MARCIA L. SCULLY, State Bar No. 080648
mscully@mwdh2o.com
REBECCA D. SHEEHAN, State Bar No. 201596
rsheehan@mwdh2o.com
ROBERT C. HORTON, State Bar No. 235187
rhorton@mwdh2o.com
JOHN D. SCHLOTTERBECK, State Bar No. 169263
jschlotterbeck@mwdh2o.com
STEFANIE D. MORRIS, State Bar No. 239787
smorris@mwdh2o.com
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (916) 650-2607
Facsimile: (213) 217-6890

Attorneys for Petitioner and Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Additional Counsel Listed on Following Page

EXEMPT FROM FILING FEES PURSUANT TO GOV. CODE, § 6103(a)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA and MOJAVE WATER AGENCY Petitioner/Plaintiff, v. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CALIFORNIA DEPARTMENT OF WATER RESOURCES and DOES 1 through 100, Respondents/Defendants/ Real Parties in Interest. CALIFORNIA NATURAL RESOURCES AGENCY and ROES 1 through 100, Real Parties in Interest.	Case No. Filed under California Environmental Quality Act (CEQA) **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S AND MOJAVE WATER AGENCY'S PETITION FOR WRIT OF MANDATE AND COMPLAINT** **(Code of Civ. Proc. §§ 1085 & 1094.5; Pub. Resources Code, § 21000 et seq.; Fish & Game Code, § 2050 et seq.)**

WILLIAM J. BRUNICK, State Bar No. 046289
mailto:bbrunick@bmklawplc.com
BRUNICK, McELHANEY & KENNEDY, PLC
1839 Commercenter West
P.O. Box 13130
San Bernardino, California 92423-3130
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner and Plaintiff
MOJAVE WATER AGENCY

Petitioners and plaintiffs The Metropolitan Water District of Southern California ("Metropolitan") and Mojave Water Agency ("Mojave") allege as follows:

INTRODUCTION

1. Metropolitan and Mojave bring this action to protect their interests in reliable State Water Project ("SWP") supplies by ensuring that any requirement to forego or cut supplies or fund mitigation and monitoring imposed on the SWP to meet California Endangered Species Act ("CESA") requirements is both scientifically and legally justified, by ensuring that the environmental impacts of altering SWP operations are fully disclosed and analyzed consistent with the California Environmental Quality Act ("CEQA"), and by protecting and enforcing Metropolitan's and Mojave's respective contractual rights.

2. California approved and built the SWP, a system of water storage, diversion and conveyance facilities, primarily to deliver water to farms and cities, but also to provide flood protection and hydroelectric power, and to serve ancillary recreational and fish and wildlife purposes. The SWP is the foundation of California's water supply system. It supplies water that ultimately reaches more than 27 million people in northern California, the Bay Area, the San Joaquin Valley, the Central Coast and southern California, as well as about 750,000 acres of farmland, mainly in the San Joaquin Valley.

3. Metropolitan's allocation of SWP water supplies comprises a significant portion of Metropolitan's water supply portfolio, enabling it to serve supplemental water to its member agencies, which, in turn serve water to their members or retail customers, reaching approximately 19 million Californians living in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties. Metropolitan is directly affected by the Department of Fish and Wildlife's ("CDFW") and the Department of Water Resources' ("DWR") failure to comply with the California Endangered Species Act ("CESA"), the California Environmental Quality Act ("CEQA"), and DWR's failure to comply with the terms of Metropolitan's contract to receive water from the SWP.

4. Mojave's boundaries encompass approximately 4,900 square miles of high desert in San Bernardino County. As a state water contractor, MWA allocation is approximately 2.15

percent of the SWP. SWP supplies are crucial to the area's survival, because local aquifers have been in overdraft since the early 1950's, according to recent studies. SWP is an important water supply for the region to meet water supply demands and manage the groundwater basin.

5. The SWP is one of the two largest water projects in the state, with the other being the Central Valley Project ("CVP"), which is owned and operated by the United States Bureau of Reclamation ("Reclamation"). The CVP serves its own agricultural, municipal, and industrial water users, as well as wildlife refuges pursuant to its own water rights and legal authorities. Although separate projects, both have water diversions in the southern part of the Sacramento-San Joaquin Delta ("Delta") and have been coordinating water operations for decades, thereby sharing available water supplies under their respective water rights and jointly complying with the State Water Resources Control Board's Water Quality Control Plan standards and the federal biological opinions issued by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service in compliance with the federal Endangered Species Act. For the last decade, the SWP has also been operating under consistency determinations, which are state permits that approve operations contained in the federal biological opinions as also being compliant with CESA.

6. This case is about the unlawful actions of the CDFW and DWR in preparing and approving a new 10-year incidental take permit for operation of the SWP pursuant to CESA and the preparation of an Environmental Impact Report ("EIR") for the long-term operations covered by the permit.

7. CDFW violated CESA because its incidental take permit applies an incorrect definition of "take" and is in excess of legal requirements, including conditions that are disproportional with the magnitude and nature of the SWP's incidental take of listed fish, and that unlawfully require the SWC to mitigate for effects of other water diverters, such as the CVP.

8. DWR violated CEQA by changing the project description not once, but twice during the preparation of its EIR, precluding informed public participation and decision making; by failing to disclose and analyze the potentially significant impacts of the project it ultimately approved; and by not allowing the public and directly affected stakeholders like Metropolitan and

Mojave the opportunity to comment on significant new information, including the new alternative that DWR ultimately approved after it certified the Final EIR.

9. CDFW violated CEQA by approving a permit and issuing findings for a project that was not evaluated in either the Draft or Final EIR, and by relying on DWR's legally deficient Final EIR.

10. In addition to violating CEQA, DWR also breached its contractual obligations to Metropolitan and Mojave by including SWP water supplies and mitigation in the permit application in excess of any legal requirement under CEQA or CESA.

PARTIES

11. At all times herein mentioned petitioner and plaintiff Metropolitan was and is a special district organized and existing under the provisions of an Act of the California State Legislature, The Metropolitan Water District Act (Water Code App., § 109-1, et seq.). Operating as a consortium of 26 cities and water districts,[1] Metropolitan provides supplemental water supplies to its member agencies, which deliver water to their members or retail customers, serving approximately 19 million people who live and work in Los Angeles, Orange, Ventura, Riverside, San Bernardino, and San Diego counties. Metropolitan also helps its member agencies develop water recycling, storage and other local resource programs to provide additional supplies and conservation programs to reduce regional demands. To supply its service area with reliable and safe water, Metropolitan also owns and operates an extensive water system including the Colorado River Aqueduct, 16 hydroelectric facilities, nine reservoirs, 819 miles of large-scale pipes and five water treatment plants. Four of these treatment plants are among the 10 largest plants in the world. In fact, Metropolitan is the largest distributor of treated drinking water in the

[1] Metropolitan's member agencies are Calleguas Municipal Water District, Central Basin Municipal Water District, City of Anaheim, City of Beverly Hills, City of Burbank, City of Compton, Eastern Municipal Water District, Foothill Municipal Water District, City of Fullerton, City of Glendale, Inland Empire Utilities Agency, Las Virgenes Municipal Water District, City of Long Beach, City of Los Angeles, Municipal Water District of Orange County, City of Pasadena, San Diego County Water Authority, City of San Fernando, City of San Marino, City of Santa Ana, City of Santa Monica, Three Valleys Municipal Water District, City of Torrance, Upper San Gabriel Valley Municipal Water District, West Basin Municipal Water District, and Western Municipal Water District of Riverside County.

United States. Metropolitan has a long-term contract with DWR that provides Metropolitan with certain participation rights in the SWP. More specifically, Metropolitan has contract rights to use the SWP conveyance system to convey both SWP and other water and, to receive an amount of water pursuant to an annual allocation that DWR makes based on availability, which depends on precipitation, snowpack, available storage, water quality and other environmental regulations, and other factors. These water supply components of Metropolitan's contact and the contracts of 28 other public water agencies are central to the SWP's construction and operation as Metropolitan and the other SWP contractors fund all SWP capital and operating costs associated with water storage and conveyance. Metropolitan is obligated to pay fixed capital and operations costs whether or not there is an allocation of water or MWD receives any water from the SWP. On average, SWP water comprises a substantial part of Metropolitan's overall water supply portfolio, and its relatively high quality supports regional and local water supply projects, including recycling, groundwater management and conjunctive use.[2]

12. At all times herein mentioned petitioner and plaintiff Mojave was and presently is a self-governing special district formed under Appendix 97, et seq. of the California Water Code, and, pursuant to California Water Code Appendix 97-1.5, is authorized to do any and every act necessary to be done so that sufficient water may be available for any present or future beneficial use of the lands and inhabitants within Mojave's service area, including the construction, maintenance, alteration, purchase and operation of any and all works of improvement within Mojave's service area necessary or proper to carry out any purpose authorized by law.

13. On June 22, 1963, Mojave and DWR entered into a "Contract Between the State of California Department of Water Resources and Mojave Water Agency For A Water Supply." The contract established Mojave's ability to participate in SWP water and requirements for the purchase thereof. On December 20, 1963, the MWA obtained a Judgment in San Bernardino Superior Court, Case No. 116910 in an action to validate the original Mojave State Water Project

[2] Indeed, Metropolitan has a legally mandated objective of providing its member agencies with full service water that consists of a blend that includes SWP water. (MWD Act, Water Code App. § 109-136 [requiring MWD to blend to the extent reasonable and practical, with an objective of reaching a 50% SWP blend].)

Contract. Over the years since 1959, Mojave's contract has been amended several times.

14. To date, Mojave has invested over $210 million in delivery and monitoring systems, as well as $324 million in the SWP since 1964. Another $100 million in additional SWP permanent Table A water acquisitions were made in anticipation of future supply demands. Current projections anticipate Mojave spending an additional $500 million for SWP costs pursuant to Mojave's contract with DWR through 2035.

15. Respondent and Real Party in Interest CDFW is an agency of the State of California under the California Natural Resources Agency and is responsible for the administration and enforcement of CESA. CDFW's headquarters are located at 1416 9th Street, 12th Floor, Sacramento, CA 95814. According to its Notice of Determination, dated March 27, 2020, acting as a responsible agency, CDFW approved the CESA incidental take permit. The incidental take permit is dated March 31, 2020. On April 1, 2020, the Office of Planning and Research posted CDFW's Notice of Determination for the incidental take permit.

16. Respondent, Defendant, and Real Party in Interest DWR is an agency of the State of California under the California Natural Resources Agency. DWR's headquarters are located at 1416 9th Street, Sacramento, CA 95814. DWR owns, operates and maintains the SWP, which is the nation's largest state-built, multi-purpose, user-financed water project. DWR is the CEQA lead agency for analyzing, approving and implementing the long-term operations of the SWP. On March 27, 2020, DWR approved the modified Alternative 2(b) and certified the Final EIR. On March 30, 2020, the Office of Planning and Research posted DWR's Notice of Determination regarding its March 27th project approval and Final EIR certification.

17. California Natural Resources Agency is named as a Real Party in Interest with respect to Metropolitan's and Mojave's State Water Project Water Supply Contract causes of action. California Natural Resources Agency is an agency of the State of California responsible for the state's natural resource policies, programs and activities and an umbrella organization for other state departments, such as DWR and CDFW. Its headquarters are located at 1416 Ninth Street, Suite 1311, Sacramento, CA 95814.

18. Metropolitan and Mojave do not know the true names and capacities, whether

individual, corporate, associate, or otherwise, of Respondents and Defendants DOES 1 through 100, inclusive, and therefore sue those Respondents and Defendants under fictitious names. Each of the Respondents and Defendants is the agent and/or employee of Respondents DWR and CDFW, and each performed acts on which this action is based within the course and scope of such party's agency and/or employment. Additionally, Metropolitan and Mojave do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of Real Parties in Interest ROES 1 through 100, inclusive, and therefore sue those Real Parties in Interest under fictitious names. Metropolitan and Mojave will amend this Petition to show the true names and capacities when those names and capacities have been ascertained.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to Public Resources Code sections 21167(a), 21168, and 21168.5, and Code of Civil Procedure sections 1060, et seq., 1085, and 1094.5.

20. Venue is proper in this Court under Code of Civil Procedure sections 401(1) and 395 because Respondent and Real Party in Interest CDFW, Respondent, Defendant and Real Party in Interest DWR, and Real Party in Interest California Natural Resources Agency each has its principal place of business and legal residence in the County of Sacramento, and because the California Attorney General has an office in the County of Fresno. (See *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 759, 770-771.)

STANDING

21. Metropolitan's and Mojave's water supplies will be directly and adversely affected by both CDFW's issuance of a flawed CESA incidental take permit based on its legally inadequate compliance with CEQA and DWR's actions in certifying the legally inadequate Final EIR and approval of the long-term operations plan for the SWP. Metropolitan and Mojave have no plain, speedy and adequate remedy in the ordinary course of law in that they will suffer irreparable harm if the CESA incidental take permit is implemented.

22. Metropolitan and Mojave have a direct and beneficial interest in CDFW's and DWR's legally adequate compliance with the CESA and CEQA, and all other applicable laws in

approving and implementing the SWP long-term operations plan and CESA incidental take permit. Metropolitan and Mojave submitted multiple timely objections on CESA, CEQA and other grounds to CDFW and DWR.

23. The adverse environmental impacts of DWR's and CDFW's actions will directly and substantially affect Metropolitan and Mojave as they seek to promote and enforce the purposes of CESA and CEQA, the purposes of which are defeated by those agencies' approvals. The incidental take permit approval is based on an unlawful application of CESA that resulted in water supply costs and mitigation that exceeds what is legally required to minimize and fully mitigate the impacts of the incidental "take" of CESA-listed species resulting from SWP operations. The CEQA mitigation is in excess of what is legally required to avoid potential significant environmental impacts, as the project has no significant environmental effects. Moreover, the approvals were made without compliance with CEQA's informational and public participation objectives. Determining the true facts about the project's environmental impacts and disclosing those facts to decision-makers and the public are within the core statutory intent of CEQA to promote fully informed public participation and decision making.

24. Metropolitan and Mojave rely upon water exported from the Delta as in important part of their respective water supply portfolios. Accordingly, the incidental take permit and the alternative approved in the Final EIR, both of which seek to unlawfully limit the availability and reliability of much-needed water supplies, relate to Metropolitan's and Mojave's beneficial interests in reliable SWP supplies and enforcement of their contractual rights.

25. CDFW has a mandatory and public duty to comply with the CESA, CEQA, and all other applicable laws, when relying on the Final EIR as a responsible agency and issuing the CESA incidental take permit. DWR has a mandatory and public duty to comply with CEQA and all other applicable laws when certifying the Final EIR and approving and implementing the long-term operations plan for the SWP. DWR also has an obligation to comply with its contracts with Metropolitan and Mojave in its all its activities, including permitting. In addition, the issues in this action under CESA and CEQA are issues of public right and Metropolitan and Mojave bring this action in the public interest to enforce CDFW's and DWR's public duties.

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND NOTICES

26. Metropolitan and Mojave have performed or are excused from performing any and all conditions precedent to filing this action. Metropolitan and Mojave fully exhausted any administrative remedies by objecting to the changing and undisclosed final project description; failure to analyze the alternatives; and failure to recirculate the EIR after substantial new information was added. The facts relevant to these claims continued to evolve continually up to the approval of the CESA incidental take permit, certification of the Final EIR, and approval of the long-term operation plan. Metropolitan, the State Water Contractors, and/or other agencies, organizations, and individuals also raised legal deficiencies asserted in this Petition and Complaint. Furthermore, the extensive new information that was not publicly disclosed and which formed the basis of the FEIR, and the ITP which was never made public prior to its approval, deprived the public of the ability to exhaust their administrative remedies with specificity. Accordingly, Metropolitan and Mojave are alternatively excused from any obligation to exhaust administrative remedies. (Pub. Resources Code, § 21177 [any obligation to exhaust administrative remedies under CEQA "does not apply to any alleged grounds . . . for which there was not a public hearing or other opportunity for members of the public to raise those objections orally or in writing before the approval of the project . . ."].)

27. Metropolitan and Mojave have complied with Public Resources Code section 21167.5 by providing DWR and CDFW notice of intent to commence this action. The notices are attached hereto as Exhibits 1 and 2.

28. In accordance with Public Resources Code section 21167.7, Metropolitan and Mojave have concurrently provided a copy of this Petition to the California Attorney General. The notice is attached hereto as Exhibit 3.

29. Service of this Petition on CDFW and DWR satisfy any applicable service requirements under Public Resources Code section 21167.6.5, subdivisions (a), (b), and (c).

30. In accordance with Public Resources Code section 21167.6, subdivision (b)(2), Metropolitan and Mojave have attached and are hereby filing a notice of their election to prepare the administrative record as Exhibit 4.

TIMELINESS AND REQUEST FOR CEQA HEARING

31. This lawsuit has been commenced within the time limits imposed for this action under Code of Civil Procedure sections 312, 337(a), 343, and Public Resources Code sections 21167, 21168 and 21168.5.

32. Further, Metropolitan and Mojave request a hearing on this Petition and Complaint pursuant to Public Resources Code section 21167.4.

BACKGROUND

State Water Project

33. The SWP is the foundation of California's water storage and delivery system. It provides drinking water for more than 27 million Californians and over 750,000 acres of farmland.

34. The SWP includes 34 storage facilities, reservoirs and lakes; 20 pumping plants; 4 pumping-generating plants; 5 hydroelectric power plants; and about 700 miles of open canals and pipelines. Figure 1, below, provides an overview of the SWP and its service area:

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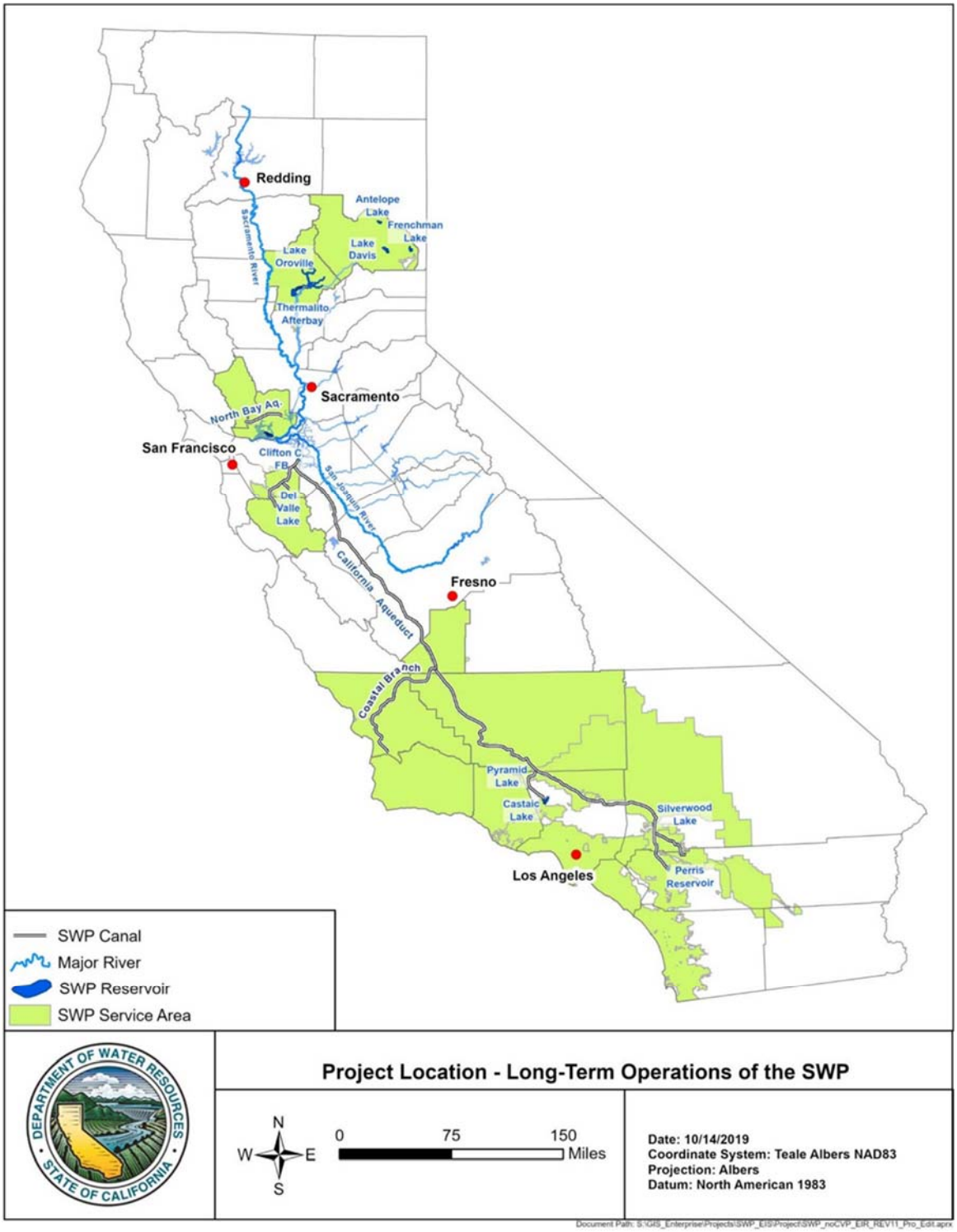

Figure 1 – SWP and Service Area

35. SWP Construction was authorized by approval of the Burns-Porter Act (Proposition One) on the November 1960 state ballot. In response, DWR entered into contracts with 29 water agencies (collectively the "State Water Contractors") in the 1960s, including

Metropolitan and Mojave. Pursuant to the contracts, the State Water Contractors pay all of the SWP capital and operating costs relating to storage and conveyance of water, and DWR owns, operates and maintains the SWP for their benefit and is obligated to make all reasonable efforts to perfect and protect SWP water rights and to satisfy the water supply commitments made to the State Water Contractors under the contracts. Reliability of the supply has been important to Metropolitan since the inception of the project.

36. Construction on the SWP began in 1957, prior to the passage of the Burns-Porter Act. The first deliveries to the Bay Area were made in 1962. Metropolitan entered into the original contract with DWR in 1960. Mojave entered into its original contract with DWR in 1963. In 1973, the pumps and the East and West branches of the California Aqueduct were completed and the first water was delivered to Southern California. At the time of the initial water deliveries to Southern California, Metropolitan had already paid more than $190 million for SWP construction bonds and additional lump sum payments.

SWP Operations

37. The SWP operates in coordination with the CVP under the Coordinated Operations Agreement between the federal government and the State of California (authorized by Pub. L. 99 546). The Coordinated Operations Agreement governs how the SWP and CVP share water rights and operations to meet specific water quality and outflow requirements in the Delta. It is based on principles of equitable sharing arising from requirements that their operations be coordinated, and as a matter of practical necessity, the two projects operate together in a complex tidal estuary.

38. The SWP and CVP are regulated by a web of state and federal laws, including state and federal water quality statutes, Army Corps of Engineers permits, federal Endangered Species Act biological opinions, and the SWP operations under one or more state incidental take authorizations pursuant to CESA. These layers of concurrent state and federal regulations cover every month of the year.

39. The Coordinated Operations Agreement provides the federal nexus that facilitates the SWP's federal Endangered Species Act coverage under the same biological opinions as the CVP.

40. The SWP and CVP operate pursuant to water rights permits and licenses issued by the State Water Resources Control Board. The separate water rights of the SWP and CVP allow appropriation of water by directly using the water, diverting water to storage for later withdrawal, and rediverting the water to storage further downstream for later consumptive use. Operating to the respective water right requirements of the SWP and CVP results in either bypass flows or withdrawal of water from storage to help satisfy specific water quality and operational criteria.

Consultation History for ESA and CESA Coverage

41. The SWP must have both CESA and federal Endangered Species Act coverage. During the permitting process at issue, DWR concurrently sought state and federal permits, complying with the federal Endangered Species Act and CESA, according to the timeline provided below:

- **August 2016**: DWR and Reclamation request reinitiation of consultation for BiOps for the coordinated long-term operation plan.
- **January 2019**: Reclamation submits initial biological assessment for coordinated long-term operation plan for the SWP and CVP.
- **July 2019**: Reclamation releases for public comment its draft environmental impact statement for the coordinated long-term operation plan.
- **October 2019**: Reclamation releases the final biological assessment.
- **October 2019**: The United State Fish and Wildlife and the National Marine Fisheries Service sign the final biological opinions.
- **November 2019**: DWR releases for public review and comment its draft environmental impact report for CESA permit for the long-term operation of the SWP. The proposed project is consistent with 2019 federal biological opinions.
- **December 2019**: DWR submits application for an incidental take permit pursuant to CESA. Proposed project not contained in the Draft EIR is inconsistent with 2019 federal biological opinions.
- **December 2019**: Reclamation releases the final environmental impact statement for the coordinated long-term operation plan for the SWP and CVP.

- **February 2020**: Reclamation signs the Record of Decision.
- **March 2020**: DWR releases Final EIR and signs the Notice of Determination adopting modified Alternative 2(b), an alternative that had never previously been disclosed.
- **March 2020**: CDFW issues CESA incidental take permit and findings for a project that has not previously been disclosed.

42. This consultation process of receiving both federal and state permits under two different endangered species acts is complicated by the fact that there are species that are listed under state law only, federal law only, and those that are dual listed. The table below describes this.

Dual Listed	Federal ESA listed only	CESA listed only
• Delta smelt • winter-run Chinook salmon and • spring-run Chinook salmon	• Central Valley steelhead • Green Sturgeon • Southern Resident Killer Whale	• Longfin Smelt

43. More than a decade ago, in 2008 and 2009, respectively, the United States Fish and Wildlife Service and the National Marine Fisheries Service issued biological opinions permitting the coordinated operations of the SWP and CVP for federally listed species. Beginning in 2009, CDFW issued consistency determinations, which is allowed under state law based on CDFW conclusions that operating to the federal biological opinions would also comply with CESA for the dual-listed species. Also in 2009, CDFW issued a Fish and Game Code section 2081 permit to authorize incidental take of Longfin smelt, a state-only listed species for which a consistency determination was not a permitting option. This state and federal permitting structure existed for about a decade, with all species covered by the same operational rules, except Longfin smelt. However, even operational parameters required for the protection of Longfin smelt under the separate Fish and Game Code section 2081 permit were largely consistent with the state and

federal permitting structure, being partially reliant on operational requirements for the protection of Delta smelt, a state and federally listed species.

44. This consistency in state and federal permits for the coordinated operation of the CVP and SWP ended in March 2020 when DWR approved a SWP long-term operations plan that was dramatically different than the jointly proposed DWR-Reclamation long term operation plan permitted by the United State Fish and Wildlife Service and the National Marine Fisheries Service, and when the CDFW signed a Fish and Game Code section 2081 permit for all dual listed and state-only species (winter-run Chinook salmon, spring-run Chinook salmon, Delta smelt and Longfin smelt) that was dramatically different than the SWP long term operations plan approved by DWR.

SWP CESA Permit

45. The 2020 CESA incidental take permit covers the operation of the SWP in the Sacramento-San Joaquin Delta ("Delta"). The SWP facilities covered by the incidental take permit are the Harvey O. Bank Pumping Plant, John E. Skinner Delta Fish Protective Facility, Clifton Court Forebay, Barker Slough Pumping Plant, Suisun Marsh Operations, south Delta temporary barrier project, and the SWP share of San Luis Reservoir. The Delta facilities are depicted in Figure 3-1 of DWR's Final EIR, titled Locations of State Water Project Facilities in the Delta, Suisun Marsh, and Suisun Bay, reproduced as Figure 2, below.

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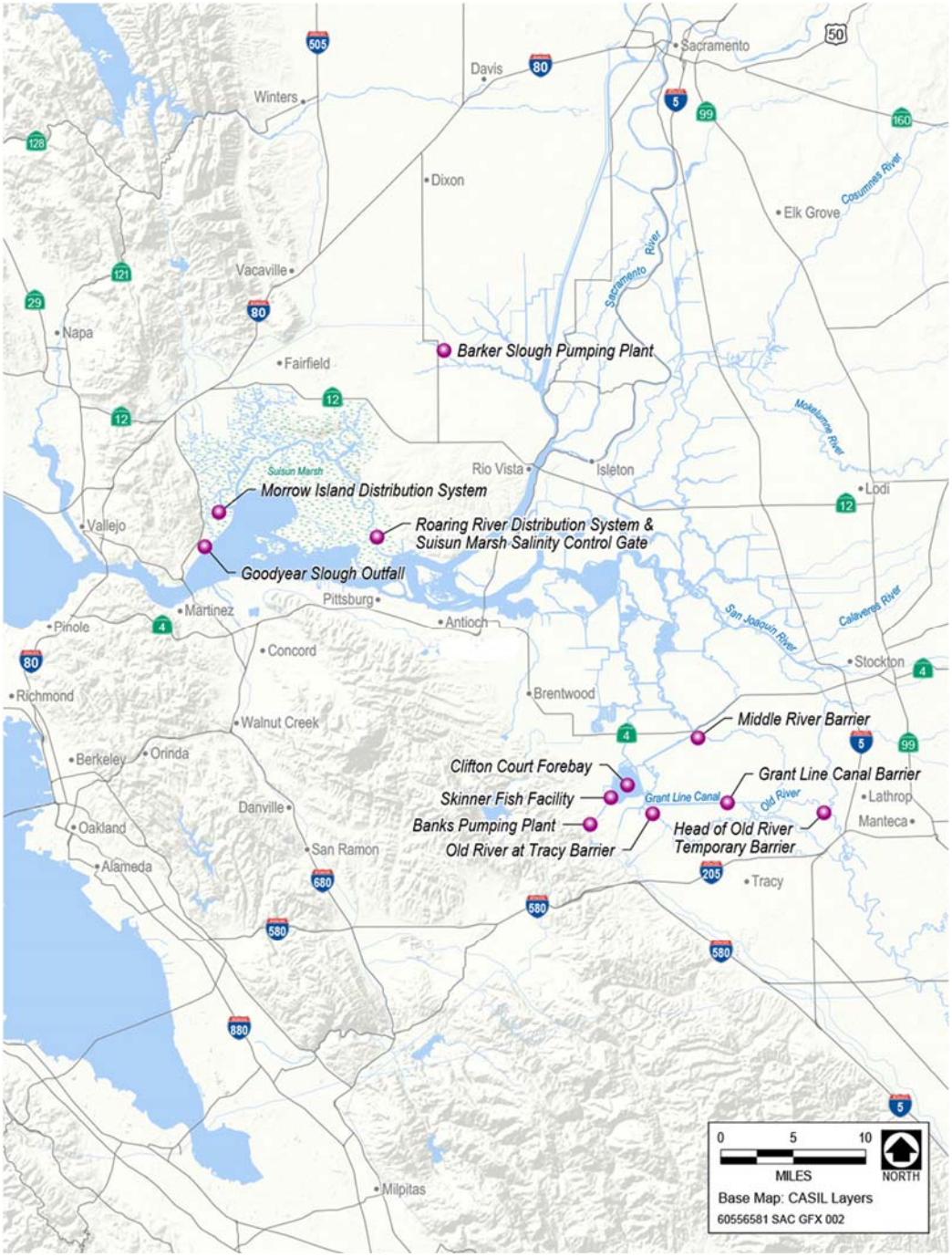


Figure 2 - Locations of State Water Project Facilities in the Delta, Suisun Marsh and Suisun Bay

46. The facilities or activities not included in the incidental take permit include flood control; CVP facilities, operations, and agreements; and Oroville Dam and Feather River operations, as these are covered by separate permits. The CESA incidental take permit area includes existing storage and export facilities located in the Delta and vicinity, generally being

downstream from Oroville Reservoir on the Feather River to the confluence with the Sacramento River, and downstream to the Delta.

47. As stated in DWR's incidental take permit application, the project's objective is "to continue the long-term operation of the SWP consistent with applicable laws, contractual obligations, and agreements. DWR proposes to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities."

48. The CESA permit authorizes incidental take of Longfin smelt (state-listed threatened), Delta smelt (state-listed endangered), spring-run Chinook salmon ESU (state-listed threatened), and winter-run Chinook salmon ESA (state-listed endangered).

DWR's CEQA and CESA Process

49. On April 19, 2019, DWR distributed a Notice of Preparation of the Draft EIR for its SWP long-term operations plan. DWR held public scoping meetings regarding the Draft EIR on May 6 and May 13, 2019.

50. DWR prepared an Initial Study for the SWP long-term operations plan, DWR determined that the SWP long-term operations plan would not have a significant impact on the following resource topics: aesthetics, agriculture/forestry, air quality, biological resources (terrestrial), cultural resources, energy, geology/soils, greenhouse gas emissions, hazards/hazardous materials, surface water hydrology, land use/planning, mineral resources, noise, population/housing, public services, recreation and transportation/traffic. The Initial Study concluded that the long-term operations plan would not result in significant impacts on hydrology or surface water resources. But because implementation of the long-term operations plan would alter existing hydrology, these alterations could potentially result in impacts on resources dependent on existing hydrologic conditions, including water quality and aquatic biological resources. Because of these potentially significant impacts, DWR decided to prepare an environmental impact report.

51. In November 2019, DWR released its Draft EIR for public comment, identifying a proposed project, which was consistent with the project that the federal fish agencies—the Fish

and Wildlife Service and the National Marine Fisheries Service—permitted in the biological opinions dated October 2019. DWR determined that the proposed project would have no potentially significant environmental impacts. Nevertheless, DWR added four alternatives (Alternative 2(a), 2(b), Alternative 3 and Alternative 4) to the Draft EIR. The potential effects were estimated by comparing each alternative to the No Action and the proposed project without fully modeling each alternative. The full range of impacts for these alternatives were not disclosed in the Draft EIR.

52. DWR held a public meeting on its Draft EIR on December 12, 2019 in West Sacramento.

53. In December 2019, DWR submitted its application for an incidental take permit to CDFW. The incidental take permit application identified a project that was different than the proposed project contained in the Draft EIR and different than the project authorized in the biological opinions. In the application, DWR concluded that the project satisfied CESA requirements.

54. Even though DWR concluded that the original proposed project in the Draft EIR had no significant and unavoidable environmental impacts, DWR added new mitigation in the form of new spring and summer outflow to the proposed project in its application for an incidental take permit. These new operational requirements and mitigation exceed what is required to comply with CESA and CEQA.

55. DWR's public comment period for its Draft EIR ended January 6, 2020. On January 6, Metropolitan and Mojave commented on the Draft EIR in combination with the State Water Contractors, raising numerous detailed objections, including objections to the changing project description and legally insufficient analysis.

56. Out of concern that DWR had further changed the project description and was planning to include significant new information in the Final EIR, which triggered CEQA's recirculation requirement, Metropolitan commented on March 17, 2020, objecting on multiple legal grounds and reiterating its prior comments on the Draft EIR. Metropolitan's objections include the failure of DWR to provide for public review of the previously undisclosed changes to

the proposed project and the analysis of their impact which, under CEQA, require recirculation; that the project description provides mitigation and limits water export in excess of legal requirements; and, that the new project proposal includes infeasible and legally unnecessary mitigation.

57. Metropolitan and Mojave commented on CDFW's legally inadequate CEQA implementation in combination with the State Water Contractors on March 27, 2020, prior to CDFW signing the incidental take permit on March 31, 2020. Metropolitan and the other State Water Contractors informed CDFW that the approval of a project had not been subject to prior review and that the lack of disclosure violated CEQA.

58. The Final EIR was issued and the Notice of Determination was signed on March 27, 2020. DWR's March 2020 Final EIR and notice of determination approved a project that was different than any of the project alternatives contained in the November 2019 public Draft EIR, the CESA Application, and the SWP's new federal 2019 biological opinions for ESA coverage.

59. Even though DWR concluded that the project described in its application for an incidental take permit fully complies with CESA, DWR added substantial new operational restrictions and mitigation to modified Alternative 2(b). These new operational requirements and mitigation exceed what is required to comply with CESA and CEQA.

60. The Final EIR includes new modeling and analysis, and a new previously undisclosed modified Alternative 2(b) that DWR approved with no opportunity for public review and comment prior to certifying the Final EIR, approving the modified project and signing the notice of determination. The previously undisclosed components of the modified Alternative 2(b) include, but are not limited to:

- new dry-year operation of Suisun Marsh Salinity Control Gate;
- new spring-run Chinook salmon daily-loss trigger for an export reduction;
- new winter-run Chinook salmon daily-loss trigger for an export reduction;
- new November and December export reduction for winter-run Chinook salmon;
- new salinity target of 4 ppt at Belden's Landing in Suisun Marsh; and
- new authority for CDFW to control real-time operations of the SWP to benefit larval

Delta smelt between an operational range of -5,000 to -1,250 cfs flow in Old and Middle River.

61. The components of modified Alternative 2(b) that were never modeled or analyzed, and therefore not disclosed to the public or decision-makers include, but are not limited to:

- deferral of up to 150,000 acre-feet of spring outflow and 100,000 acre-feet of summer outflow to subsequent years, including the use of Oroville storage;
- implementation of daily winter-run Chinook salmon loss trigger for export reduction;
- daily spring-run Chinook salmon loss trigger;
- larval Delta smelt operations between -1,250 and -5,000 cfs Old and Middle River flow;
- November and December winter-run Chinook salmon loss triggers for export reductions; and
- new salinity target of 4 ppt at Belden's Landing in Suisun Marsh.

62. Although incomplete, the Final EIR includes significant new modeling and analysis that was never provided to the public for review and comment. The final impact report also includes two brand new technical appendices (J and K); substantial revisions to four other technical appendices (C, E, F, and H); and a dozen new technical reports and modeling outcomes—containing significant new information that was never circulated for public review.

63. The exact project for which DWR sought an incidental take permit is unknowable. The application for an incidental take permit was never amended, yet CDFW relied on modeling for Alternative 2(b) that was not presented in the application or the Draft EIR, and never provided to the public for review and comment. Many other new project components were later added to modified Alternative 2(b) in the Final EIR and CESA incidental take permit that had never been previously disclosed, analyzed, or circulated for public comment prior to finalization of the permit.

64. The incidental take permit is dated March 31, 2020. The incidental take permit describes a project that is different than any of the alternatives contained in the November 2019 public Draft EIR, the CESA permit application, the Final EIR, and the SWP's federal ESA

coverage in the biological opinions. The previously undisclosed components of the permit that were never analyzed in any environmental impact report, include, but are not limited to new limits on export operations for Longfin smelt, and a new Delta Smelt salvage calculation and limit on exports. The permit also adds an additional estimated $179 million dollars in new non-flow obligations.

65. Even though DWR concluded in the Draft EIR that the proposed project and Alternative 2(b) had no significant impacts, and even though DWR concluded that the project described in its permit application complied with CESA, CDFW imposed substantial new and previously undisclosed operational limits and mitigation. These new project obligations are substantial, meaning they are out of proportion with the minimal effects shown in the underlying analysis.

66. The incidental take permit imposes obligations that are out of proportion with, and in some cases unrelated to, the effects of the SWP, and are in excess of the fully mitigate standard. (Fish and Game Code, § 2018(b)(2) ["the measures required to meet this obligation shall be roughly proportional in extent to the impacts of the authorized taking on the species"]; Cal Code of Regs, tit. 14, § 15126.4.) As DWR explained in its Response to Comments: "Under CESA, a project applicant is only responsible for mitigating the impacts that would be caused by activities proposed by the applicant, as opposed to impacts caused by others," and, "DWR does not control CVP operations." Yet, the CESA incidental take permit includes requirements that the SWP reduce exports when Delta smelt are entrained in the federal CVP facilities. The permit also requires the SWP to mitigate for the effects of upstream federal CVP reservoirs operated by Reclamation.

67. CDFW's changes to the project and imposition of unjustified additional mitigation measures presents complicated operational issues. To achieve compliance and enjoy protection under both the federal Endangered Species Act and CESA, DWR is required to comply with the conditions in both the federal biological opinions as well as the state incidental take permit. Nonetheless, CDFW stated that if there were any inconsistencies between the federal endangered species act permit and the state incidental take permit, the state permit is controlling. (See CDFW

ITP, Condition of Approval #3 ["For purposes of this ITP, where the terms and conditions in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control"].) CDFW's permit is inconsistent with law as the SWP must comply with both federal and state law.

