

Meeting of the Central Valley Flood Protection Board

December 15, 2017

Staff Report

Terminus Dam, Lake Kaweah Project Cooperation Agreement Amendment No. 1, Tulare County

Remy Gill (DWR), Greg Harvey (Board Staff)

1.0 – ITEM

Consider approval of Resolution No. 2017-15 (Attachment A) to:

- Approve the three-way Project Cooperation Agreement (PCA) Amendment No. 1 (Attachment A, Exhibit B) between the Central Valley Flood Protection Board (CVFPB), the Kaweah Delta Water Conservation District (KDWCD), and U.S. Army Corps of Engineers (USACE) for the Terminus Dam, Lake Kaweah Project in substantially the form provided. The PCA Amendment No. 1 will allow USACE to reimburse KDWCD for work that KDWCD performed before the PCA was executed, allowing the project to be closed out; and
- Delegate to the Board President the authority to execute the agreement, in substantially the form provided.

2.0 – SPONSORS

Non-Federal Sponsors:

State: CVFPB

Local: KDWCD

Federal Sponsor:

USACE

3.0 – PROJECT LOCATION

The project is located in Tulare County, approximately 50 miles southeast of Fresno and 70 miles north of Bakersfield, within the Lake Kaweah watershed. (Attachment B).

4.0 – PROJECT DESCRIPTION

The Terminus Dam, Lake Kaweah Project started in 1962 when USACE constructed the Terminus Dam and formed Lake Kaweah. Multiple years of flooding downstream of the

dam after construction resulted in a feasibility study completed by USACE, recommending enlargement of the dam and an increase in flood protection from a 46-year level of flood protection to a 70-year level of flood protection. The project provides flood damage reduction and agricultural water supply benefits.

The Terminus Dam, Lake Kaweah Project included the construction of six 21-foot tall fusegates along the existing spillway sill and the widening the spillway by 30 feet on each side. These modifications increased the gross pool elevation of the reservoir by 21 feet (from elevation 694 to 715 feet) and added 42,600 acre-feet of storage space. Additional project features included the relocation of Horse Creek Bridge along State Route 198, the replacement of recreation facilities for public health and safety, raising portions of State Route 198, and a flood control dike at the Best Western Motel. The project also required the acquisition of all private lands and homes around the lake to an elevation of 720 feet. Mitigation sites include 4,388 acres of oak woodland preservation, 40 acres of created riparian habitat, 7.19 acres of endangered species compensation for valley elderberry longhorn beetle habitat, and 1,300 acres of seasonal waterfowl habitat in the Tulare Lakebed.

5.0 – PROJECT BACKGROUND

The Terminus Dam, Lake Kaweah project started in 1962 when USACE constructed Terminus Dam and formed Lake Kaweah. The purposes of the dam and reservoir were to provide limited flood protection to Visalia, other urban areas along the Kaweah River, and agricultural lands downstream of the dam, and to provide water for agricultural irrigation.

From 1966 through 1986, there was repeated flooding and damage downstream of the dam. In 1983 alone, floods caused extensive damages amounting to approximately \$17.6 million. For this reason, a feasibility study was initiated in 1988 and completed in 1996 by USACE that recommended enlargement of the spillway to increase flood protection. The Water Resources Development Act (WRDA) 1996 authorized the enlargement of Lake Kaweah at Terminus Dam for flood protection to downstream communities and agricultural lands, and for agricultural water supply.

Construction began in 2001 after the PCA was signed between USACE, the State, and KDWCD for design and construction. Construction of the project was completed in 2005. KDWCD performed and paid for work on the Terminus Dam, Lake Kaweah project before the PCA was in place. USACE completed an Integral Determination Report (IDR) on January 2013 to affirm that work completed by KDWCD before the PCA was signed is integral to the project. The Assistant Secretary of the Army, Civil Works (ASA) approved the IDR in a letter dated March 24, 2016.

The PCA Amendment No. 1 will allow USACE to directly reimburse KDWCD for work that KDWCD performed before the PCA was executed. This amendment will allow the project to be closed out. Once this amendment is signed, USACE plans to pay KDWCD within 1 month, and close out the project before the end of 2018.

