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***APPENDIX B***  
***Draft Mitigation Joint Use Agreement, Operations Plan,  
and MOUs***

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## **Draft Mitigation Joint Use Agreement**

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AGREEMENT NO.

**McALLISTER RANCH USE OF FACILITIES AND MITIGATION AGREEMENT**

THIS AGREEMENT is made and entered into on \_\_\_\_\_ by and between the **CITY OF BAKERSFIELD**, a chartered municipal corporation, referred to herein as "CITY," and the **JAMES WATER BANK AUTHORITY**, a joint powers authority, referred to herein as the "Authority", the **BUENA VISTA WATER STORAGE DISTRICT** ("Buena Vista") and the **ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT** ("Rosedale") both California water storage districts. (Authority, Buena Vista and Rosedale are collectively referred to herein as "DISTRICTS")

**RECITALS**

A. The DISTRICTS own certain contiguous parcels of real property situated within the political boundary of the CITY, adjacent to or in proximity to the 2800 Acres and other CITY facilities, projects, water supplies, and domestic water wells, consisting of approximately 2,072 acres, which has historically been referred to as McAllister Ranch and which is more fully shown on **Exhibit "A"**, attached hereto and incorporated herein by reference ("Property"); and

B. The DISTRICTS plan to develop and manage a water recharge and recovery operation on McAllister Ranch, identified as the James Groundwater Storage and Recovery Project ("Project"), the primary use of which is for spreading, percolation, recharge, storage, banking and recovery of water for beneficial uses; and

C. The DISTRICTS plan to operate the Project on behalf of themselves, and others than may enter into agreements with the DISTRICTS and/or their members; and

D. As used herein "spreading" refers to the physical placement onto and percolation of water into the groundwater basin for purposes designated by the spreading party including, but not limited to, overdraft correction and groundwater banking for later recovery and use for beneficial purposes; and

E. CITY and DISTRICTS acknowledge that the operation of the Project may have an impact or influence on the CITY, including its groundwater and banked water supplies, water supply wells and groundwater levels in and around the Project area, for which reason both parties desire, by this Agreement, to determine and provide certain operating criteria which are designed and intended to prevent, avoid, eliminate, minimize or mitigate, to the greatest extent practicable, significant adverse impacts to the CITY and the environment; and

F. The CITY intends to complete an Environmental Impact Report ("EIR")

for the Project in 2022 and the DISTRICTS will operate the Project under the EIR and this Agreement, which will be an Appendix to the EIR.

**NOW**, THEREFORE, incorporating the foregoing recitals herein, CITY and DISTRICTS agree as follows:

**1. PARTIES.**

a. CITY executes this Agreement as the owner and operator of the 2800 Acres (CITY Project) and other CITY-owned facilities, including CITY domestic water wells, and on behalf of its residents.

b. DISTRICTS execute this Agreement on behalf of themselves and on behalf of other Project participants, each of whom will consent in writing to be bound by the terms and provisions of this Agreement as it affects the Project only.

**2. NO ALTERATION.** Nothing in this Agreement shall change or supersede any previous agreement executed by any party hereto, unless specifically set forth herein, or any water rights or interests held by any party hereto.

**3. PROJECT AREA.** The "Project Area" shall be defined as the McAllister Ranch, the 2800 Acres, the Kern River Channel, the proposed delivery channel through the Pioneer project area, any areas proposed for recovery of Project water supplies and any facilities used for the transportation of recovered water.

**4. RELATIONSHIP TO ENVIRONMENTAL STUDIES.** This Agreement shall become a part of any EIR or subsequent environmental document prepared for or in connection with the Project.

**5. FACILITIES.** Subject to the terms and conditions set forth herein, the CITY will transport DISTRICTS' water through certain CITY owned head gates to the Project or designated delivery point(s) as described below.

a. PREFERRED ALTERNATIVE – PIONEER SOUTH. DISTRICTS choose to utilize the Preferred Alternative, as described in the attached Exhibit "A", and as follows:

I. The parties agree that the Pioneer-McAllister head gate will have a capacity of 500 cfs to transfer water from the Kern River to Central Pioneer canal, and that thereafter CITY shall be responsible for maintaining the Pioneer-McAllister head gate in a condition such that the ability to deliver 500 cfs through the Pioneer-McAllister head gate shall be maintained at all times.

II. CITY shall permit the Kern County Water Agency ("KCWA") access to Basin 1 - 2800 Acres for the purpose of construction of a new Pioneer-McAllister head gate between Basin 1 and Central Pioneer at DISTRICTS'

expense which may divert water from the Basin 1 - 2800 Acres to Pioneer Project banking area, all at DISTRICTS' expense. Any plans for such construction shall be delivered to CITY prior to the date of commencement of said construction. CITY shall have final approval of any plans or specifications, provided that such approval shall not be unreasonably withheld. DISTRICTS will obtain all necessary Environmental permits and approvals prior to any construction, all at DISTRICTS' expense. DISTRICTS will work directly with CITY during construction and provide weekly reports updating the status of construction. Upon completion of construction to the satisfaction of CITY, such facilities shall be and become the property of the CITY and CITY shall thereafter own, operate and maintain the installed facilities on behalf of DISTRICTS. For the term of this Agreement, DISTRICTS shall have first priority to use any facilities constructed by it pursuant to this paragraph and shall pay applicable fees as set forth below.

- III. DISTRICTS will need to enter into an agreement or otherwise coordinate with KCWA for the conveyance of water from the head-gate through KCWA property (Pioneer Project), and to address any related issues with KCWA, including for reimbursement of design and construction costs and priority to use said facilities.

6. **PROJECT.** DISTRICTS shall control the operation of and shall own the Project, provided that DISTRICTS' use of said Project shall be governed by this Agreement, and the following:

- a. DISTRICTS anticipate recharging up to 200,000 ac-ft of water in any given year. The amount of water recharged will be dependent on the hydrologic conditions and conveyance and system capacity; This Agreement does not limit the quantity of water that DISTRICTS may recharge within the Project boundaries.
- b. DISTRICTS may recover water from the Project Property utilizing up to the 14 proposed recovery wells. DISTRICTS anticipate recovering up to 56,000 ac-ft in a single year.
- c. DISTRICTS agree to monitor and record groundwater levels for all water production wells and monitoring wells within the Project on a monthly basis, when in use, and to promptly forward all monitoring results to the CITY;
- d. DISTRICTS further agree that the recovery of water within the Project will not lead to unmitigated significant adverse impacts to the CITY and the environment, as defined in the EIR,

including to groundwater levels and water quality within the CITY and specifically in connection with any CITY domestic wells.

- e. Subject to the terms and conditions stated herein and any other prior limits or restrictions which may bind or limit DISTRICTS' pumping, DISTRICTS may also choose to recover water outside of the Project boundaries, which may include BVWSD boundaries; RRBWSD boundaries; the Pioneer Banking Project; Kern Delta Water District; and the Kern Water Bank, subject to the same limitations and restrictions set forth herein.
- f. Kern River Water Place of Use Restriction. The Parties agree that any Kern River water extracted from and used in connection with a water banking project on the Property will not be sold, transferred or exchanged out of the San Joaquin Valley portion of Kern County.

## **7. PAYMENT OF CHARGES.**

- a. Use of Pioneer-McAllister Head gate. The cost to DISTRICTS for the CITY to operate the Pioneer-McAllister head-gate, if constructed, will include the following:
  - I. Head gate fees shall apply to cover the actual costs of operation and maintenance associated with using Pioneer-McAllister head gate.
  - II. Payment of Charges. All undisputed charges herein are due and payable by DISTRICTS to CITY forty-five (45) days after the mailing of the notice that such charges are due to CITY. No oversight by CITY in making such demand shall relieve DISTRICTS from such payments.
- b. Use of Kern River Channel and 2800 Acres Facilities. the cost to DISTRICTS to use the CITY's Basin 2 head gate and spread Kern River water within CITY facilities and CITY property shall be as described as follows:
  - I. For use of the Kern River Channel easterly of the 2800 Acres to spread for the DISTRICTS in the Project, no fee shall apply.
  - II. For use of any 2800 Acres Spreading Facility to spread water for the DISTRICTS in the Project, no fee shall be applied.
  - III. Head gate fees shall apply to cover the actual costs of operation and maintenance associated with using the Basin 2 head gate to move water from Basin 1 into 2800 Acres.

- IV. Payment of Charges. All charges herein are due and payable by DISTRICTS to CITY forty-five (45) days after the mailing of the notice that such charges are due to CITY. No oversight by CITY in making such demand shall relieve DISTRICTS from such payments.

**8. WATER QUALITY ASSURANCES.**

- a. Quality Enhancement. DISTRICTS agree to operate the Project in such manner so as to maintain and, when possible, enhance the quality of groundwater in the basin underlying the Project Area. This shall be accomplished by recharging water supplies that are generally suitable for groundwater banking purposes, such as supplies from the Kern River, State Water Project supplies, Central Valley Project supplies, and other local supplies that may be available for recharge by DISTRICTS.
- b. Groundwater Monitoring. DISTRICTS will monitor and test the quality of any water recovered from Project wells and will promptly share that information with the CITY.

**9. OPERATING CRITERIA.**

- a. Sustainable Groundwater Management Act. DISTRICTS and CITY agree that operation of the Project cannot cause or result in unmitigated significant adverse impacts to the CITY and environment, as defined in the EIR, including to groundwater levels and water quality within the CITY and specifically in connection with any CITY domestic wells. The Project cannot cause water levels to exceed the Minimum Thresholds for an extended period of time, absent an emergency, as outlined in the Kern River Groundwater Sustainability Agency (KRGSA) Groundwater Sustainability Plan (GSP).
- b. Spreading Priority. In order to preserve the historical high-quality groundwater supplies underlying the Kern River Channel, it shall be the goal of CITY and DISTRICTS to maintain a positive hydraulic gradient sloping away from the existing mound underlying the Kern River Channel. In recognition of this goal, DISTRICTS agree that, at those times when water is not otherwise being spread in the Kern River Channel or in the 2800 Acres by the CITY or other entities, CITY may call for up to twenty percent (20%) of water scheduled by DISTRICTS for spreading purposes on the Property to be spread in the Kern River Channel or in the 2800 Acres and recharged on account of DISTRICTS. Said delivery will be monitored, reviewed and coordinated on a daily basis by CITY's and DISTRICTS' contact

persons. Water spread by DISTRICTS under this provision may be conveyed from Basin 1 to the 2800 Acres by gravity through the existing Basin 2 head-gate. Water spread in the 2800 Acres under this provision shall be credited to the account of DISTRICTS in the same manner as if it had been spread on the Property and shall not be subject to any CITY fees. Water spread in the Kern River Channel or in the 2800 acres under this provision may be recovered by DISTRICTS as if it was spread on the Property.

- c. Transportation of Water. DISTRICTS, at their cost, will coordinate with KCWA for the design and construction of the Preferred Alternative, as described in the Project EIR. Once completed, the CITY will own and operate the head gate from Basin 1 to Central Pioneer. Once the water is transferred onto Central Pioneer property, DISTRICTS will be required to coordinate the transportation of such water to the Project with the KCWA.
- d. Recovery Plan. DISTRICTS have developed a recovery plan for the Project which will be outlined in the EIR. This recovery plan is intended to afford maximum recovery capability within the Project Area, BVWSD and RRBWSD boundaries, and other identified areas while preventing, eliminating, or mitigating significant adverse impacts to the CITY and the environment as defined in the EIR within the CITY, KRGSA and other areas within and adjacent to the Project Area, and the Project shall not cause water levels to exceed the Minimum Thresholds for an extended period of time, absent an emergency, as outlined in the KRGSA GSP.
- e. Transportation of Recovered Water. DISTRICTS may recover water from McAllister Ranch and transport it to the Alejandro Canal for use within BVWSD or RRBWSD's boundaries or for exchanges and sales with other districts. DISTRICTS may use the Kern River Canal for this purpose as follows:
  - I. BVWSD will have the right to use the Kern River Canal for the transportation of recovered Kern River water from the Project. This Agreement does not change or modify any capacity rights in the Kern River Canal. BVWSD will not be charged costs for the transportation of recovered Kern River water in the Kern River Canal. BVWSD will pay the CITY's standard operating fees for recovered non-Kern River water transported in the Kern River Canal.
  - II. RRBWSD may use the Kern River Canal and will be charged costs for the transportation of recovered Kern River water in the Kern River Canal. BVWSD and RRBWSD will pay the CITY's standard operating fees for recovered non-Kern River water

- transported in the Kern River Canal.
- III. If the recovery system or the recovered water pumped from the Project to Kern River Canal has negative impacts on the canal liner, DISTRICTS will be invoiced for the necessary costs for the CITY to repair the damaged areas in proportion to the damage caused by the Project.
- f. Adverse Impact Avoidance. The Project must be operated so as to prevent, eliminate or mitigate significant adverse impacts as defined in the EIR, including, but not limited to, adverse impacts to the CITY and the environment. Measures to prevent significant adverse impacts from occurring or to eliminate or mitigate adverse impacts may include, but are not limited to, the following actions by DISTRICTS:
- I. Limit recovery from wells situated on Property to avoid significant adverse impacts to CITY domestic water wells.
  - II. Recovery from the Project shall not exceed the total quantity of DISTRICTS' water previously spread on the Property less losses (as set forth in Section 9(h)), minus that amount of water previously recovered by DISTRICTS from the Property, and any other authorized recovery site, or a recovery amount limited to avoid adverse impacts to CITY domestic water wells whichever is the lesser of the two. The accounting and establishment of spreading and recovery quantities referred to in this paragraph shall commence upon approval of the EIR.
  - III. Maintain a positive water balance between net water spread and having reached the standing water and water recovered at all times;
  - IV. Provide standard buffer areas between recovery wells and existing neighboring overlying users, provided that recovery wells will not be required to be relocated once constructed due to encroachment by neighboring overlying users;
  - V. Limit the monthly, seasonal or annual recovery rate;
  - VI. Provide sufficient recovery wells to allow rotation of recovery wells or the use of alternate wells;
  - VII. Adjust pumping rates or terminate pumping to reduce significant impacts, if necessary.
  - VIII. Impose time restrictions between spreading and extraction to allow for percolation of water to the aquifer; (more definition required) and
  - IX. Spread water that would not otherwise be spread in the Project Area.
- g. Mitigation for Adverse Impacts. The Project must be operated so as to prevent, eliminate or mitigate significant adverse impacts as defined in the EIR, including, but not limited to, adverse

impacts to the CITY and the environment. Mitigation measures that address, minimize, alleviate or compensate for unavoidable significant adverse impacts may additionally include, but are not limited to, the following;

- I. If as a result of adverse impacts, CITY's wells need to be modified, DISTRICTS will provide financial compensation to the CITY for the modifications for the cost of lowering the pump bowls, deepening wells, or drilling new wells as necessary to restore groundwater extraction capability to such overlying user;
  - II. DISTRICTS shall provide alternative or replacement water supplies to the CITY during the time that water cannot be extracted for urban use due to the wells not operating or under modification or construction.
  - III. New wells, whether CITY Domestic wells or DISTRICTS' recovery wells, shall be placed no closer than one-third (1/3) mile from any existing wells located on/off the Property. The CITY will seek to prevent any new water wells drilled within the CITY from being within 1/3 mile from any Project wells, including any existing wells used as Project wells.
  - IV. DISTRICTS acknowledge that CITY has heretofore hoped to acquire the 2 (two) existing Domestic Water wells within the Project. DISTRICTS will consider selling the 2 wells to the CITY at a fair market value rate. The spacing mentioned above in g (III). shall not be required with the two wells referenced in this paragraph unless incorporated as a part of that sales agreement. If sold, the mitigations measures provided for in Section 9 of this Agreement shall not apply to the two existing domestic wells.
- h. Losses. Losses will be applicable to all water spread under this Agreement and at a minimum shall be assessed as follows:
- I. Spreading losses (i.e., evaporation, evapotranspiration, etc.) shall be fixed and assessed at a rate of six percent (6%) of water spread.
  - II. An additional five percent (5%) loss shall be assessed against any water spread in the Project Area for banking by, for or on behalf of any out-of-County person, entity or organization and/or against any non-Kern River water banked sold or transferred to any out-of-County person, entity or organization.
  - III. Effective the date of this Agreement and except as otherwise limited by any prior agreement, losses assessed under this Agreement represent amounts of water that will not be credited to any account and are non-recoverable by CITY or DISTRICTS.