68. CDFW is required to utilize the best available scientific information. But it did not, often ignoring the statistical and scientific uncertainty associated with the analyses it relied on.

69. The incidental take permit and CDFW's findings fail to identify the exact nature and magnitude of incidental take associated with the SWP, and then fail to link that SWP-specific take to minimization measures and measures required to fully mitigate the impacts of the authorized incidental take. The result is the imposition of obligations on the SWP that violate legal standards.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate Pursuant to Code Civ. Proc. §§ 1085 and 1094.5–Violation of the California Endangered Species Act)

(Against CDFW and DOES 1-100)

70. Metropolitan and Mojave incorporate herein by reference each previous paragraph of this Petition and Complaint as though set forth here in full.

71. All "persons," including state agencies such as DWR, are prohibited from taking a threatened or endangered species unless authorized under an incidental take permit. (Fish & Game Code, §§ 2080, 2081; *Kern County Water Agency v. Watershed Enforcers* (2010) 185 Cal. App. 4th 969, 980-981.) In adopting CESA, the Legislature also intended that mitigation to address particular impacts on a species "shall be roughly proportional in extent to the impact of the authorized taking on the species," "shall maintain the [project] applicant's objectives to the greatest extent possible," and "shall be capable of successful implementation." (Fish & Game Code, § 2081.)

72. CDFW's actions constitute a prejudicial abuse of discretion because it failed to proceed in a manner required by law. The defects in the incidental take permit are pervasive and

fundamental. CDFW prejudicially abused its discretion by (1) imposing conditions in the incidental take permit that violate CESA; (2) issuing a decision unsupported by the Director's factual findings; and (3) making factual findings not supported by the evidence. (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal. 4th 459, 478). The incidental take permit's defects and CDFW's violations of CESA include, but are not limited to the following:

Improper Definition of Take

73. Under the Fish & Game Code, "take" "means hunt, pursue, catch, or kill, or attempt to hunt, pursue, catch, capture or kill." (Fish & Game Code, § 86.) Habitat is not within the definition of "take." (*Environmental Council of Sacramento v. City of Sacramento*, 142 Cal.App.4th 1018, 1040 (2006) ["We reject any insinuation that the definition of 'take' under Fish and Game Code section 2081 subdivision (b)(2) encompasses habitat alone"]; 94 Ops. Cal. Atty. Gen. 605 [concluding "State law does not prohibit indirect harm to a state-listed endangered species or threated species by way of habitat modification"].)

74. CDFW attempts to characterize habitat modification as "impacts of the authorized take" that must be fully mitigated under Fish & Game Code § 2081 and Cal. Code. Regs., tit. 14 § 783.4(a)(2). For example, the incidental take permit states at page 44: "Impacts of the authorized taking also include adverse impacts to covered species related to temporal losses, increased habitat fragmentation, reduction in habitat extent and quality, and increased edge effects and the Project's incremental contribution to cumulative impacts (indirect effects)."

75. Similarly, in the CESA Findings CDFW asserts that project-related disturbance of covered species habitat are expected to result in incidental take of those species and that "adverse changes to habitat characteristics that certain covered species rely on, is an appropriate and necessary indicator of the extent of incidental take at issue." (CESA Findings at pp. 6-7.) A plain reading of the incidental take permit and the related California Endangered Species Act Findings demonstrates that the agency is improperly using habitat modification as a proxy for species mortality. This runs afoul of CESA by impermissibly considering habitat modification itself to be a taking.

Permit Conditions Inconsistent with Project Objectives

76. Under CESA, CDFW "shall maintain the applicant's objectives to the greatest extent possible" when selecting among mitigation measures. (Fish & Game Code, § 2081(b)(2).)

77. DWR explains in its incidental take permit application that "[t]he objective of the Proposed Project is to continue the long-term operation of the SWP consistent with applicable laws, contractual obligations, and agreements. DWR proposes to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities. DWR seeks to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information." (CESA Application at p. 3-1; see also Draft EIR § 3.1.1.)

78. CDFW makes a conclusory finding that required mitigation in the incidental take permit maintain the project's objectives to the greatest extent possible but provides no analysis to support that statement. (CESA Findings at p. 43.) The incidental take permit shows that CDFW did not maintain the project's objectives. For example, Metropolitan and Mojave are informed and believe that CDFW intended to ensure no additional SWP exports from the Delta would be allowed under the incidental take permit, which is fundamentally inconsistent with the stated project objectives in the Draft EIR and CESA Application. Conditions in the incidental take permit, including but not limited to, conditions requiring additional export flow restrictions not tied to any anticipated incidental take results in the imposition of mitigation that does not maintain the project's objective of optimizing water supply and is not based on the best available science.

Disproportionate Mitigation

79. CESA dictates that all measures required to minimize and mitigate the impacts of an authorized taking "shall be roughly proportional in extent to the impact of the authorized taking on the species." (Fish & Game Code, § 2081(b)(2).)

80. CDFW improperly imposed minimization and mitigation measures that are disproportionate to the alleged impacts of the incidental take authorized under the incidental take permit. For example, DWR explained in its application for an incidental take permit that the

long-term operations would minimize and fully mitigate the impacts of incidental take from the SWP. CDFW nonetheless imposed new minimization, mitigation and monitoring requirements in the incidental take permit well above and beyond the conditions in prior authorizations—these new requirements will cost approximately $179 million and require significant additional SWP export restrictions. These water supply and financial costs are in addition to the approximately $580 million and significant operational limitations that were already incorporated into the project through the federal endangered species act biological opinions and changes DWR made to the project in the Final EIR.

81. CDFW fails to tie this mitigation to the alleged SWP impacts on the covered species. For example, the new spring (April-May) outflow obligation maintains the effect the of SWP at the same level that CDFW permitted under the prior consistency determinations, yet the incidental take permit requires an additional 396.3 acres to mitigate a change in April-May outflow. Either CDFW is requiring the SWP to mitigate the same effect twice, or it is requiring the SWP to mitigate for the effect of the CVP's change in April-May operations. Either is unlawful. Compounding CDFW's error in failing to explain how the incidental take permit's measures mitigate for alleged impacts from the project, it is evident that much of the mitigation is impermissibly based on impacts caused by other water users. For example, CDFW added new requirements to the permit that require that the SWP reduce exports when Delta smelt are entrained in the federal CVP facilities.

Infeasible Mitigation

82. CESA dictates that all measures required to minimize and mitigate the impacts of any authorized taking "shall be capable of successful implementation." (Fish & Game Code, § 2081(b)(2).) CDFW issued the incidental take permit with conditions that are not capable of successful implementation, including, but not limited to, conditions that require DWR to prevent other water diverters from diverting the water that the incidental take permit precludes the SWP from diverting.

Inadequate CESA Findings

83. CDFW's California Endangered Species Act Findings are inadequate and

unsupported by substantial evidence. For example, contrary to law, CDFW failed to rely on the best scientific information in making its findings and issuing the incidental take permit. (Fish & Game Code, § 2081(c).) Instead CDFW relied on conclusory statements and repeatedly failed to acknowledge the scientific uncertainty in its assumptions.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate Pursuant to Code Civ. Proc. §§ 1085 and 1094.5–Violation of the California Environmental Quality Act)

(Against CDFW and DOES 1-100)

84. Metropolitan and Mojave incorporate herein by reference each previous paragraph of this Petition and Complaint as though set forth here in full.

85. "[T]he legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 963, internal punctuation and citation omitted.) When complying with CEQA, a responsible agency must proceed in the manner required by law, and its determinations must be supported by substantial evidence. (Pub. Resources Code, § 21168.5; Cal. Code Regs., tit.14, § 15096; *River Watch v. Olivenhain Muni. Water Dist.* (2009) 170 Cal.App.4th 1186.)

86. CDFW violated CEQA in ways independent of and in addition to violations by DWR. CDFW approved an operation that was never analyzed in the Final EIR. The public was never afforded an opportunity to review and comment on the alternative operation and decision makers approved the project without being fully informed as to its impacts. The only analysis that was available to decision makers was contained in the Final EIR. The procedural and substantive defects in the Final EIR are so pervasive and fundamental that informed decision-making and informed public participation were impossible. CDFW's errors constitute a procedural and substantive violation of CEQA.

87. CDFW abused its discretion in numerous ways, including relying on a procedurally and substantively flawed Final EIR; imposing CEQA mitigation for unidentified impacts; adopting misleading and contradictory findings; and approving a project that has not yet

undergone adequate CEQA review. CDFW's CEQA violations include, but are not limited to the following.

Inconsistent and unstable project description

88. A stable and consistent project description is essential to achieving CEQA's mandate. (*Washoe Meadows Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277, 287-288.) As set forth below in greater detail, the Final EIR violates this fundamental mandate because the project description evolved throughout the administrative process and neither modified Alternative 2(b) nor the project that CDFW approved in the CESA incidental take permit were analyzed in the Final EIR.

89. The project descriptions in the Draft EIR, the incidental take application, Final EIR, and incidental take permit are all materially different. This inconsistency in describing the project prevented informed public comment and informed decision-making and rendered the Final EIR, CEQA Findings, and CDFW's incidental take permit legally deficient. This is a procedural and substantive violation of CEQA.

Failure to analyze and disclose impacts on the environment

90. It is well-established that public agencies, including CEQA responsible agencies, are not permitted to approve projects until after the completion of adequate CEQA review. (*RiverWatch v. Olivenhain Muni. Water Dist.* (2009) 170 Cal.App.4th 1186, 1215 [striking down responsible agency's approval where it preceded CEQA review].) CDFW committed a procedural violation by approving a project in the incidental take permit that was not identified or analyzed in the Final EIR.

91. Metropolitan and Mojave are informed and believe that CDFW switched from a substantial evidence- and science-based approach to one that improperly focused on "no increase in exports." As such, Metropolitan and Mojave assert that CDFW pre-determined that the incidental take permit would not allow any additional SWP exports from the Delta, regardless of what the science and record evidence showed. Given this, CDFW failed to properly exercise its independent judgment in reviewing the certified Final EIR as a responsible agency before

approving the project. CDFW's approval of the incidental take permit was pre-determined and without scientific or factual basis, in violation of CEQA.

92. In approving the incidental take permit despite the fact that its impacts were never analyzed in any CEQA document, CDFW abused its discretion and violated CEQA's procedural mandates.

Improper imposition of mitigation measures

93. Mitigation measures are only required to minimize a project's significant environmental impacts. (Cal. Code Regs., tit. 14, § 15126.4(a)(3).) Mitigation for impacts that are less than significant is not required. (*Ibid*.) Further, there must be a nexus and proportionality between the mitigation measure imposed and the identified significant impact on the environment. (Cal. Code Regs., tit. 14, § 15126.4(a)(4).) Finally, any mitigation must be "feasible," or "capable of being accomplished in a successful manner within a reasonable period of time." (Cal. Code Regs., tit. 14, § 15364.)

94. CDFW's Notice of Determination states that: (1) CDFW concluded that the ITP would not have any significant impacts on the environment; (2) CDFW imposed "additional" mitigation measures as a condition of approval; (3) CDFW approved a mitigation monitoring and reporting program; and (4) CDFW made CEQA findings as a responsible agency. In its CEQA findings – and despite CEQA's requirement that "mitigation" have a nexus to an environmental impact and be roughly proportionate to that impact (Cal. Code Regs., tit.14, § 15126.4(a)(4)) – CDFW did not identify any significant environmental impacts that the mitigation measures were intended to minimize. Instead, CDFW asserted that the CEQA findings were not required and were only informational. However, the CEQA findings are not supported by substantial evidence in the record, and, as such, are misleading.

95. Further, given that the final environmental impact report does not find any potentially significant impacts, there is no nexus between the mitigation measures and the alleged significant impacts that CDFW imposed. In addition, because the environmental impact report does not identify any potentially significant impacts, there is no proportionality between the

mitigation measures and the alleged significant impacts that the measures are intended to minimize.

California Environmental Quality Act Findings that Are Not Supported by Substantial Evidence

96. Under CEQA, substantial evidence must support a responsible agency's findings regarding potentially significant impacts, and a "brief rationale" linking the substantial evidence to the findings must be provided. (Cal. Code Regs., tit. 14, §§ 15091, 15096.) Although the Final EIR did not identify any significant impacts, CDFW nonetheless adopted CEQA findings. (CDFW CEQA Findings, 4, 5.) The findings are affirmatively misleading and contradictory because they are based upon a Final EIR that did not actually analyze the project described in the incidental take permit. CDFW's CEQA findings are replete with references to the Final EIR and statements purporting that the Final EIR covers and analyzed the incidental take permit's project impacts. (See, e.g., CDFW's CEQA Findings, 5, 7.) As such, CEQA findings affirmatively misled decision-makers as well as the public for whom the findings were allegedly an "information disclosure" tool, in a manner constituting a prejudicial abuse of discretion.

THIRD CAUSE OF ACTION

(Petition for Writ of Mandate Pursuant to Code Civ. Proc. §§ 1085 and 1094.5– Violation of CEQA)

(Against DWR and DOES 1-100)

97. Metropolitan and Mojave incorporate herein by reference each previous paragraph of this Petition and Complaint as though set forth here in full.

98. "[T]he legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 963, internal punctuation and citation omitted.) When complying with California Environmental Quality Act, a lead agency must proceed in the manner required by law, and its determinations must be supported by substantial evidence. (Pub. Resources Code, § 21168.5.)

99. The defects in the Final EIR are so pervasive and fundamental that they make

informed decision-making and informed public participation impossible. DWR's certification of the Final EIR constitutes a procedural violation of CEQA. Procedural violations are reviewed *de novo* in this court. (See, *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512, 516.) DWR's actions constituted a prejudicial abuse of discretion because DWR failed to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.) The Final EIR's defects and DWR's CEQA violations include, but are not limited to the following:

Shifting Project Description

100. A stable and consistent project description is essential to achieving CEQA's mandate. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) DWR violated this fundamental mandate because the project description was not stable throughout the administrative process and because the project that DWR ultimately approved was not adequately analyzed in the Final EIR.

Failure to Analyze the Project

101. DWR failed to comply with CEQA requirement that the lead agency must disclose and analyze a project's impacts. The modified Alternative 2b project first appeared in the Final EIR. Thus, the Draft EIR did not disclose or analyze its potentially significant impacts. The components of modified Alternative 2(b) that were never modeled or analyzed, and the effects of which were never disclosed to the public or decision-makers, include, but are not limited to:

- deferral of up to 150,000 acre-feet of spring outflow and 100,000 acre-feet of summer outflow to subsequent years, including the use of Oroville storage;
- daily winter-run Chinook salmon loss trigger for export reduction;
- daily spring-run Chinook salmon loss trigger;
- larval Delta smelt operations between -1,250 and -5,000 cfs Old and Middle River flow;
- November and December winter-run Chinook salmon loss triggers for export reductions; and
- new salinity target of 4 ppt at Belden's Landing in Suisun Marsh.

Failure to Recirculate the Draft Environmental Impact Report Despite Changing the Project Purpose, Description, and Adding Significant New Information

102. A lead agency must recirculate an environmental impact report when "significant new information" is added to the environmental impact report after a draft EIR is released to the public but before the final EIR is certified. (Cal. Code Regs., tit.14, § 15088.5.) Here, the Final EIR presents a new project that was not included in the Draft EIR. The Final EIR also includes significant new modeling and analysis that was never provided to the public for review and comment. Although incomplete, the Final EIR also includes two brand new technical appendices (J and K); substantial revisions to four other technical appendices (C, E, F, and H); and provides a dozen new technical reports and modeling outcomes—all of which constitutes significant new information that was never circulated for public review. DWR's failure to recirculate the environmental impact report despite this significant new information precluded informed public comment and informed decision-making. This is a procedural violation of CEQA's requirements.

Inadequate response to comments

103. Under CEQA, a lead agency must make a good faith, reasoned analysis in response to comments provided during the public comment period. (Cal. Code Regs., tit. 14, § 15088.) DWR's responses to comments, however, are legally inadequate.

No substantial evidence to support certification

104. As set forth herein, there is no substantial evidence to support DWR's certification of the FEIR or the approval of the modified Alternative 2(b). Although the EIR cites to certain "expert opinion," those opinions do not constitute substantial evidence because they are speculative, erroneous, and factually unsupported. (See Cal. Code Regs., tit.14, § 15384 [The opinion of "experts" only constitutes substantial evidence where that opinion is not speculation, accurate, and supported by facts].) Given these defects, the record simply does not contain substantial evidence to support DWR's certification of the Final EIR or its approval of modified Alternative 2(b).

105. The EIR lacks a consistent project description, is based on shifting project objectives, fails to include adequate analysis of the modified Alternative 2(b) project, and

includes significant new information requiring recirculation.

Inadequate CEQA Findings

106. Under CEQA, substantial evidence must support a lead agency's findings regarding potentially significant impacts, and a "brief rationale" linking the substantial evidence to the findings must be provided. (Cal. Code Regs., tit.14, § 15091.) Although DWR's Notice of Determination states that CEQA findings were made, DWR has not made its findings readily available to the public. Based on the legal inadequacy of the Final EIR, Metropolitan and Mojave believe, and on that basis allege that DWR's CEQA findings are inadequate.

FOURTH CAUSE OF ACTION

(Breach of Contract)

(Against Department of Water Resources and DOES 1-100, Real Party in Interest California Natural Resources Agency and ROES 1-100)

107. Metropolitan and Mojave incorporate herein by reference each previous paragraph of this Petition and Complaint as though set forth here in full.

108. Metropolitan and Mojave have long-term contracts ("State Water Contracts") with DWR that provide them with certain participation rights in the SWP, including rights to an allocation of the available water supply and right to use the SWP to convey water. Metropolitan and Mojave are obligated to pay their full shares of the SWP costs related to water supply and transportation whether or not there is an allocation of water or they receive any water from the SWP. (See Exhibit 5 [Metropolitan's State Water Contract].)

109. Metropolitan executed the first State Water Contract in 1960, which had an initial term of 75 years. This original contract served as the prototype contract for all subsequent contracts, including Mojave's. Metropolitan and DWR have executed various amendments to the State Water Contract, including one on December 11, 2018, which extends the term to 2085. Mojave and DWR have also executed several amendments, but the allegations contained herein remain effective and are based on provisions that are identical in both Metropolitan's and Mojave's respective State Water Contracts.

110. Under its State Water Contract, Metropolitan pays roughly 47% of all supply-

related SWP costs and nearly 62% of all transportation-related SWP costs. Under Mojave's State Water Contract, it pays roughly 2.15% of all supply-related SWP costs and roughly 2.15% to 4 % of all transportation-related SWP costs. These costs are assessed to and collected from Metropolitan and Mojave through a Statement of Charges DWR issues on an annual basis.

111. Metropolitan and Mojave have done all of the things that are required of them by the terms and conditions of their respective State Water Contracts, and remain ready, able, and willing to meet their respective obligations and complete their performance under the State Water Contracts.

112. Pursuant to Article 6 of Metropolitan's State Water Contract, it has the right to receive an allocated share of available (non-surplus) SWP water, up to a maximum of 1.9115 million acre-feet (MAF) per year. Pursuant to Article 6 of Mojave's State Water Contract, it has the right to receive an allocated share of available (non-surplus) SWP water, up to a maximum of 85,800 acre-feet per year. This is referred to as "Table A" water.

113. While Metropolitan and Mojave are not guaranteed to receive their maximum Table A amounts each year, Article 16(b) of each of the State Water Contracts requires DWR to "make all reasonable efforts to perfect and protect water rights necessary for the System and for the satisfaction of water supply commitments under this contract."

114. Furthermore, although DWR has a certain amount of discretion in how it operates and manages the SWP, Article 38 of each of the State Water Contracts requires that DWR do so in a manner that is not "arbitrary, capricious or unreasonable."

115. DWR failed to fulfill its contract obligations by agreeing to mitigation in excess of that required by law. Even though DWR determined that the proposed project in its Draft EIR did not have any significant environmental impacts and met CESA requirements, it added new project alternatives to its Draft EIR that included new high water-cost actions. DWR further proposed a different, previously undisclosed high-water cost alternative in its CESA Application, thereby impacting Metropolitan's and Mojave's water supply reliability and SWP costs in ways in excess of legal requirements. DWR concluded that the new high-water cost alternative that it included in its CESA Application satisfied CESA requirements by minimizing and fully

mitigating the incidental take associated with the SWP. Nevertheless, DWR proposed and agreed to yet another, even higher water cost alternative, which included even more export reductions and mitigation, and approved the modified Alternative 2(b) project. The new export reductions and outflow actions contained in the project that DWR ultimately approved are not required to comply with law and thereby violate DWR's contractual obligations.

116. DWR further failed to fulfill its contractual obligations under Articles 16(b) and 38 by accepting an incidental take permit for continued operations of the SWP that violated or was otherwise inconsistent with law, specifically CESA, because it includes mitigation and other measures that, among other things,

- are unnecessary, disproportionate and/or infeasible to address potential environmental and species impacts associated with operation of the SWP;
- are not supported substantial evidence and/or the best available science;
- are premised on an incorrect definition of "take" of threatened or endangered species;
- are inconsistent with the project objectives described in the incidental take permit application;
- were not subjected to the appropriate or adequate environmental review in violation of CEQA; and
- include mitigation for take or other actions by third parties.

117. As a result, Metropolitan and Mojave will now receive significantly less Table A water and be forced to pay significantly more in unwarranted water supply-related charges than they otherwise would had DWR not proposed or agreed to such improper conditions.

118. Beyond this, by approving modified Alternative 2(b), DWR has agreed to cede control over certain future operations of the SWP to CDFW under the guise of real-time - operations. However, pursuant Water Code section 11451, DWR must retain "full charge and control of the construction, operation, and maintenance of the [SWP]."

119. By vesting operational decision making to CDFW, DWR has violated Water Code section 11451 and, in doing so, has once again failed to fulfill its obligations under Articles 16(b) and 38 of the State Water Contracts.

120. DWR's failure to comply with Articles 16(b) and 38 constitute material breaches of the State Water Contracts for which Metropolitan and Mojave are entitled to relief, including without limitation declaratory relief and specific performance.

FIFTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

(Against Department of Water Resources and DOES 1-100, Real Party in Interest California Natural Resources Agency and ROES 1-100)

121. Metropolitan and Mojave incorporate herein by reference each previous paragraph of this Petition and Complaint as though set forth here in full.

122. Every contract contains an implied promise of good faith and fair dealing that prohibits one party from doing anything to unfairly interfere with the right of another party to receive the benefits of the contract.

123. Metropolitan and Mojave have done all of the things that are required of them by the terms and conditions of their respective State Water Contracts, and remain ready, able, and willing to meet their respective obligations and complete their performance under their respective State Water Contracts.

124. DWR has unfairly interfered with Metropolitan's and Mojave's respective rights to receive the full benefits of their State Water Contracts by agreeing to mitigation in excess of that required by law, and by accepting an incidental take permit for continued operations of the SWP that violated or was otherwise inconsistent with law, as alleged more specifically above.

125. DWR's breach of the implied covenant of good faith and fair dealing has caused harm to Metropolitan and Mojave for which they are entitled to relief, including without limitation declaratory relief and specific performance.

126. Metropolitan and Mojave reserve the right to amend this petition and complaint to allege additional causes of action and forms of relief as warranted by the evidence and the law.

PRAYER FOR RELIEF

WHEREFORE, Metropolitan and Mojave pray for relief as follows:

1. For interlocutory and permanent injunctive relief restraining CDFW and DWR

from taking any action to carry out the modified Alternative 2b project or the CESA incidental take permit.

2. For a peremptory writ of mandate commanding, among other things, (1) DWR to set aside and vacate its approval of the modified Alternative 2b project, certification of the Final EIR, and CEQA lead agency findings; and (2) CDFW to set aside and vacate its issuance of the CESA incidental take permit, CESA findings, and CEQA responsible agency findings;

3. For a declaration that DWR breached the State Water Contracts with Metropolitan and Mojave;

4. For specific performance of DWR's obligations to Metropolitan and Mojave under their State Water Contracts;

5. For costs of suit;

6. For attorney fees pursuant to Code of Civil Procedure section 1021.5; and

7. For such other and further relief as the Court may deem just and proper.

Dated: April 28, 2020

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____

MARCIA L. SCULLY
REBECCA D. SHEEHAN
ROBERT C. HORTON
JOHN D. SCHLOTTERBECK
STEFANIE D. MORRIS
Attorneys For Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Dated April 28, 2020

BRUNICK, McELHANEY & KENNEDY, PLC

By: _____

WILLIAM J. BRUNICK,
Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

[Petition Deemed Verified Pursuant to Code Civ. Proc., § 446(a)]

EXHIBIT 1

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

April 28, 2020

Via Federal Express and Email

California Department of Water Resources
Attn: Karla Nemeth & Dean F. Messer
P.O. Box 942836
Sacramento, CA 94236
Karla.Nemeth@water.ca.gov
ROConLTO@water.ca.gov
LTO@water.ca.gov

Re: Written Notice of Commencement of Action Challenging Environmental Impact Report (SCH No. 2019049121) and Approvals of the Long-Term Operation of the California State Water Project

Dear Ms. Nemeth and Mr. Messer:

PLEASE TAKE NOTICE that pursuant to Public Resources Code section 21167.5 The Metropolitan Water District of Southern California and Mojave Water Agency intend to file a Petition for Writ of Mandate and Complaint against the Department of Water Resources ("DWR") alleging, among other things, violations of the California Environmental Quality Act ("CEQA") relating to the Long-Term Operation of the California State Water Project ("Project"). Among other forms of relief, the Petition and Complaint seeks a writ of mandate ordering DWR to set aside its March 27, 2020 certification of the Environmental Impact Report for the Project and all related actions and approvals until DWR complies with CEQA.

Sincerely,

Marcia L. Scully
General Counsel

Robert C. Horton
Chief Deputy General Counsel

cc: Spencer Kenner, DWR Chief Counsel (via email only)
Jeff Kightlinger, MWD General Manager (via email only)
Marcia Scully, MWD General Counsel (via email only)

PROOF OF SERVICE

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 700 North Alameda Street, Los Angeles, California 90012.

On April 28, 2020, I served the foregoing document(s) described as:

Written Notice of Commencement of Action Challenging Environmental Impact Report (SCH No. 2019049121) and Approvals of the Long-Term Operation of the California State Water Project

On the interested parties in this action by placing a ☒ true and correct copy(ies) or ☐ the original thereof, enclosed in a sealed envelope(s) addressed as follows:

California Department of Water Resources
Attn: Karla Nemeth & Dean F. Messer
P.O. Box 942836
Sacramento, CA 94236
Karla.Nemeth@water.ca.gov
ROConLTO@water.ca.gov
LTO@water.ca.gov

☐ **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practice. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid, at Los Angeles, California.

☐ **(PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

☒ **(FEDERAL EXPRESS)** On or before 12:45 p.m., caused such envelope(s) to be sent by Federal Express in a sealed envelope or package designated by the express courier addressed to the person(s) on whom it is to be served.

☐ **(FACSIMILE)** In addition to the above service by mail, personal service or Federal Express, I caused said document(s) to be transmitted by facsimile approximately ___ a.m./p.m. to the address(s) marked with a ^^^. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

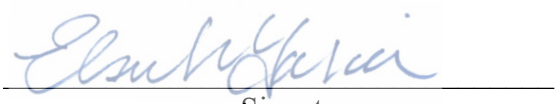
☒ **(EMAIL via PDF FILE)** On or before 12:45 p.m., I caused the document(s) to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the offices of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2020, at Los Angeles, California.

Elsa M. Garcia
Type or Print Name



Signature

EXHIBIT 2

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Counsel

April 28, 2020

Via Federal Express and Email

California Department of Fish & Wildlife
Attn: Charlton H. Bonham & Josh Grover
P.O. Box 944209
Sacramento, CA 94244-2090
director@wildlife.ca.gov
joshua.grover@wildlife.ca.gov

1010 Riverside Parkway
West Sacramento, CA 95605

Re: Written Notice of Commencement of Action Challenging Environmental Impact Report (SCH No. 2019049121) and Approvals of the Long-Term Operation of the California State Water Project and Sacramento-San Joaquin Delta Incidental Take Permit No. 2081-2019-066-00

Dear Mr. Bonham and Mr. Grover:

PLEASE TAKE NOTICE that pursuant to Public Resources Code section 21167.5 The Metropolitan Water District of Southern California and Mojave Water Agency intend to file a Petition for Writ of Mandate and Complaint against the California Department of Fish and Wildlife ("CDFW") alleging, among other things, violations of the California Environmental Quality Act ("CEQA") and the California Endangered Species Act ("CESA") relating to the Long-Term Operation of the California State Water Project and the Incidental Take Permit (No. 2081-2019-066-00) ("ITP") issued for the same. Among other forms of relief, the Petition and Complaint seeks a writ of mandate ordering CDFW to set aside the ITP until compliance with CEQA and CESA has been achieved.

Sincerely,

Marcia L. Scully
General Counsel

Robert C. Horton
Chief Deputy General Counsel

cc: Wendy Bogdan, CDFW General Counsel (vial email only)
Jeff Kightlinger, MWD General Manager (via email only)
Marcia Scully, MWD General Counsel (via email only)

PROOF OF SERVICE

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 700 North Alameda Street, Los Angeles, California 90012.

On April 28, 2020, I served the foregoing document(s) described as:

Written Notice of Commencement of Action Challenging Environmental Impact Report (SCH No. 2019049121) and Approvals of the Long-Term Operation of the California State Water Project and Sacramento-San Joaquin Delta Incidental Take Permit No. 2081-2019-066-00 On the interested parties in this action by placing a ☒ true and correct copy(ies) or ☐ the original thereof, enclosed in a sealed envelope(s) addressed as follows:

California Department of Fish & Wildlife
Attn: Charlton H. Bonham and Steven Ingram
1416 9th Street, 12th Floor
Sacramento, CA 95814
Mailing: P.O. Box 944209
Sacramento, CA 94244-2090
director@wildlife.ca.gov
steven.ingram@wildlife.ca.gov

California Department of Fish & Wildlife
Attn: Josh Grover
1010 Riverside Parkway
West Sacramento, CA 95605
joshua.grover@wildlife.ca.gov

☐ **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practice. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid, at Los Angeles, California.

☐ **(PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

☒ **(FEDERAL EXPRESS)** On or before 1:00 p.m., caused such envelope(s) to be sent by Federal Express in a sealed envelope or package designated by the express courier addressed to the person(s) on whom it is to be served.

☐ **(FACSIMILE)** In addition to the above service by mail, personal service or Federal Express, I caused said document(s) to be transmitted by facsimile approximately ___ a.m./p.m. to the address(s) marked with a ^^^. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

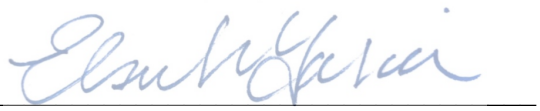
☒ **(EMAIL via PDF FILE)** On or before 1:00 p.m., I caused the document(s) to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the offices of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2020, at Los Angeles, California.

Elsa M. Garcia
Type or Print Name



Signature

EXHIBIT 3

MARCIA L. SCULLY, State Bar No. 080648
mscully@mwdh2o.com
REBECCA D. SHEEHAN, State Bar No. 201596
rsheehan@mwdh2o.com
ROBERT C. HORTON, State Bar No. 235187
rhorton@mwdh2o.com
JOHN D. SCHLOTTERBECK, State Bar No. 169263
jschlotterbeck@mwdh2o.com
STEFANIE D. MORRIS, State Bar No. 239787
smorris@mwdh2o.com
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (916) 650-2607
Facsimile: (213) 217-6890

Attorneys for Petitioner and Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Additional Counsel Listed on Following Page

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA and MOJAVE WATER AGENCY Petitioner/Plaintiff, v. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CALIFORNIA DEPARTMENT OF WATER RESOURCES and DOES 1 through 100, Respondents/Defendants/ Real Parties in Interest. CALIFORNIA NATURAL RESOURCES AGENCY and ROES 1 through 100, Real Parties in Interest.	Case No. Filed under California Environmental Quality Act (CEQA) **NOTICE TO ATTORNEY GENERAL OF CEQA ACTION** **[Pub. Resources Code, § 21167.7; Code of Civil Procedure, §388]**

WILLIAM J. BRUNICK, State Bar No. 046289
mailto:bbrunick@bmklawplc.com
BRUNICK, McELHANEY & KENNEDY, PLC
1839 Commercenter West
P.O. Box 13130
San Bernardino, California 92423-3130
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner and Plaintiff
MOJAVE WATER AGENCY

TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure Section 388 that on April 28, 2020, Petitioners and Plaintiffs The Metropolitan Water District of Southern California and Mojave Water Agency ("Petitioners") filed a Petition for Writ of Mandate and Complaint ("Petition and Complaint") against Respondents/Defendants/Real Parties in Interest California Department of Water Resources ("DWR") and California Department of Fish and Wildlife ("CDFW"), in the Superior Court of the State of California, County of Fresno. A copy of the Petition and Complaint is attached to this Notice as Exhibit A.

Dated: April 28, 2020

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____

MARCIA L. SCULLY
REBECCA D. SHEEHAN
ROBERT C. HORTON
JOHN D. SCHLOTTERBECK
STEFANIE D. MORRIS
Attorneys For Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Dated April 28, 2020

BRUNICK, McELHANEY & KENNEDY, PLC

By: _____

WILLIAM J. BRUNICK,
Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

EXHIBIT A

[Petition and Complaint with Exhibits 1-5 - intentionally left blank]

PROOF OF SERVICE

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 700 North Alameda Street, Los Angeles, California 90012.

On April 28, 2020, I served the foregoing document(s) described as:

NOTICE TO ATTORNEY GENERAL OF CEQA ACTION

On the interested parties in this action by placing a ☒ true and correct copy(ies) or ☐ the original thereof, enclosed in a sealed envelope(s) addressed as follows:

Xavier Becerra, Attorney General
Office of the Attorney General
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Telephone: (559) 705-2300

☐ **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practice. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid, at Los Angeles, California.

☐ **(PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

☒ **(FEDERAL EXPRESS)** I caused such envelope(s) to be sent by Federal Express in a sealed envelope or package designated by the express courier addressed to the person(s) on whom it is to be served.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the offices of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2020, at Los Angeles, California.

Elsa M. Garcia
Type or Print Name


Signature

EXHIBIT 4

MARCIA L. SCULLY, State Bar No. 080648
mscully@mwdh2o.com
REBECCA D. SHEEHAN, State Bar No. 201596
rsheehan@mwdh2o.com
ROBERT C. HORTON, State Bar No. 235187
rhorton@mwdh2o.com
JOHN D. SCHLOTTERBECK, State Bar No. 169263
jschlotterbeck@mwdh2o.com
STEFANIE D. MORRIS, State Bar No. 239787
smorris@mwdh2o.com
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 North Alameda Street
Los Angeles, CA 90012-2944
Mailing address: P.O. Box 54153
Los Angeles, CA 90054-0153
Telephone: (916) 650-2607
Facsimile: (213) 217-6890

Attorneys for Petitioner and Plaintiff
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Additional Counsel Listed on Following Page

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA and MOJAVE WATER AGENCY Petitioner/Plaintiff, v. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CALIFORNIA DEPARTMENT OF WATER RESOURCES and DOES 1 through 100, Respondents/Defendants/ Real Parties in Interest. CALIFORNIA NATURAL RESOURCES AGENCY and ROES 1 through 100, Real Parties in Interest.	Case No. Filed under California Environmental Quality Act (CEQA) **PETITIONERS THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA'S AND MOJAVE WATER AGENCY'S ELECTION TO PREPARE THE ADMINISTRATIVE RECORD PURSUANT TO PUBLIC RESOURCES CODE SECTION 21167.6(b)(2)**

WILLIAM J. BRUNICK, State Bar No. 046289
mailto:bbrunick@bmklawplc.com
BRUNICK, McELHANEY & KENNEDY, PLC
1839 Commercenter West
P.O. Box 13130
San Bernardino, California 92423-3130
Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Petitioner and Plaintiff
MOJAVE WATER AGENCY

TO RESPONDENTS AND DEFENDANTS:

Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners and Plaintiffs The Metropolitan Water District of Southern California and Mojave Water Agency hereby notify Respondents/Defendants/Real Parties in Interest California Department of Water Resources and California Department of Fish and Wildlife of Petitioners' election to prepare the Administrative Record of proceedings relating to this action.

Dated: April 28, 2020

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
MARCIA L. SCULLY
REBECCA D. SHEEHAN
ROBERT C. HORTON
JOHN D. SCHLOTTERBECK
STEFANIE D. MORRIS
Attorneys For Petitioner/Plaintiff
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Dated April 28, 2020

BRUNICK, McELHANEY & KENNEDY, PLC

By: _____
WILLIAM J. BRUNICK,
Attorneys for Petitioner/Plaintiff
MOJAVE WATER AGENCY

EXHIBIT 5

The Metropolitan Water District of Southern California

CONTRACT BETWEEN

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AND

THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

FOR A WATER SUPPLY AND SELECTED RELATED AGREEMENTS

Disclaimer: This document integrates The Metropolitan Water District of Southern California's State Water Project water supply contract with the many amendments to the contract entered into since 1960. It is intended only to provide a convenient reference source, and the Department of Water Resources is unable to provide assurances that this integrated version accurately represents the original documents. For legal purposes, or when precise accuracy is required, users should direct their attention to original source documents rather than this integrated version.

(As of January 1, 2005)

EXPLANATORY NOTES

< >	This symbol encloses material supplied to assist the reader but is not contained in the basic or amended contract
__	Underlining has been added for consistency even though it was not provided for in every amendment
Attachments	Separate agreements and materials that explain, modify or implement provisions of the basic contract have been included as attachments
Amendments	Amendments to the contract are indicated by footnote
Recitals	In addition to recitals contained in the basic contract, recitals from each contract amendment have also been included. For convenience, an index to recitals by amendment is included on page ii.

