

## COOPERATIVE AGREEMENT FOR ONYX INTERIM PILOT PROJECT

Rosedale Rio Bravo Water District (Rosedale), the Kern River Watermaster (Watermaster) and the agencies that comprise the Kern River Interests (KRIs) listed on Exhibit A (collectively herein “parties”) enter into this Cooperative Agreement for Onyx Interim Pilot Project (Agreement) as of March 18, 2022 based on the following facts.

### RECITALS

- a. Rosedale acquired property along the South Fork Kern River and is proposing to change the points of diversion and place of use for the water rights associated with parcels owned by Rosedale in the South Fork Valley area to the Rosedale service area on the valley floor (the Onyx Project).
- b. Rosedale certified an Environmental Impact Report (EIR) for the Onyx Ranch South Fork Valley Water Project State Clearinghouse #2018021061 on January 12, 2021.
- c. The Watermaster and KRIs have concerns about whether the Onyx Project can proceed for a number of reasons including but not limited to possible injury to the KRI water rights.
- d. The purpose of this Agreement is to establish a two-year interim pilot project to enable the parties to gather additional information and data to better understand the Onyx Project and craft operational rules that may alleviate the concerns of the Watermaster and KRIs and lead to a long-term agreement for the operation of the Onyx Project.

For these reasons, and in exchange for the mutual consideration and promises herein, the parties agree as follows:

1. **Tolling.** The “Tolling Period,” as defined in the Tolling Agreement entered into by the parties on February 3, 2021, and currently extended through March 18, 2022, is hereby extended until the earlier of December 31, 2023 or the termination of this Agreement, whichever occurs first. Notwithstanding section 3 of the Tolling Agreement, Rosedale may move Project Water through Isabella during the extended Tolling Period pursuant to this Agreement. Except as modified by this Section 1, all other provisions of the Tolling Agreement shall remain in effect.
2. **No Admission or Waiver.** This Agreement and any provisions, actions, or inactions associated with performance of this Agreement shall not operate as a waiver or admission by any party of a claim or defense related to the Onyx Project, including but not limited to challenges under CEQA, any substantive water rights, or any other legal theory related to the implementation of the Onyx Project.
3. **Party Representatives.** This Agreement requires good, timely communication between the parties. The parties shall send all communications required by this Agreement by electronic mail to the Party Representatives listed on Exhibit A. A party may change its Party Representative by providing both email and written notice to all other parties.

#### 4. Project Operations.

4.1 *Term.* The Pilot Project will operate from April 1, 2022, through December 31, 2023 unless this Agreement is terminated prior thereto pursuant to Section 11.

4.2 *Project Water.* For purposes of this Agreement the term “Gross Project Water” is the total amount of water Rosedale alleges it is entitled to divert pursuant to the water rights associated with the lands included in the Onyx Project, and the term “Net Project Water” is the amount of water Rosedale may transfer or convey below Isabella Reservoir after following the steps identified in the EIR and this Agreement subject to the cap identified below.

4.3 *Determination of Net Project Water Amount.* During Pilot Project operations, Rosedale, Watermaster, and KRI will coordinate moving the Gross Project Water to Isabella Reservoir and determine the amount of Net Project Water using the following method:

4.3.1 Determine Available South Fork Flow by adding the measured flow at the USGS Onyx Gage plus estimated Accretions between the USGS Onyx Gage and the Onyx Ranch. An example of how the parties will Determine Available South Fork Flow is provided in Exhibit B.

4.3.2 Use the lesser of the South Fork Allocation Table (based on Available South Fork Flow Plus Accretions) and the Historical Irrigation Demand Table to determine the amount of Redirected Flow from the Onyx Project. Tables in Exhibit D.

4.3.3 Apply a 20% No Injury Factor to reduce the amount of Redirected Flow determined from 4.2.2 above. The reduced amount, after application of the No Injury Factor, will be the Net Project Water amount.

4.3.4 Rosedale will e-mail a spreadsheet to the Watermaster and KRIs each day showing how the parties computed the amount of Gross and Net Project Water Available using the method described above.

4.4 *Watermaster Accounting.*

4.4.1 The Watermaster through coordination with the City and Rosedale will be the official record keeper of Gross and Net Project Water. Rosedale will notify the Watermaster and the City of Bakersfield each day by 11:00 am of the amount of Gross Project Water flowing into Isabella Reservoir and the amount of Net Project Water flowing through Isabella Reservoir for that day, and the proposed delivery point for that water supply. Rosedale will

coordinate the scheduling of the delivery of Net Project Water from the Kern River with the City of Bakersfield. Any party to this agreement has the right to call for a meeting at any time to discuss operational and record keeping concerns.

