

Contract No. 8-07-20-X0356

UNITED STATES  
DEPART OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

AGREEMENT TO TRANSFER THE  
OPERATION, MAINTENANCE AND REPLACEMENT AND  
CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES  
RELATED TO THE FRIANT-KERN CANAL AND ASSOCIATED WORKS

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EXHIBIT A -- LIST OF PROJECT WORKS

EXHIBIT B -- LIST OF OBLIGATIONS TO CONVEY AND  
DISTRIBUTE WATER IN AND FROM THE PROJECT WORKS

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California  
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6

7 AGREEMENT TO TRANSFER THE  
8 OPERATION, MAINTENANCE AND REPLACEMENT AND  
9 CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES  
10 RELATED TO THE FRIANT-KERN CANAL AND ASSOCIATED WORKS  
11

12 PREAMBLE  
13

14 THIS AGREEMENT, effective the 1st day of March 1998, in  
15 pursuance generally of the Act of Congress of June 17, 1902 (32  
16 Stat.388), and the acts amendatory thereof or supplementary  
17 thereto, including Section 5 of the Act of August 13, 1914 (38  
18 Stat. 687), all collectively hereinafter referred to as the  
19 Federal Reclamation laws, between the UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States, and the FRIANT  
21 WATER USERS AUTHORITY, hereinafter referred to as the Authority,  
22 a public agency of the State of California, duly organized,  
23 existing, and acting pursuant to the laws of the State of  
24 California,  
25

26 WITNESS, That:

27 EXPLANATORY RECITALS

28 WHEREAS, the United States Bureau of Reclamation has  
29 constructed the Friant Division, Central Valley Project  
30 (Project), for storage, diversion, carriage and distribution of  
31 water for agricultural, flood control, municipal, industrial,  
32 domestic and other beneficial uses and purposes; and

1           WHEREAS, the Authority represents water users who  
2 contract with the United States for water service provided by the  
3 Friant Division of the Project; and

4           WHEREAS, the United States operates the Friant Division  
5 of the Project for the benefit, among others, of the water users  
6 represented by the Authority; and

7           WHEREAS, the Authority has for eleven (11) years  
8 operated and maintained certain Friant Division facilities  
9 pursuant to that certain Cooperative Agreement No. 6-FC-20-04180  
10 between the parties dated August 19, 1986; and

11           WHEREAS, the Authority has demonstrated its ability to  
12 operate and maintain such facilities to the satisfaction of the  
13 United States and in a manner which best and most economically  
serves the water users relying on those facilities; and

15           WHEREAS, it is deemed to be in the best interests of  
16 the parties and the Project's water users that the operation,  
17 maintenance and replacement, as well as certain administrative  
18 and financial activities, of the Project Works (as defined below)  
19 be transferred to the Authority as the Operating Non-Federal  
20 Entity; and

21           WHEREAS, the United States also believes it to be in  
22 the best interests of the parties and the Project's water users  
23 to transfer to the Authority the administrative and financial  
24 responsibility to continue to perform and hereafter fund the  
25 Authority's operation, maintenance and replacement of the Project  
26 Works while the United States retains the responsibility to fund  
the capital costs of the Project Works; and



1 Project in accordance with the *Blue Book* entitled, Replacements--  
2 Units, Service Lives, Factors, as it exists on the date of this  
3 Agreement or in accordance with Federal law or any other  
4 regulations, policies, guidelines or instructions adopted  
5 thereunder. OM&R shall include the performance and funding of  
6 emergency or unusual operation and maintenance or extraordinary  
7 operation and maintenance costs, unusual or extraordinary repair  
8 or replacement costs, and betterment costs, but only to the  
9 extent the costs thereof are not considered capital costs of the  
10 Project in accordance with the *Blue Book* referenced above as it  
11 exists on the date of this Agreement or in accordance with  
12 Federal law or any other regulations, policies, guidelines or  
13 instructions adopted thereunder. Notwithstanding the foregoing,  
14 OM&R shall also include Capital Items, as that term is defined in  
15 Article 4(a) hereof, which the Authority chooses to accomplish  
16 and finance pursuant to Article 4(b) hereof.

17 (d) "Other Water" shall mean water other than water  
18 conveyed or delivered pursuant to Water Delivery Contracts (as  
19 defined below) which the United States has a legal or contractual  
20 obligation to convey or deliver through the Project Works. Other  
21 Water includes, without limitation, water to be conveyed through  
22 the Project Works (1) pursuant to contracts under the Warren Act  
23 (43 USC 523, et seq.), Section 305 of the Act of March 5, 1992  
24 (106 Stat. 59), Section 3408(c) of the Central Valley Project  
25 Improvement Act (106 Stat. 4706), and Section 215 of the  
26 Reclamation Reform Act of 1982 (43 USC 3900o); (2) under other

1 wheeling or conveyance agreements binding on the Secretary; (3)  
2 in accordance with agreements for conveyance of water to wildlife  
3 refuges and wildlife management areas; and (4) to satisfy other  
4 legally imposed environmental obligations of the Secretary.

5 (e) "Party Entitled to Utilize or Receive Other Water"  
6 shall mean the party required to pay the Authority the amounts  
7 described in Article 11 hereof in connection with the delivery of  
8 Other Water. In the case of Other Water delivered to satisfy  
9 agreements for conveyance of water to wildlife refuges and  
10 wildlife management areas as well as other legally imposed  
11 environmental obligations of the Secretary, the Party Entitled to  
12 Utilize or Receive Other Water (and therefore required to pay the  
13 Authority the amounts described in Article 11 hereof in  
14 connection with the delivery thereof) shall be the Contracting  
15 Officer.

16 (f) "Project Works" shall mean those facilities listed  
17 or described on the attached Exhibit A, which are incorporated  
18 herein by this reference, including: the Friant-Kern Canal and  
19 related in-line control facilities; turnouts, measuring devices  
20 and associated water level control devices and water level  
21 recording instruments; appurtenant equipment, structures and  
22 maintenance buildings; and such other facilities as the parties  
23 may agree by modification of this definition and/or addendum to  
24 Exhibit A from time to time.

1 (g) "Secretary" or "Contracting Officer" shall mean  
2 the Secretary of the United States Department of the Interior or  
3 his/her duly authorized representative.

4 (h) "Water Delivery Contract" shall mean (1) any  
5 contract entered into by the Secretary under the provisions of  
6 Sections 9(c), 9(d) or 9(e) of the Reclamation Project Act of  
7 1939 [43 USC 485h (c), (d) and (e)] or Section 3404 of the  
8 Central Valley Project Improvement Act (106 Stat. 4706) pursuant  
9 to which Project water is to be supplied from or through the  
10 Project Works, and (2) any exchange contract, water rights  
11 settlement contract or similar agreement pursuant to the terms of  
12 which water is to be supplied by the Secretary from or using the  
13 Project Works.

14 (i) "Water Delivery Contractor" shall mean a party  
15 holding a Water Delivery Contract with the United States.

16 TERM OF AGREEMENT

17 2. (a) This Agreement shall be effective as of March 1,  
18 1998, and shall remain in effect for twenty-five (25) years  
19 thereafter; Provided, that this Agreement is not terminated at  
20 an earlier date pursuant to Article 2(b) below. Subject to  
21 modification acceptable to the United States and the Authority,  
22 the Authority shall have the option to renew this Agreement for  
23 successive periods not to exceed twenty-five (25) years each by  
24 providing written notice of such to the Contracting Officer not  
25 more than one year, but not less than six (6) months, prior to  
26 the end of the then-current term.