RECITALS INDEX

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(Continuation)

Page

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(Continuation)

Page

TABLE OF CONTENTS
(Continuation)

Page

AMENDMENTS

AMENDMENTS
(Continuation)

TABLES

<ADDITIONAL TABLES>

STATE OF CALIFORNIA

DEPARTMENT OF WATER RESOURCES

CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA FOR A WATER SUPPLY

THIS CONTRACT, made this 4th day of November, 1960, <as amended through December 13, 1995> pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State", and The Metropolitan Water District of Southern California, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in Los Angeles, California, herein referred to as the "District",

WITNESSETH, That:

<Following in Basic Contract and Amendment No. 1>

WHEREAS, the State is authorized to construct and operate facilities for the storage and conveyance of water, certain of which facilities will make water available to the District; and

<Following in Basic Contract>

WHEREAS, funds will be provided under the California Water Resources Development Bond Act for the construction of said facilities; and

WHEREAS, the District is desirous of obtaining a supply of water from the State;

<Following added by Amendment No. 1>

WHEREAS, the State and the District have entered into a water supply contract, dated November 4, 1960, providing that the State shall supply certain quantities of water to the District, and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payment; <similar provision also in Amendment Nos. 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28>; and

WHEREAS, the maximum annual entitlements under all contracts executed by the State on or before December 31, 1963, did not aggregate the amount of the minimum project yield as defined in such water supply contract; and

WHEREAS, the District has elected to become entitled to a certain amount of the uncontracted for portion of the minimum project yield under the provisions of Article 8 of the above- mentioned contract and the State has determined that the District can put the water involved to beneficial use within a reasonable period of time; and

WHEREAS, the District has also pursuant to Article 8 requested to become entitled to an amount of the uncontracted for portion of the minimum project yield not pre-empted under the option provision of Article 8, and the State has considered such request in the light of all similar requests from other contractors and has determined that the District can put the water involved to beneficial use within a reasonable period of time; and

WHEREAS, the State and the District are desirous of making certain other changes and additions to such contract, while otherwise continuing the contract in full force and effect;

<Following added by Amendment No. 2>

WHEREAS, Article 12(b) of such contract provides that the State shall not be obligated to deliver to any contractor from the project transportation facilities in any one month of any year a total amount of project water greater than certain named percentages of such contractor's annual entitlement for that year, but said article further provides that such percentages may be revised by amendment of Article 12(b); and

WHEREAS, Article 17(b) of such contract provides that the State shall design and construct the project transportation facilities so as to provide certain capacity in such facilities; and

WHEREAS, Article 24(d) of such contract provides a procedure to be followed in the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b); and

WHEREAS, the District has requested that such contract be amended to provide for excess capacity in certain reaches of project transportation facilities; and

WHEREAS, the State is willing to approve such request upon the terms and conditions of this agreement; and

WHEREAS, District is willing to advance to the State funds sufficient to cover any additional cost of the project transportation facilities occasioned by the District's request, as provided in Article 24(d); and

WHEREAS, it is the intent of the State and the District that no part of such additional costs shall be borne by any contractor other than the District;

<Following added by Amendment No. 3>

WHEREAS, the State and the District entered into a contract on November 4, 1960, entitled "Water Supply Contract Between the State of California Department of Water Resources and The Metropolitan Water District of Southern California", and amended such contract by "Memorandum Regarding Performance of Contract", dated December 1, 1961 <Attachment A>, Amendment No. 1, dated September 28, 1964, and Amendment No. 2, dated February 23, 1965, (which contract, as amended, is hereinafter referred to as the "Metropolitan Contract"); and

WHEREAS, the State and the City entered into a contract on December 2, 1963 entitled "Water Supply Contract Between the State of California Department of Water Resources and City of West Covina", and amended such contract by Amendment No. 1, dated September 28, 1964, (which contract, as amended, is hereinafter referred to as the "West Covina Contract"), and the City contracted in the West Covina Contract for amounts of annual entitlements and maximum annual entitlement as shown below:

ANNUAL ENTITLEMENTS
CITY OF WEST COVINA

Year	Total Annual Amount in Acre-Feet
1 (year of initial water delivery)	4,200
2	4,600
3	4,900
4	5,200
5	5,600
6	5,900
7	6,300
8	6,600
9	7,000
10	7,300
11	7,600
12	8,000
13	8,300
14	8,700
15	9,300
16	9,800
17	10,400
18	11,000
19	11,500
and each succeeding year thereafter, for the term of the West Covina Contract as a Maximum Annual Entitlement	11,500

; and

WHEREAS, the City and the District have informed the State that all the territory within the boundaries of the City which is not now within the District will be concurrently annexed by the Upper San Gabriel Valley Municipal Water District and by the District prior to June 1, 1966; and

WHEREAS, the following is a portion of Article 15(c) of the Metropolitan Contract:

"In the event of annexation by the District of territory lying within an area served or to be served by the State with project water pursuant to a contract between the State and another contractor, and subject to the consummation of appropriate agreements between the State, the District, and such other contractor, the District's annual entitlements and maximum annual entitlement under this contract shall be increased by the amounts of the annual entitlements and maximum annual entitlement contracted for by said contractor for use in said annexed territory. Upon any increase in the District's annual entitlements and maximum annual entitlement pursuant to this subdivision, Table A included in Article 6(b), and Article 7(b) shall be amended accordingly and the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for such increased annual entitlements and maximum annual entitlement shall in all respects be subject to the terms and conditions of this contract.";

and

WHEREAS, the parties hereto are cognizant of the rights under the Metropolitan Contract and the West Covina Contract of the holders and owners of general obligation bonds issued under the California Water Resources Development Bond Act, have carefully considered the effect of this agreement on such rights, and believe that such rights are not hereby impaired because (1) the District hereby undertakes additional financial obligations under the Metropolitan Contract which are equivalent to the financial obligations heretofore imposed upon the City by the West Covina Contract, and (2) by the annexation of the City by the District, the water market within the City and the tax base of the City will continue to support financial obligations;

<Following added by Amendment No. 4>

WHEREAS, by a water supply contract dated November 4, 1960, the District has contracted with the State for certain quantities of water from the State Water Project, a portion of which will be transported for delivery to the District through the East Branch of the California Aqueduct, a part of the State Water Facilities; and

WHEREAS, Perris Reservoir is the terminal reservoir of the East Branch of the California Aqueduct; and

WHEREAS, as of the date of this agreement, the District is the only agency which has contracted with the State for delivery of water from Perris Reservoir; and

WHEREAS, the State has completed the preliminary planning and design of Perris Dam and Reservoir and, based on the criteria described in Article 17(b) and the project purposes set forth in the Bond Act, has made a preliminary determination that Perris Reservoir should have a storage capacity of one hundred thousand (100,000) acre-feet; and

WHEREAS, additional project exploratory work and planning may result in a determination by the State in order to meet the criteria described in Article 17(b) and to provide for project purposes described in the Bond Act, that Perris Reservoir should have a capacity greater than one hundred thousand (100,000) acre-feet, which greater capacity, for the purposes of this agreement, shall hereafter be called "optimum project size"; and

WHEREAS, the State has commenced proceedings to acquire sufficient lands at the site of Perris Reservoir that would permit the construction of a reservoir with a capacity of one hundred thousand (100,000) acre-feet; and

WHEREAS, the District has requested that the State acquire sufficient lands in the immediate area of the Perris Reservoir site to allow the construction of a reservoir with a capacity of up to five hundred thousand (500,000) acre-feet; and

WHEREAS, the District has also requested the State to do or prepare the necessary preliminary exploratory work, surveys, geologic studies, alternate designs and any and all other engineering and administrative work required to enable the District to select and request an appropriate plan and schedule for the construction, in one or two stages, of a reservoir at the Perris Reservoir site to sizes to be designated by the District, which sizes may be larger than the optimum project size but not exceeding five hundred thousand (500,000) acre-feet; and

WHEREAS, the State is willing to approve such requests upon the terms and conditions of this agreement, and subject to optimization of all of the project purposes in addition to providing regulatory and emergency storage at Perris Reservoir; and

WHEREAS, the District is willing to advance to the State funds sufficient to cover all additional costs occasioned by the District's requests in accordance with the three paragraphs immediately above;

<Following added by Amendment No. 5>

WHEREAS, Article 17(b) of such contract provides that the State shall design and construct the project transportation facilities, including reservoirs, so as to provide certain capacity in such facilities; and

WHEREAS, Article 24(d) of such contract provides a procedure to be followed in the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b); and

WHEREAS, Perris Reservoir is the terminal reservoir of the California Aqueduct; and

WHEREAS, as of the date of this agreement, the District is the only agency which has contracted with the State for delivery of water from Perris Reservoir; and

WHEREAS, the State has completed the preliminary planning and design of Perris Dam and Reservoir and, based on the criteria described in Article 17(b) and the project purposes set forth in the Bond Act, has made a preliminary determination that Perris Reservoir should have a storage capacity of one hundred thousand (100,000) acre-feet; and

WHEREAS, pursuant to the request of the District and the terms of Amendment No. 4 to the District's Water Supply Contract, the State has commenced proceedings to acquire sufficient lands at the site of Perris Reservoir to permit the construction of a reservoir with a capacity of up to and including five hundred thousand (500,000) acre-feet, and has performed the necessary preliminary work, surveys, geologic studies, alternate designs and other engineering and administrative work to enable the District to select and request an appropriate plan and schedule for the construction, in one or two stages, of a reservoir at the Perris Reservoir site to a size larger than one hundred thousand (100,000) acre-feet, but not exceeding five hundred thousand (500,000) acre-feet; and

WHEREAS, the District has requested that the Department initially construct Perris Reservoir to the project optimum capacity of one hundred thousand (100,000) acre-feet, but that it do all things necessary to enable the reservoir to be enlarged at a later date or dates in two or more stages of construction to any size up to and including five hundred thousand (500,000) acre-feet; and

WHEREAS, the State is willing to approve such request upon the terms and conditions of this Agreement, and subject to optimization of all of the project purposes in addition to providing regulatory and emergency storage at Perris Reservoir; and

WHEREAS, the District is willing to advance to the State funds sufficient to cover all additional costs occasioned by the District's request in accordance with the two paragraphs immediately above, and as provided in Article 24(d); and

WHEREAS, it is the intent of the State and the District that no part of such additional costs shall be borne by any contractor other than the District;

<Following added by Amendment No. 6>

WHEREAS, Article 17(b) of such contract provides that the State shall design and construct the project transportation facilities so as to provide certain capacity in such facilities; and

WHEREAS, Article 24(d) of such contract provides a procedure to be followed in the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b); and

WHEREAS, the District has requested that such contract be amended to provide for excess capacity in the reaches of the project transportation facilities extending from Cedar Springs Reservoir to South Portal San Bernardino Tunnel; and

WHEREAS, the State is willing to approve such request upon the terms and conditions of this Agreement; and

WHEREAS, District is willing to advance to the State funds sufficient to cover any additional cost of such reach of the project transportation facilities occasioned by the District's request, as provided in Article 24(d); and

WHEREAS, it is the intent of the State and the District that no part of such additional costs shall be borne by any contractor other than the District;

<Following added by Amendment No. 7>

WHEREAS, the District, under the provisions of Article 12(b) and Article 24(d) of such contract, heretofore has requested and obtained, through Amendment No. 2 of the District's contract, excess capacity in certain reaches of the project transportation facilities and has agreed to pay for the cost of such excess capacity in advance of construction; and

WHEREAS, the District and all other contractors, except Antelope Valley-East Kern Water Agency, entitled to delivery of project water from and through the West Branch Aqueduct have requested that the portion of such excess capacity in the transportation facilities from the South Portal of the Tehachapi Tunnels to the West Branch Terminal Reservoir be provided by the State not as excess capacity but as capacity which is economically justified in the judgment of the State to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of project facilities, and which in the judgment of the State will best serve the interests of all contractors entitled to delivery of project water through such facilities, the capital costs of which capacity will be paid by the District and other contractors in accordance with the provisions of Articles 24(a), (b) and (c) of such contract instead of Article 24(d); and

WHEREAS, the State is willing to approve such request on the basis that in its judgment it will alleviate problems of cost allocation and will provide additional capacity which is economically justified and will best serve the interests of the District and all other contractors: Provided, That the District will agree to make advance payments of the capital cost component of the Transportation Charge in amounts not to exceed a total of twenty-four million three hundred thousand dollars ($24,300,000) pursuant to Article 24(c)(2) of the District's contract if requested to do so by the State; and

WHEREAS, the District is willing to make such advance payments, not to exceed sixteen million three hundred thousand dollars ($16,300,000) prior to construction of the Pyramid Power Development and an additional eight million dollars ($8,000,000) when Pyramid Power Development is to be constructed, if the State determines that it needs such funds prior to 1976 to help finance the construction of project transportation facilities; and if construction costs of the Development are financed by funds provided by the sale of bonds issued by the State under the bond act and if the major construction contract for the Development is awarded for completion prior to 1976; and

WHEREAS, regulatory storage formerly included in the project transportation facilities at Silverwood Lake has been reduced because of recent engineering and geologic investigations, and such reduction will require an increase in conveyance capacity in certain transportation facilities including the reaches from Kettleman City to the South Portal of the Tehachapi Tunnels; and

WHEREAS, the District is willing to reduce the amount of its excess capacity, heretofore requested and obtained, in the reaches of the transportation facilities from Kettleman City to the South Portal of the Tehachapi Tunnels to provide additional conveyance capacity required in the transportation facilities to offset the loss of regulatory storage in Silverwood Lake;

<Amendment No. 8 not operative>

<Following added by Amendment No. 9>

WHEREAS, Article 22(b) of such water supply contract provides that for each year through the year 1969 the Delta Water Charge shall be the product of $3.50 and the Agency's annual entitlement for the respective year and that beginning in the year 1970, the Delta Water Charge shall be the sum of the capital cost component, minimum operation, maintenance, power and replacement component, and variable operation, maintenance, power and replacement component computed in accordance with Articles 22(c) and (d) of the water supply contract; and

WHEREAS, Articles 22(e) and (g) of such water supply contract provide that the Delta Water Charge as computed in accordance with Articles 22(c) and (d) shall include all projected costs of additional project and supplemental conservation facilities commencing in the years in which the State first incurs capital costs for such facilities after the facilities are authorized; and

WHEREAS, the parties desire that all water supply contracts be amended to postpone inclusion of the projected costs of any authorized additional project and supplemental conservation facilities in the computation of the Delta Water Charge until after the year 1970 and to fix the rate for computing the Delta Water Charge for the year 1970 at $6.65; and

WHEREAS, the payments to be made by the Agency <District> to the State include interest calculated at the "project interest rate" defined in Article 1(t) of such water supply contract to mean the weighted average of the interest rates paid by the State on bonds issued under the Water Resources Development Bond Act (Bond Act) disregarding premiums received on the sale of such bonds; and

WHEREAS, the underlying assumption upon which the "project interest rate" was established was that all of the initial facilities of the State Water Resources Development System (Project) would be financed principally with proceeds of bonds issued under the Bond Act or from other sources on which the interest rate would not exceed that of the bonds issued under the Bond Act; and

WHEREAS, the State already has financed the Oroville-Thermalito power facilities through Central Valley Project Revenue Bonds and may finance other portions of the project facilities through additional revenue bond issues, bonds issued under other authority granted by the Legislature or the voters, bonds issued by other state agencies, advances from contractors, and other methods under which the financing costs relate to interest rates that may exceed the interest rate of the bonds issued under the Bond Act; and

WHEREAS, either the State or contractors making advances to the State may be subject to interest rates, or other financing costs that relate to interest rates, which will be greater than the "project interest rate" as presently defined in the contracts; and

WHEREAS, the parties desire that (1) the interest costs hereafter incurred by or on behalf of the State in financing the construction of project facilities by means other than the use of moneys provided under the Bond Act will be reflected in appropriate adjustments of the "project interest rate" (excepting the interest costs incurred for the Central Valley Project Revenue Bonds issued prior to the date of this amendment); (2) appropriate credit will be given to any contractor having made an advance of funds to the State corresponding to the bond service obligation payable by such contractor by reason of such advance or if bonds were not used to obtain funds for such advance, then to the net interest cost which would have resulted if the contractor had sold bonds for the purpose of funding the advance; and (3) if any sources of funds other than those provided under the Bond Act are employed to finance the construction of specific project facilities and the interest or other costs of such financing are greater than the cost would have been if bonds issued under the Bond Act had been used, appropriate adjustments to the charges

to contractors will be made with respect to such facilities so that the charges to contractors taking water through reaches which include such facilities will be the same after such adjustments as such charges would have been if such facilities had been financed by the use of proceeds of bonds issued under the Bond Act, except insofar as the "project interest rate" has been adjusted pursuant to (1) in this recital:

<Following added by Amendment No. 10>

WHEREAS, Article 22(b) of such water supply contract, as amended, provides that for each year through the year 1969 the Delta Water Charge shall be the product of $3.50 and the Agency's annual entitlement for the respective year, that for the year 1970 the Delta Water Charge shall be the product of $6.65 and the Agency's annual entitlement for that year, and that beginning in the year 1971 the Delta Water Charge shall be the sum of the capital cost component, minimum operation, maintenance, power and replacement component, and variable operation, maintenance, power and replacement component computed in accordance with Articles 22(c) and (d) of the water supply contract; and

WHEREAS, Articles 22(e) and (g) of such water supply contract provide that the Delta Water Charge as computed in accordance with Articles 22(c) and (d) shall include all projected costs of additional project and supplemental conservation facilities commencing in the years in which the State first incurs capital costs for such facilities after the facilities are authorized; and

WHEREAS, the parties desire that all water supply contracts be amended to postpone inclusion of the projected costs of any authorized additional project and supplemental conservation facilities in the computation of the Delta Water Charge until after the year 1971 and to fix the rate for computing the Delta Water Charge for the year 1971 at $7.24;

<Following added by Amendment No. 11>

WHEREAS, Article 22(b) of such water supply contract, as amended, provides that for each year through the year 1969 the Delta Water Charge shall be the product of $3.50 and the Agency's annual entitlement for the respective year, that for the year 1970 the Delta Water Charge shall be the product of $6.65 and the Agency's annual entitlement for that year, that for the year 1971 the Delta Water Charge shall be the product of $7.24 and the Agency's annual entitlement for that year, and that beginning in the year 1972 the Delta Water Charge shall be the sum of the capital cost component, minimum operation, maintenance, power and replacement component, and variable operation, maintenance, power and replacement component computed in accordance with Articles 22(c) and (d) of the water supply contract; and

WHEREAS, Articles 22(e) and (g) of such water supply contract provide that the Delta Water Charge as computed in accordance with Articles 22(c) and (d) shall include all projected costs of additional project and supplemental conservation facilities commencing in the years in which the State first incurs capital costs for such facilities after the facilities are authorized; and

WHEREAS, the parties desire that all water supply contracts be amended to postpone inclusion of the projected costs of any authorized additional project and supplemental conservation facilities in the computation of the Delta Water Charge until the happening of certain events;

<Following added by Amendment No. 12>

WHEREAS, Article 45 of such water supply contract provides that contracts executed by the State for a dependable supply of project water shall be substantially uniform with respect to basic terms and conditions, with exceptions that are not applicable to this amendment; and

WHEREAS, subsequent to the execution of such water supply contract the State executed other contracts for a dependable supply of water that contain a provision pertaining to the sale of project water for use within the service area of such a water supply contractor, which provision is not in the District's water supply contract with the State; and

WHEREAS, the State and the District agree that such provision should be added to the District's water supply contract;

<Following added by Amendment No. 13>

WHEREAS, the Amended Contract provides for a surcharge equivalent to the power credit per acre-foot of water to be charged to water users, other than the United States or the State of California, for each acre-foot of project water determined to have been put to agricultural or manufacturing uses on excess land, for collection by the Agency <District> either itself or through a retail agency or another agency, for payment to the State of such surcharge, and for the allowance, on specified terms and conditions, of the amount of such surcharge as a credit to the Agency <District>; and

WHEREAS, the Amended Contract establishes the power credit per acre-foot of water as two dollars until all of the facilities for generation of electrical energy in connection with operation of initial project conservation facilities are installed and in operation, and provides for a redetermination of such credit thereafter to reflect accurately increases or decreases from year to year in the power credit; and

WHEREAS, the provisions of the Amended Contract providing for or related to the power credit, surcharge and surcharge credit have been suspended as to water deliveries during the years prior to 1972 pending redetermination of the power credit and a reevaluation of the merits of such contract provisions; and

WHEREAS, estimates indicate that the power credit will be relatively negligible in amount and that administrative costs associated with the power credit, surcharge and surcharge credit provisions will be excessively burdensome to the Agency <District> and its water users; and

WHEREAS, the power credit, surcharge and surcharge credit provisions rest on unclear, confused or mistaken premises and should no longer be retained;

<Following added by Amendment No. 14>

WHEREAS, Article 28 of such water supply contract provides that the State shall redetermine the annual amounts of the Transportation Charge in order that the charges to the Agency <District> may accurately reflect increases or decreases from year to year in project costs, outstanding reimbursable indebtedness of the State, annual entitlements, estimated deliveries, project interest rate, and all other factors which are determinative of such charges; and

WHEREAS, Article 28 also provides that each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the Agency <District> for succeeding years which shall account for differences, if any, between projections used by the State in determining the amounts of such components for all preceding years and actual costs incurred by the State during such years, but does not specify the computational details or the method of payment of such adjustments; and

WHEREAS, the State has been including such adjustments as “one-shot” credits or additional charges to be subtracted from or added to the Transportation Charge to be paid by the Agency <District> in the year following the redetermination; and

WHEREAS, the magnitude of such adjustments together with changes in other determinants of charges may be significantly different in comparison with the amounts projected by the State under previous determinations and could impair the planned fiscal operations of the Agency <District>, depending on the method of payment, and the parties desire to amend the contract to provide a method of amortizing the payment of the amounts of such differences over two or more years, depending on the magnitude of the differences; and

WHEREAS, bookkeeping will be simplified if the amortization of the payments of the amounts of such differences is reflected solely in the capital cost component of the Transportation Charge; and

WHEREAS, the method of payment should apply regardless of whether the adjustments tend to increase or to decrease the Transportation Charge;

<Following added by Amendment No. 15>

WHEREAS, the annual entitlement for the first year (1972) of water deliveries under the Agency's <District> contract is 254,200 acre-feet; and

WHEREAS, certain of the project facilities necessary to commence initial deliveries of project water to the Agency <District> were not completed in sufficient time to allow the Agency <District> to take delivery of all of its annual entitlement for 1972 on a reasonable schedule; and

WHEREAS, the State has developed a proposed adjustment of the Agency's <District> 1972 entitlement taking into consideration the monthly distribution of 1972 project water deliveries as requested in its five-year delivery schedule submitted to the State in 1967; and

WHEREAS, the Agency <District> has requested that its annual entitlement for the first year of water deliveries be decreased accordingly; and

WHEREAS, the State has determined that a decrease from 254,200 acre-feet to 154,772 acre-feet is justified and that allowing such a decrease in the Agency's <District> 1972 annual entitlement will not impair the financial feasibility of the project facilities;

<Following added by Amendment No. 16>

WHEREAS, the State and the Agency <District> entered into a contract whereby the State will deliver and the Agency will purchase a supply of water to be made available from project facilities constructed by the State; and

WHEREAS, the State and the Agency <District> included in such contract a subarticle, hereinafter referred to as the agricultural and groundwater replenishment provision, which entitles the Agency <District> to obtain from the State a supply of surplus water for agricultural and groundwater replenishment use when available; and

WHEREAS, Article 21 of such contract also provides for the sale by the State of a supply of surplus water when available; and

WHEREAS, the State and the Agency <District> desire to amend the provisions of such contract related to the sale and purchase of surplus water;

<Following added by Amendment No. 17>

WHEREAS, the State and the Agency <District> desire to make certain changes and additions to such contract, while otherwise continuing the contract in full force and effect; <similar provision also in Amendment No. 18>

<Following added by Amendment No. 19>

WHEREAS, The Metropolitan Water District of Southern California has requested the State to enlarge the East Branch Aqueduct from Junction, West Branch, California Aqueduct through Devil Canyon Power Plant by different capacity amounts; and

WHEREAS, a number of water supply contractors have expressed interest in receiving increased deliveries through the East Branch Aqueduct; and

WHEREAS, the State is willing to enlarge reaches of the East Branch Aqueduct from Junction, West Branch, California Aqueduct through Devil Canyon Power Plant; and

WHEREAS, other East Branch contractors may choose to participate in the facilities to be enlarged; and

WHEREAS, the State is willing to operate the East Branch Aqueduct reaches from Junction, West Branch California Aqueduct through Perris Reservoir to provide deliveries on a basis that permits full utilization of available capacity;

<Following added by Amendment No. 20>

WHEREAS, the State and the Agency <District> wish to provide financing for project facilities with water system revenue bonds and provide for repayment of water system revenue bonds; and

WHEREAS, the State and the Agency <District> wish to clarify the definition of the project interest rate without changing the interpretation of Article 1(t), except for the addition of item (7), and to specify that financing costs of water system facilities and East Branch Enlargement facilities shall not be included in calculating the project interest rate; and

WHEREAS, the State is willing to amortize over the remaining repayment period of the contract, the "one-shot" adjustment applied to previous payments resulting from revisions in the project interest rate under conditions defined in this amendment;

<Following added by Amendment No. 21>

WHEREAS, the District has requested that the State construct an emergency bypass at Devil Canyon Power Plant with a capacity for deliveries to the District of 300 cubic feet per second at the same time as construction of Devil Canyon Power Plant features of the East Branch Enlargement; and

WHEREAS, the District has requested that the bypass be financed in the same manner as provided for facilities of the East Branch Enlargement, and that repayment of all the costs of the bypass be the obligation of the District; and

WHEREAS, the Department is willing to conduct tests of the bypass after construction to determine whether the bypass could be operated on a regular basis for deliveries;

<Following added by Amendment No. 22>

WHEREAS, a more efficient use of entitlement water may be achieved by deferral of its use from October, November and December of one calendar year into the first three months of the next year; and

WHEREAS, the State and the Agency <District> desire to amend the provisions of such contract related to the delivery and scheduling of entitlement water to allow, under certain conditions, the carry-over of a portion of the Agency's <District's> entitlement deliveries from a respective year into the first three months of the next calendar year; and

WHEREAS, the carry-over of entitlement by the Agency <District> is not intended to adversely impact current or future project operations; and

WHEREAS, the State Water Project <SWP> contractors and the Department are aware that the carry-over of entitlement water from one year into the next may increase or decrease the costs to other SWP contractors in either year. The tracking of those costs may be too complex and expensive and does not warrant special accounting procedures to be established; however, any significant identifiable cost shall be charged to those contractors causing such costs, as determined by the Department; and

WHEREAS, the carry-over of entitlement water is not to affect the payment provisions of the contract;

<Following added by Amendment No. 23>

WHEREAS, the State and the Agency <District> included in such contract an article which entitles the Agency <District> to obtain from the State deliveries of surplus water when available; and

WHEREAS, the State and the Agency <District> desire to amend the provisions of such contract related to the deliveries of surplus water; and

WHEREAS, beginning January 1, 1991 the Agency <District> desires to be charged for the power used for pumping surplus water at the Melded Power Rate as provided herein for the remainder of the project repayment period; and

WHEREAS, the parties to this Amendment, and those approving the Amendment, intend no impact upon their positions with respect to the interpretation of any existing contractual provisions;

<Following added by Amendment No. 24>

WHEREAS, the State and the District desire to make certain changes and additions to such contract with regard to unscheduled water, while otherwise continuing the contract in full force and effect;

<Following added by Amendment No. 25>

WHEREAS, on December 1, 1994, representatives of the contractors and the State executed a document entitled “Monterey Agreement - Statement of Principles - By the State Water Contractors and the State of California Department of Water Resources For Potential Amendments To The State Water Supply Contracts” (the “Monterey Agreement”); and

WHEREAS, the contractors and the State have negotiated an amendment to the water supply contracts to implement provisions of the Monterey Agreement (the “Monterey Amendment”); and

WHEREAS, the State and the District desire to implement such provisions by incorporating this Monterey Amendment into the water supply contract;

<Following added by Amendment No. 26 – Caution – Amendment subject to possible termination by action other than amendment>

WHEREAS, as of May 20, 2003, Amendment 26 was interim until further action of the Courts in the case of *Planning and Conservation League, et al. v. Department of Water Resources, et al.*, Sacramento County Superior Court, Case No. 95 CS 03216; and

WHEREAS, the State and the District entered into and subsequently amended a water supply contract (the "contract") providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, on December 1, 1994, the State and representatives of certain State Water Project contractors executed a document entitled "Monterey Agreement - Statement of Principles - By The State Water Contractors And The State Of California Department Of Water Resources For Potential Amendments To The State Water Supply Contracts" (the "Monterey Agreement"); and

WHEREAS, the State, the Central Coast Water Authority ("CCWA") and those contractors intending to be subject to the Monterey Agreement subsequently negotiated an amendment to their contracts to implement provisions of the Monterey Agreement, and such amendment was named the "Monterey Amendment;" and

WHEREAS, in October 1995, an environmental impact report ("EIR") for the Monterey Amendment was completed and certified by CCWA as the lead agency, and thereafter the District and the State executed the Monterey Amendment; and

WHEREAS, the EIR certified by the CCWA was challenged by several parties (the "Plaintiffs") in the Sacramento County Superior Court and thereafter in the Third District Court of Appeal, resulting in a decision in *Planning and Conservation League, et al. v. Department of Water Resources*, 83 Cal.App.4th 892 (2000), which case is hereinafter referred to as "*PCL v. DWR*"; and

WHEREAS, in its decision, the Court of Appeal held that (i) the Department of Water Resources ("DWR"), not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA's EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the State Water Project contracts, as a non-project alternative,

(iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge of DWR's transfer of title to certain lands to Kern County Water Agency (the "Validation Cause of Action") and execution of amended State Water Project contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court's grant of motion for summary adjudication of the Validation Case of Action; (2) issue a writ of mandate vacating the certification of the EIR; (3) determine the amount of attorney fees to be awarded to Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court's opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA; and

WHEREAS, the State, the contractors, and the Plaintiffs in *PCL v. DWR* reached an agreement to settle *PCL v. DWR*, as documented by that certain Settlement Agreement dated May 5, 2003 (the "Settlement Agreement"), and in such Settlement Agreement have agreed that the contractors should be amended, for clarification purposes, to delete terms such as "annual entitlement" and "maximum annual entitlement" so that the public, and particularly land use planning agencies, will better understand the contracts; and

WHEREAS, pursuant to the Settlement Agreement, the State and the District desire to so amend the District's contract, with the understanding and intent that the amendments herein with respect to subsections (m), (n), and (o) of Article 1, subsection (b) of Article 6, and subsection (a) of Article 16, and to Table A of the District's contract are solely for clarification purposes and that such amendments are not intended to and do not in any way change the rights, obligations or limitations on liability of the State or the District established by or set forth in the contract; and

WHEREAS, pursuant to the Settlement Agreement, the State, the contractors and the Plaintiffs in *PCL v. DWR* also agreed that the contractors should be amended to include a new Article 58 addressing the determination of dependable annual supply of State Water Project water to be made available by existing project facilities, and the State and District desire to so amend the District's contract.

<Following Recitals added by Amendment No. 27 – Complete Amendment Following Article 58 – Caution – Amendment subject to early termination>

Coachella Valley Water District, herein referred to as "Coachella," and the DEPARTMENT have entered into and subsequently amended a long-term Water Supply Contract, providing that the DEPARTMENT will supply certain quantities water to Coachella, and providing that Coachella shall make certain payments to the DEPARTMENT, and setting forth the terms and conditions of such supply and such payment.

On or about October 14, 2003 the District anticipates entering into an exchange agreement ("2003 Exchange Agreement") with Coachella and Agency, herein referred to as "Agency" for the transfer to Coachella of 88,100 acre-feet of State Water Project Table A amounts held by the District and for the transfer to Agency of 11,900 acre-feet of State Water Project Table A amounts held by the District. The 2003 Exchange Agreement provides for the transfers to simultaneously terminate on December 31, 2035 unless both are earlier or later simultaneously terminated pursuant to the terms of the 2003 Exchange Agreement. <Exchange Agreement also requires compliance with condition precedent before transfer takes effect.>

The DEPARTMENT, District and Coachella wish to set forth their agreement as to such matters as (i) the 88,100 acre-feet per year decrease in the District's annual Table A amounts, (ii) the transfer of related transportation repayment obligations, and (iii) the revision of proportionate use of facilities factors set forth in the District's Water Supply Contract.

The DEPARTMENT and Coachella are simultaneously, with the execution and delivery of this Amendment, entering into Amendment No. 18 to Coachella's long-term Water Supply Contract with the DEPARTMENT in order to reflect (i) the transfer of Table A amounts described herein, (ii) the transfer of related transportation repayment obligations, and (iii) the revision of proportionate use of facilities factors.

The DEPARTMENT is willing to approve the transfer of Table A amounts in accordance with the terms of this Amendment.

A Program Environmental Impact Report for the Coachella Valley Water Management Plan and State Water Project Entitlement Transfer was prepared by Coachella, as lead agency, in compliance with the California Environmental Quality Act and certified on October 8, 2002. It concluded that the project will have a significant effect on the environment and mitigation measures were made a condition of project approval. The Director of the DEPARTMENT, acting as a responsible agency, has reviewed and considered the Program Environmental Impact Report prepared by Coachella prior to approving this Amendment.

<Following Recitals added by Amendment No. 28 – Complete Amendment following Article 58 – Caution – Amendment subject to early termination>

The Parties have entered into and subsequently amended a long-term Water Supply Contract, providing that the DEPARTMENT will supply certain quantities of water to the District, and providing that the District shall make certain payments to the DEPARTMENT, and setting forth the terms and conditions of such supply and such payment.

Agency and the DEPARTMENT have entered into and subsequently amended a long-term Water Supply Contract, providing that the DEPARTMENT will supply certain quantities of water to Agency, and providing that Agency shall make certain payments to the DEPARTMENT, and setting forth the terms and conditions of such supply and such payment.

On or about October 14, 2003 the District anticipates entering into an exchange agreement ("2003 Exchange Agreement") with the Agency and Coachella for the transfer to Agency of 11,900 acre-feet of State Water Project Table A amounts held by the District and for the transfer to Coachella of 88,100 acre-feet of State Water Project Table A amounts held by the District. The 2003 Exchange Agreement provides for the transfers to simultaneously terminate on December 31, 2035 unless both are earlier or later simultaneously terminated pursuant to the terms of the 2003 Exchange Agreement. <Exchange Agreement also requires compliance with condition precedent before transfer takes effect.>

The DEPARTMENT, District, and Agency wish to set forth their agreement as to such matters as (i) the 11,900 acre-feet per year decrease in the District's annual Table A amounts, (ii) the transfer of related transportation repayment obligations, and (iii) the revision of proportionate use of facilities factors set forth in the District's Water Supply Contract.

The DEPARTMENT and the Agency are simultaneously, with the execution and delivery of this Amendment, entering into Amendment No. 18 to the Agency's long-term Water Supply Contract with the DEPARTMENT in order to reflect (i) the transfer of Table A amounts described herein, (ii) the transfer of related transportation repayment obligations, and (iii) the revision of proportionate use of facilities factors.

The DEPARTMENT is willing to approve the transfer of Table A amounts in accordance with the terms of this Amendment.

A Program Environmental Impact Report for the Coachella Valley Water Management Plan and State Water Project Entitlement Transfer was prepared by Coachella Valley, as lead agency, in compliance with the California Environmental Quality Act and certified on October 8, 2002. It concluded that the project will have a significant effect on the environment and mitigation measures were made a condition of project approval. The Director of the DEPARTMENT, acting as a responsible agency, has reviewed and considered the Program Environmental Impact Report prepared by Coachella Valley prior to approving this agreement.

NOW THEREFORE, it is mutually agreed as follows:

A. INTRODUCTORY PROVISIONS

1. Definitions. When used in this contract, the following terms shall have the meanings hereinafter set forth:

(a) "Bond Act" shall mean the California Water Resources Development Bond Act, comprising Chapter 8, commencing at Section 12930, of Part 6 of Division 6 of the Water Code, as enacted in Chapter 1762 of the Statutes of 1959.

(b) "System" shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code.

(c) "Delta" shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code on the date of approval of the Bond Act by the voters of the State of California.

(d) [1] "Contractor" shall mean any entity that has executed, or is an assignee of, a contract of the type published in Department of Water Resources Bulletin No. 141, dated November 1965, with the State for a dependable supply of water made available by the System, except such water as is made available by the facilities specified in Section 12934(d)(6) of the Water Code.

(e) [2] "Project facilities" shall mean those facilities of the System which will, in whole or in part, serve the purposes of this contract by conserving water and making it available for use in and above the Delta and for export from the Delta and from such additional facilities as are defined in Article 1(h)(2) herein, and by conveying water to the District. Said project facilities shall consist specifically of "project conservation facilities" and "project transportation facilities", as hereinafter defined.

(f) "Project conservation facilities" shall mean such project facilities as are presently included, or as may be added in the future, under (g) and (h) below.

[1] Amended: Amendment 25
[2] Amended: Amendment 18

(g) "Initial project conservation facilities" shall mean the following project facilities specified in Section 12934(d) of the Water Code:

(1) All those facilities specified in subparagraph (1) thereof.

(2) Those facilities specified in subparagraph (3) thereof to the extent that they serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.

(3) A reservoir near Los Banos in Merced County as specified in subparagraph (2) thereof.

(4) The reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to a reservoir near Los Banos in Merced County, to the extent required for water conservation through conveyance of water diverted from the Delta to offstream storage in said reservoir as determined by the State.

(5) Those facilities specified in subparagraph (5) thereof which are incidental to the facilities included under (1), (2), (3), and (4) above.

(6) Those facilities specified in subparagraph (7) thereof which are necessary and appurtenant to the facilities included under (1), (2), (3), (4), and (5) above.

(h) [3] "Additional project conservation facilities" shall mean the following facilities and programs, which will serve the purpose of preventing any reduction in the minimum project yield as hereinafter defined:

(1) Those project facilities specified in Section 12938 of the Water Code;

(2) Those facilities and programs described in (A), (B), (C), (D), and (E) below which, in the State's determination, are engineeringly feasible and capable of producing project water which is economically competitive with alternative new water supply sources, provided that, in the State's determination, the construction and operation of such facilities and programs will not interfere with the requested deliveries of annual entitlement to any contractor other than the sponsoring contractor, and will not result in any greater annual charges to any

[3] Amended: Amendment 18

contractor other than the sponsoring contractor than would have occurred with the construction at the same time of alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The following facilities and programs shall hereinafter be referred to as "Local Projects":

(A) On-stream and off-stream surface storage reservoirs not provided for in Section 12938 of the Water Code, that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(B) Groundwater storage facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(C) Waste water reclamation facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(D) Water and facilities for delivering water purchased by the State for the System for a period of time agreed to by the sponsoring contractor; provided that the economic test specified herein shall be applied to the cost of these facilities together with the cost of the purchased water; and

(E) Future water conservation programs and facilities that will reduce demands by the sponsoring contractor for project water from the System for a period of time agreed to by the sponsoring contractor and will thereby have the effect of increasing project water available in the Delta for distribution.

(3) Whether a Local Project described in (2) above shall be considered economically competitive shall be determined by the State by comparing, in an engineering and economic analysis, such Local Project with alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The analysis for such alternative new water supply sources shall use the average cost per acre-foot of yield in the latest studies made for such sources by the State and shall compare those facilities with

the proposed Local Project using commonly accepted engineering economics. In the case of a Local Project to be funded in part by the State as part of the System and in part from other sources, the economic analysis specified herein shall be applied only to the portion to be funded by the State as part of the System.

(4) The Local Projects in (2) above shall not be constructed or implemented unless or until:

(A) The sponsoring contractor signs a written agreement with the State which:

(i) Contains the sponsoring contractor's approval of such facility or program;

(ii) Specifies the yield and the period of time during which the water from the Local Project shall constitute project water; and

(iii) Specifies the disposition of such Local Project or of the yield from such Local Project upon the expiration of such period of time.

(B) All contractors within whose boundaries any portion of such Local Project is located, and who are not sponsoring contractors for such Local Project give their written approval of such Local Project.

(5) "Sponsoring contractor" as used in this Article 1(h) shall mean the contractor or contractors who either will receive the yield from facilities described in 2(A), (B), (C), or (D) above, or agree to reduce demands for project water from the System pursuant to 2(E) above.

(6) In the event of a shortage in water supply within the meaning of Article 18(a), the determination of whether to count, in whole or in part, the yield from facilities described in 2(A), (B), (C), or (D) above, or the reduced demand from future conservation programs described in 2(E) above in the allocation of deficiencies among contractors will be based on a project-by-project evaluation taking into consideration such factors as any limitation on the use of the water from such facilities and whether the sponsoring contractor has access to project water from the Delta as an alternate to such facilities.

(i) [4] "Project transportation facilities" shall mean the following project facilities:

(1) All those facilities specified in subparagraph (2) of Section 12934(d) of the Water Code except: The reservoir near Los Banos in Merced County; the reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to the reservoir near Los Banos in Merced County, to the extent required for water conservation as determined by the State; the North Bay Aqueduct extending to a terminal reservoir in Marin County; the South Bay Aqueduct extending to terminal reservoirs in the Counties of Alameda and Santa Clara; the Pacheco Pass Tunnel Aqueduct extending from a reservoir near Los Banos in Merced County to a terminus in Pacheco Creek in Santa Clara County; and the Coastal Aqueduct beginning on the San Joaquin Valley-Southern California Aqueduct in the vicinity of Avenal, Kings County, and extending to a terminus at the Santa Maria River.

