

**Agenda Packet**

**Item No. 7J**

**Meeting of the Central Valley Flood Protection Board**

**September 28, 2012**

**Davis Ranch Property Quitclaim Approval**

**Terminus Dam, Kaweah River Project**

**Packet Contents:**

- 1. Staff report**
- 2. Resolution 2012-40**
- 3. Maps (3)**
- 4. Local Project Cooperation Agreement (LPCA)**
- 5. Quitclaim Deed**

**Meeting of the Central Valley Flood Protection Board  
September 28, 2012  
Staff Report – Davis Ranch Property Quitclaim Approval  
Terminus Dam, Kaweah River Project**

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**BOARD ACTION**

Consider approval of Resolution No. 2012-40 to approve the Quitclaim Deed to release and quitclaim to the Kaweah Delta Water Conservation District all right, title and interest in and to the excess 506 acres of Davis Site property unnecessary for mitigation lands for the Terminus Dam, Kaweah River, California Project, and to authorize the President to execute the Quitclaim Deed.

**SPONSORS**

The Terminus Dam, Kaweah River Project (Project) was constructed by the US Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (Board), and the Kaweah Delta Water Conservation District (District) as partners on the project. The project has a flood control and a water supply component. All partners participated in the flood control component of the project; the Board was authorized by State Law to participate only in the flood control component of the project.

**LOCATION AND BACKGROUND**

The Project is located in north central Tulare County, approximately 50 miles southeast of Fresno and 70 miles North of Bakersfield. The project was substantially completed in the summer of 2005 and increased flood protection to approximately 1 in 70 years by raising the Terminus Dam Spillway 21 feet, thereby increasing the Lake Kaweah capacity from 143,000 AF to 185,600 AF.

In anticipation of the Project, the District purchased 4,894 acres of land in a single transaction from a private property owner on October 8, 1998 for \$2,000,000. The site was acquired for use as Oak mitigation land for the Project. In 1999, the Board entered into a Real Estate Reimbursement Agreement (Davis Agreement) with the District to reimburse for the State's proportionate share of the purchase price of the Davis Site. The Board reimbursed the District \$1,269,520 (63.476%) in late 1999 for the State share of the purchase price.

Subsequent to the purchase of the land for use as mitigation for the project, in 2001 the Board entered into a Project Cooperation Agreement (PCA) with USACE and District for the Project. Also that year, the Board entered into a Local Project Cooperation Agreement (LPCA) with the District. The LPCA requires the District to acquire all lands, easements and rights of way, including mitigation property, required for the Project. Upon execution of the LPCA, the Davis Agreement terminated according to its own terms. A substantial part of the language written into the Davis Agreement, for management of the mitigation land, and details of ownership and cost sharing were also written into the LPCA. Therefore at the time of its execution, the LPCA became the contract between the Board and the District covering the Davis Site.

Construction of the Project started in November 2001 and the Project was substantially operational in the summer of 2005.

On July 23, 2007, USACE sent a letter to the Board and the District confirming that only 4,388 acres of the Davis Site were required for mitigation for the Project, and the balance of 506 acres was not needed for the Project. The District responded on September 10, 2007 with a letter proposing to credit the Board its proportionate share of the purchase price of the 506 acres in upcoming financial reconciliations between the Board and the District, in accordance with the LPCA.

DWR's standard practice in dealing with excess property includes acquiring an appraisal to determine the current market value. In this unique circumstance, the LPCA was written to allow the District to credit to the Board its proportionate share (63.476%) of the purchase price of the 506 excess acres of the Davis Ranch, \$131,258, in lieu of current market value. The Davis Agreement drawn up by Reclamation Board and KDWCD staff in 1999, included many unique terms – such as for grazing leases, cost sharing of net income for Project and non-Project activities, and included many other terms for the Davis Ranch distinct from all other project lands. Such terms were necessary because of the risk of the transaction, political complexities, and the expected two year lag between acquisition of the Davis Ranch and execution of a Project contract with USACE.

The District will also be crediting the Board 50% of the net revenue for grazing leases on the project lands of Davis Ranch (4388 acres) through acceptance into the project (in accordance with the LPCA), and 70% of the net revenue for grazing leases on the non-project lands (the excess lands) of the Davis Ranch (506 acres; in accordance with the LPCA) through the date of the Quitclaim of the excess land. The total credit of lease revenue due the Board is in excess of \$75,000, and the final value will be calculated upon full execution of the Quitclaim by all parties. The District intends to keep the excess 506 acres for use as mitigation lands for future District projects.

The Board will retain its rights and obligations for the 4,388 acre balance of the Davis Site that is being used as mitigation land for the Project.

**STAFF RECOMMENDATION**

Staff recommends that the board approve Resolution No. 2012-40 to quitclaim to the Kaweah Delta Water Conservation District all right, title and interest in and to the excess 506 acres of Davis Site property that is unnecessary for the Project, allowing the District to credit the Board.

**LIST OF ATTACHMENTS**

- A. Resolution 2012-40
- B. Map of Davis Site Excess Land
- C. LPCA # 4600001309
- D. Quitclaim Deed

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
TERMINUS DAM, KAWEAH RIVER PROJECT  
DAVIS RANCH PROPERTY QUITCLAIM APPROVAL  
RESOLUTION 2012-40

WHEREAS, the construction of the Terminus Dam and Lake Kaweah on the Kaweah River for flood control in the San Joaquin Valley, California, was authorized and completed pursuant to federal legislation commonly known as the Flood Control Act of 1944;

WHEREAS, the raising of the spillway at Terminus Dam and related improvements were authorized by Section 101(b)(5) of the Water Resources Development Act of 1996 (Public Law 104-303; WRDA1996), and these improvements are identified as the Terminus Dam, Kaweah River, California Project (Project) and consisted of flood control and water supply components;

WHEREAS, California Water Code Sections 12657, and 12661.5 authorize the State of California, hereinafter referred to as the "State," to cooperate on the Project, the flood control component only, and authorizes the State to give satisfactory assurances to the United States Department of the Army (Government) that the assurances of local cooperation will be furnished by the State;

WHEREAS, California Water Code Section 12661.5 also permits either The Reclamation Board (presently called the Central Valley Flood Protection Board, Board) or the Kaweah Delta Water Conservation District (District) to be the nonfederal sponsor for the Project;

WHEREAS, on October 9, 1998 the District acquired the Davis Ranch, herein referred to as the "Davis Site," in anticipation of its use for environmental mitigation for the Project, in advance of Government approval of the Davis Site as a Project feature. The 4,894 acre Davis Site was acquired by the District for a purchase price of \$2,000,000;

WHEREAS, on May 21, 1999, the Board entered into a Real Estate Acquisition Agreement with the District for Advance Reimbursement for Mitigation Land Acquisition for the Project (Davis Agreement), wherein the Board agreed to and did reimburse the District the State's proportionate share of the Davis Site purchase price, \$1,269,520;

WHEREAS, on January 10, 2001, the Board entered into a Project Cooperation Agreement with the Government and the District for construction of the Project;

WHEREAS, also on January 10, 2001, the Board entered into a Local Project Cooperation Agreement (LPCA) with the District for the Project, which requires the District to acquire all lands, easements and rights of way, including mitigation property, required for the Project, and upon its execution, the Davis Agreement terminated according to its terms;

WHEREAS, the Project was substantially operational in the summer of 2005;

WHEREAS, on July 23, 2007, the Government sent a letter to both the Board and the District confirming only 4,388 acres of the Davis Site were required for the Project, and the balance of 506 acres was not needed for the Project;

WHEREAS, on September 10, 2007, the District sent a letter to the Board advising the Board as to the manner in which the District intended to respond to the Government's letter, including crediting the proportionate share of the

purchase price of the excess 506 acres back to the Board in upcoming financial reconciliations between the State and the District,

WHEREAS, in 2011 and 2012 the State worked closely with District staff to reconcile financial obligations on the Project between the Board and the District;

WHEREAS, the District is prepared to credit to the Board its proportionate share of \$131,258 for its contribution to the purchase price of the excess 506 acres of the Davis Site upon execution of the Quitclaim of the Board's interest in the excess 506 acres;

WHEREAS, in the LPCA between the District and Board, terms are included for sharing of net revenue from grazing leases, the District will credit the Board its stated share of 50% net revenues for 4,388 acres of Davis Ranch Land, and 70% net revenues for 506 acres of Davis Ranch Land in accordance with the LPCA upon execution of the Quitclaim of the Board's interest in the excess 506 acres;

WHEREAS, the State will retain its rights and obligations for the 4,388 acres of the Davis Site that are required for the Project;

WHEREAS, the Government is in its closeout process for the Project and intends to turn over the Project to the District in 2013;

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Approves of the Quitclaim Deed to release and quitclaim to the Kaweah Delta Water Conservation District all right, title and interest in and to the excess 506 acres of Davis Site property determined unnecessary for mitigation lands for the Terminus Dam, Kaweah River, California Project, and to authorize the President to execute the Quitclaim Deed.