1           (b) The Contracting Officer may terminate this  
2 Agreement at any time before the expiration of its term whenever  
3 the Contracting Officer determines that the Authority is in  
4 substantial violation of the Agreement; Provided, that prior to  
5 the effective date of any such termination, the Contracting  
6 Officer shall notify the Authority in writing of the reason for  
7 the proposed termination, including with specificity, the  
8 purported deficiencies of the Authority in carrying out the terms  
9 and conditions of this Agreement. Such notice of purported  
10 deficiency shall be issued only after the designated  
11 representative of the Authority has met with the Contracting  
12 Officer or his designated representative to attempt in good faith  
13 and with the use of best efforts to resolve any dispute arising  
14 from the purported deficiency. It is the intent of the parties  
15 that disputes be resolved pursuant to this Article 2(b) as  
16 expeditiously as is reasonably possible without the necessity of  
17 other relief at law or in equity. The Authority shall have at  
18 least ninety (90) days from receipt of the written notice of said  
19 reasons for termination to correct all deficiencies referred to  
20 in said written notice; Provided, that in the event of a  
21 condition which threatens the safety or integrity of the Project  
22 Works, the Contracting Officer may specify a shorter notice  
23 period which the Contracting Officer determines to be appropriate  
24 under the circumstances. In the event the Authority does not  
25 correct all deficiencies referred to in said written notice  
26 within the applicable period, the Contracting Officer may

1 thereafter terminate this Agreement upon thirty (30) days prior  
2 written notice to the Authority. Any termination pursuant to  
3 this Article shall be subject to the rights and obligations of  
4 the parties as more specifically set forth in this Agreement.

5 (c) The Authority may at any time, upon giving twelve  
6 (12) months written notice, terminate this Agreement; Provided,  
7 that such termination shall not relieve the Authority of any of  
8 its duties, liabilities or obligations accruing from the  
9 effective date of this Agreement to the effective date of such  
10 termination, except insofar as the Authority lacks funding to  
11 perform such obligations due to a failure by the United States to  
12 meet any of its obligations under this Agreement.

13 (d) Upon any termination of this Agreement, the  
14 Authority shall transfer to the United States (1) title to all  
15 tools, vehicles, supplies, and equipment transferred under  
16 Article 3(b) hereof (to the extent still on hand) or purchased by  
17 the Authority for the purposes of this Agreement, and (2) any  
18 funds in its possession which were collected for, or allocated  
19 to, the OM&R of the Project Works for the then-current Fiscal  
20 Year which are in excess of the obligations of the Authority for  
21 the OM&R of the Project Works. All other funds and reserves in  
22 the Authority's possession, including without limitation all  
23 other funds collected for, or allocated to, the OM&R of the  
24 Project Works and the reserve funds established under Article 13  
25 hereof shall be retained or distributed by the Authority in  
26 accordance with the direction of the Authority's board of  
7 directors.

TRANSFER OF OM&R TO THE AUTHORITY

1  
2           3.   (a)   The effective date for the transfer of the Project  
3 Works to the Authority for OM&R pursuant to the terms and  
4 conditions of this Agreement shall be March 1, 1998; Provided,  
5 that the effective date for the transfer of any facilities  
6 subsequently included as Project Works by way of an addendum to  
7 Exhibit A shall be as mutually agreed by the parties. After a  
8 transfer of any Project Works to the Authority for OM&R, and so  
9 long as such Project Works are necessary for the conveyance of  
10 water pursuant to Water Delivery Contracts or to convey or  
11 deliver Other Water, the Authority shall be responsible for the  
12 OM&R of such Project Works in accordance with the terms and  
13 conditions of this Agreement. The Authority shall maintain the  
14 Project Works in such a manner that the Project Works shall  
15 remain in substantially the same condition for the storage,  
16 diversion and carriage of water as they existed on the effective  
17 date of the transfer of such Project Works to the Authority for  
18 OM&R, excepting ordinary and reasonable wear and Acts of God. In  
19 addition, the Authority shall operate, maintain and replace the  
20 Project Works consistent with the guidelines provided by existing  
21 Designers Operating Criteria, standard operation procedures  
22 and/or manufacture's technical manuals for the Project Works, in  
23 accordance with such sound engineering practices as have been or  
24 may be developed for the Project Works, and in accordance with  
25 applicable Federal, State, and local environmental laws.

1 Deviations from or changes to these standards shall be approved  
2 by the Contracting Officer.

3 (b) In connection with the transfer of Project Works  
4 to the Authority for OM&R as herein provided, the Contracting  
5 Officer, at the request of the Authority, shall transfer to the  
6 Authority title to all tools, non-passenger vehicles, supplies  
7 and equipment owned and used by the United States in the OM&R of  
8 the Project Works as such equipment is noted on the property  
9 records maintained by the United States for the Project Works.  
10 Only title to personal property owned by the United States shall  
11 be transferred to the Authority pursuant to this Article. Title  
12 to all Project Works and any real property associated or used in  
13 connection with the Project Works shall remain with the United  
14 States unless and until the Congress of the United States  
15 provides otherwise; Provided, that the United States hereby  
16 grants to the Authority a right of possession to all real  
17 property owned by the United States which is included in,  
18 associated with or used in connection with the OM&R of the  
19 Project Works for as long as this Agreement remains in effect  
20 with respect to any of the Project Works.

21 (c) The Authority shall make no substantial change in  
22 the Project Works without first obtaining the written approval of  
23 the Contracting Officer. The Contracting Officer's determination  
24 as to whether any change in any such Project Works is or is not  
25 substantial shall ordinarily be made after consultation with the  
26 Authority and shall be conclusive and binding upon the parties  
7 hereto.



1 (b) Notwithstanding the provisions of Article 4(a)  
2 hereof, in the event the Authority identifies Capital Items it  
3 deems necessary for the OM&R of the Project Works and the  
4 Contracting Officer is unable or unwilling to provide a mechanism  
5 for accomplishing and financing such Capital Items, the Authority  
6 in its sole discretion may proceed with the accomplishment and  
7 financing of such Capital Items and deem the costs thereof to be  
8 OM&R costs hereunder, regardless of whether such costs are  
9 capitalized by the Authority. Such Capital Items may include,  
10 without limitation, the acquisition, repair or replacement of  
11 personal property (such as motor vehicles and heavy equipment)  
12 which might otherwise be deemed to be Capital Items and the  
13 construction or improvement of structures utilized by the  
14 Authority in connection with the OM&R of the Project Works.

15 EMERGENCY ACTION PLANS AND NOTIFICATIONS

16 5. (a) The Authority shall prepare such emergency action  
17 plans for the Project Works as are required by governmental  
18 agencies with jurisdiction over the Authority's operations. The  
19 Authority shall furnish copies of any such plans to the  
20 Contracting Officer.

21 (b) In addition to implementing Article 5(a) hereof,  
22 the Authority shall notify the Contracting Officer as soon as  
23 reasonably practicable after initial observation by the Authority  
24 of any event or situation which threatens (1) the safety or  
25 integrity of the Project Works, or (2) the well-being of humans  
26 or property located adjacent to the Project Works.

1 Notwithstanding Article 27 hereof, such notification shall be  
2 made telephonically or by facsimile transmission rather than by  
3 mail.

4 ADMINISTRATION OF PROJECT LANDS

5 6. (a) (1) The lands and rights-of-way acquired and/or  
6 withdrawn by the United States for the purposes of the  
7 construction, care, operation and/or maintenance of Project Works  
8 (hereafter referred to as Project Lands) may be used by the  
9 Authority for such purposes without being charged any  
10 administrative fees therefor. The Authority shall not issue  
11 rights-of-way across such lands or issue any other rights,  
12 leases, licenses, permits or special-use agreements involving  
13 such lands. All such land use instruments shall only be issued  
14 by the Contracting Officer.

15 (2) The Contracting Officer shall not issue any  
16 rights-of-way across Project Lands or leases, licenses, permits  
17 or special-use agreements involving Project Lands until the  
18 Contracting Officer has determined that the grant is compatible  
19 with the Project purposes and with the OM&R of the Project Works.  
20 The Contracting Officer shall issue such rights-of-way across  
21 Project Lands or any leases, licenses, permits or special-use  
22 agreements involving Project Lands only after offering the  
23 Authority the opportunity to provide appropriate comment  
24 concerning the request. Requests for such grants that are  
25 received by the Authority shall be referred to the Contracting  
26 Officer along with appropriate comment concerning the request.

1 A copy of all such grants issued by the Contracting Officer shall  
2 be provided to the Authority.

3 (b) The Authority shall regularly inspect the Project  
4 Lands to identify any trespass, and determine the general  
5 condition of the real property itself. Cases of trespass shall  
6 be corrected, where possible, by the Authority. Trespass cases  
7 which the Authority feels may require undue time and/or expense  
8 to correct shall be referred without delay to the Contracting  
9 Officer for resolution.

