

CONTRACT AND AGREEMENT

BETWEEN

HENRY MILLER and Others, of the First Part,

AND

JAMES B. HAGGIN and Others, of the Second Part.

WHEREAS, the following named persons and corporations, viz:

Henry Miller; Frederick Cox; C. W. Clarke; George N. Cornwell; Horatio Stebbins; Henry Miller, the surviving partner of the late firm of Miller & Lux; Henry Miller, Jesse Sheldon Potter and Miranda Wilmarth Lux, Executors and Executrix of the Last Will and Testament of Charles Lux, deceased; Miranda Wilmarth Lux, Philip Lux, Barbara Lux, Dorothea Roehrig, formerly Dorothea Lux, wife of Henry Roehrig, George Lux, Henry Lux, Charles H. Lux, Lizzie M. Lux, Lena B. Lux, Jesse Sheldon Potter, devisees under the will and heirs of Charles Lux, deceased;

The Kern Valley Water Company;
The Kern River Land and Canal Company;
The Kern River Water and Irrigating Company;
The Stine Canal Company;
The Anderson Canal Company;
The Gates Canal Company;
The Buena Vista Canal Company;
The James Canal Company;
The Plunkett Canal Company;
The Meacham Irrigating Canal Company (unincorporated).
The Goose Lake Canal Company;
The Pioneer Canal Company;
The James & Dixon Canal Company;
The Joyce Canal Company;
The Kern Island Irrigating Canal Company;
The Farmers' Canal Company;
James B. Haggin; Lloyd Tevis; William B. Carr;
The Johnson Ditch or Canal (unincorporated);
The Railroad Canal (unincorporated);
The Wible Canal (unincorporated);
The Jones and Tuckey Ditch (unincorporated);
The May Ditch (unincorporated);
The Frazier and Rymes Ditch (unincorporated);
The Edwards, Shinn and Meacham Ditch (unincorporated);
The Parish and Wilson Ditch (unincorporated);
The McCord Canal (unincorporated);

- The South Fork Ditch or Canal (unincorporated);
- The Goode and McCaffrey Ditch (unincorporated);
- The Castro Ditch (unincorporated);
- The Kern Valley Bank;
- The Bloomfield Land Association;
- Philo Jewett
- E. M. Roberts
- H. L. Borgwardt, Jr.
- L. S. Rogers
- R. N. Ferguson
- W. L. Dixon
- M. S. Nelson
- F. D. Nelson
- Chas. Benterbaugh
- I. W. Harbaugh
- Susan Pensinger, administratrix of the estate of Jerry Pensinger, deceased;
- W. E. Houghton
- Warren Olney
- R. E. Houghton
- G. P. Laird
- F. J. Laird
- John M. Keith
- S. A. Pindar
- P. D. Jewett
- R. McDonald
- J. C. Roberts
- W. W. Frazier
- Peter McCaffrey
- M. W. Morris
- Rosetta Bull
- Samuel B. Kingsley
- S. W. Wible
- C. W. Duvall
- T. E. Owens
- I. D. Thronsen, administratrix of the estate of Otto Thronsen, deceased.
- F. H. Colton
- George G. Carr
- Alex. Mills
- A. Tyler
- H. F. Laird
- H. H. Fish
- C. C. Pierce
- G. W. Pierce
- E. Eccleston
- John A. Fry
- Izra Chaffee
- E. J. Wareham
- George C. Smart
- Edw. Gray Stetson
- C. C. Stockton
- Geo. Daggett
- I. N. King
- Charles Kerr
- John E. Bailey
- D. G. McLean
- Frank Howell
- H. A. Blodget
- Isaac Jameson
- D. B. Hurlbut
- C. E. Coughran
- J. J. Darnul
- A. P. Bernard

—each of the companies above named being a corporation, created and existing under and pursuant to the laws of the State of California—own, or claim to own, certain lands or interests in lands situated in Kern County, State of California, and all of which lands so owned or claimed, or in which an interest is owned or claimed, are either bordering on or along the watercourse known as Kern River and at its lower end known as Buena Vista Slough, or bordering on Kern and Buena Vista Lakes, or on one of said lakes, or on the slough connecting said lakes, all in said county, or are irrigated from said river, lakes and sloughs, or some thereof, or have, or claim to have, certain rights and properties in and to the waters of said river, lakes and sloughs, or some thereof, or have, or claim to have, the right to divert, take out, use and consume said waters, or some thereof, or have, or claim to have, the right to furnish and supply to said and other lands, or to the owners,

claimants, holders or possessors thereof, for use thereon for irrigation and other purposes water from said river, lakes and sloughs, or some thereof;

AND WHEREAS, all of the aforesaid owners of and claimants in said lands claim to have in connection with or as appurtenant to, or as a part and parcel of said lands, certain riparian or other rights to the waters of said river, sloughs or lakes, or some thereof;

AND WHEREAS, Henry Miller; Frederick Cox; C. W. Clarke; George N. Cornwell; Horatio Stebbins; Henry Miller, surviving partner of the late firm of Miller & Lux; Henry Miller, Jesse Sheldon Potter and Miranda Wilmarth Lux, Executors and Executrix of the Last Will and testament of Charles Lux, deceased; Miranda Wilmarth Lux, Philip Lux, Barbara Lux, Dorothea Roehrig, formerly Dorothea Lux, wife of Henry Roehrig, George Lux, Henry Lux, Charles H. Lux, Lizzie M. Lux, Lena B. Lux and Jesse Sheldon Potter, devisees under the will and heirs of Charles Lux, deceased, and each of them, and James B. Haggin, and others of the above named parties, own land bordering upon Kern River, Buena Vista Slough, Kern Lake or Buena Vista Lake, or the Slough connecting said Lakes, or on one or more of them, and as to such lands are entitled to riparian property rights in or upon said Kern River, Buena Vista Slough, Kern Lake and Buena Vista Lake, or on the Slough connecting said Lakes and the waters thereof, or in or upon some one or more of them or in or to the waters thereof;

AND WHEREAS, the above named persons and corporations, or some thereof, have acquired and now hold valid and vested rights by appropriation in and to certain portions of the waters of said river, lakes and sloughs, at points thereon below the point on said river hereinafter fixed and designated as the first point of measurement, and have also made and acquired and now hold by appropriation other valid and vested rights against all the world, except as against said above mentioned riparian proprietors, in and to all the waters of said river, lakes and sloughs at every point thereon below said first point of measurement;

The said Henry Miller; Frederick Cox; C. W. Clarke; George N. Cornwell; Horatio Stebbins; Henry Miller, the surviving partner of the late firm of Miller & Lux; Henry Miller, Jesse Sheldon Potter and Miranda Wilmarth Lux, Executors and Executrix of the Last Will and Testament of Charles Lux, deceased; Miranda Wilmarth Lux, Philip Lux, Barbara Lux, Dorothea Roehrig, formerly Dorothea Lux, wife of Henry Roehrig, George Lux, Henry Lux, Charles H. Lux, Lizzie M. Lux, Lena B. Lux, Jesse Sheldon Potter, devisees under the will and heirs of Charles Lux, deceased; and the Kern Valley Water Company will be hereinafter designated as the parties of the first part herein, and all other parties to this agreement will be hereinafter designated as the parties of the second part;

AND WHEREAS, of the parties of the first part, Henry Miller, and of the parties of the second part, James B. Haggin, own, hold and control the larger interests in the lands and waters mentioned in this agreement, and are more affected by its terms and provisions than the others of said respective parties;

AND WHEREAS, the parties of the first part, or some of them, have instituted or now control and are directly or indirectly interested in the result of sundry suits, actions and other proceedings at law or in equity against James B. Haggin, Lloyd Tevis, William B. Carr and others, corporations and individuals taking out and using the waters of said river at points on said river above the lands of the parties of the first part, and also above

the point where the Canal of the Kern Valley Water Company takes its water from Buena Vista Slough:

NOW FOR THE PURPOSE of settling and finally terminating such litigation, suits, actions and proceedings at law and in equity, relative to the waters of Kern River, Buena Vista Slough, Kern and Buena Vista Lakes, and the slough connecting said lakes, or any thereof, or the obstructions, diversions, consumption and use thereof, and of amicably adjusting, compromising and settling all conflicting interests directly or indirectly involved in or affected by such suits, actions and other proceedings, and also all the rights of the parties of the first part, their heirs, executors, administrators and assigns, and of the parties of the second part, their heirs, executors, administrators, and assigns, in and to the waters of Kern River, Buena Vista Slough, and Kern and Buena Vista Lakes, and the slough connecting said lakes, and to the use thereof, as between said parties of the first part, their heirs, executors, administrators and assigns, and said parties of the second part, their heirs, executors, administrators and assigns, and also that all of the said lands owned or claimed by the parties hereto, and all lands supplied or contemplated to be supplied with water by the said respective canal companies corporations, situated in the townships hereinafter described, may be supplied with water for irrigation and other purposes, and thereby be benefited and made more valuable by reason of receiving such water for such purposes.

IT IS HEREBY MUTUALLY AGREED by and between the parties hereto—

FIRST.

