



Santa Clara Valley Water District Board of Directors Meeting

Teleconference Zoom Meeting

SPECIAL BOARD MEETING AGENDA

**Tuesday, November 17, 2020
1:00 PM**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

DISTRICT BOARD OF DIRECTORS

Nai Hsueh, Chair, District 5
Tony Estremera, Vice Chair, District 6
John L. Varela, District 1
Barbara Keegan, District 2
Richard P. Santos, District 3
Linda J. LeZotte, District 4
Gary Kremen, District 7

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend Board of Directors' meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

RICK L. CALLENDER, ESQ.
Chief Executive Officer

MICHELE L. KING, CMC
Clerk of the Board
(408) 265-2600
Fax (408) 266-0271
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

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Santa Clara Valley Water District
Board of Directors
SPECIAL BOARD MEETING
AGENDA

Tuesday, November 17, 2020

1:00 PM

Teleconference Zoom Meeting

IMPORTANT NOTICES

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by members of the Board of Directors, District staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

Members of the public wishing to address the Board during a video conferenced meeting on an item not listed on the agenda, or any item listed on the agenda, should use the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

Santa Clara Valley Water District (District), in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in District Board meetings to please contact the Clerk of the Board's office at (408) 630-2711, at least 3 business days before the scheduled District Board meeting to ensure that the District may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by the District on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:
<https://valleywater.zoom.us/j/92725343992>
Meeting ID: 927 2534 3992
Join by Phone:
1 (669) 900-9128, 92725343992#

1. CALL TO ORDER:

- 1.1. Roll Call.
- 1.2. Pledge of Allegiance/National Anthem.
- 1.3. Orders of the Day.
 - A. *Approximate Discussion Time (Board); and*
 - B. *Adjustments to the Order of Agenda Items.*
- 1.4. Time Open for Public Comment on any Item not on the Agenda.
Notice to the public: Members of the public who wish to address the Board on any item not listed on the agenda should access the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Board Chair in order requests are received and granted speaking access to address the Board. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Board action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Board may take action on any item of business appearing on the posted agenda.

2. TIME CERTAIN:

1:00 PM

- 2.1. Receive an Update on the Second Amendment to Valley Water's Central Valley Project Contract, Adopt the Resolution Approving the Second Amendment, and Authorize the Chief Executive Officer to Execute the Second Amendment.

[20-0665](#)

Recommendation:

- A. Receive information on the Second Amendment to Valley Water's Central Valley Project Contract;
- B. Adopt the Resolution APPROVING THE SECOND AMENDMENT TO CONTRACT BETWEEN UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION; and
- C. Authorize the Chief Executive Officer to execute the Second Amendment.

Manager: Vincent Gin, 408-630-2633

Attachments: [Attachment 1: Resolution](#)
[Attachment 2: Second Amendment](#)
[Attachment 3: PowerPoint](#)

Est. Staff Time: 10 Minutes

- 2.2. Adopt Resolution Making Responsible Agency Findings and Approving State Water Project Contract Amendment for Water Management, and Authorize the Chief Executive Officer to Execute the Amendment and File Notice of Determination.

[20-0873](#)

Recommendation:

- A. Receive information and discuss the proposed State Water Project Water Supply Contract Amendment for Water Management (Water Management Tools Amendment);
- B. Adopt the Resolution (1) MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO CEQA FOR THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) AND ADOPTING CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (2) APPROVING THE PROPOSED STATE WATER PROJECT CONTRACT AMENDMENT FOR WATER MANAGEMENT, AMENDMENT NO. 25 TO VALLEY WATER'S WATER SUPPLY CONTRACT WITH THE DEPARTMENT OF WATER RESOURCES; and
- C. Authorize the Chief Executive Officer to execute Amendment No. 25 to Valley Water's State Water Project Water Supply Contract and file Notice of Determination.

Manager: Vincent Gin, 408-630-2633

Attachments: [Attachment 1: Resolution](#)
[Attachment 2: Draft Notice of Determination](#)
[Attachment 3: PowerPoint](#)

Est. Staff Time: 10 Minutes

2.3. Monitoring and Assessment Program Evaluation of Los Vaqueros
Reservoir Expansion, Sites Reservoir, and Delta Conveyance Project.

[20-1058](#)

Recommendation:

- A. Receive and discuss information regarding the Los Vaqueros Reservoir Expansion Project, Sites Reservoir Project, and Delta Conveyance Project;
- B. Authorize the Chief Executive Officer (CEO) to execute Amendment 2 to the 2019 Multi-Party Agreement for Los Vaqueros Reservoir Expansion Project, which includes a contract extension through December 2021 and a cost-share not to exceed \$1,013,661;
- C. Authorize the CEO to execute the Second Amendment to 2019 Reservoir Project Agreement with Sites Project Authority and the Project Agreement Members for a participation level of 0.2 percent with a \$50,000 cost share; and
- D. For the Delta Conveyance Project:
 - i. Approve a provisional participation percentage in the Project of 2.73 percent and authorize the CEO to increase Valley Water's provisional participation percentage up to a total of 3.23 percent if additional shares become available;
 - ii. Adopt the Resolution APPROVAL OF PROVISIONAL PARTICIPATION PERCENTAGE AND AUTHORIZING NEGOTIATION AND EXECUTION OF A FUNDING AGREEMENT FOR PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A POTENTIAL DELTA CONVEYANCE PROJECT;
 - iii. Authorize the CEO to negotiate and execute a funding agreement with the Department of Water Resources committing up to \$4,034,001 for Project environmental planning and design costs incurred in Calendar Years 2021 and 2022, with an option to commit up to an additional \$6,972,348, upon future approval of the Board, for Project environmental planning and design costs incurred in Calendar Years 2023 and 2024; and
 - iv. Approve and Authorize the CEO to execute the Amended and Restated Joint Powers Agreement Forming the Delta Conveyance Design and Construction Authority.

Manager:

Jerry De La Piedra, 408-630-2257
Vincent Gin, 408-630-2633

Attachments: [Attachment 1: LVE Project Information](#)
 [Attachment 2: LVE Local Agency Partners](#)
 [Attachment 3: LVE Amendment No. 2](#)
 [Attachment 4: LVE Project Map](#)
 [Attachment 5: LVE Transfer-Bethany Pipeline Information](#)
 [Attachment 6: LVE Proposed JPA Structure](#)
 [Attachment 7: Sites Amendment No. 2 \(incl: 2019 Agmt, Amdt No.](#)
 [Attachment 8: Sites Project Information](#)
 [Attachment 9: Sites Participation Summary](#)
 [Attachment 10: Sites Risk, Challenges, Mitigation](#)
 [Attachment 11: Sites Letter to SCVWD WSEC, 081120](#)
 [Attachment 12: DCP SCVWD Resolution No. 19-69](#)
 [Attachment 13: DCP Project Information](#)
 [Attachment 14: DCP Agreement in Principle](#)
 [Attachment 15: DCP DWR Letter to SWC, 102320](#)
 [Attachment 16: DCP Gap Funding Agreement](#)
 [Attachment 17: DCP Participation Percentages](#)
 [Attachment 18: DCP Resolution, Joint Funding](#)
 [Attachment 19: DCP Amended and Restated Joint Powers DCA A](#)
 [Attachment 20: LVE, Sites, DCP Milestones](#)
 [Attachment 21: PowerPoint](#)

Est. Staff Time: 45 Minutes

3. ADJOURN:

- 3.1. Clerk Review and Clarification of Board Requests.
- 3.2. Adjourn to 4:00 p.m. Closed Session and 6:00 p.m. Regular Meeting, on November 24, 2020, to be called to order in compliance with the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20.



Santa Clara Valley Water District

File No.: 20-0665

Agenda Date: 11/17/2020

Item No.: 2.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Receive an Update on the Second Amendment to Valley Water's Central Valley Project Contract, Adopt the Resolution Approving the Second Amendment, and Authorize the Chief Executive Officer to Execute the Second Amendment.

RECOMMENDATION:

- A. Receive information on the Second Amendment to Valley Water's Central Valley Project Contract;
- B. Adopt the Resolution APPROVING THE SECOND AMENDMENT TO CONTRACT BETWEEN UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION; and
- C. Authorize the Chief Executive Officer to execute the Second Amendment.

SUMMARY:

On January 29, 2019, the Santa Clara Valley Water District (Valley Water) and the U.S. Bureau of Reclamation (Reclamation) completed negotiations to amend Valley Water's long-term CVP water service contract to add the South Bay Aqueduct as a point of delivery for Valley Water's Central Valley Project (CVP) water (Second Amendment). The negotiations resulted in the addition of standard contract language that allows for additional points of delivery that are mutually agreed upon by Reclamation and Valley Water, as well updating select provisions of the contract with Reclamation's new standard contract language. The result is an amended contract that will improve the flexibility and reliability of Valley Water's imported water operations and protect against limitations on delivery through the San Felipe Division facilities.

Currently, Valley Water's only permanent point of delivery for its CVP water is located along the San Felipe Division facilities, with conveyance occurring through San Luis Reservoir. Valley Water has intermittently delivered its CVP water through the South Bay Aqueduct by exchange for many years in response to operational limitations on the San Felipe Division and to help address water quality issues, but this action has been reliant on temporary approvals. Reclamation informed Valley Water

staff that an amendment to our CVP water service contract is needed in order to continue this flexibility. Execution of the Second Amendment will provide the contractual mechanism needed to secure Reclamation's long-term approval and to make this additional point of delivery permanent. The delivery CVP water through the South Bay Aqueduct, as discussed in this memo, does not literally involve conveyance of CVP water through this facility but instead relies on an exchange in which Valley Water's allocated CVP water is provided to the Department of Water Resources (DWR) downstream of Valley Water, and DWR provides an equal amount of State Water Project (SWP) water to Valley Water through the South Bay Aqueduct.

The Second Amendment contains a number of new or updated standard provisions that Reclamation is requiring to conform with its current policies for contracting. However, none of these have a material impact on Valley Water's rights or obligations under its existing CVP water contract.

Background

The need for Valley Water to deliver its CVP water through the South Bay Aqueduct was first identified as a means to mitigate for water quality issues in San Luis Reservoir that sometimes impact Valley Water's treatment processes and result in taste and odor concerns among Valley Water customers. During the summer and fall, high temperatures and declining water levels create conditions that foster algae growth, causing water quality degradation, which is referred to as San Luis Low Point. These conditions can limit the availability of CVP water and can cause significant impacts to Valley Water's raw and treated water operations. Delivery of CVP water through the South Bay Aqueduct provides an alternative conveyance pathway and helps avoid San Luis Low Point impacts.

Adding an additional point of delivery provides flexibility in Valley Water's raw and treated water operations by optimizing flows to treatment plants and recharge ponds to meet demands. It also helps to balance available CVP and SWP supplies throughout the year and achieve desired levels of imported water carryover in subsequent years. The Second Amendment will also improve Valley Water's overall water supply reliability by facilitating the recovery of our CVP supplies stored in the Semitropic Water Banking Program, which will be especially important in years when the SWP allocation is low.

The ability to use CVP and SWP supplies interchangeably has become increasingly important as a means to accommodate planned and unplanned outages on both the South Bay Aqueduct and the San Felipe Division facilities.

FINANCIAL IMPACT:

There is no financial impact due to execution of the Second Amendment. If Valley Water elects to receive delivery of its CVP water through the South Bay Aqueduct, it will be responsible for energy costs associated with pumping the water to Valley Water's service area. In this case DWR would assess additional charges and Reclamation would reduce its charges accordingly. In 2020, this would result in an increase in costs of approximately \$53 per acre-foot delivered. This variance is

accounted for annually in the Imported Water Unit budget.

CEQA:

The Second Amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of CEQA Guidelines, which exempts the operation of existing public structures involving negligible or no expansion beyond existing use. Valley Water filed a Notice of Exemption with the Clerk of the County of Santa Clara on September 3, 2019 in compliance with CEQA.

Reclamation, as the lead agency under NEPA, filed FONSI-14-046 on January 4, 2019 in which it was determined that the Proposed Action does not have the potential to cause direct, indirect, or cumulative adverse effects on the environment.

ATTACHMENTS:

Attachment 1: Resolution
Attachment 2: Second Amendment
Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:

Vincent Gin, 408-630-2633

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**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 20-

**APPROVAL OF SECOND AMENDMENT TO CONTRACT BETWEEN
UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT
FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF
CERTAIN WORKS OF THE SAN FELIPE DIVISION**

WHEREAS, the United States of America ("United States") has constructed and is operating the Central Valley Project (CVP) for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of water of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

WHEREAS, the Santa Clara Valley Water District ("Valley Water") and United States entered into a contract for delivery of CVP water to Valley Water, Contract No. 7-07-20-W0023, dated June 7, 1977 ("CVP Contract"), which established terms for such water delivery from January 1, 1988 through December 31, 2027; and

WHEREAS, in 1992, the United States Congress enacted the Central Valley Project Improvement Act ("CVPIA") (106 Stat. 4706), which addressed the renewal of existing long-term water service contracts and established that certain terms should be included in contracts renewed or amended after January 1, 1988; and

WHEREAS, on March 28, 2007, the United States and Valley Water entered into an amendment to the CVP Contract ("First Amendment") to promote compliance with the CVPIA, consistent with the goal of ensuring a reliable long-term water supply for Valley Water; and

WHEREAS, the First Amendment also resulted in the conversion of a portion of Valley Water's water service contract into a repayment contract whereby payment of Valley Water's share of San Felipe Division capital costs are repaid pursuant to a 30-year schedule commencing on January 1, 2007, and ending on July 1, 2036; and

WHEREAS, Valley Water was created by the Legislature of the State of California under the Santa Clara Valley Water District Act, California Water Code Appendix, Chapter 60, ("District Act") as a special water district with an independent Board of Directors; and

WHEREAS, Section 4(a) of the District Act identifies the purposes of the District Act to authorize Valley Water to provide comprehensive water management for all beneficial uses; and protection from flooding within Santa Clara County; and

WHEREAS, imported water from Valley Water's CVP contract is a major component of Valley Water's water portfolio to ensure its comprehensive water management in Santa Clara County; and

WHEREAS, Section of 5(12) of the District Act authorizes Valley Water to enter into contracts and do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof, by the District Act, including ensuring Valley Water's comprehensive water management in Santa Clara County; and

WHEREAS, Valley Water now seeks to exercise its authority under the District Act to enter into the Second Amendment to Contract Between United States and Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division ("Second Amendment"), attached hereto as Exhibit A, which, if executed, will update Article 9 to provide for the delivery of CVP water to Valley Water at additional point or points of delivery mutually agreed upon by the parties; and

WHEREAS, additional point or points of delivery of Valley Water's CVP water will improve Valley Water's efforts to comprehensively manage water for all beneficial uses in Santa Clara County.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby approve execution of the Second Amendment, attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED that the Chief Executive Officer is hereby authorized to execute the Second Amendment on behalf of the Santa Clara Valley Water District.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on November 17, 2020.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

NAI HSUEH
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

EXHIBIT A COVERSHEET

SECOND AMENDMENT TO CONTRACT BETWEEN UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

No. of Pages: 123

Exhibit Attachments: None

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DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

SECOND AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES
AND
SANTA CLARA VALLEY WATER DISTRICT
FOR WATER SERVICE AND OPERATION AND
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

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4	Article 7, in the Existing Contract, "Water Shortage and Apportionment" is replaced in its entirety	5-6
5	Article 8, in the Existing Contract, "Quality of Water" is deleted in its entirety and Article 21, "Water and Air Pollution Control" is retitled "Protection of Water and Air Quality" and is amended and replaced by the following Article 21 in its entirety	6-7
6	Article 10, in the Existing Contract "Limitation on Delivery" is deleted in its entirety	7
7	Article 14 in the Existing Contract, "Charges for Delinquent Payments", is amended and replaced in its entirety.....	7-8
8	Article 20 in the Existing Contract, "Reserve Fund" is retitled "Emergency Reserve Fund" and is amended and replaced in its entirety	8-9
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12	Article 31, "Rules, Regulations and Determinations", replaces Article 31 in the Existing Contract in its entirety	10-11
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19	Article 42, "Confirmation of Contract", replaces Article 42 in the Existing Contract in its entirety.....	14-15
20	The first sentence of subdivision (a) of Article 43 of the Existing Contract, "Water Conservation" is amended and replaced	15
21	The following Articles 44 through 46 are added to the Existing Contract: Article 44, "Privacy Act Compliance"	15-16
	Article 45, "Medium for Transmitting Payments"	16
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22	Article 12 in the First Amendment, "Preservation of Existing Contracts" is replaced by Article 47 in its entirety.....	16
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	Exhibit F – Copy of First Amendment and Attachments (Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "D") dated March 28, 2007	
	Exhibit G – Points of Delivery	

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

SECOND AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES
AND
SANTA CLARA VALLEY WATER DISTRICT
FOR WATER SERVICE AND OPERATION AND
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

1 THIS SECOND AMENDMENT CONTRACT NO. 7-07-20-W0023B, is made this ____
2 day of _____, 2020 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388),
3 and acts amendatory and supplementary thereto, including but not limited to, the Act of August
4 26, 1937 (50 Stat. 844), as amended and supplemented; August 4, 1939 (53 Stat. 1187), as
5 amended and supplemented; July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), August 27,
6 1967 (81 Stat. 173), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as
7 amended, and Title XXXIV of the Act of October 30, 1992, (106 Stat. 4706), all collectively
8 hereinafter referred to as the Federal Reclamation law, between THE UNITED STATES OF
9 AMERICA, hereinafter referred to as the United States, and SANTA CLARA VALLEY
10 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
11 California, duly organized, existing, and acting pursuant to the laws thereof;

12 WITNESSETH, That;

13 EXPLANATORY RECITALS

14 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
15 Project ("Project"), California, for diversion, storage, carriage, distribution and beneficial use,
16 for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation,
17 protection and restoration, generation and distribution of electric energy, salinity control,

navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the Contractor and the United States entered into a contract titled "*Contract Between the United States and Santa Clara Valley Water District for Water Service and for Operation and Maintenance of Certain Works of the San Felipe Division*", Contract No. 7-07-20-W0023, dated June 7, 1977, which established terms and conditions for the delivery to the Contractor of Project water from January 1, 1988 through December 31, 2027, hereinafter referred to as the "1977 Contract"; and

[3rd] WHEREAS, the Contractor and the United States entered into an amendment to the 1977 Contract dated March 28, 2007, titled "*First Amendment to Contract between the United States and Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division*", Contract No. 7-07-20-W0023A, which among other things established the terms and conditions for the repayment of the San Felipe Division facilities and implementation of certain Central Valley Project Improvement Act activities, hereinafter referred to as "First Amendment"; and

[4th] WHEREAS, the 1977 Contract as amended by the First Amendment is hereinafter referred to as "Existing Contract"; and

[5th] WHEREAS, the "First Amendment" incorrectly identifies the Contract No. as 7-07-02-W0023A instead of 7-07-20-W0023A; and

[6th] WHEREAS, the Contracting Officer and the Contractor agree to amend the Existing Contract, with the execution of this Second Amendment to the Existing Contract to update Article 9 to add CVP-wide form of contract language providing for the mutually agreed upon point or points of delivery pursuant to Federal Reclamation law on the terms and conditions

as set forth below and to update the Standard Articles consistent with the Bureau of Reclamations current requirements; and

[7th] WHEREAS, the environmental compliance requirements for the execution of this contract have been met by Environmental Assessment Number (EA) 14-046 entitled "Santa Clara Valley Water District Second Contract Amendment," which resulted in a Finding of No Significant Impact Number 14-046 dated January 4, 2019.

NOW, THEREFORE, in consideration of the mutual and dependent covenant herein contained, it is hereby mutually agreed by the parties hereto as follows:

MODIFICATION TO EXISTING CONTRACT

1. The contract number Contract No. 7-07-02-W0023A is corrected to Contract No. 7-07-20-W0023A wherever it occurs in the Existing Contract including exhibits.

2. Article 1 in the Existing Contract, entitled DEFINITIONS is amended as follows:

(a) Subdivisions (b), (h), (i) and (k) in Article 1 of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (b), (h), (i) and (k).

(b) "Project" shall mean the Central Valley Project (CVP) owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(h) "Agricultural Water" shall mean the use of Project Water to irrigate lands primarily for the production of commercial, agricultural crops or livestock, and domestic and other uses that are incidental thereto;

(i) "Municipal and Industrial Water or M&I" shall mean the use of Project Water for municipal, industrial, and miscellaneous other purposes not falling under the definition of Agricultural Water or within another category of water use under an applicable Federal authority;

66 (k) "Calendar Year" or "Year" shall mean the period January 1 through
67 December 31, both dates inclusive;

68 (b) **Article 1 in the Existing Contract is amended to add the following**
69 **definitions in subdivisions (u) through (cc):**

70 (u) "Condition of Shortage" shall mean a condition respecting the Project
71 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
72 Contract Total;

73 (v) "Contract Total" shall mean the maximum amount of water to which the
74 Contractor is entitled under subdivision (b) of Article 3 of this Contract;

75 (w) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
76 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

77 (x) "Delta Division Facilities" shall mean those existing and future Project
78 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,
79 the Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the
80 San Luis Reservoir, used to divert, store and convey water to those Project Contractors entitled
81 to receive water conveyed through the Delta-Mendota Canal;

82 (y) "Operation and Maintenance" or "O&M" shall mean normal and
83 reasonable care, control, operation, repair, replacement (other than capital replacement), and
84 maintenance of Project facilities;

85 (z) "Project Contractors" shall mean all parties who have water service
86 contracts for Project Water from the Project with the United States pursuant to Federal
87 Reclamation law;

88 (aa) "Project Water" shall mean all water that is developed, diverted, stored, or

delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(bb) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(cc) "Water Scheduled" shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to Article 4 of this Contract;

3. Article 9(a) in the Existing Contract First sentence is amended and replaced in its entirety with the following:

POINT OF DELIVERY – MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION

9. (a) Project Water scheduled as provided in Article 4 of this Contract shall be made available to the Contractor, pursuant to this Contract, at the headworks of the Santa Clara Facilities and/or any additional point or points of delivery either on Project facilities or another location or locations, mutually agreed to in writing by the Contracting Officer and the Contractor. Such additional point or points of delivery shall be set forth in Exhibit "G", which may be revised without amending this Contract.

4. Article 7 in the Existing Contract titled WATER SHORTAGE AND APPORTIONMENT is amended and replaced in its entirety with the following new Article 7:

CONSTRAINTS ON AVAILABILITY OF WATER

7. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made

available to the Contractor pursuant to this contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then, except as provided in Article 32 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) In any year that the Contracting Officer determines there is a shortage in the quantity of water available to Project Contractors, the Contracting Officer will apportion available water among the water users capable of receiving water from the same Project facilities by reducing deliveries to all such water users by the same percentage, unless the Contracting Officer is prohibited by existing contracts, Project authorizations, or the Contracting Officer determines that some other method of apportionment is required to prevent undue hardship. In the event reduced deliveries within the Division are necessary, Project Water furnished under this Contract for M&I purposes will be allocated in accordance with the CVP M&I Water Shortage Policy. Such Policy shall be amended, modified, or superseded only through public notice and comment procedure.

(d) If operation of the Project to meet legally required Delta water quality control standards, including Federally adopted water quality standards, causes a shortage in water supply and requires a reduction in deliveries of water to the Contractor under this agreement, such reductions will be made in accordance with subdivision (c) of this article and shall not be deemed a breach hereof.

5. Article 8 in the Existing Contract titled QUALITY OF WATER is deleted in its entirety and Article 21 titled WATER AND AIR POLLUTION CONTROL is retitled

PROTECTION OF WATER AND AIR QUALITY and is amended and replaced by the following Article 21 in its entirety:

PROTECTION OF WATER AND AIR QUALITY

21. (a) The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(c) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal[, State, and local] water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(d) This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

6. Article 10 in the Existing Contract titled **LIMITATION ON DELIVERY**, is deleted in its entirety.

7. Article 14 in the Existing Contract titled **CHARGES FOR DELINQUENT PAYMENTS**, is amended and replaced in its entirety with the following new Article 14:

14. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt

collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

8. Article 20 in the Existing Contract titled RESERVE FUND is retitled EMERGENCY RESERVE FUND and is amended and replaced by the following Article 20 in its entirety:

EMERGENCY RESERVE FUND
(Annual Deposit)

20. (a) Commencing with the year following the transfer of operation and maintenance of the transferred works to the Contractor, the Contractor shall accumulate and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Contractor shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

(b) The Contractor shall accumulate the reserve fund with annual deposits or investments of not less than \$50,000 to a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government: Provided, That money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$250,000 is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual written agreement between the Contractor and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project; the size of the annual operation and maintenance budget; additions to, deletions from, or changes in project works; and operation and maintenance costs not contemplated when this contract was

208 executed.

209 (d) The Contractor may make expenditures from the reserve fund only for
210 meeting routine or recurring operation and maintenance costs incurred during periods of special
211 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary operation
212 and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or
213 for meeting betterment costs (in situations where recurrence of severe problems can be
214 eliminated) during periods of special stress. Proposed expenditures from the fund shall be
215 submitted to the Contracting Officer in writing for review and written approval prior to
216 disbursement. Whenever the reserve fund is reduced below the current balance by expenditures
217 therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as
218 specified in paragraph (b) herein.

219 (e) During any period in which any of the project works are operated and
220 maintained by the United States, the Contractor agrees the reserve fund shall be available for like
221 use by the United States.

222 (f) On or before November 1 of each year, the Contractor shall provide a
223 current statement of the principal and accumulated interest of the reserve fund account to the
224 Contracting Officer.

225 9. Article 28 in the Existing Contract titled GENERAL OBLIGATION-
226 BENEFITS CONDITIONED UPON PAYMENT is amended and replaced by the following
227 Article 28 in its entirety:

228 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

229 28. (a) The obligation of the Contractor to pay the United States as provided in
230 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
231 obligation may be distributed among the Contractor's water users and notwithstanding the default
232 of individual water users in their obligation to the Contractor.

233 (b) The payment of charges becoming due pursuant to this Contract is a
234 condition precedent to receiving benefits under this Contract. The United States shall not make
235 water available to the Contractor through Project facilities during any period in which the
236 Contractor is in arrears in the advance payment of water rates due the United States. The
237 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
238 parties that are in arrears in the advance payment of water rates as levied or established by the
239 Contractor.

240 10. Article 29 in the Existing Contract titled CHANGES IN THE
241 CONTRACTOR'S ORGANIZATION is retitled CHANGES IN THE CONTRACTOR'S

242 **ORGANIZATION OR SERVICE AREA** and is amended and replaced by the following

243 **Article 29 in its entirety:**

244 **CHANGES IN THE CONTRACTOR'S ORGANIZATION OR SERVICE AREA**

245 29. While this Contract is in effect, no change may be made in the Contractor's
246 service area or organization, by inclusion or exclusion of lands or by any other changes which
247 may affect the respective rights, obligations, privileges, and duties of either the United States or
248 the Contractor under this Contract including, but not limited to, dissolution, consolidation, or
249 merger, except upon the Contracting Officer's written consent.

250 11. **Article 30 in the Existing Contract Titled BOOKS, RECORDS, AND**

251 **REPORTS** is amended and replaced by the following Article 30 in its entirety:

252 **BOOKS, RECORDS, AND REPORTS**

253 30. (a) The Contractor shall establish and maintain accounts and other books and
254 records pertaining to administration of the terms and conditions of this Contract, including the
255 Contractor's financial transactions; water supply data; project operation, maintenance, and
256 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
257 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
258 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
259 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
260 and regulations, each party to this Contract shall have the right during office hours to examine
261 and make copies of the other party's books and records relating to matters covered by this
262 Contract.

263 (b) Nothing in this Article 30 shall be construed to limit or constrain the
264 ability of the Bureau of Reclamation to conduct contract compliance reviews of this contract in
265 accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised
266 November 20, 2014, as may be further revised, amended, modified, or superseded.

267 12. **Article 31 in the Existing Contract titled RULES AND REGULATIONS is**
268 **retitled RULES, REGULATIONS, AND DETERMINATIONS and subdivision (a) is**
269 **amended and replaced by the following Article 31 subdivisions (a) and (b) and subdivision**
270 **(b) is redesignated subdivision (c):**

RULES, REGULATIONS, AND DETERMINATIONS

31. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its provisions, the laws of the United States, and the State of California and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

13. Article 33 in the Existing Contract titled TITLE VI, CIVIL RIGHTS ACT OF 1964 is retitled COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS is amended and replaced by the following Article 33 in its entirety:

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

33. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

14. Article 34 in the Existing Contract titled EQUAL OPPORTUNITY is retitled EQUAL EMPLOYMENT OPPORTUNITY is amended and replaced by the following Article 34 in its entirety:

EQUAL EMPLOYMENT OPPORTUNITY

34. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(d) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however, that* in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

15. Article 38 in the Existing Contract titled CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS is amended and replaced by the following Article 38 in its entirety:

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

38. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

16. Article 39 in the Existing Contract titled OFFICIALS NOT TO BENEFIT subdivision (a) is amended and replaced by the following subdivision (a) in its entirety:

OFFICIALS NOT TO BENEFIT

39. (a) No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

17. Article 40 in the Existing Contract titled ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED is amended and replaced by the following Article 40 in its entirety:

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

40. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

18. Article 41 in the Existing Contract titled NOTICES is replaced by the following Article 41 in its entirety:

NOTICES

41. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Valley Water District, 5750 Almaden Expressway, San Jose, California 95118. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

19. Article 42 in the Existing Contract titled CONFIRMATION OF CONTRACT is replaced by the following Article 42 in its entirety:

CONFIRMATION OF CONTRACT

42. Promptly after the execution of this Amendment, the Contractor will provide evidence to the Contracting Officer that, pursuant to the laws of the State of California, the Contractor is a legally constituted entity and the Amendment is lawful, valid, and binding on the Contractor. This Amendment will not be binding on the United States until the Contractor provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Contractor may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the

State of California, confirming the proceedings on the part of the Contractor for the authorization of the execution of this Amendment.

20. The first sentence of subdivision (a) of Article 43 of the Existing Contract titled WATER CONSERVATION is amended and replaced with the following:

WATER CONSERVATION

43. (a) Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

21. Articles 44 through 46 are added to the Existing Contract:

PRIVACY ACT COMPLIANCE

44. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) 5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act (43 C.F.R. § 2.45, et seq.) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43 C.F.R. § 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in paragraph (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the

System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as authority for the request.

MEDIUM FOR TRANSMITTING PAYMENTS

45. (a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

CONTRACT DRAFTING CONSIDERATIONS

46. This contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this contract pertains. The double spaced Articles of this contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

22. Article 12 in the First Amendment titled PRESERVATION OF EXISTING CONTRACT is replaced by the following Article 47 in its entirety:

PRESERVATION OF EXISTING CONTRACT

47. Except as expressly modified by the provisions of this Second Amendment, the Existing Contract, along with all amendments to the Existing Contract, and Exhibits A and B attached to the Existing Contract, shall remain in full force and effect.

EFFECTIVE DATE

This Second Amendment to the Existing Contract shall be effective on the date first written above.

471 IN WITNESS WHEREOF, the parties hereto have executed this Second
472 Amendment to Contract No. 7-07-20-W0023B on the day and year first above written.

473 THE UNITED STATES OF AMERICA

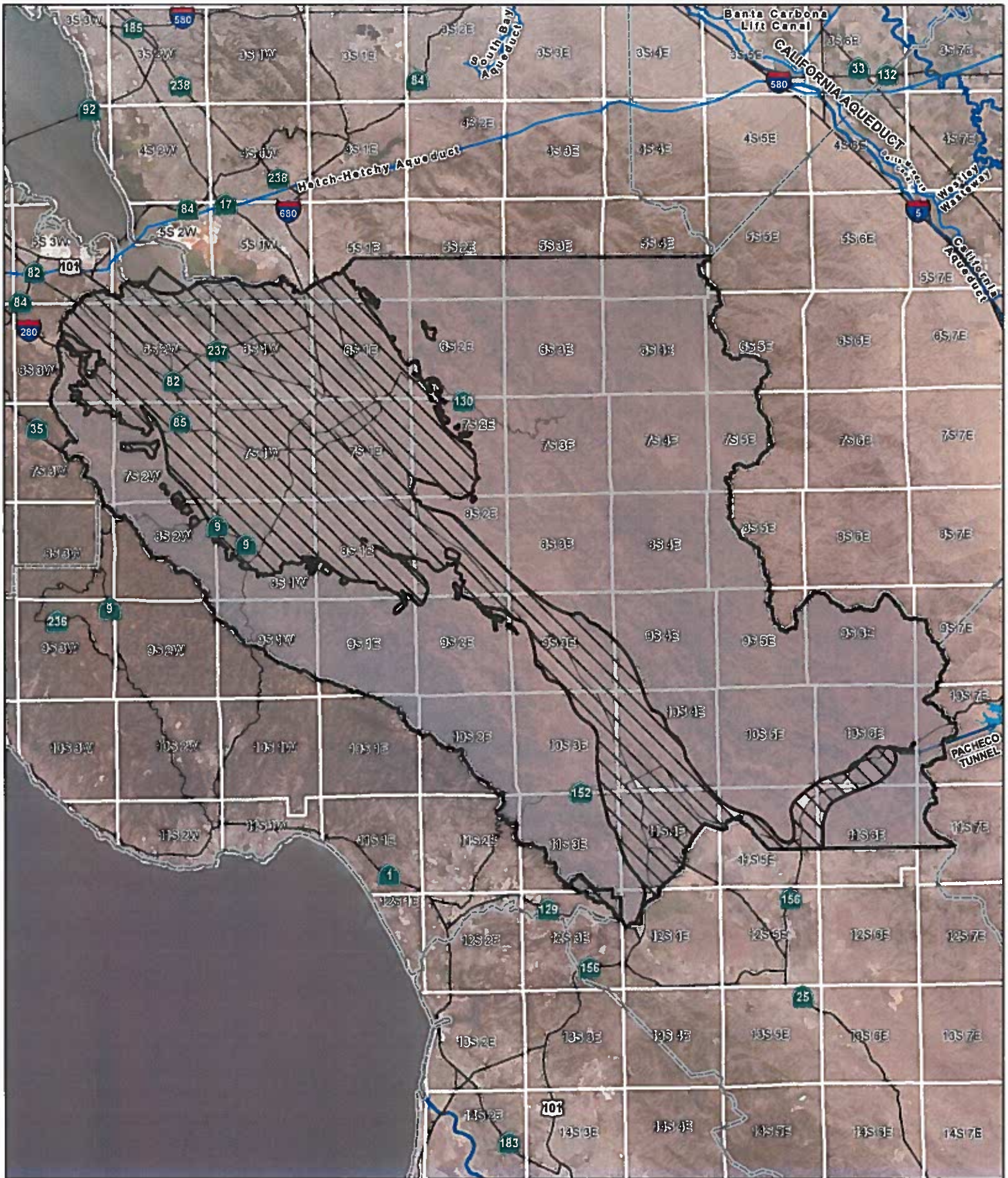
474 By: _____
475 Regional Director
476 Interior Region 10: California-Great Basin
477 Bureau of Reclamation



478 SANTA CLARA VALLEY WATER DISTRICT

479 By: _____
480 Rick L. Callender, Esq.
481 Chief Executive Officer

481 ATTEST:

482 By: _____
483 Clerk/Board of Directors



-  District Boundary
-  Contractor's Service Area

Santa Clara Valley Water District

Contract No. 7-07-02-W0023B
Exhibit A



— BUREAU OF —
RECLAMATION

EXHIBIT B
SANTA CLARA VALLEY WATER DISTRICT
2020 Rates and Charges
(Per Acre-Foot)

	Irrigation Water	M&I Water
COST-OF-SERVICE (COS) RATE		
Construction Costs	\$28.46	\$3.89
DMC Aqueduct Intertie	\$0.77	
O&M Components		
Water Marketing	\$8.97	\$6.12
Storage	\$17.87	\$14.84
Credit for other PUE Remittance	(\$3.78)	(\$3.58)
Conveyance Pumping		
Direct Pumping		
Deficit Cost Component (American Recovery and Reinvestment Act (ARRA)) include	\$0.00	\$0.00
TOTAL COS RATE (Tier 1 Rate)	\$52.29	\$21.27
IRRIGATION FULL COST RATE (RRA)		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited	76.63	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	93.49	
Project Use Energy Payment ¹		
Direct Pumping	18.81	\$18.81
Other PUE Remittance	3.78	\$3.58
M&I FULL COST RATE		\$22.53
TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)		
Irrigation		
[Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$12.17	
Tier 3 Rate: >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	\$24.34	
M&I		
Tier 2 Rate: >80% <= 90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		\$0.63
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to be Added to Tier 1 Rate)		\$1.26
CHARGES AND ASSESSMENTS (Payments in addition to Rates)		
[Section 3407(d)(2)(A)]	\$10.91	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	\$0.12

EXPLANATORY NOTES

¹ Project Use Energy is in addition to the Contract Rate and Full-Cost Water Rates. Refer to the water rate books for more information.

Recent Historic Use, as defined in the Reallocation Agreement, Agreement No. 7-07-20-W1428 dated April 17, 2007 is 111,000 acre-feet

Additional detail of rate components is available on the Internet at:
<http://www.usbr.gov/mp/cvp/waterrates/ratebooks/index.html>

EXHIBIT E

**COPY OF
SANTA CLARA VALLEY WATER DISTRICT
1977 Contract dated June 7, 1977**

Contract No.
7-07-20-W0023

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

CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY
WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

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

CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY
WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

THIS CONTRACT, made this 7th day of June, 1972,

in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and
acts amendatory thereof or supplementary thereto, all collectively
hereinafter referred to as the Federal reclamation laws, between
THE UNITED STATES OF AMERICA, hereinafter referred to as the United
States, and SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred
to as the Contractor or the District, a public agency of the State
of California, duly organized, existing, and acting pursuant to the
laws thereof, with its principal place of business in San Jose, California,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing and operating
the Central Valley Project, for the purposes, among others, of
furnishing water for irrigation, municipal, industrial, domestic,
and other beneficial uses; and

WHEREAS, the groundwater basins in the District have been
overdrawn and the lands of the District and its inhabitants are in
need of additional water for beneficial uses and purposes; and

Preamble
Explanatory Recitals . . .

1 WHEREAS, the United States proposes to construct the San
2 Felipe Division as a feature of the Project for the diversion,
3 carriage, distribution, regulation, and beneficial use of waters of
4 the Project; and

5 WHEREAS, investigations indicate that the water supply to
6 be developed by the Project can be made available to the Contractor
7 for beneficial uses and purposes; and

8 WHEREAS, the Contractor desires to contract for a water supply
9 from the Project at the rates and under the conditions hereinafter set
10 forth;

11 NOW, THEREFORE, in consideration of the covenants herein
12 contained, it is agreed as follows:

13 DEFINITIONS

14 1. When used herein, unless otherwise distinctly expressed, or
15 manifestly incompatible with the intent hereof, the term:

16 (a) "The Contracting Officer" shall mean the duly authorized
17 representative of the Secretary of the Interior;

18 (b) "Project" shall mean the Central Valley Project,
19 California, of the Bureau of Reclamation;

20 (c) "Division" shall mean the San Felipe Division of the
21 Project;

22

1 (d) "Division Facilities" shall mean main conveyance, pumping
2 plants, regulating reservoirs, and other works constructed or
3 acquired by the United States to deliver water to the contractors
4 within the Division;

5 (e) "Santa Clara Facilities" shall mean the Division Facilities
6 used to deliver water to the Contractor exclusively;

7 (f) "State" shall mean the State of California;

8 (g) "initial delivery date" shall mean the day that water
9 from the Division Facilities is first available for deliver to
10 the Contractor under this contract;

11 (h) "newly irrigated land" shall mean land on which, as
12 demonstrated to the satisfaction of the Contracting Officer, an
13 irrigated crop has not been produced prior to the time water from
14 the Project becomes available for furnishing to said land;

15 (i) "agricultural water" shall mean water used primarily
16 in the commercial production of agricultural crops or livestock,
17 including domestic use incidental thereto, on tracts of land
18 operated in units of more than 2 acres;

19 (j) "municipal, industrial, and domestic water" (hereinafter
20 referred to as M&I water) shall mean water used for other than
21 agricultural purposes;
22

- 1 (k) "reclaimed water" means waste water that has been
2 treated to the extent necessary to be suitable for groundwater
3 recharge, agricultural, municipal or industrial uses; and
4 (1) "year" shall mean the calendar year.

5 TERM OF CONTRACT--RENEWALS

6 2. This contract shall be effective on the date first herein-
7 above written and shall remain in effect for a period of 40 years
8 commencing with the year in which water is first available from
9 the Division Facilities to any contractor under terms of a long-
10 term contract for service therefrom: Provided, That under terms
11 and conditions agreeable to the parties, renewals of this contract
12 may be made for successive periods not to exceed 40 years each. The
13 terms and conditions of each renewal shall be agreed upon not later
14 than one year prior to the expiration of the then existing contract.

15 WATER TO BE FURNISHED TO THE CONTRACTOR

16 3. (a) The Contracting Officer will notify the Contractor of
17 the date on which water will be available for the Contractor from the
18 Project at least 6 months in advance.

19 (b) The United States shall make available to the Contractor
20 the quantities of agricultural and M&I water specified in the schedule
21 submitted by the Contractor in accordance with Article 4, and the Con-
22 tractor shall pay for said water at the rates established by the
23 provisions of Article 11: Provided, That the United States shall make
24 available agricultural and M&I water and the Contractor shall pay for as

1 a minimum the total quantities set forth in Column A of the following
2 table, and the total annual minimum shall include at least the annual
3 minimum for M&I water required in Column B of the table. The total
4 quantity the United States shall make available annually during the term
5 of this contract shall be 152,500 acre-feet, of which 119,400 acre-feet
6 shall be M&I water: Provided further, That such total quantity of
7 152,500 acre-feet per annum shall be limited to a maximum of 137,500
8 acre-feet per annum until and unless the Contractor and the United States,
9 before January 1, 1990, have found, and have executed writings that
10 declare that wastewater reclamation will not feasibly provide for the
11 supplemental water needs of the Contractor above said 137,500 acre-feet
12 per annum: And provided further, That any adjustment of pricing schedule
13 required, in the opinion of the Contracting Officer, by a decision not
14 to exceed said 137,500 acre-feet per annum may be made effective
15 January 1, 1990: Provided, however, That at any time or times after
16 the Contractor's requirement for M&I water exceeds 119,400 acre-feet
17 per year for 3 years in any 5-year period, any or all of the Project
18 water to be furnished for agricultural use may be converted and shall
19 be added to said 119,400 acre-feet and shall become the minimum quantity
20 the Contractor shall pay for as M&I water each year thereafter during
21 the term of this contract. Years shown in the table refer to the year
22 of initial delivery and the following years.

TABLE OF MINIMUM ANNUAL DELIVERIES

1	2	COLUMN A		COLUMN B
		Year	Total Minimum Water Delivery	Minimum M&I Water Delivery
3	1	1	16,000	16,000
	2	2	22,000	20,000
4	3	3	27,000	24,000
	4	4	32,000	28,000
5	5	5	37,000	32,000
	6	6	43,000	36,000
6	7	7	49,000	40,000
	8	8	55,000	44,000
7	9	9	61,000	48,000
	10	10	67,000	52,000
8	11	11	74,000	56,000
	12	12	79,300	58,300
9	13	13	84,600	60,600
	14	14	89,900	62,900
10	15	15	95,200	65,200
	16	16	100,600	67,500
11	17	17	102,900	69,800
	18	18	105,200	72,100
12	19	19	107,500	74,400
	20	20	109,800	76,700
13	21	21	112,100	79,000
	22	22	114,400	81,300
14	23	23	116,700	83,600
	24	24	119,000	85,900
15	25	25	121,300	88,200
	26	26	123,600	90,500
16	27	27	125,900	92,800
	28	28	128,200	95,100
17	29	29	130,500	97,400
	30	30	132,800	99,700
18	31	31	135,100	102,000
	32	32	137,100	104,000
19	33	33	139,100	106,000
	34	34	141,100	108,000
20	35	35	143,100	110,000
	36	36	145,100	112,000
21	37	37	147,100	114,000
	38	38	149,100	116,000
22	39	39	151,100	118,000
	40	40	152,500	119,400

1 (c) Each year, the United States shall use all reasonable
2 diligence to deliver and the Contractor shall make all reasonable
3 efforts to schedule and accept the amounts of water necessary to
4 satisfy the annual total minimum acre-feet set forth in the Table of
5 Minimum Annual Deliveries: Provided, That if the Contractor is unable
6 in any year to accept quantities sufficient to satisfy the total minimum
7 for that year, the amount of payments for water not used may be applied
8 to meet the payment for water taken in excess of the minimum requirement
9 in any of the subsequent 5 years but not thereafter: Provided further,
10 That payments for water received in excess of the total annual minimum,
11 excluding payments for water received pursuant to subdivision (i) of
12 this article, may be used to satisfy minimum payments due during any
13 of the subsequent 5 years but not thereafter.

14 (d) In no event shall the United States be obligated to
15 furnish more than 152,500 acre-feet of water during any year of the
16 term of this contract: Provided, That this quantity may be increased
17 pursuant to subdivisions (g) and (h) hereof: And provided further,
18 That this quantity may be decreased by agreement of the parties for
19 the remainder of the term of this contract.

20 (e) In the event the United States is unable to deliver the
21 scheduled quantity of water due to water shortage or other disruption
22 of service and part or all of the undelivered water was required to
23 meet the contract minimum then the minimum for such year will be
24 reduced to the amount delivered.

1 (f) The United States will provide the electrical capacity
2 and energy, hereinafter referred to as Project power, necessary to
3 deliver Project water to and through the Division Facilities without
4 any charge over and above the rates and any adjustments thereof set
5 forth in Article 11 of this contract.

6 (g) If the Contractor in any year requires a quantity of water
7 in addition to the maximum quantity of 152,500 acre-feet per annum which
8 the United States is obligated to deliver to the Contractor, additional
9 water, if water and capacity are available as determined by the Con-
10 tracting Officer, may be delivered upon receipt from the Contractor of
11 a written request together with a schedule indicating the desired times,
12 uses, and quantities of water and payment at the applicable rates speci-
13 fied in Article 11 hereof. The delivery by the United States and
14 acceptance by the Contractor of such additional water shall neither en-
15 title nor obligate the Contractor to receive such quantities in
16 subsequent years.

17 (h) If from time to time the Contracting Officer determines
18 that other potential contractors within the Division have not obligated
19 themselves to purchase the maximum quantity of water the Division is
20 capable of supplying, the Contracting Officer will notify all contractors
21 within the Division of such unobligated supply and will make the same
22 available on a prorated basis to such contractors who request additional
23 water and demonstrate a need therefor to the satisfaction of the Contract-
24 ing Officer. Any such additional quantities made available to the
25 Contractor shall be delivered and paid for as shall be agreed upon in
26 writing by the parties hereto.

1 (1) The United States may furnish Project water to the Con-
2 tractor in excess of the quantities shown in the Table of Minimum Annual
3 Deliveries in subdivision (b) of this article for the purpose of replacing
4 the historical depletion of groundwater: Provided, That during the term
5 of this contract a total of 350,000 acre-feet, or an amount otherwise
6 agreed upon, may be provided as available from the Project for this purpose,
7 as determined by the Contracting Officer. All such water delivered for
8 this purpose shall hereinafter be referred to as replacement water and
9 shall be paid for at the rates established in Article 11.

10 DELIVERY SCHEDULES

11 4. The Contractor will submit for each year a schedule satisfactory
12 to the Contracting Officer showing the quantities of water, including a
13 separate schedule for water to be delivered pursuant to Article 3(i),
14 required each month during such year. The schedule for the year in which
15 the initial delivery date occurs shall be submitted 2 months prior to the
16 initial delivery date. Thereafter, schedules will be submitted not later
17 than November 1st preceding the year covered by the schedule and at such
18 other times as is necessary to assure coordination of Project operation.
19 The United States shall notify the Contractor of concurrence with or
20 changes to said schedule prior to December 15th and shall attempt to
21 deliver water in accordance with said schedules or any revision thereof
22 satisfactory to the Contracting Officer which are submitted to the Con-
23 tracting Officer within a reasonable time before the desired time for
24 delivery. The inability, failure, or refusal of the Contractor to
25 submit a schedule shall not relieve it of its payment obligations.

1 United States shall use its best efforts to avoid any discontinuance
2 or reduction in service for a period longer than 3 days. Upon resump-
3 tion of service after such reduction and if requested by the Contractor,
4 the United States will attempt to deliver the quantity of water which
5 would have been furnished hereunder in the absence of such contingency.

6 WATER SHORTAGE AND APPORTIONMENT

7 7. (a) In its operation of the Project, the United States will
8 use all reasonable means to guard against a condition of shortage in
9 the quantity of water available to the Contractor pursuant to this
10 contract. Nevertheless, if a shortage does occur during any year
11 because of drought, or other causes which, in the opinion of the Con-
12 tracting Officer, are beyond the control of the United States, no
13 liability shall accrue against the United States or any of its officers,
14 agents, or employees for any damage, direct or indirect, arising therefrom.

15 (b) In any year that the Contracting Officer determines there
16 is a shortage in the quantity of water available to customers of the
17 United States from the Project, the Contracting Officer will apportion
18 available water among the water users capable of receiving water from the
19 same Project facilities by reducing deliveries to all such water users
20 by the same percentage, unless he is prohibited by existing contracts,
21 Project authorizations, or he determines that some other method of appor-
22 tionment is required to prevent undue hardship. In the event reduced
23 deliveries within the Division are necessary, the water supplies for both
24 M&I and agricultural use shall be reduced by the same percentage for each
25 contractor.

1 (c) If operation of the Project to meet legally required
2 Delta water quality control standards, including Federally adopted water
3 quality standards, causes a shortage in water supply and requires a
4 reduction in deliveries of water to the Contractor under this agreement,
5 such reductions will be made in accordance with subdivision (b) of this
6 article and shall not be deemed a breach hereof.

