

10
5/23/13

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT FOR TRANSFER AND EXCHANGE OF WATER

This Agreement for Transfer and Exchange of Water ("Agreement") is made and effective as of May 30, 2013 by and between (i) the City of Fresno, a California municipal corporation ("City") and (ii) the San Luis Water District, a California water district ("SLWD") with reference to the following facts:

A. City has the right to receive Class 1 water from the Friant Division of the Central Valley Project ("CVP") under Contract No. 14-06-200-8901D ("CVP Contract Water") with the United States Bureau of Reclamation ("Reclamation").

B. Reclamation has forecast the City will have available up to 27,000 acre-feet of CVP Contract Water between March 1, 2013 and February 28, 2014 (the "2013 Water Year").

C. Water Year 2013 is considered a critical dry (drought) year. As a result, certain regional water users have access to insufficient supplies to meet their minimal water requirements.

D. Through this Agreement, the City and SLWD intend to coordinate their use of a portion of the CVP Contract Water to optimize the use and availability of regional water supplies during this drought year.

THEREFORE, the parties agree as follows:

1. Water Transfers and Exchanges. The City and SLWD shall coordinate their use of a portion of the CVP Contract Water and undertake all reasonable efforts necessary to complete the following transfers of water:

a. 5,000 AF of CVP Contract Water ("Transfer Quantity") shall be transferred by the City and made available as follows for use by the following entities (collectively, the "Transferees") during Water Year 2013:

- i. 2,000 AF to Madera Irrigation District; and
- ii. 700 AF to Orange Cove Irrigation District; and
- iii. 2,300 AF to Saucelito Irrigation District.

b. SLWD shall be responsible for any and all arrangements necessary to accomplish any exchanges contemplated by the Additional Agreements (defined below).

2. Payment.

a. SLWD shall make payment to City of \$1,625,000 (one million, two hundred thousand dollars; \$325 per AF times 5,000 AF) within 30 days of the date of Reclamation authorizes the transfer and delivery of CVP Contract Water to the Transferees.

b. The City shall make timely payment to Reclamation for the Transfer Quantity. The City shall be responsible for these costs as though the City accepted delivery of the Transfer Quantity at the Transferees' actual points of delivery.

c. SLWD shall be responsible for any and all costs associated with the delivery and use of any water subject to the Additional Agreements.

3. Transfer Instructions. To accomplish the water transfers provided in this Agreement, the City and SLWD shall arrange to complete the Notices of Transfer in a form substantially similar to Attachments A, B, and C attached hereto. As a condition precedent to the implementation of the Additional Agreements necessary for SLWD to implement the transfers provided in Section 1.a, SLWD shall deliver to the City the executed versions of Attachments A, B, and C signed by the Transferees. The City shall then promptly sign and deliver to Reclamation the fully executed versions of Attachments A, B and C. The City and SLWD shall provide any other approvals and consents as may be reasonably required to implement this Agreement

4. Additional Agreements. The City and SLWD acknowledge and agree that SLWD will enter into separate agreements with the Transferees, pursuant to which SLWD may receive additional financial consideration and water exchange rights ("Additional Agreements"). The City acknowledges and agrees that it has no right or claim to the SLWD's additional consideration that may be provided through the Additional Agreements.

5. Counterparts. This Agreement may be executed in counterparts by the parties. Facsimile signatures shall be binding.

6. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior agreements with respect to that subject matter, whether verbal or written, are hereby superseded in their entirety by this Agreement and are of no further force or effect. Amendments to this Agreement shall be effective only if in writing, and then only when signed by the authorized representatives of the respective parties.

7. Time of the Essence. Time is of the essence and the performance by the parties of this Agreement.

8. Specific Performance. The parties acknowledge that the water to be transferred and exchanged under this Agreement is unique, and that the failure of the City or SLWD to perform under this Agreement may not be readily compensable in monetary damages. Therefore, in addition to any other remedies available at law or in equity, in the event of a breach or threatened breach of this Agreement, the City and SLWD shall each be entitled to specific performance of this Agreement.

9. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, and that provision cannot be reformed to be

enforceable consistent with the overall intent of this Agreement, the entire Agreement shall be void and unenforceable.