The waters flowing in Kern River shall be measured and ascertained from time to time during the months of March, April, May, June, July and August of each year, and as often as may be necessary, or as Henry Miller or James B. Haggin may request, or as a majority in interest of the parties of the first part or a majority in interest of the parties of the second part may demand, but not more than once each day, by the superintendent hereinafter mentioned or by some other competent and disinterested person appointed therefor by Henry Miller and James B. Haggin, or by the parties of the first part and the parties of the second part, at some convenient point above the head of the canal of the Kern River Water and Irrigating Company, known as the Beardsley Ditch or Canal, which point shall be known as the First Point of Measurement. Such point of measurement to be at the point in Section two (2), in Township twenty-nine (29) south, Range twenty-eight (28) east, Mount Diablo base and meridian, at which Walter James and S. W. Wible have recently made a cross-section of Kern River and established gauges for ascertaining the amount of water flowing in said river, until some other point is agreed upon by said Henry Miller and James B. Haggin, or by a majority in interest of the parties of the first part and a majority in interest of the parties of the second part.

SECOND.

During said months of March, April, May, June, July and August of each and every year, the water-flowing in Kern River shall also be measured at the weirs across the Kern River at the head of what is known as the Joyce Canal, on Section twenty-three (23), in Township thirty (30) south, Range twenty-five (25) east, Mount Diablo base and meridian. Such measurement to be made on the same day and as soon as practicable after the

measurement is made at the First Point of Measurement, and by said Superintendent or by some other competent and disinterested person, appointed therefor by said Henry Miller and James B. Haggin or by a majority in interest of the parties of the first part and a majority in interest of the parties of the second part. The point of measurement at the head of the Joyce Canal shall be known as the Second Point of Measurement.

If by reason of the washing out of or damage to the levees or weirs at the Second Point of Measurement, the water flowing in Kern River cannot be measured at said Second Point of Measurement at any time during said months of March, April, May, June, July and August, then and in that event the measurements shall be made at some point below said Second Point of Measurement, to be selected by said Henry Miller and James B. Haggin, or by the Superintendent provided for in this contract, or by a majority in interest of the parties of the first part and a majority in interest of the parties of the second part, until such levees or weirs can be repaired and replaced so that the measurement can be made at such designated Second Point of Measurement.

THIRD.

During the months of March, April, May, June, July and August of each and every year, from and after March 1st, 1888, the waters flowing in Kern River shall be divided and apportioned between the parties of the first part, their heirs, executors, administrators and assigns, and the parties of the second part, their heirs, executors, administrators and assigns, as follows, that is to say:

When the amount of said waters flowing at said First point of Measurement does not exceed three hundred (300) cubic feet flowing per second, the Kern Island Irrigating Canal Company, one of the parties of the second part, its successors and assigns, shall be entitled to all thereof.

When the amount of said waters flowing at said First Point of Measurement during said months of March, April, May, June, July and August exceeds three hundred (300) cubic feet flowing per second, then of the amount thereof over and in excess of said first three hundred (300) cubic feet per second, the parties of the first part, their heirs, executors, administrators and assigns, shall be entitled to one-third ($\frac{1}{3}$), and the parties of the second part, their heirs, executors, administrators and assigns, shall be entitled to two-thirds ($\frac{2}{3}$); and the parties of the first part, their heirs, executors, administrators and assigns, shall be entitled to receive their full one-third at the Second Point of Measurement, without diminution by reason of percolation or seepage or any interference whatsoever of or by the parties of the second part, their heirs, executors, administrators or assigns, to be used and disposed of by them in any manner, at any place and for any purpose they may think proper, or arrange or agree upon among themselves. The water allotted to the parties of the second part, other than the three hundred (300) cubic feet flowing per second, above specifically allotted to the Kern Island Irrigating Canal Company, in addition to its other rights as one of the parties of the second part, to be taken out, used and disposed of by them in any manner, at any place and for any purpose they may think proper, or arrange or agree upon among themselves. Said three hundred (300) cubic feet of water flowing per second, so specifically allotted to said Kern Island Irrigating Canal Company, to be by it taken out, used and disposed of in any manner, at any place and for any purpose it may think proper.

During the months of January, February, September, October, November and December of each and every year, the Kern Island Irrigating Canal Company, its successors and assigns, as to the first three hundred (300) cubic feet flowing per second, and the parties of the second part, their heirs, executors, administrators and assigns, as to all over and above said first three hundred (300) cubic feet flowing per second, shall be entitled to all the water flowing in said Kern River at any point above said Second Point of Measurement and may intercept, divert, take out, use and consume the same in such manner, and at such points and places, and for such purposes, as they may desire. Any and all water to which the parties of the second part are entitled hereunder, which shall not have been diverted by the parties of the second part, their heirs, executors, administrators or assigns, or some of them, before reaching said Second Point of Measurement, shall, upon and after passing said Second Point of Measurement, belong to the parties of the first part, their heirs, executors, administrators and assigns, to be used and enjoyed by them as the other waters which they shall receive as hereinabove provided.

And the parties hereto of the second part, and each of them, hereby acknowledge the right of the parties of the first part as riparian proprietors in Kern River, Buena Vista Slough, Kern and Buena Vista Lakes, and on the slough connecting said lakes, to the proportion of water flowing in Kern River, hereinbefore agreed upon, and that as such riparian proprietors they shall, at all times, be entitled to receive at the Second Point of Measurement, during the months of March, April, May, June, July and August, of each year, the amount of water they are so entitled to.

And the parties hereto of the first and second parts hereby agree that in the event of any party or parties, corporation or corporations, not parties to this contract, shall at any time divert any water from Kern River at any point between the said First and Second Points of Measurement, then and in that event the loss occasioned to the parties hereto by such diversion shall be borne, one-third by the parties of the first part, and two-thirds by the parties of the second part.

FOURTH.

THE PARTIES HERETO HEREBY FURTHER AGREE, that they will construct or cause to be constructed about Buena Vista Lake a levee so that such lake shall become a reservoir for storing water to be used for irrigating the lands of the parties of the first part hereto. Said levee to be constructed on or as nearly on the following line as practicable: Commencing at a point on the range line between Ranges twenty-five (25) and twenty-six (26) east, on or about Section thirteen (13), in Township thirty-two (32) south, Range twenty-five (25) east; thence running north along said range line to the northeast corner of Section thirty-six (36), Township thirty-one (31) south, Range twenty-five (25) east; thence running west along the north line of said Section thirty-six (36) to the north-west corner thereof; thence running northwesterly along the clear water line of said Buena Vista Lake to the east side of Buena Vista Slough, at or near the north line of Section seventeen (17), Township thirty-one (31) south, Range twenty-five (25) east. Also, a levee from a point on the west side of Buena Vista Slough on or near the north line of said Section seventeen (17), and running westerly by the shortest and most practicable line to the high land or bluff northwesterly of Buena Vista Lake. Such levees to be constructed to an uniform height of four (4) feet above the level of the segregation line dividing the

Swamp and Overflowed Land from the high land, to be twelve (12) feet wide on the top, and with an inner slope of four (4) to one (1) and outer slope of three (3) to one (1); together with necessary gates and other works necessary to regulate and control water running into and taken out of such reservoir. All such levees and other works to be constructed in accordance with plans prepared by Walter James and F. P. McCray, in October, 1885.

All such levees and other works to be constructed under the supervision of a civil engineer to be selected and changed at pleasure by James B. Haggin and Henry Miller. Said Haggin and Miller may also change the plans and locations of such levees and other works in such manner and to such extent as they may mutually deem advisable. They may also provide for the construction thereof in any way or manner they may deem most expedient.

The expense of constructing, repairing and maintaining all such levees and other works to be paid, one-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors, administrators and assigns.

IT IS FURTHER AGREED, in consideration of the sum of eight thousand five hundred dollars (\$8500) by the parties of the second part to the parties of the first part in hand paid, the receipt whereof is hereby acknowledged, that the parties of the first part will protect and save harmless the said parties of the second part, their heirs, executors, administrators and assigns, and each of them, from any and all suits, claims and demands for damages resulting from the flooding or damaging any lands not belonging to any of the parties to this agreement by reason of such reservoir, levees and other works.

IT IS FURTHER AGREED, that any and all lands which may be purchased to avoid paying damages for flooding the same by such reservoir, levees and other works, shall be paid for by the parties of the first part, their heirs, executors, administrators and assigns, and that all suits and proceedings which may be instituted to hinder or prevent the construction or maintenance of such reservoir, levees and other works, brought by the owners, holders or claimants of or of any interest in any lands to the westward or to the southward of such levees, or either of them, shall be defended by and at the cost and expense of the parties of the first part, their heirs, executors, administrators and assigns, and without cost or charge to the parties of the second part, their heirs, executors, administrators or assigns; any other suits or proceedings brought by other parties to restrain or prevent the construction or maintenance of such levees and other works, shall be defended by the parties hereto, and the expenses thereof, including attorney's fees, shall be paid, one-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors, administrators and assigns.

But it is expressly understood and agreed, that no party to this contract will claim any damage resulting from the breaking of such reservoir, levees or other works.