By: \_\_\_\_\_ Date: \_\_\_\_\_

William Edgar  
President

By: \_\_\_\_\_ Date: \_\_\_\_\_

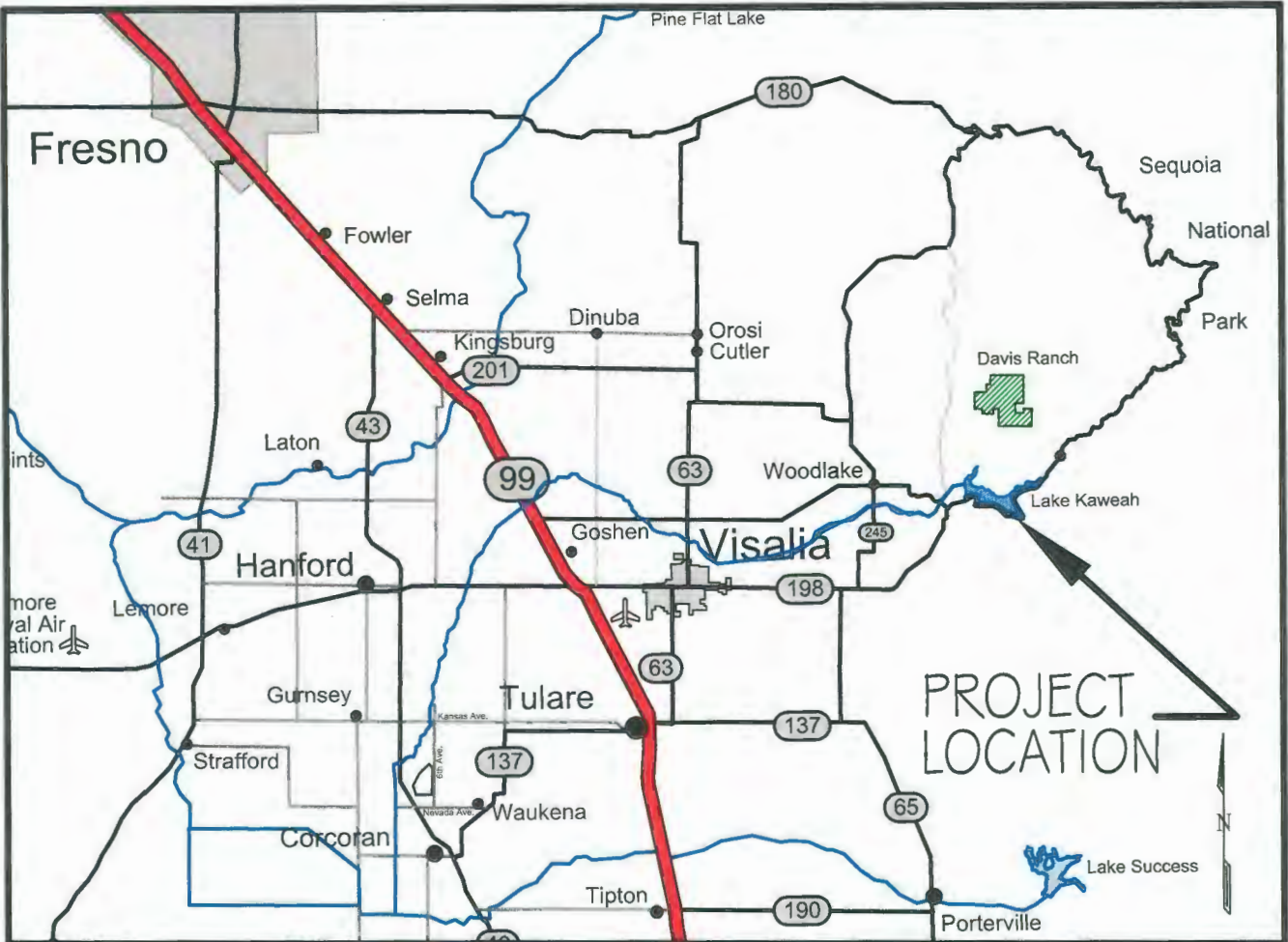
Jane Dolan  
Secretary

Approved as to Legal Form and Sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_

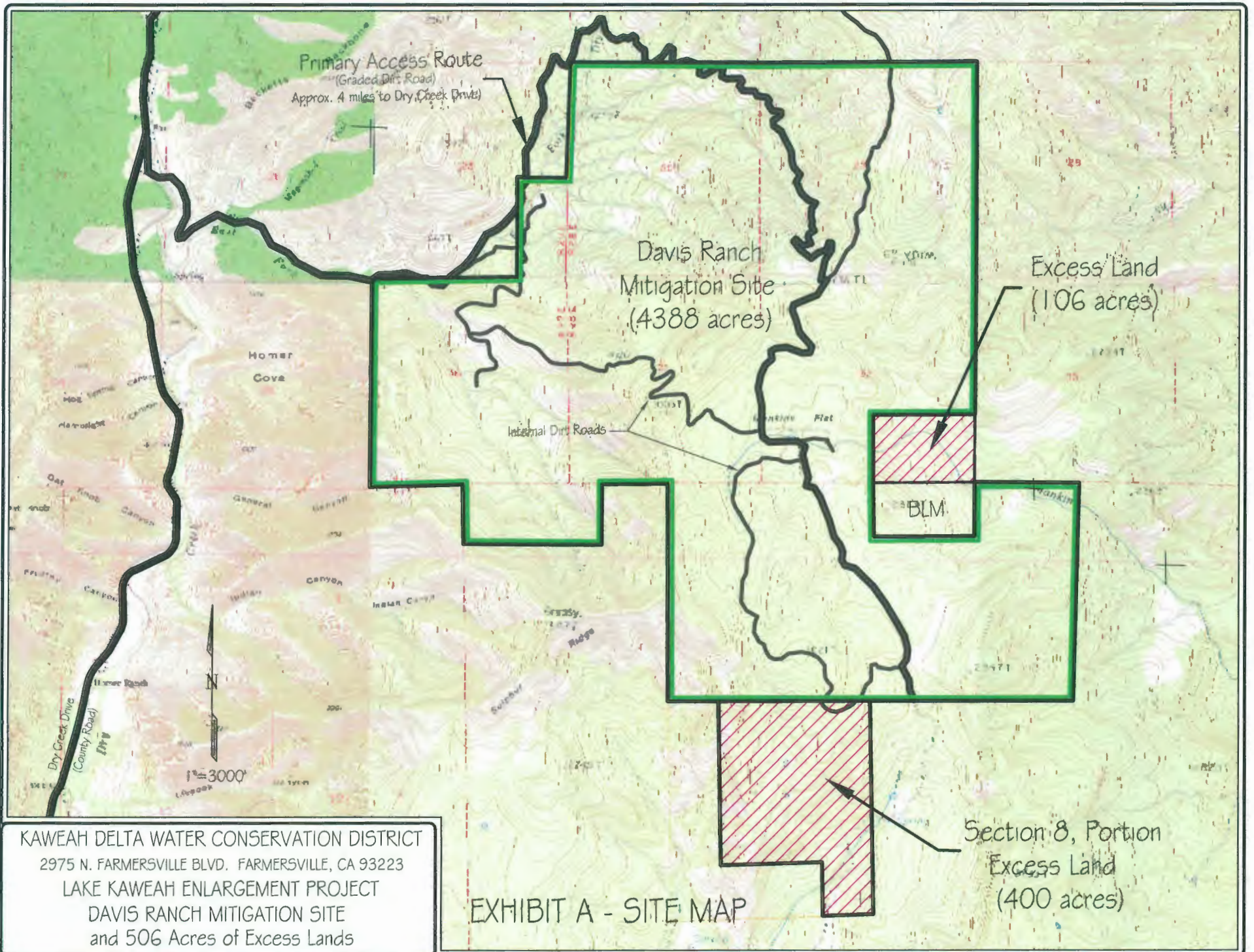
Jeremy Goldberg  
Staff Counsel





KAWEAH DELTA WATER CONSERVATION DISTRICT  
 2975 N. FARMERSVILLE BLVD. FARMERSVILLE, CA 93223  
 LAKE KAWEAH ENLARGEMENT PROJECT  
 DAVIS RANCH MITIGATION SITE  
 Exhibit 2 - REGIONAL LOCATION MAPS





Primary Access Route  
(Graded Dirt Road)  
Approx. 4 miles to Dry Creek Drive

Davis Ranch  
Mitigation Site  
(4388 acres)

Excess Land  
(106 acres)

Internal Dirt Roads

BLM

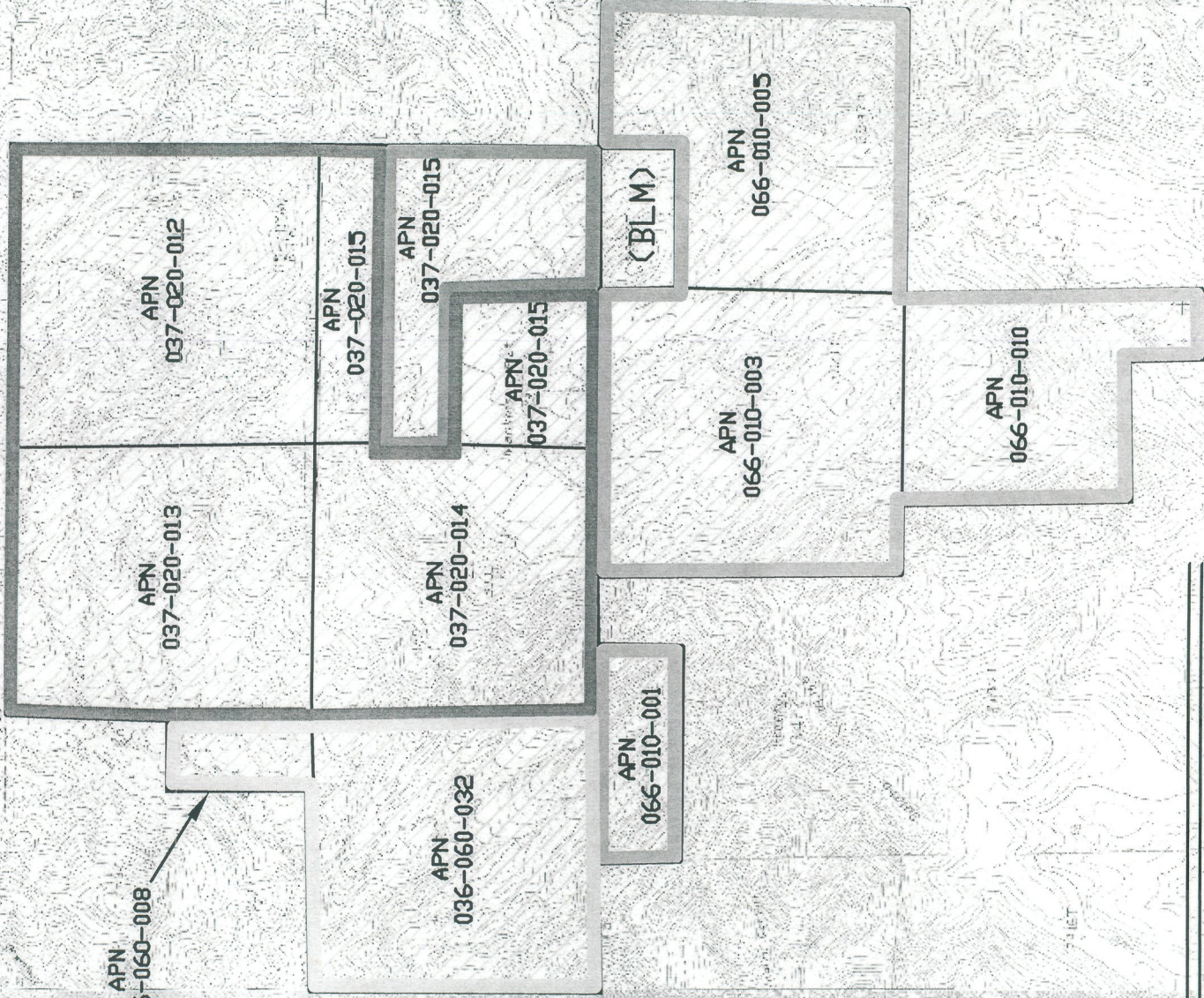
Section 8, Portion  
Excess Land  
(400 acres)

