

EXHIBIT C

POINT OF DELIVERY AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT BETWEEN
DEPARTMENT OF WATER RESOURCES,
STATE OF CALIFORNIA,
AND THE
KERN COUNTY WATER AGENCY

THIS AGREEMENT is made this 8th day of June, 2000,
pursuant to the provisions of the California Water Resources Development Bond Act,
and other applicable laws of the State of California, between the State of California
"Department of Water Resources," herein referred to as the "STATE" and the "Kern
County Water Agency," herein referred to as the "AGENCY," a political subdivision of
the State of California created by an Act of the California State Legislature (Statutes
1961 Ch. 1003, as amended).

RECITALS:

- A. The STATE and the AGENCY have entered into and subsequently amended a
water supply contract, herein referred to as the "Water Supply Contract,"
providing that the STATE will supply certain quantities of water to the AGENCY,
and providing that the AGENCY shall make certain payments to the STATE, and
setting forth the terms and conditions of such supply and such payment; and
- B. The AGENCY has entered into an agreement with "Western Hills Water District,"
a California Water District located in Stanislaus County, herein referred to as

- "WESTERN," to provide a long-term water supply for WESTERN utilizing Local Water from the AGENCY's share of the Pioneer Groundwater Banking Project in Kern County and delivering such water to WESTERN by exchanging it for a portion of the AGENCY's State Water Project (SWP) entitlement water; and
- C. The purpose of this Agreement between the STATE and the AGENCY is to set forth provisions governing the delivery of the AGENCY's Local Water to WESTERN by exchanging the AGENCY's Local Water for a like amount of AGENCY's SWP entitlement delivered to the Western Hills Turnout on the California Aqueduct in Reach 2A; and
- D. The AGENCY's agreement to provide a water supply to WESTERN is an alternative to WESTERN's previously planned purchase of SWP entitlement from the Berrenda Mesa Water District, a member unit of the AGENCY, pursuant to Article 53 of the Water Supply Contract; and
- E. Existing SWP contractors have expressed an interest in purchasing the Berrenda Mesa entitlement and the STATE and the AGENCY wish to assure that these contractors have the opportunity to proceed with such a purchase; and
- F. The AGENCY's agreement to supply WESTERN with a water supply will not increase the AGENCY's demand for project water, and the source of the Local Water provided for this exchange will not be SWP water; and
- G. The transportation facilities required to implement the proposed exchange are included in Table 1 of the Water Supply Contract, and accordingly, the AGENCY participates in the repayment of the reaches required for this exchange; and

- H. Pursuant to Article 15(a) of the AGENCY's Water Supply Contract, the STATE hereby consents to the delivery of AGENCY SWP Table A entitlement water outside the AGENCY's service area under the terms of this Agreement and finds that such delivery will not materially impair the AGENCY's capacity to make payments to the STATE.
- I. The STATE has filed a petition with the State Water Resources Control Board on February 11, 2000 to include WESTERN's service area as described in Exhibit A within the authorized place of use of SWP water.

AGREEMENT

1. DEFINITIONS

- (a) "Entitlement" means the acre-feet amounts listed in Table A of the Water Supply Contract, excluding interruptible water and turnback pool water.
- (b) "Water Supply Contract" means the contract entered into for a long-term supply of water from the California Water Resources Development System between the STATE and the AGENCY, dated November 15, 1963, as amended.
- (c) "Western Hills Turnout" means the turnout proposed to be constructed on Reach 2A, Milepost 42.9 of the California Aqueduct as shown on Exhibit A.
- (d) Definitions and terms contained in the Water Supply Contract apply to this Agreement.

- (e) "Local Water" means local water stored in the Pioneer Groundwater Banking Project, excluding SWP water of all classifications, (eg., entitlement, interruptible, and turnback pool water.)
- (f) "Western Hills Water District" means the California Water District located in Stanislaus County.
- (g) "Pioneer Participation Agreement" means the agreement entered into for recharging and withdrawing water in the Pioneer Groundwater Banking Project among AGENCY and various member units of the AGENCY, dated January 1, 1997, as amended.

