

**AGREEMENT BETWEEN THE UNITED STATES AND THE NORTHERLY  
DISTRICTS**

**Draft**

**July 8, 2016**

The United States, acting through the Bureau of Reclamation (“Reclamation”), hereby enters into this Northerly Districts Agreement with the San Luis Water District, Panoche Water District, and Pacheco Water District (the “Northerly Districts”). The Secretary of the Interior (“Secretary”) and the Northerly Districts agree as follows:

1. DEFINITIONS

a. The term “Condition of Shortage” means “Condition of Shortage” as that term is defined in existing San Luis Water District and Panoche Water District water service contracts.

b. The term “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Agreement or applicable Federal Reclamation law or regulation.

c. The term “Pacheco Water District” means the water service contractor pursuant to Contract No.14-06-200-W0469 (Contract Between The United States and Pacheco Water District Providing for Water Service) (“1986 Water Service Contract”) receiving water from the Bureau of Reclamation’s Delta Division, including the San Luis Unit, as subsequently amended or renewed.

d. The term “Panoche Water District” means the water service contractor pursuant to Contract No. 14-06-200-7864A (Contract Between The United States And Panoche Water District Providing for Water Service) (“1974 Water Service Contract”) receiving water from the Bureau of Reclamation’s Delta Division, including the San Luis Unit, as subsequently amended or renewed.

e. The term “San Luis Water District” means the water service contractor pursuant to Contract No. 14-06-200-7773A (Contract Between The United States and San Luis Water District Providing for Water Service) (“1975 Water Service Contract”) receiving water from the Bureau of Reclamation’s San Luis Unit, as subsequently amended or renewed.

f. The term “Panoche Drainage District” means the California local agency containing and providing drainage service to all of the Panoche Water District plus an additional approximately 6,000 acres of land adjacent to Panoche Water District.

2. BACKGROUND

a. On June 3, 1960, Congress approved the San Luis Act, Pub. L. No. 86-488, 74 Stat. 156, authorizing the construction of and operation of the San Luis Unit of the Central Valley Project.

b. On March 1, 1986, Pacheco Water District entered into the 1986 Water Service Contract through February 29, 2024 with Reclamation pursuant to section 9(e) of the Reclamation Project Act of 1939.

c. On January 1, 1975, San Luis Water District entered into the 1975 Water Service Contract with Reclamation pursuant to section 9(e) of the Reclamation Project Act of 1939, and the parties have subsequently entered into interim renewal contracts.

d. On August 30, 1974, Panoche Water District entered into the 1974 Water Service Contract with Reclamation pursuant to section 9(e) of the Reclamation Project Act of 1939, and the parties have subsequently entered into interim renewal contracts.

e. On December 18, 2000, the United States District Court for the Eastern District of California entered an Order Modifying Partial Judgment on Findings of Fact and Conclusions of Law Re: Statutory Duty to Conform to Ninth Circuit Opinion (“Order Modifying Partial Judgment”) in *Firebaugh Canal Water Dist. v. United States*, Case No. F-88-cv-634-OWW (E.D. Cal.) directing that the Secretary “shall, without delay, provide drainage to the San Luis Unit pursuant to the statutory duty imposed by section 1(a) of the San Luis Act”. Each of the Northerly Districts was joined as defendants in this litigation.

f. SAN LUIS DRAINAGE FEATURE RE-EVALUATION

The Secretary, through Reclamation, developed the San Luis Drainage Feature Re-evaluation as a drainage service plan for the San Luis Unit that would comply with the San Luis Act and the Order Modifying Partial Judgment. Reclamation issued a Final Environmental Impact Statement on the proposed San Luis Feature Re-evaluation in 2006. On March 9, 2007, Reclamation’s Mid-Pacific Regional Director signed a Record of Decision selecting the In-Valley/Water Needs Land Retirement Alternative as Reclamation’s plan for drainage service for the San Luis Unit. Reclamation began implementation of this plan in a portion of Westlands Water District and in the Northerly Districts in 2010. Under the authority of this Record of Decision, Reclamation has constructed a demonstration treatment plant on land that is part of the San Joaquin River Water Quality Improvement Project (further described below). Reclamation currently estimates the costs of completing this plan for the San Luis Unit to be \$3.8 billion in 2015 dollars.