KAWEAH DELTA WATER CONSERVATION DISTRICT  
2975 N. FARMERSVILLE BLVD. FARMERSVILLE, CA 93223  
LAKE KAWEAH ENLARGEMENT PROJECT  
DAVIS RANCH MITIGATION SITE  
and 506 Acres of Excess Lands

EXHIBIT A - SITE MAP



DAVIS RANCH  
(LKE - DAV)  
(4,894 Acres)



- PARCEL 1
- PARCEL 2
- PARCEL 3
- PARCEL 4

KAWEAH DELTA WATER CONSERVATION DISTRICT  
2975 N. FARMERSVILLE BLVD. FARMERSVILLE, CA 93223  
LAKE KAWEAH ENLARGEMENT PROJECT  
DAVIS RANCH PARCELS



STATE OF CALIFORNIA

**STANDARD AGREEMENT** — APPROVED BY THE ATTORNEY GENERAL  
 STD 2 (REV 5-91)

CONTRACT NUMBER 166249/4600001309	AM. NO.
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER 94-2146824	

THIS AGREEMENT, made and entered into this 10th day of January, 2001, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE: Director  
 AGENCY: Department of Water Resources/The Reclamation Board

CONTRACTOR'S NAME: Kaweah Delta Water Conservation District, hereafter called the Contractor.

**COPY**

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: (Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)

See the Local Project Cooperation Agreement between the State of California The Reclamation Board and Kaweah Delta Water Conservaiton District for the Terminus Dam, Kaweah River Project, which is attached and made part of this Agreement by this reference.

Signatures appear on page 20 of this Agreement.

The anticipated term of this agreement is January 10, 2001 through January 10, 2011, but it will not become effective until the Project Cooperation Agreement is signed by the U.S. Army Corps of Engineers and approved by the California Department of General Service's Office of Legal Services, and this agreement is signed by the parties and approved by DGS.

CONTINUED ON 20 SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.  
 IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		CONTRACTOR	
AGENCY		CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.)	
BY (AUTHORIZED SIGNATURE)		BY (AUTHORIZED SIGNATURE)	
PRINTED NAME OF PERSON SIGNING		PRINTED NAME AND TITLE OF PERSON SIGNING	
TITLE		ADDRESS	

AMOUNT ENCUMBERED BY THIS DOCUMENT \$	PROGRAM/CATEGORY (CODE AND TITLE)		FUND TITLE	
	(OPTIONAL USE)			
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$	ITEM	CHAPTER	STATUTE	FISCAL YEAR
TOTAL AMOUNT ENCUMBERED TO DATE \$	OBJECT OF EXPENDITURE (CODE AND TITLE)			
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T B A NO	B R NO	
SIGNATURE OF ACCOUNTING OFFICER		DATE		

Department of General Services  
Use Only

- CONTRACTOR
- STATE AGENCY
- DEPT OF GEN SER
- CONTROLLER
-

LOCAL PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE STATE OF CALIFORNIA, THE RECLAMATION BOARD  
AND  
KAWEAH DELTA WATER CONSERVATION DISTRICT  
FOR THE  
TERMINUS DAM, KAWEAH RIVER PROJECT

This Agreement ("Agreement") is entered into by and between The State of California, acting by and through The Reclamation Board ("State") and the Kaweah Delta Water Conservation District ("District") on the \_\_\_\_ day of \_\_\_\_\_, 2001.

1. The construction of Terminus Dam and Lake Kaweah on the Kaweah River for flood control in the San Joaquin Valley, California, was authorized and completed pursuant to federal legislation commonly known as the Flood Control Act of 1944;
2. The raising of the spillway at Terminus Dam and related improvements, identified as the Terminus Dam, Kaweah River, California, Project for Flood Damage Reduction and Agricultural Water Supply Storage Project were authorized by Section 101(b)(5) of the Water Resources Development Act of 1996 (Public Law 104-303) ("WRDA 1996") and for purposes of this Agreement, the "Project" is defined to mean the flood control component of the authorized project;
3. Water Code Sections 12657 and 12661.5 authorize the State to cooperate on the Project and authorize the State to give satisfactory assurances to the United States Department of the Army ("the Government") that the required local cooperation for flood control purposes will be furnished by the State in connection with the authorized project;
4. Simultaneously with the execution of this Agreement, the District will execute a Project Cooperation Agreement ("PCA"), a draft copy of which is attached hereto as Exhibit A, with the State and the Government wherein the District will provide, among other things, satisfactory assurances directly to the Government that the required local cooperation for agricultural water supply storage purposes will be furnished by the District in connection with the authorized project;
5. The State agrees to serve as the nonfederal sponsor for the Project on the condition that the District provides the State with the assurances specified in this Agreement that it will contribute its share of the nonfederal costs of the Project and will be responsible for operation, maintenance, repair, replacement, and rehabilitation of the Project upon its completion; and will, as described below, hold and save the Government, and the State free from all claims and damages

arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project.

6. The State and the District have the power and authority to do all things required of the nonfederal participants for the Project;
7. The State may request the Government to accomplish betterments as defined in Article I.J of the PCA and in accordance with Article II.B of the PCA.
8. The Water Resources Development Act of 1999 (Public Law 106-53) ("WRDA 1999") permits the transfer to the Government, without consideration, title to the perimeter lands acquired for the Project by the nonfederal interests; and
9. WRDA 1999 provides that upon the request of the nonfederal interests, the Government shall carry out operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the Project if the nonfederal interests enter into a binding agreement with the Government to reimburse the Government for 100 percent of the costs incurred for OMRR&R.

IT IS HEREBY AGREED:

SECTION I: Obligations of the State and the District

A. Obligations of the State

1. The State shall act as nonfederal sponsor for the Project and shall provide the assurances of nonfederal cooperation required by the Government for the Project. The State's obligations as nonfederal sponsor for the flood control portion of the authorized project are set forth in the PCA to be executed for the authorized project among the State, the District and the Government. The State's obligations and responsibilities shall be limited to those of the "State" as defined and described in the PCA, namely those of the Non-Federal Sponsor for flood control. A draft of the PCA is attached as Exhibit A and incorporated by this reference.
2. For purposes of this Agreement, the terms "total project flood control costs" and "total project water supply costs" shall be defined as set forth in Article I of the PCA. The terms of this Agreement shall apply to all of the components of this Project including separate construction and mitigation contracts that may be awarded by the Government. The total project flood control costs are 90.68 percent of the authorized project construction, and OMRR&R costs. The total project water supply storage costs are 9.32 percent of the authorized project construction and OMRR&R costs.
3. The terms of this Agreement shall apply to all of the components of this Project including separate construction and mitigation contracts that may be awarded by the Government.

4. As authorized by Water Code Section 12585.5, the State shall pay 70 percent of the following Project costs in accordance with the terms and conditions set forth in the PCA: the nonfederal capital costs required by Section 103(a) of Public Law 99-662; the nonfederal design costs required by Section 105(c) of PL 99-662; and the nonfederal capital costs of fish and wildlife mitigation.
5. The State shall furnish to the Government, according to the terms and conditions of Article III of the PCA, those lands, easements, rights of way, relocations, borrow material, and/or excavated material disposal, required for the Project ("Project rights of way") determined by the Government to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project. The District may assist the State as described in Section II of this Agreement.
6. The District may request the State to request the Government to accomplish betterments in accordance with Article II.B of the PCA and Sections I.B.5, III.I, and III.J of this Agreement.
7. The District shall have the opportunity to review and comment on all contracts to be carried out, including relevant plans and specifications, prior to the issuance of invitations for bid. The District shall have the opportunity to review and comment on any modifications in connection with such contracts. The time allotted for plan reviews shall be within the control of the Government. The State may consider the District's comments, but pursuant to the provisions of Article II.A.1 of the PCA, all work on the Project (whether performed under contract or by Government personnel) shall be exclusively within the control of the Government.

**B. Obligations of the District:**

1. The District shall pay 30 percent of the following total project flood control costs: the nonfederal capital costs required by Section 103(a) of PL 99-662; the nonfederal design costs required by Section 105(c) of Public Law 99-662; and the nonfederal capital costs of fish and wildlife mitigation. If the total nonfederal contribution towards total project flood control costs exceeds 50 percent of total project flood control costs and the State receives a refund from the Government in accordance with Article VI.D.2 of the PCA, a portion of such refund shall be returned by the State to the District in proportion to the District's contribution to the Project;
2. The District shall perform all OMRR&R on the facilities and related features constructed pursuant to the Project in accordance with the regulations or directions prescribed by the Secretary of the Army and pay the costs of OMRR&R of those facilities turned over to the Government pursuant to Section 307 of WRDA 99;

3. The District shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors;
4. The District shall hold and save the State to the extent required by State law in effect at the time of the signing of this Agreement, free and harmless from any and all claims or damages arising out of or in connection with the obligations herein assumed by the District, including any responsibility for claims or damages arising out of work performed by the Government for which the State may be held liable under the terms of the PCA; and
5. The District shall pay the entire cost of betterments requested by the District. The District shall provide all lands, easements, rights of way, and suitable borrow and dredged or excavated material disposal areas and perform relocations associated with such betterments in accordance with Section II of this Agreement. The District will establish a cost accounting system that will separately identify and document all costs attributable to betterments and will provide the State with the full amount of funds required to pay for betterments in accordance with Section III of this Agreement and Article VI.C of the PCA.
6. The District shall participate in and comply with applicable federal floodplain management and flood insurance programs.
7. The District shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and their use in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project. A report detailing this information shall be provided to the State.
8. Not less than once each year, the District shall inform affected interests of the extent of protection afforded by the Project.
9. The District shall assure continued operation, maintenance, repair, replacement, and rehabilitation of the existing flood warning system under the control of the District, if any, for the life of the Project.