2. APPROVAL

The STATE approves delivery of a portion of the AGENCY's SWP Table A entitlement at the Western Hills Turnout on the California Aqueduct to implement the AGENCY's agreement to provide a water supply from the AGENCY's Local Water by exchange for a portion of its entitlement under the terms and conditions of this Agreement.

3. TERM

This Agreement shall be coextensive with the Pioneer Participation Agreement. The AGENCY shall furnish to the STATE copies of all amendments to the Pioneer Participation Agreement within 30 days of execution.

4. USE OF WATER

Water delivered by the STATE under this Agreement shall not be sold, used or otherwise disposed of outside of WESTERN's service area described in Exhibit A attached hereto. If any such water is sold, used or otherwise disposed of outside of Western's service area, upon notification from the STATE, the AGENCY shall seek an injunction or other appropriate remedy to halt any such deliveries and the STATE may reclassify deliveries of State Project water to the AGENCY up to the amount that was delivered outside of WESTERN's service area. The AGENCY shall notify the STATE of any change in WESTERN's service area as described in Exhibit A, including by inclusion or exclusion of lands, partial or total consolidation, merger with another district, or proceeding to dissolve.

5. SCHEDULING, DELIVERY PRIORITY AND USE OF CALIFORNIA
AQUEDUCT CAPACITY

The STATE shall deliver a portion of the AGENCY'S Table A entitlement water to the Western Hills Turnout in accordance with schedules, provided by the AGENCY, which have been reviewed and approved by the STATE pursuant to applicable scheduling provisions of the Water Supply Contract and consistent with the overall operations of the SWP. All deliveries of water shall be subject to applicable provisions of the Water Supply Contract. The STATE shall not be obligated to convey such water at times when such delivery would adversely impact SWP operations or

facilities, or other SWP contractors' water deliveries or costs, as determined by the STATE. The AGENCY shall be responsible for any adverse impacts that may result from deliveries under this Agreement as determined by the STATE.

6. AGENCY'S TABLE A NOT AMENDED

The AGENCY's Table A is not amended by this Agreement.

7. SOURCE OF EXCHANGE WATER

The AGENCY's agreement to supply water to WESTERN does not constitute a sale of its SWP water, and the AGENCY confirms that the source of water for the exchange is local water stored in the AGENCY's share of the Pioneer Groundwater Banking Project, and not SWP water of any classification, including entitlement and interruptible.

8. RECORDS OF EXCHANGE

The AGENCY shall certify to the STATE's State Water Project Analysis Office annually by January 31 the following information for the previous year's delivery:

- (a) The original and intermediate sources of water used for the exchange to WESTERN.
- (b) The groundwater accounting for the Pioneer Groundwater Banking Project.

The STATE will maintain monthly records accounting for the delivery of the AGENCY's SWP Table A entitlement to WESTERN delivered pursuant to this Agreement.

9. ARTICLE 53

The AGENCY shall not contend that this Agreement, or any actions taken in conjunction with its provision of water to WESTERN, constitute performance of the AGENCY's obligation to offer for sale 130,000 acre-feet of its entitlement pursuant to Article 53 of the Water Supply Contract.

10. CHARGES

- (a) Charges for conveyance shall be calculated in the same manner as charges are calculated for the AGENCY's other SWP entitlement water being moved through the same reaches, including charges for SWP power resources (including on-aqueduct, off-aqueduct and any other power) used in the transportation of such water calculated from Bank's Pumping Plant to the Western Hills Turnout. Charges shall be determined in accordance with the provisions of the Water Supply Contract for SWP entitlement deliveries applicable in the year the water is delivered.
- (b) In addition to the charges identified above, the AGENCY agrees to pay any additional identified increased SWP non-power costs, as defined in Article 56(c)(6) of the Water Supply Contract, that the STATE or other SWP contractors would not otherwise incur but for this Agreement or actions undertaken pursuant to this Agreement.
- (c) All charges arising out of this Agreement shall be paid within 60 days after billing and shall be collected in the same manner and on

the same terms and conditions as other charges under the Water Supply Contract.

11. APPROVALS

The delivery of water under this Agreement shall be contingent on and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable regulations.

