DATE: March 1, 2018

TO: Board of Directors

FROM: Stephen H. Ottemoeller, Water Resources Manager
Donald M. Davis, General Counsel

SUBJECT: Approval of Extension of Temporary Agreement for Conveyance of Water (San Joaquin River Restoration Flows) with Banta-Carbona Irrigation District and Patterson Irrigation District; approval of Repayment Agreement for Recapture of Restoration Flows in Lower San Joaquin River (Water Year 2018).

SUMMARY: In 2016 and 2017, FWA entered into one-year Conveyance Agreements with Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID) for the recapture and conveyance of Restoration Flows that were released past Sack Dam. A total of 832 AF of Restoration Flows was recaptured and conveyed pursuant to the 2016 agreements and 12,274 AF has been recaptured during October 2017 through January 2018 pursuant to the 2017 agreements. Similar circumstances exist in 2018 whereby Restoration Flows are being and will continue to be released past Sack Dam for the duration of the 2018 water year. The proposed action would extend the existing Conveyance Agreements to continue recapture in the lower San Joaquin River. The mechanism for determining which Friant Division districts will have access to, and bear the responsibility of paying the costs for, the recaptured Restoration Flows is a Repayment Agreement between FWA and the agencies electing to participate and commit to pay the associated costs for such water. The form of such agreement for the 2018 Water Year (which is identical to the 2017 Water Year version) is also submitted for Board approval.

EXECUTIVE COMMITTEE ACTION: At its meeting on February 12, 2018, the Executive Committee approved the extension of the Conveyance Agreements in the event that they needed to be executed in advance of the Board meeting. As there has been a delay on the part of Reclamation in extending their Memorandum of Agreement with PID and BCID regarding the Restoration Flows, staff is requesting that the full Board also approve (or ratify as applicable if action is taken before March 1) the execution of the extensions. In addition, the Executive Committee recommended that the Board approve the form of Repayment Agreement for the 2018 Water Year.

DISCUSSION: Since the U.S. Bureau of Reclamation (Reclamation) has not yet implemented the necessary protocols and procedures to recapture Restoration Flows in the Delta, the only way to recapture Restoration Flows released past Sack Dam is to enter into agreements with the
districts that have diversion facilities with fish screens on the lower San Joaquin River (SJR) that can convey the water to the Delta Mendota Canal (DMC). FWA and member agencies have been exploring the potential for longer term agreements with PID and BCID, but at this point the best and most expeditious way to ensure continued recapture in 2018 in the lower SJR is to extend the two Conveyance Agreements for the 2018 water year. Copies of the two proposed extension agreements are attached.

The mechanism for determining which Friant Division agencies will have access to, and bear the responsibility of paying the costs for, the Restoration Flows recaptured under the Conveyance Agreements is a “Repayment Agreement” between FWA and the agencies electing to participate and commit to pay the associated costs. Other costs will include charges from the San Luis & Delta Mendota Water Authority for conveyance of the recaptured Restoration Flows in the south-of-Delta CVP facilities that they operate and/or DWR for conveyance of water in the California Aqueduct if there is insufficient capacity in the DMC. A copy of the proposed Repayment Agreement for the 2018 water year is attached.

Environmental review and documentation for the proposed recapture of Restoration Flows has been prepared by Reclamation under NEPA and a Finding of No Significant Impact is being issued. Under California law, a temporary water transfer such as proposed is exempt from CEQA.

**RECOMMENDED ACTION:** Authorize the CEO and COO to: (1) execute the Conveyance Agreement extensions, and (2) execute the Repayment Agreement and circulate it for execution by the agencies that desire to participate.

**BUDGET IMPACT:** There will be no net impact to the FWA General Member Budget, either in the current fiscal year or the 2018-19 Fiscal Year. FWA will submit payments as invoiced by the two districts and other entities participating in the conveyance of recaptured Restoration Flows and will bill the participating agencies to recover such costs.

**SUGGESTED MOTION:**
A Motion to authorize the CEO and COO to: (1) execute the Conveyance Agreement extensions, and (2) execute the Repayment Agreement and circulate it for execution by the agencies that desire to participate.

**ATTACHMENTS:**
1. Extension of Temporary Agreement For Conveyance Of Water with Patterson ID
2. Extension of Temporary Agreement For Conveyance Of Water with Banta Carbona ID
3. Repayment Agreement For Recapture of Restoration Flows in Lower San Joaquin River
EXTENSION OF
TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER
(San Joaquin River Restoration Flows)

This EXTENSION OF TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER ("Extension") is effective as of March 1, 2018, and is between the Patterson Irrigation District, a California irrigation district ("PID") and the Friant Water Authority, a California joint powers authority ("Friant") contracting on behalf of all Friant Division Contractors.

Recitals

A. Friant and PID have entered into that certain TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER effective as of September 17, 2017 ("Agreement"). All capitalized terms in this Extension have the meaning set forth in the Agreement unless otherwise defined in this Extension.


C. PID and the United States Bureau of Reclamation ("Reclamation") have extended their Memorandum of Agreement ("MOA") with respect to the recapture and recirculation of Restoration Flows on the San Joaquin River until February 28, 2019, and as part of such extension Reclamation prepared an Environmental Assessment dated ________________ that addressed the recapture of Restoration Flows at PID diversion facilities on the San Joaquin River. The Environmental Assessment resulted in a Finding of No Significant Impact. In addition, in its 2013 Order, in Section 8 on page 8 of 11, the State Water Resources Control Board previously found that Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). Accordingly, no further environmental review is required for this Extension and the activities authorized hereunder.

D. Friant and PID desire to extend the Term of the Agreement so that it runs concurrent with the term of the MOA as provided in this Extension.

THE PARTIES AGREE AS FOLLOWS:

1. Extension of Term. The Term of the Agreement is hereby extended until February 28, 2019.

2. Ratification of Agreement. Except for the extension of the Term as provided above, all remaining provisions of the Agreement are hereby ratified and will remain in full force and effect until the expiration of the amended Term.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE PARTIES have executed this Agreement as of the date first above written.

