

WATER SALES AGREEMENT

The Turlock Irrigation District (the "District"), and the Stanislaus Regional Water Authority, a California Joint Powers Authority ("SRWA") enter into this Water Sales Agreement ("Agreement") dated July 28, 2015, and agree as follows:

1. Definitions.

- (a) Board – The Board of Directors of the Turlock Irrigation District.
- (b) Closing Date - The date on which all approvals and permits under Sections 2(c), 2(d), and 4(m) have been obtain in accordance with those sections.
- (c) District Delivery Facilities – The raw water infiltration gallery, the raw water pump station, and the pipeline from the pump station to and including the delivery meter at the SRWA treatment plant. The District Delivery Facilities are solely owned by District.
- (d) District Delivery Facilities Capital Cost Allocation – Except as otherwise provided in this Agreement, the capital costs for existing and future District Delivery Facilities shall be allocated between the Parties as follows: District, Twenty Percent (20%); SRWA, Eighty Percent (80%).
- (e) Fish flow requirements – All requirements in the FERC hydroelectric license or in any other regulatory requirements and any other applicable agreements, licenses, permits, or governmental approvals, now or existing in the future relating to fish resources below Don Pedro Dam, including but not limited to the following: minimum fish flows requirements (e.g., existing FERC License Article 37), flow fluctuation limitations (e.g., existing FERC License Article 38), river water temperatures, ramping rates limitations, and fish studies. The SRWA acknowledges and understands that the ongoing FERC licensing process for the Don Pedro Project and the La Grange Project and regulatory proceedings at the State Water Resources Control Board could result in significant changes to the existing fish flow requirements.
- (f) Offset Water - Water provided by the SRWA to the District under Section 4(i) to offset the increased demand placed by the Project on TID water supplies.
- (g) Party - The SRWA or the District, or collectively, "Parties".
- (h) Point of Delivery - Defined in Section 4(a).
- (i) Project - The Project consists of all property and work desirable or necessary to design, build, operate, own and maintain a domestic water treatment plant and associated treated water transmission facilities, excluding the District Delivery Facilities.

- (j) Recycled water - Tertiary treated wastewater, which complies with all applicable laws and regulations for unrestricted agricultural use including, without limitation, use for row and feed crops and orchards.
- (k) Transfer Water - The amount of raw water required to be sold by District to SRWA in accordance with the terms and conditions of this Agreement, as set forth in Section 3(a) below.
- (l) Year - The twelve month period beginning April 1 through March 31 of the following year unless otherwise specified.

2. Overview.

- (a) Purpose. The purpose of this Agreement is to provide the terms and conditions under which the District will sell and deliver Transfer Water to the SRWA. The Parties have not committed to approve all or any part of this Project and retain discretion to approve the Project, approve an alternative to the Project, adopt mitigation measures, or disapprove the Project.
- (b) C.E.Q.A. District has performed the necessary CEQA investigation, analysis and documentation of CEQA requirements with respect to the District Delivery Facilities and the treatment plant, which documentation has been reviewed and approved by SRWA. In the event that additional work is required to update the District's previous CEQA work, the Parties agree that the District will be the CEQA lead agency and to split such costs based upon the District Delivery Facilities Capital Cost Allocation. SRWA will be the CEQA lead agency and will perform all other necessary CEQA investigation, analysis and documentation of CEQA requirements with respect to the Project and at SRWA's expense.
- (c) Water Rights. District will use commercially reasonable efforts to petition the State Water Resources Control Board (SWRCB), and SRWA will reasonably cooperate in District's request, for a Long-Term Transfer under Water Code section 1735, et seq., to the SRWA for up to 30,000 acre feet of water per year and to add municipal and industrial purposes of use under District's post-1914 water rights License 11058 and to add the District Delivery Facilities as a point of rediversion.
- (d) SWRCB's Failure to Approve Section 2(c) Petition. In that event that District cannot obtain the required SWRCB approvals described in section 2(c) on terms and conditions acceptable to the District in the District's sole discretion, the Parties will fulfill their already existing obligations to one another in this Agreement and the Agreement will then terminate.
- (e) District Shall Maintain Rights. District shall diligently maintain the water rights to all Transfer Water throughout the life of this Agreement under all applicable laws and regulations. District agrees to diligently pursue renewal of the long-term water transfer prior to its expiration subject to the SRWA being in full compliance with this Agreement.

3. District to Sell Water.

- (a) Sale of Water. Subject to the delivery limitations, the Offset Water requirements, and other terms and conditions of this Agreement, District shall make continuously available to SRWA 30,000 acre feet of Transfer Water per year in accordance with section 4. District will make such Transfer Water available to SRWA within the scope of District's valid post-1914 appropriative water rights.
- (b) No Transfer of Water Rights. The Parties to this Agreement confirm that this constitutes a contractual right to purchase raw water and that no water right is being transferred by the District to the SRWA.