**10. COORDINATION AND RECORD KEEPING.**

- a. Coordination. DISTRICTS are responsible for the day-to-day operation of the Project. DISTRICTS and CITY will designate a contact person to coordinate DISTRICTS' activities that involve the CITY. Water deliveries to the Project Area via the Kern River Channel and/or 2800 Acres shall be regulated through CITY operation and shall be scheduled forty-eight (48) hours in advance through the CITY Water Dispatcher by the DISTRICTS' contact person. Unless otherwise agreed, the DISTRICTS' contact person shall meet regularly with CITY to coordinate Project operations.
- b. Records. The CITY is responsible for, and shall continue to maintain records of all points of diversion from the Kern River Channel and CITY-owned facilities. DISTRICTS shall have access to such records. The DISTRICTS' contact person will provide such assistance and information as is necessary for CITY to meet its obligations hereunder. All other records required for this Agreement shall be developed and maintained by DISTRICTS.

**11. OVERDRAFT REDUCTION.** CITY and DISTRICTS agree that the use of the Property shall not cause or contribute to overdraft of the groundwater basin.

**12. NO CHANGE TO RIGHTS.** Nothing in this Agreement is intended to alter, amend, affect, enhance, convey, grant transfer, or diminish any water rights, property rights, or contract rights of the parties to this Agreement. In addition, other than as expressly set forth herein, nothing in this Agreement is intended to alter, amend, affect, enhance, convey, grant transfer, or diminish any rights or interest in and to water control, conveyance, distribution, delivery, storage, measurement, or other structures and facilities of any party to this Agreement, including, without limitation, canals, weirs, weir structures, head gates, and the like. Each party reserves all right, title and interest in and to such structures and facilities owned by it, including the right and authority to unilaterally operate and control the same subject only to such limitations as exist by law or contract.

**13. INDEMNIFICATION**

- a. Indemnity. CITY and DISTRICTS agree to indemnify and hold each other harmless from any and all claims, demands, liabilities, losses or causes of action which arise by virtue of its own acts or omissions (either directly or through or by its agents, officers, or employees) to such extent and in such part as the respective parties are found by reason of law to have proximately caused the injury or damage.

- b. Notice of Claim. The party against whom any claim arising from any subject matter of this Agreement is filed shall give prompt notice of the filing of the claim to the other party.

14. **EFFECTIVE DATE.** This Agreement is effective the day and year first above written regardless of the date of actual execution.

15. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally delivered or sent by certified or registered mail, in which latter case service will be effective upon depositing in the United States mail. Notices to CITY and DISTRICTS shall be addressed as follows, or at any other address designated by notice given in the manner herein provided:

CITY: CITY OF BAKERSFIELD  
WATER RESOURCES DEPARTMENT  
1000 Buena Vista Road, Bakersfield, CALIFORNIA 93311

JAMES WATER BANK AUTHORITY  
c/o BUENA VISTA WATER STORAGE DISTRICT  
525 N. Main St., PO Box 6386, Buttonwillow, CA 93206

BUENA VISTA WATER STORAGE DISTRICT  
525 N. Main St., PO Box 6386 Buttonwillow, CA 93206

ROSEDALE – RIO BRAVO WATER STORAGE DISTRICT  
849 Allen Road, Bakersfield, CA 93314

16. **FORUM.** Any lawsuit pertaining to any matter arising under, or growing out of, this Agreement shall be instituted in Kern County, California.

17. **ASSIGNMENT.** This Agreement shall not be assigned by CITY or DISTRICTS without the prior written consent of the other.

18. **BINDING EFFECT.** The rights and obligation of this Agreement shall inure to the benefit of, and be binding upon, the parties to this Agreement and their heirs, administrators, executors, personal representative, successors and assigns.

19. **AUTHORITY.** Each party executing this Agreement represents and warrants that it is duly authorized to execute and deliver this Agreement on behalf of the organization named herein and that this Agreement is binding upon said organization in accordance with its terms.

20. **WAIVER OF DEFAULT.** The failure of any party to enforce against another a provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement

**21. MERGER AND MODIFICATION.** All prior oral agreements or understandings between the parties with respect to the matters covered by this Agreement are incorporated in this Agreement which constitutes the entire agreement. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous oral agreement. The parties further intend this Agreement constitutes the complete and exclusive statement of its terms. This Agreement may be modified only in a writing approved by the City Council, the DISTRICTS, and signed by all the parties.

**22. NEGATION OF PARTNERSHIP.** No party shall become or be deemed a partner or joint venture with any other party or associate in any such relationship with any other party by reason of the provisions of this Agreement. DISTRICTS shall not for any purpose be considered an agent, officer or employee of CITY, and CITY shall not for any purpose be considered an agent, officer or employee of DISTRICTS.

**23. EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

**24. ENVIRONMENTAL QUALITY.** The CITY has various environmental concerns relating to the Project which have been addressed to the CITY's satisfaction in this Agreement; however, the CITY does not warrant or guarantee the environmental quality of the Project and does not warrant or guarantee the Project will be without environmental effects.

**25. AUTHORSHIP.** It is understood and agreed that this Agreement is the product of negotiation between CITY and DISTRICTS, with each represented by independent counsel of its choice and each has contributed to the drafting hereof. In constructing this Agreement, neither CITY nor DISTRICTS shall be deemed its author.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

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**PROJECT RECOVERY OPERATIONS PLAN REGARDING PIONEER  
PROJECT, ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, AND  
KERN WATER BANK AUTHORITY PROJECTS**

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**PROJECT RECOVERY OPERATIONS PLAN REGARDING  
PIONEER PROJECT, ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT,  
AND KERN WATER BANK AUTHORITY PROJECTS**

**Purpose:**

The Kern County Water Agency, on behalf of itself and the Pioneer Project Recovery Participants, Rosedale- Rio Bravo Water Storage District, and the Kern Water Bank Authority (the Parties) have developed this Operating Plan to designate measures, consistent with the MOUs<sup>1</sup> governing their respective projects, to “... *prevent, eliminate or mitigate significant adverse impacts*” resulting from project recovery operations. This plan applies to all recovery programs undertaken by any of the Parties’ projects that are governed by MOUs. Pioneer mitigation includes the Pioneer Project, Berrenda Mesa Banking Project and Improvement District No. 4’s Allen Road well field. This plan applies to landowners using groundwater for overlying agricultural or domestic uses as of the date this plan is executed. It does not apply to wells installed after the date of this plan that are installed to unsuitable depths based on historic water level fluctuations.

**Plan Components:**

**1. Establish a Joint Operations Committee (JOC):**

- a. Representatives from each of the Parties will participate in the JOC. Each Party will have equal representation on the JOC and an equal voice in its determinations, except that with respect to claims made to the JOC, only those parties contributing to mitigation will have a vote in determinations made on such claims.
- b. The JOC will meet as needed during years in which recovery operations are occurring (or expected to occur) to evaluate groundwater conditions, model results, landowner claims, and any other topics of concern. It is expected that the JOC will meet at least monthly during years when recovery operations are occurring.
- c. The JOC may establish a technical subcommittee to assist with compiling information to use in evaluating claims.
- d. The JOC will evaluate all claims with respect to model results and other appropriate information and the triggers established in Section 3, and approve or reject such claims. If claims are approved, appropriate mitigation will be determined as further described in Section 3. If mitigation is provided, the JOC will fund and/or contribute to the actions as described in Section 4.

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<sup>1</sup> MOU refers to all of those MOUs executed by the parties that contain terms substantially similar to the *Memorandum of Understanding Regarding Operation and Monitoring of the Kern Water Bank Groundwater Banking Program* (dated October 26, 1995).

## **2. Evaluate Groundwater Conditions**

- a. The Parties have developed groundwater models (AMEC and Harder) as a tool to evaluate With Project versus Without Project groundwater levels and predict potential groundwater impacts. The Parties shall mutually agree on the assumptions used for Without Project conditions, and for purposes of making determinations hereunder an average of the output for the two models shall be utilized. The Pioneer Without Project condition shall assume farming is continued on its footprint.
- b. The models will be updated regularly (at least annually) and compared to actual conditions during years in which recovery occurs. The Parties shall mutually cooperate to attain all data necessary for such updates. The Parties will utilize the water quality and water level monitoring data collected by the Kern Fan Monitoring Committee, and may conduct additional monitoring as needed. The Parties will report the results of the modeling to their respective Boards of Directors and shall publish on their respective websites maps and data showing current and projected water level information in the general area of the projects. As a matter of practice, the Parties will use the best and latest science and information available in all modeling and technical matters.
- c. Absent unanimous approval of the JOC, recovery in any calendar year beyond March 15 of that year shall not commence (or continue) until the Models have been run for the projected operations and the Committee has met to review the results.<sup>2</sup>
- d. The Models will be used to:
  - i. Forecast With Project and Without Project groundwater levels at the outset of recovery programs.
  - ii. Forecast any localized areas for special attention and/or monitoring.
  - iii. Attempt to identify domestic wells at risk of impacts.
  - iv. Determine if mitigation triggers have been met (See Section 3b).
- e. The Parties may, based on experience gained, select a mutually agreeable groundwater model capable of accurately predicting groundwater impacts resulting from project operations.
- f. In case of a dispute concerning a technical issue with a model, such as data inputs or the results based thereon, the Parties shall consult with a third party to resolve the matter.

## **3. Triggers and Actions**

- a. These actions will not occur in years when average water levels (measured at the following wells: 29S/25E-25M1&2, 29S/26E-31H1&2, 29S/26E-34M1, and 29S/26E-35H) are less than 140 feet from the surface as measured on March 31 of a given year

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<sup>2</sup> Model data for a preceding year becomes available at different times in the following year. Modeling at the beginning of any given year will necessitate estimating certain model input data for the preceding year (e.g. Kern River losses). These estimates will be replaced with actual data at regular intervals when the model is updated.

because it is expected that water levels will not decline during such year to an extent resulting in a mitigatable impact.

- b. The trigger for whether mitigation is considered shall be based upon an analysis and comparison of Model generated Without Project conditions to Model generated With Project conditions. When the With Project conditions are fifteen (15) or forty-five (45) feet deeper than the Without Project conditions at any operative domestic or agricultural well, respectively, and mechanical failure or other operational problems have occurred or are reasonably likely to occur due to declining water levels, mitigation will be provided as described below.
- c. To be eligible for mitigation as provided below, the affected landowner shall allow the JOC (or representatives thereof) to perform a field inspection as described in 3.d. below, and provide claim information concerning the condition of the well and casing and pumping equipment, as determined appropriate by the JOC. The JOC shall evaluate all submitted claims within forty-five (45) days of receipt, provided that the landowner cooperates with the collection of necessary information. All mitigation actions are contingent upon the claimant executing an appropriate release, the terms of which will depend upon the nature of the mitigation provided.
- d. For all claims, a field inspection will be conducted with the consent and coordination of the landowner to determine static depth to groundwater levels within the well and verify well construction information and pump setting information, if possible.
- e. Well construction information and pump setting information will be compared to Model projected pumping water levels to determine pump submergence levels and evaluate the necessity and feasibility of mitigation measures. Mitigation measures, if warranted, will include one or more of the following:
  - i. Providing a short-term emergency water supply to domestic well owners. Short-term emergency supplies shall be provided as soon as reasonably possible, but in all cases within 14 days of notification to the JOC of such needs;
  - ii. Providing funds to lower a well pump;
  - iii. Providing funds to complete a connection to an M&I water provider;
  - iv. Supplying an equivalent water supply from an alternate source;
  - v. Providing funds to replace the affected well with a deeper well that meets Kern County well ordinance standards;
  - vi. Reducing or adjusting recovery pumping as necessary to avoid the impact; or
  - vii. With the consent of the affected landowner, providing other acceptable mitigation.
- f. Mitigation will not be provided where it can be demonstrated that the affected well requires remediation for reasons other than temporary groundwater level declines resulting from Project operations (i.e., general overdraft conditions, lack of well maintenance, normal wear and tear, failure of well equipment, etc.).



#### **4. Mitigation Funding**

- a. It is the intent of the Parties to mitigate and/or compensate for legitimate Project impacts; it is not the intent of the Parties or the Plan to generate a windfall for landowners. Accordingly, adjustments will be made for depreciation of existing equipment and landowner contributions based on betterment for all mitigation measures. See Exhibit A for an example of such adjustments.
- b. All costs paid, water supplies provided, and/or pumping reductions used by the Parties to prevent, eliminate or mitigate claimed impacts at a well site shall be initially allocated among the parties according to their respective projects' proportionate contributions to the With Project water level as compared to Without Project water level, as determined by using an average of the most recent versions of the models. After years end, the models shall be updated with the actual operations data for that year and recalibrated, and the average of the results of such modeling shall be used for a final allocation of the projects' proportionate contributions levels. If appropriate, the parties shall exchange funds and/or water supplies among them in accordance with the final allocation. For administrative ease, only an initial and final allocation for a given year shall be required. This procedure shall apply to mitigation for both domestic and agricultural wells.
- c. All costs expended by any Party for equipment, water supplies or labor that is/are purchased or provided to address emergency health and safety concerns at domestic wells (exclusive of the costs described in 4.b. above) shall initially be allocated equally between the Parties. These costs shall be reallocated among the parties after years end per the procedure described in 4.b. above, provided that only those domestic wells for which emergency health and safety costs were incurred by a party shall be included in such reallocation, and further provided that the projects' proportionate contribution levels shall be based on the melded average of the results of the reallocation at all of the wells included in the reallocation.
- d. All costs expended by any JOC participant in the administration of the JOC on behalf of all participants (e.g., processing claim response letters, calls from claimants, postage, notary public services, etc.) shall initially be allocated equally between the Parties. These costs shall be reallocated after years end per the procedure described in 4.b. above.