PATTERSON IRRIGATION DISTRICT

By: ___________________________________________________________________
    Vincent Lucchesi, General Manager

FRIANT WATER AUTHORITY

By: ___________________________________________________________________
    Douglas DeFlitch, Chief Operating Officer
EXTENSION OF
TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER
(San Joaquin River Restoration Flows)

This EXTENSION OF TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER ("Extension") is effective as of March 1, 2018, and is between the Banta-Carbona Irrigation District, a California irrigation district ("BCID") and the Friant Water Authority, a California joint powers authority ("Friant") contracting on behalf of all Friant Division Contractors.

Recitals

A. Friant and BCID have entered into that certain TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER effective as of September 17, 2017 ("Agreement"). All capitalized terms in this Extension have the meaning set forth in the Agreement unless otherwise defined in this Extension.


C. BCID and the United States Bureau of Reclamation ("Reclamation") have extended their Memorandum of Agreement ("MOA") with respect to the recapture and recirculation of Restoration Flows on the San Joaquin River until February 28, 2019, and as part of such extension Reclamation prepared an Environmental Assessment dated _______________ that addressed the recapture of Restoration Flows at BCID diversion facilities on the San Joaquin River. The Environmental Assessment resulted in a Finding of No Significant Impact. In addition, in its 2013 Order, in Section 8 on page 8 of 11, the State Water Resources Control Board previously found that Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). Accordingly, no further environmental review is required for this Extension and the activities authorized hereunder.

D. Friant and BCID desire to extend the Term of the Agreement so that it runs concurrent with the term of the MOA as provided in this Extension.

THE PARTIES AGREE AS FOLLOWS:

1. Extension of Term. The Term of the Agreement is hereby extended until February 28, 2019.

2. Ratification of Agreement. Except for the extension of the Term as provided above, all remaining provisions of the Agreement are hereby ratified and will remain in full force and effect until the expiration of the amended Term.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE PARTIES have executed this Agreement as of the date first above written.

BANTA-CARBONA IRRIGATION DISTRICT       FRIANT WATER AUTHORITY

By: ________________________________       By: ________________________________
David Weisenberger, General Manager       Douglas DeFlitch, Chief Operating Officer
This REPAYMENT AGREEMENT ("Agreement") is effective as of March 1, 2018, and is by and between the FRIANT WATER AUTHORITY ("FWA"), ARVIN-EDISON WATER STORAGE DISTRICT, CHOWCHILLA WATER DISTRICT, CITY OF FRESNO, DELANO-EARLIMART IRRIGATION DISTRICT, EXETER IRRIGATION DISTRICT, FRESNO IRRIGATION DISTRICT, FRESNO COUNTY WATER WORKS DISTRICT #18, GARFIELD WATER DISTRICT, GRAVELLY FORD WATER DISTRICT, HILLS VALLEY WATER DISTRICT, INTERNATIONAL WATER DISTRICT, IVANHOE IRRIGATION DISTRICT, KAWEAH DELTA WATER CONSERVATION DISTRICT, KERN-TULARE WATER DISTRICT, LEWIS CREEK WATER DISTRICT, LINDMORE IRRIGATION DISTRICT, LINDSAY-STRATHMORE IRRIGATION DISTRICT, CITY OF LINDSAY, LOWER TULE RIVER IRRIGATION DISTRICT, MADERA IRRIGATION DISTRICT, CITY OF ORANGE COVE, ORANGE COVE IRRIGATION DISTRICT, SAUCELITO IRRIGATION DISTRICT, SHAFER-WASCO IRRIGATION DISTRICT, SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT, STONE CORRAL IRRIGATION DISTRICT, TEAPOT DOME WATER DISTRICT, TERRA BELLA IRRIGATION DISTRICT, TRI-VALLEY WATER DISTRICT AND TULARE IRRIGATION DISTRICT (hereafter individually "Reimbursing District" or collectively "Reimbursing Districts").

REQUITALS

A. The September 2006 Stipulation of Settlement ("Settlement") in the case of NRDC, et al. v. KIRK RODGERS, et al., included a goal to reduce or avoid adverse water supply impacts on members of FWA, and others, as a result of the Settlement.

B. FWA and other Friant Division contractors are parties to the Settlement.

C. The Settlement identifies the need for a plan for recirculation, recapture, reuse, exchange or transfer of water released from Friant Dam into the San Joaquin River.

D. As part of its ongoing activities to comply with the Settlement, the U.S. Bureau of Reclamation ("Reclamation") proposed that FWA, in coordination with other organizations representing the interests of all Friant Division Long Term Contractors that may choose to become Reimbursing Districts, enter into temporary agreements with Patterson Irrigation District ("PID") and Banta Carbona Irrigation District ("BCID" and hereafter collectively with PID as "Conveying Districts") for the purpose of recapturing "Restoration Flows," as defined in Section 13(a) of the Settlement,
downstream of the Merced River confluence pursuant to the terms of the Settlement and conveying such water to the Delta Mendota Canal so that the recaptured water could be made available in the San Luis Reservoir or exchanged consistent with the terms of the State Water Resources Control Board Order dated October 21, 2013 related to implementation of the Settlement (hereafter “Recirculation Water”).

D. In 2017, FWA entered into a TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER with each of the Conveying Districts on behalf of the Reimbursing Districts, which agreements are attached as Exhibit A (“Conveyance Agreements”). Effective as of March 1, 2018, the Conveyance Agreements have been extended until February 28, 2019 through an EXTENSION OF TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER between FWA and each of the Conveying Districts, which agreements are also attached as part of Exhibit A.

E. Reclamation has prepared an Environmental Assessment dated __________, 2018 that addressed the recapture of Restoration Flows at PID and BCID diversion facilities on the San Joaquin River. The Environmental Assessment resulted in a Finding of No Significant Impact. In addition, in its 2013 State Board Order, in Section 8 on page 8 of 11, the State Water Resources Control Board found that Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). As such, no further environmental review is required.

F. The implementation of the Conveyance Agreements will result in costs associated with the use of facilities involved in the recapture, conveyance and exchange of the Recirculation Water, including, but not limited to, conveyance and energy costs payable by FWA to the Conveying Districts and conveyance costs payable to San Luis & Delta Mendota Water Authority.

G. FWA is willing to help facilitate the implementation of the Conveyance Agreements, as well as other possible conveyance or exchange agreements subsequently determined to be necessary to recirculate recaptured water and allocation of Recirculation Water, by agreeing to advance costs incurred in connection therewith (hereinafter “Costs”), so long as FWA is entitled, thereafter, to collect the Costs from the agencies that receive the Recirculation Water.

