

under this Agreement, notwithstanding such subcontracts. Further, Semitropic acknowledges that Participant will be delivering and recovering water under this Agreement for the benefit of its members (or entities in which members hold their interests), all of which are consented to by Semitropic, provided that Participant shall remain responsible for performing all duties under this Agreement. Any successor to Semitropic shall be a successor Trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

14.2 Allocation Among Semitropic Improvement Districts. Semitropic shall allocate the rights and obligations under this Agreement between the water users and landowners of Semitropic Water Storage District, Semitropic Improvement District, Buttonwillow Improvement District and Pond-Poso Improvement District as it deems appropriate, so long as Participant's and the other Banking Partners right to obtain the return of Stored Water is not adversely impacted. Regardless of such allocations, Semitropic shall remain the trustee under this Agreement.

14.3 No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of any of (a) the water supply contracts between the DWR and the Agency or Participant (b) the water supply agreements between the Agency and Semitropic and (c) any agreements (and amendments thereto) with any of the Original Banking Partners as they exist as of the date of this Agreement.

14.4 Waiver/Cure of Defaults. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

14.5 **Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "**herein**," "**hereof**" and "**hereunder**" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "**person**" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "**Participant**" and "**Semitropic**" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "**including**," "**include**" or "**includes**" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "**month**" shall mean calendar month; and the term "**business day**" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement. Unless otherwise required by Contract (or otherwise provided herein), references to capacity in acre-feet shall refer to annual capacities (except as to a Storage Account Balance or stored water, which shall be a cumulative value).

14.6 **Entire Agreement.** This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral pertaining between the Parties relating to the matters provided for herein.

14.7 **Severability.** In the event that a court of competent jurisdiction or a arbitration panel as provided at Article 9 determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 13.2.

14.8 **Force Majeure.** All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. Other events or causes beyond the control of the Parties shall have the same meaning as "Reasons beyond its control" in Section 12.2. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 13.8. In event of such an occurrence of duration in excess of one year, Section 12.2 shall control, unless the Parties otherwise agree.

14.9 **Notices.** All notices, requests and demands hereunder ("**Notices**") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Semitropic shall be sent to the General Manager of Semitropic at Post Office Box Z, Wasco, California 93280, if mailed, and otherwise to the General Manager at 1101 Central Avenue, Wasco, California 93280. Notices for Participant shall be sent to Managing Member, 1326 West Herdon, Suite 101, Fresno, California, 93711. Each Party hereto (a "**Recipient**") who receives from another Party hereto (a "**Sender**") by electronic facsimile transmission (telecopier) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

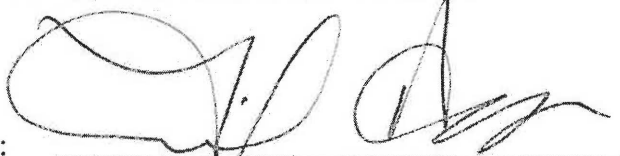
14.10 **Further Assurances.** Each party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

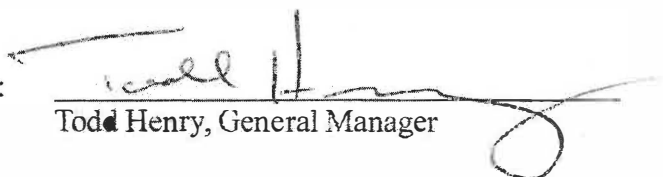
14.11 **Counterparts.** This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an

amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

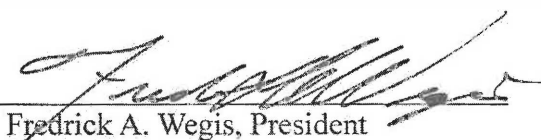
Executed the day and year first hereinabove written.

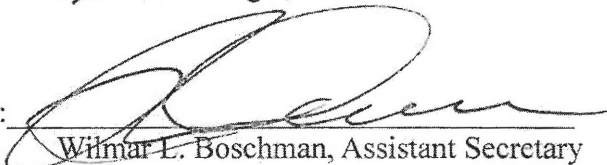
POSO CREEK WATER COMPANY, LLC

By: 
Farid Assemi, General Manager

By: 
Todd Henry, General Manager

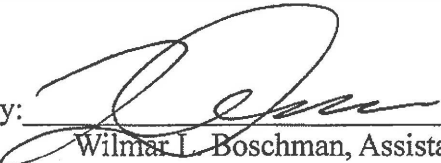
SEMITROPIC WATER STORAGE DISTRICT

By: 
Fredrick A. Wegis, President


By: 
Wilmar L. Boschman, Assistant Secretary

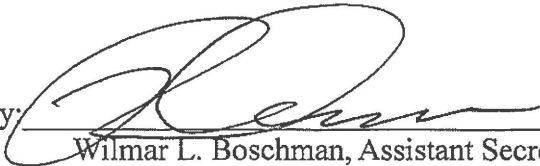
**SEMITROPIC IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Fredrick A. Wegis, President


By: 
Wilmar L. Boschman, Assistant Secretary

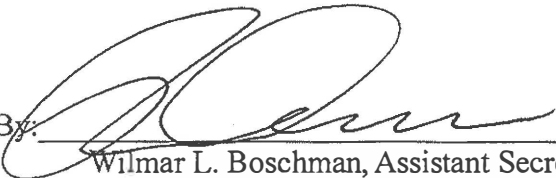
**BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Fredrick A. Wegis, President

By: 
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Fredrick A. Wegis, President

By: 
Wilmar L. Boschman, Assistant Secretary

Appendix B: Cultural Resources Determination

CULTURAL RESOURCES COMPLIANCE
Division of Environmental Affairs
Cultural Resources Branch (MP-153)

MP-153 Tracking Number: 17-SCAO-139

Project Name: Poso Creek Water Company Programmatic Banking and Transfer Program

NEPA Document: EA-17-006

NEPA Contact: Jenifer Lewis, Natural Resource Specialist

MP 153 Cultural Resources Reviewer: Scott Williams, Archaeologist 

Date: April 26, 2017

Reclamation proposes to approve a long-term transfer and exchange program with Poso Creek members (San Luis Water District, Semitropic Water Storage District, Westlands Water District, and Wheeler Ridge-Maricopa Water Storage District). This is the type of undertaking that does not have the potential to cause effects to historic properties, should such properties be present, pursuant to the NHPA Section 106 regulations codified at 36 CFR § 800.3(a)(1). Reclamation has no further obligations under NHPA Section 106, pursuant to 36 CFR § 800.3(a)(1).

The proposed program provides Poso Creek members with operational flexibility and facilitates better management of available water supplies to meet their needs. 9-year programmatic agreement that would allow the transfer/exchange of up to 50,000 acre-feet annual limit of various Central Valley Project water supplies (Class 1 and 2 water, Section 215 water, Unreleased Restoration Flows, Westlands and San Luis Water Districts CVP water supplies, Recapture/Recovered water) from Millerton Reservoir, San Luis Reservoir, and the Cross Valley Canal to Poso Creek members to support existing farming with the existing CVP place of use. This water may also be banked in Semitropic for later delivery to Poso Creek members. The proposed action would utilize existing facilities and would not involve any new ground disturbance or construction.

This document is intended to convey the completion of the NHPA Section 106 process for this undertaking. Please retain a copy in the administrative record for this action. Should changes be made to this project, additional NHPA Section 106 review, possibly including consultation with the State Historic Preservation Officer, may be necessary. Thank you for providing the opportunity to comment.