IT IS ALSO AGREED, that if in the future, after said reservoir, levees and other works shall have been constructed, they shall break and cause injury to the lands of others not parties to this contract, nor the heirs, executors, administrators or assigns, of any of said parties, such damages as may be recovered therefor, shall be paid, one-half by the parties of

the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors, administrators and assigns; and all expenses of defending suits (including attorneys' fees), which may be brought to recover damages for such injuries, shall be paid by the same persons and in the same proportions.

Said reservoir being for the purpose of storing water for the benefit of the parties of the first part, the said parties of the first part for themselves, their heirs, executors, administrators and assigns, covenant and agree that said reservoir shall not at any time be filled or stored with water to any point therein higher than one foot from the top of said levees.

FIFTH.

THE PARTIES HERETO FURTHER AGREE to construct and maintain and repair such levees, weirs or other works as may be necessary to enable a correct measurement of water to be made at the two points of measurement above mentioned. The expenses thereof to be paid, one-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors, administrators and assigns.

All such levees, weirs and other works to be constructed under the supervision of some Civil Engineer to be selected by Henry Miller and James B. Haggin; such Engineer, however, may be changed from time to time by said Miller and Haggin, as they deem advisable. Said Miller and Haggin may also change the plans or location of such works in such manner and to such extent as they mutually deem advisable. They may also provide for the construction thereof in any way or manner they deem expedient.

SIXTH.

THE PARTIES HERETO FURTHER AGREE to construct such levees as may be necessary to control the flow of water to the natural channel of Kern River, below the Second Point of Measurement, into Buena Vista Slough and Buena Vista Lake; together with such gates, weirs and other works as may be necessary to regulate and control the flow of such water into and out of Buena Vista Lake.

All such levees and other works to be constructed under the supervision and according to the plans of a civil engineer to be selected, and whose plans shall be approved by Messrs. James B. Haggin and Henry Miller; such engineer, however, may be changed from time to time by Messrs. Haggin and Miller, as they deem advisable. The said Henry Miller and James B. Haggin may also change the plans of such canals, levees and other works in such manner and to such extent as they mutually deem most expedient. They may also provide for the construction thereof in any way or manner they deem proper. They may also, if they so deem advisable, straighten out or deflect the course of said River, below said Second Point of Measurement, or change the same as they see proper.

The expenses of constructing and maintaining such levees and other works to be paid as follows: One-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors and assigns.

SEVENTH.

THE PARTIES HERETO FURTHER AGREE to dig and construct a canal from Buena Vista Lake to the head of the Canal of the Kern Valley Water Company, in Section fourteen (14), Township thirty (30) south, Range twenty-four (24) east, such canal to be fifty (50) feet wide on the bottom, side slopes of three (3) to one (1) with the bottom grade of the canal where it leaves Buena Vista Lake to be five (5) feet below the level of the segregation line of Swamp and Overflowed Land, and to be constructed with necessary head-gates and waste-gates, and in accordance with a survey made and plans and specifications prepared by Walter James and F. P. McCray, in October, 1885.

All of such canals, gates and other works to be constructed under the supervision of a civil engineer to be selected by Messrs. James B. Haggin and Henry Miller; such engineer, however, may be changed from time to time by Messrs. Haggin and Miller, as they deem advisable. The said Henry Miller and James B. Haggin may also change the plans of such canals, levees and other works in such manner and to such extent as they mutually deem advisable. They may also provide for the construction thereof in any way or manner they deem most expedient.

The expenses of constructing such canals and other works to be paid as follows: One-half by the parties of the first part, their heirs, executors, administrators and assigns; and one-half by the parties of the second part, their heirs, executors, administrators and assigns.

The expenses of maintaining all such levees, canals and other works to be paid by the parties of the first part, their heirs, executors, administrators and assigns.

EIGHTH.

IT IS UNDERSTOOD AND AGREED, that no party to this agreement shall make any claim for payment for any right of way through his or their lands for any of the canals, levees or other works hereinabove agreed to be constructed by the parties hereto. ALSO, that the parties who are to maintain the same shall have the right of access thereto to inspect and keep the same in repair.

NINTH.

A competent superintendent shall be employed to take charge of measuring the water at the First and at the Second Points of Measurement, and whose duties it shall also be to see that all the levees, canals and other works, except the canal from Buena Vista Lake to the head of the canal of the Kern Valley Water Company, are kept in good condition and repair, and whose duty it shall also be to see that the parties of the first part, their heirs, executors, administrators and assigns, receive at the Second Point of Measurement the amount of water they are entitled to under the provisions of this contract, during the months of March, April, May, June, July and August. Such superintendent, and all other agents and attorneys (one of such attorneys to be selected by Henry Miller and one by James B. Haggin), employed under the provisions of this contract, may be selected, changed and removed, and their salaries, compensations and expenses fixed by Messrs. Henry Miller and James B. Haggin, or by a majority in interest of the parties of the first part, and a majority in interest of the parties of the second part, and such salaries, compensations and expenses shall be paid, one-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their

heirs, executors, administrators and assigns.

TENTH.

IT IS FURTHER AGREED, that the construction of the canal, levees and head-gates and other necessary works provided for in this agreement, to convey water from Buena Vista Lake to the head of the canal of the Kern Valley Water Company, shall be commenced on or before September 1st, 1888, and completed before the first day of March, 1889.

ELEVENTH.

IT IS FURTHER AGREED, that the construction of the levees along Kern River and Buena Vista Slough, provided by this agreement to be constructed to control the water below the Second Point of Measurement, and lead it into Buena Vista Slough and Buena Vista Lake, and the necessary gates, weirs and other works, shall be commenced on or before the first day of September, 1888, and completed on or before the first day of March, 1889.

TWELFTH.

IT IS FURTHER AGREED, that the construction of the levees and other works provided by this agreement, to be constructed around Buena Vista Lake, shall be commenced upon not less than three (3) months' notice of a desire to have such levees constructed. Such notice may be given at any time after June 1st, 1889, by Henry Miller to James B. Haggin, or by James B. Haggin to Henry Miller, or by those of the parties of the one part who represent the majority of the acreage of the land affected by this contract held by the parties of such part to those of the parties of the other part, who represent the majority of the acreage of the lands affected by this contract, held by the parties of such other part. Said notice, however, may be waived by mutual consent of Henry Miller and James B. Haggin, or of the parties by and to whom it is provided to be given. When commenced, pursuant to such notice, the construction of said levees shall be prosecuted diligently to completion.

THIRTEENTH.

IT IS HEREBY FURTHER AGREED, that when and so long as, during the construction of the canals, levees and other works above provided to be constructed, and during the time necessary to repair any break thereof occurring subsequent to their construction, the water channels below the Second Point of Measurement, cannot be used to carry the water to which the parties of the first part would, during the months of March, April, May, June, July and August, be entitled under this agreement, the parties of the first part may take such water to the extent of the capacity of the canals through which taken, through some one or more of the following named canals, to wit:

- The Goose Lake Canal,
- The Wible Canal,
- The Railroad Canal,
- The Pioneer Canal,
- The James and Dixon or Johnson Canal,
- The Joyce Canal,

as the owners thereof may arrange or agree upon between themselves, or in default thereof, as the above mentioned superintendent may equitably regulate; *provided, however,* that

no more than two of said canals shall be so used at any one time without the express consent of the owners of the other canal or canals, which the said parties of the first part may desire to so use.

IT IS ALSO AGREED, that such use of said canals by the parties of the first part shall be at no expense to the owners of said canals, and that the canal or canals so used by the parties of the first part, shall be by them kept in repair, at their own expense, during the time they are used by them for such purpose; and that if any extensions of said canals so used by said parties of the first part be necessary to enable them to convey their water to the place of use, such extension may be made by and at the expense of said parties of the first part.

But it is distinctly understood, that nothing herein shall in any manner or at any time be held or construed to give or create any vested or property rights to or in said parties of the first part, or any of them, in or to such canals, or any thereof.

FOURTEENTH.

IT IS FURTHER EXPRESSLY AGREED by the parties of the first part, that upon the due execution of this agreement by all of the parties hereto, and upon its delivery, they, the parties of the first part, will cause to be dismissed all of the suits now pending in the Superior Court of Kern County, in the Superior Court of Tulare County, in the Superior Court of Napa County, and in the Superior Court of the City and County of San Francisco, brought by any of the parties of the first part, and also all suits brought by John H. Redington, and now pending in said Courts, or in any thereof, which in any manner relate to or affect the rights of any party or parties to this agreement, in or to the water or the use of the water flowing in Kern River, Buena Vista Slough, or in Kern and Buena Vista Lakes, or the slough connecting said lakes, but such dismissal shall be made only as to the parties who may be defendants in such suits, and who shall sign this agreement, without costs to either side.

FIFTEENTH.