H. The Reimbursing Districts have indicated their intent to receive Recirculation Water as the result of the implementation of the Conveyance Agreements.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises hereinafter set forth, the parties agree as follows:
1. **Estimate of Costs.** At the time of the execution of this Agreement, the best estimate of the total Costs to the Reimbursing Districts for the Recirculation Water made available to Friant contractors in San Luis Reservoir or O"Neill Forebay are those Costs identified on the attached Exhibit B. The parties anticipate that there may be changes in the Costs shown on Exhibit B but that the total cost is not likely to increase significantly.

2. **Payment by FWA.** FWA will pay the Recirculation Water Costs to the Conveying Districts in accordance with the terms of the Conveyance Agreements in Exhibit A.

3. **Agreement to Reimburse FWA for Costs.** Each Reimbursing District agrees to pay FWA for its share of the Costs paid by FWA that are attributable to the share of Recirculation Water made available to and accepted by such Reimbursing District. Each Reimbursing District must make payment to FWA within 30 days of the date that Reimbursing District receives from FWA an itemized bill for Costs to facilitate the conveyance of the Recirculation Water received.

4. **Attorney Fees.** Should it be necessary for any party to initiate any legal action arising out of or related to this Agreement, the prevailing party in such proceeding will be entitled to an award of its reasonable attorney fees and court costs.

5. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Amendments to this Agreement will be effective only if in writing, and then only when signed by the authorized representatives of the respective parties. This Agreement is governed by and will be construed in accordance with the laws of the State of California. The Agreement may be signed in any number of counterparts. Facsimile and electronic signatures will be deemed valid and binding.

[Signatures on the following page.]
IN WITNESS WHEREOF, the undersigned authorized representatives of the parties have executed this Agreement as of the Effective Date.

FRIANT WATER AUTHORITY
By __________________________
Douglas DeFlitch, Chief Operating Officer

ARVIN-EDISON WATER STORAGE DISTRICT
By __________________________

CHOWCHILLA WATER DISTRICT
By __________________________

DELANO-EARLIMART IRRIGATION DISTRICT
By __________________________

CITY OF FRESNO
By __________________________

EXETER IRRIGATION DISTRICT
By __________________________

GARFIELD WATER DISTRICT
By __________________________

HILLS VALLEY WATER DISTRICT
By __________________________
INTERNATIONAL WATER DISTRICT

By ___________________________

IVANHOE IRRIGATION DISTRICT

By ___________________________

KERN-TULARE WATER DISTRICT

By ___________________________

LEWIS CREEK WATER DISTRICT

By ___________________________

LINDMORE IRRIGATION DISTRICT

By ___________________________

LINDSAY-STRATHMORE IRRIGATION DISTRICT

By ___________________________

LOWER TULE RIVER IRRIGATION DISTRICT

By ___________________________

MADERA IRRIGATION DISTRICT

By ___________________________

ORANGE COVE IRRIGATION DISTRICT

By ___________________________

PORTERVILLE IRRIGATION DISTRICT

By ___________________________
SAUCELITO IRRIGATION DISTRICT  SHAFTER-WASCO IRRIGATION DISTRICT

By ___________________________  By ___________________________

STONE CORRAL IRRIGATION DISTRICT  SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT,

By ___________________________  By ___________________________

TEAPOT DOME WATER DISTRICT  TERRA BELLA IRRIGATION DISTRICT

By ___________________________  By ___________________________

TRI-VALLEY WATER DISTRICT

By ___________________________
EXHIBIT A
Conveyance Agreements
[Attached]
TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER
(San Joaquin River Restoration Flows)

This AGREEMENT FOR CONVEYANCE OF WATER ("Agreement") is effective as of September 27, 2017, and is between the Patterson Irrigation District, a California irrigation district ("PID") and the Friant Water Authority, a California joint powers authority ("Friant") contracting on behalf of all Friant Division Contractors, with reference to the following facts:

A. This Agreement is entered into concurrently by Friant with that certain "REPAYMENT AGREEMENT FOR RECAPTURE OF RESTORATION FLOWS IN LOWER SAN JOAQUIN RIVER (Water Year 2017)" ("Repayment Agreement"), the recitals of which are hereby incorporated by reference, including all defined terms.

B. PID owns facilities capable of diverting water from the San Joaquin River channel and conveying it to the Delta-Mendota Canal ("DMC").

C. Friant anticipates that it will need conveyance services to recover San Joaquin River Restoration Flows ("SJRRF") during the 2017 water year. Friant requires conveyance of the SJRRF from the San Joaquin River to the DMC so that the SJRRF can be physically delivered to Friant via south-of-Delta Central Valley Project facilities including, but not limited to, the DMC, O'Neill Pumping Plant, O'Neill Forebay, San Luis Reservoir and San Luis Canal, as well as State Water Project facilities and other third party conveyance facilities, as necessary to deliver water to the Friant service area.

D. PID is willing to provide such conveyance from the San Joaquin River channel to the DMC on the terms set forth in this Agreement.

THEREFORE, the parties agree as follows:

1. Recitals. The recitals and facts set forth above are true and correct and are incorporated herein by this reference.

2. Term. This Agreement is effective upon the date first written above and will terminate on February 28, 2018 ("Term").

3. Conveyance. Subject to the provisions of this Agreement, during the Term, PID will convey up to 29,000 acre feet of SJRRF for the benefit of Friant or its designees through PID's facilities and deliver such SJRRF into the DMC. For purposes of this Agreement, conveyance of SJRRF includes diversion of that water from the San Joaquin River as well as the conveyance and delivery thereof via PID facilities into the DMC at MP 42.53-L1RW. No SJRRF will be stored in PID facilities under this Agreement.

4. Conveyance Rate. SJRRF will be conveyed under the terms and conditions of the Agreement at a rate to be determined by PID to be available subject to the priorities described in Section 7 below.

5. Construction. Friant acknowledges that PID is planning to construct improvements to its water conveyance facilities that may require the facilities to be shut down. As a result, the conveyance goal may not be met during the Term due to construction. PID agrees to undertake
reasonable efforts to convey the full 29,000 acre feet annually despite such constraints, but will not be in violation of this Agreement if it is unable to do so.