6.0 – AUTHORITIES

Federal: WRDA 1996 Public Law(PL) 104-303 Section 101(b)(5)
 WRDA 2007 (Section 3020) (As amended by Section 128 of PL 110-161)
 State: California Water Code Sections 12616, 12661, 12661.5

7.0 – FUNDING STATUS

- KDWCD performed and paid for work on the Terminus Dam, Lake Kaweah project before a PCA was in place.
- USACE completed an IDR on January 2013 to affirm that work completed by KDWCD before the PCA was signed is integral to the project.
- The ASA approved the IDR in a letter dated March 24, 2016.
- USACE has been working toward executing an amendment to the PCA to allow the non-Federal sponsors to receive Section 221 Credit as directed under Section 3020 of the WRDA of 2007 for work performed on the Lake Kaweah Enlargement Project.
 - This work was carried out by KDWCD beginning in 1997 prior to the signing of the PCA.
- When the PCA is amended (Amendment No. 1), applicable funds, in the amount of \$627,748, can be reimbursed directly to KDWCD from USACE.
- Total project costs for the entire Lake Kaweah Project are approximately \$53 million.
 - USACE Share: \$34,563,396
 - State Share: \$12,097,189
 - KDWCD Share: \$6,513,871
- DWR is seeking approval of PCA Amendment No.1 (Attachment A, Exhibit B) in substantially the form provided. The amendment only reflects the changes that were made to the original PCA. This amendment has been approved and signed by KDWCD.

8.0 – PROJECT ACTIVITIES

The status of the project is described below in order of completion.

Design: The design of the project began in 1996 and was completed in 1999.

Construction: The PCA was executed in 2001 and construction also started in 2001. Construction completed in 2005 at which point the maintenance of the project was turned over to the non-Federal Sponsor, Kaweah Delta Water Conservation District.

WRDA 2007: Authorizing language in WRDA 2007 was added to account for work competed by KDWCD prior to the execution of the PCA that was integral to the project.

IDR: IDR was created by KDWCD for review and approval by USACE in 2010 with updates as USACE reviewed it. USACE Head Quarters reviewed and approved the IDR in 2015 and the Office of the Assistant Secretary of the Army for Civil works approved it in 2016.

Project Closeout: Project is working towards project closeout in FY 2018 with the approval of PCA amendment No. 1 and closing out cost-share balance is 65/35 with return of any non-Federal money to the non-Federal sponsor by September 2018.

9.0 – STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution No. 2017-15 (Attachment A) to:

Approve: The three-way PCA Amendment No. 1 (Exhibit B) between the Board, KDWCD, and USACE, to allow the State to allow funds to be reimbursed to the KDWCD and

Delegate: Authority to the President of the Board to execute Amendment No. 1 to the PCA, with non-substantive changes after USACE ASA approval, in substantially the form provided.

10.0 – LIST OF ATTACHMENTS

A – Resolution No. 2017-15

Exhibit A: Existing Approved PCA

Exhibit B: Draft PCA Amendment 1

B- Project Map

Prepared By:	Remy Gill, Project Manager, DWR, Flood Projects Office
Report Review:	Robert E. Scarborough, PE, DWR Flood Projects Office Section Chief Todd Bernardy, PE, DWR Acting Flood Projects Office Chief
Legal Review:	James Herink, DWR Counsel
Board Staff Review:	Greg Harvey, PE, Senior Engineer Michael Wright, PE, Supervising Engineer Jit Dua, Board Counsel Leslie Gallagher, Executive Officer

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

DRAFT RESOLUTION NO. 2017-15

FINDINGS AND DECISION AUTHORIZING
APPROVAL OF PROJECT COOPERATION AGREEMENT AMENDMENT 1
FOR THE TERMINUS DAM, LAKE KAWEAH FLOOD CONTROL PROJECT

WHEREAS, the Central Valley Flood Protection Board (Board) and Kaweah Delta Water Conservation District (KDWCD) entered into local construction agreement (Local Construction Agreement) on December 9, 1964 where the Board and KDWCD agreed to share the non-federal costs of the construction project and agreed on a cost share formula and the delegation of responsibilities for the non-federal design obligations for the Authorized Project (Reclamation Contract Number 14-06-200-1729A); and