10. Ambiguities. This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is hereby waived.

11. Notices. All notices under this Agreement shall be effective (i) when personally delivered, (ii) when sent by facsimile on a business day between the hours of 8 a.m. and 5 p.m. (with written confirmation of transmission), at the numbers set forth below, provided that a copy is mailed as indicated below, or (iii) three business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as follows:

To City: Martin A. Querin, PE, Assistant Director of Public Utilities
City of Fresno, Department of Public Utilities
2600 Fresno Street
Fresno, CA 93721
Facsimile No.: (559) 488-1024
Telephone No.: (559) 621-8600

To FID: Martin McIntyre, General Manager
San Luis Water District
1015 6th Street
Los Banos, CA 93635
Facsimile No.: (209)
Telephone No.: (209) 826-4043

or such other address or facsimile number as the parties may from time to time designate in writing. As a matter of convenience, however, communications between the City and SLWD shall, to the extent feasible, be conducted orally by telephone or in person, and/or through the parties' respective counsel, with such communications to be confirmed and made effective in writing as set forth above provided no such oral notice or communication shall be effective unless so confirmed in writing.

16. Further Action. The parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement.

17. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this Agreement.

18. Environmental Compliance. The obligations of the parties under this Agreement are expressly conditioned upon: (i) compliance with the California Environmental Quality Act

("CEQA") and all other applicable environmental laws with respect to the actions contemplated by this Agreement, and (ii) the receipt of all necessary governmental and third party consents and approvals for those actions. Each party shall promptly prepare all appropriate environmental documents, if any are required, for it to undertake the actions contemplated in this Agreement. The parties shall cooperate to diligently complete all environmental review required in order to implement this Agreement, and shall use reasonable efforts to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. Notwithstanding any other provision of this Agreement, no action shall be taken to effect the actions contemplated by this Agreement, and no other action shall be taken that commits any material resources of any party, until all required environmental review is completed and all parties have independently made all findings required by CEQA and other applicable environmental laws. If, upon completion of such environmental review, a party finds one or more significant, unmitigated environmental impacts resulting from the actions contemplated by this Agreement and cannot make a finding that the benefits of the proposed project outweigh the impact or impacts, or that the impacts can be mitigated to a level below significance, then this Agreement shall terminate without further obligation or liability of any party. Neither the execution of this Agreement, nor any preliminary steps taken to implement this Agreement, shall be taken into account in determining whether mitigating or avoiding any significant impact is feasible.

//[continued on next page]//

19. Attorneys' Fees. In the event of any action between the parties seeking enforcement or interpretation of any of the terms and conditions of this Agreement, the prevailing party in such action shall be awarded its reasonable costs and expenses, including, but not limited to, taxable costs and reasonable attorneys' fees.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

The parties have executed this Agreement on the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

SAN LUIS WATER DISTRICT
a California water district

By: 
Patrick N. Wiemiller
Director of Public Utilities

By: 
Martin McIntyre
General Manager

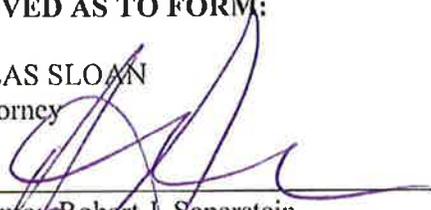
ATTEST:

YVONNE SPENCE, CMC
City Clerk, City of Fresno

By: 
Deputy

APPROVED AS TO FORM:

DOUGLAS SLOAN
City Attorney

By: 
Print Name: Robert J. Saperstein
Title: Special Counsel to the City Attorney
Date: May 30, 2013

NOTICE OF WATER TRANSFER 2013 WATER YEAR

THIS NOTICE OF WATER TRANSFER 2013 WATER YEAR ("Notice") is provided as of this 30th day of May, 2013, by the CITY OF FRESNO, hereinafter referred to as "City", and MADERA IRRIGATION DISTRICT, hereinafter referred to as "MID" with reference to the following facts:

A. Reclamation has forecast the City will have available up to 27,000 acre-feet of CVP Contract Water between March 1, 2013 and February 28, 2014 (the "Water Year 2013").

B. Water Year 2013 is considered a critical dry (drought) year. As a result, certain regional water users have access to insufficient supplies to meet their minimal water requirements.

THEREFORE, subject to Reclamation's approval, the Parties intend to effectuate the following transfer of CVP Contract Water:

1. To Madera Irrigation District:

- a. The City does hereby transfer to MID 2,000 AF of CVP Contract Water allocated to City by Reclamation, for use by Madera Irrigation District in the 2013 water year pursuant to the schedule attached hereto as Exhibit 1.
- b. The City shall pay all Reclamation rates and charges associated with delivery of the CVP Contract Water to be delivered to MID's requested point(s) of delivery.

2. MID shall ensure that the transferred CVP Contract Water is put to reasonable and beneficial use in accordance with State and Federal law, including Reclamation law.