4. Delivery of Water.

- (a) Point of Delivery. The Point of Delivery of Transfer Water from District to SRWA shall be at the delivery meter located at the SRWA's domestic water treatment plant. The delivery meter is part of the District Delivery Facilities. SRWA will provide easements on any property owned or leased by SRWA or any member agency to the District required by the District to install, access, and maintain the District Delivery Facilities and any additional District facilities connecting the District Delivery Facilities to the District's Ceres Main. SRWA is responsible for ensuring that Transfer Water does not flow back into District Delivery Facilities.
- (b) Delivery Schedules. The amounts, times and rates of delivery of Transfer Water to SRWA during any Year will be in accordance with a water delivery schedule for that Year to be determined as follows:
 - (1) On or before January 1 preceding each new Year, the SRWA will submit to District a preliminary water delivery schedule indicating the amounts of water desired by the SRWA during each month of the next succeeding two Years. Beginning with the second full Year, the total amount of water requested for any given Year shall not vary by more than ten percent (10%) from the immediately prior Year and the next succeeding Year unless a greater variation is approved by the District. The delivery rate for each month of the schedule shall be at a fixed cubic feet per second.
 - (2) Upon receipt of a preliminary schedule, the District will review it and after consultation with SRWA will make such modifications as the District deems necessary. On or before March 1 preceding each new Year, District will determine and furnish to the SRWA the water delivery schedule for the coming new Year, commencing April 1, which will show the amounts of water to be delivered to the SRWA during each month of that Year. Because of fish flow requirements, SRWA agrees that during any river flow fluctuation limitation period, the SRWA delivery schedule may not reduce flows in the river by more than the amount or percentage of flow required by any fish flow requirement during the entire limitation period.
 - (3) A water delivery schedule may be amended by the District at its discretion upon the SRWA's written request. Proposed amendments will be submitted by the SRWA within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the District in like manner as the schedule itself. District will

not modify the delivery schedule if it will cause an increase in District's fish flow requirements under its FERC license.

(4) If the District determines during a Year that the availability of water to its agricultural and municipal customers has changed significantly, the District reserves the right to amend the delivery schedule in April or May of that Year for deliveries of Transfer Water during the remaining months of that Year.

- (c) Measurement of Water Delivered. The District will measure all water delivered to the SRWA and all water diverted through the District Delivery Facilities but which are delivered to the Ceres Main Canal and not to the SRWA. The District will keep and maintain accurate and complete measurement records. The District will install, operate, and maintain water metering equipment that are reasonably acceptable to both Parties at all delivery points for water from the District Delivery Facilities to the SRWA and to the District's Ceres Main Canal. The meters shall be examined, tested and serviced regularly by the District to maintain their accuracy in accordance with the meter manufacturer's written recommendations. The SRWA may inspect the metering equipment and the measurement records during regular business hours upon reasonable notice. The District will provide the SRWA with instrumentation output signals for water flow rate and water pressure information at each meter. SRWA retains the right to install reciprocal measuring devices that comply with the same standards and procedures set forth above. Disparities between District and SRWA measurements will be resolved pursuant to Section 12, Resolution of Differences, of this Agreement.
- (d) SRWA Responsible for Delivery Schedule Water Impacts.
- (1) If deliveries under the Delivery Schedule result in any increase in the amount of any fish flow requirements, whether required by the FERC or any other regulatory agency, which flows cannot be diverted at the Infiltration Gallery for use by the SRWA, then SRWA agrees to pay for the cost of that additional water at the same per-acre-foot price as for water delivered to the SRWA. O&M costs described in Section 7(e) shall not apply to flows which cannot be diverted at the Infiltration Gallery for use by the SRWA.
- (2) If the District releases water at La Grange Dam in accordance with the applicable Delivery Schedule but the SRWA fails to divert all or any portion of the water made available by the District for diversion at the Infiltration Gallery in accordance with the applicable Delivery Schedule, then the SRWA agrees to pay for the cost of the water at the same per-acre-foot price as for water delivered to the SRWA even if the District is actually able to divert all or any portion of the water into the Ceres Main Canal.
- (e) SRWA and Agriculture Water Delivery Treated on Parity Basis. District agrees to treat District's agricultural customers and SRWA on a parity basis. If at any time before or during a Year the District decides it is necessary to reduce deliveries, it will cut back its deliveries to its agricultural customers and to SRWA in equal proportions based upon the base allocation of water allocated during that Year. If at any time before or during a Year

the District decides it can increase deliveries, it will increase its deliveries to its agricultural customers and to SRWA in equal portions based upon the base allocation of water allocated during that Year. For agriculture customers, the base allocation will be 48 inches per acre. For the SRWA, the base allocation will be the amount of water requested by the SRWA in the current Year of the most current approved two year delivery schedule. District agrees that its commitments to its agricultural customers and to SRWA shall be met before any subsequent transfers for delivery of water outside District's boundaries, with the exception of transfers of water released pursuant any agreement with the City and County of San Francisco and/or the Modesto Irrigation District relating to fish flow requirements.

- (f) Formula for Reduction in Water Allocation. The allocation of Transfer Water to SRWA will be reduced in any Year that Y is less than 48 inches per acre.

$$(Y/48) \times Z = X$$

"Y" will be the actual final number of inches of water allocated by the Board to agricultural water users for the irrigation season commencing on or about April 1 of that Year. In the event a portion of the agricultural water allocation is optional and the fixed and optional amounts equal or exceed 48 inches, the Y will be 48 inches for the purposes of this calculation.

"Z" will be the total amount of water requested by the SRWA in the current Year of the two year delivery schedule.