10. Subject to the State's authority in Water Code Section 8710, the District shall prescribe and enforce, to the extent of its powers, regulations preventing obstruction of or encroachment on Project works that would reduce the level of protection afforded or hinder operation, maintenance, repair, replacement, and rehabilitation.

C. Obligations of State and District:

1. In order to facilitate nonfederal participation in the Project, the following actions and/or decisions shall be made only upon mutual consent of the State and District:
  - a. The issuance of a letter to the Government indicating that both the State and District are willing to proceed with the Project, as described in Article II.A.1 of the PCA;
  - b. The decision as to the maximum cumulative financial obligation for construction of the Project, as described in Article II.A.3 of the PCA; and
  - c. The decision to request betterments, as described in Article II.B of the PCA, provided that the party requesting the betterments will be solely responsible for any additional cost associated with such betterments.

SECTION II: Project Lands, Easements Rights of Way, Relocations and Disposal Areas

A. Provisions Applicable to All Parcels

1. Title to all Project rights of way will be acquired by the District, unless otherwise directed by the State prior to the acquisition of the same. Subject to Government approval, the District shall secure an easement in the name of the State and the District on all Project rights of way for inspections and emergency work and to do all work, perform all tasks, and take any action required, at the discretion of the State and in any reasonable manner, to allow the State and the District to operate and maintain the Project in conformity with the PCA, the U.S. Army Corps of Engineers' Operation and Maintenance Manual for the Project, and all applicable state and federal laws, rules and regulations. As to any Project rights of way to be conveyed to the Government, the easement shall be executed at or before the time the District provides fee title to the Government in implementation of Section 307 of WRDA 1999.
2. Unless otherwise directed by the State, the District or its contractors will, on behalf of the State, negotiate for the acquisition of the Project rights of

way and perform relocations that are necessary for the Project, as determined by the Government. During the acquisition of Project rights of way on behalf of the State, the District or its contractor will furnish the personnel, services, and materials necessary to accomplish the following tasks:

- a. Surveying and preparation of legal descriptions of the parcels that are to be acquired for Project rights of way, hereinafter referred to as "all parcels."
  - b. Preparation of deeds and contracts for all parcels.
  - c. Appraisal of all parcels.
  - d. Examination of title to all parcels, including the obtaining of litigation guarantees and/or preliminary reports on title and policies of title insurance.
  - e. Acquisition of all parcels by deed and contract and/or condemnation by a date which shall be specified by the State. For parcels being acquired by condemnation, an Order of Possession shall be deemed "acquisition" for purposes of meeting the above date.
  - f. Relocation of public utilities, private utilities, and other facilities, as required by the Project, which will not be included in the Government's Project construction contract.
  - g. Provide relocation assistance for qualified occupants of acquired property, as required by State and federal statutes, rules, and regulations.
3. The State shall provide the District with appraisal guidelines, appraisal format, and sample copies of right of way contracts and deed language to be used for acquisition activities.
  4. If the District uses a contractor to negotiate for the acquisition of Project rights of way, the District shall enter into a written agreement with the contractor for that purpose. The agreement with the contractor shall be subject to the prior review and approval of the State. No Project rights of way acquired for the Project on behalf of the District by a contractor shall be eligible for credit or payment to District unless the contract between the District and the contractor has been approved by the State. The contract shall provide for termination of the contractor by the District upon not more than 30 days written notice.

5. Neither the District nor its contractor shall take steps toward acquiring Project rights of way on behalf of the State, until such steps are reviewed and approved by the State.
6. The District acknowledges that pursuant to Article III of the PCA, the State is obligated to certify to the Corps that Project rights of way have been acquired. The date by which the certification will be required shall be set by the Corps after the PCA and this Agreement have been executed. The District agrees to provide, by no later than thirty days before the date on which certification to the Corps is required, a certification to the State specifying that: (a) the State and/or the District hold sufficient legal rights to allow Project construction to proceed in the form of fully executed deeds or Superior Court orders for immediate possession; and (b) that the property may be utilized for the purpose of constructing the Project.
7. The actual reasonable costs of Project rights of way incurred by the District and its contractors, and their reasonable costs of performance, to the extent that the costs are creditable as total project flood control costs as provided by Article IV of the PCA, shall be eligible for credit toward the District's portion of the nonfederal share of total project flood control costs. The method of calculating that credit is set forth in Section III of this Agreement. For purposes of this Agreement, the term "costs of performance" shall include, but shall not be limited to, the following: fees and expenses payable to the District's contractors pursuant to their contracts; reasonable court costs and attorneys fees incurred in pursuing the acquisition of Project rights of way for the Project; title insurance company escrow fees and premiums for title insurance preliminary reports, policies, and litigation guarantees; mapping and other incidental expenses and costs properly attributable to the acquisition of Project rights of way.
8. The District shall keep the State apprised of its Project rights of way acquisition activities and the activities of its contractors, shall consult with State on matters concerning compliance with State and federal acquisition rules and regulations, and shall provide complete access as requested to its records relating to such right of way acquisition. The District shall provide to the State a copy of all litigation guarantees, preliminary title reports and policies of title insurance reasonably promptly following receipt thereof.
9. If the District is using a contractor to acquire Project rights of way for the State, the contractor's performance shall be subject to review by the State. If in the opinion of the State the contractor's performance is not sufficient to allow the District to comply with the terms of this Agreement, then after the State has consulted with the District regarding its opinion, the State may request the District to terminate the contractor pursuant to the terms of the District's contract with the contractor.

10. Before the District or its contractor makes a written offer to an owner, the District shall provide to the State for review and approval the appraisal, the proposed contract, and deed for each parcel. The State's review shall be accomplished and the results reported to the District reasonably promptly following receipt of those documents, and in no event later than 30 days following receipt. If the acquisition is not exempt from the review by the State of California, Department of General Services ("General Services"), the State shall expeditiously deliver the documents for review by General Services. Before the close of escrow for any parcel, the District shall provide to the State the memorandum of settlement and a litigation guarantee. Each individual acquisition shall be subject to the review and approval, before the close of escrow, by General Services, except as provided in Department of General Services' Exemption No. 34.3, dated October 1, 1991, and any revisions thereto. The State shall assist General Services in completing its review as quickly as possible.
11. The District may elect to purchase Project rights of way prior to precise definition of those required for the Project. In accordance with Article IV.A, of the PCA, the State will provide the District with credits toward the share of total project flood control costs for the actual costs to the District of Project rights of way so purchased. The District will be credited only for the State's share of Project rights of way costs determined to be eligible for credit under the terms of the PCA. For these reasons, payment to the District for any Project rights of way purchased, and relocations made prior to execution of the PCA, and/or prior to final determination by the Government of the extent of land interests necessary for the Project, is subject to adjustment during the final accounting of nonfederal costs shared between the State and the District. No credit shall be given for Project rights of way which, as determined by the Government, were previously obtained for purposes of a prior project built in cooperation with the Government. For Project rights of way which were acquired not more than five years prior to the date on which the PCA will be signed, the credit provided hereunder shall include the incidental costs of Project rights of way.
12. Solely for the purposes of this Section, pursuant to Government Code Section 895.4, the District, to the extent permitted by law, shall defend, indemnify, and hold the State harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the District, its officers, agents, contractors and employees under or in connection with any work, authority, or jurisdiction delegated to the District under this Section.
13. Solely for the purposes of this Section, pursuant to Government Code Section 895.4, the State, to the extent permitted by law, shall defend, indemnify, and hold the District harmless from any liability imposed for injury (as defined by

Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the State under or in connection with any work, authority, or jurisdiction delegated to the State under this Section.

14. Responsibility for hazardous and toxic waste associated with the land shall remain the responsibility of the District including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) regulated substances. Hazardous and toxic waste responsibilities are further described in Section X, herein.
15. In the event any Project rights of way acquired by the District are not used for the Project, it shall be deemed a remnant and, shall be sold. Upon the sale, the State shall receive its proportionate contribution for any remnants based on the State's contribution to the total project flood control cost.
16. After the Government accepts Project rights of way as mitigation lands for the Project, the State shall receive 70 percent and the District shall receive 30 percent of all net lease revenues from any activity on Project rights of way not required as part of OMRR&R.
17. The District shall obtain the written consent of the State before disposing of or conveying any interest in any Project rights of way.

**B. Provisions Applicable Only to Perimeter Lands**

1. The District and the State agree to transfer the perimeter lands ("perimeter lands") to the Government as authorized in Section 307 of WRDA 1999. Subject to approval of the Government, the transfer document shall have provisions substantially similar to the following provisions:

"This grant is made on the express condition that the property shall not be used for any purpose that will conflict with flood control and agricultural water supply storage at Lake Kaweah. If the Grantee ever uses the property for conflicting purposes, the property shall revert to grantor or its assignee, and the right, title and interest of the Grantee and assigns shall be terminated and forfeited. The Grantor may exercise the power of termination by giving written notice to the Grantee. Upon notification by Grantor, the Grantee shall execute a quitclaim deed to the Grantor for the subject properties."

**C. Provisions Applicable Only to Environmental Mitigation Lands**

1. Adverse environmental impacts resulting from the Project shall be offset by establishing environmental mitigation sites. The mitigation sites will be considered to be a functional unit of the Project. If so directed, the Government's contractor will construct the mitigation site as directed by

the Government to meet the mitigation requirements approved for the Project by the State, District, and the Government.