4.4.2 Net Project Water will be treated as last-in and first-out of Isabella and will not be stored in Isabella Reservoir. Any required flood control, power, or other releases from Isabella shall be comprised of Net Project Water first to the extent Net Project Water is available that day.

4.4.3 Once Net Project Water enters the Kern River below Isabella, the Watermaster will impose a loss factor to the daily Project Water amount proportionate to the share of transportation losses below Isabella Reservoir in the Kern River.

4.4.4 Rosedale will coordinate the scheduling of any diversion of Net Project Water by either (1) transfer and/or exchange with a KRI, or (2) delivery for credit to a Pioneer Project account pursuant to Agreement No. 96-356 Pioneer Project Joint Operating Agreement and/or Pioneer Project Participation Agreement with the Kern County Water Agency consistent with current practices for scheduling diversion of water pursuant to said Agreements.

4.5 *Operational Limits.* For purposes of this pilot project only, Rosedale will further limit the amount of Net Project Water as follows. These limits are being used to facilitate the pilot project under this Agreement and are not an admission or concession by any party.

4.5.1 If there is a Precipitation Event (rainfall in an amount that causes other irrigators in the South Fork Valley to forego surface water deliveries), Rosedale will not claim any Net Project Water for the duration of the time that other irrigators are not taking surface water deliveries.

4.5.2 Rosedale shall not claim Net Project Water on days when there is less than 6 cfs of water measured at the USGS gage in the South Fork River.

4.5.3 Rosedale additionally will not claim Net Project Water on days that there is no visible flow in the South Fork Kern River at Patterson Lane and/or Sierra Highway.

4.5.4 Rosedale will not move Net Project Water when unused capacity is not available in the Kern River channel and in other water conveyance facilities which may be utilized for the transfer of Project Water.

4.5.5 Rosedale shall not sell any Net Project Water outside of their district for the duration of this Agreement.

5. **Net Project Water.** During the term of this Agreement, the maximum amount of Net Project Water that will accrue to Rosedale shall not exceed 5,000-acre feet of water per year. Any Net or Gross Project Water above that amount will be considered a transfer to the KRIs. An explanation and example of how the accounting will be done for the Project Water is attached as Exhibit E.

a. On a daily or weekly basis, Rosedale will coordinate with the KRIs to approximate the South Fork inflow to Isabella Reservoir by taking the daily and/or three-day mean change in storage for Isabella Reservoir and subtracting the inflows from the North Fork of the Kern River (Calculated South Fork Inflow). The daily Net Project Water amount should be less than or equal to the Calculated South Fork Inflow.

6. **Consultant Collaboration.** The KRIs believe the No Injury Factor will have to be further adjusted based on additional information and model refinement. Rosedale does not agree this is necessary but is willing to work with the KRIs to investigate their concerns about the model used to develop the No Injury Factor. To do this, the parties will make their respective consultants available for regular collaboration to learn more about the model that Rosedale used to determine the No-Injury Factor and consider potential changes to that model and potential changes to the No-Injury Factor. The parties will facilitate at least 4 quarterly meetings including Todd Groundwater and Tom Harter for this purpose to occur in January, March, May, and July 2022. Items from the surface water budget and groundwater model that will be considered include but will not be limited to:

5.1 Review the data and assumptions used to calculate key surface water budget components for return flows (i.e. deep infiltration of applied water) and crop consumption to determine the potential uncertainty of these factors and how that uncertainty may affect the surface water budget analysis. These components are also used as input parameters for the groundwater model.

5.2 Conduct a sensitivity analysis of various model input parameters to assess the relative effect of varying these parameters, within plausible ranges, on model outcomes and the calculation of water available to the Project. The model input parameters to be considered for sensitivity analysis will include, but not be limited to, assumptions for return flow, evapotranspiration, stream and canal characteristics, and aquifer properties. Parameters selected for sensitivity analysis will be varied independently so that a clear cause-and-effect relationship can be established with respect to each condition.

