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SUPERIOR COURT

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10 *and Reclamation District 2086*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN JOAQUIN**
13 **STOCKTON BRANCH**

14 CORTOPASSI PARTNERS, a California)
15 limited partnership, and RECLAMATION)
16 DISTRICT 2086,)
17)
18 Plaintiffs,)
19)
20 vs.)
21)
22 THE STATE OF CALIFORNIA, and DOES 1)
23 through 100, inclusive,)
24)
25 Defendants.)
26)
27)
28)

Case No.:
**VERIFIED FIRST AMENDED
COMPLAINT FOR INJUNCTIVE
RELIEF AND SPECIFIC
PERFORMANCE BASED UPON:**
**1. PRIVATE NUISANCE
2. BREACH OF CONTRACT**

21 Plaintiffs allege the following facts constituting their cause of action and make the
22 following demand for judgment for the relief to which they claim they are entitled.

23 **INTRODUCTION**

24 1. Plaintiffs allege that the State of California, acting through the Department of
25 Water Resources ("DWR"), has created and maintained a nuisance in the Sacramento- San
26 Joaquin Delta (the "Delta") by artificially diverting water through the Delta for the State Water
27 Project ("SWP") and thereby causing unnatural siltation of Delta channels, increased water
28 levels in Delta channels and increased flood risk to Delta landowners.

1 complaint, did so within the course and scope of their authority on behalf of the State, and the
2 State has ratified such acts or failures to act.

3 8. Plaintiffs are ignorant of the true names and capacities of the defendants sued as
4 Does 1 through 100, inclusive, and therefore sue those defendants by fictitious names. Plaintiffs
5 will seek to amend this complaint when their true names and capacities are ascertained.

6 9. Plaintiffs are informed and believe and thereon allege that at all relevant times,
7 each of the Doe defendants was vicariously liable for the judgment demanded herein, or
8 contributed as a substantial factor to Plaintiffs' harm.

9 10. The California Department of Water Resources ("DWR") controls and
10 administers water to which the State has domain pursuant to the provisions of California Water
11 Code sections 120 *et seq.*

12 **FACTUAL BACKGROUND**

13 11. A delta is a riverine landform created where a river flows into a body of standing
14 water, such as an ocean or estuary. The Sacramento-San Joaquin Delta was formed through the
15 combination of water-borne siltation and aquatic plant decomposition.

16 12. Siltation is a function of the quantity of silt in water-borne suspension, and the
17 declining velocity of such water. After the Delta was reclaimed from its original natural
18 condition, water inflows were channeled into soughs/rivers coursing through the Delta, and it
19 became increasingly important to periodically remove silt deposited in channel bottoms so as to
20 maintain floodwater channel capacity.

21 13. The heightened elevation of a siltated channel bottom reduces the water- carrying
22 capacity of that channel. Like a chain can be no stronger than its weakest link, a channel cannot
23 convey any volume of water greater than the water-carrying capacity of its highest streambed
24 elevation. As silt deposits accumulate in channel locations of low-velocity water, the silt
25 deposits act as underwater "dams" that raise channel water levels and therefore increase flooding
26 risks to adjacent landowners.

27 14. The Delta is one of the most fertile agricultural areas in the United States, and
28 agriculture in this region materially contributes to the economics of adjacent counties and

1 California. However, the risk of flooding constitutes an ongoing risk of Delta agricultural
2 production. A recent example of Delta flooding occurred on Jones Tract in 2004.

3 **The California State Water Project**

4 15. The SWP is a system designed to transport water from Northern California to
5 Central and Southern California. It is managed by DWR, and operates as follows.

6 16. The State has domain over all water originating within California, with the
7 exception of water rights held by third parties (both private and public) as either “riparian” water
8 rights or “appropriative” water rights. Therefore, all the water not subject to third party water
9 rights arriving in the Delta from Sierra Nevada sources is subject to State domain and SWP
10 export to Central/Southern California.

11 17. The export of SWP water occurs by DWR artificially transporting water through
12 Delta channels to giant pumps located on the southern periphery of the Delta near Tracy,
13 California. Those pumps export SWP water via concrete canals to Central/Southern California
14 water purchasers. The SWP artificially exports approximately 5 million-acre feet of water per
15 year out of the Delta, an amount several times greater than the water yield from SWP reservoirs
16 in the Sierras.

17 18. The SWP export pumps suck water from the Delta, and the SWP artificially alters
18 natural water flows in the Delta to feed those pumps, including routing Sacramento River water
19 through the “Delta Cross-Channel” (“DCC”).

20 19. The DCC is an artificial aqueduct in the northern part of the Delta located near
21 Walnut Grove in Sacramento County. It connects the Sacramento River to the Mokelumne
22 River, and can be opened and closed with mechanical gates. An aerial photograph of the Delta
23 Cross Channel is attached as Exhibit A, and incorporated herein by this reference.

24 20. From the DCC, the DWR continues to artificially divert SWP water through the
25 North and South Forks of the Mokelumne River southward through the Delta to the export
26 pumps. At times, the DCC artificially diverts as much as 50% of the water in the Sacramento
27 River to the Mokelumne River.

28

1 21. An illustration showing how the State transports its water from the north to the
2 south through the Delta for the SWP is attached as Exhibit B and incorporated herein by
3 reference.

4 **Canal Ranch**

5 22. Plaintiff owns 3,040 acres of farmland in Northern San Joaquin County, known as
6 Canal Ranch (“Canal Ranch”). The location of Canal Ranch is shown on the map attached as
7 Exhibit C, which is incorporated herein by reference.

8 23. Like other Delta islands, Canal Ranch is at risk of flooding from the Mokelumne
9 River and adjacent sloughs. RD 2086 constructed and maintains levees on the Canal Ranch
10 designed to reduce flooding risk. RD 2086’s jurisdiction coincides with the boundaries of Canal
11 Ranch. As shown on Exhibit C, the South Fork of the Mokelumne River flows along the western
12 levee of Canal Ranch and comprises the western boundary of Canal Ranch and RD 2086.
13 Beaver Slough, along the northern edge of the Canal Ranch, and Hog Slough, along the southern
14 edge of the Canal Ranch are also exposed to high water flood risks emanating from the DCC and
15 Mokelumne River.