7 QUALITY OF WATER

8 8. The operation and maintenance of Project facilities and the
9 construction of new Project facilities for the provision of Project water
10 under this contract shall be performed in such a manner as is practicable
11 to maintain the quality of raw water to be furnished hereunder at the
12 highest level reasonably attainable as determined by the Contracting
13 Officer. The United States is under no obligation to construct or
14 furnish water treatment facilities to maintain or better the quality of
15 water. Further the United States does not warrant the quality of water
16 to be furnished pursuant to this contract.

17 POINT OF DELIVERY--MEASUREMENT--RESPONSIBILITY FOR DISTRIBUTION

18 9. (a) The water to be furnished to the Contractor pursuant to
19 this contract will be made available to the Contractor at the headworks
20 of the Santa Clara Facilities, hereinafter referred to as the point of
21 delivery. Turnouts will be constructed by the United States at its
22 expense at such points within the Santa Clara Facilities as may be agreed
23 upon in writing by the Contracting Officer and the Contractor: Provided,
24 That in the event the United States shall have reached the construction

1 of the portion of the Division Facilities which will embrace such
2 turnouts and their location has not been agreed upon, such turnouts
3 shall be established at locations as in the conclusive determination
4 of the Contracting Officer will best serve the needs of the Contractor:
5 Provided further, That future additional turnouts shall be provided at
6 the Contractor's expense.

7 (b) The Contractor shall construct and install, without cost
8 or expense to the United States, suitable connection facilities required
9 by the Contractor to take and convey the water from the turnouts. The
10 Contractor will furnish for approval of the Contracting Officer drawings
11 showing the construction to be performed by the Contractor within the
12 United States right-of-way 3 months before issuance of the invitations
13 for bids. The facilities may be installed, operated, and maintained
14 on or across the United States right-of-way subject to such restrictions
15 and regulations as to type, location, method of installation, operation,
16 and maintenance as may be prescribed by the Contracting Officer.

17 (c) All water delivered to the Contractor shall be measured
18 by the Contractor at the first measuring device installed on the Santa
19 Clara Facilities at or downstream from the point of delivery with
20 equipment furnished and installed by the United States. The measuring
21 equipment shall be operated and maintained in proper condition for
22 accurate measurement by the Contractor at its expense. The United States
23 shall have access to the measuring equipment it furnished at all reason-
24 able times.

1 (d) The quantity of Project water furnished to the Con-
2 tractor exclusive of replacement water shall be determined as follows:

3 (1) Project water delivered by the Contractor directly
4 to its customers shall be computed by a method or methods satis-
5 factory to the Contracting Officer or measured by meters furnished,
6 installed, operated, and maintained by the Contractor or its
7 customers. Upon the request of the Contracting Officer, the
8 Contractor shall investigate and test the accuracy of said meters
9 and shall adjust any errors disclosed by such investigation. The
10 United States shall be afforded reasonable opportunity to be
11 present during said investigations and tests by the Contractor for
12 the purpose of determining the accuracy and conditions of the
13 meters. If said meters are found to be defective or inaccurate,
14 the Contractor will be responsible for making timely repairs, replace-
15 ments, or adjustments to eliminate defects or inaccuracies.

16 (2) The amount of Project water delivered by the United
17 States in any year which is used for groundwater recharge shall be
18 equal to the difference between the total amount delivered to the
19 Contractor in that year and the total of the direct deliveries by
20 the Contractor determined in accordance with subsection (d)(1) of
21 this article. The Contractor will cause determinations of ground-
22 water extractions and use to be made and recorded and will cause

1 the water surface elevations in the groundwater basins to be
2 recorded, all in a manner satisfactory to the Contracting
3 Officer. The installation, operation, and maintenance of all
4 measuring devices and all computations of amounts of water re-
5 charged and extracted shall be made without cost or expense to
6 the United States. The United States shall have the same rights
7 with respect to the investigations and testing of said measuring
8 devices and records as are set forth in subsection (d)(1) of this
9 article. Prior to April 30 of each year after the year in which
10 the initial delivery date occurs the Contractor will submit to
11 the Contracting Officer a report setting forth the amount of
12 Project water recharged by the Contractor and the quantities of
13 water that were pumped from the basins and put to M&I and agri-
14 cultural use respectively during the preceding year. The quantities
15 of Project water recharged in each basin shall be computed annually
16 by prorating between M&I water and agricultural water in the
17 same proportion that the water pumped from the basin and used
18 for each of said purposes bears to the total water pumped from the
19 basin in that year: Provided, That the Contractor shall not divide
20 the District into more than three basins for accounting purposes:
21 Provided further, That firm supplies of water purchased by the Con-
22 tractor from the State of California or the City and County of San
23 Francisco shall be deemed to be M&I and any such water percolated

1 will be subtracted from the M&I water pumped prior to computa-
2 tions of Project water use but surplus water purchased from
3 the State of California and percolated to the underground will
4 not be subtracted.

5 (e) The quantity of replacement water shall be either that
6 quantity of water scheduled by the Contractor and approved by the Con-
7 tracting Officer to be used for groundwater replacement, or as otherwise
8 agreed upon.

9 (f) The Contractor shall maintain, in a manner satisfactory
10 to the Contracting Officer, monthly records of the quantities of water
11 determined pursuant to section (c) of this article and will submit a
12 report to the Contracting Officer before the 7th day of the following
13 month.

14 (g) The United States shall not be responsible for the control,
15 carriage, handling, use, disposal, or distribution of water beyond the
16 point of delivery, and the Contractor shall hold the United States
17 harmless on account of damage or claim of damage of any nature whatso-
18 ever for which there is legal responsibility, including property damage,
19 personal injury or death arising out of or connected with the control,
20 carriage, handling, use, disposal, or distribution of such water beyond
21 said points of delivery.
22

LIMITATION ON DELIVERY

10. Prior to and including the year 1977, no water from the Division Facilities shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in Section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

RATES OF PAYMENT FOR WATER

11. (a) The Contractor shall pay for water at the following rates:

(1) Agricultural water shall be \$16.50 per acre-foot which will be adjusted as specified in subdivision (b) below.

(2) M&I water shall be \$61 per acre-foot which will be adjusted as specified in subdivision (c) below.

(3) Replacement water shall be \$24 per acre-foot which will be adjusted effective January 1, 1991, and every 5 years thereafter by the Contracting Officer.

(b) The agricultural water rate shall be adjusted as follows:

(1) Effective January 1, 1996, and every 5th year thereafter, the Contracting Officer shall adjust the rate for changes in operation, maintenance, replacement, and Project power costs as appropriate: Provided, That if the 5th year following the first year of delivery is after 1996, the first adjustment will be made at that time, but this will not affect the subsequent adjustment dates.

(2) Effective January 1, 2001, and January 1, 2011, the Contracting Officer shall adjust the rate in accordance with the then current agricultural rate setting policies of the Project: Provided, That rate adjustments will be restricted to changes in operation, maintenance, replacement, and Project power costs

1 in accordance with (b)(1) above, in the event the then current
2 agricultural policies of the Project discontinue the requirement
3 for adjustment of the full agricultural rate in future or renewed
4 contracts.

5 (c) The M&I water rate of \$61 per acre-foot shall be
6 considered in two parts and adjusted as follows:

7 (1) Effective January 1, 1991, and every 5th year
8 thereafter, the Contracting Officer shall adjust that portion
9 of the rate (initially \$18 per acre-foot), to account for
10 changes in costs (including operation, maintenance and replace-
11 ment) for Project water supply, Project power, and conveyance,
12 exclusive of Division Facilities costs, as appropriate, in
13 accordance with the then current M&I rate setting policies
14 of the Project: Provided, That if the 5th year following
15 the first year of delivery is after 1991, the first adjustment
16 will be made at that time, but this will not affect the sub-
17 sequent adjustment dates: Provided further, That in each
18 rate adjustment hereunder the conveyance portion will be
19 limited to the authorized conveyance facilities of the Project
20 as of the date of this contract and future conveyance additions
21 which directly relate to the quantity and quality of water
22 available to the Division as conclusively determined by the
23 Contracting Officer. .

1 (2) Effective January 1, 2006, and every 5th year
2 thereafter, the Contracting Officer shall adjust that portion
3 of the rate (initially \$43 per acre-foot), for the Division
4 Facilities costs, exclusive of Project power which is covered
5 in (c)(1) above, as appropriate, in accordance with the then
6 current M&I rate setting policies of the Project: Provided,
7 That if the 20th year following the first year of delivery
8 occurs after 2006, the first adjustment will be made at that
9 time, but this will not affect the subsequent adjustment dates.

10 (d) The Contracting Officer will make available to the
11 Contractor the computations, appropriate rate policy, and cost
12 allocation upon which any proposed rate adjustment is based and will
13 afford the Contractor not less than 3 months to study, to comment,
14 and the opportunity to consult on the proposed adjustment of rates,
15 the rate policies, or the cost allocation procedures before announc-
16 ing an adjustment of the rate. Final determination of an adjustment
17 will be announced by the Contracting Officer after consideration of
18 the Contractor's comments but not less than 6 months prior to the
19 effective date thereof.
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METHOD OF PAYMENT FOR WATER

12. The method of payments to be made by the Contractor for water furnished pursuant to this contract shall be as follows:

(a) Prior to the date on which it wishes to accept the first delivery of water hereunder the Contractor shall pay for the water scheduled to be delivered for agricultural, M&I, and replacement purposes during the first 2 calendar months. Before the end of the first month of delivery and before the end of each month thereafter, the Contractor shall pay for the water to be delivered pursuant to the latest approved schedule during the second month immediately following. Water furnished pursuant to subdivision (g) of Article 3 shall be paid for in full at the time or times such requests are made: Provided, That if the Contractor does not accept delivery of water as soon as it becomes available in the month in which the initial delivery date occurs and each month for the remainder of that year and each month of each year thereafter until the Contractor desires to accept delivery of water, the Contractor shall pay for 1/12th of the quantity of water that will fulfill the total minimum quantity requirement for that year specified in Article 3.

(b) Adjustment for any difference between the payment for the scheduled quantities of water and payment for the quantities of water actually delivered in any month shall be

1 made in the payment in the month immediately following: Provided,
2 That the total quantity of water paid for in any year shall be
3 no less than the minimum quantity specified in Column A of the
4 Table of Minimum Annual Deliveries except that the minimum for
5 the first year shall be prorated on the basis of 1/12th of the
6 total for that year for each month water is available, and by
7 December 1 the Contractor shall make any additional payment
8 necessary to pay for such minimum: Provided further, That the
9 quantity of M&I water paid for annually shall not be less than
10 the quantity necessary to fulfill the minimum quantity require-
11 ment specified in Column B of the Table of Minimum Annual
12 Deliveries except that the minimum for the first year shall be
13 prorated on the basis of 1/12th of the total for that year for
14 each month water is available, or a greater actual quantity
15 delivered in that year, or any greater quantity resulting from
16 the use of water furnished for agricultural purposes but used
17 for M&I purposes, as specified and provided in Article 3.

18 (c) Upon determination of the amounts of Project M&I and
19 agricultural water used during the preceding year, in accord-
20 ence with Article 9(d), if a greater amount of M&I water and a
21 lesser amount of agricultural water were used than set forth in
22 the Article 4 schedule, such greater amount of M&I water used

1 shall be deducted from the agricultural water scheduled but
2 not used in said year and the Contractor will, on or before
3 April 30 of the following year, pay the difference between the
4 M&I and agricultural water rates for the amount of M&I water
5 used in excess of the amount scheduled.

6 (d) In the event the Contractor is unable, fails, or
7 refuses to accept delivery of the quantities of water available
8 for delivery to it and which it is required to pay for pursuant
9 to this contract, said inability, failure, or refusal shall not
10 relieve the Contractor of the obligation to pay for such water,
11 and the Contractor agrees to make payment in the same manner as
12 if such water had been delivered and accepted by the Contractor.
13 Payment for undelivered water will be determined in the same
14 ratio as payment for water used for recharge into groundwater
15 basins as provided in Article 9.

16 ADJUSTMENTS

17 13. The amount of any payment by the Contractor during any year
18 over the amount the Contractor otherwise under the provisions of this
19 contract would have been required to pay, as conclusively determined
20 by the Contracting Officer, shall be applied first to any accrued
21 indebtedness arising out of this contract then due and owing to the
22 United States by the Contractor, and any amount of such overpayment then
23 remaining, at the option of the Contractor, shall be refunded to the

. . . Articles 12 - 13 . . .

1 Contractor or credited upon amounts to become due to the United States
2 from the Contractor in the ensuing year under the provisions hereof.

3 INTEREST FOR DELINQUENT PAYMENTS

4 14. The Contractor shall pay interest on installments or charges
5 which become delinquent computed at the rate of one percent per month
6 of the amount of such delinquent installments or charges for each day
7 from such delinquency until paid: Provided, That no interest shall be
8 charged to the Contractor unless such delinquency continues for more
9 than 30 days in which event the interest shall accrue from the initial
10 date of delinquency.

11 EXCHANGES OF WATER

12 15. The Contractor may from time to time, with the prior written
13 approval of the Contracting Officer, enter into contracts, transfers,
14 or exchanges with other contractors for a water supply from the Project
15 which would have the effect of providing additional Project water to the
16 Contractor, or which would have the effect of transferring water furnished
17 or delivered hereunder to other parties having contracts with the United
18 States for water from the Project.

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1 CONVEYANCE OF NON-PROJECT WATER

2 16. The Contractor shall have the right to use Division Facil-
3 ities to convey non-Project water, subject, however, to each of the
4 following conditions:

5 (1) the Contractor and the Contracting Officer shall
6 agree upon the charge to be paid by the Contractor prior to the
7 use of the Facilities;

8 (2) such conveyance shall not interfere with deliveries
9 of Project water to the Contractor or to any other user of the
10 Facilities;

11 (3) arrangements for power necessary to convey such
12 water shall be the responsibility of the Contractor;

13 (4) the United States shall not incur any liability or
14 unreimbursed cost or expense thereby; and,

15 (5) to the extent that non-Project water conveyed
16 through Division Facilities is directly applied to land for
17 agricultural use, such water shall be subject to the provisions
18 of Articles 24, 25, and 26 hereof.

19 TRANSFER OF CARE, OPERATION
20 AND MAINTENANCE OF SANTA CLARA FACILITIES
 TO THE CONTRACTOR

21 17. (a) On completion of construction of the Santa Clara
22 Facilities or so much thereof as in the conclusive determination of

Articles 16 - 17 . . .

1 the Contracting Officer will permit the commencement of the delivery
2 of water without interference with the construction of the rest of
3 said Facilities, the Contracting Officer will furnish to the Contractor,
4 a written notice, hereinafter referred to as the transfer notice,
5 announcing the transfer to the Contractor for care, operation, and maintenance of the completed portion or portions of the said Facilities, together
6 with a description thereof, and the effective date of the transfer. If
7 all of said Facilities are not transferred pursuant to the aforesaid
8 notice, a similar notice or notices may be given as other parts thereof
9 are ready for transfer. All Facilities so transferred shall hereinafter
10 be referred to as transferred works.
11

12 (b) Prior to the effective date of a transfer notice, the
13 Contractor shall determine what, if any, movable property, including
14 equipment, supplies and records used in connection with the transferred
15 works it desires to accept and shall submit a list thereof to the
16 Contracting Officer. To the extent authorized by law, title to such
17 movable property as the Contracting Officer determines to be essential
18 to the operation of the transferred works, shall be transferred to the
19 Contractor in accordance with the Federal Property Management Regulations at the time of transfer and the value thereof will be added to
20 and become a part of the Division construction costs.
21
22

. . . Article 17

1 CARE, OPERATION, AND MAINTENANCE OF TRANSFERRED AND OTHER DIVISION WORKS

2 18. (a) The Contractor, without expense to the United States, shall
3 care for, operate, and maintain the transferred works in full compliance
4 with Federal reclamation law and in such manner that they will remain in
5 good and efficient condition: Provided, That the United States shall be
6 responsible for major repair or replacement of transferred works and other
7 Division works required as a result of disaster or obsolescence, as
8 determined by the Contracting Officer.

9 (b) The Contractor, upon the effective date of the transfer,
10 shall assume all obligations of the United States under any contract or
11 contracts related to the crossing of the transferred works in, over,
12 along, or across land or rights-of-way of public utilities, the State
13 of California, or agencies thereof.

14 (c) The Contractor will furnish to the United States such records
15 of its operations of the transferred works as the Contracting Officer may
16 require. The Contractor will furnish and install in said transferred
17 works such replacement parts as are required for proper maintenance.

18 (d) The United States will furnish to the Contractor copies
19 of documents, drawings, and other records necessary for the operation
20 and maintenance of the Project works as shall from time to time be requested
21 by the Contractor in writing. The Contractor will pay for the cost of
22 reproducing copies of said records requested after one year from the
23 effective date of the transfer. The Contractor will keep drawings current
24 and will furnish a copy of all revised drawings to the Contracting Officer.

1 (e) For the purposes of this contract, definitions of the
2 following terms are:

3 (1) An easement is an instrument which grants an
4 estate in the land which is not revocable except as may be
5 provided in the instrument. Rights of way for roads, transmission
6 lines, pipelines, and like uses, are granted by an easement.

7 (2) A lease is an instrument by which lands and
8 tenements are conveyed for a number of years or at will.
9 Leases may be used to convey lands for grazing, agricultural,
10 commercial and other uses.

11 (3) A license is an instrument granting authority to
12 do an act or acts on lands without conveying an interest therein.
13 It may be used to allow such uses as surveying, temporary cross-
14 ings, bank travel, or installation of temporary pumps. It is an
15 instrument giving a personal privilege which is temporary and
16 revocable.

17 (f) When the Contracting Officer receives a request for
18 use of the right-of-way transferred to the Contractor for operation
19 and maintenance, he shall forward the request, together with any
20 comments which may be pertinent, to the Contractor. Notice of referral
21 shall be sent to the applicant without comment. The applicant also
22 should be told that further information regarding the application will

. . . Article 18 . . .

1 emanate from the Contractor and all subsequent inquiries concerning
2 the application should be sent direct to the Contractor.

3 (g) Subject to the provisions of (h) below, the Contractor
4 may grant or deny licenses to use the right-of-way. The Contractor
5 will send the Contracting Officer a copy of each license granted.
6 The Contractor will obtain the prior written approval of the
7 Contracting Officer for any license that involves a major installa-
8 tion and construction of structures in the right-of-way, such flumes,
9 siphons, culverts, drains, and permanent turnouts.

10 (h) The following rights to use the right-of-way shall be
11 granted only by the Contracting Officer:

12 (1) All leases and grants of easement.

13 (2) Licenses, consents, and other forms of agreement
14 requested by Pacific Gas and Electric Company or any other entity
15 which has a master contract with the United States.

16 (3) Licenses for removal of sand, gravel, or spoil.

17 (4) Licenses for transmission lines with voltage in
18 excess of 33 k.v.

19 If the application is one which can only be granted by the Contracting
20 Officer then the Contractor shall furnish a copy of the application
21 and comments thereon to the Contracting Officer. If the request is
22 compatible with the operation and maintenance of the transferred works

. . . Article 18 . . .

1 and if the Contractor has indicated approval, the Contracting Officer
2 will send the appropriate executed documents to the Contractor for
3 transmittal to the applicant.

4 (i) In granting permission to use the right-of-way, care
5 shall be exercised to assure that:

6 (1) The encroachment is held to the minimum practical,

7 (2) There is no interference with water supply opera-
8 tions on the right of way,

9 (3) A license is not issued as a substitute for an
10 easement or lease, and

11 (4) Disposal of land by the United States is not being
12 contemplated. When there is doubt on any of these matters, the
13 application shall be sent to the Contracting Officer.

14 (j) Charges will normally be made for easements, leases,
15 and licenses to use the right of way.

16 (1) The charge shall be based on the fair value of
17 the right granted with a minimum sufficient to cover the adminis-
18 tration expenses involved. The Contractor may establish uniform
19 charges for servicing licenses.

20 (2) No charge will be made by the United States for
21 rights granted to governmental entities or to such quasi-govern-
22 mental agencies or nonprofit organizations as the parties shall

. . . Article 18 . . .

1 agree upon. However, if a governmental entity requests a
2 right for the specific benefit of a private entity, charges
3 will be imposed and will be paid to the Contractor direct as
4 though the grant were to the private entity.

5 (k) The parties agree that the procedures set forth in
6 subdivisions (d) through (j) appear desirable and feasible at this
7 time. However, the effectiveness of these procedures is subject to
8 review during operations. Necessary or desirable changes will be
9 made by agreement of the parties when the need therefor becomes
10 evident.

11 (1) No change in any of the transferred works, which in the
12 opinion of the Contracting Officer is substantial, shall be made by
13 the Contractor without prior written consent of the Contracting
14 Officer. The Contractor promptly shall make any repairs and replace-
15 ments to the transferred works which in the opinion of the Contracting
16 Officer are necessary and are the responsibility of the Contractor.
17 If the Contractor neglects or fails to make such repairs and replace-
18 ments or, in the event of operation of the transferred works by the
19 Contracting Officer, pursuant to subsection (o) of this article, the
20 United States may cause the repairs and replacements to be made and
21 the Contractor's share of the cost thereof, as determined by the Con-
22 tracting Officer, shall be paid by the Contractor to the United States
23 upon notice of the payment due but not later than April 1 of the year
24 following that during which such work was completed.

1 (m) The Contracting Officer with the Contractor may, from
2 time to time, review the maintenance of transferred works being
3 operated by the Contractor in order to assist the Contractor in
4 determining the condition of facilities and the adequacy of the
5 maintenance program. A report of the review, including recommenda-
6 tions, if any, will be prepared and copies will be furnished to the
7 Contractor. Except for such participation by the Contractor as it
8 may desire, such reviews will be without cost to the Contractor.

9 (n) If deemed necessary by the Contracting Officer, special
10 inspections of any transferred works and of the Contractor's books
11 and records may be made to ascertain the extent of any operation
12 and maintenance deficiencies, to determine the remedial measures
13 required for their correction, and to assist the Contractor in solving
14 specific problems. Any special inspection or audit shall, except in
15 a case of emergency, be made after written notice to the Contractor
16 and the actual cost thereof shall be paid by the Contractor to the
17 United States.

18 (o) If the Contracting Officer determines that the Contractor
19 has not properly cared for, operated, or maintained the transferred
20 works or has failed to comply with any of the provisions of this contract,
21 the United States, at the election of the Contracting Officer, may take
22 over from the Contractor, or make any other arrangements as in his

. . . Article 18 . . .

1 opinion are necessary, for the care, operation, and maintenance of all
2 or any part of the transferred works by giving written notice to the
3 Contractor of such election and the effective date thereof. During
4 the period of operation by the Contracting Officer the Contractor
5 shall pay to the United States in advance of the use of such trans-
6 ferred work its share of the cost of operation and maintenance thereof
7 and replacements therefor as fixed in notices from the Contracting
8 Officer. If such advances are inadequate to properly care for,
9 operate, and maintain the transferred works to the end of any year,
10 the Contracting Officer may give written notice of a supplemental
11 operation and maintenance charge and the Contractor shall pay its
12 share of such amount on or before the date specified in said notice.
13 The Contractor shall provide for the collection of sufficient opera-
14 tion and maintenance or toll charges to pay all such bills to the
15 United States within the time stated herein in addition to providing
16 the necessary funds to meet the other obligations of the Contractor.
17 Any amount of such advances remaining unexpended or unobligated shall,
18 at the option of the Contractor, either be refunded or credited upon
19 amounts to become due to the United States from the Contractor under
20 the provisions of this contract in subsequent years. The transferred
21 works so taken back by the United States may be retransferred to the
22 Contractor upon furnishing to the Contractor a 90-day written notice
23 of intention to retransfer.

. . . Article 18 . . .

1 (p) No liability shall accrue against the United States and
2 its officers and employees because of any damage or injury caused by the
3 operation of said transferred works by the Contractor. The Contractor shall
4 hold the United States harmless from every claim for damage to persons or
5 property arising out of or connected with the care, operation, and maintenance
6 of said transferred works by the Contractor.

7 (q) At the option of the United States the Contractor will operate
8 the Pacheco Tunnel and the approximately 6,000 feet of conveyance facilities
9 downstream therefrom to the bifurcation of Division Facilities: Provided,
10 That in the event the Contractor operates these facilities, the United States
11 shall require other entities receiving water as a result of such operation
12 to pay the Contractor an equitable share of the operating costs. Such
13 tunnel and conveyance facilities, subject to the terms of an auxiliary
14 agreement, may also be maintained by the Contractor.

15 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

16 19. During the time the transferred works are operated and maintained
17 by the Contractor, in addition to all other payments to be made by the Contractor
18 under this contract, the Contractor shall pay to the United States
19 within 60 days following the receipt of a detailed cost statement such
20 specific items of direct cost incurred by the United States for work associated
21 with this contract as are normally charged by the United States to water
22 users and properly and equitably chargeable to the Contractor plus a percentage
23 of direct costs for administrative and general overhead in accordance
24 with the procedures approved by the Contracting Officer: Provided, That costs
25 incurred by the United States as a result of disaster or obsolescence in
26 accordance with subdivision (a) of Article 18 are not considered to be costs
27 within the meaning of this article.

RESERVE FUND

20. Commencing with the year following the transfer of operation and maintenance of the transferred works to the Contractor, the Contractor shall accumulate and maintain a reserve fund which will be available for use in the manner, for the purposes, and in the circumstances hereinafter set forth. Such reserve fund shall consist of annual deposits by the Contractor of not less than \$50,000 to a special account created by the Contractor for this purpose. Such annual deposits shall continue until the amount in the reserve fund is not less than \$250,000. Expenditures shall be made from such reserve fund only for meeting unforeseen extraordinary costs which are the responsibility of the Contractor for operation and maintenance, repair and replacement of the transferred works, and for operation and maintenance during periods of special stress, such as may be caused by drought, hurricane, earthquakes, storms, or other like emergencies. Whenever said reserve fund is reduced below \$250,000 by expenditures therefrom, it shall be restored by the accumulation of annual deposits of \$50,000 commencing with the next year following that in which the fund is reduced below said amount. During any period in which any of the Division Facilities are operated and maintained by the United States, such fund shall be available for like use by the United States. At the option of the Contractor, the reserve fund may be invested to the extent permitted by law: Provided, That such reserve fund may be made available within a reasonable time to meet the expenses for the purpose for which it

1 was accumulated: Provided further, That upon mutual agreement said
2 fund and the annual installments may be adjusted to reflect the addition,
3 deletion, or changes in the transferred works and operation and mainte-
4 nance costs not contemplated when this contract was executed.

5 WATER AND AIR POLLUTION CONTROL

6 21. The Contractor, in carrying out this contract, shall comply
7 with all applicable water and air pollution laws and regulations of
8 the United States and the State of California and shall obtain all
9 required permits or licenses from the appropriate Federal, State, or
10 local authorities.

11 DRAINAGE STUDIES AND FACILITIES

12 22. To aid in determining the source and solution of future
13 potential drainage problems, the Contractor shall initiate and maintain,
14 in a manner satisfactory to the Contracting Officer, a program of ground-
15 water observation in order to delineate shallow water-table areas and
16 furnish annually to the Contracting Officer, during the term of this
17 contract and any renewal thereof, records, and analyses of such
18 observations as they relate to potential drainage problems.

19 RIGHT TO RETURN FLOWS

20 23. The United States reserves the right to all waste, seepage,
21 and return-flow waters derived from water furnished to the Contractor
22 which escapes or is discharged beyond the District's boundaries. Nothing

1 herein shall be construed as claiming for the United States any right,
2 as waste, seepage, or return flow, to water being used pursuant to this
3 contract for surface irrigation or underground storage within the
4 District's boundaries by the Contractor, or those claiming by or through
5 the Contractor.

6 LANDS NOT TO RECEIVE WATER FURNISHED TO CONTRACTOR
7 BY UNITED STATES UNTIL OWNERS
8 THEREOF EXECUTE CERTAIN CONTRACTS

8 24. No water made available pursuant to this contract shall be
9 furnished to any excess lands as defined in Article 26 hereof unless
10 the owners thereof shall have executed valid recordable contracts in
11 form prescribed by the United States, agreeing to the provisions of
12 this article and Articles 25 and 26 hereof, agreeing to the appraisal
13 provided for in Article 25 hereof and that such appraisal shall be
14 made on the basis of the actual bona fide value of such lands at the
15 date of the appraisal without reference to the construction of the
16 Project, all as hereinafter provided, and agreeing to the sale of
17 such excess lands under terms and conditions satisfactory to the
18 Secretary and at prices not to exceed those fixed, as hereinafter
19 provided. No sale of any excess lands shall carry the right to receive
20 water made available pursuant to this contract, unless and until the
21 purchase price involved in such sale is approved by the Contracting
22 Officer and upon proof of fraudulent representation as to the true
23 consideration involved in such sales the United States may instruct

1 the Contractor by written notice to refuse to furnish any water
2 subject to this contract to the land involved in such fraudulent
3 sales and the Contractor thereafter shall not furnish said water
4 to such lands until such written notice is withdrawn: Provided,
5 That the requirements of this article and Articles 25 and 26 hereof
6 shall not apply to any use on excess land of any water pumped from
7 any underground source.

8 VALUATION AND SALE OF EXCESS LANDS

9 25. (a) The value of the excess irrigable lands within the
10 District as defined in Article 26, held in private ownership of
11 large landowners as defined in said article for the purpose of this
12 contract, shall be appraised in a manner to be prescribed by the
13 Secretary. At the option of the large landowner, however, the
14 value of such land may be appraised, subject to the approval thereof
15 by the Secretary, by three appraisers. One of said appraisers shall
16 be designated by the Secretary and one shall be designated by the
17 Contractor and the two appraisers so appointed shall name the third.
18 If the appraisers so designated by the Secretary and the Contractor
19 are unable to agree upon the appointment of the third, a Presiding
20 Justice of the Court of Appeal of the State of California, First
21 Appellate District, shall be requested to name the third appraiser.

22

. . . Articles 24 - 25 . . .

1 (b) The following principles shall govern the appraisal:
2 (1) No value shall be given such lands on account of
3 the existing or prospective possibility of securing water from
4 the Project; and
5 (2) The value of improvements on the land at the time
6 of said appraisal shall be included therein, but shall also be
7 set forth separately in such appraisal.
8 (c) The excess land of any large landowners shall be
9 reappraised in the manner provided in subdivision (a) hereof at the
10 instance of the United States or at the request of said landowner.
11 The cost of the first appraisal of each tract of excess land
12 shall be paid by the United States. The cost of each appraisal
13 thereafter shall be paid by the party requesting such appraisal.
14 (d) Any improvements made or placed on the appraised land
15 after the appraisal hereinabove provided for prior to sale of the
16 land by a large landowner may be appraised in like manner.
17 (e) Excess irrigable lands sold by large landowners within
18 the District shall not carry the right to receive water made available
19 pursuant to this contract for such land and the Contractor agrees to
20 refuse to furnish such water to lands so sold until, in addition to
21 compliance with the other provisions hereof, a verified statement
22 showing the sale price upon any such sale shall have been filed with

. . . Article 25 . . .

1 property, the beneficial ownership of each coowner shall be that
2 fraction of the total acreage held in coownership which equals the
3 coowner's fractional interest therein. The term "large landowner"
4 means an owner of excess lands, and the term "nonexcess land" means
5 all irrigable land within the District which is not excess land as
6 defined herein. Lands owned by the State, its political subdivisions,
7 and agencies shall be administered in accordance with Public Law 91-310.

8 (b) Each large landowner as a condition precedent to the
9 right to receive water made available pursuant to this contract for
10 any of his excess land shall:

11 (1) Before any water is furnished by the Contractor
12 to his excess land, execute a valid recordable contract in form
13 prescribed by the United States agreeing to the provisions con-
14 tained in this article and Articles 24 and 25 hereof and agreeing
15 to dispose of his excess lands in accordance therewith to persons who
16 can take title thereto as nonexcess land as herein provided and at a
17 price not to exceed the approved, appraised value of such excess land
18 and within a period of 10 years after the date of the execution of
19 said recordable contract and agreeing further that if said land is
20 not so disposed of within said period of 10 years the Secretary shall
21 have the power to dispose of said land at the appraised value thereof
22 fixed as provided herein or such lower price as may be approved by the

1 owner of such land, subject to the same conditions as would apply to
2 the same conditions as would apply to such large landowner. The
3 Contractor shall refuse to furnish water to any large landowner
4 other than for his nonexcess lands until such owner meets the
5 condition precedent herein stated; and

6 (2) Within 30 days after the date of notice from the
7 United States requesting a large landowner to designate his
8 irrigable lands within the District which he desires to designate
9 as nonexcess lands, file in the office of the Contractor, in
10 duplicate, one copy thereof to be furnished by the Contractor to
11 the Bureau of Reclamation his written designation and description
12 of lands so selected to be nonexcess land and upon failure to do so
13 the Contractor shall make such designation and mail a notice thereof
14 to the large landowner, and in the event the Contractor fails to
15 act within such period of time as the Contracting Officer considers
16 reasonable, such designation will be made by the Contracting Officer,
17 who will mail a notice thereof to the Contractor and the large land-
18 owner. The large landowner shall become bound by any such action
19 on the part of the Contractor or the Contracting Officer and the
20 Contractor will furnish said water only to the land so designated
21 to be nonexcess land. A large landowner may with the consent of
22 the Contracting Officer designate land other than that previously
23 designated as nonexcess land: Provided, That an equal acreage of

1 the land previously designated as nonexcess shall upon such new
2 designation, become excess land thereafter subject to the
3 provisions of this article and Articles 24 and 25 of this contract
4 and shall be described in an amendment of such recordable contract
5 as may have been executed by the large landowner in the same
6 manner as if such land had been excess land at the time of the
7 original designation.

8 REPEAL OR AMENDMENT OF FEDERAL RECLAMATION LAWS

9 27. In the event that the Congress of the United States repeals
10 the so-called excess land provisions of the Federal reclamation laws,
11 Articles 24, 25, and 26 of this contract will no longer be of any force
12 or effect and, in the event that the Congress amends the excess land
13 provisions or other provisions of the Federal reclamation laws, the
14 United States agrees, at the option of the Contractor, to negotiate
15 amendments of appropriate articles of this contract, all consistent
16 with the provisions of such amendment.

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1 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

2 28. (a) The obligation of the Contractor to pay the United
3 States as provided in this contract is a general obligation of the
4 Contractor notwithstanding the manner in which the obligation may be
5 distributed among the Contractor's water users and notwithstanding
6 the default of individual water users in their obligations to the
7 Contractor.

8 (b) The payment of charges becoming due hereunder is a
9 condition precedent to receiving benefits under this contract. No
10 water will be made available to the Contractor through Project facilities
11 during any period in which the Contractor may be in arrears in the
12 advance payment of water rate or any operation and maintenance charges
13 due the United States.

14 CHANGES IN THE CONTRACTOR'S ORGANIZATION

15 29. The boundaries of the District, being the same as the exterior
16 boundaries of the County of Santa Clara, are established by Section 2
17 of the Santa Clara Valley Water District Act (Statutes of California 1951,
18 chapter 1405, as amended). The District cannot be dissolved nor can its
19 boundaries be changed except by State statute. The Contractor will not
20 recommend to the California legislature any enactment which will result
21 in a dissolution or change in the boundaries of the District except with
22 the prior written concurrence of the Contracting Officer.

23 BOOKS, RECORDS, AND REPORTS

24 30. The Contractor shall establish and maintain accounts and
25 other books and records pertaining to its financial transactions, land

1 use and crop census, water use, and to other matters as the Contracting
2 Officer may require. Reports thereon shall be furnished to the Con-
3 tracting Officer in such form and on such date or dates as he may require.
4 Subject to applicable Federal laws and regulations each party shall have
5 the right during office hours to examine and make copies of each other's
6 books and records relating to matters covered by this contract.

7 RULES AND REGULATIONS

8 31. The Contracting Officer, after offering the Contractor an
9 opportunity for consultation, shall make rules and regulations and
10 supply necessary details for administration of this contract. Such
11 rules and regulations shall be consistent with the provisions of this
12 contract, the laws of the United States, and the State of California.
13 The Contracting Officer may add to or modify them as may appear
14 necessary and the Contractor shall observe such rules and regulations.

15 DETERMINATION OF FINDINGS OF FACTS

16 32. Where the terms of this contract provide for action to be based
17 upon the opinion or determination of either party to this contract, said
18 terms shall not be construed as permitting such action to be predicated
19 upon arbitrary, capricious, or unreasonable opinions or determination,
20 whether or not stated to be conclusive. If the Contractor questions
21 any determination made by the Contracting Officer, the findings of facts
22 shall be made by the Secretary of Interior after consultation with the
23 Contractor and shall be binding upon the parties.

TITLE VI, CIVIL RIGHTS ACT OF 1964

33. (a) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or, in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the Federal financial assistance is extended to it by the United States.

1 (c) This assurance is given in consideration of and for
2 the purpose of obtaining any and all Federal grants, loans, contracts,
3 property, discounts, or other Federal financial assistance extended
4 after the date hereof to the Contractor by the United States, including
5 installment payments after such date on account of arrangements for
6 Federal financial assistance which were approved before such date. The
7 Contractor recognizes and agrees that such Federal financial assistance
8 will be extended in reliance on the representations and agreements
9 made in this assurance, and that the United States shall reserve the
10 right to seek judicial enforcement of this assurance. This assurance
11 is binding on the Contractor, its successors, transferees, and assignees.

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EQUAL OPPORTUNITY

34. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

1 (c) The Contractor will send to each labor union or
2 representative of workers with which it has a collective
3 bargaining agreement or other contract or understanding, a
4 notice, to be provided by the Contracting Officer, advising
5 the labor union or workers' representative of the Contractor's
6 commitments under this Equal Opportunity clause, and shall
7 post copies of the notice in conspicuous places available to
8 employees and applicants for employment.

9 (d) The Contractor will comply with all provisions of
10 Executive Order No. 11246 of September 24, 1965, as amended,
11 and of the rules, regulations, and relevant orders of the
12 Secretary of Labor.

13 (e) The Contractor will furnish all information and
14 reports required by said amended Executive Order and by the
15 rules, regulations, and orders of the Secretary of Labor, or
16 pursuant thereto, and will permit access to its books, records,
17 and accounts by the Contracting Officer and the Secretary of
18 Labor for purposes of investigation to ascertain compliance
19 with such rules, regulations, and orders.

20 (f) In the event of the Contractor's noncompliance with
21 the Equal Opportunity clause of this contract or with any of
22 the said rules, regulations, or orders, this contract may be

1 canceled, terminated, or suspended, in whole or in part, and
2 the Contractor may be declared ineligible for further Govern-
3 ment contracts in accordance with procedures authorized in said
4 amended Executive Order, and such other sanctions may be imposed
5 and remedies invoked as provided in said Executive Order, or by
6 rule, regulation, or order of the Secretary of Labor, or as
7 otherwise provided by law.

8 (g) The Contractor will include the provisions of para-
9 graphs (a) through (g) in every subcontract or purchase order
10 unless exempted by rules, regulations, or orders of the Secretary
11 of Labor issued pursuant to Section 204 of said amended Executive
12 Order, so that such provisions will be binding upon each sub-
13 contractor or vendor. The Contractor will take such action with
14 respect to any subcontract or purchase order as the Contracting
15 Officer may direct as a means of enforcing such provisions,
16 including sanctions for noncompliance: Provided, however, That
17 in the event the Contractor becomes involved in, or is threatened
18 with, litigation with a subcontractor or vendor as a result of
19 such direction by the Contracting Officer, the Contractor may
20 request the United States to enter into such litigation to
21 protect the interests of the United States.

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1 CONTRACTOR'S RIGHTS TO WATER

2 35. (a) The right to the beneficial use of water furnished
3 to the Contractor pursuant to this contract and any renewal hereof
4 shall not be disturbed so long as the Contractor fulfills all of
5 its obligations under this contract and such renewal.

6 (b) Except as provided by Section 14 of the Reclamation
7 Project Act of 1939, or as otherwise provided by law, the Contracting
8 Officer shall not furnish water to other contractors or water users
9 for use within the County of Santa Clara without the prior written
10 approval of the Contractor unless the Contractor determines that it
11 is unable or unwilling to furnish such water.

12 (c) The provisions of this contract shall not be applicable
13 to or affect water or water rights now owned or hereafter acquired by
14 the District or any landowner therein other than from the United
15 States.

16 CONVERSION OF PORTION OF CONTRACT UNDER SECTION (9)D
17 OF THE RECLAMATION PROJECT ACT OF 1939

18 36. Upon the request of the Contractor to the Contracting
19 Officer not later than one year prior to the expiration of this
20 contract, insofar as it relates to agricultural water, whenever,
21 account being taken of the amount then credited to the costs of
22 construction of Project water supply works, the remaining amount of

1 construction costs of water supply works which is properly assignable
2 for ultimate return by the Contractor, as established by the Secretary
3 pursuant to (3) Section 1 of Public Law 84-643 (70 Stat. 483), probably
4 can be repaid to the United States within the term of a contract under
5 subsection (d) of Section 9 of the Reclamation Project Act of 1939
6 (53 Stat. 1187), the portions of this contract pertaining to the
7 furnishing of agricultural water may be converted to a contract under
8 said subsection (d) upon terms and conditions agreeable to the United
9 States and the Contractor.

10 RENEGOTIATION

11 37. If hereafter the United States enters into, renews, or
12 amends any contract for water from the Project which, because of a
13 change in general Reclamation law or generally applicable policy,
14 contains terms and conditions which would be substantially more favor-
15 able to the Contractor with respect to matters similar to those
16 contained in this contract, the United States upon the Contractor's
17 request, will renegotiate this contract for the purpose of providing
18 comparable terms in accordance with the new law or policy.

19 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

20 38. The expenditure of any money or the performance of any work
21 by the United States hereunder which may require appropriation of
22 money by the Congress or the allotment of funds shall be contingent

1 upon such appropriation or allotment being made. The failure of the
2 Congress to appropriate funds or the absence of any allotment of funds
3 shall not relieve the Contractor from any obligation under this contract.
4 No liability shall accrue to the United States in case such funds are
5 not appropriated or allotted.

6 OFFICIALS NOT TO BENEFIT

7 39. (a) No member of or delegate to Congress or resident com-
8 missioner shall be admitted to any share or part of this contract or
9 to any benefit that may arise herefrom. This restriction shall not be
10 construed to extend to this contract if made with a corporation for its
11 general benefit.

12 (b) No official of the Contractor shall receive any benefit
13 that may arise by reason of this contract other than as a landowner
14 within the Project and in the same manner as other landowners within
15 the Contractor's service area.

16 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

17 40. The provisions of this contract shall apply to and bind the
18 successors and assigns of the parties hereto, but no assignment or
19 transfer of this contract or any part or interest therein shall be
20 valid until approved by the Contracting Officer.

21

22

1 IN WITNESS WHEREOF, the parties have executed this contract
2 on the date first above written.

3 THE UNITED STATES OF AMERICA

4
5 APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

6 *James C. Turner*
7 OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By *B. E. Martin*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

8 SANTA CLARA VALLEY WATER DISTRICT

9 By *Charles F. Bush*
Chairman, Board of Directors

10 (SEAL)

11
12 Attest:

13 *Walter T. Edwards*
14 Clerk



RESOLUTION NO. 77- 50

APPROVING AND AUTHORIZING
EXECUTION OF CONTRACT WITH
THE UNITED STATES

RESOLVED, by the Board of Directors of Santa Clara Valley Water District that, it appearing, and being hereby found that all requirements of law have been duly met and that the form of contract hereinafter identified is in the best interests of the residents, farms and industries of the County of Santa Clara, the CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION, being R.O. Draft 3/2-1976 as modified and amended by letter to this District dated June 2, 1977, from the Regional Director, Mid-Pacific Region, United States Bureau of Reclamation, shall be and the same is hereby approved and the Chairman of this Board shall be and he is hereby authorized to execute the same for and on behalf of Santa Clara Valley Water District.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District this 7th day of June, 1977, by the following vote:

AYES: Directors J. CHINI, M. E. DULLEA, P. T. FERRARO,
J. J. LEWIS, L. PERALTA, G. RUSH, R. T. SAPP
NOES: Directors NONE
ABSENT: Directors NONE

SANTA CLARA VALLEY WATER DISTRICT

By: Courtland M. Rush
Chairman of the Board of Directors

ATTEST: VIOLET V. ENANDER

Violet V. Enander
Clerk of said Board of Directors

I hereby certify that the foregoing is a full, true and correct copy of the original thereof on file in my office.

DATED: June 7, 1977

Violet V. Enander
VIOLET V. ENANDER
Clerk, Board of Directors
Santa Clara Valley
Water District

EXHIBIT F

**COPY OF
SANTA CLARA VALLEY WATER DISTRICT
FIRST AMENDMENT AND ATTACHMENTS
(EXHIBIT "A", EXHIBIT "B", EXHIBIT "C"
AND EXHIBIT "D" dated March 28, 2007**



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-440
WTR-4.00

MAR 28 2007

RECEIVED		
APR - 2 2007		
DATE	INITIALS	CODE
		84-5600

Mr. Larry Wilson
Chair
Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118-3686

Subject: First Amendment Contract No. 7-07-02-W0023A Between the United States and Santa Clara Valley Water District (District) for Water Service and for Operation and Maintenance of Certain Works of the San Felipe Division – Central Valley Project, California

Dear Mr. Wilson:

Enclosed is an executed original of the subject contract amendment for your records. We would like to take this opportunity to express our appreciation for the District's cooperation and assistance in expediting the execution of the contract amendment.

If you have questions concerning this contract amendment, please contact Ms. Angela Slaughter, Repayment Specialist, at 916-978-5252.

Sincerely,

(sgd) Kirk C. Rodgers

Kirk C. Rodgers
Regional Director

Enclosure

cc: Mr. Thomas M. Berliner
Attorney
Duane Morris, LLP
1 Market Spear Tower No. 2000
San Francisco, California 94105-1104

bc: Deputy Director, Office of Program and Policy Services, Denver, CO
Attention: D-5600 (M. Peterson)
Assistant Solicitor, Water and Power Branch, Washington, DC
Regional Solicitor, Pacific Southwest Region, Sacramento, CA
Attention: Jim Turner
MP-440 (lab), SCC-440 (jt) (ea w/cpy encl.)
MP-3400 (w/original contract)

WBR:aslaughter:lab:2/12/2007:916-978-5252

H:\PUB440\CONTRACTS\Water Service Contracts\Long-term Contracts\San Felipe
Division\Transmittal Letters\scvwd w0023a-2-12-2007.doc

Surnames: MP-440(2), MP-400, -1150, MP-115, MP-100

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

SCVWD ENACTED COPY
Contract Administration Unit
AGMT: A0315W2 FILE: 3163-363

FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND
SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE FOR
OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE
DIVISION

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Exhibit A – Contractors Water Service Area

Exhibit B – Rates and Charges

Exhibit C – San Felipe Division Reimbursable Capital Costs

Exhibit D – Santa Clara Valley Water District Repayment Schedule

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

FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND
SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND
OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE
DIVISION

THIS FIRST AMENDMENT CONTRACT No. 7-07-20-W0023A, is made this 1 day
of 1, 2007 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and
acts amendatory and supplementary thereto, including but not limited to, the Acts of August 26,
1937 (50 Stat. 844), as amended and supplemented; August 4, 1939 (53 Stat. 1187), as amended
and supplemented; July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), August 27, 1967 (81
Stat. 173), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and
Title XXXIV of the Act of October 30, 1992, (106 Stat 4706), all collectively hereinafter
referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
hereinafter referred to as the United States, and THE SANTA CLARA VALLEY WATER
DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,
duly organized, existing, and acting pursuant to the laws thereof;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley
Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of water of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the Contractor and the United States entered into a contract for delivery of Central Valley Project water to the Contractor, Contract No. 7-07-20-W0023, dated June 7, 1977, which established terms for the delivery to the Contractor of Central Valley Project Water from January 1, 1988 through December 31, 2027, (hereinafter referred to as the "Existing Contract"); and

[3rd] WHEREAS, in 1992, Congress enacted the Central Valley Project Improvement Act (CVPIA) (106 Stat. 4706), which addressed the renewal of existing long-term water service contracts and established that certain terms should be included in contracts renewed or amended after January 1, 1988; and

[4th] WHEREAS, to promote compliance with the CVPIA, consistent with the goal of ensuring a reliable long-term water supply for the Contractor, the parties desire to amend the Existing Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

MODIFICATION TO EXISTING CONTRACT

1. Article 1 of the Existing Contract entitled **DEFINITIONS** is amended as follows:

a) Subdivisions (d) and (e) are hereby deleted in their entirety and replaced with the following definitions, and the remaining definitions are redesignated (e) – (k) accordingly:

(d) “San Felipe Division Facilities” shall mean those existing and future Project facilities generally west of San Luis Reservoir used to divert, store and convey water to the Contractor(s). San Felipe Facilities are divided into reaches, as defined as follows:

i) “Reach 1” shall mean the facilities from the Pacheco Tunnel to and including the Pacheco Bifurcation Structure, including but not limited to, the Pacheco Pumping Plant Substation, Pacheco Pumping Plant Substation – 70kvLine, Pacheco Tunnel (including the inlet works in and under San Luis Reservoir), Pacheco Conduit and Pacheco Bifurcation Structure;

ii) “Reach 2” shall mean the facilities from, but not including, the Pacheco Bifurcation Structure to and including the Watsonville Turnout facility, and Santa Clara Tunnel and Conduit;

iii) “Reach 3” shall mean the facilities from, but not including, the Watsonville Turnout facility to and including the Coyote Pumping Plant, including but not limited to, the Santa Clara Tunnel and Conduit, Coyote Pumping Plant, Coyote Pumping Plant Substation and Coyote Pumping Plant 115 kv Line;

iv) “San Benito Facilities” shall mean San Felipe Division Facilities used to deliver water to the San Benito Water District exclusively, including the Hollister Conduit and the San Justo Dam and Reservoir;

b) The following definitions are hereby added to Article 1 as follows:

(l) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(m) "Contract," shall mean the Existing Contract as amended hereby;

(n) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract, as set forth on Exhibit "A" attached hereto which may be modified from time to time without amendment to this Contract;

(o) "Delivered Water" or "Water Delivered" shall mean Project water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(p) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting Officer, that shall amortize the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, or facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(b) and (3)(C) of the RRA. The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations of the RRA;

(q) "Operating Non-Federal Entity" shall mean the Operating Non-Federal Entity(ies) and their successors or assigns, which have the obligation to operate and maintain all or a portion of the Project facilities including the Division Facilities pursuant to written agreements with the United States. As of the effective date of this Contract, the Operating Non-Federal Entity(ies) were the San Luis & Delta-Mendota Water Authority with respect to certain Delta Division Facilities, Santa Clara Valley Water District with respect to certain Division Facilities, and the San Benito County Water District with respect to certain Division Facilities;

(r) "Rates" shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable ratesetting policies for the Project, as described in Article 11 of this Contract;

(s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(t) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 11 of this Contract.