- 5.3 Discuss the results of the sensitivity analysis and the effect of various parameter changes on the water budget, model calibration and the calculation of water available to the Project. The consultants will compare model output to measured groundwater levels and key observable physical features (e.g., groundwater levels relative to the ground surface) within the model domain.
- 5.4 As appropriate, the model will be recalibrated in consideration of the results of the sensitivity analysis. In consideration of the fact that the model is calibrated using inverse methods, the consultants will select a revised range of potential values, based on the sensitivity analysis, for the parameters to be varied during calibration. The recalibrated model will be used to recalculate the water available to the Project.
7. **USGS Gage.** Some of the parties have concerns about the accuracy of the USGS Gage. Rosedale and/or any KRI may coordinate directly with USGS to calibrate and determine the accuracy of the Gage, and will make adjustments or recommendations for improved accuracy or other gaging methods.
8. **Onyx Project Site Visits.** A party can request that Rosedale host a site visit of the Onyx Project site monthly, or more frequently if Rosedale staff are available and agreeable to an additional site visit, to view Project operations and verify conditions. Hosted site visits shall be coordinated with Rosedale in advance. If a hosted site visit cannot be timely arranged, that party may visit the Onyx Project site unaccompanied after providing 24 hours' notice to Rosedale. Each party shall bear its own costs of sending staff to a site visit.
9. **Annual Audit of Project Water.** The parties will meet in December 2022 and December 2023 to review the amount of Project Water moved pursuant to this program. The review will include, but not be limited to, comparing the amount of water accruing to legal users of Kern River Water during similar water years.
10. **No Injury.** Rosedale agrees that the Onyx Project, and this agreement, will not cause or result in injury to any legal user of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses, and Rosedale will take appropriate measures to avoid injury to any legal user of water.
11. **Negotiation of Extended Agreement.** Based on information gathered during the term of this Agreement, the parties will endeavor to negotiate a potential long-term operational agreement regarding the Onyx Project that resolves the parties' concerns.
12. **Termination.** Any party may withdraw from or terminate this Agreement by providing written notice of option to withdraw or terminate, in which case the party shall withdraw from or the Agreement shall terminate within 30 days of the date of the notice. Notice to terminate shall be sent via email and via U.S. Mail to all party representatives and their legal counsel listed on Exhibit A.

**13. Default and Remedies.**

11.1 In the event of an impasse or disagreement, the parties shall use their best efforts to find a mutually agreeable result. To this effect, the parties shall:

11.1.1 Provide prompt written notice to all parties regarding any dispute or claim of default.

11.1.2 Schedule a meeting to discuss the matter within 14 days and proceed to consult and negotiate with each other in good faith in an attempt to reach a solution that is mutually satisfactory.

14. **Board Approval.** The parties have discussed this Agreement with their respective Boards and counsel and understand its terms and implications. Each Board has either approved this Agreement or authorized its approval by the applicable signatory below.

15. **Execution.** This Agreement may be signed in counterparts by one or more of the parties and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all parties. For the purpose of executing this Agreement, an electronic, facsimile, or other copy of a signature shall have the same force and effect as the original.

IN WITNESS WHEREOF the Parties have executed this agreement on March 18, 2022.