10 (c) Construction by the Authority of any new  
11 facilities on Project Lands, other than new facilities (1)  
12 constructed in connection with the OM&R of the Project Works, or  
13 (2) the costs of which are added to the capital costs of the  
14 Project, shall not be commenced without the written approval of  
15 the Contracting Officer. Plans of sufficient detail to describe  
16 the proposed location of construction, the employment of sound  
17 engineering practices, and the use to be made of the proposed  
18 facility shall be reviewed by the Contracting Officer for  
19 sufficiency and for consistency with the purposes of the Project.  
20 The Contracting Officer, upon finding the proposed new facility  
21 to be consistent with this Agreement, sound engineering  
22 practices, and the purpose of the Project shall issue the  
23 Authority appropriate permission for such use without any use or  
24 administrative fee; Provided, that the Authority shall reimburse  
25 the Contracting Officer for the Contracting Officer's actual  
26 costs incurred in reviewing and approving the Authority's plans  
for such proposed new facilities.



1 Water specifying such turnouts and delivery points, or as may be  
2 agreed to by such party entitled to utilize or receive water from  
3 the Project Works, the Authority and the Contracting Officer.

4 (b) A complete list of all valid obligations of the  
5 United States to convey and distribute water in and from the  
6 Project Works is attached as Exhibit B and incorporated herein by  
7 this reference. Exhibit B indicates whether each obligation is  
8 under a Water Delivery Contract or is for the delivery of Other  
9 Water. The Contracting Officer shall modify Exhibit B from time  
10 to time as such obligations change or as new obligations are  
11 added.

12 (c) Prior to the Contracting Officer entering into,  
13 renewing or amending any Water Delivery Contract or any other  
14 agreement which requires or permits the conveyance of water  
15 through any of the Project Works, the Contracting Officer shall  
16 consult with the Authority about the terms of such contract  
17 action, and shall provide the Authority the opportunity to review  
18 and comment thereon. Any such contract action shall be taken by  
19 the Contracting Officer only after the Contracting Officer has  
20 given due consideration to, and has taken all reasonable actions  
21 to mitigate the impacts of such contract action on (1) the  
22 quantity or quality of water available to those parties which are  
23 Water Delivery Contractors, or Parties Entitled to Utilize or  
24 Receive Other Water, as of the date of this Agreement, and (2)  
25 the ability of the Authority to perform its obligations under  
26 this Agreement.

1 RESOLUTION OF DISPUTES

2 9. Should any dispute arise concerning delivery or  
3 conveyance of water by the Authority through the Project Works  
4 between the Authority, any Water Delivery Contractor(s) and/or any  
5 Party Entitled to Utilize or Receive Other Water from or through  
6 the Project Works, which the Authority concludes cannot be  
7 resolved through negotiations with the other party(ies) to the  
8 dispute, the Authority shall provide its position with respect to  
9 such dispute to the other party(ies) thereto in writing. Within  
10 sixty (60) days after such notice is provided, the dispute shall  
11 be referred to the Contracting Officer for resolution. The  
12 Contracting Officer's resolution of the dispute shall be accepted  
13 by the Authority and other party(ies) thereto as final and  
14 conclusive and the Authority and the other party(ies) shall  
15 promptly comply with said decision, and shall operate the Project  
16 Works in conformance with such decision until the same is stayed,  
17 reversed or modified by a decision of a court of competent  
18 jurisdiction.

19 INSPECTION AND TECHNICAL ASSISTANCE FOR  
20 DETERMINING ADEQUACY OF OM&R

21 10. (a) The Contracting Officer shall at all times have  
22 access to the Project Works, and may periodically, as reasonably  
23 necessary, inspect and investigate the same for the purpose of  
24 ascertaining if the Project Works are being operated, maintained  
25 and replaced in accordance with this Agreement. The Contracting  
26 Officer shall provide the Authority with reasonable advance  
27 notice of any such inspections and investigations, and the

1 purpose and scope thereof. The actual costs of such reasonable  
2 inspections and investigations shall be reimbursed by the  
3 Authority within sixty (60) days after receipt by the Authority  
4 of a detailed billing for such costs. Any determinations by the  
5 Contracting Officer as to the reasonableness of such inspections  
6 and investigations shall be subject to Article 17 hereof.

7 (b) In addition to the inspection rights of the  
8 Contracting Officer provided in Article 10(a) hereof, no more  
9 frequently than annually, the Contracting Officer may upon  
10 written notice to the Authority referencing this Article 10(b),  
11 or upon request of the Authority shall, conduct a RO&M  
12 examination of any or all of the Project Works to assist the  
13 Contracting Officer and/or the Authority in determining the  
14 condition of the Project Works and the adequacy of the  
15 Authority's OM&R thereof, as appropriate. A report of the  
16 review, including recommendations, if any, shall be prepared by  
17 the Contracting Officer and a copy shall be furnished to the  
18 Authority. The Authority shall reimburse the United States for  
19 the actual costs incurred for each RO&M examination, including  
20 the actual costs of any further inspections or investigations the  
21 Contracting Officer determines to be necessary as a result of  
22 conditions observed during the RO&M examination. The Contracting  
23 Officer shall provide a detailed billing to the Authority for  
24 such costs and the Authority shall pay such billings within sixty  
25 (60) days from the date the billing is received.

1 (c) If requested by the Authority, the Contracting  
2 Officer shall undertake special reviews and provide technical  
3 assistance relating to the Project Works, and related books and  
4 records to ascertain the extent of OM&R deficiencies, if any, to  
5 determine the remedial measures required for their correction and  
6 to assist the Authority in solving specific problems. Any such  
7 reviews or technical assistance provided shall, except in a case  
8 of emergency, be requested in writing at least thirty (30) days  
9 in advance. The Contracting Officer shall bill the Authority for  
10 the actual cost of such reviews and technical assistance and the  
11 Authority shall pay such billings within sixty (60) days from the  
12 date the billing is received.

13 COST RECOVERY FOR AUTHORITY OM&R ACTIVITIES

14 11. As of the effective date of this Agreement, the  
15 Authority shall be responsible for directly funding the OM&R of  
16 the Project Works transferred hereby. Except as otherwise  
17 provided herein, the parties acknowledge that the United States  
18 will no longer provide funding through the appropriations process  
19 for such OM&R. The United States hereby delegates to the  
20 Authority all required authority under statutes, contracts,  
21 regulations and policies to collect for OM&R of the Project  
22 Works. The procedures and authorities to be utilized by the  
23 Authority for such direct funding are set forth in this Article  
24 11 and in Article 12(d) hereof.

25 (a) OM&R Budgets. By July 1 of each year, the  
26 Authority shall make available to each Water Delivery Contractor,

1 and all Parties Entitled to Utilize or Receive Other Water,  
2 proposed budgets for each of the next two (2) succeeding Fiscal  
3 Years for all activities of the Authority to be carried out under  
4 this Agreement. The budgets so developed shall include amounts  
5 necessary to establish the reserve fund described in Article 13  
6 hereof and such other reserves as may be determined to be  
7 necessary by the Authority from time to time. The Authority  
8 shall afford each Water Delivery Contractor and all Parties  
9 Entitled to Utilize or Receive Other Water the opportunity to  
10 submit comments on such proposed budgets by September 1 of that  
11 year. Except as otherwise provided in the Memorandum of  
12 Understanding described in Article 11(e) hereof, any dispute(s)  
13 regarding the proposed budgets shall be resolved in the manner  
14 described in Article 9 hereof. The Authority shall submit the  
15 final budget for each Fiscal Year to the Contracting Officer  
16 prior to the start of that Fiscal Year. The Authority shall use  
17 reasonable efforts to perform its responsibilities under this  
18 Agreement in accordance with the applicable final budget.

19 (b) Cost Recovery Methodology. The Authority shall  
20 develop a methodology to recover all costs incurred by the  
21 Authority in carrying out its responsibilities under this  
22 Agreement, including without limitation all costs described in  
23 the budgets prepared pursuant to Article 11(a) hereof.

