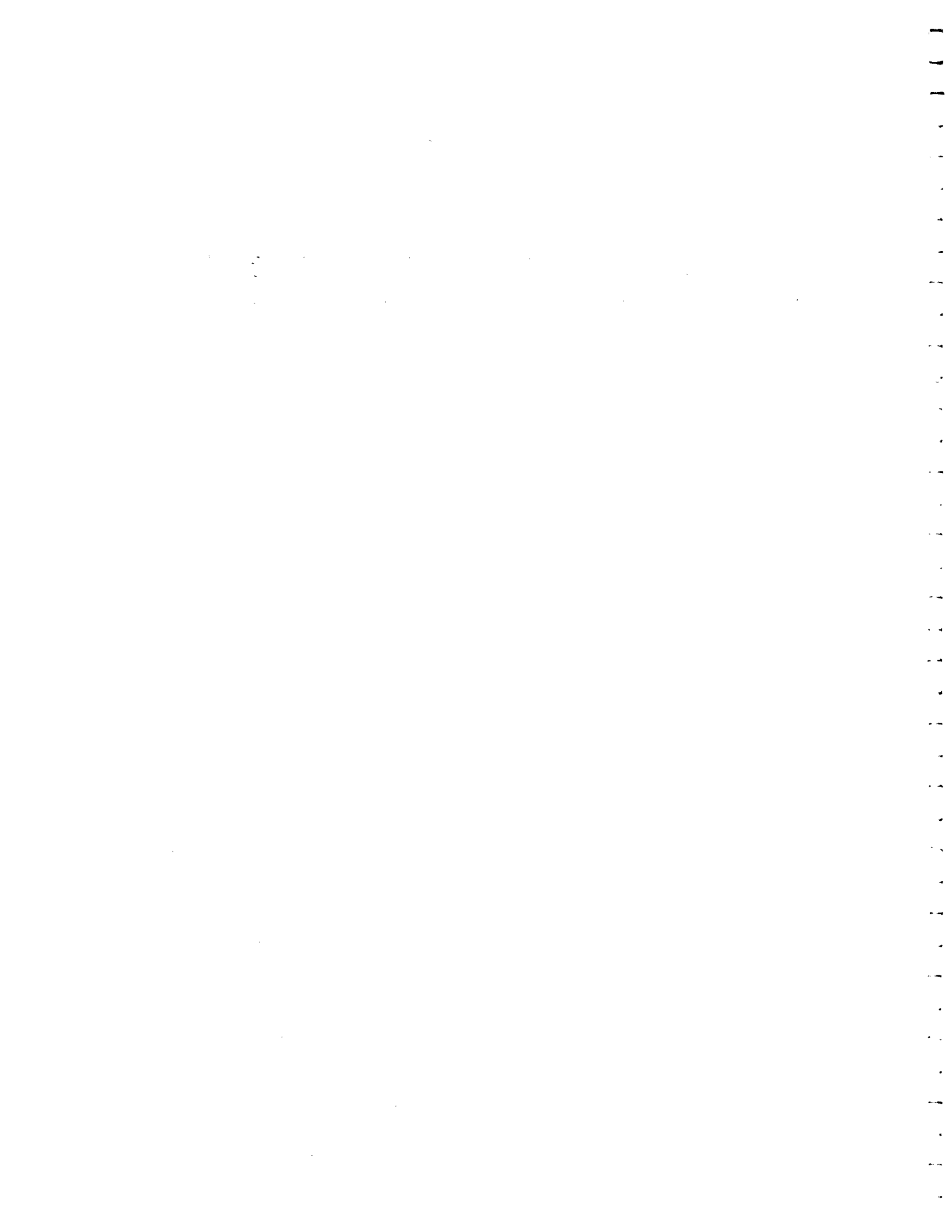


APPENDIX 5
USE AGREEMENT



Agreement No. 6-07-20-w1319

UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT FOR USE
OF THE
SAN LUIS DRAIN

THIS AGREEMENT is entered into this 3rd day of November 1995, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and all Acts amendatory thereof and supplemental thereto, all such Acts commonly known as and referred to as the Federal Reclamation Law, by the United States of America (UNITED STATES), acting by and through its Bureau of Reclamation, Mid-Pacific Region (RECLAMATION), Department of the Interior, represented by the officer executing this agreement, and the San Luis & Delta-Mendota Water Authority (AUTHORITY), a joint powers authority, duly organized, existing and acting pursuant to the laws of the State of California, acting by and through its Executive Director.