16 24. For approximately thirty (30) years DWR has operated and controlled SWP
17 export pumps and artificially altered Delta and Sacramento River water flows. During those
18 three decades SWP water artificially diverted from the Sacramento River has flowed in
19 waterways on three sides of Canal Ranch.

20 25. In late 2007, CP acquired Canal Ranch. Dino Cortopassi, a managing agent of
21 CP, has Delta farming experience since 1972. After studying the cumulative effect of SWP
22 artificial water diversion into streambeds adjacent to Canal Ranch, Mr. Cortopassi realized that
23 diversion had caused extreme unnatural sedimentation in those channels. CP owns riparian
24 water rights to draw water via siphon pipes from adjacent channels. Mr. Cortopassi discovered
25 that the water intakes of those siphon pipes had become buried by sediment deposition. As a
26 result CP had to install new siphon pipes with water intakes above sediment-filled channels.

27 26. In 2008 counsel for Plaintiffs in preparation for this lawsuit conducted a sonar
28 scan (with expert assistance) of approximately forty (40) miles of Delta water channels,

1 39. The State created the artificial boundaries between these three agencies as
2 follows: the North Delta Agency covers 240,000 acres and the Central and South Delta Water
3 Agencies cover the remaining 350,000 acres of the Delta.

4 40. Since the Plaintiffs' filing of its original complaint in this matter, document
5 discovery has been ongoing. As a result, Plaintiffs have become aware of an existing contract
6 between DWR and NDWA.

7 41. On or about January 28, 1981 the DWR entered into a written contract (the
8 "Contract") with the NDWA. A true and complete copy of that contract is attached hereto as
9 Exhibit D, and incorporated herein by this reference.

10 42. In this contract, executed by DWR twenty-eight (28) years ago, the State
11 expressly and specifically acknowledges its responsibility to mitigate flood risk arising from the
12 DWR's "management" of SWP water.

13 43. Article 6 of the Contract states:

14 **Flow Impact.** *The State shall not convey SWP water so as to cause a decrease or*
15 *increase in the natural flow, or reversal of the natural flow direction, or to cause*
16 *the water surface elevation in the Delta channels to be altered, to the detriment of*
17 *Delta channels or water users within the Agency. If lands, levees, embankments,*
18 *or revetments adjacent to Delta channels within the Agency incur seepage or*
19 *erosion damage or if diversion facilities must be modified as a result of altered*
20 *water surface elevations as a result of the conveyance of water from the SWP to*
21 *lands outside the Agency after the date of this contract, the State shall repair or*
22 *alleviate the damage, shall improve the channels as necessary, and shall be*
23 *responsible for all diversion facility modifications required. (Emphasis added.)*

24 44. Canal Ranch is located within the boundaries of the NDWA and CP is a "water
25 user" within the NDWA.

26 45. As a "water user" within the NDWA, the foregoing provision of Article 6 of the
27 Contract was made expressly for the benefit of CP. By the specific language in the contract, all
28 "water users" within NDWA are third party beneficiaries with standing to enforce the provisions
of Article 6. The contemporaneous negotiations of the parties to the Contract, and their
subsequent actions, verify their intention that all "water users" within the NDWA are third party
beneficiaries of the Contract.

1 to, dredging of the South Fork of the Mokelumne River to the Stockton Deep Water Channel,
2 Beaver Slough and Hog Slough;

- 3 2. For costs of suit herein incurred;
- 4 3. For attorneys' fees; and
- 5 4. For such other and further relief as the Court may deem just and proper.

6 Dated: July 31, 2009

Respectfully submitted,

8 By: Jim Brown
9 JAMES B. BROWN, ESQ.
10 *Attorneys for Plaintiffs Cortopassi Partners and*
11 *Reclamation District 2086*

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

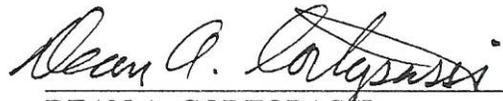
I, the undersigned, say:

I have read the foregoing VERIFIED FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE BASED UPON: 1. PRIVATE NUISANCE; AND 2. BREACH OF CONTRACT and know its contents.

I am a managing agent for Cortopassi Partners, a party to this action. The matters stated in the complaint are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on July, 31, 2009, at Stockton, California.

I declare under penalty of perjury that the foregoing is true and correct.



DEAN A. CORTOPASSI

PROOF OF SERVICE

I, Jennifer K. Whipple, certify and declare as follows:

I am over the age of 18 years and not a party to this action. My business address is 11292 N. Alpine Road, Stockton, CA 95212. On the date set forth below, I served the following document: **VERIFIED FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE BASED UPON: 1. PRIVATE NUISANCE; AND 2. BREACH OF CONTRACT.**

[X] BY U.S. MAIL. By enclosing the document(s) in a sealed envelope addressed to the person(s) set forth below, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing of correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

[X] BY ELECTRONIC MAIL (EMAIL). By sending the document(s) to the person(s) at the email address(es) listed below.