IT IS HEREBY FURTHER AGREED, that if any person or persons, corporation or corporations, shall divert any water from Kern River at any point above the Second Point of Measurement, then and in that event the parties of the first part, for themselves, their heirs, executors, administrators or assigns, and the parties of the second part, for themselves, their heirs, executors, administrators or assigns, agree that they will unite in such suits or proceedings as may be necessary to prevent such diversion of the water of Kern River, and that they will pay the expenses of such suits or proceedings, including necessary attorneys fees, as follows: The parties of the first part, their heirs, executors, administrators and assigns, one-half; and the parties of the second part, their heirs, executors, administrators and assigns, one-half. And in the event that any person or persons, corporation or corporations, shall commence any suit or proceeding to prevent the construction of the weirs and other works above provided to be constructed for the purpose of obtaining correct measurements of water at the points of measurement above fixed, or the levee and other works to control the flow of water from the Second Point of Measurement to Buena Vista Slough and Buena Vista Lake above provided to be constructed, or the canal above provided to be constructed from Buena Vista Lake to the head of the Kern Valley Water

Company's Canal, then and in that event such suits shall be defended by all of the parties to this contract, their heirs, executors, administrators and assigns, and the expense of such defense, including necessary attorneys' fees, shall be paid, one-half by the parties of the first part, their heirs, executors, administrators and assigns, and one-half by the parties of the second part, their heirs, executors, administrators and assigns.

SIXTEENTH.

BUT IT IS UNDERSTOOD AND AGREED, that the rights of the parties of the first part hereto, in or to any of the canals or ditches taking water from Kern River between the First and Second Points of Measurement, are in no manner affected by this agreement; that as to such rights in such canals or ditches, they shall remain the same as though this agreement had not been made, except in so far as the rights of such canals and ditches may be affected by the fact that the amount of water they are entitled to take from Kern River is reduced by reason of the parties of the first part being conceded a fixed amount of water during six (6) months of each year—the intent hereof being that the rights in this paragraph mentioned shall be diminished in the same way and to the same extent as is provided concerning the rights of the parties of the second part in Paragraph twenty of this agreement.

SEVENTEENTH.

IT IS FURTHER MUTUALLY AGREED between the parties hereto that this agreement shall be perpetual, and shall at all times be construed as a covenant running with all the land owned or claimed by any of the parties hereto, which is situated in the following townships or portions of townships, and that any and all transfers, leases, or contracts, of any kind or nature, made by any of the parties to this contract, their heirs, executors, administrators or assigns, affecting said land or any of it, shall be subject to all the provisions of this agreement.

The said townships and portions of townships are, to wit:

Township twenty-five (25) south, Ranges twenty-two (22), twenty-three (23) and twenty-four (24) east; and all of Township twenty-five (25) south, Range twenty-one (21) east, lying east of the segregation line dividing the swamp and overflowed land from the high land.

Township twenty-six (26) south, Ranges twenty-two (22), twenty-three (23), twenty-four (24) and twenty-five (25) east; and all of Township twenty-six (26) south, Range twenty-one (21) east, lying east of the segregation line dividing the swamp and overflowed land from the high land.

Township twenty-seven (27) south, Ranges twenty-two (22), twenty-three (23), twenty-four (24) and twenty-five (25) east; all of township twenty-seven (27) south, Range twenty-six (26) east, west of the road of the Southern Pacific Railroad.

Township twenty eight (28) south, Ranges twenty-two (22), twenty-three (23) twenty-four (24) and twenty-five (25) east; and all of Township twenty-eight (28) south, Range twenty-six (26) east, west and southwesterly of the road of the Southern Pacific Railroad.

Township twenty-nine (29) south, Ranges twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) east; and all of Sections one (1), two (2), three (3), ten (10), eleven (11) and twelve (12), in Township twenty-

nine (29) south, Range twenty-two (22) east.

Township thirty (30) south, Ranges twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) east; and all of Sections one (1), two (2), eleven (11) and twelve (12), in Township thirty (30) south, Range twenty-three (23) east.

Township thirty-one (31) south, Ranges twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) east; and all of Sections one (1), twelve (12), thirteen (13), twenty-four (24), twenty-five (25) and thirty-six (36), in Township thirty-one (31) south, Range twenty-four (24) east.

All of Sections one (1) and twelve (12) in Township thirty-two (32) south, Range twenty-four (24) east; all of Township thirty-two (32) south, Range twenty-five (25) east, north of the segregation line dividing the swamp and overflowed land from the high land; all of Township thirty-two (32) south, Range twenty-six east, north of the segregation line dividing the swamp and overflowed land from the high land; all of Township thirty-two (32) south, Range twenty-seven (27) east, north of the segregation line dividing the swamp and overflowed land from the high land; all of Sections four (4), five (5), six (6), seven (7), eight (8), nine (9), seventeen (17), eighteen (18) and nineteen (19), in Township thirty-two (32) south, Range twenty-eight (28) east.

All of the Mount Diablo base and meridian.

EIGHTEENTH.

And in consideration of the premises and of five dollars to them in hand this day paid by the said parties of the second part, the said parties of the first part, for themselves, their heirs, executors, administrators and assigns, do hereby grant and convey unto the said parties of the second part, their heirs, executors, administrators and assigns, all and singular the waters, water rights, privileges and easements, to which said parties of the second part are respectively, by paragraph third of this instrument, declared entitled, or which are or are intended to be, by said paragraph, apportioned to them respectively: To have and to hold the same to the said parties of the second part, their heirs, executors, administrators and assigns, as between themselves, in the manner and to the extent provided in paragraph twenty of this instrument.

NINETEENTH.

And in consideration of the premises and of five dollars to them in hand this day paid by the said parties of the first part, the said parties of the second part, for themselves, their heirs, executors, administrators and assigns, do hereby grant and convey unto the said parties of the first part, their heirs, executors, administrators and assigns, all and singular the waters, water rights, privileges and easements, to which said parties of the first part are respectively, by paragraph third of this instrument, declared entitled, which are or are intended to be, by said paragraph, apportioned to them respectively: To have and to hold the same to the said parties of the first part, their heirs, executors, administrators or assigns, forever.

TWENTIETH.

AND THE SAID PARTIES OF THE SECOND PART, in consideration of the premises, and of five dollars by each to the other of them this day paid, and for divers other good and

sufficient considerations, do hereby mutually covenant, grant and agree, each to and with the other, and by and for their respective heirs, executors, administrators and assigns, that with the exception of the three hundred (300) cubic feet specifically allotted to the Kern Island Irrigating Canal Company, all the water, water rights, privileges and easements assured to the parties of the second part by paragraph three of this instrument, shall vest in, belong to and be held by them respectively in the same manner and proportions, and with the same priorities, as they now own and hold the waters of Kern River, and all water rights and privileges therein or connected therewith. That is to say, that the present rights of each of said parties shall be respectively and proportionately, and without regard to priority, diminished so as to make each contribute pro rata to the amount by this instrument allotted to the parties of the first part; and to the said three hundred (300) cubic feet allotted to the Kern Island Irrigating Canal Company. The true intent and meaning of this clause being that whenever there is not enough water to supply to said parties of the second part the amounts to which they would be respectively entitled if there were no rights to the waters of said river except the rights of said parties of the second part, as they existed prior to this agreement, and also to supply to the parties of the first part all the water by this instrument allotted to them, and to supply the said three hundred (300) cubic feet allotted to the Kern Island Irrigating Canal Company, then the rights to said water of said parties of the second part shall severally and respectively be diminished so that the aggregate diminution shall exceed by three hundred (300) cubic feet the amount necessary to supply said parties of the first part; and so that the rights of said parties of the second part shall each be diminished in the proportion that the amount of water to which each would have been entitled but for this agreement, and in the absence of any other rights but theirs to said waters, bears to the aggregate amount of water to which all said parties of the second part would have been so entitled.

TWENTY - FIRST.

IT IS FURTHER AGREED, between the parties hereto, that the part or proportion of all original outlays and expenses for constructing, and for four years next after the date hereof, maintaining the levees and other works in this agreement above provided to be paid by the parties of the first part, shall be advanced and paid for and on account of said parties of the first part by said Henry Miller.

TWENTY - SECOND.

IT IS FURTHER AGREED, between the parties hereto, and especially between the parties of the second part, that the part or proportion of all original outlays and expenses of constructing, and for four years next after the date hereof, maintaining the levees and other works in this agreement above provided to be paid by the parties of the second part, shall be advanced and paid for and on account of said parties of the second part by said James B. Haggin, one of the parties of the second part; and each of the others of the said parties of the second part for himself, his heirs, executors, administrators and assigns, hereby severally and expressly covenants and agrees with said Haggin, that in consideration of said Haggin's undertaking to advance such sums of money for and on his account, he will reimburse and repay to the said Haggin, his heirs, executors, administrators and assigns, on demand, his full part and proportion of all sums of money so advanced, together with legal interest on each several amount so advanced or paid out, from the date thereof until

paid. The said proportion of such advances to be so repaid to said Haggin by said several and respective parties of the second part, to be estimated and computed as follows, to wit: As the rights to or interests in the waters of Kern River of each such party of the parties of the second part respectively are to the whole or aggregate of the rights or interests of all the parties of the second part in and to the waters of said river, so shall the part or proportion to be repaid said Haggin be to the whole amount paid out by said Haggin for or on account of the parties of the second part.

TWENTY-THIRD.