2. Pursuant to Water Code section 8610, the State will offer to lease to the State of California Department of Fish and Game ("DFG") any mitigation land acquired by the State. If DFG agrees to lease the mitigation site, the costs of operation, maintenance, repair, replacement, and rehabilitation of the site may be shared by DFG and the District. If DFG does not agree to lease the site, the District shall perform the OMRR&R of the site and will bear the entire cost of these obligations. The specific work necessary to do the OMRR&R on any mitigation site will be specified by the State in accordance with any operation and maintenance manual provided for the Project by the Government.
3. **Davis Ranch**
  - a. This Section applies to the Davis Ranch ("Davis Site") as described in the Real Estate Agreement Between The Reclamation Board State of California and Kaweah Delta Water Conservation District For Advance Reimbursement for Mitigation Land Acquisition For The Terminus Dam, Kaweah River Project For Flood Control, (hereinafter referred to as the "Davis Agreement") entered into on May 21, 1999.
  - b. The District acquired the Davis Site, in anticipation of its use for environmental mitigation for the Project, in advance of Government approval of the Davis Site as a Project feature; the advance purchase assured its availability at a reasonable cost for the Project. The approximately 4900-acre Davis Site, was acquired by the District for \$2 million. In addition, the District incurred potentially reimbursable acquisition and related costs as part of its process to select and purchase the Davis Site. The Davis Site is currently being managed by a third party under an agreement with the District, which is one of several costs now being incurred by the District in connection with the ownership and management of the Davis Site.
  - c. The State acquired an interest in the Davis Site from the District with the intent that the land will be used to fulfill, in part, its responsibility to provide lands required for the Project as part of its obligations of nonfederal cooperation as set forth in the PCA. This was accomplished by the State reimbursing the District for 70 percent of the purchase price of the Davis Site, which reimbursement amounted to \$1,400,000. Payment of the State contribution was made upon receipt, review, and approval by the Board and the Department of General Services of the appropriate documents substantiating the purchase price, and acquisition costs.

- d. From the effective date of this Agreement, until the Government accepts the Davis Site as mitigation lands for the Project:
- (1) The State, after consultation with the District, may request the return of all or part of the principal and acquisition costs paid to the District under the Davis Agreement, and upon 60-days notice. The District shall pay interest at the rate of the State Surplus Money Investment Fund to accrue from a date sixty (60) days following the date State gives notice, as provided above, until payment is received by the State. This request can be made when, in the opinion of the State, the Davis Site is not being operated or maintained in a manner suitable for Project purposes or is not being retained for use for the Project.
  - (2) The District may enter into one or more new grazing leases, reviewed and approved by the State, until the State exercises its option granted in paragraph (4) below. At the time the State exercises its option herein granted, or as soon thereafter as practicable, any grazing lease shall be pursuant to a grazing lease substantially similar to a standard State grazing lease. The Davis Site shall be managed in consultation with the State by the District, its agents and lessees, including those acting under the land management agreement and the grazing lease, in a manner consistent with environmental resources protection and all obligations of parties pursuant to the Corps' Project Operation and Maintenance Manual and the Project's final EIS/EIR. All existing oak trees shall be protected and preserved, unless approved by both parties to this Agreement.
  - (3) Extensions to the existing land management agreement, leases to a third party, or any change in use of the land must be approved by the State. The District may not dispose of or exchange any portion of the Davis Site unless the transaction has been approved by the State including the Department of General Services. The State shall receive credit and/or reimbursement for fifty (50) percent of any net income accruing since the date of the Davis Agreement.
  - (4) The District agrees, as in the Davis Agreement, to provide joint use of the Davis Site to the State. As consideration for the State reimbursement of the District, the District grants the State an option to either: (1) an undivided seventy (70) percent interest as tenants in common in the fee title for the

flood control portion of the Davis Site, or (2) an undivided seventy (70) percent interest in a conservation mitigation easement or similar restriction agreeable to the State over the portion of the parcel allocated to mitigation for the Project, which easement or restriction agreeable to the State would include all rights necessary for the State to fulfill its obligations to the Government under the PCA.

- e. That portion of the Davis Site approved by the Government as a flood control project feature shall be included as a nonfederal contribution for the Project. The final disposition is to be in accordance with the provisions for the PCA. Thereafter, if the District has not cancelled the interest of the State as hereinafter provided in paragraph f, an adjustment will be made between the District and the State based on an original purchase price of \$2,000,000, allocated between mitigation for the flood control purposes and the agricultural water supply storage purposes of the authorized project, as if the Davis Site was acquired in the same manner as the other parcels are being acquired for the Project. In the event that there are non-creditable, non-federal land costs associated with the Davis Site which, in the opinion of the State are necessary for the Project, to the extent permitted by law, the State may agree to cost-share such costs with the District.
- f. At any time and for any reason, prior to the recording of a conservation easement on the Davis Site or the issuance of a writing whereby the Government accepts fee title to the Davis Site into the Project, the District, after consultation with the State, may cancel all interest of the State in the Davis Site by returning to the State the \$1,400,000, or any unreimbursed portion thereof, it paid to the District for such interest. The District shall pay interest on any funds returned to the State by it, commencing on the date the State paid said funds and ending on the date they are returned to the State, at the rate of the State Surplus Money Investment Fund.
- g. The State shall cooperate with the District in obtaining the Government's approval of a conservation easement or similar restrictive covenant over the Davis Site for meeting the Project's mitigation obligations. Upon the sale of the fee of the Davis Site (with the imposition of a restrictive covenant or the reservation of a conservation easement to the District and the State pursuant to paragraph (4) above), the State shall be entitled to seventy (70) percent of the net proceeds of the sale within sixty (60) days following the sale with interest to accrue as specified in paragraph II.C.3.d(1). above, unless the State has been previously fully reimbursed pursuant to either paragraph II.C.3.d(1). of this Section



or otherwise received reimbursement of its payment pursuant to this Agreement.

### SECTION III: Method of Payment

- A. A table showing estimated costs for the Project, entitled "Estimated Costs for Construction of the Terminus Dam, Kaweah River Project" is attached hereto as Exhibit B and incorporated by this reference.
- B. The District has developed and proposed an accounting system for the Project. The State shall consider the aforementioned accounting system and, thereafter, either adopt the accounting system for the Project or establish another cost accounting system that will separately identify and document all nonfederal costs attributed to the Project.
- C. The amounts contained in Exhibit B are estimates and may change as the design of the Project, the acquisition of Project rights of way, and construction proceed. The parties agree to make payments during the course of this Project, not to exceed the total amounts shown for the respective parties on Exhibit B, unless this Agreement is amended in accordance with Section XI of this Agreement. After all contracts awarded by the Government have been completed or terminated and claims settled, a final allocation of the total Project costs will be performed based on the actual costs of the Project.
- D. The Parties agree to pay their respective share of Project costs in accordance with Article VI, "Method of Payment" of the PCA. No federal funds may be used to meet the nonfederal share of costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the federal granting agency.
- E. As the Project proceeds, the State will attempt to maintain, subject to a final accounting, the 70 percent/30 percent cost-sharing ratio of expenditures that is required by Sections I.D and I.H.1 of this Agreement, in the following manner:
  1. Cash Payments to the Corps of Engineers - The State will forward to the Corps of Engineers the cash payments for the nonfederal share of costs of construction contracts as required by Article VI "Method of Payment" of the PCA. Within sixty days of the District's receipt of written request by the State, the District will pay the State 30 percent of the nonfederal share of costs for its portion of any payment required by the Government on the same schedule as the State is required to make payments to the Corps.
  2. Project Costs incurred by the District - The District will submit itemized invoices bearing the Agreement Number 460000 1309/166249, in triplicate, no more frequently than monthly in arrears, for its Project costs to the State addressed as follows:

General Manager  
The Reclamation Board  
1416 Ninth Street, Room 1601  
Sacramento, CA 95814

The District shall be the acquiring agency for Project rights of way. Prior to the scheduled close of escrow, the State shall deliver to the escrow holder 70 percent and the District shall deliver 30 percent of the Project share of the total purchase price and closing costs for each parcel needed for the Project. The remaining purchase price and closing costs (the costs attributable to agricultural water supply) shall be paid by the District in accordance with the provisions of the PCA.

3. Project Costs incurred by the State - Upon written request, the District will pay to the State 30 percent of the State's expenditures for Project rights of way as determined by the Government to be eligible for credit under Project requirements in accordance with the provisions of Article IV of the PCA.
  4. Project Costs incurred by District - Upon written request, the State will pay to the District 70 percent of the District's expenditures for Project rights of way determined by the Government to be eligible for credit under Project requirements in accordance with the provisions of Article IV of the PCA.
  5. Quarterly Summaries - Each party will provide to the other a summary of actual costs it has incurred for the Project on a quarterly basis each July, October, January, and April, until Project completion. The summary shall separate costs as follows: (1) cash payments, (2) relocation payments included in Corps construction contracts, (3) land costs, and (4) relocations performed by the District.
  6. Balancing of Contributions - As frequently, but no more frequently than quarterly, as the District provides costs for crediting to the State, the State shall request approval of the State and District expenditures for crediting as Project costs. Upon approval by the Government of the expenditures for credit, the parties shall make adjustments as between themselves so that the State has contributed 70 percent of the total project costs for flood control and the District has contributed 30 percent of the total project costs for flood control. The adjustment shall be accomplished by the party falling below the foregoing percentages providing a payment to the other party within 60 days of acquiring the aforementioned approval from the Government.
- F. The State and the District share a common goal of maximizing the flexibility with which payments may be made pursuant to this Agreement. The parties intend to cooperate in Project funding based on appropriations available to them. In order that the Project is not delayed due to one party's funding constraints, any party

may fund all or any percentage of the items above during the course of the Project, provided that the overall cost-sharing obligation is met, and with the understanding that payments made in excess of a party's obligation will be subject to reimbursement. (Any reimbursement by the State shall be made only upon specific appropriation for the Project by the Legislature)

- G. The estimated nonfederal cash contribution by federal fiscal year is shown on Exhibit B. In the event that the District's cash contribution exceeds the State's reimbursement authority in any given year, the District may make payments directly to the Government to meet the required cash contribution in accordance with Article VI of the PCA.
- H. If the Government, State, or the District fail to make timely payments as required in the PCA and this Agreement, the Project will be subject to Termination or Suspension under the provisions of Article XIV.A and XIV.B of the PCA.
- I. The District will provide the State with the full amount of funds required to pay for betterments requested by the District in advance of the Government or the State incurring any financial obligations associated with the requested betterments.
- J. If the District fails to provide the State with its share of the Project funds, or those funds associated with the betterments requested by the District, this Agreement may be terminated by the State.