"X" will be the actual amount of Transfer Water allocated to the SRWA for Years in which there is a reduction in the allocation. It is anticipated that from time to time District may modify its current agricultural water allocation. When District makes changes in its agricultural water allocation, the Parties will meet and confer and agree upon changes to ensure that reductions or increases in available water are in equal proportions as between District's agricultural customers and SRWA.

In no event will District be required to make available to SRWA more than the amount of Transfer Water than is stated in the delivery schedule. If there is a reduction or increase in the allocation in accordance with this section, the payment obligations of SRWA shall be adjusted in accordance with this Agreement.

- (g) Force Majeure. In the event of Force Majeure, District shall first supply SRWA and its agricultural users in parity, except in the event this becomes physically impossible. The District is not required to deliver, and is not liable for failure to deliver, water under this Agreement when the cause of the failure is beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other person or entity to comply with then-existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of a governmental entity, or failure to issue a requested

order, license, or permit. Should either Party become aware of any impending Force Majeure, it shall notify the other Party as soon as is reasonably possible.

- (h) Curtailment of Delivery for Maintenance Purposes. The District may temporarily discontinue or reduce the delivery of Transfer Water for the SRWA for purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the District Delivery Facilities necessary for the delivery of Transfer Water to the SRWA. The District will notify the SRWA as far in advance as possible of any such projected discontinuance or reduction, except in cases of emergency, in which case prior notice need not be given. Maintenance reductions of Transfer Water shall be made up within one calendar year of the maintenance reduction on a delivery schedule mutually agreed by the Parties and subject to the capacity of the District Delivery Facilities and limitations of any fish flow requirements.
- (i) Offset Water To Be Provided by SRWA to the District. In any Year when there is a reduction in the water allocation under section 4(f), SRWA must provide Offset Water to the District starting on April 1 in accordance with the following formula:

$$\text{Amount of Offset Water Required} = 2 \times \% \text{ of Reduction} \times \text{Actual Amount of Transfer Water Allocated}$$

“% of Reduction” will be the factor by which the water allocated by the Board to agricultural water users for the irrigation season commencing immediately prior to the Year is reduced from 48 inches. For example, if the agricultural water allocation is 36 inches, it has been reduced by 12 inches which is a 25 % reduction from 48 inches ($12 \div 48 = 0.25$). The % of Reduction is 0.25.

“Actual Amount of Transfer Water Allocated” will be the amount determined to be “X” in section 4(f), Formula for Reduction in Water Allocation.

SRWA will not, however, be required to provide more Offset Water in a given Year than the Actual Amount of Transfer Water Allocated. Thus, if after the formula is applied, the Amount of Offset Water Required is greater than the Actual Amount of Transfer Water Allocated, the Offset Water required will be equal to the Actual Amount of Transfer Water.

The following table illustrates examples of potential reductions and Offset Water requirements:

SRWA Request: 30,000 AF

	0% Reduction	25% Reduction	50% Reduction	75% Reduction	100% Reduction
Actual Amount of Transfer Water Allocated	30,000	22,500	15,000	7,500	0
Total Offset Water by SRWA	0	11,250	15,000	7,500	0
Shortage from SRWA's request of 30,000 AF	0	7,500	15,000	22,500	30,000

- (j) Upon approval by the State Water Resources Control Board, the City of Turlock, on behalf of the SRWA, will provide District with 2,000 AF of baseline recycled water every year, regardless of water year type. District would take delivery of the 2,000 AF of baseline recycled water only during the irrigation season, not to exceed 9.5 AF per day. The irrigation season would be determined yearly depending on water year. For planning purposes, it is assumed to be mid-March through mid-October or seven (7) full months. The treated wastewater that the City of Turlock provides to the District for the Walnut Energy Center is not included in the 2,000 AFY of baseline recycled water. During dry years when the SRWA is required to provide more Offset Water beyond the 2,000 AF of baseline recycled water, the SRWA may make up the difference with any other water source. The term "any other water source" shall mean water, which complies with all applicable laws and regulations for unrestricted agricultural use including, without limitation, use for row and feed crops and orchards; for example, well water.

Example: Assuming it is a dry year and there is a 25% reduction in water allocation. District would provide the SRWA with 22,500 AF of Transfer Water. The Offset Water required from SRWA would be 50% of the Transfer Water. In this case, the Offset Water required would be 11,250 AF. The City of Turlock, on behalf of the SRWA, would provide District with 2,000 AF of recycled water and the SRWA would provide the remaining amount of 9,250 AF from any other water source.

- (k) The District will pay all reasonable costs associated with obtaining any and all approvals to use recycled water for irrigation purposes, whether or not such approvals are issued or obtained, including attorney and filing fees. District shall obtain all permits necessary from the State Water Resources Control Board, Regional Water Quality Control Board, or any other entity to use recycled water for irrigation purposes. SRWA agrees to provide assistance and all relevant and available information to the District for its use in obtaining these permits. If the District cannot obtain all of the required approvals and permits on terms and conditions acceptable to the District in the District's sole discretion, the Parties will fulfill their already existing obligation to one another in this Agreement and the Agreement will then automatically terminate.
- (l) The District shall use all Offset Water within the Turlock Groundwater Subbasin. Offset Water provided by SRWA shall not be transferred outside the Turlock Groundwater Subbasin without prior SRWA approval, including but not limited to a revenue sharing agreement.
- (m) The Parties agree that in providing Offset Water to the District, no water right is being transferred by the SRWA to the District.
- (n) SRWA shall pay the design, construction, operation, maintenance, and replacement costs for the capital facilities needed to interconnect the Offset Water source or sources with the District's existing irrigation water delivery system. The Parties agree that the recycled water source shall interconnect with the District's Lateral 4 via the recycled water pipeline to Pedretti Park. The location and design of the interconnection facilities shall be subject to the prior review and approval of the District.