6. **Acquisition of SJRRF.** Friant is solely responsible for any actions and costs required to permit SJRRF to be conveyed by PID pursuant to this Agreement. Friant is also solely responsible for causing SJRRF to arrive at PID's diversion facilities on the San Joaquin River and for any and all costs and arrangements required in order for that water to thereafter be placed into and conveyed through the DMC.

7. **Priorities.** PID's obligations to use its facilities for the conveyance of SJRRF under this Agreement will at all times be subordinate in priority to: (1) PID's use of those facilities, and (2) any disclosed pre-existing written agreements or pre-approved arrangements for water delivery to third parties as noted in Exhibit A. Subject to the foregoing, PID may utilize its facilities for arrangements with other parties, provided that PID will not voluntarily engage in any subsequent activities or enter into any other arrangements that would interfere with its ability to perform under this Agreement or that would grant other parties a right to utilize PID's facilities senior or equal to Friant's rights under this Agreement.

8. **Scheduling.**

a. PID and Friant will work cooperatively to schedule the conveyance of SJRRF by PID under this Agreement. Friant understands that there will be times when capacity to convey SJRRF will be unavailable or unknown in advance. The parties acknowledge that it may not be feasible for Friant and its designees to identify or predict specific quantities of SJRRF to PID's diversion facilities on the San Joaquin River during periods when conveyance capacity is available for SJRRF in PID's facilities. Friant will make reasonable efforts to provide notice to PID regarding the amount of SJRRF expected to be available at PID's diversion facilities on the San Joaquin River during available conveyance periods, but Friant will not be in default under this Agreement to the extent such SJRRF are not so available. Friant will only be liable for unused capacity set aside for conveyance of SJRRF pursuant to Section 13 unless it provides notice at least 14 days in advance that reserved capacity is no longer needed.

b. Before the first of each month during the Term, Friant will submit a schedule of SJRRF anticipated to be available at the PID diversion facilities, and PID will use reasonable efforts to convey the maximum amount of available SJRRF, subject to its diversion capacity and applicable priorities described in this Agreement. If Friant does not provide the notice required by this Section, PID will not be required to provide any conveyance under this Agreement in that month, and will be free to utilize its available capacity in that month to provide wheeling services to others. Friant and PID will work cooperatively each month to reconcile the amount of SJRRF water available for conveyance, the amount of SJRRF diverted and the amount of SJRRF discharged into the DMC for the purpose of reporting to Reclamation and SLMWA.

9. **Constraints on Facilities.** PID's obligations under this Agreement are subject and subordinate to the following conditions:

a. the terms and conditions of the Approvals (as defined below);
b. applicable federal and state laws now in existence or adopted during the Term of this Agreement, and as modified from time to time, affecting PID’s rights or obligations or ability to divert from the San Joaquin River; or

c. low flow in the San Joaquin River or other adverse hydrologic conditions that make it impossible or impracticable for PID to pump SJRRF from the San Joaquin River, which conditions will be deemed a force majeure event governed by Section 11 of this Agreement;

10. **Regulatory Requirements Beyond a Party’s Control.** SJRRF to be conveyed under this Agreement may be reduced due to failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations of PID or other relevant facilities; and any action, legislation, ruling or determination adverse to a party affecting the Agreement and beyond the reasonable control of such party. An affected party will make a good faith effort to oppose such reductions, but the affected party will not be liable for reductions of supply due to such causes.

11. **Force Majeure.** If by reason of a Force Majeure Event (defined below) either party is rendered unable wholly or in part to carry out its obligations under this Agreement, then such party will give notice and full particulars of such Force Majeure Event in writing to the other party within a reasonable time after occurrence of the event or cause relied on, and such party’s obligation, so far as it is affected by such Force Majeure Event, will be suspended during the continuance of the inability then claimed, but for no longer period, and such party will endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure Event" means, but is not limited to, an event not the fault of, and beyond the reasonable control of, either party which makes it impossible or impracticable for that party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include but are not limited to (1) an "act of God" such as an earthquake, flood, earth movement, lighting, fire, storms, washouts, droughts, landslides, or similar catastrophic event, (2) an act of the public enemy, terrorism, sabotage, vandalism, contamination, civil disturbance of similar event, (3) a strike, work stoppage, lockout, civil or industrial disturbance or similar event, (4) delays in construction caused by negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, (5) breakage or accidents to machinery, buildings, equipment, pipelines or canals, partial or entire failure of water supply, or (6) an order or regulation issued by a federal, state or local regulatory agency or a judgment or order entered by a federal or state court.

12. **Curtailment of Conveyance.** PID has the right to temporarily discontinue or reduce conveyances under this Agreement (1) as reasonably required to perform scheduled routine or emergency maintenance, and (2) as needed to perform any system modifications. PID will give Friant reasonable notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Any repairs, maintenance, replacement, or other work that will necessitate taking all or a portion of the conveyance system out of operation will, to the extent practical, be undertaken between November and February, inclusive. Upon resumption of service after such reduction or curtailment, PID will attempt to convey the quantity of water that would have been furnished hereunder in the absence of such discontinuance or reduction.
13. **Conveyance Fee.** As payment for conveyance of SJRRF under this Agreement, Friant will pay PID a total fee of $100 per acre foot of SJRRF so conveyed, measured by PID upon turnout at the DMC, payable within 30 days after the last day of the calendar month during which such SJRRF is conveyed. Such fee includes without limitation all administrative, operations, maintenance, conveyance, energy and other costs incurred or imposed by PID for conveying SJRRF under this Agreement. By the tenth day of each calendar month, PID will provide Friant with an invoice indicating the amount of SJRRF conveyed under this Agreement during the immediately preceding calendar month. Except as otherwise provided in this Agreement, should Friant provide notice pursuant to Section 8 above that it intends to convey water under this Agreement in any given month, and such water is available for conveyance by PID, Friant will be required to make payment to PID pursuant to this Agreement to the extent the capacity requested is not used by Friant in that month unless otherwise utilized in that month by PID to convey other water.

14. **Losses.** No losses of water will be imposed by PID on SJRRF conveyed under this Agreement.