#### SECTION IV: Obligations to Operate, Maintain, Repair, Replace and Rehabilitate

- A. Upon completion of the Project or any functional portion thereof as determined by the Government, the District shall have the obligation to perform all OMRR&R required for the Project by Article VIII of the PCA. The State agrees that pursuant to Section 307 of WRDA 1999, the District may request the Government to carry out a portion of the OMRR&R for the Project. In such event, the District shall pay 100 percent of the costs incurred by the Government for such OMRR&R.
- B. If the District has failed or refused to perform the obligations set forth in this Section and that failure or refusal constitutes, in the opinion of the Government or the State, a threat to the continued ability of that unit of the Project to meet design specifications or the requirements of the Government's Operation and Maintenance Manual for the Project, then the State or Government may perform the necessary work either with their own forces or by contract. The District will reimburse the State or Government for the reasonable costs of performing that work.

**SECTION V: Disputes**

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

**SECTION VI: Maintenance of Records; Audit**

Within 60 days of the date of this Agreement, the State and the District shall develop procedures for keeping books, records, documents and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Project costs. The State and the District shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of Project construction and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement. Pursuant to California Government Code Section 8546.7, contracting parties shall be subject to the examination and audit by the State Auditor for the State of California for a period of three years after final payment under this contract.

**SECTION VII: Final Accounting**

The State and the District, upon completion or termination of the Project, shall each prepare an accounting of all costs incurred and credits claimed hereunder. This accounting shall be tabulated by the State and used in reaching a final accounting with the Government and with the District for creditable Project costs.

**SECTION VIII: Compliance with State and Federal Law**

In carrying out the provisions of this Agreement, the District agrees to comply with all applicable federal and State laws and regulations, including: Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 55000.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations; and Army Regulations 600-7, entitled "Non-Discrimination on the Basis of Handicapped in Programs and Activities Assisted or Conducted by the Department of the Army." In acquiring Project rights of way, the District shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Acts.

**SECTION IX: Obligation of Future Appropriations**

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State.

**SECTION X: Hazardous Substances**

The District acknowledges that pursuant to Article XV of the PCA, the State may incur certain obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601-9675, on lands necessary for Project construction, operation and maintenance. The District agrees:

- A. That in the event that the Government directs the State to perform or cause to be performed an environmental investigation to identify the existence and extent of any hazardous substances regulated under CERCLA on lands required for Project construction, operation, or maintenance the State may, after consultation with the District, direct the District to perform or cause to be performed such an environmental investigation. In that event, the District shall consult with the State concerning the selection of the person or entity to conduct the investigation, the amount of money spent for such investigation, the scope of work, and any other aspect of the investigation.
- B. That in the event that the District discovers through an environmental investigation or other means that any Project rights of way that are to be or that have been acquired or provided for the Project contain hazardous substances regulated under CERCLA, the District shall promptly notify the State of that discovery and, if not already acquired, shall not proceed or continue with acquisition of those Project rights of way until directed to do so by the State. During the course of consultation contemplated by PCA Article XV.C, the State shall consult with the District concerning the initiation of or continuation with Project construction at such site(s).
- C. That in the event that the Government determines that it will initiate or continue with construction of the Project at any site necessary for Project construction, operation, or maintenance at which hazardous substances regulated under CERCLA have been found, then, at the direction of the State after consultation with the District, the District shall initiate and complete any and all necessary response and cleanup activity required under CERCLA, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA shall be made by the District. In the event that the District fails to provide the funds necessary for response and cleanup activity required under CERCLA or to otherwise discharge the District responsibilities under this paragraph C., but the Government determines that it will proceed with work at the site, then the State may perform the necessary response and cleanup activity, and the District will reimburse the State therefor.

If the State performs the necessary response and cleanup activity required under CERCLA, the State shall consult with the District concerning the selection of the person(s) or entity to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

- D. That the District shall consult with the State, and the State shall consult with the Government in accordance with Article V of the PCA in order to ensure that responsible persons under CERCLA ultimately bear all necessary response and cleanup costs as defined in CERCLA.
- E. That the District shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control the intentional or negligent release or threatened release of hazardous substances regulated under CERCLA on lands necessary for Project construction or OMRR&R.
- F. That in the event that the Government or the State are found to be liable under CERCLA for the release or threatened release of hazardous substances arising out of the construction or OMRR&R of the Project, then the District shall indemnify the Government or the State for any response or cleanup costs for which the Government or the State is found liable under CERCLA, except for such response or cleanup costs which result from negligence of the Government or its contractors and such other exceptions of the Government's liability as may be contained in the PCA..
- G. No decision made or action taken pursuant to any provision of this Section of this Agreement shall relieve any responsible person from any liability that may arise under CERCLA, or shall such decision or action be considered a waiver by the State or the District of any right to seek from any responsible person as defined by CERCLA the recovery or contribution of or indemnification from costs incurred by the State or the District for response or cleanup activity required under CERCLA, nor shall such decision or action be considered a waiver by the State or the District of any other right or remedy provided by law.
- H. As between the State and the District, the District shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the District shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

#### SECTION XI: Term of Agreement; Amendment

The term of this Agreement shall be coextensive with that of the PCA, but the Agreement shall not become effective until approved by the California Department of General Services. This Agreement may be amended only upon consent of all parties and the approval of the Department of General Services. If the final PCA executed between the Government and the State differs from the draft PCA that is attached as

Exhibit A hereto, the Board and the District agree to renegotiate those provisions of this Agreement that are affected by any changes in the final PCA.

#### SECTION XII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Reclamation Board:

General Manager  
The Reclamation Board  
1416 Ninth Street, Room 1601  
Sacramento, CA 95814

If to Kaweah Delta Water Conservation District :

General Manager  
Kaweah Delta Water Conservation District  
2975 N. Farmersville Boulevard  
Farmersville, California 93223

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

#### SECTION XIII: Standard Clauses

The Standard Clauses attached hereto as Exhibit C are incorporated by this reference. Also, the provisions on the reverse of the face sheet of the form Standard Agreement, except those marked out, are incorporated by this reference.

#### SECTION XIV: Severability

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

THE RECLAMATION BOARD OF THE STATE OF CALIFORNIA

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By Peter D. Robson  
for Barbara LeVake, President

By David A. Sandino  
David A. Sandino, Counsel

Date: 1/10/01

Date: 1/10/01

KAWEAH DELTA WATER CONSERVATION DISTRICT

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By Russell M. Doe  
Russell M. Doe, President

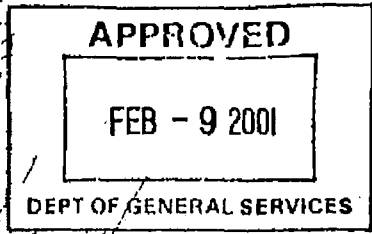
By D. Zackary Smith  
D. Zackary Smith, Counsel

Date: December 14, 2000

Date: December 14, 2000

Approved as to legal form and sufficiency:

S. Epstein  
Asst. Chief Counsel, DWR





**EXHIBIT A**

PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
STATE OF CALIFORNIA, THE RECLAMATION BOARD  
AND KAWEAH DELTA WATER CONSERVATION DISTRICT  
FOR CONSTRUCTION OF THE  
TERMINUS DAM, KAWEAH RIVER, CALIFORNIA,  
FLOOD CONTROL PROJECT  
AND WATER SUPPLY

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the STATE OF CALIFORNIA acting by and through THE RECLAMATION BOARD (hereinafter the "State"), and the KAWEAH DELTA WATER CONSERVATION DISTRICT (hereinafter the "District") represented by their General Managers (the State and District are hereinafter collectively referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the construction of Terminus Dam and Lake Kaweah on the Kaweah River for flood control in the San Joaquin Valley, California, was authorized and completed pursuant to the Federal legislation commonly known as the Flood Control Act of 1944;

WHEREAS, the raising of the spillway at Terminus Dam, and related improvements, identified as the Terminus Dam, Kaweah River, California, Project for flood damage reduction and agricultural water supply storage project were authorized by Section 101(b)(5) of the Water Resources Development Act of 1996 (Public Law 104-303);

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement for construction of the Terminus Dam, Kaweah River, California, Project for flood damage reduction and agricultural water supply storage (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each Non-Federal Sponsor has entered into a written

agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 104 of the Water Resources Development Act of 1986, Public Law 99-662 authorizes the Assistant Secretary of the Army (Civil Works) to afford a credit for work accomplished by the Non-Federal Sponsors;

WHEREAS, the Non-Federal Sponsors do not qualify for a reduction of the maximum Non-Federal cost share pursuant to the guidelines that implement Section 103 (m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Terminus Dam, Kaweah River, California, Project and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall be further defined to mean the flood control and agricultural water supply storage features on Terminus Dam, Kaweah River, California consisting of raising the existing spillway 21 feet, and associated mitigation. These features are described in the Terminus Dam, Kaweah River, California, Feasibility Report, dated September 1996 and approved by the Chief of Engineers on December 23, 1996, and supplemented by a Decision Document, dated May 1999 and approved by the Chief of Engineers on December 1, 1999.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; Costs of cleanup and response for hazardous substances not regulated under CERCLA; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in

accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "Non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsors total cash contribution required in accordance with Articles II.D.1 and II.D.3, and II.D.4 of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsors in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Sacramento District (hereinafter the "District Engineer") notifies the Non-Federal Sponsors in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsors to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "State" shall mean the Non-Federal Sponsor for flood control.

L. The term "District" shall mean the Non-Federal Sponsor for agricultural water supply storage.

M. The term "total project flood control costs" shall mean that portion of the total project costs allocated by the Government to flood control. Total project flood control costs are determined to be 90.68 percent of the total project costs.

N. The term "total project water supply costs" shall mean that portion of the total project costs allocated by the Government to agricultural water supply storage. Total project water supply costs are determined to be 9.32 percent of the total project costs.