**BUENA VISTA WATER STORAGE DISTRICT**

**CITY OF BAKERSFIELD**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Tim Ashlock

Name: Art Chianello

Title: Engineer-Manager

Title: Water Resources Manager

**KERN COUNTY WATER AGENCY**

**KERN DELTA WATER DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Thomas McCarthy

Name: Steven Teglia

Title: General Manager

Title: General Manager

**NORTH KERN WATER STORAGE DISTRICT**

**KERN RIVER WATER MASTER**

By: \_\_\_\_\_

By: \_\_\_\_\_


Name: David Hampton

Name: Mark Mulkay

Title: General Manager

Title: Kern River Watermaster

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT**

By:  \_\_\_\_\_

Name: Dan Bartel

Title: General Manager

**Exhibit A**

**KERN RIVER INTERESTS**

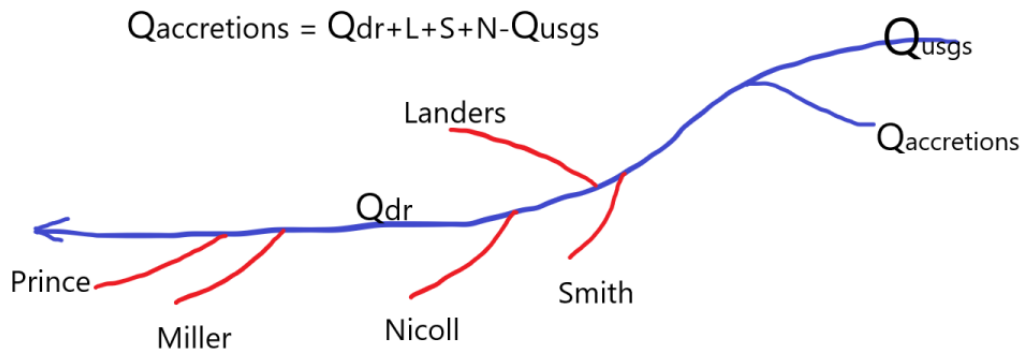
<p>Buena Vista Water Storage District Contact          Name: Tim Ashlock          Email: <a href="mailto:Tim@bvh2o.com">Tim@bvh2o.com</a>          Phone: 661-979-6182          Mailing Address: PO Box 756          Buttonwillow, CA 93206          Counsel Name: Isaac St. Lawrence          Email: <a href="mailto:isaac@mhwslegal.com">isaac@mhwslegal.com</a>          Phone: 661.322.4417          Mailing Address: 2001 22ND STREET,          STE. 100, BAKERSFIELD, CA 93301</p>	<p>North Kern Water Storage District Contact          Name: David Hampton          Email: <a href="mailto:dhampton@northkernwsd.com">dhampton@northkernwsd.com</a>          Phone: 661-393-2696          Mailing Address: PO Box 81435          Bakersfield, CA 93380          Counsel Name: Alan Doud          Email: <a href="mailto:adoud@youngwooldridge.com">adoud@youngwooldridge.com</a>          Phone: 661-327-9661          Mailing Address: 1800 30th Street, 4th          Floor Bakersfield, CA 93301</p>
<p>City of Bakersfield Contact          Name: Art Chianello          Email: <a href="mailto:achianel@bakersfieldcity.us">achianel@bakersfieldcity.us</a>          Phone: 661-326-3715          Mailing Address: 1000 Buena Vista Road          Bakersfield, CA 93311          Counsel Name: Colin Pearce          Email: <a href="mailto:CLPearce@duanemorris.com">CLPearce@duanemorris.com</a>          Phone: 415 957 3015          Mailing Address: One Market Plaza, Suite          2200 San Francisco, CA 94105</p>	<p>Kern County Water Agency Contact          Name: Tom McCarthy          Email: <a href="mailto:tmccarthy@kcwa.com">tmccarthy@kcwa.com</a>          Phone: 661-634-1400          Mailing Address: 3200 Rio Mirada Drive          Bakersfield, CA 93308           Counsel Name: Amelia T. Minaberrigarai          Email: <a href="mailto:ameliam@kcwa.com">ameliam@kcwa.com</a>          Phone: 661-634-1400</p>
<p>Kern Delta Water Agency Contact          Name: Steven Teglia          Email: <a href="mailto:Steven@kerndelta.org">Steven@kerndelta.org</a>          Phone: 661-834-465          Mailing Address: 501 Taft Highway          Bakersfield, CA 93307           Counsel Name: Richard Iger          Email: <a href="mailto:Richard@kerndelta.org">Richard@kerndelta.org</a>          Phone: 661-834-4656</p>	

<p><b>ROSEDALE RIO-BRAVO WATER STORAGE DISTRICT</b>          Contact Name: Dan Bartel          Email: <a href="mailto:dbartel@rrbwsd.com">dbartel@rrbwsd.com</a>          Phone: 661-589-6045          Mailing Address: 849 Allen Road          Bakersfield, CA 93314           Counsel Name: Jennifer Spaletta          Email: <a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a>          Phone: 209-481-9795          Mailing Address: P.O. Box 2660          Lodi, CA 95241</p>	<p><b>KERN RIVER WATERMASTER</b>          Contact Name: Mark Mulkay          Email: <a href="mailto:mark@kernriverwm.org">mark@kernriverwm.org</a>          Phone: 661-834-4656          Mailing Address: 501 Taft Highway          Bakersfield, CA 93307          Counsel Name: Scott Kuney          Email: <a href="mailto:skuney@youngwooldridge.com">skuney@youngwooldridge.com</a>          Phone: 661-327-9661          Mailing Address: 1800 30th Street, 4th          Floor Bakersfield, CA 93301</p>
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## Exhibit B

- Step 1:** Determine if a Precipitation Event has precluded irrigation by others in South Fork Valley. If not proceed to Step 2.
- Step 2:** Determine flow at the South Fork USGS Onyx Gage. If the flow is less than 6 cfs, there will be no project water.
- Step 3:** Determine and add system accretions when not in “typical irrigation demand” mode. Onyx staff to manually stream gage the South Fork at a measurable section near Doyle Ranch Road to calculate accretions. The calculated accretion would be used for the following week when allocating supplies to the right holders. See calculation.



- Step 4:** Determine amount of Redirected Flow available by taking the lesser of the South Fork Allocation Table and the Historical Irrigation Demand Table.
- Step 5:** Deduct any actual surface or groundwater irrigation deliveries from available Redirected Flow.
- Step 6:** Apply a No Injury Factor of 20% to net Redirected Flow to ensure that the Project Water is not counting water that would otherwise accrue to the existing Kern River water rights holders.

