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5/23/2013

**AGREEMENT FOR TRANSFER AND EXCHANGE OF WATER
FOR WATER YEARS 2013 - 2015**

CITY OF FRESNO
City Clerk's Office (Original)

This Agreement for Transfer and Exchange of Water for Water Years 2013 – 2015 (“Agreement”) is made and effective as of June 18, 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. On or about September 13, 2006, a Stipulation of Settlement was entered in the litigation entitled Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., United States District Court, Eastern District of California, No. CIV. S-88-1658-LKK/GGH (“SJ River Settlement”).

C. In March 2009, the San Joaquin River Restoration Settlement Act (Public Law 111-11 (H.R. 146); “SJ River Restoration Act”) was enacted as required by and as a mechanism to implement certain portions of the SJ River Settlement.

D. Together, the SJ River Settlement and the SJ River Restoration Act provide for certain environmental restoration activities along the main stem of the San Joaquin River, referred to as the “San Joaquin River Restoration Program” or the “Restoration Program”. Pursuant to the Restoration Program, the United States Bureau of Reclamation (“Reclamation”) periodically releases a portion of the Friant Division CVP water supplies, including those associated with the City CVP Contract Water, to supplement San Joaquin River flow (“Restoration Flows”).

E. Also pursuant to the SJ River Settlement and the SJ River Restoration Act, a portion of the Restoration Flows are recaptured by Reclamation and made available to the Friant Division contractors, including the City, in the San Luis Reservoir (the “Recaptured Water”).

F. Recaptured Water is most easily accessible at the San Luis Reservoir. SLWD is geographically best located to access and obtain delivery of Recaptured Water from San Luis Reservoir.

G. The quantity of Recaptured Water available highly variable and based on annual rainfall, snow pack, anticipated runoff and the magnitude of the Restoration Flows and monthly operational adjustments. The City anticipates that variable amounts of Recaptured Water will be available through Water Years 2013 – 2015 (March 1, 2013 – February 28, 2016).

H. Through this Agreement, the City and SLWD intend to coordinate their use of a portion of the Recaptured Water for irrigation of permanent crops within SLWD service area and to optimize the use and availability of regional water supplies.

THEREFORE, the parties agree as follows:

1. Water Transfers and Exchanges. The City shall make available to SLWD the entire amount of Recaptured Water available to the City during the term of this Agreement, except for: a) up to 1,500 AF in Water Year 2013, and b) up to 1,000 AF in each of Water Years 2014 and 2015. The City and SLWD shall coordinate their use of the Recaptured Water to maximize its use and undertake all reasonable efforts necessary to effectuate the transfers of Recaptured Water from the City to SLWD as provided in this Agreement.

2. Notice of Available Recaptured Water.

a. For Water Year 2013, the City shall take all reasonably necessary steps to transfer to SLWD and SLWD shall take all reasonable steps to take delivery and make reasonable and beneficial use all Recaptured Water made available to City by Reclamation in the San Luis Reservoir, provided that City reserves up to 1,500 AF for other purposes. Reclamation's most recent forecast allocates to the City up to 5,052 AF of Recaptured Water in Water Year 2013 plus 130 AF from Water Year 2012 for a total of 5,182 AF available in the San Luis Reservoir.

b. On or before June 1 of Water Years 2014 and 2015, the City shall provide written notice to SLWD of the estimated quantity of Recaptured Water available for transfer to SLWD for the applicable Water Year. SLWD shall be obligated to pay for and accept delivery of the full amount of Recaptured Water which Reclamation makes available to City in San Luis Reservoir

3. Payment.

a. For Water Year 2013, SLWD shall make payment to City of \$1,067,780 (one million, sixty seven thousand, seven hundred eighty dollars; \$290 per AF times 3,682 AF) within 30 days of the date of Reclamation authorizes the transfer and delivery of the Recaptured Water available to SLWD for Water Year 2013.

b. For Water Years 2014 and 2015, SLWD shall make payment to City for fifty percent (50%) of the Recaptured Water made available to SLWD for that Water Year. The balance of the amount owed to the City for Water Years 2014 and 2015 shall be paid on or before February 28, 2015 and February 28, 2016.