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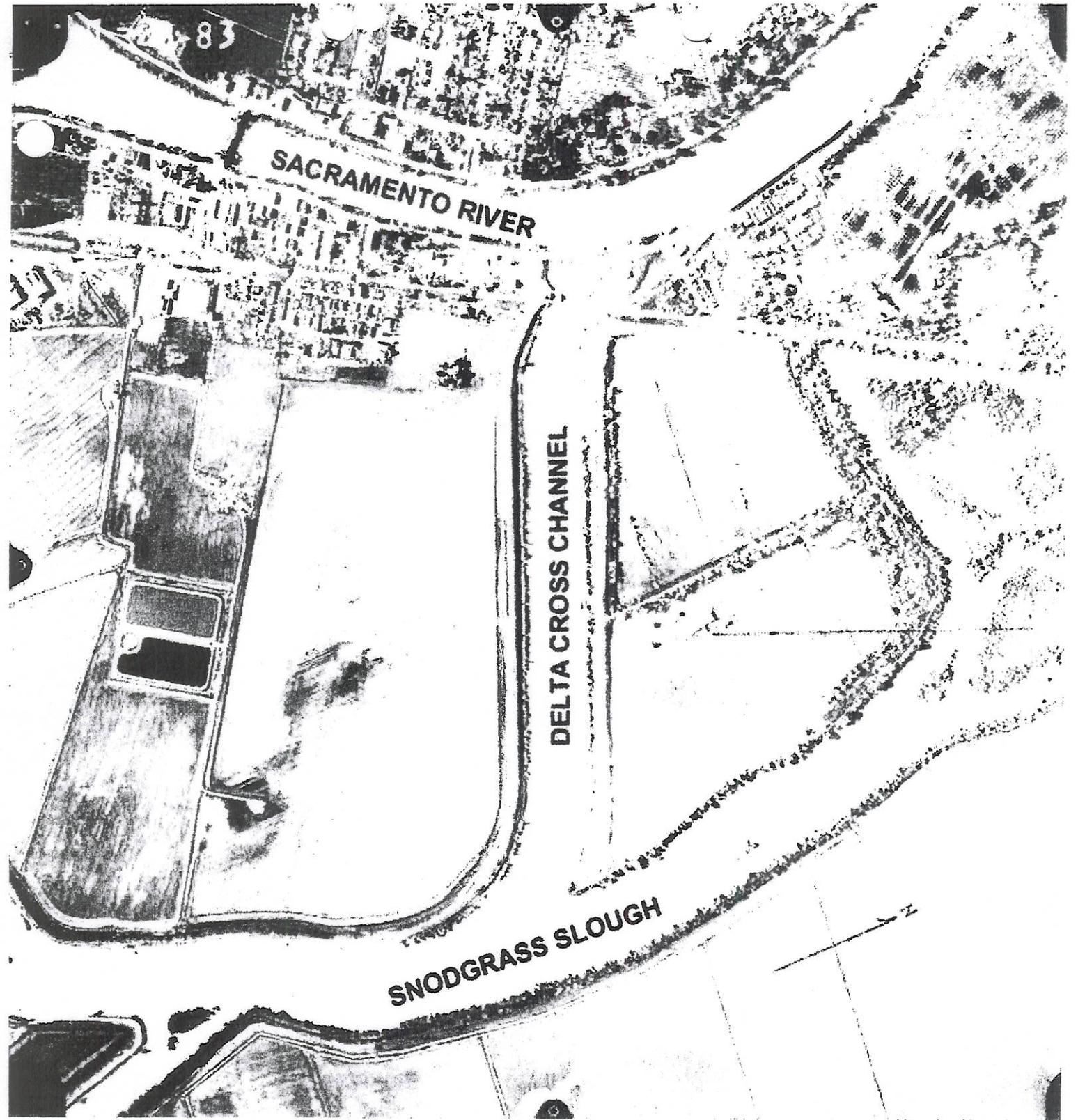
*Attorneys for Defendant California
Department of Water Resources*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 31, 2009

