Agreement No. 01-WC-20-2075

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

and

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
Los Banos, California

AGREEMENT FOR USE OF THE SAN LUIS DRAIN

FOR THE PERIOD
OCTOBER 1, 2001 THROUGH DECEMBER 31, 2009

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

AGREEMENT FOR USE OF THE SAN LUIS DRAIN

THIS AGREEMENT is entered into this 28th day of September 2001, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and all Acts amendatory thereof and supplemental thereto, all such Acts commonly known as and referred to as the Federal Reclamation Law, by the United States of America (UNITED STATES), acting by and through its Bureau of Reclamation, Mid-Pacific Region (RECLAMATION), Department of the Interior, represented by the officer executing this Agreement, and the San Luis & Delta-Mendota Water Authority (AUTHORITY), a joint powers Authority, duly organized, existing and acting pursuant to the laws of the State of California, acting by and through its Executive Director,

RECITALS

A. The UNITED STATES has acquired land and constructed the San Luis Drain, as a feature of its Central Valley Project.

B. The AUTHORITY has requested that the UNITED STATES permit it to continue using a portion of the San Luis Drain (as hereinafter defined and hereinafter referred to as the "Drain") for the discharge and transportation of a maximum flow of 150 cubic feet per second ("CFS") of drainage water to Mud Slough.

C. The AUTHORITY and RECLAMATION have evaluated potential environmental consequences of the proposed continued use of the Drain to convey drainage water, as set forth in this Agreement, and have completed the necessary environmental reviews in accordance with the AUTHORITY'S responsibilities under the California Environmental Quality Act ("CEQA") and RECLAMATION's responsibilities under the National Environmental Policy Act ("NEPA"). On the basis of their environmental reviews of the proposed action, the AUTHORITY issued an Environmental Impact Report ("EIR") and Notice of Determination ("NOD"), filed on August

14, 2001, and RECLAMATION issued an Environmental Impact Statement ("EIS") and Record of Decision ("ROD") on September 28, 2001.

It is the intention and objective of RECLAMATION and the AUTHORITY, among other things, to ensure that continued use of the Drain as provided in this Agreement results in improvement in water quality and environmental conditions in the San Joaquin River, delta, and estuary relative to the quality that existed prior to the term of this Agreement, insofar as such quality or conditions may be affected by drainage discharges from the Drainage Area (as hereinafter defined), and to ensure that such continued use of the Drain does not reduce the ability to meet the salinity standard at Vernalis compared to the ability to meet the salinity standard that existed prior to the term of this Agreement.

It is the further intention and objective of RECLAMATION and the AUTHORITY, among other things, to pursue planning to identify by 2006 the means to meet water quality objectives in Mud Slough by the Regional Board's Basin Plan (as hereinafter defined) compliance date. These efforts will be coordinated with the California Department of Fish and Game and the United States Fish and Wildlife Service to accommodate their activities relating to endangered and non-endangered species in or adjacent to Mud Slough.

D. The AUTHORITY has entered into an agreement with its members, known as the Grassland Basin Drainage Management Activity Agreement, and into memoranda of understanding with certain other parties described in section I.D. (collectively, the "Activity Agreement"), all of which have a need for continued use of the San Luis Drain. RECLAMATION has no objection to the AUTHORITY entering into such agreements.

E. The UNITED STATES has no objection to such continued use of the Drain and RECLAMATION land as such continued use is, at this time, not incompatible with the purpose of the Drain and the purpose for which the RECLAMATION land was withdrawn or acquired and is being administered by the UNITED STATES.

F. The AUTHORITY has entered into Contract No. 8-07-20-X0354 (the "Transfer Agreement"), with RECLAMATION, whereby the AUTHORITY is responsible for, among other things, the operation and maintenance of the San Luis Drain to the extent described in the Transfer Agreement and according to the terms set forth therein; the scope of AUTHORITY's responsibility for operation and maintenance of the San Luis Drain and of its authority delegated by RECLAMATION will be as set forth in the Transfer Agreement, except that the terms of this Agreement providing any more specific responsibilities and authority supersede the Transfer Agreement for that portion of the Drain subject to this Agreement.

G. RECLAMATION anticipates that any long-term use of the Drain beyond the term of this Agreement will require further specific planning and compliance with all environmental laws, including the National Environmental Policy Act and the Endangered Species Act. Reclamation intends to assure that any such future long-term use will be consistent with a long-term drainage management plan for the Draining Parties that provides for compliance with water quality objectives, including without limitation, objectives for selenium and salinity in the receiving waters.

H. This Agreement is the successor to and supersedes the First Use Agreement between RECLAMATION and the AUTHORITY (as hereinafter defined), which earlier agreement was based in part on a Negative Declaration issued by the AUTHORITY on December 26, 1990, and supplemented by an Addendum on July 13, 1995, and on a Finding of No Significant Impact issued by RECLAMATION on November 3, 1995 ("FONSI").

AGREEMENT

Subject to the following terms, conditions, and limitations, the UNITED STATES grants permission to the AUTHORITY to continue to enter upon, use, operate and maintain the Drain, including check structures and all other land and facilities appurtenant to the Drain for the purpose of conveying drainwater flows from the Drainage Area, from Milepost 105.72, Check 19 to the terminus and into Mud Slough. In addition, RECLAMATION grants permission to use Drain rights-of-way from the terminus (Kesterson Reservoir) to Check 19, as reasonably required in accordance with this Agreement. "Land" includes land owned and/or controlled by the United States and land in which the United States holds an interest that is affected by the AUTHORITY's activities under this Agreement.

I. DEFINITIONS AND REFERENCED TERMS

For purposes of this Agreement:

A. "Attributable Discharge" means the amount of selenium load or salt load, whichever is applicable, discharged from the Drain, plus any storm event discharges to the Grassland Water District from the Drainage Area, minus any amount exempted pursuant to the high rainfall exemption as specified in Appendix F (attached hereto and incorporated herein), and minus any amount exempted pursuant to the upper watershed exemption as specified in Appendix G (attached hereto and incorporated herein).

B. "Drainage Area" means those lands identified in Appendix A (attached hereto and incorporated herein) within the geographic area shown on Appendix B which are within the boundaries of districts identified as "Draining Parties" or whose owners have become Draining Parties.

C. "Drainage Oversight Committee" or "Oversight Committee" means the Oversight Committee formed pursuant to the First Use Agreement that is composed of agency managers from RECLAMATION, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, California Department of Fish and Game, and the Regional Water Quality Control Board, and which continues to exercise the functions described in this Agreement.

D. "Draining Parties" means the AUTHORITY member agencies which have entered into the Grassland Basin Drainage Management Activity Agreement with the AUTHORITY and with the parties to various Memoranda of Understanding ("MOUs") by the terms of which the parties who would discharge into the Drain have agreed to abide by the terms of this Agreement. Members of the AUTHORITY which have entered into the Grassland Basin Drainage Management Activity Agreement include the Broadview Water District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, the Charleston Drainage District and the Widren Water District, the parties to that certain MOU with the AUTHORITY referred to as the Camp 13 Drainers (now Camp 13 Drainage District), and any other parties which may enter into MOU's with the AUTHORITY including the owners of certain additional lands, described in Appendix A hereto, from which lands drainage waters historically entered channels utilized to provide water to wetland habitat in the Grassland Water District and state and federal refuges.

E. "First Use Agreement" means that certain agreement for use of the San Luis Drain between the United States, Department of the Interior, Bureau of Reclamation and the San Luis & Delta Mendota Water AUTHORITY entered into November 3, 1995, Agreement No. 6-07-20-W1319 and any amendments thereto, including Amendment to the Use Agreement for Use of the San Luis Drain dated September 30, 1998 and, Second Amendment to the Agreement for Use of the San Luis Drain dated December 30, 1998.

F. "Regional Board Basin Plan" means the Regional Water Quality Control Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins.

G. "Regional Water Quality Control Board" or "Regional Board" means the California Regional Water Quality Control Board, Central Valley Region.

H. "Salinity" or "salinity" means the content of dissolved mineral salts, measured by determining the amount of total dissolved solids or by measuring the electrical conductivity and through appropriate conversion factors estimating the total dissolved solids.

I. "Salts" or "salts" means the products, other than water, of the reaction of an acid with a base; such products found in soils, when dissolved in water, break up into cations (e.g., sodium, calcium) and anions (e.g., chloride, sulfate).

J. "Salt Load" or "salt load" means the total mass of salts in a given volume of water entering or leaving an area.

K. "San Luis Drain" or the "Drain" mean the drain owned by the United States and consisting of approximately 28 miles from the terminus (Kesterson Reservoir) to Milepost 105.72, Check 19 (near Russell Avenue).