The AGENCY shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order.

The AGENCY shall furnish to the STATE copies of all approvals acquired for the actions undertaken pursuant to this Agreement.

12. LIABILITY

If a claim of liability against the STATE, its officers or employees, individually or severally, arises out of this Agreement or any actions taken pursuant to this Agreement or the exchange accomplished by this Agreement, to the extent permitted by law, the AGENCY shall defend, indemnify, and hold the STATE, and any of its officers or employees harmless from any such claim. The AGENCY shall defend against the claim and shall upon the demand of the STATE reimburse the STATE for any costs the STATE incurs in participating in the defense against the claim.

13. NO MODIFICATION OF THE WATER SUPPLY CONTRACT

This Agreement shall be subject to the terms and conditions of the Water Supply Contract and shall not be interpreted to modify the terms or conditions of the Water Supply Contract.

14. WAIVER

No waiver by either party on any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provisions.

15. ASSIGNMENT OF AGREEMENT

No assignment or transfer of the Agreement or any part hereof, rights hereunder, or interest herein by the AGENCY shall be valid unless and until it is approved by the STATE.

16. THIRD PARTY BENEFICIARIES

No third-party beneficiary is created or intended by this Agreement, and neither party shall contend otherwise.

17. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

18. TERMS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party,

such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

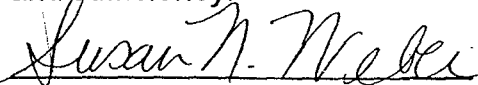
19. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

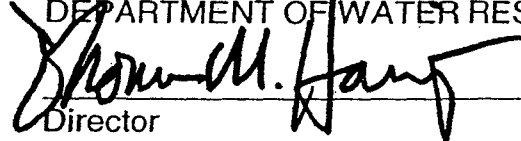
Certified copies of resolutions authorizing the AGENCY to enter into this Agreement shall be delivered to the STATE before implementation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

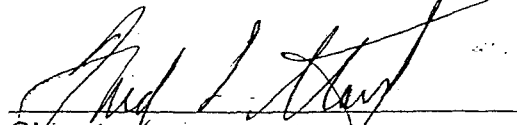
Approved as to legal form
and sufficiency:


Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

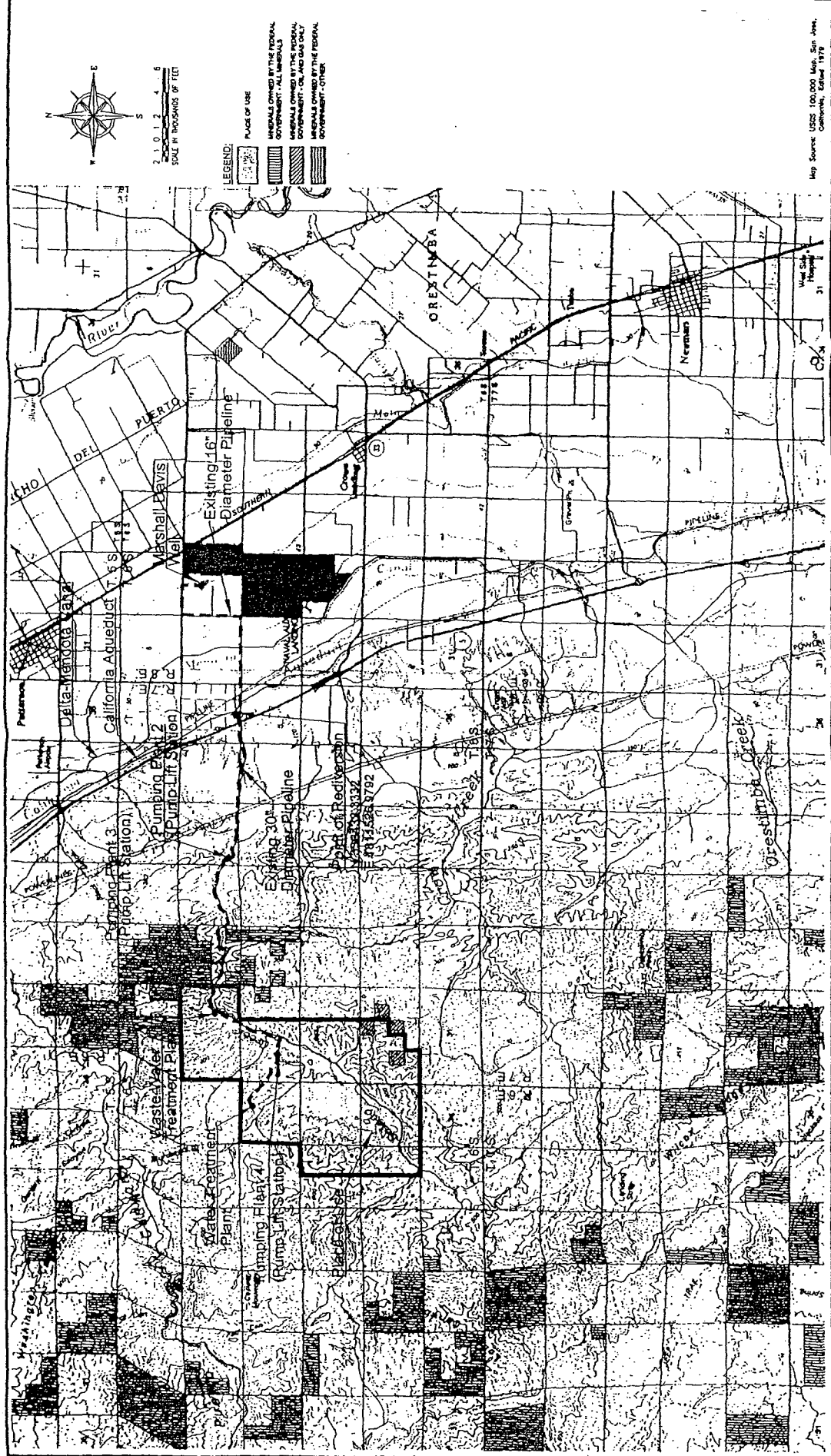

Director

KERN COUNTY WATER AGENCY


Signature

President
Title

May 25, 2000
Date



WESTERN HILLS WATER DISTRICT



POINT OF REDIVERSION
AND PLACE OF USE

DATE: OCTOBER 1999
SCALE: 1"=1 MI
SHEET: 14-000
SHEET NUMBER: 14-000
DRAWING NUMBER: 14-000

NO.	DESCRIPTION	DATE	BY	CHKD
1	DESIGNED	10/19/99	MC	MC
2	DRAWN	10/19/99	MC	MC
3	CHECKED	10/19/99	MC	MC
4	APPROVED	10/19/99	MC	MC

REDUCED
NOTE
DRAWING

WESTERN HILLS WATER SUPPLY PROGRAM

(Attachments 1-5)

Original Western Hills Proposal – Purchase of SWP Entitlement

Western Hills Water District, located in Stanislaus County on the west side of the California Aqueduct north of San Luis Reservoir, was formed for the purpose of supplying water to the Diablo Grande Project, a proposed private home development. In 1998, Western Hills entered into a contract with Berrenda Mesa Water District to purchase 8,000 AF of SWP entitlement pursuant to the provisions of the Monterey Amendment that permitted the permanent sale of up to 130,000 AF of SWP agricultural entitlement to SWP Urban Contractors or potentially non-Contractors. Also in 1998, pursuant to the Monterey Amendment, SWP Urban Contractors were given a right of first refusal option to purchase the 8,000 AF under the same terms and conditions and none of the Contractors exercised the option.

In 1999, DWR expressed the following concerns about approving the sale:

- 1) Western Hills WD was really a privately owned development;
- 2) The Western Hills WD service area was located outside the SWP service area;
- 3) The Western Hills WD service area was located north of San Luis Reservoir making it more vulnerable to SWP outages;
- 4) Because of its' location, a backup supply for Western Hills was critically important.

During the later part of 1999, KCWA proposed an alternative water supply for Western Hills that would hopefully satisfy Western Hills and avoid some of the issues concerning DWR.