2. The last sentence of subdivision (b) of Article 7 of the Existing Contract entitled WATER SHORTAGE AND APPORTIONMENT is hereby deleted and replaced with the following:

"In the event reduced deliveries within the Division are necessary, Project water furnished under this contract for M&I purposes will be allocated in accordance with the CVP M&I Water

111 Shortage Policy. Such Policy shall be amended, modified, or superseded only through public
112 notice and comment procedure.”

113 3. Article 8 of the Existing Contract entitled QUALITY OF WATER is
114 amended to add the following subdivision:

115 (b) The Contractor shall be responsible for compliance with all State and
116 Federal water quality standards applicable to the Contractor for surface and subsurface
117 agricultural drainage discharges generated through the use of Federal facilities for Water
118 Delivered to the Contractor.

119 4. Article 9(d)(1) of the Existing Contract entitled POINT OF DELIVERY –
120 MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION – is deleted in its entirety
121 and replaced with the following:

122 9. (d)(1)(i) The Contractor has established a measuring program satisfactory
123 to the Contracting Officer. The Contractor shall ensure that all surface water delivered for
124 irrigation purposes to the Contractor’s customers within the Contractor’s Service Area is
125 measured at each agricultural turnout and such water delivered for M&I purposes to the
126 Contractor’s customers is measured at each M&I service connection. The water measuring
127 devices or water measuring methods of comparable effectiveness must be acceptable to the
128 Contracting Officer. The Contractor shall be responsible for ensuring that its retail customers are
129 installing, operating, and maintaining and repairing all measuring devices and implementing all
130 water measuring methods at no cost to the United States. The Contractor shall use the
131 information obtained from such water measuring devices or water measuring methods to ensure

its proper management of the water, to bill water users for water delivered by the Contractor;
and, if applicable, to record water delivered for M&I purposes by customer class as defined in
the Contractor's water conservation plan provided for in Article 43 of this Contract. Nothing
herein contained, however, shall preclude the Contractor from establishing and collecting any
charges, assessments, or other revenues authorized by California law. The Contractor shall
include a summary of all its annual surface water deliveries in the annual report described in
subdivision (c) of Article 43 of this Contract.

(d)(1)(ii) To the extent the information has not otherwise been
provided, upon the effective date of this Contract, the Contractor shall provide to the Contracting
Officer a written report describing the measurement devices or water measuring methods being
used or to be used to implement subdivision (d)(1)(i) of this Article and identifying the
agricultural turnouts and the M&I service connections or alternative measurement programs
approved by the Contracting Officer, at which such measurement devices or water measuring
methods are being used, and, if applicable, identifying the locations at which such devices and/or
methods are not yet being used including a time schedule for implementation at such locations.
The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy,
and necessary modifications, if any, of the measuring devices or water measuring methods
identified in the Contractor's report and if the Contracting Officer does not respond in such time,
they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the
measuring devices or methods are inadequate, the parties shall within 60 days following the
Contracting Officer's response, negotiate in good faith the earliest practicable date by which the

Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (d)(1)(i) of this Article.”

(d)(1)(iii) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (d)(1)(i) of this Article.”

(d)(1)(iv) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.”

(d)(1)(v) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Agricultural Water and M&I Water taken during the preceding month.

5. Article 11 of the Existing Contract entitled **RATES OF PAYMENT FOR WATER** and Article 12 of the Existing Contract entitled **METHOD OF PAYMENT FOR WATER** are hereby deleted in their entirety and replaced with the following:

RATES AND METHOD OF PAYMENT FOR WATER

11. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary of the Interior's Irrigation Ratesetting Policy and the Secretary's then-existing ratesetting policy for M&I water. Such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)

174 other applicable provisions of this Contract. Payments shall be made by cash transaction,
175 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
176 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
177 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," which
178 shall be attached hereto, as may be revised annually.

179 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,
180 and Tiered Pricing Component as follows:

181 (1) Prior to July 1 of each calendar year, the Contracting Officer shall
182 provide the Contractor an estimate of the Charges for Project water that will be applied to the
183 period October 1, of the current calendar year, through September 30, of the following calendar
184 year, and the basis for such estimate. The Contractor shall be allowed not less than two months
185 to review and comment on such estimates. On or before September 15 of each calendar year, the
186 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
187 period October 1 of the current calendar year, through September 30, of the following calendar
188 year, and such notification shall revise Exhibit "B."

189 (2) Prior to October 1 of each calendar year, the Contracting Officer
190 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
191 for Project water for the following year and the computations and cost allocations upon which
192 those Rates are based. The Contractor shall be allowed not less than two months to review and
193 comment on such computations and cost allocations. By December 31 of each calendar year, the

Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the upcoming year, and such notification shall revise Exhibit "B."

(c) At the time the Contractor submits the initial schedule for the delivery of Project water for each year pursuant to Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project water scheduled to be delivered pursuant to this Contract during the first two calendar months of the year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the water scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for water scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of water scheduled and paid for by the Contractor, no additional Project water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project water is made. Final adjustment between the advance payments for the water scheduled and payments for the quantities of Water Delivered during

215 each year pursuant to this Contract shall be made as soon as practicable but no later than April
216 30th of the following year.

217 (d) The Contractor shall also make a payment in addition to the Rate(s) in
218 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
219 appropriate Tiered Pricing Component then in effect, before the end of the month following the
220 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
221 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
222 consistent with the quantities of agricultural water and M&I water delivered as shown in the
223 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or,
224 if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery
225 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
226 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges
227 shall be made through the adjustment of payments due to the United States for Charges for the
228 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing
229 Component shall be computed pursuant to Article 14 of this Contract.

230 (e) The Contractor shall pay for any Water Delivered under subdivision (g) or
231 (h) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
232 statutes, associated regulations, any applicable provisions or guidelines or ratesetting policies;
233 Provided, That the Rate for Water Delivered under subdivision (g) or (h) of Article 3 of this
234 Contract shall be no more than the otherwise applicable Rate for agricultural water or M&I water
235 under subdivision (a) of this Article;

236 (f) Payments to be made by the Contractor to the United States under this
237 Contract may be paid from any revenues available to the Contractor.

238 (g) All revenues received by the United States from the Contractor relating to
239 the delivery of Project water or the delivery of non-Project water through Project facilities shall
240 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
241 regulations, and the then current Project ratesetting policies for M&I water or agricultural water.

242 (h) The Contracting Officer shall keep its accounts pertaining to the
243 administration of the financial terms and conditions of its long-term contracts, in accordance
244 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
245 The Contracting Officer shall, each year upon request of the Contractor, provide to the
246 Contractor a detailed accounting of all Project and Contractor expense allocations, the
247 disposition of all Project and Contractor revenues, and a summary of all water delivery
248 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
249 to resolve any discrepancies or disputes relating to accountings, reports, or information.

250 (i) The parties acknowledge and agree that the efficient administration of this
251 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
252 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
253 and/or for making and allocating payments, other than those set forth in this Article may be in
254 the mutual best interest of the parties, it is expressly agreed that the parties may enter into

255 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
256 this Contract is in effect without amending this Contract.

257 (j) (1) Beginning at such time as deliveries of Project water in a year
258 exceed 80 percent of the total available pursuant to this Contract, then before the end of the
259 month following the month of delivery the Contractor shall make an additional payment to the
260 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component
261 for the amount of Water Delivered in excess of 80 percent of the total available pursuant to this
262 Contract, but less than or equal to 90 percent of that total, shall equal one-half of the difference
263 between the Rate established under subdivision (a) of this Article and the Full Cost Rate for
264 agricultural water or Full Cost Rate for M&I water, whichever is applicable. The Tiered Pricing
265 Component for the amount of Water Delivered which exceeds 90 percent of the total available
266 pursuant to this Contract shall equal the difference between (i) the Rate established under
267 subdivision (a) of this Article and (ii) the Full Cost Rate for agricultural water or Full Cost Rate
268 for M&I water, whichever is applicable.

269 (2) Subject to the Contracting Officer's written approval, the
270 Contractor may request and receive an exemption from such Tiered Pricing Component for
271 Project water delivered to produce a crop which the Contracting Officer determines will provide
272 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
273 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
274 agricultural water shall apply only if such habitat values can be assured consistent with the

275 purposes of the CVPIA through binding agreements executed with or approved by the
276 Contracting Officer prior to use of such water.

277 (3) For purposes of determining the applicability of the Tiered Pricing
278 Component pursuant to this Article, Water Delivered shall include Project water that the
279 Contractor transfers to others and Project water provided to the Contractor pursuant to
280 subdivision (h) of Article 3 of this Contract, but shall not include Project water transferred to the
281 Contractor.

282 (k) For the term of this Contract, Rates applied under the respective
283 ratesetting policies will be established to recover only reimbursable O&M (including any
284 deficits) and capital costs of the Project, as those terms are used in the then-current Project
285 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
286 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
287 practices which implement the Contracting Officer's ratesetting policies will not be implemented
288 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
289 need, and impact of the proposed change.

290 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
291 CVPIA, the Rates for Project water transferred by the Contractor shall be the Contractor's Rates
292 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
293 Officer in the delivery of the transferred Project water to the transferee's point of delivery in
294 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving

295 lower Rates and Charges because of inability to pay and is transferring Project water to another
296 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
297 for transferred Project water shall not be adjusted to reflect the Contractor's inability to pay.

298 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
299 Officer is authorized to adjust determinations of ability to pay every five years.

300 REPAYMENT OBLIGATION

301 The Contractor's repayment obligation is described below:

302 12. (a) Repayment of San Felipe Division Facilities. The Contractor and
303 San Benito County Water District are each entering into contracts with the United States
304 committing to repay their separate, individual share of the total reimbursable capital costs for the
305 San Felipe Division Facilities. These contracts collectively will provide for repayment of the
306 unpaid reimbursable capital costs as of September 30, 2006. Until the final accounting of such
307 costs is available, the Contractor's and San Benito County Water District's interim repayment
308 terms will be based on the September 30, 2004, reimbursable capital costs for the San Felipe
309 Division Facilities, which totaled \$319,417,648, as shown on Exhibit C, which exhibit may be
310 revised by mutual agreement of the parties and San Benito County Water District without
311 amending this Contract. These reimbursable capital costs for the San Felipe Division Facilities
312 are summarized below:

313 (1) Reach 1 Facilities. The total reimbursable capital cost of Reach 1
314 Facilities including allocated interest during construction as of September 30, 2004, is
315 \$154,767,564.

316 (2) Reach 2 Facilities and Reach 3 Facilities. The total reimbursable
317 capital cost of Reach 2 Facilities and Reach 3 Facilities including allocated interest during
318 construction, as of September 30, 2004, is \$102,546,257.

319 (3) San Benito Facilities. The total reimbursable capital costs of the
320 San Benito Facilities including allocated interest during construction as of September 30, 2004,
321 is \$62,103,817.

322 (4) Interest During Construction. The reimbursable San Felipe
323 Division interest during construction, as of September 30, 2004, is \$32,227,149.

324 (b) Final Accounting for San Felipe Division Facilities. In the event that the
325 September 30, 2006, final accounting of the unpaid reimbursable capital costs for the San Felipe
326 Division Facilities is not available by December 31, 2007, the Contractor's and San Benito
327 County Water District's repayment obligations will be based on the most recent total
328 reimbursable capital costs available, and include all payments through December 31, 2007.

329 (c) San Felipe Division Facilities Interest Rates. The interest rate for the
330 Pacheco Tunnel Inlet used for M&I purposes is 3.137 percent per annum. The interest rate for the
331 San Felipe Division Facilities, not including the Pacheco Tunnel Inlet, used for M&I purposes is
332 3.50 percent per annum. Any calculation or recalculation of the semi-annual payment schedule
333 shown in Exhibit D in this Contract, or in any subsequent renewed or amended contract during the
334 remainder of the 50-year repayment period, shall be based on these interest rates.

(d) Repayment of Unpaid Capital Interest. The Contractor shall pay for unpaid capital interest, consistent with the "Agreement Among the United States, City of Fresno, City of Coalinga, Contra Costa Water District, Keswick County Service Area #25, Mountain Gate Community Services District, Sacramento Municipal Utility District, San Juan Water District, Santa Clara Valley Water District, Shasta County Water Agency, and City of Tracy for Settlement of the CVP M&I Ratesetting Lawsuit" entered into in 2005 to resolve City of Fresno v. United States, Civ. No. F-03-5350 (E.D.Cal). As specified in the settlement agreement, the interest rate for the unpaid balance shall be 3.50 percent per annum.

(e) Repayment Obligation and Annual Payment Schedule.

(1) Interim Repayment Obligation. The Contractor's interim repayment obligation will be computed by totaling its separate, individual share of reimbursable capital costs for Reach 1 Facilities, Reach 2 Facilities and Reach 3 Facilities, as of September 30, 2004, shown on Exhibit C, plus its unpaid capital interest, minus its accumulated repayment as of September 30, 2004. The Contractor's semiannual payment schedule shown on Exhibit D reflects a stepped repayment structure. Reach 1 Facilities costs are allocated 81.02% to the Contractor, and Reach 1 Facilities interest during construction (IDC) costs are allocated 94.816% to the Contractor.

(2) Final Repayment Obligation. Using the same allocation of Reach 1 Facilities cost to the Contractor and the same stepped repayment structure as in subparagraph (e)(1), the Contractor's final repayment obligation for San Felipe Division Facilities will be computed by totaling its separate, individual share of reimbursable capital costs for Reach 1

Facilities, Reach 2 Facilities and Reach 3 Facilities, as of September 30, 2006, plus its final balance of unpaid capital interest, minus its final accumulated repayment. The reimbursable San Felipe Division capital costs shown on Exhibit C, and the Contractor's semi-annual payment schedule on Exhibit D will be revised in a manner consistent with the above, without amending this Contract.

(f) Supplemental Payments and Relief from Payment Schedule.

(1) The Contractor may, at any time prior to the expiration of this Contract, make supplemental payment(s) of all or part of the unpaid balance for any or part of the Contractor's share of Reach 1 Facilities, Reach 2 Facilities or Reach 3 Facilities, or its unpaid capital interest, in which case the repayment schedule in Exhibit D will be shortened and will maintain the same stepped repayment structure over the remaining repayment period. Exhibit D may be revised by mutual agreement of the Parties without amending this Contract.

(2) If circumstances arise that compromise the Contractor's ability to make payments according to Exhibit D, the Contractor may request a deferment of said payments consistent with Reclamation law, and if approved, Exhibit D shall be revised accordingly by mutual agreement without amending this Contract.

(g) Upon repayment of the amounts required under this Article, the Contractor shall have no further repayment obligations associated with the capital costs of the San Felipe Division Facilities or unpaid capital interest.

6. Article 14 of the Existing Contract entitled PENALTY FOR DELINQUENT PAYMENTS is deleted in its entirety and replaced with the following:

CHARGES FOR DELINQUENT PAYMENTS

14. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

7. Subdivision 5 of Article 16 of the Existing Contract entitled CONVEYANCE OF NON-PROJECT WATER is hereby amended by deleting the words:

"the provisions of Articles 24, 25, and 26 hereof" and substituting the words "subdivision (b) of Article 31 of this Contract."

8. Article 17 of the Existing Contract entitled TRANSFER OF CARE, OPERATION, AND MAINTENANCE OF SANTA CLARA FACILITIES TO THE CONTRACTOR is hereby amended by changing its designation as article 17, to article "17.1", and the following is added as article 17:

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

17. (a) The operation and maintenance (O&M) of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor

shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its successor

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

9. The Existing Contract is hereby amended to add Articles 18.1 and 18.2
entitled OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER
DISTRICT; and RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA
VALLEY WATER DISTRICT:

OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER DISTRICT

18.1 (a) The O&M of a portion of the Division Facilities have been transferred to
Santa Clara Valley Water District by separate agreement (Contract No. 6-07-20-X0290) between
the United States and the existing San Felipe Division Contractors. Unless otherwise expressly
set forth herein, nothing in this Contract is intended to affect the rights and obligations set forth
in Contract No. 6-07-20-X0290. The United States and the Contractor agree that this Contract,
and any amendments or renewals thereto, shall be considered to be within the definition of
"Contract" as provided in Contract No. 6-07-20-X0290, so that the execution of this Contract
shall not impact the effectiveness of Contract No. 6-07-20-X0290, and Contract No. 6-07-20-
X0290 is hereby deemed to so provide.

(b) The Contractor is authorized under Contract No. 6-07-20-X0290 and this
Contract to undertake activities necessary for the complete care, operation, maintenance and
replacement of Reach 1 Facilities, Reach 2 Facilities and Reach 3 Facilities, to maintain efficient
and reliable operating condition and fulfillment of authorized San Felipe Division purposes. The
Contracting Officer shall use its best efforts to promptly review proposals for work to be
undertaken by the Contractor pursuant to said agreement, and to promptly coordinate and
facilitate such work. To the extent that the approval or determination of the Contracting Officer

is required in connection with any such activities, such approval or determination shall not be
unreasonably withheld.

RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA VALLEY WATER
DISTRICT

18.2 (a) Subject to Articles 18.2(b) and 18.2(c) of this Contract, the Contractor, as
the Operating Non-Federal Entity, has the right to require any entity or individual to pay the
Contractor an amount(s) to recover costs incurred by the Contractor for Reach 1 Facilities, Reach
2 Facilities and Reach 3 Facilities, in addition to O&M costs, provided that such amount(s) are
just and reasonable. In any contract or approval by the Contracting Officer to deliver water
through such Facilities, the Contracting Officer shall require the entity or individual to pay such
amount(s) to the Contractor, upon presentation of Contractor's invoice therefore.

(b) Unless otherwise agreed, the Contractor's right to recover capital costs
from San Benito County Water District is limited to such capital costs for its share of Reach 1
Facilities that are not paid directly to the United States by San Benito County Water District
under the terms of Contract No. 8-07-20-W0130A. San Benito County Water District's share of
Reach 1 Facilities shall be based on Article 3(b) of Contract No. 6-07-20-X0290 or as otherwise
mutually agreed upon by the Contractor and San Benito County Water District in a separate
contract.

(c) Amount(s) imposed by the Contractor to recover costs from Pajaro Valley
Water Management Agency shall include previous and current costs, and Pajaro Valley Water
Management Agency's share of capital repayment, all of which are to be consistent with the
cost-sharing provisions of Contract No. 6-07-20-X290, or as otherwise mutually agreed by the

Contractor and Pajaro Valley Water Management Agency in a separate contract. Such contract and amount(s) collected pursuant thereto shall satisfy the requirements of Article 3 of Contract No. 6-07-20-X0290.

10. Article 24 of the Existing Contract entitled LANDS NOT TO RECEIVE WATER FURNISHED TO CONTRACTOR BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS, Article 25 of the Existing Contract entitled VALUATION AND SALE OF EXCESS LANDS and Article 26 of the Existing Contract entitled EXCESS LANDS are hereby deleted in their entirety and the following is added as subdivision (b) of Article 31 of the Existing Contract entitled RULES AND REGULATIONS:

(b) Except as provided by the San Felipe Division Act of August 28, 1967 (81 Stat. 173), the parties agree that the delivery of agricultural water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

11. The Existing Contract is hereby amended to add Article 43 entitled WATER CONSERVATION:

WATER CONSERVATION

43. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this contract, the Contractor

shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project water delivery pursuant to this contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (b) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

530 (c) The Contractor shall submit to the Contracting Officer a report on the
531 status of its implementation of the water conservation plan on the reporting dates specified in the
532 then existing conservation and efficiency criteria established under Federal law.

533 (d) At 5 year intervals, the Contractor shall revise its water conservation plan
534 to reflect the then current conservation and efficiency criteria for evaluating water conservation
535 plans established under Federal law and submit such revised water management plan to the
536 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
537 the water conservation plan meets Reclamation's then current conservation and efficiency
538 criteria for evaluating water conservation plans established under Federal law.

539 (e) If the Contractor is engaged in direct groundwater recharge, such activity
540 shall be described in the Contractor's water conservation plan.

541 PRESERVATION OF EXISTING CONTRACT

542 12. Except as expressly modified by the provisions hereof, the Existing
543 Contract shall remain in full force and effect.

544 IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Contract No.
545 7-07-20-W0023A on the day and year first above written.

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APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. Turner
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

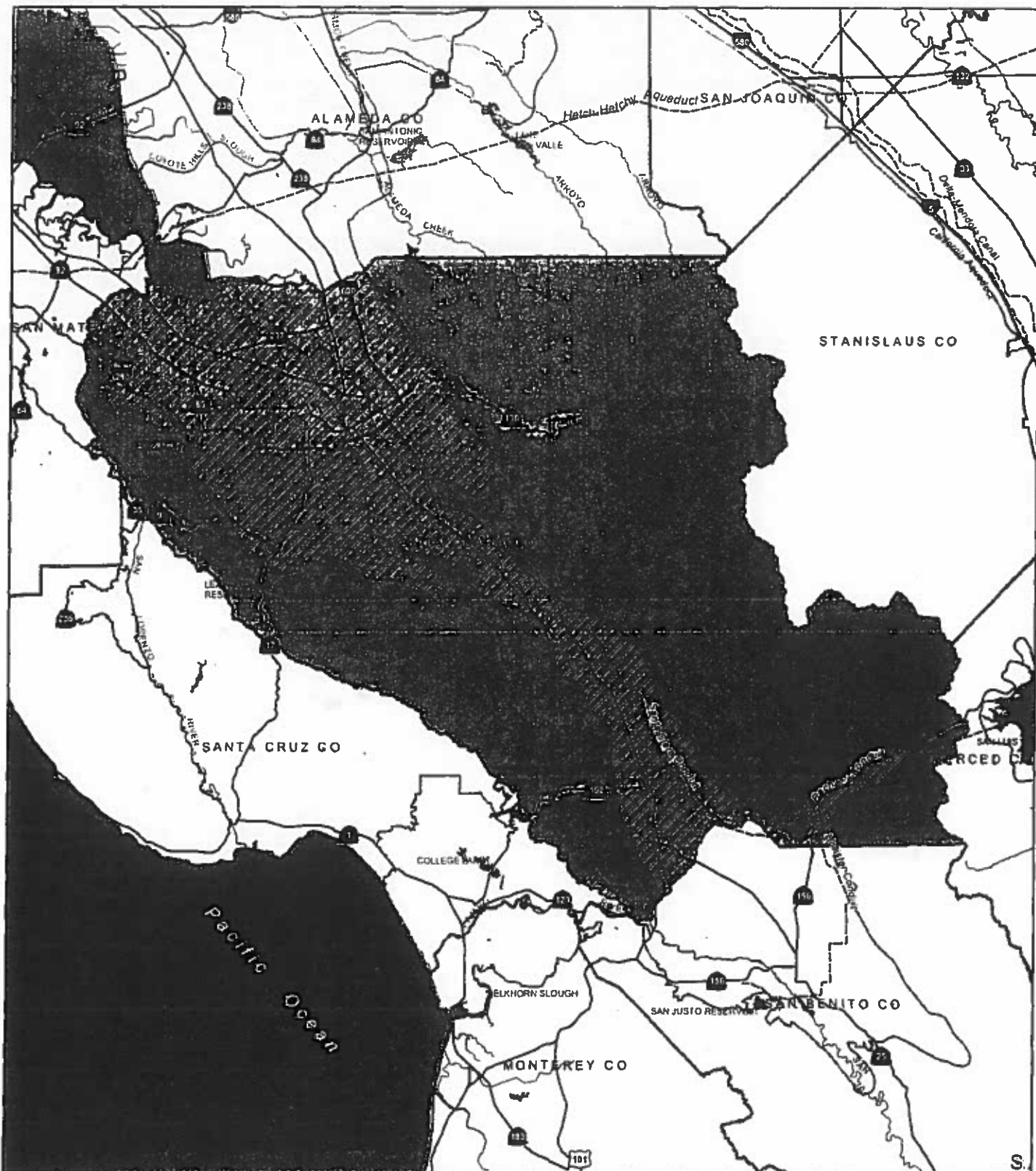
By: *Tubert*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

SANTA CLARA VALLEY WATER DISTRICT

By: *Tony Eschmeyer*
Chair, Board of Directors

Attest:

By: *Louise Keller*
Clerk of the Board of Directors



Santa Clara Valley W.D.

-  Santa Clara Valley WD Boundary
-  Santa Clara Valley WD Service Area
-  Consolidated Place of Use

Santa Clara Valley W.D. Contract No. 7-07-02-W0023A
Exhibit A

0 10 20 Miles



Date: June 27, 2006
File Name: N:\Districts\Contract\Santa Clara San Benito Joint\Santa Clara.mxd

921-202-5

EXHIBIT B
[RATES AND CHARGES]

EXHIBIT B

January 1, 2007 to December 31, 2007, Water Rates
for Amendment No. 1 to Contract No. 7-07-20-W0023
Santa Clara Valley WD

	Rates per Acre-Foot	
	Irrigation <u>Water</u>	M&I <u>Water</u>
<u>BUREAU OF RECLAMATION</u>		
<u>O&M COST-OF-SERVICE</u>		
<u>RATES:</u>		
Capital Rates	\$8.49	\$13.47
O&M Rates:		
Water Marketing	\$6.86	\$5.76
Storage	\$7.23	\$9.10
Direct Pumping	<u>\$9.91</u>	<u>\$9.91</u>
TOTAL O&M RATE:	\$24.00	\$24.77
CFO/PFR Adjustment Rate:	\$1.32	\$2.06
Deficit Rates:		
Non-Interest Bearing	N/A	N/A
Interest Bearing	<u>\$0.00</u>	<u>\$3.03</u>
TOTAL DEFICIT RATE:	\$0.00	\$3.03
TOTAL COST-OF-SERVICE RATES	<u>\$33.81</u>	<u>\$43.33</u>
<u>FULL COST RATES</u>		
<u>Section 202(3)</u> Rates is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981	\$49.92	

Section 205(a)(3) Rate is applicable to a
Limited Recipient that did not receive
irrigation water on or before October 1, 1981. \$58.13

TIERED PRICING RATES

Tier 1 Pricing Rate <= 80%
of Contract total [COS Rate] \$33.81 \$43.33

Tier 2 Pricing Rate > 80%
<= 90%
of Contract Total [Full Cost Rate [(202(3)) +
(COS Rate)/2] \$41.87 \$48.29

Tier 3 Pricing Rate > 90%
of Contract Total [Full Cost Rate [202(3)]] \$49.92 \$53.24

SURCHARGES UNDER P.L. 102-575 TO
RESTORATION FUND *

Restoration Payments (3407 (d)(2)(A)) \$8.58 \$17.15

*Conveyance and Conveyance Pumping Operating & Maintenance cost were removed for
ratesetting purposes and are to be billed directly to the water authorities

** The surcharges are payments in addition to water rates and were determined pursuant to
Title XXXIV of Public Law 102-575. These surcharges are on a fiscal year basis (10/1-9/30)
and will change each fiscal year.

M&I HISTORIC USE
FOR 2006 CONTRACT YEAR:¹
111,000acre-feet

¹ If the historic use amount (as determined pursuant to the existing CVP M&I Water Shortage Policy) is less than 111,000
acre-feet, then the historic use shall be determined pursuant to Article 2 of the Water Reallocation Agreement between the
United States, Santa Clara Valley Water District and the San Luis Delta-Mendota Water Authority dated April 17, 1997.

EXHIBIT C
SAN FELIPE DIVISION REIMBURSABLE CAPITAL COSTS

	Total	Reach 1 Facilities	Reach 2 Facilities	Reach 3 Facilities	SBCWD Facilities
<u>Reclamation Facilities</u>					
Pacheco Pumping Plant	\$30,220,448	\$30,220,448			
Pacheco Substation 70 kv Line	\$239,745	\$239,745			
Pacheco Substation 70-kv IDC	\$5,044	\$5,044			
Pacheco Tunnel	\$75,352,668	\$75,352,668			
Pacheco Conduit	\$29,764,210	\$29,764,210			
Santa Clara Tunnel and Conduit	\$67,877,286		\$23,186,694	\$44,690,592	
Coyote Pumping Plant	\$16,493,415			\$16,493,415	
Coyote Pumping Plant - 115 kv Line	\$1,923,559			\$1,923,559	
Coyote Pumping Plant - 115 kv Line IDC	\$18,082			\$18,082	
Hollister Canal and Conduit	\$26,032,191				\$26,032,191
San Justo Dam & Reservoir	\$35,286,142				\$35,286,142
San Felipe Division IDC	\$32,227,149	\$17,075,058	\$4,907,593	\$9,459,014	\$785,484
San Felipe Division Permanent Operating Facilities	\$234,222	\$234,222			
San Felipe Division Wildlife Mitigation Lands	\$301,445	\$301,445			
<u>Power System</u>					
Pacheco Pumping Plant Substation	\$1,203,910	\$1,203,910			
Pacheco Pumping Plant IDC	\$370,824	\$370,824			
Coyote Pumping Plant Substation	\$1,649,124			\$1,649,124	
Coyote Pumping Plant IDC	\$218,184			\$218,184	
	\$319,417,648	\$154,767,574	\$28,094,287	\$74,451,970	\$62,103,817

Amounts listed for each facility include interest during construction.
Amounts reflected are as of September 30, 2004.

EXHIBIT D
SANTA CLARA VALLEY WATER DISTRICT
REPAYMENT SCHEDULE

PAYMENT SCHEDULE																
Payment #	Payment Due Date	Payment @			Interest Charges			Unpaid Cap Int			Principal Paid	Capital Interest	Remaining Balance	3.4814%	3.5000%	Total
		Interest	MI	MI	MI	MI	MI	MI	MI	MI						
41	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
42	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
43	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
44	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
45	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
46	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
47	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
48	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
49	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
50	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
51	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
52	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
53	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
54	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
55	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
56	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
57	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
58	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
59	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
60	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00

Weighted composite rate (across level) was 3.13% (95% CI 2.50-3.80%).

**Santa Clara Valley
Water District**



**CONFORMED COPY
BOARD AGENDA MEMO**

Meeting Date: 01/09/07
Agenda Item No.: **10**
Manager: K. Whitman
Extension: 2080
Directors: All

☐ Discussion ☒ Action ☐ Consent ☐ Information

SUBJECT: Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

RECOMMENDATION:

That the Board adopt the Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division (Attachment 1).

Failure to execute the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division (First Amendment) means that the District would continue to receive Central Valley Project (CVP) water service and continue to operate and maintain (O&M) certain San Felipe Division facilities under its existing CVP contract, which extends through 2027. Financial and administrative modifications to comply with the 1992 Central Valley Project Improvement Act (CVPIA) would likely be delayed until 2008 or later, after ongoing Endangered Species Act consultations are completed by the Bureau of Reclamation (Reclamation) on its CVP Operating Criteria and Plan, assuming that a long-term renewal contract can be negotiated successfully at that time. Also, the Agreement Between Santa Clara Valley Water District and San Benito County Water District for Repayment and Management of San Felipe Division Facilities (Santa Clara-San Benito Agreement) that the Board recently approved on November 28, 2006, will take effect only if both districts complete amendments of their respective CVP contracts. The Santa Clara-San Benito Agreement significantly reduces the District's share of existing San Felipe Division capital costs, provides greater ability to control future costs, and addresses other facility management issues of mutual benefit to the two districts.

RATIONALE:

Executive Limitation 5.7 states that the CEO shall not "make a single purchase, contract, 3rd party claim settlement of liability, or commitment in amounts greater than the following, unless authorized by the Board:

5.7.2 For Consultant Service Contracts—\$100,000."

ADOPTED

JAN 09 2006

SUBJECT: Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

Approval of the First Amendment may commit the District to paying up to \$390,000 in asset management consultant costs under the Santa Clara-San Benito Agreement, if San Benito County Water District follows through as expected with amendment of its CVP contract.

EL-3.7 COMPLIANCE:

Not applicable.

SUMMARY:

On February 28, 2006, staff informed the Board of impending action by Reclamation to release the District's draft long-term CVP renewal contract for 60-day public review. Shortly after that, Reclamation decided, in response to ongoing litigation, to re-initiate consultation under the Endangered Species Act on its CVP Operating Criteria and Plan. These consultations form part of the underlying environmental documentation for long-term contract renewal, and Reclamation therefore suspended contract renewals until the consultations are complete, which is expected by mid-2008.

On February 28, staff also described the District's overall strategy of amending its existing CVP contract in order to create an acceptable "fall back" position in the event of legal challenge of the renewal contract. Unlike other CVP contractors completing renewals under CVPIA, the District's existing CVP contract extends through 2027. Rather than have to pull together short-term interim contracts while legal challenges are resolved, Reclamation agreed to allow the District to step back to its existing contract as long as it was amended to include administrative and financial provisions of CVPIA. The amendment also establishes repayment of San Felipe Division facilities and allows repayment to continue in an orderly fashion, rather than lapse back to water service terms.

Attachment 2 contains the review draft of the First Amendment that was released for 60-day public review ending December 22, 2006.

Final forms of the following Exhibits for the First Amendment are also provided:

Attachment 3: Exhibit A, Santa Clara Valley Water District Service Area Map
Attachment 4: Exhibit C, San Felipe Division Reimbursable Plant in Service Costs
Attachment 5: Exhibit D, Santa Clara Valley Water District Repayment Schedule

Highlights of the First Amendment:

- Pursuant to CVPIA, all surface water delivered within the Districts service area must be measured at each agricultural turnout and M&I service connection. This requirement is also included in the District's interim CVP contract for the Mercy Springs joint assignment, and therefore is already being met.

SUBJECT: Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

- The District must develop and be implementing a CVPIA Water Management Plan that is determined by Reclamation to be in compliance with federal law prior to receiving CVP water under the amended contract. The Board adopted the CVPIA Water Management Plan by Board Resolution on June 27, 2006, and Reclamation has determined that the District is in compliance.
- Pursuant to CVPIA, all new, amended and renewed water service and repayment contracts must include a tiered pricing rate structure that applies to CVP water deliveries over 80 percent of the contract quantity. Therefore, CVP deliveries in excess of 122,000 acre-feet (80 percent of 152,500 acre-feet) will be subject to additional charges of \$5 to \$10 per acre-foot for M&I water, and \$8 to \$16 per acre-foot for Agricultural water. Modeling of District operations indicates that less than 3 percent of future CVP deliveries will be subject to tiered rates, due to plentiful local supplies that also occur in wet years, and due to the Water Reallocation Agreement under which the District voluntarily foregoes wet-year CVP water deliveries in return for more reliable dry-year CVP deliveries. As a result, it is anticipated that CVPIA tiered pricing will not change the quantity of CVP water requested by or delivered to the District, nor alter the District's water management.
- Repayment terms for existing San Felipe Division capital are established based on the cost allocation contained in the Santa Clara-San Benito Agreement. The District's cost allocation is reduced by \$35 million (net), resulting in a present-value savings of \$123 million over the repayment period, or over \$3 million annually.
- Under both the existing CVP contract and the First Amendment, San Felipe Division costs allocated to the District include capital costs for uncommitted capacity originally constructed to serve a future third contractor. Because the First Amendment establishes a fixed repayment obligation for the District, it also provides the District the right to recover these capital costs from third parties or future contractors that may wheel water through San Felipe Division facilities, in addition to O&M costs, provided that such wheeling rates are "just and reasonable".

CEQA REQUIREMENTS:

The First Amendment provides for repayment of San Felipe Division facilities, implementation of tiered pricing and water conservation reporting consistent with the Central Valley Project Improvement Act. The First Amendment will not result in any change in water deliveries, facilities, distribution or management of water compared to water deliveries, facilities, distribution or management of water that would occur under the District's existing CVP contract. None of the provisions of the First Amendment will result in a direct physical change to the environment, nor any reasonably foreseeable indirect change to the environment. Therefore, the First Amendment does not rise to the level of a "project" as defined by CEQA.

SUBJECT: Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

PUBLIC OUTREACH:

The San Felipe Division contract negotiations with Reclamation and San Benito were all publicly noticed, and the final contracts were released for 60-day public review that concluded on December 22, 2006.

FINANCIAL IMPACT:

The First Amendment will reduce the District's share of San Felipe Division capital costs by \$35 million (net), resulting from a \$58 million decrease in allocated M&I costs and a \$23 million increase in allocated Agricultural costs. This results in present-value savings of \$123 million over the repayment period through 2036, or savings of over \$3 million annually. The First Amendment establishes fixed, semi-annual payments of approximately \$7.5 million each, due in January and July each year, for San Felipe Division capital and unpaid capital interest. Funds for these payments are available in the FY07 Water Purchases budget, and are included in future Water Utility rate projections.

Other financial impacts related to the First Amendment were described in the November 28, 2006, agenda memorandum (Attachment 6) for approval of the Santa Clara-San Benito Agreement that will take effect upon completion of CVP contract amendments by both districts. New costs that would be incurred include (1) the District's share of consultant costs to develop a Reach 1 asset management plan (78 percent of a maximum amount of \$500,000, or up to \$390,000); and (2) provision of District staff time for technical consultation on issues related to San Justo Reservoir, up to 200 hours per year for five years (estimated value up to \$40,000 per year). Sufficient funds are available in the current budget to accommodate these new FY07 costs.

Comparison of water rates under the District's existing and amended CVP contracts are provided below:

M&I Cost per Acre-Foot	Existing Contract	Amended Contract
"In Basin" Water Service	\$41	\$41
CVPIA Restoration Fund	16	16
SL&DMWA O&M	11	11
San Felipe Division**	188	153
Tiered Rates* (Avg. Annual)	--	<1
Total	\$256	\$222

SUBJECT: Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

Agricultural Cost per Acre-Foot	Existing Contract	Amended Contract
"In Basin" Water Service	\$34	\$34
CVPIA Restoration Fund	8	8
SL&DMWA O&M	11	11
San Felipe Division**-SCVWD	41	41
Tiered Rates* (Avg. Annual)	--	<1
Subtotal	\$94	\$94
San Felipe Division***-Additional Capacity	--	32
Total	\$94	\$126

***CVPIA Tiered Rates:**

Tier	% of Contract Deliveries	M&I "In Basin" Rate	Ag "In Basin" Rate
1	0-80%	\$41	\$34
2	81-90%	\$46	\$42
3	91-100%	\$51	\$50

On a long-term average basis, the District anticipates taking little wet-year CVP water, and the average annual cost of CVPIA tiered rates is estimated to be less than \$1 per acre-foot.

****San Felipe Division:**

Under the First Amendment, San Felipe Division capital costs will be repaid in two fixed semi-annual payments, however, for purposes of comparison these annual payments have been converted to rates using the same water delivery base as the existing water service rates.

The District's existing CVP contract does not contain an Agricultural rate for San Felipe Division facilities. However, all Agricultural capital costs are required by law to be repaid by 2036, and absent the First Amendment or early renewal under CVPIA, would be included in the renewal contract negotiated in 2027.

*****Additional Capacity:**

Under the First Amendment, the District will be carrying additional San Felipe Division uncommitted capacity costs as part of its non-interest-bearing Agricultural cost allocation. The First Amendment provides mechanisms to recover a portion of these costs from San Benito County Water District, and also from third parties or future contractor(s) who wheel water through the facilities. At the end of 2036, the District will gain permanent rights to any additional capacity that is not reimbursed by San Benito County Water District or a future contractor.

RESOLUTION NO. 07-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF SANTA CLARA VALLEY WATER DISTRICT APPROVING THE FORM AND CONTENT OF AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

WHEREAS, on June 7, 1977, the District entered into Contract No. 7-07020-W0023, with the United States providing for water service from the United States Central Valley Project (CVP) through December 2027; and

WHEREAS, Section 3406(c)(3) of the Central Valley Project Improvement Act (CVPIA), Title XXXIV of Public Law 102-575, enacted on October 30, 1992, established that certain terms should be included in contracts renewed or amended after January 1, 1988; and

WHEREAS, to promote compliance with the CVPIA, consistent with the goal of improving financial certainty and reducing the cost of CVP water, the District and the United States desire to enter into the First Amendment; and

WHEREAS, all negotiations were conducted in public and were concluded in April 2006, and thereafter the First Amendment was made available for a 60-day public review and comment period; and

WHEREAS, the First Amendment does not result in a direct or indirect change to the environment; and

WHEREAS, it is in the best interest of the District that its existing water service contract with the United States of America be amended, thereby providing for a method for the repayment of San Felipe Division facilities in accordance with existing law;

WHEREAS, the U.S. Bureau of Reclamation requires that the District's Board of Directors approve the form and content of the contract entitled "The First Amendment to Contract Between the United States and Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division" and authorize the Chair, Board of Directors to execute the contract on behalf of the District.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on January 9, 2007:

AYES: Directors J. Judge, G. Zlotnick, R. Kamei, S. Sanchez, R. Santos,
L. Wilson, T. Estremera

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: 
TONY ESTREMER
Chair/Board of Directors

ATTEST: LAUREN L. KELLER

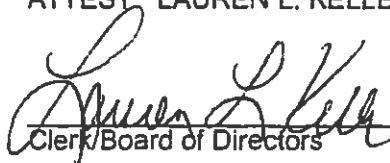

Clerk/Board of Directors

EXHIBIT G
SANTA CLARA VALLEY WATER DISTRICT
POINTS OF DELIVERY

Point(s) of Delivery: Central Valley Project (Project) water scheduled pursuant to Article 4 of Contract No. 7-07-20-W0023B shall be delivered to the Contractor at the headworks of the San Felipe Division Facilities and/or at any point or additional points of delivery on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

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Central Valley Project Contract - 2nd Amendment

November 17, 2020 Board Meeting

Staff Recommendations

- A. Receive information**
- B. Adopt resolution**
- C. Delegate execution to CEO**

Valley Water's 1977 Central Valley Project Contract

**Most significant and reliable source of
imported water**

1st Amendment - 2007

2nd Amendment - proposed 2020

PURPOSE

Flexible Operations - Water Supply Reliability

Additional Point of Delivery - South Bay Aqueduct

Alternative Conveyance Pathways



Benefits

- Flexibility / Reliability** - **Operations**
- Resiliency** - **Facility Outages**
- Water quality** - **Improvements**
- Recovery** - **Semitropic water**

Staff Recommendations

- A. Receive information**
- B. Adopt resolution**
- C. Delegate execution to CEO**

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Santa Clara Valley Water District

File No.: 20-0873

Agenda Date: 11/17/2020

Item No.: 2.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Resolution Making Responsible Agency Findings and Approving State Water Project Contract Amendment for Water Management, and Authorize the Chief Executive Officer to Execute the Amendment and File Notice of Determination.

RECOMMENDATION:

- A. Receive information and discuss the proposed State Water Project Water Supply Contract Amendment for Water Management (Water Management Tools Amendment);
- B. Adopt the Resolution (1) MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO CEQA FOR THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) AND ADOPTING CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (2) APPROVING THE PROPOSED STATE WATER PROJECT CONTRACT AMENDMENT FOR WATER MANAGEMENT, AMENDMENT NO. 25 TO VALLEY WATER'S WATER SUPPLY CONTRACT WITH THE DEPARTMENT OF WATER RESOURCES; and
- C. Authorize the Chief Executive Officer to execute Amendment No. 25 to Valley Water's State Water Project Water Supply Contract and file Notice of Determination.

SUMMARY:

The State Water Project Water Supply Contract Amendment for Water Management, often called the Water Management Tools Amendment, will provide greater flexibility for transfers and exchanges among State Water Project (SWP) contractors and will improve Valley Water's access to supplemental dry year supplies. The primary benefit of the Water Management Tools Amendment is that it provides the ability to transfer SWP water among SWP contractors, which is not currently allowed under the SWP contract. The key elements of the amendment include:

- Direct single and multiple-year transfers
- Financial compensation determined by SWP contractors
- Ability to transfer water stored in San Luis Reservoir
- Ability to transfer water from groundwater banks
- Updated rules for water exchanges
- Process for improved transparency

The Water Management Tools Amendment does not result in the construction of new facilities or modify existing SWP facilities. It will not change the water supply delivered by the SWP, as SWP water would continue to be delivered consistent with current SWP Water Supply Contract terms and all regulatory requirements.

Background

Valley Water's long-term water supply contract with DWR was first executed in 1961 and has been amended 24 times. Previous amendments included provisions for the transfer and exchange of SWP water under limited circumstances, but these rules have proven to be ineffective and are rarely used. The Water Management Tools Amendment would remove these limitations and provide the ability to transfer and exchange water among SWP contractors more freely.

The provisions in the Water Management Tools Amendment were initially developed as part of the SWP contract amendment negotiation process for the California WaterFix, which concluded on June 27, 2018. When DWR rescinded the California WaterFix on May 2, 2019, DWR and the SWP contractors agreed to remove the negotiation points related to California WaterFix and instead move forward with the Water Management Tools components as a standalone amendment.

Transfers of State Water Project Water

The SWP contract currently does not allow SWP contractors to enter into agreements to transfer their SWP supplies water among themselves. The Water Management Tools Amendment addresses this limitation by allowing the direct transfer of SWP water from one contractor to another using single year or multiple year transfers. With the new rules, SWP contractors can now buy and sell water in the same year, which was not previously allowed, and financial compensation will now be determined solely by the parties involved in each transfer, allowing for a greater degree of cost recovery in line with the market value of the water at the time of transfer.

The Water Management Tools Amendment also provides for the transfer of SWP water carried over in San Luis Reservoir from prior years, helping to redistribute water to areas with greater need. This could protect against the risk of spill in San Luis Reservoir and at the same time allow for significant cost recovery when otherwise this water would be lost to the selling contractor.

In addition, the new contract provisions will provide for the direct transfer of any future SWP water stored in groundwater banks to other SWP contractors. As a result, Valley Water will have the ability to sell or exchange any SWP water it delivers for storage in the Semitropic Groundwater Bank after the date of this amendment. This will allow for more flexible management of Valley Water's water and will help recover some of the costs of this storage.

The SWP contract allows for the delivery of interruptible, or "surplus" Article 21 water, which is occasionally available for direct delivery, separate from, and in addition to, a contractor's annual Table A amount. The Water Management Tools Amendment will provide certain small agricultural

water districts the ability to transfer their share of Article 21 water, while DWR may also approve the transfer of Article 21 water for other SWP contractors under special circumstances.

Exchanges of State Water Project Water

The Water Management Tools Amendment revises contract provisions relating to water exchanges by amending and clarifying DWR's existing administrative process for exchanges. The maximum amount of water that can be exchanged in any year will be determined by a ratio that fluctuates along with the annual SWP allocation. Exchanged water must be returned within 10 years, and costs associated with exchanges are limited to the fixed costs that the exchanging contractor would normally pay for delivery to its service area.

Criteria for Transfers and Exchanges

The Water Management Tools Amendment contains clearly defined criteria required for DWR to approve a transfer or exchange, which increases transparency and streamlines the approval process. These include not harming or adversely affecting other SWP contractors or SWP operations, not impacting the financial integrity of the SWP, and complying with all applicable laws and regulations. The Water Management Tools Amendment also includes a process to resolve disputes among SWP contractors related to transfers and exchanges, should any arise.

FINANCIAL IMPACT:

There is no financial impact associated with execution of the Water Management Tools Amendment. Any costs associated with transferring or exchanging SWP water pursuant to these new contract provisions would occur through separate future agreements.

CEQA:

In October of 2018, the DWR circulated the State Water Project Water Supply Contract Amendments for Water Management and California WaterFix Draft Environmental Impact Report. On May 2, 2019, the Director of DWR issued a memo withdrawing approval of California WaterFix. In response, DWR and the SWP Contractors agreed to move forward with the Water Management Tools Amendment as a separate stand-alone project.

On February 28, 2020 DWR published its Partially Recirculated Draft Environmental Impact Report for the water management tools alone, removing provisions related to the California WaterFix. On August 28, 2020, DWR released its FEIR and Notice of Determination for the Water Management Tools Amendment, State Clearinghouse Number 2018072033. Both documents can be found at the following website:

<https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>.

As a responsible agency under CEQA, Valley Water staff has reviewed and considered DWR's FEIR and agree with its Findings of Fact and Statement of Overriding Considerations. Staff is requesting

that Valley Water's Board independently adopt CEQA Findings and Statement of Fact and Overriding Considerations and authorize the Chief Executive Officer to file a Notice of Determination. A draft Notice of Determination is included as Attachment 2 to this memo.