L. "Selenium" or "selenium" means the metalloid element, assigned atomic number 34, in all of its chemical forms, including but not limited to selenate, selenite, selenomethionine and elemental selenium. An essential nutrient in low concentrations, it bioaccumulates in the food web and can have significant adverse effects on sensitive predators.

M. "Selenium Load" means the total mass of selenium in a given volume of water entering or leaving an area.

N. "Total Dissolved Solids" or "TDS" shall mean the non-filterable portion of the material residue remaining after a liquid sample is evaporated.

O. "TMML" means the Total Maximum Monthly Load. For purposes of this Use Agreement, initial TMML values will be those contained in the Regional Board March 1996 Staff Report titled, "Amendments to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins for the Control of Agricultural Subsurface Drainage Discharges." In the event that the Regional Board subsequently submits revised TMML values to the U.S. Environmental Protection Agency and those values are formally approved by the U.S. Environmental Protection Agency, those revised TMML values may become the TMML values for purposes of this Use Agreement in accordance with Appendix D.

P. "Unacceptable Adverse Environmental Effects" shall be determined by RECLAMATION, based upon available data and science and after consultation with the Oversight Committee, after considering applicable federal and state laws (e.g. Migratory Bird Treaty Act, Endangered Species Act, Clean Water Act, Porter-Cologne Act), as well as the impacts in Mud Slough or at any point downstream of Mud Slough, including adjacent wetland and riparian areas.

Q. "Unforeseeable and Uncontrollable Events" are events that cannot reasonably be anticipated and are caused by events outside the control of the Authority. Final determinations as to what constitutes Unforeseeable and Uncontrollable Events are made solely by the Oversight Committee.

R. "Waste Discharge Requirements" or "WDR" means the terms and conditions for discharges of drainage issued by the Regional Board pursuant to California law.

II. PURPOSE AND SCOPE OF USE

A. RECLAMATION and the AUTHORITY have entered into this Agreement to

1. continue the separation of unusable agricultural drainage water discharged from the Grassland Drainage Area from wetland water supply conveyance channels for the period 2001-2009; and,

2. facilitate drainage management that maintains the viability of agriculture in the project area and promotes continuous improvement in water quality in the San Joaquin River.

B. The lands to be served pursuant to this Agreement are only those lands located within the geographic area in Appendix A and shown in Appendix B (attached hereto and incorporated herein), which consists of approximately 97,400 acres, together with additional lands not to exceed 1,100 acres whose owners choose to become Draining Parties.

C. The AUTHORITY shall be permitted to use the Drain for the discharge into and transportation of drainage water from the Draining Parties within the Drainage Area, in accordance with the terms and conditions of this Agreement.

D. The AUTHORITY may incorporate terms into the Activity Agreement or MOUs or may promulgate bylaws, rules or regulations thereunder concerning the sharing of responsibilities, costs and obligations arising from this Agreement and for the payment of fees as compensation to the AUTHORITY for its performance of its obligations and responsibilities under this Agreement, but in no event shall any such Activity Agreement or MOU entered into between the AUTHORITY and the Draining Parties include rights and responsibilities which are inconsistent with the specific terms and conditions of this Agreement, or which are in violation of any laws or regulations applicable to this Agreement.

III. PERMITS AND RESPONSIBILITIES

A. Permits and Approvals. The AUTHORITY shall be responsible for obtaining all permits and other approvals necessary for its continued use, operation and maintenance of the Drain in accordance with the terms and conditions of this Agreement, the Drainage Operation Plans of the Draining Parties as submitted to the Regional Board, the Waste Discharge Requirements issued to the AUTHORITY and Draining Parties by the Regional Board on September 7, 2001, and any subsequent WDR issued in relation to this Agreement, or any alternative form of requirements of the Regional Board, and all applicable local, state and federal laws and regulations.

B. Discharges into and from Drain. The AUTHORITY shall be responsible for ensuring that only drainage water from the Drainage Area pursuant to the terms of the Activity Agreement

or MOU enters the Drain, and that such drainage water is controlled and monitored to ensure that its quality and composition comply with this Agreement and all applicable federal, state and local standards, requirements, regulations and laws. During its use of the Drain under this Agreement, the AUTHORITY shall be solely responsible for and have sole authority over the proper management and disposal of all discharges into and from the Drain, subject to this Agreement and all applicable laws and regulations.

C. Check 19. For purposes of this project the AUTHORITY shall not use the Drain in any manner that will affect water levels in or cause drainage water to flow into the portions of the Drain south of Check 19. Management and control of the operation of Check 19 shall be in accordance with the Transfer Agreement.

D. Silt Removed by RECLAMATION. RECLAMATION, in its discretion, shall, at any time during the term of this Agreement, have the option of either removing the sediment and organic materials now deposited in the Drain, or, of delegating this responsibility to the AUTHORITY. If RECLAMATION elects to remove the sediment during the term of this Agreement, RECLAMATION shall endeavor to conduct and coordinate such activities in a manner which will not unreasonably interfere with the AUTHORITY's use of the Drain. In any event, unless directed otherwise by RECLAMATION, the AUTHORITY shall be responsible for the management, removal and disposal, at its own and sole expense, of all sediment, organic materials and other substances accumulating in the Drain as a result of its use of the Drain pursuant to the First Use Agreement and this Agreement. Any costs incurred by either RECLAMATION or the AUTHORITY for the management, removal and disposal of the sediment and other materials in the Drain shall be apportioned between RECLAMATION and the AUTHORITY on the basis of the total volume of materials and the total concentration of contaminants in those materials in the Drain attributable to each party's use of the Drain.

E. Payment of Direct Costs. AUTHORITY shall pay to RECLAMATION such specific items of direct costs reasonably incurred by RECLAMATION for work associated with this Agreement as are normally charged by RECLAMATION under similar agreements and properly and equitably are chargeable to the AUTHORITY, plus a percentage of direct cost to cover RECLAMATION administrative and general overhead in accordance with the procedures approved by RECLAMATION. AUTHORITY shall pay the total annual costs within sixty (60) days following its receipt of a detailed cost statement from RECLAMATION for each year during the term of this Agreement.

F. Water Conservation Programs. All Draining Parties discharging into the Drain pursuant to this Agreement that are subject to Federal Reclamation law shall be implementing an effective water conservation and efficiency program based on that Draining Party's water conservation plan that has been determined by RECLAMATION to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

G. Management Plans. The AUTHORITY shall develop the following plans:

1. A Salinity Management Plan within one year from the commencement of this Agreement for consideration by the Oversight Committee.

2. A Long Term Management Plan as required by the Regional Board that provides for compliance with water quality objectives, including objectives for selenium and salinity in the receiving waters.

3. A Mud Slough Compliance Plan by 2006 for consideration by the Oversight Committee, to identify how water quality objectives in Mud Slough will be met by the Regional Board's Basin Plan compliance date.

4. A revised Sediment Management Plan by 2005 for consideration by the Oversight Committee.

H. Environmental Commitments:

1. Operational Commitments. The AUTHORITY commits to the following:

(a) Spill Prevention. The structure in the San Luis Drain at Check 19 has been modified to prevent drainage waters from flowing southerly and to provide a mechanism to allow any groundwater that has seeped into the San Luis Drain south of Check 19 to be discharged downstream as necessary to prevent overtopping. The Drain will continue to be operated and maintained to prevent drainage water from flowing south of Check 19 and to allow groundwater from south of Check 19 to spill into the Drain as necessary to prevent overtopping.

(b) Downstream Users Notification. The AUTHORITY will make flow and monitoring data available to downstream entities that have requested it. The AUTHORITY will provide advance notice to such parties of operations that may cause sudden changes in flow or quality and will develop procedures to coordinate with such parties on such operations. The AUTHORITY will work cooperatively with downstream entities regarding the timing of discharges and establish procedures that will ensure advance notice to, and coordination with, downstream diverters of upcoming releases.

(c) Regional Archeology. Any proposed construction areas will be evaluated and cleared by Reclamation's Regional Archeologist. If, during construction, subsurface or previously unidentified archeological resources are encountered, activities will immediately be halted and the Regional Archeologist notified. Appropriate clearance will be obtained prior to resumption of work.

(d) Protection of China Island. The AUTHORITY has coordinated with the California Department of Fish and Game regarding the design and construction of retainer dikes or other measures to protect Fish and Game's China Island Wildlife Area and the

immediately adjacent portion of the San Joaquin River from drainage water discharged from the Drainage Area. Any construction activities will incorporate these measures. In addition, the AUTHORITY will obtain permission, by means of a Memorandum of Agreement, from the California Department of Fish and Game relating to use of Mud Slough (North) within the boundaries of the China Island Wildlife Area. Said MOA may be modified from time to time with the mutual consent of the parties thereto.