IT IS FURTHER DISTINCTLY UNDERSTOOD AND AGREED, by and between the parties hereto, that whereas, by paragraph seventeen above, the terms, covenants and conditions of this agreement are expressly declared to run with the lands in said paragraph described, all personal liability hereunder imposed, shall be deemed and held the liability of the persons owning, holding or claiming said lands or interest therein at the time such liability shall accrue; and any party hereto parting with his ownership of or interest in said lands, or any thereof, shall thenceforth and forever thereafter be freed, released and discharged from all and every liability thereafter to accrue, to the extent and in the proportion that the lands or interests in lands so parted with by him bear to the whole amount of such lands or interests in lands theretofore owned, held or claimed by him.

TWENTY-FOURTH.

IT IS FURTHER AGREED, between the parties hereto, that wheresoever above in this agreement, any discretion, power or authority is given or conferred upon Henry Miller, for and on account of the parties of the first part, such and the same discretion, power and authority, and to the same extent and for the same purposes, may, in the event of the death of said Henry Miller, or in the event that the said Henry Miller shall cease to be the largest owner or holder amongst said parties of the first part of the lands and interests in lands affected by this agreement, be used and exercised by such other of the said parties of the first part who shall for the time being be the largest owner or holder amongst said parties of the first part of said lands and interests in lands affected by this agreement.

TWENTY-FIFTH.

IT IS FURTHER AGREED, between the parties hereto, that wheresoever above in this agreement, any discretion, power or authority is given or conferred upon James B. Haggin, for and on account of the parties of the second part, such and the same discretion, power and authority, and to the same extent and for the same purposes, may, in the event of the death of said Haggin, or in the event that said Haggin shall cease to be the largest owner or holder amongst said parties of the second part of the lands and interests in lands affected by this agreement, be used and exercised by such other of the said parties of the second part who shall for the time being be the largest owner or holder amongst said parties of the second part of said lands and interests in lands affected by this agreement.

TWENTY-SIXTH.

IT IS AGREED, by and between the parties hereto, that when and as the parties of the first part shall sign or cause to be signed this agreement, they shall place the same, so signed, in the hands of Henry Miller, to be by him, for and on behalf of said parties of

the first part, delivered to the parties of the second part, whensoever said Miller shall himself sign and deliver such agreement for and on his own behalf. Such delivery may be made to and received by James B. Haggin, for and on behalf of said parties of the second part. Also, that when and as the parties of the second part shall sign or cause to be signed this agreement, they shall place the same, so signed, in the hands of James B. Haggin, to be by him, for and on behalf of said parties of the second part, delivered to the parties of the first part, whensoever said Haggin shall himself sign and deliver such agreement for and on his own behalf. Such delivery may be made to and received by Henry Miller, for and on behalf of said parties of the first part.

IN WITNESS WHEREOF, the parties hereto of the first and second parts, other than the corporations above named, have hereunto set their hands and seals, this twenty-eighth day of July A. D. 1888. And the said corporations, parties hereto, have each respectively, on said last mentioned date, caused their corporate names to be hereunto subscribed and their corporate seals to be hereunto affixed by their respective Presidents and Secretaries, thereunto first duly authorized; all done in duplicate.

Kern Valley Water Company,
(Corporate Seal). By Jesse S. Potter, President,
By C. L. Merritt, Secretary.

Kern River Land and Canal Company,
(Corporate Seal). By A. E. Davis, President,
By Irwin C. Stump, Secretary.

Stine Canal Company,
(Corporate Seal). By F. H. Colton, President,
By Alex. Mills, Secretary.

Kern River Water and Irrigating Company,
(Corporate Seal). By Sol. Jewett, President,
By Alex. Mills, Secretary.

Anderson Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Gates Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Buena Vista Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

James Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Plunkett Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Goose Lake Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Pioneer Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

James and Dixon Canal Company,
(Corporate Seal). By L. Crusoe, President,
By Alex. Mills, Secretary.

Joyce Canal Company,
(Corporate Seal). By L. Crusoc, President,
By Alex. Mills, Secretary.

Farmers Canal Company,
(Corporate Seal). By Geo. G. Carr, President,
By Alex. Mills, Secretary.

Kern Island Irrigating Canal Company,
(Corporate Seal). By Geo. G. Carr, President,
By Alex. Mills, Secretary.

G. N. Cornwell (Seal).
Frederick Cox (Seal).
Horatio Stebbins (Seal).
Jesse S. Potter (Seal).
C. W. Clark (Seal).
Henry Miller, surviving partner of the
late firm of Miller & Lux (Seal).
Miranda W. Lux, by her Attorney in
Fact, Jesse S. Potter (Seal).
Bloomfield Land Association,
J. M. Rothchild, President,
L. Slessinger, Secretary.
Philip Lux, by his Attorney in Fact,
Henry Lux (Seal).
Barbara Lux, by her Attorney in Fact,
Henry Lux (Seal).
Dorothea Rochrig (formerly Lux), by
her Attorney in Fact, Henry Lux (Seal).
George Lux, by his Attorney in Fact,
Henry Lux (Seal).
Henry Lux (Seal).
Chas. H. Lux (Seal).
Lizzie M. Lux (Seal).
Lena B. Lux (Seal).
Henry Miller and Jesse S. Potter, Exe-
cutors of the last will and testa-
ment of Charles Lux, deceased. (Seal).

Philo Jewett, by S. Jewett, Attorney in Fact	(Seal).
F. H. Colton	(Seal).
E. M. Roberts	(Seal).
Geo. G. Carr	(Seal).
W. B. Carr	(Seal).
H. L. Borgwardt, Jr.	(Seal).
Alex. Mills	(Seal).
L. S. Rogers	(Seal).
A. Tyler	(Seal).
R. N. Ferguson	(Seal).
H. F. Laird	(Seal).
W. L. Dixon	(Seal).
H. H. Fish	(Seal).
M. S. Nelson	(Seal).
C. C. Pierce	(Seal).
F. D. Nelson	(Seal).
G. W. Pierce	(Seal).
Chas. Beuterbaugh	(Seal).
E. Eccleston	(Seal).
I. W. Harbaugh	(Seal).
Susan Pensinger, administratrix of the estate of Jerry Pensinger, deceased	(Seal).
John A. Fry	(Seal).
R. E. Houghton	(Seal).
Ezra Chaffee	(Seal).
Warren Olney	(Seal).
E. J. Warcham	(Seal).
W. E. Houghton	(Seal).
Geo. C. Smart	(Seal).
Edw. Gray Stetson	(Seal).
G. P. Laird	(Seal).
C. C. Stockton	(Seal).
F. J. Laird	(Seal).
John M. Keith	(Seal).
Geo. Dagget	(Seal).
S. A. Pindar	(Seal).
S. Jewett	(Seal).
Kern Valley Bank (Corporate Seal).	By S. Jewett, its President
I. N. King	(Seal).
P. D. Jewett	(Seal).
Charles Kerr	(Seal).
R. McDonald	(Seal).
John E. Bailey	(Seal).

J. C. Roberts	(Seal).
D. G. McLean	(Seal).
W. W. Frazier	(Seal).
Frank Howell	(Seal).
Peter McCaffrey	(Seal).
H. A. Blodget	(Seal).
M. W. Morris	(Seal).
Isaac Jameson	(Seal).
Rosetta Bull	(Seal).
D. B. Hurlbut	(Seal).
C. E. Coughran	(Seal).
S. W. Wible	(Seal).
J. J. Darnul	(Seal).
C. W. Duvall	(Seal).
A. P. Bernard	(Seal).
T. C. Owens	(Seal).
I. D. Thronsen, Administratrix of the Estate of Otto Thronsen, deceased	
Henry Miller	(Seal).
J. B. Haggin	(Seal).
Lloyd Tevis	(Seal).
Samuel B. Kingsley	(Seal).

KERN RIVER WATER RIGHTS AND STORAGE AGREEMENT

by and among

BUENA VISTA WATER STORAGE DISTRICT,

NORTH KERN WATER STORAGE DISTRICT,

TULARE LAKE BASIN WATER STORAGE DISTRICT,

and HACIENDA WATER DISTRICT

December 31, 1962

KERN RIVER WATER RIGHTS AND STORAGE AGREEMENT

THIS AGREEMENT, made as of the 31st day of December, 1962, by and among BUENA VISTA WATER STORAGE DISTRICT, a water storage district duly organized and existing under and by virtue of the laws of the State of California (herein called "Buena Vista"), NORTH KERN WATER STORAGE DISTRICT, a like district (herein called "North Kern"), TULARE LAKE BASIN WATER STORAGE DISTRICT, a like district (herein called "Tulare Lake"), and HACIENDA WATER DISTRICT, a California water district duly organized and existing under and by virtue of the laws of the State of California (herein called "Hacienda"), which four Districts are herein collectively called "Districts",

W I T N E S S E T H:

THAT WHEREAS:

A. Buena Vista executes this contract for and on behalf of itself, Buena Vista Associates, Incorporated, and all of the parties of the first part (or their successors in interest) in and to that certain contract known as the "Miller-Haggin Agreement", dated 28 July 1888, and recorded in the office of the County Recorder of Kern County, California, in Book 2 of Agreements at page 40, as amended and supplemented, who may wish to share in the benefits and obligations of this contract;