24 (1) The Authority's cost recovery methodology  
25 shall (i) provide for the equitable allocation of the costs to be  
26 recovered among Water Delivery Contractors with an obligation to

1 pay for water delivered or conveyed through the Project Works and  
2 all Parties Entitled to Utilize or Receive Other Water with an  
3 obligation to pay therefor, including without limitation the  
4 United States; (ii) provide for the equitable allocation of the  
5 costs to be paid to the San Luis & Delta-Mendota Water Authority  
6 pursuant to the Memorandum of Understanding described in Article  
7 11(e) hereof; and (iii) clearly set forth the manner in which all  
8 such costs shall be collected by the Authority, including  
9 deadlines for payments and/or deposits required of Water Delivery  
10 Contractors and all Parties Entitled to Utilize or Receive Other  
11 Water under the methodology.

12 (2) Such methodology shall recover costs in lieu  
13 of the conveyance operation and maintenance cost component and  
14 the conveyance pumping operation and maintenance cost component  
15 heretofore calculated by the United States pursuant to its  
16 ratesetting policies for the Project. In addition to OM&R costs  
17 for direct funding the OM&R of the Project Works, such  
18 methodology shall recover amounts due from the United States to  
19 the Western Area Power Administration (hereinafter referred to as  
20 "Western") that are payable by the Water Delivery Contractors,  
21 Parties Entitled to Utilize or Receive Other Water, and  
22 contractors in the Friant Division pursuant to the Memorandum of  
23 Understanding described in Article 11(e) hereof, in connection  
24 with the delivery or conveyance of water through the Project  
25 Works.

1                   (3) The Authority's cost recovery methodology,  
2 and any subsequent amendments thereto, shall be approved by the  
3 Authority and provided to all parties with payment obligations  
4 under this Article 11 by July 1 of each year, or not less than  
5 sixty (60) days prior to the effective date of any amendment  
6 thereof. Except as otherwise specified in the Memorandum of  
7 Understanding described in Article 11(e) hereof, any dispute(s)  
8 regarding the Authority's cost recovery methodology shall be  
9 resolved in the manner described in Article 9 hereof. The  
10 Contracting Officer has approved the Authority's initial cost  
11 recovery methodology. All proposed amendments shall be submitted  
12 to the Contracting Officer for review and comment concurrent with  
13 the dissemination to all parties with payment obligations noted  
14 above.

15                   (c) Deficiencies in Cost Recovery/Right of Offset. In  
16 the event any Water Delivery Contract or obligation to deliver  
17 Other Water provides for or results in the payment of less than  
18 all of the costs to be recovered by the Authority in accordance  
19 with Article 11(b) hereof, whether resulting from the inadequacy  
20 of the contract water rates to cover actual OM&R costs,  
21 delinquency in payment of amounts due, or otherwise, the United  
22 States shall reimburse the Authority for the deficiency by  
23 allowing the Authority to offset any such deficiency with amounts  
24 otherwise due to the United States under Article 12(a) hereof.  
25 If the amounts otherwise due to the United States under Article  
26 12(a) hereof are insufficient, the United States shall pay the

1 amount of any such deficiency to the Authority within thirty (30)  
2 days after the receipt of a written notice from the Authority  
3 advising the United States of such deficiency.

4 (d) Interest. In the event any amounts due to the  
5 Authority from the United States under this Agreement are not  
6 paid when due, in addition to exercising the rights afforded the  
7 Authority under Articles 11(c) and 12(d) hereof, the Authority  
8 may add to the delinquent amounts interest payable pursuant to  
9 the Prompt Payment Act, as amended (31 USC 3901, et seq.).

10 (e) Memorandum of Understanding. The parties  
11 acknowledge that the OM&R of certain Project facilities  
12 benefitting parties in the Friant Division will be performed by  
13 the San Luis & Delta-Mendota Water Authority pursuant to that  
14 certain Agreement for the Transfer of the Operation, Maintenance  
15 and Replacement and Certain Financial and Administrative  
16 Activities Related to the San Luis and Delta-Mendota Canals,  
17 Tracy Pumping and O'Neill Pumping/Generating Plant, San Luis  
18 Drain and Associated Works between the San Luis & Delta-Mendota  
19 Water Authority and the United States of America effective  
20 March 1, 1998. In connection therewith, the Authority has  
21 entered into that certain Memorandum of Understanding Between the  
22 Friant Water Users Authority and the San Luis & Delta-Mendota  
23 Water Authority Relating to Allocation, Collection and Payment of  
24 Operation, Maintenance & Replacement Costs for Water Delivered  
25 Through Certain Central Valley Project Facilities, effective  
26 March 1, 1998. Pursuant to such Memorandum of Understanding,

1 certain OM&R costs described therein will be payable by  
2 contractors in the Friant Division of the Project, and collected  
3 by the Friant Water Users Authority and paid to the San Luis &  
4 Delta-Mendota Water Authority in accordance with the terms of  
5 such Memorandum of Understanding as it may be amended by the  
6 parties thereto from time to time. The United States  
7 acknowledges and agrees that it is not a party to such Memorandum  
8 of Understanding.

9 (f) Direct Charges Replace U.S. Rate Components.

10 After the effective date of this Agreement, the United States  
11 shall not charge water rate components for conveyance operation  
12 and maintenance or conveyance pumping operation and maintenance  
13 to Water Delivery Contractors or to Parties Entitled to Utilize  
14 or Receive Other Water, except to the extent financial  
15 obligations otherwise properly included in such components have  
16 been incurred by the United States prior to the effective date of  
17 this Agreement and have not been included as an expense therein  
18 under the ratesetting policies for the Project.

19 (1) To the extent the Authority's cost recovery  
20 methodology includes recovery of power costs for conveyance  
21 pumping that are due to Western, the Authority shall remit such  
22 funds to the Contracting Officer within thirty (30) days after  
23 receipt of the Contracting Officer's billing therefor; Provided,  
24 that this Article 11(f)(1) shall continue in effect only until  
25 execution and implementation of an agreement between the  
26 Contracting Officer, the Authority and Western providing for the  
7 direct payment by the Authority to Western of such obligations,

1 whereupon, the funds collected for payment to Western shall be  
2 directly remitted by the Authority pursuant to the terms of such  
3 agreement.

4 (2) All costs recovered pursuant to the  
5 Authority's cost allocation methodology and not required to be  
6 remitted to the Contracting Officer pursuant to this Article  
7 11(f) shall be immediately available for funding the costs of the  
8 Authority pursuant to this Article 11.

9 (g) Deposits of Amounts Collected. Amounts collected  
10 by the Authority pursuant to this Article 11 shall be placed on  
11 deposit or otherwise invested in accordance with the Authority's  
12 investment policy and in conformance with State law to be  
13 expended solely for purposes of this Agreement. All interest  
14 accruing on said account shall be property of the Authority, and  
15 not of the United States, and shall be applied against OM&R  
16 costs.

17 COLLECTION BY THE AUTHORITY OF AMOUNTS DUE; TERMINATION OF WATER  
18 DELIVERIES  
19

20 12. The United States hereby appoints the Authority as its  
21 fiscal agent for the purpose of collecting, applying and  
22 remitting water rates and charges as set forth in this Article.

23 (a) Collection of Other Amounts. In addition to the  
24 amounts collected by the Authority pursuant to Article 11 hereof,  
25 the Authority, as fiscal agent for the United States, shall  
26 collect all water rates and charges and other amounts due from  
27 the Water Delivery Contractors and Parties Entitled to Utilize or  
28 Receive Other Water to the United States, according to the

1 Department of Interior's then most-current water ratesetting  
2 policy documents and as provided by the applicable contract,  
3 statute or regulation. Not later than each October 1, the  
4 Contracting Officer shall inform the Authority of the amounts to  
5 be collected by the Authority pursuant to this Article 12(a)  
6 during the twelve (12) months commencing on the following (1)  
7 January 1, for Water Delivery Contractors with contract years  
8 commencing on January 1, or (2) March 1 for all other Water  
9 Delivery Contractors and all Parties Entitled to Utilize or  
10 Receive Other Water. Any increases in such amounts shall become  
11 effective sixty (60) days after the Authority receives written  
12 notification of such modification from the Contracting Officer.  
13 Decreases in such amounts may be effective on such shorter notice  
14 as the Authority may approve.