(e) Mud Slough. In the event RECLAMATION or the AUTHORITY receive notification from appropriate local, state or federal authorities that a potential public health risk exists in Mud Slough or the San Joaquin River associated with drainage from the Drainage Area, RECLAMATION and the AUTHORITY will notify resource management agencies in the affected area. RECLAMATION and the AUTHORITY will, in collaboration with such resource management agencies jointly develop and implement a program to protect public health that is acceptable to those agencies. All costs of developing and implementing said program to protect public health will be borne by the AUTHORITY.

(f) Sediment. Selenium already contained in sediments in the Drain is a source of concern because flows may suspend and transport sediments; selenium may migrate into the water column; and sediments may act as a sink, and selenium may concentrate into sediment. To avoid re-suspending sediment in the Drain, the maximum rate of flow in the Drain shall be 150 cfs. Under normal operations, flows will be slow enough to not cause sediment movement. Monitoring activities will detect any movements or selenium migration. In the event that selenium in sediments migrates into the water column, such selenium will be included in the total annual load discharged by, and attributed to, the Authority. If monitoring results indicate that the Drain behaves like a sink, the measured loads will be used to estimate total selenium concentration within the sediments, and the information will be used to determine if the sediments must be removed from the Drain. Sediments will be removed well before composite concentrations indicate hazardous material values. The specific details of responses to monitoring results that indicate any of these scenarios exist will be presented in any sediment management plan required by the Regional Board.

2. Load Reduction Assurances

(a) Selenium Load Values. The Selenium Load Values in Appendix C are hereby incorporated and made a part of this Agreement. These Values specify both annual and monthly Selenium Loads.

(1) In the event that the Regional Board submits to the U.S. Environmental Protection Agency a TMML for selenium that is different from that contained in the Regional Board March 1996 Staff Report titled, "Amendments to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins for the Control of Agricultural Subsurface Drainage Discharges," and the revised TMML receives formal approval from the U.S. Environmental Protection Agency, the Selenium Load Values may be revised according to

Appendix D (attached and incorporated herein); in the event the Load Values in Appendix D become operational, the Load Values in Appendix C shall be replaced with the Selenium Load Values determined in accordance with Appendix D.

(2) To determine if Selenium Load Values are being met, the Attributable Discharge of selenium will be compared to the Selenium Load Value for the time period under consideration. Selenium load will be measured at the terminus of the Drain (referred to as "Site B"), except that load discharged to the Grassland Water District from the Drainage Area during storm events will be measured at the discharge points into the Grassland Water District, and selenium load to be exempted under Appendices F or G will be determined as described in those Appendices.

(3) If the Attributable Discharge of Selenium exceeds the applicable Selenium Load Value in any given month or year during the term of this Agreement, a Drainage Incentive Fee shall be calculated in accordance with the Performance Incentive System as stated in section IV.B. of this Agreement, and the Agreement may be subject to termination pursuant to Section VII.B.

(b) Salinity Load Values and Goals: The Salinity Load Values in Appendix E are hereby incorporated and made a part of this Agreement. These Values specify both annual and monthly salt loads.

(1) The Salinity Load Values are only calculated for the first four years of the term of this Agreement because they are intended to guide reductions in salt discharges until such time as the Regional Board adopts its own numeric limits on salt discharges to achieve compliance with water quality objectives for the San Joaquin River. In the event that the Regional Board does not adopt such limits on salt discharges during the four year period, the Salinity Load Values for years five to eight of the term of this Agreement shall be calculated as described in Appendix I to this Agreement, until the Regional Board's numeric limits do take effect.

(2) To determine if Salt Load Values are being met, the Attributable Discharge of salts will be compared to the Salt Load Value for the time period under consideration. Salt load will be measured at the inlet to the Drain (referred to as "Site A"), except that salt load discharged to the Grassland Water District from the Drainage Area during storm events will be measured at the discharge points in to the Grassland Water District, and load to be exempted under Appendices F and G will be determined as described in those Appendices.

(3) If the Attributable Discharge of Salinity exceeds the applicable Salinity Load Value in any given month or year during the term of this Agreement, a Drainage Incentive Fee shall be calculated in accordance with the Performance Incentive System as stated in section IV.B. of this Agreement.

(4) The Salinity Discharge Goals described in Appendix E are lower than the Salinity Load Values because they exactly match percentage reductions in Selenium Load Values and have not been adjusted upwards to reflect the imperfect correlation between discharges of salts and of selenium. The Salinity Discharge Goals are intended to provide a measurement of progress toward reducing salinity discharges commensurate with selenium discharges, but carry no legally enforceable consequences.

3. Record of Decision. The Authority will implement those commitments contained in the ROD.

IV. DRAINAGE OVERSIGHT COMMITTEE AND PERFORMANCE INCENTIVE SYSTEM

A. Role of Drainage Oversight Committee

The Oversight Committee will meet annually, or more frequently as needed. The Oversight Committee reviews progress and operation of the project including drainage reduction goals, progress in achieving water quality objectives, monitoring data, etc. It makes recommendations to the Draining Parties, RECLAMATION, and/or the Regional Board, as appropriate, regarding all aspects of the project, including modifications to project operation, appropriate mitigative actions, and termination of the Agreement if necessary. It carries out other functions required of it under this Agreement, which include determining the occurrence and extent of load exceedances, the Drainage Incentive Fees that are payable and actions or projects to be funded with Drainage Incentive Fees. For example, if any Draining Party resumes discharges into channels cleaned up through the Project, the Oversight Committee can determine appropriate remedies, up to and including termination of this Agreement.

1. The Oversight Committee will appoint and be assisted by a technical committee as determined necessary or appropriate by the Oversight Committee.

2. The Oversight Committee may appoint one or more subcommittees comprised of experts to help in the analysis of biological or water quality monitoring data or other information relevant to the drainage issue as necessary or appropriate to assist in carrying out its role.

3. If the Oversight Committee determines, based on monitoring data or otherwise, that adverse environmental impacts have occurred and the Oversight Committee finds those impacts to be significant, the Oversight Committee will identify appropriate mitigative actions. Appropriate mitigative actions, depending on the situation, would include, but not necessarily be limited to, interruption of a specific identified contamination pathway through hazing or habitat manipulation; increased management, enhancement, and recovery activities

directed at impacted species in channels cleaned up as a result of the project; and/or, establishment and attainment of more stringent contaminant load reductions. The costs of mitigation, as well as any required clean-up, shall be borne by the Draining Parties.

4. The Oversight Committee shall also make other determinations as specified in this Agreement including without limitation those described in Sections VII.B. and VII.F.

B. Performance Incentive System

The performance incentive system shall be implemented by means of the following:

1. Drainage Incentive Fee Account. RECLAMATION shall maintain at a nationally-chartered bank or other independent third party trustee an account known as the Drainage Incentive Fee Account. Disbursements shall be made from said Drainage Incentive Fee Account only at the direction of the Oversight Committee.

2. Calculation of Drainage Incentive Fees. Based upon information from the monitoring program established pursuant to Section V of this Agreement, RECLAMATION shall calculate the Attributable Discharge for each year and month. Drainage Incentive Fees shall be calculated based on Attributable Discharge.

(a) Preliminary and Final Calculations - Drainage Incentive Fees.

(1) Within sixty (60) days of the close of the transition period established under Section VIII.A of this Agreement and of each calendar year thereafter for the duration of this Agreement, RECLAMATION shall, based on the monitoring results, determine whether an Annual Drainage Incentive Fee or any Monthly Drainage Incentive Fees are due for such period, and if due, shall calculate the preliminary Annual Incentive Fee or Monthly Incentive Fees in accordance with Appendix C ("Selenium Load Values"), Appendix E ("Salinity Load Values"), Appendix H ("Performance Incentive System for Selenium and Salt"), and Appendix I ("Alternate Salinity Load Values for 2001-2009") of this Agreement (attached hereto and incorporated herein). RECLAMATION shall immediately submit such calculations to the Oversight Committee.

(2) Within (ninety) 90 days of the close of the transition period established in Section VII.A. of this Agreement and of each calendar year thereafter for the duration of this Agreement, the Oversight Committee shall, with the advice of any technical committee it may establish, determine the Annual Drainage Incentive Fee and any Monthly Drainage Incentive Fees. Such Annual Drainage Incentive Fee and any Monthly Drainage Incentive Fees shall be the amount calculated by RECLAMATION for each such fee reduced by the amount, if any, that is waived by the Oversight Committee pursuant to subsection (b)(1) of this section, and/or reduced or credited pursuant to subsections (b)(2), (b)(3), or (b)(4) of this section.