B. North Kern executes this contract for and on behalf of itself and all of the parties of the second part (or their successors in interest) in and to said Miller-Haggin Agreement, as amended and supplemented, and all of the parties (or their successors in interest) whose water rights on the Kern River were adjudicated among themselves in that certain judgment known as the "Shaw Decree", rendered 6 August 1900, by the Superior Court of the State of California in and for the County of Kern, Honorable Lucien Shaw, Judge, in that certain action No. 1901, entitled "Farmers Canal Company, et al., Plaintiffs, vs. J. R. Simmons, et al., Defendants", who may wish to share in the benefits and obligations of this contract;

C. Tulare Lake and Hacienda execute this contract on behalf of themselves and all others who establish rights to waters of Kern River for use on lands north of Wasco Road and who may wish to share in the benefits and obligations of this contract; and

D. The Districts have been negotiating for some years with the United States for a contract or contracts permitting

them to use storage space in Isabella Reservoir for storage of their Kern River water, but such negotiations have not been completed and it is not certain when or whether they will be completed, and the Districts now desire, without awaiting the conclusion of such negotiations, to agree among themselves upon the division of the water of Kern River and upon the other matters hereinafter set forth upon a mutually satisfactory basis which shall be permanently effective regardless of when or whether the Districts or any of them ever do execute such a contract or contracts with the United States;

NOW, THEREFORE, the Districts hereby agree with each other as follows:

1. Upstream-Downstream Division.

All parties agree that from and after the date hereof all waters of Kern River shall be divided and apportioned between North Kern and Buena Vista and the parties they represent (hereinafter called "Upstream Group"), on the one hand, and Tulare Lake, Hacienda and all other parties establishing rights to such waters north of the Wasco-Paso Robles Highway (hereinafter called "Downstream Group"), on the other hand, as follows:

(a) The following percentages of the calculated natural flow of Kern River at First Point of Measurement shall be allocated and belong to the Downstream Group during the indicated periods of each calendar year:

<u>Aggregate Kern River Flow in Thousands of Acre-Feet</u>	<u>Downstream Group Percentage</u>
<u>January - March</u>	
First 250	None
All over 250	33%
<u>April - July</u>	
First 550	None
Next 50 (from 550 to 600)	33%*
Next 50 (from 600 to 650)	33%
Next 400 (from 650 to 1050)	44%
All over 1050	60.5%

August - December

None

*Only in certain years, namely, each year immediately following a year in which the April-July flow equals or exceeds 600,000 acre-feet.

(b) In the next calendar year when the calculated natural flow of Kern River at First Point of Measurement exceeds 650,000 acre-feet during the April-July period the Upstream Group will assign an extra 19,800 acre-feet of Kern River water to Hacienda over and above the Downstream Group's allocation under subparagraph (a) hereof, this assignment of extra water to be done once only and never repeated after having been accomplished.

(c) Whenever it appears likely, upon the basis of snow surveys and other relevant data, that Downstream Group will receive an allocation of water during the April-July period of any year, then allocations of water to Downstream Group will commence as early in the April-July period as is practicable, subject to adjustment as the season progresses, in accordance with procedures and criteria to be approved by the chief engineers of the Districts.

(d) All of the flow of Kern River not apportioned to the Downstream Group in accordance with subparagraphs (a) and (b) hereof shall be apportioned and belong to the Upstream Group.

(e) As used herein the term "calculated natural flow at First Point of Measurement" shall mean the quantity of water which would have passed the First Point of Measurement in the Kern River during any specified period of time if Isabella Dam and Reservoir were not in existence, as calculated upon a daily average basis by the Water Master in accordance with a formula to be submitted to and approved by the Chief Engineer of each of the four Districts; which formula may be revised from time to time by such Engineers. The "First Point of Measurement" is the measuring station established and existing in the channel of Kern River in the Southwest Quarter (SW-1/4) of Section Two (2), Township Twenty-Nine (29) South, Range Twenty-Eight (28) East, M.D.B. & M., and it shall not be moved without the written approval of the Chief Engineer of each of the four Districts.

2. Transportation of Downstream Group Allocation.

(a) Each year during which the Downstream Group is entitled to a water allocation within the April-July period pursuant to Paragraph 1 hereof North Kern agrees to transport all water so allocated to the Downstream Group to the Second Point of Measurement on Kern River (being the measuring station as now established and existing in the channel of Kern River in the Northeast Quarter of Section 24, Township 30 South, Range 25 East, M.D.B. & M., or as hereafter relocated with the consent of the Districts) undiminished in quantity during the period ending August 31st of the same year, provided that Kern River water allocated to Buena Vista is being transported to Second Point of Measurement at the same time, and subject to reasonable rates of flow and practicable procedures to be agreed upon by the respective engineers of Tulare, Hacienda, Buena Vista and North Kern from time to time.

(b) Whenever the Downstream Group shall be entitled to a water allocation within the April-July period of any year, and a member of the Downstream Group stores any or all of its share of such allocation in Isabella Reservoir until after August 31st of the same year, then on September 1st of that year North Kern, to the extent that it has water in storage in Isabella Reservoir, will assign to the owner of such Downstream water an amount of North Kern's water then in storage in Isabella Reservoir equal to the quantity of additional water which would have been required to transport such Downstream water to Second Point of Measurement in accordance with the obligation of North Kern under the foregoing subparagraph (a) hereof if the owner of such Downstream water had caused such water to flow down to Second Point of Measurement prior to August 31st of such year instead of storing it in Isabella Reservoir. Water so assigned to a member of the Downstream Group in accordance with this subparagraph shall be stored and held by the assignee thereof in Isabella Reservoir at the assignee's own risk, cost and expense, and shall bear its own evaporation and seepage losses. Such water shall be used by the assignee thereof solely for the purpose of absorbing seepage, evaporation and transportation losses in the transportation of the assignee's Kern River water to Second Point of Measurement, and for no other purpose or purposes whatsoever.

(c) Other than as provided in subparagraphs (a) or (b) respecting the transportation of Downstream Group water to Second Point, nothing shall be deemed or claimed at any time to give Downstream Group any right to or interest in the seepage, evaporation or transportation losses or the equivalent thereof, and if more efficient transportation methods or facilities or different points of delivery shall be established by North Kern and/or Buena Vista, all resulting savings in such losses shall belong to the District or Districts accomplishing such savings.

(d) When Kern River water allocated to the Downstream Group is transported to Second Point of Measurement at times not covered by subparagraph (a) hereof, the seepage, evaporation and transportation losses attributable to the transportation of such Downstream Group water shall be computed on an incremental loss basis in accordance with criteria and formulas agreed upon from time to time by the engineers of the respective districts.

(e) Buena Vista agrees with the members of the Downstream Group that when water owned by any member of the Downstream Group is transported from Second Point of Measurement to the Wasco-Paso Robles Highway in Kern River Channel or in any other conduit which the member of the Downstream Group may have the right to use, and there is Buena Vista water in the same channel or conduit at the same time, then the evaporation, seepage and transportation losses attributable to the transportation of such Downstream Group water will be computed upon an incremental loss basis, in accordance with criteria and formulas agreed upon from time to time by said engineers, but nothing herein contained shall be deemed to obligate Buena Vista to cause Buena Vista water to be present in any such channel or conduit at any time or times, and when no Buena Vista water is present in any such channel or conduit, all such losses shall be borne by the member or members of the Downstream Group having water therein. Buena Vista and the Downstream Group agree to establish such water measuring stations and such procedures for maintaining, cleaning and operating the river channel and levees, canals, flood channels and other structures which may now or hereafter be established and utilized for the purpose of transportation of waters of Kern River from Second Point of Measurement to the Wasco-Paso Robles Highway, as the respective engineers of Buena Vista and the Downstream Group shall agree from time to time, and the cost of all such facili-

ties and operations shall be shared by Buena Vista and the Downstream Group in accordance with principles and criteria approved from time to time by said engineers. Such use of channels or conduits under the control of Buena Vista shall be subject to priority of use by Buena Vista in transporting for its own purposes or purposes of landowners within its boundaries, Kern River water, and water hereafter acquired by it or said landowners from sources other than Kern River, including, but not by way of limitation, well water pumped from within or without its boundaries by it or said landowners. Buena Vista shall have the exclusive right to determine if space is available in channels or conduits under its control for transportation of water for Downstream Group.

3. North Kern - Buena Vista Division.

North Kern and Buena Vista agree that all waters of the Kern River apportioned to the Upstream Group hereunder shall be divided and apportioned in accordance with the Miller-Haggin Agreement mentioned above, as amended and supplemented, except that on each day when any water shall be apportioned to the Downstream Group under the provisions of Paragraph 1 hereof or under any other agreement entered into by the parties hereto or under any judgment binding upon them the remainder of the waters of the river on that day shall be divided and apportioned among the Upstream Group as follows:

(a) All of the waters of the Kern River on that day shall first be tentatively apportioned under the Miller-Haggin Agreement as amended just as though all such waters were to be apportioned to the Upstream Group and none thereof to the Downstream Group.