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. § 1962d-5b), and Section 103(j) of the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, as amended (33 U.S.C. § 2213(j)), requires each non-federal partner to enter into a written agreement with the Secretary of the Army for the project or separable element before the Secretary of the Army commences construction of any water resources project, or any element of a water resources project; and

WHEREAS, the raising of the Terminus Dam, and related improvements for flood risk management, (Authorized Project) within Lake Kaweah in Tulare County, California, was authorized by the federal government through the WRDA of 1996 (Public Law 104-303); and

WHEREAS, the WRDA 1996, Public Law 104-303 authorized construction of the Terminus Dam, Kaweah River, California Project for flood damage reduction and agricultural water supply storage; and

WHEREAS, the KDWCD provided a resolution to the Board dated July 21, 2000 and self-certification expressing their interest and financial capability to participate in the Lake Kaweah Project as a non-Federal partner to the Project Cooperation Agreement (PCA), in the construction of the Reservoir Enlargement Project; and

WHEREAS, the KDWCD Board, acting by and through the KDWCD has provided a January 02, 2001 KDWCD Board Resolution stating its intent and authority to enter into partnership and cost sharing agreements with the U.S. Army Corps of Engineers (USACE) and the Board; and

WHEREAS, the Department of the Army, USACE, the State of California represented by the Board, formerly The Reclamation Board, and the KDWCD entered into a Construction Agreement on February 09, 2001, (Exhibit A, attached hereto and incorporated by reference) for Construction of the Authorized Project, which obligates the Board to pay a portion of the

costs for construction of the Authorized Project as a cost sharing partner with USACE; and

WHEREAS, the Board and the KDWCD each assume the responsibilities of the non-Federal Sponsors under the terms of the PCA, equal to and exclusive of each other; and

WHEREAS, USACE and the non-Federal Partners have the full authority and capability to perform and intend to cooperate in cost sharing and financing of the Lake Kaweah Project in accordance with the terms of the PCA; and

WHEREAS, the design and construction costs under the terms of the PCA are cost-shared between the Federal and non-Federal Partners and apportioned at a rate of 65% and 35%, respectively; and

WHEREAS, the non-Federal design and construction costs are to be cost-shared between the Board and the Local Sponsors and apportioned at a rate of 65% and 35%, respectively; and

WHEREAS, Section 3020 of the WRDA of 2007 authorizes the Secretary of the Army to credit, in accordance with Section 221 of the (a) (4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b (a) (4)), toward the Non-Federal Share of the cost of the Authorized Project, work carried out prior to the execution of the Agreement; and

WHEREAS, on September 29, 2015, USACE South Pacific Division released an Integral Determination Report to determine that the pre-PCA work completed by the Non-Federal Sponsors is integral to the completion of the Authorized Project, and amend the PCA to include the appropriate costs as credit toward the Non-Federal Sponsors share of Costs of the Lake Kaweah Project.

WHEREAS, on March 24, 2016, the Secretary determined that the construction of parts of the Lake Kaweah Enlargement Project is integral to the Authorized Project, as defined in accordance with Section 221 of the Flood Control Act of 1970, and is thereby creditable pursuant to Section 3020 of the Water Resources Development Act of 2007; and

WHEREAS, the Government and the Non-Federal Sponsors desire to amend the PCA to provide reimbursement to KDWCD from USACE as determined by the Secretary of the Army to be transferred pursuant to Section 3020 of the WRDA of 2007.

NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood Protection Board:

- 1 Approves the three-way PCA Amendment No. 1 between the Board, the KDWCD and USACE for the Lake Kaweah Project in substantially the form attached hereto (Exhibit B, incorporated by reference).
- 2 Delegates to the Board President the authority to execute Amendment No. 1 to the PCA, with non-substantive changes and in substantially the same as the form attached hereto.

PASSED AND ADOPTED by vote of the Board on _____, 2017.