15. **Approvals.** The parties acknowledge that, in order for SJRRF to be acquired by Friant and conveyed by PID, certain regulatory approvals and consents (the "Approvals") may be required, including without limitation (i) approvals by the California State Water Resources Control Board and (ii) approvals and issuance of a conveyance agreement by the United States Department of the Interior and/or San Luis and Delta Mendota Water Authority, as appropriate, for conveyance of SJRRF water in the DMC. The parties will diligently and cooperatively pursue all Approvals and will each dedicate at no charge to the other such staff as is reasonably necessary to obtain them. The out of pocket expenses for obtaining the Approvals will be borne by Friant. Each party will execute such other documents as may be necessary in order to permit the conveyance of SJRRF under this Agreement. Receipt of all Approvals is a condition precedent to the parties' obligations hereunder other than the parties' obligations under this Section 15 and Section 17.

16. **No Transfer or Assignment.** This Agreement may not be assigned in whole or in part by Friant without the prior written consent of the PID, which may be withheld in PID's sole and absolute discretion. Notwithstanding the foregoing, Friant may permit other designated agencies to utilize all or any portion of the PID conveyance capacity made available to Friant under this Agreement by providing written notice to PID that it has so designated such other agency(ies). Friant will remain liable for all payments and obligations required of Friant under this Agreement notwithstanding such designation, and all water conveyed by PID hereunder for Friant's designee will be deemed conveyed for Friant hereunder.

17. **Environmental Compliance.** Compliance with the California Environmental Quality Act ("CEQA") and all other applicable environmental laws with respect to the actions contemplated by this Agreement is a condition precedent to the parties' obligations hereunder other than the parties' obligations under this Section 17 and Section 15. The parties acknowledge and agree that to their best knowledge, compliance with CEQA has been satisfied based on the actions described in the recitals to the Repayment Agreement. Nevertheless, if additional CEQA review and compliance is determined to be required, each party agrees to promptly prepare all appropriate environmental documents, if any are required, for it to undertake the actions contemplated in this Agreement and will dedicate at no charge to the
other such staff as is reasonably necessary in connection therewith. The parties will cooperate to diligently complete, or cause the completion of, all environmental review required in order to implement this Agreement, and will use reasonable efforts to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. All out of pocket costs of compliance with CEQA and other environmental laws will be borne by Friant. Notwithstanding any other provision of this Agreement, no action will be taken to effect the actions contemplated by this Agreement, and no other action will be taken that irrevocably commits any material resources of any party, until all required environmental review is completed and each party has 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 will terminate without further obligation or liability of any party. Neither the execution of this Agreement, nor any steps taken to implement this Agreement, will be taken into account in determining whether mitigating or avoiding any significant impact is feasible. Nothing in this Agreement pre-commits either party to any project approval.

18. **Attorneys' Fees.** In the event of any action between PID and Friant seeking enforcement or interpretation of any of the provisions of this Agreement, the prevailing party in such action will be awarded, in addition to damages, its reasonable costs and expenses, including without limitation actual out of pocket costs and attorneys' fees, all as ordered by the court. In the event a third party challenges this Agreement, whether judicially or otherwise, PID and Friant will assist one another without cost in connection with such challenge by providing information and witnesses as reasonably requested. Any costs of defending any such challenge, including out-of-pocket costs and attorneys' fees, will be borne by Friant except to the extent such challenge results from the gross negligence or willful misconduct of PID; provided, that PID will have the exclusive right to choose counsel and control such defense after consulting with Friant with respect to PID's choice of counsel and defense strategy.

19. **Representations and Warranties.** PID and Friant each represent and warrant to the other that (i) it has the authority to enter into this Agreement and to perform as set forth herein without any court approval or consents from third parties except the Approvals, (ii) the execution of this Agreement and performance of its obligations hereunder will not violate any agreement, option, covenant, condition, obligation, court order or undertaking affecting it, nor to the best of its knowledge will it violate any law, ordinance, statute, order or regulation, and (iii) to the best of its knowledge, there is no suit, action or arbitration, or legal, administrative, or other proceeding that affects the ability of such party to perform hereunder.

20. **Water Quality.** PID makes no warranty or representations as to the quality or fitness for use of SJRRF conveyed to Friant; provided, that PID will not voluntarily or knowingly cause the deposit or discharge of any substance into water being conveyed for Friant that would preclude the ability to discharge such water into the DMC. Friant will be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of the SJRRF.

21. **Regulatory and Litigation Costs.** Friant will defend its own interests, and will defend, indemnify and hold harmless, PID in any litigation or regulatory action challenging the validity of the SJRRF or Friant' ability to transfer or convey such water. The parties will each
defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and use of PID's conveyance facilities.

22. **Indemnification.** Each party agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to properly and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the other party hereunder.

23. **Specific Performance.** The parties acknowledge that conveyance of SJRRF is unique and of substantial value to Friant, and that the failure of PID to perform under this Agreement may not be readily compensable in monetary damages. Therefore, in addition to any other remedies available to Friant at law or in equity, in the event of a breach or threatened breach of this Agreement by PID, Friant will be entitled to specific performance of this Agreement. Further, PID acknowledges that Friant will make substantial investments in SJRRF in reliance on this Agreement that could be lost if PID fails to perform hereunder.

24. **Measurement.** Necessary measurement of water to permit compliance with this Agreement will be taken by PID by recording measuring devices selected, installed, and maintained by PID and subject to inspection at all times by Friant. PID will maintain records of the quantities of water measured by such devices and will make such records available to Friant upon request.

25. **Notices.** All notices under this Agreement will be effective (i) when personally delivered to PID or Friant, as the case may be, (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) to PID or Friant, as the case may be, at the numbers set forth 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 PID:**  
948 Orange Ave  
Patterson, CA 95363  
Attention: General Manager  
Facsimile No.: (209) 892-4013  
Telephone No.: (209) 892-6233

**To Friant:**  
854 N. Harvard Ave.  
Lindsay, CA 93247  
Attention: Chief Operating Officer  
Facsimile No.: (559) 562-3496  
Telephone No.: (559) 562-6305

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 PID and Friant will, 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 will be effective unless so confirmed in writing.

26. 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. PID and Friant acknowledge that the actions contemplated by this Agreement will require regular consultation and coordination and the parties will in good faith engage in all such consultation and coordination necessary or appropriate to facilitate the arrangements contemplated by this Agreement.