(3) The Annual Drainage Incentive Fees shall not exceed the Annual Drainage Incentive Fee cap of $250,000 per year, and the total of the Monthly Drainage Incentive Fees in any given year shall not exceed the Monthly Drainage Incentive Fee cap of $250,000 per year.

(4) The Oversight Committee's determination of the Annual Drainage Incentive Fee shall be transmitted to the AUTHORITY in writing immediately.

(b) Adjustment of Incentive Fees.

(1) Waiver for Uncontrollable and Unforeseeable Events. The Oversight Committee may waive the Drainage Incentive Fee, in whole or in part, only upon a finding that the AUTHORITY has shown that exceedances, in particular months or for the year as a whole, were caused by Unforeseeable and Uncontrollable Events.

(2) Duplicative Regional Board Penalties. In the event that the Regional Board or other regulatory agency imposes a financial penalty which the AUTHORITY or Draining Parties become responsible to pay for discharges of Selenium or Salt that are the subject of Drainage Incentive Fees assessed under this Agreement, the Drainage Incentive Fee owed by such parties shall be reduced by the amount of such other financial penalty. The Oversight Committee shall determine when this payment relief is applicable.

(3) Incentive Credits. In order to provide incentive to reduce selenium and salinity discharges beyond the current annual Load Values, a credit toward future incentive fees will be given if the annual selenium Attributable Discharge or the annual salinity Attributable Discharge is are below the annual Load Value for such constituent. The incentive credit will be determined as set forth in Appendix "J" to this Agreement.

(4) Exceedances of both Selenium and Salinity Load Values. In the event that both the applicable Selenium Load Values and Salinity Load Values are exceeded in any given month or year, only the incentive fee for exceeding the Selenium Load Values shall be imposed.

3. Deposit of Incentive Fees. Within sixty (60) days of the receipt of the Oversight Committee's determination, the AUTHORITY shall deposit the amount of the Drainage Incentive Fee in the Drainage Incentive Fee Account. Failure to deposit said amount in the Drainage Incentive Fee Account within ninety (90) days of receipt of the Oversight Committee's decision shall constitute grounds for immediate termination of this Use Agreement.

4. Disposition of Incentive Fees. The Oversight Committee shall determine the disposition of funds deposited in the Drainage Incentive Fee Account. Such determination shall be made only after consultation with the Draining Parties and any other interested parties, and

may be based on recommendations from subcommittees established by the Oversight Committee. These funds are to be used for such programs or actions as the Oversight Committee determines will assist in meeting Selenium Load Values, Salinity Load Values and Discharge Goals, water quality objectives in the Drainage Area, and/or will enhance wildlife values in the Drainage Area or adjacent areas. In determining the disposition of Account funds, the Oversight Committee shall give special consideration to programs or actions identified in the San Joaquin Valley Drainage Program Report, as supplemented. It is intended that programs or actions funded through the Drainage Incentive Fee Account will be supplemental to, and shall not replace, budgeted actions of the AUTHORITY or of RECLAMATION to accomplish drainage reduction targets. At its discretion, the Oversight Committee may accumulate funds in the Drainage Incentive Fee Account until sufficient funds have accumulated to fund larger programs or actions. Upon making its determination as to the disposition of funds in the Drainage Incentive Fee Account, the Oversight Committee shall instruct RECLAMATION to make such disbursements from the Account to such persons and in such amounts as are consistent with that determination.

5. Treatment of Incentive Fees Upon Termination. Drainage Incentive Fees owed by the AUTHORITY pursuant to subsection IV.B. and any funds held in the Drainage Incentive Fee Account as of the date of termination of this Agreement shall be paid, held, administered and disposed of in accordance with subsection IV.B.4. Except for Drainage Incentive Fees owed on the date of termination, the AUTHORITY shall have no obligation for Drainage Incentive Fees under the Agreement following the termination hereof.

V. MONITORING

A. The AUTHORITY shall be responsible for implementing a comprehensive monitoring program that meets the following objectives:

1. to provide water quality data for purposes of determining the Draining Parties' compliance with Selenium Load Values and Salinity Load Values as set forth in this Agreement;

2. to provide biological data to allow an assessment of whether or not any environmental impacts constitute Unacceptable Adverse Environmental Effects that have resulted from this Agreement; and

3. to provide data on sediment levels, distribution, and selenium content.

The monitoring program shall consist of the monitoring program established by the parties during the First Use Agreement, as such program may be modified by the parties after consultation with the agencies represented by the Oversight Committee. The Oversight Committee in consultation with the AUTHORITY shall resolve disagreement as to proposed modifications. Such modifications shall not constitute an amendment of this Agreement. Data collected in the course of the monitoring program may be utilized as appropriate to meet

requirements of biological opinions issued in relation to this Agreement; the balance of data to meet the requirements of such biological opinions will be developed by alternate studies pursuant to Section III.H.3. of this Agreement. RECLAMATION and the AUTHORITY will compile the results of the monitoring program into an Annual Report and present it for review by the Oversight Committee.

B. On a regular basis, and in no event less frequently than monthly, the results of the monitoring program, including the monitoring results pertaining to the discharges of selenium and salts being delivered from the Drain to Mud Slough, shall be submitted to RECLAMATION, to the Oversight Committee, and to other interested parties.

C. Results of the monitoring program will be reviewed annually or as required to implement this Agreement, by the Oversight Committee.

D. The AUTHORITY shall be responsible for implementing this monitoring program; provided that, nothing contained in this Agreement is intended to extend monitoring requirements downstream of Crows Landing ("Site N") on the San Joaquin River.

VI. CONSTRUCTION, OPERATION AND MAINTENANCE

A. The AUTHORITY shall be responsible for the construction, installation, operation, maintenance, and ultimate removal, if such removal is required by RECLAMATION, of any new facilities necessary for the AUTHORITY's use of the Drain; for the operation and maintenance of all existing features of the Drain; for the repair of any damage to the Drain arising out of its use of the Drain; and for the restoration of any land requiring restoration as a result of the AUTHORITY's use of the Drain.

B. The AUTHORITY shall furnish to RECLAMATION for approval the plans and specifications for all facilities or structures that are to be constructed on Land of the UNITED STATES. The AUTHORITY shall not commence construction or installation of any such facility prior to submitting the plans and specifications to RECLAMATION for review and obtaining written approval, which approval shall not unreasonably be withheld.

C. RECLAMATION shall promptly furnish to the AUTHORITY copies of documents, drawings and other records available to RECLAMATION which are appropriate or necessary for the AUTHORITY's use of the Drain in accordance with this Agreement, as requested by the AUTHORITY in writing. The AUTHORITY shall revise such drawings to reflect new facilities and any modifications to existing facilities installed by the AUTHORITY and shall promptly furnish a copy of each revised drawing to RECLAMATION.

D. The Parties acknowledge and agree that the Draining Parties shall be responsible to the AUTHORITY for payment of all operation and maintenance, administration, and construction costs arising from performance by the AUTHORITY pursuant to this Agreement,

provided, that payment for baseline operation and maintenance and administration costs incurred by the AUTHORITY for the Drain pursuant to the Transfer Agreement shall be budgeted, and repayment responsibility shall be allocated, in accordance with the terms of the Transfer Agreement without regard to this Agreement.

VII. TERM, REVISION AND TERMINATION

A. Term. This Agreement shall become effective on October 1, 2001, and unless sooner terminated in accordance with its terms, shall remain in effect through December 31, 2009.

1. The term shall commence with a transition period of three (3) months, from October 1, 2001 through December 31, 2001. For purposes of calculating the Annual Drainage Incentive Fees under section IV.B.2(a) and Annual Exceedances under Section VII. B.1 of this Agreement, the transition period shall be treated as an annual period wherein the sum of the three monthly selenium load values and the three monthly salinity load values, set forth in Appendix C and Appendix E to this Agreement is equivalent to the Annual Selenium Load Value and the Annual Salinity Load Value.

2. The balance of the term shall consist of eight consecutive calendar years, the first of which shall commence on January 1, 2002.

B. Termination for Exceedance of Selenium Load Values

1. Annual Exceedances. If the calculated annual Attributable Discharge of selenium loads exceeds by 20% or more the annual Selenium Load Values, RECLAMATION shall terminate this Agreement unless the Oversight Committee, after consulting with the Draining Parties, any other stakeholders, and any technical committee established by the Oversight Committee, makes an affirmative finding that the AUTHORITY has shown that such exceedance was caused by Unforeseeable and Uncontrollable Events.