Jennifer K. Whipple

EXHIBIT A



SACRAMENTO RIVER

DELTA CROSS CHANNEL

SNODGRASS SLOUGH

83

EXHIBIT B

How Water Gets to the California Economy

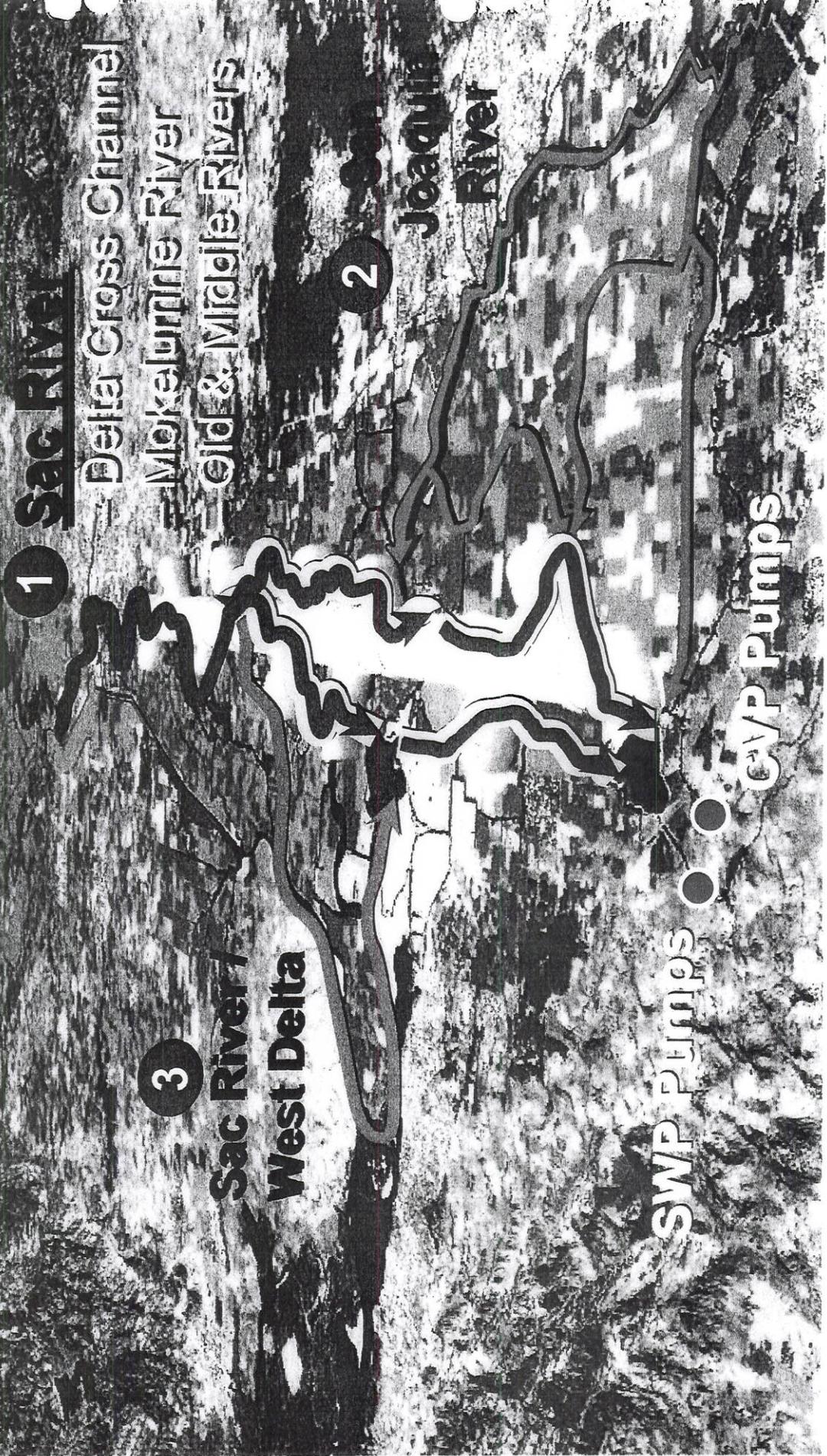


EXHIBIT C

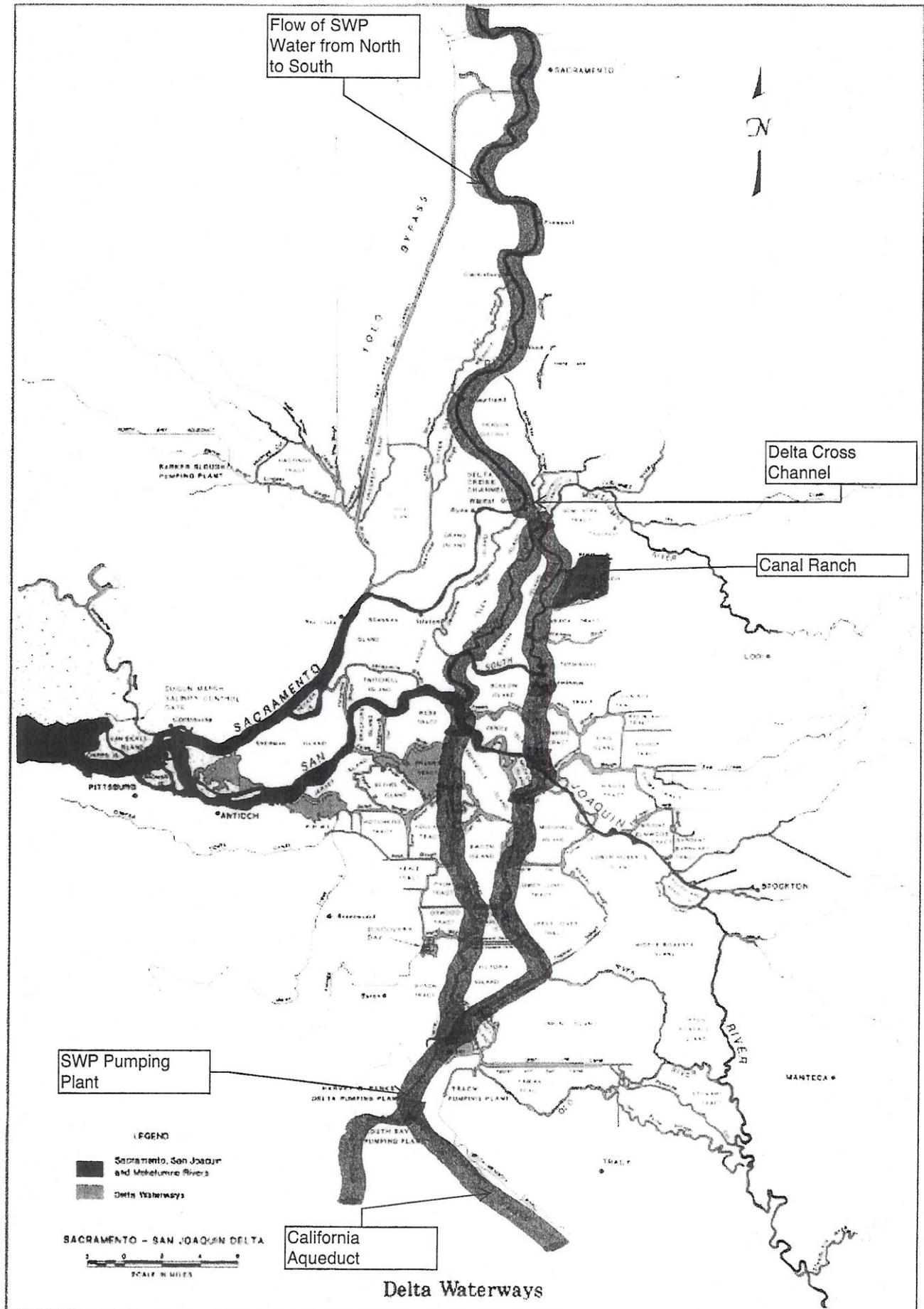


EXHIBIT D

CONTRACT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND
NORTH DELTA WATER AGENCY

FOR THE ASSURANCE
OF A DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY

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**CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE NORTH DELTA WATER AGENCY
FOR THE ASSURANCE OF A DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY**

THIS CONTRACT, made this 28 day of Jan., 1981, between the STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF WATER RESOURCES (State), and the NORTH DELTA WATER AGENCY (Agency), a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in Sacramento, California.

RECITALS

(a) The purpose of this contract is to assure that the State will maintain within the Agency a dependable water supply of adequate quantity and quality for agricultural uses and, consistent with the water quality standards of Attachment A, for municipal and industrial uses, that the State will recognize the right to the use of water for agricultural, municipal, and industrial uses within the Agency, and that the Agency will pay compensation for any reimbursable benefits allocated to water users within the Agency resulting from the Federal Central Valley Project and the State Water Project, and offset by any detriments caused thereby.