ATTACHMENTS:

Attachment 1: Resolution
Attachment 2: Draft Notice of Determination
Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:

Vincent Gin, 408-630-2633

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 20-

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY
WATER DISTRICT (1) MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO CEQA
FOR THE FINAL ENVIRONMENTAL IMPACT REPORT AND ADOPTING CEQA FINDINGS
AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (2) APPROVING THE
PROPOSED STATE WATER PROJECT CONTRACT AMENDMENT FOR WATER
MANAGEMENT, PROPOSED AMENDMENT NO. 25 TO VALLEY WATER'S WATER
SUPPLY CONTRACT WITH THE DEPARTMENT OF WATER RESOURCES**

WHEREAS, the Santa Clara Valley Water District (Valley Water) has a long-term water supply contract with the State of California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water (SWP Contract); and

WHEREAS, under the existing SWP Contract, water transfers are permitted in a limited and very specific manner, resulting in their infrequent use, and the parameters for exchanges of water, while allowed, lack specificity and clear guidance, which impede planning; and

WHEREAS, Valley Water, along with other public water agencies (PWAs) with SWP Contracts conducted a series of public negotiations with DWR with the goal of agreeing on concepts to supplement and clarify the existing water transfer and exchange provisions of the SWP Contracts to provide improved water management; and

WHEREAS, in June 2018, PWAs and DWR agreed upon an Agreement in Principle (AIP), which included specific principles to clarify and enhance the terms of the SWP water supply contract related to water transfers and exchanges to improve water management capabilities and PWA options; and

WHEREAS, in October 2018, DWR circulated a Draft Environmental Impact Report (2018 DEIR) that considered impacts related to the AIP, which at that time also included certain cost allocation sections for the California WaterFix project (WaterFix); and

WHEREAS, in early 2019, Governor Newsom decided not to move forward with California WaterFix and DWR rescinded its approvals of the AIP project. The PWAs and DWR subsequently held a public negotiation and agreed to remove the WaterFix cost allocation sections from the AIP, but to retain the water management provisions, and the AIP was finalized on May 20, 2019; and

WHEREAS, the attached proposed Amendment No. 25 (The Water Management Amendment) to the SWP Contract between Valley Water and DWR (proposed "Amendment No. 25"), attached hereto as Exhibit A and incorporated herein by this reference, articulates in contract language the principles of the final AIP; and

WHEREAS, DWR is the lead agency for the water supply contract changes reflected in proposed Amendment No. 25, called the State Water Project Supply Contract Amendments for Water Management (Project), pursuant to CEQA (Pub. Res. Code §§ 21000, et seq.) and the State CEQA Guidelines (14 CCR §§ 15000, et seq.). As the lead agency, DWR is responsible for assuring that an adequate analysis of the Project's environmental impacts is conducted; and

WHEREAS, on February 28, 2020, DWR issued a Partially Recirculated Draft Environmental Impact Report (DEIR) for the Project, which was circulated for public review for 94 days through June 1, 2020; and

WHEREAS, DWR prepared a Final Environmental Impact Report for the Project, which included the DEIR, appendices, comments on the DEIR, responses to comments on the DEIR, and revisions to the DEIR (collectively, FEIR) that can be found at <https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>; and

WHEREAS, on or about August 25, 2020, DWR certified the FEIR, adopted CEQA Findings of Fact and Statement of Overriding Considerations and approved the Project; and

WHEREAS, the FEIR concluded that the Project could have significant and unavoidable impacts to groundwater hydrology and water quality, and cumulatively considerable and unavoidable impacts to groundwater supplies and subsidence. As such, DWR adopted CEQA Findings of Fact and Statement of Overriding Considerations for the Project, attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, Valley Water and DWR propose to amend the Valley Water's SWP Contract by approving and executing Amendment No. 25 – the environmental effects of which were studied in the FEIR; and

WHEREAS, Valley Water is a responsible agency and has more limited approval and implementing authority over Amendment No. 25 than does DWR; and

WHEREAS, the Board of Directors (Board) of the Santa Clara Valley Water District, at this scheduled public meeting on November 17, 2020 has independently reviewed and considered the FEIR, CEQA Findings of Fact and Statement of Overriding Considerations, and other related documents and evidence in the record before it; and

WHEREAS, all the procedures of CEQA and the State CEQA Guidelines have been met, and the FEIR prepared in connection with the Project is sufficiently detailed so that all the potentially significant effects of the Project and Amendment No. 25 on the environment, and measures feasible to avoid or substantially lessen such effects, have been evaluated in accordance with CEQA; and

WHEREAS, as contained herein, the Valley Water has endeavored in good faith to set forth the basis for its decision on Amendment No. 25;

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby:

1. Find that the above recitals are true and correct and are incorporated herein by reference as an operative portion of this Resolution.

2. Receives, considers, and incorporates by reference the FEIR prepared for the Project located and accessible at <https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>.

3. Pursuant to State CEQA Guidelines section 15096, in its limited role as a responsible agency under CEQA, the Board has reviewed and considered the FEIR, as well as DWR's certification of the FEIR and approval of the Project, and DWR's CEQA Findings of Fact and Statement of Overriding Considerations for the State Water Project Water Supply Contract Amendments for Water Management. As to those resources within Valley Water's power and authority as a responsible agency under CEQA, the Board exercises its independent judgment and finds that the FEIR contains a complete, objective and accurate reporting of Amendment No. 25's impacts, and is adequate for use by Valley Water.

4. Exercising its independent judgment, the Board concurs with the CEQA Findings of Fact and Statement of Overriding Considerations approved by DWR and hereby adopts those CEQA Findings of Fact and Statement of Overriding Considerations. The Board further finds that, for the reasons discussed in the FEIR, there are no feasible mitigation measures or alternatives within its authority that would substantially lessen or avoid any significant effects that the Project would have on the environment.

5. The Board concurs with the Statement of Overriding Considerations adopted by DWR and finds that the benefits of Amendment No. 25 outweigh the adverse environmental impacts not reduced to below a level of significance.

6. The Board hereby authorizes and directs staff to file and have posted a Notice of Determination with the County Clerk and with the State Clearinghouse within 5 working days of the adoption of this Resolution.

7. Based on the above findings, the Board hereby approves proposed Amendment No. 25 and authorizes the Chief Executive Officer to execute it on behalf of Valley Water.

8. The documents and materials that constitute the record of proceedings for this Resolution are located at 5750 Almaden Expressway, San Jose California 95118 c/o Michele King, Clerk of the Board and at <https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on November 17, 2020:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

NAI HSUEH
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

EXHIBIT A COVERSHEET

PROPOSED AMENDMENT NO. 25 TO SWP CONTRACT

No. of Pages: 22

Exhibit Attachments: Attachment 1: Amendment No. 25

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STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 25 (THE WATER MANAGEMENT AMENDMENT)
TO WATER SUPPLY CONTRACT
BETWEEN
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND
SANTA CLARA VALLEY WATER DISTRICT

THIS AMENDMENT to the Water Supply Contract is made this _____ day of _____, 20____ pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State," and Santa Clara Valley Water District, herein referred to as the "District."

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RECITALS

- A. The State and the District entered into and subsequently amended a water supply contract (the “contract”), dated November 20, 1961, providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and
- B. The State and the District, in an effort to manage water supplies in a changing environment, explored non-structural solutions to provide greater flexibility in managing State Water Project (SWP) water supplies; and
- C. The State and the District, in an effort to support the achievement of the coequal goals for the Delta set forth in the Delta Reform Act, sought solutions to develop water supply management practices to enhance flexibility and reliability of SWP water supplies while the District is also demonstrating its commitment to expand its water supply portfolio by investing in local water supplies; and
- D. The State and the District, in response to the Governor’s Water Resiliency Portfolio, wish to maintain and diversify water supplies while protecting and enhancing natural systems without changing the way in which the SWP operates; and
- E. The State and the District sought to create a programmatic solution through transfers or exchanges of SWP water supplies that encourages regional approaches among water users sharing watersheds and strengthening partnerships with local water agencies, irrigation districts, and other stakeholders; and
- F. The State and the District, in an effort to comply with the Open and Transparent Water Data Platform Act (Assembly Bill 1755), sought means to create greater transparency in water transfers and exchanges; and
- G. The State, the District and representatives of certain other SWP Contractors have negotiated and agreed upon a document (dated May 20, 2019), the subject of which is “ Draft Agreement in Principle for the SWP Water Supply Contract Amendment for Water Management” (the “Agreement in Principle”); and
- H. The Agreement in Principle describes that the SWP Water Supply Contract Amendment for Water Management “supplements and clarifies terms of the SWP water supply contract that will provide greater water management regarding transfers and exchanges of SWP water within the SWP service area”; the principles agreed to achieve this without relying upon increased SWP diversions or changing the way in which the SWP operates, and are consistent with all applicable contract and regulatory requirements; and

- I. The State, the District and those Contractors intending to be subject to the contract amendments contemplated by the Agreement in Principle subsequently prepared an amendment to their respective Contracts to implement the provisions of the Agreement in Principle, and such amendment was named the “SWP Water Supply Contract Amendment for Water Management”; and
- J. The State and the District desire to implement continued service through the contract and under the terms and conditions of this “SWP Water Supply Contract Amendment for Water Management”;

NOW, THEREFORE, IT IS MUTUALLY AGREED that the following changes and additions are hereby made to the District's water supply contract with that State:

AMENDED CONTRACT TEXT

ARTICLE 1 IS AMENDED TO ADD THE FOLLOWING DEFINITIONS, PROVIDED THAT IF THIS WATER MANAGEMENT AMENDMENT TAKES EFFECT BEFORE THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT, THE ADDITIONS HEREIN SHALL CONTINUE IN EFFECT AFTER THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT NOTWITHSTANDING THE CONTRACT EXTENSION AMENDMENT'S DELETION AND REPLACEMENT OF ARTICLE 1 IN ITS ENTIRETY:

1. Definitions

- (au) **"Article 56 Carryover Water"** shall mean water that the District elects to store under Article 56 in project surface conservation facilities for delivery in a subsequent year or years.

ARTICLES 21 and 56 ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING TEXT:

21. Interruptible Water Service

(a) Allocation of Interruptible Water

Each year from water sources available to the project, the State shall make available and allocate interruptible water to contractors in accordance with the procedure in Article 18(a). Allocations of interruptible water in any one year may not be carried over for delivery in a subsequent year, nor shall the delivery of interruptible water in any year impact the District's approved deliveries of Annual Table A Amount or the District's allocation of water for the next year. Deliveries of interruptible water in excess of the District's Annual Table A Amount may be made if the deliveries do not adversely affect the State's delivery of Annual Table A Amount to other contractors or adversely affect project operations. Any amounts of water owed to the District as of the date of this amendment pursuant to former Article 12(d), any contract provisions or letter agreements relating to wet weather water, and any Article 14(b) balances accumulated prior to 1995, are canceled. The State shall hereafter use its best efforts, in a manner that causes no adverse impacts upon other contractors or the project, to avoid adverse economic impacts due to the District's inability to take water during wet weather.

(b) Notice and Process for Obtaining Interruptible Water

The State shall periodically prepare and publish a notice to contractors describing the availability of interruptible water under this Article. To obtain a supply of interruptible water, including a supply from a transfer of interruptible water, the District shall execute a further agreement with the State. The State will timely process such requests for scheduling the delivery of the interruptible water.

(c) Rates

For any interruptible water delivered pursuant to this Article, the District shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were Table A Amount water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if interruptible water were not scheduled for or delivered to the District. Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.

(d) Transfers of Interruptible Water

- (1) Tulare Lake Basin Water Storage District, Empire West-Side Irrigation District, Oak Flat Water District, and County of Kings may transfer to other contractors a portion of interruptible water allocated to them under subdivision (a) when the State determines that interruptible water is available.
- (2) The State may approve the transfer of a portion of interruptible water allocated under subdivision (a) to contractors other than those listed in (d)(1) if the contractor acquiring the water can demonstrate a special need for the transfer of interruptible water.
- (3) The contractors participating in the transfer shall determine the cost compensation for the transfers of interruptible water.

The transfers of interruptible water shall be consistent with Articles 56(d) and 57.

56. Use and Storage of Project Water Outside of Service Area and Article 56 Carryover Water

(a) State Consent to Use of Project Water Outside of Service Area

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District storing Project Water in a groundwater storage program, project surface conservation facilities and in nonproject surface storage facilities located outside its service area for later use by the District within its service area and to the District transferring or exchanging Project Water outside its service area consistent with agreements executed under this contract.

(b) Groundwater Storage Programs

The District shall cooperate with other contractors in the development and establishment of groundwater storage programs. The District may elect to store Project Water in a groundwater storage program outside its service area for later use within its service area. There shall be no limit on the amount of Project Water the District can store outside its service area during any year in a then existing and operational groundwater storage program.

(1) Transfers of Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.

In accordance with applicable water rights law and the terms of this Article, the District may transfer any Annual Table A Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area to another contractor for use in that contractor's service area. These transfers must comply with the requirements of Articles 56(c)(4)(i)-(v), (6) and (7), and Article 57. The District will include these transfers in its preliminary water delivery schedule required in Article 12(a).

(2) Exchanges of any Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.

In accordance with applicable water rights law and the terms of this Article, the District may exchange any Annual Table A

Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area with another contractor for use in that contractor's service area. These exchanges must comply with the requirements in Article 56(c)(4)(i)-(v). The District shall include these exchanges in its preliminary water delivery schedule pursuant to Article 12(a).

(c) Article 56 Carryover Water and Transfers or Exchanges of Article 56 Carryover Water

- (1) In accordance with any applicable water rights laws, the District may elect to use Article 56 Carryover Water within its service area, or transfer or exchange Article 56 Carryover Water to another contractor for use in that contractor's service area in accordance with the provisions of subdivision (c)(4) of this Article. The District shall submit to the State a preliminary water delivery schedule on or before October 1 of each year pursuant to Article 12(a), the quantity of water it wishes to store as Article 56 Carryover Water in the next succeeding year, and the quantity of Article 56 Carryover Water it wishes to transfer or exchange with another contractor in the next succeeding year. The amount of Project Water the District can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the District's service area each year shall be limited to the lesser of the percent of the District's Annual Table A Amount shown in column 2 or the acre-feet shown in column 3 of the following table, depending on the State's final Table A water supply allocation percentage as shown in column 1. For the purpose of determining the amount of Project Water the District can store, the final water supply allocation percentage shown in column 1 of the table below shall apply to the District. However, there shall be no limit to storage in nonproject facilities in a year in which the State's final water supply allocation percentage is one hundred percent. These limits shall not apply to water stored pursuant to Articles 12(e) and 14(b).

1. Final Water Supply Allocation Percentage	2. Maximum Percentage of District's Annual Table A Amount That Can Be Stored	3. Maximum Acre-Feet That Can Be Stored
50% or less	25%	100,000
51%	26%	104,000
52%	27%	108,000
53%	28%	112,000
54%	29%	116,000
55%	30%	120,000
56%	31%	124,000
57%	32%	128,000
58%	33%	132,000
59%	34%	136,000
60%	35%	140,000
61%	36%	144,000
62%	37%	148,000
63%	38%	152,000
64%	39%	156,000
65%	40%	160,000
66%	41%	164,000
67%	42%	168,000
68%	43%	172,000
69%	44%	176,000
70%	45%	180,000
71%	46%	184,000
72%	47%	188,000
73%	48%	192,000
74%	49%	196,000
75% or more	50%	200,000

- (2) Storage capacity in project surface conservation facilities at any time in excess of that needed for project operations shall be made available to requesting contractors for storage of project and Nonproject Water. If such storage requests exceed the available storage capacity, the available capacity shall be allocated among contractors requesting storage in proportion to their Annual Table A Amounts for that year. The District may store water in excess of its allocated share of capacity as long as capacity is available for such storage.
- (3) If the State determines that a reallocation of excess storage capacity is needed as a result of project operations or because of the exercise of a contractor's storage right, the available capacity shall be reallocated among contractors requesting storage in proportion to their respective Annual

Table A Amounts for that year. If such reallocation results in the need to displace water from the storage balance for any contractor or noncontractor, the water to be displaced shall be displaced in the following order of priority:

First, water, if any, stored for noncontractors;

Second, water stored for a contractor that previously was in excess of that contractor's allocation of storage capacity; and

Third, water stored for a contractor that previously was within that contractor's allocated storage capacity.

The State shall determine whether water stored in a project surface water conservation facility is subject to displacement and give as much notice as feasible of a potential displacement. If the District transfers or exchanges Article 56 Carryover Water pursuant to this subdivision to another contractor for storage in such facility, the State shall recalculate the amount of water that is subject to potential displacement for both contractors participating in the transfer or exchange. The State's recalculation shall be made pursuant to subdivision (4) of this Article.

(4) Transfers or Exchanges of Article 56 Carryover Water

The District may transfer or exchange its Article 56 Carryover Water as provided in this subdivision under a transfer or an exchange agreement with another contractor. Water stored pursuant to Articles 12(e) and 14(b) and Nonproject Water shall not be transferred or exchanged. Transfers or exchanges of Article 56 Carryover Water under this subdivision shall comply with subdivision (f) of this Article and Article 57 as applicable, which shall constitute the exclusive means to transfer or exchange Article 56 Carryover Water.

On or around January 15 of each year, the State shall determine the maximum amount of Article 56 Carryover Water as of January 1 that will be available for transfers or exchanges during that year. The State's determination shall be consistent with subdivisions (c)(1) and (c)(2) of this Article.

The State shall timely process requests for transfers or exchanges of Article 56 Carryover Water by participating contractors. After execution of the transfer or exchange agreement between the State and the contractors participating in the transfer or exchange, the State shall recalculate each contractor's storage amounts for the contractors participating in the transfer or exchange. The State's recalculation shall result in an increase by an amount of water within the storage amounts for the contractor receiving the water and a decrease by the same amount of water for the contractor transferring or exchanging water. The State's recalculation shall be based on the criteria set forth in the State's transfer or exchange agreement with the participating contractors. The State's calculations shall also apply when a contractor uses Article 56 Carryover Water to complete an exchange.

Transfers and exchanges of Article 56 Carryover Water shall meet all of the following criteria:

- (i) Transfers or exchanges of Article 56 Carryover Water are limited to a single-year. Project Water returned as part of an exchange under subdivision (c)(4) may be returned over multiple years.
- (ii) The District may transfer or exchange an amount up to fifty percent (50%) of its Article 56 Carryover Water to another contractor for use in that contractor's service area.
- (iii) Subject to approval of the State, the District may transfer or exchange an amount greater than 50% of its Article 56 Carryover Water to another contractor for use in that contractor's service area. The District seeking to transfer or exchange greater than 50% of its Article 56 Carryover Water shall submit a written request to the State for approval. The District making such a request shall demonstrate to the State how it will continue to meet its critical water needs in the current year of the transfer or exchange and in the following year.

- (iv) The contractor receiving the water transferred or exchanged under subdivisions (4)(i) or (ii) above shall confirm in writing to the State its need for the water that year and shall take delivery of the water transferred or exchanged in the same year.
 - (v) Subject to the approval of the State, the District may seek an exception to the requirements of subdivisions (4)(i), (ii), and (iii) above. The District seeking an exception shall submit a written request to the State demonstrating to the State the need for 1) using project surface conservation facilities as the transfer or exchange point for Article 56 Carryover Water if the receiving contractor cannot take delivery of the transfer or exchange water in that same year, 2) using project surface conservation facilities for the transfer or exchange of one contractor's Article 56 Carryover Water to another contractor to reduce the risk of the water being displaced, or 3) for some other need.
- (5) The restrictions on storage of Project Water outside the District's service area provided for in this subdivision (c), shall not apply to storage in any project off-stream storage facilities constructed south of the Delta after the date of the Monterey Amendment.
- (6) For any Project Water stored outside its service area pursuant to subdivisions (b) and (c), the District shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the District pays for the transportation of Annual Table A Amount to the reach of the project transportation facility from which the water is delivered to storage. If Table A Amount is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the District shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of

return to the aqueduct to the turn-out in the District's service area. In addition, the District shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the District's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

- (7) If the District elects to store Project Water in a nonproject facility within the service area of another contractor it shall execute a contract with that other contractor prior to storing such water which shall be in conformity with this Article and will include at least provisions concerning the point of delivery and the time and method for transporting such water.

(d) Non-Permanent Water Transfers of Project Water

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District transferring Project Water outside its service area in accordance with the following:

- (1) The participating contractors shall determine the duration and compensation for all water transfers, including single-year transfers, Transfer Packages and multi-year transfers.
- (2) The duration of a multi-year transfer shall be determined by the participating contractors to the transfer, but the term of the transfer agreement shall not extend beyond the term of the Contract with the earliest term.
- (3) A Transfer Package shall be comprised of two or more water transfer agreements between the same contractors. The State shall consider each proposed water transfer within the package at the same time and shall apply the transfer criteria pursuant to Article 57 in the review and approval of each transfer. The State shall not consider a Transfer Package as an exchange.

(e) Continuance of Article 12(e) Carry-over Provisions

The provisions of this Article are in addition to the provisions of Article 12(e), and nothing in this Article shall be construed to modify or amend the provisions of Article 12(e). Any contractor electing to transfer or exchange Project Water during any year in accordance with the provisions of subdivision (c) of this Article, shall not be precluded from using the provisions of Article 12(e) for carrying over water from the last three months of that year into the first three months of the succeeding year.

(f) Bona Fide Exchanges Permitted

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District exchanging Project Water outside its service area consistent with this Article. Nothing in this Article shall prevent the District from entering into bona fide exchanges of Project Water for use outside the District's service area with other parties for Project Water or Nonproject Water if the State consents to the use of the Project Water outside the District's service area. Also, nothing in this Article shall prevent the District from continuing those exchange or sale arrangements entered into prior to September 1, 1995. Nothing in this Article shall prevent the District from continuing those exchange or sale arrangements entered into prior to the effective date of this Amendment which had previously received any required State approvals. The State recognizes that the hydrology in any given year is an important factor in exchanges. A "bona fide exchange" shall mean an exchange of water involving the District and another party where the primary consideration for one party furnishing water to another party is the return of a substantially similar amount of water, after giving due consideration to the hydrology, the length of time during which the water will be returned, and reasonable payment for costs incurred. In addition, the State shall consider reasonable deductions based on expected storage or transportation losses that may be made from water delivered. The State may also consider any other nonfinancial conditions of the return. A "bona fide exchange" shall not involve a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether a proposed exchange of water constitutes a "bona fide exchange" within the meaning of this paragraph and not a disguised sale.

(g) Exchanges of Project Water

Exchanges of Project Water shall be consistent with Article 57. In addition, the State shall apply the following criteria to its review of each exchange of Project Water as set forth below:

(1) Exchange Ratio

Exchange ratio shall mean the amount of water delivered from a contractor's project supply in a year to another contractor compared to the amount of water returned to the first contractor in a subsequent year by the other contractor. All exchanges shall be subject to the applicable exchange ratio in this Article as determined by the allocation of available supply for the Annual Table A Amount at the time the exchange transaction between the contractors is executed.

- (a) For allocations greater than or equal to 50%, the exchange ratio shall be no greater than 2 to 1.
- (b) For allocations greater than 25% and less than 50%, the exchange ratio shall be no greater than 3 to 1.
- (c) For allocations greater than 15% and less than or equal to 25%, the exchange ratio shall be no greater than 4 to 1.
- (d) For allocations less than or equal to 15%, the exchange ratio shall be no greater than 5 to 1.

(2) Cost Compensation

The State shall determine the maximum cost compensation calculation using the following formula:

The numerator shall be the exchanging contractor's conservation minimum and capital and transportation minimum and capital charges, including capital surcharges. DWR will set the denominator using the State Water Project allocation which incorporates the May 1 monthly Bulletin 120 runoff forecast.

If the District submits a request for approval of an exchange prior to May 1, the State shall provide timely approval with the obligation of the contractors to meet the requirement of the maximum compensation. If the maximum compensation is exceeded because the agreement between the

contractors is executed prior to the State Water Project allocation as defined in (c)(2) above, the contractors will revisit the agreement between the two contractors and make any necessary adjustments to the compensation. If the contractors make any adjustments to the compensation, they shall notify the State.

(3) Period During Which the Water May Be Returned:

The period for the water to be returned shall not be greater than 10 years and shall not go beyond the expiration date of this Contract. If the return of the exchange water cannot be completed within 10 years, the State may approve a request for an extension of time.

(h) Other Transfers

Nothing in this Article shall modify or amend the provisions of Articles 15(a), 18(a) or Article 41, except as expressly provided for in subdivisions (c) and (d) of this Article and in subdivision (d) of Article 21.

NEW CONTRACT ARTICLES

ARTICLE 57 IS ADDED TO THE CONTRACT AS A NEW ARTICLE AS FOLLOWS:

57. Provisions Applicable to Both Transfers and Exchanges of Project Water

- (a)** Nothing in this Article modifies or limits Article 18 (a).
- (b)** Transfers and exchanges shall not have the protection of Article 14(b).
- (b)** The District may be both a buyer and seller in the same year and enter into multiple transfers and exchanges within the same year.
- (d)** Subject to the State's review and approval, all transfers and exchanges shall satisfy the following criteria:
 - (1)** Transfers and exchanges shall comply with all applicable laws and regulations.
 - (2)** Transfers and exchanges shall not impact the financial integrity of the State Water Project, Transfers and exchange agreements shall include provisions to cover all costs to the State for the movement of water such as power costs and use of facility charge.
 - (3)** Transfers and exchanges shall be transparent, including compliance with subdivisions (g) and (h) of this Article.
 - (4)** Transfers and exchanges shall not harm other contractors not participating in the transfer or exchange.
 - (5)** Transfers and exchanges shall not create significant adverse impacts to the service area of each contractor participating in the transfer or exchange.
 - (6)** Transfers and exchanges shall not adversely impact State Water Project operations.
- (e)** The District may petition the State and the State shall have discretion to approve an exception to the criteria set forth in subdivision (d) in the following cases:
 - (1)** When a transfer or an exchange does not meet the criteria, but the District has determined that there is a compelling need to proceed with the transfer or exchange.

- (2) When the District has received water in a transfer or an exchange and cannot take all of the water identified in the transaction in the same year, the District may request to store its water consistent with Article 56(c), including in San Luis Reservoir.
- (f) The State will timely process such requests for scheduling the delivery of the transferred or exchanged water. Contractors participating in a transfer or an exchange shall submit the request in a timely manner.
- (g) The District shall, for each transfer or exchange it participates in, confirm to the State in a resolution or other appropriate document approving the transfer or exchange, including use of Article 56(c) stored water, that:
 - (1) The District has complied with all applicable laws.
 - (2) The District has provided any required notices to public agencies and the public.
 - (3) The District has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
 - (4) The District is informed and believes that the transfer or exchange will not harm other contractors.
 - (5) The District is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
 - (6) The District is informed and believes that the transfer or exchange will not affect its ability to make all payments, including payments when due under its Contract for its share of the financing costs of the State's Central Valley Project Revenue Bonds.
 - (7) The District has considered the potential impacts of the transfer or exchange within its service area.
- (h) **Dispute Resolution Process Prior to Executing an Agreement**

The State and the contractors shall comply with the following process to resolve disputes if a contractor that is not participating in the transfer or exchange claims that the proposed transfer and/or exchange has a significant adverse impact.

- (1) Any claim to a significant adverse impact may only be made after the District has submitted the relevant terms pursuant to Article

57(g)(3) and before the State approves a transfer or an exchange agreement.

- (2) In the event that any dispute cannot be resolved among the contractors, the State will convene a group including the Department's Chief of the State Water Project Analysis Office, the Department's Chief Counsel and the Department's Chief of the Division of Operations or their designees and the contractors involved. The contractor's representatives shall be chosen by each contractor. Any contractor claiming a significant adverse impact must submit written documentation to support this claim and identify a proposed solution. This documentation must be provided 2 weeks in advance of a meeting of the group that includes the representatives identified in this paragraph.
- (3) If this group cannot resolve the dispute, the issue will be taken to the Director of the Department of Water Resources and that decision will be final.

WATER MANAGEMENT AMENDMENT IMPLEMENTING AND ADMINISTRATIVE PROVISIONS

IT IS FURTHER MUTUALLY AGREED that the following provisions, which shall not be part of the Water Supply Contract text, shall be a part of this Amendment and be binding on the Parties.

1. EFFECTIVE DATE OF WATER MANAGEMENT AMENDMENT

- (a) The Water Management Amendment shall take effect ("Water Management Amendment effective date") on the last day of the calendar month in which the State and 24 or more contractors have executed the Water Management Amendment, unless a final judgment by a court of competent jurisdiction has been entered that the Water Management Amendment is invalid or unenforceable or a final order has been entered that enjoins the implementation of the Water Management Amendment.
- (b) If any part of the Water Management Amendment of any contractor is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, the Water Management Amendments of all contractors shall be of no force and effect unless the State and 24 or more contractors agree any the remaining provisions of the contract may remain in full force and effect.
- (c) If 24 or more contractors have not executed the Water Management Amendment by February 28, 2021 then within 30 days the State, after consultation with the contractors that have executed the amendment, shall make a determination whether to waive the requirement of subdivision (a) of this effective date provision. The State shall promptly notify all contractors of the State's determination. If the State determines, pursuant to this Article to allow the Water Management Amendment to take effect, it shall take effect only as to those consenting contractors.
- (d) If any contractor has not executed the Water Management Amendment within sixty (60) days after its effective date pursuant to subdivisions (a) through (c) of this effective date provision, this Amendment shall not take effect as to such contractor unless the contractor and the State, in its discretion, thereafter execute such contractor's Water Management Amendment, in which case the Water Management Amendment effective date for purposes of that contractor's Amendment shall be as agreed upon by the State and contractor, and shall replace the effective date identified in subdivision (a) for that contractor.

2. ADMINISTRATION OF CONTRACTS WITHOUT WATER MANAGEMENT AMENDMENT

The State shall administer the water supply contracts of any contractors that do not execute the Water Management Amendment in a manner that is consistent with the contractual rights of such contractors. These contractors' rights are not anticipated to be affected adversely or benefited by the Water Management Amendments.

3. OTHER CONTRACT PROVISIONS

Except as amended by this Amendment, all provisions of the contract shall be and remain the same and in full force and effect, provided, however, that any reference to the definition of a term in Article 1, shall be deemed to be a reference to the definition of that term, notwithstanding that the definition has been re-lettered within Article 1. In preparing a consolidated contract, the parties agree to update all such references to reflect the definitions' lettering within Article 1.

4. DocuSign

The Parties agree to accept electronic signatures generated using DocuSign as original signatures.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date first above written.

Approved as to Legal Form
and Sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
Department of Water Resources

Director

Date

Approved as to Form:

SANTA CLARA VALLEY WATER
DISTRICT

General Counsel
Santa Clara Valley Water District

Chief Executive Officer

Date

EXHIBIT B COVERSHEET

CEQA FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

No. of Pages: 15

Exhibit Attachments: Attachment 1: DWR's CEQA Findings of Fact and Statement of
Overriding Considerations

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CEQA Findings of Fact and Statement of Overriding Considerations for the State Water Project Water Supply Contract Amendments for Water Management

Section 1. Description of the Project

The proposed project includes amending certain provisions of the State Water Resources Development System (SWRDS) Water Supply Contracts (Contracts). SWRDS (defined in Wat. Code, Section 12931), or more commonly referred to as the SWP, was enacted into law by the Burns-Porter Act, passed by the Legislature in 1959 and approved by the voters in 1960. The Department of Water Resources constructed and currently operates and maintains the SWP, a system of storage and conveyance facilities that provide water to 29 State Water Contractors known as the Public Water Agencies (PWAs)¹. The Contracts include water management provisions as the methods of delivery, storage and use of water and financial provisions for recovery of costs associated with the planning, construction, and operation and maintenance of the SWP.

DWR and the PWAs have a common interest to ensure the efficient delivery of SWP water supplies and to ensure the SWP's financial integrity. In order to address water management flexibility DWR and the PWAs agreed to the following objectives:

- Supplement and clarify terms of the SWP water supply contract that will provide greater water management regarding transfers and exchanges of SWP water supply within the SWP service area.

The proposed project would add, delete, and modify provisions of the Contracts and clarify certain terms of the Contracts that will provide greater water management regarding transfers and

¹ The State Water Project Public Water Agencies include Alameda County Flood Control and Water Conservation District (Zone 7), Alameda County Water District, Antelope Valley-East Kern Water Agency, City of Yuba City, Coachella Valley Water District, County of Butte, County of Kings, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire West Side Irrigation District, Kern County Water Agency, Littlerock Creek Irrigation District, The Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, Plumas County Flood Control and Water Conservation District, San Bernardino Valley Municipal Water District, San Gabriel Valley Municipal Water District, San Geronio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Barbara County Flood Control and Water Conservation District, Santa Clara Valley Water District, Santa Clarita WA (formerly Castaic Lake WA), Solano County Water Agency, Tulare Lake Basin Water Storage District, and Ventura County Flood Control District.

exchanges of SWP water within the SWP service area. In addition, the proposed project would not build new or modify existing SWP facilities nor change any of the PWA's annual Table A amounts.² The proposed project would not change the water supply delivered by the SWP, as SWP water would continue to be delivered to the PWAs consistent with current Contract terms and all regulatory requirements. The May 20, 2019 AIP is included as Appendix A of the 2020 Partially Recirculated Draft Environmental Impact Report (RDEIR).

Section 2. Findings Required Under CEQA

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environment impacts that would otherwise occur. Mitigation measures or alternatives are not required, however, where such changes are infeasible or where the responsibility for the project lies with some other agency. (CEQA Guidelines, Section 15091, sub. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, Sections 15093, 15043, sub. (b); see also Pub. Resources Code, Section 21081, sub. (b).)

In seeking to effectuate the substantive policy of CEQA to substantially lessen or avoid significant environmental effects to the extent feasible, an agency, in adopting findings, need not necessarily address the feasibility of both mitigation measures and environmentally superior alternatives when contemplating approval of a proposed project with significant impacts. Where a significant impact can be mitigated to an "acceptable" level solely by the adoption of feasible mitigation measures, the agency, in drafting its findings, has no obligation to consider the feasibility of any environmentally superior alternative that could also substantially lessen or avoid that same impact — even if the alternative would render the impact less severe than would the proposed project as mitigated. (*Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California* ("Laurel Heights I") (1988) 47 Cal.3d 376, 400-403.)

In cases in which a project's significant effects cannot be mitigated or avoided, an agency, after adopting proper findings, may nevertheless approve the project if it first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the "benefits of the project outweigh the significant effects on the environment." (Pub. Resources Code, Section 21081, sub. (b); see also, CEQA Guidelines, Sections 15043, subd. (b), 15093 .)

² The maximum amount of SWP water that the PWAs can request pursuant to their individual water supply contract. annual Table A amounts also serve as a basis for allocation of some SWP costs among the contractors.

In the Statement of Overriding Considerations found at the conclusion of this exhibit, DWR identifies the benefit that, in its judgment, outweigh the significant environmental effects that the projects would cause.

The California Supreme Court has stated that “[t]he wisdom of approving ... any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Citizens of Goleta* (1990) 52 Cal.3d 553, 564.)

In support of its approval of the proposed project, DWR’s findings are set forth below for the potentially significant environmental effects and alternatives of the proposed project identified in the EIR pursuant to Public Resources Code, Section 21080 and Section 15091 of the CEQA Guidelines.

These findings do not attempt to describe the full analysis of each environmental impact contained in the 2018 DEIR and 2020 RDEIR (collectively referred to in this document as the DEIR). Instead, a full explanation of these environmental findings and conclusions can be found in the DEIR and these findings hereby incorporate by reference the discussion and analysis in the DEIR supporting the determination regarding the impacts of the proposed project. In making these findings, DWR ratifies, adopts and incorporates in these findings the determinations and conclusions of the DEIR and Final EIR (FEIR) relating to environmental impacts except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

As described below and in the DEIR, there were two significant impacts identified for the proposed project and they were associated with groundwater hydrology and water quality. There were no mitigation measures identified in the DEIR to substantially lessen or avoid the potentially significant and significant groundwater resource impacts of the proposed project. Therefore, a Mitigation Monitoring and Reporting Program was not developed for the proposed project and is not included herein.

Unless otherwise specified, all page references presented herein are to the 2020 RDEIR.

2.1. Significant and Unavoidable Impacts

The following significant and potentially significant environmental impacts of the project are unavoidable and cannot be mitigated in a manner that would lessen the significant impact to below the level of significance. Notwithstanding disclosure of these impacts, DWR elects to approve the project due to overriding considerations as set forth below in Section 7, the statement of overriding considerations.

Impact Category: Groundwater Hydrology and Water Quality

Impact 5.10-1: The increase in groundwater pumping associated with changes in transfers and exchanges implemented by PWAs could substantially deplete groundwater supplies in some areas of the study area. [p. 5.10-17 – 5.10-21]

Finding. It is possible that transfers and exchanges of SWP water among the PWAs could result in benefits to groundwater levels, as transferred or exchanged water could be used instead of groundwater supplies or this water could be used for groundwater recharge. However, it is also possible that transfers and exchanges from agricultural to M&I PWAs could result in an increase in groundwater pumping resulting in a net deficit in aquifer volume or lowering the local groundwater table in some areas of the study area. DWR's conclusion is based on a program-level analysis, as there is uncertainty in the amount of groundwater use that may occur.

Because the Sustainable Groundwater Management Act (SGMA) is in the process of being implemented and because the extent, location, and implementation timing of groundwater pumping associated with changes in transfers and exchanges implemented by PWAs are not known, assumptions related to the ability of SGMA to mitigate any changes in groundwater levels are speculative.

PWAs could propose feasible mitigation measures to reduce significant impacts to less than significant in some cases, although it is not possible for DWR to conclude that feasible mitigation measures would be available to avoid or mitigate significant groundwater effects in all cases. Per CEQA Guidelines Section 15091(a)(2), implementation and enforcement mitigation measures are within the responsibility and jurisdiction of another public agency and not the agency making the finding.

The extent, location, and implementation timing of groundwater pumping associated with changes in transfers and exchanges implemented by PWAs are not known. Therefore, it is concluded that the potential increase in groundwater pumping could result in a net deficit in aquifer volume or lowering the local groundwater table. **For these reasons, this impact is significant and unavoidable.**

Impact 5.10-2: The increase in groundwater pumping associated with changes in transfers and exchanges implemented by PWAs could result in subsidence in some of the study area. [p. 5.10-22 – 5.10-25]

Finding. It is possible that transfers and exchanges among the PWAs could result in benefits to groundwater levels, as transferred or exchanged water could be used instead of groundwater supplies or this water could be used for groundwater recharge. However, it is also possible that transfers and exchanges from agricultural to M&I PWAs could result in an increase in groundwater pumping in some areas of the study area causing subsidence due to a net deficit in aquifer volume or lowering the local groundwater table. Because the extent, location, and implementation timing of groundwater pumping associated with changes in transfers and exchanges implemented by PWAs are not known, it is concluded that groundwater pumping in

some areas of the study area would cause subsidence due to a net deficit in aquifer volume or lowering the local groundwater table and the impact would be potentially significant.

Because SGMA is in the process of being implemented and because the extent, location, and implementation timing of groundwater pumping associated with changes in transfers and exchanges implemented by PWAs are not known, assumptions related to the ability of SGMA to mitigate any changes in groundwater levels or related subsidence are speculative.

PWAs could propose feasible mitigation measures to reduce significant impacts to less than significant in some cases, although it is not possible for DWR to conclude that feasible mitigation measures would be available to avoid or mitigate significant groundwater effects in all cases. Per CEQA Guidelines Section 15091(a)(2), implementation and enforcement mitigation measures are within the responsibility and jurisdiction of another public agency and not the agency making the finding.

DWR has no information on specific implementation of the transfers and exchanges from the proposed project and it has no authority to implement mitigation measures in the PWA service area. **For these reasons, this impact is significant and unavoidable.**

Section 3. Cumulative Impacts

Cumulative impacts, as defined in Section 15355 of the CEQA Guidelines, refer to two or more individual effects that, when taken together, are “considerable” or that compound or increase other environmental impacts. Cumulative impacts can result from individually minor, but collectively significant, actions when added to the impacts of other closely related past, present, or reasonably foreseeable future projects. Pertinent guidance for cumulative impact analysis is provided in Section 15130 of the CEQA Guidelines.

The DEIR presents the cumulative impact analysis for the proposed project. Each impact discussion in the DEIR assesses whether the incremental effects of the proposed project could combine with similar effects of one or more of the projects identified in the 2020 RDEIR (p.6-2 – 6.14) to cause or contribute to a significant cumulative effect. If so, the analysis considers whether the incremental contribution of the proposed project would be cumulatively significant (p. 6-8 –6-14).

DWR hereby finds that implementation of the proposed project would not result in physical environmental impacts on the following resource areas: hazards and hazardous materials; noise; population, employment and housing; public services and recreation; surface water hydrology and water quality; transportation; and utilities and service systems. Therefore, these resource areas would not contribute to a cumulative effect and would not compound or increase an environmental impact of these other projects.

The cumulative impact analysis associated with the remaining resource areas (aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, energy, geology and soils, GHG, groundwater hydrology and water quality, land use and planning, and water supply) focused on six types of impacts that were identified as less than significant or

potential impacts of the proposed project that could contribute to cumulative impacts with the cumulative projects (Contract Extension Project, Monterey Amendment and Settlement Agreement, and Sustainable Groundwater Management Act Implementation) identified in the DEIR. The six types of impacts are impacts to groundwater supplies, subsidence, fallowing and changes in crop patterns, energy and Greenhouse Gas (GHG), reservoir storage, and surface water flow above or below diversions. Impacts associated with fallowing and changes in crop patterns, energy and GHG, reservoir storage, and surface water flow above or below diversions were determined to be less than significant with no mitigation required.

Related to groundwater supplies and subsidence, DWR hereby finds as follows:

Groundwater Supplies and Subsidence

Findings. The incremental contribution of the proposed project's effect on groundwater supplies and subsidence would be cumulatively considerable when viewed in connection with the effects of past projects, and current and probable future projects (as full implementation of SGMA is not anticipated until 2040 or 2042). This cumulative impact would be **significant**. PWAs may provide mitigation in their project-level analysis for exchanges and transfers. However, per CEQA Guidelines Section 15091(a)(2), implementation and enforcement mitigation measures are within the responsibility and jurisdiction of another public agency and not the agency making the finding.

Because DWR has no information on specific implementation of the transfers and exchanges from the proposed project and it has no authority to implement mitigation measures in the PWA service area, the cumulative impact would remain **significant and unavoidable**.

Section 4. Significant Irreversible Environmental Changes

According to Sections 15126, subd. (c) and 15126.2, subd. (c) of the CEQA Guidelines, an EIR is required to address any significant irreversible environmental changes that would occur should the proposed project be implemented.

The proposed project would add, delete and modify provisions of the Contracts to clarify terms of the Contracts that will provide greater water management regarding transfers and exchanges of SWP water supply within the service area. The proposed project would not build or modify existing SWP facilities nor change each PWA's contractual maximum Table A amounts. The proposed project would amend and add financial provisions to the Contracts based on the negotiated Agreements in Principle between DWR and the PWAs. Therefore, the proposed project would not result in the commitment of nonrenewable natural resources such as gravel, petroleum products, steel, and slowly renewable resources such as wood products any differently than under existing conditions, and there would be no significant irreversible environmental changes.

Section 5. Growth-Inducing Effects

The CEQA Guidelines Section 15126.2, subd. (d) requires that an EIR evaluate the growth-inducing impacts of a project. As identified in CEQA Section 15126.2(d), growth inducement is not in and of itself an “environmental impact;” however, growth can result in adverse environmental consequences. Growth inducement may constitute an adverse impact if the growth is not consistent with or accommodated by the land use plans and policies for the affected area. Local land use plans, typically General Plans, provide for land use development patterns and growth policies that allow for the “orderly” expansion of urban development supported by adequate urban public services, such as water supply, sewer service, and new roadway infrastructure. A project that would induce “disorderly” growth (i.e., a project in conflict with local land use plans) could indirectly cause adverse environmental impacts. To assess whether a project with the potential to induce growth is expected to result in significant impacts, it is important to assess the degree to which the growth associated with a project would or would not be consistent with applicable land use plans.

In California, cities and counties have primary authority³ over land use decisions, while water suppliers, through laws and agreements, are expected and usually required to provide water service if water supply is available. Approval or denial of development proposals is the responsibility of the cities and counties in the study area. Numerous laws are intended to ensure that water supply planning, including planning for water supply infrastructure, and land use planning (such as the approval of, or establishment of constraints to, development) proceed in an orderly fashion.

The proposed project would not build new or modify existing SWP facilities nor change each PWA’s contractual maximum Table A amounts. As discussed in DEIR Section 5.14, Population, Employment, and Housing, (p. 5.14-2 to 5.14-5) because there would be no new facilities built or existing facilities modified, no housing is proposed as part of the project or required as a result of it, nor would the project provide substantial new permanent employment opportunities. Therefore, the proposed project would not result in direct growth inducement.

Because the proposed project would not result in the construction of new or modification of existing water supply storage, treatment or conveyance facilities it would not remove an obstacle to growth associated with water supply.

As discussed in DEIR Section 5.3 Agricultural and Forestry Resources of the DEIR (p. 5.3-7 to 5.3-9), it is possible that transfers from agricultural to M&I PWAs could result in fallowing of agricultural lands and/or changes in crop patterns (e.g., switching from high water-using crops to low water-using crops) in the study area. It is also possible that exchange of SWP water from agricultural to M&I PWAs could occur. However, these transfers and exchanges and any associated fallowing of agricultural land and/or changes in cropping patterns in the study area would not be anticipated to change the existing agricultural land use designations because the land use would remain in agricultural use. Furthermore, additional water transfers or exchanges

³ Although cities and counties have primary authority over land use planning, there are exceptions to this such as the CEC (with permit authority and CEQA lead agency status for some thermal power plant projects) and the CPUC (with regulatory authority and CEQA lead agency status for certain utility projects).

are not expected to substantially affect the acreage of land fallowed or put into dry farming compared to existing practices for other reasons (e.g., market conditions, economic conditions, etc.). As a result, it would not be anticipated that there would be a change in land uses associated with delivery of SWP water supplies including, conversion of agricultural land uses to urban uses or increased developed uses in urban areas.

While with the proposed amendments transfers and exchanges could be more frequent and longer in duration, they would not be a permanent transfer of a PWAs annual Table A amounts; therefore, it would not represent a viable long-term source of urban water supply to support additional unplanned growth. Therefore, the proposed amendments would not result in additional water supply that could support growth over what is currently planned for in those jurisdictions and the proposed project would not result in indirect growth inducement.

Furthermore, cities and counties are responsible for considering the environmental effects of their growth and land use planning decisions (including, but not limited to, conversion of agricultural land to urban uses, loss of sensitive habitats, and increases in criteria air emissions). As new developments are proposed, or general plans adopted, local jurisdictions prepare environmental compliance documents to analyze the impacts associated with development in their jurisdiction pursuant to CEQA. The impacts of growth would be analyzed in detail in general plan EIRs and in project-level CEQA compliance documents. Mitigation measures for identified significant impacts would be the responsibility of the local jurisdictions in which the growth would occur. If identified impacts could not be mitigated to a level below the established thresholds, then the local jurisdiction would need to adopt overriding considerations.

Section 6. Alternatives

DWR has considered the project alternatives presented and analyzed in the DEIR and presented during the comment period and public hearing process. DWR finds that these alternatives are infeasible. Based on the impacts identified in the DEIR and other reasons summarized below, and as supported by substantial evidence in the record, DWR finds that approval and implementation of the proposed project as proposed is the most desirable, feasible, and appropriate action and hereby rejects the other alternatives and other combinations and/or variations of alternatives as infeasible based on consideration of the relevant factors set forth in CEQA Guidelines Section 15126.6, subdivision (f). (See also CEQA Guidelines, Section 15091, subd. (a)(3).) Each alternative and the facts supporting the finding of infeasibility of each alternative are set forth below.

Alternatives Considered and Dismissed from Further Consideration

The alternative described below was rejected for further consideration (p 7-3 – 7-4).

Implement New Water Conservation Provisions in the Contracts: Agriculture and urban water efficiency, conservation, and management measures are governed by the existing regulatory and legal requirements independent from the proposed project, including Assembly

Bill 1668 and Senate Bill 606. Additional water conservation measures in the Contracts would not provide greater water management regarding transfers and exchanges of SWP water as compared to the proposed project because water conservation is already required. Consequently, these actions are independent from the proposed project and do not meet the basic project objectives. Therefore, amending the Contracts to require implementation of agriculture and M&I water conservation measures was rejected, as these actions are required by state statute and are met by local water agencies under existing law.

Summary of Alternatives Considered

CEQA requires that an EIR describe and evaluate a range of reasonable alternatives to a project or to the location of a project that would feasibly attain most of the basic project objectives and avoid or substantially lessen significant project impacts. The purpose of the alternatives analysis is to determine whether or not a variation of the proposed project would reduce or eliminate significant project impacts within the framework of the project's basic objectives.

The alternatives considered in the DEIR include:

- Alternative 1: No Project
- Alternative 2: Reduce Table A Deliveries
- Alternative 3: Reduced Flexibility in Water Transfers/Exchanges
- Alternative 4: More Flexibility in Water Transfers/Exchanges
- Alternative 5: Only Agriculture to M&I Transfers Allowed

Alternative 1: No Project

Description

CEQA Guidelines section 15126.6, subd. (e) requires consideration of a No Project Alternative. The purpose of this alternative is to allow the decision makers to compare impacts of approving a project with impacts of not approving a project. Under the No Project Alternative, DWR takes no action, and DWR and the PWAs would continue to operate and finance the SWP under the current Contracts.

Facts in Support of Finding of Infeasibility

Alternative 1 would not meet the objective of the project because Alternative 1 does not provide greater water management regarding transfers and exchanges of SWP water supply within the SWP service area and as compared to the proposed project. In addition, impacts under Alternative 1 would be similar but greater when compared to the proposed project. Alternative 1 could result in new potentially significant impacts associated with the construction and operation of new water supply facilities that were not identified for the proposed project. In addition, if alternative sources of water are not available, then the less than significant impacts identified for the proposed project could be potentially significant.

Alternative 2: Amending Contract to Reduce Table A Deliveries

Description

Under Alternative 2, as with the proposed project, DWR and the PWAs would agree to amend the Contracts based on the May 20, 2019 AIP. However, unlike the proposed project, the Contracts would be amended to reduce annual Table A amounts proportionately for all the PWAs.

Facts in Support of Finding of Infeasibility

Alternative 2 would not meet the objectives of the project because it would cause a reduction in delivery of annual Table A amounts proportional for all PWAs and would not provide greater water management regarding transfers and exchanges. In addition, impacts under Alternative 2 would be similar but greater when compared to the proposed project. Alternative 2 could result in new potentially significant impacts associated with the construction and operation of new water supply facilities that were not identified for the proposed project. In addition, if alternative sources of water are not available, then the less than significant impacts identified for the proposed project could be potentially significant.