#### **5. Additional Actions and Miscellaneous.**


- a. The term of this Operations Plan shall commence on February 1, 2017, and shall terminate on January 31, 2019. The Parties may agree to extend this Operations Plan and will meet starting October 1, 2018 to discuss any extension.
- b. Modification language - This Operations Plan may not be altered, amended, or modified in any respect, except by unanimous consent of the Parties. Any modification to this Operations Plan must be made in writing and executed by all the Parties.

- c. Except as set forth below, in the event the Joint Operations Committee cannot agree on (1) the implementation of this agreement, or (2) the proper action in response to a landowner claim, such dispute shall be submitted to binding arbitration before a single neutral arbitrator appointed by the Parties, and in absence of such consent, appointed by the presiding judge of the Kern County Superior Court. Any arbitrator selected by the parties shall have experience arbitrating groundwater disputes. The arbitration shall be called and conducted in accordance with such rules as the Parties shall agree upon, and in the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure section 1282, et seq. Notwithstanding the foregoing, in any arbitration the Parties agree that discovery will be allowed pursuant to Code of Civil Procedure section 1283.05. The Parties shall attempt to jointly appoint the neutral arbitrator within ten (10) days after a dispute arises, and in the event the Parties cannot agree to a neutral arbitrator within said ten-day period, either Party may make a request to the presiding judge of the Kern County Superior Court immediately thereafter. In the event a landowner submits a claim and the Joint Operations Committee cannot agree on the proper action in response, the arbitration requirement shall be contingent upon the landowner's express written consent to proceed and be bound by arbitration and to pay his/her/its proportionate share of arbitrator fees and related costs. Absent such landowner consent, there shall be no obligation on the part of either Party to arbitrate any such dispute.
- d. With respect to the interpretation and enforcement of this Plan, and with respect to the resolution of any matter left for future determination or implementation, the Parties agree to carry out such duties and responsibilities in good faith and in cooperation with one another, to the end that the objectives and purposes of this agreement will be achieved and/or carried out to the greatest extent practicable.

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2017

**“PARTIES”**

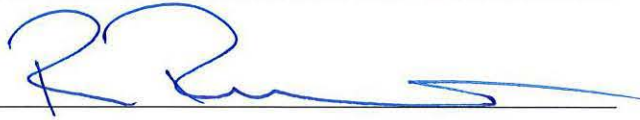
**KERN COUNTY WATER AGENCY, on behalf of itself and  
the Pioneer Project Recovery Participants**

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

**KERN WATER BANK AUTHORITY**

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

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT**

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



Joint Operations Committee  
Well Cost Alternatives Worksheet

Date: October 13, 2015  
Case No. 15-017  
Name: Ross Johnson

## A. Notes:

1. Pump was lowered in 2015.
2. Pump was pulled in October 2015 and found to be sanded up. (ME Beggs Invoice)
3. Bottom of well was tagged in October 2015 at 288 ft or 6 ft shallower than a year ago. (ME Beggs Invoice)
4. Casing is flaking off (ME Beggs Invoice)

## B. Exhibit A Analysis:

i. Pump Capacity Analysis:

Required Pump Flow Rate (Estimated)	10 GPM
Measured Pump Flow Rate (Estimated)	0 GPM
Difference	10 GPM
Adequate Capacity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> X <input type="checkbox"/>

ii. Pump Setting Analysis:

Depth of Casing	288 Ft
Depth to Water (Static)	222 Ft
Depth to Pumping Water Level (Estimated)	231.5 Ft
Drawdown	9.5 Ft
Pump Setting	284 Ft
Pump Submergence	52.5 Ft
Adequate Submergence	Yes <input checked="" type="checkbox"/> X <input type="checkbox"/> No <input type="checkbox"/>
Projected static depth to water level (From Study)	250 Ft
Drawdown	9.5
Required Submergence	50
Projected 10 Year Casing Setting	175
Modified Pump Setting	485 Ft
Existing Casing Depth	288 Ft
Modified Pump Setting	485 Ft
15 feet minimum pump clearance.	15 Ft
Required casing depth in ten years.	500 Ft
Existing Casing Depth below Required Casing Depth	(212) Ft
Adequate Clearance	Yes <input type="checkbox"/> No <input type="checkbox"/> X <input checked="" type="checkbox"/>

## C. Well Replacement Analysis

Well Replacement Depreciation Analysis:

Existing well casing - Expected Life	50 Years
Existing well casing - Age	38
Existing well casing - Expected Remaining Life (Casing has failed)	0
Existing pump -- Expected Life	15 Years
Existing pump - (Pump replaced in July 2015)	0
Existing pump - Expected Remaining Life	15
<i>Note: In some cases, existing column, tube, shaft and motor should also be evaluated, or included with Existing pump.</i>	

## Facility Remaining Replacement Cost Analysis:

	Cost	Cont. Amount	Total
Drilling and casing cost for new well.	90,000	9,000	\$99,000
Purchase and installation of new pumping equipment.	5,000	500	\$5,500
Salvage Value			\$0
Total:			\$104,500
Unit Well Replacement Cost	\$99,000 /	500 FT =	\$198 /FT
Existing Well - Replace Cost	\$198 /FT x	288 FT =	57,024
Existing Well - Depreciated Value			57,024
Existing Well - Remaining Value			0
New Well - Incremental Cost	\$198 /FT x	212 FT =	41,976
Action Fund Mitigation Cost			\$41,976
Unit Pump Replacement Cost	\$5,500 /	485 FT =	\$11 /FT
Existing Pump - Replace Cost	\$11 /FT x	284 FT =	3,224
Existing Pump - Depreciated Value			0
Existing Pump - Remaining Value			3,224
New Pump - Incremental Cost	\$11 /FT x	201 FT =	2,276
Action Fund Mitigation Cost			\$5,500

Facility Replacement Cost Summary:

Owner Cost for Facility Replacement	\$57,024
Action Fund Cost for Facility Replacement	\$47,476
Total Replacement Cost	\$104,500

## D. Cost Alternative Summary:

1) Cost to drill new well to a depth of 495 ft.	\$99,000
2) Incremental cost to drill new well from 288 ft down to 495 ft.	\$41,976
3) Drill New Well & Provide Pump (Full Cost)	\$104,500

## E. Action Fund Cost

Exhibit A - Incremental cost to drill new well from 288 ft down to 495 ft and lower pump from 284 ft to 485 ft.	\$47,476
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**LONG-TERM PROJECT  
RECOVERY OPERATIONS PLAN  
REGARDING KERN WATER BANK AUTHORITY PROJECT**

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**LONG-TERM PROJECT  
RECOVERY OPERATIONS PLAN  
REGARDING KERN WATER BANK AUTHORITY PROJECT**

**Purpose.**

Consistent with Kern Water Bank Authority's (KWBA) Memorandum of Understanding governing its banking project (MOU), this Long Term Operations Plan Regarding Kern Water Bank Authority ("Plan") designates specific measures to be employed to "... *prevent, eliminate or mitigate significant adverse impacts*" resulting from project operations. KWBA will carry out its duties and responsibilities under this Plan in good faith and in cooperation with Adjoining Entities to the end that the objectives and purposes of this Plan will be achieved and/or carried out to the greatest extent practicable.<sup>1</sup> This plan applies to neighboring landowners currently using groundwater for overlying uses from an agricultural supply or domestic well. It does not apply to new wells that are installed to unsuitable depths based on historic water level fluctuations.

**Plan Components:**

**A) Monitor and Report Groundwater Conditions to KWBA's Board of Directors and the Public.**

- 1) KWBA will monitor groundwater levels monthly, except during periods of no recovery when monitoring will occur at least quarterly. KWBA may rely on monitoring conducted by the Kern Fan Monitoring Committee to meet these requirements.
- 2) KWBA will report current groundwater levels to its Board of Directors at each monthly regular meeting, and will make the reports available to the public on its website (<http://www.kwb.org/>).
- 3) KWBA will regularly update its Groundwater Model (Model) to actual conditions and use the Model to project future groundwater conditions. KWBA will endeavor to use the best practicable science and latest information available in all modeling and technical matters. KWBA will report the results of its modeling to its Board of Directors and will make the results available to the public on its website (<http://www.kwb.org/>). Recovery in any calendar year beyond March 15 of that year shall not commence (or continue) until the Model has been run for projected operations and the results have been reported to the Board and made available to the public.<sup>2</sup>

**B) Implement Proactive Measures (in addition to A. above).**

- 1) KWBA will use its Model as a tool to evaluate potential groundwater impacts

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<sup>1</sup> Rosedale Rio Bravo Water Storage District (Rosedale) has proposed and adopted a similar plan to prevent, eliminate or mitigate potential impacts from their projects, which plan is part of their Stockdale Integrated Banking Project Draft Environmental Report dated April, 2015. KWBA expects that an agreement will be developed with Rosedale and others for the coordinated implementation of long-term banking operations plans.

<sup>2</sup> Model data for a preceding year becomes available at different times in the following year. Modeling at the beginning of any given year will necessitate estimating certain model input data for the preceding year (e.g. Kern River losses). These estimates will be replaced with actual data at regular intervals when the model is updated.

resulting from its project operations. The Model will be periodically run and updated as projected recovery plans become known or change and the Model will assume such conditions as described in A)3).

- 2) The Model will be used to:
  - a) Forecast groundwater levels.
  - b) Forecast and predict the contribution of KWB operations to groundwater level declines in the area.
  - c) Determine water level conditions with “Without KWB Operations” for purposes of evaluating the potential impact of “With KWB Operations.” The “Without KWB Operations” condition is the water level that would have been at any particular well location absent “KWB Operations.”
  - d) Identify, based upon an analysis of “Without KWB Operations” versus “With KWB Operations,” if a **negative potential impact (“NPI”)** has or is likely to occur for which the measures described at D, E, and F may be operative. NPI is determined according to C)1) below.
  - e) Forecast any localized areas for special attention and/or additional monitoring, where groundwater levels will decline 30 or more feet below the “Without KWB Operations” groundwater level.
  - f) Identify wells at risk of potential impacts during recovery operations.
- 3) KWBA will provide notification on its website if the Model shows that an **NPI** has or is likely to occur, including steps that potentially affected landowners must follow if the landowner desires to make a claim to KWBA regarding potential well impacts due to KWBA’s recovery operations.

### C) Implement Triggers and Actions.

The actions described in sections D, E, and F, will be implemented in consultation with affected landowners/well owners that make a claim to KWBA regarding well impacts relating to KWBA’s recovery operations and groundwater level declines, subject to the following:

- 1) The trigger for mitigation shall be based upon an analysis and comparison of Model generated “Without KWB Operations” versus “With KWB Operations.” When “With KWB Operations” are 30 feet deeper than the “Without KWB Operations” at an operative well, and the well has (or is expected to) experience mechanical failure or other operational problems due to declining water levels, a negative potential impact (“NPI”) is triggered.
- 2) For a well owner to be eligible for mitigation as provided below, the affected landowner shall submit a claim to KWBA, in accordance with the Government Claims Act, which shall, at a minimum, provide information concerning the condition of the well and casing and pumping equipment of the well, and other information that is relevant to the landowner’s claim. Upon receipt of a claim, KWBA shall use the Model (or the results of modeling as reported to the Board and the public) to determine whether an NPI exists at the landowner’s well and respond with the appropriate action described below.
- 3) KWBA will provide mitigation and/or compensation for the KWB operations’ contribution to the adverse impact. Mitigation and/or compensation is not required for a well owner’s lack of well maintenance, normal wear and tear, depreciation, failure of well equipment, well casing degradation, etc., or other reasons not relating to KWB



operations.

**D) Implement Action for Agricultural Wells When Well Adjustment Is Needed and Available**

- 1) Trigger: When the Model predicts NPI for an operational agricultural well outside the current operating range of the pump but within the potential operating range of the well.
- 2) KWBA actions will be completed within 60 days (provided that the land/well owner cooperates) from receipt of a claim as follows:
  - a) Field verify (with the affected landowner if requested) static depth to groundwater levels within the well and compare to Model values to determine if flow stoppage is due to groundwater level decline due to KWB operations. If needed:
    - (1) Obtain right of entry permit and well data release from well owner.
    - (2) Collect pump manufacturer data, the in-situ pump setting, and casing depth information.
  - b) Compare pump setting information with Model projected pumping water levels throughout the year to determine pump submergence levels and evaluate the necessity and feasibility of lowering the well pump to meet the landowner's needs to provide the least-cost short- and long-term solution.
  - c) Develop a cost estimate to complete the necessary work.
  - d) Develop and submit a report to the landowner informing the landowner of the findings and proposed actions, including denying the claim because groundwater declines are not due to KWB operations.
- 3) At KWBA's option, it may reduce or adjust pumping of its wells as necessary to prevent avoid, or eliminate the NPI, using the Model to identify the well or wells that may require reduction or adjustment in pumping.
- 4) If groundwater declines are due to KWB operations, unless KWBA implements D)3), once agreement is reached between KWBA and the landowner pursuant to D)2)b) and all cost estimates have been completed, pay costs associated with the landowner claim (considering C)3) above), including the cost to complete the necessary work.

**E) Action for Ag Wells – Well Adjustment Unavailable**

- 1) Trigger: When the Model predicts NPI for an operational agricultural well outside the current and potential operating range of the well.
- 2) KWBA actions will be completed within 60 days (provided that the land/well owner cooperates) from receipt of a claim as follows:
  - a) Field verify (with the affected landowner if requested) static depth to groundwater levels within the well and compare to Model values to determine if flow stoppage is due to groundwater level decline due to KWB operations. If needed:
    - (1) Obtain right of entry permit and well data release from well owner.
    - (2) Collect pump manufacturer data, the in-situ pump setting, and casing depth information.
  - b) Identify water of an equivalent water quantity and quality suitable for agricultural uses for the affected landowner from an alternate source at no greater cost to the affected landowner or, with the consent of the affected landowner, identify acceptable mitigation (for example, drill and equip a new well) to provide the least-cost short- and

- long-term solution, including an estimate to complete the necessary work.
- c) Develop and submit a report to the landowner informing the landowner of the findings and proposed actions, including denying the claim because groundwater declines are not due to KWB operations.
  - 3) At KWBA's option, it may reduce or adjust pumping of its wells as necessary to prevent avoid, or eliminate the NPI, using the Model to identify the well or wells that may require reduction or adjustment in pumping.
  - 4) If groundwater declines are due to KWB operations, unless KWBA implements E)3), once agreement is reached between KWBA and the landowner pursuant to E)2)b) and all cost estimates have been completed, pay costs associated with the landowner claim (considering C)3) above), including the cost to complete the necessary work.