IN WITNESS THEREOF, the parties, through their duly authorized representatives, have executed this Notice as of the day and year first above written.

CITY OF FRESNO
a California municipal corporation

MADERA IRRIGATION DISTRICT
a California irrigation district

By: 
Patrick N. Wiemiller
Director of Public Utilities

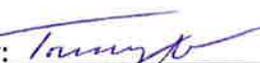
By:  6/3/13
Thomas Greer
General Manager

EXHIBIT 1

Delivery Schedule to MID

June	2,000 acre-feet
July	
August	
September	
October	
November	
December	
January	
February	

NOTICE OF WATER TRANSFER 2013 WATER YEAR

THIS NOTICE OF WATER TRANSFER 2013 WATER YEAR ("Notice") is provided as of May 30, 2013, by the CITY OF FRESNO, hereinafter referred to as "City", and ORANGE COVE IRRIGATION DISTRICT, hereinafter referred to as "OCID" with reference to the following facts:

A. Reclamation has forecast the City will have available up to 27,000 acre-feet of CVP Contract Water between March 1, 2013 and February 28, 2014 (the "Water Year 2013").

B. Water Year 2013 is considered a critical dry (drought) year. As a result, certain regional water users have access to insufficient supplies to meet their minimal water requirements.

THEREFORE, subject to Reclamation's approval, the Parties intend to effectuate the following transfer of CVP Contract Water:

1. To Orange Cove Irrigation District:
 - a. The City does hereby transfer to OCID 700 AF of CVP Contract Water allocated to City by Reclamation, for use by OCID in the 2013 water year pursuant to the schedule attached hereto as Exhibit 1.
 - b. The City shall pay all Reclamation rates and charges associated with delivery of the CVP Contract Water to be delivered to OCID's requested point(s) of delivery.
2. OCID shall ensure that the transferred CVP Contract Water is put to reasonable and beneficial use in accordance with State and Federal law, including Reclamation law.

IN WITNESS THEREOF, the parties, through their duly authorized representatives, have executed this Notice as of the day and year first above written.

CITY OF FRESNO
a California municipal corporation

By: 
Patrick N. Wiemiller
Director of Public Utilities

ORANGE COVE IRRIGATION DISTRICT
a California irrigation district

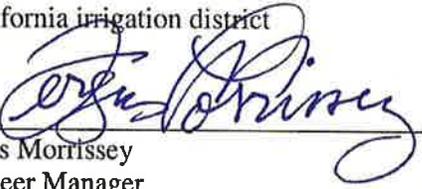
By: 
Fergus Morrissey
Engineer Manager

EXHIBIT 1

Delivery Schedule to OCID (acre-feet)

June	
July	700
August	
September	
October	
November	
December	
January	
February	

NOTICE OF WATER TRANSFER 2013 WATER YEAR

THIS NOTICE OF WATER TRANSFER 2013 WATER YEAR ("Notice") is provided as of May 30, 2013, by the CITY OF FRESNO, hereinafter referred to as "City", and SAUCELITO IRRIGATION DISTRICT, hereinafter referred to as "SID" with reference to the following facts:

A. Reclamation has forecast the City will have available up to 27,000 acre-feet of CVP Contract Water between March 1, 2013 and February 28, 2014 (the "Water Year 2013").

B. Water Year 2013 is considered a critical dry (drought) year. As a result, certain regional water users have access to insufficient supplies to meet their minimal water requirements.

THEREFORE, subject to Reclamation's approval, the Parties intend to effectuate the following transfer of CVP Contract Water:

1. To Saucelito Irrigation District:

- a. The City does hereby transfer to SID 2,300 AF of CVP Contract Water allocated to City by Reclamation, for use by SID in the 2013 water year pursuant to the schedule attached hereto as Exhibit 1.
- b. The City shall pay all Reclamation rates and charges associated with delivery of the CVP Contract Water to be delivered to SID's requested point(s) of delivery.

2. SID shall ensure that the transferred CVP Contract Water is put to reasonable and beneficial use in accordance with State and Federal law, including Reclamation law.

IN WITNESS THEREOF, the parties, through their duly authorized representatives, have executed this Notice as of the day and year first above written.

CITY OF FRESNO
a California municipal corporation

By: 
Patrick N. Wiemiller
Director of Public Utilities

SAUCELITO IRRIGATION DISTRICT
a California irrigation district

By: 
Sean Geivet
General Manager

EXHIBIT 1

Delivery Schedule to SID

June	1,000
July	1,000
August	300
September	
October	
November	
December	
January	
February	