Alternative 3: Less Flexibility in Water Transfers/Exchanges

Description

Under Alternative 3, as with the proposed project, DWR and the PWAs would agree to amend the Contracts based on the May 20, 2019 AIP. However, unlike the proposed project, the Contracts would not be amended to modify provisions of the Contracts and clarify certain terms of the Contracts to provide greater water management regarding transfers and exchanges of SWP water supply within the SWP service area. Some increase in flexibility of exchanges and transfers would be agreed to, but not all. For example, Alternative 3 would amend the Contracts to allow PWAs to transfer carryover water in San Luis Reservoir, but only 20 percent of the carryover water (the proposed project allows for 50 percent), allow limited multi-year transfers of five years or less (the proposed project allows for up to the Contract term), and not allow use of Transfer Packages. In addition, unlike the proposed project, PWAs would transfer water based on cost compensation established by DWR. Also, under Alternative 3, the Contracts would not amend the text in Article 56(f) regarding water exchanges to add provisions, such as conducting water exchanges as buyers and sellers in the same year and increasing the compensation allowed to facilitate the exchanges. Therefore, Alternative 3 would result in a similar or slightly less amount of water transfers among the PWAs than the proposed project, due to the less flexibility in water transfers and exchanges.

Facts in Support of Finding of Infeasibility

Alternative 3 would meet the objectives of the project, but to a lesser degree because the water transfers and exchanges would not provide as much water management flexibility regarding transfers and exchanges. In addition, impacts under Alternative 3 would be similar but greater

when compared to the proposed project. Alternative 3 could result in new potentially significant impacts associated with the construction and operation of new water supply facilities that were not identified for the proposed project. In addition, if alternative sources of water are not available, then the less than significant impacts identified for the proposed project could be potentially significant.

Alternative 4: More Flexibility in Water Transfer/Exchanges

Description

Under Alternative 4, as with the proposed project, DWR and the PWAs would agree to amend the Contracts. However, unlike the proposed project, the Contracts would be amended to allow PWAs more flexibility in water transfers and exchanges. Similar to the proposed project, PWAs would be able to transfer carryover water in San Luis Reservoir, transfer water for multiple years without permanently relinquishing that portion of their Table A amounts, and transfer water in Transfer Packages. Similar to the proposed project, PWA would be able to transfer water based on terms they establish for cost compensation and duration, and store and transfer water in the same year. Unlike the proposed project that only allows for a single-year transfers associated with carryover water, Alternative 4 would allow transfers and exchanges to include up to 100 percent of a PWA's carryover in San Luis Reservoir and allow multi-year use of its carryover water in both transfers and exchanges. Similar to the proposed project, the proposed exchange provisions of the AIP would establish a larger range of return ratios in consideration of varying hydrology and also maximum compensation with respect to SWP charges and allow PWAs to conduct additional water exchanges as buyers and sellers in the same year.

Facts in Support of Finding of Infeasibility

Alternative 4 would meet the objectives of the project. In addition, Under Alternative 4 the less than significant impacts associated with changes in flow including, adverse effects to special-status fish or terrestrial species, and water supply would be similar to the proposed project. However, similar to the proposed project, there is potential for Alternative 4 to result in a net deficit in aquifer volume, lowering of the local groundwater table, or subsidence in some areas of the study area with impacts that may be significant and unavoidable.

Alternative 5: Greater Water Management – Only Agriculture to M&I Transfers Allowed

Description

Under Alternative 5, as with the proposed project, DWR and the PWAs would agree to amend the Contracts based on the May 20, 2019 AIP.

Unlike the proposed project, DWR and PWAs would amend Contract provisions to allow the transfer of Table A water only from agricultural PWAs to M&I PWAs and not change any current Contract provisions for exchanges. Transfers from M&I PWAs to M&I PWAs, M&I PWAs to agricultural PWAs, and agricultural PWAs to agricultural PWAs would not be allowed. Similar to

the proposed project, PWAs could transfer carryover water in San Luis Reservoir to PWAs, transfer water for multiple years without permanently relinquishing that portion of their Table A amounts and request DWR's approval of Transfer Package; however, unlike the proposed project, these transfers would only be from agricultural PWAs to M&I PWAs. Similar to the proposed project, Alternative 5 would revise the Contract to allow the PWAs to transfer water based on terms they establish for cost compensation and duration. An agricultural PWA would be able to store and transfer water in the same year to M&I PWAs, and transfer up to 50 percent of its carryover water, but only for a single-year transfer to an M&I PWA (i.e., a future or multi-year commitment of transferring carryover water is not allowed). Under Alternative 5, the Contracts would not be amended to modify the text in Article 56(f) regarding water exchanges to include additional provisions, such as conducting water exchanges as buyers and sellers in the same year.

Similar to the proposed project, Alternative 5 would not build new or modify existing SWP facilities nor change any of the PWA's contractual maximum Table A amounts. Also similar to the proposed project, Alternative 5 would not change the water supply delivered by the SWP as SWP water supply would continue to be delivered to the PWAs consistent with current Contracts terms, including Table A and Article 21 deliveries. Operation of the SWP under this alternative would be subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. Also similar to the proposed project, Alternative 5 would not require additional permits or approvals.

Facts in Support of Finding of Infeasibility

Alternative 5 would meet some of the objectives of the project, but to a lesser degree because the water transfers and exchanges would not provide as much water management flexibility regarding transfers and exchanges. In addition, impacts under Alternative 5 would be similar but greater when compared to the proposed project. Alternative 5 could result in new potentially significant impacts associated with the construction and operation of new water supply facilities that were not identified for the proposed project. In addition, if alternative sources of water are not available, then the less than significant impacts identified for the proposed project could be potentially significant.

Environmentally Superior Alternative

CEQA Guidelines Section 15126.6 subd. (e) requires the identification of an environmentally superior alternative to the proposed project.

As presented in the DEIR, implementation of the proposed project would result in less than significant or no physical environmental impacts to all resource areas except for impacts related to groundwater supplies and subsidence, which are significant and unavoidable.

Alternative 4 would result in similar impacts as the proposed project (e.g., net deficit in aquifer volume, lowering of the local groundwater table, or subsidence in some areas of the study area). Alternatives 1, 2, 3, and 5 could result in impacts similar or greater (new potentially significant impacts associated with the construction and operation of new water supply facilities that were not identified for the proposed project) than the proposed project. Therefore, because the

proposed project and Alternative 4 would result in similar impacts and the other alternatives may result in similar or greater impacts, Alternative 4 was determined to be the environmentally superior alternative.

Section 7. Statement of Overriding Considerations

DWR hereby declares that, pursuant to CEQA Guidelines Section 15093, it has balanced the benefits of the proposed project against any unavoidable environmental impacts in determining whether to approve the proposed project. Pursuant to the CEQA Guidelines, if the benefits of the proposed project outweigh the unavoidable adverse environmental impacts, those impacts may be considered “acceptable.”

Having evaluated the reduction of adverse significant environmental effect of the proposed project to the extent feasible, considered the entire administrative record on the Project, and weighed the benefits of the proposed project against its unavoidable adverse impact, DWR has determined that each of the following benefits of the proposed project separately and individually outweigh the potential unavoidable adverse impacts and render those potential adverse impacts acceptable based upon the following overriding considerations. The following represents the specific reasons to support this determination based on the final EIR and information contained therein.

Water Transfers

The proposed project would add, delete, and modify provisions of the Contracts and clarify certain terms of the Contracts that will provide greater water management regarding transfers and exchanges of SWP water within the SWP service area.

The transfer provisions of the proposed project would facilitate the PWAs ability to:

- Transfer SWP water for multiple years and multiple parties without permanently relinquishing that portion of their annual Table A amounts;
- negotiate cost compensation and duration among the PWAs on a willing seller-willing buyer basis for water transfers; and
- Transfer SWP water stored outside of the transferring PWA’s service area to the receiving PWA’s service area

All these proposed transfer provisions would provide the PWAs with increased flexibility for short-term and long-term planning and management of their SWP water supplies. The proposed project, however, would not include any change to the PWA’s permanent annual Table A amounts.

Since the Monterey Amendment, DWR has approved short-term water transfers pursuant to Articles 15(a) and 41, and has administered the short-term Turn-Back Water Pool Program pursuant to Article 56 of the Contracts. The Turn-Back Water Pool Program allows a PWA to sell Table A water that it will not use, subject to certain conditions, for a set price that is either 50

percent or 25 percent of the Delta Water Rate for that year. DWR has also administered, on a demonstration basis, a multi-year water pool program for 2013-2014 and 2015-2016 that allowed PWAs to participate in the two-year program as either a buyer or seller for each of the two years (a decision made at the beginning of each of the two-year programs) with greater compensation for the water than allowed under the Turn-Back Water Pool Program. DWR has allowed transfers of Table A water among two PWAs with the same landowner in their respective service areas that do not include an exchange of money.

The proposed project would remove all language related to the Turn-back Pool from the Contracts and, compared to the Turn-Back Water Pool Program where DWR established the price based on the Delta water rate, the proposed project would revise the Contracts to allow the PWAs to transfer water based on terms they establish for cost compensation and duration. Also, in contrast to the Turn-Back Water Pool Program, a water transfer could be as long as the remainder of the term of the PWA's Contract. In addition, a PWA would be able to store and transfer water in the same year, and transfer up to 50 percent of its carryover water in San Luis Reservoir, but only for a single-year transfer (i.e., a future or multi-year commitment of transferring carryover water is not allowed).

The proposed amendments would result in a greater amount of water transfers among the PWAs than under the current Contract provisions. Based on past experience and discussions with PWAs, most water transfers that occur due to the proposed amendments would occur among the PWAs located south of the Delta and would not involve additional export of SWP water from the Delta. Water transfers would be implemented using the existing physical facilities and existing operational and regulatory processes, including CEQA compliance.

Water Exchanges

The proposed project would amend the text in Article 56(f) regarding water exchanges to include additional provisions. The proposed exchange provisions of the AIP would establish return ratios (up to a 5:1 ratio) based on a consideration of varying hydrology and would set compensation based on a PWA's SWP charges.

The proposed amendments would allow PWAs to exchange carryover water in San Luis Reservoir, and exchange up to 50 percent of their carryover water in a single-year transaction (i.e., a future or multi-year commitment of exchanging carryover water is not allowed). The proposed provisions would also allow PWAs to conduct water exchanges of carryover water as buyers and sellers in the same year.

While DWR has approved water exchanges pursuant to Articles 15(a), 41, and 56(f), the proposed project would provide the PWAs with increased flexibility for short-term and long-term planning of water supplies. Under the proposed project, exchanges may be used more frequently to respond to variations in hydrology, such as wet years, and in single dry-year and multiple dry-year conditions.

Acronyms and Glossary

AIP	Agreement in Principle
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
Contracts	Water Supply Contracts
DEIR	Draft Environmental Impact Report
DWR	California Department of Water Resources
EIR	Environmental Impact Report
FEIR	Final EIR
PRC	California Public Resources Code
PWAs	Public Water Agencies
RDEIR	Recirculated Draft Environmental Impact Report
SGMA	Sustainable Groundwater Management Act
SWC	State Water Contractors
SWP	State Water Project

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NOTICE OF DETERMINATION

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
(408) 265-2600

☐ Office of Planning and Research ☒ County of Santa Clara County Clerk
1400 Tenth Street, Room 121 70 West Hedding Street
Sacramento, CA 95818 San Jose CA 95110

Subject:

Filing of Notice of determination in compliance with Section 21108 or 21152 of the Public Resource Code.

Contact Person: Elise Latedjou-Durand	Telephone No: (408) 630-3205	State Clearinghouse No: 2018072033
Project Title: State Water Project Water Supply Amendments for Water Management.		
Project Applicant: Santa Clara Valley Water District (Valley Water)		
Project Location: SWP Facilities and Service Areas throughout the State of California		
Project Description: The proposed project would add, delete, and modify provisions of the Contracts and clarify certain terms of the Contracts that will provide greater water management regarding transfers and exchanges of State Water Project (SWP) water within the SWP service area. The proposed project would not build new or modify existing SWP facilities nor change any of the Public Water Agencies (PWAs) annual Table A amounts. The proposed project would not change the water supply delivered by the SWP, as SWP water would continue to be delivered to the PWAs consistent with current SWP Water Supply Contract terms and all regulatory requirements.		

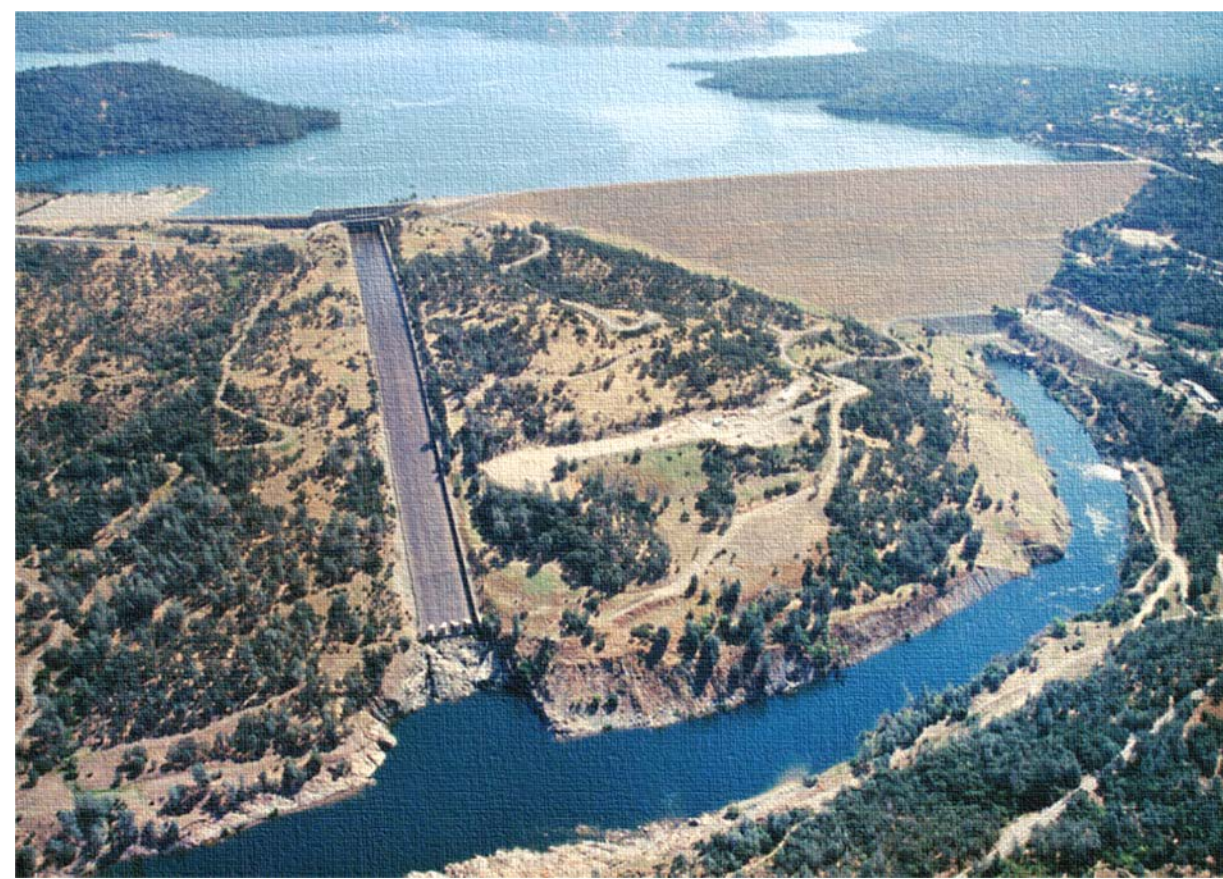
This is to advise that Valley Water, acting as a Responsible Agency, has approved the above described proposed project on _____ and has made the following determinations:

1. The project ☒ will, ☐ will not, have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ☐ were, ☒ were not made a condition of the approval of the project.
4. A statement of Overriding Considerations ☒ was, ☐ was not adopted for this project.
5. Findings ☒ were, ☐ were not made pursuant to the provision of CEQA.

This is to certify that the Negative Declaration and record of project approval is available to the General Public at: 948 Orange Avenue. Patterson. California

Signature:	Rick Callender Chief Executive Officer	Date:
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State Water Project Contract – Water Management Tools Amendment

November 17, 2020 Board Meeting

Staff Recommendations

- A. Receive information**
- B. Adopt resolution**
- C. Delegate execution to CEO**

Valley Water's State Water Project Contract

Significant source of imported water

Limited ability to transfer water

Purpose

Greater Flexibility – Water Supply Reliability

New Rules – Transfers and Exchanges

Transparency – Due Diligence

BENEFITS

Reliability

- Access to dry year supplies
- Short and long-term transfers
- Risk mitigation

Control

- Direct transfers
- Cost compensation

Transparency

- Approval criteria
- No impact

Background

June 2018

- Agreement in Principle (AIP) reached

October
2018

- EIR circulated

May 2019

- Project approval withdrawn for CA WaterFix
- Agreement to remove CA WaterFix cost allocation from the AIP
- EIR amended and recirculated

August
2020

- Project Approval and NOD

Staff Recommendations

- A. Receive information**
- B. Adopt resolution**
- C. Delegate execution to CEO**

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Santa Clara Valley Water District

File No.: 20-1058

Agenda Date: 11/17/2020

Item No.: 2.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Monitoring and Assessment Program Evaluation of Los Vaqueros Reservoir Expansion, Sites Reservoir, and Delta Conveyance Project.

RECOMMENDATION:

- A. Receive and discuss information regarding the Los Vaqueros Reservoir Expansion Project, Sites Reservoir Project, and Delta Conveyance Project;
- B. Authorize the Chief Executive Officer (CEO) to execute Amendment 2 to the 2019 Multi-Party Agreement for Los Vaqueros Reservoir Expansion Project, which includes a contract extension through December 2021 and a cost-share not to exceed \$1,013,661;
- C. Authorize the CEO to execute the Second Amendment to 2019 Reservoir Project Agreement with Sites Project Authority and the Project Agreement Members for a participation level of 0.2 percent with a \$50,000 cost share; and
- D. For the Delta Conveyance Project:
 - i. Approve a provisional participation percentage in the Project of 2.73 percent and authorize the CEO to increase Valley Water's provisional participation percentage up to a total of 3.23 percent if additional shares become available;
 - ii. Adopt the Resolution APPROVAL OF PROVISIONAL PARTICIPATION PERCENTAGE AND AUTHORIZING NEGOTIATION AND EXECUTION OF A FUNDING AGREEMENT FOR PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A POTENTIAL DELTA CONVEYANCE PROJECT;
 - iii. Authorize the CEO to negotiate and execute a funding agreement with the Department of Water Resources committing up to \$4,034,001 for Project environmental planning and design costs incurred in Calendar Years 2021 and 2022, with an option to commit up to an additional \$6,972,348, upon future approval of the Board, for Project environmental planning and design costs incurred in Calendar Years 2023 and 2024; and
 - iv. Approve and Authorize the CEO to execute the Amended and Restated Joint Powers Agreement Forming the Delta Conveyance Design and Construction Authority.

SUMMARY:

The Water Supply Master Plan 2040 (Master Plan) is Santa Clara Valley Water District's (Valley Water) strategy for providing a reliable and sustainable water supply and ensuring effective and efficient new water supply investments. The Master Plan, adopted by the Board of Directors (Board) in November 2019, recommends a three-pronged strategy and associated projects to ensure Valley Water achieves its level of service goal:

- 1) Secure existing supplies and infrastructure:
 - Continue baseline projects (Vasona Pump Plant Upgrade, Rinconada Water Treatment Plant Reliability Improvement, dam seismic upgrades)
 - Delta Conveyance Project (DCP)
- 2) Expand water conservation and reuse:
 - 24,000 acre-foot (AF) potable reuse project
 - Achieve 110,000 AF of conservation by 2040 (represents an additional 11,000 AF of conservation above the baseline).
- 3) Optimize the use of existing supplies and infrastructure:
 - Pacheco Reservoir
 - Transfer Bethany Pipeline

The Master Plan's recommended projects exceeded Valley Water's level of service goal to be prudent given future uncertainties with demands and supplies. In addition to the recommended projects, there are also alternate Master Plan projects such as Los Vaqueros Reservoir Expansion Project (LVE) storage and Sites Reservoir Project (Sites) in which Valley Water is participating in case a recommended project does not move forward or fails to achieve its assumed benefits. Recommended projects are included in Valley Water's current water rates forecast while alternate projects are not.

As part of the on-going master planning process to address future uncertainties with demands, existing supplies, and proposed projects, Valley Water presented the Monitoring and Assessment Program 2020 (MAP) report to the Board on October 27, 2020. The MAP report included an updated demand forecast through 2040. The projected new 2040 demand for planning purposes is approximately 335 thousand acre-feet (TAF), which is approximately 14% lower than the Master Plan's 2040 demand projection.

With the significantly lower demand projection, the potential overinvestment in the Master Plan may be more acute. Valley Water is re-evaluating Master Plan projects to determine which projects should continue to be invested in to meet the level of service goal and potentially for other benefits such as operational flexibility, supply diversification, and resiliency to future uncertainties. Currently, Valley Water needs to make participation and funding decisions for LVE (Transfer Bethany Pipeline is a recommended project, storage is an alternate project), Sites (alternate project), and DCP (recommended project). Valley Water is evaluating its continued participation in these three projects considering new demands. Over the next couple of years, Valley Water will also be making decisions on other major investments such as Pacheco Reservoir and potable reuse; Valley Water will also consider them within the context of the MAP demand forecast and the Master Plan's ensure

sustainability strategy.

Los Vaqueros Expansion Project

The LVE Project would expand Los Vaqueros Reservoir storage from 160 thousand acre-feet (TAF) to 275 TAF and build the Transfer-Bethany Pipeline to connect the reservoir to the State Water Project (SWP) South Bay Aqueduct (SBA) and the California Aqueduct. The LVE Project may provide Valley Water regional storage, new water through Contra Costa Water District's (CCWD) diversion rights, and increased operational flexibility in conveying imported water. Valley Water is considering a Second Amendment (A2) to the 2019 Multi-Party Agreement (MPA) to continue project development through 2021 with an additional cost share of approximately between \$800,000 and \$1 million. Funding will go towards making progress on permits, design, preparing services agreements, and the formation of the JPA. Valley Water presented A2 to the Water Storage Exploratory Committee (WSEC) in July, August, and November 2020 and is scheduled to bring A2 to the full Board for consideration on November 17, 2020. Given the potential operational flexibility that the regional storage and conveyance of the project may provide, Valley Water staff and the WSEC recommend that the Board approve continued participation in the next phase of the project. Refer to Attachment 1 for more detail on the project.

Through June 2020, Valley Water has spent approximately \$618,000 towards LVE Project cost-sharing for the WSIP application and project development, including in-kind labor costs. CCWD estimates the total LVE Project development and construction 40-year life cycle costs to be \$868 million in constant 2018 dollars (\$513 million for storage and \$355 million for conveyance). The California Water Commission approved a Proposition 1 Water Storage Investment Program (Prop 1 WSIP) grant award of up to \$459 million for the LVE Project, including \$22.95 million in early funding. The U.S. Bureau of Reclamation (USBR) received \$2.155 million of federal funding for the LVE Project through the Water Infrastructure Improvements for the Nation (WIIN) Act for Fiscal Year (FY) 2020. CCWD and local area partners (LAPs) (Attachment 2) are continuing efforts to procure additional WIIN Act funding beyond FY 2020, ultimately seeking \$223 million in total. The rest of the project funding would come from the LAPs.

LVE Storage and Conveyance

Valley Water continues to work with CCWD and the LAPs to evaluate long-term participation levels, how it translates to water storage and/or supply benefits, costs, and risks. Many of these potential benefits depend on if and how much Valley Water participates in project storage or Transfer-Bethany Pipeline conveyance components. In addition, Valley Water is working with regional partners to evaluate how storage and conveyance components could support other regional projects, such as the Bay Area Regional Desalination Project and the Refinery Recycled Water Project.

Prior to the recent MAP report, Valley Water was working with CCWD to evaluate LVE storage as a means to diversify Valley Water's out-of-county storage program or as a storage project that is in addition to Master Plan proposed investments. However, given the new demand forecast, Valley Water now recommends evaluating the project storage component solely as the means to diversify Valley Water's storage program. The strategic location of LVE storage may provide Valley Water an operational and emergency benefit; Valley Water staff are currently evaluating this option considering

the revised demands.

Valley Water completed the preliminary evaluation of using LVE storage in addition to the recommended Master Plan projects (Table 1). Given Valley Water's significant investments in storage (i.e., local groundwater and surface water storage and Semitropic Water Bank storage), its ability to utilize carryover storage in San Luis Reservoir, and the inclusion of the Pacheco Reservoir project in the Master Plan investment portfolio, the evaluation indicated Valley Water rarely filled LVE storage. However, if LVE storage is operated to diversify and add flexibility to Valley Water's storage program, Valley Water may be able to exercise the storage in LVE better. Costs in Table 1 also do not account for the recently negotiated reduced user fees for the CCWD and East Bay Municipal Utility District (EBMUD) existing infrastructure. A new cost evaluation is expected from CCWD in December 2020. Valley Water expects the project benefit to potentially increase if used to diversify from existing storage projects and the costs to decrease compared to those reported in Table 1.

Table 1. Storage of Valley Water Supplies in LVE¹

Preliminary Analysis	Dedicated Storage (30 TAF)	Pooled Storage (up to 20 TAF)	Transfer Bethany Only ⁵
PV Life Cycle Cost to Valley Water (2019\$) ²	\$200 Million	\$50 Million	\$50-250 Million
Average Storage Volume ³ (TAF/yr)	13	3	-
PV life cycle unit cost (\$/AF) ^{2,4}	\$1,000	\$1,300	\$700

¹ Costs and impacts shown only for LVE storage components, based on values from Valley Water's Water Evaluation and Planning (WEAP) model, CCWD's CalSim II model, and CCWD's Proforma 3.0 financial model.

² Present Value (PV) life cycle cost calculated using Valley Water's 100-year life cycle cost methodology. LAPs have negotiated lower usage fees and CCWD is updating its financial model; Valley Water expects this to lower storage and conveyance costs.

³ Average volume held in storage by Valley Water over 83-year CalSim II model period.

⁴ Unit cost is calculated using the 100-year life cycle cost and the life cycle usable project supplies. Usable project supplies are the portion of the preliminary estimated delivered yield that can be used by Valley Water to meet demands.

⁵ Assumes between a 1% to 7% share of Transfer Bethany Pipeline capacity.

Apart from storage, LVE includes the Transfer-Bethany Pipeline, which could potentially provide Valley Water additional operational flexibility and access to new water during wetter years. Preliminary model analysis of current LAP participation levels and planned infrastructure capacities suggest that Valley Water could use up to approximately 7% of the pipeline capacity. The current evaluation shows conveyance through Transfer Bethany Pipeline costs Valley Water approximately \$700 per AF and that Valley Water could have access to up to 6 TAF of new water during years with surplus conditions in the Delta. More analysis is underway to refine costs given the updated usage fees and to determine if and how Valley Water could benefit from increased Transfer-Bethany Pipeline use, such as to convey imported water supplies other than Delta surplus and water stored in LVE (e.g., direct delivery of Central Valley Project [CVP] or SWP contract water, refinery recycled water exchange project water, etc.). This information will inform the JPA service agreements, and Valley Water staff will provide this analysis to the WSEC for feedback to inform the service agreements discussions during 2021 and early 2022. JPA service agreements would be presented to

the Board for consideration in late 2021 and early 2022.

LVE Cost Share through December 2021

The current project agreement executed on April 30, 2019, between CCWD and the LAPs included a cost-share commitment to expire on June 30, 2020. Valley Water signed the MPA Amendment 1 in June 2020 to extend the existing agreement through December 31, 2020. A1 was only a time extension and did not require any additional cost share. To continue project development through to when the JPA is formed, CCWD is requesting partners sign MPA A2 (Attachment 3). A2 extends the MPA through December 31, 2021, includes a revised scope of work, and requires an additional cost share to cover project costs through December 2021. The total cost for A2 is approximately \$6.1 million, and the cost share to Valley Water is expected to be approximately between \$800,000 to \$1 million, depending on the number of LAPs that continue participation and the allocation approach. The allocation proposal is to share the total cost equally among the LAPs, same as the allocation approach in the MPA. The additional cost share in A2 will fund: JPA formation, preparation of service agreements, developing permits and agreements necessary to secure full WSIP funding, operational or conveyance issues identified by LAPs (e.g., SBA conveyance), 90% level of LVE Project design, and other critical path items as required. Executing A2 includes no commitment to join the JPA. Given that A2 is requesting a significant financial commitment, CCWD proposes to split the cost share into four payments: when the amendment is executed, November 2020, March 2021, and July 2021. If approved in November, the first two payments would be due. There are provisions that allow LAPs to withdraw at any time, and if a decision to withdraw is made before any one of the payment due dates, those future payments would not need to be made.

Attachments 4 through 6 provide an LVE project map, Transfer-Bethany Pipeline details, and proposed JPA structure details which are still being negotiated.

Sites Reservoir Project

Sites is a proposed new 1.5 million acre-foot (MAF) off-stream reservoir that would be located north-of-Delta (NOD), approximately 10 miles west of the town of Maxwell in Colusa County. Sites may provide Valley Water new storage, new Delta-conveyed water supplies, improved CVP/SWP reliability, and increased operational flexibility.

Valley Water is considering a Second Amendment to the 2019 Reservoir Project Agreement with Sites Project Authority (Sites A2) (Attachment 7) to support continued Phase 2 work activities through December 2021. Staff recommends continuing participation in Sites and reducing Valley Water's requested yield to 500 acre-feet (AF), corresponding to a 0.2 percent participation level in the project at a cost of \$50,000. Refer to Attachment 8 for more detail on the project.

To date, all existing participants except Valley Water have agreed to continue participation in the project as further detailed in Attachment 9. The Sites Project Authority (Sites JPA) requested a decision on project participation from Valley Water by November 2020.

A summary of the Sites Project major project risks, challenges, and mitigation measures is provided

in Attachment 10. Regarding project governance, the Sites JPA sent a letter dated August 11, 2020 recognizing Valley Water's concerns regarding representation on the Sites JPA and providing assurance that this issue will be discussed during the Sites A2 phase of work (Attachment 11).

Second Amendment to 2019 Project Agreement

Execution of the Sites A2 would obligate Valley Water to provide funding for continued work on Phase 2 of the Sites Project, provide Valley Water with a continuing seat on the Sites Reservoir Committee through December 2021, and give Valley Water priority access to proportional water supply and storage benefits provided by the project. Work to be performed under this amendment is critical for satisfying requirements to secure Prop 1 WSIP funding. The total budget is roughly \$40 million, of which about \$19 million is to be funded by water user participants that comprise the Sites Reservoir Committee. The remaining budget is expected to be funded using Prop 1 WSIP early funding and funds secured from provisions under the WIIN Act.

Sites A2 allows members to withdraw from the agreement with at least 30 days written notice. A withdrawing member would still be responsible for paying costs approved prior to the date of written notice of withdrawal. Should Valley Water reduce or withdraw its participation, it may be possible to rejoin in the future if there is unsubscribed participation in the Project; however, reinstating first priority rights to the project benefits would be subject to approval of the Sites Reservoir Committee.

Participation Level

The Board approved a requested yield of 16,000 AF from the Sites project in February of 2019, which corresponds to a 3.2 percent participation level in the original \$6 billion project. Since that time, the project has been downsized from a 1.8 to a 1.5 MAF storage facility, with a capital cost reduction from \$6 billion to \$3 billion. Staff evaluated several options for continued participation:

- *Option 1 - Reduce but maintain significant benefits (\$780,000 funding commitment):* Reduces Valley Water's requested yield from 16,000 AF to 7,800 AF while maintaining a 3.2 percent overall participation level in the downsized project;
- *Option 2 - Reduce participation by half (\$400,000 funding commitment):* Reduces Valley Water's participation in the total project from 3.2% to 1.6%, corresponding to a requested yield of 4,000 AF;
- *Option 3 - Reduce to a minimal participation level (\$50,000 funding commitment):* Reduces Valley Water's requested yield to 500 AF, a level that does not provide significant benefits but that can maintain Valley Water's participation in the Sites Reservoir Committee, the governing body under the Sites JPA that is developing the project. This corresponds to a participation level in the total project of 0.2 percent; and
- *Option 4 - Withdraw from the project (no funding commitment):* Withdraw completely from the project.

The funding commitments associated with the various options correlate to \$100 dollars in funding per each incremental 1 AF in participation request, payable in two payments, with \$60 dollars per AF due in November 2020 and up to \$40 per AF due in April 2021. Table 2 compares preliminary costs and benefits of the different options.

Table 2: Comparison of Sites Participation Options*

	Last Board Decision (February 26, 2019)	Option 1	Option 2	Option 3	Option 4
		Maintain Participation	Reduce Participation by Half	Reduced Participation	Withdraw from Participation
Valley Water Share of Total Capital Cost (2019 Dollars)	\$192 Million	\$97 Million	\$50 Million	\$6 Million	\$0 Million
Average Yield Available to Valley Water (AF)	11,100	~5,500	~3,000	350	0
Valley Water Storage Share (AF)	55,000	45,000	23,000	2,800	0
PV Lifecycle Unit Cost**	Not available	\$1,100/AF - \$1,400/AF	\$1,100/AF - \$1,400/AF	\$1,100/AF - \$1,400/AF	Not Applicable

*See Table 1 in Attachment 8 for more detail

**Based on the Water Master Plan's assessment of the usable portion of available Sites yield, assuming other projects are implemented and there is limited demand for Sites water supplies.

The Master Plan considers the Sites project to be an alternative to the Delta Conveyance Project that is not needed to meet the level of service goal in 2040; therefore, staff is recommending Option 3, which includes a 0.2 percent participation level in Sites. This minimal participation level will allow Valley Water to continue to evaluate the project while further developing its water supply reliability needs within the context of new demand projections. The option 3 was presented to the WSEC on November 9, 2020 and the Committee concurred with the staff recommendation.

Funding

Through September 2020, Valley Water has spent approximately \$1.88 million towards Sites cost sharing for the Prop 1 WSIP application and project development. The California Water Commission approved a Prop 1 WSIP grant award of up to \$816 million for Sites, including \$40.8 million in early funding. The U.S. Bureau of Reclamation received a total of \$10 million of federal funding for Sites through the WIIN Act. The U.S. Department of Agriculture approved a \$449 million loan for the Site's Maxwell water intertie conveyance facilities. Sites project partners are continuing efforts to procure additional funding beyond 2021.

Delta Conveyance Project

The Master Plan identifies the Delta Conveyance Project as a key project supporting the strategy to secure existing supplies and infrastructure. Staff therefore recommends continued participation in the project.

At the September 24, 2019 Board meeting, Valley Water Board of Directors approved Resolution 19-

69 “Support of Governor Newsom’s Proposed Delta Conveyance (‘Governor’s Proposed Project’)” and adopted Guiding Principles to shape Valley Water’s participation in the Project (Attachment 12). Since that time, several significant developments have occurred. Refer to Attachment 13 for more detail on each of these items.

SWP Contract Amendment for Delta Conveyance

At the end of April 2020, the Department of Water Resources (DWR) and the SWP Contractors completed negotiations of the Draft Agreement in Principle (AIP) for the SWP Water Supply Contract Amendment on a Delta Conveyance Project (Attachment 14). The AIP provides the basis for how DWR will allocate costs and benefits of the Project through a future SWP contract amendment that will be executed only if a project is ultimately approved and only after the necessary environmental review is completed.

SWP Contractor Provisional Participation Percentages

On October 23, 2020, DWR sent a letter to the State Water Contractors asking SWP Contractors to indicate their likely participation percentages to confirm that the proposed Project is fully supported and to allocate planning costs accordingly (Attachment 15). As described in the AIP, SWP Contractors can either opt out or choose to participate at a level that is equal to or greater than their Table A percentage.

Valley Water’s percentage of the total SWP contract supply is approximately 2.5 percent. For the California WaterFix, staff had identified a total participation percentage of 5 percent as a reasonable proxy for participation both on the SWP and CVP, which is roughly the same participation percentage that is currently included in Valley Water’s rate projections. Several SWP Contractors have already indicated they will not be participating in the project. The remaining SWP Contractors are considering increases in their standard Table A percentage of about 14 percent on average in order to absorb the share of project costs associated with the known Non-Participants. Valley Water’s participation percentage consistent with this coordination effort would be 2.73 percent if it absorbs its proportionate share. Staff expects SWP contractors to complete their board decisions by the end of 2020 or early 2021; it is possible that the outcome of these decisions result in additional project shares becoming available, which may require participating agencies to increase their participation percentage to ensure full funding for the project. Given the lower demand projections in the MAP 2020 report and the current state of the economy, staff is not recommending participation at a 5 percent level; however, because this project is critical for securing Valley Water’s baseline State Water Project supplies into the future, staff is recommending approval of a provisional participation percentage of 2.73 percent, and authorization for an additional 0.5 percent in the event additional shares become available, for a total provisional participation percentage of 3.23 percent.

Gap Funding Agreement to Support Planning and Design Costs

DWR is asking participating SWP contractors to enter into a funding agreement (Gap Funding Agreement) to provide \$340.7 million for environmental review, planning, and design of the proposed Project (Attachment 16). Staff anticipates interim funding will be reimbursed or credited upon the first issuance of revenue bonds for the Project; however, there is a chance that funds will not be

reimbursed or credited.

Valley Water has the option to approve its entire obligation for the next four years of Project planning or to limit the commitment to just the first two years, with the remaining amount subject to future Board action without requiring an amendment to the agreement. Attachment 17 shows estimated costs for each 0.1 percent participation percentage increment. Staff recommends adopting a Resolution authorizing the CEO to negotiate and execute on behalf of Valley Water a Gap Funding Agreement substantially similar to the agreement attached hereto as Attachment 18 and committing up to \$4,034,001 for Project environmental planning and design costs in 2021 and 2022, with an option to commit up to an additional \$6,972,348, upon future approval by the Board, for planning and design costs in 2023 and 2024.

Amended and Restated Joint Powers Agreement

In May 2018, certain SWP Contractors, including Valley Water, entered into a Joint Powers Agreement and formed the Delta Conveyance Design and Construction Authority (DCA), whose purpose was to actively participate with DWR in the design and construction of California WaterFix. Some SWP Contractors seek to reorganize the governance structure to better align with current participation in the proposed Project. The proposed amendments would primarily amend the governance structure. Attachment 19 is a redline-strike out copy of the proposed Amended and Restated Joint Powers Agreement Forming the Delta Conveyance Design and Construction Authority. Staff recommends approving this Amended and Restated Joint Powers Agreement.

Delta Conveyance Design and Construction Authority (DCA) Cost Assessment

On August 20, 2020, the DCA released a preliminary cost assessment of \$15.9 billion for the proposed Project in undiscounted 2020 dollars that includes capital costs for design and construction, soft costs, and environmental mitigation. It does not include financing costs. The construction cost includes a 38 percent contingency such that together with an estimate of \$354 million for risk mitigation, total Project contingency levels are 44 percent. DCA engineers believe this is an appropriately conservative contingency given the current level of project development.

State Water Contractors High Level Analysis of Project Benefits

The State Water Contractors conducted a preliminary analysis of potential total Project water supply benefits under a range of potential future scenarios to assess the Project's ability to maintain or improve SWP reliability and resiliency. That analysis indicates that future regulatory scenarios could reduce SWP system-wide supplies by anywhere from about 300 TAF to over 1 MAF, depending on the regulatory scenario. Under these scenarios, the Project could restore available SWP system-wide deliveries by anywhere from about 100 TAF to 1 MAF per year on average. The modeling also indicates that late century sea level rise could result in over 1 MAF of reduced supplies without the Project. Under this future scenario, the Project could potentially restore approximately 900 TAF of system-wide deliveries.

Next Steps and Schedule

Los Vaqueros and Sites Project

Over the next two years, LVE and Sites have many key decision points and milestones (Attachment 20). If the Board decides to continue participation in LVE and/or Sites, Valley Water will continue to track the key decision points and will return to the WSEC with project updates regularly.

LVE project construction is expected to start in 2022, with the Transfer-Bethany Pipeline being constructed from 2023-2025. The Los Vaqueros dam raise, pumping facilities upgrades, and other conveyance improvements will be completed between 2027-2029. The Sites project is expected to begin construction in 2024 and to initiate project operations in 2030.

Delta Conveyance Project

For DCP, DWR anticipates completing CEQA and NEPA in 2023 and other environmental, permitting and regulatory processes in 2024. Future Valley Water decisions include:

- End of 2022, potential decision on whether to provide an additional two years of funding for planning and design work.
- Early 2024, potential final decision on project participation.

FINANCIAL IMPACT:

Los Vaqueros Reservoir Expansion Project

An \$800,000 to \$1,013,661 expenditure is associated with the approval of this item. Funding for this item is included in the Fiscal Year 2021 Transfer-Bethany Pipeline Project, project number 91251001.

Site Reservoir Project

Participation options considered by staff include a funding commitment of up to \$780,000. If the staff and WSEC recommended option is approved, the funding will be \$50,000. This amount is included in the Fiscal Year 2021 Imported Water Program budget, project number 91131004.

Delta Conveyance Project

The financial impact of the Gap Funding Agreement will be determined by the Board action commensurate with the participation percentage selected. Under the staff recommendation, Valley Water would provide up to a total of \$4,034,001 over the next two years, with a potential additional contribution of up to \$6,972,348 subject to a future Board action. If the Board elects a greater participation percentage, the costs would increase accordingly, up to a total of \$20.4 million over four years under the 6 percent participation scenario.

The Imported Water Program has budgeted \$7.8 million for the Gap Funding Agreement in the fiscal year 2021. This amount is available for any commitment made by today's Board action and can be encumbered for future years' costs under the Gap Funding Agreement. If any additional funding is

necessary, the funds would need to be budgeted in future fiscal years.

CEQA:

Los Vaqueros Reservoir Expansion Project and Site Reservoir Project

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

Delta Conveyance Project

The proposed actions do not constitute the approval by Valley Water of the Project or its construction, of any amendment to the long-term water supply contract with DWR, or to any actions by the DCA that may cause direct or reasonably foreseeable indirect environmental impacts. As such, the actions recommended herein are not a “project” under the California Environmental Quality Act (“CEQA”) Guidelines Section 15378(a).

Alternatively, Valley Water’s approval of the proposed actions are statutorily exempt from CEQA under State CEQA Guidelines Section 15262, as the proposed actions concern “feasibility or planning studies for possible future actions Valley Water has not approved, adopted, or funded.” (State CEQA Guidelines, § 15262.)

Furthermore, Valley Water’s approval of the proposed actions are exempt from CEQA under the common sense exemption set forth in State CEQA Guidelines section 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

ATTACHMENTS:

- Attachment 1: LVE Project Information
- Attachment 2: LVE Local Agency Partners
- Attachment 3: LVE Amendment No. 2
- Attachment 4: LVE Project Map
- Attachment 5: LVE Transfer-Bethany Pipeline Information
- Attachment 6: LVE Proposed JPA Structure
- Attachment 7: Sites Amendment No. 2 (incl. 2019 Agmt, Amdt No. 1)
- Attachment 8: Sites Project Information
- Attachment 9: Sites Project Participation Summary
- Attachment 10: Sites Risk, Challenges, and Mitigation
- Attachment 11: Sites Letter to SCVWD WSEC, 081120
- Attachment 12: DCP SCVWD Resolution No. 19-69
- Attachment 13: DCP Project Information

Attachment 14: DCP Agreement in Principle
Attachment 15: DCP DWR Letter to SWC, 102320
Attachment 16: DCP Gap Funding Agreement
Attachment 17: DCP Participation Percentages
Attachment 18: DCP Resolution, Joint Funding
Attachment 19: DCP Amended and Restated Joint Powers DCA Agreement
Attachment 20: LVE, Sites, and DCP Milestones
Attachment 21: PowerPoint

UNCLASSIFIED MANAGER:

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Los Vaqueros Expansion Project Information

Summary

The Santa Clara Valley Water District (Valley Water) continues to evaluate participating in the Los Vaqueros Reservoir Expansion Project (LVE Project) led by Contra Costa Water District (CCWD). Valley Water began evaluating the project in 2016 as part of the Water Supply Master Plan 2040 and most recently entered into a 2019 Multi-Party Agreement (MPA) that included a \$314,782 cost share to fund LVE Project development through June 30, 2020. To continue project development and evaluation, CCWD has requested an amendment (A2) to extend the MPA through 2021 and includes an additional cost share (Attachment 3). The cost share for Valley Water is expected to be between approximately \$800,000 and \$1 million and depends on the number of project partners. At the July 2020 Water Storage Exploratory Committee meeting, the committee recommended that A2 to the 2019 MPA be presented to the full Board for consideration. The LVE Project may provide Valley Water regional storage, new water through CCWD's diversion rights, and increased operational flexibility in the conveyance of imported water. Given the potential operational flexibility that the regional storage and conveyance of the project may provide, Valley Water staff recommends that the Board of Directors (Board) continue participating in the project and provide the cost share funding. This document provides information on the water supply benefits of the LVE project, an update on LVE Project governance, and information on the 2019 MPA amendments and cost share.

Background

The LVE Project would expand Los Vaqueros Reservoir (Los Vaqueros) storage from 160 thousand acre-feet (TAF) to 275 TAF and build the 300 cubic feet per second (cfs) Transfer-Bethany Pipeline to connect Los Vaqueros to the State Water Project's (SWP) South Bay Aqueduct (SBA) (Attachment 4). Additional LVE Project elements include upgrading pump facilities, improving conveyance, and improving ecological conditions in the San Francisco Bay Delta. Valley Water began participating in the LVE Project in 2016 to support CCWD's Proposition 1 Water Storage Investment Program (WSIP) funding application. The WSIP funding program is overseen by the California Water Commission (CWC). The CWC approved a maximum grant award of \$459 million for LVE Project development and construction, including \$22.95 million in early funding.

On December 20, 2019, \$2.155 million of federal funding for the LVE Project was approved from the Water Infrastructure Improvements for the Nation Act (WIIN Act) through the federal government's Fiscal Year (FY) 2020. WIIN Act funding supports U.S. Bureau of Reclamation's (USBR) efforts to consult with federal permitting agencies, develop inter-agency agreements, and to advance engineering design and analysis of the LVE Project. CCWD and the Local Agency Partners (LAPs) are continuing efforts to procure WIIN Act funding beyond FY 2020, ultimately seeking \$223 million in total.

To conduct preliminary evaluations of potential LVE Project benefits and to participate in project development, the Valley Water Board of Directors (Board) on March 26, 2019 authorized joining the LVE Project 2019 MPA, which included cost share funds not to exceed \$355,000. The LVE Project 2019 MPA was fully executed on April 30, 2019 and committed Valley Water to \$314,782 of an equally split cost share portion among the LAPs. As of June 2020, Valley Water has spent approximately \$618,000 towards LVE Project cost sharing for the WSIP application and project development, including in-kind labor costs.

Several other 'Local Agency Partners' (LAPs), mostly other Bay Area water agencies and suppliers, are also evaluating LVE Project participation (Attachment 2). CCWD estimates the total LVE Project development and construction 40-year life cycle costs to be \$868 million in constant 2018 dollars for proposed storage (\$513 million) and conveyance (\$355 million) components. Approximately 45% of LVE Project costs would be paid by the LAPs while the remaining 55% is from the WSIP and WIIN grant funding.

Since receiving WSIP, WIIN, and cost share funding, CCWD and LAPs have worked with consultants to develop preliminary engineering plans and timelines, negotiate agreements, evaluate project benefits and costs, and advance project permitting. On February 28, 2020, the Final Supplement to the EIR/EIS was published in the Federal Register. On August 14, 2020, CCWD submitted the Federal Feasibility Report to Congress. Neither the Federal Feasibility Report nor the EIR/EIS received legal challenges or significant public opposition. CCWD's Board adopted a resolution certifying the Final Supplement to the Final EIS/EIR and approved the LVE Project. The LVE Project is now proceeding with permitting and design.

LVE Project Benefits to Valley Water

Valley Water has continued to work with CCWD and the other LAPs to evaluate LVE Project long-term participation levels and how it translates to water storage and/or supply benefits. Many of these potential benefits depend on if and how much Valley Water participates in project storage or Transfer-Bethany Pipeline conveyance components. Valley Water is continuing to work with CCWD and the LAPs to better define and analyze LVE Project water supply and operational benefits, costs, and risks. In addition, Valley Water is also working with regional partners to evaluate how the LVE Project storage and conveyance components could support other regional projects, such as the Bay Area Regional Desalination Project and the Refinery Recycled Water Project. Below is a preliminary evaluation of how LVE Project storage and conveyance may provide operational flexibility, access to new water supplies, and/or improve Valley Water's ability to use its SWP and CVP contract supplies.

Storage Component

While the expanded reservoir has a 275 TAF storage capacity, CCWD plans to retain their 160 TAF of storage capacity in Los Vaqueros, leaving 115 TAF for the LAPs. CCWD is allowing LAPs to use either “dedicated storage” or “pooled” storage. Dedicated storage is a defined amount of storage available to be used at any time by the LAP who owns that dedicated storage. Pooled storage can be used by any LAP on a first come-first served basis. Those LAPs with dedicated storage will pay for the LVE Project proportional to the volume of storage purchased, independent of the volume of water in their dedicated storage. The pooled participants are expected to pay based on a ‘take-or-pay provision’ (i.e., pay the storage allocation rate for volume used or pay a lower fee for not using storage but continuing to participate in the LVE Project), which means costs would vary annually based on use. Priority for use of conveyance and diversion facilities by dedicated vs. pooled project participants still needs to be negotiated.

Latest CCWD LVE analysis has San Francisco Public Utilities Commission (SFPUC), Bay Area Water Supply & Conservation Agency (BAWSCA), San Luis Delta & Mendota Authority, and EBMUD requesting a total of 90 TAF of dedicated storage. The remaining 25 TAF is the available pooled storage.

Valley Water is evaluating the water supply benefits for using dedicated versus pooled storage. In collaboration with CCWD, Valley Water is conducting preliminary analyses for using LVE Project storage to diversify our Semitropic Bank storage or as a storage project that is in addition to our Water Supply Master Plan 2040 (Master Plan) proposed investments (improving/retrofitting existing infrastructure, Delta Conveyance Project, Pacheco Reservoir Expansion, water reuse projects, Transfer-Bethany Pipeline, and demand management and stormwater capture projects). Preliminary analysis of LVE storage with the Master Plan proposed investments, prior to the development of the new demand model, indicates that Valley Water rarely fills available storage space (Table 1). This is because Valley Water already has significant investments in storage (i.e., local groundwater and surface water storage and the Semitropic Water Bank storage), carryover storage in San Luis Reservoir, and the Master Plan recommended Pacheco Reservoir storage. However, the strategic location of the LVE Project may provide Valley Water an operational and emergency benefit if the storage is used to diversify Valley Water’s current Semitropic Water Bank investment; Valley Water staff are currently evaluating this option in light of the revised demands.