O. The term "costs for cleanup and response for hazardous substances not regulated under CERCLA" shall mean costs for necessary special handling or remediation of wastes, pollutants and other contaminants which are not regulated under CERCLA which will be treated as total project costs if the requirement is the result of a validly promulgated Federal, state or local regulation pursuant to paragraph 6(c) of ER 1165-2-132 (26 June 92).

P. The term "perimeter lands" shall mean all lands, easements, and rights-of-way that are determined by the Government pursuant to Article III of this Agreement to be required for the construction, operation, or maintenance of the Project, that are provided by the Non-Federal Sponsors, and that are adjacent to the existing Lake Kaweah reservoir except for lands, easements, or rights-of-way required for mitigation that are described in Article VIII.E of this Agreement and those required for the borrow/disposal areas.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsors, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsors have confirmed in writing their willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsors with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsors with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, the total project cost would exceed \$33,126,000, the Government and the Non-Federal Sponsors agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsors agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsors, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor(s) may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor requesting the betterment shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify

the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The State shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project flood control costs, and the District shall contribute 35 percent of total project water supply costs in accordance with the provisions of this paragraph. The Government shall allocate total project costs to total project flood control costs and total project water supply costs. The State shall be responsible for the Non-Federal Sponsors' share of total project flood control costs. The State shall not be responsible for total project water supply costs. The District shall be responsible for the Non-Federal Sponsors' share of total project water supply costs.

1. The State shall provide a cash contribution equal to 5 percent of total project flood control costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsors shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines that the Non-Federal Sponsors must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the State's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project flood control costs, the State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the State's total contribution equal to 25 percent of total project flood control costs.

4. If the Government projects that the value of the District's contributions under paragraph D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 35 percent of total project water supply costs, the District shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the District's total contribution equal to 35 percent of project water supply costs.

5. If the Government determines that the value of the State's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project flood control costs, the Government, subject to the availability of funds, shall reimburse the State for any such value in excess of 45 percent of total project flood control costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable

borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the State.

6. If the Government determines that the value of the District's contributions provided under paragraph D.2. and D.4 of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 35 percent of total project water supply costs, the Government, subject to the availability of funds, shall reimburse the District for any such value in excess of 35 percent of total project water supply costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the District.

7. Notwithstanding any other language in this Agreement, the Government shall conduct reviews of audits conducted by the Non-Federal sponsors for the purpose of deriving intermediate levels of excess funds for reimbursement to the Non-Federal Sponsor. The Federal Government following the end of the fiscal year shall complete the reviews of such audits. Such reimbursement of excess funds under the first sentence of this paragraph shall be made, subject to availability of funds for that purpose, no later than 90 days after completion of the annual audits. However, the term "excess funds" when used in this paragraph shall not mean funds that are required to remain obligated or where the refund of such funds would impact on awarded contracts or otherwise affect the Project schedule.

E. The Non-Federal Sponsors may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsors. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsors in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsors have met their obligations under paragraphs B., D., and E. of this Article.



G. The Non-Federal Sponsors shall not use Federal funds to meet the Non-Federal Sponsors share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The Non-Federal Sponsors agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. Not less than once each year the Non-Federal Sponsors shall inform affected interests of the extent of protection afforded by the Project.

J. The Non-Federal Sponsors shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

#### ARTICLE III -LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsors shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsors shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes,

wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions.

Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsors shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsors shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsors shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsors share of total project costs.

E. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

F. In accordance with Section 307 of the Water Resources Development Act of 1999, Public Law 106-53, and at the request of the Non-Federal Sponsors made concurrently with or subsequent to the request of the Non-Federal Sponsors pursuant to Article VIII.C of this

Agreement, the Government shall accept the transfer of title to perimeter lands from the Non-Federal Sponsors for flood control and agricultural water supply storage after acquisition of such lands by the Non-Federal Sponsors. Subject to approval by the United States in accordance with existing laws, regulations, and standards at the time of transfer of title to the Government, the Government shall accept such transfer of title to perimeter lands subject to the right of reversion to the Non-Federal Sponsor that conveyed such land to the United States in the event that the Government determines in writing that such land is no longer needed for the purposes of flood control or agricultural water supply storage.

#### ARTICLE IV -CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsors shall receive credit toward its share of the project costs allocated to flood control for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsors must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsors must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsors shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsors also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, or the Non-Federal Sponsors choose not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsors shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal

Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsors, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

#### ARTICLE V -PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsors and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and counterparts named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' counterparts shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsors' total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the Non-Federal proportionate share of the total project costs actually incurred to date, and of the funds the Government projects to be required from the Non-Federal Sponsors for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$33,126,000, and the Non-Federal Sponsors cash contribution required under Article II.D. of this Agreement is projected to be \$1,500,000 for flood control and \$0 for agricultural water supply storage. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Non-Federal Sponsors shall provide the cash contribution required under Articles II.D.1., II.D.3. and II.D.4. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsors to meet the Non-Federal proportionate share of projected financial obligations for construction on a quarterly basis, including the Non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsors shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer.

2. For the second and subsequent quarters of construction, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of that quarter, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the Non-Federal proportionate share of projected financial obligations for construction for that quarter. No later than 30 calendar days prior to the beginning of the quarter, the Non-Federal Sponsors shall make the full amount of the required funds for that quarter available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the Non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the Non-Federal proportionate share of financial obligations

for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the Non-Federal proportionate share of projected financial obligations for construction for the current quarter, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required, and the Non-Federal Sponsors, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to pay for such additional work on a quarterly basis by delivering a check payable to "FAO, USAED, Sacramento District" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsors must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsors shall provide the Government with a check for the full amount of the additional required funds for that quarter.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsors' cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsors shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsors' required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsors no later than 90 calendar days after the final accounting is complete; however, the State shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the Non-Federal



Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

E. On or before 1 July of any fiscal year during which the Government will be carrying out operation, maintenance, repair, replacement and rehabilitation responsibilities as described in Article VIII.C., the Government shall notify the Non-Federal Sponsors in writing of the funds which the Government determines to be required from the Non-Federal Sponsors to cover the costs of such responsibilities. On or before 1 September of any fiscal year during which the Government will be carrying out the responsibilities as described in Article VIII.C., the Non-Federal Sponsors shall verify to the satisfaction of the Government that the Non-Federal Sponsors have deposited the required funds in a Terminus Dam and Lake Kaweah enlargement project escrow account acceptable to the Government. The Government shall expend monies from this Terminus Dam and Lake Kaweah enlargement project escrow account for costs required to operate, maintain, repair, replace and rehabilitate the Project.

#### ARTICLE VII -DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of Non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION ("OMRR&R")

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto. Except when notice is given to the Government, pursuant to Paragraph C of this Article, requesting that the Government undertake such responsibilities, nothing in this Agreement shall obligate the Government to operate, maintain, repair, replace, or rehabilitate the Project. Nothing in this agreement, including the specific itemization of costs set forth in paragraph D of this Article, shall interfere with the Government's authority to provide assistance to the Non-Federal Sponsors pursuant to the terms of Public Law 84-99 and its implementing regulations or pursuant to other applicable Federal laws or regulations. In the

event OMRR&R of the Project pursuant to the OMRR&R Manual would adversely affect any Federal endangered or threatened species or result in the destruction or adverse modification of critical habitat, at the request of the Non-Federal Sponsors, the District Engineer shall initiate Section 7 consultation and modify the Manual as necessary.

B. The Non-Federal Sponsors hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsors for any reason are failing to perform their obligations under this Agreement, the Government shall send a written notice describing the Non-performance to the Non-Federal Sponsors. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsors continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors own or control for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsors of responsibility to meet the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement. If the Government is operating, maintaining, repairing, replacing and rehabilitating the Project, as set forth in Paragraph C of this Article, the Government, to the extent permitted by law, hereby gives the Non-Federal Sponsors a right to enter, at reasonable times and in a reasonable manner, upon property that the Government owns or controls for access to the Project for the purpose of inspecting the OMRR&R of the Project by the Government.

C. At the request of the Non-Federal Sponsors, the Government shall carry out OMRR&R of the Project, in accordance with Section 307 of the Water Resources Development Act of 1999, at the Project site for Project features as set forth in Article VIII.D of this Agreement. The Non-Federal Sponsors shall pay 100% of the costs incurred by the Government for the operation, maintenance, repair, replacement, and rehabilitation of the Project site for Project features, in accordance with the procedures set forth in Article VI.E. If the Government is carrying out the aforementioned duties pursuant to the request of the Non-Federal Sponsors, beginning on October 1 of any year, the Non-Federal Sponsors may resume responsibility for the performance of the aforementioned duties, or may return responsibility for performance of such duties thereafter to the Government, by giving not less than two month written notice thereof to the Government. At any time the Non-Federal Sponsors have assumed responsibility for the aforementioned duties and expenses, they shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Government owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing or rehabilitating the Project.

D. Specifically, the costs of OMRR&R for the Project, excluding the off-site mitigation lands, shall include five elements: First, the actual costs of OMRR&R for the Project fusegates,

inlet tower, inlet box and conduit to inlet tower, and other associated fusegate appurtenances; second, the actual costs of OMRR&R for the floodwall adjacent to the existing motel and highway; third, the actual costs of OMRR&R for the perimeter lands that are transferred to the Government beginning on the date that title thereto is transferred to the Government; fourth, the actual costs of OMRR&R for the on-site mitigation land to be located near Terminus Dam on existing Government land, including the actual costs to perform maintenance inspections and vegetation replacement, if necessary; fifth, the actual costs assigned to recreation, which are agreed to be \$5,000 per year, which amount shall be adjusted annually beginning in fiscal year 1997 and based on the Consumer Price Index for All-Urban Consumers (CPI-U) for the West Region, using the line item labeled "all items" in the expenditure category, or any replacement index, published by the Government, starting with the first full fiscal year after the District Engineer makes the determination described in Paragraph C of Article II. The costs of OMRR&R for the Project, excluding the off-site mitigation lands, shall not include any other costs.

E. The foregoing paragraph D shall be inapplicable to the mitigation lands purchased for the Project, which are located away from the Terminus Dam and Lake Kaweah. The Non-Federal Sponsors shall be responsible to operate, maintain, repair, replace and rehabilitate such off-site mitigation lands.