15 (b) Deposits and Distribution. All amounts collected  
16 by the Authority as fiscal agent for the United States pursuant  
17 to this Article 12 shall be placed on deposit or otherwise  
18 invested in accordance with the Authority's investment policy and  
19 in conformance with State law. A copy of the Authority's  
20 investment policy shall be provided to the Contracting Officer  
21 upon request. All amounts collected by the Authority as fiscal  
22 agent for the United States under this Article 12, and all  
23 interest earned on amounts collected by the Authority as fiscal  
24 agent for the United States less account maintenance fees and  
25 similar charges imposed on the Authority, shall be distributed to  
26 the United States within sixty (60) days after the end of the

1 calendar month in which such amounts were collected or interest  
2 was credited together with the information described in Article  
3 12(c)(3).

4 (c) Water Accounting Program. The Authority shall  
5 assist the Contracting Officer in the development, maintenance  
6 and utilization of a system of water accounting, acceptable to  
7 the Contracting Officer, for use in the administration of the  
8 Authority's responsibilities under Articles 11 and 12 of this  
9 Agreement.

10 (1) The water accounting program shall fully and  
11 accurately document the allocation and deliveries of water  
12 through the Project Works and account for the financial  
13 transactions affecting the Water Delivery Contractors, the Friant  
14 Division Contractors required to make payments via the Friant  
15 Water Users Authority to the Authority pursuant to the Memorandum  
16 of Understanding described in Article 11(e) hereof, and all  
17 Parties Entitled to Utilize or Receive Other Water with an  
18 obligation to pay therefor. All water accounting records created  
19 or maintained by the Authority under this Agreement shall be  
20 subject to Article 14 hereof and shall be accessible by the  
21 Contracting Officer.

22 (2) As soon as reasonably practical after the end  
23 of each calendar month, the Authority shall provide each Water  
24 Delivery Contractor and all Parties Entitled to Utilize or  
25 Receive Other Water, with the following: (i) a report of all  
26 water delivered or conveyed through the Project Works for such

1 party during the applicable calendar month; (ii) the applicable  
2 water rates and charges collected by the Authority pursuant to  
3 its cost recovery methodology and as fiscal agent for the United  
4 States in connection with the delivery or conveyance of such  
5 water; (iii) the amounts then held on deposit with the Authority  
6 which may be applied against amounts due from such party after  
7 credits for charges reflected in the report; and (iv) the amount,  
8 if any, required to correct any deficiency in amounts due from  
9 such party.

10 (3) After affording each party receiving the  
11 information described in this Article 12(c) a reasonable period  
12 to review and comment on such information, the Authority shall  
13 provide the Contracting Officer with a report of (i) all water  
14 delivered or conveyed through the Project Works during the  
15 applicable calendar month, and (ii) the amounts collected by the  
16 Authority as fiscal agent for the United States pursuant to this  
17 Article 12 in connection therewith.

18 (d) Discontinuing Water Deliveries. In the event any  
19 amount due to or to be collected by the Authority from a Water  
20 Delivery Contractor or any other party pursuant to Article 11 or  
21 Article 12 hereof is not paid when due, upon three (3) days  
22 written notice to the affected party and the Contracting Officer,  
23 the Authority is authorized by the United States, as the United  
24 States' agent, to discontinue delivery and conveyance of water to  
25 or for such Water Delivery Contractor or other party until such  
26 time as the delinquency is cured. In the event the Contracting

1 Officer directs the Authority to deliver or convey water to or  
2 for a delinquent party, the United States shall be liable to the  
3 Authority for the costs to be recovered from such party under  
4 this Agreement, and the Authority shall have no obligation to  
5 collect any amounts associated with such water. The United  
6 States shall pay the costs associated with any such water on the  
7 same terms and conditions as would otherwise apply to the  
8 applicable Water Delivery Contractor or other party; Provided,  
9 that the Authority may offset any amounts due from the United  
10 States against amounts otherwise due to the United States under  
11 Article 12(a) hereof.

12 EMERGENCY RESERVE FUND

13 13. (a) Upon transfer of the OM&R of the Project Works  
14 under this Agreement, the Authority shall establish and maintain  
15 a minimum reserve fund account to finance (1) unusual OM&R costs;  
16 (2) costs associated with addressing conditions which threaten or  
17 cause interruption of water service; (3) unforeseen or  
18 extraordinary OM&R costs; and (4) costs associated with  
19 addressing conditions which threaten the safety or integrity of  
20 the Project Works; Provided, that such reserve fund may also be  
21 utilized as needed to provide funding for OM&R activities  
22 necessary before the collection of monthly billings during  
23 periods of diminished water deliveries. If the funds in the  
24 reserve fund are insufficient to pay the costs described in the  
25 preceding sentence, the Contracting Officer shall, subject to the  
26 availability of funds, make funds available to the Authority on

1 terms and conditions on which the Authority and the Contracting  
2 Officer agree.

3 (b) The targeted minimum reserve fund amount will be  
4 accumulated by deposits made no less frequently than annually,  
5 over a maximum of ten (10) years and is to be held in an  
6 interest-bearing or dividend-paying account in a Federally  
7 insured financial institution, in Federally guaranteed  
8 securities, in the California Local Agency Investment Fund, or,  
9 if approved by the Contracting Officer, in any fiduciary account  
10 in a manner provided by the laws of the State of California. The  
11 targeted minimum reserve fund amount shall equal fifteen percent  
12 (15%) of the average annual actual OM&R costs incurred by the  
13 Authority for the Project Works during the three most recent  
14 Fiscal Years. For purposes of the preceding sentence, the  
15 Authority's actual OM&R costs for Fiscal Years 1995-1997 shall be  
16 deemed to be the Contracting Officer's actual OM&R costs for the  
17 Project Works in those Fiscal Years.

18 (c) The Authority shall submit proposed expenditures  
19 from the reserve fund in writing to the Contracting Officer for  
20 review and approval prior to incurring the obligation, and such  
21 expenditures shall be deemed approved if the Contracting Officer  
22 does not respond within thirty (30) days; Provided, that in the  
23 event the Authority determines an expenditure from the reserve  
24 fund is necessary to correct an emergency that poses an immediate  
25 threat to or is causing interruption of water service, the  
26 Authority may request and receive oral consent of the Contracting

1 Officer for expenditures of reserve funds to address the  
2 emergency. The Contracting Officer shall confirm the consent in  
3 writing within five (5) working days. The amount withdrawn from  
4 the reserve fund consistent with this Article 13(c) shall be  
5 replaced in the reserve fund within five (5) years of withdrawal,  
6 in amounts which will be over and above the normal annual  
7 contribution to the reserve fund; Provided, that any withdrawals  
8 made to provide funding for OM&R activities necessary before the  
9 collection of monthly billings during periods of diminished water  
10 deliveries shall be replaced in the reserve fund within twelve  
11 (12) months of withdrawal.

12 (d) The Authority may collect other reserve funds as  
13 it deems necessary in addition to the targeted minimum reserve  
14 fund set forth under Article 13(b) hereof. Any such additional  
15 reserve amount collected by the Authority is not subject to the  
16 terms and conditions set forth in this Article 13, but may be  
17 incorporated into the budget and the cost allocation methodology  
18 described in Article 11 of this Agreement.

#### 19 RECORDS

20 14. (a) The Authority shall establish and maintain  
21 separate, adequate and appropriate records and books for the OM&R  
22 and financial and administrative activities undertaken by the  
23 Authority relative to the Project Works under this Agreement.  
24 All records and books maintained pursuant to this Agreement shall  
25 be available to, and subject at all reasonable times to  
26 inspection, examination, copying or audit by authorized

1 representatives of affected Water Delivery Contractors, Parties  
2 Entitled to Utilize or Receive Other Water delivered or conveyed  
3 through the Project Works and the Contracting Officer.