2. Monthly Exceedances. This Agreement may be terminated on account of monthly Attributable Discharge in excess of Selenium Load Values only pursuant to the conditions set forth in Paragraphs VII.C and VII.D of this Agreement.

3. Salinity Exceedances. No annual or monthly exceedances of salinity shall be the basis of termination pursuant to this section VII.B.

C. Termination by Prohibition of Discharge. This Agreement shall terminate immediately upon any final order or action by the California State Water Resources Control Board, Regional Board, Environmental Protection Agency, or any other federal, State or local government entity with jurisdiction over the drainwater discharges contemplated by this Agreement which prohibits or substantially prohibits the discharge of drainage water by the AUTHORITY into the San Luis Drain, Mud Slough, or the San Joaquin River.

D. Termination for Cause. This Agreement will be reviewed at least annually for compliance with its terms and conditions and, except as otherwise set forth herein, shall be subject to termination upon a finding that the AUTHORITY failed to comply with any of the terms or conditions of this Agreement or if Unacceptable Adverse Environmental Effects occur. For purposes of this paragraph, if RECLAMATION determines, based on available data and science and after consultation with the Oversight Committee and the AUTHORITY, that Unacceptable Adverse Environmental Effects have occurred due to the use of the Drain, RECLAMATION shall notify the AUTHORITY of its determination and provide the AUTHORITY an adequate opportunity to refute this determination. If, in RECLAMATION's judgement, the AUTHORITY fails to provide sufficient evidence refuting RECLAMATION's determination, RECLAMATION shall terminate this Agreement.

E. Termination after Notice. Except as otherwise set forth herein, RECLAMATION may terminate this Agreement upon failure of the AUTHORITY or a Draining Party to comply with any of the terms, conditions and limitations of this Agreement, if such noncompliance is continuing sixty (60) days after written notice to the AUTHORITY of such noncompliance. The requirement of continuing noncompliance for sixty (60) days after written notice does not apply to violation of terms, conditions and limitations of this Agreement, where such provisions state requirements that, if violated, cannot be cured by subsequent AUTHORITY action.

F. Termination for Resumption of Discharge to Wetland Channels. The parties to this Agreement agree that a critical purpose of this Agreement is the removal of drainage water from the channels utilized to provide water to wetland habitat in the Grassland Water District and state and federal wildlife refuges. In the event that any of the Draining Parties withdraw from the Grasslands Basin Drainage Management Activity Agreement and resume the discharge of drainage water into those channels, or if any individuals within the Drainage Area who have commenced using the Drain resume the discharge of drainage water into those channels, the Oversight Committee shall review the impact of such resumed discharge and shall recommend appropriate remedies, up to and including termination of this Agreement. In making its evaluation, the Oversight Committee shall give special consideration to the existence of exceedances of water quality standards in the channels and to the probable causes of such exceedances.

G. Termination by the Authority. This Agreement may be terminated by the AUTHORITY upon thirty (30) days' written notice to RECLAMATION.

H. Termination upon Completion of Drain. In the event that construction of the San Luis Drain, including both the Drain as defined herein and segments that are not subject to this Agreement, is completed as an out-of-valley drainage facility, discharge permits obtained, and environmental compliance completed during the term of this Agreement, or any extension hereof, this Agreement shall terminate.

VIII. RESTORATION

Upon termination of this Agreement, at the discretion of the UNITED STATES, the AUTHORITY shall remove without delay, and at the expense of the AUTHORITY, all equipment and improvements and other facilities constructed or placed upon the Land, and shall restore said Land to as nearly the same condition as existed prior to the issuance of this Agreement and repair any damage to the Drain arising out of its use of the Drain. In the event the AUTHORITY fails to remove all equipment, improvements or facilities within a reasonable time, not to exceed sixty (60) days, the UNITED STATES may remove them and restore the land and repair the Drain at the expense of the AUTHORITY.

IX. MISCELLANEOUS

A. The AUTHORITY's use of the Land shall be subject to existing valid rights to such Land held by third parties.

B. RECLAMATION, in its discretion, may, at any time during the AUTHORITY's use of the Drain under this Agreement, have access to, or make modifications to the Drain and issue such outgrants as easements, leases, licenses or permits, so long as such access, modifications or outgrants do not unreasonably interfere with the AUTHORITY's intended use of the Drain under this Agreement; specifically, during the AUTHORITY's use of the Drain under this Agreement, RECLAMATION will not use or authorize the use of the Drain in such a manner as to reduce the AUTHORITY's use of the Drain with an authorized maximum flow of 150 CFS of drainage water.

C. The AUTHORITY shall continue to carry out the operation and maintenance obligations of the AUTHORITY described in the Transfer Agreement created pursuant to such agreement consistent with the guidelines provided by existing design operating criteria, standard operating procedures and/or manufacturer's technical memorandums, except that any terms of this Agreement providing more specific operation and maintenance responsibilities shall supersede the Transfer Agreement.

D. This Agreement shall not be construed to affect the positions of RECLAMATION nor of AUTHORITY nor any of the Draining Parties within the Drainage Area discharging into the Drain pursuant to this Agreement concerning the question of ultimate liability for costs initially funded by the UNITED STATES in undertaking management actions with respect to the Drain, nor shall this Agreement affect the positions of the UNITED STATES, the AUTHORITY nor any other Draining Party utilizing the Drain concerning any contractual or legal obligation of RECLAMATION to provide drainage service pursuant to the San Luis Act.

E. This Agreement does not constitute a contract or an amendment of a contract as described in Section 203(a) of the Reclamation Reform Act of 1982 and the implementing rules and regulations, nor does it constitute a new contract nor an amendment of a contract for the

delivery of water from the Central Valley Project within the meaning of Sections 105 and 106 of Public Law 99-546 (100 Stat. 3050, et seq.), nor does this constitute an amendment of the Second Amended Contract for Exchange of Waters dated February 14, 1968, between the United States of America and Central California Irrigation District, Columbia Canal Company, San Luis Canal Company and Firebaugh Canal Company.

F. The UNITED STATES shall not be liable for any claims for damages, cleanup, or remedial actions arising from or attributed to discharges from the Drain by or on behalf of the AUTHORITY or the Draining Parties during the AUTHORITY's use of the Drain pursuant to the term of the First Use Agreement or this Agreement.

G. The UNITED STATES, its agents, employees, licensees and permittees shall not be liable for any damages to the property of the AUTHORITY under this Agreement by reason of any act committed on the land, save and except any damages to said property caused by or resulting from the negligent or willful act or omission of the UNITED STATES, its agents, employees, licensees and permittees to the extent provided by the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

H. The AUTHORITY shall hold the United States free and harmless from, and indemnify it against, any and all direct treatment and clean-up costs, losses, damages, claims and liabilities related thereto arising from the AUTHORITY's, or any one or all of the Draining Party's performance or nonperformance under this Agreement; provided, that RECLAMATION shall exercise care to prevent any harm to personal and real property in carrying out its rights and responsibilities under this Agreement, and shall cooperate to the extent authorized by law in the resolution of any claims pursuant to the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., arising from these activities; provided further the AUTHORITY shall have no obligation under this Section IX.H to provide a defense to the United States, nor to indemnify it for legal fees or costs incurred in legal proceedings instituted against the United States relating to use of the Drain.

I. Notwithstanding anything in this Agreement to the contrary, the AUTHORITY is authorized to enter into agreements with other entities, including but not limited to one or more of the Draining Parties, pursuant to which the AUTHORITY is or will be indemnified and/or held harmless with regard to all or any portion of the AUTHORITY's obligations under this Agreement.

J. Nothing in this Agreement shall create any rights in favor of any person or entity that is not a signatory to this Agreement, save and except for rights created pursuant to the Grassland Basin Drainage Management Activity Agreement and any MOUs between the AUTHORITY and the Draining Parties within the Drainage Area.

K. The expenditure of any money or the performance of any obligation of RECLAMATION under this Agreement shall be contingent upon appropriation or allotment of

funds. Absence of appropriation or allotment of funds shall not relieve the AUTHORITY from any obligation under this Agreement. No liability shall accrue to the RECLAMATION in case funds are not appropriated or allotted.

L. No member of or delegate to Congress, or official of the AUTHORITY shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners in the AUTHORITY.

M. If any of the provisions of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform the Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

N. The terms and conditions in Sections III.D, E, and H; VI.D; VIII; and IX.D through H, J and K of this Agreement shall survive the use of the Drain and/or completion of the performance under this Agreement by the AUTHORITY and the Draining Parties and the termination of this Agreement for any cause.