**F) Implement action for Domestic Wells.**

- 1) Trigger: When the Model predicts NPI for an operational domestic well.
- 2) KWBA actions will be completed within 60 days (provided that the land/well owner cooperates) from receipt of a claim as follows:
  - a) Field verify (with the affected landowner if requested) static depth to groundwater levels within the well and compare to Model values to determine if flow stoppage is due to groundwater level decline due to KWB operations. If needed:
    - (1) Obtain right-of-entry permit and well data release from well owner.
    - (2) Collect pump manufacture data, the in-situ pump setting and the casing depth information.
  - b) Identify availability of and cost of a permanent connection to the nearest water service provider.
  - c) Identify acceptable mitigation (for example, lower the domestic submersible pump bowl setting sufficient to restore and maintain service or drill and equip a new well that complies with applicable county well standards) to provide the least-cost short- and long-term solution, including an estimate to complete the necessary work.
  - d) Develop and submit a report to the landowner informing the landowner of the findings and proposed actions, including denying the claim because groundwater declines are not due to KWB operations.
  - e) If necessary for emergency health and safety concerns, provide interim in-home water supplies within 14 days after receipt of the claim until a permanent mitigation action is implemented or the claim has been denied because groundwater declines are not due to KWB operations.
- 3) At KWBA's option, it may reduce or adjust pumping of its wells as necessary to prevent, avoid, or eliminate the NPI using the Model to identify the well or wells that may require reduction or adjustment in pumping.
- 4) If groundwater declines are due to KWB operations, unless KWBA implements F)3), once an agreement is reached for KWBA to provide mitigation pursuant to F)2)c) above and all cost estimates have been completed, pay costs associated with the landowner claim (considering C)3) above), including the cost to complete the necessary work.

### **G) Action for Other Landowner Claims.**

- 1) Trigger: A landowner makes a claim of impact on his groundwater use (which could be due to KWBA's operations, adjacent landowners, or a combination) that does not relate to the actual (or likely) cessation of production at a well.
- 2) Actions:
  - a) Refer claim to the Board of Directors to evaluate and respond to landowner claim at its next regularly scheduled meeting.
  - b) Process claim according to agreed upon dispute resolution process (e.g., mediation, arbitration, etc.) in the event the affected landowner does not agree with the Board of Directors' response.

### **Development of Joint Operating Plan**

The Triggers and Actions described above apply to the operations of the Kern Water Bank. In the evaluation of KWB operations, the Model compares groundwater conditions with the operation of the KWB (the "With KWB Operations" condition) against groundwater conditions without the operation of the KWB (the "Without KWB Operations" condition). In the "Without KWB Operations" condition, the Model assumes the continued operation of other groundwater banks in the area of the project. This KWB Long-Term Operations Plan is modeled after and is substantially similar to Rosedale's "Long-Term Project Recovery Operations Plan Regarding Rosedale-Rio Bravo Water Storage District Projects," (Rosedale Operations Plan) included as a part of Rosedale's April 2015 Stockdale Integrated Banking Project Draft Environmental Impact Report (SCH#: 2013091076). The implementation of the Long-Term Operations Plan and the Rosedale Operations Plan address the cumulative impacts on groundwater of both projects. KWBA and Rosedale are coordinating to develop a joint operations plan applicable to the combined groundwater impacts of the KWB and Rosedale operations. Under a joint plan, the modeling of the "Without KWB Operations" condition will assume that neither the KWB nor the Rosedale banks will be in operation. As a result, the joint plan may include triggers applicable to the joint operations that may be applied in lieu of the Triggers described in this KWB Long-Term Operations Plan and the Rosedale Operations Plan.

### **Release; KWBA's Rights Against Others**

In all instances when KWBA takes action to mitigate the effects of declining groundwater levels under this Plan, the affected landowner shall be required to execute an appropriate release in favor of KWBA. Nothing in this Plan or any action taken by KWBA hereunder shall affect KWBA's rights or remedies against any other person or entity (e.g., adjacent landowners, other recovery projects in the area and participants in such projects, etc.) which may have caused or contributed to the effects for which KWBA has mitigated; if appropriate, an affected landowner that receives assistance from KWBA hereunder shall assign its rights against such other person(s) or entity(ies) to KWBA.

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**MEMORANDUM OF UNDERSTANDING  
REGARDING OPERATION AND MONITORING  
OF THE BUENA VISTA WATER STORAGE DISTRICT  
GROUNDWATER BANKING PROGRAM**

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## **MEMORANDUM OF UNDERSTANDING**

### **REGARDING OPERATION AND MONITORING OF THE BUENA VISTA WATER STORAGE DISTRICT GROUNDWATER BANKING PROGRAM**

This Memorandum of Understanding is entered into the Effective Date hereof by and among BUENA VISTA WATER STORAGE DISTRICT, hereinafter referred to as "Buena Vista", and SEMITROPIC WATER STORAGE DISTRICT, HENRY MILLER WATER DISTRICT, KERN COUNTY WATER AGENCY, KERN DELTA WATER DISTRICT, KERN WATER BANK AUTHORITY, ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, and WEST KERN WATER DISTRICT, collectively referred to as "Adjoining Entities."

#### **RECITALS**

**WHEREAS**, Buena Vista expects that certain real property more particularly shown on the map attached hereto as Exhibit A and incorporated herein by this reference ("Project Site"), or portions thereof, will be used in connection with the Project; and

**WHEREAS**, Buena Vista intends to develop and improve the Project Site as necessary to permit the importation, percolation and storage of water in underground aquifers for later recovery, transportation and use for the benefit of Buena Vista, all as more fully described in Exhibit B attached hereto and incorporated herein by this reference ("Project"); and

**WHEREAS**, Adjoining Entities encompass lands and/or operate existing projects lying adjacent to the Project Site as shown on said Exhibit A; and

**WHEREAS**, in recent years, water banking, recovery and transfer programs in Kern County have become increasingly numerous and complex; and

**WHEREAS**, it is appropriate and desirable to mitigate or eliminate any short-term and long-term significant adverse impacts of new programs upon potentially affected projects and landowners within the boundaries of Adjoining Entities; and

**WHEREAS**, Adjoining Entities and Buena Vista desire that the design, operation and monitoring of the Project be conducted and coordinated in a manner to insure that the beneficial effects of the Project to Buena Vista are maximized but that the Project does not result in significant adverse impacts to water levels, water quality or land subsidence within the boundaries of Adjoining Entities, or otherwise interfere with the existing and ongoing programs of Adjoining Entities; and

**WHEREAS**, on October 26, 1995, the Kern Water Bank Authority and its Member Entities, as the "Project Participants," and Buena Vista Water Storage District, Rosedale-Rio Bravo Water Storage District, Kern Delta Water District, Henry Miller Water District and West Kern Water District, as the "Adjoining Entities," entered into a Memorandum of Understanding, similar to this Memorandum of Understanding, which provided among other things at Paragraph 8 that for "any future project within the Kern Fan Area, the Parties hereto shall use good faith efforts to negotiate an agreement substantially similar in substance to this MOU," and by entering into this MOU the Adjoining Entities find that this MOU satisfies such requirement for the Project; and

**WHEREAS**, Buena Vista intends to operate its Project such that the same does not cause or contribute to overdraft of the groundwater basin; and

**WHEREAS**, in connection with its environmental review for the Project, Buena Vista commissioned a hydrologic balance study for the period 1962 - 2000, which study shows that the District is not currently operating in a state of overdraft, and, further, Buena Vista has projected said hydrologic balance study into the future, assuming completion of the Project, and said projection demonstrates that the District is not expected to operate in state of overdraft following implementation of the Project which studies have not been independently verified by the Adjoining Entities; and

**WHEREAS**, in the hydrologic balance studies conducted by Buena Vista in connection with the Project, the annual safe yield from the groundwater basin is assumed to be .3 acre-feet per acre times the gross developed acres in the District and no assumption is included with respect to groundwater inflow or outflow; and

**WHEREAS**, this MOU affects banking programs operated directly or indirectly for the benefit of third parties involving, (1) construction of new facilities or (2) direct or indirect sale of stored groundwater by Buena Vista, as more particularly described in Exhibit B.

**NOW, THEREFORE, BE IT RESOLVED** that, based upon the mutual covenants contained herein, the parties hereto agree as follows: .

1. **Project Description and Construction.** Buena Vista has completed a preliminary Project Description described in Exhibit B hereto representing the contemplated facilities for the Project. Said preliminary description has been reviewed by the parties hereto except, however, the Adjoining Entities have not reviewed, approved or agreed to any wells located outside the existing District boundary. The



foregoing shall not be interpreted to imply consent to any aspect of any future project not described in the Environmental Impact Report, certified October 11, 2002, for the Buena Vista/Rosedale Rio Bravo Water Banking and Recovery Program. Buena Vista will construct the Project consistent with such preliminary description. Any major modifications of the facilities and/or significant changes from that described in Exhibit B and in the environmental documentation for the Project will be subject to additional environmental review pursuant to CEQA and will be subject to review of the Monitoring Committee prior to implementation.

2. Project Operation. The Project shall be operated to achieve the maximum water storage and withdrawal benefits for Buena Vista consistent with avoiding, mitigating or eliminating to the greatest extent practicable, significant adverse impacts resulting from the Project. To that end, the Project shall be operated in accordance with the following Project Objectives and Minimum Operating Criteria:

a. Project Objectives. Consistent with the Project description, Buena Vista will make a good faith effort to meet the following objectives, which may or may not be met:

(1) The parties should operate their projects in such manner as to maintain and, when possible, enhance the quality of groundwater within the Project Site and the Kern Fan Area as shown in Exhibit C.

(2) If supplies of acceptable recharge water exceed recharge capacity, all other things being equal, recharge priority should be given to the purest or best quality water.

(3) Each project within the Kern Fan Area should be operated with the objective that the average concentration of total dissolved salts in the recovered water will exceed the average concentration of total dissolved salts in the recharged water, at a minimum, by a percentage equal to or greater than the percentage of surface recharge losses. The average shall be calculated from the start of each project.

(4) To maintain or improve groundwater quality, recovery operations should extract poorer quality groundwater where practicable. Blending may be used to increase recovery of lesser quality groundwater unless doing so will exacerbate problems by generating unfavorable movement of lesser quality groundwater. It is recognized that the extent to which blending can help to resolve groundwater quality problems is limited by regulatory agency rules regarding discharges into conveyance systems used for municipal supplies, which may be changed from time to time.

(5) All groundwater pumpers should attempt to control the migration of poor quality water. Extensive monitoring will be used to identify the migration of poor quality water and give advance notice of developing problems.

Problem areas may be dealt with by actions including, but not limited to:

- (a) limiting or terminating extractions that tend to draw lesser quality water toward or into the usable water areas;
- (b) increasing extractions in areas that might generate a beneficial, reverse gradient;

(c) increasing recharge within the usable water area to promote favorable groundwater gradients.

(6) It is intended that all recovery of recharged water be subject to the so-called "golden rule." In the context of a banking project, the "golden rule" means that, unless acceptable mitigation is provided, the banker may not operate so as to create conditions that are worse than would have prevailed absent the project giving due recognition to the benefits that may result from the project, all as more fully described at paragraph 2(b)12 below.

(7) The Project shall be developed and operated so as to prevent, eliminate or mitigate significant adverse impacts. Thus, the Project shall incorporate mitigation measures as necessary. Mitigation measures to prevent significant adverse impacts from occurring include but are not limited to the following: (i) spread out recovery area; (ii) provide buffer areas between recovery wells and neighboring overlying users; (iii) limit the monthly, seasonal, and/or annual recovery rate; (iv) provide sufficient recovery wells to allow rotation of recovery wells or the use of alternate wells; (v) provide adequate well spacing; (vi) adjust pumping rates or terminate pumping to reduce impacts, if necessary; (vii) impose time restrictions between recharge and recovery to allow for downward percolation of water to the aquifer; and (viii) provide recharge of water that would otherwise not recharge the Kern Fan Basin. Mitigation measures that compensate for unavoidable adverse impacts include but are not limited to the following: (i) with the consent of the affected groundwater pumper, lower the pump bowls or deepen wells as necessary to restore

groundwater extraction capability to such pumper; (ii) with the consent of the affected groundwater pumper, provide alternative water supplies to such pumper; and (iii) with the consent of the affected groundwater pumper, provide financial compensation to such pumper.

b. Minimum Operating Criteria.

(1) The Monitoring Committee shall be notified prior to the recharge of potentially unacceptable water, such as "produced water" from oilfield operations, reclaimed water, or the like. The Monitoring Committee shall review the proposed recharge and make recommendations respecting the same as it deems appropriate. Where approval by the Regional Water Quality Control Board is required, the issuance of such approval by said Board shall satisfy this requirement.

(2) Recharge may not occur in, on or near contaminated areas, nor may anyone spread in, on or near an adjoining area if the effect will be to mound water near enough to the contaminated area that the contaminants will be picked up and carried into the uncontaminated groundwater supply. When contaminated areas are identified within or adjacent to the Project, Buena Vista shall also:

(a) participate with other groundwater pumpers to investigate the source of the contamination;

(b) work with appropriate authorities to ensure that the entity or individual, if any, responsible for the contamination meets its responsibilities to remove the contamination and thereby return the Project Site to its full recharge and storage capacity;

(c) operate the Project in cooperation with other groundwater pumpers to attempt to eliminate the migration of contaminated water toward or into usable water quality areas.

(3) Operators of projects within the Kern Fan Area will avoid operating such projects in a fashion so as to significantly diminish the natural, normal and unavoidable recharge of water native to the Kern Fan Area as it existed in pre-project condition. If and to the extent this occurs as determined by the Monitoring Committee, the parties will cooperate to provide equivalent recharge capacity to offset such impact.

(4) The mitigation credit referenced in 2.b(12) for fallowed Project land shall be .3 acre-feet per acre per year times the amount of fallowed land included in the Project Site in the year of calculation.

(5) The District Lands shown in Exhibit A may be utilized for any purpose provided, however, the use of said property shall not cause or contribute to overdraft of the groundwater basin.

(6) Each device proposed to measure recharge water to be subsequently recovered and/or recovery of such water will be initially evaluated and periodically reviewed by the Monitoring Committee. Each measuring device shall be properly installed, calibrated, rated, monitored and maintained by and at the expense of the owner of the measuring device.

(7) It shall be the responsibility of the user to insure that all measuring devices are accurate and that the measurements are provided to the

Monitoring Committee at the time and in the manner required by the Monitoring Committee.

(8) A producer's flow deposited into another facility, such as a transportation canal, shall be measured into such facility by the operator thereof and the measurement reported to the Monitoring Committee at the time and in the manner required by such Monitoring Committee.

(9) The Monitoring Committee or its designee will maintain official records of recharge and recovery activities, which records shall be open and available to the public. The Monitoring Committee will have the right to verify the accuracy of reported information by inspection, observation or access to user records (i.e., P.G.&E. bills). The Monitoring Committee will publish or cause to be published annual reports of operations.

(10) Losses shall be assessed as follows:

(a) Surface recharge losses shall be fixed and assessed at a rate of 6% of water diverted for direct recharge.