27. Third Party Beneficiaries. This Agreement does not create, and will 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.

28. Binding Effect; Governing Law; Counterparts. This Agreement is binding upon and enforceable against each of the parties. This Agreement will be governed by and construed in accordance with the laws of the State of California and may be signed in any number of counterparts. Facsimile and electronic signatures will be binding.

29. Interpretation. This Agreement will 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.

30. Waiver. Any waiver of the provisions of this Agreement by the party entitled to the benefits thereof as to any instance must be in writing and will in no event be deemed a waiver of the same provision with respect to any other instance or a waiver of any other provision of this Agreement.

31. 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, written or implied, are hereby superseded in their entirety by this Agreement and are of no further force or effect. Amendments to this Agreement will be effective only if in writing, and then only when signed by the authorized representatives of the respective parties.

32. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, that provision will be deemed automatically reformed to be enforceable to the maximum extent legally permissible, and the balance of this Agreement will be unaffected.

[Signatures on the following page.]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PATTERSON IRRIGATION DISTRICT

By: 

Vincent Lucchesi, General Manager

FRIANT WATER AUTHORITY

By: 

Douglas DeFliet, Chief Operating Officer
EXHIBIT A
Pre-Existing Commitments for Use of Conveyance Capacity

1. Agreement from October 1, 2016 to February 28, 2018 with Del Puerto Water District for conveyance up to 18.5 CFS.
TEMPORARY AGREEMENT FOR CONVEYANCE OF WATER
(San Joaquin River Restoration Flows)

This AGREEMENT FOR CONVEYANCE OF WATER ("Agreement") is effective as of Sept. 20, 2017, and is between the Banta-Carbona Irrigation District, a California irrigation district ("BCID") and the Friant Water Authority, a California joint powers authority ("Friant") contracting on behalf of all Friant Division Contractors, with reference to the following facts:

A. This Agreement is entered into concurrently by Friant with that certain "REPAYMENT AGREEMENT FOR RECAPTURE OF RESTORATION FLOWS IN LOWER SAN JOAQUIN RIVER (Water Year 2017)" ("Repayment Agreement"), the recitals of which are hereby incorporated by reference, including all defined terms.

B. BCID owns facilities capable of diverting water from the San Joaquin River channel and conveying it to the Delta-Mendota Canal ("DMC").

C. Friant anticipates that it will need conveyance services to recover San Joaquin River Restoration Flows ("SJRRF") during the 2017 water year, from the San Joaquin River to the DMC so that the SJRRF can be physically delivered to Friant via south-of-Delta Central Valley Project facilities including, but not limited to, the DMC, O'Neill Pumping Plant, O'Neill Forebay, San Luis Reservoir and San Luis Canal, as well as State Water Project facilities and other third party conveyance facilities, as necessary to deliver water to the Friant service area.

D. BCID is willing to provide such conveyance from the San Joaquin River channel to the DMC on the terms set forth in this Agreement.

THEREFORE, the parties agree as follows:

1. Recitals. The recitals and facts set forth above are true and correct and are incorporated herein by this reference.

2. Term. This Agreement is effective upon the date first written above and will terminate on February 28, 2018 ("Term").

3. Conveyance. Subject to the provisions of this Agreement, during the Term, BCID will convey up to 48,000 acre feet of SJRRF for the benefit of Friant or its designees through BCID's facilities and deliver such SJRRF into the DMC. For purposes of this Agreement, conveyance of SJRRF includes diversion of that water from the San Joaquin River as well as the conveyance and delivery thereof via BCID facilities into the DMC at MP MP 20.42-L1RW. No SJRRF will be stored in BCID facilities under this Agreement.

4. Conveyance Rate. SJRRF will be conveyed under the terms and conditions of the Agreement at a rate to be determined by BCID to be available subject to the priorities described in Section 7 below.

5. Construction. Friant acknowledges that BCID is planning to construct improvements to its water conveyance facilities that may require the facilities to be shut down. As a result, the conveyance goal may not be met during the Term due to construction. BCID agrees to undertake reasonable efforts to convey the full 48,000 acre feet annually despite such constraints, but will not be in violation of this Agreement if it is unable to do so.
6. **Acquisition of SJRRF.** Friant is solely responsible for any actions and costs required to permit SJRRF to be conveyed by BCID pursuant to this Agreement. Friant is also solely responsible for causing SJRRF to arrive at BCID's diversion facilities on the San Joaquin River and for any and all costs and arrangements required in order for that water to thereafter be placed into and conveyed through the DMC.

7. **Priorities.** BCID's obligations to use its facilities for the conveyance of SJRRF under this Agreement will at all times be subordinate in priority to: (1) BCID's use of those facilities, and (2) any disclosed pre-existing written agreements or pre-approved arrangements for water delivery to third parties as noted in Exhibit A. Subject to the foregoing, BCID may utilize its facilities for arrangements with other parties, provided that BCID will not voluntarily engage in any subsequent activities or enter into any other arrangements that would interfere with its ability to perform under this Agreement or that would grant other parties a right to utilize BCID's facilities senior or equal to Friant's rights under this Agreement.

8. **Scheduling.**

   a. BCID and Friant will work cooperatively to schedule the conveyance of SJRRF by BCID under this Agreement. Friant understands that there will be times when capacity to convey SJRRF will be unavailable or unknown in advance. The parties acknowledge that it may not be feasible for Friant and its designee to identify or predict specific quantities of SJRRF to BCID's diversion facilities on the San Joaquin River during periods when conveyance capacity is available for SJRRF in BCID's facilities. Friant will make reasonable efforts to provide notice to BCID regarding the amount of SJRRF expected to be available at BCID's diversion facilities on the San Joaquin River during available conveyance periods, but Friant will not be in default under this Agreement to the extent such SJRRF are not so available. Friant will only be liable for unused capacity set aside for conveyance of SJRRF pursuant to Section 13 unless it provides notice at least 14 days in advance that reserved capacity is no longer needed.

   b. Before the first of each month during the Term, Friant will submit a schedule of SJRRF anticipated to be available at the BCID diversion facilities, and BCID will use reasonable efforts to convey the maximum amount of available SJRRF, subject to its diversion capacity and applicable priorities described in this Agreement. If Friant does not provide the notice required by this Section, BCID will not be required to provide any conveyance under this Agreement in that month, and will be free to utilize its available capacity in that month to provide wheeling services to others. Friant and BCID will work cooperatively each month to reconcile the amount of SJRRF water available for conveyance, the amount of SJRRF diverted and the amount of SJRRF discharged into the DMC for the purpose of reporting to Reclamation and SLDMWA.