(b) Whenever during the period commencing April 1st and ending July 31st of any year the calculated natural flow of Kern River at First Point of Measurement shall exceed 650,000 acre-feet then the portion of the Downstream Group allocation during that period which is equal to ten per cent (10%) of the excess of such flow over 650,000 acre-feet during the period shall be deducted from the quantity so tentatively apportioned to the Parties of the First Part to the Miller-Haggin Agreement and their heirs, executors, administrators, successors and assigns.

(c) All other water actually apportioned to the Downstream Group shall be deducted from the quantity so tentatively apportioned to the Parties of the Second Part to the Miller-Haggin Agreement and their heirs, executors, administrators, successors and assigns.

(d) There shall then be finally apportioned on that day to such respective parties the quantities remaining out of their respective tentative apportionments after the deductions described in the foregoing subparagraphs (b) and (c).

4. Covenant Against Claims.

Each party hereby accepts the water apportionment provisions hereof as a final and permanent settlement of all of its rights and claims in and to the waters of Kern River, and each party hereby covenants and agrees with the others that it will never make or assert against any other party or parties hereto any claim to any of the waters of Kern River except the waters herein expressly apportioned to it. Each party agrees that all waters of Kern River to which it may become entitled under any application now pending or hereafter filed before the State Water Rights Board, or under any permit or license issued pursuant to any such application, shall serve and be used only to feed and support the respective rights and allocations of the parties hereto in accordance with the provisions of this contract.

5. Upstream Releases.

All parties agree that any and all waters to which the Upstream Group shall be entitled but which shall not be stored or diverted from the Kern River above the Wasco-Paso Robles Highway shall, upon and after passing said highway, belong to the Downstream Group to be used and enjoyed by them as other Kern River waters which they shall be entitled to receive; that such use and enjoyment by the Downstream Group are permissive; and that the Downstream Group shall never, and it hereby agrees that it will not at any time, claim or contend that its rights have been enlarged thereby or that the rights of the Upstream Group have been diminished thereby or waived or abandoned to the extent thereof.

6. Storage and Diversion Rights.

(a) All parties agree that water belonging to any party may be stored by such party in Isabella Reservoir whenever and to the extent that space therein shall be available to such party, or may be stored by such party elsewhere in any surface or underground reservoir available to it, or may be diverted by such party directly from Kern River for beneficial use without prior storage, all as such party shall determine from time to time.

(b) The ownership of all water stored in Isabella Reservoir by the United States for flood control purposes shall not be affected or changed by such storage but shall be treated for all purposes hereunder as though stored by the owners thereof for their respective accounts.

(c) Each party agrees with the others that it will not request or approve the release from Isabella Reservoir of any water not owned by such party without the consent of the owner of such water.

(d) All parties agree that water stored in Isabella Reservoir by any party hereto shall be released or discharged from storage only on direction of the party to which such water is credited and belongs, or on instructions from the United States for flood control purposes, and that upon such release or discharge such water shall be allowed to flow down the channels of Kern River for diversion and use by the party to which such water belongs without interference or diminution by any other party.

7. Permanent Storage Contract.

All parties shall cooperate with each other and with the United States in completing negotiations for and executing as soon as possible a permanent contract (herein called "permanent storage contract") for the use of conservation storage space in Isabella Reservoir upon a cash payment basis in a form as similar as possible to the form identified as "Draft 9/25/62" now pending before the Department of the Interior. In such permanent contract the Districts shall purchase the following respective percentages of the right to the use of the storage space available for conservation use in Isabella Reservoir:

Buena Vista	32%
North Kern	68%
Tulare	None
Hacienda	None

	100%
	====

For convenience 32% of such storage space is hereinafter designated as "Buena Vista Space" and 68% thereof as "North Kern Space". Likewise, 20/68ths of the North Kern Space (equal to 20% of the entire space) is hereinafter designated as "Downstream Space".

8. Option of Downstream Group for the Purchase of Storage Space.

If and when North Kern so contracts with the United States for use of storage space in Isabella Reservoir, the Downstream Group shall have an irrevocable option for ten years from the date of such contract to purchase all or any part of the Downstream Space from North Kern at North Kern's cost (which is \$45,730 per percentage point or \$914,600 for the entire 20%) without interest. Such option may be exercised by giving written notice to North Kern accompanied by full payment of the purchase price and the written approval of Tulare Lake and Hacienda. Copies of the notice shall be given to the United States and to the Water Master.

9. Rental of Storage Space.

If and when a permanent storage contract is made with the United States for use of conservation storage space in Isabella Reservoir as contemplated by Paragraph 7 hereof, then the following provisions shall become applicable and shall remain in effect throughout the duration of such contract:

(a) In addition to the option to purchase the Downstream Space from North Kern pursuant to the provisions of Paragraph 8 hereof, Downstream Group shall have the perpetual right to rent the Downstream Space in whole or in part from North Kern for the storage of Kern River water allocated to Downstream Group in this contract. If Downstream Group shall purchase any of the Downstream Space

from North Kern pursuant to Paragraph 8 hereof, then the quantity of space so purchased shall be deducted from the quantity which Downstream Group shall have the right to rent hereunder, and if Downstream Group shall so purchase all of the Downstream Space then its right of rental under this Paragraph 9(a) shall thereupon terminate. The rate of rental to be paid by Downstream Group to North Kern for use of such space shall be the rate hereinafter specified.

(b) Whenever the Buena Vista space is not fully occupied the unoccupied portion thereof may be rented temporarily by North Kern at the rental rate hereinafter specified, but it must be promptly vacated whenever and to the extent that such space is needed by Buena Vista.

(c) Whenever the North Kern Space (including the Downstream Space to the extent not purchased by the Downstream Group) is not fully occupied, the unoccupied portion thereof may be rented temporarily by Buena Vista at the rental rate hereinafter specified, but it must be promptly vacated whenever and to the extent that such space is needed by North Kern or (to the extent of such Downstream Space) by Downstream Group.

(d) If Downstream Group shall purchase any of the Downstream Space pursuant to Paragraph 8 hereof, then whenever any of the space so purchased is not fully occupied the unoccupied portion thereof may be rented temporarily by Buena Vista or North Kern (or by both of them in proportion to the respective quantities of water they have available for storage therein) at the rental rate hereinafter specified, but it must be promptly vacated whenever and to the extent that such space is needed by Downstream Group.

(e) The rate of rental to be paid for the use of storage space pursuant to Paragraphs 9(a), 9(b), 9(c) and 9(d) hereof shall be computed as follows:

(1) Promptly after the end of each calendar year (herein called the "current year") commencing with the first calendar year during which water is stored in Isabella Reservoir pursuant to such permanent storage contract, the Water Master shall determine the total cost to all of the Districts of all storage by

them of water in Isabella Reservoir during the current calendar year and the four immediately preceding calendar years. Such total cost shall consist of all charges made by the United States to the Districts for operation and maintenance under the permanent storage contract or under the pre-existing interim storage contracts for the five-year period, plus the sum of \$1,143,250 representing interest at 5% per annum for the five-year period upon the purchase price of all the storage space in the reservoir under the permanent storage contract.

(2) The Water Master shall then determine the number of acre-feet of irrigation water stored in Isabella Reservoir pursuant to the permanent storage contract or the pre-existing interim contracts upon each day during the same five-year period. He shall then add together the numbers of acre-feet so determined for all of the days of the five-year period so as to obtain a figure representing in acre-foot days the aggregate use of Isabella Reservoir for irrigation water storage during the entire five-year period.

(3) The Water Master shall then divide the total number of dollars representing the total cost of storage for the five-year period determined pursuant to item (1) hereof by the number of acre-foot days of irrigation water storage during the same period determined pursuant to item (2) hereof, so as to obtain an average cost per acre-foot-day for the storage of irrigation water in the reservoir during the five-year period.

(4) The rental rate of storage space per acre-foot-day during the current calendar year shall then be the average cost per acre-foot-day as so determined.

(f) Promptly after so computing the applicable rental rate for the current year, the Water Master shall compute and notify all parties of the total rent due by each party to each other party for rental of storage space during the current year, and each party shall promptly pay each amount of rent due by it.

10. Flood Control Releases.

All parties agree that whenever the United States shall order that water stored in Isabella Reservoir shall be discharged therefrom to provide space for flood control storage, and more than one of the Districts then have contracts with the United States for use of such space, then the procedure shall be as follows:

(a) Each party's share (to be designated as such party's "available storage space") of the storage space which will be available after completion of the discharges so ordered by the United States shall be computed by the Water Master in terms of acre-feet in conformity with the proportions which all parties' shares of the rights to such storage space bear to each other. For this purpose Downstream Group's share of the right to such storage space shall include the portion of the Downstream Space which Downstream Group has the right to rent pursuant to Paragraph 9(a) hereof.

(b) The Water Master shall then compute as of the time immediately prior to the commencement of such discharges the amount, if any, by which the quantity of water held by each party in storage in Isabella Reservoir exceeds such party's available storage space. Such excess shall be designated as "excess storage".