g. GRASSLANDS DRAINAGE AREA

The Northerly Districts are situated in an area known as the Grassland Drainage Area. The Grassland Drainage Area (“GDA”) is an agricultural region on the west side of California’s San Joaquin Valley comprising approximately 97,000 acres. The GDA formed a regional drainage entity in March 1996 under the umbrella of the San Luis and Delta-Mendota Water Authority (“the Authority”) to implement the Grassland Bypass Project, one of the on-going drainage management activities now part of the Westside Regional Drainage Plan, described in more detail below.

h. WESTSIDE REGIONAL DRAINAGE PLAN

In 2003, a group of water and drainage agencies developed the Westside Regional Drainage Plan (“WRDP”) to manage subsurface drainwater and stormwater runoff from irrigated lands (“Drain Water”) through source control, groundwater management, re-use, treatment, and disposal of salts as a long-term plan for drainage service to lands in the GDA. Panoche Water District, Pacheco Water District and the San Luis Water District all participate in the WRDP. Cooperating parties include Camp 13 Drainage District, Charleston Drainage District, Firebaugh Canal Water District, Pacheco Water District, Panoche Water District and Panoche Drainage District. The drainage service plan adopted in Reclamation’s 2007 Record of Decision incorporates elements of the WRDP for lands in the GDA.

i. GRASSLANDS BYPASS PROJECT

The Grasslands Bypass Project is the conveyance of Drain Water from the GDA through the Grassland Bypass Channel into the San Luis Drain to Mud Slough (North), thereby removing drainage from the GDA from wetland water supply channels where it historically flowed. The Grassland Bypass Project currently operates under the terms of the 2009 Agreement for Continued Use of the San Luis Drain (Agreement No. 10-WC-20-3975) (“Third Use Agreement”) between the Authority and Reclamation. It is regulated under waste discharge requirements issued by the California Water Quality Control Board, Central Valley Region (“Regional Board”). Through joint efforts of area farmers and participating water and drainage agencies, with support from Reclamation and regulatory agencies, the Grasslands Bypass Project has reduced selenium and salt loading from the GDA to the wetland conveyance channels and downstream water bodies. The Third Use Agreement expires at the end of 2019, at which time discharges of Drain Water through the San Luis Drain to Mud Slough must cease. Narrowly described, the Grassland Bypass Project is one management tool of the WRDP. However, the term “Grassland Bypass Project” is commonly used to include not only the conveyance, but all the WRDP strategies employed to meet the contractual and regulatory requirements for the Project.

j. SAN JOAQUIN RIVER WATER QUALITY IMPROVEMENT PROJECT

The San Joaquin River Water Quality Improvement Project (“SJRIP”) is another tool for implementing the WRDP undertaken by the Grassland Drainage Area entities. Panoche Drainage District owns and manages, alone or together with Firebaugh Canal Water District, approximately 6,000 acres of land comprising the SJRIP. The land is utilized for growing salt-tolerant crops, primarily irrigated with re-used Drain Water; pumping shallow wells for groundwater management; and providing concentrated drainage water for the development of treatment and salt disposal. The United States has provided funding support for the development of the SJRIP and other drainage reduction activities of the participants and has constructed a pilot demonstration treatment plant on a portion of the SJRIP. The SJRIP has been a key component of the Grassland Bypass Project in achieving a reduction in selenium load limits. Future phases of the project call for acquisition of additional acreage, installation of subsurface drainage systems on the

additional acquired acres, and implementation of treatment and salt disposal components.