9. **Constraints on Facilities.** BCID's obligations under this Agreement are subject and subordinate to the following conditions:

   (a) the terms and conditions of the Approvals (as defined below);

   (b) applicable federal and state laws now in existence or adopted during the Term of this Agreement, and as modified from time to time, affecting BCID's rights or obligations or ability to divert from the San Joaquin River; or

   (c) low flow in the San Joaquin River or other adverse hydrologic conditions that make it impossible or impracticable for BCID to pump SJRRF from the San Joaquin River, which conditions will be deemed a force majeure event governed by Section 11 of this Agreement;

4837-7226-3804 v2
10. **Regulatory Requirements Beyond a Party's Control.** SJRRF to be conveyed under this Agreement may be reduced due to failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations of BCID or other relevant facilities; and any action, legislation, ruling or determination adverse to a party affecting the Agreement and beyond the reasonable control of such party. An affected party will make a good faith effort to oppose such reductions, but the affected party will not be liable for reductions of supply due to such causes.

11. **Force Majeure.** If by reason of a Force Majeure Event (defined below) either party is rendered unable wholly or in part to carry out its obligations under this Agreement, then such party will give notice and full particulars of such Force Majeure Event in writing to the other party within a reasonable time after occurrence of the event or cause relied on, and such party's obligation, so far as it is affected by such Force Majeure Event, will be suspended during the continuance of the inability then claimed, but for no longer period, and such party will endeavor to remove or overcome such inability with all reasonable dispatch. The term "**Force Majeure Event**" means, but is not be limited to, an event not the fault of, and beyond the reasonable control of, either party which makes it impossible or impracticable for that party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include but are not limited to (1) an "act of God" such as an earthquake, flood, earth movement, lighting, fire, storms, washouts, droughts, landslides, or similar catastrophic event, (2) an act of the public enemy, terrorism, sabotage, vandalism, contamination, civil disturbance of similar event, (3) a strike, work stoppage, lockout, civil or industrial disturbance or similar event, (4) delays in construction caused by negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, (5) breakage or accidents to machinery, buildings, equipment, pipelines or canals, partial or entire failure of water supply, or (6) an order or regulation issued by a federal, state or local regulatory agency or a judgment or order entered by a federal or state court.

12. **Curtailment of Conveyance.** BCID has the right to temporarily discontinue or reduce conveyances under this Agreement (1) as reasonably required to perform scheduled routine or emergency maintenance, and (2) as needed to perform any system modifications. BCID will give Friant reasonable notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Any repairs, maintenance, replacement, or other work that will necessitate taking all or a portion of the conveyance system out of operation will, to the extent practical, be undertaken between November and February, inclusive. Upon resumption of service after such reduction or curtailment, BCID will attempt to convey the quantity of water that would have been furnished hereunder in the absence of such discontinuance or reduction.

13. **Conveyance Fee.** As payment for conveyance of SJRRF under this Agreement, Friant will pay BCID a total fee of $100 per acre foot of SJRRF so conveyed, measured by BCID upon turnout at the DMC, payable within 30 days after the last day of the calendar month during which such SJRRF is conveyed. Such fee includes without limitation all administrative, operations, maintenance, conveyance, energy and other costs incurred or imposed by BCID for conveying SJRRF under this Agreement. By the tenth day of each calendar month, BCID will provide Friant with an invoice indicating the amount of SJRRF conveyed under this Agreement during the immediately preceding calendar month. Except as otherwise provided in this Agreement, should Friant provide notice pursuant to Section 8 above that it intends to convey water under this Agreement in any given month, and such water is available for conveyance by BCID, Friant will be required to make payment to BCID pursuant to this Agreement to the extent the capacity requested is not used by Friant in that month unless otherwise utilized in that month by BCID to convey other water.

14. **Losses.** No losses of water will be imposed by BCID on SJRRF conveyed under this Agreement.
15. Approvals. The parties acknowledge that, in order for SJRRF to be acquired by Friant and conveyed by BCID, certain regulatory approvals and consents (the "Approvals") may be required, including without limitation (i) approvals by the California State Water Resources Control Board and (ii) approvals and issuance of a conveyance agreement by the United States Department of the Interior and/or San Luis and Delta Mendota Water Authority, as appropriate, for conveyance of SJRRF water in the DMC. The parties will diligently and cooperatively pursue all Approvals and will each dedicate at no charge to the other such staff as is reasonably necessary to obtain them. The out of pocket expenses for obtaining the Approvals will be borne by Friant. Each party will execute such other documents as may be necessary in order to permit the conveyance of SJRRF under this Agreement. Receipt of all Approvals is a condition precedent to the parties' obligations hereunder other than the parties' obligations under this Section 15 and Section 17.

16. No Transfer or Assignment. This Agreement may not be assigned in whole or in part by Friant without the prior written consent of the BCID, which may be withheld in BCID's sole and absolute discretion. Notwithstanding the foregoing, Friant may permit other designated agencies to utilize all or any portion of the BCID conveyance capacity made available to Friant under this Agreement by providing written notice to BCID that it has so designated such other agency(ies). Friant will remain liable for all payments and obligations required of Friant under this Agreement notwithstanding such designation, and all water conveyed by BCID hereunder for Friant' designees will be deemed conveyed for Friant hereunder.