THE UNITED STATES OF AMERICA

DATED: 9/28/01

By _____
Kirk C. Rodgers
Acting Regional Director,
Mid-Pacific Region, Bureau of Reclamation

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

DATED: 9/28/01

By _____
Daniel G. Nelson
Executive Director

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APPENDIX "A" - Description of Lands

1. Lands within Broadview Water District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, the Charleston Drainage District and the Widren Water District.

Containing 84,470 acres, more or less.

2. All of those portions of Sections 26, 27, 34, 35 and 36 in T. 11 S., R. 11 E., M.D.B.&M., Sections 31, 32,33 and 34 in T. 11 S., R. 12 E., M.D.B.&M., Section 1 in T. 12S., R. 11 E., M.D.B.&M., and Sections 2,3,4,5,6,9,10,11 and 12 in T. 12S., R. 12E., M.D.B.&M., bounded on the north by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the east by the boundary of the Central California Irrigation District, bounded on the south by the north right-of-way line of the Central California Irrigation District Outside Canal, and bounded on the west by the Central California District Camp 13 Bypass Canal.

Containing 5,380 acres, more or less.

3. All of those portions of Section 13, T. 12S, R. 12E, M.D.B.&M., and Sections 7, 17, 18 and 19, T. 12S., R. 13E., M.D.B.&M., bounded partially on the north and west by the Panoche Drainage District, bounded partially on the west, south and east by the Firebaugh Canal Water District and the Wildren Water District, and bounded partially on the north by the southerly right-of-way line of the Central California Irrigation District Outside Canal.

Containing 1,410 acres, more or less.

4. All of those portions of Sections 1 and 12, T. 12S. R. 12 E., M.D.B.&M., Sections 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 24, T. 12S., R. 13E., M.D.B.&M. And Sections 19, 29, 30, 32, and 33, T. 12S., R. 14E., M.D.B.&M. being lands within the Central California Irrigation District, bounded on the north and east by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the south and west by the north right-of-way line of the Central California Irrigation District Outside Canal, bounded on the west by the boundary line of the Central California Irrigation District and bounded on the east by the Southern Pacific Railroad right-of-way line. These lands also known as the Camp 13 Drainage District.

Containing 5,490 acres, more or less.

5. All of those portions of Sections 3 and 4, T. 12 S., R. 11 E. and Section 34, T. 11 S., R. 11 E., M.D.B.& M. lying southerly of the Central California Irrigation District Outside Canal, bounded on the west by the Pacheco Lift Canal, bounded on the south by the Delta Mendota Canal, and bounded on the east by the east line of said section 3.

Containing 676 acres, more or less.

6. The west half of Sections 27 and 34, T. 11 S., R. 12 E., M.D.B.& M. lying southerly of the San Luis Drain and northerly of the Central California Irrigation District Main Canal, and the east half of Sections 28 and 33 T. 11 S., R. 12 E., M.D.B.& M. also lying southerly of the San Luis Drain and northerly of the Central California Irrigation District Main Canal.

Containing 1,100 acres, more or less.

7. Lands adjacent to right-of-ways that may be acquired in the future necessary for drainage facilities to serve the Drainage Area.

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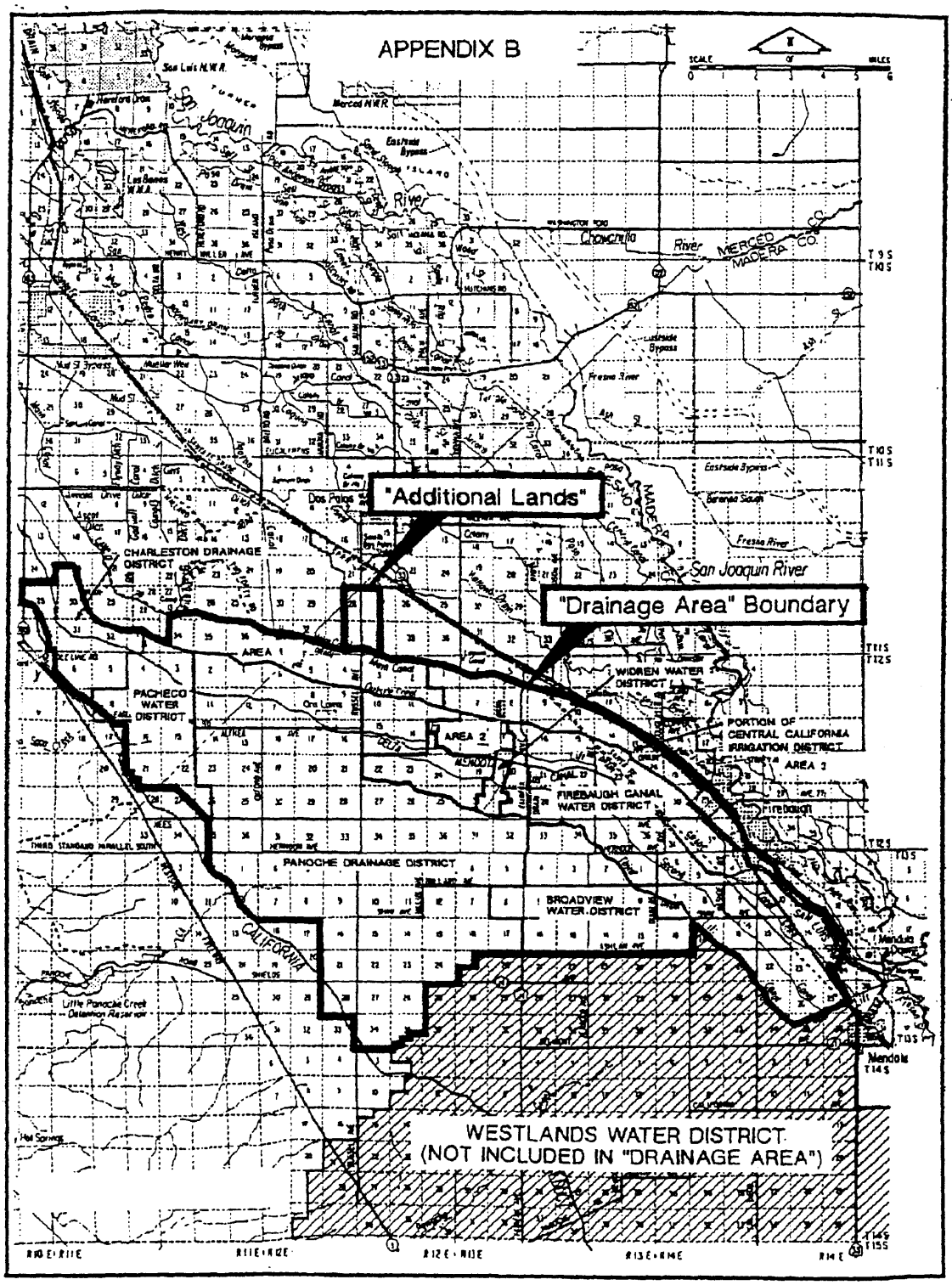
APPENDIX "B" - Geographic Location


APPENDIX B
"Additional Lands"
"Drainage Area" Boundary
CHARLESTON DRAINAGE DISTRICT
PACHECO WATER DISTRICT
WIDREN WATER DISTRICT
PORTION OF CENTRAL CALIFORNIA IRRIGATION DISTRICT
FIREBAUGH CANAL WATER DISTRICT
PANOCHE DRAINAGE DISTRICT
BROADVIEW WATER DISTRICT
WESTLANDS WATER DISTRICT
(NOT INCLUDED IN "DRAINAGE AREA")
San Joaquin River
Chowchilla River
MERCED
MADERA CO.
AREA 1
AREA 2
AREA 3
Firebaugh
Mendota

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APPENDIX "C" - Selenium Load Values

Note: As used in this Appendix, the term Dry Years includes years classified as Critically Dry, Dry and Below Normal and the term Wet Years includes those classified as Above Normal and Wet. The water year classification will be established using the best available estimate of the 60-20-20 San Joaquin Valley water year hydrologic classification (as defined in Footnote 17 for Table 3 in the State Water Resources Control Board's *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary,* May 1995) using data from the Department of Water Resources Bulletin 120 series.