(b) To account for all other actual or potential losses (including migration losses), a rate of 4% of water placed in a bank account (including District accounts when designated for potential sale) shall be deducted to the extent that Buena Vista has been compensated within three (3) years following the end of the calendar year in which the water was designated as banked at the SWP Delta Water Rate charged by DWR at the time of payment; provided further, however, that the water

purchased and subtracted from a groundwater bank account pursuant to this provision shall only be used for overdraft correction within the district purchasing the water.

(c) An additional 5% loss shall be assessed against any water diverted to the Project Site for banking by, for, or on behalf of any out-of-County person, entity or organization and/or against any banked water sold or transferred to any out-of-County person, entity or organization (except current SWP Agricultural Contractors).

(d) All losses provided for herein represent amounts of water that are non-bankable and non-recoverable by Buena Vista.

(11) Recovery of banked water shall be from the Project Site and recovery facilities shall be located therein. Recovery from outside the Project Site may be allowed with the consent of the District or entity having jurisdiction over the area from which the recovery will occur and upon review by the Monitoring Committee.

(12) Recovery of banked water may not be allowed if not otherwise mitigated if it will result in significant adverse impacts to surrounding overlying users. "Adverse impacts" will be evaluated using data applicable in zones including the area which may be affected by the Project of approximately five miles in width from the boundaries of the Project as designated by the Monitoring Committee. In determining "adverse impacts," as provided at this paragraph and elsewhere in this MOU, consideration will be given to the benefits accrued over time during operation of the Project to landowners surrounding the Project Site including higher groundwater levels as a result of operation of the Project. In determining non-Project conditions vs. Project

conditions, credit toward mitigation of any otherwise adverse impacts shall be recognized to the extent of the 4% loss and 5% losses recognized under paragraphs 2.b.(10)(b) and (c), for the mitigation credit recognized under paragraph 2.b.(4), if any, and to the extent of recharge on the Project Site for overdraft correction.

(13) To the extent that interference, other than insignificant interference, with the pumping lift of any existing active well as compared to non-Project conditions, is attributable to pumping of any wells on the Project Site, Buena Vista will either stop pumping as necessary to mitigate the interference or compensate the owner for such interference, or any combination thereof. The Monitoring Committee will establish the criteria necessary to determine if well interference, other than insignificant interference, is attributable to pumping of Project wells by conducting pumping tests of Project wells following the installation of monitoring wells (if not already completed) and considering hydrogeologic information.

(14) The Kern Fan Element Groundwater Model, with input from Buena Vista and the Adjoining Entities, and utilizing data from a comprehensive groundwater monitoring program, may be used by the Monitoring Committee as appropriate to estimate groundwater impacts of the Project.

(15) The Project shall be operated with a positive balance, i.e., there shall be no "borrowing" of water for recovery from the basin.

3. Project Monitoring. Adjoining Entities agree to participate in a comprehensive monitoring program and as members of a Monitoring Committee, as hereinafter more particularly described, in order to reasonably determine groundwater



level and water quality information under Project and non-Project conditions. The monitoring program will more particularly require the following:

a. Monitoring Committee: Buena Vista and the Adjoining Entities shall form a Monitoring Committee for the Project upon terms and conditions acceptable to the participants. The Monitoring Committee shall:

- (1) Engage the services of a suitable independent professional groundwater specialist who shall, at the direction of the Committee, provide assistance in the performance of the tasks identified below;
- (2) Meet and confer ~~monthly or at other intervals deemed to be~~ appropriate in furtherance of the monitoring program;
- (3) Establish a groundwater evaluation methodology or methodologies;
- (4) Prepare a monitoring plan and two associated maps, "Well Location, Water Quality Network," and "Well Location, Water Level Network," which plan and maps depict the location and types of wells anticipated to be used in the initial phase of groundwater monitoring (said plan and maps are expected to be modified from time to time as the monitoring program is developed and operated);
- (5) Specify such additional monitoring wells and ancillary equipment as are deemed to be necessary or desirable for the purposes hereof;
- (6) Prepare annual water balance studies and other interpretive studies, which will designate all sources of water and the use thereof within the study area;

(7) Develop criteria for determining whether excessive mounding or withdrawal is occurring or is likely to occur in an area of interest;

(8) Annually or as otherwise needed determine the impacts of the Project on each of the Adjoining Entities by evaluating with and without Project conditions; and

(9) Develop procedures, review data, and recommend Project operational criteria for the purpose of identifying, verifying, avoiding, eliminating or mitigating, to the extent practicable, the creation of significant imbalances or significant adverse impacts.

b. Collection and Sharing of Data. The Adjoining Entities will make available to the Monitoring Committee copies of all relevant groundwater level, groundwater quality, and other monitoring data currently collected and prepared by each. Buena Vista shall annually report, by areas of interest, water deliveries for banking and other purposes, groundwater withdrawals from bank accounts, transfers and other changes in account balances.

c. Monitoring Costs.

(1) The cost of constructing any necessary monitoring wells and ancillary equipment within Buena Vista shall be borne by Buena Vista. The cost of any new or additional monitoring wells and ancillary equipment outside of the boundaries of Buena Vista shall be borne as may be determined by separate agreement of Buena Vista and Adjoining Entities.

(2) Each of the parties shall be responsible for the personnel costs of its representative on the Monitoring Committee. In addition, the Adjoining Entities shall be responsible for all costs of monitoring operations and facilities within their respective boundaries and Buena Vista shall be responsible for all costs of monitoring operations and facilities within the Project Site.

(3) All other groundwater monitoring costs, including employment of the professional groundwater specialist, collection, evaluation and analyses of data as adopted by the Monitoring Committee, shall be allocated among and borne by the parties as they shall agree among themselves. Cost sharing among Adjoining Entities shall be as agreed by them. Any additional monitoring costs shall be determined and allocated by separate agreement of those parties requesting such additional monitoring.

4. Modification of Project Operations. The Monitoring Committee may make recommendations to Buena Vista, including without limitation recommendations for modifications in Project operations based upon evaluation(s) of data which indicate that excessive mounding or withdrawal is occurring or is likely to occur in an area of interest. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner.

5. Dispute Resolution.

a. Submission to Monitoring Committee. All disputes regarding the operation of the Project or the application of this MOU, or any provision hereof, shall first be submitted to the Monitoring Committee for review and analysis. The Monitoring

Committee shall meet and review all relevant data and facts regarding the dispute and, if possible, recommend a fair and equitable resolution of the dispute. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner. In the event that (1) the Monitoring Committee fails to act as herein provided, (2) any party disputes the Monitoring Committee's recommended resolution or (3) any party fails to implement the Monitoring Committee's recommended resolution within the time allowed, any party to this MOU may seek any legal or equitable remedy available as hereinafter provided.

b. Arbitration. If all of the parties agree that a factual dispute exists regarding any recommendation of the Monitoring Committee made pursuant hereto, or implementation thereof, such dispute shall, be submitted to binding arbitration before a single neutral arbitrator appointed by unanimous consent and, in the absence of such consent, appointed by the presiding judge of the Kern County Superior Court. The neutral arbitrator shall be a registered civil engineer or a registered geologist or other person acceptable to the Parties, preferably with a background in groundwater hydrology. The arbitration shall be called and conducted in accordance with such rules as the contestants shall agree upon, and, in the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure section 1282, et seq. Any other dispute may be pursued through a court of competent jurisdiction as otherwise provided by law.

c. Burden of Proof. In the event of arbitration or litigation under this MOU, all parties shall enjoy the benefit of such presumptions as are provided by law

but, in the absence thereof, neither party shall bear the burden of proof on any contested legal or factual issue.

d. Landowner Remedies. Nothing in this MOU shall prevent any landowner within the boundaries of any party from pursuing any remedy at law or in equity in the event such landowner is damaged as a result of projects within the Kern Fan Area.

6. Term. The Effective Date of this MOU shall be January 1, 2003 regardless of the date of actual execution. This MOU shall continue in force and effect from and after the Effective Date until terminated by (1) operation of law, (2) unanimous consent of the parties, or (3) abandonment of the Project and a determination by the Monitoring Committee that all adverse impacts have been fully eliminated or mitigated as provided in this MOU.

7. Complete Agreement/Incorporation Into Banking Agreements. This MOU constitutes the whole and complete agreement of the parties regarding Project operation, maintenance and monitoring. Buena Vista shall incorporate this MOU by reference into any further agreement it enters into respecting banking of water in or withdrawal of water from the Project Site.

8. Future Projects. With respect to any future project within the Kern Fan Area, the Parties hereto shall use good faith efforts to negotiate an agreement substantially similar in substance to this MOU.

9. Notice Clause. All notices required by this MOU shall be sent via first class United States mail to the following and shall be deemed delivered three days after deposited in the mail:

Buena Vista: Buena Vista Water Storage District (Martin Milobar)  
P. O. Box 756  
Buttonwillow, CA 93206

Adjoining Entities: Kern County Water Agency (Tom Clark)  
P. O. Box 58  
Bakersfield, CA 93301-0058

Kern Delta Water District (Mark Mulkay)  
501 Taft Highway  
Bakersfield, CA 93307-6247

Semitropic Water Storage District (Wil Boschman)  
P. O. Box Z  
Wasco, CA 93280-0877

Henry Miller Water District (Joe Lutje)  
P. O. Box 9759  
Bakersfield, CA 93389-9759

Kern Water Bank Authority (Bill Phillimore)  
P. O. Box 80607  
Bakersfield, CA 93380-0607

Rosedale-Rio Bravo Water Storage District (Hal Crossley)  
P. O. Box 867  
Bakersfield, CA 93302-0867

West Kern Water District (Jerry Pearson)  
P.O. Box ~~MM~~ 1105  
Taft, CA 93268-2735 1105

Notice of changes in the representative or address of a party shall be given in the same manner.

10. California Law Clause. All provisions of this MOU and all rights and obligations of the parties hereto shall be interpreted and construed according to the laws of the State of California.

11. Amendments. This MOU may be amended by written instrument executed by all of the parties. In addition, recognizing that the parties may not now be able to contemplate all the implications of the Project, the parties agree that on the tenth anniversary of implementation of the Project, if facts and conditions not envisioned at the time of entering into this MOU are present, the parties will negotiate in good faith amendments to this MOU. If the parties cannot agree on whether conditions have changed necessitating an amendment and/or upon appropriate amendments to the MOU, such limited issues shall be submitted to an arbitrator or court, as the case may be, as provided above.

12. Successors and Assigns. This MOU shall bind and inure to the benefit of the successors and assigns of the parties.

13. Severability. The rights and privileges set forth in this MOU are severable and the failure or invalidity of any particular provision of this MOU shall not invalidate the other provisions of this MOU; rather all other provisions of this MOU shall continue and remain in full force and effect notwithstanding such partial failure or invalidity.

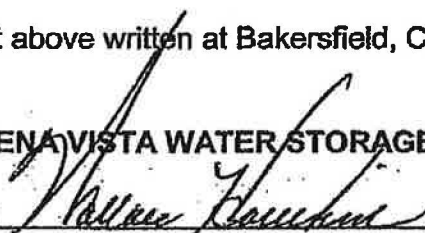
14. Force Majeure. All obligations of the parties shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent

jurisdiction, or other events or causes beyond the control of the parties. In no event shall any liability accrue against a party, or its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this paragraph.

15. Counterparts. This MOU, and any amendment or supplement thereto, may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. In proving this MOU or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

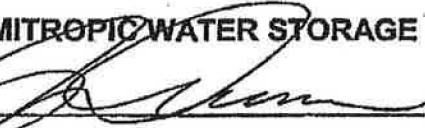
IN WITNESS WHEREOF the parties have executed this MOU the day and year first above written at Bakersfield, California.

BUENA VISTA WATER STORAGE DISTRICT

By: 

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

SEMITROPIC WATER STORAGE DISTRICT

By: 

By: Gen. Mgr.

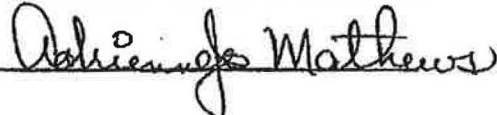


**HENRY MILLER WATER DISTRICT**

By: 

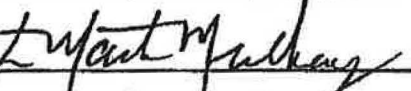
By: Joe Lutje

**KERN COUNTY WATER AGENCY**

By: 

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

**KERN DELTA WATER DISTRICT**

By: 


By: L. Mark Mulkey

**KERN WATER BANK AUTHORITY**

By: 

By: William Phillimore

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT**

BY: 