(b) The United States, acting through its Department of the Interior, has under construction and is operating the Federal Central Valley Project (FCVP).

(c) The State has under construction and is operating the State Water Project (SWP).

(d) The construction and operation of the FCVP and SWP at times have changed and will further change the regimen of rivers tributary to the Sacramento-San Joaquin Delta (Delta) and the regimen of the Delta channels from unregulated flow to regulated flow. This regulation at times improves the quality of water in the Delta and at times diminishes the quality from that which would exist in the absence of the FCVP and SWP. The regulation at times also alters the elevation of water in some Delta channels.

(e) Water problems within the Delta are unique within the State of California. As a result of the geographical location of the lands of the Delta and tidal influences, there is no physical shortage of water. Intrusion of saline ocean water and municipal, industrial and agricultural discharges and return flows, tend, however, to deteriorate the quality.

(f) The general welfare, as well as the rights and requirements of the water users in the Delta, require that there be maintained in the Delta an adequate supply of good quality water for agricultural, municipal and industrial uses.

(g) The law of the State of California requires protection of the areas within which water originates and the watersheds in which water is developed. The Delta is such an area and within such a watershed. Part 4.5 of Division 6 of the California Water Code affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose.

(h) The Agency asserts that water users within the Agency have the right to divert, are diverting, and will continue to divert, for reasonable beneficial use, water from the Delta that would have been available therein if the FCVP and SWP were not in existence, together with the right to enjoy or acquire such benefits to which the water users may be entitled as a result of the FCVP and SWP.

(i) Section 4.4 of the North Delta Water Agency Act, Chapter 283, Statutes of 1973, as amended, provides that the Agency has no authority or power to affect, bind, prejudice, impair, restrict, or limit vested water rights within the Agency.

(j) The State asserts that it has the right to divert, is diverting, and will continue to divert water from the Delta in connection with the operation of the SWP.

(k) Operation of SWP to provide the water quality and quantity described in this contract constitutes a reasonable and beneficial use of water.

(l) The Delta has an existing gradient or relationship in quality between the westerly portion most seriously affected by ocean salinity intrusion and the interior portions of the Delta where the effect of ocean salinity intrusion is diminished. The water quality criteria set forth in this contract establishes minimum water qualities at various monitoring locations. Although the water quality criteria at upstream locations is shown as equal in some periods of some years to the water quality at the downstream locations, a better quality will in fact exist at the upstream locations at almost all times. Similarly, a better water quality than that shown for any given monitoring location will also exist at interior points upstream from that location at almost all times.

(m) It is not the intention of the State to acquire by purchase or by proceeding in eminent domain or by any other manner the water rights of water users within the Agency, including rights acquired under this contract.

(n) The parties desire that the United States become an additional party to this contract.

AGREEMENTS

1. **Definitions.** When used herein, the term:

(a) "Agency" shall mean the North Delta Water Agency and shall include all of the lands within the boundaries at the time the contract is executed as described in Section 9.1 of the North Delta Water Agency Act, Chapter 283, Statutes of 1973, as amended.

(b) "Calendar year" shall mean the period January 1 through December 31.

(c) "Delta" shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code as of the date of the execution of the contract.

(d) "Electrical Conductivity" (EC) shall mean the electrical conductivity of a water sample measured in millimhos per centimeter per square centimeter corrected to a standard temperature of 25° Celsius determined in accordance with procedures set forth in the publication entitled "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 13th Edition, 1971, including such revisions thereof as may be made subsequent to the date of this contract which are approved in writing by the State and the Agency.

(e) "Federal Central Valley Project" (FCVP) shall mean the Central Valley Project of the United States.

(f) "Four-River Basin Index" shall mean the most current forecast of Sacramento Valley unimpaired runoff as presently published in the California Department of Water Resources Bulletin 120 for the sum of the flows of the following: Sacramento River above Bend Bridge near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. The May 1 forecast shall continue in effect until the February 1 forecast of the next succeeding year.

(g) "State Water Project" (SWP) shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code of the State of California.

(h) "SWRCB" shall mean the State Water Resources Control Board.

(i) "Water year" shall mean the period October 1 of any year

through September 30 of the following year.

2. Water Quality.

(a) (i) The State will operate the SWP to provide water qualities at least equal to the better of: (1) the standards adopted by the SWRCB as they may be established from time to time; or (2) the criteria established in this contract as identified on the graphs included as Attachment A.

(ii) The 14-day running average of the mean daily EC at the identified location shall not exceed the values determined from the Attachment A graphs using the Four-River Basin Index except for the period February through March of each year at the location in the Sacramento River at Emmaton for which the lower value of the 80 percent probability range shall be used.

(iii) The quality criteria described herein shall be met at all times except for a transition period beginning one week before and extending one week after the date of change in periods as shown on the graphs of Attachment A. During this transition period, the SWP will be operated to provide as uniform a transition as possible over the two-week period from one set of criteria to the next so as to arrive at the new criteria one week after the date of change in period as shown on the graphs of Attachment A.

(b) While not committed affirmatively to achieving a better water quality at interior points upstream from Emmaton than those set forth on Attachment A, the State agrees not to alter the Delta hydraulics in such manner as to cause a measurable adverse change in the ocean salinity gradient or relationship among the various monitoring locations shown on Attachment B and interior points upstream from those locations, with any particular flow past Emmaton.

(c) Whenever the recorded 14-day running average of mean daily EC of water in the Sacramento River at Sacramento exceeds 0.25 mmhos, the quality criteria indicated on the graphs of Attachment A may be adjusted by adding to the value taken therefrom the product of 1.5 times the amount that the recorded EC of the Sacramento River at Sacramento exceeds 0.25 mmhos.

3. **Monitoring.** The quality of water shall be measured by the State as needed to monitor performance pursuant to Article 2 hereof with equipment installed, operated, and maintained by the State, at locations indicated on "Attachment B". Records of such measurements shall at regular intervals be furnished to the Agency. All monitoring costs at North Fork Mokelumne River near Walnut Grove, Sacramento River at Walnut Grove, and Steamboat Slough at Sutter Slough incurred by the State solely for this contract shall be shared equally by the Agency and the State. All monitoring costs to be borne by the Agency for monitoring at the above locations are included in the payment under Article 10.