(2) [5] Facilities for the generation and transmission of electrical energy of the following types:

(A) Hydroelectric generating and transmission facilities, whose operation is dependent on the transportation of project water, or on releases to channels downstream of project facilities defined under (1) above. Such facilities shall be called "project aqueduct power recovery plants."

(B) All other generating and associated transmission facilities, except those dependent on water from project conservation facilities, for the generation of power. These facilities shall be called "off-aqueduct power facilities" and shall consist of the State's interest in the Reid-Gardner and any other generating and associated transmission facilities, constructed or financed in whole or in part by the State, which are economically competitive with alternative power supply sources as determined by the State.

(3) [6] Those facilities specified in subparagraph (7) of Section 12934(d) of the Water Code which are necessary and appurtenant to the facilities included under (1) and (2) above.

[4] Amended: Amendment 18
[5] Added: Amendment 18
[6] Amended: Amendment 18

(j) "East Branch Aqueduct" shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Perris, Riverside County.

(k) "West Branch Aqueduct" shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Newhall, Los Angeles County.

(l) "Project water" shall mean water made available for delivery to the contractors by the project conservation facilities and the transportation facilities included in the System.

(m) "Minimum Project Yield" shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project's capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

(1) The estimated relative proportion of deliveries for agricultural use to deliveries for municipal use for the year 1990, and the characteristic distributions of demands for these two uses throughout the year.

(2) Agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the diversion or utilization of waters of the Delta or streams tributary thereto.

(n) "Annual Table A Amount" shall mean the amount of project water set forth in Table A of this Contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term "annual entitlement" appears elsewhere in this contract, it shall mean "Annual Table A Amount." The State agrees that in future amendments to this and other contractor's contracts, in lieu of the term "annual entitlement," the term "Annual Table A Amount" will be used and will have the same meaning as "annual entitlement" wherever that term is used.

(o) Maximum Annual Table A Amount

"Maximum annual entitlement" shall mean that maximum annual amounts set forth in Table A of this contract, and where the term "maximum annual entitlement" appears elsewhere in this contract it shall mean "Maximum Annual Table A Amounts."

(p) "Supplemental conservation facilities" shall mean those facilities provided for in Section 12938 of the Water Code which will serve the purpose of supplying water in addition to the minimum project yield and for meeting local needs.

(q) "Supplemental water" shall mean water made available by supplemental conservation facilities, in excess of the minimum project yield.

(r) "Year" shall mean the 12-month period from January 1 through December 31, both dates inclusive.

(s) "Year of initial water delivery" shall mean the year when project water will first be available for delivery to a contractor pursuant to its contract with the State.

(t) [7] "Project interest rate" shall mean the weighted average interest rate on bonds, advances, or loans listed in this section to the extent the proceeds of any such bonds, advances, or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities (except off-aqueduct power facilities; water system facilities; advances for delivery structures, measuring devices and excess capacity; and East Branch Enlargement Facilities). The project interest rate shall be calculated as a decimal fraction to five places by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total of the products of the various principal amounts and the respective terms in years of all such amounts. The bonds, advances, or loans used in calculating the project interest rate shall be:

(1) General obligation bonds issued by the State under the Bond Act, except that any premium received on the sale of these bonds shall not be included in the calculation of the project interest rate,

(2) Revenue bonds issued by the State under the Central Valley Project Act after May 1, 1969,

(3) Bonds issued by the State under any other authority granted by the Legislature or the voters, <Attachment L>

(4) Bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,

(5) Funds advanced by any contractor without the actual incurring of bonded debt therefore, for which the net interest cost and terms shall be those which would have resulted if the contractor had sold bonds for the purpose of funding the advance, as determined by the State,

(6) Funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Surplus Money Investment Fund of such Treasury invested in securities, and

[7] Amended: Amendments 9, 18, 19 and 20

(7) Any other financing capability available in the Treasury of the State of California at whatever interest rate and other financing costs are provided in the law authorizing such borrowing. However, the use of other financing from the State Treasury is intended to involve only short term borrowing at interest rates and other financing costs no greater than those charged to other State agencies during the same period until such time as the Department can sell bonds and reimburse the source of the short term borrowing from the proceeds of the bond sale.

(u) "Capital costs" shall mean all costs incurred subsequent to authorization of a facility for construction by the Legislature or by administrative action pursuant to Section 11290 of the Water Code and to the Bond Act, including those so incurred prior to the beginning of the project repayment period as herein defined and any accrued unpaid interest charges thereon at the rates specified herein, which are properly chargeable to the construction of and the furnishing of equipment for the facilities of the System, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights-of-way, and relocation work, all as shown upon the official records of the Department of Water Resources.

(v) "Project revenues" shall mean revenues derived from the service of project water to contractors and others, and from the sale or other disposal of electrical energy generated in connection with operation of project facilities.

(w) [8] "Project repayment period" shall mean that period of years commencing on January 1, 1961, and extending until December 31, 2035; provided, that whenever construction of any project facilities is financed by a bond issue with maturity dates later than December 31, 2035, whether the bonds are issued pursuant to the Bond Act or other authority, repayment of the costs of such facilities shall be extended to end on the date of the latest maturities of the bonds with which construction of such facilities is financed.

(x) "Municipal use" shall mean all those uses of water common to the municipal water supply of a city, town, or other similar population group, including uses for domestic purposes, uses for the purposes of commerce, trade or industry, and any other use incidental thereto for any beneficial purpose.

(y) "Manufacturing use" shall mean any use of water primarily in the production of finished goods for market.

(z) "Agricultural use" shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stock-watering purposes.

[8] Amended: Amendment 17

(aa) "Subject to approval by the State" shall mean subject to the determination and judgment of the State as to acceptability.

(bb) "Area of origin statutes" shall mean Sections 10505 and 11460 through 11463 of the Water Code as now existing or hereafter amended.

(cc) [9] "Water system revenue bonds" shall mean revenue bonds or revenue bond anticipation notes issued by the State under the Central Valley Project Act after January 1, 1987 for water system facilities identified in Article 1(hh).

(dd) No such article exists.

(ee) No such article exists.

(ff) No such article exists.

(gg) No such article exists.

(hh) [10] "Water System Facilities" shall mean the following facilities to the extent that they are financed with water system revenue bonds or to the extent that other financing of such facilities is reimbursed with proceeds from water system revenue bonds:

(1) The North Bay Aqueduct,

(2) The Coastal Branch Aqueduct,

(3) Delta Facilities, including Suisun Marsh facilities, to serve the purposes of water conservation in the Delta, water supply in the Delta, transfer of water across the Delta, and mitigation of the environmental effects of project facilities, and to the extent presently authorized as project purposes, recreation and fish and wildlife enhancement,

(4) Local projects as defined in Article 1(h)(2) designed to develop no more than 25,000 acre-feet of project yield from each project,

(5) Land acquisition prior to December 31, 1995, for the Kern Fan Element of the Kern Water Bank, <Attachment L>

[9] Added: Amendment 20
[10] Added: Amendments 20, 25

(6) Additional pumps at the Banks Delta Pumping Plant,

(7) The transmission line from Midway to Wheeler Ridge Pumping Plant,

(8) Repairs, additions, and betterments to conservation or transportation facilities existing as of January 1, 1987, and to all other facilities described in this subarticle (hh) except for item (5), <Attachment L>

(9) A project facilities corporation yard, and

(10) A project facilities operation center.

(ii) [11] "Carry-over Entitlement Water" shall mean water from a contractor's annual entitlement for a respective year, which is made available for delivery by the State in the next year pursuant to Article 12(e).

(jj) [12] "Interruptible Water" shall mean project water available as determined by the State that is not needed for fulfilling contractors' annual entitlement deliveries as set forth in their water delivery schedules furnished pursuant to Article 12 or for meeting project operational requirements, including storage goals for the current or following years.

(kk) [13] "Nonproject Water" shall mean water made available for delivery to contractors that is not project water as defined in Article 1(l).

(ll) [14] "Monterey Amendment" shall mean this amendment and substantially similar amendments to other contractors' water supply contracts that include, among other provisions, the addition of Articles 51 through 56.

[11] Added: Amendment 22
[12] Added: Amendment 25
[13] Added: Amendment 25
[14] Added: Amendment 25

2. [15] Term of Contract. This contract shall become effective on the date first above written and shall remain in effect for the longest of the following:

(1) The project repayment period

(2) 75 years

(3) The period ending with the latest maturity date of any bond issue used to finance the construction costs of project facilities.

3. Validation. Within one (1) year after the effective date of this contract, the District shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment, the State shall make all reasonable efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, the District shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

4. [16] Option for Continued Service. By written notice to the State at least six (6) months prior to the expiration of the term of this contract, the District may elect to receive continued service after expiration of said term under the following conditions unless otherwise agreed to: [Validated by California Supreme Court Marquardt v. Metropolitan Water District, 59 Cal.2d 159 (1963).]

(1) Service of water in annual amounts up to and including the District's maximum annual entitlement hereunder.

(2) Service of water at no greater cost to the District than would have been the case had this contract continued in effect.

(3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder.

(4) Retention of the same chemical quality objective provision as is set forth herein.

[15] Amended: Amendment 17
[16] Amended: Amendment 25

(5) Retention of the same options to utilize the project transportation facilities as are provided for in Articles 18(c) and 55, to the extent such options are then applicable.

Other terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and conditions provide for continued service for a limited number of years only, the District shall have the same option to receive continued service here provided for upon the expiration of that and each succeeding period of continued service.

5. Pledge of Revenues. This contract is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under the Bond Act, and the income and revenues derived from this contract are pledged to the purposes and in the priority set forth in that act.

B. WATER SERVICE PROVISIONS

6. Annual Entitlements.

(a) The year of initial water delivery to the District is presently estimated to be 1972. To the extent practicable, the State shall notify the District of any change in this estimate.

(b) District's Annual Table A Amounts

Commencing with the year of initial water delivery to the District, the State each year shall make available for delivery to the District the amounts of project water designated in Table A of this contract, which amounts shall be subject to change as provided for in Article 7(a) and are referred to in this contract as the District's Annual Table A Amounts.

TABLE A[17]

ANNUAL ENTITLEMENTS
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Year	<Calendar> <Year>	Total Annual Amount in Acre-Feet
1	<1972>	154,772
2	<1973>	354,600
3	<1974>	454,900
4	<1975>	555,200
5	<1976>	655,600
6	<1977>	755,900
7	<1978>	856,300
8	<1979>	956,600
9	<1980>	1,057,000
10	<1981>	1,157,300
11	<1982>	1,257,600
12	<1983>	1,358,000
13	<1984>	1,458,300
14	<1985>	1,558,700
15	<1986>	1,659,300
16	<1987>	1,759,800
17	<1988>	1,860,400
18	<1989>	1,961,000
19	<1990>	2,011,500
And each succeeding year thereafter, <the amount is 1,911,500, effective January 1, 2005 until December 31, 2035>[18] for the term of this contract:		2,011,500

In any year, the amounts designated in this Table A shall not be interpreted to mean that the State is able to deliver those amounts in all years. Article 58 describes the State's process for providing current information for project delivery capability.

[17] Amended: Amendments 1, 3, 15, 26, 27 and 28. In addition to Table A entitlements, Metropolitan also is a sublessee of 1,850 acre-feet of Ventura County Flood Control District entitlement. (See Attachment AA.)

[18] Amount and two final sentences of subsection (b) are subject to the terms and effectiveness of Amendments 26, 27 and 28 (See Articles 58, 59 and 60), and agreements referenced therein.

(c) Subject to the availability of funds, the State shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project facilities necessary for delivery of project water to the District in such manner and at such times that said delivery can commence in or before the year specified in subdivision (a) of this article, and continue in the amounts designated in Table A.

7. Change in Annual Entitlements; Maximum Annual Entitlement.

(a) [19] The District may, at any time or times during the term of this contract, by timely written notice furnished to the State, request that project water be made available to it thereafter in annual amounts greater or less than the annual entitlements designated in Table A of this contract. Subject to approval by the State of any such request, the State's construction schedule shall be adjusted to the extent necessary to satisfy the request, and the requested increases or decreases in said annual entitlements shall be incorporated in said Table A by amendment thereof. Requests for changes in annual entitlements for more than one year shall be approved by the State: *Provided*, That no change shall be approved if in the judgment of the State it would impair the financial feasibility of project facilities.

(b) [20] The maximum amount of project water to be made available to the District in any one year under this contract shall be 2,011,500 acre-feet, referred to in this contract as the District's maximum annual entitlement, and in no event shall such maximum amount of project water to be made available to the District be increased over this amount, except as is provided for in Articles 8 and 15(c).

(c) In the event that the State enters into a contract with a contractor for service of project water to an area outside the District, which area, as shown upon the official records of the District as of the date of execution of this contract, is proposed to be served by the District with project water made available pursuant to this contract, provision being made therefore in Table A included in Article 6(b), the District's annual entitlements and maximum annual entitlement hereunder shall be appropriately reduced, effective on the effective date of said contract for service of project water by the State to such area outside the District, by amendment of said Table A and subdivision (b) of this article respectively: Provided, That such reductions shall not exceed the amounts of said contractor's annual entitlements and maximum annual entitlement under its contract. Upon any reduction in the District's annual entitlements and maximum annual entitlement pursuant to this subdivision, the State shall appropriately reduce: (1) the delivery capabilities to be provided in the project transportation facilities for service to the District, and (2) the District's payment obligations hereunder.

[19] Amended: Amendment 25
[20] Amended: Amendments 1, 3

8. Option to Increase Maximum Annual Entitlement. In the event that the maximum annual entitlements under all contracts executed by the State on or before December 31, 1963, do not aggregate the amount of the minimum project yield as herein defined, the State shall immediately notify the District and all other contractors, and the District may elect to become entitled to the uncontracted for portion of the minimum project yield in or up to an amount which bears the same ratio to such uncontracted for portion as the District's maximum annual entitlement bears to the total of the maximum annual entitlements of all contractors as of that date: Provided, That such option may be exercised only to the extent that the water involved can be put to beneficial use within a reasonable period of time. Such option shall become effective on the date that the District receives said notice from the State and shall remain in effect through September 30, 1964. If the full amount of such uncontracted for portion of the minimum project yield is not preempted by the District under this option and by other contractors through the exercise of similar options on or before September 30, 1964, the District may request that it become entitled to any amount of such water not so preempted. Such request shall be subject to approval by the State and shall be considered in the light of all similar requests from other contractors. The State shall approve such request only to the extent that the water involved can be put to beneficial use within a reasonable period of time. Upon the exercise of such option or upon the approval of such request the District's maximum annual entitlement under Article 7(b) shall be increased by the amount of the additional entitlement thereby obtained by amendment of that article, and the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for said increased entitlement shall in all respects be subject to the terms and conditions of this contract.

9. Obligation to Deliver Water Made Available. Project water made available to the District pursuant to Article 6(b) shall be delivered to the District by the State at the delivery structures established in accordance with Article 10. At any time or times the District may refuse to accept delivery of water made available to it: Provided, That the District shall remain obligated to make all payments required under this contract.

10. Delivery Structures.

(a) Project water made available to the District pursuant to this contract shall be delivered to the District at such locations and times and through delivery structures of such capacities as are requested by the District and approved by the State.

(b) Pursuant to subdivision (a) of this Article, the District shall furnish to the State on or before June 30, 1963, its written requests as to:

(1) The location of delivery structures for delivery of project water to it.

(2) The time at which project water is first to be delivered through each such delivery structure.

(3) The maximum instantaneous flow capacity in cubic feet per second to be provided in each such delivery structure.

(4) The maximum amount of water in acre-feet to be delivered in any one month through each such delivery structure.

(5) The total combined maximum instantaneous flow capacity in cubic feet per second to be provided by all such delivery structures.

(6) The total maximum amount of water in acre-feet to be delivered in any one month through all such delivery structures.

(c) From time to time the District may request delivery structures in addition to those requested pursuant to subdivision (b) of this article.

(d) The District shall pay all of the costs of delivery structures for the delivery of project water to it, and shall deposit with the State, prior to the commencement of construction of any such delivery structure, an amount of money estimated by the State to be sufficient to cover the costs thereof.

11. Measurement of Water Delivered.

(a) The State shall measure all project water delivered to the District and shall keep and maintain accurate and complete records thereof. For this purpose, the State shall install, operate, and maintain at all delivery structures for delivery of project water to the District such measuring devices and equipment as are satisfactory and acceptable to both parties. Said devices and equipment shall be examined, tested, and serviced regularly to insure their accuracy. At any time or times, the District or any other contractor may inspect such measuring devices and equipment, and the measurements and records taken there from.

(b) The District shall pay all of the costs of acquiring and installing the measuring devices and equipment provided for in subdivision (a) of this article, and shall deposit with the State, prior to such acquisition and installation, an amount of money estimated by the State to be sufficient to cover such costs.

12. [21] Priorities, Amounts, Times, and Rates of Delivery.

(a) The amounts, times, and rates of delivery of project water to the District during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(1) On or before October 1 of each year, the District shall submit in writing to the State a preliminary water delivery schedule, subject to the provisions of this article and Articles 6(b), 7(b), 10 and 17, indicating the amounts of water desired by the District during each month of the succeeding five (5) years.

(2) [22] Upon receipt of a preliminary schedule the State shall review it and, after consultation with the District, shall make such modifications in it as are necessary to insure the delivery of the annual quantity allocated to the District in accordance with Article 18 and to insure that the amounts, times, and rates of delivery to the District will be consistent with the State's overall delivery ability, considering the then current delivery schedules of all contractors. On or before December 1 of each year, the State shall determine and furnish to the District the water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the District during each month of that year.

(3) A water delivery schedule may be amended by the State upon the District's written request. Proposed amendments shall be submitted by the District within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the State in like manner as the schedule itself.

(b) [23] In no event shall the State be obligated to deliver to any contractor through all delivery structures provided for such contractor a total amount of project water in any year greater than the contractor's annual entitlement for that year; nor to deliver to any contractor from the project transportation facilities downstream from Pumping Plant VI <the A. D. Edmonston Pumping Plant> in any one month of any year a total amount of project water greater than eleven percent (11%) of such contractor's annual entitlement for that year; nor to deliver to any contractor from the project transportation facilities upstream from said Pumping Plant VI <A. D. Edmonston Pumping Plant> in any one month of any year a total amount of project water greater than the sum of eighteen percent (18%) of that portion of such contractor's annual entitlement

[21] Title Amended: Amendment 25
[22] Amended: Amendment 25
[23] Amended: Amendment 2

for that year to be devoted to agricultural use, as determined by the State, and eleven percent (11%) of that portion of such contractor's annual entitlement for that year to be devoted to municipal use, as determined by the State: Provided, That if the State delivers project water to any contractor through delivery structures both downstream and upstream from said Pumping Plant VI <A. D. Edmonston Pumping Plant>, the foregoing limitations on monthly deliveries to such contractor shall be based on an appropriate apportionment of such contractor's annual entitlement for that year to the respective portions of such contractor's service area to which delivery is made from the project transportation facilities downstream from said Pumping Plant VI <A. D. Edmonston Pumping Plant> and from the project transportation facilities upstream there from: Provided further, That the respective percentages set forth hereinabove may be revised by amendment of this subdivision after submission to the State of the respective contractor's requests with respect to maximum monthly deliveries, such revision being subject to approval by the State and subject to advancement to the State by the respective contractor of funds sufficient to cover any additional costs of the project transportation facilities occasioned thereby, as such costs are determined pursuant to Article 24(d): Provided further, That with respect to deliveries to the District from the project transportation facilities downstream from the Pumping Plant VI <A. D. Edmonston Pumping Plant> the percentage of eleven percent (11%) is revised to the extent provided in Article 47(c) of this contract.

(c) [24] In no event shall the State be obligated to deliver water to the District through all delivery structures at a total combined instantaneous rate of flow exceeding three thousand six hundred seventy-one (3,671) <rate reduced to three thousand four hundred eighty-eight (3,488) so long as to Article 60 in effect (Amendment 28)> cubic feet per second, except as this rate of flow may be revised by amendment of this article after submission to the State of the District's requests with respect to maximum flow capacities to be provided in said delivery structures, pursuant to Article 10.

(d) [25] (Deleted.)

(e) Delivery of Carry-over Entitlement Water.

Upon request of the Agency <District>, the State shall make Carry-over Entitlement Water available for delivery to the Agency <District> during the first three months of the next year, to the extent that such deliveries do not adversely affect current or future project operations, as determined by the State. The State's determination shall

[24] Amended: Amendments 1, 3; 27; 28
[25] Deleted: Amendment 25

include, but not be limited to the operational constraints of project facilities, filling of project conservation storage, flood control releases and water quality restrictions.

Carry-over of entitlement water shall be limited to entitlement water that was included in the Agency's <District's> approved delivery schedule for October, November and December, but was not delivered due to:

(1) Scheduled or unscheduled outages of facilities within the Agency's <District's> service area; or

(2) A delay in the planned application of a contractor's annual entitlement water for pre-irrigation; or

(3) A delay in the planned spreading of the Agency's <District's> annual entitlement water for groundwater storage.

After determining that the carry-over of entitlement water would not adversely affect project operations, the State shall notify the Agency <District> of the amount of entitlement water to be carried over to the following January through March period. The notification shall include the proposed terms and conditions consistent with this Article 12(e) that would govern the delivery of the Carry-over Entitlement Water.

The Agency <District> agrees to pay all significant identifiable costs associated with its Carry-over Entitlement Water, as determined by the State.

All scheduling and delivery of Carry-over Entitlement Water shall be carried out pursuant to the provisions of this Contract.

The Agency <District> agrees to forego the delivery of any Carry-over Entitlement Water that is lost because of project operations or is not delivered by March 31 of the next year.

Any Carry-over Entitlement Water foregone by the Agency <District> will become a part of the current year's total project supply.

(f) [26] Priorities.

Each year water deliveries to the contractors shall be in accordance with the following priorities to the extent there are conflicts:

[26] Added: Amendment 25

First, project water to meet scheduled deliveries of contractors' annual entitlements for that year.

Second, interruptible water to the extent contractors' annual entitlements for that year are not met by the first priority.

Third, project water to fulfill delivery requirements pursuant to Article 14(b).

Fourth, project water previously stored pursuant to Articles 12(e) and 56.

Fifth, nonproject water to fulfill contractors' annual entitlements for that year not met by the first two priorities.

Sixth, additional interruptible water delivered to contractors in excess of their annual entitlements for that year.

Seventh, additional nonproject water delivered to contractors in excess of their annual entitlements for that year.

13. Responsibilities for Delivery and Distribution of Water.

(a) Neither the State nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of project water supplied to the District after such water has passed the delivery structures established in accordance with Article 10; 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, carriage, handling, use, disposal or distribution of such water beyond said delivery structures; and the District shall indemnify and hold harmless the State and its officers, agents, and employees from any such damages or claims of damages.

(b) Neither the District nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of project water before such water has passed the delivery structures established in accordance with Article 10; 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, carriage, handling, use, disposal, or distribution of such water before it has passed said delivery structures.

14. [27] Curtailment of Delivery.

(a) State May Curtail Deliveries.

The State may temporarily discontinue or reduce the delivery of project water to the District hereunder for the purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the project facilities necessary for the delivery of project water to the District, as well as due to outages in, or reductions in capability of, such facilities beyond the State's control or unuseability of project water due to an emergency affecting project facilities. The State shall notify the District as far in advance as possible of any such discontinuance or reduction, except in cases of emergency, in which case notice need not be given.

(b) District May Receive Later Delivery of Water Not Delivered.

In the event of any discontinuance or reduction of delivery of project water pursuant to subdivision (a) of this article, the District may elect to receive the amount of annual entitlement which otherwise would have been delivered to it during such period under the water delivery schedule for that year at other times during the year or the succeeding year to the extent that such water is then available and such election is consistent with the State's overall delivery ability, considering the then current delivery schedules of annual entitlement to all contractors.

15. Use of Water.

(a) No sale or other disposal of project water delivered to the District pursuant to this contract shall be made by the District for use of such water outside the District which would, in the judgment of the State, materially impair the District's capacity to make payments to the State as provided for in this contract. Except insofar as such water is sold by the District to the United States, the State of California, or to purchasers for use within areas which are outside the areas proposed to be served by the State with water made available by the system, project water delivered to the District pursuant to this contract shall not be sold or otherwise disposed of by the District for use outside the District without the prior written consent of the State. The District shall notify the State as promptly as feasible of all sales or other disposals of project water made or proposed to be made by the District for use outside the District.

[27] Amended: Amendment 25

(b) While this contract is in effect, no change shall be made in the organization of the District which would materially impair the District's capacity to make payments to the State as provided for herein. The District shall notify the State as promptly as feasible of any change or proposed change in the District's boundaries.

(c) In the event of annexation by the District of territory lying within an area served or to be served by the State with project water pursuant to a contract between the State and another contractor, and subject to the consummation of appropriate agreements between the State, the District, and such other contractor, the District's annual entitlements and maximum annual entitlement under this contract shall be increased by the amounts of the annual entitlements and maximum annual entitlement contracted for by said contractor for use in said annexed territory. In the event of annexation by the District of territory lying within an area proposed to be served by the State with project water, but for which no contract has been executed by the State for service of project water for use in such annexed territory, the District's annual entitlements and maximum annual entitlement under this contract, at the request of either the State or the District, shall be increased by the amounts of the prospective annual entitlements and maximum annual entitlement to project water allocated or assigned by the State for use in said annexed territory. Upon any increase in the District's annual entitlements and maximum annual entitlement pursuant to this subdivision, Table A included in Article 6(b), and Article 7(b) shall be amended accordingly and the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for such increased annual entitlements and maximum annual entitlement shall in all respects be subject to the terms and conditions of this contract.

(d) [28] The State shall make no other contract to supply project water for use within the boundaries of the District without the consent of the District, and shall not authorize any other contractor to supply project water for use outside such other contractor's boundaries and within the boundaries of the District without the consent of the District.

16. Continuity and Dependability of Water Supply.

(a) [29] Limit on Total of all Maximum Annual Table A Amounts.

The District's Maximum Annual Table A Amount hereunder, together with the maximum Table A amounts of all other contractors, shall aggregate no more than 4,185,000 acre-feet of project water.

[28] Amended: Amendment 12
[29] Amended: Amendments 1, 25

(b) The State shall make all reasonable efforts to perfect and protect water rights necessary for the System and for the satisfaction of water supply commitments under this contract.

(c) Commencing within two (2) years from the year of initial water delivery to the District, the State shall submit to the District at five-year intervals a report on the State's ability to meet future demands for project water and for supplemental water, and on the State's plans for constructing additional project conservation facilities and supplemental conservation facilities. Such reports shall include all estimates, projections, and other data which the State deems relevant thereto.

(d) Bond funds required to be expended for the construction of additional facilities of the System under the provisions of Section 12938 of the Water Code shall be expended only for construction of additional project conservation facilities as defined herein, and related, appurtenant facilities necessary and desirable to meet local needs: Provided, That if at any time after 1985 the State finds that a part or all of such bond funds are not then required for the above purpose, and will not be so required within the next succeeding ten (10) years, such bond funds may be used, to the extent permitted in the Bond Act, to construct supplemental conservation facilities as defined herein.

(e) In planning and designing supplemental conservation facilities the State shall give consideration to the requirements and demands for supplemental water of the District and others who have contracted for project water. Entitlements to supplemental water shall be obtained, and repayment therefore shall be arranged, in contracts separate from contracts for project water.

17. Construction of Project Facilities.

(a) [30] Subject to the rights of the District under subdivision (b) of this article and the other provisions of this contract, the State shall provide in each aqueduct reach of the project transportation facilities, other than the East Branch Aqueduct and the West Branch Aqueduct, such maximum monthly delivery capability for the transport and delivery of project water to the District as, in the judgment of the State, will best serve the interests of the District and all other contractors entitled to delivery of project water from or through said facilities: Provided, That within three (3) months after either the effective date of this contract or the execution of any amendments to this contract pursuant to the first proviso in Article 2, whichever is later, the District shall furnish to the State a written request specifying such maximum monthly delivery capabilities, and

[30] Amended: Amendment 3

the State shall give full consideration to such request in planning and designing said facilities. On or before June 30, 1963, the District shall furnish to the State its written request specifying, subject to Articles 6(b), 7(b), 12(b), and 12(c), the maximum monthly delivery capability to be provided in each reach, including reservoirs, of the East Branch Aqueduct and of the West Branch Aqueduct for the transport and delivery of project water to the District, and specifying from which of said Branch Aqueducts the District shall receive water in the year of initial water delivery to the District and the year in which the first delivery of project water from the other of said Branch Aqueducts shall be made to the District. Such maximum monthly delivery capabilities and timing of first deliveries of project water from said Branch Aqueducts shall be as so requested by the District:

Provided, That the District shall not specify less than a total maximum monthly delivery capability of sixty-one thousand two hundred sixty-five (61,265) acre-feet in each of said Branch Aqueducts for the transport and delivery of project water to the District, and the District's payment obligation under the Transportation Charge for said Branch Aqueducts shall be in accordance therewith unless the District requests a greater total maximum monthly delivery capability in either or both of said Branch Aqueducts pursuant to this subdivision: Provided further, That in the event said request by the District with respect to the timing of first deliveries of project water to the District from said Branch Aqueducts is, in the judgment of the State, incompatible with similar requests received from other contractors to be served from or through said Branch Aqueducts, which contractors have executed contracts with the State on or before June 30, 1963, the timing of first deliveries of project water to the District and such other contractors from said Branch Aqueducts shall be as established by mutual agreement among the State, the District, and said contractors: Provided further, That if such agreement has not been reached on or before December 31, 1963, the State may then construct said Branch Aqueducts in accordance with such construction schedules as, in the judgment of the State, will best serve the interest of all serve the interests of all those contractors whose service areas are located south of the South Portal of the Tehachapi Tunnels and which have executed contracts with the State on or before June 30, 1963.

(b) [31] The State shall design and construct the project transportation facilities so as to provide for each reach thereof, including reservoirs, the capacity necessary to enable delivery of project water in each year to the District and to other contractors in the maximum monthly amounts and at the locations, times, and maximum rates specified or provided for in their respective contracts for such year, and shall include in each such reach such capacity as is economically justified in the judgment of the State to

[31] Amended: Amendment 2

compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of project facilities, and for losses of water due to evaporation, leakage, seepage, or other causes. Subject to Articles 6(b), 7(b), 12(b), and 12(c), the capacity so to be provided by the State for each reach of the project transportation facilities necessary for transporting water to the District shall be sufficient to enable delivery to the District in each month of any year of an amount of water up to but not exceeding eleven percent (11%) of the District's annual entitlement for the respective year and, upon completion of the project facilities, to enable delivery to the District in each month of any year of an amount of water up to but not exceeding eleven percent (11%) of the District's maximum annual entitlement: Provided, That regulatory storage reservoirs included in the project transportation facilities may be utilized in conjunction with conveyance capacity provided in said facilities for delivery to the District of the foregoing monthly amounts, subject to the retention at all times, except during periods of emergency, in each reservoir on the East Branch Aqueduct and the West Branch Aqueduct, respectively, of an amount of stored water reasonably sufficient to meet emergency requirements of the District for project water during the respective year: Provided further, That excess capacity shall be provided in accordance with Article 47(c) of this contract.

(c) The District shall have a reasonable opportunity to inspect and study the State's plans and specifications for all project facilities during the planning stage and prior to the solicitation of bids for the construction thereof, and may make comments and recommendations thereon to the State. Such privilege shall also extend to any plans and specifications or proposed agreements for the use by the State, in conjunction with the project facilities, of facilities owned by an entity other than the State. The State shall not enter into any such agreement which would impair the State's ability to perform fully its obligations under this contract.

(d) No bonds shall be sold nor funds expended under the authority of the Bond Act for the construction of any aqueduct or appurtenance thereto included in the System unless and until contracts are executed which will insure the recovery by the State of at least seventy-five percent (75%) of those capital costs of the particular aqueduct and any appurtenances thereto which shall be reimbursable by the contractors as determined by the State; nor shall any bonds be sold or funds expended under the authority of the Bond Act for the construction of any project conservation facility or supplemental conservation facility, unless and until contracts are executed which, together with estimated revenues from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities and supplemental conservation facilities, will insure the recovery by the State of at least seventy-five percent (75%) of those capital costs of the particular facility which shall be reimbursable

by the contractors as determined by the State: Provided, That the foregoing limitations shall not apply with respect to: (1) surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights of way, relocation work, and essential administrative work in connection therewith; (2) construction for which appropriations had been made prior to approval of the Bond Act by the voters of the State of California; and (3) construction of facilities pursuant to an agreement between the State and the United States.

(e) The State shall make all reasonable efforts to commence construction of the project transportation facilities on or before June 30, 1963. In the event that no contract for construction of project transportation facilities south of the San Luis Canal of the San Luis unit of the Federal Central Valley Project has been let on or before December 31, 1964, and that no bonds have been issued nor funds expended for construction of said facilities by that date, the District at any time after December 31, 1964, may at its option terminate this contract by giving notice of such termination to the State, such termination to be effective six (6) months after the giving of such notice, whereupon both parties hereto shall be relieved of all further obligations hereunder: Provided, That if the District has not theretofore given such notice, this option shall expire upon the letting by the State of a contract for construction of said facilities at any time after March 31, 1965.

(f) In the event that the State fails or is unable to complete construction of any portion or portions of the project transportation facilities necessary to deliver water to the District as provided in this contract, and gives the District written notice thereof, or by reason of such failure or inability construction of said facilities has ceased for a period of two and one-half (2-1/2) years, the District, if it be not then in default and without exclusion of such other rights as it may have under this contract, may exercise the following options:

(1) The District may provide funds to the State in such amounts and at such times as may be necessary to enable the State to complete construction of such uncompleted portion or portions of the project transportation facilities to the extent necessary for the transport and delivery of water to the District as provided for in this contract: Provided, That the State shall be and remain the owner of such project transportation facilities or portions thereof constructed in whole or in part with funds provided by the District, and shall be and remain obligated to operate, maintain, repair and replace such facilities to the full extent contemplated in this contract: Provided further, That the amount of any funds so provided by the District shall be credited by the State against the District's payment obligation under the capital cost component of the Transportation Charge, but the District shall be and remain obligated to pay its share of any capital costs of the above-described facilities not paid for with such funds, together with its proportionate share of the operation, maintenance, power and replacement costs of such facilities.

(2) The District may at its own expense, and on a joint venture basis if such an arrangement is made with other contractors having similar options, connect to the project transportation facilities constructed by the State for the purpose of receiving project water to which it is entitled under this contract. In such event and notwithstanding any other provisions of this contract, the structures for delivery of project water to the District pursuant hereto shall thereafter be deemed to be located at such point of connection. Specific arrangements for acquiring, constructing, operating, maintaining and replacing the District's facilities at the point of connection thereof with the State's facilities shall be in accordance with terms and conditions mutually agreed upon by the parties: Provided, That the State shall be and remain the owner of all facilities constructed by it to said point of connection, and the District shall be and remain obligated to pay its proportionate share of the costs thereof.

(g) [32] Adjustments Due to Supplemental Financing Costs.

(1) If a contractor, with approval of the State, advances funds to the State to assist the State in financing construction of project facilities (except advances for delivery structures, measuring devices and excess capacity and also excepting advances made under Article 47(m) of this contract), such advance shall be amortized by means of annual credits to the contractor having made such advance of funds to the State, with such credits being equal to the actual bond service obligations payable by such contractor by reason of such advance or, if no bonded debt was incurred, then such credits shall be sufficient to cover the repayment of principal and interest costs which would have resulted if the contractor had sold bonds for the purpose of funding the advance as determined by the State.

(2) If, after May 1, 1969, any source of funds other than those provided by the Bond Act is employed to finance construction of specific project facilities, any additional costs incurred because of such financing will not be charged to the contractors, except for adjustments to the "project interest rate".

[32] Amended: Amendment 9

18. [33] Shortage in Water Supply.

(a) Shortages; Delivery Priorities.

In any year in which there may occur a shortage due to drought or any other cause whatsoever, in the supply of project water available for delivery to the contractors, with the result that such supply is less than the total of the annual entitlements of all contractors for that year, the State shall allocate the available supply in proportion to each contractor's annual entitlement as set forth in its Table A for that year and shall reduce the allocation of project water to each contractor using such water for agricultural purposes and to each contractor using such water for other purposes by the same percentage of their respective annual entitlements for that year: Provided, that the State may allocate on some other basis if such is required to meet minimum demands of contractors for domestic supply, fire protection, or sanitation during the year. If a contractor is allocated more water than it requested, the excess water shall be reallocated among the other contractors in proportion to their annual entitlements as provided for above: The foregoing provisions of this subdivision shall be inoperative to the extent necessary to comply with subdivision (c) of this article and to the extent that a contractor's annual entitlement for the respective year reflects established rights under the area of origin statutes precluding a reduction in deliveries to such contractor.

(b) [34] (Deleted.)

(c) [35] Permanent Shortage; Contracts for Areas-of-Origin.

In the event that the State, because of the establishment by a party of a prior right to water under the provisions of Sections 11460 through 11463 of the Water Code, enters into a contract with such party for a dependable supply of project water, which contract will cause a permanent shortage in the supply of project water to be made available to the District hereunder:

(1) The State shall: (i) equitably redistribute the costs of all transportation facilities included in the System among all contractors for project water, taking into account the diminution of the supply to the District and other prior contractors in accordance with the terms of their contracts, and (ii) revise the District's annual entitlements and maximum annual entitlement, by amendment of Table A of this contract to correspond to the reduced supply of project water to be made available to the District: Provided, That such redistribution of costs of transportation facilities shall not be made until there has been reasonable opportunity for the District to exercise the option provided for in (2) below, and for other prior contractors to exercise similar options.

[33] Amended: Amendment 25
[34] Deleted: Amendment 25
[35] Amended: Amendment 25

(2) The District, at its option, shall have the right to use any of the project transportation facilities which by reason of such permanent shortage in the supply of project water to be made available to the District are not required for delivery of project water to the District, to transport water procured by it from any other source: Provided, That such use shall be within the limits of the capacities provided in the project transportation facilities for service to the District under this contract: Provided further, That, except to the extent such limitation in Section 12931 of the Water Code be changed, the District shall not use the project transportation facilities under this option to transport water the right to which was secured by the District through eminent domain unless such use be approved by the Legislature by concurrent resolution with a majority of the members elected to each house voting in favor thereof. This option shall terminate upon a redistribution of costs of transportation facilities by the State pursuant to (1) above. In the event that this option is exercised, the State shall take such fact into account in making such redistribution of costs, and shall offset such use as is made of the project transportation facilities pursuant thereto against any reduction in the District's payment obligation hereunder resulting from such redistribution of costs.

(d) Reinstatement of Entitlements.

If after any revision of annual entitlements and maximum annual entitlements pursuant to subdivision (c) of this article, circumstances arise which, in the judgment of the State, justify a revision upward of the same, the State shall, with the consent of the affected contractor, reinstate proportionately the previously reduced entitlements of such contractor to the extent deemed justified, and shall equitably redistribute the costs of the project transportation facilities if inequities would otherwise occur as a result of such reinstatement of entitlements.

(e) Advance Notice of Delivery Reductions.

The State shall give the District written notice as far in advance as possible of any reduction in deliveries to it which is to be made under subdivision (a) of this article and, to the extent possible, shall give the District written notice five (5) years in advance of any reduction in its annual entitlements and maximum annual entitlement under subdivision (c) of this article. Reports submitted to the District pursuant to Article 16(c) may constitute such notices.

(f) No Liability for Shortages.

Neither the State nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to the District under this contract caused by drought, operation of area of origin statutes, or any other cause beyond its control.