BY: Hal Crossley

**WEST KERN WATER DISTRICT**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**REQUIRED ATTACHMENTS:**

**EXHIBIT A: MAP OF DISTRICT**

**EXHIBIT B: NARRATIVE DESCRIPTION OF PROJECT FACILITIES**

**EXHIBIT C: MAP OF KERN FAN AREA**

ending MCLupat

**HENRY MILLER WATER DISTRICT**

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

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

**KERN COUNTY WATER AGENCY**

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

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

**KERN WATER BANK AUTHORITY**

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

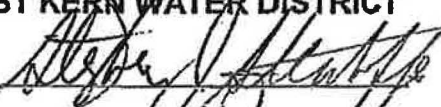
By: \_\_\_\_\_

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT**

BY: \_\_\_\_\_

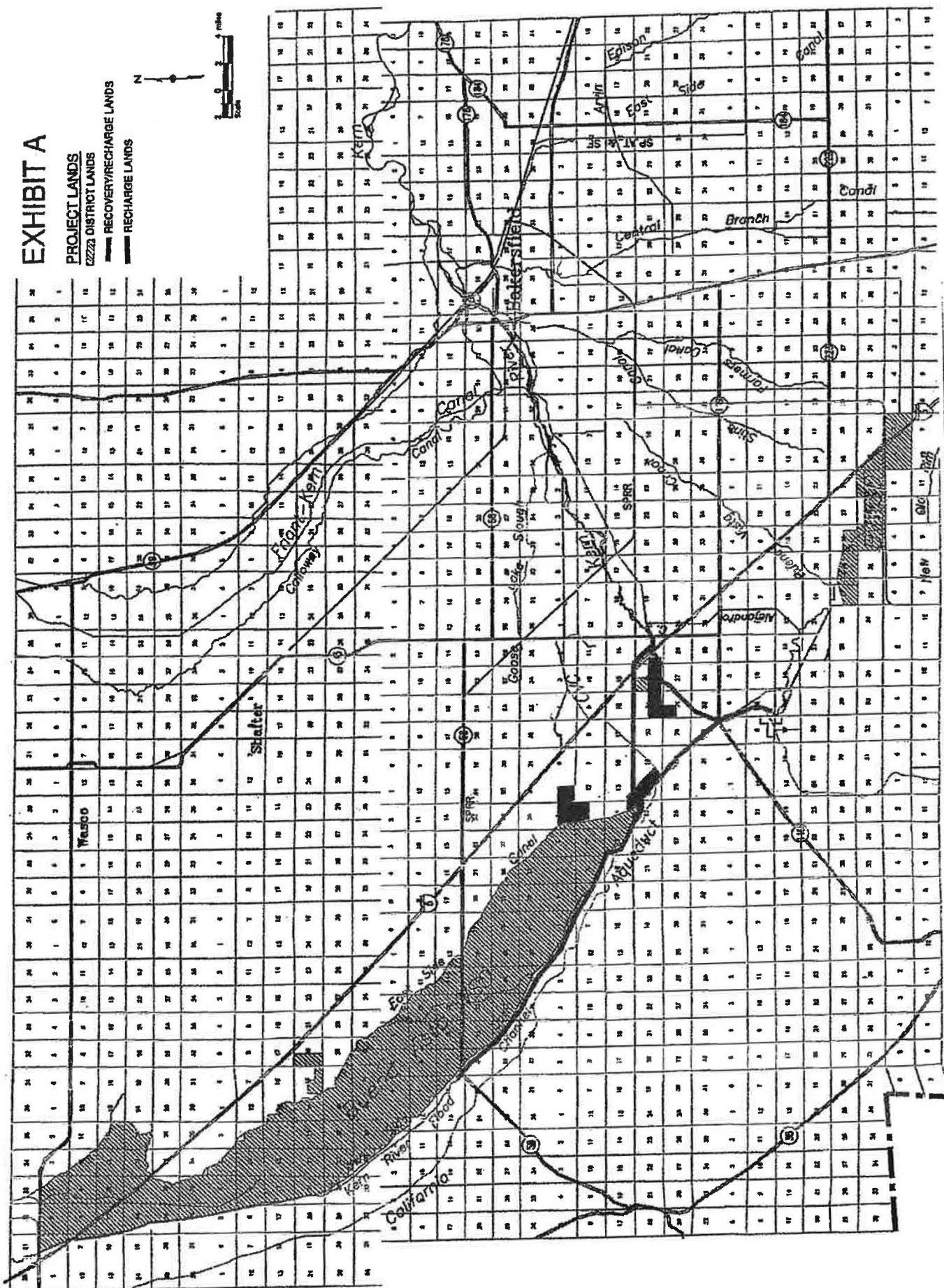
BY: \_\_\_\_\_

**WEST KERN WATER DISTRICT**

BY:  \_\_\_\_\_

BY:  \_\_\_\_\_

**PROJECT LANDS**  
**DISTRICT LANDS**  
**RECOVERY/RECHARGE LANDS**  
**RECHARGE LANDS**



**PROJECT DESCRIPTION****Purposes**

The primary water management objective of Buena Vista Water Storage District (Buena Vista) is to enhance water supplies for its landowners. Under the project, surface water will be stored in aquifers during times of surplus and recovered when needed either through district or landowner wells. Through its ongoing conjunctive use program, the District has stored, and will continue to store more water that can be beneficially used by its landowners. The new project involves the continuation and expansion of the conjunctive use program and the sale of a portion of its stored water that is surplus to its long-term needs.

**Sources of Water**

Kern River water, being Buena Vista WSD's primary supply water right, as well as other sources will be recharged. Such sources include: the Kern River, Friant-Kern, SWP, CVP, flood water and other sources that may be available from time to time.

Buena Vista has assessed its water needs for irrigation, its available water sources, and the amount of direct and in-lieu recharge that can occur effectively (i.e. be recovered and still be consistent with this MOU). It has concluded that at least 30,000 acre feet, as a long term average, is effective recharge that is surplus to its needs and can be recovered either directly, or through exchange of Buena Vista's SWP entitlement. Therefore, Buena Vista plans to sell a portion of its surplus water inside and/or outside the county.

**Facilities**

Buena Vista has historically recharged water on Project Lands as shown on Exhibit A. Recharge has also occurred through the delivery of surface water to landowners who would otherwise pump groundwater on "District Lands" and "Recovery/Recharge Lands" outside the District's boundaries. These activities will continue and may be expanded.

Of the approximately 50,000 acres that presently constitute Buena Vista "District Lands", all may be used for in-lieu recharge and some areas are suitable for direct recharge. In addition, the "Recharge Lands" and "Recovery/Recharge Lands" identified on Exhibit A may also be used for in-lieu and direct recharge.

It is proposed that water would be conveyed to and from project facilities using available capacity in any of the canals and conveyance facilities that may serve the Project including: the Cross Valley Canal, the River Canal, the Kern River, the Friant Kern Canal, the California Aqueduct, the Alejandro Canal, and the Main Canal/KWB Canal. Additional conveyance facilities may be constructed as future projects are developed.

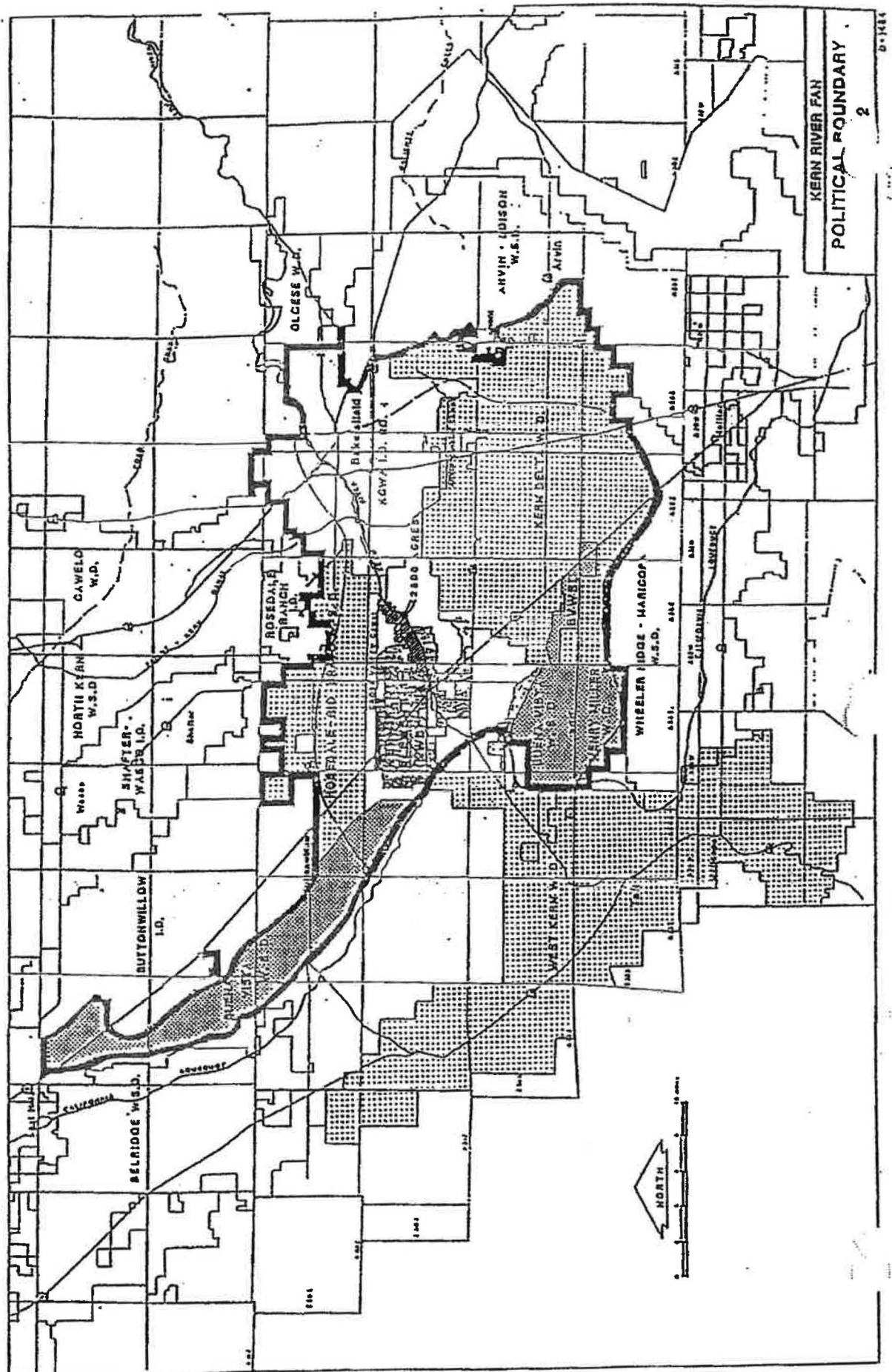
Buena Vista may construct additional recharge ponds, water conveyance facilities, and water wells. Currently the District has four District owned wells within the Buttonwillow service area. According to a 2000 survey, there are approximately 200 landowner wells. Another 20 District owned wells may be added within the "District Lands" and "Recovery/Recharge Lands" as shown on Exhibit A before the project is complete to provide adequate recovery capacity and the necessary operational flexibility to avoid or minimize adverse impacts. District/Landowner programs may include the use of landowner wells by District-wide reduction in surface supply allocations or by individual volunteer well lease programs. Once build out of the recovery facilities is complete, the recovery capacity will be maintained by constructing new wells to replace the capacity of older wells as they fail. New District owned wells shall be placed no

closer than one-third mile from any functioning wells outside the project boundaries. Project wells shall be located and operated so as to prevent significant non-mitigable adverse impacts to neighboring landowners.

#### **Operation**

The project shall be managed by the Buena Vista Water Storage District. Day-to-day operation of portions of the project may be contracted to other parties. Operation of the project shall be coordinated with adjoining projects.

Buena Vista has historically managed its groundwater and surface supplies to protect water users within the District and assure an affordable water supply of sufficient quality and quantity to meet future needs. This Project will not alter that mission. The District will maintain a groundwater storage account considered adequate to ensure that the District will have sufficient water in storage to meet its continuing in-district needs.



KERN RIVER FAN  
POLITICAL BOUNDARY  
2

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**FIRST AMENDED MEMORANDUM OF UNDERSTANDING  
REGARDING OPERATION AND MONITORING OF THE  
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT  
GROUNDWATER BANKING PROGRAM**

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**FIRST AMENDED  
MEMORANDUM OF UNDERSTANDING  
REGARDING OPERATION AND MONITORING  
OF THE  
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT  
GROUNDWATER BANKING PROGRAM**

This Memorandum of Understanding is entered into the Effective Date hereof by and among **ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT**, hereinafter referred to as "Rosedale", and **SEMITROPIC WATER STORAGE DISTRICT, BUENA VISTA WATER STORAGE DISTRICT, HENRY MILLER WATER DISTRICT, KERN COUNTY WATER AGENCY, KERN WATER BANK AUTHORITY, IMPROVEMENT DISTRICT NO. 4 OF THE KERN COUNTY WATER AGENCY**, and **WEST KERN WATER DISTRICT**, collectively referred to as "Adjoining Entities."

**R E C I T A L S**

**WHEREAS**, Rosedale expects that certain real property more particularly shown on the map attached hereto as Exhibit A and incorporated herein by this reference ("Project Site"), or portions thereof, will be used in connection with the Project; and

**WHEREAS**, Rosedale intends to develop and improve the Project Site as necessary to permit the importation, percolation and storage of water in underground aquifers for later recovery, transportation and use for the benefit of Rosedale, all as more fully described in Exhibit B attached hereto and incorporated herein by this reference ("Project"); and

**WHEREAS**, Adjoining Entities encompass lands and/or operate existing projects lying adjacent to the Project Site as shown on said Exhibit A; and

**WHEREAS**, in recent years, water banking, recovery and transfer programs in Kern County have become increasingly numerous and complex; and

**WHEREAS**, it is appropriate and desirable to mitigate or eliminate any short-term and long-term significant adverse impacts of new programs upon potentially affected projects and landowners within the boundaries of Adjoining Entities; and

**WHEREAS**, Adjoining Entities and Rosedale desire that the design, operation and monitoring of the Project be conducted and coordinated in a manner to insure that the beneficial effects of the Project to Rosedale are maximized but that the Project does not result in significant adverse impacts to water levels, water quality or land subsidence within the boundaries of Adjoining Entities, or otherwise interfere with the existing and ongoing programs of Adjoining Entities; and

**WHEREAS**, on October 26, 1995, the Kern Water Bank Authority and its Member Entities, as the "Project Participants," and Buena Vista Water Storage District, Rosedale-Rio Bravo Water Storage District, Kern Delta Water District, Henry Miller Water District and West Kern Water District, as the "Adjoining Entities," entered into a Memorandum of Understanding, similar to this Memorandum of Understanding, which provided among other things at Paragraph 8 that for "any future project within the Kern Fan Area, the Parties hereto shall use good faith efforts to negotiate an agreement substantially similar in substance to this MOU," and by entering into this MOU the Adjoining Entities find that this MOU satisfies such requirement for the Project; and

**WHEREAS**, Rosedale intends to operate its Project such that the same does not cause or contribute to overdraft of the groundwater basin; and

**WHEREAS**, in connection with its environmental review for the Project, Rosedale commissioned a hydrologic balance study for a period of years, which study shows that the District is not currently operating in a state of overdraft, and, further, Rosedale has projected said hydrologic balance study into the future, assuming completion of the Project, and said projection demonstrates that the District is not expected to operate in state of overdraft following implementation of the Project, which studies have not been independently verified by the Adjoining Entities; and

**WHEREAS**, in the hydrologic balance studies conducted by Rosedale in connection with the Project, the annual safe yield from the groundwater basin is assumed to be .3 acre-feet per acre times the gross developed acres in the District and no assumption is included with respect to groundwater inflow or outflow; and

**WHEREAS**, this MOU affects the Project and other similar banking programs operated for the benefit of third parties. Conversely, this MOU does not apply to or permit any project involving the sale by Rosedale of water banked in the name of, and within the boundaries of, Rosedale to third parties for a use outside the boundaries of Rosedale.

**NOW, THEREFORE, BE IT RESOLVED** that, based upon the mutual covenants contained herein, the parties hereto agree as follows:

1. Project Design and Construction. Rosedale has completed a preliminary Project Description of the Project described in Exhibit B hereto representing the contemplated facilities for the Project. Said preliminary description has been reviewed by the parties hereto. The foregoing shall not be interpreted to imply consent to any aspect of any future project not described in existing approved environmental documentation. Rosedale will construct the Project consistent with such preliminary description. Any major modifications of the facilities and/or significant changes from that described in Exhibit B and in the environmental documentation for the Project will be subject to additional environmental review pursuant to CEQA and will be subject to review of the Monitoring Committee prior to implementation.

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2. Project Operation. The Project shall be operated to achieve the maximum water storage and withdrawal benefits for Rosedale consistent with avoiding, mitigating or eliminating to the greatest extent practicable, significant adverse impacts resulting from the Project. To that end, the Project shall be operated in accordance with the following Project Objectives and Minimum Operating Criteria:

a. Project Objectives. Consistent with the Project description, Rosedale will make a good faith effort to meet the following objectives, which may or may not be met:

(1) The parties should operate their projects in such manner as to maintain and, when possible, enhance the quality of groundwater within the Project Site and the Kern Fan Area as shown in Exhibit C.