KCWA/Western Hills Water Supply Program – Purchase of non-SWP Water

In March, 2000, KCWA approved the KCWA/Western Hills Water Supply Program Contract (Attachment 1, KCWA/Western Hills contract), which was a unique water supply alternative whereby Western Hills would pay Berrenda Mesa the agreed to one-time \$1,000/AF purchase price, but Berrenda Mesa would then convey the 8,000 AF of SWP entitlement to KCWA. KCWA would then supply Western Hills with a like amount of pre-1914 Lower River Rights Water banked in KCWA's 25% share of the Pioneer Groundwater Banking Project (Attachment 2, Pioneer Project CEQA documents, Attachment 3, Pioneer Participation Agreement). Western Hills would pay KCWA each year the same amount they would have paid if they had purchased the SWP entitlement.

Source of Supply

The banked pre-1914 Lower River Rights Water used as the source of water to supply Western Hills is high flow Kern River water, much of which was historically used outside of Kern County. After establishing the Western Hills Water Supply Program in 2000, KCWA acquired the Lower River Rights Water in 2001 (See Lower River Rights Acquisition and attachments).

Delivery by Exchange

Physically, KCWA delivers water to Western Hills each year by exchange, whereby up to 8,000 AF of SWP entitlement can be delivered to Western Hills from the California Aqueduct and in exchange, a like amount of previously banked Lower River Rights Water is recovered from the Pioneer Project and delivered locally within KCWA to replace the SWP entitlement exchange water delivered to Western Hills.

Point of Delivery Agreement

In June, 2000, DWR executed the DWR/KCWA Point of Delivery Agreement which provides terms and conditions for the delivery of SWP entitlement exchange water to Western Hills (Attachment 4, DWR/KCWA Point of Delivery Agreement). Since Western Hills is not a SWP Contractor, only DWR and KCWA are parties to the agreement.

Turnout Construction, O&M Agreement

Also in June, 2000, DWR executed the DWR/KCWA/Western Hills Turnout Construction, O&M Agreement which provides terms and conditions for the construction and O&M of the Western Hills Turnout (Attachment 5, DWR/KCWA/Western Hills Turnout Agreement). Since Western Hills would be constructing the new turnout, DWR, KCWA and Western Hills are parties to the agreement.

Backup Supply

Western Hills developed a water shortage contingency plan which is described in the KCWA/Western Hills contract (Attachment 1, Exhibit E, Western Hills Shortage Contingency Plan) and consists of access to groundwater or a plan to acquire water from O'Neill Forebay.

LOWER RIVER RIGHTS WATER AQUISITION
(Attachments 6-8)

The Lower River Rights Water is a Kern River water right, originally established by the Miller-Haggin Agreement in 1888, and had since been owned and retained by Miller's descendants, currently represented by Nickel Family LLC. Historically, yield from the water right has been extremely variable, occurring in years when runoff from the Kern River is at or exceeds 120% of normal. Typically, yield has occurred in about one out of five years and has exceeded 500,000 AF in some years. The long-term average annual yield has been about 50,000 AF of which, about 40,000 AF was beneficially used and the remaining 10,000 AF was uncontrolled flood water. In addition to the water right itself, there are other rights, including up to 40,000 AF of storage in Lake Isabella that can be utilized under certain terms and conditions. In addition, much of this water has historically been used outside of Kern County, primarily in the Tulare Lake basin located in Kings County. For example, most recently from 1995 through 2000, a total of about 124,000 AF was used outside of Kern County.

Prior to 2000, Nickel Family LLC had offered to permanently transfer the Lower River Right to interests both inside and outside of Kern County, but because of the highly variable nature of the supply, potential buyers had the problem of finding ways to re-regulate the supply in order to justify the purchase price. Unless significant amounts of the supply, when it occurred, could be stored for later use under drier conditions, much of the supply had to be used under very wet conditions, when the value of the water was relatively low. For many years, KCWA had been interested in acquiring the water right for use in Kern County, but had not actively pursued the purchase primarily due to lack of funding, but also due to lack of a well defined program to re-regulate the supply.