RECITALS

A. The UNITED STATES has acquired land and constructed the San Luis Drain, as a feature of its Central Valley Project.

B. The AUTHORITY has requested that the UNITED STATES permit it to use a portion of the San Luis Drain consisting of approximately 28

miles from the terminus (Kesterson Reservoir) to Milepost 105.72, Check 19 (near Russell Avenue) for the discharge and transportation of a maximum flow of 150 cubic feet per second (CFS) of drainage water to Mud Slough (said portion hereinafter referred to as the "Drain").

C. The AUTHORITY and RECLAMATION have evaluated potential environmental consequences of the proposed use of the Drain to convey drainage water, as set forth in this Agreement, and have completed the necessary environmental reviews in accordance with the AUTHORITY'S responsibilities under the California Environmental Quality Act (CEQA) and RECLAMATION'S responsibilities under the National Environmental Policy Act (NEPA). On the basis of their environmental reviews of the proposed action, the AUTHORITY issued a Negative Declaration on December 26, 1990, which was approved with an Addendum on July 13, 1995, and RECLAMATION issued a Finding of No Significant Impact on November 3, 1995 (referred to as the "FONSI").

It is the objective and intention of RECLAMATION and the AUTHORITY, among other things, to ensure that the use of the Drain as provided in this Agreement does not result in degradation of water quality in the San Joaquin River relative to the quality that would exist in the absence of the project and does not reduce the ability to meet the salinity standard at Vernalis compared to the ability to meet the salinity standard that would exist in the

absence of the project. RECLAMATION and the AUTHORITY will work to monitor and analyze the effect of the project on this objective through analysis of the monthly effects on salinity concentrations and loads.

D. The AUTHORITY has entered into an agreement with its members, referred to as the Grassland Basin Drainage Management Activity Agreement, and into memoranda of understanding with certain other parties, all of which have a need for use of the San Luis Drain. RECLAMATION has no objection to the AUTHORITY entering into such agreements.

E. The UNITED STATES has no objection to such use of the Drain and RECLAMATION land as such use is, at this time, not incompatible with the purpose of the Drain and the purpose for which the RECLAMATION land was withdrawn or acquired and is being administered by the UNITED STATES.

F. The AUTHORITY has entered into Cooperative Agreement No. 3-FC-30-10820, as modified (the "Cooperative Agreement"), with RECLAMATION, whereby the AUTHORITY is responsible for, among other things, the operation and maintenance of the San Luis Drain to the extent described in the Performance Work Statement created pursuant to the Cooperative Agreement and according to the terms set forth therein; the scope of AUTHORITY's responsibility for operation and maintenance of the San Luis Drain and of its authority delegated by

RECLAMATION will be as set forth in the Cooperative Agreement, except that the terms of this Agreement providing any more specific responsibilities and authority supersede the Cooperative Agreement for that portion of the Drain subject to this Use Agreement.

G. RECLAMATION anticipates that any long-term use of the Drain beyond the scope of this interim project will require further specific planning and prior completion of an Environmental Impact Statement under NEPA (along with other environmental compliance requirements). RECLAMATION intends to assure that any future use of the Drain is consistent with a long-term drainage management plan that provides for compliance with water quality standards, including, as necessary for such compliance, continuing additional reductions in selenium loads.

AGREEMENT

Subject to the following terms, conditions, and limitations, and the Environmental Commitments set forth in the FONSI at pages 4-9, which are hereby incorporated and made an integral component of this Agreement, the UNITED STATES grants permission to the AUTHORITY to enter upon, use, operate and maintain the Drain, including check structures and all other land and facilities appurtenant to the Drain for the purpose of conveying drainwater flows from the Drainage Area, as defined herein, from Milepost 105.72, Check 19 to the terminus and into Mud Slough. In addition, RECLAMATION grants permission to use Drain rights-of-way from the

terminus (Kesterson Reservoir) to Check 19, as reasonably required in accordance with this Agreement. "Land" includes land owned and/or controlled by the United States and land in which the United States holds an interest that is affected by the AUTHORITY's activities under this Agreement.

I. Purpose of Use

A. The AUTHORITY is entering this Use Agreement for the purpose of providing the benefit of use of the San Luis Drain according to the terms hereof to those of its member agencies which have entered into the Grassland Basin Drainage Management Activity Agreement with the AUTHORITY and with the parties to various Memoranda of Understanding (MOU's) by the terms of which the parties who would discharge into the Drain have agreed to abide by the terms of this Use Agreement.