5. Responsibility for Distribution of Water.

- (a) Water Quality. The District assumes no responsibility for the quality of the water delivered to SRWA under this Agreement and the District does not warrant the quality of any such water for any particular use. The SRWA shall be responsible for the treatment of all such water to the minimum water quality standards for water for domestic use as may be established from time to time by the State of California and/or by federal government, and notwithstanding subsection 5(c) below, the SRWA shall defend, indemnify, and hold harmless the District from and against any and all claims, damages, costs, expenses, judgments, attorney fees or other liability to any person or entity asserting that said water does not meet or has not met domestic use water quality standards.
- (b) Non-Liability of District. Neither the District nor any of its officers, agents, or employees will be liable for the control, carriage, handling, use, disposal, or distribution of water delivered to the SRWA after such water has passed the Point of Delivery, nor for claims of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, treatment, carriage, handling, use, disposal, or distribution of the water beyond the Point of Delivery and attorneys' fees and related costs of defense. The SRWA shall defend, indemnify and hold harmless the District and its officers, agents, and employees from any damages or claims that arise under sections 5(a) and/or 5(b).
- (c) Non-Liability of SRWA. Neither the SRWA nor any of its officers, agents, or employees will be liable for control, carriage, handling, use, disposal, or distribution of water delivered to the SRWA until such water has passed the Point of Delivery, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, treatment, carriage, handling, use, disposal, or distribution of the water before it has reached the Point of Delivery and attorneys' fees and related costs of defense. The District shall defend, indemnify and hold harmless the SRWA and its officers, agents, and employees from any such damages or claims that arise under this Section 5(c).

6. Water Use.

- (a) Sale or Other Disposition of Project Allotment by SRWA. Transfer Water provided under this Agreement is for beneficial use exclusively within the irrigation boundary of the District. SRWA agrees that the amount of water purchased under this Agreement will not exceed the amount of water used by SRWA's customers within the District's irrigation boundary during the Year. No sale or other disposition of all or any portion of the SRWA's allotment shall relieve SRWA of any of its obligations under this Agreement.
- (b) Ownership of Wastewater. Notwithstanding Paragraph 6(a), the SRWA will have sole ownership and responsibility for all wastewater and recycled water produced by SRWA's use of Transfer Water purchased under this Agreement. Once raw water furnished to

SRWA by District has passed the Point of Delivery, District shall not own or control it under any circumstances except by purchase, or except to the extent provided to the District by the SRWA as Offset Water.

7. SRWA Payment Obligations.

- (a) Payments. The SRWA shall make payments, at the times and in the manner set forth below.
- (b) Water Price. Subject to Section 4(d), District agrees to release and SRWA agrees to pay for all Transfer Water released at La Grange Dam in accordance with the delivery schedule and measured at the Point of Delivery minus the amount of any Offset Water that may be provided by the SRWA under Section 4(i). The price for the water delivered shall be the then current published per-acre-foot charge for the District's Tier 4 irrigation water subject to adjustment as approved by the District's Board of Directors. The District will issue monthly billing statements for the Transfer Water which will be due and payable on the first business day of each month, and will be considered delinquent if not paid within thirty (30) days of the due date.
- (c) SWRCB Proceedings. The SRWA will pay all costs associated with filing the petition for and obtaining the long term water transfer from the SWRCB, whether or not the petition is successful. This includes attorney and filing fees, and any costs associated with implementing the water transfer. District will issue monthly billing statements for these costs as they accrue. Payment will be due and payable within thirty (30) days of issuance by the District.
- (d) Capital Costs of the District Delivery Facilities.
 - (1) The District has paid a total of \$924,302 to permit, design, and construct the existing Infiltration Gallery. The Parties agree that those capital costs shall be allocated between the Parties in accordance with the District Delivery Facilities Capital Cost Allocation. The SRWA agrees to pay the District the sum of \$739,442 on the Closing Date.
 - (2) The District will incur additional capital costs to permit, design, and construct the pump station and the pipeline from the pump station to the treatment plant. The Parties agree that the pump station, pumps, and pipeline will be sized to a capacity of 100 cfs. The Parties recognize that the pump station will have multiple pumps and that the pumps may be installed in phases as the SRWA's Transfer Water demands or the District's use of the pumps increases over time. Unless the shared priority of use of the District Delivery Facilities under Section 7(f) changes, these additional capital costs will be allocated in accordance with the District Delivery Facilities Capital Cost Allocation.
 - (3) The Parties agree that the additional capital costs for the District Delivery Facilities under Section 7(d)(2) shall be paid by the Parties on a pay-as-you-go basis. Each Party shall be solely responsible for securing funds necessary to make all such payments.