19. Water Quality.

(a) It shall be the objective of the State and the State shall take all reasonable measures to make available, at all delivery structures for delivery of project water to the District, project water of such quality that the following constituents do not exceed the concentrations stated as follows:

WATER QUALITY OBJECTIVES FOR
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Constituent	Unit	Monthly Average	Average for any 10-year Period	Maximum
Total dissolved solids	ppm.	440	220	-
Total hardness	ppm.	180	110	-
Chlorides	ppm.	110	55	-
Sulfates	ppm.	110	20	-
Sodium percentage	%	50	40	-
Fluoride	ppm.	-	-	1.5
Lead	ppm.	-	-	0.1
Selenium	ppm.	-	-	0.05
Hexavalent Chromium	ppm.	-	-	0.05
Arsenic	ppm.	-	-	0.05
Iron and Manganese together	ppm.	-	-	0.3
Magnesium	ppm.	-	-	125.
Copper	ppm.	-	-	3.0
Zinc	ppm.	-	-	15.
Phenol	ppm.	-	-	0.001

(b) The State shall regularly take samples of water at each delivery structure for delivery of project water to the District, and shall make chemical and physical analyses and tests of such samples. The State shall keep accurate and complete records of all such analyses and tests, which records shall be available for inspection by the District at any time or times.

(c) If through no negligence of the State or its officers, agents, or employees, the State is unable to attain the quality objectives set forth in subdivision (a) of this article, neither the State nor any of its officers, agents, or employees shall be liable in any manner whatsoever for such deviation from said quality objectives.

20. Suspension of Service. In the event of any default by the District in the payment of any money required to be paid to the State hereunder, the State may, upon not less than six months' notice to the District, suspend deliveries of water under this contract for so long as such default continues: Provided, That during such period the District shall remain obligated to make all payments required under this contract. Action taken pursuant to this article shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

21. [36] Interruptible Water Service.

(a) Allocation of Interruptible Water.

Each year from water sources available to the project, the State shall make available and allocate interruptible water to contractors in accordance with the procedure in Article 18(a). Allocations of interruptible water in any one year may not be carried over for delivery in a subsequent year, nor shall the delivery of interruptible water in any year impact a contractor's approved deliveries of annual entitlement or the contractor's allocation of water for the next year. Deliveries of interruptible water in excess of a contractor's annual entitlement may be made if the deliveries do not adversely affect the State's delivery of annual entitlement to other contractors or adversely affect project operations. Any amounts of water owed to the District as of the date of this amendment pursuant to former Article 12(d), any contract provisions or letter agreements relating to wet weather water, and any Article 14(b) balances accumulated prior to 1995, are canceled. The State shall hereafter use its best efforts, in a manner that causes no adverse impacts upon other contractors or the project, to avoid adverse economic impacts due to a contractor's inability to take water during wet weather.

(b) Rates.

For any interruptible water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were entitlement water, as well as all incremental operation,

[36] Amended: Amendments 16, 25

maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those non-power costs, which would not be incurred if interruptible water were not scheduled for or delivered to the contractor. Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.

(c) Contracts.

To obtain a supply of interruptible water, a contractor shall execute a further contract with the State which shall be in conformity with this article and shall include at least provisions concerning the scheduling of deliveries of interruptible water and times and methods of payment.

C. PAYMENT PROVISIONS

22. Delta Water Charge.

(a) The payments to be made by each contractor for project water shall include an annual charge designated as the Delta Water Charge. This charge, together with the total revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities, shall return to the State during the project repayment period all costs of the project conservation facilities incurred during the project repayment period, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article. Wherever reference is made, in connection with the computation or determination of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State.

(b) [37] For each contractor receiving project water in any year through December 31, 1969, the Delta Water Charge shall be the product of $3.50 and the contractor's annual entitlement to project water for the respective year. For each contractor receiving project water in the year 1970, the Delta Water Charge shall be the product of $6.65 and the contractor's annual entitlement to project water for that year.

[37] Amended: Amendments 9, 10

The $6.65 rate for the year 1970 shall consist of a capital cost component of $5.04 and a minimum operation, maintenance, power and replacement component of $1.61. For each contractor receiving project water in the year 1971, the Delta Water Charge shall be the product of $7.24 and the contractor's annual entitlement to project water for that year. The $7.24 rate for the year 1971 shall consist of a capital cost component of $5.44 and a minimum operation, maintenance, power and replacement component of $1.80. After December 31, 1971, the Delta Water Charge shall consist and be the sum of the following components as these are computed in accordance with subdivisions (c) and (d) of this article: a capital cost component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(c) The capital cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water Charge, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the project repayment period, respectively, the following categories of the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article: (1) capital costs; (2) operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractors; and (3) operation, maintenance, power, and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractors: Provided, That each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities. Each component of the Delta Water Charge shall be computed on the basis of a rate which, when charged during the project repayment period for each acre-foot of the sum of the yearly totals of annual entitlements of all contractors, will be sufficient, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the project repayment period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$\frac{(C_1 - r_1)(1+i)^{-1} + (C_2 - r_2)(1+i)^{-2} + \ldots + (c_n - r_n)(1+i)^{-n}}{e_1(1+i)^{-1} + e_2(1+i)^{-2} + \ldots + e_n(1+i)^{-n}}$$

Where:

	i =	The project interest rate.
	c =	The total costs included in the respective category of costs and incurred during the respective year of the project repayment period.
	r =	That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category and incurred during the respective year of the project repayment period.
1,2, and n appearing below c and	r =	The respective year of the project repayment period during which the costs included in the respective category are incurred, n being the last year of the project repayment period.
	e =	With respect to the capital cost and minimum operation, maintenance, power, and replacement components, the total of annual entitlements to project water of all contractors for the respective year of the project repayment period.
	e =	With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of project water delivered to all contractors for the respective year of the expired portion of the project repayment period, together with the total of annual entitlements to project water of all contractors for the respective year of the unexpired portion of the project repayment period.
1,2, and n appearing below	e =	The respective year of the project repayment period in which the annual entitlements or project water deliveries occur, n being the last year of the project repayment period.
n used as an exponent	=	The number of years in the project repayment period.

(d) The capital cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge shall be the product of the appropriate rate computed under subdivision (c) of this article, and the contractor's annual entitlement to project water for the respective year. The variable operation, maintenance, power, and replacement component of the charge shall be the product of the appropriate rate computed under subdivision (c) of this article and the number of acre-feet of project water delivered to the contractor during the respective year: Provided, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, said variable component during such period shall be the product of said rate per acre-foot and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(e) [38] Prior to the time that additional project conservation facilities or supplemental conservation facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those initial project conservation facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following project facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Delta Pumping Plant) <Harvey O. Banks Delta Pumping Plant>, the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: Provided, That all of the actual and projected costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities shall be allocated to the purpose of water conservation in, above, and below the Delta: Provided further, That allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.

Commencing in the year in which the State first awards a major construction contract for construction of a major feature of additional project conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of additional project conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all projected costs of such feature of the

[38] Amended: Amendment 11

additional project conservation facilities: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State: Provided further, That all costs of additional project conservation facilities incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are incurred.

(f) The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (d) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (c) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivisions (c) and (d) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project conservation facilities described in subdivision (e) of this article, annual entitlements, deliveries of project water, project interest rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining said rates for all preceding years, and actual costs incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(g) [39] Upon the construction of the supplemental conservation facilities, the Delta Water Charge shall be paid by all contractors for supplemental water, as well as by contractors for project water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities and supplemental conservation facilities, shall return to the State, in addition to those costs of the project conservation facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (e) of this article, all costs of such supplemental conservation facilities, including capital,

[39] Amended: Amendment 11

operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any supplemental conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of supplemental conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations made pursuant to subdivision (e) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in said subdivision (e), of all projected costs of such feature of the supplemental conservation facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the annual entitlements to water under all contracts for supplemental water. If the repayment period of any bonds sold to construct supplemental conservation facilities or the repayment period under any agreement with a federal agency for repayment of the costs of supplemental conservation facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(h) [40] The determination of the rate for water under the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (c), (d) and (e) above, for all additional project conservation facilities as defined in Article 1(h) hereinabove. In the event a Local Project as defined in Article 1(h)(2) will, pursuant to written agreement between the State and the sponsoring contractor, be considered and treated as an additional project conservation facility for less than the estimated life of the facility, the rate under the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an additional project conservation facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the Delta Water Charge unless and until the written agreement required by Article 1(h) has been entered into.

[40] Amended: Amendment 18

(i) [41] In calculating the rate for project water to be paid by each contractor for the Delta Water Charge under subdivisions (c), (d) and (e) above, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as project water.

(j) [42] Notwithstanding provisions of Article 22(a) through (i), the capital cost component and the minimum OMP&R component of the Delta Water Charge shall include an annual charge to recover the Agency's <District's> share of the conservation portion of the water system revenue bond financing costs. Charges to the Agency <District> for these costs shall be calculated in accordance with provisions in Article 50 of this contract. Charges for the conservation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

23. Transportation Charge.

The payments to be made by each contractor entitled to delivery of project water from the project transportation facilities shall include an annual charge under the designation Transportation Charge. This charge shall return to the State during the project repayment period those costs of all project transportation facilities necessary to deliver project water to the contractor incurred during the project repayment period, including capital, operation, maintenance, power, and replacement costs, which are allocated to the contractor in accordance with the cost allocation principles and procedures hereinafter set forth. Wherever reference is made, in connection with the computation, determination, or payment of the Transportation Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State. The Transportation Charge shall consist of a capital cost component; a minimum operation, maintenance, power, and replacement component; and a variable operation, maintenance, power, and replacement component, as these components are defined in and determined under Articles 24, 25, and 26, respectively. For the purpose of allocations of costs pursuant to said articles, the project transportation facilities shall be segregated into such aqueduct reaches as are determined by the State to be necessary for such allocations of costs. Subject to such modifications as are determined by the State to be required by reason of any request furnished by the District to the State pursuant to Article 17(a) of this contract, or by reason of contracts entered into by the State with other contractors,

[41] Amended: Amendment 18
[42] Added: Amendments 20, 25

the aqueduct reaches of the project transportation facilities are established as follows: Provided, That those costs of the aqueduct reaches from the Delta through the outlet of San Luis Reservoir which are allocated to the purpose of water conservation in, above, and below the Delta for the purpose of determining the Delta Water Charge, as hereinbefore set forth, shall not be included in the Transportation Charge.

Aqueduct Reach	**Major Features of Reach**
Delta to Discharge Pumping Plant I:	Intake Canal Fish Protective Facilities Pumping Plant I <Harvey O. Banks>
Discharge Pumping Plant I to San Luis Forebay:	Aqueduct
San Luis Forebay to Outlet San Luis Reservoir:	San Luis <O'Neill> Forebay and Dam Pumping Plant II <Dos Amigos> San Luis Reservoir and Dam
Outlet San Luis Reservoir to Avenal Gap	Aqueduct
Avenal Gap to Pumping III:	Aqueduct
Pumping Plant III to Pumping Plants IV-V:	Pumping Plant III <Buena Vista> Aqueduct
Pumping Plant IV-V to Pumping Plant VI:	Pumping Plant IV <Wheeler Ridge (IRA J. Chrisman)> Pumping Plant V <Windgap (John R. Teerink> Aqueduct
Pumping Plant VI to South Portal Tehachapi Tunnels:	Pumping Plant VI <A.D. Edmonston> Tehachapi Tunnels

East Branch Aqueduct

South Portal Tehachapi Tunnels to Cottonwood Power Plant:	Aqueduct Cottonwood Power Plants 1 and 2 <now one plant named Alamo Power Plant>
Cottonwood Power Plant to a point near Fairmont Reservoir:	Aqueduct
Near Fairmont Reservoir to Little Rock Creek:	Aqueduct
Little Rock Creek to West Fork Mojave River:	Pumping Plant VIII <Pearblossom Pumping Plant> Aqueduct
West Fork Mojave River to Perris Reservoir:	Cedar Springs Reservoir <Lake Silverwood> and Dam, Devil Canyon Power Plants 1 and 2 <now one plant>Aqueduct <Santa Ana Pipeline> Perris Reservoir and Dam <Lake Perris>

West Branch Aqueduct

South Portal Tehachapi Tunnels to West Branch Terminal Reservoir:	Aqueduct <Canal, Oso Pumping Plant, Quail Lake, Peace Valley Pipeline, Warne Power Plant, Pyramid Lake, Angeles Tunnel, Castaic Power Plant, and Elderberry Forebay>
West Branch Terminal Reservoir:	Dam, reservoir, and outlet facilities <Castaic Lake>

24. Transportation Charge -- Capital Cost Component.

(a) The capital cost component of the Transportation Charge shall be sufficient to return to the State those capital costs of the project transportation facilities necessary to deliver water to the contractor, which are allocated to the contractor pursuant to subdivision (b) of this article. The amount of this component shall be determined in two steps as follows: (1) an allocation of capital costs to the contractor, and (2) a computation of annual payment of such allocated capital costs and interest thereon, computed at the project interest rate, to be made by the contractor.

(b) [43] In the first step, the total amount of capital costs of each aqueduct reach to be returned to the State shall be allocated among all contractors entitled to delivery of project water from or through the reach by the proportionate use of facilities method of cost allocation and in accordance with (1) and (2) below. The measure of the proportionate use of each contractor of each reach shall be the average of the following two ratios: (i) the ratio of the contractor's maximum annual entitlement to be delivered from or through the reach to the total of the maximum annual entitlements of all contractors to be delivered from or through the reach from the year in which charges are to be paid through the end of the project repayment period and (ii) the ratio of the capacity provided in the reach for the transport and delivery of project water to the contractor to the total capacity provided in the reach for the transport and delivery of project water to all contractors served from or through the reach from the year in which charges are to be paid through the end of the project repayment period. Allocations of capital costs to the District pursuant hereto shall be on the basis of relevant values which will be set forth in Table B by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach of the project transportation facilities for the transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That these values shall be subject to redetermination by the State in accordance with Article 28: Provided further, That the principles and procedures set forth in this subdivision shall be controlling as to allocations of capital costs to the District. Proportionate use of facilities factors for prior years shall not be adjusted by the State in response to changes or transfers of entitlement among contractors unless otherwise agreed by the State and the parties to the transfer and unless there is no impact on past charges or credits of other contractors.

[43] Amended: Amendment 25

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<PUBLISHED AS TABLE B-1 AND TABLE B-2
IN BULLETIN 132>

(1) The total amount of capital costs allocated to a contractor shall be the sum of the products obtained when there is multiplied, for each aqueduct reach necessary to deliver water to the contractor, the total amount of the capital costs of the reach to be returned to the State under the Transportation Charge by the average of the two foregoing ratios for such reach as said average is set forth in the appropriate table included in its contract.

(2) In the event that excess capacity is provided in any aqueduct reach for the purpose of making project water available in the future to an agency or agencies with which the State has not executed contracts at the time of any allocation of costs pursuant to this subdivision, the prospective maximum annual entitlement or entitlements to be supplied by such excess capacity, as determined by the State, shall be deemed to be contracted for by said agency or agencies for the purpose of such allocation of costs, to the end that the capital costs of providing such excess capacity are not charged to any contractor entitled by virtue of an executed contract to the delivery of project water from or through that aqueduct reach at the time of such allocation. Where additional capacity is provided in any aqueduct reach to compensate for loss of water due to evaporation, leakage, seepage, or other causes, or to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of the facilities of the project facilities, then, for the purpose of any allocation of costs pursuant to this subdivision: (i) the maximum annual entitlement to be delivered from or through the reach of each contractor entitled to delivery of project water from or through the reach shall be increased by an amount which bears the same proportion to the maximum annual delivery capability provided by such additional capacity that the contractor's maximum annual entitlement to be delivered from or through the reach bears to the total of the maximum annual entitlements to be delivered from or through the reach under all contracts; and (ii) the capacity provided in the reach for each contractor entitled to delivery of project water from or through the reach shall be increased in the same proportion that the contractor's maximum annual entitlement to be delivered from or through the reach is increased pursuant to (i) above.

(3) The projected amounts of capital costs to be allocated annually to the District under the capital cost component of the Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision, which principles and procedures shall be controlling as to allocations of capital costs to the District. Such amounts will be set forth in Table C by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a):

TABLE C

PROJECTED ALLOCATIONS OF CAPITAL COST OF PROJECT TRANSPORTATION FACILITIES TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Year	Projected Allocation in Thousands of Dollars
1*	
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10	
11	
12	
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15	
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26	
27	
28	
29	
30	
31	

* Year in which State commences construction of project transportation facilities.
<Table C is published as table B-14 in Bulletin 132>

Provided, That these amounts shall be subject to redetermination by the State in accordance with Article 28.

(c) In the second step, the District's annual payment of its allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, shall be determined in accordance with a repayment schedule established by the State and determined in accordance with the principles set forth in (1), (2), and (3) below, which principles shall be controlling as to the District's payment of its allocated capital costs. The District's repayment schedule will be set forth in Table D by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table D shall be subject to redetermination by the State, pursuant to Article 28.

(1) The District's annual payment shall be the sum of the amounts due from the District on the District's allocated capital costs for the then current year and for each previous year where each such amount will pay, in not more than fifty (50) equal annual installments of principal and interest, the District's allocated capital costs for the respective year and interest thereon, computed at the project interest rate and compounded annually.

(2) The District may make payments at a more rapid rate if approved by the State.

(3) Such annual payments shall cease when all allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, are repaid.

TABLE D

TRANSPORTATION CHARGE -- CAPITAL COST COMPONENT
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Year	Annual Payment of Principal	Annual Interest Payment	Total Annual Payment by District
1*			
2**			
3			
4			
5			
6			
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11			
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34			

TABLE D (Continued)

TRANSPORTATION CHARGE -- CAPITAL COST COMPONENT
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Year	Annual Payment of Principal	Annual Interest Payment	Total Annual Payment by District
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
51			
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57			
58			
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60			
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67			
68			

TABLE D (Continued)

TRANSPORTATION CHARGE -- CAPITAL COST COMPONENT
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Year	Annual Payment of Principal	Annual Interest Payment	Total Annual Payment by District
69			
70			
71			
72			
73			
74			
75			
76			
77			
78			
79			
80			

TOTAL

* Year in which the State commences construction of the project transportation facilities
** Year of first payment.

<DWR provides TABLE D with Metropolitan's annual statement of charges. TABLE D is published in (unadjusted) summary form as TABLE B-15 in Bulletin 132.>

(d) In the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b) for the uses designated therein, such contractor shall furnish to the State, in advance of the construction of such aqueduct reach, funds sufficient to cover the costs of providing such excess capacity, which funds shall be in an amount which bears the same proportion to the total capital costs of such reach, including the costs of providing such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. For the purpose of any allocation of costs pursuant to subdivision (b) of this article, the total capital costs of such aqueduct reach shall be allocated among all

contractors entitled to delivery of project water from or through the reach in the following manner: (1) The costs which would have been incurred for such reach had no such excess capacity been provided shall be estimated by the State and allocated among all such contractors in the manner provided in said subdivision (b); and (2) the amount of the difference between said estimated costs and the projected actual costs of such reach shall be allocated to the contractor or contractors for which such excess capacity is provided. Where such excess capacity is provided for more than one contractor, the costs allocated to them under (2) above shall be further allocated between or among them in amounts which bear the same proportion to the total of said allocated costs as the amount of such excess capacity provided for the respective contractor bears to the total of such excess capacity provided in such reach. In the event that the funds advanced by a contractor pursuant to this subdivision are more or less than the costs so allocated to such contractor under (2) above, the account of such contractor shall be credited or debited accordingly.

(e) [44] The capital costs of project aqueduct power recovery plants shall be charged and allocated in accordance with this Article 24. The capital costs of off-aqueduct power facilities shall be charged and allocated in accordance with Article 25(d).

(f) [45] Notwithstanding provisions of Articles 24(a) through 24(d), capital costs associated with East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the capital cost component of the East Branch Enlargement Transportation Charge [Article 49(d)]. Any capital costs of off-aqueduct power facilities associated with deliveries through East Branch Enlargement Facilities shall be charged and allocated in accordance with Article 25(d).

(g) [46] Notwithstanding provisions of Articles 24(a) through (d), the capital cost component of the Transportation Charge shall include an annual charge to recover the Agency's <District's> share of the transportation portion of the water system revenue bond financing costs. Charges to the Agency <District> for these costs shall be calculated in accordance with provisions in Article 50 of this contract. Charges for the transportation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

[44] Added: Amendment 18
[45] Added: Amendment 19
[46] Added: Amendments 20, 25

25. Transportation Charge -- Minimum Operation, Maintenance, Power, and Replacement Component.

(a) The minimum operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (b) below: Provided, That to the extent permitted by law, the State may establish reserve funds to meet anticipated minimum replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the minimum replacement costs for the year in which such deposits are made.

(b) The total projected minimum operation, maintenance, power, and replacement costs of each aqueduct reach of the project transportation facilities for the respective year shall be allocated among all contractors entitled to delivery of project water from said facilities by the proportionate use of facilities method of cost allocation, in the same manner and upon the same bases as are set forth for the allocation of capital costs in Article 24: Provided, That such minimum operation, maintenance, power, and replacement costs as are incurred generally for the project transportation facilities first shall be allocated to each aqueduct reach in an amount which bears the same proportion to the total amount of such general costs that the amount of the costs incurred directly for the reach bears to the total of all direct costs for all aqueduct reaches.

(c) The amount to be paid each year by the District under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (b) of this article on the basis of the relevant values to be set forth for the respective aqueduct reaches in Table B, included in Article 24: Provided, That these values shall be subject to redetermination by the State in accordance with Article 28. Such amounts and any interest thereon shall be set forth by the State in Table E as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table E shall be subject to redetermination by the State in accordance with Article 28.

TABLE E

TRANSPORTATION CHARGE -- MINIMUM OPERATION MAINTENANCE, POWER, AND REPLACEMENT COMPONENT THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Year	Total Annual Payment by District* (In Thousands of Dollars)
1**	
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and each succeeding year thereafter,
for the term of this contract.

* Payment shall start with respect to each aqueduct reach in the year following the year in which the State completes construction of the respective reach.

** Year in which the State commences construction of the project transportation facilities.

<Table E is published as table B-16A in Bulletin 132>

(d) [47] Notwithstanding the provisions of subdivisions (a) and (b) of this Article, or of Article 1(u), the costs of off-aqueduct power facilities shall be determined and allocated as follows:

(1) The off-aqueduct power costs shall include all annual costs the State incurs for any off-aqueduct power facility, which shall include, but not be limited to, power purchases, any annual principal and interest payments on funds borrowed by or advanced to the State, annual principal and interest on bonds issued by the State or other agency, or under revenue bond financing contracts, any requirements for coverage, deposits to reserves, and associated operation and maintenance costs of such facility, less any credits, interest earnings, or other monies received by the State in connection with such facility. In the event the State finances all or any part of an off-aqueduct power facility directly from funds other than bonds or borrowed funds, in lieu of such annual principal and interest payments, the repayment of capital costs as to that part financed by such other funds shall be determined on the basis of the schedule that would have been required under Article 24.

(2) The annual costs of off-aqueduct power facilities as computed in (1) above shall initially be allocated among contractors in amounts which bear the same proportions to the total amount of such power costs that the total estimated electrical energy (kilowatt hours) required to pump through project transportation facilities the desired delivery amounts of annual entitlements for that year, as submitted pursuant to Article 12(a)(1) and as may be modified by the State pursuant to Article 12(a)(2), bears to the total estimated electrical energy (kilowatt hours) required to pump all such amounts for all contractors through project transportation facilities for that year, all as determined by the State.

(3) [48] An interim adjustment in the allocation of the power costs calculated in accordance with (2) above, may be made in May of each year based on April revisions in approved schedules of deliveries of project and nonproject water for contractors for such year. A further adjustment shall be made in the following year based on actual deliveries of project and nonproject water for contractors; provided, however, in the event no deliveries are made through a pumping plant, the adjustments shall not be made for that year at that plant.

[47] Added: Amendment 18
[48] Amended: Amendment 25

(4) To the extent the monies received or to be received by the State from all contractors for off-aqueduct power costs in any year are determined by the State to be less than the amount required to pay the off-aqueduct power costs in such year, the State may allocate and charge that amount of off-aqueduct power costs to the District and other contractors in the same manner as costs under the capital cost component of the Transportation Charge are allocated and charged. After that amount has been so allocated, charged and collected, the State shall provide a reallocation of the amounts allocated pursuant to this paragraph (4), such reallocation to be based on the allocations made pursuant to (2) and (3) above for that year, or in the event no such allocation was made for that year, on the last previous allocation made pursuant to (2) and (3) above. Any such reallocation shall include appropriate interest at the project interest rate.

(e) [49] The total minimum operation, maintenance, power and replacement component due that year from each contractor shall be the sum of the allocations made under the proportionate use of facilities method provided in subdivision (b) of this article and the allocations made pursuant to subdivision (d) of this article for each contractor.

(f) [50] Notwithstanding provisions of Articles 25(a) through 25(c) and 25(e), minimum operation, maintenance, power, and replacement costs associated with deliveries through East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the minimum operation, maintenance, power, and replacement component of the East Branch Enlargement Transportation Charge [Article 49(e)].

26. Transportation Charge -- Variable Operation, Maintenance, Power, and Replacement Component.

(a) The variable operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (1) and (2) below: Provided, That to the extent permitted by law, the State may establish reserve funds to meet anticipated variable replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the variable replacement costs for the year in which such deposits are made. The amount of this component shall be determined as follows:

[49] Added: Amendment 18
[50] Added: Amendment 19

(1) There shall be computed for each aqueduct reach of the project transportation facilities a charge per acre-foot of water which will return to the State the total projected variable operation, maintenance, power, and replacement costs of the reach for the respective year. This computation shall be made by dividing said total by the number of acre-feet of project water estimated to be delivered from or through the reach to all contractors during the year.

(2) The amount of the variable component shall be the product of the sum of the charges per acre-foot of water, determined under (1) above, for each aqueduct reach necessary to deliver water to the contractor, and the number of acre-feet of project water delivered to the contractor during the year: Provided, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, the amount of said variable component to be paid by such contractor during such period shall be the product of the above sum and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(b) There shall be credited against the amount of the variable component to be paid by each contractor, as determined pursuant to subdivision (a) of this article, a portion of the projected net value of any power recovered during the respective year at project aqueduct power recovery plants located upstream on the particular aqueduct from the delivery structures for delivery of project water to the contractor. Such portion shall be in an amount which bears the same proportion to said projected net value that the number of acre-feet of project water delivered to the contractor through said plants during the year bears to the number of acre-feet of project water delivered to all contractors through said plants during the year.

(c) The amount to be paid each year by the District under the variable operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (a) of this article for the respective aqueduct reaches in Table B, included in Article 24. Such amounts and any interest thereon shall be set forth by the State in Table F as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table F shall be subject to redetermination by the State in accordance with Article 28.

TABLE F

TRANSPORTATION CHARGE -- ESTIMATED VARIABLE OPERATION, MAINTENANCE, POWER, AND REPLACEMENT COMPONENT THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Year	Total Annual Payment by District* (In Thousands of Dollars)
1**	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	

and each succeeding year thereafter,
for the term of this contract.

* Payments start with year of initial water delivery.
** Year in which State commences construction of project conservation facilities.

<TABLE F is published as TABLE B-18 in Bulletin 132.>

(d) [51] There shall be no separate variable operation, maintenance, power, and replacement component for deliveries of water through East Branch Enlargement Facilities defined in Article 49(a).

27. Transportation Charge -- Repayment Schedule. The amounts to be paid by the District for each year of the project repayment period under the capital cost and minimum operation, maintenance, power, and replacement components of the Transportation Charge, and under the variable operation, maintenance, power, and replacement component of said charge on the basis of then estimated deliveries, shall be set forth by the State in Table G as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a), which Table G shall constitute a summation of Tables D, E, and F: Provided, That each of the amounts set forth in Table G shall be subject to redetermination by the State in accordance with Article 28: Provided further, That the principles and procedures set forth in Articles 24, 25, and 26 shall be controlling as to such amounts. Such amounts shall be paid by the District in accordance with the provisions of Article 29.

[51] Added: Amendment 19

TABLE G

REPAYMENT SCHEDULE
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Transportation Charge				
Year	**Capital Cost Component**	**Minimum Component**	**Variable Component**	**Total**
1*				
2**				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				

TABLE G (Continued)

REPAYMENT SCHEDULE
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Transportation Charge				
Year	**Capital Cost Component**	**Minimum Component**	**Variable Component**	**Total**
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
60				
61				
62				

TABLE G (Continued)

REPAYMENT SCHEDULE
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(In Thousands of Dollars)

Transportation Charge				
Year	**Capital Cost Component**	**Minimum Component**	**Variable Component**	**Total**
63				
64				
65				
66				
67				
68				
69				
70				
71				
72				
73				
74				
75				
76				
77				
78				
79				
80				

* Year in which State commences construction of project transportation facilities
** Year of first payment

<Table G is published in summary form as Table B-19 in Bulletin 132>

28. [52] Transportation Charge -- Redetermination.

(a) Determinative Factors Subject to Retroactive Change.

The State shall redetermine the values and amounts set forth in Tables B, C, D, E, F, and G of this contract in the year following the year in which the State commences construction of the project transportation facilities and each year thereafter in order that the Transportation Charge to the Agency <District> and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project transportation facilities described in Table I of this contract, annual entitlements, estimated deliveries, project interest rate, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the Agency <District> for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the Agency <District> or credited to the Agency's <District's> account in the manner described in (b) and (c) below.

(b) Adjustment: Transportation Charge -- Capital Cost Component.

Adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the Agency <District>, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination: Provided, That the Agency <District> may elect to exercise the option whereby when the redetermined Transportation Charge for the following year, with adjustments, including adjustments of the operation, maintenance, power, and replacement components provided for in subdivision (c) of this article, is more or less than the last estimate of the Charge provided pursuant to Article 27 for the corresponding year, without adjustments, an amount equal to the total of such difference shall be deducted from or added to the adjusted capital cost component for that year and paid or credited in accordance with the following schedule:

[52] Amended: Amendment 14

Percent that Transportation Charge differs from last estimate (+ or -)	Period, in years, for amortizing the difference in indicated charge
for 10% or less	no amortization
more than 10%, but not more than 20%	2
more than 20%, but not more than 30%	3
more than 30%, but not more than 40%	4
more than 40%.	5

Such payments or credits shall be equal semi-annual amounts of principal and interest on or before the 1st day of January and the 1st day of July, with interest computed at the project interest rate and compounded annually, during varying amortization periods as set forth in the preceding schedule: Provided, That for the purpose of determining the above differences in the Transportation Charge, the variable operation, maintenance, power, and replacement component shall be computed on the basis of the same estimated project water deliveries as was assumed in computing pursuant to Article 26(c).

(c) Adjustment: Transportation Charge -- Minimum and Variable Components.

One-twelfth of the adjustments for prior underpayments or overpayments of the Agency's <District's> minimum and variable operation, power, and replacement components for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination.

(d) Exercise of Option.

The option provided for in subdivision (b) above shall be exercised in writing on or before the January 1 due date of the first payment of the capital cost component of the Transportation Charge for the year in which the option is to become effective.

Such option, once having been exercised, shall be applicable for all of the remaining years of the project repayment period.

(e) [53] Notwithstanding the provisions of Article 28(b), adjustments for prior overpayments and underpayments shall be repaid beginning in the year following the redetermination by application of a unit rate per acre-foot which, when paid for the projected portion of the Agency's <District's> annual entitlement will return to the State, during the project repayment period, together with interest thereon computed at the project interest rate and compounded annually, the full amount of the adjustments resulting from financing after January 1, 1987, from all bonds, advances, or loans listed in Article 1(r) <1(t)> except for Article 1(r)(3) <1(t)3> and except for bonds issued by the State under the Central Valley Project Act after January 1, 1987 for facilities not listed among the water system facilities in Article 1(hh). Notwithstanding the immediately preceding exception, such amortization shall also apply to any adjustments in this component charge resulting from a change in the project interest rate due to any refunding after January 1, 1986 on bonds issued under the Central Valley Project Act. However, amortization of adjustments resulting from items (1)(r)(4) <1(t)(4)> through (7) shall be limited to a period which would allow the Department to repay the debt service on a current basis until such time as bonds are issued to reimburse the source of such funding. In no event shall this amortization period be greater than the project repayment period.

(f) [53] Adjustment: Water System Revenue Bond Financing Costs. The use of water system revenue bonds for financing facilities listed in Article 1(hh) would result in adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the Agency <District> under the provisions of this article; however, in place of making such adjustments, charges to the Agency <District> will be governed by Article 50.

29. Time and Method of Payment.

(a) Payments by the District under the Delta Water Charge shall commence in the year of initial water delivery to the District.

(b) Payments by the District under the capital cost component of the Transportation Charge shall commence in the year following the year in which the State commences construction of the project transportation facilities.

[53] Added: Amendment 20 <Article 1(r) defines Project Interest Rate in the Standard Provisions Contract. Article 1(t) defines Project Interest Rate in Metropolitan's Contract.>

(c) Payments by the District under the minimum operation, maintenance, power and replacement component of the Transportation Charge shall commence for each aqueduct reach in the year following the year in which construction of that reach is completed.

(d) Payments by the District under the variable operation, maintenance, power and replacement component of the Transportation Charge shall commence in the year of initial water delivery to the District.

(e) The State shall, on or before July 1 of each year, commencing with the year preceding the year in which payment of the respective charge is to commence pursuant to this article, furnish the District with a written statement of: (1) the charges to the District for the next succeeding year under the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge; (2) the unit charges to the District for the next succeeding year under the variable operation, maintenance, power and replacement components of said Delta Water Charge and Transportation Charge; and (3) the total charges to the District for the preceding year under the variable operation, maintenance, power and replacement components of said Delta Water Charge and Transportation Charge: Provided, That through December 31, 1969, the Delta Water Charge shall be based upon a unit rate of $3.50 per acre-foot and shall be paid by the contractors on the basis of their respective annual entitlements to project water, as provided in Article 22(b). All such statements shall be accompanied by the latest revised copies of the document amendatory to Article 22 and of the tables included in Articles 24 through 27 of this contract, together with such other data and computations used by the State in determining the amounts of the above charges as the State deems appropriate. The State shall, on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, furnish the District with a statement of the charges to the District for the preceding month under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge. Such charges shall be determined by the State in accordance with the relevant provisions of Articles 22 and 26 of this contract, upon the basis of metered deliveries of project water to the District, except as otherwise provided in those articles.

(f) The District shall pay to the State, on or before January 1 of each year, commencing with the year in which payment of the respective charge is to commence pursuant to this article, one-half (1/2) of the charge to the District for the year under the capital cost component of the Delta Water Charge and one-half (1/2) of the charge to the District for the year under the capital cost component of the Transportation Charge, as such charges are stated pursuant to subdivision (e) of this article; and shall pay the remaining one-half (1/2) of each of said charges on or before July 1 of that year.

(g) The District shall pay to the State, on or before the first day of each month of each year, commencing with the year of initial water delivery to the District, one-twelfth (1/12) of the sum of the charges to the District for the year under the minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, as such charges are stated pursuant to subdivision (e) of this article.

(h) The District shall pay to the State on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, the charges to the District under the variable operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, for which a statement was received by the District during the preceding month pursuant to subdivision (e) of this article, as such charges are stated in such statement.

(i) In the event that the District in good faith contests the accuracy of any statement submitted to it pursuant to subdivision (e) of this article, it shall give the State notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that the State finds the District's contentions regarding the statement to be correct, it shall revise the statement accordingly, and the District shall make payment of the revised amounts on or before the due date. To the extent that the State does not find the District's contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the District shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from the State.

30. [54] Surcharge for Excess Use of Project Water. (Deleted)

31. Adjustment for Overpayment or Underpayment. If in any year, by reason of errors in computation or other causes, there is an overpayment or underpayment to the State by the District of the charges provided for herein, which overpayment or underpayment is not accounted for and corrected in the annual redetermination of said charges, the amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the District's account for the next succeeding year and the State shall notify the District thereof in writing.

[54] Deleted: Amendment 13

32. Delinquency in Payment.

(a) The governing body of the District shall provide for the punctual payment to the State of payments which become due under this contract.

(b) [55] Upon every amount of money required to be paid by the District to the State pursuant to this contract which remains unpaid after it becomes due and payable, interest shall accrue at an annual rate equal to that earned by the Pooled Money Investment Fund, as provided in Government Code Sections 16480, et seq. calculated monthly on the amount of such delinquent payment from and after the due date until it is paid, and the District hereby agrees to pay such interest: provided, that no interest shall be charged to or be paid by the District unless such delinquency continues for more than thirty (30) days.

33. Obligation of District to Make Payments.

(a) The District's failure or refusal to accept delivery of project water to which it is entitled under Article 6(b) shall in no way relieve the District of its obligation to make payments to the State as provided for in this contract. The State, however, shall make reasonable efforts to dispose of any water made available to but not required by the District, and any net revenues from such disposal shall be credited to the District's account hereunder.

(b) The District as a whole is obligated to pay to the State the payments becoming due under this contract, notwithstanding any individual default by its constituents or others in the payment to the District of assessments, tolls, or other charges levied by the District.

34. Obligation of District to Levy Taxes and Assessments.

(a) If in any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.

(b) Taxes or assessments levied by the governing body of the District pursuant to subdivision (a) of this article shall be enforced and collected by all officers of the District charged with the duty of enforcing and collecting taxes or assessments levied by the District.

[55] Amended: Amendment 18

(c) All money collected for taxes or assessments under this article shall be kept in a separate fund by the treasurer or other officer of the District charged with the safekeeping and disbursement of funds of the District, and, upon the written demand of the State, the treasurer or other officer shall pay over to the State all such money in his possession or control then due the State under this contract, which money shall be applied by the State to the satisfaction of the amount due under this contract.

(d) In the event of failure, neglect, or refusal of any officer of the District to levy any tax or assessment necessary to provide payment by the District under this contract, to enforce or to collect the tax or assessment, or to pay over to the State any money then due the State collected on the tax or assessment, the State may take such action in a court of competent jurisdiction as it deems necessary to compel the performance in their proper sequence of all such duties. Action taken pursuant hereto shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

D. GENERAL PROVISIONS

35. Remedies Not Exclusive. The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

36. Amendments. This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law.

37. Reservation With Respect to State Laws. Nothing herein contained shall be construed as estopping or otherwise preventing the District or any person, firm, association, corporation, or public body or agency claiming by, through, or under the District from contesting by litigation or other lawful means the validity, constitutionality, construction or application of any law of this State, including laws referred to in the Bond Act, or as preventing or prejudicing the amendment or repeal of any such law, and each contract executed by the State for a dependable supply of project water shall contain a similar reservation with respect to State laws.

38. Opinions and Determinations. Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

39. Contracting Officer of the State. The contracting officer of the State shall be the Director of Water Resources of the State of California and his successors, or their duly authorized representatives. The contracting officer shall be responsible for all discretionary acts, opinions, judgments, approvals, reviews, and determinations required of the State under the terms of this contract.

40. Successors and Assigns Obligated. This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

41. Assignment. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the District shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

42. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

43. Notices. All notices that are required either expressly or by implication to be given by one party to the other under this contract shall be signed for the State by its contracting officer, and for the District by its General Manager and Chief Engineer and his successors or their duly authorized representatives. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, the District shall address all notices to the State as follows:

Director of Water Resources
P.O. Box 388 <P.O. Box 942836>
Sacramento 2, California <94236-0001>

and the State shall address all notices to the District as follows:

The Metropolitan Water District
of Southern California
<700 No. Alameda Street>
306 West Third Street <P.O. Box 54153>
Los Angeles, California <90054>

44. Maintenance and Inspection of Books, Records, and Reports. During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this contract or matters related hereto. Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this contract and the Bond Act.