4 (b) The Authority shall maintain records of actual  
5 expenditures in accordance with an accounting system prescribed  
6 by the California State Controller in compliance with California  
7 Government Code Section 53891. The Contracting Officer and the  
8 Authority shall preserve and make available their respective  
9 financial and accounting records and books relating to this  
10 Agreement until the later of either (1) the final disposition of  
11 any litigation or settlement of claims arising out of performance  
12 under this Agreement, or (2) the expiration of five (5) years  
13 after the activities giving rise to the creation of such records  
14 and books. By the January 31 following the completion of each  
15 Fiscal Year, the Authority shall provide the Contracting Officer  
16 with a copy of its audited financial statements as of the end of  
17 the preceding Fiscal Year.

18 (c) Pending transfer of such records to the United  
19 States, the Authority shall retain the originals or copies of all  
20 significant OM&R records pertinent to the Project Works and/or  
21 water operations, including modifications to Project Works; as-  
22 built drawings; maintenance and repair logs; equipment tests,  
23 equipment operations logs; emergency response plans; spill  
24 prevention control and countermeasure plans; written inquiries  
25 received by the Authority pursuant to the Federal Freedom of  
26 Information Act or analogous State law; Congressional or States

1 Legislative requests; or public or private claims or potential  
2 claims against the United States and/or the Authority relative to  
3 the Project Works.

4 (d) The Contracting Officer shall make available to  
5 the Authority those operation, maintenance, financial and  
6 administrative records relating to the Project Works in his  
7 possession at the time this Agreement is executed and any  
8 revisions or modifications to those records subsequent to such  
9 execution.

10 COOPERATION/MUTUAL AID

11 15. (a) In situations which the Contracting Officer and  
12 the Authority determine to be emergencies or other extraordinary  
13 circumstances affecting the Project, including without  
14 limitation, the Project Works, either the Contracting Officer or  
15 the Authority may request the other to furnish personnel,  
16 materials, tools, equipment or other resources. The party so  
17 requested shall immediately cooperate with the other and render  
18 such assistance as the party so requested determines to be  
19 available. Unless otherwise agreed, the party making the  
20 request, within sixty (60) days of receipt of properly itemized  
21 bills from the other party, shall reimburse the party rendering  
22 such assistance for all costs properly and reasonably incurred by  
23 it in such performance. Such costs shall be determined on the  
24 basis of current charges or rates charged by the party rendering  
25 the assistance.

1           (b) In instances in which the total costs of  
2 responding to emergencies or other extraordinary circumstances,  
3 whether due to a single event or condition or to multiple events  
4 or conditions, exceed or substantially deplete the Authority's  
5 minimum reserve fund established pursuant to Article 13(b)  
6 hereof, the Contracting Officer agrees to cooperate with the  
7 Authority (1) to promptly identify sources of funding, including  
8 but not limited to, sources available from or to the United  
9 States; (2) to allocate responsibility for paying the costs of  
10 responding to such emergencies or other extraordinary  
11 circumstances, including but not limited to by determining  
12 Capital Items under Article 13(b) hereof; and (3) to develop a  
13 timetable for repayment of such costs that are provided by the  
14 United States and are allocated to the Authority.

15                           NOTIFICATION OF THIRD PARTIES

16           16. (a) By July 1, 1998, the Contracting Officer shall  
17 instruct all Water Delivery Contractors and all Parties Entitled  
18 to Utilize or Receive Other Water delivered or conveyed through  
19 the Project Works that, effective March 1, 1998, the Authority  
20 became the Operating Non-Federal Entity with respect to the  
21 Project Works and is the United States' fiscal agent for purposes  
22 of all payments to be made for or in connection with water  
23 delivered or conveyed through the Project Works. The Contracting  
24 Officer shall inform all parties to be so notified of the  
25 Authority's rights, authorities and obligations under this  
26 Agreement and any other agreements relevant to the Authority's

1 status as the Operating Non-Federal Entity, and shall cooperate  
2 with the Authority in ensuring that all such parties timely and  
3 properly make all required payments to the Authority. Without  
4 limiting the foregoing, the Contracting Officer shall direct all  
5 such parties to simultaneously provide the Authority with copies  
6 of all water delivery schedules provided to the Contracting  
7 Officer. The Contracting Officer shall also inform all parties  
8 to be notified pursuant to this Article 16(a) that, after the  
9 effective date of this Agreement, the United States shall not  
10 charge the conveyance operation and maintenance cost component or  
11 the conveyance pumping operation and maintenance cost component  
12 heretofore calculated by the United States pursuant to its  
13 ratesetting policies for the Project to Water Delivery  
14 Contractors, or Parties Entitled to Utilize or Receive Other  
15 Water, except to the extent financial obligations otherwise  
16 properly included in such components have been incurred by the  
17 United States prior to the effective date of this Agreement and  
18 have not been included as an expense therein under the  
19 ratesetting policies for the Project.

20 (b) The Secretary shall include in all agreements  
21 providing for the delivery or conveyance of water through the  
22 Project Works which are entered into, renewed or amended after  
23 May 29, 1998 a provision requiring that, while this Agreement is  
24 in effect, the Authority shall be the Operating Non-Federal  
25 Entity with respect to the Project Works and the United States'  
26 fiscal agent for purposes of all payments to be made for or in

1 connection with water delivered or conveyed through the Project  
2 Works. All such new, renewed or amended agreements shall include  
3 provisions recognizing the Authority's rights, authorities and  
4 obligations under this Agreement and any other agreements  
5 relevant to the Authority's status as the Operating Non-Federal  
6 Entity, and shall require that the non-federal parties to such  
7 agreements timely and properly make all required payments to the  
8 Authority. Such new, renewed or amended agreements shall also  
9 include provisions requiring the non-federal parties to such  
10 agreements to simultaneously provide the Authority with copies of  
11 all water delivery schedules provided to the Contracting Officer.  
12 The Contracting Officer shall also include in all such new,  
13 renewed or amended agreements a provision confirming that, after  
14 May 29, 1998, the United States shall not charge the conveyance  
15 operation and maintenance cost component or the conveyance  
16 pumping operation and maintenance cost component heretofore  
17 calculated by the United States pursuant to its ratesetting  
18 policies for the Project to Water Delivery Contractors, or  
19 Parties Entitled to Utilize or Receive Other Water, except to the  
20 extent financial obligations otherwise properly included in such  
21 components have been incurred by the United States prior to the  
22 effective date of this Agreement and have not been included as an  
23 expense therein under the ratesetting policies for the Project.

#### 24 OPINIONS AND DETERMINATIONS

25 17. (a) Where the terms of this Agreement provide for  
26 actions to be based upon the opinion or determination of either

1 party, said terms shall not be construed as permitting such  
2 action to be predicated upon arbitrary, capricious or  
3 unreasonable opinions or determinations. Both parties,  
4 notwithstanding any other provisions of this Agreement, expressly  
5 reserve the right to relief from and appropriate adjustment for  
6 any such arbitrary, capricious or unreasonable opinion or  
7 determination. Each opinion or determination by either party  
8 shall be provided in a timely manner.

9 (b) The Contracting Officer shall have the right to  
10 make determinations necessary to administer this Agreement that  
11 are consistent with the expressed and implied provisions of this  
12 Agreement, the laws of the United States and the State of  
13 California, and rules and regulations applicable to the  
14 Contracting Officer. Such determinations shall be made in  
15 consultation with the Authority to the extent reasonably  
16 practicable.

#### 17 CHARGES FOR DELINQUENT PAYMENTS

18 18. (a) The Authority shall be subject to interest,  
19 administrative and penalty charges on delinquent installments or  
20 payments. When a payment is not received by the due date, the  
21 Authority shall pay an interest charge for each day the payment  
22 is delinquent beyond the due date. When a payment becomes 60  
23 days delinquent, the Authority shall pay an administrative charge  
24 to cover additional costs of billing and processing the  
25 delinquent payment. When a payment is delinquent 90 days or  
26 more, the Authority shall pay an additional penalty charge of 6  
27 percent per year for each day the payment is delinquent beyond  
28 the due date. Further, the Authority shall pay any fees incurred  
29 for debt collection services associated with a delinquent  
30 payment.