(2) If supplies of acceptable recharge water exceed recharge capacity, all other things being equal, recharge priority should be given to the purest or best quality water.

(3) Each project within the Kern Fan Area should be operated with the objective that the average concentration of total dissolved salts in the recovered water will exceed the average concentration of total dissolved salts in the recharged water, at a minimum, by a percentage equal to or greater than the percentage of surface recharge losses. The average shall be calculated from the start of each project.

(4) To maintain or improve groundwater quality, recovery operations should extract poorer quality groundwater where practicable. Blending may be used to increase recovery of lesser quality groundwater unless doing so will exacerbate problems by generating unfavorable movement of lesser quality groundwater. It is recognized that the extent to which blending can help to resolve groundwater quality problems is limited by regulatory agency rules regarding discharges into conveyance systems used for municipal supplies, which may be changed from time to time.

(5) All groundwater pumpers should attempt to control the migration of poor quality water. Extensive monitoring will be used to identify the migration of poor quality water and give advance notice of developing problems. Problem areas may be dealt with by actions including, but not limited to:

- (a) limiting or terminating extractions that tend to draw lesser quality water toward or into the usable water areas;
- (b) increasing extractions in areas that might generate a beneficial, reverse gradient;
- (c) increasing recharge within the usable water area to promote favorable groundwater gradients.

(6) It is intended that all recovery of recharged water be subject to the so-called “golden rule.” In the context of a banking project, the “golden rule” means that, unless acceptable mitigation is provided, the banker may not operate so as to create conditions that are worse than would have prevailed absent the project giving due recognition to the benefits that may result from the project, all as more fully described at paragraph 2(b)12 below.

(7) The Project shall be developed and operated so as to prevent, eliminate or mitigate significant adverse impacts. Thus, the Project shall incorporate mitigation measures as necessary. Mitigation measures to prevent significant adverse impacts from occurring include but are not limited to the following: (i) spread out recovery area; (ii) provide buffer areas between recovery wells and neighboring overlying users; (iii) limit the monthly, seasonal, and/or annual recovery rate; (iv) provide sufficient recovery wells to allow rotation of recovery wells or the use of alternate wells; (v) provide adequate well spacing; (vi) adjust pumping rates or terminate pumping to reduce impacts, if necessary; (vii) impose time restrictions between recharge and recovery to allow for downward percolation of water to the aquifer; and (viii) provide recharge of water that would otherwise not recharge the Kern Fan Basin. Mitigation measures that compensate for unavoidable adverse impacts include but are not limited to the following: (i) with the consent of the affected groundwater pumper, lower the pump bowls or deepen wells as necessary to restore groundwater extraction capability to such pumper; (ii) with the consent of the affected groundwater pumper, provide alternative water supplies to such pumper; and (iii) with the consent of the affected groundwater pumper, provide financial compensation to such pumper.

b. Minimum Operating Criteria.

(1) The Monitoring Committee shall be notified prior to the recharge of potentially unacceptable water, such as "produced water" from oilfield operations, reclaimed water, or the like. The Monitoring Committee shall review the proposed recharge and make recommendations respecting the same as it deems appropriate. Where approval by the Regional Water Quality Control Board is required, the issuance of such approval by said Board shall satisfy this requirement.

(2) Recharge may not occur in, on or near contaminated areas, nor may anyone spread in, on or near an adjoining area if the effect will be to mound water near enough to the contaminated area that the contaminants will be picked up and carried into the uncontaminated groundwater supply. When contaminated areas are identified within or adjacent to the Project, Rosedale shall also:

(a) participate with other groundwater pumpers to investigate the source of the contamination;

(b) work with appropriate authorities to ensure that the entity or individual, if any, responsible for the contamination meets its responsibilities to remove the contamination and thereby return the Project Site to its full recharge and storage capacity;

(c) operate the Project in cooperation with other groundwater pumpers to attempt to eliminate the migration of contaminated water toward or into usable water quality areas.

(3) Operators of projects within the Kern Fan Area will avoid operating such projects in a fashion so as to significantly diminish the natural, normal and unavoidable recharge of water



native to the Kern Fan Area as it existed in pre-project condition. If and to the extent this occurs as determined by the Monitoring Committee, the parties will cooperate to provide equivalent recharge capacity to offset such impact.

(4) The mitigation credit for fallowed Project land shall be .3 acre-feet per acre per year times the amount of fallowed land included in the Project Site in the year of calculation.

(5) The lands shown in Exhibit A may be utilized for any purpose provided, however, the use of said property by Rosedale for the Project shall not cause or contribute to overdraft of the groundwater basin.

(6) Each device proposed to measure recharge water to be subsequently recovered and/or recovery of such water will be initially evaluated and periodically reviewed by the Monitoring Committee. Each measuring device shall be properly installed, calibrated, rated, monitored and maintained by and at the expense of the owner of the measuring device.

(7) It shall be the responsibility of the user to insure that all measuring devices are accurate and that the measurements are provided to the Monitoring Committee at the time and in the manner required by the Monitoring Committee.

(8) A producer's flow deposited into another facility, such as a transportation canal, shall be measured into such facility by the operator thereof and the measurement reported to the Monitoring Committee at the time and in the manner required by such Monitoring Committee.

(9) The Monitoring Committee or its designee will maintain official records of recharge and recovery activities, which records shall be open and available to the public. The Monitoring Committee will have the right to verify the accuracy of reported information by

inspection, observation or access to user records (i.e., P.G.&E. bills). The Monitoring Committee will publish or cause to be published annual reports of operations.

(10) Losses shall be assessed as follows:

(a) Surface recharge losses shall be fixed and assessed at a rate of 3%, which includes a “safety factor” of 1% of water diverted for direct recharge. An additional surface recharge loss of 3% shall be fixed and assessed against water directly recharged which is subsequently extracted for out-of-district use. Such initial 3% loss may be modified in the future if studies acceptable to the parties demonstrate that such modification is appropriate, providing that a 1% “safety factor” shall be maintained and the total loss when directly recharged water is subsequently extracted for out-of-district use shall not exceed 6%. Notwithstanding anything to the contrary provided herein, water banked in Rosedale for or on behalf of third parties (i.e., creating a third party bank account) shall be subject to surface recharge losses calculated at 6% of water diverted for direct recharge.

(b) To account for all other actual or potential losses (including migration losses), a rate of 4% of water placed in a bank account shall be deducted to the extent that Rosedale has been compensated within three (3) years following the end of the calendar year in which the water was designated as banked at the SWP Delta Water Rate charged by DWR at the time of payment; provided further, however, that the water purchased and subtracted from a groundwater bank account pursuant to this provision shall only be used for overdraft correction within the District purchasing the water.

(c) An additional 5% loss shall be assessed against any water diverted to the Project Site for banking by, for, or on behalf of any out-of-County person, entity or organization (except current SWP Agricultural Contractors).

(d) All losses provided for herein represent amounts of water that are non-bankable and non-recoverable by Rosedale.

(11) Recovery of banked water shall be from the Project Site and recovery facilities shall be located therein. Recovery from outside the Project Site may be allowed with the consent of the District or entity having jurisdiction over the area from which the recovery will occur and upon review by the Monitoring Committee.

(12) Recovery of banked water may not be allowed if not otherwise mitigated if it will result in significant adverse impacts to surrounding overlying users. "Adverse impacts" will be evaluated using data applicable in zones including the area which may be affected by the Project of approximately five miles in width from the boundaries of the Project as designated by the Monitoring Committee. In determining "adverse impacts," as provided at this paragraph and elsewhere in this MOU, consideration will be given to the benefits accrued over time during operation of the Project to landowners surrounding the Project Site including higher groundwater levels as a result of operation of the Project. In determining non-Project conditions vs. Project conditions, credit toward mitigation of any otherwise adverse impacts shall be recognized to the extent of the 4% loss and 5% losses recognized under paragraphs 2.b.(10)(b) and (c), for the mitigation credit recognized under paragraph 2.b.(4), if any, and to the extent of recharge on the Project Site for overdraft correction.

(13) To the extent that interference, other than insignificant interference, with the pumping lift of any existing active well as compared to non-Project conditions, is attributable to pumping of any wells on the Project Site, Rosedale will either stop pumping as necessary to mitigate the interference or compensate the owner for such interference, or any combination thereof. The Monitoring Committee will establish the criteria necessary to determine if well interference, other than insignificant interference, is attributable to pumping of Project wells by conducting pumping tests of Project wells following the installation of monitoring wells (if not already completed) and considering hydrogeologic information.

(14) The Kern Fan Element Groundwater Model, with input from Rosedale and the Adjoining Entities, and utilizing data from a comprehensive groundwater monitoring program, may be used by the Monitoring Committee as appropriate to estimate groundwater impacts of the Project.

(15) The parties recognize that the Project shall be operated with a positive balance, i.e., there shall be no “borrowing” of water for recovery from the basin.

3. Project Monitoring. Adjoining Entities agree to participate in a comprehensive monitoring program and as members of a Monitoring Committee, as hereinafter more particularly described, in order to reasonably determine groundwater level and water quality information under Project and non-Project conditions. The monitoring program will more particularly require the following:

a. Monitoring Committee: Rosedale and the Adjoining Entities shall form a Monitoring Committee for the Project upon terms and conditions acceptable to the participants. The Monitoring Committee shall:

(1) Engage the services of a suitable independent professional groundwater specialist who shall, at the direction of the Committee, provide assistance in the performance of the tasks identified below;

(2) Meet and confer monthly or at other intervals deemed to be appropriate in furtherance of the monitoring program;

(3) Establish a groundwater evaluation methodology or methodologies;

(4) Prepare a monitoring plan and two associated maps, "Well Location, Water Quality Network," and "Well Location, Water Level Network," which plan and maps depict the location and types of wells anticipated to be used in the initial phase of groundwater monitoring (said plan and maps are expected to be modified from time to time as the monitoring program is developed and operated);

(5) Specify such additional monitoring wells and ancillary equipment as are deemed to be necessary or desirable for the purposes hereof;

(6) Prepare annual water balance studies and other interpretive studies, which will designate all sources of water and the use thereof within the study area;

(7) Develop criteria for determining whether excessive mounding or withdrawal is occurring or is likely to occur in an area of interest;

(8) Annually or as otherwise needed determine the impacts of the Project on each of the Adjoining Entities by evaluating with and without Project conditions; and

(9) Develop procedures, review data, and recommend Project operational criteria for the purpose of identifying, verifying, avoiding, eliminating or mitigating, to the extent practicable, the creation of significant imbalances or significant adverse impacts.

b. Collection and Sharing of Data. The Adjoining Entities will make available to the Monitoring Committee copies of all relevant groundwater level, groundwater quality, and other monitoring data currently collected and prepared by each. Rosedale shall annually report, by areas of interest, water deliveries for banking and other purposes, groundwater withdrawals from bank accounts, transfers and other changes in account balances.

c. Monitoring Costs.

(1) The cost of constructing monitoring wells and ancillary equipment within Rosedale shall be borne by Rosedale. The cost of any new or additional monitoring wells and ancillary equipment outside the boundaries of Rosedale shall be borne as may be determined by separate agreement of Rosedale and the Adjoining Entities.

(2) Each of the parties shall be responsible for the personnel costs of its representative on the Monitoring Committee. In addition, the Adjoining Entities shall be responsible for all costs of monitoring operations and facilities within their respective boundaries and Rosedale shall be responsible for all costs of monitoring operations and facilities within the Project Site.

(3) All other groundwater monitoring costs, including employment of the professional groundwater specialist, collection, evaluation and analyses of data as adopted by the Monitoring Committee, shall be allocated among and borne by the parties as they shall agree among themselves. Cost sharing among Adjoining Entities shall be as agreed by them. Any additional monitoring costs shall be determined and allocated by separate agreement of those parties requesting such additional monitoring.

4. Modification of Project Operations. The Monitoring Committee may make recommendations to Rosedale, including without limitation recommendations for modifications in Project operations based upon evaluation(s) of data which indicate that excessive mounding or withdrawal is occurring or is likely to occur in an area of interest. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner.

5. Dispute Resolution.

a. Submission to Monitoring Committee. All disputes regarding the operation of the Project or the application of this MOU, or any provision hereof, shall first be submitted to the Monitoring Committee for review and analysis. The Monitoring Committee shall meet and review all relevant data and facts regarding the dispute and, if possible, recommend a fair and equitable resolution of the dispute. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner. In the event that (1) the Monitoring Committee fails to act as herein provided, (2) any party disputes the Monitoring Committee's recommended resolution or (3) any party fails to implement the Monitoring Committee's recommended resolution within the time allowed, any party to this MOU may seek any legal or equitable remedy available as hereinafter provided.

b. Arbitration. If all of the parties agree that a factual dispute exists regarding any recommendation of the Monitoring Committee made pursuant hereto, or implementation thereof, such dispute shall, be submitted to binding arbitration before a single neutral arbitrator appointed by unanimous consent and, in the absence of such consent, appointed by the presiding judge of the Kern County Superior Court. The neutral arbitrator shall be a registered civil engineer, registered geologist, or other person agreeable to the parties, preferably with a background in groundwater hydrology. The arbitration shall be called and conducted in accordance with such rules as the contestants shall agree upon, and, in the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure section 1282, et seq. Any other dispute may be pursued through a court of competent jurisdiction as otherwise provided by law.

c. Burden of Proof. In the event of arbitration or litigation under this MOU, all parties shall enjoy the benefit of such presumptions as are provided by law but, in the absence thereof, neither party shall bear the burden of proof on any contested legal or factual issue.

d. Landowner Remedies. Nothing in this MOU shall prevent any landowner within the boundaries of any party from pursuing any remedy at law or in equity in the event such landowner is damaged as a result of projects within the Kern Fan Area.

6. Term. The Effective Date of this MOU shall be January 1, 2003 regardless of the date of actual execution. This MOU shall continue in force and effect from and after the Effective Date until terminated by (1) operation of law, (2) unanimous consent of the parties, or (3) abandonment of the Project and a determination by the Monitoring Committee that all adverse impacts have been fully eliminated or mitigated as provided in this MOU.



7. Complete Agreement/Incorporation Into Banking Agreements. This MOU constitutes the whole and complete agreement of the parties regarding Project operation, maintenance and monitoring (amending and replacing the original MOU between the parties regarding Rosedale's Groundwater Banking Program). Rosedale shall incorporate this MOU by reference into any further agreement it enters into respecting banking of water in or withdrawal of water from the Project Site.

8. Future Projects. With respect to any future project within the Kern Fan Area, the Parties hereto shall use good faith efforts to negotiate an agreement substantially similar in substance to this MOU.

9. Notice Clause. All notices required by this MOU shall be sent via first class United States mail to the addresses shown on the signature page of this agreement and shall be deemed delivered three days after deposited in the mail. Notice of changes in the representative or address of a party shall be given in the same manner.