- (e) Annual Operation and Maintenance Costs of the District Delivery Facilities. The Parties agree that the annual operation and maintenance costs of the District Delivery Facilities shall include, but not be limited to, the following: costs to operate and maintain the Infiltration Gallery, the pump station (including all pumps and associated equipment), the pipeline from the pump station to the treatment plant, and the delivery meter, the electricity to operate the pump station, and the repair and replacement of any component.
- (f) The Parties recognize and agree that the uses of the District Delivery Facilities will be for the following purposes: (1) delivery of the Transfer Water to the SRWA, (2) to divert water released at La Grange Dam to comply with fish flow requirements or to otherwise mitigate or enhance the fish habitat between La Grange Dam and the Infiltration Gallery and which is not delivered to the SRWA, and (3) if the District needs to provide irrigation water into the Ceres Main Canal. Uses (2) and (3) shall be called "District Water Use". Unless otherwise agreed pursuant to Section 7(d)(2), the scheduling of the use of the District Delivery Facilities for those purposes shall be on a prorate basis in accordance with the District Delivery Facilities Capital Cost Allocation.

The SRWA's annual share and payment of these costs shall be calculated as follows: The total number of acre feet of water delivered to the SRWA at the Point of Delivery in Section 4(a) ["SRWA Water Use"] divided by the sum of SRWA Water Use and District Water Use in acre feet pumped through the pump station during the Year with the resulting quotient expressed as a percentage. The total annual operation and maintenance costs shall be multiplied by the resulting quotient expressed as a percentage. The product shall be the amount of annual operation and maintenance costs payable by the SRWA to the District in 12 equal monthly installments.

- (g) Payments to District of Capital and Operation and Maintenance Costs.

(1) Budget Process. In preparing and reviewing budgets for the District Delivery Facilities, the Parties will be guided by the principle that the District Delivery Facilities will be operated in as economic a manner as practical in accordance with generally accepted waterworks practices as evidenced by well-designed and operated similarly sized facilities in Northern California.

(2) Budget Preparation. The District will prepare a preliminary annual budget for the first year of District Delivery Facilities operation at least six months prior to the date the SRWA projects it will conduct operational testing of the Project. Thereafter, for each Year during the operation of the Project, District will prepare a preliminary budget for the District Delivery Facilities prior to January 1 for the next two ensuing Years for review and comment by the SRWA. Each budget will include (i) any credits to be applied, (ii) operating and maintenance costs, (iii) capital replacement costs, and (iv) capital costs for new capital additions to the District Delivery Facilities and will also include the estimated monthly payment to be paid for the ensuing year. District staff will use its best efforts to resolve any questions or concerns during such review. The Board of Directors of the District will adopt a final annual budget for each Year on or before March 15 of

each year after a public hearing for which ten days' notice has been given, and will supply a copy of the adopted budget to the SRWA.

(3) The District will issue monthly billing statements for the monthly payment estimated in the applicable budget which will be due and payable on the first business day of each month, and will be considered delinquent if not paid within thirty (30) days of the due date.

(4) As soon as practicable after each Year, District will determine the actual amount of Transfer Water delivered and the cost thereof, as well as the actual costs of operation and maintenance, and capital costs for the preceding Year. District will notify SRWA of any over or under payment by the SRWA and any necessary adjustments will be amortized and applied, without interest, to the regular monthly billing statements remaining in the then current Year following completion of the calculations.

8. Default.

- (a) Written Demand Upon Failure to Perform. Upon failure of either Party to perform any obligation under this Agreement, the aggrieved Party shall send a written notice of default, specifying the nature of the default, and a demand for performance to the nonperforming Party.
- (b) 30 Days to Cure. If the Nonperforming Party does not remedy its failure within 30 days of receipt of notice, or the Parties have not agreed on a plan to cure the default within that time, either Party may invoke the procedures specified in Section 12.
- (c) Parties Liable for Cost of Default. Upon any default by the District or SRWA, the liable Party shall pay to the other Party all costs incurred because of the default, including attorney's fees, investigation costs, and other reasonable costs of implementing the default provisions. Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.

9. Covenants of SRWA.

- (a) Rate Sufficiency Covenant. The SRWA covenants and agrees to establish and collect rates and charges for the water provided to the Project sufficient to provide revenues adequate to meet its obligations under this Agreement.
- (b) SRWA Annual Audited Financial Statements. The SRWA shall deliver to the District or make available to the District on the SRWA's website within 270 days following the end of each SRWA fiscal year, a copy of the SRWA's annual audited financial statements for such SRWA fiscal year. The annual statements will be prepared in accordance with the general accounting standards applicable to California joint powers agencies. In all cases the statements shall be for the most recent accounting period. If any such statements are not available on a timely basis due to a delay in preparation or certification, such delay shall not constitute a default under this Agreement so long as the SRWA diligently pursues the preparation, certification and delivery of the annual statements.

- (c) Transfer of Ownership of SRWA Water System. The SRWA shall not transfer ownership of all or any substantial portion of its water system that is receiving Transfer Water from the Project to another entity without the written consent of District.

10. Indemnification.

- (a) Indemnification by SRWA. The SRWA releases and agrees to defend and indemnify the District, its officers, employees and agents (collectively, the “Indemnified Parties”) from and against any and all losses, claims, damages, liabilities or expenses arising out of, resulting from the SRWA’s negligence, willful misconduct, or breach of this Agreement.