31  
32 (b) The interest charge rate shall be the greater of  
33 the rate prescribed quarterly in the Federal Register by the  
34 Department of the Treasury for application to overdue payments,  
35 or the interest rate of 0.5 percent per month prescribed by

1 Section 6 of the Reclamation Project Act of 1939 (Public Law 76-  
2 260). The interest charge rate shall be determined as of the due  
3 date and remain fixed for the duration of the delinquent period.  
4

5 (c) When a partial payment on a delinquent account is  
6 received, the amount received shall be applied first, to the  
7 penalty, secondly to the administrative charges, third to the  
8 accrued interest, and finally to the overdue payment.  
9

10 (d) Nothing contained in this Article 18 shall apply  
11 to the Authority when it acts as the fiscal agent of the United  
12 States pursuant to this Agreement.

### 13 LIABILITY

14 19. (a) The Authority hereby agrees that it will not  
15 assert that the United States, its agents and employees are  
16 responsible or liable for any liability on account of personal  
17 injury, death, or property damage of any nature whatsoever and by  
18 whomsoever asserted arising out of any act or omission of the  
19 Authority, its agents or employees under this Agreement;  
20 Provided, that the Authority does not assume any liability to the  
21 United States or any other person or persons for damages or  
22 injuries caused by (1) any action or omission by the United  
23 States, including any action or omission by the United States in  
24 the planning, design, construction, or OM&R of the Project Works  
25 prior to the date of transfer of the Project Works to the  
26 Authority for OM&R, (2) any directive given by the Contracting  
27 Officer to the Authority relating to the OM&R of the Project  
28 Works, or (3) acts of God, riot, war, the enactment of any  
29 governmental law, executive or judicial order or decree, or by  
30 any other cause beyond the reasonable control of the Authority,  
31 its members, officers, directors, agents and employees.

1           (b) The United States hereby agrees that it will not  
2 assert that the Authority, its members, officers, directors,  
3 agents and employees are responsible or liable for any claims,  
4 demands, actions and causes of action, loss or damage, cost or  
5 expense, or for any liability on account of personal injury,  
6 death or property damage of any nature whatsoever and by  
7 whomsoever asserted arising out of any act or omission of the  
8 United States, its agents or employees under this Agreement  
9 including, but not limited to (1) any action or omission by the  
10 United States, including any action or omission by the United  
11 States in the planning, design, construction, or OM&R of the  
12 Project Works prior to the date of transfer of the Project Works  
13 to the Authority for OM&R, (2) any directive given by the  
14 Contracting Officer to the Authority relating to the OM&R of the  
15 Project Works, or (3) acts of God, riot, war, the enactment of  
16 any governmental law, executive or judicial order or decree, or  
17 by any other cause beyond the reasonable control of the  
18 Authority, its members, officers, directors, agents and  
19 employees; Provided, that Article 19(b) (3) shall not apply in  
20 circumstances where the damage results from the failure of the  
21 Authority to implement a legally applicable law, executive or  
22 judicial order or decree.

23           (c) Within thirty (30) days of the receipt of any  
24 claim which may result in the imposition of liability on either  
25 party to this Agreement relating to the Project Works or this  
26 Agreement, the parties shall notify each other of such claim and

1 provide a copy of that claim, if it is in written form. The  
2 Authority and the United States shall have the right to intervene  
3 in any action arising from such a claim, and the parties shall  
4 have the right to name each other as indispensable parties in any  
5 such action. In the event of such a claim, either party may  
6 bring action against the other if the party against which such  
7 claim is made believes some or all of the liability arising under  
8 such claim should be borne by the other party. The parties  
9 understand that the payment of any money damages by the United  
10 States may be subject to the availability of appropriated funds.

#### 11 HAZARDOUS MATERIALS

12 20. (a) The Authority shall comply with all applicable  
13 Federal, State, and local laws and regulations, existing or  
14 hereafter enacted or promulgated, concerning any Hazardous  
15 Material that will be used, produced, transported, stored, or  
16 disposed of on or in lands or waters of the Project Works.

17 (b) The Authority shall take reasonable steps to  
18 prevent the deposit or release of Hazardous Material on or in  
19 lands or waters of the Project Works if such deposit or release  
20 would violate applicable laws or regulations. The Authority  
21 shall initiate immediate remedial action upon discovery of any  
22 event or condition which may or does result in such a deposit or  
23 release. Within twenty-four (24) hours of the discovery of any  
24 such event or condition, the Authority shall report such event or  
25 condition to the Contracting Officer with full details of the  
26 remedial actions taken and to be taken.

1           (c) Violation of any of the provisions of this Article  
2 20 shall make the Authority liable for any and all penalties and  
3 fines assessed by Federal, State, or local enforcement agencies  
4 as a result of such violation, and for the cost of full and  
5 complete remediation and/or restoration of the Project Works or  
6 water in the Project Works that are adversely affected as a  
7 result of the violation.

8           (d) The Authority shall include the provisions  
9 contained in Articles 20(a) through (c) hereof in any  
10 subcontract or third party contract it may enter into pursuant to  
11 this Agreement.

12           (e) The Contracting Officer, using reasonable  
13 diligence, shall provide information necessary for the Authority  
14 to comply with the provisions of this Article 20.

15           (f) Notwithstanding any other provision of this  
16 Article 20, in addition to any rights the Authority may possess  
17 under Article 19 hereof, with respect to any Hazardous Material  
18 present in, on or under the Project Works as of August 19, 1986,  
19 nothing in this Agreement shall be construed to alter the  
20 financial responsibility of the United States, if any, for (1)  
21 all penalties and fines assessed by Federal, State, or local  
22 enforcement agencies in connection therewith and (2) costs  
23 incurred by the Authority in connection with the disposal,  
24 cleanup or other remedial actions the Authority undertakes in  
25 connection therewith.

1           ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED

2           21. The provisions of this Agreement shall apply to and  
3 bind the successors and assigns of the respective parties, but  
4 assignment or transfer of this Agreement by the Authority, or any  
5 part thereof or interest therein, shall not be valid unless and  
6 until approved by the Contracting Officer in writing. Any waiver  
7 at any time by any party to this Agreement of its rights with  
8 respect to a default, or any other matter arising in connection  
9 with this Agreement, shall not be deemed to be a waiver with  
10 respect to any subsequent default or matter.

11           CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

12           22. The expenditure or advance of any money or the  
13 performance of any obligation of the United States under this  
14 Agreement shall be contingent upon appropriation or allotment of  
15 funds. Absence of appropriation or allotment of funds shall not  
16 relieve the Authority from any obligations under this Agreement.  
17 No liability shall accrue to the United States in case funds are  
18 not appropriated or allotted.

19           OFFICIALS NOT TO BENEFIT

20           23. No member of or delegate to Congress, Resident  
21 Commissioner or official of the Authority shall benefit from this  
22 Agreement other than as a water user or landowner in the same  
23 manner as other water users or landowners.

24           WATER AND AIR POLLUTION CONTROL

25           24. The Authority, in carrying out this Agreement, shall  
26 comply with all applicable water and air pollution laws and  
27 regulations of the United States and the State of California, and  
28 shall obtain all required permits or licenses from the  
29 appropriate Federal, State, or local authorities.