10. California Law Clause. All provisions of this MOU and all rights and obligations of the parties hereto shall be interpreted and construed according to the laws of the State of California.

11. Amendments. This MOU may be amended by written instrument executed by all of the parties. In addition, recognizing that the parties may not now be able to contemplate all the implications of the Project, the parties agree that on the tenth anniversary of implementation of the Project, if facts and conditions not envisioned at the time of entering into this MOU are present, the parties will negotiate in good faith amendments to this MOU. If the parties cannot

agree on whether conditions have changed necessitating an amendment and/or upon appropriate amendments to the MOU, such limited issues shall be submitted to an arbitrator or court, as the case may be, as provided above.

12. Successors and Assigns. This MOU shall bind and inure to the benefit of the successors and assigns of the parties.

13. Severability. The rights and privileges set forth in this MOU are severable and the failure or invalidity of any particular provision of this MOU shall not invalidate the other provisions of this MOU; rather all other provisions of this MOU shall continue and remain in full force and effect notwithstanding such partial failure or invalidity.

14. Force Majeure. All obligations of the parties shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the parties. In no event shall any liability accrue against a party, or its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this paragraph.

15. Counterparts. This MOU, and any amendment or supplement thereto, may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. In proving this MOU or any such amendment, supplement, document or

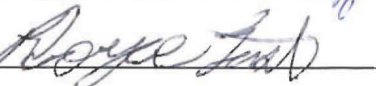
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**IN WITNESS WHEREOF** the parties have executed this MOU the day and year first above written at Bakersfield, California.

**ROSEDALE-RIO BRAVO  
WATER STORAGE DISTRICT**

P. O. Box 867  
Bakersfield, CA 93302-0867

By: 

By: 

**SEMITROPIC WATER  
STORAGE DISTRICT**

P. O. Box Z  
Wasco, CA 93280-0877

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

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

**HENRY MILLER WATER DISTRICT**

P. O. Box 9759  
Bakersfield, CA 93389-9759

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

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

**KERN COUNTY WATER AGENCY**

P. O. Box 58  
Bakersfield, CA 93302-0058

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

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

**WEST KERN WATER DISTRICT**

800 Kern Street  
P. O. Box 1105  
Taft, CA 93268-1105

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

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

**BUENA VISTA WATER  
STORAGE DISTRICT**

P. O. Box 756  
Buttonwillow, CA 93206

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

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

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Bakersfield, CA 93380-0607

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

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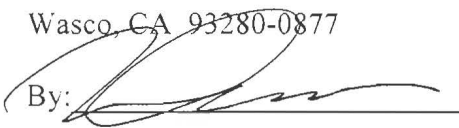
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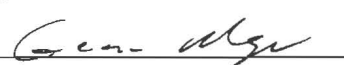
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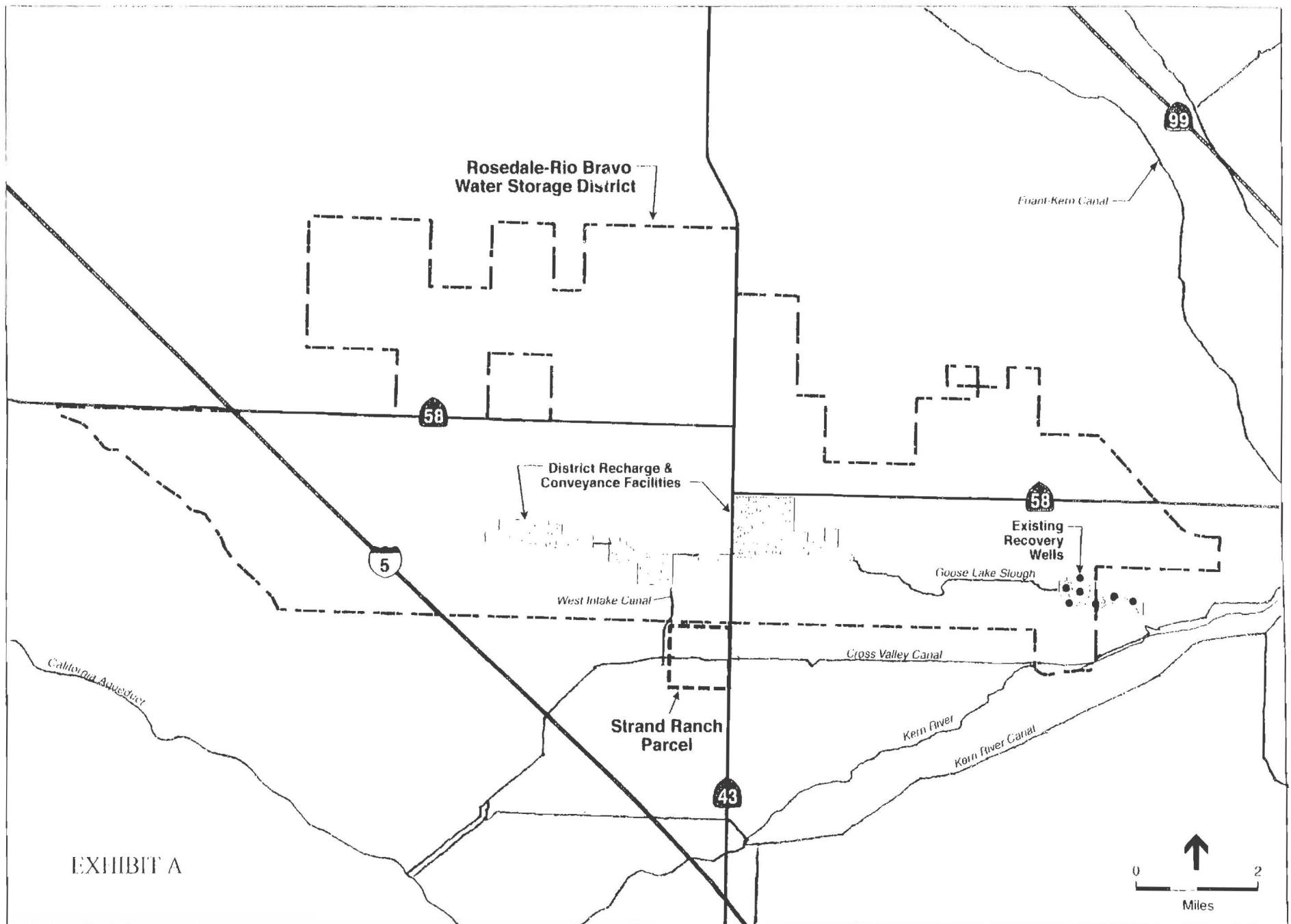


EXHIBIT A

## PROJECT DESCRIPTION

### Purposes

The primary water management objective of Rosedale-Rio Bravo Water Storage District is to enhance water supplies for its landowners. One method of attaining this goal is to sponsor third party banking programs. Under such programs surface water will be stored in aquifers during times of surplus and either recovered during times of shortage or remain in the ground to assist with overdraft correction.

### Sources of Water

Kern River water, being Rosedale-Rio Bravo WSD's primary supply water right, as well as other sources will be recharged. Such sources include: the Kern River, Friant-Kern, SWP, CVP, flood water and other sources that may be available from time to time.

### Facilities

To achieve its water management objectives through third party banking programs, the Rosedale-Rio Bravo Water Storage District may require the construction of recharge ponds, water conveyance facilities, and water wells in addition to its existing facilities.

Of the approximately 43,000 acres that presently constitute Rosedale-Rio Bravo Water Storage District all may be used for in-lieu and/or direct recharge. In addition, adjacent lands within non-districted areas may also be used for in-lieu and direct recharge. It is anticipated that in the wettest of years as much as 300,000 acre-feet can be recharged.

It is proposed that water would be conveyed to and from the property using available capacity in any of the canals and conveyance facilities that may serve the property including: the Cross Valley Canal, the Kern River, the Friant Kern Canal, the California Aqueduct, and the Goose Lake Slough. It is also proposed to build additional conveyance facilities as future projects are developed.

As many as 20 wells may be added within the District boundaries before the project is complete to provide adequate recovery capacity and the necessary operational flexibility to avoid or minimize adverse impacts. District/Landowner programs may include the use of landowner wells by District wide reduction in surface supply allocations or by individual volunteer well lease programs. Once build out of the recovery facilities is complete, the recovery capacity will be maintained by constructing new wells to replace the capacity of older wells as they fail. New District owned wells shall be placed no closer than 880 feet from property and/or District boundaries. Wells inside the District boundaries shall be located and operated so as to prevent significant non-mitigable adverse impacts to neighboring landowners.

### Operation

The project shall be managed by the Rosedale-Rio Bravo Water Storage District. Day-to-day operation of portions of the project may be contracted to other parties. Operation of the project shall be coordinated with adjoining projects. The total storage capacity intended to be utilized at any one time for banking project purposes is 500,000 AF and the total recovery capacity intended to be utilized for banking project purposes is 63.250 AF/year.

### Banking Projects

The project includes all third party banking programs whether pending or completed. These

programs include, without limitation, the following:

#### ROSEDALE CONJUNCTIVE USE PROGRAM PARTNERSHIP AGREEMENTS

Banking Partner	Type	Annual Recharge (af)	Maximum Return Obligation (afy)	Maximum Storage (af)	Banked Water Source
Arvin-Edison WSD (draft terms)	2:1 Banking	30,000	10,000	90,000	CVP
Kern-Tulare/Rag Gulch WD	2:1 Banking	20,000	7,500	50,000	varies
Castaic Lake Water Agency	Banking	20,000	20,000*	100,000	varies
Buena Vista WSD	Banking	80,000	8,250	200,000	Kern River
Irvine Ranch Water District	Banking	17,500	<u>17,500</u>	<u>50,000</u>	varies
<b>TOTAL</b>			<b>63,250</b>	<b>490,000</b>	

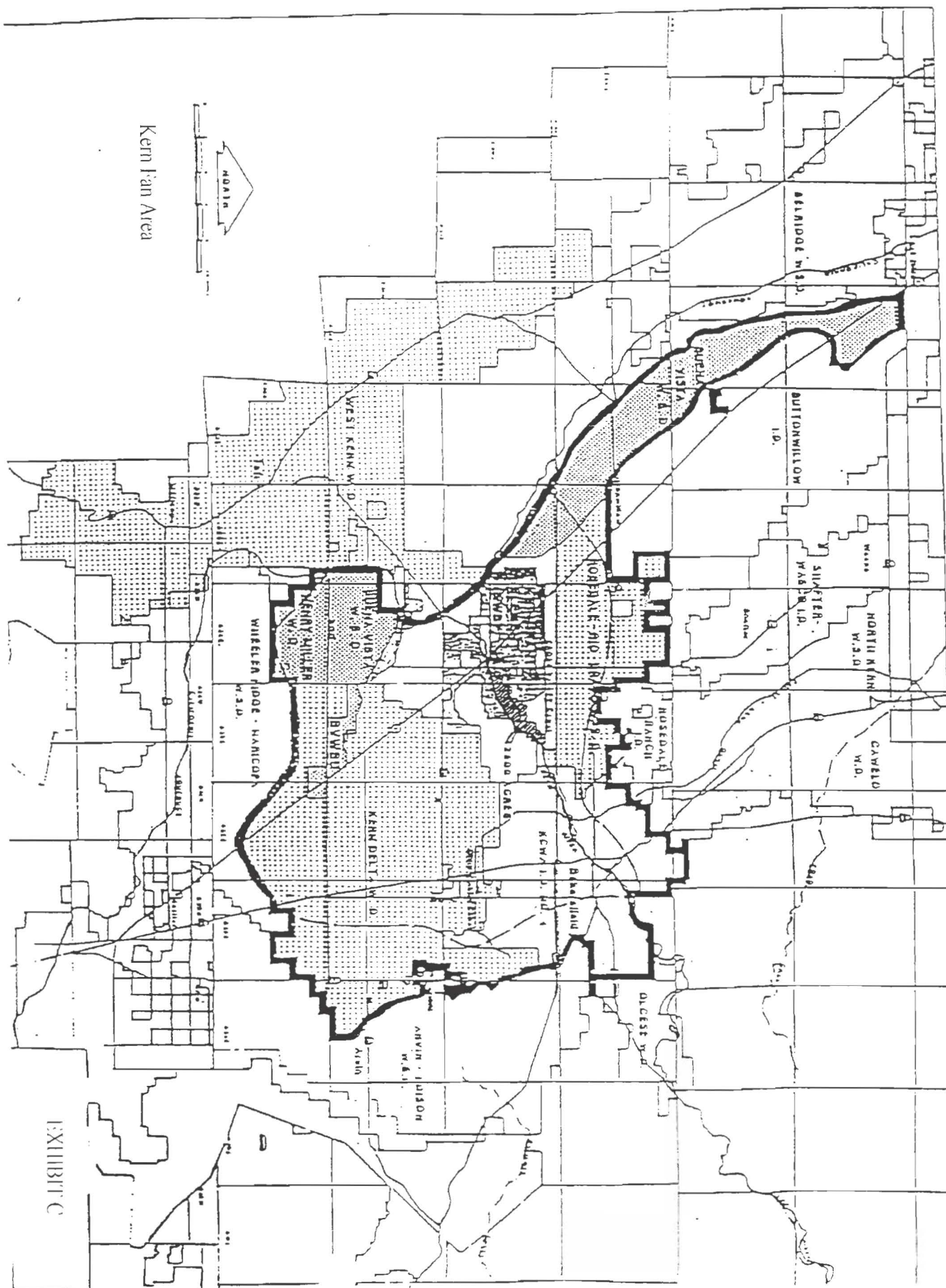
\*surplus capacity of existing wells

A detailed description of each program is found in the environmental documentation relating thereto which includes, without limitation, the following: (1) Master EIR for Groundwater Storage, Banking, Exchange, Extraction and Conjunctive Use Program, certified July 17, 2001; (2) Addendum No. 1 to Master EIR, adopted in 2003; (3) FEIR for the BVWSD/RRBWSD Water Banking and Recovery Program, certified October 11, 2002; (4) Negative Declaration for Kern Tulare Program; (5) Negative Declaration for Groundwater Banking - Allen Road Wellfield (AEWSD) Program; and (6) FEIR for the Strand Ranch Integrated Banking Project (IRWD), certified May 27, 2008.

#### Addenda

(1) Notwithstanding paragraph 2.b.(10)(a) of this agreement, the surface recharge losses for the Strand Ranch property shall be fixed and assessed at a rate of 6% whether the recharge is intended for in-district or out-of-district use; provided, however, such 6% loss may be modified in the future if studies acceptable to the parties demonstrate that such modification is appropriate; provided further, however, that a 1% safety factor shall be maintained and the total loss when directly recharged water is extracted for out-of-district use shall not exceed 6%.

(2) It is understood and agreed by and among all parties that issues involving project operations may be presented to and addressed by the Monitoring Committee whether or not such issues were discussed, reviewed and/or considered during the environmental evaluation of the project.



Kern River Area

EXHIBIT C