1. Members of the AUTHORITY which have entered into the Grassland Basin Drainage Management Activity Agreement include the Broadview Water District, the Charleston Drainage District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, and the Widren Water District, and parties which may enter into Memoranda of Understanding with the AUTHORITY include the owners of certain additional lands, described in Appendix "A" hereto, from which lands drainage waters do or may enter channels utilized to provide water to wetland habitat in the

Grassland Water District and state and federal refuges; the parties to such Agreements and MOU's are collectively termed the "Draining Parties".

2. The lands to be served pursuant to the Use Agreement are only those lands located within the geographic area shown in Appendix "B" attached hereto and made a part hereof, which consists of approximately 97,000 acres (the "Drainage Area").

3. The AUTHORITY shall be permitted to use the Drain for the discharge into and transportation of drainage water from the Draining Parties within in the Drainage Area, provided, (a) that such use is consistent with and subject to the terms, conditions and limitations of the Environmental Commitments set forth in the FONSI and this Agreement, (b) that the effects of such use on the salinity standard in the San Joaquin River at Vernalis be monitored and analyzed on a monthly basis, (c) if such analysis indicates an increase of TDS concentrations or loads over such concentrations or loads as would have existed without the AUTHORITY's use of the Drain during any month from March through October, corrective actions shall be implemented within 45 days, and (d) the AUTHORITY meets all other terms and conditions of this Use Agreement.

B. The AUTHORITY may incorporate terms into the Activity Agreement or MOU's or may promulgate bylaws, rules or regulations thereunder concerning the sharing of responsibilities, costs and

obligations arising from this Agreement or under the FONSI and for the payment of fees as compensation to the AUTHORITY for its performance of its obligations and responsibilities under this agreement, but in no event shall any such Activity Agreement or MOU entered into between the AUTHORITY and the Draining Parties include rights and responsibilities which are inconsistent with the specific terms and conditions of this Agreement or the FONSI, or which are in violation of any laws or regulations applicable to this Agreement.

II. Permits and Responsibilities

A. The AUTHORITY shall be responsible for obtaining all permits and other approvals necessary for its use, operation and maintenance of the Drain in accordance with the terms and conditions of this Agreement, the FONSI, the Drainage Operation Plans of the Draining Parties as submitted to the California Regional Water Quality Control Board, Central Valley Region (the "Regional Board"), or any alternative form of requirements of the Regional Board, and all applicable local, state and federal laws and regulations.

B. The AUTHORITY shall be responsible for ensuring that only drainage water from the Drainage Area pursuant to the terms of the Activity Agreement or MOU enters the Drain, and that such drainage water is controlled and monitored to ensure its quality and

composition complies with this Agreement and all applicable federal, state and local standards, requirements, regulations and laws. During its use of the Drain under this Agreement, the AUTHORITY shall be solely responsible for and have sole authority over (subject to the FONSI, this Agreement and all applicable laws and regulations) the proper management and disposal of all discharges into and from the Drain.

C. For purposes of this project the AUTHORITY shall not use the Drain in any manner that will affect water levels in or cause drainage water to flow into the portions of the Drain south of Check 19. Management and control of the operation of Check 19 shall be in accordance with the Cooperative Agreement.

D. RECLAMATION, in its discretion, shall, at any time during the term of this Use Agreement, have the option of either removing the sediment and organic materials now deposited in the Drain, or, of delegating this responsibility to the AUTHORITY. If RECLAMATION elects to remove the sediment during the term of this Agreement, RECLAMATION shall endeavor to conduct and coordinate such activities in a manner which will not unreasonably interfere with the AUTHORITY's use of the Drain. In any event, unless directed otherwise by RECLAMATION, the AUTHORITY shall be responsible for the management, removal and disposal, at its own and sole expense, of all sediment, organic materials and other substances accumulating in the Drain as a result of its use of the Drain pursuant to

this Agreement. Any costs incurred by either RECLAMATION or the AUTHORITY for the management, removal and disposal of the sediment and other materials in the Drain shall be apportioned between RECLAMATION and the AUTHORITY on the basis of the total volume of materials and the total concentration of contaminants in those materials in the Drain attributable to each party's use of the Drain. (For purposes of this Section D, the AUTHORITY shall not be deemed to have used the Drain until it begins delivering drainage water into the Drain under the terms of this Agreement).

E. AUTHORITY shall pay to RECLAMATION such specific items of direct costs reasonably incurred by RECLAMATION for work associated with this Agreement as are normally charged by RECLAMATION under similar agreements and properly and equitably are chargeable to the AUTHORITY, plus a percentage of direct cost to cover RECLAMATION administrative and general overhead in accordance with the procedures approved by RECLAMATION. AUTHORITY shall pay the total annual costs within sixty (60) days following its receipt of a detailed cost statement from RECLAMATION for each year during the term of this Agreement.