### 3. AMENDMENT TO THE SAN LUIS ACT AND ENABLING LEGISLATION

a. The Northerly Districts agree to support amendments to the San Luis Act in substantially the form attached hereto as Attachment 1 (the “Enabling Legislation”) that would terminate the federal government’s obligation to provide drainage service under that Act and would recognize that the responsibility to provide drainage service to landowners within their boundaries will fall to the Northerly Districts. The Northerly Districts will support such an amendment in exchange, in part, for Reclamation’s support for their drainage service activities as provided in and under the terms of this Agreement. The Northerly Districts intend to meet their drainage needs within their respective service areas through continued implementation of the WRDP, including through cooperative efforts with other participants in that Plan, as described in the Background section above and any future amendments or additional agreements among the cooperating parties. The parties’ obligations under this Agreement are contingent upon the enactment of the Enabling Legislation. If the Enabling Legislation is not enacted into law by January 15, 2017, unless such date is mutually agreed to by the Northerly Districts and the United States in writing to be extended, this Agreement shall become voidable as to any party to this Agreement by that party. In addition, enactment of the Enabling Legislation as set forth in Attachment 1 is material and essential to this Agreement. If any party to this Agreement determines that such legislation was enacted with material changes, and that party provides written notice of such determination to the other parties within 30 days of enactment, this Agreement shall become voidable as to such party upon the election by the party providing such notice. Provided, that before any of the Northerly Districts or the United States may exercise its right to void this Agreement based on material changes in the Enabling Legislation, it shall provide thirty days written notice to the other parties of its intent to exercise its right to void this Agreement, and the parties shall thereafter meet and confer. If this Agreement becomes null and void pursuant to this paragraph, the parties agree not to move this Agreement into evidence or otherwise present it in any judicial or administrative proceeding. In the event this Agreement becomes null and void as to a party or as to all parties, nothing in this Agreement creates any right of action or may be used against any party for any purpose.

### 4. RESPONSIBILITY FOR DRAINAGE

a. Upon enactment of the Enabling Legislation, and as a condition of the 9(d) repayment contract, the contracting Northerly District shall agree to become responsible for the management of drainage water within such district’s boundaries in accordance with federal and state law, on its own behalf or through cooperative regional efforts, and will obtain all necessary permits.

5. CHANGES TO CONTRACTS

a. Upon enactment of Enabling Legislation, the Secretary shall initiate and complete all actions necessary to convert the Northerly Districts' existing water service contracts, or any renewals thereof, entered into under section 9(e) of the Reclamation Project Act of August 4, 1939, 43 U.S.C. § 485h(e), to repayment contracts under section 9(d) of said Act, 43 U.S.C. § 485h(d), including all acts amendatory thereof and supplementary thereto, upon mutually agreeable terms and conditions which shall be substantially the same as the terms of each Northerly District's existing 9(e) water service contract, including contract quantities. Reclamation's costs in implementing this Agreement shall be recovered in a manner consistent with its policy existing at the time Reclamation undertakes the action. Each 9(d) repayment contract shall include the following terms:

i. The Northerly Districts agree that they, and not the United States, are responsible for the management of drainage water within their respective boundaries, in accordance with state and federal law, and at their sole expense, except as provided under the terms of this agreement, and sole liability; provided, that the Northerly Districts' responsibility to manage drainage water under this Agreement shall not extend to drainage water resulting from storm events or other extraordinary events outside the Districts' control.

ii. The Northerly Districts subject thereto shall remain subject to existing regulatory oversight and enforcement mechanisms under the current Third Use Agreement through December 31, 2019, which include potential termination of the right to utilize the San Luis Drain for the conveyance of drainage benefitting the Northerly Districts, incentive fees for failure to meet specified load targets, and mitigation fees that encourage reducing drainage to zero discharge before the end of the Use Agreement. The existing Waste Discharge Requirements issued by the Regional Board also include prohibitions of discharge and potential financial liability for non-compliance during the term of the current Use Agreement and require demonstration that any significant environmental impacts associated with continued operation of the Grasslands Bypass Project, including use of the San Luis Drain after December 31, 2019, have been analyzed under applicable statutes and are in compliance with the Endangered Species Act.

iii. Any applicable subsequent or modified future Waste Discharge Requirements after December 31, 2019 shall remain subject to Regional Board enforcement.

iv. Nothing in this Agreement shall limit the authority of the Secretary to make allocation decisions in the Project consistent with the requirements of all current or future enacted Federal law, including, but not limited to the Federal Endangered Species Act, Reclamation law, and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the Central Valley Project.

v. If there is a Condition of Shortage in the amount of water available for delivery to the Northerly Districts because of errors in physical operations of the Central Valley Project, drought, hydrologic variability, other physical causes beyond the control of the Secretary, or actions taken by the Secretary to meet legal obligations, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

b. Conversion of the Northerly Districts' contracts to 9(d) repayment contracts shall not afford the Northerly Districts any greater or lesser rights to an annual allocation of water than the Northerly Districts would have had if the Northerly Districts' 9(e) water service contracts and any interim renewals thereof had remained in place.