An Indemnified Party will promptly notify the SRWA in writing after receiving notice of any action against it for which indemnification may be sought against the SRWA. However, the omission to notify the SRWA of any such action shall not relieve the SRWA from any liability which it may have to the Indemnified Party under this indemnity agreement except to the extent that the SRWA is prejudiced thereby. If any action is brought against an Indemnified Party, the SRWA may, or if requested by the Indemnified Party must, participate in or assume the defense of the action with counsel satisfactory to the Indemnified Party at the SRWA’s option. After notice to the Indemnified Party that the SRWA has elected to assume the defense of the action, the SRWA will not be liable to the Indemnified Party under this section for any legal or other expenses subsequently incurred by the Indemnified Party in connection with defending against the action other than the cost of reasonable investigation.

The SRWA will not be liable for settlement of any action effected without its consent by any Indemnified Party. If the SRWA consents to settlement of the action, the SRWA agrees to indemnify and hold harmless the Indemnified Party to the extent provided in this agreement.

- (b) Indemnification by District. The District releases and agrees to indemnify the SRWA, its officers, employees and agents (collectively, the “Indemnified Parties”) from and against any and all losses, claims, damages, liabilities or expenses arising out of, resulting from the District’s negligence, willful misconduct, or breach of the Agreement.

An Indemnified Party will promptly notify the District in writing after receiving notice of any action against it for which indemnification may be sought against the District. However, the omission to notify the District of any such action shall not relieve the District from any liability which it may have to the Indemnified Party under this indemnity agreement except to the extent that the District is prejudiced thereby. If any action is brought against an Indemnified Party, the District may, or if requested by the Indemnified Party must, participate in or assume the defense of the action with counsel satisfactory to the Indemnified Party. After notice to the Indemnified Party that the District has elected to assume the defense of the action, the District will not be liable to the Indemnified Party under this section for any legal or other expenses subsequently incurred by the Indemnified Party in connection with defending against the action other than the costs of reasonable investigation.

The District will not be liable for settlement of any action effected without its consent by any Indemnified Party. If the District consents to settlement of the action, the District agrees to indemnify and hold harmless the Indemnified Party to the extent provided in the Agreement.

- (c) Term of Indemnity. The provision of this section will survive the termination of this Agreement.

11. Term and Ownership of Facilities.

- (a) Term. The term of this Agreement shall commence upon its execution by the authorized representatives of the Parties and shall continue in effect for 50 years, unless sooner terminated in accordance with this Agreement or unless extended by the mutual agreement of the Parties.
- (b) Reopening Negotiations. District may reopen this Agreement at any time for the purpose of negotiating changes to the amount of Transfer Water provided by District and Offset Water provided by SRWA if conditions or restrictions on the District's use of its water are imposed by the Federal Energy Regulatory Commission, the State Water Resources Control Board or any other entity.
- (c) Ownership of Facilities. At all times during the term of this Agreement, the District will have sole ownership of the District Delivery Facilities and the District facilities connecting the District Delivery Facilities to the Ceres Main Canal, and SRWA will have sole ownership of all physical facilities from the Point of Delivery meter. Nothing in this Agreement may be construed to create a partnership or joint venture of any kind.
- (d) Ownership of Real Property. Upon approval of the long-term water transfer by the SWRCB, the District agrees to sell the treatment plant site, subject to a reservation of such easements for the District's pipelines to the treatment plant from the pump station and from the treatment plant to the Ceres Main Canal, to the SRWA at a sales price of \$1,436,674.00 payable to the District on the Closing Date. The Parties agree that should the treatment plant not be built, SRWA will reconvey the treatment plant site to the District at the sales price of \$1,436,674.00. A legal description and parcel map of the treatment plant site is attached hereto as Exhibit "A" and incorporated herein by reference. SRWA will acquire such additional lands and/or easements to complete, operate and maintain the treatment plant and treated water delivery pipelines and facilities.

12. Resolution of Differences.

- (a) Dispute Resolution. This Section 12 shall apply to all disputes arising out of or relating to this Agreement. The Parties shall attempt in good faith to resolve any dispute promptly by negotiation between the District General Manager and the SRWA General Manager.
- (b) Binding Arbitration. If the District and the SRWA are unable to reach an agreement after discussions under subsection (a) above, within 90 calendar days after the date of the initial

Managers' meeting on the dispute, either Party may serve the other with a request for binding arbitration under the Arbitration Rules of the American Arbitration Association ("AAA") ("Rules") by a single arbitrator. The demand must set forth the nature of the dispute and the claim or relief sought. If the District and the SRWA cannot agree on a person to serve as the arbitrator, the dispute shall be submitted to one neutral arbitrator selected from the panels of arbitrators of the AAA. To this end, the Parties agree to select the arbitrator from a panel of five arbitrators offered by AAA by alternate strikes. The Party who served the request for binding arbitration shall strike first. The District and the SRWA agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery will be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein unless the parties agree otherwise. The District and the SRWA hereby consent to the jurisdiction of the courts of Stanislaus County, California, for the confirmation, correction or vacation of any arbitration award. The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator will have no power to award punitive damages or other damages not measured by the Party's actual damages against any Party. This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to arbitrate sufficient to vest jurisdiction in a court with respect to that issue. The arbitrator's award will be deemed final, conclusive and binding to the fullest extent allowed by California law, and may be entered as a final judgment in court.