F. AUTHORITY shall follow the procedures described in the "Plan for Initial Operation, Filling and Management of Releases from the San Luis Drain" included as Appendix 1 in the Supplemental Environmental Assessment dated November 2, 1995.

G. All Draining Parties discharging into the Drain pursuant to this Agreement that are subject to the requirement to prepare a "water conservation plan" under Federal law will have a water conservation plan as provided in the Central Valley Project Improvement Act and in the Bureau's April 1993 Guidelines that has been deemed adequate by six months from the date of the first discharge of drainage into the San Luis Drain under the Use Agreement. Such Draining Parties will comply with all applicable provisions in the implementation plan included in an adequate "water conservation plan".

H. Drainage Incentive Fees.

(1) At or before the time an initial payment is to be made pursuant to this subsection H, RECLAMATION shall establish at a nationally-chartered bank or other independent third party trustee an account known as the Drainage Incentive Fee Account. Disbursements shall be made from said Drainage Incentive Fee Account only at the direction of the Oversight Committee described in the FONSI (the "Oversight Committee").

(2) On a regular basis, and in no event less frequently than monthly, the results of the monitoring program, including the monitoring results pertaining to selenium loads being delivered from the Drain to Mud Slough, shall be submitted to RECLAMATION, to the Oversight Committee, and to other interested parties.

(3) Within 30 days of the close of the 12-month period following the first discharge into the Drain pursuant to this Agreement RECLAMATION shall, based on the monitoring results, calculate the preliminary Drainage Incentive Fee for such year in accordance with Appendix B to the Consensus letter to the Regional Board dated November 2, 1995, and shall immediately submit such calculations to the Oversight Committee.

(4) Within 60 days of the close of each year, the Oversight Committee shall, with the advice of any technical committee it may establish, determine the Drainage Incentive Fee. Such Drainage Incentive Fee shall be the amount calculated by RECLAMATION reduced by the amount, if any, waived by the Oversight Committee. The Oversight Committee may waive the Drainage Incentive Fee, in whole or in part, only upon a finding that the AUTHORITY has shown that exceedances in particular months or for the year as a whole were caused by unforeseeable and uncontrollable events (as discussed in the FONSI). The Oversight Committee's determination of the Drainage Incentive Fee shall be transmitted to the AUTHORITY in writing immediately.

(5) Within 60 days of the receipt of the Oversight Committee's determination, the AUTHORITY shall deposit the amount of the Drainage Incentive Fee in the Drainage Incentive Fee Account. Failure to deposit said amount in the Drainage Incentive Fee Account within 90 days of receipt of the Oversight Committee's

decision shall constitute grounds for immediate termination of this Use Agreement.

(6) The Oversight Committee shall at least annually determine the disposition of funds deposited in the Drainage Incentive Fee Account. Such determination shall be made only after consultation with the Draining Parties and any other interested parties, and may be based on recommendations from subcommittees established by the Oversight Committee. These funds are to be used for such programs or actions as the Oversight Committee determines will assist in meeting selenium load values stated in Appendix A to the Consensus letter to the Regional Board dated November 2, 1995 ("Selenium Load Values"), and/or water quality objectives in the Drainage Area. In determining the disposition of Account funds, the Oversight Committee shall give special consideration to programs or actions identified in the San Joaquin Valley Drainage Program Report. It is intended that programs or actions funded through the Drainage Incentive Fee Account will be supplemental to, and shall not replace, budgeted actions of the AUTHORITY or of RECLAMATION to accomplish drainage reduction targets. At its discretion, the Oversight Committee may accumulate funds in the Drainage Incentive Fee Account until sufficient funds have accumulated to fund larger programs or actions. Upon making its determination as to the disposition of funds in the Drainage Incentive Fee Account, the Oversight Committee shall instruct RECLAMATION to make such disbursements from the Account to such

persons and in such amounts as are consistent with that determination.

(7) Drainage Incentive Fees owed by the AUTHORITY pursuant to subsection II H(4) and any funds held in the Drainage Incentive Fee Account as of the date of termination of this Agreement shall be paid, held, administered and disposed of in accordance with this subsection II. H. Except for Drainage Incentive Fees owed on the date of termination, the AUTHORITY shall have no obligation for Drainage Incentive Fees under the Agreement following the termination hereof.

III. Monitoring

The AUTHORITY shall be responsible for implementation of a monitoring program in accordance with the requirements of the FONSI.

IV. Construction, Operation and Maintenance

A. The AUTHORITY shall comply with the requirements of the FONSI in all construction, operation and maintenance activities.