Table 1. Storage of Valley Water Supplies in LVE¹

<i>Preliminary Analysis</i>	<i>Dedicated Storage (30 TAF)</i>	<i>Pooled Storage (up to 20 TAF)</i>
PV Life Cycle Cost to Valley Water (2019\$) ²	\$200 Million	\$50 Million
Average Storage Volume ³ (TAF/yr)	13	3
PV life cycle unit cost (\$/AF) ^{2,4}	\$1,000	\$1,300

¹ Costs and impacts shown only for LVE storage components, based on values from Valley Water's Water Evaluation and Planning (WEAP) model and CCWD's CalSim II model and Proforma 3.0 financial model.

² Present Value (PV) life cycle cost calculated using Valley Water's 100-year life cycle cost methodology. LAPs have negotiated lower usage fees and CCWD is updating their financial model; Valley Water expects this to lower storage and conveyance costs.

³ Average volume held in storage by Valley Water over 83-year CalSim II model period.

⁴ Unit cost is calculated using the 100-year life cycle cost and the life cycle usable project supplies

Conveyance Components

There are multiple conveyance components as part of the LVE Project to facilitate water deliveries to and from Los Vaqueros, such as the new Delta-Transfer Pipeline and Transfer Facility that will connect to Transfer-Bethany Pipeline (Attachment 4). Deliveries from the LVE Project will largely depend on conditions in the Delta, CCWD operational needs, and LAP demands.

The Transfer-Bethany Pipeline is the primary conveyance component that could potentially provide Valley Water additional operational flexibility and access to new water during wetter years. To use the Transfer-Bethany Pipeline, the LAPs are expected to pay facilities construction and usage costs corresponding with total deliveries. Additional Transfer-Bethany Pipeline details are provided in a handout in Attachment 5. Preliminary model analysis of current LAP participation levels and planned infrastructure capacities suggest that Valley Water would use up to approximately 2% of the pipeline capacity. More analysis is underway to determine if and how Valley Water could benefit from increased Transfer-Bethany Pipeline use, such as to convey other imported water supplies (e.g., supplies from the Refinery Recycled Water Exchange Project). This information will inform the JPA service agreements and Valley Water staff will provide this analysis before JPA service agreements are presented to the Board for consideration.

Water Supply Benefit from Conveyance Components

Transfer-Bethany could provide Valley Water access to surplus Delta supplies in wetter years. While it may be possible to negotiate with the LVE partners to participate in Transfer-Bethany without the storage components of the project, the framework currently under discussion does assume a minimal buy-in to storage. Operational constraints related to storing additional wet year supplies will continuously be evaluated throughout the project. Table 2 summarizes estimated cost and yield for the Transfer-

Bethany Pipeline and associated conveyance components. Valley Water is working with CCWD to better evaluate the percent utilization of the available yield.

Table 2. New LVE Project Water Available to Valley Water through Transfer-Bethany Pipeline

	<i>Valley Water Participation</i>
PV Life Cycle Cost to Valley Water (2018\$) ¹	\$50-250 Million
Years with Surplus Deliveries (out of 83 years ²)	14-62
Average Surplus Yield for Years with Surplus Delivery ² (TAF/year)	4 – 8
Average Surplus Yield Over 83-Year Model Period ² (TAF/year)	1-6
Unit Cost for Surplus Conveyance ¹ (\$/AF)	\$700

¹ Cost is for conveyance of Delta surplus supplies and does not include storage costs. The cost range represents the high and low end of Delta surplus available to Valley Water. The range of available Delta surplus is based on different future Valley Water's investment portfolios, where the different future projects impact Valley Water's system's storage and conveyance capacities. Cost is calculated using Valley Water's 100-year life cycle cost methodology. Cost inputs to develop the 100-year life cycle cost estimate are from CCWD's Proforma Model 3.0. In comparison, CCWD reports their costs as a 40-year life cycle estimate.

² Surplus deliveries are modeled in CalSim II, which has an 83-year model period. Deliveries and yield represent the volume of water available to be conveyed to Valley Water and is dependent on preliminary Valley Water capacity to accept the supplies and CCWD's analysis of available surplus and conveyance capacity. Further analysis is necessary to refine what proportion of the available supplies reported in Table 2 are able to be put to beneficial use within Valley Water's service area.

Valley Water is also evaluating whether Transfer-Bethany Pipeline could provide useful alternative conveyance pathways for receiving SWP and CVP supplies. In particular, Valley Water staff are determining if Transfer-Bethany Pipeline and associated conveyance facilities would not be subject to regulatory restrictions that impact certain SWP and CVP facilities.

SBA Capacity Analysis

The LVE Project operations will need to coordinate with SWP and CVP operations and facilities. Valley Water, Alameda County Water District, and Zone 7 Water Agency are SWP contractors that typically rely on Department of Water Resources (DWR)-owned SBA facilities to receive their imported SWP water supplies (collectively, the SBA Contractors). The SBA Contractors plan to receive their LVE Project water through the SBA. In addition, SFPUC and BAWSCA have expressed interest in using the SBA to wheel their LVE Project water either through Valley Water facilities to SFPUC or to SFPUC's Sunol Water Treatment Plant.

Portions of the SBA are becoming unreliable. SBA condition may influence LAP participation in the LVE Project but addressing SBA condition is beyond the direct scope of the LVE Project. The SBA Contractors have been coordinating with DWR to better understand SBA condition and future reliability. DWR has provided details of their program of SBA reliability improvements to the SBA Contractors. This program includes near-term improvements that may be completed later this year or early next year and additional studies to identify longer-term improvements for future SBA reliability, which are expected to be completed in late 2021 or early 2022.

In addition to looking into SBA condition, the SBA Contractors are also evaluating SBA capacity availability for conveyance of LVE Project water. The SBA Contractors procured consultant services to analyze available capacity for regional use (e.g., SFPUC or BAWSCA), without impacting reliability of deliveries for the SBA Contractors. The consultant analysis is complete, and the results shared with SFPUC and BAWSCA to inform their analysis of the LVE Project.

The SBA contractors will use this data to understand how non-SBA contractor LAPs may want to use the SBA to retrieve project water. One potential conveyance pathway for SFPUC and BAWSCA is through the SBA and Valley Water's treated water facilities. If SFPUC and BAWSCA remain interested in this pathway based on the SBA capacity analysis, Valley Water will need to evaluate potential capacity limitations within Valley Water's treatment and conveyance system.

LVE Project Governance and Financing

The LAPs are in the process of forming a JPA to lead LVE Project planning, construction, and operations. The development of the JPA has been led by independent counsel (Lagerlof, LLP) working with a Legal Working Group made up of legal staff from CCWD and the LAPs. The currently proposed JPA structure is provided in Attachment 6. Valley Water has been active in the LAP workshops to ensure Valley Water's interests are addressed.

Once the JPA is in place, responsibilities such as project financing and executing LVE Project agreements will transition from CCWD to the new JPA. CCWD's project schedule aims to have the JPA Agreement completed for consideration by the LAPs by winter 2020/2021. Subsequent service agreements that will transition project financing responsibilities to the JPA are expected to be completed by the end of 2021.

MPA Amendments and Cost-Share

The current MPA executed on April 30, 2019 between CCWD and the LAPs included a cost-share commitment to expire on June 30, 2020. Valley Water signed the MPA Amendment 1 (A1) in June 2020 to extend the existing agreement through December 31, 2020. A1 was only a time extension and did not require any additional cost share.

To continue project development through to when the JPA is formed, CCWD is requesting partners sign MPA A2 (Attachment 3). A2 extends the MPA through December 31, 2021, includes a revised scope of work, and requires an additional cost share to cover project costs through December 2021. The total cost for A2 is approximately \$6.1 million and the cost share to Valley Water is expected to be approximately between \$800,000 to \$1 million, depending on the number of LAPs that continue participation and the allocation approach. The allocation proposal is to share the total cost equally among the LAPs, same as the allocation approach in the MPA. The additional cost share in A2 will fund: JPA formation, preparation of service agreements, developing permits and agreements necessary to secure full WSIP funding, operational or conveyance issues identified by LAPs (e.g., SBA conveyance), 90% level of LVE Project design, and other critical path items as required. Given that A2 is requesting a significant financial commitment, CCWD proposes to split the cost share into four payments: upon amendment execution, November 2020, March 2021, and July 2021. If approved in November, the first two payments would be due. There are provisions that allow LAPs to withdraw at any time, and if a decision to withdraw is made prior to any one of the payment due dates, those future payments would not need to be made.

Next Steps

The following are the key long-term decision points and milestones for the LVE Project:

- Fall 2020: Board committee meeting to discuss and recommend JPA Agreement for the Board's consideration.
- Early 2021: Board meeting to consider Valley Water participation in JPA.
- Late-2021: JPA executes Service Agreements (storage and/or conveyance services) with CCWD and the LAPs and the JPA executes Facilities Usage Agreements with CCWD and EBMUD for existing facilities (i.e., establishes user fees).
- 2023-2025: Construction of Transfer-Bethany Pipeline.
- 2027-2029: Construction of Los Vaqueros dam raise, upgraded pumping facilities, and other conveyance improvements

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List of Local Agency Partners (LAPs)
Los Vaqueros Expansion Project

- 1) Contra Costa Water District (CCWD)
- 2) Alameda County Water District (ACWD)
- 3) East Bay Municipal Utility District (EBMUD)
- 4) Grassland Water District/Refuge Water Supply
- 5) Santa Clara Valley Water District (Valley Water)
- 6) San Francisco Public Utilities Commission (SFPUC)
 - Bay Area Water Supply and Conservation Agency (BAWSCA)
- 7) Zone 7 Water Agency
- 8) San Luis & Delta Mendota Water Authority (SLDMWA)
 - Byron Bethany Irrigation District
 - Del Puerto Water District
 - Westlands Water District
 - Panoche Water District

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**Amendment No. 2 to the
Cost Share Agreement for
Los Vaqueros Reservoir Expansion Project Planning**

The Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning between Contra Costa Water District (CCWD) and Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7); Alameda County Water District (ACWD); Bay Area Water Supply & Conservation Agency (BAWSCA); East Bay Municipal Utility District (EBMUD); Grassland Water District (GWD); San Francisco Public Utilities Commission (SFPUC); San Luis & Delta-Mendota Water Authority (SLDMWA); and Santa Clara Valley Water District (Valley Water) (collectively, “Local Agency Partners”), dated April 30, 2019 and amended on June 22, 2020 (referred to hereafter as the “Agreement”), shall hereby be amended by this Amendment No. 2. The Agreement, together with Amendment No. 1 and this Amendment No. 2, may be referenced hereafter as the “Agreement as amended”.

RECITALS

WHEREAS, Contra Costa Water District and the Local Agency Partners (collectively, “Parties”) entered into the Agreement dated April 30, 2019, to provide for the cost-sharing of the funding requirements for the planning of the Los Vaqueros Reservoir Expansion Project (“Project”); and

WHEREAS, pursuant to Sections 5 and 17 of the Agreement, the Agreement was amended on June 22, 2020 to extend the term of the Agreement to the earlier of the completion of the work contemplated therein or December 31, 2020, unless the term is modified consistent with Section 17 of the Agreement; and

WHEREAS, on April 30, 2020 CCWD and the City of Brentwood entered into a Memorandum of Understanding (Brentwood/CCWD MOU) regarding the City’s potential service from Los Vaqueros and CCWD is participating in coordination with and on behalf of the City of Brentwood through the Brentwood/CCWD MOU; and

WHEREAS, on April 29, 2019 CCWD and ACWD entered into a letter agreement to procure services to complete the independent review of the proposed usage fees developed by CCWD and EBMUD; and

WHEREAS, ACWD entered into a contract with Bartle Wells Associates to complete the independent review of the proposed usage fees and continues to support the usage fees workgroup as updated proposals are reviewed; and

WHEREAS, on December 30, 2019 Bartle Wells Associates provided the Parties with the final report of the evaluation of the proposed usage fees; and

WHEREAS, on May 13, 2020 CCWD’s Board of Directors approved the Project and certified the Final Supplement to the Final Environmental Impact Statement/ Environmental Impact Report; and

WHEREAS, on May 22, 2020 the Notice of Determination for the Los Vaqueros Reservoir Expansion Project was filed with the State Clearinghouse; and

WHEREAS, the Final Federal Feasibility Report has been completed by the U.S. Department of the Interior Bureau of Reclamation ("Reclamation") and was submitted to Congress; and

WHEREAS, the 2020 federal budget included \$2.155 million to fund Reclamation's work to advance pre-construction activities for the Project; and

WHEREAS, a legal workgroup was formed consisting of counsel from each of the Parties; the legal workgroup unanimously selected Joint Powers Authority (JPA) Formation Counsel to draft a Joint Exercise of Powers Agreement for the Project; and

WHEREAS, on May 18, 2020 the first draft of the Joint Exercise of Powers Agreement was provided to the legal workgroup; and

WHEREAS, draft biological assessments were provided to Reclamation to support re-initiation of consultation with U.S. Fish and Wildlife Service and National Marine Fisheries Service under Section 7 of the Endangered Species Act; and

WHEREAS, on May 21, 2020 the Technical Review Board and representatives from the Division of Safety of Dams reviewed the 50% design of the Los Vaqueros dam raise; and

WHEREAS, on May 26, 2016 CCWD entered into a funding agreement with the California Department of Water Resources (DWR) for the Canal Replacement Project and amended that agreement to fund preliminary design evaluations of Pumping Plant No. 1 Replacement; and

WHEREAS, CCWD competitively selected an engineering consultant and entered into a professional services agreement to prepare preliminary design evaluations of Pumping Plant No. 1 Replacement in support of permitting efforts; and

WHEREAS, CCWD and the South Bay Aqueduct Contractors, who currently hold contracts with DWR for supply from the State Water Project and conveyance of these supplies through the South Bay Aqueduct, have initiated discussions with DWR to address potential changes to water rights, Delta operations, and other agreements necessary to implement the Project; and

WHEREAS, the South Bay Aqueduct is currently a critical conveyance facility for the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct would be the primary conveyance facility for providing water supply benefits from the Project to the SFPUC's Service Areas and to BAWSCA; and

WHEREAS, DWR is conducting a condition assessment of the South Bay Aqueduct in coordination with the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct Contractors have procured a consultant to evaluate potential capacity in the South Bay Aqueduct available for use by BAWSCA and the SFPUC; and

WHEREAS, DWR, as the owner and operator of the South Bay Aqueduct, has the authority to approve the conveyance of non-State Water Project water supplies through the South Bay Aqueduct for use by BAWSCA and the SFPUC; and

WHEREAS, time is of the essence in terms of the completion of both the South Bay Aqueduct condition assessment and capacity study and the development of additional agreements with DWR as necessary in order for the South Bay Aqueduct Contractors, BAWSCA, and the SFPUC to be provided with the necessary information and assurances to further evaluate the benefits and costs of BAWSCA and the SFPUC's participation in the Project; and

WHEREAS, the California Water Commission (CWC) and CCWD have amended the Early Funding Agreement to increase the cap on State reimbursements from \$13.65 million to \$22.95 million; and

WHEREAS, Parties have collectively paid a total of \$2,833,036 to date in addition to in-kind services to support work in the Agreement; and

WHEREAS, the Parties wish to again amend the Agreement to include additional purposes in the Agreement with a detailed supplemental scope of work and budget for activities funded by this Amendment No. 2; to further extend the term of the Agreement to the earlier of (i) the completion of the work contemplated therein, (ii) until this Agreement is superseded by an interim funding agreement expected to be negotiated among the Parties, or (iii) December 31, 2021; to include additional roles and responsibilities for certain Parties to the Agreement; and to amend the cost and payment terms of the Agreement in order to fund additional planning activities necessary to proceed to a final award hearing and secure a final funding award from the CWC ; and

NOW, THEREFORE, the Parties agree that the above recitals are incorporated in and made part of the Agreement, and, pursuant to Section 17 of the Agreement, do hereby amend the Agreement as follows:

1. Section 1 (Purpose)

In addition to purposes a through h, as provided for in the Agreement, the following purposes and additional paragraphs shall be included in the Agreement as amended.

- i) permits, approvals, certifications, and agreements as required by the CWC to proceed to a final award hearing and secure a final funding award;
- j) design of the Los Vaqueros dam to the 90% level and advancement of design work on other Project facilities;
- k) drafting of service agreements; and
- l) drafting of an interim funding agreement.

As of the effective date of Amendment No. 2 to the Agreement, purposes a, b, and f, as provided for in the Agreement, have been achieved and do not require additional funding.

Work to achieve Purposes c, d, e, g, h, i, j, k, and l will be advanced under the Agreement as amended. Work completed by the Consultant Team and CCWD staff to achieve these purposes will be partially funded by this Amendment No. 2 to the Agreement.

A detailed supplemental scope of work and budget for activities funded by this Amendment No.2 are included in Exhibit A-2 and Exhibit B-2, respectively, which are attached hereto and incorporated herein as if fully set forth in this Amendment No. 2 to the Agreement.

2. Section 2 (Roles & Responsibilities)

In addition to the existing roles and responsibilities of the Parties described in the Agreement, the following additional roles and responsibilities for certain Parties shall be included in the Agreement as amended.

2.1 Contra Costa Water District Responsibilities

- a-l) as described in the Agreement; and
- m) will submit permit applications for construction and operations of Project facilities including but not limited to: Transfer-Bethany Pipeline, Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Neroly Highlift Pump Station, Transfer Facility, Delta-Transfer Pipeline; and
- n) will advance the design of Project facilities including but not limited to Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Transfer-Bethany Pipeline, and Neroly Highlift Pump Station; and
- o) will enter into coordinated operations agreements with Reclamation and DWR; and
- p) will file change petitions as appropriate on water rights held by CCWD, if deemed necessary and appropriate; and
- q) will work cooperatively with DWR and Reclamation to file change petitions as appropriate to modify or amend their water rights if deemed necessary and appropriate in DWR's and Reclamation's sole discretion; and
- r) will execute contracts for administration of public benefits with the California Department of Fish and Wildlife (CDFW) and DWR; and
- s) will enter into a cost share agreement with Reclamation; and
- t) will work cooperatively with the South Bay Aqueduct Contractors to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- u) will work cooperatively with EBMUD to develop and execute a Memorandum of Understanding for the potential provision of water during Project construction; and
- v) will complete an operational risk and reliability assessment; and
- w) will enter into an agreement with the City of Brentwood to continue its participation in the development of the Project; coordinate with Brentwood and seek their timely input, review and feedback as described in this Agreement; and provide for Brentwood's participation in negotiations, meetings, conference calls, webinars, and committees. No other party will object to such participation.

2.2 East Bay Municipal Utility District Responsibilities

- a-k) as described in the Agreement; and
- l) will obtain permits for EBMUD facilities that will be funded in part by the CWC, if, and to the extent, such permits are required by the State as a precondition of disbursement of state construction funding; and
- m) will work cooperatively with CCWD to develop and execute a Memorandum of Understanding setting forth mutually acceptable principles to guide the

anticipated negotiation of a potential subsequent agreement for the potential provision of water to CCWD during Project construction.

2.6 South Bay Aqueduct Contractors Responsibilities

- a-d) as described in the Agreement; and
- e) will work cooperatively with CCWD to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- f) will provide to the SFPUC and BAWSCA (1) the results of the South Bay Aqueduct capacity study and (2) the results of the condition assessment of the South Bay Aqueduct once available and approved to share by DWR.

2.8 Joint Responsibilities

- a-b) as described in the Agreement; and
- c) CCWD and all Local Agency Partners will work cooperatively to secure federal funding.

The following Section 2.9 shall be added in its entirety to Section 2 of the Agreement as amended:

2.9. BAWSCA Participation

BAWSCA may participate, in whole or in part, in the development of the Project, either as a Local Agency Partner or via the SFPUC in the event that BAWSCA is no longer a Local Agency Partner. BAWSCA's participation in the development of the Project via the SFPUC may include but is not limited to participation in meetings, conference calls, webinars, and committees. No other Party will object to such participation.

3. Section 3 (Cost & Payment)

Section 3 shall be amended such that the following terms shall, as applicable, supplement and/or supersede the corresponding terms in the Agreement in their entirety.

Funds previously provided under the Agreement have been nearly expended. The payments are intended to provide sufficient funding for advancing the completion of the additional Scope of Work as provided for in Exhibit A-2 and the Budget provided for in Exhibit B-2.

- a) Total costs to fund work hereunder are identified in Exhibit B-2. The CCWD and Local Agency Partners' collective total share of the cost shall not exceed \$6,081,967 ("Total Cost Share").
- b) Notwithstanding anything to the contrary in the Agreement as amended, CCWD and the Local Agency Partners, excluding GWD, shall be responsible for providing the Total Cost Share in accordance with Exhibit B-2. In no event shall any Party's individual share of the Total Cost Share exceed \$1,013,661 if six (6) Parties, excluding GWD, execute Amendment No. 2. Absent a further written amendment to this Agreement pursuant to Section 17, each Party's individual share of the Total Cost Share shall be less than \$1,013,661 if seven (7) or eight (8) Parties, excluding GWD, execute Amendment No. 2, in accordance with Exhibit B-2. Timing and quantity of payment for each Local Agency Partner shall not vary from what is put

forth in Exhibit B-2 unless CCWD and the Local Agency Partners voluntarily agree to modifications pursuant to Sections 3(d)(iii) and 17 of the Agreement. The Total Cost Share described herein is exclusive of any joint defense or litigation cost share amounts which may be determined in a subsequent written agreement entered into pursuant to Section 9 of the Agreement.

- c) The SFPUC's payments as a Local Agency Partner under the Agreement as amended, are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter and the budget decisions of its Mayor and Board of Supervisors. No SFPUC funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The SFPUC's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The SFPUC, its employees and officers are not authorized to request services that are beyond the scope of those expressly described herein, unless a written amendment is approved as required by law. As to the SFPUC only, this Section 3(c) controls against any conflicting provision of the Agreement as amended.
- d) CCWD and the Local Agency Partners will split the Total Cost Share equally over four payments. CCWD will invoice each of the Local Agency Partners, and itself, for their individual shares of the Total Cost Share detailed in Exhibit B-2.
 - (i) Four invoices are anticipated according to the schedule below:
 - 1. Upon execution
 - 2. November 1, 2020
 - 3. March 1, 2021
 - 4. July 1, 2021
 - (ii) Payment from the Local Agency Partners shall be remitted within thirty (30) days after invoice submittal.
 - (iii) Funds contributed by the Local Agency Partners shall be committed by CCWD and expended only for work required to further the purposes of this Agreement.
 - (iv) If a sufficient number of Parties withdraw from the Agreement or fail to execute Amendment No. 2 before the second, third, or fourth invoice such that the Local Agency Partners' individual cost shares change substantially, or the individual cost shares approach or exceed the maximum financial responsibility for each Party (determined herein as \$1,013,661), each remaining Local Agency Partner, at its sole discretion consistent with Section 3(b) of this Agreement, shall determine whether to withdraw from

the Agreement. CCWD and the Local Agency Partners who do not choose to withdraw will work together to develop an amendment that substantially conforms to this Agreement. If no mutually agreeable amendment can be developed, the remaining Parties will terminate this Agreement.

- (v) If a new Local Agency Partner is added, consistent with Section 12 of this Agreement, each subsequent invoice for each Local Agency Partner will be adjusted to reflect the cost share of the new partner and the total number of Local Agency Partners. The adjustments contemplated herein shall reflect any “catch-up” contribution required of the newly added Local Agency Partner in addition to the contributions to be made on a prospective basis. “Catch-up” contributions shall be calculated based on the then total value of the of the Local Agency Partners’ individual monetary shares paid pursuant to the Agreement as amended prior to the date of the new member’s signing of the Agreement.
- (vi) If funds remain after work under this Agreement is completed, each Local Agency Partner will determine whether its pro-rata share of the remaining funds shall be returned or contributed to future work consistent with Section 7 of this Agreement. Each Local Agency Partner shall advise CCWD of its determination within sixty (60) days of receiving notice from CCWD of the completion of the work, or the remaining funds shall automatically be contributed towards future work.
- (vii) In-kind services may include labor costs and overhead costs for staff who are providing in-kind services for Project activities under this Agreement, including but not limited to data collection, document review, communications, stakeholder outreach, management of third-party consultant contracts, and attending Project meetings. In-kind services will contribute toward the non-State funding match required by the Early Funding Agreement, as it may be amended from time to time. In-kind services, pursuant to Section 2.7(d) of this Agreement, are contributed at the discretion of each Local Agency Partner with no minimum or maximum in-kind contribution limits.

5. Section 5 (Term)

Shall be amended such that the following term shall modify the corresponding term in the Agreement in its entirety:

The Agreement as amended shall terminate on the earliest occurring of the following events: (i) completion of the work contemplated herein; (ii) the effective date of an interim funding agreement which is negotiated between the Parties and intended as a successor to the Agreement as amended; or, (iii) on December 31, 2021, unless the Term is further modified consistent with Section 17 of this Agreement.

8. Section 10 (Early Funding Agreement)

Section 10 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Early funding, in the amount of \$13.65 million, which is equal to fifty percent of the estimated total planning and permitting costs, was approved by the California Water Commission on July 24, 2018. The Early Funding Agreement was amended on July 24, 2020 to increase the total funding available from the California Water Commission from \$13.65 million to \$22.95 million. The Amendment to the Early Funding Agreement, which is attached hereto in Exhibit E-2, requires a fifty percent (50%) funding match from non-State entities ("Non-Program Cost Share"). The Local Agency Partners hereby agree to cooperate in good faith with CCWD to reasonably assist CCWD in its compliance with the Early Funding Agreement. Without limiting the generality of the foregoing, each Local Agency Partner agrees to provide information and access to records in all forms as may be necessary to facilitate CCWD's compliance with all reporting and audit requirements of the Early Funding Agreement, including but not limited to information necessary to adequately document the Non-Program Cost Share.

9. Section 11 (Federal Funding)

Section 11 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Federal appropriations in Federal Fiscal Year 2020 allocated \$2.155 million to Reclamation to complete pre-construction activities for the Project. Reclamation recommended \$7.845 million for the Project in Federal Fiscal Year 2021. With support from the Local Agency Partners, CCWD is seeking a total of \$223 million in federal funding for design, pre-construction, and construction activities through the Water Infrastructure Improvements for the Nation (WIIN) Act or other federal legislation. If federal funding for the Project is appropriated by Congress, Reclamation would receive the requested funding and the funds would support Reclamation's staff and consultant team and the federal permitting process. Reclamation and the CCWD may enter into a funding agreement that would provide funding to CCWD for staff and consultants to complete design and pre-construction activities. Some portion of the federal funds may be directly applied to the scope of work contained in Exhibit A-2. The federal funds could be credited towards any Non-Program Cost Share as required in the Early Funding Agreement as described in Section 10 of this Agreement.

Effective date of Amendment No. 2.

Amendment No. 2, including the financial contribution provisions herein, shall be effective as to CCWD and each Local Agency Partner as of the date of signature by CCWD and each subsequent Local Agency Partner signatory.

Except as amended by this Amendment No. 2, the Agreement as previously amended shall continue in full force and effect. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute Amendment No. 2.

Robert Shaver, General Manager
Alameda County Water District

Date

Nicole Sandkulla, CEO / General Manager
Bay Area Water Supply and Conservation Agency

Date

Stephen J. Welch, General Manager
Contra Costa Water District

Date

Clifford C. Chan, General Manager
East Bay Municipal Utility District

Date

Ric Ortega, General Manager
Grassland Water District

Date

Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Date

Approved as to Form
Deputy City Attorney San Francisco

Date

Federico Barajas, Executive Director
San Luis & Delta-Mendota Water Authority

Date

Rick Callender, Chief Executive Officer
Santa Clara Valley Water District

Date

Valerie Pryor, General Manager
Zone 7 Water Agency

Date

Exhibit A-2

Amendment No. 2 Scope of Work

The following tasks describe the work efforts by Contra Costa Water District (CCWD), consultants for the Los Vaqueros Reservoir Expansion (LVE) Project, and the Local Agency Partners (as indicated) under this Amendment No. 2 to the Agreement. References to joint work efforts by Reclamation are described as appropriate but are not intended to imply that Reclamation is a party to this Amendment. CCWD will be supported by the consultant and legal services team that are under contract to CCWD and managed by CCWD.

Task 1 Project Management

Task 1.1 CWC Early Funding Agreement Administration

Administer the Early Funding Agreement executed by CCWD and the California Water Commission (CWC), including meeting reporting and invoicing requirements of the Agreement, coordinating with CWC staff as needed to respond to questions and data requests, and managing cost commitments. Provide financial statements and other supporting documentation as requested by the CWC staff pertaining to the Early Funding Agreement.

Pursuant to the Early Funding Agreement, prepare quarterly progress reports detailing work completed in prior quarter in accordance with Water Storage Investment Program (WSIP) requirements and Cost Share MOU with Reclamation. Progress reports will explain the status of the Project and will include the following information: summary of the work completed for the project during the reporting period; activities and milestones achieved; and accomplishments and any problems encountered in the performance of work.

Prepare monthly invoices meeting the invoice content terms of the Early Funding Agreement, including relevant supporting documentation for submittal to the CWC and Reclamation. Coordinate with consultants and Local Agency Partners to prepare and submit sufficient backup documentation to support claimed costs.

Deliverables:

- ☐ Invoices and associated backup documentation
- ☐ Quarterly Progress Reports (for CWC and Reclamation)

Task 1.2 Project Management Activities

This task includes project management activities performed by CCWD, Local Agency Partners, consultants, and other agencies related to, but not limited to, managing staff, invoicing, budgeting, scheduling, reviewing submittals, holding meetings and conference calls, and coordinating project activities that are within the objectives of the Project and of this Agreement.

Deliverables:

- ☐ Summary updates on project management activities in Quarterly Progress Reports

Task 1.3 Joint Powers Authority Formation

Selection of legal counsel to assist the Local Agency Partners and CCWD in forming a Joint Powers Authority (JPA) was completed previously. Legal counsel will assist in implementing JPA formation through development of a joint powers agreement.

Develop Project term sheet to identify roles of the JPA and Local Agency Partners, as well as outline major terms of existing agreements amongst CCWD and the Local Agency Partners. Based on the Project term sheet, engage special counsel to develop a joint powers agreement. Conduct meetings and workshops as necessary with Local Agency Partners to negotiate terms.

Legal counsel will work with the legal workgroup to develop draft service agreements.

Deliverables:

- ☐ Joint selection of special counsel (completed)
- ☐ JPA Agreement (in progress)
- ☐ Term sheet (in progress)
- ☐ Draft services agreements

Task 2 Environmental Planning

Task 2.1 Modeling

Modeling tasks to support preparation of the Final Supplement to the Final EIS/EIR were completed previously. Develop new or modify existing modeling tools so that operations or limitations of various operational priorities can be evaluated in terms of benefits to partners. Refine the model to track terms and requirements of various water rights. Re-build or refine the Los Vaqueros daily operations model to accommodate partner operations, which may serve as a tracking tool in the future for permit reporting, billing, scheduling deliveries, etc.

Deliverables:

- ☐ Re-built and/or revised CalSim Model
- ☐ Summaries of modeling results

Task 2.2 Public Outreach

Perform outreach activities to educate and inform the media, elected officials, CCWD ratepayers, communities in the Los Vaqueros area, environmental organizations, and regional and statewide interests about the purpose, objectives, and results of the technical studies.

Respond to routine stakeholder comments. Post responses as appropriate to the CCWD hosted project website at ccwater.com or share with stakeholders in informal meetings.

A public meeting was previously held in Concord to support the CCWD Board of Directors' certification of the Final Supplement, approval of a project, and adoption of CEQA Findings and MMRP.

Deliverables:

- ☐ Stakeholder and public involvement program
- ☐ Documentation of outreach activities
- ☐ Public meeting(s) for Final Supplement to the Final EIS/EIR (completed)
- ☐ Public meetings to support Record of Decision if necessary

Task 2.3 Environmental Document and Technical Studies

The U.S. Department of the Interior, Bureau of Reclamation, Region 10 – California-Great Basin (Reclamation) is the lead agency under the National Environmental Policy Act (NEPA) for preparation of the EIS and, in conjunction with CCWD, the lead agency under CEQA. Reclamation and CCWD previously prepared a joint Final EIS/EIR in March 2010 and CCWD completed construction of the first phase of reservoir expansion from 100,000 acre-feet (100 TAF) to 160 TAF in 2012. Reclamation and CCWD previously prepared a joint Supplement to the Final EIS/EIR document to support the second phase of reservoir expansion up to 275 TAF.

The development of the Supplement to the Final EIS/EIR, including the completion of the necessary technical studies in support of this effort culminating with issuance of the Supplement, were previously completed. The studies and data produced adhered to the federal planning and NEPA guidelines, CEQA guidelines, and WSIP guidance. Technical studies were conducted in accordance with the alternatives identified in the Draft Supplement.

All agency meetings and technical workgroup meetings required to support the environmental document and studies are described in Task 1.2 and Task 2.2.

(2.3.1) Post-Draft Supplement Technical Studies and Surveys

This task has been completed.

(2.3.2) Transfer-Bethany Pipeline Alternative Location Evaluation

This task has been completed.

(2.3.3) Final Supplement to the Final EIS/EIR

This task has been completed.

(2.3.4) CEQA Findings and Mitigation Monitoring and Reporting Plan

This task has been completed.

(2.3.5) Record of Decision

It is anticipated that Reclamation will issue a Record of Decision on the Project during the term of this Amendment. CCWD will provide support to Reclamation with any necessary reporting, public meetings, briefings, white papers, and/or presentations.

Deliverables:

- ☐ Record of Decision

Task 2.4 Regulatory Permitting

Prepare documentation of environmental regulatory compliance including the Clean Water Act (CWA) Section 404(b)(1), CWA Section 401, the Federal Endangered Species Act (Section 7), the California Endangered Species Act, Section 1602 of the California Fish and Game Code, the National Historic Preservation Act (NHPA Section 106), and the Fish and Wildlife Coordination Act (FWCA). When possible or beneficial, obtain amendments to existing permits and excess compensation land acquired/managed during the Phase 1 expansion. If not possible to amend existing permits, seek new permits. Coordinate with regulatory agencies to confirm when amendments will be appropriate. In support of this task, several key work efforts (described below) will be completed.

Conduct reconnaissance-level biological field surveys of any new project areas (if any) to identify the potential for the presence of sensitive biological resources. Conduct a desktop analysis including a database search of the California Natural Diversity Data Base (CNDDB), California Native Plants Society's Inventory of Rare and Endangered Plants, USFWS species lists, and NMFS species lists in order to determine the potential occurrence of special-status plants, animals, and vegetation communities. Conduct site-specific biotic assessments to identify biological resources that are present or have a high likelihood to occur in the study area, and to assess the likely impacts associated with construction and/or long-term operations of the proposed project on biological resources. The results of the reconnaissance survey and analysis will be used to inform the regulatory permitting documents, and resource agency review.

Prepare the regulatory permit applications for the proposed project. Attend meetings with regulatory agencies. Develop supporting technical reports, as needed, to support preparation of proposed permit applications. Permit applications and supporting documents to be prepared in support of the project may include: Biological Assessment for Federal Endangered Species Act compliance and Magnuson Stevens Fisheries Conservation and Management Act compliance; Clean Water Act Section 404/Section 10 Individual Permit Application; Clean Water Act Section 401 Clean Water Act Water Quality Certification Application; California Fish and Game Code Section 1602 Streambed Alteration Agreement Application; Section 2081 California Endangered Species Act Incidental Take Permit Application; Fish and Wildlife Coordination Act Report; National Historic Preservation Act Section 106 compliance; and Aquatic Resources Delineation.

Deliverables:

- ☐ Rare plant surveys and report of results (completed)
- ☐ Wetland delineation and mapping, report of results (completed)
- ☐ Administrative Draft Supplement to the Final EIS/EIR (completed)
- ☐ Final Supplement to the Final EIS/EIR (completed)
- ☐ Draft CEQA Findings and MMRP (completed)
- ☐ Final CEQA Findings and MMRP (completed)
- ☐ Permit applications and supporting technical reports, as applicable

Task 2.5 Water Rights Permitting

Coordinate with Reclamation, the Department of Water Resources (DWR), Local Agency Partners, and the State Water Resources Control Board (State Board) regarding changes to existing water rights. Prepare petitions for change for CCWD's water right permit and assist Reclamation, DWR, and Local Agency Partners with preparation of change petitions as required. File petitions with the State Board, assist State Board staff with drafting orders and permit amendments as required, respond to any protests that may be filed and seek resolution of those protests, prepare for and participate in hearings as required.

Deliverables:

- ☐ Change petition on CCWD water right
- ☐ Change petition on CVP water rights
- ☐ Change petition on DWR water rights
- ☐ Change petition on Local Agency Partners' water rights as required

Task 2.6 Land Transactions

Identify and contact the landowners of parcels that will be surveyed for Task 2.3.1, Task 2.3.2. Acquire the appropriate land rights to gain access to the properties. Identify potential mitigation lands as needed for Task 2.4. Determine preliminary appraisal value of potential mitigation lands. Initiate discussions to obtain right-of-way for Transfer-Bethany Pipeline. Acquire options to acquire mitigation lands with the concurrence of the Local Agency Partners.

Deliverables:

- ☐ Entry permits and temporary easements on properties needed for technical surveys
- ☐ Identification and preliminary appraisal of potential mitigation sites
- ☐ Discussions regarding right-of-way for Transfer-Bethany Pipeline

Task 2.7 Final Award Hearing Requirements

A series of agreements will be needed to meet the final award hearing requirements of the California Water Commission. Progress on a number of agreements will commence during the term of this amendment. The agreements necessary to get to the final award hearing may include but are not limited to: operations coordination agreements with Reclamation and the Department of Water Resources; conveyance agreements with DWR to convey water from the Project through the California Aqueduct and the South Bay Aqueduct; contracts for administration of public benefits; a cost share agreement with Reclamation for pre-construction activities; an agreement with DWR for the design and construction of the Transfer-Bethany Pipeline connecting to SWP facilities; an agreement with the JPA for design and construction of Project conveyance facilities and the expanded Los Vaqueros Reservoir dam.

Additionally, Task 2.7 will also include the development and execution of a Memorandum of Understanding between CCWD and EBMUD setting forth mutually acceptable principles to guide the anticipated negotiation of a potential subsequent agreement for provision of water during construction.

Deliverables:

- ☐ Operations coordination agreement(s) with Reclamation and DWR
- ☐ Conveyance agreement(s) with DWR
- ☐ Contracts for administration of public benefits
- ☐ Cost-share agreement with Reclamation
- ☐ Design and construction agreement with DWR
- ☐ Design and construction agreement with the JPA
- ☐ MOU between CCWD and EBMUD

Task 3 Engineering Feasibility

Task 3.1 Financial Evaluation

Perform a financial evaluation that will assess the costs and merits of the Project.

Clean Energy Capital will further develop an excel-based Proforma Financial Model for the Project that incorporates water pricing options and integration with CalSim model. Hold stakeholder meetings and workshops; collect and review stakeholder and local partner comments and inputs to the model. Refine model as additional information arises that may affect the local agency partners, operations, water pricing, or other financial components of the Project. Clean Energy Capital will work directly with Local Agency Partners, as needed, to support each agency's understanding and familiarity with the financial evaluation.

ACWD will continue to retain Bartle Wells Associates, an independent financial consultant, to further support evaluation of the usage fees CCWD and EBMUD have developed for use of their assets and infrastructure. ACWD's costs to retain Bartle Wells will be reimbursed up to a cumulative amount of \$85,000. Clean Energy Capital will also be available to support the independent financial review of the usage fees.

Create a Plan of Finance describing the proposed financing structure and assumptions for financing the Project. The Plan of Finance will take into consideration appropriate debt structures, timing, impact on rates, budgeting, credit ratings, tax laws, availability of grants and other State and Federal funding, Local Agency Partners that pay upfront in-lieu of participating in JPA financing, and assessment of capital market conditions. Evaluate the funding capabilities of a JPA and associated contractual requirements for partners receiving and paying for services.

Deliverables:

- ☐ Updated Proforma Financial Model
- ☐ Further support for evaluation of Refined Usage Fees (as required)
- ☐ Plan of Finance

Task 3.2 Federal Feasibility Report

The Final Federal Feasibility Report was completed in 2020 and was submitted to Congress on August 11, 2020. The Secretary of the Interior and/or Congress may continue to evaluate federal participation in the Project throughout the term of this Amendment.

Additional work may be necessary to secure Congressional budget appropriations for pre-construction activities. CCWD and Local Agency Partners will also provide support to Reclamation on any post-feasibility report requirements as needed.

Deliverables:

- ☐ Final Federal Feasibility Study (completed)
- ☐ Updated fact sheets for meetings with elected officials
- ☐ Updated federal funding and budget requests
- ☐ Post-feasibility report support

Task 3.3 Preliminary Design

(3.3.1) Pumping Plant No. 1

Preliminary design technical evaluations are being completed by CCWD as part of CCWD's Canal Replacement Project. Following completion of preliminary design, additional design development and evaluations must be completed in support of permitting and developing inter-agency agreements, including field work, site facility layouts, and development of electrical design sufficient for coordination with the Western Area Power Administration (WAPA) and other design development in order to maintain progress to allow construction consistent with the Project schedule.

Deliverables:

- ☐ Pumping Plant No. 1 Preliminary Design Report
- ☐ Facility layout drawings
- ☐ Electrical System Improvements Plans
- ☐ Principles of Agreement with WAPA

(3.3.2) Los Vaqueros Dam

This task includes work efforts related to design of the Los Vaqueros Dam expansion to gain Division of Safety of Dams (DSOD) authorization to construct. Design-related tasks may include, but are not limited to, reporting, investigations, testing, analysis, and surveys; geotechnical investigations and reporting; stability and deformation analysis; design of earthquake ground motions and parameters, spillway, outlet works, new emergency release outlet, tunnel/portal, transfer pipeline connection, and dam instrumentation; constructability review, value engineering, risk analysis, and feasibility studies; DSOD meetings and correspondence; and design of site restoration for the core borrow area. This task includes formation of a Technical Review Board for independent review of the dam consultant's work in accordance with DSOD guidelines.

Deliverables:

- ☐ LV Dam Drawings and Specifications 50% (completed)
- ☐ LV Dam Drawings and Specifications 90%
- ☐ LV Cost Estimate/Schedule

(3.3.3) Transfer-Bethany Pipeline

CCWD will competitively procure an engineering consultant to continue pipeline alignment evaluations resulting from continued coordination with local resource and transportation agencies. CCWD will work with Contra Costa County Public Works and the Contra Costa Transportation Authority and their ongoing regional transportation planning for the Vasco Road widening and the State Route 239 Connector and will evaluate alignment adjustments as needed. CCWD will work with resource agencies to evaluate implications of alignment modifications and construction methods and associated mitigation and land needs along the alignment south of Vasco road in support of coordination with the East Contra Costa Habitat Conservation Plan and the County. CCWD will coordinate with the Department of Water Resources to review and define design criteria and to develop designs of the turn-in to the California Aqueduct, and will review available geotechnical information and define pipeline corridor within State owned lands. Topographic survey will be completed with up-to-date aerial photography. Preliminary design of the pipeline and turn-in will be developed. CCWD will prepare a geotechnical work plan and initial assessment of land acquisition needs.

Deliverables:

- ☐ Alignment Adjustment Evaluations TM
- ☐ Transfer-Bethany Pipeline Preliminary Design Report
- ☐ Topographic Survey
- ☐ Geotechnical Work Plan
- ☐ Assessment of Pipeline Land Acquisition Need

(3.3.4) Operation and Reliability Assessment

Complete a risk assessment of CCWD's existing and planned facilities and their operation as a system to confirm appropriate criteria are developed for reliability, redundancy and viability of long-term operations to meet the Project objectives. The assessment will consider the range of operations and future scenarios that consider planned and unplanned shutdowns and other events that might affect performance of the system and the economic implications.

Deliverables:

- ☐ CCWD facilities and system operation risk assessment

Exhibit B-2

Budget and Cost Share

The budget for Amendment No. 2 to the Agreement covers three major tasks: project management, environmental planning, and engineering feasibility. The total budget includes projected costs for legal and consulting services, CCWD staff in-kind services, Local Agency Partner in-kind services, and Reclamation expenses. The total cost for the scope of work listed in Exhibit A-2 is \$17,832,667 (original Agreement total \$11,623,400) and is shown in Table 1.

Table 1. Amendment No. 2 to the Multiparty Agreement Budget

Task No.	Description	Original	Amendment No. 2	Total
1	Project Management	\$1,090,600	\$2,302,400	\$3,393,000
2	Environmental Planning	\$3,777,400	\$5,368,967	\$9,146,367
3	Engineering Feasibility	\$6,755,400	\$10,161,300	\$16,916,700
	Total	\$11,623,400	\$17,832,667	\$29,456,067

The total cost to complete the scope of work, \$17,832,667 will be paid through a combination of in-kind services, contributions from Reclamation (pursuant to 2015 Cost Share Memorandum of Understanding between Reclamation and CCWD), reimbursement from the California Water Commission (CWC), and contributions from CCWD and the Local Agency Partners.

To calculate the amount owed by CCWD and the Local Agency Partners, the total cost is reduced by contribution from the CWC, Reclamation, CCWD in-kind services funded by CCWD, the Local Agency Partner's in-kind services, and the projected carryover of unspent funds from the original Agreement. The CWC contribution includes fifty percent (50%) of the total cost, less 10% retention; the total CWC contribution therefore is estimated to be \$8,024,700.

The costs remaining after accounting for contributions from CWC, Reclamation, CCWD in-kind services, and Local Agency Partner in-kind services is \$6,081,967 as shown in Table 2. This is equal to the Total Cost share defined in Section 3(a) of the Agreement as amended and will be split equally among CCWD and the Local Agency Partners, excluding Grassland Water District which will provide in-kind services only. The ultimate cost per agency depends on the total number of Local Agency Partners that proceed and execute this Amendment. Four equal invoices are proposed over the amended term of the Agreement for CCWD and each Local Agency Partner. Table 3 shows the invoice schedule and the total costs per agency varying by the total number of agencies participating. For purposes of calculating the amount to be invoiced, the "total number of agencies participating" is equal to the total number of parties signatory to this Amendment No. 2 (including CCWD), but excluding Grassland Water District and further excluding any signatory party which has completed its withdrawal from the Agreement prior to the time for payment.

Table 2. Amendment No. 2 to the Multiparty Agreement Cost Allocation

Total Projected Costs	\$17,832,667
less Reclamation Cost	-\$2,155,000
less CCWD in-kind services (portion funded by CCWD)	-\$441,000
less partner in-kind services	-\$980,000
less projected carryover of unspent funds from original Agreement	-\$150,000
less projected CWC Invoice payments	-\$8,024,700
Remaining Cost Required from Local Agency Partners & CCWD	\$6,081,967

Table 3. Invoice schedule where each invoice equals 25 percent of total costs per agency

		Invoice #1	Invoice #2	Invoice #3	Invoice #4
	Total Cost Per Agency	Upon Execution	November 2020	March 2021	July 2021
8 Agencies	\$760,246	\$190,061	\$190,061	\$190,061	\$190,061
7 Agencies	\$868,852	\$217,213	\$217,213	\$217,213	\$217,213
6 Agencies	\$1,013,661	\$253,415	\$253,415	\$253,415	\$253,415

Exhibit E-2

Amendment No. 1 to Early Funding Agreement

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (CALIFORNIA WATER COMMISSION) AND
CONTRA COSTA WATER DISTRICT
FOR
LOS VAQUEROS RESERVOIR EXPANSION
WATER STORAGE INVESTMENT PROGRAM (WSIP) – EARLY FUNDING
AGREEMENT NUMBER 4600012892 AMENDMENT 1
WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014
CALIFORNIA WATER CODE 79750, ET SEQ.**

Pursuant to Standard Condition D.3), Agreement Number 4600012892 is amended as follows:

Paragraph 1. PROJECT COST is revised from \$27,300,618 to \$45,900,000.

Paragraph 3 FUNDING AMOUNT is revised from \$13,650,309 to \$22,950,000.

The Exhibit B Budget is replaced in its entirety with the attached revised Exhibit B.

All other terms and conditions of the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment 1.

STATE OF CALIFORNIA

Contra Costa Water District

California Water Commission





Joseph R. Yun

Stephen J. Welch

Executive Officer

General Manager

Date 7/24/2020

Date 7/21/2020

Approved as to Legal Form and Sufficiency



Holly G. Stout

Counsel to the Commission

Date 7/24/2020

Exhibit B - Revised**BUDGET**

Funding recipient shall be reimbursed based on the ratio of Program cost share and non-Program cost share, also referred to as concurrent draw down. The Commission will reimburse no more than \$22,950,000 under this Funding Agreement, also known as Program cost share. The non-Program cost share is \$22,950,000.