## 6. REPAYMENT RELIEF

a. Upon enactment of Enabling Legislation so authorizing, the Northerly Districts shall be relieved of all repayment obligations for unpaid capitalized construction costs for the Central Valley Project allocated to the Northerly Districts as of the date of this Agreement, as identified in the Central Valley Project Schedule of Irrigation Allocated Construction Costs per Acre-Foot by Contractor, dated January 23, 2014, and the Central Valley Project Schedule of M&I Allocated Construction Costs per Acre-Foot by Contractor, dated February 26, 2014, as adjusted to reflect payments by the Northerly Districts not reflected in such schedule, and properly assignable for ultimate return by the contractor. Upon completion of a subsequent or final allocation of capital construction costs expended by the United States and allocated among long-term water service and repayment contractors prior to the date of this Agreement, the Northerly Districts shall neither receive a credit nor incur any additional obligation as a result of the subsequent or final allocation of capital construction costs. The Northerly Districts shall have no obligation to repay any costs incurred by the United States prior to the date of this Agreement for purposes of evaluating, planning, or providing drainage to the San Luis Unit, including costs incurred for technical support and environmental monitoring for the Grasslands Bypass Project, and all costs expended toward construction of the demonstration treatment plant.

b. The repayment relief afforded to the Northerly Districts in paragraph 6(a) above, shall not extend to the Northerly Districts' operation and maintenance obligations, with the exception of those costs incurred for the Grasslands Bypass Project prior to this Agreement, whether payable to the United States or to an operating non-federal entity, or to construction costs or other capitalized costs not yet allocated to or incurred by Reclamation on behalf of the Northerly Districts as of the date of this Agreement, including, but not limited to, costs attributable to the Folsom Safety of Dams modifications or the B.F. Sisk corrective action study or Safety of Dams modifications, or the repayment of future capital costs incurred after the date of this Agreement. Central Valley Project construction costs or other capitalized costs allocated to the Northerly Districts after the date of this Agreement, and properly assignable to the Northerly Districts, shall be repaid as provided by then current applicable Reclamation law, policies, and procedures.

c. Within eighteen months of the execution of each 9(d) repayment contract between the United States and the Northerly Districts referenced in paragraph 5 above, Reclamation shall, unless enjoined by a court, take all necessary actions to complete the process necessary to implement the exemption from the ownership and full cost pricing limitations of the Reclamation Reform Act of 1982 (96 Stat. 1269) (“RRA”) and the ownership limitations provided in any other provision of Federal Reclamation law for lands within the Northerly Districts, as directed by the Enabling Legislation. Upon commencement of this process Reclamation will send a conditional exemption letter to each of the Northerly Districts explaining that districts’ RRA responsibilities from the date of the execution of the 9(d) repayment contract until each district receives a formal exemption from the Commissioner of Reclamation.

d. Upon enactment of the Enabling Legislation, the Northerly Districts’ capital repayment obligations and payments under each districts existing water service contract shall be suspended until the execution of the 9(d) repayment contracts as provided herein, and upon execution of each Northerly District’s 9(d) repayment contracts, such Northerly District shall receive a credit against future operation and maintenance costs payable to the United States in the amount of the capital costs and payments under such district’s existing water service contract paid by such district between the date of this Agreement and the date of enactment of the Enabling Legislation.