4. Emergency Provisions.

(a) If a structural emergency occurs such as a levee failure or a failure of an SWP facility, which results in the State's failure to meet the water quality criteria, the State shall not be in breach of this contract if it makes all reasonable efforts to operate SWP facilities so that the water quality criteria will be met again as soon as possible. For any period in which SWP failure results in failure of the State to meet the water quality criteria, the State shall waive payment under Article 10, prorated for that period, and the amount shall be deducted from the next payment due.

(b) (i) A drought emergency shall exist when all of the following occur:

(1) The Four-River Basin Index is less than an average of 9,000,000 acre feet in two consecutive years (which occurred in 1933-4 and 1976-7); and

(2) An SWRCB emergency regulation is in effect providing for the operation of the SWP to maintain water quality different from that provided in this contract; and

(3) The water supplied to meet annual entitlements of

SWP agricultural contractors in the San Joaquin Valley is being reduced by at least 50 percent of these agricultural entitlements (it being the objective of the SWP to avoid agricultural deficiencies in excess of 25 percent) or the total of water supplied to meet annual entitlements of all SWP contractors is being reduced by at least 15 percent of all entitlements, whichever results in the greater reduction in acre feet delivered.

(ii) A drought emergency shall terminate if any of the conditions in (b) (i) of this Article ceases to exist or if the flow past Sacramento after October 1 exceeds 20,000 cubic feet per second each day for a period of 30 days.

(iii) Notwithstanding the provisions of Article 2 (a), when a drought emergency exists, the emergency water quality criteria of the SWRCB shall supersede the water quality requirements of this contract to the extent of any inconsistency; provided, however, that the State shall use all reasonable efforts to preserve Delta water quality, taking into consideration both the limited water supply available for that purpose and recognizing the priority established for Delta protection referred to in Recital (g).

(iv) When a drought emergency exists, and an overland supply is not available to an individual water user comparable in quality and quantity to the water which would have been available to the user under Attachment A, the State shall compensate the user for loss of net income for each acre either (A) planted to a more salt-tolerant crop in the current year, (B) not planted to any crop in the current year provided such determination not to plant was reasonable based on the drought emergency, or (C) which had a reduced yield due to the drought emergency, calculated on the basis of the user's average net income for any three of the prior five years for each such acre. A special contract claims procedure shall be established by the State to expedite and facilitate the payment of such compensation.

5. Overland Water Supply Facilities.

(a) Within the general objectives of protecting the western Delta areas against the destruction of agricultural productivity as a result of the increased salinity of waters in the Delta channels resulting in part from SWP operation, the State may provide diversion and overland facilities to supply and distribute water to Sherman Island as described in the report entitled "Overland Agricultural Water Facilities Sherman Island" dated January 1980. Final design and operating specifications shall be subject to approval of the Agency and Reclamation District No. 341. The Agency or its transferee will assume full ownership, operation, and maintenance responsibility for such facilities after successful operation as specified. After the facilities are constructed and operating, the water quality criteria for the Sacramento River at Emmaton shall apply at the intake of the facilities in Three Mile Slough.

(b) The State and the Agency may agree to the construction and operation of additional overland water supply facilities within the Agency, so long as each landowner served by the overland facilities receives a quality of water not less than that specified in Attachment A for the upstream location nearest to his original point of diversion. The design and operation of such facilities and the cost sharing thereof are subject to approval of any reclamation district which includes within its boundaries the area to be served. The ownership, operation, and maintenance of diversion works and overland facilities shall be the subject of a separate agreement between the Agency or its transferees and the State.

6. **Flow Impact.** The State shall not convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency. If lands, levees, embankments, or revetments adjacent to Delta channels within the Agency incur seepage or erosion damage or if diversion facilities must be modi-

ted as a result of altered water surface elevations as a result of the conveyance of water from the SWP to lands outside the Agency after the date of this contract, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversion facility modifications required.

7. Place of Use of Water.

(a) Any subcontract entered into pursuant to Article 18 shall provide that water diverted under this contract for use within the Agency shall not be used or otherwise disposed of outside the boundaries of the Agency by the subcontractor.

(b) Any subcontract shall provide that all return flow water from water diverted within the Agency under this contract shall be returned to the Delta channels. Subject to the provisions of this contract concerning the quality and quantity of water to be made available to water users within the Agency, and to any reuse or recapture by water users within the Agency, the subcontractor relinquishes any right to such return flow, and as to any portion thereof which may be attributable to the SWP, the subcontractor recognizes that the State has not abandoned such water.

(c) If water is attempted to be used or otherwise disposed of outside the boundaries of the Agency so that the State's rights to return flow are interfered with, the State may seek appropriate administrative or judicial action against such use or disposal.

(d) This article shall not relieve any water user of the responsibility to meet discharge regulations legally imposed.

8. Scope of Contract.

(a) During the term of this contract:

(i) This contract shall constitute the full and sole agreement between the State and the Agency as to (1) the quality of water which shall be in the Delta channels, and (2) the payment for the assurance given that water of such quality shall be in the Delta channels for reasonable and beneficial uses on lands within the Agency, and said diversions and uses shall not be disturbed or challenged by the State so long as this contract is in full force and effect.

(ii) The State recognizes the right of the water users of the Agency to divert from the Delta channels for reasonable and beneficial uses for agricultural, municipal and industrial purposes on lands within the Agency, and said diversions and uses shall not be disturbed or challenged by the State so long as this contract is in full force and effect, and the State shall furnish such water as may be required within the Agency to the extent not otherwise available under the water rights of water users.

(iii) The Agency shall not claim any right against the State in conflict with the provisions hereof so long as this contract remains in full force and effect.

(b) Nothing herein contained is intended to or does limit rights of the Agency against others than the State, or the State against any person other than the Agency and water users within the Agency.