45. Contracts to be Uniform. Contracts executed by the State for a dependable supply of project water shall be substantially uniform with respect to basic terms and conditions, except as otherwise provided in this article with respect to payment of the capital cost component of the Transportation Charge. Schedules for all contractors for payment of the capital cost component of the Transportation Charge shall provide as a minimum for payment currently of interest on all allocated capital costs at the project interest rate, and for commencement of payment of the principal of such allocated costs in the year following the year in which capital costs allocated to the respective contractor are first incurred by the State, subject only to (1) through (4) below:

(1) The commencement of payment of the principal of such allocated costs may be deferred up to a maximum of nine (9) years following the year in which such costs are first incurred by the State, to the extent that in the judgment of the State such delay in commencement of payment is necessary to prevent unreasonable financial hardship on the contractor.

(2) The payment of such principal and interest may be made, subject to approval by the State, in installments which vary in magnitude during the project repayment period.

(3) In the case of any contractor to which the delivery of project water for agricultural use as of 1990 is estimated by the State to be in excess of twenty-five percent (25%) of such contractor's maximum annual entitlement, payment of any portion or all of the capital costs allocated to such contractor which are attributed by the State to agricultural use of project water, together with payment of interest on said capital costs, may be commenced by such contractor in the year of initial water delivery, to the extent that in the judgment of the State such delay in commencing payment is necessary to prevent unreasonable financial hardship on such contractor.

(4) All unpaid interest shall be accumulated at the project interest rate, compounded annually, and added to the contractor's allocated capital costs.

Notwithstanding (1) through (4) above, all contractors shall completely pay their total allocated capital costs, together with interest thereon, within the project repayment period, and payments under the schedule of payment of capital costs for each contractor, including interest over the project repayment period, shall have a present value, when discounted at the project interest rate to the first day of the project repayment period, equal to the present value of the payments under that schedule which would be derived for such contractor on the bases provided in this contract when so discounted at the project interest rate to the same date.

46. Suit on Contract. Each of the parties hereto may sue and be sued with respect to this contract.

47. Amendatory Provisions.

(a) [56] Surplus Water. (Deleted.)

(b) [57] Surcharge Credit. (Deleted.)

(c) [58] Excess Capacity.

The State shall provide: (i) in each reach of the project transportation facilities from Kettleman City to the South Portal of the Tehachapi Tunnels excess capacity in the amount of one hundred eighty-eight (188) cubic feet per second, and (ii) in the reach of the project transportation facilities from Silverwood Lake to South Portal San Bernardino Tunnel excess capacity in the amount of seven hundred eighty-seven (787) cubic feet per second. To the extent made possible by the excess capacity provided in accordance with the preceding sentence, the State shall comply with requests of the District to deliver from the project transportation facilities downstream from Tehachapi Pumping Plant in any one month of any year a total amount of project water greater than eleven percent (11%) of the District's annual entitlement for that year: Provided, That in any year the District may request, and, to the extent made possible by capacity provided by the State, the State shall comply with the requests of the District for delivery of water through the West Branch Aqueduct in an amount up to the District's annual entitlement for such year. In no event shall the State be obligated to deliver to the District from the project transportation facilities downstream from Tehachapi Pumping Plant in any one month of any year a total amount of project water greater than eleven percent (11%) of the District's annual entitlement for that year except insofar as the excess provided in accordance with the first sentence of this subdivision (c) makes possible such greater delivery: Provided further, That in any year the State shall not be obligated to deliver to the District through the main California Aqueduct and the West Branch Aqueduct in combination an amount of water in excess of the District's annual entitlement for such year.

[56] Added: Amendment 1; Amended: Amendment 13; Deleted: Amendment 16
[57] Added: Amendment 1; Deleted: Amendment 13
[58] Added: Amendment 2; Amended: Amendments 6, 7

(d) [59] Advance Payment for Excess Capacity.
<Attachment B>

The District shall furnish to the State each year, in advance of the construction of the aqueduct reaches from Kettleman City to the South Portal of the Tehachapi Tunnels, and from Silverwood Lake to South Portal San Bernardino Tunnel, funds sufficient to cover the costs incurred during that year in providing for the excess capacity described in subdivision (c) of this Article. Such yearly funds shall be in an amount which bears the same proportion to the total capital costs of each such reach to be incurred during that year, including the costs of providing for such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. Upon completion of construction of each aqueduct reach in which excess capacity is provided but prior to completion of all such aqueduct reaches, there shall be a determination as to such reach, of: (1) each annual cost attributable to such excess capacity, determined by the annual differences between the estimated cost which would have been incurred had no excess capacity been provided and the actual cost incurred, and (2) each annual payment as determined above. The amount by which each such annual payment exceeds the associated annual cost shall be credited to the installment for other excess capacities due January 1 of the following year, with interest on separate halves of such amount from the dates payments were made on the respective installments of such annual payment at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semiannually. The amount by which each such annual cost exceeds the associated annual payment shall be debited to the installment for other excess capacities due January 1 of the following year, with interest on separate halves of such amount from January 1 and July 1, respectively, of the year such insufficient annual payment was made at the project interest rate, compounded annually. The State shall furnish the District, on or before July 1 of each year, a written statement of the charges to the District pursuant to this subdivision for the next year. Each such statement shall account for any change in the factors, which are determinative of these charges. Included in each statement shall be a redetermination of charges, in compliance with the provisions of Article 28 of this contract, accounting for all accumulated overpayments or underpayments attributable to such proposed increase in capacity incurred in prior years, together with interest thereon from the respective dates of such payments. Overpayments by the District shall be credited to the installment for excess capacities due in the year following the year of the redetermination, with interest at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semi-annually. Underpayments shall be debited to the installment for excess capacities due in the year following the year of the redetermination, with interest at the project interest rate, compounded annually.

[59] Added: Amendment 2; Amended: Amendments 6, 7

Statements submitted by the State on each July 1 for the estimated costs for the next year shall be payable in two equal installments, the first installment being due on January 1 of such next year and the second installment being due on July 1 of such next year. All adjustments for prior overpayments or underpayments together with interest thereon shall be credited to the installment due January 1 of such statement: Provided, That the annual charges included in Statement Nos. 68-128-T, dated June 30, 1967, and 69-166-T, dated June 30, 1968, shall incorporate adjustments to the extent necessary to include credits for payments made by the District in prior years for capacity that by reason of this Amendment No. 7 will no longer be considered excess capacity, together with interest on such prior payments from the respective dates thereof at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semiannually: Provided further, That if such credit, including interest, to be made by reason of this Amendment No. 7 is greater than the total of the first annual charge for excess capacity to be furnished the District following the date of this Amendment No. 7, the difference shall be credited to the District's annual payment of the Capital Cost Component of the Transportation Charge for the year of such first annual charge.

(e) [60] Allocation of Capital Costs of Reaches in Which Excess Capacity is Provided.

The total capital costs of each aqueduct reach in which excess capacity is provided for the District pursuant to subdivision (c) of this article shall be allocated among all contractors entitled to delivery of project water from or through the reach in accordance with the provisions of Article 24(d). The values and amounts so allocated shall be subject to redetermination by the State in accordance with Article 28. Such redetermination shall include, without limitation as to other proper adjustments, a recalculation, based on actual costs incurred by the State, of both the estimated costs which would have been incurred had no excess capacity been provided and of the projected actual costs.

(f) [61] Reconciliation of Advance Payments with Cost Allocation.

Upon completion of construction of the excess capacities provided pursuant to subdivision (c) of this Article and in the event that the funds advanced for such excess capacities by the District pursuant to subdivision (d) of this Article are more or less than the costs allocated to the District pursuant to subdivision (e) of this Article, the account of the District under the capital cost component of the Transportation Charge shall be credited or debited accordingly, together with interest on such resultant overpayment or required advance of funds at the appropriate interest rate in accordance with subdivision (d) of this Article.

[60] Added: Amendment 2
[61] Added: Amendment 2; Amended: Amendment 7

(g) [62] Allocation of Minimum Operation, Maintenance, Power, and Replacement Costs of Reaches in Which Excess Capacity is Provided.

Subject to the provisions of subdivision (i) of this article, the minimum operation, maintenance, power, and replacement costs for the respective year of each aqueduct reach of the project transportation facilities in which excess capacity has been provided pursuant to subdivision (c) of this article shall be allocated among contractors by the proportionate use of facilities method of cost allocation, in accordance with the provisions of Article 25: Provided, That in making such allocation with respect to all such costs other than those for any connected-load charges for power the capacity provided in each reach for the transport and delivery of project water to the District and the total capacity provided in each reach shall include the excess capacity provided pursuant to subdivision (c) of this article.

(h) [62] Allocation of Variable Operation, Maintenance, Power, and Replacement Costs of Reaches in Which Excess Capacity is Provided.

Subject to the provision of subdivision (i) of this article, the variable operation, maintenance, power, and replacement costs for the respective year of each aqueduct reach of the project transportation facilities in which excess capacity has been provided pursuant to subdivision (c) of this article shall be allocated among contractors in accordance with the provision of Article 26: Provided, That the District shall make such additional payments with respect to such variable component as may be necessary in order that the present value, when discounted at the project interest rate to the first day of the project repayment period, of payments of any other contractor under the variable operation, maintenance, power, and replacement component of the Transportation Charge will not be greater than the present value, when discounted at the project interest rate to the first day of the project repayment period, of payments under that component of the Transportation Charge that would have been derived for such contractor on the bases provided in its contract in the absence of subdivisions (c) to (i), inclusive, of this article in this contract.

(i) [63] Connected-Load Charges for Power.

The connected-load charges for power resulting from the excess capacity provided pursuant to subdivision (c) of this article shall be paid entirely by the District and such costs shall not be included in the minimum operation, maintenance, power, and replacement component or the variable operation, maintenance, power, and replacement

[62] Added: Amendment 2
[63] Added: Amendment 2

component of the Transportation Charge to be allocated among contractors: Provided, That such costs shall be paid by the District at the same times and under the same procedures as the minimum operation, maintenance, power, and replacement component as provided in Article 29.

(j) [64] Special Provisions Implementing Article 15(c) Upon Annexation of the City of West Covina by the District.

The State shall credit the account of the District hereunder in the amounts of the payments made by the City of West Covina to the State pursuant to the water supply contract between such City and the State executed on December 2, 1963, as if such payments, in their respective amounts and on their respective dates, had been made by the District in satisfaction of obligations owing the State from the District hereunder.

The statement of charges furnished by the State to the District pursuant to Article 29(e) of this contract on July 1, 1965 shall be revised, and all future such statements shall be prepared, to take into account the increase in the District's annual entitlements and maximum annual entitlement upon the annexation of the City of West Covina by the District.

The State shall deliver project water made available to the District pursuant to the increase in the District's annual entitlements and maximum annual entitlement upon the annexation of the City of West Covina by the District from such delivery structures on either the East Branch Aqueduct or West Branch Aqueduct as hereafter may be specified pursuant to Article 10(c) of this contract: Provided, the District shall specify maximum monthly delivery capabilities in each of said branch aqueducts in accordance with Article 17(a) of this contract.

(k) [65] Acquisitions and Planning for Perris Reservoir Enlargement.
<See Attachment C>

(1) As heretofore requested by the District, the State shall acquire all lands, easements, and rights-of-way which in its judgment are necessary for the construction of a reservoir with a capacity of up to five hundred thousand (500,000) acre-feet at the site of the Perris Reservoir, being the terminal reservoir on the East Branch of the California Aqueduct as specified in Section 12934(d)(2) of the Water Code. It is agreed that all lands in the watershed below the crest of the Bernasconi and other hills, which bound the reservoir site on three sides, and any other lands necessary in the opinion of the State for the construction of the dam and reservoir and for optimization of other project purposes associated with the reservoir, should be acquired.

[64] Added: Amendment 3
[65] Added: Amendment 4

(2) As heretofore requested by the District, the State shall commence immediately to do or prepare the necessary preliminary exploratory work, surveys, geologic studies, alternative designs, and any and all other engineering and administrative work required to enable the District to select and request an appropriate plan and schedule for the construction, in one or two stages, of a reservoir at the Perris Reservoir site to sizes to be designated by the District, which sizes may be larger than the optimum project size but not exceeding five hundred thousand (500,000) acre-feet.

(3) In furtherance of the work performed under paragraph (2), the State shall also do or prepare any necessary revision of studies, surveys, designs, plans and specifications for facilities associated with the Perris Reservoir project, including those for other project purposes, but excluding plans and specifications for construction of the dam.

(4) The District shall pay to the State, each year in advance, funds sufficient to cover all costs, which the State estimates will be occasioned in such year by reason of the State's complying with the requests of the District covered by this subdivision. Within thirty (30) days after the date of this Amendment No. 4, the State shall furnish the District a written statement of such charges for costs attributable to such proposed increase in capacity in the year 1965 and in the year 1966, with all 1965 charges and one-half (1/2) of the 1966 charges payable on or before January 1, 1966, and the remaining one-half (1/2) of such 1966 charges payable on or before July 1, 1966. The State shall furnish the District on or before July 1 of each year, commencing in 1966, a written statement of such charges for the next year. Each such statement shall reflect all accumulated costs attributable to such proposed increase in capacity incurred in prior years, together with interest thereon at the project interest rate, compounded annually; and shall give credit for all payments by the District, together with interest thereon from the respective dates of such payments at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semi-annually. Statements submitted by the State on each July 1 for the estimated costs for the next year shall be payable in two equal installments, the first installment being due on January 1 of such next year and the second installment being due on July 1 of such next year.

(5) The District may notify the State at any time after the date of this agreement that it does not wish Perris Reservoir to be enlarged to a capacity in excess of the optimum project size, and the State shall not thereafter incur costs occasioned by the requests of the District pertaining to such enlarged capacity, provided that the District shall remain liable for and shall reimburse the State for all costs of the State then made or committed in connection with the requests of the District covered by this subdivision.

(6) If, as a result of information developed pursuant to this subdivision, the District submits a request to the State for a change in the plan and schedule for the construction of Perris Reservoir, it is the intention of the District and the State that a subsequent contract amendment will be entered into for such change. If the District does not submit such a request prior to the date on which the State commences the final design of the dam for Perris Reservoir, the State shall design for a reservoir of a capacity of the optimum project size and shall not make any additional expenditures not then committed in connection with the enlargement of such reservoir to a capacity in excess of the optimum project size. The State shall notify the District in writing at least ninety (90) days prior to such date.

(7) If the District fails to request that Perris Reservoir be enlarged to a greater capacity than the optimum project size in accordance with paragraph (6), the State shall credit to the District any moneys advanced by the District for such enlargement which are then unexpended or uncommitted. Such unexpended and uncommitted moneys shall be credited to the next payment or payments (as they come due) of the capital cost component of the Transportation Charge. Such refund shall include interest from the dates of the respective advances of such moneys at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semi-annually. If and when the State sells or otherwise disposes of the excess lands acquired for the enlargement of the reservoir and not required for the reservoir actually constructed, including lands used for all project purposes, in addition to crediting the District with such unexpended and uncommitted moneys, the State shall credit to the District on the next payment or payments due of the capital cost component of the Transportation Charge all net amounts (after deducting all costs connected with the sale or disposal) received by the State. In the event the State utilizes all or part of such excess lands for purposes which would fall into the category of costs which are non-reimbursable by the District in accordance with the principles for allocating costs under this contract, the State shall credit the District in such manner with an amount equal to the purchase price (or condemnation award) paid for such lands, plus interest on such amount at the project interest rate compounded annually from the dates of the acquisition of the lands so utilized by the State.

(8) Notwithstanding anything in this subdivision to the contrary, it is understood that the State shall not be required to construct a dam and reservoir at the Perris site of a capacity in excess of that which it determines to be feasible under its standards of safety, nor to delay the construction of project transportation facilities necessary to meet the scheduled delivery dates as set forth in Article 6(a) of the water supply contracts for other contractors served through project facilities affected by the provisions of this subdivision.

(l) [66] Option of District to Have Perris Reservoir Enlarged.
<See Attachment C>

(1) The State agrees to modify its present design for Perris Reservoir Dam and to construct the dam in the manner and to the extent necessary so that when completed the dam will have the capability of being enlarged in two or more stages of construction to a size or sizes required for a reservoir with a capacity of up to and including five hundred thousand (500,000) acre-feet.

(2) The State will continue the geological explorations instigated by and being conducted under the provisions of Amendment No. 4 to this contract to determine the location of all borrow materials required to construct Perris Reservoir with a storage capacity of up to and including five hundred thousand (500,000) acre-feet, and will proceed to acquire those lands and other properties necessary to preserve and protect the availability and character of such borrow materials so that they can be used for the enlargement of the dam embankment, for saddle dams and for other related purposes at such time as it is deemed necessary to expand Perris Reservoir to a capacity of up to and including five hundred thousand (500,000) acre-feet.

(3) At any time or times during the term of this contract, the District has the option, but not the duty, to require the State to increase the size and capability of the Perris Reservoir embankment and other necessary appurtenant facilities and to do other work required to create and maintain a reservoir at this site which will have such storage capacity, not to exceed five hundred thousand (500,000) acre-feet, as shall be designated by the District, and the State agrees to comply with the District's requirements in this respect: Provided, That the State shall not be required to enlarge the dam and reservoir at the Perris site to a capacity in excess of that which it determines to be feasible under its standards of safety.

(4) The State agrees to modify its present design for the reaches of the California Aqueduct from Devil Canyon Power Plant to Perris Reservoir and to construct such reaches in the manner and to the extent necessary so that when completed such reaches will have the capability which is required to convey that portion of the District's maximum annual entitlement which will be delivered from Perris Reservoir if and when such reservoir has been enlarged to a storage capacity of five hundred thousand (500,000) acre-feet. The State further agrees that any capital costs incurred by reason of such modification and allocated to the District for payment shall be paid by the District in accordance with the

[66] Added: Amendment 5

provisions of subdivision (a), (b) and (c) of Article 24 of this contract: Provided, That at the same time as such payments are made, the District shall make such additional payments as may be necessary in order that the costs to any other contractor for its capacity in such reaches will not be greater than the costs that would have been derived for such contractor on the bases provided in its contract in the absence of this paragraph (4) of this subdivision (1) of this article.

(5) If and when the District requires the State to increase the size of Perris Reservoir to a capacity exceeding one hundred thousand (100,000) acre-feet, the customary and reasonable costs of relocating recreational and visitor facilities and of constructing substitute facilities to replace those which will be rendered unusable by reason of such increased capacity, shall be included in the costs to be paid by the District in advance in accordance with paragraph (6) below.

(6) The capital costs for the modification of the California Aqueduct referred to in paragraph (4) above, shall be paid by the District in accordance with the provisions of subdivision (a), (b) and (c) of Article 24. The District shall pay to the State, each year in advance, funds sufficient to cover all costs which the State estimates will be occasioned in such year by reason of the provisions of paragraphs (1), (2) and (5) above and the requirements of the District covered by paragraph (3) above. Within sixty (60) days after the date of this Amendment No. 5, the State shall furnish the District a written statement of such charges for costs the State estimates will be attributable to such provisions and requirements in the year 1966 and in the year 1967, with all 1966 charges and one-half (1/2) of the 1967 charges payable on or before January 1, 1967, and the remaining one-half (1/2) of such 1967 charges payable on or before July 1, 1967. The State shall furnish the District on or before July 1 of each year, commencing in 1967, a written statement of such charges for the next year. Each such statement shall reflect all accumulated costs so attributable which may have been incurred in prior years, together with interest thereon at the project interest rate, compounded annually; and shall give credit for all payments by the District, together with interest thereon from the respective dates of such payments at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semiannually. Statements submitted by the State on each July 1 for the estimated costs for the next year shall be payable in two equal installments, the first installment being due on January 1 of such next year and the second installment being due on July 1 of such next year.

(7) If the District at any time notifies the State that it will not thereafter require that Perris Reservoir be enlarged or further enlarged under the terms of this subdivision (1), and relinquishes its option to have the reservoir enlarged or further enlarged, the State shall credit to the District any moneys advanced by the District for such enlargement which are then unexpended or uncommitted. Such unexpended and uncommitted moneys shall be credited to the next payment or payments (as they come due) of the capital cost component of the Transportation Charge. Such credit shall include interest from the dates of the respective advances of such moneys at the applicable apportionment rate of the Surplus Money Investment Fund, compounded semi-annually. If and when the State sells or otherwise disposes of the excess lands acquired for the enlargement of the reservoir and not required for the reservoir actually constructed, including lands used for all project purposes, in addition to crediting the District with such unexpended and uncommitted moneys, the State shall credit to the District on the next payment or payments due of the capital cost component of the Transportation Charge all net amounts (after deducting all costs connected with the sale or disposal) received by the State. In the event the State utilizes all or part of such excess lands for purposes which would fall into the category of costs which are non-reimbursable by the District in accordance with the principles for allocating costs under this contract, the State shall credit the District in such manner with an amount equal to the purchase price (or condemnation award) paid for such lands, plus interest on such amount at the project interest rate compounded annually from the dates of the acquisition of the lands so utilized by the State.

(8) Except as modified or otherwise affected by this Amendment No. 5, the provisions of subdivision (k) of Article 47, added by Amendment No. 4 to this contract, shall remain in full force and effect.

(m) [67] Advance Payment of Capital Cost Component of the Transportation Charge.

At least twenty-four (24) months prior to the beginning of a calendar year in which the State desires that the District pay to the State an advance payment pursuant to Article 24(c)(2) of the District's contract, the State shall transmit a written request to the District for such payment, and the District shall pay to the State at the same time and in the same manner as it makes payments on the capital cost component of the Transportation Charge, one-half (1/2) of the requested amount on or before January 1 of the calendar year in which payment is requested to be made, and shall pay the remaining one-half (1/2) of such amount on or before July 1 of that year: Provided, That the

[67] Added: Amendment 7

amounts to be paid in advance will not exceed sixteen million three hundred thousand dollars ($16,300,000) prior to construction of the Pyramid Power Development and an additional amount not to exceed eight million dollars ($8,000,000) if construction of the Pyramid Power Development is to be completed prior to 1976 with funds provided by the sale of bonds issued by the State under the bond act: Provided further, That such request from the State is made between December 1, 1969, and January 1, 1975, and no such payment or any portion thereof shall be requested to be made subsequent to July 1, 1977.

(n) [68] Devil Canyon Power Plant Bypass.

(1) The Department shall construct for transport and delivery of water to the District, as part of the East Branch Aqueduct, a 300 cubic-foot-per-second bypass at Devil Canyon Power plant, designated as Reach 26B.

(2) The District shall be responsible for repayment of all capital costs of the bypass including financing costs, as well as payment of minimum operation, maintenance, power and replacement costs allocated to the bypass. Financing and repayment of capital costs shall be subject to Article 49(d). The construction costs portion of capital costs of the bypass shall be determined as the total construction costs of the bypass and Reach 26A East.

Branch Enlargement less the final estimated costs that would have been incurred had the bypass not been constructed. Minimum operation, maintenance, power and replacement costs shall be determined in the same manner as for other reaches of the East Branch Aqueduct.

(3) The bypass shall be constructed for emergency use. After the bypass is completed, the Department will conduct tests to determine whether the bypass could be operated on a regular basis for deliveries. If the State determines that the bypass increases the capacity available for deliveries to the District through Reach 25 and the portion of Reach 26A upstream of Reach 26B it shall so notify the District. If the District requests that a portion or all of such increase in capacity be available for deliveries on a non-emergency basis, the State shall make the requested capacity available and shall revise the allocation factors for Reach 25 and the portion of Reach 26A to reflect the increase in capacity made available for deliveries on a non-emergency basis to the District.

(4) Notwithstanding Subsection (b) of Article 26, the District shall not receive a power generation credit associated with Devil Canyon Power Plant for any water which is conveyed through the bypass.

[68] Added: Amendment 21

48. [69] Operation of East Branch Aqueduct from -- Devil Canyon Power Plant to Perris Reservoir (Reaches 28G through 28J). <See Attachments B, G and H>

The State agrees to operate all actual capacity provided in the reaches of the East Branch Aqueduct from Devil Canyon Power plant to Perris Reservoir, including that provided pursuant to Article 17, in accordance with the criteria for the East Branch facilities specified in Article 49(h).

49. [69] Enlargement Capacity from Junction, West Branch, California Aqueduct through Devil Canyon Power Plant (Reaches 18A through 26A). <See Attachments B, G, and H>

(a) Definitions.

When used in this Article 49, the following terms shall have the meanings hereinafter set forth:

(1) East Branch Enlargement Facilities--all of the following:

(A) The facilities remaining to be constructed as part of the East Branch Enlargement construction;

(B) The work done pursuant to the letter agreement between the State and The Metropolitan Water District of Southern California dated November 29, 1966, <Attachment B> which consisted of constructing the California Aqueduct between Cottonwood (now known as Alamo) Power Plant and Cedar Springs (now known as Silverwood) Reservoir so that, by future additions to the canal lining, siphons, and additional pumping units at Pearblossom Pumping Plant, the capacity could be increased by a then-estimated approximately 700 cubic feet per second;

(C) That portion of the enlargement of the Pearblossom Pumping Plant Forebay and Cofferdam construction which would not have been constructed but for the proposed East Branch Enlargement and which was done pursuant to the letter agreement between the State and The Metropolitan Water District of Southern California, dated January 18, 1984 <Attachment F>;

[69] Added: Amendment 19

(D) That portion of the canal lining work between Alamo Power plant and Pearblossom Pumping Plant done pursuant to the letter agreements between the State and The Metropolitan Water District of Southern California, dated July 2, 1984 <Attachment G> and May 15, 1985 <Attachment H> which increased the East Branch Aqueduct capacity beyond that set forth in Table B-2 as shown in State Bulletin 132-70;

(E) That portion of Reach 24 (Silverwood Lake) to be determined by a reallocation of Reach 24 to reflect the additional use to be made of that reach as a result of the East Branch Enlargement operation;

(F) That portion of Reach 25 (San Bernardino Tunnel) to be determined by an allocation of total delivery capability of Reach 25 between the basic East Branch facilities and the East Branch Enlargement as a result of East Branch Enlargement operation.

(2) Participating Contractor -- any contractor signing a contract amendment for participating in any East Branch Enlargement Facility.

(b) Sizing and Construction of Enlargement.

(1) The State shall construct the East Branch Enlargement Facilities to accommodate flows to at least the capacities contracted for by the State and the Participating Contractors. Capacity provided in each reach of the enlargement for transport and delivery of project water to the District shall be as shown in the following table:

REACH [1]	CFS OF CAPACITY	
18A	1,200	<Junction West Branch thru Alamo>
19	1,200	<Alamo Power Plant to Fairmont>
20A	1,200	<Fairmont thru 70th St. West>
20B	1,200	<70th St. West to Palmdale>
21	1,200	<Palmdale to Littlerock Creek>
22	1,200	<Littlerock Creek to Pearblossom Pumping Plant>
22B	1,200	<Pearblossom P. P. to West Fork Mojave River>
23	1,200	<West Fork Mojave River to Silverwood Lake>
24	1,200 [2]	<Cedar Springs Dam and Silverwood Lake
25	1,200 [3]	<Silverwood Lake thru South Portal San Bernardino Tunnel>
26A	1,200	<S. Portal S.B. Tunnel thru Devil Canyon Power Plant>

[1] These numbers apply to the reaches as set forth in Figure B-5 in State Bulletin 132-85.

[2] Additional flow through capacity in this reach (Silverwood Lake) to be included in the reallocation of capacity as provided for by subsection (d)(7) of this article.

[3] The 1,200 cfs Enlargement capacity in the Tunnel will be arrived at by an appropriate reallocation of basic and excess Tunnel capacity.

(2) The State shall construct the East Branch Enlargement Facilities in stages, with the first stage providing the District in each reach at least fifty percent of the capacity shown in the table set forth in Article 49(b)(1). The State shall determine the specific reach features to be enlarged in consultation with the Participating Contractors. All Participating Contractors which have capital cost repayment obligations in a reach shall be considered to have a minimum delivery capability in each stage. The minimum delivery capabilities of the Participating Contractors in each staged reach shall be in the same proportion as the Participating Contractor's proportion of the total enlargement capacity. The State shall not construct Reaches 18A through 23 and 26A of the East Branch Enlargement Facilities to capacities greater than shown in the following table provided that power facilities may be constructed to a larger capacity if found by the State to be economically or operationally justifiable after prior consultation with the Participating Contractors.

REACH	CFS OF CAPACITY	
18A	1,506	<Junction West Branch thru Alamo>
19	1,506	<Alamo Power Plant to Fairmont>
20A	1,541	<Fairmont thru 70th St. West>
20B	1,541	<70th St. West to Palmdale>
21	1,535	<Palmdale to Littlerock Creek>
22A	1,535	<Littlerock Creek to Pearblossom Power Plant>
22B	1,500	<Pearblossom P.P. to West Fork Mojave River>
23	1,683	<West Fork Mojave River to Silverwood Lake>
26A	1,600	<South Portal, San Bernardino Tunnel thru Devil Canyon Power Plant>

(3) The State shall make all reasonable efforts to complete construction of the first stage of the East Branch Enlargement Facilities as specified above by July 1, 1991. If the State determines that construction of the first stage cannot be accomplished by July 1, 1991 without incurring extra costs, it shall consult with the Participating Contractors.

(4) The State shall make all reasonable efforts to complete construction of any East Branch Enlargement Facilities necessary to accommodate the total of the constructed amount which are not completed as part of the first stage. It shall undertake further construction activities upon the earliest of (1) the State's determination that delivery schedules submitted pursuant to Article 12 justify such action or (2) a request by The Metropolitan Water District of Southern California that such action be taken. If the State fails to complete construction of any portion or portions of the East Branch Enlargement Facilities one or more of the agencies may complete construction pursuant to the procedure in Article 17(f).

(5) Upon completion of each stage of construction, the State shall determine whether actual capacity of the East Branch Enlargement Facilities differs from contracted for capacity. If actual capacity differs from contracted for capacity, the capacity provided for transport and delivery of project water shall be proportionately adjusted by the State among the Participating Contractors.

(c) East Branch Enlargement Transportation Charge.

The payments to be made by each Participating Contractor entitled to delivery of project water from or through the East Branch Enlargement Facilities shall include an annual charge under the designation East Branch Enlargement Transportation Charge. This charge shall return to the State during the repayment period associated with financing of East Branch Enlargement Facilities, those costs of the East Branch Enlargement Facilities which are allocated to the Participating Contractor in accordance with the cost allocation principles and procedures hereinafter set forth. Wherever reference is made, in connection with the computation, determination, or payment of the East Branch Enlargement Transportation Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the Participating Contractors as determined by the State. The East Branch Enlargement Transportation Charge shall consist of a capital cost component; and a minimum operation, maintenance, power, and replacement component, as these components are defined in and determined under Articles 49(d) and 49(e), respectively. For the purpose of allocations of costs pursuant to said articles, the East Branch Enlargement Facilities shall be segregated into aqueduct reaches as set forth in Figure B-5 in State Bulletin 132-85, provided, however, that Reach 23 may be adjusted after consultation with the contractors as a result of a delivery point being changed.

(d) East Branch Enlargement Transportation Charge -- Capital Cost Component.

(1) Method of Computation.

Each Participating Contractor shall be allocated a capital cost component of the East Branch Enlargement Transportation Charge which shall be sufficient to return to the State those capital costs of the East Branch Enlargement Facilities which are allocated to the Participating Contractor pursuant to subdivision (d)(2) of this article. The amount of this charge shall be determined by an allocation of capital costs to the Participating Contractor and a computation of annual payments of such allocated costs and interest, if any, thereon to be made by the Participating Contractor pursuant to this article. The capital costs allocated to the District shall be reduced by payments advanced by the District pursuant to Article 9(d)(4).

(2) Allocation of Capital Costs Among Participating Contractors.

The total amount of capital costs of each reach of the enlargement to be returned to the State shall be allocated among all Participating Contractors on the basis of the ratio of the capacity provided in that reach of the East Branch Enlargement Facilities for the transport and delivery of project water to the Participating Contractor to the total capacity provided in that reach of the East Branch Enlargement Facilities for the transport and delivery of project water to all Participating Contractors served from or through the reach.

(3) Determination of Capital Cost Component.

The amount of this component shall be determined as follows:

(A) The total amount of capital costs allocated to a Participating Contractor shall be the sum of the products obtained when there is multiplied, for each enlargement reach, the total amount of the capital costs of the enlargement reach to be returned to the State under the capital cost component of the East Branch Enlargement Transportation Charge by the ratio of the East Branch Enlargement capacity provided to make deliveries to the District in the reach in cubic feet per second (cfs), as provided in subarticle 49(b)(1), to the total cfs capacity of the reach of enlargement.

(B) The projected amounts of capital costs to be allocated annually to the District under the capital cost component of the East Branch Enlargement Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in Article 49(d)(3)(A), which principles and procedures shall be controlling as to allocations of capital costs to the Participating Contractors. These amounts shall be subject to redetermination by the State in accordance with Article 49(g).

(4) Financing of Allocated Capital Costs by a Participating Contractor.

(A) The District may elect to pay a portion or all of the capital costs of the enlargement construction allocated to the District by furnishing funds to the State in advance of the State incurring the capital costs, provided that the total remaining costs to be financed by the State shall not be less than $50 million. The District may elect in writing to use this option by June 15 of each year as to any portion of an East Branch Enlargement Facility not yet funded by the State. If the District does not elect this option by June 15 of a given year, it may, with the consent of the State elect the option at a later time in that year.

(B) For any year in which the District elects this option, the State shall, on or before July 1 furnish the District with a written statement of estimated amounts of funds needed by the State in the succeeding year and of the calendar dates by which the State will need the funds. During each succeeding year the State shall, on the first of each month, notify the District of funds needed within the succeeding month. The District shall pay to the State the requested funds within fifteen calendar days of receipt of notification. The District may elect to advance funds to the State on an accelerated schedule acceptable to the State. Unless otherwise agreed to by the District and the State, interest earned on any funds advanced pursuant to this paragraph shall be credited to reduce payments due from the District under this contract. To the extent practicable, interest earned shall be at the Surplus Money Investment Fund rate. The District may terminate its use of this option for a given year with the agreement of the State. If the District elects this option, subparagraphs (d)(5) and (d)(6) of this article shall not apply to any portion of capital costs to be paid pursuant to the option.

(C) If the District does not elect to pay all of the capital costs of the enlargement allocated to the District by furnishing funds to the State in advance, the State, after consultation with the District, shall prepare a plan for the State's financing of the East Branch Enlargement and shall give the District an opportunity to comment on the plan. The plan shall include but not be limited to the size of any revenue bond issuances and the form of necessary resolutions, articles and covenants.

(5) State Revenue Bond Financing of Allocated Capital Costs.

(A) Revenue Bond Charge.

If the District does not pay all of the capital costs allocated to the District pursuant to subparagraph (3) and the State issues revenue bonds to finance the enlargement construction, the portion of the capital costs not advanced pursuant to subparagraph (4) shall be recovered through a Revenue Bond Charge. The Revenue Bond Charges allocated to the Participating Contractors shall return to the State an amount equal to the financing costs the State incurs for that portion of the East Branch Enlargement Facilities constructed in whole or in part with funds from revenue bonds (including revenue bond anticipation notes). The elements of the financing costs shall include but not be limited to bond marketing expenses to the extent not financed from the proceeds of applicable revenue bond sales, interest expense during construction of the East

Branch Enlargement Facilities to the extent not provided for from bond proceeds, annual premiums for insurance or other security obtained pursuant to Article 49(d)(5)(E), and all semi-annual East Branch Enlargement Facilities revenue bond requirements including principal and interest and, to the extent not funded in advance of any proposed bond sale, or at any time following such a sale, in accordance with Articles 49(d)(5)(C) and 49(d)(5)(D), any additional requirements for coverage and deposits to reserves as required under applicable resolutions for the issuance of East Branch Enlargement Facilities revenue bonds. Any credits which shall include, but not be limited to, interest earnings or other earnings of the State in connection with such bonds shall when and as permitted by the bond resolution first be utilized for East Branch Enlargement Facilities construction purposes and thereafter all realized earnings shall be paid the Participating Contractors at least semi-annually. Such earnings shall for the purpose of determining each non-defaulting Participating Contractor's portion of any remaining capital costs be credited and paid to each non-defaulting Participating Contractor on the same basis that the capital costs were allocated to each Participating Contractor.

(B) Revenue Bond Charge Computation.

The Revenue Bond Charge for the East Branch Enlargement construction payable by the District shall be computed as follows. The capital costs allocable to the District pursuant to Article 49(d) shall be determined. Any amounts paid by the District pursuant to Article 49(d)(4) shall be subtracted. The resulting difference shall be divided by the total of all capital costs to be financed by revenue bonds. The ratio resulting from the division shall be applied to each element of the total revenue bond financing costs. Until such time as the actual costs to be used in the foregoing computation are known, such computation shall be based on estimates of such costs. The District's Revenue Bond Charge shall be paid by the District semiannually at least 40 days before the State is required to make the corresponding semi-annual payment to the bondholders.

(C) Excess Coverage.

If the amount of coverage on any issue of revenue bonds, and interest earned on the coverage, is in excess of that required under the applicable bond resolution, articles or covenants, each participating contractor's share of the excess shall be in the same proportion as charges were paid by each participating contractor pursuant to Article 49(d)(5)(B)

for the portion of the facilities financed by said issue of revenue bonds. When and as permitted by the terms of the bond resolution, the share of excess coverage together with any realized interest earnings, shall at the Participating Contractor's option be returned to the Participating Contractor or be utilized to fund remaining East Branch Enlargement construction costs to the extent not otherwise provided for. To the extent practicable, interest earned shall be at the Surplus Money Investment Fund rate.

(D) Reserves.

The State shall maintain revenue bond reserve funds no greater than necessary, as required under the applicable bond resolution, articles or covenants. In determining the level of revenue bond reserves to be maintained the State may, to the extent allowable under the applicable bond resolution, articles, or covenants, take account of any restricted reserve funds, other than replacement reserve funds, maintained by the individual Participating Contractors for the payment of State water contract payment obligations. Interest earned on revenue bond reserves maintained by the State and any excess reserve funds shall be credited promptly thereon to each Participating Contractor by the State. Upon retirement of any issue of revenue bonds and in accordance with the terms of the bond resolution, reserves maintained by the State on account of such issue, together with interest earnings thereon, shall be used to pay the final net annual debt service for such issue. Any reserves maintained by the State on account of an issue of revenue bonds and remaining after retirement of such issue, shall be repaid to the Participating Contractors in proportion to the total reserves that each Participating Contractor paid. To the extent practicable, interest earned shall be at the Surplus Money Investment Fund rate.

(E) Insurance.

To the extent economically justifiable, as determined by the State after consultation with the Participating Contractors, the State shall obtain insurance or maintain other security protecting bondholders and Participating Contractors against costs resulting from the failure of any Participating Contractor to make the payments required by this Article 49(d)(5).

(6) State Non-Revenue Bond Financing of Allocated Capital Costs.

The State may use any of its available funds other than revenue bonds, to finance all, or a portion of the capital costs of the enlargement construction. Until revenue bonds or other debt instruments are issued, the Participating Contractors shall pay interest at the Surplus Money Investment Fund rate on whatever funds are used. Any State debt instrument other than revenue bonds or bond anticipation notes shall only be used after consultation with the Participating Contractors.

(7) Reallocation of Costs.

No later than the date of completion of the first stage of the East Branch Enlargement Facilities, the State shall in consultation with the contractors participating in the repayment of the reaches, reallocate costs for Reach 24 (Silverwood Lake). Such reallocation of costs shall apply to years beginning with the date of completion of the first stage of the East Branch Enlargement Facilities. The State shall also reallocate at the same time the costs of Reach 25 (San Bernardino Tunnel) among all contractors participating in repayment of such reach, to reflect the redistribution of flow capacity necessary for the East Branch Enlargement Facilities. Such reallocation shall include historical as well as future costs as appropriate. By the same date the State, in consultation with the contractors participating in the repayment of the reaches, shall also reallocate all costs associated with the work done pursuant to the letter agreement between the State and The Metropolitan Water District of Southern California dated November 29, 1966 <Attachment B>, as described in Subarticle 49(a)(1)(B).