30           COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

31           25. (a) The Authority shall comply with Title VI of the  
32 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
33 Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
34 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), American  
35 Disabilities Act (P.L. 101-336), and any other applicable civil  
36

1 rights laws, as well as with their respective implementing  
2 regulations and guidelines imposed by the U.S. Department of the  
3 Interior and/or Bureau of Reclamation.  
4

5 (b) These statutes require that no person in the  
6 United States shall, on the grounds of race, color, national  
7 origin, handicap, age, sex, or religion, be excluded from  
8 participation in, be denied the benefits of, or be otherwise  
9 subjected to discrimination under any program or activity  
10 receiving financial assistance from the Bureau of Reclamation.  
11 By executing this Agreement, the Authority agree to immediately  
12 take any measures necessary to implement this obligation,  
13 including permitting officials of the United States to inspect  
14 premises, programs and documents.  
15

16 (c) The Authority makes this Agreement in  
17 consideration of and for the purpose of obtaining any and all  
18 Federal grants, loans, contracts, property discounts or other  
19 Federal financial assistance extended after the date hereof to  
20 the Authority by the Bureau of Reclamation, including financial  
21 assistance, which were approved before such date. The Authority  
22 recognizes and agree that such Federal assistance will be  
23 extended in reliance on the representations and agreements made  
24 in this article, and that the United States reserves the right to  
25 seek judicial enforcement thereof.  
26

#### 27 EQUAL OPPORTUNITY

28 26. During the performance of this Agreement, the Authority  
29 agrees as follows:  
30

31 (a) The Authority will not discriminate against any  
32 employee or applicant for employment because of race, color,  
33 religion, sex, age, handicap, or national origin. The Authority  
34 will take affirmative action to ensure that applicants are  
35 employed, and that employees are treated during employment,  
36 without regard to their race, color, religion, sex or national  
37 origin. Such action shall include, but not be limited to, the  
38 following: Employment, upgrading, demotion, or transfer;  
39 recruitment or recruitment advertising; layoff or termination;  
40 rates of pay or other forms of compensation; and selection for  
41 training, including apprenticeship. The Authority agree to post  
42 in conspicuous places, available to employees and applicants for  
43 employment, notices to be provided by the Contracting Officer  
44 setting forth the provisions of this nondiscrimination clause.  
45  
46

47 (b) The Authority will, in all solicitations or  
48 advertisements for employees placed by or on behalf of the  
49 Authority state that all qualified applicants will receive  
50 consideration for employment without discrimination because of  
51 race, color, religion, sex, age, handicap, or national origin.

1 (c) The Authority will send to each labor union or  
2 representative of workers with which they have a collective  
3 bargaining agreement or other contract or understanding, a  
4 notice, to be provided by the Contracting Officer, advising the  
5 said labor union or workers' representative of the Authority's  
6 commitments under Section 202 of Executive Order 11246 of  
7 September 24, 1965, and shall post copies of the notice in  
8 conspicuous places available to employees and applicants for  
9 employment.

10  
11 (d) The Authority will comply with all provisions of  
12 Executive Order No. 11246 of September 24, 1965, as amended, and  
13 of the rules regulations and relevant orders of the Secretary of  
14 Labor.

15  
16 (e) The Authority will furnish all information and  
17 reports required by said amended Executive Order and by the  
18 rules, regulations and orders of the Secretary of Labor, or  
19 pursuant thereto, and will permit access to its books, records  
20 and accounts by the Contracting Officer and the Secretary of  
21 Labor for purposes of investigation to ascertain compliance with  
22 such rules, regulations and orders.

23  
24 (f) In the event of the Authority's noncompliance with  
25 the nondiscrimination clauses of this Agreement or with any of  
26 the said rules, regulations or orders, this Agreement may be  
27 canceled, terminated or suspended, in whole or in part, and the  
28 Authority may be declared ineligible for further Government  
29 contracts in accordance with procedures authorized in said  
30 amended Executive Order, and such other sanctions may be imposed  
31 and remedies invoked as provided in said Executive Order, or by  
32 rule, regulation or order of the Secretary of Labor, or as  
33 otherwise provided by law.

34  
35 (g) The Authority will include the provisions of  
36 paragraphs (a) through (g) in every subcontract or purchase order  
37 unless exempted by the rules, regulations or orders of the  
38 Secretary of Labor issued pursuant to Section 204 of said amended  
39 Executive Order, so that such provisions will be binding upon  
40 each subcontractor or vendor. The Authority will take such  
41 action with respect to any subcontract or purchase order as may  
42 be directed by the Secretary of Labor as a means of enforcing  
43 such provisions, including sanctions for noncompliance: Provided,  
44 however, that in the event the Authority becomes involved in, or  
45 is threatened with, litigation with a subcontractor or vendor as  
46 a result of such direction, the Authority may request the United  
47 States to enter into such litigation to protect the interests of  
48 the United States.

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NOTICES

27. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered to the South-Central California Area Office of the United States Bureau of Reclamation, 2366 North Grove Industrial Drive, Suite 106, Fresno, CA 93727-1851 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Friant Water Users Authority, 845 North Harvard Avenue, Lindsay, CA 93247-1715 or such other address as from time to time may be designated in a written notice to the parties of this Agreement; Provided, that this Article 27 shall not preclude the effective service of such notice by other means.

TERMINATION OF COOPERATIVE AGREEMENT

28. Effective March 1, 1998, that certain Cooperative Agreement No. 6-FC-20-04180 between the parties dated August 19, 1986, shall be terminated; Provided, that all obligations of the parties thereunder which survive a termination of such Cooperative Agreement shall be unaffected by such termination.

MODIFICATIONS

29. Each of the parties reserves the right to propose modifications to this Agreement at any time while it is in effect. If either party proposes any such modifications, the parties shall promptly attempt to negotiate in good faith an amendatory agreement to accommodate the proposed modifications.

1 IN WITNESS WHEREOF, the parties hereto have executed  
2 this contract as of the day and year first above written.  
3  
4  
5

6 UNITED STATES OF AMERICA

7  
8  
9 (SEAL)

10 APPROVED AS TO LEGAL  
11 FORM AND SUFFICIENCY  
12 *James E. ...*  
13 OFFICE OF REGIONAL SOLICITOR  
14 DEPARTMENT OF THE INTERIOR

15 By: *Joseph P. ...*  
16 Regional Director,  
17 Mid-Pacific Region  
18 Bureau of Reclamation

19 Friant Water Users Authority

20 (SEAL)

21 By: *... up*  
22 Chairman,  
23 Board of Directors  
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27 Attest:

28 *...*  
29 Secretary  
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**EXHIBIT A**

**LIST OF PROJECT WORKS**

Friant Water Users Authority

**PROJECT WORKS:**

Friant-Kern Canal and Appurtenant Works

EXHIBIT B

LIST OF OBLIGATIONS TO CONVEY AND  
DISTRIBUTE WATER IN AND FROM THE PROJECT WORKS

Friant Water Users Authority

Water Service Contracts:

Millerton Lake

Fresno Co. Waterworks #18	14-06-200-5904-IR2
Gravelly Ford WD	1-07-20-W0242-IR2
Madera, County of	14-06-200-2406A-IR2
Orange Cove, City of	14-06-200-5230I

Friant-Kern Canal

Arvin-Edison WSD	14-06-200-229A-IR2
Delano-Earlimart ID	I75r-3327R
Exeter ID	I75r-2508R
Fresno, City of	14-06-200-8901
Fresno, County of	14-06-200-8292A
Fresno ID	14-06-200-1122A-IR2
Garfield WD	14-06-200-9421-IR2
International WD	14-06-200-585A-IR2
Ivanhoe ID	I75r-1809R
Kern County WA	7-07-20-W1404
Lewis Creek WD	14-06-200-1911A-IR2
Lindmore ID	I75r-1635R
Lindsay, City of	5-07-20-W0428
Lindsay-Strathmore ID	I1r-1514R
Lower Tule River ID	I75r-2771R
Orange Cove ID	I75r-1672R

Orange Cove, City of	14-06-200-5230-IR2
Porterville ID	I75r-4309R
Saucelito ID	I75r-2604R
Shafter-Wasco ID	14-06-200-4032-IR2
So. San Joaquin MUD	I1r-1460R
Stone Corral ID	I75r-2555R
Tea Pot Dome WD	14-06-200-7430-IR2
Terra Bella ID	I75r-2446R
Tulare ID	I75r-2485R
Tulare, County of	14-06-200-8293A

Cross Valley Canal Contractors

Arvin-Edison WSD	14-06-200-299x
Fresno, County of	14-06-200-8292A-IR2
Hills Valley ID	14-06-200-8466A-IR2
Kern-Tulare WD	14-06-200-8601A-IR2
Lower Tule River ID	14-06-200-8237A-IR2
Pixley ID	14-06-200-8238A-IR2
Rag Gulch WD	14-06-200-8367A-IR2
Tri-Valley WD	14-06-200-8565A-IR2
Tulare County of	14-06-200-8293A-IR2

Warren Act Contracts:

There are no long-term Warren Act Contract obligations at this time.

Water Right Contracts:

Round Mountain Ranch	14-06-200-7932
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Refuge Deliveries:

No current contracts for refuge water deliveries, but use of the Friant-Kern Canal is being considered as part of a long-term conveyance alternative.