13. Miscellaneous

- (a) Assignment. SRWA may not sell, transfer or assign all or any portion of this Agreement without the prior written consent of District. District agrees not to sell, transfer, or assign any of its right or interest in the Project including this Agreement, in whole or in part, without prior written consent of SRWA.
- (b) Amendment/Termination. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.
- (c) No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.
- (d) Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it

can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

- (e) Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.
- (f) Choice of Law. This Agreement will be construed in accordance with the laws of the State of California.
- (g) Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.
- (h) Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.
- (i) Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below:

If delivered to SRWA:

STANISLAUS REGIONAL WATER AUTHORITY
General Manager
C/O City of Modesto Utilities Department
P.O. Box 642
Modesto, CA 95353

If delivered to the District:

TURLOCK IRRIGATION DISTRICT
General Manager
333 East Canal Drive
Turlock, CA 95380

A Party may change its place of notice by a notice sent to the other Party in compliance with this section.

- (j) No Third Party Beneficiaries. Except for the Parties and their respective successors and assigners, nothing in this Agreement, whether express or implied, is intended to confer any rights on any person or entity whatsoever.
- (k) No Breach of Other Agreements. Neither Party's execution and performance of this Agreement will result in the breach of any other agreement to which that party is a Party, or to which that Party is otherwise subject or bound.
- (l) No Party Drafter. Neither Party to this agreement shall be considered its drafter. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against either Party.

IN WITNESS WHEREOF, the SRWA has executed the Agreement with the approval of its Board, and the District has executed this Agreement in accordance with the authorization of its Board of Directors, as of the date first written above.

TURLOCK IRRIGATION DISTRICT

By: Casey Hashimoto
CASEY HASHIMOTO, General Manager

STANISLAUS REGIONAL WATER AUTHORITY

By: Stevan Stroud
STEVAN STROUD, Interim General Manager

ATTEST:

By: Judy Rosa
JUDY ROSA, Secretary to the Board

APPROVED AS TO FORM:

By: R. Stevens
ROLAND STEVENS, General Counsel

EXHIBIT "A"

EXHIBIT A
LEGAL DESCRIPTION

WATER TREATMENT PLANT PARCEL

All that certain real property situate, lying, and being a portion of that certain parcel of land described in the Grant Deed to Rodney Beard and Virginia Beard, recorded August 19, 1994 as Instrument No. 94082327, Stanislaus County Records, commonly known as Assessor's Parcel No. 018-006-002, lying in the west half of Section 2, Township 4 South, Range 10 East, Mount Diablo Base and Meridian, being more particularly described as follows:

COMMENCING at the south $\frac{1}{4}$ corner of said Section 2, thence northerly, along the north-south $\frac{1}{4}$ section line, North $0^{\circ}04'38''$ East 1533.54 feet, to the southeasterly corner of the aforementioned Beard Parcel, also being on the northerly line of the of the Turlock Irrigation District Ceres Main Canal, said point being the POINT OF BEGINNING of this description; thence, along the southerly line of said Beard Parcel and the northerly line of said Ceres Main Canal, South $78^{\circ}11'02''$ West 81.76 feet; thence, parallel with, and 80.00 feet west (measured at a right angle) of the east line of said Beard Parcel, North $00^{\circ}04'38''$ East 414.65 feet; thence North $77^{\circ}06'05''$ West 237.38 feet; thence North $75^{\circ}48'12''$ West 50.95 feet, to the beginning of a curve, concave to the south, having a radius of 295.00 feet, and a central angle of $49^{\circ}52'42''$; thence, along the arc of said curve, 256.81 feet; thence South $54^{\circ}19'06''$ West 246.25 feet; thence South $51^{\circ}35'56''$ West 292.30 feet; thence South $49^{\circ}54'08''$ West 106.47 feet; thence South $82^{\circ}06'37''$ West 9.20 feet; thence North $07^{\circ}52'53''$ West 688.63 feet; thence South $88^{\circ}25'07''$ West 30.18 feet, to an angle point on the westerly boundary of said Beard Parcel; thence, along the westerly and northerly boundary of said Beard Parcel, the following five (5) courses:

- 1) North $07^{\circ}52'53''$ West 803.65 feet; thence
- 2) North $33^{\circ}25'28''$ East 439.15 feet; thence
- 3) North $49^{\circ}50'18''$ East 217.57 feet; thence
- 4) North $88^{\circ}24'35''$ East 527.96 feet; thence
- 5) South $67^{\circ}15'25''$ East 461.54 feet,

to a point on the aforementioned north-south $\frac{1}{4}$ section line; thence, along said north-south $\frac{1}{4}$ section line, also being along the easterly boundary of said Beard Parcel, South $00^{\circ}04'38''$ West 1842.38 feet, to the point of beginning.

Containing a total of 47.90 acres, more or less.