(8) Allocation of Improvement Costs.

Using the procedure provided in Article 24 (Transportation Charge--Capital Cost Component) the State shall, as of the effective date of Article 49, allocate among all contractors entitled to delivery of project water from or through the affected reaches those design and construction costs encompassed in letter agreements dated January 18, 1984 <Attachment F>, July 2, 1984 <Attachment G>, and May 15, 1985 <Attachment H>, between the State and The Metropolitan Water District of Southern California which would have been incurred irrespective of East Branch Enlargement Facilities. The Metropolitan Water District of Southern California shall receive credits for principal and interest at the project interest rate. Interest at the project interest rate shall be paid on funds advanced by The Metropolitan Water District of Southern California, pursuant to the aforesaid letter agreements, in excess of the allocations made pursuant to this subparagraph.

(9) Reimbursement for Previously Advanced East Branch Enlargement Costs.

If additional contractors become participants in Reach 25, The Metropolitan Water District of Southern California shall, no later than the date of completion of the first stage of the East Branch Enlargement Facilities, receive credits with interest at a rate of 6 percent for funds previously paid by it to the State for excess capacity in Reach 25 allocated to such additional contractors. By the same time, all existing contractors in Reach 25 will receive credits with interest at the project interest rate for any payments previously made by them with interest at the project interest rate, for basic capacity costs of Reach 25 to the extent those payments exceed the amounts they would have been obligated to pay if this amendment had been in effect as of the date funds were first paid. Tables B-1 and B-2 as shown in State Bulletin 132-70 shall be appropriately adjusted.

(e) East Branch Enlargement Transportation Charge -- Minimum Operation, Maintenance, Power, and Replacement Component.

(1) The minimum operation, maintenance, power, and replacement component of the East Branch Enlargement Transportation Charge shall return to the State those minimum operation, maintenance, power, and replacement costs which in the judgment of the State are incurred solely because of construction, operation and maintenance of the East Branch Enlargement Facilities, and which are based on the proportional capital cost allocation to the District for such enlargement facilities, by reach. Other costs which cannot be attributed solely to East Branch facilities provided for pursuant to Article 17(a) shall be shared in accordance with a formula to be developed by the State in consultation with contractors participating in the repayment of the capital costs of the affected reaches. The State may establish reserve funds to meet anticipated minimum replacement costs in the same manner provided for in Article 25(a).

(2) The total projected minimum operation, maintenance, power and replacement costs of each reach of the East Branch Enlargement Facilities for the respective year shall be allocated among all Participating Contractors on the basis of the ratio of the capacity provided in the East Branch Enlargement Facilities reach for the transport and delivery of project water to each Participating Contractor to the total capacity provided in the East Branch Enlargement Facilities reach for the transport and delivery of project water to all Participating Contractors served from or through the reach.

(3) Notwithstanding the provisions of subdivisions (e)(1) and (e)(2) of this article, or of Article 1(u), the costs of off-aqueduct power facilities associated with deliveries of water through East Branch Enlargement Facilities shall be included in the determinations and allocations pursuant to Article 25(d). There shall be no separate off-aqueduct power facilities determination and allocation for East Branch Enlargement Facilities.

(f) East Branch Enlargement Variable Operation, Maintenance, Power, and Replacement Costs.

The variable operation, maintenance, power, and replacement costs associated with deliveries of water through East Branch Enlargement Facilities shall be included in the determinations and allocations pursuant to Article 26. There shall be no separate variable operation, maintenance, power, and replacement component of the East Branch Enlargement Transportation Charge.

(g) Redetermination of Charges.

(1) Determinative Factors Subject to Retroactive Charge.

The State shall redetermine the values and amounts chargeable to Participating Contractors in 1988 or the year following the year in which this article is effective, whichever is later, and each year thereafter as needed in order that the East Branch Enlargement charges to the District accurately reflect the increases or decreases from year to year in projected costs, properly attributable to each Participating Contractor. In addition, each such redetermination shall include an adjustment of the components of the charges to be paid by each Participating Contractor for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the Participating Contractor or credited to the Participating Contractor's account in the manner described in Articles 49(g)(2) and 49(g)(3) below.

(2) Adjustment: East Branch Enlargement Transportation Charge -- Capital Cost Component.

Adjustments for prior underpayments or overpayments of the capital cost component of the East Branch Enlargement Transportation Charge to the Participating Contractor, together with accrued interest charges or credits thereon

computed at the then current Surplus Money Investment Fund rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination.

(3) Adjustment: East Branch Enlargement Transportation Charge -- Minimum Operation, Maintenance, Power, and Replacement Component.

One-twelfth of the adjustments for prior underpayments or overpayments of the Participating Contractor's minimum operation, power, and replacement component of the East Branch Enlargement Transportation Charge for each year shall be added or credited and paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current Surplus Money Investment Fund rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year when the underpayment or overpayment occurred to and including the year following the redetermination.

(h) East Branch Operation.
<Attachment J>

Requests for delivery of water through the East Branch Enlargement Facilities shall be subject to Article 12. Except as otherwise provided, the East Branch Enlargement Facilities shall be operated as an integral part of the East Branch Aqueduct and shall be subject to the same criteria. To the extent that then-current deliveries involve rates of flow within the limitations of Article 12(b) or involve capacities less than those on which the contractor's capital charges are based, the State shall provide the deliveries with no power peaking charges. To the extent delivery capability is available to permit then-current deliveries at a rate of flow in excess of the lesser of that provided in (a) Article 12(b), or (b) of the sum of the capacities on which the District's capital charges are based in the basic East Branch Aqueduct Facilities and the District's proportional share of the operational capacity of the East Branch Enlargement Facilities, such deliveries will be allowed if such deliveries do not adversely affect the ability of other contractors to receive entitlement deliveries. However, if such excess deliveries would cause increased power costs to any other contractors, the District shall pay the power costs that would otherwise increase power costs to the other water contractors. These power costs resulting from such excess deliveries will be based upon

administrative cost allocation procedures adopted by the Director of the Department of Water Resources after consultation with the contractors. Before beginning deliveries that would involve extra power peaking charges, the State shall consult with the District to determine if the District desires (a) a change in its delivery schedule or (b) modifications in East Branch Aqueduct or Enlargement operation to avoid the increased power costs.

(i) Failure to Meet Payment Obligations Under Article 49.

(1) If a Participating Contractor defaults in payments due under Article 49 and the costs of other Participating Contractors would as a consequence be increased, the State shall, in addition to any actions taken pursuant to Articles 32 and 34, notify the defaulting Participating Contractor that if the Participating Contractor fails to cure the default within 30 days, the State will offer the capacity provided for the Participating Contractor to the other Participating Contractors. If the Participating Contractor fails to cure the default within thirty (30) days of notice by the State, the State shall offer to each Participating Contractor, in proportion to the contractor's degree of participation in the enlargement, the opportunity to assume responsibility for the capital charges and delivery capability on which the defaulting contractor's capital costs were based. If Participating Contractors fail to cure the default, The Metropolitan Water District of Southern California shall assume responsibility for the capital charges on which the defaulting contractor's capital costs were based, and shall receive the capacity associated with such capital charges. Article 49(b)(1) shall be appropriately adjusted.

(2) No credits shall be assigned to a Participating Contractor under this article while the Participating Contractor is in default of any payment to the State under this article for a period of more than thirty (30) days.

50. [70] Water System Revenue Bond Financing Costs.
<Attachment L>

(a) Charges to the Agency <District> for water system revenue bond financing costs shall be governed by provisions of this article. Charges to all contractors for water systems revenue bond financing costs shall return to the State an amount equal to the annual financing costs the State incurs in that year for water system revenue bonds (including water system revenue bond anticipation notes). Annual financing costs shall include, but not be limited to, any annual principal and interest on water system revenue bonds plus any additional requirements for bond debt service coverage, deposits to

[70] Added: Amendment 20

reserves, and annual premiums for insurance or other security obtained pursuant to subdivision (f) of this article. The State shall provide credits to the contractors for excess reserve funds, excess debt service coverage, interest, and other earnings of the State in connection with repayment of such revenue bond financing costs, when and as permitted by the bond resolution. When such credits are determined by the State to be available, such credits shall be promptly provided to the contractors and shall be in proportion to the payments under this article from each contractor. Reserves, bond debt service coverage, interest, and other earnings may be used in the last year to retire the bonds.

(b) Annual charges to recover water systems revenue bond financing costs shall consist of two elements. <See Attachments K and L>

(1) The first element shall be an annual charge to the Agency <District> for repayment of capital costs of water system facilities as determined under Articles 22 and 24 of this contract with interest at the project interest rate. For conservation facilities, the charge shall be a part of the capital cost component of the Delta Water Charge in accordance with Article 22. For transportation facilities, the charge shall be a part of the capital cost component of the Transportation Charge in accordance with Article 24.

(2) The second element shall be the Agency's <District's> share of a Water System Revenue Bond Surcharge to be paid in lieu of a project interest rate adjustment. The total annual amount to be paid by all contractors under this element shall be the difference between the total annual charges under the first element and the annual financing costs of the water system revenue bonds. The amount to be paid by each contractor shall be calculated annually as if the project interest rate were increased to the extent necessary to produce revenues from all contractors sufficient to pay such difference for that year. In making that calculation, adjustments in the Agency's <District's> Transportation capital cost component charges for prior overpayments and underpayments shall be determined as if amortized over the remaining years of the project repayment period.

(c) The Water System Revenue Bond Surcharge will be identified by component and charge in the Agency's <District's> invoice.

(d) Timing of Payments. Payments shall be made in accordance with Article 29(f) of this contract.

(e) Reduction in Charges. The Water System Revenue Bond Surcharge under Article 50(b)(2) shall cease for each series of water system revenue bonds when that series is fully repaid. However, the annual charge determined pursuant to Article 50(b)(1) shall continue to be collected for the time periods otherwise required under Articles 22 and 24. <See: Attachments T and U>

After the Department has repaid the California Water Fund in full and after each series of Water System Revenue Bonds is repaid, the Department will reduce the charges to all contractors in an equitable manner in a total amount that equals the amount of the charges under Article 50(b)(1) that the Department determines is not needed for future financing of facilities of the System which, in whole or in part, will serve the purposes of the water supply contract with the Agency <District>.

(f) To the extent economically feasible and justifiable, as determined by the State after consultation with contractors, the State shall maintain insurance or other forms of security protecting bondholders and non-defaulting contractors against costs resulting from the failure of any contractor to make the payments required by this article.

(g) Before issuing each series of water system revenue bonds, the State shall consult with the contractors, prepare a plan for the State's future financing of water system facilities, and give the Agency <District> an opportunity to comment on the plan. The plan shall include but not be limited to the size of any water system revenue bond issuances and the form of any necessary resolutions or supplements.

(h) Defaults.

(1) If a contractor defaults partially or entirely on its payment obligations calculated under this article and sufficient insurance or other security protecting the non-defaulting contractors is not provided under Article 50(f), the State shall allocate a portion of the default to each non-defaulting contractor. The Agency's <District's> share of the default shall be equal to an amount determined by multiplying the total default amount to be charged to all non-defaulting contractors by the ratio that the Agency's <District's> maximum Table A entitlements bears to the maximum Table A entitlements of all non-defaulting contractors. However, such amount shall not exceed in any year 25 percent of the Water System Revenue Bond financing costs that are otherwise payable by the Agency <District> in that year. The amount of default to be charged to non-defaulting contractors shall be reduced by any receipts from insurance protecting non-defaulting contractors and bond debt service coverage from a prior year and available for such purpose. <Attachment L>

(2) If a contractor defaults partially or entirely on its payment obligations under this article, the State shall also pursuant to Article 20, upon six months' notice to the defaulting contractor, suspend water deliveries under Article 20 to the defaulting Contractor so long as the default continues. The suspension of water deliveries shall be proportional to the ratio of the default to the total water system revenue bond payments due from the defaulting contractor. However, the State may reduce, eliminate, or not commence suspension of deliveries pursuant to this subparagraph if it determines suspension in the amounts otherwise required is likely to impair the defaulting contractor's ability to avoid further defaults or that there would be insufficient water for human consumption, sanitation, and fire protection. The State may distribute the suspended water to the non-defaulting contractors on terms it determines to be equitable.

(3) During the period of default, credits otherwise due the defaulting contractor shall be applied to payments due from the defaulting contractor.

(4) Except as otherwise provided in Article 50(h)(3), the defaulting contractor shall repay the entire amount of the default to the State with interest compounded annually at the Surplus Money Investment Fund rate before water deliveries that had been suspended shall be fully resumed to that contractor. If the defaulting contractor makes a partial repayment of its default, the Department may provide a proportional restoration of suspended deliveries. The amount of the default to be repaid shall include any amounts previously received by the State from insurance proceeds, bond debt service coverage, or other reserves, and payments from other contractors pursuant to this subparagraph (h). The defaulting contractor shall not be entitled to any make-up water deliveries as compensation for any water deliveries suspended during the period when the contractor was in default.

(5) At such time as the default amount is repaid by the defaulting contractor, the non-defaulting contractors shall receive credits in proportion to their contributions towards the amount of the default with interest collected by the State on the defaulted amount.

(6) In the event there is an increase in the amount a non-defaulting contractor contributes to reserves and/or bond debt service coverage, such increase shall be handled in the same manner as provided in Article 50(a).

(7) Action taken pursuant to this subarticle shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

(i) [Inoperative] Power of Termination. <Attachments N and O>

(1) The Department and the Agency <District> agree to negotiate in good faith the development of a means to provide adequate protection for the Department's cash flow into priorities one and two for revenues under Water Code Section 12937(b) with the goal of obtaining agreement by April 1, 1987. The Department and the Agency <District> agree to continue negotiations beyond April 1, 1987 if necessary to meet their common goal of arriving at agreement.

(2) If such an agreement has not been reached by April 1, 1987, and if the Director of Water Resources determines that adequate progress has not been made toward such an agreement, the Director may give notice to the Agency <District> and other contractors that he intends to exercise the power to terminate provided in this subarticle 50(i). The Director's authority to give such a notice shall terminate on July 1, 1988.

(3) After six months from the date of issuing the notice of intent to terminate, but in no event later than January 1, 1989, the Director may terminate the authority of the Department to issue additional series of water system revenue bonds using the repayment provisions of Article 50. The Department shall promptly notify the Agency <District> and other contractors that the Director has exercised the power of termination.

(4) No additional series of water system revenue bonds shall be issued under the provisions of this Article 50 after the Director has exercised the power to terminate, but Article 50 shall remain in effect as to any series of water system revenue bonds issued prior to the time the Director exercises the power to terminate.

(5) An exercise of the power to terminate provided in this subarticle 50(i) shall also rescind any changes made by this amendment in the schedule of payment of overpayment or underpayment of capital costs resulting from a change in the project interest rate and shall also rescind the addition of item (7) to Article 1(t). However, if the Department has borrowed any funds under Article 1(t)(7), Article 1(t)(7) shall remain in effect as to that and only that borrowing. Upon the exercising of the power to terminate, subarticles 28(e) and (f) shall be rescinded and Article 1(t) shall read as it previously read as shown on Attachment Number 1 to this amendment. <See Attachment M>

(6) At any time before January 1, 1989, so long as the Director has not already exercised the power of termination, the Director may irrevocably waive his right to exercise the power of termination or may rescind any previously issued notice of intention to terminate. <See Attachment N>

(7) If the Director does not exercise the power of termination before January 1, 1989, this subarticle 50(i) shall expire, and the remainder of this Article 50 shall remain in effect. Changes made by this amendment to other articles shall also remain in effect.

[71] (j) Amounts payable under this article shall not be affected by any reductions in payments pursuant to Article 51.

[72] 51. Financial Adjustments.

(a) General Operating Account.

(1) The State shall maintain a General Operating Account to provide the moneys needed to pay obligations incurred by the State of the types described in Water Code sections 12937(b)(1) and (2) in the event of emergency or cash flow shortages.

(2) An initial deposit of $15 million shall be made available from revenue bond reserves that are no longer required by revenue bond covenants and that would otherwise be credited to the contractors including the District. In 1998 or when the funds become available an additional $7.7 million will be deposited in the General Operating Account from revenue bond reserves that are no longer required by revenue bond covenants and that would otherwise be credited to the contractors including the District, bringing the deposits to that account under this article to $22.7 million.

(3) The balance in the General Operating Account will increase pursuant to subdivision (e)(3)(v) of this article to an amount determined by the State but not in excess of $32 million. However, after the year 2001, the maximum amount of the fund may increase or decrease annually by not more than the same percentage as the increase or decrease in the charges, other than power charges for pumping water, to all the contractors for the previous year from the charges for the year before that for obligations under subdivisions (c)(2)(ii) and (iii) of this article.

[71] Added: Amendment 25
[72] Added: Amendment 25

(b) State Water Facilities Capital Account.

(1) The State shall establish a State Water Facilities Capital Account to be funded from revenues available under Water Code section 12937(b)(4). Through procedures described in this article and as limited by this article, the State may consider as a revenue need under subdivision (c)(2)(v) of this article and may deposit in the State Water Facilities Capital Account the amounts necessary to pay capital costs of the State Water Facilities for which neither general obligation bond nor revenue bond proceeds are available, including but not limited to planning, reconnaissance and feasibility studies, the San Joaquin Valley Drainage Program and, through the year 2000, the CALFED Bay-Delta Program.

(2) The Director of the Department of Water Resources shall fully consult with the contractors and consider any advice given prior to depositing funds into this account for any purposes. Deposits into this account shall not exceed the amounts specified in subdivision (c)(2)(v) of this article plus any amounts determined pursuant to subdivision (e)(1)(iii) of this article.

(3) The State shall use revenue bonds or other sources of moneys rather than this account to finance the costs of construction of any major capital projects.

(c) Calculation of Financial Needs.

(1) Each year the State shall calculate in accordance with the timing provisions of Articles 29 and 31 the amounts that would have been charged (but for this article) to each contractor as provided in other provisions of this contract.

(2) Each year the State shall also establish its revenue needs for the following year for the following purposes, subject to the following limitations:

(i) The amount required to be collected under the provisions of this contract, other than this article, with respect to all revenue bonds issued by the State for Project Facilities.

(ii) The amount required for payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof as described in Water Code section 12937(b)(1). These costs shall not include operation and maintenance costs of any Federal Central Valley Project facilities constructed by the United States and acquired by the State of California after 1994, other than the State's share of the joint use facilities which include San Luis Reservoir, the San Luis Canal and related facilities.

(iii) The amount required for payment of the principal of and interest on the bonds issued pursuant to the Burns-Porter Act as described in Water Code section 12937(b)(2).

(iv) Any amount required for transfer to the California Water Fund in reimbursement as described in Water Code section 12937(b)(3) for funds utilized from said fund for construction of the State Water Resources Development System.

(v) For the years 1998 and thereafter, the amount needed for deposits into the State Water Facilities Capital Account as provided in subdivision (b) of this article, but (A) not more than $6 million per year for the years 1998, 1999 and 2000, and (B) not more than $4.5 million per year for the years 2001 and thereafter.

(3) Subject to the provisions of subdivision (e) of this article, the State shall reduce the annual charges in the aggregate for all contractors by the amounts by which the hypothetical charges calculated pursuant to subdivision (c)(1) above exceed the revenue needs determined pursuant to subdivision (c)(2) above. The reductions under this article shall be apportioned among the contractors as provided in subdivisions (d), (e), (f) and (g) of this article. Reductions to contractors shall be used to reduce the payments due from the contractors on each January 1 and July 1; provided, however, that to the extent required pursuant to subdivision (h) of this article, each Agricultural Contractor shall pay to the Agricultural Rate Management Trust Fund an amount equal to the reduction allocated to such Agricultural Contractor. Any default in payment to the trust fund shall be subject to the same remedies as any default in payment to the State under this contract.

(4) The State may submit a supplemental billing to the District for the year in an amount not to exceed the amount of the prior reductions for such year under this article if necessary to meet unanticipated costs for purposes identified in Water Code section 12937(b)(1) and (2) for which the State can issue billings under other provisions of this contract. Any supplemental billing made to the District for these purposes shall be in the same proportion to the total supplemental billings to all contractors for these purposes as the prior reduction in charges to the District in that year bears to the total reductions in charges to all contractors in that year and shall be treated as reducing the amount of the reduction made available for that year to the District by the amount of the supplemental bill to the District.

(5) The State may also submit a supplemental billing to the District for the year if necessary to meet unanticipated costs for revenue bond debt service and coverage for which the State can issue a statement of charges under provisions of this contract other than this article. The relative amounts of any supplemental billing made to the District and to other contractors for revenue bond purposes shall be governed by such other applicable provisions of this contract.

(6) Payment of any supplemental billing shall be due thirty days after the date of the invoice. Delinquency and interest on delinquent amounts due shall be governed by Article 32.

(d) Apportionment of Reductions between Agricultural and Urban Contractors.

(1) Reductions available under this article are projected to begin to occur in 1997. The numbers and percentages in this subdivision reflect certain estimates of dollars and sharing of reductions. The actual reductions may vary slightly from the amounts described below. The State shall determine the availability of reductions for each year in accordance with this article.

(2) Reductions shall be phased in as follows:

(i) In 1997 reductions in the amount of $14 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(ii) In 1998 reductions in the amount of $17 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(iii) In 1999 reductions in the amount of $32 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(iv) In 2000 reductions in the amount of $33 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(3)(i) In the event that the aggregate amount of reductions in any of the years 1997 through 2000 is less than the respective amount projected for such year in subdivision (d)(2) above, the shortfall shall be taken first from reductions that would have been provided to Urban Contractors. Only after all reductions to Urban Contractors have been eliminated in a given year shall the remaining shortfall be taken from reductions scheduled for Agricultural Contractors. Any projected reductions not made available due to such shortfalls in the years 1997 through 2000 shall be deferred with

interest at the project interest rate to the earliest subsequent years when reductions in excess of those projected for those years are available. Such deferred reductions with interest at the project interest rate shall be applied to the charges of the contractors whose reductions have been deferred.

(ii) In the event that the aggregate amount of reductions available in any of the years 1997 through 2000 is greater than the sum of (A) the respective amount projected for such year in subdivision (d)(2) above, plus (B) the amount of any shortfall with accrued interest at the project interest rate, remaining from any prior year to be applied, the excess shall be applied for the purposes and in the amounts per year described in subdivisions (e)(3)(iii), (iv), (v) and (vi) of this article, in that order.

(4) In 2001 and in each succeeding year reductions equal to or in excess of $40.5 million are projected to be available and shall be applied as follows:

(i) If reductions are available in an amount that equals or exceeds $40.5 million, $10 million of reductions shall be apportioned among the Agricultural Contractors, and $30.5 million of reductions shall be apportioned among the Urban Contractors. If reductions are available in an amount greater than $40.5 million, the excess shall be applied as provided in subdivision (e)(3) of this article, subject however to subdivision (e)(1).

(ii) If reductions are available in an amount less than $40.5 million in any of these years, the reductions shall be divided on a 24.7% - 75.3% basis between the Agricultural Contractors and the Urban Contractors respectively. Any such reductions not made due to shortages shall be applied without interest in the next year in which reductions in an amount in excess of $40.5 million are available pursuant to subdivision (e)(3) of this article with any remainder that is not available carried over without interest to be applied in the earliest subsequent years when reductions in excess of $40.5 million are available.

(5) Annual charges to a contractor shall only be reduced prospectively from and after the date it executes the Monterey Amendment to this contract. Apportionments of reductions shall be calculated on the assumption that all contractors have executed such amendment.

(e) Review of Financial Requirements.

(1) In 2001 and every fifth year thereafter the Director of the Department of Water Resources, in full consultation with the contractors, will review the financial requirements of the State Water Resources Development System and determine the following:

(i) The amount of revenues that are needed for State Water Resources Development System purposes in addition to those needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii), and (iv) of this article;

(ii) If the aggregate amount that would have been charged to all contractors in any year but for this article exceeds the sum of (A) the amount of revenues needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii) and (iv), plus (B) $40.5 million, plus (C) the amount determined pursuant to subdivision (c)(2)(v) of this article, the amount of such excess.

(iii) The amount of the excess determined in subdivision (e)(1)(ii) above that should be collected by the State for additional State Water Resources Development System purposes and the amount of such excess that should be used for further annual charge reductions.

(2) After making the determinations required above, the State may collect the revenues for additional State Water Resources Development System purposes in the amount determined pursuant to subdivision (e)(1)(iii) above.

(3) If and to the extent that as a result of such determinations, the aggregate amount to be charged to contractors is to be reduced by more than $40.5 million per year, the following priorities and limitations shall apply with respect to the application of such additional reductions:

(i) First, reductions shall be allocated to make up shortfalls in reductions from those projected for the years 1997 through 2000 with interest at the project interest rate pursuant to subdivision (d)(3)(i).

(ii) Second, reductions shall be allocated to make up shortfalls in reductions from those projected for the years beginning with 2001 without interest pursuant to subdivision (d)(4)(ii).

(iii) Third, additional reductions in the amount of $2 million per year shall be apportioned among the Urban Contractors until a total of $19.3 million in such additional reductions have been so applied.

(iv) Fourth, reductions up to an additional $2 million per year shall be allocated to make up any shortfalls in the annual reductions provided for in subdivision (e)(3)(iii).

(v) Fifth, $2 million per year shall be charged and collected by the State and deposited in the General Operating Account to bring the account ultimately up to an amount determined by the State but not in excess of $32 million with adjustments as provided in subdivision (a) of this article. Any amount in the account in excess of this requirement shall be returned to general project revenues.

(vi) Sixth, remaining amounts if any shall be used for reductions divided on a 24.7% - 75.3% basis between the Agricultural Contractors and the Urban Contractors respectively.

(f) Apportionment of Reductions Among Urban Contractors.

Reductions in annual charges apportioned to Urban Contractors under subdivisions (d) and (e) of this article shall be further allocated among Urban Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Urban Contractor shall be based on each Urban Contractor's proportionate share of total allocated capital costs as calculated below, for both project conservation and project transportation facilities, repaid by all Urban Contractors over the project repayment period.

(1) The conservation capital cost component of the reduction allocation shall be apportioned on the basis of maximum annual entitlement. Each Urban Contractor's proportionate share shall be the same as the percentage of that contractor's maximum annual entitlement to the total of all Urban Contractors' maximum annual entitlements.

(2) The transportation capital cost component of the reduction allocation shall be apportioned on the basis of transportation capital cost component repayment obligations, including interest over the project repayment period. Each Urban Contractor's proportionate share shall be the same as the percentage that the contractor's total transportation capital cost component repayment obligation is of the total of all Urban Contractors' transportation capital cost component repayment obligations.

(i) Recalculations shall be made annually through the year 1999. Beginning in the year 2000 recalculations shall be made every five years unless an Urban Contractor requests a recalculation for an interim year and does so by a request in writing delivered to the Department by January 1 of the year in which the recalculation is to take place.

(ii) The transportation capital cost component repayment obligations, for purposes of this Article 51(f), shall be based in the year of recalculation on the then most recent Department of Water Resources Bulletin 132, Table B-15, "Capital Cost Component of Transportation Charge for Each Contractor," or its equivalent, excluding any costs or entitlement associated with transfers of entitlement from Agricultural Contractors pursuant to Article 53.

(3) To reflect the relative proportion of the conservation capital cost component and the transportation capital cost component to the total of all capital cost repayment obligations, the two cost components shall be weighted as follows:

(i) The conservation capital cost component shall be weighted with a thirty percent (30%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of maximum annual entitlements as calculated in subdivision (f)(1) of this article by thirty percent (30%).

(ii) The transportation capital cost component shall be weighted with a seventy percent (70%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of transportation capital cost component repayment obligations as calculated in subdivision (f)(2) of this article by seventy percent (70%).

(iii) A total, weighted capital cost percentage shall be calculated for each Urban Contractor by adding the weighted conservation capital cost component percentage to their weighted transportation capital cost component percentage.

(4) The total amount of the annual charges to be reduced to Urban Contractors in each year shall be allocated among them by multiplying the total amount of annual charges to be reduced to the Urban Contractors by the total, weighted capital cost percentages for each such contractor. If the amount of the reduction to an Urban Contractor is in excess of that contractor's payment obligation to the Department for that year, such excess shall be reallocated among the other Urban Contractors.

(5) In the case of a permanent transfer of urban entitlement, the proportionate share of annual charge reductions associated with that entitlement shall be transferred with the entitlement to the buying contractor. In the case of an entitlement transfer by either Santa Barbara County Flood Control and Water Conservation District or San Luis Obispo County Flood Control and Water Conservation District, the reductions in annual charges to that agency shall be allocated (a) on the basis of that entitlement being retained by that agency which bears Coastal Branch Phase II transportation costs, (b) on the basis of that entitlement being retained by that agency which does not bear Coastal Branch Phase II transportation costs, and (c) on the basis of the balance of that agency's entitlement which also does not bear Coastal Branch Phase II transportation costs.

(g) Apportionment of Reductions Among Agricultural Contractors.

(1) Reductions in annual charges apportioned to Agricultural Contractors under subdivisions (d) and (e) of this article shall be allocated among the Agricultural Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Agricultural Contractor for the years 1997 through 2001 shall be based on each Agricultural Contractor's estimated proportionate share of the total project costs, excluding the variable operation, maintenance, power and replacement components of the Delta Water Charge and the Transportation Charge and also excluding off-aqueduct power charges, to be paid by all Agricultural Contractors for the years 1997 through 2035, calculated without taking into account this article. For purposes of these calculations, Kern County Water Agency and Dudley Ridge Water District's estimated project costs shall not include any costs associated with the 45,000 acre-feet of annual entitlement being relinquished by those contractors pursuant to subdivision (j) of Article 53. Also, for purposes of these calculations, an Agricultural Contractor's estimated project costs shall not be reduced by the transfer of any of the 130,000 acre-feet of annual entitlements provided for in subdivisions (a) through (i) of Article 53. The proportionate shares for 1997 through 2001 shall be calculated as follows:

(i) Each Agricultural Contractor's statement of charges received on July 1, 1994, shall be the initial basis for calculating the proportionate shares for the five years 1997 through 2001.

(ii) Each Agricultural Contractor's estimated capital and minimum components of the Delta Water Charge and the Transportation Charge (excluding off-aqueduct power charges) and Water Revenue Bond Surcharge shall be totaled for the years 1997 through 2035.

(iii) Kern County Water Agency and Dudley Ridge Water District totaled costs shall be reduced for the 45,000 acre-feet of annual entitlement being relinquished by them.

(iv) Any reductions in an Agricultural Contractor's totaled costs resulting from the transfer of any of the 130,000 acre-feet of annual entitlement shall be re-added to that contractor's costs.

(v) Each Agricultural Contractor's proportionate share shall be computed by dividing that contractor's total costs by the total costs for all Agricultural Contractors determined pursuant to subparagraphs (ii), (iii) and (iv) above.

(2) The reductions in annual charges, for 1997 through 2001, shall be calculated using the method described in subdivision (g)(1) of this article.

(3) The allocation shall be recalculated using the same method described in subdivision (g)(1) of this article every five years beginning in 2002, if any Agricultural Contractor requests such a recalculation. Any recalculation shall be based on project cost data beginning with the year that the recalculation is to become effective through 2035.

(h) Agricultural Rate Management Trust Fund.

(1) Establishment. Through a trust agreement executed contemporaneously with this amendment, the State and the Agricultural Contractors that sign the Monterey Amendments shall establish the Agricultural Rate Management Trust Fund with a mutually agreed independent trustee.

(2) Separate Accounts. The trustee shall maintain within the trust fund a separate account for each Agricultural Contractor that signs the trust agreement to hold deposits made pursuant to this article.

(3) Deposits. Each Agricultural Contractor that signs the trust agreement shall deposit into such contractor's account within the trust fund, at the same time as payments would otherwise be required by this contract to be made to the State, an amount equal to the amount by which such contractor's charges under this contract have been reduced by reason of this article, until the balance in such contractor's account within the trust fund is the same percentage of $150,000,000 as such contractor's percentage share of reductions made available to all Agricultural Contractors as specified in subdivision (g) of this article. In 2002 and every fifth year thereafter, the Agricultural Contractors will review the maximum accumulation in the trust fund (the "Cap") and determine whether the cap should be adjusted. However, the Cap shall not be reduced below an aggregate of $150,000,000 for all Agricultural Contractor accounts.

(4) Trust Fund Disbursements.

(i) In any year in which the State's allocation of water to an Agricultural Contractor by April 15th of that year is less than one hundred percent (100%) of the contractor's requested annual entitlement for that year, the trustee shall, to the extent there are funds in that contractor's account, distribute to the State from such account for the benefit of that contractor an amount equal to the percentage of the total of that contractor's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of that contractor's annual entitlement for that year that was not allocated to it by the State by April 15th of that year.

(ii) In addition to the provisions of subdivision (h)(4)(i) of this article, if on April 15 of any year any of the irrigable land within the Tulare Lake Basin Water Storage District (Tulare) is flooded, and Tulare in writing requests the trustee to do so, the trustee shall, to the extent there are funds in Tulare's account, distribute to the State from such account for the benefit of Tulare an amount equal to the percentage of the total of Tulare's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of the irrigable land within Tulare that is flooded on April 15.

(iii) Each Agricultural Contractor shall remain obligated to make payments to the State as required by other articles in this contract. Any amount to be disbursed pursuant to subdivisions (h)(4)(i) and (h)(4)(ii) shall be paid by the trustee to the State on July 1 of the year involved and shall be credited by the State toward any amounts owed by such respective Agricultural Contractor to the State as of that date. However, an Agricultural Contractor may direct the trustee to make the disbursement to that Agricultural Contractor which shall in turn make the payment to the State as required by other provisions of this contract. If the amount to be disbursed exceeds the amount owed to the State by such contractor as of July 1, the excess shall be disbursed by the Trustee to the State at the time of and in payment of future obligations owed to the State by such contractor. Alternatively, upon the request of such contractor, all or part of the excess shall be paid by the trustee to that contractor in reimbursement of prior payments by the contractor to the State for that year.

(5) Payment of Supplemental Bills. In any year in which a supplemental bill has been submitted to an Agricultural Contractor pursuant to subdivision (c)(4) of this article, such supplemental bill shall be treated as reducing by an equal amount the obligation of such contractor for that year to make payments into the Agricultural Rate Management Trust Fund. To the extent that such contractor has already made payments to the trust fund in an amount in excess of such contractor's reduced trust fund payment obligation, such contractor may request the trustee to use the excess from the trust fund to pay the supplemental bill.

(6) Discharge of Payment Obligation. Each payment to the State by the trust fund shall discharge and satisfy the Agricultural Contractor's obligation to pay the amount of such payment to the State. No reimbursement of the trust fund by the Agricultural Contractor for such payments shall be required. However, each Agricultural Contractor shall continue to make deposits to the trust fund matching the amount of each year's reductions as provided in subdivision (d) of this article so long as the amount in that contractor's account is less than its share of the Cap.

(7) Distribution of Funds in Excess of the Cap. Whenever accumulated funds (including interest) in an Agricultural Contractor's account in the trust fund exceed that contractor's share of the Cap, or the estimated remaining payments the contractor is required to make to the State prior to the end of the project repayment period, that contractor may direct the trustee to pay such excess to the contractor.

(8) Termination of Trust Fund. At the end of the project repayment period, the Agricultural Rate Management Trust Fund shall be terminated and any balances remaining in the accounts for each of the Agricultural Contractors shall be disbursed to the respective Agricultural Contractors.

(i) Definitions. For the purposes of this article, the following definitions will apply:

(1) "Agricultural Contractor" shall mean the following agencies as they now exist or in any reorganized form:

(i) County of Kings,

(ii) Dudley Ridge Water District,

(iii) Empire West Side Irrigation District,

(iv) Kern County Water Agency for 993,300 acre-feet of its entitlement,

(v) Oak Flat Water District,

(vi) Tulare Lake Basin Water Storage District.

(2) "Urban Contractor" shall mean every other agency having a long-term water supply contract with the State as they exist as of the date of this amendment or in any reorganized form as well as Kern County Water Agency for 119,600 acre-feet of its entitlement.

(j) Except as provided in subdivisions (c)(4) and (c)(5), this article shall not be interpreted to result in any greater State authority to charge the contractors than exists under provisions of this contract other than this article.

[73] 52. Kern Water Bank.

(a) The State shall convey to the Kern County Water Agency (KCWA) in accordance with the terms set forth in the agreement between the State of California Department of Water Resources, Kern County Water Agency entitled "Agreement for the Exchange of the Kern Fan Element of the Kern Water Bank" (the Kern Water Bank Contract), the real and personal property described therein.

(b) Subject to the approval of KCWA, other contractors may be provided access to and use of the property conveyed to KCWA by the Kern Water Bank Contract for water storage and recovery. Fifty percent (50%) of any project water remaining in storage on December 31, 1995, from the 1990 Berrenda Mesa Demonstration Program and the La Hacienda Water Purchase Program shall be transferred to KCWA pursuant to the Kern Water Bank Contract. The remaining fifty percent (50%) of any such water (approximately 42,828.5 acre-feet) shall remain as project water and the State's recovery of such project water shall be pursuant to the provisions of a separate recovery contract. Any other Kern Water Bank demonstration program water shall remain as project water and the State's recovery of such water shall be pursuant to the provisions of the respective contracts for implementation of such demonstration programs.

[73] Added: Amendment 25

[74] 53. Permanent Transfers and Reductions of Entitlement.

(a) Article 41 provides that no assignment or transfer of a contract or any part thereof, rights thereunder or interest therein by a contractor shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. In accordance with State policy to assist water transfers, the State and the County of Kings, Dudley Ridge Water District (DRWD), Empire West Side Irrigation District, Kern County Water Agency (KCWA), Oak Flat Water District and Tulare Lake Basin Water Storage District (for the purposes of this article the "Agricultural Contractors") shall, subject to the conditions set forth in this article, expeditiously execute any necessary documents and approve all contracts between willing buyers and willing sellers until permanent transfers totaling 130,000 acre-feet of annual entitlements of the Agricultural Contractors and, to the extent provided in such contracts, rights in project transportation facilities related to such annual entitlement have been made to other contractors (the "Urban Contractors") or noncontractors in accordance with the provisions of this article. Such approval requirement shall apply to all contracts executed prior to January 1, 2011. KCWA shall be responsible for approval of such transfers for any portion of the 130,000 acre-feet not previously made available under this article by the other Agricultural Contractors. A contract between a willing buyer and a willing seller shall mean a contract between (1) a buyer which is an Urban Contractor or, to the extent provided in subdivision (e) of this article, a noncontractor and (2) a seller which is an Agricultural Contractor or a public entity which obtains project water from an Agricultural Contractor.

(b) The State shall not be obligated to approve any transfer of annual entitlements if in its judgment the transfer would impair the security of the State's bondholders and the State may impose conditions on any transfer as necessary to make the delivery of the water operationally feasible and to assure that the transportation costs associated with the transferred entitlement are fully repaid. Transfers not approved by the State shall not be considered as part of the 130,000 acre-feet of annual entitlements provided for in this article.

(c) KCWA member units shall have 90 days to exercise a right of first refusal to purchase any annual entitlements being offered for sale to Urban Contractors by another KCWA member unit pursuant to this article, other than those annual entitlements made available to Urban Contractors by subdivision (d) of this article, by agreeing to pay the same price offered by the buyer. Any such sales to KCWA member units exercising such right of first refusal shall not be considered a part of the 130,000 acre-feet of annual entitlements provided for in this article.