## 7. FINANCIAL SUPPORT

a. Upon enactment of the Enabling Legislation, if funds are appropriated by the Congress and apportioned by the Office of Management and Budget, Reclamation shall disburse an amount not to exceed a total of \$70 million over 7 consecutive federal fiscal years in funds for the Panoche Drainage District to assist the Northerly Districts and their cooperating agencies towards implementation of the 2014 Draft Westside Regional Drainage Plan Long Term Update. These funds will be distributed by Reclamation directly to San Luis Water District, Panoche Water District, or Pacheco Water District, or any combination thereof in Reclamation’s sole discretion, which district(s) shall then be responsible for providing the funds to Panoche Drainage District. Other funds needed to complete the full implementation of the 2014 Draft Westside Regional Drainage Plan Long Term Update shall be the responsibility of the Northerly Districts. The 7-year funding period shall commence on October 1 immediately following enactment of the Enabling Legislation. Reclamation shall seek to secure appropriations every year consistent with the strategy of obtaining or exceeding equal annual funding amounts until the full amount is secured and provided. Reclamation shall account for expenditures made to the Northerly Districts under the terms of this Agreement in an annual report to be issued by December 31<sup>st</sup> of each year of the 7 year period.

b. All funds provided to the Northerly Districts under paragraph 7(a) above shall be subject to the audit requirements in 2 CFR Subpart F §200.501, regardless whether the amount expended during the non-Federal entity’s fiscal year in Federal awards is less than \$750,000, including but not limited to the following: audit reports shall be sent to the



Reclamation Contract or Grants Officer within 30 days of completion. Proof of compliance with any audit mitigation measures or findings shall be provided to the Reclamation Contract or Grants Officer within 30 days of the written request from the Reclamation Contract or Grants Officer. The Reclamation Contract or Grants Officer shall have the authority to stop payment, at no cost or liability to the United States, if timely audit reports or proof of compliance with any audit mitigation measures or findings are not provided within the time frames identified above or if compliance with any audit mitigation measures or findings is not being implemented.

c. Technical support, as described below, may be funded out of the appropriations identified in paragraph 7(a) above, according to annual work plans and budgets developed between Reclamation and representatives of the Northerly Districts. Technical support would include the administration of the Third Use Agreement, such as (1) the provision of personnel and services relating to development and implementation of monitoring programs, including quality control and quality assurance; (2) any actions required by Reclamation to implement the incentive fee program to ensure compliance with salt and selenium load values; (3) performance or funding of certain biological studies, monitoring, and preparing reports for the GBP through December 31, 2019; and (4) any other actions of Reclamation under the 2009 Biological Opinion or terms and conditions for the 2015 Waste Discharge Requirements issued by the Regional Board for the GBP through December 31, 2019. The reimbursability of technical support funded by appropriations not covered under the \$70 million cap identified in paragraph 7(a) above, would be determined consistent with existing laws; technical services that are subject to this determination of reimbursability would be implemented according to annual work plans and budgets developed between Reclamation and representatives of the Northerly Districts and would be subject to a letter agreement providing for repayment of any such reimbursable services.

## 8. TITLE TRANSFER OF CERTAIN FACILITIES

a. Upon execution of the 9(d) repayment contract with Panoche Water District, or as soon thereafter as practicable, the Secretary shall transfer all right, title and interest, without warranties, in and to the following facilities, as follows:

i. Upon mutually agreeable terms and conditions, all of the United States' right, title, and interest to the San Luis Demonstration Treatment Plant situated within the San Joaquin River Improvement Project to the Panoche Drainage District. Upon transfer of title, the Secretary shall have no further responsibility for the operations and maintenance of the San Luis Demonstration Treatment Plant; provided that project use power shall continue to be provided for the operation of said facility in an amount not to exceed 3 gigawatts per year. Upon transfer of the facilities pursuant to this paragraph, any operation and maintenance of the facilities transferred shall be conducted in the sole discretion of the Panoche Drainage District and the Secretary shall have no further responsibility therefor.

b. Upon the execution of the respective section 9(d) repayment contract with each Northerly San Luis Unit District, or as soon thereafter as practicable, the Secretary shall transfer to such Northerly San Luis Unit District the United States' interest, if any, to their respective facilities as follows:

i. To the Pacheco Water District, all facilities owned by the United States that are within and operated by the Pacheco Water District, including but not limited to:

A. San Luis Canal Left Bank turnouts and any pumping plants operated by Pacheco Water District, including but not limited to facilities at San Luis Canal Milepost 89.66LA and 89.66LB.

B. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property covered by this subsection (i).

ii. To the Panoche Water District, all facilities owned by the United States that are within and operated by the Panoche Water District, including but not limited to:

A. San Luis Canal Left and Right Bank turnouts and any pumping plants operated by Panoche Water District, including but not limited to facilities at San Luis Canal Milepost 96.15L; 96.85L; 100.48L and 102.64L.

B. Delta-Mendota Canal turnouts and any pumping plants operated by Panoche Water District including but not limited to facilities at Delta-Mendota Canal Milepost 93.25R and MP 96.70R.

C. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property covered by this subsection (ii).

iii. To the San Luis Water District, all facilities owned by the United States that are within and operated by the San Luis Water District, including but not limited to:

A. All water conveyance and lateral systems, and other related works for the furnishing of water and all lands and interest in lands, any buildings, equipment and machinery necessary for the operation and maintenance of the water delivery facilities, pumping plants, turnouts, including but not limited to San Luis Water District pumping plants appurtenant to the Delta-Mendota Canal and the San Luis Canal, solely utilized by the San Luis Water District, located at miles posts:

- D87.48R – Kaljian PP
- S075.49R – PP6, PP7
- S079.39R – PP8, PP9
- S082.10R – PP10, PP11

- S092.16R (A-D) - PP3, Fittje, PP4, PP5
- S101.70R – PP16, PP17

B. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property associated with this subsection (iii).

c. The Secretary shall transfer title pursuant to this section consistent with all applicable Reclamation policies and procedures.

d. Upon the transfer of facilities pursuant to paragraph 8(b), each Northerly District shall be responsible, at its own expense, for the operation and maintenance of facilities transferred to it; provided that project use power, where previously provided to such facilities for pumping CVP project water, shall continue to be provided for the operation of said facilities to the extent those facilities continue to pump CVP project water.

## 9. SAN LUIS DRAIN

a. The Northerly Districts have an interest in the operation, maintenance and use of the San Luis Drain after 2019 to convey storm water runoff as a means to reduce the quantity of such runoff flowing into wetland delivery channels. Reclamation and the Northerly Districts agree to attempt to negotiate a new “Stormwater Use Agreement” that would take effect immediately following expiration of the Third Use Agreement. The parties intend that a Stormwater Use Agreement would address operation, maintenance and use of that segment of the San Luis Drain currently used by the GBP after the expiration of the Third Use Agreement, including the Northerly Districts’ responsibilities for all environmental permitting requirements, monitoring and technological requirements, and liability that may be associated with future operation or discharges from that segment of the San Luis Drain.

b. Upon enactment of the Enabling Legislation, the Secretary shall in coordination with the Northerly Districts transfer title to a willing entity for the portion of the San Luis Drain from Milepost 105.72, Check 19 (near Russell Avenue) to Milepost 78.5 (Mud Slough) to an entity or party other than the United States.

## 10. WAIVER, RELEASE, AND INDEMNIFICATION OF CLAIMS

Upon enactment of the Enabling Legislation and the execution of appropriate agreements to disburse the \$70 million to the Northerly Districts as provided in Paragraph 7:

a. Each Northerly District shall indemnify and hold the United States harmless against any and all claims by individual landowners within such district’s boundaries,

including any and all claims under the Fifth Amendment of the United States Constitution, arising from the alleged failure of the United States to provide drainage or drainage services. A Northerly District's payment for indemnifiable costs, expenses, attorney fees, and damages of any sort shall be due within 360 days of the United States invoicing such Northerly District.

b. Each Northerly District further agrees to cooperate in good faith with the United States in the defense of any claim then pending or subsequently brought by a past, present or future landowner within the Northerly District's boundaries against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to the provision of drainage service or lack thereof within the Northerly District's boundaries, including but not limited to any claims for costs, expenses, attorney fees, and damages of any sort; and

c. The Northerly Districts agree to waive, release, and abandon all claims against the United States that they may have as of the date of enactment of the Enabling Legislation, and all future claims, arising from the alleged failure of the United States to provide drainage or drainage service.