William H. Edgar
President

Jane Dolan
Secretary

Approved as to Legal Form and Sufficiency

Kanwarjit Dua
Board Counsel

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 9th day of FEBRUARY, 2001 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 costs 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

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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

Attachment A Exhibit A

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Page 24 of 28

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 BOARDBY: Claudio J. Trubion

OR AND IN Joseph W. Westphal
THE ABSENCE Assistant Secretary of the Army
(Civil Works)

BY: Peter D. Rabbon

Peter D. Rabbon
General Manager
The Reclamation Board

DATE: 2/7/01DATE: 1/10/01

Approved as to legal form
and sufficiency:

S. E. Thomas
Asst. Chief Counsel, DWR

APPROVED

JAN 29 2001

DEPT OF GENERAL SERVICES

KAWEAH DELTA WATER
CONSERVATION DISTRICTBY: 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

9th day of January 2001.

David A. Sandino

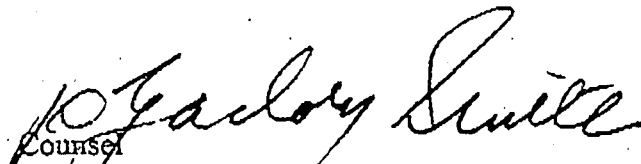
Counsel

The Reclamation Board

CERTIFICATE OF AUTHORITY

I, D. Zackary Smith, 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.

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


Counsel
Kaweah Delta Water Conservation District

CERTIFICATION REGARDING LOBBYING

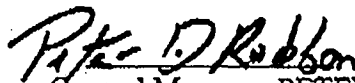
The undersigned certifies, to the best of his or her knowledge and belief that:

(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. RABBON
State of California, The Reclamation Board

DATE: 1/10/01

CERTIFICATION REGARDING LOBBYING

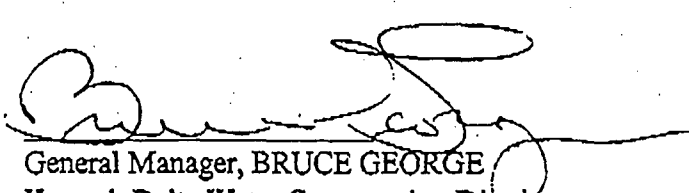
The undersigned certifies, to the best of his or her knowledge and belief that:

(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

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
STATE OF CALIFORNIA
AND KAWEAH DELTA WATER CONSERVATION DISTRICT
FOR CONSTRUCTION OF THE
TERMINUS DAM, KAWEAH RIVER, CALIFORNIA,
FLOOD CONTROL PROJECT
AND WATER SUPPLY

THIS AMENDMENT is entered into this _____ day of _____, 2017, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the Kaweah Delta Water Conservation District (hereinafter the "District") represented by its President (the State and the District hereinafter referred to collectively as the "Non-Federal Sponsors").

WITNESSETH, THAT:

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

WHEREAS, on February 9, 2001, the Government and the State, acting by and through The Reclamation Board, and the District, entered into an agreement for construction of the Project (hereinafter the "Agreement");

WHEREAS, pursuant to California Water Code, Section 8550, all duties and corresponding funding, together with all necessary positions, of The Reclamation Board of the State were transferred to the Central Valley Flood Protection Board as it was reconstituted effective January 1, 2008;

WHEREAS, Section 3020 of the Water Resources Development Act of 2007 (Public Law 110-114), as amended by Section 128 of the Consolidated Appropriations Act of 2008 (Public Law 110-161), directs the Secretary of the Army to credit, in accordance with section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the project, or provide reimbursement not to exceed \$800,000, for the costs of any work carried out by the Non-Federal interest before or after the date of the Agreement;

WHEREAS, Section 221 of the Flood Control Act of 1970, as amended, authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the Project for the value of in-kind contributions that the Secretary of the Army determines are integral to the Project;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Non-Federal Sponsors desire to receive credit or reimbursement in accordance with the provisions of Section 3020 of the Water Resources Development Act of 2007, as amended, and Section 221 of the Flood Control Act of 1970, as amended, for the \$627,748 value of in-kind contributions determined to be integral to the Project on March 24, 2016; and

WHEREAS, the Government and Non-Federal Sponsors have the full authority and capability to enter into this Amendment.

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

1. ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

Article I is amended by adding the following paragraph at the end thereof:

“Q. The term “Section 102 Limit” shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.”

22. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

a. Article II.D., second sentence, is amended by adding at the end thereof: “, and shall allocate the \$627,748 value of in-kind contributions deemed to be integral to the Project to the flood control purpose and the water supply purpose.”

b. Article II.D.3. is amended by striking “the State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary” after “flood control costs,” and substituting “the Government shall determine the amount of funds that that would be necessary”. Article II.D.3. is further amended by adding the following sentence at the end thereof: “The State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount determined in the preceding sentence reduced by the amount of credit afforded by the share of the \$627,748 allocated to the flood control purpose.”.

c. Article II.D.4. is amended by striking "the District shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary" after "water supply costs," and substituting "the Government shall determine the amount of funds that that would be necessary". Article II.D.4. is further amended by adding the following sentence at the end thereof: "The District shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount determined in the preceding sentence reduced by the amount of credit afforded by the share of the \$627,748 allocated to the water supply purpose."

3. ARTICLE VI – METHOD OF PAYMENT

a. Article VI.D.2. is amended by inserting ", including amounts determined to be excess after credit is afforded pursuant to Article II.D.3. and Article II.D.4. of this Agreement," after "refund the excess to the Non-Federal Sponsors" and before "no later than 90 calendar days".

b. Article VI.D. is amended by adding the following paragraph at the end thereof:

"3. Any portion of the \$627,748 remaining after credit is afforded pursuant to Article II.D.3. and Article II.D.4. of this Agreement shall be reimbursed to the Non-Federal Sponsors and paid to the District, subject to the Section 102 Limit, from appropriated funds reserved for this purpose prior to the date of Amendment Number 1 to this Agreement, no later than 90 calendar days after the final accounting is complete."

4. ARTICLE XVI – NOTICES

Article XVI.A. is amended by striking:

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

and replacing it with the following:

"Central Valley Flood Protection Board,
Executive Officer,
3310 El Camino Ave., Room LL40
Sacramento, CA 95821"

5. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

Attachment A Exhibit B

THE DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

BY: _____
David G. Ray, P.E.
Colonel, U.S. Army
District Commander

BY: _____
William H. Edgar
President,
Central Valley Flood Protection Board

DATE: _____

DATE: _____

KAWEAH DELTA WATER
CONSERVATION DISTRICT

BY: Don Mills
Don Mills
President
Kaweah Delta Water Conservation District

DATE: 6/15/2017

CERTIFICATE OF AUTHORITY

I, Kanwarjit Dua, do hereby certify that I am the principal legal officer of the State of California Central Valley Flood Protection Board, that the State of California Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 1 to the Agreement between the Department of the Army, the State of California, and the Kaweah Delta Water Conservation District in connection with the Terminus Dam, Kaweah River, California, Flood Control Project and Water Supply, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Amendment No. 1 on behalf of the State have acted within their statutory authority.

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

_____ day of _____ 20____.

Kanwarjit Dua,
Board Counsel,
State of California Central Valley Flood Protection Board

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 31 U.S.C. 1352. 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.

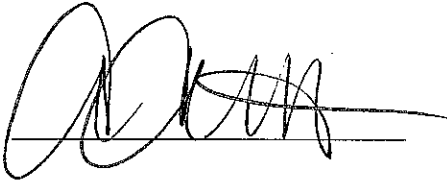
William H. Edgar
President
Central Valley Flood Protection Board

DATE: _____

CERTIFICATE OF AUTHORITY

I, Aubrey A. Maurtson do hereby certify that I am the principal legal officer of the Kaweah Delta Water Conservation District, that the Kaweah Delta Water Conservation District is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 1 to the Agreement between the Department of the Army, the State of California, and the Kaweah Delta Water Conservation District in connection with the Terminus Dam, Kaweah River, California, Flood Control Project and Water Supply, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Amendment No. 1 on behalf of the State have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
16 day of June 2016 ~~2017~~

A handwritten signature in black ink, appearing to read 'Aubrey A. Maurtson', is written over a horizontal line.

CERTIFICATION REGARDING LOBBYING

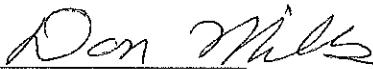
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 31 U.S.C. 1352. 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.



Don Mills
President
Kaweah Delta Water Conservation District

DATE: 6/15/2017