[74] Added: Amendment 25

(d) Any permanent transfers of annual entitlements by Agricultural Contractors to noncontractors, including transfers to KCWA urban member units or to KCWA's Improvement District Number 4, other than transfers pursuant to subdivision (c) of this article, will be considered a part of the 130,000 acre-feet of annual entitlements provided for in this article if the Urban Contractors have been given a right of first refusal to purchase such annual entitlements as well as transportation rights in accordance with the following terms and procedure:

(1) The Agricultural Contractor shall provide the State a copy of a bona fide contract or Proposed Contract (the "Proposed Contract") and the State shall, within five working days of receipt, provide copies of such Proposed Contract to all Urban Contractors together with a Notice of Proposed Contract stating the date on or before which a Notice of Intent to Exercise a Right of First Refusal (NOI) must be delivered to both the State and the seller, which date shall be 90 days from the date the State mails the Notice of Proposed Contract.

(2) The Proposed Contract shall provide for the transfer of rights in project transportation facilities sufficient to deliver to the seller's service area in any one month eleven percent (11%) of the annual entitlement being transferred or such greater amount as the seller determines to sell; provided, however, that sellers shall not be obligated to sell any transportation rights in the Coastal Aqueduct.

(3) To exercise the right of first refusal, an Urban Contractor shall deliver to the State and the seller its NOI within the time period stated in the Notice of Proposed Contract and shall proceed in good faith to try to complete the transfer to the Urban Contractor. If two or more Urban Contractors deliver NOI's to the State, the amount of annual entitlement and transportation rights being sold shall be allocated among those Urban Contractors that are prepared to perform the purchase by the Performance Date provided for herein in proportion to their maximum annual entitlements, or in another manner acceptable to the Urban Contractors delivering the NOIs. An offer by an Urban Contractor in its NOI to purchase less than the entire annual entitlement and transportation right being transferred shall not be deemed to be an effective exercise of the right of first refusal unless other Urban Contractors submit NOIs to purchase the remainder of the annual entitlement and transportation right or the noncontractor buyer agrees to purchase the remainder at the same unit price and on the same terms and conditions provided for in the Proposed Contract. The Performance Date shall be the date upon which the Urban Contractor is prepared to perform the purchase, which date shall be the later of: (1) 180 days after the delivery of the NOI or (2) the date set forth in the Proposed Contract for the noncontractor buyer to perform the purchase.

The Performance Date shall be extended at the request of the Urban Contractor if a temporary restraining order or preliminary injunction is in effect as a result of a lawsuit challenging the execution of the contract on the basis of noncompliance with the California Environmental Quality Act. Such extensions shall continue until five days after the temporary restraining order or injunction expires or until the Urban Contractor requests it be discontinued, whichever occurs first. The Urban Contractor shall be liable for any damages suffered by the seller as a result of such extensions of the Performance Date.

(4) If the seller and the noncontractor buyer under the Proposed Contract make any substantive changes in the Proposed Contract, such changes shall constitute a new Proposed Contract that cannot be performed without compliance with all of the procedures set forth in this article.

(5) If an Urban Contractor issuing a NOI fails to complete its exercise of the Right of First Refusal by the Performance Date, the seller shall be free to sell its entitlement in substantial conformance with the terms and conditions set forth in the Proposed Contract. An Urban Contractor issuing a NOI may assign its rights to exercise a right of first refusal to another Urban Contractor and the assignee shall have the same rights as the assignor to complete the purchase by the Performance Date.

(6) In exercising the Right of First Refusal, an Urban Contractor, at its option, may either agree to perform the Proposed Contract in its entirety, including all of its terms and conditions, or agree to pay the price offered under the Proposed Contract for the annual entitlement and transportation rights without condition and without being entitled to enforce or being subject to any other provisions of the Proposed Contract.

(e) As used in this article, "price" shall mean the dollar amount of consideration provided for in the Proposed Contract.

(f) Upon the effective date of any such transfer, the seller shall be relieved of and the buyer shall become liable to the State for all prospective Delta Water Charges, the related Transportation Charges and any other charges for the annual entitlements and associated transportation rights transferred unless the seller and buyer provide otherwise in the contract for the transfer and the State approves such other provisions. However, the contractor making the sale shall remain obligated to the State to make the payments if the buyer defaults on its payments to the State related to the water transferred and is not a party to a long term water supply contract of the type contained in Department of Water

Resources Bulletin Number 141. If the contractor making the sale is required to make any payments to the State as a result of the buyer's default, the entitlement transferred to the defaulting buyer shall, if provided for in the Proposed Contract, revert back to the contractor making the sale. The buyer may also be liable for any charges imposed pursuant to subdivision (g) of this article.

(g) A contractor which is a buyer of annual entitlement pursuant to this article may receive deliveries using any portion of the capacity previously provided by the State in each reach of the project transportation facilities for such contractor that is necessary for transporting the entitlement purchased by it on the same basis as any other entitlement provided for in its Table A in effect prior to the date of the Monterey Amendment. Such contractor may also use any transportation rights transferred to it by a seller in the same manner as the seller was entitled to use them and any unused capacity in any of the reaches specified in this paragraph so long as project operations and/or priority of service of water to other contractors participating in repayment of capital costs in such reaches is not adversely affected. The State shall not be responsible for any resulting adverse impacts upon its ability to provide such contractor peaking capacity. The capital cost and minimum, operation, maintenance, power and replacement components of the Transportation Charge allocated to a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach shall be determined prospectively based upon the increase in the buying contractor's annual entitlement resulting from the purchase, and service of water to fulfill annual entitlement to other contractors shall not be impaired. The capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charges shall then be reallocated among the other entities participating in repayment of costs of that reach. For the purposes of this determination, all payments received by the State from the seller relating to the annual entitlement sold shall be deemed to have been received from the buying contractor. Any increased Transportation minimum operation, maintenance, power and replacement component charges allocated to the buying contractor pursuant to this subdivision (g) shall begin January 1 of the year following the effective date of the transfer.

(h) Individual contractors may transfer entitlements among themselves in amounts in addition to those otherwise provided for in this article. The State shall expeditiously execute any necessary documents and approve all contracts involving permanent sales of entitlements among contractors, including permanent sales among Urban Contractors. Such sales shall be subject to the provisions of subdivisions (b), (f) and (g) of this article; Provided, however, that for a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach, reallocation of the Transportation capital cost component charges for transfers other than (i) the 130,000 acre-feet provided for in this article and (ii) the approximate 33,000 acre-feet of transfers proposed from contractors located in Santa Barbara or San Luis Obispo counties, shall be determined both prospectively and retroactively.

(i) On January 1 following the year in which such Monterey Amendments become effective and continuing every year thereafter until the end of the project repayment period: (i) Kern County Water Agency's (KCWA) annual entitlement for agricultural use as currently designated in Table A-1 of its contract shall be decreased by 40,670 acre-feet; (ii) Dudley Ridge Water District's (DRWD) annual entitlement as currently designated in Table A of its contract shall be decreased by 4,330 acre-feet; and (iii) the State's prospective charges (including any adjustments for past costs) for the 45,000 acre-feet of annual entitlements to be relinquished by KCWA and DRWD thereafter shall be deemed to be costs of project conservation facilities and included in the Delta Water Charge for all contractors in accordance with the provisions of Article 22. If by November 20, 1995 and each October 1 thereafter until the Monterey Amendments of both KCWA and DRWD become effective, KCWA and DRWD at their option notify the State in writing that they will relinquish up to their shares of 45,000 acre-feet of annual entitlements for the following calendar year beginning before the effective date of the Monterey Amendments, the State shall adjust the charges retroactively for the acre-feet relinquished by KCWA and DRWD to January 1 of each year for which water was relinquished. The delivery points for the 45,000 acre-feet of annual entitlement to be relinquished shall be identified for the State by KCWA and DRWD to enable the State to calculate the transportation costs for the 45,000 acre-feet to be included in the Delta Water Charge.

[75] 54. Usage of Lakes Castaic and Perris.

(a) The State shall permit the contractors participating in repayment of the capital costs of Castaic Lake (Reach 30) and Lake Perris (Reach 28J) to withdraw water from their respective service connections in amounts in excess of deliveries approved pursuant to other provisions of the state water contracts. Each such contractor shall be permitted to withdraw up to a Maximum Allocation from the reach in which it is participating. The contractors participating in repayment of Castaic Lake may withdraw a collective Maximum Allocation up to 160,000 acre-feet pursuant to this article, which shall be apportioned among them pursuant to the respective proportionate use factors from the Department of Water Resources' Bulletin 132-94, Table B-1 upon which capital cost repayment obligations are based, as follows:

[75] Added: Amendment 25

Castaic Lake

Participating Contractor	Proportionate Use Factor	Maximum Allocation (Acre-Feet)
The Metropolitan Water District of Southern California	0.96212388	153,940
Ventura County Flood Control and Water Conservation District	0.00860328	1,376
Castaic Lake Water Agency	0.02927284	4,684
Total	1.00000000	160,000

The Metropolitan Water District of Southern California, as the only contractor participating in repayment of Lake Perris, shall be allocated a Maximum Allocation at Lake Perris of 65,000 acre-feet based upon a proportionate use factor of 1.00000000.

The Maximum Allocation totals of 160,000 acre-feet and 65,000 acre-feet shall not be subject to adjustment. The individual contractor's Maximum Allocations shall be adjusted only as agreed to among the contractors desiring to adjust their Maximum Allocations. Adjustments between the contractors shall be subject to approval of the State which approval shall be given unless there are adverse impacts upon another contractor participating in the reach which are unacceptable to such contractor. The participating contractors will, in consultation with the State, cooperate with each other in an effort to promote efficient utilization of Castaic Lake, and to minimize any adverse impacts to each other, through coordination of deliveries pursuant to other provisions of the State Water Contract as well as withdrawals of allocations pursuant to this article.

(b) The State shall operate Castaic and Perris Reservoirs as transportation facilities in a manner consistent with this article. A contractor desiring to withdraw a portion or all of its Maximum Allocation shall furnish the State with a proposed delivery schedule. The proposed schedule may be submitted as part of the preliminary water delivery schedule submitted pursuant to Article 12(a)(1). Upon receipt of a schedule the State shall promptly review it to ensure that the amounts, times and rates of delivery will be consistent with the State's ability to operate the reach. The contractor may modify its proposed delivery schedule at any time, and the modified schedule shall be subject to review in the same manner. If necessary, the State may modify the schedule after

consultation with the contractor and other contractors participating in repayment of that reach but may not change the total quantity of water to be withdrawn. As part of the consultation, the State shall advise a contractor if it determines a withdrawal will adversely impact the rate of delivery provided for the contractor in this contract. The State shall not be responsible for any such impacts.

(c) A contractor may withdraw all or a portion of its Maximum Allocation. It shall restore any withdrawn portion of such allocation by furnishing an equivalent amount of replacement water to the reservoir from which the water was withdrawn within five years from the year in which the withdrawal takes place. The unused portion of the allocation, in addition to any replacement water furnished to the reservoir, shall remain available for subsequent withdrawal. The State shall keep an accounting of the contractor's storage withdrawals and replacements. In any year, the State shall permit a contractor to withdraw an amount equivalent to the contractor's Maximum Allocation minus remaining replacement water requirements due to previous withdrawals. If the contractor fails to schedule and replace the withdrawn water within the five-year return period, the State shall provide the replacement water from water scheduled for delivery to the contractor in the sixth year or as soon as possible thereafter. The total amount of scheduled annual entitlement which a contractor can use in any one year for restoring its Maximum Allocation and storing water in surface storage facilities outside of its service area pursuant to Article 56 shall be the sum of the maximum amount the contractor can add to storage that year pursuant to Article 56 and the amount of acre-feet shown in column 2 of the following table, depending on the State's final water supply allocation percentage as shown in column 1.

1. Final Water Supply Allocation Percentage	2. Maximum Acre-Feet of Scheduled Entitlement for Restoring Maximum Allocation*
50% or less	100,000
51%	98,000
52%	96,000
53%	94,000
54%	92,000
55%	90,000
56%	88,000
57%	86,000
58%	84,000
59%	82,000
60%	80,000
61%	78,000
62%	76,000
63%	74,000
64%	72,000
65%	70,000
66%	68,000
67%	66,000
68%	64,000
69%	62,000
70%	60,000
71%	58,000
72%	56,000
73%	54,000
74%	52,000
75 to 99%	50,000
100%	no limit

* Excludes the maximum amount that can be added to storage in a year pursuant to Article 56, which may be used in addition to the amounts in this table to restore Maximum Allocation.

A contractor may use any of this total amount for replacement water but cannot use any more than that provided for in Article 56 to add to storage in project surface conservation facilities and in nonproject surface storage facilities. There shall be no limit under this article on the amount of scheduled annual entitlement a contractor can use to restore its Maximum Allocation in a year when its percentage of annual water supply allocation is one hundred percent (100%), nor shall there be any limit under this article on the amount of interruptible water, nonproject water or water obtained through an exchange which a contractor can use to restore its Maximum Allocation.

(d) For any replacement water furnished to reservoir storage pursuant to this article, the responsible contractor shall pay the State charges for the conservation, if any, and transportation of such replacement water as are associated with the type of replacement water that is furnished, as if such water were delivered to the turnout at the reservoir to which the replacement water is furnished. Adjustments from estimated to actual costs shall be subject to provisions applicable to the type of replacement water. The State shall not charge contractors for water withdrawn pursuant to this article.

(e) The State shall operate capacity in Castaic and Perris Reservoirs, not required for purposes of Maximum Allocation deliveries, in compliance with the requirement of Article 17(b) of The Metropolitan Water District of Southern California's water supply contract with the State to maintain an amount of water reasonably sufficient to meet emergency requirements of the contractors participating in repayment of that reach. A contractor receiving water pursuant to this article accepts that the State shall not be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available from that reservoir to meet the contractor's actual emergency requirements as a result of prior storage withdrawals by that contractor pursuant to this article. Nothing in this article shall permit or require the State to adjust allocations or deliveries under Article 18.

(f) To the extent a contractor, during a calendar year, uses all or a portion of its Maximum Allocation, the State may, to the extent necessary to service project purposes, reduce that contractor's requested peaking service. Such reduction in peaking service shall only occur to the extent such usage of Maximum Allocation causes the State to be unable to provide all peaking service requested. This paragraph shall not apply to the extent the contractor requested usage of Maximum Allocation as part of the preliminary water delivery schedule submitted pursuant to Article 12(a)(1).

(g) The State may reduce water stored in Castaic Lake and Lake Perris to the extent necessary for maintenance and to respond to emergencies resulting from failure of project transportation facilities or of other supply importation facilities serving the State project service area. The State shall promptly replace water within the Maximum Allocation as soon as the need for the reduction terminates.

[76] 55. Transportation of Nonproject Water.

(a) Subject to the delivery priorities in Article 12(f), contractors shall have the right to receive services from any of the project transportation facilities to transport water procured by them from nonproject sources for delivery to their service areas and to interim storage outside their service areas for later transport and delivery to their service areas: Provided, that except to the extent such limitation in Section 12931 of the Water Code be changed, a contractor shall not use the project transportation facilities under this option to transport water the right to which was secured by the contractor through eminent domain unless such use be approved by the Legislature by concurrent resolution with the majority of the members elected to each house voting in favor thereof.

(b) For any nonproject water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conservation and transportation of such water as if such nonproject water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, which may include an administrative or contract preparation charge, all as determined by the State. Incremental costs shall mean those nonpower costs which would not be incurred if nonproject water were not scheduled for or delivered to contractors. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for the delivery of nonproject water from or through that reach. Costs for transporting water placed into interim storage shall be paid in the same manner provided for in subdivision (c)(6) of Article 56.

(c) The amounts, times and rates of delivery of nonproject water shall be provided for pursuant to a water delivery schedule to be issued in the same manner as provided for in Article 12. The costs specified in this article shall be paid for at the same time the corresponding project water costs are paid.

[77] 56. Use, Storage and Sale of Project Water Outside of Service Area and Storage of Water in Project Surface Conservation Facilities.

(a) State Consent to Use of Project Water Outside of Service Area.

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District storing project water outside its service area for later use within its service area in accordance with the provisions of subdivision (c) of this article and to the District selling project water for use outside its service area in accordance with the provisions of subdivision (d) of this article.

[76] Added: Amendment 25
[77] Added: Amendment 25

(b) Groundwater Storage Programs.

The District shall cooperate with other contractors in the development and establishment of groundwater storage programs.

(c) Storage of Project Water Outside of Service Area.

(1) A contractor may elect to store project water outside its service area for later use within its service area, up to the limits and in accordance with the provisions provided for in this subdivision (c) and any applicable water right laws, by setting forth on the preliminary water delivery schedule submitted to the State on or before October 1 of each year pursuant to Article 12(a) the quantity of project water it wishes to store in the next succeeding year. There shall be no limit on the amount of project water a contractor can store outside its service area during any year in a then existing and operational groundwater storage program. The amount of project water a contractor can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the contractor's service area each year shall be limited to the lesser of the percent of the contractor's Table A annual entitlement shown in column 2 or the acre-feet shown in column 3 of the following table, depending on the State's final water supply allocation percentage as shown in column 1. However, there shall be no limit to storage in nonproject facilities in a year in which the State's final water supply allocation percentage is one hundred percent. These limits shall not apply to water stored pursuant to Article 12(e).

1. Final Water Supply Allocation Percentage	2. Maximum Percent of District's Annual Entitlement That Can be Stored	3. Maximum Acre-Feet That Can be Stored
50% or less	25%	100,000
51%	26%	104,000
52%	27%	108,000
53%	28%	112,000
54%	29%	116,000
55%	30%	120,000
56%	31%	124,000
57%	32%	128,000
58%	33%	132,000
59%	34%	136,000
60%	35%	140,000
61%	36%	144,000
62%	37%	148,000
63%	38%	152,000
64%	39%	156,000
65%	40%	160,000
66%	41%	164,000
67%	42%	168,000
68%	43%	172,000
69%	44%	176,000
70%	45%	180,000
71%	46%	184,000
72%	47%	188,000
73%	48%	192,000
74%	49%	196,000
75% or more	50%	200,000

(2) Storage capacity in project surface conservation facilities at any time in excess of that needed for project operations shall be made available to requesting contractors for storage of project and nonproject water. If such storage requests exceed the available storage capacity, the available capacity shall be allocated among contractors requesting storage in proportion to their annual entitlements designated in their Table A's for that year. A contractor may store water in excess of its allocated share of capacity as long as capacity is available for such storage.

(3) If the State determines that a reallocation of excess storage capacity is needed as a result of project operations or because of the exercise of a contractor's storage right, the available capacity shall be reallocated among contractors requesting storage in proportion to their annual entitlements designated in their Table A's for that year. If such reallocation results in the need to displace water from the storage balance for any contractor or noncontractor, the water to be displaced shall be displaced in the following order of priority:

First, water, if any, stored for noncontractors.

Second, water stored for a contractor that previously was in excess of that contractor's allocation of storage capacity.

Third, water stored for a contractor that previously was within that contractor's allocated storage capacity.

The State shall give as much notice as feasible of a potential displacement.

(4) Any contractor electing to store project water outside its service area pursuant to this subdivision may not sell project water under the provisions of subdivision (d) of this article during the year in which it elected to store project water. This limitation shall not apply to replacement water furnished to Castaic and Perris Reservoirs pursuant to Article 54, or to the storage of water introduced into a groundwater basin outside a contractor's service area if recovery is intended to occur within that contractor's service area.

(5) The restrictions on storage of project water outside a contractor's service area provided for in this subdivision (c), shall not apply to storage in any project offstream storage facilities constructed south of the Delta after the date of this amendment.

(6) For any project water stored outside its service area pursuant to this subdivision (c), a contractor shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the contractor pays for the transportation of annual entitlement to the reach of the project transportation facility from which the water is delivered to storage. If annual entitlement is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the contractor shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of return to the aqueduct to the turn-out in the contractor's service area. In addition, the contractor shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs, which would not be incurred if such water were scheduled for or delivered to the contractor's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

(7) A contractor electing to store project water in a nonproject facility within the service area of another contractor shall execute a contract with that other contractor prior to storing such water which shall be in conformity with this article and will include at least provisions concerning the point of delivery and the time and method for transporting such water.

(d) Sale of Project Water For Use Outside Service Area.

(1) If in any year a contractor has been allocated annual entitlement that it will not use within its service area, the contractor has not elected to store project water in accordance with the provisions of subdivision (c) of this article during that year, and the contractor has not elected to carry over entitlement water from the prior year pursuant to the provisions of Article 12(e), the contractor may sell such annual entitlement for use outside its service area in accordance with the following provisions.

(2) Each year the State shall establish an annual entitlement water pool (the Pool) for contractors wishing to sell or buy project water pursuant to the provisions of this subdivision. The Pool shall constitute the exclusive means of selling portions of annual entitlements not desired by contractors that year.

Contractors willing to sell to or buy water from the Pool shall notify the State in writing of their desire to do so indicating the quantity to be sold or purchased. Contractors shall have the first priority to purchase all water placed in the Pool. The State may purchase any water remaining in the Pool not purchased by contractors at the same price available to contractors and use such water for the purpose of providing additional carryover storage for contractors: Provided, that the State shall consult with the contractors prior to making any such purchases.

(3) Each year, the price per acre-foot to be paid by the State to contractors selling water placed in the Pool on or before February 15 that is purchased by a contractor requesting such purchase by March 1 or by the State on March 1 shall be equal to fifty percent (50%) of the Delta water rate as of that date. The price per acre-foot to be paid to the State for the purchase of water from the Pool by a contractor placing a request for such purchase on or before March 1 shall be equal to fifty percent (50%) of the Delta water rate as of that date. Any water placed in the Pool on or before February 15 that is not purchased by contractors or the State by March 1 may be withdrawn from the Pool by the selling contractor.

(4) Each year the price per acre-foot to be paid by the State to contractors selling water remaining in the Pool or placed in the Pool after February 15, but on or before March 15 that is purchased by a contractor requesting such purchase by April 1 or by the State on April 1 shall be equal to twenty-five percent (25%) of the Delta water rate as of that date. The price per acre-foot to be paid to the State for the purchase of water from the Pool by a contractor placing a request for such purchase between March 2 and April 1 shall be equal to twenty-five percent (25%) of the Delta water rate as of the later date. Any water placed in the Pool on or before March 15 that is not purchased by a contractor or the State by April 1 may be withdrawn from the Pool by the selling contractor.

(5) If there are more requests from contractors to purchase water from the Pool than the amount in the Pool, the water in the Pool shall be allocated among those contractors requesting such water in proportion to their annual entitlements for that year up to the amount of their requests. If requests to purchase water from the Pool total less than the amount of water in the Pool, the sale of Pool water shall be allocated among the contractors selling such water in proportion to their respective amounts of water in the Pool.

(6) Any water remaining in the Pool after April 1 that is not withdrawn by the selling contractor shall be offered by the State to contractors and noncontractors and sold to the highest bidder: Provided, that if the highest bidder is a noncontractor, all contractors shall be allowed fifteen days to exercise a right of first refusal to purchase such water at the price offered by the noncontractor. The price to be paid to the selling contractor shall be the amount paid by the buyer exclusive of the amount to be paid by the buyer to the State pursuant to subdivision (d)(7) of this article.

(7) For any water delivered from the Pool to contractors, the buyer shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were not scheduled for or delivered to the buyer. Only those buyers not participating in the repayment of a reach shall be required to pay any use of facilities charge for the delivery of such water from or through the reach. Adjustments from estimated to actual costs shall be computed by the State pursuant to these provisions and shall be paid by the buyer or credited to the buyer at the times and interest rates described in Article 28(c).

(e) Continuance of Article 12(e) Carry-over Provisions.

The provisions of this article are in addition to the provisions of Article 12(e), and nothing in this article shall be construed to modify or amend the provisions of Article 12(e). Any contractor electing to sell project water during any year in accordance with the provisions of subdivision (d) of this article, shall not be precluded from using the provisions of Article 12(e) for carrying over water from the last three months of that year into the first three months of the succeeding year.

(f) Bona Fide Exchanges Permitted.

Nothing in this article shall be deemed to prevent the District from entering into bona fide exchanges of project water for use outside the District's service area with other parties for project water or nonproject water if the State consents to the use of the project water outside the District's service area. Also, nothing in this article shall be deemed to prevent the District from continuing those exchange or sale arrangements entered into prior to September 1, 1995, which had previously received any required State approvals. A "bona fide exchange" shall mean an exchange of water involving a contractor and

another party where the primary consideration for one party furnishing water to another is the return of a substantially similar amount of water, after giving due consideration to the timing or other nonfinancial conditions of the return. Reasonable payment for costs incurred in effectuating the exchange and reasonable deductions from water delivered, based on expected storage or transportation losses may be made. A "bona fide exchange" shall not include a transfer of water from one contractor to another party involving a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether transfers of water constitute "bona fide exchanges" within the meaning of this paragraph and not disguised sales.

(g) Other Transfers.

Nothing in this article shall be deemed to modify or amend the provisions of Article 15(a), or Article 41, except as expressly provided for in subdivisions (c) and (d) of this article.

All balances of wet weather and Article 12(d) water otherwise available to any contractor executing the Monterey Amendment shall be eliminated as of the effective date of such amendment and no new balances for such water shall be established.

57. [78] Effective Dates and Phase-In.

(a) No Monterey Amendment <Amendment No. 25 of the District's contract> to any contractor's water supply contract shall take effect unless and until both of the following have occurred [(1) the Monterey Amendments to both the Kern County Water Agency's and The Metropolitan Water District of Southern California's contracts have been executed and no legal challenge has been filed within sixty days of such execution or, if filed, a final judgment of a court of competent jurisdiction has been entered sustaining or validating said amendments]; <See Attachment W> and (2) the State has conveyed the property which constitutes the Kern Fan Element of the Kern Water Bank to Kern County Water Agency pursuant to the Kern Water Bank Contact provided for in Article 52 either on or before October 1, 1996 or, if the conveyance on such date has been prevented by an interim court order, within ninety days after such court order has become ineffective so long as said ninety days expires not later than January 1, 2000. The October 1, 1996 date and the January 1, 2000 date may be extended by unanimous agreement of the State, Kern County Water Agency and The Metropolitan Water District of Southern California.

[78] Added: Amendment 25; No number assigned by Amendment. Numbered as Article 57 for convenience.

(b) The State shall administer the water supply contracts of any contractors that do not execute the Monterey Amendment so that such contractors are not affected adversely or to the extent feasible beneficially by the Monterey Amendments of other contractors' water supply contracts.

(c) If a court of competent jurisdiction issues a final judgment or order determining that any part of a contractor's Monterey Amendment is invalid or unenforceable, all provisions of that amendment shall be of no force or effect as to such contractor, except as provided in subdivisions (e) and (f) of this paragraph.

(d) If any part of the Monterey Amendment of the Kern County Water Agency's or The Metropolitan Water District of Southern California's contracts or if the conveyance of the Kern Fan Element of the Kern Water Bank to the Kern County Water Agency provided for in Article 52 is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, the Monterey Amendments of all contractors and the Kern Water Bank Contract shall be of no force and effect except as provided in subdivisions (e) and (f) of this paragraph.

(e) Notwithstanding subdivisions (c), (d) and (f) of this paragraph, if any part of the Monterey Amendment of the Kern County Water Agency's or The Metropolitan Water District of Southern California's contract is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, and if Articles 52 and 53 (i) have been implemented (i.e., the property which constitutes the Kern Fan Element of the Kern Water Bank has been conveyed by the State and the 45,000 acre-feet of annual entitlements have been relinquished to the State), the implementation of the relinquishment shall not be reversed unless the implementation of the conveyance is also reversed, and conversely, implementation of the conveyance shall not be reversed unless implementation of the relinquishment is also reversed. Nothing in this subdivision shall affect any party's right to seek additional damages, compensation or any other remedy available at law or in equity.

(f) The total invalidity or unenforceability of one contractor's Monterey Amendment as provided for in subdivision (c) of this paragraph or of all contractor's Monterey Amendments as provided for in subdivision (d) of this paragraph or of the Kern Water Bank Contract as provided for in subdivision (d) of this paragraph may be avoided only if such invalidity or unenforceability is explicitly waived in writing signed by the State, Kern County Water Agency and The Metropolitan Water District of Southern California. In cases arising under subdivision (c) or (d), the affected contractor whose Monterey Amendment has been determined to be partially invalid or unenforceable must first request the waiver.

58. [79] Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities.

In order to provide current information regarding the delivery capability of existing project conservation facilities, commencing in 2003 and every two years thereafter the State shall prepare and mail a report to all contractors, and all California city, county, and regional planning departments and agencies within the contractors' project service area. This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor.

59. [80] Amendment 27 (Table A Amount and Capacity Transfer Between Metropolitan and Coachella).

1. This Amendment shall become effective the later of January 1, 2004 or January 1 of the first year after DISTRICT, COACHELLA and <Desert Water>AGENCY notify the DEPARTMENT that the 2003 Exchange Agreement is effective and will terminate on December 31, 2035 unless extended or terminated earlier pursuant to the terms of 2003 Exchange Agreement. Upon termination, transferred Table A Amounts shall revert to the DISTRICT on January 1 of the year following the termination and capacity values accordingly adjusted.

2 Article 12(c) of the DISTRICT's Water Supply Contract is amended to read as follows:

In no event shall the DEPARTMENT be obligated to deliver water to the DISTRICT through all delivery structures at a total combined instantaneous rate of flow exceeding three thousand five hundred ten (3,510) cubic feet per second, except as this rate of flow may be revised by amendment of this article after submission to the DEPARTMENT of the DISTRICT's requests with respect to maximum flow capacities to be provided in said delivery structures, pursuant to Article 10.

3. As a result of this transfer, Table A as designated in subdivision (b) of Article 6 is amended to read as follows:

[79] Added by Amendment 26; No number assigned by Amendment. Numbered as Article 58 for convenience. Interim as of May 20, 2003. See note accompanying Recitals for Amendment 26, as well as Attachment Y.
[80] Added by Amendment 27; No number assigned by Amendment. Numbered as Article 59 for convenience.

TABLE A

ANNUAL AMOUNTS
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

	Year	Acre-Feet
1	(1972)	154,772
2	(1973)	354,600
3	(1974)	454,900
4	(1975)	555,200
5	(1976)	655,600
6	(1977)	755,900
7	(1978)	856,300
8	(1979)	956,600
9	(1980)	1,057,000
10	(1981)	1,157,300
11	(1982)	1,257,600
12	(1983)	1,358,000
13	(1984)	1,458,300
14	(1985)	1,558,700
15	(1986)	1,659,300
16	(1987)	1,759,800
17	(1988)	1,860,400
18	(1989)	1,961,400
19	(1990)	2,011,500
20	(1991)	2,011,500
21	(1992)	2,011,500
22	(1993)	2,011,500
23	(1994)	2,011,500
24	(1995)	2,011,500
25	(1996)	2,011,500
26	(1997)	2,011,500
27	(1998)	2,011,500
28	(1999)	2,011,500
29	(2000)	2,011,500
30	(2001)	2,011,500
31	(2002)	2,011,500
32	(2003)	2,011,500
33	(2004)	1,923,400

And each succeeding year
thereafter, until December 31, 2035: **1,923,400**

Effective December 31, 2035: **2,011,500**

If the 2003 Exchange Agreement terminates on a different date than December 31, 2035, the Table A Amount shall be 2,011,500 acre-feet on January 1 of the year following termination and subsequent years.

4. Reductions in the DISTRICT's Delta Water Charge, the Transportation Charges, and the Water System Revenue Bond Surcharge resulting from the decrease in the DISTRICT's annual Table A amounts for the year 2004 and each year thereafter shall commence January 1, 2004, and be identified by the DEPARTMENT and included in future annual Statements of Charges to the DISTRICT.

5. Any over and under adjustments to payments made by the DISTRICT for 2003 and prior years attributable to the 88,100 acre-feet of annual Table A amounts shall be paid by or credited to the DISTRICT, including refunds or credits for Off-Aqueduct and Water System Revenue Bond reserves. Any over and under adjustments to payments made by COACHELLA for 2004 and future years attributable to the 88,100 acre-feet of annual Table A amounts shall be paid by or credited to COACHELLA.

6. If this Amendment does not become effective until January 1, 2005 or later, the Department shall accordingly adjust the years specified in Sections 4 and 5.

7. For cost allocation and repayment purposes, actual values will be used by the DEPARTMENT in implementing the terms of this Amendment and in redetermination of Table B of the Water Supply Contract under Article 28. Exhibit A attached hereto shows Table A amounts and capacity values for each aqueduct reach, excluding the West Branch reaches, in which the DISTRICT participates consistent with the limits of Articles 12(b) and 12(c). These redetermined values shall be used to derive the proportionate use of facilities factors as set forth in Table B as designated in Article 24(b). The capacity amounts shown in Exhibit A are estimated values.

8. The Water Supply Contract was amended to add the Monterey Amendment. The Monterey Amendment and the Environmental Impact Report for the Monterey Agreement were challenged in a lawsuit and addressed by the Court of Appeal in *Planning and Conservation League, et al. v. Department of Water Resources and Central Coast Water Agency*, (2000) 83 Cal.App.4th 892. The DISTRICT acknowledges that this transfer is not conditioned on the Monterey Amendment being in effect.

9. This Amendment is contingent upon the effectiveness of Water Supply Contract Amendment No. 18 between the DEPARTMENT and COACHELLA and the 2003 Exchange Agreement. If either becomes ineffective for any reason, the DEPARTMENT shall identify the date on which this Amendment shall be deemed inoperative for the purpose of assuring timely repayment of contract obligations; restoration of Table A Amounts to the DISTRICT and orderly administration of the long-term Water Supply Contracts but in no case more than 18 months after either becomes ineffective.

10. The DISTRICT agrees to indemnify, defend, and hold harmless the DEPARTMENT and any of its officers, agents, or employees from any liability, expenses, defense costs, attorney fees, claims, actions, liens and lawsuits of any kind arising from or related to this Amendment and associated agreements.

11. This Amendment shall not be used as precedent.

12. Except as amended herein, all other provisions of the Water Supply Contract will remain in full force and effect.

13. Article 54 of the Water Supply contract is not amended by this Amendment. DISTRICT's participation in the usage of Lake Perris pursuant to this article is not revised.

60. [81] Amendment 28 (Table A Amount and Capacity Transfer Between Metropolitan and Desert).

1. This Amendment shall become effective the later of January 1, 2004 or January 1 of the first year after DISTRICT, COACHELLA and AGENCY notify the DEPARTMENT that the 2003 Exchange Agreement is effective and will terminate on December 31, 2035 unless extended or terminated earlier pursuant to the terms of 2003 Exchange Agreement. Upon termination, transferred Table A Amounts shall revert to the DISTRICT on January 1 of the year following the termination and capacity values accordingly adjusted.

2. Article 12(c) of the DISTRICT's Water Supply Contract is amended to read as follows:

   In no event shall the DEPARTMENT be obligated to deliver water to the DISTRICT through all delivery structures at a total combined instantaneous rate of flow exceeding three thousand four hundred eighty-eight (3,488) cubic feet per second, except as this rate of flow may be revised by amendment of this article after submission to the DEPARTMENT of the DISTRICT's requests with respect to maximum flow capacities to be provided in said delivery structures, pursuant to Article 10.

3. As a result of this transfer, Table A as designated in subdivision (b) of Article 6 is amended to read as follows:

[81] Added by Amendment 28; No number assigned by Amendment. Numbered as Article 60 for convenience.

TABLE A

ANNUAL AMOUNTS
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

	Year	Acre-Feet
1	(1972)	154,772
2	(1973)	354,600
3	(1974)	454,900
4	(1975)	555,200
5	(1976)	655,600
6	(1977)	755,900
7	(1978)	856,300
8	(1979)	956,600
9	(1980)	1,057,000
10	(1981)	1,157,300
11	(1982)	1,257,600
12	(1983)	1,358,000
13	(1984)	1,458,300
14	(1985)	1,558,700
15	(1986)	1,659,300
16	(1987)	1,759,800
17	(1988)	1,860,400
18	(1989)	1,961,400
19	(1990)	2,011,500
20	(1991)	2,011,500
21	(1992)	2,011,500
22	(1993)	2,011,500
23	(1994)	2,011,500
24	(1995)	2,011,500
25	(1996)	2,011,500
26	(1997)	2,011,500
27	(1998)	2,011,500
28	(1999)	2,011,500
29	(2000)	2,011,500
30	(2001)	2,011,500
31	(2002)	2,011,500
32	(2003)	2,011,500
33	(2004)	1,911,500

And each succeeding year
thereafter, until December 31, 2035: **1,911,500**

Effective December 31, 2035: **2,011,500**

If the 2003 Exchange Agreement terminates on a different date than December 31, 2035, the Table A Amount shall be 2,011,500 acre-feet on January 1 of the year following termination and subsequent years.

4. Reductions in the DISTRICT's Delta Water Charge, the Transportation Charges, and the Water System Revenue Bond Surcharge resulting from the decrease in the DISTRICT's annual Table A amounts for the year 2004 and each year thereafter shall commence January 1, 2004, and be identified by the DEPARTMENT and included in future annual Statements of Charges to the DISTRICT.

5. Any over and under adjustments to payments made by the DISTRICT for 2003 and prior years attributable to the 11,900 acre-feet of annual Table A amounts shall be paid by or credited to the DISTRICT, including refunds or credits for Off-Aqueduct and Water System Revenue Bond reserves. Any over and under adjustments to payments made by the AGENCY for 2004 and future years attributable to the 11,900 acre-feet of annual Table A amounts shall be paid by or credited to the AGENCY.

6. If this Amendment does not become effective until January 1, 2005 or later, the DEPARTMENT shall accordingly adjust the years specified in Sections 4 and 5.

7. For cost allocation and repayment purposes, actual values will be used by the DEPARTMENT in implementing the terms of this Amendment and in redetermination of Table B of the Water Supply Contract under Article 28. Exhibit A attached hereto shows Table A amounts and capacity values for each aqueduct reach, excluding the West Branch reaches, in which the DISTRICT participates consistent with the limits of Articles 12(b) and 12(c). <Exhibit A is attached to this Agreement as Attachment BB> These redetermined values shall be used to derive the proportionate use of facilities factors as set forth in Table B as designated in Article 24(b). The capacity amounts shown in Exhibit A are estimated values.

8. The Water Supply Contract was amended to add the Monterey Amendment. The Monterey Amendment and the Environmental Impact Report for the Monterey Agreement were challenged in a lawsuit and addressed by the Court of Appeal in *Planning and Conservation League, et al. v. Department of Water Resources and Central Coast Water Agency*, (2000) 83 Cal.App.4th 892. The DISTRICT acknowledges that this transfer is not conditioned on the Monterey Amendment being in effect.

9. This Amendment is contingent upon the effectiveness of Water Supply Contract Amendment No. 18 between the DEPARTMENT and the AGENCY and the 2003 Exchange Agreement. If either becomes ineffective for any reason, the DEPARTMENT shall identify the date on which this Amendment shall be deemed inoperative for the purpose of assuring timely repayment of contract obligations; restoration of Table A Amounts to the DISTRICT and orderly administration of the long-term Water Supply Contracts but in no case more than 18 months after either becomes ineffective.

10. The DISTRICT agrees to indemnify, defend, and hold harmless the DEPARTMENT and any of its officers, agents, or employees from any liability, expenses, defense costs, attorney fees, claims, actions, liens and lawsuits of any kind arising from or related to this Amendment and associated agreements.

11. This Amendment shall not be used as precedent.

12. Except as amended herein, all other provisions of the Water Supply Contract will remain in full force and effect.

13. Article 54 of the Water Supply Contract is not amended by this Amendment. District's participation in the usage of Lake Perris pursuant to this article is not revised.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

STATE OF CALIFORNIA

By: /s/ Edmund G. (Pat) Brown
Governor

Approved as to legal form
and sufficiency

/s/ P. A. Towner
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By: /s/ Harvey O. Banks
Director

Attest:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

(SEAL)

/s/ A. L. Gram
Executive Secretary
The Metropolitan Water District
of Southern California

By: /s/ R. A. Skinner
Assistant Chief Engineer

Approved as to form
and execution

/s/ Charles C. Cooper, Jr.
General Counsel
The Metropolitan Water District
of Southern California

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