(c) This contract shall not affect, bind, prejudice, impair, restrict, or limit vested water rights within the Agency.

(d) The Agency agrees to defend affirmatively as reasonable and beneficial the water qualities established in this contract. The State agrees to defend affirmatively as reasonable and beneficial the use of water required to provide and sustain the qualities established in this contract. The State agrees that such use should be examined only after determination by a court of competent jurisdiction that all uses of water exported from the Delta by the State and by the United States, for agricultural, municipal, and industrial purposes are reasonable and beneficial, and that irrigation practices, conservation efforts, and groundwater management within areas served by such exported water should be examined in particular.

(e) The Agency consents to the State's export of water from

the Delta so long as this contract remains in full force and effect and the State is in compliance herewith.

9. Term of Contract.

(a) This contract shall continue in full force and effect until such time as it may be terminated by the written consent and agreement of the parties hereto, provided that 40 years after execution of this contract and every 40 years thereafter, there shall be a six-month period of adjustment during which any party to this contract can negotiate with the other parties to revise the contract as to the provisions set out in Article 10. If, during this period, agreement as to a requested revision cannot be achieved, the parties shall petition a court of competent jurisdiction to resolve the issue as to the appropriate payment to be made under Article 10. In revising Article 10, the court shall review water quality and supply conditions within the Agency under operation of the FCVP and SWP, and identify any reimbursable benefits allocated to water users within the Agency resulting from operation of the FCVP and SWP, offset by any detriments caused thereby. Until such time as any revision is final, including appeal from any ruling of the court, the contract shall remain in effect as without such revision.

(b) In the event this contract terminates, the parties' water rights to quality and quantity shall exist as if this contract had not been entered into.

10. Amount and Method of Payment for Water.

(a) The Agency shall pay each year as consideration for the assurance that an adequate water supply and the specific water quality set forth in this contract will be maintained and monitored, the sum of one hundred seventy thousand dollars (\$170,000.00). The annual payments shall be made to the State one-half on or before January 1 and one-half on or before July 1 of each year commencing with January 1, 1982.

(b) The payment established in (a) above shall be subject to adjustment as of January 1, 1987, and every fifth year thereafter. The adjusted payment shall bear the same relation to the payment specified in (a) above that the mean of the State's latest projected Delta Water Rate for the five years beginning with the year of adjustment bears to \$10.00 per acre foot; provided that, no adjusted payment shall exceed the previous payment by more than 25 percent.

(c) The payments provided for in this article shall be deposited by the State in trust in the California Water Resources Development System Revenue Account in the California Water Resources Development Bond Fund. The trust shall continue for five years (or such longer period as the State may determine) but shall be terminated when the United States executes a contract as provided in Article 11 with the State and the Agency at which time the proportion of the trust fund that reflects the degree to which the operation of the FCVP has contributed to meeting the water quality standard under this contract as determined solely by the State shall be paid to the United States (with a pro rata share of interest). In the event that the United States has not entered into such a contract before the termination of the trust, the trust fund shall become the sole property of the State.

11. **Participation of the United States.** The Agency will exercise its best efforts to secure United States joinder and concurrence with the terms of this contract and the State will diligently attempt to obtain the joinder and concurrence of the United States with the terms of this contract and its participation as a party hereto. Such concurrence and participation by the United States in this contract shall include a recognition ratified by the Congress that the excess land provisions of Federal reclamation law shall not apply to this contract.

12. Remedies.

(a) The Agency shall be entitled to obtain specific perfor-

mance of the provisions of this contract by a decree of the Superior Court in Sacramento County requiring the State to meet the standards set forth in this contract. If the water quality in Delta channels falls below that provided in this contract, then, at the request of the Agency, the State shall cease all diversions to storage in SWP reservoirs or release stored water from SWP reservoirs or cease all export by the SWP from Delta channels, or any combination of these, to the extent that such action will further State compliance with the water quality standards set forth in this contract, except that the State may continue to export from Delta channels to the extent required to meet water quality requirements in contracts with the Delta agencies specified in Section 11456 of the California Water code.

(b) To the extent permitted by law, the State agrees to forego the use of eminent domain proceedings to acquire water rights of water users within the Agency or any rights acquired under this contract for water or water quality maintenance for the purpose of exporting such water from the Delta. This provision shall not be construed to prohibit the utilization of eminent domain proceedings for the purpose of acquiring land or any other rights necessary for the construction of water facilities.

(c) Except as provided in the water quality assurances in Article 2 and the provisions of Article 6 and Article 8, neither the State nor its officers, agents, or employees shall be liable for or on account of:

(i) The control, carriage, handling, use, disposal, or distribution of any water outside the facilities constructed, operated and maintained by the State.

(ii) Claims of damage of any nature whatsoever, including but not limited to property loss or damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of any water outside of the facilities constructed, operated and maintained by the State.

(d) The use by the Agency or the State of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive either from using any other remedy provided by law.

13. Comparable Treatment. In the event that the State gives on the whole substantially more favorable treatment to any other Delta entity under similar circumstances than that accorded under this contract to the Agency, the State agrees to renegotiate this contract to provide comparable treatment to the Agency under this contract.

GENERAL PROVISIONS

14. Amendments. This contract may be amended or terminated at any time by mutual agreement of the State and the Agency.

15. Reservation With Respect to State Laws. Nothing herein contained shall be construed as estopping or otherwise preventing the Agency, or any person, firm, association, corporation, or public body claiming by, through, or under the Agency, from contesting by litigation or other lawful means, the validity, constitutionality, construction or application of any law of the State of California.

16. Opinions and Determinations. Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

17. Successors and Assigns Obligated. This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

18. Assignment and Subcontract. The Agency may enter into subcontracts with water users within the Agency boundaries in which the assurances and obligations provided in this contract as

to such water user or users are assigned to the area covered by the subcontract. The Agency shall remain primarily liable and shall make all payments required under this contract. No assignment or transfer of this contract, or any part hereof, rights hereunder, or interest herein by the Agency, other than a subcontract containing the same terms and conditions, shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

19. Books, Records, Reports, and Inspections Thereof. Subject to applicable State laws and regulations, the Agency shall have full and free access at all reasonable times to the SWP account books and official records of the State insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the State shall have similar rights with respect to the account books and records of the Agency.

20. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

21. Assurance Relating to Validity of Contract. This contract shall be effective after its execution by the Agency and the State. Promptly after the execution and delivery of this contract, the Agency shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings of the Agency's Board of Directors and of the Agency leading up to and including the making of this contract and the validity of the provisions thereof as a binding and enforceable obligation upon the State and the Agency. If, in this proceeding or other proceeding before a court of competent jurisdiction, any portion of this contract should be determined to be constitutionally invalid, then the remaining portions of this contract shall remain in full force and effect unless modified by mutual consent of the parties.

22. Notices. All notices that are required either expressly or by implication to be given by one party to the other shall be deemed to have been given if delivered personally or if enclosed in a properly addressed, postage prepaid, envelope and deposited in a United States Post Office. Unless or until formally notified otherwise, the Agency shall address all notices to the State as follows:

Director, Department of Water Resources
P.O. Box 388
Sacramento, California 95802

and the State shall address all notices to the Agency as follows:

North Delta Water Agency
921 E 11th St., Rm. 703
Sacramento, California 95814

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

Approved as to legal form and sufficiency: STATE OF CALIFORNIA

By /s/ P. A. TOWNER
Chief Counsel
Dept. of Water Resources

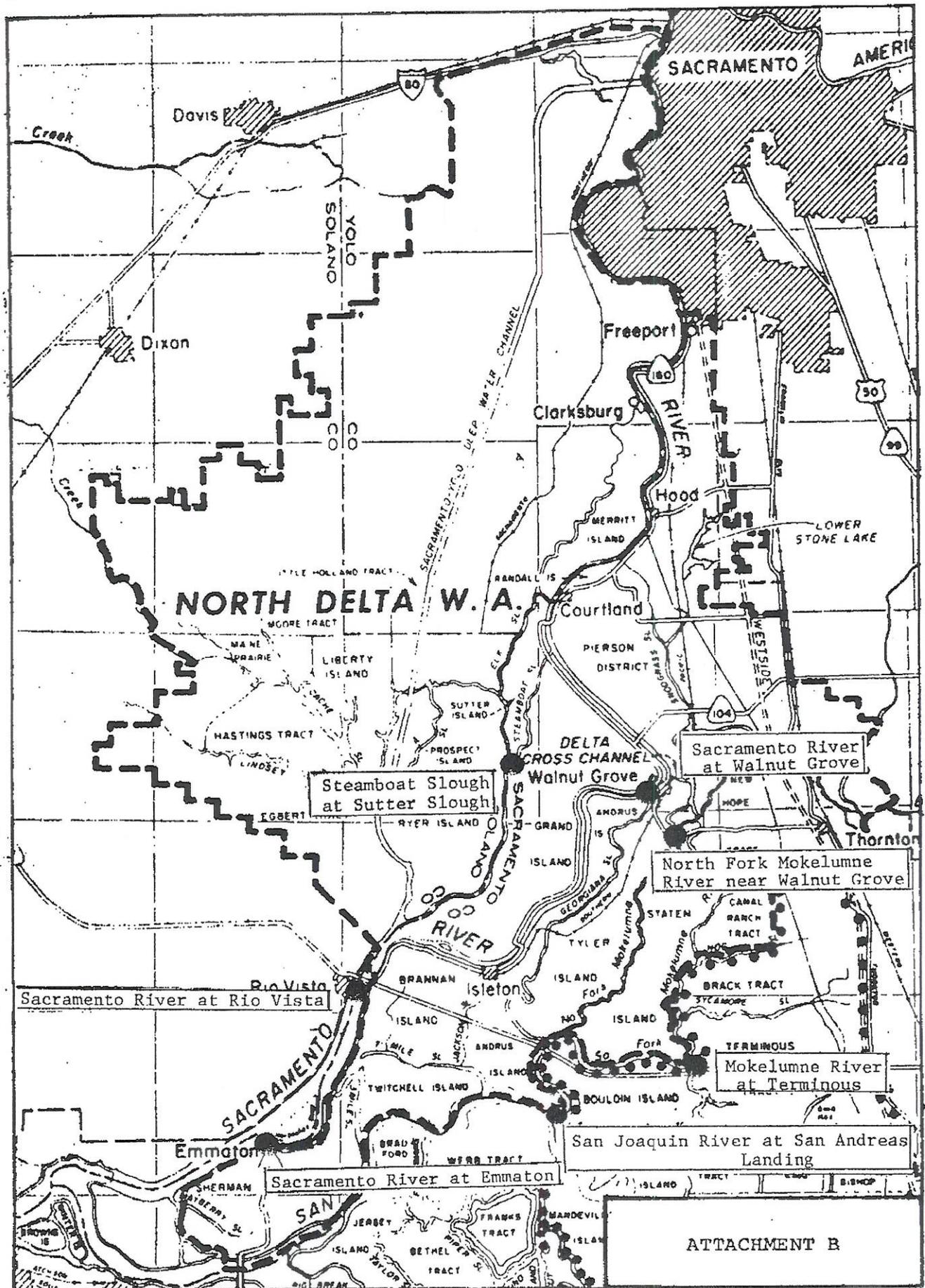
By /s/ RONALD B. ROBT
Dept. of Water Resources

Approved as to legal form and sufficiency:

NORTH DELTA WATER AGENCY

By /s/ GEORGE BASYE
General Counsel
North Delta Water Agency

By /s/ W. R. DARSIE
Chairman
Board of Directors



NORTH DELTA W. A.

Steamboat Slough at Sutter Slough

Sacramento River at Walnut Grove

North Fork Mokelumne River near Walnut Grove

Rio Vista
Sacramento River at Rio Vista

TERMINOUS
Mokelumne River at Terminous

San Joaquin River at San Andreas Landing

Emmaton
Sacramento River at Emmaton

ATTACHMENT B