As a result of the Monterey Amendment implemented in 1995, KCWA and local districts have been able to significantly expand groundwater banking and recovery facilities with the development of the Kern Water Bank as well as KCWA's Pioneer Project. These two facilities alone have increased the capability to capture and store (by groundwater banking) wet year water, like the Lower River Rights Water, by almost 600,000 AF per year. Additional banking facilities are also being developed by individual districts. Accordingly, by 2000, Kern County now had the physical capability to re-regulate the Lower River Rights Water as well as other sources. What was still needed however, was a source of funds to purchase the Lower River Rights.

In the spring of 2000, KCWA received a \$23,000,000 grant under Proposition 13, the *Safe Drinking Water, Clean Water, Watershed Protection Act*, which was approved by the voters in November, 1999. In September, 2000, KCWA completed the CEQA requirements for use of the \$23,000,000 for the *Kern River Restoration and Water Supply Program*, which included, among other things, acquisition of the Lower River Rights from Nickel Family LLC (Attachment 6, Lower River Rights CEQA documents). In November, 2000, KCWA approved execution of the purchase agreement which provided for a \$10,000,000 one-time payment for the Lower River Rights and a KCWA obligation to provide 10,000 AF per year of re-regulated Lower River Rights Water to Nickel Family LLC, which water could be delivered to the California Aqueduct by exchange and marketed by Nickel Family LLC (Attachment 7, KCWA/Nickel Lower River Rights Purchase Agreement). Delivery of the exchange water from the California Aqueduct to a future buyer(s) is subject to DWR's approval. Additional CEQA addressing the 10,000 AF/YR delivery outside KCWA will be finalized by KCWA in November, 2001, (Attachment 8, Lower River Rights CEQA document).

KCWA/NICKEL/DUKE AVENAL WATER SUPPLY PROGRAM

(Attachments 9-10)

Nickel/Duke Avenal – Purchase of non-SWP Water

Nickel Family LLC has agreed to sell 2,250 AF per year to Duke Energy Avenal, LLC (Duke Avenal) for a water supply for a combined cycle power plant proposed to be built near the City of Avenal (Attachment 9, Nickel/Duke Purchase Agreement). The power plant is to be located within Kings County which is a SWP Contractor. Kings County is supportive of the project and KCWA has agreed to cooperate to obtain DWR approval to deliver the water (Attachment 10, KCWA cooperation letter). Duke Avenal will also enter into an agreement with Kings County that provides terms and conditions for Kings County to deliver the water to Duke Avenal.

Source of Supply

On behalf of Nickel, KCWA would provide up to 2,250 AF/YR of banked pre-1914 Lower River Rights Water for use as the source of water to supply Kings County on behalf of Duke Avenal, which is the same type of high flow Kern River water used to supply Western Hills WD (See Lower River Rights Acquisition and attachments).

Delivery by Exchange

Physically, KCWA would deliver water to Kings County each year by exchange, whereby up to 2,250 AF of SWP entitlement or other exchange water would be delivered to Kings County from the California Aqueduct and in exchange, a like amount of previously banked Lower River Rights Water will be recovered from KCWA's 25% share of the Pioneer Project Banking Facility and delivered locally within KCWA to replace the SWP entitlement or other exchange water delivered to Kings County.

Point of Delivery Agreement

Since Kings County is a SWP Contractor, a Point of Delivery Agreement between DWR, KCWA and Kings County will be needed to provide terms and conditions for the delivery of SWP entitlement or other exchange water to Kings County on behalf of Duke Avenal. This agreement will have provisions similar to the Western Hills POD Agreement with respect to the source of water and delivery by exchange and other provisions similar to POD agreements with SWP Contractors, like MWD, Santa Clara, Alameda, Zone 7, etc.

Turnout Construction, O&M Agreement

Duke Avenal is proposing to use the new turnout which the City of Avenal is proposing to construct. It will be a CVP turnout under an agreement with USBR.

Backup Supply

Duke Avenal has secured the right to acquire access to three nearby wells under an agreement with a local landowner. The groundwater will be piped to the power plant and will be sufficient to temporarily supply 100% of the power plants needs in case of a SWP Aqueduct outage.