B. The AUTHORITY shall develop and implement, at its own and sole expense, a supplemental maintenance program for the Drain appropriate for the use under this Agreement. The maintenance program shall be submitted to RECLAMATION for review and approval within 30 days of the effective date of this Agreement, and shall

be implemented after approval by RECLAMATION, which approval shall not unreasonably be withheld.

C. The AUTHORITY shall be responsible for the construction, installation, operation, maintenance, and ultimate removal, if such removal is required by RECLAMATION, of any new facilities necessary for the AUTHORITY's use of the Drain; for the operation and maintenance of all existing features of the Drain; for the repair of any damage to the Drain arising out of its use of the Drain; and for the restoration of any land requiring restoration as a result of the AUTHORITY's use of the Drain.

D. The AUTHORITY shall furnish to RECLAMATION for approval the plans and specifications for all facilities or structures that are to be constructed on Land of the UNITED STATES. The AUTHORITY shall not commence construction or installation of any such facility prior to submitting the plans and specifications to RECLAMATION for review and obtaining written approval, which approval shall not unreasonably be withheld.

E. RECLAMATION shall promptly furnish to the AUTHORITY copies of documents, drawings and other records available to RECLAMATION which are appropriate or necessary for the AUTHORITY's use of the Drain in accordance with this Agreement, as requested by the AUTHORITY in writing. The AUTHORITY shall revise such drawings to reflect new facilities and any modifications to existing

facilities installed by the AUTHORITY and shall promptly furnish a copy of each revised drawing to RECLAMATION.

F. The Parties acknowledge and agree that the Draining Parties shall be responsible to the Authority for payment of all operation and maintenance, administration, and construction costs arising from performance by the Authority pursuant to this Use Agreement, provided, that payment for baseline operation and maintenance and administration costs incurred by the Authority for the San Luis Drain pursuant to the Cooperative Agreement shall be budgeted, and repayment responsibility shall be allocated, in accordance with the terms of the Cooperative Agreement without regard to this Use Agreement.

V. Term, Extension Term, and Termination

A. This Agreement shall become effective on its date of execution by the parties, and unless sooner terminated in accordance with its terms, shall remain in effect for a term of two (2) years from the date drainwater is first discharged by the AUTHORITY, or by one of the Draining Parties pursuant to the Activity Agreement or an MOU with the AUTHORITY, into the Drain.

B. This Agreement shall be extended for a period of three (3) years as provided in the FONSI.

C. **Termination for Exceedance of Selenium Load Values**

1. Annual Exceedances. If the calculated annual load of selenium discharged from the Drain into Mud Slough as determined in accordance with the monitoring program established under the FONSI exceeds by 20% or more the annual Selenium Load Values, RECLAMATION shall terminate this Use Agreement unless the Oversight Committee, after consulting with the Draining Parties, any other stakeholders, and any technical committee established by the Oversight Committee, makes an affirmative finding that the AUTHORITY has shown that such exceedance was caused by unforeseeable and uncontrollable events (as discussed in the FONSI).

2. Monthly Exceedances. This Use Agreement may be terminated on account of exceedance of monthly Selenium Load Values only pursuant to the conditions set forth in Paragraphs V.D. and V.E. of this Agreement.

D. This Agreement shall terminate immediately upon any final order or action by the California State Water Resources Control Board, Regional Board, Environmental Protection Agency, or any other federal, State or local government entity with jurisdiction over the drainwater discharges contemplated by this Agreement which prohibits or substantially prohibits the discharge of drainage water by the AUTHORITY into the San Luis Drain, Mud Slough, or the San Joaquin River.

E. This Agreement will be reviewed at least annually for compliance with its terms and conditions and, except as otherwise set forth herein, shall be subject to termination upon a finding that the Authority failed to comply with any of the terms or conditions of this Agreement or if unacceptable adverse environmental effects occur as determined pursuant to the FONSI. For purposes of this paragraph, if RECLAMATION determines, based on available data and after consultation with the Oversight Committee and the AUTHORITY, that unacceptable adverse environmental effects have occurred due to the use of the Drain, RECLAMATION shall notify the AUTHORITY of its determination and provide the AUTHORITY an adequate opportunity to refute this determination. If, in RECLAMATION's judgement, the AUTHORITY fails to provide sufficient evidence refuting RECLAMATION's determination, RECLAMATION shall terminate this Agreement.