## 11. SUPPORT FOR VACATING THE FIREBAUGH INJUNCTION

Within 28 days of the enactment of the Enabling Legislation and provided that no party to this Agreement has determined that the Enabling Legislation was enacted with a material change in accordance with paragraph 3, the Northerly Districts agree to support a motion to the district court in *Firebaugh Canal Water Dist. v. United States*, CV-F-88-634-LJO/CV-F-91-048-LJO (E.D. Cal.) petitioning for the vacatur of the Order Modifying Partial Judgment issued by the *Firebaugh* court referenced in paragraph 2(e) above, and all subsequent orders directing the United States to implement drainage or control schedules, pursuant to Fed. R. Civ. P. 60(b)(5).

## 12. OTHER PROVISIONS

a. This Agreement has been approved by the Commissioner of the Bureau of Reclamation. This Agreement has been approved by each of the Northerly Districts. This Agreement is in no way related to or concerned with income or other taxes for which the Northerly Districts are now liable or may become liable in the future as a result of this Agreement.

b. Each Northerly District warrants and represents that to its knowledge no action or suit, other than those identified in this Agreement, with respect to the provision of drainage service within its boundaries, is pending and that it will not file in or submit to any other court, administrative agency, or legislative body any claim related to the provision of drainage service within such district's boundaries. Each Northerly District further warrants and represents that it has made no assignment or transfer of all or any

part of its rights arising out of or relating to the claims advanced in this suit.

c. Notwithstanding any other provision of law or any provision of this Agreement, no Northerly District shall be in breach of this Agreement because another Northerly District is in breach hereof. This Agreement shall not be terminated or abridged as to any non-breaching Northerly District, nor shall any non-breaching Northerly District's rights under this Agreement be affected as a result of a breach of this Agreement by another Northerly District.

d. Implementation of the provisions of this Agreement shall not alter the repayment obligation of any other long-term water service or repayment contractor receiving water from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to the Northerly Districts absent this Agreement, including operations and maintenance costs, construction costs, or other capitalized costs allocated to the Northerly Districts after the date of this Agreement.

e. This Agreement is for the purpose of resolving drainage issues in the San Luis Unit addressed in this Agreement with respect to Panoche Water District, Pacheco Water District, San Luis Water District and for no other. Accordingly, this Agreement shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of this Agreement.

f. This Agreement binds any and all future successors and/or assigns of the Northerly Districts.

g. The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not appropriated.

h. The parties reserve the right to amend this Agreement upon mutually agreeable terms.

i. The signatory for each of the Northerly Districts represents that he has been and is authorized to enter into this Agreement on behalf of such district.

j. The Commissioner of Reclamation represents that he has been and is authorized to enter into this Agreement on behalf of the United States.

k. This document constitutes a complete integration of the Agreement between the parties and supersedes any and all prior oral or written representations, understandings or agreements among or between them.

l. This Agreement is binding upon and shall inure to the benefit of the Northerly Districts and the Secretary of the Interior. This Agreement is not intended to and shall not be interpreted in a manner so as to confer rights on persons or entities who are not parties hereto, or to create intended or expected third party status on any such non-party.

m. No Member of or Delegate to Congress, Resident Commissioner, or official of the Northerly Districts shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

n. Nothing in this Agreement shall be construed to deprive any federal official of the authority to revise, amend, or promulgate regulations. Nothing in this Agreement shall be deemed to limit the authority of the executive branch to make recommendations to Congress on any particular piece of legislation.

o. The parties shall cooperate with one another in the implementation of this Agreement.

p. This Agreement may be executed in counterparts, with separate signature pages to be effective as of the date of last signature.

UNITED STATES OF AMERICA

By: \_\_\_\_\_ Dated: \_\_\_\_\_

PANOCHÉ WATER DISTRICT

By: \_\_\_\_\_ Dated: \_\_\_\_\_

PACHECO WATER DISTRICT

By: \_\_\_\_\_ Dated: \_\_\_\_\_

SAN LUIS WATER DISTRICT

By: \_\_\_\_\_ Dated: \_\_\_\_\_