c. The magnitude of each payment shall be calculated by multiplying the applicable price times the applicable AF transferred to SLWD. The applicable price shall be based on Reclamation's final determination of the percentage allocation of agricultural water made available to South of Delta CVP contractors for the applicable water year, with the associated price per AF as set forth in the following table:

South of Delta CVP Agricultural Contractor Allocation (Final Percentage Set by Reclamation)	Applicable Price per AF for Recaptured Water (\$/AF)
0	425
5	400
10	375
15	325
20	290
25	260
30	235
35	215
40	190
45	165
50	145
55 and above	130

d. The City shall make timely payment to Reclamation for any and all charges for the Recaptured Water to the point of that water becoming available to SLWD in San Luis Reservoir.

e. In addition to the payments provided in sections 3.a through 3.c, above, SLWD shall be responsible for any and all costs associated with the delivery and use of the Recaptured Water from San Luis Reservoir.

f. On or about April 15 of each year during the term of this Agreement, the City and SLWD shall reconcile the amounts paid and owed, based on the actual quantity of Recaptured Water transferred to SLWD each Water Year and the applicable price. Any amounts owed shall be due and payable within 30 days of each annual reconciliation.

4. Rescheduling. Upon request of SLWD and full payment having been made to the City by SLWD, the City shall request that Reclamation reschedule any Recaptured Water purchased by SLWD hereunder remaining in San Luis Reservoir at the end of the Water Year. SLWD shall be responsible for all Reclamation or other charges for rescheduling the Recaptured Water and shall bear any and all water losses that might occur.

5. Transfer Instructions. To accomplish the water transfers provided in this Agreement, for each Water Year the City and SLWD shall arrange to complete a Notice of Transfer in a form substantially similar to Attachment A. The transfer form for Water Year 2013 is provided as Attachment A.

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

7. 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.

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

9. 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.

10. 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.

11. 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.

12. 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.

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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.

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

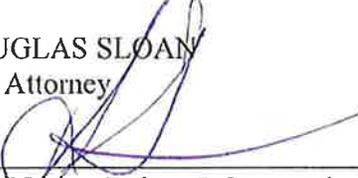
ATTEST:

YVONNE SPENCE, CMC
City Clerk, City of Fresno

By:  6/19/13
Deputy

APPROVED AS TO FORM:

DOUGLAS SLOAN
City Attorney

By: 
Print Name: Robert J. Saperstein
Title: Special Counsel to the City Attorney

ATTACHMENT A

NOTICE OF WATER TRANSFER 2013 WATER YEAR

THIS NOTICE OF WATER TRANSFER 2013 WATER YEAR ("Notice") is provided as of June 18, 2013, by the CITY OF FRESNO, hereinafter referred to as "City", and SAN LUIS WATER DISTRICT, hereinafter referred to as "SLWD" with reference to the following facts:

A. The United States Bureau of Reclamation "(Reclamation)" has most recently forecast the City will be allocated up to 5,052 AF Recaptured Water in Water Year 2013 plus 130 AF from Water Year 2012 for a total of 5,182 AF available in the San Luis Reservoir as a result of the implementation of the San Joaquin River restoration activities.

B. The City and SLWD intend to optimize the efficient use of available water resources.

THEREFORE, subject to Reclamation's approval, the Parties intend to effectuate the following transfer of Central Valley Project Recaptured Water:

1. To San Luis Water District:

- a. The City does hereby transfer to SLWD all of the Recaptured Water made available to the City by Reclamation, less up to 1,500 AF, for use by SLWD pursuant to the tentative schedule attached hereto as Exhibit 1.
- b. The City shall pay all Reclamation rates and charges associated with Recaptured Water reaching the San Luis Reservoir.
- c. SLWD shall be responsible for all rates and charges for storage, rescheduling and delivery of the Recaptured Water from San Luis Reservoir.

2. SLWD shall ensure that the transferred Recaptured 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

SAN LUIS WATER DISTRICT
a California irrigation district

By: 
Martin McIntyre
General Manager

EXHIBIT 1

Delivery Schedule to SLWD

June	0
July	1,000
August	1,600
September	71
October	100
November	311
December	0
January	300
February	300
Total	3,682