F. Except as otherwise set forth herein, RECLAMATION may terminate this Agreement upon failure of the AUTHORITY or a Draining party to comply with any of the terms, conditions and limitations of this Agreement or the FONSI, if such noncompliance is continuing 60 days after written notice to the AUTHORITY of such noncompliance. The requirement of continuing noncompliance for 60 days after written notice does not apply to violation of terms, conditions and limitations of this Agreement or the FONSI, where such provisions state requirements that, if violated, cannot be cured by subsequent AUTHORITY action, including, without limita-

tion, the provisions in the FONSI requiring advance consultations regarding endangered species and archeological resources (FONSI, Environmental Commitments, Par. B). For purposes of this Agreement, to the extent that there are inconsistencies between this Agreement and the FONSI, this Agreement shall take precedence over the FONSI.

G. The parties to this Use Agreement agree that a critical purpose of this Use Agreement is the removal of drainage water from the channels utilized to provide water to wetland habitat in the Grassland Water District and state and federal wildlife refuges. In the event that any of the Draining Parties withdraw from the Grasslands Basin Drainage Management Activity Agreement and resume the discharge of drainage water into those channels, or if any individuals within the Drainage Area who have commenced using the Drain resume the discharge of drainage water into those channels, the Oversight Committee shall review the impact of such resumed discharge and shall recommend appropriate remedies, up to and including termination of the Use Agreement. In making its evaluation, the Oversight Committee shall give special consideration to the existence of exceedances of water quality standards in the channels and to the probable causes of such exceedances.

H. This Agreement may be terminated by the AUTHORITY upon thirty (30) days' written notice to RECLAMATION.

I. In the event that an out-of-valley export facility addressed by the Partial Judgement dated March 10, 1995, in *Sumner Peck Ranch, Inc., v. Bureau of Reclamation*, Civ. Nos. F-91-048 OWW & F-88-634 OWW (E.D.Cal.) is constructed, discharge permits obtained, and environmental compliance completed during the term of this Agreement (including any extension), this Agreement will terminate.

J. In the event that this Agreement is terminated for any reason, the Parties understand that the Draining Parties intend to resume discharge of drainage water through channels historically utilized.

VI. Restoration

Upon termination of this Agreement, at the discretion of the UNITED STATES, the AUTHORITY shall remove without delay, and at the expense of the AUTHORITY, all equipment and improvements and other facilities constructed or placed upon the Land, and shall restore said Land to as nearly the same condition as existed prior to the issuance of this Agreement and repair any damage to the Drain arising out of its use of the Drain. In the event the AUTHORITY fails to remove all equipment, improvements or facilities within a reasonable time, not to exceed sixty (60) days, the UNITED STATES may remove them and restore the land and repair the Drain at the expense of the AUTHORITY.

VII. Miscellaneous

A. The AUTHORITY's use of the Land shall be subject to existing valid rights to such Land held by third parties.

B. RECLAMATION, in its discretion, may, at any time during the AUTHORITY's use of the Drain under this Agreement, have access to, or make modifications to the Drain and issue such outgrants as easements, leases, licenses or permits, so long as such access, modifications or outgrant does not unreasonably interfere with the AUTHORITY's intended use of the Drain under this Agreement; specifically, during the AUTHORITY's use of the Drain under this Agreement, RECLAMATION will not use or authorize the use of the Drain in such a manner as to reduce the AUTHORITY's use of the Drain with an authorized maximum flow of 150 CFS of drainage water.

C. The AUTHORITY shall continue to carry out the operation and maintenance obligations of the AUTHORITY described in the Cooperative Agreement created pursuant to such agreement and according to the terms of the Performance Work Statement attached thereto, except that any terms of this Use Agreement and the FONSI providing more specific operation and maintenance responsibilities shall supersede the Cooperative Agreement.

D. This Agreement shall not be construed to affect the positions of RECLAMATION nor of AUTHORITY nor any of the Draining

Parties within the Drainage Area discharging into the Drain pursuant hereto concerning the question of ultimate liability for costs initially funded by the UNITED STATES in undertaking management actions with respect to the Drain, nor shall this Agreement affect the positions of the UNITED STATES, the AUTHORITY nor any other Draining Party utilizing the Drain concerning any contractual or legal obligation of RECLAMATION to provide drainage service pursuant to the San Luis Act.

E. This Agreement does not constitute a contract or an amendment of a contract as described in Section 203(a) of the Reclamation Reform Act of 1982 and the implementing rules and regulations, nor does it constitute a new contract nor an amendment of a contract for the delivery of water from the Central Valley Project within the meaning of Sections 105 and 106 of Public Law 99-546 (100 Stat. 3050, et seq.), nor does this constitute an amendment of the Second Amended Contract for Exchange of Waters dated February 14, 1968, between the United States of America and Central California Irrigation District, Columbia Canal Company, San Luis Canal Company and Firebaugh Canal Company.