#### ARTICLE IX -INDEMNIFICATION

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X -MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsors shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsors shall each allow the other to inspect such books, documents, records, and other evidence shall be subject to mutual examination and audit for a period of three years after final payment under this agreement.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any Non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE XI -FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans.

#### ARTICLE XII -RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

**ARTICLE XIII - OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

**ARTICLE XIV - TERMINATION OR SUSPENSION**

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works), shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other Non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsors in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsors elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

**ARTICLE XV - HAZARDOUS SUBSTANCES**

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsors shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determine to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive

Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsors for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsors and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsors should proceed.

C. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsors fail to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsors and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability except during periods when the Government operates, maintains, repairs, replaces, and rehabilitates the Project. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XVI -NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsors:

State of California  
The Reclamation Board  
1416 Ninth Street, Room 1601  
Sacramento, California 95814

Kaweah Delta Water Conservation District  
2975 N. Farmersville Boulevard  
Farmersville, California 93223

If to the Government:

US Army Corps of Engineers  
Sacramento District  
1325 J Street  
Sacramento, California 95814-2922

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XVII -CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

### ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsors and the Government consistent with the minimum Non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government; and the minimum Non-Federal cost sharing requirements for the underlying agricultural water supply storage purpose, as follows: 35 percent borne by the Non-Federal Sponsor, and 65 percent borne by the Government.

### ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsors have reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Terminus Dam, Kaweah River, California, project for flood damage reduction and agricultural water supply storage. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsors, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$48,072,000 as calculated in accordance with ER 1105-2-100 using October 1, 1999 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

### ARTICLE XX -OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California. The Government acknowledges that the Non-Federal Sponsors are bound by the limitations of Article XVI, Section 1, of the California Constitution. In the event that the total project costs, as defined in Article I.B., exceed the estimate



in Article VI.A by more than 20 percent, the Non-Federal Sponsors commit to take appropriate actions within their authorities to secure all required funding for this Agreement and to do so on a priority basis.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA, THE RECLAMATION BOARD

BY: \_\_\_\_\_  
Joseph W. Westphal  
Assistant Secretary of the Army  
(Civil Works)

BY: Peter D. Rabbon  
Peter D. Rabbon  
General Manager  
The Reclamation Board

DATE: \_\_\_\_\_

DATE: 1/10/01

KAWEAH DELTA WATER CONSERVATION DISTRICT

BY: Russell M. Doe  
Russell M. Doe  
President  
Kaweah Delta Water Conservation District

DATE: January 2, 2001

## CERTIFICATE OF AUTHORITY

I, David Sandino do hereby certify that I am the principal legal officer of the State of California, The Reclamation Board, that The Reclamation Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and The Reclamation Board and the Kaweah Delta Water Conservation District in connection with the Terminus Dam, Kaweah River Basin, California, Flood Control Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of The Reclamation Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

9<sup>th</sup> day of January 2001.




Counsel

The Reclamation Board

## CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the Kaweah Delta Water Conservation District, that Kaweah Delta Water Conservation District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Kaweah Delta Water Conservation District in connection with the Terminus Dam, Kaweah River Basin, California, Agricultural Water Supply Storage Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Kaweah Delta Water Conservation District have acted within their statutory authority.

2<sup>nd</sup> IN WITNESS WHEREOF, I have made and executed this certification this  
day of January 2001.

  
Counsel  
Kaweah Delta Water Conservation District

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



General Manager, PETER D. RABRON  
State of California, The Reclamation Board

DATE: 1/10/01

## CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
General Manager, BRUCE GEORGE  
Kaweah Delta Water Conservation District

DATE: January 2, 2001

**EXHIBIT B**

## LOCAL PROJECT COOPERATION AGREEMENT

## ESTIMATED COSTS FOR CONSTRUCTION OF THE TERMINUS DAM, KAWEAH RIVER PROJECT

Estimated Project Costs (Rounded to \$1,000)							
	Prior to 2000	Year 2000	Year 2001	Year 2002	Year 2003	Year 2004	Total
Estimated Total Project Cost	2,900,000	2,885,000	6,547,000	10,711,000	8,422,000	1,661,000	33,126,000
Flood Control Share - 90.68%	2,630,000	2,616,000	5,937,000	9,713,000	7,637,000	1,506,000	30,038,000
Nonfederal F.C. Cash Requirement of 5 %	0	286,000	233,000	478,000	415,000	90,000	1,502,000
Total Project LERRDs	1,100,000	3,100,000	4,740,000	4,290,000	1,070,000	0	14,300,000
Nonfederal F.C. Share of LERRDs - 90.68%	998,000	2,811,000	4,298,000	3,890,000	970,000	0	12,967,000
Total Nonfederal F. C. Costs	998,000	3,097,000	4,531,000	4,368,000	1,385,000	90,000	14,469,000

Estimated Nonfederal Funding Requirements for Flood Control (Rounded to \$1,000)							
LERRDs	998,000	2,811,000	4,298,000	3,890,000	970,000	0	12,967,000
Cash	0	286,000	233,000	478,000	415,000	90,000	1,502,000
Nonfederal Requirements	998,000	3,097,000	4,531,000	4,368,000	1,385,000	90,000	14,469,000
State	699,000	2,168,000	3,172,000	3,058,000	970,000	61,000	10,128,000
Locals	299,000	929,000	1,359,000	1,310,000	415,000	29,000	4,341,000

Note: These costs do not include \$174,000 for cultural resources which is 100% federally funded.

**EXHIBIT C**



**STANDARD CLAUSES -  
CONTRACTS WITH PUBLIC ENTITIES**

**Workers' Compensation Clause.** Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.

**Claims Dispute Clause.** Any claim that Contractor may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty days of its accrual. State and Contractor shall then attempt to negotiate a resolution of such claim and process an amendment to this agreement to implement the terms of any such resolution.

**Nondiscrimination Clause.** During the performance of this contract, the recipient, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11133 - 11139.5), and the regulations or standards adopted by the awarding State agency to implement such article. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Recipient, Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

**Availability of Funds.** Work to be performed under this contract is subject to availability of funds through the State's normal budget process.

**Audit Clause.** For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract. (Government Code Section 8546.7).

**Retention Clause.** Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 19316 and 19317 pending satisfactory completion of all services under the contract.

**Reimbursement Clause.** If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: N/A

**Termination Clause.** The State may terminate this contract without cause upon 30 days' advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.

**Drug-Free Workplace Certification.** By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8130 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
2. Establish a Drug-Free Awareness Program to inform employees about all of the following:
  - (a) The dangers of drug abuse in the workplace,
  - (b) The person's or organization's policy of maintaining a drug-free workplace,
  - (c) Any available counseling, rehabilitation and employee assistance programs, and
  - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Every employee who works on the proposed contract or grant:
  - (a) Will receive a copy of the company's drug-free policy statement, and
  - (b) Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

This contract or grant may be subject to suspension of payments or termination, or both, and the Contractor or grantee may be subject to debarment if the department determines that: (1) the Contractor or grantee has made a false certification, or (2) the Contractor or grantee violates the certification by failing to carry out the requirements noted above.

**Americans With Disabilities Act.** By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Conflict of Interest. Current State Employees:** a) No State officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receive compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment. b) No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

**Former State Employees:** a) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. b) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

Agreement No. 166249/4600001309

Exhibit   C  

Page 2 of 2

**Child Support Compliance Act.** For any agreement in excess of \$100,000, the Contractor acknowledges in accordance therewith, that:

1. The Contractor recognizes the importance of child and family support Obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
2. The Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

**DEPARTMENT OF WATER RESOURCES**

Division of Engineering  
Real Estate Branch  
1416 9<sup>th</sup> Street, Room 425  
Sacramento, California 95814

SPACE ABOVE THE LINE FOR RECORDER'S USE

APNS 066-010-010 and a portion  
of APN 037-020-015

**QUITCLAIM DEED**

Project KAWEAH RIVER PROJECT

Parcel No. 13698-A  
54-0800-01

The SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through THE CENTRAL VALLEY FLOOD PROTECTION BOARD of the STATE OF CALIFORNIA, does hereby release and quitclaim to

**KAWEAH DELTA WATER CONSERVATION DISTRICT**

all of its right, title and interest in and to the hereinafter described real property:

PARCEL 13698-A

UNIT A

The South 1749.00 feet of the Southeast quarter of Section 32, Township 16 South, Range 28 East, M.D.M., County of Tulare, State of California, according to the Official Plat thereof, approved on February 14, 1907, and filed in the District Land Office.

Containing 106 acres, more or less.

UNIT B

The Northeast quarter, East half of the Northwest quarter, Northeast quarter of the Southwest quarter, North half of the Southeast quarter and the Southeast quarter of the Southeast quarter of Section 8, Township 17 South, Range 28 East, M.D.M., County of Tulare, State of California, according to the Official Plat thereof, approved on June 8, 1907, and filed in the District Land Office.

Containing 400 acres, more or less.



State of California  
The Resources Agency  
Department of Water Resources  
THE CENTRAL VALLEY FLOOD  
PROTECTION BOARD

Parcel No. \_\_\_\_\_  
54-0800-01

Executed this \_\_\_\_day \_\_\_\_\_, of 20 \_\_\_\_\_

SACRAMENTO AND SAN JOAQUIN DRAINAGE  
DISTRICT, acting by and through  
The Central Valley Flood Protection Board of the State  
of California.

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

Signed and delivered in the presence of:

Approved as to Legal Form

STATE OF CALIFORNIA  
County of \_\_\_\_\_ } SS

On \_\_\_\_\_, 20\_\_\_\_.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

**AUG 09 2012**

## CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed in the attached Quitclaim Deed from The SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through THE CENTRAL VALLEY FLOOD PROTECTION BOARD of the STATE OF CALIFORNIA, to the Kaweah Delta Water Conservation District is hereby accepted by the undersigned officer on behalf of the Kaweah Delta Water Conservation District, pursuant to authority conferred by resolution of the Board of Directors on the \_\_\_\_ day of \_\_\_\_\_, 2012 and the Kaweah Delta Water Conservation District consents to recordation thereof by its duly authorized officer.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012

KAWEAH DELTA WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_  
Mark Larsen, General Manager