Selenium Wet Year Load Values in pounds									
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Jan		385	359	333	289	211	211	211	211
Feb		619	571	523	440	297	297	297	297
March		753	685	618	496	297	297	297	297
April		577	538	499	433	315	315	315	315
May		488	464	439	400	322	322	322	322
June		429	397	365	308	212	212	212	212
July		429	397	365	310	214	214	214	214
Aug		387	363	339	299	225	225	225	225
Sep		310	303	297	291	264	264	264	264
Oct	315	308	301	294	260	260	260	260	260
Nov	315	308	301	294	260	260	260	260	260
Dec	353	334	316	298	211	211	211	211	211
Annual	983	5328	4995	4662	3996	3088	3088	3088	3088

Selenium Dry Year Load Values in pounds									
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Jan		385	359	333	289	211	211	198	185
Feb		619	571	523	440	297	297	265	234
March		753	685	618	496	297	297	265	233
April		577	538	499	433	315	315	282	249
May		488	464	439	400	322	322	288	255
June		429	397	365	308	212	212	188	165
July		429	397	365	310	214	214	190	166
Aug		387	363	339	299	225	225	200	175
Sep		310	303	297	291	264	264	229	193
Oct	315	308	301	294	260	260	260	225	190
Nov	315	308	301	294	260	260	260	225	190
Dec	353	334	316	298	211	211	211	198	185
Annual	983	5328	4995	4662	3996	3088	3088	2754	2421

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APPENDIX "D" - Revisions of TMML for Selenium

As specified in Section III.H.2.(a)(1) of the Use Agreement, if the Regional Board submits to the U.S. Environmental Protection Agency a TMML that is different from that contained in the Regional Board's March 1996 Staff Report titled, "Amendments to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins for the Control of Agricultural Subsurface Drainage Discharges," and the revised TMML ("Alternate TMML") receives formal approval from the U.S. Environmental Protection Agency, then upon the request of the Draining Parties the Selenium Load Values shall be revised as follows:

1. The revised Selenium Load Values will be effective on January 1 of the year selected by the Draining Parties. (In other words, the revised load values may be applicable retroactively in some months of the first year.)

2. As used in this Appendix, Water Year classifications will be established using the best available estimate of the 60-20-20 San Joaquin Valley water year hydrologic classification (as defined in Footnote 17 for Table 3 in the State Water Resources Control Board's *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*, May 1995) using data from the Department of Water Resources Bulletin 120 series. "Wet Years" shall mean those years classified as Above Normal and Wet. "Dry Years" shall mean those years classified as Critically Dry, Dry and Below Normal.

3. Revision of Values for Wet Years:

a. The revised annual load value will equal the sum of the monthly load values.

b. Prior to October 2005, the revised monthly load value will be the higher of the following:

i. The applicable Selenium Load Value in Appendix C; or

ii. The amount of discharge allocated to the Draining Parties for that month and year in that water year type pursuant to the alternate TMML (hereinafter the "alternate TMML load value for that month.")

c. During and after October 2005, the revised monthly load value will equal the alternate TMML load value for that month and year in that water year type.

4. Revisions of Values for Dry Years

a. The annual load value will equal the sum of the monthly load values.

b. Prior to October 2005, the revised monthly load value will equal the load value that would be applicable during the driest of the wet year types pursuant to 3.b. above. (In other words, if wet years are divided into two types – wet years and above normal years – then the monthly load value in a dry, below normal, or critical year would be the same as the above normal load value.)

c. From October 2005 through December 2005, the revised monthly load value will equal the alternate TMML load value for that month in the driest of the wet year types.

d. From January 2006 through December 2006, the revised monthly load value will be calculated as follows:

Let A=the revised monthly load value
Let B=the alternate TMML load value for that month during the driest of the wet year types.
Let C=the alternate TMML load value for that month in year 2011 for the applicable dry year type.

Then A=B-0.1(B-C)

In other words, the revised monthly load value will be reduced from the alternate TMML load value for that month during the driest of the wet year types by 10% of the difference between the alternate TMML value for the driest of the wet year types and the alternate TMML load value for the applicable dry year type.

e. From January 2007 through December 2007, the revised monthly load value will be calculated as follows:

A=B-0.2(B-C)

f. From January 2008 through December 2008, the revised monthly load values will be calculated as follows.

A=B-0.3(B-C)

g. From January 2009 through December 2009, the revised monthly load values will be calculated as follows:

A=B-0.52(B-C)

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APPENDIX "E" - Salinity Load Values and Goals

Salinity Load Values in tons					
	2001	2002	2003	2004	2005
January		11,935	11,338	10,741	10,526
February		20,924	19,877	18,831	18,455
March		24,208	22,998	21,788	21,352
April		20,015	19,014	18,014	17,653
May		20,021	19,020	18,019	17,659
June		20,624	19,593	18,562	18,191
July		21,862	20,769	19,676	19,283
August		18,396	17,476	16,556	16,225
September		10,210	9,700	9,189	9,006
October	6,423	6,423	6,102	5,781	5,665
November	7,036	7,036	6,684	6,332	6,205
December	8,646	8,646	8,214	7,782	7,626
Total	**22,105**	**190,301**	**180,786**	**171,271**	**167,845**

Salinity Discharge Goals in tons					
	2001	2002	2003	2004	2005
January		9,548	8,951	8,354	8,139
February		16,739	15,693	14,647	14,270
March		19,367	18,156	16,946	16,510
April		16,012	15,011	14,011	13,650
May		16,017	15,016	14,015	13,655
June		16,500	15,468	14,437	14,066
July		17,490	16,397	15,304	14,910
August		14,716	13,797	12,877	12,546
September		8,168	7,658	7,147	6,963
October	5,138	5,138	4,817	4,496	4,381
November	5,629	5,629	5,277	4,925	4,798
December	6,917	6,917	6,485	6,052	5,897
Total	**17,684**	**152,241**	**142,726**	**133,211**	**129,785**

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APPENDIX "F" - High Rainfall Exemption

This Appendix describes a High Rainfall Exemption that will, under certain specified circumstances, reduce the Attributable Discharge amount defined in Section I.A. of the Use Agreement. The overall objective of this High Rainfall Exemption is to accomplish the following:

- Respond to the concern that farmers may lose their ability to control discharges to the levels required by the Use Agreement during high-rainfall months.
- Protect water quality in the San Joaquin River and the estuary downstream; and
- Be consistent with current federal and state policy.

Notwithstanding any other provision of this Appendix or of the Use Agreement, this High Rainfall Exemption is not applicable for any period for which the Oversight Committee, in its sole discretion, has determined that the actual discharge of selenium has caused significant adverse environmental impacts in Mud Slough or at any point downstream of Mud Slough pursuant to Section IV.A.3. of the Agreement.

1. When applicable: If the 3-month cumulative rainfall, measured at the Panoche Water District gauge, equals or exceeds 6 inches in either the current month, or in any of the previous three months; and, if the actual "4-day monthly equivalent low flow at Crow's Landing" during the current month is equal to or exceeds 300% of the "4-day monthly equivalent low flow at Crow's Landing" (i.e., design flow) used to calculate the TMML for that month; provided, that installation, maintenance and operation of a rainfall monitoring gauge at the Panoche Water District has been approved by the Oversight Committee and said station is being operated and maintained by the Authority or the Draining Parties at the time of the high rainfall period.

2. Calculation of Exemption for Selenium

a. The amount of discharge that is exempted is limited by a monthly and annual ceiling as follows:

i. The monthly ceiling is the lesser of the following:

a) A selenium load in pounds that, in the absence of all other discharges, would result in a 1.5 parts per billion selenium concentration at Crows Landing, based on the actual "4-day monthly equivalent low flow" in acre feet for that month; *i.e.* (monthly

ceiling)=(actual Crows Landing 4-day monthly equivalent low flow measured in acre feet for that month)x(1.5 ppb)x 0.002718); or

b) The highest selenium load discharged the same month of 1997, 1998, or 1999 as shown in the attached Table F-1.

ii. The annual ceiling is the amount fixed by the Basin Plan above which the discharge of selenium from agricultural subsurface drainage systems in the Grassland watershed to the San Joaquin River is prohibited, currently 8,000 pounds per year.

b. Monthly and Annual Amounts Exempted:

i. The amount of selenium discharge excused in any month would be the lesser of the following:

a) the difference between the monthly ceiling and the Selenium Load Value for that month; or

b) the difference between i) the amount calculated as follows: the amount of selenium discharged from the Drain (measured at the terminus) plus the amount of selenium in any discharges during a storm event to the Grassland Water District (measured at the discharge points) minus any amount of selenium discharge exempted under the Upper Watershed Exemption described in Appendix G and ii) the Selenium Load Value for that month.

ii. The amount of selenium discharge excused in any year would be the lesser of the following:

a) the sum of the monthly amounts excused; or

b) the difference between the annual ceiling and the annual Selenium Load Value.