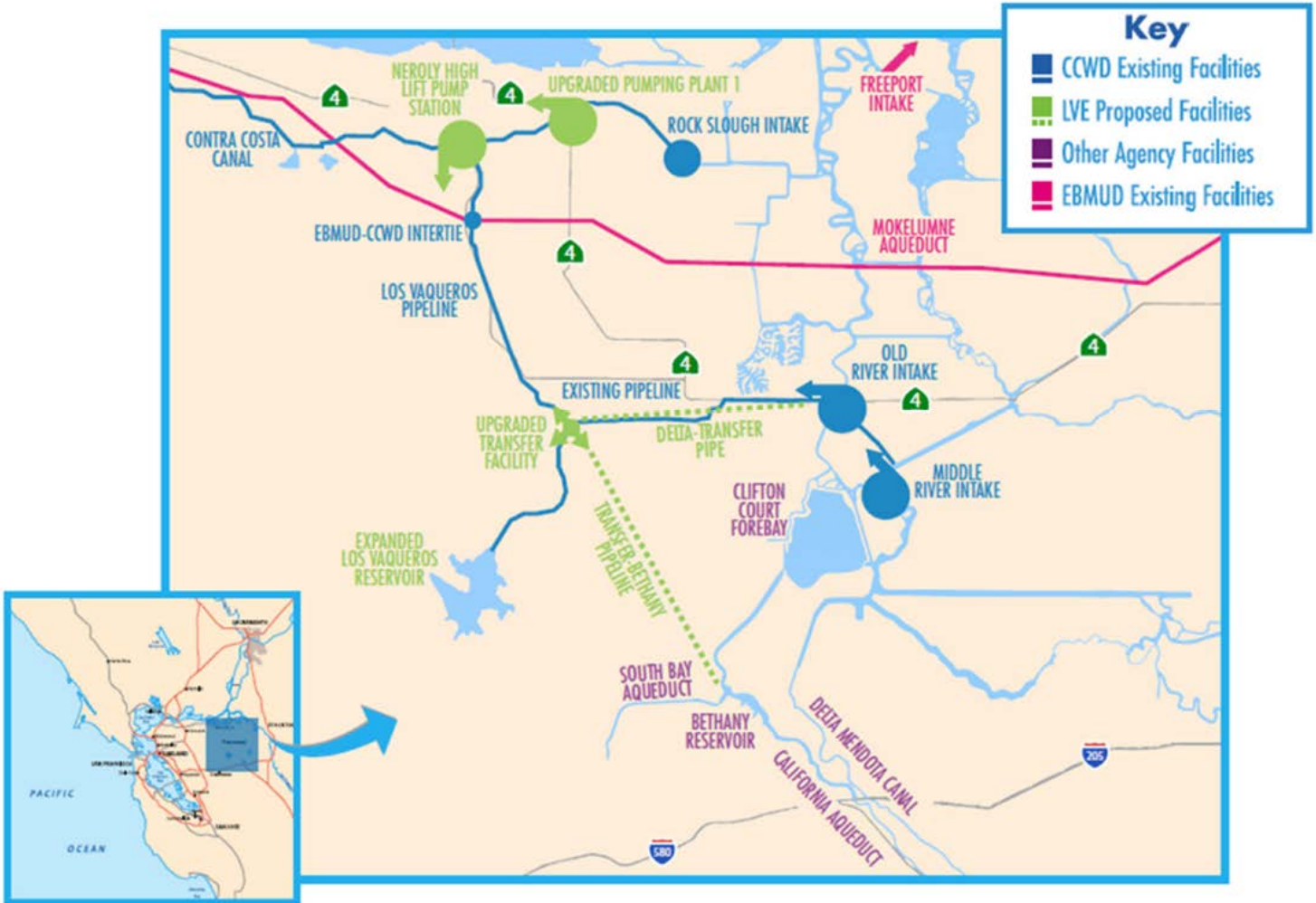
Task	Total Costs
Task 1 Project Management	\$6,885,000
Task 2 Environmental Planning	\$13,770,000
Task 3 Engineering Feasibility	\$25,245,000
Total	\$45,900,000

Commission approves invoices at the overarching task-level. Subtasks are provided in the Work Plan for additional detail and guidance for the project manager to be aware of when administering the Funding Agreement.

Reimbursement of costs will commence after this Funding Agreement is executed as described above. The proportion (or percentage) of Program cost share is the maximum funding amount of this funding agreement divided by the total project cost; which is 50%. If the first invoice received contains eligible costs for the period of August 14, 2017 to the execution date of the agreement, at Commission's discretion, these costs, or a portion thereof, may be directly deducted from the non-Program cost share and the concurrent drawdown percentage may be modified accordingly.

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Project Facilities Map Los Vaqueros Expansion Project



<i>Project Facility</i>	<i>Category</i>	<i>Project Status</i>
Delta-Transfer Pipeline	Conveyance	New
Los Vaqueros Dam Raise	Storage	New
Neroly High-Lift Pump Station	Storage	New
Transfer Facility Expansion	Conveyance	New
Transfer-Bethany Pipeline	Conveyance	New
Los Vaqueros Recreation Facilities	Storage	Modification
Rock Slough PP#1 Replacement	Storage	Modification
Transfer Facilities Improvements	Conveyance	Modification

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January 16, 2020

Transfer-Bethany Pipeline Coordination

- Supply to LAPs during LVE drawdown and construction
- 7.5 miles, 84-inch Diameter
- 300 cfs (193 MGD) Capacity

Potential Beneficiaries

- ACWD
- Zone 7
- Valley Water
- SFPUC
- BAWSCA
- SLDMWA
- Grassland Water District

Alignment Segments

- A. Expanded Transfer Facility
- B. Vasco Road Widening/SR-239
- C. Conservancy Lands
- D. California Aqueduct Turn-In

Key Actions

- Coordinate Segment B Alignment
- Coordination with DWR
- Site access
- Land Acquisition (~21 properties)

Costs

- Design, CM, etc. \$9M
- Land \$5M to \$10M
- Construction \$144M

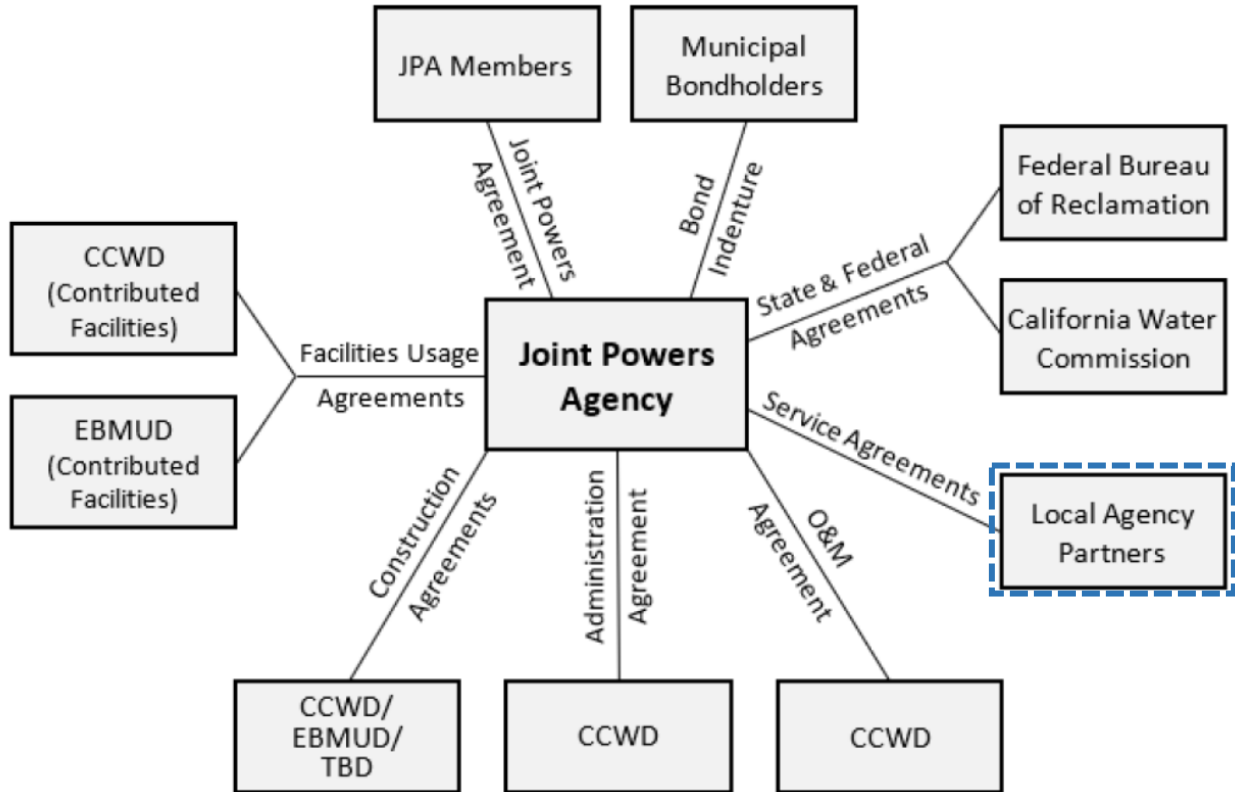


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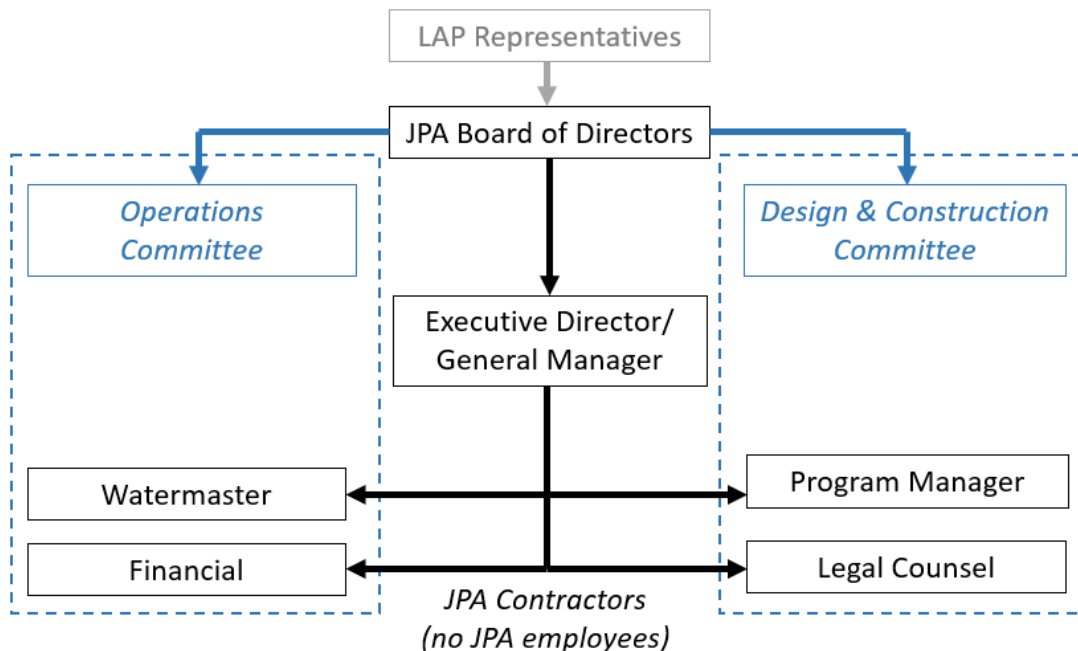
Proposed JPA Structure

Los Vaqueros Expansion Project

A general structure of the proposed LVE Project JPA structure is shown below:



The proposed organization chart of the JPA is shown below:



Per the JPA formation workshops, the objectives of the JPA will be as follows:

1. Provide governance of the LVE Project by the LAPs and CCWD.
2. Ensure sufficient and stable funding for the LVE Project.
3. Ensure costs are reasonable and cost allocations are equitable and transparent (through Service Agreements).
4. Ensure reliable delivery of water to LAPs consistent with the terms of the Service Agreements.
5. Establish clear dispute resolution approach.
6. Establish procedure to adjust terms in response to changed conditions.

Per the draft Term Sheet, the proposed 'primary activities of the JPA' (i.e., roles and responsibilities) include the following:

- A. Supervise and manage the LVE Project so as to fulfill the promises and deliver the benefits that led to the commitment of State, Federal and LAP funding;
- B. Enter into State Funding Agreements and Federal Funding Agreements and assume rights and obligations pursuant to these agreements;
- C. Finance development period activities through a combination of Early WSIP Funding and pay-as-you-go contributions from the LAPs;
- D. Enter into one or more Design & Construction Agreements and O&M Agreements with CCWD for the design, construction, operation and maintenance of the new and modified facilities (Attachment 1) including the operations of the Transfer-Bethany Pipeline;
- E. Enter into a Design & Construction Agreement and O&M Agreement with EBMUD for the design, construction, operation and maintenance for use of their existing facilities;
- F. Enter into a Design & Construction Agreement and O&M Agreement with an entity to be identified for the design, construction, and maintenance of the Transfer-Bethany Pipeline;
- G. Enter into the Facilities Usage Agreements with CCWD and EBMUD;
- H. Enter into an Administration Agreement with CCWD to serve as the JPA's administrator;
- I. Enter into agreements with outside entities providing program management, Watermaster, legal, financial, accounting, auditing, and other services as required;
- J. Enter into agreements with the California Department of Water Resources, the California Department of Fish and Wildlife, the Bureau of Reclamation, and other entities as required to comply with the requirements of the State and Federal Funding Agreements and implement the Project;
- K. Issue Project Revenue Bonds, secured by revenues of the Project, to provide financing for the Project;
- L. Fund and maintain adequate reserve funds to support debt and operational requirements;
- M. Deliver Services to the LAPs, and receive payment from the LAPs, pursuant to the Service Agreements; and
- N. Conduct such other activities as are necessary and appropriate to the above.

SECOND AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT

BY AND AMONG
SITES PROJECT AUTHORITY

and

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Dated as of July 1, 2020

THIS SECOND AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT (this “Second Amendment”), dated as of July 1, 2020, by and among SITES PROJECT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “Authority”), and the project agreement members listed in the Agreement referenced below (the “Project Agreement Members”) and amends that certain 2019 Reservoir Project Agreement dated as of April 1, 2019 (the “Original Agreement”), as previously amended by the First Amendment to 2019 Reservoir Project Agreement dated as of January 1, 2020 (the “First Amendment” and, together with the Original Agreement, the “Agreement”), each by and among the Authority and the Project Agreement Members;

WITNESSETH:

WHEREAS, Authority and the Project Agreement Members have determined to approve an Amendment 2 Work Plan and to extend the term of the Agreement to December 31, 2021; and

WHEREAS, under Section 11 of the Agreement, the Agreement may be amended by a writing executed by the Authority and at least 75% of the total weighted vote of the then current Committee members as provided in Subsection 3(g); and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Second Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Second Amendment;

NOW, THEREFORE, THIS SECOND AMENDMENT WITNESSETH, the Authority and the Project Agreement Members agree, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

ARTICLE II

AMENDMENTS TO AGREEMENT

Section 2.01. **Project Agreement Members.**

(a) Effective September 1, 2020, the Project Agreement Members attached as Exhibit A to the Agreement shall be succeeded in their entirety by the Project Agreement Members attached hereto as Exhibit A.

Section 2.02. **Work Plan.**

(a) Effective September 1, 2020, the 2019 Work Plan attached as Exhibit B to the Agreement shall be supplemented by the Work Plan attached hereto as Exhibit B (the “Amendment 2 Work Plan”).

Section 2.03. **Funding.**

The Agreement is hereby amended to remove Section 4(a) in its entirety and replace it with the following:

“(a) **Budget.** The Committee shall, in cooperation with the Authority’s Board, provide and approve both a Fiscal Year operating budget and reestablish a Phase 2 budget target, annually or more frequently as needed. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums reflected in the 2019 Work Plan (prior to November 1, 2020) and the Amendment 2 Work Plan (on and after November 1, 2020) in accordance with Section 5 of this Project Agreement; provided, however, that in no event shall the amount paid by a Project Agreement Member exceed \$160 per acre-foot (with \$60 of such amount being attributable to the 2019 Work Plan and \$100 of such amount being attributable to the Amendment 2 Work Plan) without the approval of such Project Agreement Member. The contribution with respect to the pro-rata budgeted sums reflected in the Amendment 2 Work Plan shall be payable by each Project Agreement Member in two installments. The first installment shall be in an amount equal to \$60 per acre-foot and shall be payable by no later than November 1, 2020. The second installment shall be in an amount up to \$40 per acre-foot and shall be payable by no later than April 1, 2021. The exact amount per acre-foot of the second installment shall be established by the Committee, in cooperation with the Authority’s Board, and notice of such amount shall be provided by the Authority to each Project Agreement Member.”

Section 2.04. **Future Development of the Sites Reservoir Project.**

The Agreement is hereby amended to remove Section 6(b) in its entirety and replace it with the following:

“(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, equal to that Project Agreement Member’s Participation Percentage, to contract for a share of any water supply that is developed, and for storage capacity that may be available from, the Sites Reservoir Project. In any successor phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before February 28, 2019, shall be granted rights to contract for a share, in an amount equal to that Project Agreement Member’s Participation Percentage as of the effective date of such successor phase agreement, of any water supply that is developed, and for storage capacity that may be available from the Sites Reservoir Project prior to the rights of those becoming parties to this Project Agreement after that date.

If a participating Project Agreement Member as of February 28, 2019 identifies a lesser amount in the Second Amendment than its Original Agreement requested amount, that participating Project Agreement Member’s first rights of refusal in the future are to be based on the Second Amendment amounts and not the February 28, 2019 amounts.

Provided, however, that if a Project Agreement Member withdraws from the Project Agreement pursuant to Section 9 of this Agreement but later requests to be reinstated, then to the extent there is unsubscribed participation in the Project as determined by the Committee, the

Committee may vote to readmit said withdrawn Member with a reinstated first right of refusal provided said withdrawing Member provides funding to the Project commensurate with the funding requirements met by all current Project Agreement Members in the current phase of the Project as well as any prior phase, as adjusted for any credits, payments and/or reimbursements made under the Authority's credit reimbursement policy (the "Credit Reimbursement Policy").

Further provided, that if a Project Agreement Member desires to increase its participation after execution of the Second Amendment, then to the extent there is unsubscribed participation in the Project as determined by the Committee, the Committee may vote to approve said increase, or portion thereof, with a first right of refusal attendant thereto, provided said increasing Project Agreement Member provides funding to the Project commensurate with the funding requirements met by all current Project Agreement Members in the current phase of the Project as well as any prior phase, as adjusted for any credits, payments and/or reimbursements made under the Credit Reimbursement Policy.

The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the Project Agreement Member."

Section 2.05. **Term.** The Agreement is hereby amended to remove Section 8(b) in its entirety and replace it with the following:

"(b) The term of this Project Agreement shall continue until December 31, 2021. In the event that this Second Amendment is not approved by Project Agreement Members with the requisite percentage of the total weighted vote as set forth in the Agreement by June 30, 2020, the Agreement shall be revived immediately upon approval by such requisite percentage, without any additional approval of the Project Agreement Members, and this Second Amendment shall become effective."

Section 2.06. **Executive Director.** All references to the "General Manager" in the Agreement shall be changed to "Executive Director."

ARTICLE III

PROJECT AGREEMENT MEMBER PARTICIPATION

Section 3.01. **Project Agreement Participation.** Each Project Agreement Member shall specify its participation in the Sites Reservoir Project by indicating its elected water participation amount in the Sites Reservoir Project and the associated cost in the space provided therefor on the signature page to this Second Amendment. Based upon the respective participation elections of the Project Agreement Members, the Authority shall update Exhibit A pursuant to Section 5 of the Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.01. **Effectiveness of Agreement.** Except as expressly amended by this Second Amendment, the Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof. The amendments set forth in this Second Amendment shall be incorporated as part of the Agreement upon their effectiveness in accordance with Section 11 of the Agreement.

Section 4.02. **Execution in Several Counterparts.** This Second Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Project Agreement Members shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 4.03. **Authorization, Ratification and Confirmation of Certain Actions.** The Authority and the Project Agreement Members each hereby authorize, ratify and confirm the extension of the term of the Agreement, as previously extended pursuant to the First Amendment, to June 30, 2020, and the expenditure of funds collected under the Agreement with respect to the 2019 Work Plan on and prior to June 30, 2020.

Section 4.04. **Laws Governing Second Amendment.** The effect and meaning of this Second Amendment and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: _____

SITES PROJECT AUTHORITY

By: _____
Name:
Title:

[PROJECT AGREEMENT MEMBER]

Dated: _____

(Authority & Project Agreement Member)

By: Santa Clara Valley Water District
Name: Rick L. Callender, Esq.
Title: Chief Executive Officer

PARTICIPATION AMOUNT

[PROJECT AGREEMENT MEMBER] hereby elects to participate in the Sites Reservoir Project in the amount and at the cost identified below.

**Participation
(Second Amendment
Annualized Acre-Foot):**

**Second Amendment Cost:
Not to Exceed \$100 per
Acre-Foot**

EXHIBIT A

PROJECT AGREEMENT MEMBERS

Participant	Participation (Second Amendment Annualized Acre-Foot)	
	Preliminary	Percent
American Canyon, City of		
Antelope Valley-East Kern Water Agency		
Carter Mutual Water Company #		
Coachella Valley Water District		
Colusa County		
Colusa County Water District		
Cortina Water District		
Davis Water District		
Desert Water Agency		
Dunnigan Water District		
Glenn-Colusa Irrigation District		
LaGrande Water District		
Metropolitan Water District of S. CA		
Pacific Resources Mutual Water Company #		
Reclamation District 108		
San Bernardino Valley Municipal Water District		
San Geronio Pass Water Agency		
Santa Clara Valley Water District		
Santa Clarita Valley Water Agency		
Westside Water District		
Wheeler Ridge-Maricopa Water Storage District		
Zone 7 Water Agency		
Potential new participants		
Total:		

Participation Percentages exclude State of California and United States Bureau of Reclamation share of the Project.

Denotes a non-public agency. Refer to California Corporations Code Section 14300 et. seq. with additional requirements provided in both the Public Utilities Code and Water Code.

EXHIBIT B
AMENDMENT 2 WORK PLAN

Exhibit B

Reservoir Committee

2020 and 2021 Work Plan

Reservoir Committee Annual Budget for FY 2020 and FY 2021 (\$000)

	Subject Area	2020	2021	Total
Revenue	Beginning Balance	\$6,847	\$0	\$6,847
	Participation Revenue	\$11,520	\$7,680	\$19,200
	Federal Revenue	\$0	\$4,000	\$4,000
	State Revenue	\$5,134	\$5,502	\$10,636
Revenue Total		\$23,501	\$17,182	\$40,683
Expenses	Permitting	(\$2,558)	(\$5,011)	(\$7,569)
	Early Mitigation	(\$243)	(\$2,257)	(\$2,500)
	Environmental Planning	(\$3,511)	(\$2,376)	(\$5,887)
	Operations Modeling	(\$3,486)	(\$536)	(\$4,022)
	Engineering	(\$4,360)	(\$2,180)	(\$6,540)
	Geotechnical	(\$1,142)	(\$2,003)	(\$3,145)
	Real Estate	(\$145)	(\$272)	(\$417)
	Communications	(\$489)	(\$579)	(\$1,068)
	Project Controls	(\$1,333)	(\$1,528)	(\$2,861)
	Funding	(\$777)	(\$590)	(\$1,367)
	Growth	(\$819)	(\$910)	(\$1,729)
	Management	(\$461)	(\$1,219)	(\$1,681)
	Support	(\$248)	(\$388)	(\$636)
Expenses Total		(\$19,573)	(\$19,848)	(\$39,422)
Grand Total		\$3,928	(\$2,666)	\$1,261

Annual expense budgets are based on the projected spend rate for the Amendment 1B and Amendment 2 work plans combined (Pg 2 and 3).

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Amendment 1B Budget by Month (\$000s)

Reservoir Committee Work Plan Summary

Subject Area	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Total
Revenue									
Beginning Balance*	\$6,847								\$6,847
Participation Revenue									\$0
Federal Revenue									\$0
State Revenue	\$3,300								\$3,300
Revenue Sum	\$10,147								\$10,147
Expenses									
Environmental Planning	(\$269)	(\$245)	(\$269)	(\$269)	(\$245)	(\$257)	\$0	\$0	(\$1,555)
Operations Modeling	(\$519)	(\$472)	(\$355)	(\$220)	(\$116)	(\$85)	(\$55)	(\$53)	(\$1,876)
Engineering	\$0	(\$151)	(\$237)	(\$239)	(\$247)	(\$272)	(\$248)	(\$205)	(\$1,600)
Geotechnical	\$0	\$0	(\$27)	(\$118)	(\$107)	(\$118)	(\$118)	(\$113)	(\$601)
Real Estate	(\$7)	(\$6)	(\$7)	(\$7)	(\$6)	(\$7)	(\$7)	(\$7)	(\$55)
Communications	(\$38)	(\$35)	(\$38)	(\$38)	(\$35)	(\$38)	(\$38)	(\$36)	(\$297)
Project Controls	(\$255)	(\$77)	(\$85)	(\$85)	(\$77)	(\$85)	(\$85)	(\$81)	(\$828)
Funding	(\$74)	(\$109)	(\$120)	(\$121)	(\$104)	(\$61)	(\$37)	(\$35)	(\$661)
Growth	(\$93)	(\$84)	(\$93)	(\$93)	(\$84)	(\$93)	(\$93)	(\$88)	(\$719)
Management	\$0	\$0	\$0	(\$1)	(\$23)	(\$25)	(\$9)	\$0	(\$58)
Support	(\$15)	(\$14)	(\$15)	(\$15)	(\$14)	(\$15)	(\$15)	(\$15)	(\$120)
Expenses Sum	(\$1,271)	(\$1,194)	(\$1,247)	(\$1,206)	(\$1,059)	(\$1,056)	(\$705)	(\$633)	(\$8,370)

*Adjusted from value published in work plan based on 2019 close-out

Amendment 2 Budget by Month (\$000s)

Reservoir Committee Work Plan Summary

Subject Area	Sep 20	Oct 20	Nov 20	Dec 20	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Oct 21	Sep 21	Nov 21	Dec 21	Total
Revenue																	
Participation Revenue			\$11,520					\$7,680									\$19,200
Federal Revenue							\$2,000				\$2,000						\$4,000
State Revenue			\$1,834			\$1,834						\$1,834			\$1,834		\$7,336
Revenue Total			\$13,354			\$1,834	\$2,000	\$7,680			\$2,000	\$1,834			\$1,834		\$30,536
Expenses																	
Permitting	(\$253)	(\$577)	(\$1,023)	(\$705)	(\$525)	(\$525)	(\$584)	(\$471)	(\$419)	(\$448)	(\$295)	(\$309)	(\$295)	(\$295)	(\$613)	(\$232)	(\$7,569)
Early Mitigation	\$0	\$0	(\$113)	(\$131)	(\$119)	(\$119)	(\$136)	(\$131)	(\$119)	(\$235)	(\$231)	(\$242)	(\$231)	(\$231)	(\$220)	(\$242)	(\$2,500)
Environmental Planning	(\$488)	(\$512)	(\$442)	(\$513)	(\$474)	(\$474)	(\$218)	(\$71)	(\$65)	(\$71)	(\$61)	(\$62)	(\$216)	(\$42)	(\$343)	(\$279)	(\$4,332)
Operations Modeling	(\$621)	(\$680)	(\$232)	(\$78)	(\$71)	(\$71)	(\$81)	(\$72)	(\$43)	(\$48)	(\$46)	(\$48)	(\$11)	(\$46)	\$0	\$0	(\$2,146)
Engineering	(\$1,134)	(\$768)	(\$398)	(\$461)	(\$108)	(\$185)	(\$355)	(\$292)	(\$221)	(\$190)	(\$161)	(\$186)	(\$155)	(\$155)	(\$147)	(\$25)	(\$4,941)
Geotechnical	(\$52)	(\$54)	(\$61)	(\$374)	(\$346)	(\$461)	(\$513)	(\$134)	(\$124)	(\$172)	(\$42)	(\$44)	(\$42)	(\$42)	(\$40)	(\$42)	(\$2,544)
Real Estate	(\$23)	(\$24)	(\$20)	(\$24)	(\$21)	(\$21)	(\$25)	(\$24)	(\$21)	(\$24)	(\$23)	(\$24)	(\$23)	(\$23)	(\$21)	(\$24)	(\$362)
Communications	(\$48)	(\$50)	(\$43)	(\$50)	(\$46)	(\$46)	(\$52)	(\$50)	(\$46)	(\$50)	(\$48)	(\$50)	(\$48)	(\$48)	(\$46)	(\$50)	(\$771)
Project Controls	(\$126)	(\$132)	(\$114)	(\$132)	(\$120)	(\$120)	(\$138)	(\$132)	(\$120)	(\$132)	(\$126)	(\$132)	(\$126)	(\$126)	(\$120)	(\$132)	(\$2,033)
Funding	(\$29)	(\$30)	(\$26)	(\$30)	(\$64)	(\$66)	(\$76)	(\$73)	(\$66)	(\$71)	(\$29)	(\$30)	(\$29)	(\$29)	(\$28)	(\$30)	(\$706)
Growth	(\$25)	(\$26)	(\$23)	(\$26)	\$0	\$0	(\$38)	(\$36)	(\$33)	(\$36)	(\$35)	(\$154)	(\$146)	(\$146)	(\$139)	(\$148)	(\$1,010)
Management	(\$101)	(\$106)	(\$91)	(\$106)	(\$96)	(\$96)	(\$110)	(\$106)	(\$96)	(\$106)	(\$101)	(\$106)	(\$101)	(\$101)	(\$96)	(\$106)	(\$1,623)
Support	(\$32)	(\$34)	(\$29)	(\$34)	(\$31)	(\$31)	(\$35)	(\$34)	(\$31)	(\$34)	(\$32)	(\$34)	(\$32)	(\$32)	(\$31)	(\$34)	(\$516)
Expenses Total	(\$2,931)	(\$2,994)	(\$2,616)	(\$2,663)	(\$2,020)	(\$2,214)	(\$2,362)	(\$1,624)	(\$1,404)	(\$1,616)	(\$1,230)	(\$1,422)	(\$1,454)	(\$1,314)	(\$1,844)	(\$1,345)	(\$31,052)

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SITES PROJECT AUTHORITY

2019 RESERVOIR PROJECT AGREEMENT

DATED AS OF APRIL 1, 2019

BY AND AMONG

SITES PROJECT AUTHORITY

AND

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

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THIS 2019 RESERVOIR PROJECT AGREEMENT is made effective as of April 1, 2019, by and among (a) the Sites Project Authority (the “Authority”) and (b) certain Members and/or Non-Member Participating Parties, listed on the attached **Exhibit A** and is made with reference to the following facts:

RECITALS

A. Various public agencies in the Sacramento River Watershed created the Authority in 2010. Various public agencies in the Sacramento River Watershed, including certain Project Agreement Members, previously entered into the Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated November 21, 2016, pursuant to which they are developing the Sites Reservoir Project, which is contained in the CalFed Bay-Delta program Programmatic Record of Decision, August 28, 2000. The Joint Powers Agreement provides a mechanism for “Project Agreements” (as defined in the Joint Powers Agreement) to undertake specific work activities for the development of the Sites Reservoir Project. On September 17, 2018, the Authority’s Board of Directors also adopted Bylaws for Phase 2 of the Sites Reservoir Project, which also address Project Agreements and their management through Reservoir Project Committees.

B. On April 11, 2016, certain Authority Members of the Authority entered into the PHASE 1 RESERVOIR PROJECT AGREEMENT which was amended and restated as of November 21, 2016.

C. The Authority and certain Project Agreement Members have undertaken a process to negotiate a 2019 Reservoir Project Agreement to undertake specific work activities.

D. The Project Agreement Members wish to continue development of the Project pursuant to a Work Plan approved by the Authority on November 19, 2018 and the Reservoir Project Committee on November 16, 2018 and a summary of which is described in **Exhibit B** attached hereto. The Project will be undertaken in the name of the Authority and in accordance with the Authority’s stated Mission as set forth in the fourth Recital of the Joint Powers Agreement. The Project Agreement Members are entering into this Project Agreement to satisfy the requirements of Article VI of the Joint Powers Agreement.

E. All members of the Authority have also been given the opportunity to enter into this Project Agreement. The form of this Project Agreement was determined to be consistent with the Joint Powers Agreement and the Bylaws and approved by the Authority’s Board of Directors on September 17, 2018.

F. The Authority and the Project Agreement Members acknowledge that one of the Authority’s goals, in addition to providing environmental benefits, is to develop and make both a water supply and storage capacity available to water purveyors and landowners within the Sacramento River watershed, and in other areas of California, who are willing to purchase either or both a water supply and storage capacity from the Sites Reservoir Project, and that the Project Agreement Members should have a preference to the water supply or storage capacity.

G. The Authority and the Project Agreement Members acknowledge that the approval and execution of this Project Agreement does not commit the Authority, the Project Agreement Members or any other party to any definite course of action regarding the Sites Reservoir Project. As

set forth in Section 6(a) of this Project Agreement, there are no assurances that the Sites Reservoir Project will be constructed. One of the prerequisites that would need to be fulfilled before the Sites Reservoir Project could be constructed is the completion of environmental review under the California Environmental Quality Act (“CEQA”). As part of this environmental review, the Authority, as the lead agency that is conducting the review, reserves all of its rights, responsibilities, obligations, powers, and discretion under the provisions of CEQA to: (i) evaluate the environmental impacts of the Sites Reservoir Project; (ii) deny and disapprove the Sites Reservoir Project if the environmental review reveals significant environmental impacts that cannot feasibly be mitigated; (iii) adopt feasible mitigation measures and/or an alternative to the Sites Reservoir Project to avoid or lessen significant environmental impacts; or (iv) determine that any significant environmental impacts that cannot feasibly be mitigated are outweighed by the economic, social or other benefits of the Sites Reservoir Project.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

Section 1 Definitions

“Authority” means the Sites Project Authority, a joint exercise of powers agency created pursuant to the Joint Powers Agreement.

“Authority Members” means the members of the Authority executing the Joint Powers Agreement, as such members may change from time-to-time in accordance with Section 3.3, Section 7.12 and Section 7.2 of the Joint Power Agreement.

“Board” means the Board of Directors of the Authority.

“Bylaws” means the Bylaws for Phase 2 of the Sites Reservoir Project adopted by the Authority on September 17, 2018, as such Bylaws may be amended or supplemented from time-to-time in accordance therewith.

“Committee” means the Reservoir Project Committee described in Section 3 of this Project Agreement.

“Fiscal Year” means the fiscal year of the Authority, which currently begins on January 1 of each calendar year and ends on December 31 of each calendar year, or such other twelve month period which may be designated by the Authority as its Fiscal Year.

“Joint Power Agreement” means the Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated November 21, 2016, as such agreement may be amended or supplemented from time-to-time in accordance therewith.

“Law” means Articles 1 through 4 (commencing with Section 6500), Chapter 5, Division 7, Title 1 of the California Government Code, as amended or supplemented from time-to-time.

“Material Change Item” shall have the meaning ascribed thereto in the Bylaws.

“Participation Percentage” means the Participation Percentages as set forth in **Exhibit A** hereto, as such Participation Percentages may be modified in accordance herewith.

“2019 Budget” means the 2019 Budget approved by the Committee on November 16, 2018 and the Authority on November 19, 2018, as such 2019 Budget may be amended or supplemented from time-to-time in accordance with the Joint Powers Agreement, this Project Agreement and the Bylaws.

“Project” or “Sites Reservoir Project” means the Sites Reservoir Project as described in **Exhibit B** hereto, as modified from time-to-time in accordance therewith.

“Project Agreement” means this Project Agreement, dated as of April 1, 2019, by and among the Authority and the Project Agreement Members listed on **Exhibit A** from time-to-time, as such Project Agreement may be amended or supplemented from time-to-time in accordance herewith.

“Project Agreement Members” means (a) the Authority Members listed in the attached **Exhibit A**, (b) the Non-Member Participating Parties listed in the attached **Exhibit A** and (c) additional Authority Members or Non-Member Participating Parties who execute this Project Agreement from time-to-time pursuant to Section 10 hereof.

“Work Plan” means the activities described in **Exhibit B** hereto as such description may be amended or supplemented from time-to-time.

Section 2 Purpose

The purpose of this Project Agreement is to permit the Authority and the Project Agreement Members to continue development of the Project in the name of the Authority consistent with the Joint Powers Agreement. The activities undertaken to carry out the purposes of this Project Agreement shall be those, and only those, authorized by the Authority and the Committee in accordance with this Project Agreement, the Joint Powers Agreement and the Bylaws. Without limiting in any way the scope of the activities that may be undertaken under this Project Agreement, such activities shall include funding the Authority’s costs undertaken to carry out the directions of the Committee. Notwithstanding any other provision of this Project Agreement, no activity undertaken pursuant to this Project Agreement shall conflict with the terms of the Joint Powers Agreement or the Bylaws, nor shall this Project Agreement be construed in any way as creating an entity or combination of entities that is separate and apart from the Authority.

Section 3 Reservoir Project Committee

(a) Committee Membership. The business of the Project Agreement Members under this Project Agreement shall be conducted by a Committee consisting of one member appointed by each Project Agreement Member. Appointment of each member of the Committee shall be by action of the governing body of the Project Agreement Member appointing such member, and shall be effective upon the appointment date as communicated in writing to the Authority. Project Agreement Members may also appoint one or more alternate Committee members, which alternate(s) shall assume the duties of the Committee member in case of absence or unavailability of such member. Project Agreement Members may also appoint an alternate Committee member from a different Project Agreement Member for convenience in attending Committee meetings, who may

cast votes for such Project Committee Members, provided that no person shall represent more than five other Project Committee Members and more than 20% of the weighted vote as provided in Subsection 3(g) at any given meeting; provided however, that if the appointing Project Committee Member is an officer of the Committee, the appointed alternate Committee member shall not assume the capacity of such officer position. In order to serve as an alternate Committee member, a written evidence of such designation shall be filed with the Committee Secretary. Each member and alternate member shall serve on the Committee from the date of appointment by the governing body of the Project Agreement Member he/she represents and at the pleasure of such governing body.

(b) Officers. The Committee shall select from among its members a Chairperson, who shall annually act as presiding officer, and a Vice Chairperson, to serve in the absence of the Chairperson. There also shall be selected a Secretary, who may, but need not be, a member of the Committee and a Treasurer. All elected officers shall be elected and remain in office at the pleasure of the Committee, upon the affirmative vote of at least a majority of the total weighted vote as provided at Subsection 3(g);

(c) Treasurer. The Authority Treasurer shall serve as the Committee's Treasurer and shall act as the Committee's liaison to the Authority's General Manager and Authority Board on financial matters affecting the Committee. The Treasurer shall prepare and provide regular financial reports to the Committee as determined by the Committee. The Treasurer shall not be required to be a member of the Board of Directors of the Authority.

(d) General Manager. The Authority's General Manager shall (1) serve as the Project Director responsible for advancing the Sites Reservoir Project, (2) be a non-voting member of the Committee, (3) ensure coordination of activities between the Authority and Committee, (4) convene, on an as needed basis, legal representatives from the Project Agreement Members and Authority Members to advise the General Manager on legal matters that will be reported to the Committee and Authority on a timely basis, and (5) coordinate the activities between the Committee and both the United States Bureau of Reclamation and Department of Water Resources.

(e) Meetings. The Chairperson of the Committee or a majority of a quorum of the members of the Committee are authorized to call meetings of the Committee as necessary and appropriate to conduct its business under this Project Agreement. All such meetings shall be open to the public and subject to the requirements set forth in the Ralph M. Brown Act (Government Code Sections 54950 et seq.).

(f) Quorum. A majority of the Committee members based on the weighted vote provided in Subsection 3(g) shall constitute a quorum of the Committee.

(g) Voting. Notwithstanding any provisions of the Bylaws that might be construed otherwise, for purposes of this Project Agreement, the voting rights of each Project Agreement Member shall be determined as follows:

(i) an equal number of voting shares for each Project Agreement Member as defined in **Exhibit A**, that being for each Project Agreement Member, 1 divided by the total number of Project Agreement Members, multiplied by 50; plus

- (ii) an additional number of voting shares for each Project Agreement Member equal to its respective Participation Percentage described in **Exhibit A**, multiplied by 50, using the version of **Exhibit A** in effect at the time the Committee votes.

The resulting weighted total of all voting shares shall equal 100. An Example of this weighted voting incorporating the formulas for determining participating percentages is attached at **Exhibit A**.

(h) Decision-making Thresholds. In accordance with Section 5.8 of the Bylaws, for purposes of this Project Agreement, approval by the Committee for material and non-material changes shall be as follows: for actions other than Material Change Items, action of the Committee shall be taken upon the affirmative vote of at least a majority of the total weighted vote as provided in Subsection 3(g); for Material Change Items, action shall be taken upon the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 3(g).

(i) Delegation of Authority/Powers and Limitations Thereon. Subject to the direction of the governing bodies of the Project Agreement Members, the Committee shall undertake all actions necessary for carrying out this Project Agreement, including but not limited to setting policy for the Project Agreement Members acting under this Project Agreement with respect to the Project; recommending actions to be undertaken in the name of the Authority under this Project Agreement; determining the basis for calculation of the Participation Percentages for each fiscal year, and the timing required for payments of obligations hereunder; authorizing expenditure of funds collected under this Project Agreement within the parameters of the Work Plan and budget; and such other actions as shall be reasonably necessary or convenient to carry out the purposes of this Project Agreement. This Section 3(i) is subject to any and all limitations set forth in the Joint Powers Agreement and Bylaws, including but not limited to, any action that constitutes a material change as defined at Section 12.3 of the Bylaws requiring the approval of both the Committee and the Authority Board, and actions specified in Section 10 of the Bylaws which remain exclusively with the Authority Board.

Section 4 Funding

(a) Budget. The Committee shall, in cooperation with the Authority's Board, provide and approve both a Fiscal Year operating budget and reestablish a Phase 2 budget target, annually or more frequently as needed. On November 19, 2018, the Board approved the Fiscal Year 2019 operating budget. The Work Plan, including annual budget, dated November 19, 2018, is **Exhibit B**. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums in accordance with Section 5 of this Project Agreement; provided, however, that in no event shall the amount paid by a Project Agreement Member exceed \$60 per acre-foot without the approval of such Project Agreement Member.

(b) Fiscal Responsibilities. **Exhibit B** specifies the Authority's requirements regarding the fiscal responsibilities of the Committee.

(c) Allocation of Project Agreement Expenses. The Project Agreement Members agree that all expenses incurred by them and/or by the Authority under this Project Agreement are the costs of the Project Agreement Members and not of the Authority or the Project Agreement Members of the Authority that do not execute this Project Agreement, and shall be paid by the Project Agreement Members; provided, however, that this Section shall not preclude the Project Agreement Members from accepting voluntary contributions and/or Authority Board's pre-approval

of in-kind services from other Authority Members, or Project Agreement Members, and applying such contributions to the purposes hereof. The Project Agreement Members further agree to pay that share of any Authority costs reasonably determined by the Authority's Board to have been incurred by the Authority to administer this Project Agreement. Before the Authority's costs of administering this Project Agreement become payable, the Authority will provide its calculation of such costs to the Committee, which will have the right to audit those costs and provide comments on the calculation to the Authority Board. The Authority Board shall consider the Committee's comments, if any, including the results of any such audit, in a public meeting before the Authority Board approves a final invoice for such costs.

Section 5 Participation Percentages

Subject to Section 4(a), each Project Agreement Member shall pay that share of costs for activities undertaken pursuant to this Project Agreement, whether undertaken in the name of the Authority or otherwise, equal to such Project Agreement Member Participation Percentage as established in this Section 5. The initial Participation Percentages of the Project Agreement Member are set forth in the attached **Exhibit A**. These initial Participation Percentages are for the purpose of establishing the Reservoir Project Agreement Members respective responsibilities for costs under this Project Agreement and other amounts contained in the approved Fiscal Year budget and Phase 2 budget target, which is defined as the "Approved Budget" on **Exhibit B**. The Participation Percentages of each Project Agreement Member will be modified by the Committee from time to time as the result of the admission of a new Project Agreement Member to this Project Agreement or the withdrawal of a Project Agreement Member, and **Exhibit A** shall be amended to reflect all such changes. Such amended **Exhibit A** shall, upon approval by the Committee, be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A** without the requirement of further amendment of this Project Agreement.

Section 6 Future Development of the Sites Reservoir Project

(a) The Project Agreement Members acknowledge that the Sites Reservoir Project is still in the conceptual stage and there are no assurances that the Sites Reservoir Project will be constructed or that any water supplies will be developed as a result of this Project Agreement. The Project Agreement Members therefore recognize that they are not acquiring any interest in the Sites Reservoir Project other than their interest in the specific permitting, design, engineering and other materials that will be in the Work Plan Project as described in **Exhibit B**, and that the Project Agreement Members are not acquiring under this Project Agreement any interest in any future water supply or access to any other services from the Sites Reservoir Project except as provided hereunder.

(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, equal to that Project Agreement Member's Participation Percentage, to contract for a share of any water supply that is developed, and for storage capacity that may be available from, the Sites Reservoir Project. In any successor phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before February 28, 2019, shall be granted rights to contract for a share of any water supply that is developed, and for storage capacity that may be available from the Sites Reservoir Project prior to the rights of those becoming parties to this Project Agreement after that date. The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project

Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the such Project Agreement Member.

Section 7 Indemnity and Contribution

(a) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority, Authority Members and other Project Agreement Members and their directors, trustees, officers, employees, and agents harmless from and against any liability, cause of action or damage (including, without limitation, reasonable attorneys' fees) arising out of the performance of this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. Notwithstanding the foregoing, to the extent any such liability is caused by the negligent or intentional act or omission of an Authority Member or a Project Agreement Member, such Authority Member or Project Agreement Member shall bear such liability.

(b) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority and the members of the Authority that do not execute this Project Agreement and their directors, trustees, officers, employees and agents harmless from and against any liabilities, costs or expenses of any kind (including, without limitation, reasonable attorney's fees) arising as a result of the activities described in or undertaken pursuant to this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. All assets, rights, benefits, debts, liabilities and obligations attributable to activities undertaken under this Project Agreement shall be assets, rights, benefits, debts, liabilities and obligations solely of the Project Agreement Members in accordance with the terms hereof, and shall not be the assets, rights, benefits, debts, liabilities and obligations of the Authority or of those members of the Authority that have not executed this Project Agreement. Members of the Authority not electing to participate in the Project Agreement shall have no rights, benefits, debts, liabilities or obligations attributable to the Project Agreement.

Section 8 Term

(a) No provision of this Project Agreement shall take effect until this Project Agreement has been duly executed and delivered by the Authority and by one Project Agreement Member.

(b) The term of this Project Agreement shall continue until December 31, 2019, unless extended in writing by the parties hereto.

Section 9 Withdrawal From Further Participation

To withdraw from this Project Agreement, a Project Agreement Member shall give the Authority and other Project Agreement Members written notice of such withdrawal not less than 30 days prior to the withdrawal date. As of the withdrawal date, all rights of participation in this Project Agreement shall cease for the withdrawing Project Agreement Member. The financial obligation as prescribed in the Bylaws' Section 5.11 in effect on the withdrawal date, shall consist of the withdrawing Member's share of the following costs: (a) payment of its share of all non-contract costs incurred prior to the date of the written notice of withdrawal, and (b) those contract costs associated with funds approved in either contract amendments or task orders that were approved

prior to the date of the written notice of withdrawal for which the contractor's work extends beyond the withdrawal date. However, a withdrawing member shall have no liability for any change order or extensions of any contractor's work that the remaining Project Agreement Members agree to after the withdrawing Member provides written notice of withdrawal. Withdrawal from this Project Agreement shall not be considered a Material Change Item and shall not be subject to the Dispute Resolution process provided for in Section 13.3 of the Bylaws.

Section 10 Admission of New Project Agreement Members

Additional Members of the Authority and Non-Member Participating Parties may become Project Agreement Members upon (a) confirmation of compliance with the membership requirements established in the Bylaws, (b) the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 3(g) of the then-current Project Agreement Members, (c) the affirmative vote of at least 75% of the total number of Directors of the Authority, and (d) upon such conditions as are fixed by such Project Agreement Members.

Section 11 Amendments

This Project Agreement may be amended only by a writing executed by the Authority and at least 75% of the total weighted vote as provided in Subsection 3(g) of the then-current Committee members.

Section 12 Assignment; Binding on Successors

Except as otherwise provided in this Project Agreement, the rights and duties of the Project Agreement Members may not be assigned or delegated without the written consent of the other Project Agreement Members and the Authority, which consent shall not be unreasonably withheld. Any attempt to assign or delegate such rights or duties in contravention of this Project Agreement shall be null and void. Project Agreement Members may assign and delegate their rights and duties under this Project Agreement to other Project Agreement Members, and they may assign, sell, trade, or exchange all or a fraction of the potential benefits (e.g. acre-feet of water supply, megawatt-hours of power) they expect to receive through their participation in this Project Agreement. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Project Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority and the Project Agreement Members.

Section 13 Counterparts

This Project Agreement may be executed by the Authority and each Project Agreement Member in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.

Section 14 Merger of Prior Agreements

This Project Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understanding between the parties

relating to the subject matter hereof. This Project Agreement is intended to implement, and should be interpreted consistent with, the Joint Powers Agreement.

Section 15 Severability

If one or more clauses, sentences, paragraphs or provisions of this Project Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of the Project Agreement shall not be affected thereby.

Section 16 Choice of Law

This Project Agreement shall be governed by the laws of the State of California.