SUBJECT TO:

And easement for ingress/egress over the following described portion of the parcel described above:

COMMENCING at the south $\frac{1}{4}$ corner of said Section 2, thence northerly, along the north-south $\frac{1}{4}$ section line, North $0^{\circ}04'38''$ East 1533.54 feet, to the southeasterly corner of the aforementioned Beard Parcel, also being on the northerly line of the of the Turlock Irrigation District Ceres Main Canal, said point being the **POINT OF BEGINNING** of this description; thence, along the southerly line of said Beard Parcel and the northerly line of said Ceres Main Canal, South $78^{\circ}11'02''$ West 81.76 feet; thence, parallel with, and 80.00 feet west (measured at a right angle) of the east line of said Beard Parcel, North $00^{\circ}04'38''$ East 414.65 feet; thence South $89^{\circ}55'22''$ East 80.00 feet, to a point on the easterly boundary of said Beard Parcel; thence, along said easterly boundary, South $00^{\circ}04'38''$ West 397.80 feet, to the point of beginning.

Containing a total of 0.75 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record.

Bearings and distances are based on the California Coordinate System-83, Zone 3 (1991.35). A line between City of Modesto monuments 2021 and 2125 bears North $79^{\circ}27'51''$ East as calculated from City of Modesto GPS Control Network Survey, filed for record in Book 22 of Surveys, at Page 51, Stanislaus County Records. All distances are grid, based on a combination factor of 0.99993300. To convert distances shown hereon to ground, multiply by the reciprocal of said combination factor, 1.00006700.



Michael Halterman
9 Jun 08

31 S 30

LINE TABLE

NO	BEARING	DISTANCE
L1	S78°11'02"W	81.74' (M161)
L2	N6°54'40"E	414.68' (M161)
L3	N75°06'05"W	237.40' (M161)
L4	S75°40'18"W	50.95' (M161)
L5	N35°40'54"W	292.08' (M161)
L6	S84°19'05"W	246.27' (M161)
L7	S51°25'55"W	292.32' (M161)
L8	S89°54'08"W	106.48' (M161)
L9	S89°55'22"E	80.00' (M161)

SCHMIDT FAMILY LP
98-0053352

N 1/4 COR. N.E. 1/4 SEC. 2 PROPRIATION BETWEEN N.M. & M.E. SECTION CORNERS. 307'x45' NE 1/4

SURVEYOR'S STATEMENT:
THIS MAP WAS EXAMINED IN ACCORDANCE WITH SECTION 11109 OF THE PROFESSIONAL LAND SURVEYORS ACT AT THE REQUEST OF T.J.D. ON JUNE 20, 2008.
BY: *William B. Jones*
WILLIAM B. JONES, COUNTY SURVEYOR
LICENSED EXPIRATION: JUNE 30, 2009



COUNTY SURVEYOR'S STATEMENT:

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 11109 OF THE PROFESSIONAL LAND SURVEYORS ACT AT THE REQUEST OF T.J.D. ON JUNE 20, 2008.
BY: *William B. Jones*
WILLIAM B. JONES, COUNTY SURVEYOR
LICENSED EXPIRATION: JUNE 30, 2009

WILLIAM B. JONES, COUNTY SURVEYOR
LICENSED EXPIRATION: JUNE 30, 2009
BY: *William B. Jones*
WILLIAM B. JONES, P.L.S. 1968

LEGEND

- SET 1/2" REBAR 30" LONG WITH CAP L.S. 5230
- FD.3/4" REBAR NO TAG SET CAP L.S. 5230
- ALL OTHER POINTS AS NOTED ON MAP.

T.J.D.
DEED: INST. NO. 2008-82231
47.91 ACRES +/-

SCHMIDT, M.
2788-OR-22
S.F.N.F. (B)

SCALE 1" = 200'

SECTION BREAKDOWN
N.T.S.

SEC. 35, T.35, R.10E
N.T.S.
40 CHAINS (C)

SEC. 2, T.45, R.10E
40 CHAINS (C)

REFERENCES

- (A) 36-PM-37 UNRECORDED SURVEY IN 1964 FOR FOX BROTHERS RANCH ON FILE WITH COUNTY SURVEYOR'S OFFICE
- (B) CORNER RECORD # 01619
- (C) CO. SURVEY NO. 1586
- (D) 20-PM-39
- (E) G.L.O. NOTES
- (F) CO. SURVEY NO. 1620
- (G) CURRENT DEED TO T.J.D. INSTRUMENT NO. 2008-82231

RECORD OF SURVEY

OF THE PROPERTY DESCRIBED IN THE DEED TO T.J.D. RECORDED AS INST. NO. 2008-82231 IN A PORTION OF SEC. 2, T.45, R.10E., M.D.M. STANISLAUS COUNTY CALIFORNIA

SCALE 1"=200' JULY 2008

BASIS OF BEARINGS

BEARINGS OF 179°27'15" BETWEEN CITY OF MOKINGO CORNER AS DESCRIBED IN THE DEED TO T.J.D. INST. NO. 2008-82231 BASED ON GRID BEARING.
ALL DISTANCE SHOWN HEREON ARE GROUND DISTANCES IF GRID DISTANCE IS DESIRED MULTIPLY ALL GROUND DISTANCES BY THE GRID COMBINED FACTOR OF 0.99993500.
S.F.N.F. SEARCHED FOR NOT FOUND.



G.K. GIULIANI & KULL, INC.
440 S. YOSEMITE AVE.
OAKDALE, CA. 95361
Ph. 209-847-8726 FAX. 209-847-7323

SHEET 1 of 1

31 S 30