3. Calculation of Exemption for Salt. When an Excessive Rainfall exemption is granted for selenium, an exemption shall also be granted for salt. The amount of salt exempted shall be calculated as follows:

Salt exemption in tons = selenium exemption in pounds x (average salt: se correlation factor) + 20% [to account for the imperfect correlation between salt and selenium] x (lbs to tons conversion)

Average salt: se correlation factor = (average ratio of monthly salt discharges to monthly selenium discharges from 1986 to 1996) = 44,350

So,

Salt exemption (tons) = selenium exemption (lbs) x 26.6

TABLE F-1

Calculation of Monthly Ceiling for Excessive Rainfall Exemption (pounds of selenium)

Month	1997 Actual	1998 Actual	1999 Actual	Higher of columns 2, 3 & 4
1	2	3	4	5
Jan	672	335	284	672
Feb	926	851	609	926
Mar	1119	1586	799	1586
April	1280	1549	529	1549
May	849	1367	482	1367
June	611	807	524	807
July	428	615	462	615
Aug	348	500	418	500
Sept	109	388	275	388
Oct	248	277	181	277
Nov	207	226	193	226
Dec	178	239	236	239

Note: The data in Table F-1 have been corrected to exclude any loads originating in the upper watershed.

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APPENDIX "G" - Upper Watershed Exemption

Under certain conditions of high rainfall in the Coastal Range, water carrying selenium loads runs off from the Upper Panoche/Silver Creek watershed, through the channels of the Grassland Area Farmers, and is discharged into the San Joaquin River through the Grassland Bypass and/or the San Luis Drain. The parties to the Use Agreement have agreed that the selenium load from the upper watershed discharged though the Bypass and the San Luis Drain under certain specified conditions should not be included in the computation of Attributable Discharges for purposes of this Use Agreement.

Notwithstanding any other provision of this Appendix G or of the Use Agreement, no amount of discharge will be exempted pursuant to this Appendix G until an Upper Watershed Selenium Monitoring System has been developed as described in this Appendix and submitted to and approved by the Oversight Committee.

Measurable upper watershed loads of both selenium and salt that enter the drainage area and are discharged from the drainage area through the Bypass; Drain or wetland channels will be exempted. The measurement of these upper watershed loads shall be in accordance with the "Upper Watershed Selenium Monitoring System" to be submitted for approval by the Oversight Committee.

1. Components of the "Upper Watershed Selenium Monitoring System" (hereinafter "UWSMS"). The UWSMS shall describe, not only the monitoring activities, but also the method of calculating the amount of selenium and salt that is to be excluded. The monitoring activities shall include the following elements:

a. The monitoring procedure to be developed shall ensure that usable data is collected from the area during a rain event. The procedure shall be fully described in the UWSMS plan and shall reflect the best currently-available science that is obtainable at reasonable cost.

b. The current "Storm Event Plan" shall be revised as necessary to accomplish the purposes of this exemption. The revised Storm Event Plan shall require, to the extent physically possible, that drainage sump pump operations and associated discharge of subsurface drainage cease during the period of time covered by the exemption.

c. Any measurable flow at Panoche Creek at I-5 will trigger both 1) the implementation of the UWSMS to quantify the amount of selenium and salt entering the

drainage area from the upper watershed and discharged through the Bypass or Drain and 2) the management of the drainage channels, the Bypass and the Drain in accordance with the Storm Event Plan.

d. The UWSMS will use photographic and field observations to identify and document surface impoundment and sheet flow.

e. Groundwater will be monitored at existing, representative wells.

2. Discretion of Oversight Committee to Revise. When the "Sources of Selenium Study, "which had commenced and was in progress at the commencement of this Agreement is completed, the Oversight Committee shall have the discretion to update the UWSMS, including the method used to calculate the amount of selenium and salt that comes from the upper watershed and discharged through the Bypass, Drain or wetland channels.

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APPENDIX "H" - Performance Incentive System for Selenium and Salt

1. Selenium

A. Annual Incentive Fees:

Annual incentive fees are set as an annually variable flat price per pound of Attributable Discharges that exceed annual load values determined by the following formula:

$250,000/(.20 x current annual load value) per pound or $500 per pound, whichever is less.

Maximum annual incentive fees will be $250,000 per year. Annual incentive fees may be reduced by the credits described in Appendix J.

If there are incentive credits in accordance with Appendix J, the credit will be added to the annual load value as follows:

Amount subject to incentive fees (lbs) = annual Attributable Discharge (lbs) minus the sum of the annual load value (lbs) and the incentive credit (lbs).

B. Monthly Incentive Fees:

Monthly incentive fees are set as an annually variable flat price per pound of Attributable Discharges that exceed Monthly Load Values as follows:

If the monthly exceedance is less than or equal to 5% of the Monthly Load Value there will be no monthly incentive fee.

If the monthly exceedance is greater than 5% of the Monthly Load Value the monthly incentive fee will be determined by the following formula:

$250,000/(0.20 x current annual load value) per pound or $500 per pound, whichever is less.

If the monthly exceedance is greater than 5% of the monthly load value, the monthly incentive fee will apply to the entire monthly exceedance, including the first 5% of the monthly exceedance. Maximum cumulative monthly incentive fees will be $250,000 per year.

2. Salt

A. Annual Incentive Fees:

Annual incentive fees are set as an annually variable flat price per ton of Attributable Discharges that exceed Annual Load Values determined by the following formula:

$250,000/(0.20 x current annual load value) per ton or $7.50 per ton, whichever is less.

Maximum annual incentive fees will be $250,000 per year. Annual incentive fees may be reduced by the credits described in Appendix J.

If there are incentive credits in accordance with Appendix J, the credit will be added to the annual load value as follows:

Amount subject to incentive fees (tons) = annual Attributable Discharge (tons) minus the sum of the annual load value (tons) and the incentive credit (tons).

B. Monthly Incentive Fees:

Monthly incentive fees are set as an annually variable flat price per ton of Attributable Discharges that exceed Monthly Load Values as follows:

If there are monthly Salt Load Value exceedances in the months of October or November, they can be offset (on a ton for ton basis without multipliers) by discharges below load values in the previous April of the same calendar year. The maximum allowable offset in any one year shall be 5000 tons. For the purposes of the initial three-month transition period of this Agreement, an offset of any monthly exceedances in the months of October or November shall be available to the extent that the April 2001 salt discharges are less than the Salinity Load Value for April 2002.

If the monthly exceedance is less than or equal to 5% of the Monthly Load Value, there will be no monthly incentive fee.

If the monthly exceedance is greater than 5% of the Monthly Load Value, the monthly incentive fee will be determined by the following formula:

$250,000/(0.20 x current annual load value) per ton or $7.50 per ton, whichever is less.

If the monthly exceedance is greater than 5% of the monthly load value, the monthly incentive fee will apply to the entire monthly exceedance, including the first 5% of the monthly exceedance.

Maximum cumulative monthly incentive fees will be $250,000 per year.

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"APPENDIX I" - Alternate Salinity Load Values for 2006-2009

For wet and above normal year types the monthly and annual Salinity Load Values for 2006 through 2009 shall be calculated by multiplying the 2005 monthly and annual Salinity Load Values by a reduction factor. That reduction factor shall be defined as the annual Selenium Load Value for the above normal year type for the current year divided by the annual Selenium Load Value for 2005.

For below normal, dry and critical year types, the monthly and annual Salinity Load Values for 2006 through 2009 shall be calculated by multiplying the 2005 monthly and annual Salinity Load Values by a reduction factor. That reduction Factor shall be defined as the annual Selenium Load Value for the below-normal/dry year type for the current year divided by the annual Selenium Load Value for 2005.

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"APPENDIX J" - Calculation and Application of Incentive Credits

In order to provide incentive to reduce selenium or salt discharges beyond the current annual load value, a credit toward future annual incentive fees will be given if annual selenium or salt discharges are below the annual load value. The incentive credit will accrue until applied at the option of the Authority and will be determined each year in the following manner:

a) If the annual Attributable Discharge is 90% or more of the annual Load Value, no incentive credit will be given.

b) If the annual Attributable Discharge is less than 90% of the annual Load Value, then an incentive credit will be given that can be used to offset future incentive fees.

1) If the credit is to be applied in the same water year type in which it was earned, the credit will be equal to the total pounds of selenium or tons of salt, whichever is applicable, by which the Attributable Discharge in the year in which it is earned is less than the annual Load Value in the year in which it is earned.

2) If the credit is to be applied in a different water year type than the water year type in which it was earned, the credit will be equal to the total pounds of selenium or tons of salt (whichever is applicable) by which the Attributable Discharge is less than the annual Load Value multiplied by an adjustment factor. That adjustment factor shall be defined as a ratio with the numerator being the annual Salt or Selenium Load Value for the year and water year type in which the credit is to be applied and with the denominator being the annual Salt or Selenium Load Value for the year in which the credit is to be applied and for the water year type in which the credit was earned.

c) The incentive credit applies only to the calculation of incentive fees and not to any other provision of this Agreement.