17. Environmental Compliance. Compliance with the California Environmental Quality Act ("CEQA") and all other applicable environmental laws with respect to the actions contemplated by this Agreement is a condition precedent to the parties' obligations hereunder other than the parties' obligations under this Section 17 and Section 15. The parties acknowledge and agree that to their best knowledge, compliance with CEQA has been satisfied based on the actions described in the recitals to the Repayment Agreement. Nevertheless, if additional CEQA review and compliance is determined to be required, each party agrees to promptly prepare all appropriate environmental documents, if any are required, for it to undertake the actions contemplated in this Agreement and will dedicate at no charge to the other such staff as is reasonably necessary in connection therewith. The parties will cooperate to diligently complete, or cause the completion of, all environmental review required in order to implement this Agreement, and will use reasonable efforts to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. All out of pocket costs of compliance with CEQA and other environmental laws will be borne by Friant. Notwithstanding any other provision of this Agreement, no action will be taken to effect the actions contemplated by this Agreement, and no other action will be taken that irrevocably commits any material resources of any party, until all required environmental review is completed and each party has 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 will terminate without further obligation or liability of any party. Neither the execution of this Agreement, nor any steps taken to implement this Agreement, will be taken into account in determining whether mitigating or avoiding any significant impact is feasible. Nothing in this Agreement pre-commits either party to any project approval.

18. Attorneys' Fees. In the event of any action between BCID and Friant seeking enforcement or interpretation of any of the provisions of this Agreement, the prevailing party in such action will be awarded, in addition to damages, its reasonable costs and expenses, including without limitation actual out of pocket costs and attorneys' fees, all as ordered by the court. In the event a third party challenges this Agreement, whether judicially or otherwise, BCID and Friant will assist one another without cost in
connection with such challenge by providing information and witnesses as reasonably requested. Any costs of defending any such challenge, including out-of-pocket costs and attorneys' fees, will be borne by Friant except to the extent such challenge results from the gross negligence or willful misconduct of BCID; provided, that BCID will have the exclusive right to choose counsel and control such defense after consulting with Friant with respect to BCID's choice of counsel and defense strategy.

19. Representations and Warranties. BCID and Friant each represent and warrant to the other that (i) it has the authority to enter into this Agreement and to perform as set forth herein without any court approval or consents from third parties except the Approvals, (ii) the execution of this Agreement and performance of its obligations hereunder will not violate any agreement, option, covenant, condition, obligation, court order or undertaking affecting it, nor to the best of its knowledge will it violate any law, ordinance, statute, order or regulation, and (iii) to the best of its knowledge, there is no suit, action or arbitration, or legal, administrative, or other proceeding that affects the ability of such party to perform hereunder.

20. Water Quality. BCID makes no warranty or representations as to the quality or fitness for use of SJRRF conveyed to Friant; provided, that BCID will not voluntarily or knowingly cause the deposit or discharge of any substance into water being conveyed for Friant that would preclude the ability to discharge such water into the DMC. Friant will be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of the SJRRF.

21. Regulatory and Litigation Costs. Friant will defend its own interests, and will defend, indemnify and hold harmless, BCID in any litigation or regulatory action challenging the validity of the SJRRF or Friant' ability to transfer or convey such water. The parties will each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and use of BCID's conveyance facilities.

22. Indemnification. Each party agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the other party hereunder.

23. Specific Performance. The parties acknowledge that conveyance of SJRRF is unique and of substantial value to Friant, and that the failure of BCID to perform under this Agreement may not be readily compensable in monetary damages. Therefore, in addition to any other remedies available to Friant at law or in equity, in the event of a breach or threatened breach of this Agreement by BCID, Friant will be entitled to specific performance of this Agreement. Further, BCID acknowledges that Friant will make substantial investments in SJRRF in reliance on this Agreement that could be lost if BCID fails to perform hereunder.

24. Measurement. Necessary measurement of water to permit compliance with this Agreement will be taken by BCID by recording measuring devices selected, installed, and maintained by BCID and subject to inspection at all times by Friant. BCID will maintain records of the quantities of water measured by such devices and will make such records available to Friant upon request.

25. Notices. All notices under this Agreement will be effective (i) when personally delivered to BCID or Friant, as the case may be, (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) to BCID or Friant, as the case may be, at the numbers set forth 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 BCID: 3514 West Lehman Road
Tracy, CA  95304-9336
Attention: General Manager
Facsimile No.: (209) 835-2009
Telephone No.: (209) 835-4670

To Friant: 854 N. Harvard Ave.
Lindsay, CA  93247
Attention: Chief Operating Officer
Facsimile No.: (559) 562-3496
Telephone No.: (559) 562-6305

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 BCID and Friant will, 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 will be effective unless so confirmed in writing.

26. 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. BCID and Friant acknowledge that the actions contemplated by this Agreement will require regular consultation and coordination and the parties will in good faith engage in all such consultation and coordination necessary or appropriate to facilitate the arrangements contemplated by this Agreement.

27. Third Party Beneficiaries. This Agreement does not create, and will 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.

28. Binding Effect; Governing Law; Counterparts. This Agreement is binding upon and enforceable against each of the parties. This Agreement will be governed by and construed in accordance with the laws of the State of California and may be signed in any number of counterparts. Facsimile and electronic signatures will be binding.

29. Interpretation. This Agreement will 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.

30. Waiver. Any waiver of the provisions of this Agreement by the party entitled to the benefits thereof as to any instance must be in writing and will in no event be deemed a waiver of the same provision with respect to any other instance or a waiver of any other provision of this Agreement.

31. 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, written or implied, are hereby superseded in their entirety by this Agreement and are of no further force or effect. Amendments to this Agreement will be effective only if in writing, and then only when signed by the authorized representatives of the respective parties.
32. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, that provision will be deemed automatically reformed to be enforceable to the maximum extent legally permissible, and the balance of this Agreement will be unaffected.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BANTA-CARBONA IRRIGATION DISTRICT  FRIANT WATER AUTHORITY

By: [Signature] [Signature]

David Weisenberger, General Manager  Douglas DeFlitch, Chief Operating Officer
EXHIBIT A

Pre-Existing Commitments for use of Conveyance Capacity

1) Water Transfer Agreement Between Banta-Carbona Irrigation District and Meyers Farms Family Trust – 10,000 acre feet

2) Temporary Warren Act Contract #15-WC-20-4659 – 10,000 acre feet
EXHIBIT B

Estimated LSJR Conveyance Agreements Costs

[Attached]
Exhibit B: Estimated LSJR Repayment Agreement Costs

2017 LSJR Recapture Cost Elements

Cost estimate*

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<th>Cost Estimate</th>
<th>Amount</th>
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<td>PID/BCID Conveyance Charge ($/AF)</td>
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<td>Total cost Intertie to O’Neill</td>
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* Assumes all water uses DMC Intertie and Ca Aqueduct
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