F. The UNITED STATES shall not be liable for any claims for damages, cleanup, or remedial actions arising from or attributed to discharges from the Drain by or on behalf of the AUTHORITY or the Draining Parties during the AUTHORITY's use of the Drain pursuant to the term of this Agreement.

G. The UNITED STATES, its agents, employees, licensees and permittees shall not be liable for any damages to the property of the AUTHORITY under the Agreement by reason of any act committed on the Land, save and except any damages to said property caused by or resulting from the negligent or willful act or omission of the UNITED STATES, its agents, employees, licensees and permittees to the extent provided by the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

H. The AUTHORITY shall hold the United States free and harmless from, and indemnify it against, any and all direct treatment and clean-up costs, losses, damages, claims and liabilities related thereto arising from the AUTHORITY's, or any one or all of the Draining Party's performance or nonperformance under this Agreement; provided, that RECLAMATION shall exercise care to prevent any harm to personal and real property in carrying out its rights and responsibilities under this Agreement, and shall cooperate to the extent authorized by law in the resolution of any claims pursuant to the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., arising from these activities; provided further the Authority shall have no obligation under this Section VII. H. to provide a defense to the United States, nor to indemnify it for legal fees or costs incurred in legal proceedings instituted against the United States relating to use of the San Luis Drain.

I. Notwithstanding anything in this Agreement to the contrary, the AUTHORITY is authorized to enter into agreements with other entities, including but not limited to one or more of the Draining Parties, pursuant to which the AUTHORITY is or will be indemnified and/or held harmless with regard to all or any portion of the AUTHORITY's obligations under this Agreement.

J. Nothing in this Agreement shall create any rights in favor of any person or entity that is not a signatory to this Agreement, save and except for rights created pursuant to the Grassland Basin Drainage Management Activity Agreement and any MOU's between the AUTHORITY and the Draining Parties within the Drainage Area.

K. The expenditure of any money or the performance of any obligation of RECLAMATION under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the AUTHORITY from any obligation under this Agreement. No liability shall accrue to the RECLAMATION in case funds are not appropriated or allotted.

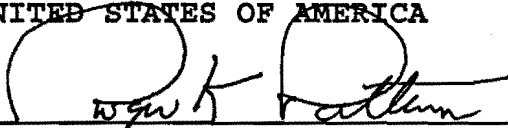
L. No member of or delegate to Congress, or official of the AUTHORITY shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners in the AUTHORITY.

M. If any of the provisions of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform the Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

N. The terms and conditions in Sections II. D, E, and H; IV. F; VI; and VII. D through H, J, and K of this Agreement and the FONSI shall survive the use of the Drain and/or completion of the performance under this Agreement by the AUTHORITY and the Draining Parties and the termination of this Agreement for any cause.