(c) The quantity of stored water discharged each day from storage in Isabella Reservoir to comply with such order of the United States shall be computed by the Water Master and shall be deemed to be part of and shall be deducted from the respective balances of excess storage of those parties having excess storage remaining in Isabella Reservoir at the end of the previous day. Such deductions shall be made in the proportion that such excess storage balances bear to each other.

(d) The foregoing process shall be continued until the aggregate amount of water held in storage by all parties shall be reduced to the total volume of the available storage space of all parties.

(e) If at the time of any such discharge any party has in storage less water than could be contained

in its available storage space then none of the water discharged to comply with the order of the United States shall be deducted from such party's balance of stored water, and any of its available storage space not occupied by its own water may be temporarily used by the other parties in accordance with the provisions of Paragraph 9 hereof.

(f) The discharge of water from Isabella Reservoir to comply with an order of the United States shall not change or affect the ownership of the water so discharged.

(g) All such computations shall be made and recorded by the Water Master.

11. Water Master.

The parties agree that the Water Master shall prepare and keep complete records on a daily basis of the flow of the waters of Kern River and the storage thereof in and release thereof from Isabella Reservoir and shall prepare and deliver to each District reports summarizing such records at such times (but not more often than weekly) as the chief engineers of the four Districts shall approve from time to time; that all such records of the Water Master shall be open to inspection by the properly authorized representatives of the Districts at all reasonable times; that each District shall supply the Water Master with any and all information in its possession which may be needed in compiling such records; that the Water Master shall supply each District with complete copies of such records or specified portions thereof promptly upon request and payment by the requesting District of the actual cost of preparing such copies; that the Water Master shall promptly notify each District of all orders affecting such District which are given to him by any District or by the United States for storage of water in or release of water from Isabella Reservoir; and that the Water Master shall be compensated for his services and reimbursed for his expenses by the Districts on a fair basis to be agreed upon and shared by the respective Districts from time to time. All parties hereby appoint the General Manager of Kern County Canal and Water Company at Bakersfield, California, to serve as Water Master under this Agreement and under the contract with the United States until such appointment is

revoked and a new appointment is made. The appointment of a Water Master may be revoked by written notice from a majority of the Districts to the Water Master and to the other parties hereto, and the appointment of a new Water Master may be made by written agreement of all of the Districts, or, if they do not agree, such appointment may be made upon request of any District by the Director of Water Resources of the State of California. By endorsement hereon said Kern County Canal and Water Company agrees that its General Manager may serve as such Water Master.

12. Dismissal of Litigation.

By endorsement hereon Kern River Delta Farms, a partnership, successor in interest to La Hacienda Company, as the owner of substantially all of the land in Hacienda Water District, approves the execution of this contract on its behalf by Hacienda Water District, and agrees that immediately after the execution and delivery of this contract it will cause each of the following actions to be dismissed with prejudice:

(a) Action No. 14360 commenced April 13, 1959, in the Superior Court of the State of California in and for the County of Kings, entitled "La Hacienda Company, a corporation, Plaintiff, vs. Tulare Lake Basin Water Storage District, et al., Defendants."

(b) Petition No. 128-60 filed April 14, 1960, in the United States Court of Claims, entitled "La Hacienda Company, a corporation, Plaintiff, vs. The United States of America, Defendant".

13. Water Percolation and Recovery Committee.

The Districts recognize that the use of underground water storage basins in the Kern River Delta may become important for the effective, economical and efficient use of the Kern River waters apportioned hereunder and such other waters as may be obtained from other sources from time to time, and in order to determine the feasibility and practicability of a program for the percolation of water to such underground basins for later recovery and use the Districts agree as follows:

(a) A committee to be known as "Water Percolation and Recovery Committee" shall be promptly established, its

membership to consist of a representative and one or more alternates appointed by each of the Districts.

(b) The Committee shall proceed promptly to consider the formulation of a plan of study and experimentation to determine the feasibility and practicability of such a water percolation and recovery program.

(c) Said Committee in its deliberations concerning the type and extent of said study and experimentation plan shall consider, among other things, the following items:

(1) The specific yield of soils where water may be percolated.

(2) The practical percentage of recovery of percolated water in various areas and under different conditions and periods of storage.

(3) The best and most efficient locations for well and pump installations.

(4) The cost per acre-foot of recovering percolated water with both natural gas and electrically operated pumps.

(5) The possible use of certain existing wells and pumps as part of the program operation.

(6) The cost of conduit construction or improvement for conveyance of recovered water to its place of use in crop irrigation.

(7) The possibility of incorporating into such a program the percolation and recovery of water brought into the area from sources other than Kern River.

(8) The relation to underground recharge in specific areas to varying amounts of gravity water use in adjoining areas.

(9) Determination of the ground water inflow requirements in specific areas to sustain adequate and economic well water production.

(10) Determination of ground water quality in specific areas and its possible relationship to vary-

ing amounts of gravity water application on overlying lands.

(11) An appropriate formula for the sharing by the Districts of the costs of the study and experimentation plan.

(d) The Committee, as soon as practicable, shall prepare and submit a report of its conclusions and recommendations to each of the Districts. Each District by resolution shall manifest its approval or disapproval of the Committee's report. If a study and experimentation program is recommended by the Committee, each District shall indicate whether it desires to proceed as recommended and whether it accepts its share of the costs.

(e) Each District shall make available to the Committee data and information in its possession pertinent to a water percolation and recovery program.

14. Water Exchange Contracts.

Downstream Group shall have a priority position on any contracts to exchange Kern River water and receive in return water from other sources.

(a) Downstream Group may at any time sell or exchange water of Kern River to which it is entitled hereunder for water owned or obtained by other parties from other sources.

(b) North Kern and Buena Vista may independently or together exchange water of Kern River to which they are entitled hereunder for waters owned or obtained by other parties from other sources subject to the following limitations:

NOTE

(1) Downstream Group shall in any such contract be permitted to substitute, upon the same terms and conditions, up to the quantity of Kern River entitlement that Downstream Group then has available, its Kern River water for all or a portion of North Kern and Buena Vista water that other parties agree to accept.

(2) Water to be returned by other parties for Kern River water shall first be offered to Down-

stream Group to the extent that Downstream Group is willing to accept such water and to the extent that Downstream Group has a credit balance of Kern River water delivered.

(3) Downstream Group may specify points of delivery other than the Kern River Channel, such as turnouts of the Friant-Kern Canal or the proposed Feather River Canal, provided only that the exchanger can physically arrange such a delivery. If designation of different points of delivery is more expensive for an exchanger than the exchange that would otherwise be made to North Kern or Buena Vista, Downstream Group shall compensate the exchanger for the additional expense.

(4) If and when North Kern and/or Buena Vista negotiate exchanges with third parties, such third parties are to be informed of and required to agree to these provisions. All such arrangements will be handled through the Water Master and there shall be no inconvenience or greater expense than if the exchanger had made its exchange solely with either North Kern or Buena Vista.

15. Term.

This contract shall take effect upon the date set forth in the preamble hereof and it shall continue in effect until terminated or amended by the mutual written consent of all of the Districts or their successors in interest.

16. Notices.

Any notice hereunder to any of the following shall be deemed to have been given if deposited in the United States Mail in a sealed envelope, franked or postpaid, certified, and addressed as follows:

To North Kern: North Kern Water Storage District
Post Office Box 1195
Bakersfield, California

To Buena Vista: Buena Vista Water Storage District
Buttonwillow, California

To Tulare Lake: Tulare Lake Basin Water Storage
District
Corcoran, California

To Hacienda: Hacienda Water District
Corcoran, California

Any party may change its address by giving the other parties written notice of its new address.

17. Succession.

This agreement shall bind and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the Districts and all parties on whose behalf each of them makes this agreement.

EXECUTED in ten counterparts (two for each District, one for Kern County Canal and Water Company and one for La Hacienda Company) at Bakersfield, California, as of the day and year first above written.

NORTH KERN WATER STORAGE DISTRICT

By G. E. STANFIELD
President

By JANE MATHEWS
Assistant Secretary

(SEAL)

BUENA VISTA WATER STORAGE DISTRICT

By L. F. FREEBORN
President

By GINO TORIGIANI
Secretary

(SEAL)

TULARE LAKE BASIN WATER STORAGE
DISTRICT

By LOUIS T. ROBINSON
President

By JAMES G. MCCAIN
Assistant Secretary

(SEAL)

HACIENDA WATER DISTRICT

By HUGH BENNETT
President

By W. F. CRAVEN
Secretary

(SEAL)

The undersigned hereby agrees that its General Manager may serve as Water Master under the foregoing Agreement.

Bakersfield, California, MAR 18, 1963.

KERN COUNTY CANAL AND WATER COMPANY

By CARTER H. BREUSING
Vice President

By LEON J. McDONOUGH
Assistant Secretary

(SEAL)

The undersigned hereby approves the execution of the foregoing contract by Hacienda Water District on its behalf and agrees to perform the obligations imposed upon it by Paragraph 12 of the contract.

Merced, California, April 2nd, 1963.

KERN RIVER DELTA FARMS,
a partnership

By C. RAY ROBINSON
C. Ray Robinson

HUGH BENNETT
Hugh Bennett

GEORGE W. NICKEL, JR.
George Nickel, Jr.

General Partners