### Example

**Step 1:** No. No precipitation has occurred to shut of others from irrigating

**Step 2:** USGS Flow = **35 cfs**

**Step 3:**  $Q_{\text{dr}} = 30 \text{ cfs}$     $L = 0 \text{ cfs}$     $S = 6 \text{ cfs}$     $N = 5 \text{ cfs}$

$$Q_{\text{acc}} = 27 + 0 + 6 + 5 - 35 = \mathbf{3 \text{ cfs}}$$

**Step 4:** Total South Fork Available = 38 cfs. Redirected Flow Available = **19 cfs**

**Step 5:** Onyx surface water irrigation = 0 cfs   Smith and Onyx groundwater irrigation = 2 cfs  
 Net Redirected Flow =  $19 - 2 = \mathbf{17 \text{ cfs}}$

**Step 6:** Project water =  $(1 - 0.22) \times 17 = \mathbf{13 \text{ cfs}}$

## Exhibit C

**South Fork Kern River Allocation Table (cfs)**

Available Flow d/s of	USGS		Branson/Baily (2/3 Smith)	RRBWS (Onyx-Boone+1/3 Smith)	RRBWS (Boone)	Nicoll
	Haf/NC/Prince					
73	29.3		6.6	31.2	3.0	2.9
72	28.3		6.6	31.2	3.0	2.9
71	27.3		6.6	31.2	3.0	2.9
70	26.3		6.6	31.2	3.0	2.9
69	26.3		6.6	30.2	3.0	2.9
68	26.3		6.6	29.2	3.0	2.9
67	26.3		6.6	28.2	3.0	2.9
66	26.3		6.6	28.2	2.0	2.9
65	26.3		6.6	28.2	1.0	2.9
64	26.3		6.6	28.2		2.9
63	26.3		6.6	27.2		2.9
62	26.3		6.6	26.2		2.9
61	26.3		6.6	25.2		2.9
60	25.3		6.6	25.2		2.9
59	24.3		6.6	25.2		2.9
58	23.3		6.6	25.2		2.9
57	22.3		6.6	25.2		2.9
56	21.3		6.6	25.2		2.9
55	20.3		6.6	25.2		2.9
54	19.3		6.6	25.2		2.9
53	18.3		6.6	25.2		2.9
52	17.3		6.6	25.2		2.9
51	16.3		6.6	25.2		2.9
50	15.3		6.6	25.2		2.9
49	14.3		6.6	25.2		2.9
48	13.3		6.6	25.2		2.9
47	12.3		6.6	25.2		2.9
46	11.3		6.6	25.2		2.9
45	10.3		6.6	25.2		2.9
44	10.3		6.6	24.2		2.9
43	10.3		6.6	23.2		2.9
42	10.3		6.6	22.2		2.9
41	10.3		6.6	21.2		2.9
40	10.3		6.6	20.2		2.9
39	10.3		6.6	19.2		2.9
38	9.5		6.6	19.0		2.9
37	9.5		6.6	18.0		2.9
36	9.5		6.6	17.0		2.9
35	9.5		6.6	16.0		2.9
34	9.0		6.6	15.5		2.9
33	8.0		6.6	15.5		2.9
32	8.0		6.6	14.5		2.9
31	8.1		6.6	12.4		2.9
30	8.1		6.6	12.4		2.9
29	8.6		6.6	10.9		2.9
28	8.2		6.6	10.3		2.9
27	8.0		6.6	9.5		2.9
26	7.0		6.6	9.5		2.9
25	6.0		6.6	9.5		2.9
24	5.0		6.6	9.5		2.9
23	4.0		6.6	9.5		2.9
22	3.0		6.6	9.5		2.9
21	2.0		6.6	9.5		2.9
20	1.0		6.6	9.5		2.9
19			6.6	9.5		2.9
18			6.6	8.9		2.5
17			6.6	8.4		2.0
16			6.6	7.9		1.5
15			6.6	7.4		1.0
14			6.6	6.8		0.5
13			6.6	6.3		
12			6.0	6.0		
11			5.3	5.7		
10			4.6	5.4		
9			3.9	5.1		
8			3.3	4.7		
7			2.6	4.4		
6			2.0	4.0		
5			1.3	3.7		
4			0.7	3.3		
3				3.0		
2				2.0		
1				1.0		

**Exhibit D**

**HISTORIC IRRIGATION DEMAND IN CFS**

January	19
February	23
March	35
April	37
May	43
June	43
July	43
August	31
September	26
October	26
November	21
December	21