THE UNITED STATES OF AMERICA

DATED: November 3, 1995

By 
Roger Patterson
Regional Director, Mid-Pacific Region
Bureau of Reclamation

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

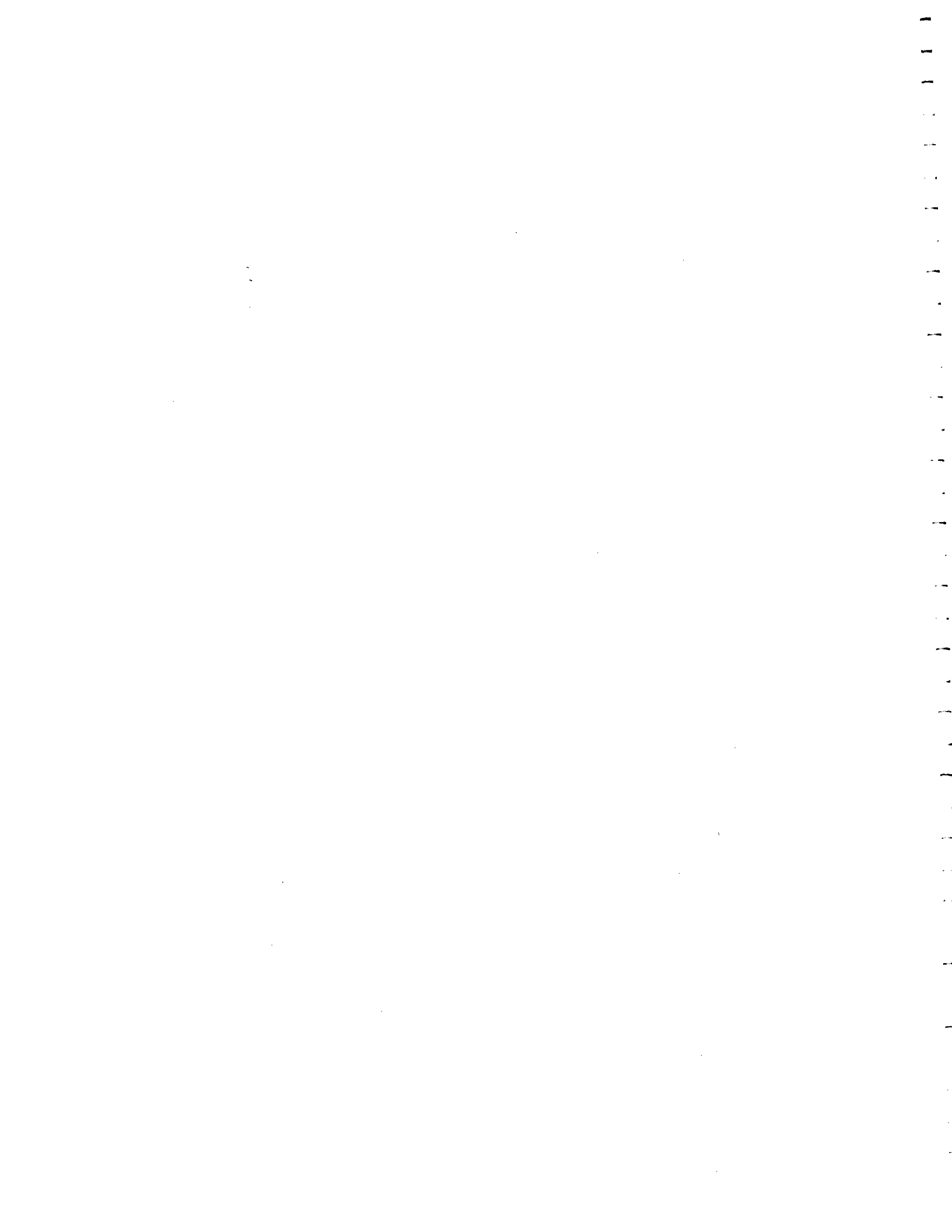
DATED: November 3, 1995

By 
Daniel Nelson
Executive Director

**AGREEMENT OF USE
FOR THE
SAN LUIS DRAIN**

APPENDIX "A"

(DESCRIPTION OF LANDS)



APPENDIX "A"

4/20/95

1. All of those portions of Sections 26, 27, 34, 35 and 36 in T. 11 S., R. 11 E., M.D.B. & M., Sections 31, 32, 33 and 34 in T. 11 S., R. 12 E., M.D.B. & M., Section 1 in T. 12 S., R. 11 E., M.D.B. & M., and Sections 2, 3, 4, 5, 6, 9, 10, 11 and 12 in T. 12 S., R. 12 E., M.D.B. & M., bounded on the north by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the east by the boundary of the Central California Irrigation District, bounded on the south by the north right-of-way line of the Central California Irrigation District Outside Canal, and bounded on the west by the Central California District Camp 13 Bypass Canal.

Containing 5,380 acres, more or less.

2. All of those portions of Section 13, T. 12 S., R. 12 E., M.D.B. & M., and Sections 7, 17, 18, and 19, T. 12 S., R. 13 E., M.D.B. & M., bounded partially on the north and west by the Panoche Drainage District, bounded partially on the west, south and east by the Firebaugh Canal Water District and the Widren Water District, and bounded partially on the north by the southerly right-of-way line of the Central California Irrigation District Outside Canal.

Containing 1,410 acres, more or less.

13
3. All of those portions of Sections 1 and 12, T. 12 S., R. 12 E., M.D.B & M., Sections 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 24, T. 12 S., R. 13 E., M.D.B. & M. and Sections 19, 29, 30, 32 and 33, T. 12 S., R. 14 E., M.D.B. & M. being lands within the Central California Irrigation District, bounded on the north and east by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the south and west by the north right-of-way line of the Central California Irrigation District Outside Canal, bounded on the west by the boundary line of the Central California Irrigation District and bounded on the east by the Southern Pacific Railroad right-of-way line.

Camp 13

Containing 5,490 acres, more or less.

4. Lands adjacent to right-of-ways that may be acquired in the future necessary for drainage facilities to serve the Drainage Area.

**AGREEMENT OF USE
FOR THE
SAN LUIS DRAIN**

APPENDIX "B"

(GEOGRAPHIC LOCATION)



APPENDIX B