Section 17 Notices

Notices authorized or required to be given under this Project Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the addresses set forth **Exhibit E** (“**Notifications**”), or to such other address as a Project Agreement Member may provide to the Authority and other Project Agreement Members from time to time.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: 3/25/2019

SITES PROJECT AUTHORITY

By: [Signature]
Name: JC Watson
Title: General Manager

[PROJECT AGREEMENT MEMBER]

Dated: _____

City of American Canyon

(Authority & Project Agreement Member)

4,000 AF

By: Jason Ho City Manager
Name: [Signature]
Title: 2/11/19

Dated: 3/1/19

ANTELOPE VALLEY - EAST KERN WATER AGENCY

(Authority & Project Agreement Member)

500 AF

By: [Signature] For
Name: DWAYNE CHISAM
Title: GENERAL MANAGER

[PROJECT AGREEMENT MEMBER]

Dated: 4/27/2019

CARTER MUTUAL WATER COMPANY

(Authority & Project Agreement Member)

300 AF

By: [Signature]
Name: BENJAMIN F. CARTER
Title: MANAGER

Dated: 02.13.2019

COACHELLA VALLEY WATER DISTRICT

(Authority & Project Agreement Member)

10,000 AF

By: [Signature]
Name: J. M. Barrett
Title: General Manager

Dated: 2/19/19

Colusa County

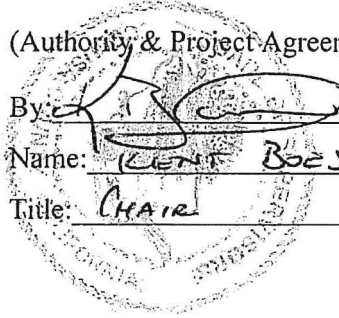
10,000 AF

(Authority & Project Agreement Member)

By: [Signature]

Name: KENT BOES

Title: CHAIR



ATTEST: Wendy G. Tyler, Clerk to the Board of Supervisors

By: [Signature]
Patricia Rodriguez, Deputy Clerk

APPROVE AS TO FORM

[Signature]
Marcos Kropf, County Counsel

[PROJECT AGREEMENT MEMBER]

Dated: 2/25/19

[Signature]

(Authority & Project Agreement Member)

11,975 AF

By: [Signature]
Name: Colusa County Water District
Title: General Manager

Dated: 02/05/19

(Authority & Project Agreement Member) Desert Water Agency

6,500 AF

By: [Signature]
Name: Mark S. Krause
Title: General Manager-Chief Engineer

Dated: 1/25/19

GLENN COLUSA IRRIGATION DISTRICT



(Authority & Project Agreement Member)

By: Donald R. Braustford Name:

Title: President - Glenn-Colusa Irrigation District

5,000 AF

Dated: 3/10/19

Metropolitan Water District of Southern California

(Authority & Project Agreement Member)

By:

Name: Jeffrey Kightlinger

Title: General Manager

50,000 AF

Dated: 15 FEB 2019

RD - 108

(Authority & Project Agreement Member)

By:

Name: WILLIAM VANDERWAAL

Title: DEPUTY MANAGER, RD-108

4,000 AF

Dated: 1/28/19

[PROJECT AGREEMENT MEMBER]

San Bernardino Valley Municipal Water District

(Authority & Project Agreement Member)

By:

Name: Douglas D. Headrick

Title: General Manager

21,400 AF

[PROJECT AGREEMENT MEMBER]

Dated: 2-27-19

San Geronimo Pass Water Agency

(Authority & Project Agreement Member)

By: [Signature]
Name: JEFF DAVIS
Title: General Manager

14,000 AF

Dated: 2/14/19

Santa Clarita Valley Water Agency

(Authority & Project Agreement Member)

By: [Signature]
Name: Matthew G. Stone
Title: General Manager

5,000 AF

Dated: February 26, 2019

SANTA CLARA VALLEY WATER DISTRICT

(Authority & Project Agreement Member)

By: [Signature]
Name: Norma J. Camacho
Title: Chief Executive Officer

16,000 AF

Dated: 3/7/2019

CORTINA Water District

(Authority & Project Agreement Member)

By: [Signature]
Name: JAMES PETERSON
Title: vice president

450 AF

[Signature]
Charles Grimmer
President CWD

Dated: 2/13/19

Davis Water District

(Authority & Project Agreement Member)

By: [Signature]

Name: Thomas Charter

Title: Vice-President

2,000 AF

[PROJECT AGREEMENT MEMBER]

Dated: 15 FEB 2019

Dunnigan WD

(Authority & Project Agreement Member)

By: [Signature]

Name: WILLIAM VANDERWAAL

Title: MANAGER - DWD

2717 AF

Dated: 03-21-19

(Authority & Project Agreement Member)

By: LaGrande Water District by [Signature]

Name:

Title:

1,000 AF

Dated: 2-25-2019

Westside Water District

(Authority & Project Agreement Member)

By: [Signature]

Name: Doug Parker

Title: Board President

15,000 AF

Dated: February 13, 2019

WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT

3,050 AF

By: 
Name: George R. Cappello
Title: President

By: 
Name: Jose B. Marin
Title: Secretary

Dated: 1/30/19

ZONE 7 WATER AGENCY



(Authority & Project Agreement Member)

10,000 AF

By: _____
Name: _____
Title: _____

EXHIBIT A
PROJECT AGREEMENT MEMBERS

Participant	Participation (Annualized Acre-Foot)		
	Estimated Deliveries	Water Supply Pct	Weighted Voting Pct
American Canyon, City of	4,000	2.1%	3.42 %
Antelope Valley-East Kern WA	500	0.3%	2.51 %
Carter MWC ‡	300	0.2%	2.46 %
Coachella Valley WD	10,000	5.2%	4.97 %
Colusa County	10,000	5.2%	4.97 %
Colusa County WD	11,975	6.2%	5.49 %
Desert WA	6,500	3.4%	4.06 %
Glenn-Colusa ID	5,000	2.6%	3.68 %
Metropolitan WD of S. CA	50,000	25.9%	15.34 %
Reclamation District 108	4,000	2.1%	3.42 %
San Bernardino Municipal WD	21,400	11.1%	7.93 %
San Geronio Pass WA	14,000	7.3%	6.01 %
Santa Clara Valley WD	16,000	8.3%	6.53 %
Santa Clarita Valley WA	5,000	2.6%	3.67 %
TC4: Cortina WD	450	0.2%	2.50 %
TC4: Davis WD	2,000	1.0%	2.90 %
TC4: Dunnigan WD	2,717	1.4%	3.09 %
TC4: LaGrande WD	1,000	0.5%	2.64 %
Westside WD	15,000	7.8%	6.27 %
Wheeler Ridge-Maricopa WSD	3,050	1.6%	3.17 %
Zone 7 WA	10,000	5.2%	4.97 %
Total:	192,892	100.0 %	100.00 %

Participation Percentages exclude State of California's and United States Bureau of Reclamation's participation in the Sites Reservoir Project.

‡ Denotes a non-member participating party. Refer to California Corporations Code Section 14300 et. seq. with additional requirements provided in both the Public Utilities Code and Water Code.

EXHIBIT B

2019 WORK PLAN

2018 November 16 Reservoir Committee Meeting - Attachment A - Agenda Item 3-3

Category	(Multiple Items)
Action	(Multiple Items)
Funding Source	(Multiple Items)
Work Manager	(All)
Priority	(All)

Report: Reservoir Committee 2019 Work Plan & Budget
Report Date: 2018 Nov 12

Expense (-) or Revenue (+)	Cost Center	Task	Resource	Reprioritize	Approved Budget
				Currently Approved Budget	Authority= 12 mon Res. Comm= 9 mon
Expense (-) or Revenue (+)	Cost Center	Task	Resource	Sum of Total End of Phase 1	Sum of Total 2019
Expense	C.R. Policy			\$ -	\$ (2,067,094)
	Engagement			\$ -	\$ (135,000)
	Operations	Contingency		\$ -	\$ -
		Env Interests		\$ (44,936)	\$ (120,552)
		Exchange		\$ -	\$ (75,550)
		Modeling		\$ (325,000)	\$ (998,480)
		Op POA		\$ (59,488)	\$ (61,040)
		Staff+		\$ (69,705)	\$ (417,555)
		Storage		\$ (17,824)	\$ (136,300)
		Water Rights		\$ (29,712)	\$ (204,264)
		Water Rights+		\$ (29,712)	\$ (119,892)
	Operations Total			\$ (576,377)	\$ (2,133,633)
	Power	Grid Interconn+		\$ -	\$ (1,097,880)
		H2oPower+		\$ -	\$ (668,453)
		Staff Aug+		\$ -	\$ (632,880)
		Staff+		\$ -	\$ -
	Power Total			\$ -	\$ (2,399,213)
	Res. Comm. O	Advisory		\$ (43,200)	\$ (82,565)
		Office		\$ -	\$ (133,100)
		Participation		\$ (109,800)	\$ (210,600)
		PROCURE		\$ -	\$ (80,240)
		PROCURE-2		\$ -	\$ -
		Rebalance		\$ (8,400)	\$ (134,070)
		Staff		\$ (6,000)	\$ (1,739,573)
		Staff Aug		\$ -	\$ (4,237,495)
		Staff Aug+		\$ -	\$ (225,990)
		Staff+		\$ -	\$ -
		Support		\$ (26,925)	\$ (107,678)
		Technology		\$ (3,330)	\$ (13,280)
		USDA-1		\$ (10,000)	\$ (10,800)
		WSIP-1		\$ (51,440)	\$ (81,960)
	Res. Comm. OH Total			\$ (259,095)	\$ (7,057,351)
	Water	Dam Design		\$ -	\$ (8,776,500)
		Economics+		\$ -	\$ (329,880)
		EIR-EIS		\$ (165,000)	\$ (2,371,767)
		Field Studies		\$ (200,000)	\$ (887,876)
		Field Surveys		\$ -	\$ (91,980)
		Permit Coord		\$ (590,000)	\$ (8,095,900)
		Rights of Entry		\$ (306,000)	\$ (600,119)
	Water Total			\$ (1,261,000)	\$ (21,154,022)
Expense Total				\$ (2,096,472)	\$ (34,946,312)

Summary - Page 1 of 2

				Reprioritize Currently Approved Budget	Approved Budget Authority= 12 mon Res. Comm= 9 mon
Expense (-) or Revenue (+)	Cost Center	Task	Resource	Sum of Total End of Phase 1	Sum of Total 2019
Revenue	Conversion			\$ -	\$ 2,067,094
	WIIN			\$ -	\$ 8,776,500
	WSIP			\$ 821,603	\$ 10,077,760
	Res. Comm.			\$ -	\$ 14,044,440
Revenue Total				\$ 821,603	\$ 34,965,795
Grand Total				\$ (1,274,870)	\$ 19,482

Summary - Page 2 of 2

NOTE: 2019 budget, which is applicable to this Agreement, was approved by the Reservoir Committee at their November 16, 2018 meeting with the Reservoir Committee's share of expenses listed on page B-1.

EXHIBIT C

NOTIFICATIONS

Attention: Mr. Steve Hartwig
City of American Canyon
4381 Broadway, Suite 201
American Canyon, CA 94503

Attention: Mr. Dwayne Chisam
Antelope Valley-East Kern WA
6500 West Avenue N
Palmdale, CA 93551

Attention: Mr. Ben Carter
Carter MWC
4245 River Road
Colusa, CA 95932

Attention: Mr. Jim Barrett
Coachella Valley Water District
P.O. Box 1058
Coachella, CA 92236

Attention: Ms. Wendy Tyler
Colusa County
547 Market St., Suite 102
Colusa, CA 95932

Attention: Ms. Shelley Murphy
Colusa County Water District
P.O. Box 337
Arbuckle, CA 95912

Attention: Mr. Jim Peterson
Cortina Water District
P.O. Box 489,
Williams, CA 95987

Attention: Mr. Tom Charter
c/o Ms Jamie Traynham
Davis Water District
P.O. Box 83
Arbuckle, CA 95912

Attention: Mr. Mark Krause
Desert Water Agency
1200 South Gene Autry Trail
Palm Springs, CA 92264

Attention: Mr. Bill Vanderwaal
Dunnigan Water District
P.O. Box 84
Dunnigan, CA 95937

Attention: Mr. Thad Bettner
Glenn-Colusa Irrigation District
P.O. Box 150
Willows, CA 95988

Attention: Mr. Matt LaGrande
LaGrande Water District
P.O. Box 370
Williams, CA 9598

Attention: Mr. Steve Arakawa
Metropolitan Water District of Southern
California
1121 L Street, Suite 900
Sacramento, CA 95814

Attention: Mr. Bill Vanderwaal
Reclamation District 108
P.O. Box 50
Grimes, CA 95950

Attention: Mr. Dirk Marks
Santa Clarita Valley Water Agency
27234 Bouquet Canyon Road
Santa Clarita, CA 91350

Attention: Mr. Doug Headrick
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408-3593

Attention: Dan Ruiz
Westside Water District
5005 State Hwy 20
Williams, CA 95987

Attention: Mr. Jeff Davis
San Geronio Pass Water Agency
1210 Beaumont Ave,
Beaumont, CA 92223

Attention: Robert Kunde
Wheeler Ridge-Maricopa Water Storage District
12109 Highway 166
Bakersfield, CA 93313

Attention: Ms. Cindy Kao
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
Attention: Mr. Dirk Marks

Attention: Ms. Valerie Pryor
Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 945

FIRST AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT

BY AND AMONG
SITES PROJECT AUTHORITY

and

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Dated as of January 1, 2020

THIS FIRST AMENDMENT TO RESERVOIR PROJECT AGREEMENT (this "First Amendment"), dated as of January 1, 2020, by and among SITES PROJECT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the project agreement members listed in the Original Agreement referenced below (the "Project Agreement Members") and amends that certain 2019 Reservoir Project Agreement dated as of April 1, 2019 (the "Original Agreement"), by and among the Authority and the Project Agreement Members;

WITNESSETH:

WHEREAS, Authority and the Project Agreement Members have determined to extend the term of the Original Agreement to June 30, 2020; and

WHEREAS, under Section 11 of the Original Agreement, the Original Agreement may be amended by a writing executed by the Authority and at least 75% of the total weighted vote as provided in Subsection 3(g) of the then-current Committee members; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this First Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Amendment;

NOW, THEREFORE, THIS FIRST AMENDMENT WITNESSETH, the Authority and the Project Agreement Members agree, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning set forth in the Original Agreement.

ARTICLE II

AMENDMENTS TO 2019 ORIGINAL AGREEMENT

Section 2.01. **Amendments to Section 8(b) of the Original Agreement.**

(a) The reference in Section 8(b) of the Original Agreement to December 31, 2019 shall be changed to June 30, 2020. In the event that this First Amendment is not approved by Project Agreement Members with the requisite percentage of the total weighted vote as set forth in the Original Agreement by December 31, 2019, the Original Agreement shall be revived immediately upon approval by such requisite percentage, without any additional approval of the Project Agreement Members, and this First Amendment shall become effective.

ARTICLE III

MISCELLANEOUS

Section 3.01. **Effectiveness of Original Agreement.** Except as expressly amended by this First Amendment, the Original Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof. The amendments set forth in this First Amendment shall be incorporated as part of the Original Agreement upon their effectiveness in accordance with Section 11 of the Original Agreement.

Section 3.02. **Execution in Several Counterparts.** This First Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Project Agreement Members shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 3.03. **Laws Governing First Amendment.** The effect and meaning of this First Amendment and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: May 13, 2020

SITES PROJECT AUTHORITY

By: _____
Name: Jos C. Wata
Title: _____

Dated: 1/9/20
[PROJECT AGREEMENT MEMBER]
Santa Clarita Valley Water Agency
(Authority & Project Agreement Member)
By: Matthew G. Stone
Name: Matthew G. Stone
Title: General Manager, Santa Clarita Valley Water Agency

Dated: 12-17-2019
[PROJECT AGREEMENT MEMBER]
Westside Water District
(Authority & Project Agreement Member)
By: Douglas Parker
Name: Douglas Parker
Title: President of Board of Directors

Dated: 12/17/19
[PROJECT AGREEMENT MEMBER]
DESERT WATER AGENCY
(Authority & Project Agreement Member)
By: Mark S. Krause
Name: Mark S. Krause
Title: General Manager-Chief Engineer

Dated: 12/19/19
[PROJECT AGREEMENT MEMBER]
Davis Water District
(Authority & Project Agreement Member)
By: Thomas E. Charter
Name: Thomas E. Charter
Title: Vice-President

Dated: 11 DEC 2019
[PROJECT AGREEMENT MEMBER]
DUNNIGAN WATER DISTRICT
(Authority & Project Agreement Member)
By: WR VANDERWAAL
Name: WR VANDERWAAL
Title: MANAGER

Dated: _____
[PROJECT AGREEMENT MEMBER]
GLIMP - COMSA I.D.
(Authority & Project Agreement Member)
By: THADDEUS L. BETNER
Name: THADDEUS L. BETNER
Title: General Manager, SECRETARY

Dated: 3/3/20
[PROJECT AGREEMENT MEMBER]
HERNANDON WATER DISTRICT
(Authority & Project Agreement Member)
By: GERRIE HARRIS
Name: GERRIE HARRIS
Title: General Manager

Dated: 19 DEC 2019
[PROJECT AGREEMENT MEMBER]
RECLAMATION DISTRICT No. 108
(Authority & Project Agreement Member)
By: WILLIAM VANDERWAAL
Name: WILLIAM VANDERWAAL
Title: DEPUTY MANAGER

Dated: 12/17/19
San Bernardino Valley Municipal Water District
By: Douglas D. Headrick
Name: Douglas D. Headrick
Title: General Manager

Dated: 12-6-19
[PROJECT AGREEMENT MEMBER]
San Geronimo Pass Water Agency
(Authority & Project Agreement Member)
By: Jeff Davis
Name: Jeff Davis
Title: General Mgr

Dated: 12/27/19
SANTA CLARA VALLEY WATER DISTRICT
By: Rick L. Callender
Name: Rick L. Callender
Title: Chief of External Affairs - External Affairs Division
Acting for Norma J. Camacho
Chief Executive Officer

Dated: December 11, 2019
[PROJECT AGREEMENT MEMBER]
WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT
(Authority & Project Agreement Member)
By: Dennis Atkinson
Name: Dennis Atkinson
Title: President

Dated: 4/19/2020
CARTER MUTUAL WATER COMPANY
(Authority & Project Agreement Member)
By: Dominic J. F.
Name: _____
Title: _____

Dated: 12/23/19
SITES PROJECT AUTHORITY
By: Jason Holley
Name: Jason Holley
Title: City Manager

Dated: 01.15.2020

COACHELLA VALLEY WATER DISTRICT

Dated: 12/31/19

(Authority & Project Agreement Member)

By: [Signature]
Name: J.M. BARRETT
Title: GENERAL MANAGER

COLUSA COUNTY WATER DISTRICT

By: [Signature]
Name: Shelly Murphy
Title: General manager

Dated: 12/17/19

COUNTY OF COLUSA

Dated: 1/15/20

(Authority & Project Agreement Member)

By: [Signature]
Name: Ken S. Boes
Title: Chairman

Zone 7 Water Agency

(Authority & Project Agreement Member)

By: [Signature]
Name: Valerie Pryor
Title: General Manager

ATTEST: Wendy G. Tyler, Clerk to the Board of Supervisors

by [Signature]
Melissa Kitts, Deputy

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SITES RESERVOIR PROJECT INFORMATION

SUMMARY:

In 2019, the Santa Clara Valley Water District's (Valley Water) Board of Directors (Board) authorized the Chief Executive Officer (CEO) to execute an agreement and subsequent first amendment to participate in Phase 2 of the Sites Reservoir Project (Sites Project) (Attachment 7). That agreement expired on June 30, 2020. The Sites Project Authority (Sites JPA), a joint powers authority, is offering Valley Water the opportunity to continue participating in the Sites Project by executing the Second amendment to the 2019 Reservoir Project Agreement (Sites A2) (Attachment 7). Staff recommendation to the Board is to authorize the CEO to execute the Sites A2 for a participation level of 0.2 percent of the total project and a funding commitment of up to \$50,000. Updates and report on Sites Project, including the participation options described below, were provided by staff to the Board Water Storage Exploratory Committee (Committee) in July, August, and October 2020.

To date, all of existing project agreement member participants except Valley Water have agreed to continue participation in the project. Attachment 9 lists the existing participants and their requested yields as well as two new potential participants. The Sites JPA requests a decision on project participation from Valley Water by November 2020.

Second Amendment to 2019 Project Agreement

Execution of the agreement would obligate Valley Water to provide funding for continued Phase 2 work activities from June 2020 through December 2021 (Phase 2, Years 2 and 3), provide Valley Water with a continuing seat on the Sites Project Reservoir Committee (Reservoir Committee) through December 2021, and give Valley Water priority access to proportional water supply and storage benefits provided by the project. The total Phase 2 Years 2 and 3 budget is roughly \$40 million, of which about \$19 million is to be funded by water user participants that comprise the Reservoir Committee. The remaining budget is expected to be funded using Prop 1 WSIP early funding and funds secured from provisions under the WIIN Act.

Funding for Sites A2 will go towards making progress on completion and release of draft EIR/EIS documents for public comment, development of guidelines for coordinated operations of the Sites Project with the State Water Project (SWP) and Central Valley Project (CVP), permits, feasibility design, evaluation of water rights issues, and further development of Sites Project policies and governance. The next two years of Phase 2 will also be critical in satisfying requirements to secure funding from the Proposition 1 Water Storage Investment Program (Prop 1 WSIP).

Sites A2 allows members to withdraw from the agreement with at least 30 days written notice. A withdrawing member would still be responsible for paying costs approved prior to the date of written notice of withdrawal. Should Valley Water reduce or withdraw its participation, it may be possible to rejoin in the future if there is unsubscribed participation in the Project; however, reinstating first priority rights to the project benefits would be subject to approval of the Sites Reservoir Committee.

SITES RESERVOIR PROJECT INFORMATION

Background

The Sites Project is a proposed off-stream reservoir that would be located north-of-Delta (NOD), approximately 10 miles west of the town of Maxwell in Colusa County. Sites may provide Valley Water new storage, new Delta-conveyed water supplies, improved CVP and SWP reliability, and increased operational flexibility. Since 2016, Valley Water and nine other water agencies that contract for SWP supplies have coordinated with the Sites JPA, a joint powers authority which is comprised of CVP contractors north of the Delta, to move the project forward. The new reservoir would collect winter flood flows from the Sacramento River with the objective of increasing water supply certainty while ensuring in-stream flows that benefit the Delta ecosystem. The Sites Project managers anticipate that the Sites Project will be cooperatively managed in conjunction with both the SWP and CVP and will increase the reliability of statewide water supplies in drier years for environmental, agricultural, and urban uses.

The Sites Project is envisioned to progress in a five-phase approach:

- Phase 1 - Prop 1 WSIP funding application and EIR/EIS development. Completed in 2018;
- Phase 2 - EIR/EIS completion, predesign, critical permits, and water rights. In progress;
- Phase 3 - Final design, land and right of way acquisition, and remaining permits. Future 2022 to 2025;
- Phase 4 – Construction. Future 2025-2029; and
- Phase 5 - Transfer to Operations

The first year of Phase 2 has ended and additional funding is needed to continue development of the project. Accomplishments of the Sites Project Phase 2 Year 1 (2019) work include:

- Securing an additional \$6 million in Congressional appropriations from the Water Infrastructure Improvements for the Nation (WIIN) Act, bringing total to \$10 million;
- Adoption of a Sites Storage Policy which better defines storage benefit to project participants and outlines rules of use;
- Refinement of project description and reduction in cost and size; and
- Recognition in the Governor's 2020 Water Resilience Portfolio - a plan to provide reliability and resiliency to statewide water supplies.

In April 2020, the cost of the Sites Project was reduced from roughly \$6 billion to roughly \$3 billion by reducing the size of the reservoir from 1.8 million acre-foot (MAF) to 1.5 MAF and refining project elements. Reducing the size of the reservoir was responsive to input from project participants, state and federal agencies, non-government organizations, elected officials, landowners and local communities.

Potential Valley Water Benefits

The Sites Project can provide both water supply yield as well as new storage. The reservoir is anticipated to also provide storage capacity for other supplies secured by

SITES RESERVOIR PROJECT INFORMATION

participants. Staff anticipates the Sites Project could provide the following benefits to Valley Water, if it is able to divert and store water as proposed with operations integrated with the SWP and CVP:

- An increase in water supply, including significant amounts in dry years;
- Storage rights in Sites reservoir proportional to the Valley Water's targeted participation level; and
- Improvement in Shasta Reservoir storage levels and cold-water pool that may provide fishery benefits and help stabilize CVP water supply allocations.

The Sites Project has been identified in Valley Water's Water Supply Master Plan (WSMP) as a potential alternative to help ensure reliability of its Delta-conveyed supplies. In addition, the availability of new dry year supplies produced by Sites Project can expand opportunities for water transfers and exchanges and possibly provide greater exchange capabilities to support Valley Water's groundwater banking withdrawals in dry years.

As with any large infrastructure project in California, the extent to which these benefits can be realized depends on how the project risks, challenges, and mitigation measures are addressed throughout project development. Preliminary water storage benefits are estimated in Table 1 below. A summary of the Sites Project major project risks, challenges, and mitigation measures is provided in Attachment 10. If Valley Water were to ultimately invest in the Sites Project, these risks could be reduced by also investing in conveyance improvement projects such as the Delta Conveyance Facility or the Transfer Bethany Pipeline (part of the Los Vaqueros Expansion Project).

Project Governance

The Sites Project is governed by the Sites JPA and a Reservoir Committee, whose authority is delegated by the Sites JPA. Valley Water board members have expressed an interest in developing opportunities to join the Sites JPA in order to better manage Valley Water's investment in the project, while some Sites JPA members have expressed a desire to maintain local control of the Sites Project. In a letter, dated August 11, 2020, the Sites JPA recognizes Valley Water's concerns and interest in a greater level of policy oversight by participants outside of the Sacramento Valley and provides assurance that this issue will be discussed by the Sites JPA Board and Reservoir Committee during the Sites A2 phase of work (Attachment 11).

Recommended Participation Level

The Sites JPA has not set a minimum participation level for the project. As shown in Table 1 below, the Board approved a requested yield of 16,000 acre-foot (AF) from the Sites Project in February of 2019, which corresponds to a 3.2 percent participation level in the original \$6 billion project. Since that time, the project has been downsized from 1.8 to 1.5 MAF of storage, with a capital cost reduction from \$6 billion to \$3 billion. Staff evaluated several options for continued participation:

- *Option 1 – Reduce but maintain significant benefits (\$780,000 funding commitment):* This option reduces Valley Water's requested yield from 16,000 AF to 7,800 AF while maintaining a 3.2 percent overall participation level in

SITES RESERVOIR PROJECT INFORMATION

- the downsized project for a cost of \$780,000;
- *Option 2 – Reduce participation by half (\$400,000 funding commitment):* This option reduces Valley Water's participation in the total project from 3.2% to 1.6%. This corresponds to a requested yield of 4,000 AF;
 - *Option 3 – Reduce to a minimal participation level (\$50,000 funding commitment):* This option reduces Valley Water's requested yield to 500 AF, a level that does not provide significant benefits but that can maintain Valley Water's participation in the Reservoir Committee, the governing body under the Sites JPA that is developing the project. This corresponds to a participation level in the total project of 0.2 percent for a cost of \$50,000; and
 - *Option 4 – Withdraw from the project (No funding commitment):* Under this option, Valley Water would withdraw completely from the project at no additional cost and the Reservoir Committee.

The funding commitments associated with the various options correlate to \$100 dollars in funding per each incremental 1 AF in participation request, payable in two payments, with \$60 dollars per AF due in November 2020 and up to \$40 per AF due in April 2021.

Staff's analysis indicates that the Sites Project may potentially provide significant quantities of additional water supply, storage, and operational flexibility. However, the current suite of water supply investments prioritized in the WSMP, when coupled with the reduced demand forecast presented in the Monitoring and Assessment Program (MAP) 2020 report, are more than sufficient to meet Valley Water's level of service goals for 2040. In addition, the WSMP considers the Sites Project to serve as an alternative to the Delta Conveyance Project if the Delta Conveyance Project does not ultimately move forward. Given this information and a recognition of current economic considerations and limited Valley Water funds, staff is recommending a significantly reduced participation level corresponding to Option 3. Staff recommends sustaining a minimal participation level and staying in the project rather than completely withdrawing for the following reasons:

- Several water supply investments prioritized in the WSMP are currently under development, and anticipated benefits may not be fully realized;
- Staff's analysis of the long term impacts from climate change have not yet been completed;
- Valley Water may want to consider increasing participation at the end of 2021 if supported by new information and there is available capacity; and
- Continued participation will allow staff to continue to evaluate the project in the event increased participation is justified.

Note the yield amounts in Table 1 represent new water supplies not otherwise available to Valley Water, for example, through other projects currently being considered. Ultimately the amount of project yield and benefit that is usable by Valley Water depends on the portfolio of water supply projects Valley Water ultimately implements as guided by the WSMP; the outcome of negotiations among water agency participants, Department of Water Resources, and U.S. Bureau of Reclamation (USBR); the outcome of ongoing regulatory processes; and refinements of Sites Project operations

SITES RESERVOIR PROJECT INFORMATION

to reflect storage benefits and updated operational constraints.

Additional modeling refinements are currently being implemented to better estimate potential yields and benefits.

Past Sites Project Funding

Through September 2020, Valley Water has spent approximately \$1.88 million towards Sites Project cost-sharing for the Prop 1 WSIP application and project development. The California Water Commission approved a Prop 1 WSIP grant award of up to \$816 million for Sites Project, including \$40.8 million in early funding. The USBR received a total of \$10 million of federal funding for Sites Project through the Water Infrastructure Improvements for the Nation Act (WIIN Act). The U.S. Department of Agriculture approved a \$449 million loan for the Sites Project's Maxwell water intertie conveyance facilities. Sites Project and project partners are continuing efforts to procure additional funding beyond 2021.

The Sites JPA has adopted a credit reimbursement policy that provides for reimbursement to participants that reduce their participation level or withdraw from the project prior to Phase 3, provided that (1) the withdrawal is offset by additional funding provided by others, and (2) such reimbursement does not have an adverse impact on the financial viability or overall implementation of the project. Depending upon overall funding and support for the project, the policy may allow for partial or full reimbursement of Valley Water's past payments if Valley Water reduces or withdraws participation. If funding for the project is inadequate, Valley Water would not be reimbursed.

Table 1: Comparison of Participation Options

	Last Board Decision (February 26, 2019)	Option 1	Option 2	Option 3	Option 4
		Maintain Participation	Reduce Participation by Half	Reduced Participation	Withdraw from Participation
PROJECT DESCRIPTION					
Total Capital Cost (2019 Dollars) ¹	\$6 Billion	\$3 Billion	\$3 Billion	\$3 Billion	\$3 Billion
Reservoir Size (MAF)	1.8	1.5	1.5	1.5	1.5
Total Estimated Project Annual Yield (AF)	500,000	240,000	240,000	240,000	240,000
PARTICIPATION SIZE					
Valley Water Share of Total Project Cost and Benefit	3.20%	3.20%	1.60%	0.20%	0.00%
Valley Water Participation Request (AF) ²	16,000	7,800	4,000	500	0

SITES RESERVOIR PROJECT INFORMATION

PRELIMINARY ESTIMATED BENEFITS (STORAGE AND YIELD)					
Valley Water Average Delivered Yield (AF) ³	11,100	4,700 to 6,100	2,400 to 3,100	300 to 400	0
Valley Water Average Dry/Critical (Drier) Year Delivered Yield (AF) ³	21,500	6,500 to 8,200	3,300 to 4,200	400 to 500	0
Valley Water Storage Share (AF)	55,000	45,000	23,000	2,800	0
FUNDING					
Valley Water Share of Total Capital Cost (2019 Dollars)	\$192 Million	\$97 Million	\$50 Million	\$6 Million	\$0 Million
Valley Water Share of Total Capital Cost (Fully Inflated Dollars) ⁴	\$242 Million	\$125 Million	\$64 Million	\$8 Million	\$0 Million
PV Lifecycle Unit Cost ⁵	Not Available	\$1,100/AF - \$1,400/AF	\$1,100/AF - \$1,400/AF	\$1,100/AF - \$1,400/AF	Not Applicable
Valley Water Funding Commitment	\$0.96 Million	\$0.78 Million	\$0.40 Million	\$0.05 Million	\$0.00 Million

¹ Capital cost were reported in 2015 dollars at the February 26, 2019 Board meeting and are escalated to 2019 dollars in this report. The previously reported 2015 dollar values were \$5.5 billion for the total project and \$177 million for Valley Water's 3.2% share of a 1.8 MAF reservoir project.

² Value requested and used by Sites Project managers to calculate participation levels relative to other participants. Actual annual yield of the project will differ from participation level.

³ Delivered yields assume a 25% carriage water loss.

⁴ Total Capital Cost published by the Sites Project were fully inflated by Valley Water financial staff to determine estimated construction costs.

⁵ PV lifecycle unit cost is calculated using the Valley Water 100-year life cycle cost and the life cycle usable project supplies. Usable project supplies is the portion of the preliminary estimated delivered yield that can be used by Valley Water to meet demands.

Project Participation Summary

Participant	Phase 2 (2019) Participation Request (AF) – larger project no longer pursued	Amendment 2 Staff Recommended Participation Request (AF) ¹	Approval Status as of October 16, 2020 ¹	Estimated Cost Share of Total Project ²
South of Delta				
Santa Clara Valley WD	16,000	500	---	0.2%
Antelope Valley-East Kern WA	500	500	Approved	0.2%
Wheeler Ridge-Marcopa WSD	3,050	3,050	Approved	1.3%
Santa Clarita Valley WA	5,000	5,000	Approved	2.1%
Desert WA	6,500	6,500	Approved	2.7%
Coachella Valley WD	10,000	10,000	Approved	4.1%
Zone 7 WA	10,000	10,000	Approved	4.1%
San Gorgonio Pass WA	14,000	14,000	Approved	5.8%
San Bernardino Municipal WD	21,400	21,400	Approved	8.8%
Metropolitan WD of S. CA	50,000	50,000	Approved	20.6%
North of Delta				
Carter MWC	300	300	Approved	0.1%
TC4: Cortina WD	450	450	Approved	0.2%
TC4: LaGrande WD	1,000	1,000	Approved	0.4%
TC4: Davis WD	2,000	2,000	Approved	0.8%
TC4: Dunnigan WD	2,717	2,947	Approved	1.2%
American Canyon, City of	4,000	4,000	Approved	1.6%
Reclamation District 108	4,000	4,000	Approved	1.6%
Westside WD	15,000	4,175	Approved	1.7%
Glenn-Colusa ID	5,000	5,000	Approved	2.1%
Colusa County	10,000	10,000	Approved	4.1%
Colusa County WD	11,975	10,073	Approved	4.1%
TOTAL	192,892	164,895		67.9%

1. Information as presented in the Sites Project Reservoir Committee meeting held on October 16, 2020.

2. Total project assumes 243,000 AF.

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SITES MAJOR PROJECT RISK, CHALLENGES, AND MITIGATION TABLE

No.	MAJOR RISK AND CHALLENGES	DESCRIPTION	MITIGATION MEASURE
A.	WATER SUPPLY		
A1	Transportation across Delta during critically dry years	<ul style="list-style-type: none"> Water quality and pumping limitations may impact conveyance. Transfers routinely occur during dry years but conveyance losses have been between 20% and 35%. 	<ul style="list-style-type: none"> Develop alternative conveyance pathways <ul style="list-style-type: none"> Delta Conveyance Facility, Transfer Bethany Pipeline, other alternative.
A2	Deliveries thru South Bay Aqueduct (SBA)	<ul style="list-style-type: none"> SBA had frequent outages in recent years – in need of repair. Sites Reservoir Project (Sites Project) water will primarily be conveyed through SBA. SBA must be rehabilitated irrespective of our participation in the Sites Project. 	<ul style="list-style-type: none"> Continue engagement with Department of Water Resources (DWR) to rehabilitate SBA. Develop agreements to use Central Valley Project (CVP) facilities as an alternative delivery option.
A3	Projected yield and storage capacity of the project	<ul style="list-style-type: none"> Ongoing consultation with regulatory agencies may result in lower project yield. 	<ul style="list-style-type: none"> Continue engagement with regulatory agencies to develop appropriate operating criteria.
A4	Coordinated operations with SWP and CVP	<ul style="list-style-type: none"> Sites Project operations will require coordination with DWR and U.S. Bureau of Reclamation (Reclamation). 	<ul style="list-style-type: none"> Develop coordinated operations agreements with DWR and Reclamation.

SITES MAJOR PROJECT RISK, CHALLENGES, AND MITIGATION TABLE

B. PERMITTING			
B1	Water rights from State Water Resources Control Board	<ul style="list-style-type: none"> • Assignment or release of a State filed application or new water right needed. • Protests and injury claims may be filed. • State Board may impose additional operating restrictions. 	<ul style="list-style-type: none"> • The project has contracted with legal counsel specifically to address water rights issues.
B2	CEQA/NEPA Approvals	<ul style="list-style-type: none"> • Fishery agencies may impose more severe restrictions on operations than anticipated. • CEQA litigation challenges. 	<ul style="list-style-type: none"> • Negotiation team assembled to work with regulatory agencies.
B3	Environmental opposition	<ul style="list-style-type: none"> • Some nongovernment organizations (NGOs) had opposed project. 	<ul style="list-style-type: none"> • Respond to public in recirculated draft EIR/EIS • Continue briefings with NGOs to solicit feedback and address concerns • Fund technical studies to address environmental concerns from mercury raised by NGOs.
C. CONSTRUCTION			
C1	Geotechnical uncertainties	<ul style="list-style-type: none"> • Major geotechnical analysis is being postponed until the design phase (beginning in 2022) to reduce cost. 	<ul style="list-style-type: none"> • Strategically spend limited funding on targeted geotechnical analysis to inform project decisions on critical path.

SITES MAJOR PROJECT RISK, CHALLENGES, AND MITIGATION TABLE

D. COST			
D1	Securing adequate participation	<ul style="list-style-type: none"> Sustaining adequate participation level as funding requests increase may be a challenge. 	<ul style="list-style-type: none"> Develop strong outreach program and work to increase support. Continue to reach out to potential investors.
D2	Proposition 1 Water Storage Investment Program Funding (Prop 1)	<ul style="list-style-type: none"> Feasibility Study, public review EIS, Commission Findings, and 75% funding commitment must be met by January 1, 2022. 	<ul style="list-style-type: none"> Focus project team on meeting Prop 1 requirements. Assemble effective team of consultants and staff.
D3	Construction cost	<ul style="list-style-type: none"> Costs may increase as more information is developed. 	<ul style="list-style-type: none"> Project size and costs have been reduced. Implement geotechnical mitigation measures. Update risk assessment.

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August 11, 2020

Chairman Gary Kremen
Valley Water Storage Exploratory Committee
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Subject: Sites Reservoir Participation

Dear Chairman Kremen,

This is a follow-up to the July 24, 2020 meeting which was a productive discussion about the next stage of project development and areas of interest to the Valley Water Board of Directors. We understand the Valley Water Board looks to you for guidance with regard to evaluating Valley Water's continued participation in the Sites Reservoir Project as the Chair of your Board's Water Storage Exploratory Committee.

As was explained in the meeting, the recent rightsizing puts the project on a renewed path forward to deliver an affordable, permittable and buildable project within the next decade. We are seeing strong interest from other existing and new participants in the project and would like to see Valley Water, as an early participant, continue to be a key partner in building this critical statewide infrastructure.

We want you and the Board to know that we acknowledge your concerns about project governance and your interest in a greater level of policy oversight by participants outside of the Sacramento Valley. Governance and policy oversight will be a subject area considered by the Authority Board during this next stage of project development (within 16 months). In our positions as Chair and Vice Chair of the Authority Board, we have been and will continue to be committed to governance and policy oversight that provides every participant the control, oversight and independence to achieve its expected benefits from the investment. If there is something that is needed to strengthen that commitment, we would welcome your suggestion and ensure a discussion by the Authority Board.

Clearly, one of the key foundations of any large infrastructure project that expects to be successful is "partnership". But we also understand that partnership needs to be supported by legal assurances provided through contractual mechanisms. These

elements will be the subject of discussion as well in conjunction with policy and governance discussions over the next 16 months.

We value Valley Water's contributions to this project to date and we look forward to a continued, strong working relationships going forward.

Sincerely,

A handwritten signature in blue ink that reads "FRITZ DURST". The letters are stylized and connected.

Fritz Durst, Chairman
Sites Authority Board

A handwritten signature in blue ink that reads "Jeff Sutton". The signature is written in a cursive style.

Jeff Sutton, Vice-Chairman
Sites Authority Board

cc: Valley Water Board of Directors
Rick Callender, Chief Executive Officer, Valley Water
Garth Hall, Interim Chief Operating Officer, Valley Water
Jerry De La Piedra, Interim Deputy Operating Officer of Water Supply, Valley Water
Cindy Kao, Imported Water Manager, Valley Water
Sites Authority Board of Directors
Sites Project Reservoir Committee
Jerry Brown, Executive Director, Sites Project Authority

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 19 – 69

**SUPPORT OF GOVERNOR NEWSOM'S
PROPOSED DELTA CONVEYANCE
("GOVERNOR'S PROPOSED PROJECT")**

WHEREAS, our mission at the Santa Clara Valley Water District (Valley Water) is to provide Silicon Valley with safe, clean water to support healthy lives, the environment, and economy; and

WHEREAS, the Board of Directors endeavor through our policies and actions to affirm to the residents of Silicon Valley that we are dependable stewards and that Valley Water can be trusted to provide clean, safe, affordable water, and guarantee our water supply for the future; and

WHEREAS, Santa Clara County relies on State Water Project (SWP) and Central Valley Project (CVP) water conveyed through the Sacramento-San Joaquin Bay-Delta (Delta) for 40 percent of its water supply on average; and

WHEREAS, imported water from the Delta and its watershed has played a significant role in recharging the County's groundwater basin, protecting against further land subsidence, and providing for the well-being of the citizens of Santa Clara County; and

WHEREAS, substantial local investments in water use efficiency and conservation, recycled water and groundwater management are essential but cannot cost-effectively replace imported water; and

WHEREAS, Valley Water has long been committed to sustained reliable water supplies as well as environmental stewardship; and

WHEREAS, if no action is taken, Valley Water's SWP and CVP supplies will be vulnerable to risks from declining ecosystem conditions, increasing regulatory restrictions, seismic risks, climate change and sea level rise, resulting in reduced water supply reliability for Santa Clara County; and

WHEREAS, the "Bay-Delta Plan" as proposed by the State Water Resources Control Board may materially cut water deliveries to the San Francisco Public Utility Commission served areas of Santa Clara County, potentially creating more demand upon Valley Water; and

WHEREAS, Governor Newsom, through the California Department of Water Resources (DWR) proposes to develop a single tunnel Delta Conveyance Project; and

WHEREAS, the Delta Conveyance Project is a critical component of the Governor's "balanced portfolio approach" to water, the State of California's blueprint for a "sustainable and resilient future"; and

WHEREAS, the Governor's Proposed Project has the potential to protect Valley Water's water supply reliability by upgrading aging infrastructure, thereby reducing the vulnerability of SWP and CVP water supplies to seismic events in the Delta and climate change impacts; and

Support of Governor Newsom's Proposed Delta Conveyance ("Governor's Proposed Project")
Resolution No. 19-69

WHEREAS, the Governor's Proposed Project has the potential to improve access to transfer supplies and increase storage project yield while conveying water across the Delta in a way that is safer for the environment; and

WHEREAS, Valley Water supports the use of unionized labor and Project Labor Agreements (PLAs) to participate in the construction of the Governor's Proposed Project.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby find, determine, and order as follows:

1. Valley Water hereby declares its support for Governor Newsom in his development of a single tunnel Delta Conveyance Project (the Governor's Proposed Project) and adopts the Guiding Principles, attached hereto as Attachment 1, for Participation in the Governor's Proposed Project; and
2. Valley Water Directors and staff will use these Guiding Principles to shape Valley Water's participation in the Governor's Proposed Project, including evaluating the Governor's Proposed Project, identifying ways to meet Valley Water's goals, and shaping the project development and any agreements necessary to secure the conditions needed for Valley Water's continued participation and support.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on September 24, 2019:

AYES: Directors T. Estremera, J. Varela, N. Hsueh, B. Keegan, G. Kremen,
R. Santos, L. LeZotte

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: 

LINDA J. LEZOTTE

Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC


Clerk, Board of Directors

ATTACHMENT 1

Guiding Principles for Participation in Governor Newsom's Proposed Delta Conveyance Project ("Governor's Proposed Project")

Guiding Principle #1 - Santa Clara County needs are the primary drivers in all our decisions involving the Governor's Proposed Project.

Fresno, Huron, Southern California, Discovery Bay, Rio Vista and other places in California have important desires, but providing safe, clean, affordable water for the people, businesses, wildlife and habitat of *Santa Clara County* is our primary focus.

Guiding Principle #2 - We will not allow Silicon Valley values and priorities to be placed at a disadvantage relative to Central Valley Agriculture or Southern California.

We support the Governor's Proposed Project in which all parties pay their fair share and avoid cost shifting to urban users.

Santa Clara County rate payers and / or taxpayers should *pay no subsidies* to Central Valley Agriculture or Southern California water users. If anyone pays less than Valley Water on a per acre-foot basis, their benefit from the Governor's Proposed Project should be less than Valley Water's benefit.

Guiding Principle #3 - We are advocating for a flexible approach that addresses Silicon Valley stakeholder and community input.

We take public input seriously, having had over 60 agenda items at properly noticed, public meetings on Delta Conveyance and Valley Water's water master supply plan alone (see Appendix A for a partial list of such meetings).

We support the Governor's Proposed Project that provides for environmental protections for the Delta, that is part of an overall State effort for a portfolio of science-based actions, and that takes into account climate change.

To quote from the recent *Baykeeper Issue Brief on the Delta Tunnels*:

"With a portfolio of science-based actions we can stabilize the Delta ecosystem to prevent fish extinctions while permitting sustainable water exports. Signs of hope and solutions include:

Reduction in tunnel scope to a single smaller tunnel. Several groups, including the Natural Resources Defense Council and the Public Policy Institute of California, have suggested that a single tunnel could help achieve the reliability and resiliency sought by water contractors while maintaining an engineered limit to diversions that would be less susceptible to over-extraction and abuse."

Additionally, to quote Governor: Newsom in his 2019 "State of the State" speech:

"That's why I do support a single tunnel."

"The status quo is not an option."

"We need to protect our water supply from earthquakes and rising sea levels, preserve delta fisheries and meet the needs of cities and farms."

"We have to get past the old binaries, like farmers versus environmentalists, or North versus South. Our approach can't be 'either/or.' It must be 'yes/and.'"

Given that Westlands Water District and certain other agriculture districts have declined to participate in the WaterFix project, we are supportive of a *lower-cost, scaled-down*, project relative to the previously planned California WaterFix. Other than one tunnel instead of two which is mandatory, we support considering an approach that incorporates the following objectives:

- a. A reduced intake volume from the original 9,000 cubic feet per second; and
- b. A reduced number of intakes on the Sacramento River; and
- c. A project that incorporates and ensures less impacts on fisheries and the environment relative to current operations; and
- d. Allows Valley Water elected officials to be actively involved as leaders in the governance of the Governor's Proposed Project to ensure the project is implemented appropriately and to prevent any Southern California or big agriculture water grab.

Any changes to the Governor's Proposed Project that diverge from this principle must be brought before the board before any final agreement is announced.

Guiding Principle #4 - As water is a human right, we must make investments to make sure our water supply meets future needs at a cost affordable by everyone.

Valley Water believes in an "all-of-the-above approach" to water supply. We have significant ongoing investments in water conservation. We are looking seriously at highly purified (drinkable) water, recycled water, storm water capture, rainwater capture, grey water usage, etc. We take into account the importance of local supplies and resiliency.

At the same time, the cost of water is an important consideration to our rate payers and we believe that water is a basic human right. Of the options that produce a significant quantity of supply, our imported supply is the lowest cost per unit source available to Valley Water, and the Governor's Proposed Project could help stabilize the increasing cost of our overall supply portfolio. The cost of water is a social justice issue; the Governor's Proposed Project would help keep down the cost of our water supply portfolio and make safe, clean water more affordable.

Consistent with this principle, our support of the Governor's Proposed Project is conditioned on the per acre-foot cost remaining similar to the prior estimates of per acre-foot cost for the California WaterFix, adjusted for the loss of scale inherent in one tunnel.

Guiding Principle #5 - Equity and costs are important.

Those communities and/or organizations that pay SWP property taxes (funds) and receive on average 85% of their water supply from sources other than Valley Water managed supplies will receive, directly or indirectly and not exceeding the amount of SWP property tax paid as estimated by Valley Water, those funds back in the form of additional, incremental, dedicated, segregated funds exclusively for water conservation programs, potable recycled water, non-potable recycled water (including salinity reductions), options to purchase wastewater, purified water, wastewater treatment plant environmental upgrades, Automatic Meter Infrastructure (AMI) updates, or dedicated environmental focused grants starting in FY 2019 until FY 2024. Upon Valley Water approval of award for a program within the FY 2019-2024 timeframe, the funds shall be reserved for the recipient, including interest earned, to reimburse eligible expenditures through FY 2033. To unlock these additional, incremental, dedicated funds, the communities and organizations will be required to make at least a 20% match of Valley Water's contribution (with no match required for facilities where Valley Water would have a long-term water supply contract or option for such). If an eligible agency has not gained Valley Water approval for a program by 6/30/2024, the dedicated, segregated funds go back to Valley Water by FY 2026.

Guiding Principle #6 - Any final arrangement must provide flexibility to acquire supplemental water by taking advantage of future wet years to ensure residents have a reliable water supply, no matter what extreme weather the changing climate brings.

Valley Water supports a participation approach, that would allocate the benefits and costs of the Governor's Proposed Project to Valley Water in proportion to its current 2.5% level of participation in the State Water Project ("SWP").

Given the uncertainty around Central Valley Project ("CVP") use of the facilities contemplated under the Governor's Proposed Project, Valley Water shall acquire an additional increment of SWP water supply benefit enabled by the Governor's Proposed Project that would offset projected declines in long-term CVP deliveries as well as strongly advocate for moving our current or future CVP supplies through the Governor's Proposed Project. This objective will lead to our participation in the Governor's Proposed Project for State Water Project deliveries at a higher percentage level than 2.5%.

Additionally, Valley Water shall commit to and/or purchase enough supplies from the Governor's Proposed Project to replace the projected deficit in current imported water supplies over time, and to ensure against future uncertainty. More specifically, we commit to securing sufficient supplemental water supplies if they become available at a reasonable price to avoid a deficit in our water supply, with potentially additional investments to provide insurance against future uncertainty. To optimize the benefits available through participation in the Governor's Proposed Project, we will also seek and evaluate additional storage opportunities.

If we do not act, given competition for limited water supplies in California, undoubtedly, water made available through improvements in the State Water Project and the Bay-Delta will instead go to Central Valley Agriculture and Southern California.

Guiding Principle #7 - Keep negotiating for the best deal for Santa Clara County.

Staff shall continue participating in planning discussions with State and federal agencies as well as other prospective Project participants to further define the project, and to develop agreements to secure the conditions needed for Valley Water's support.

Guiding Principle #8 – Public Engagement to be part of the Proposed Project.

Stakeholder engagement within the Delta as well as outside the Delta is paramount for the success of the proposed project; therefore public engagement throughout the duration of the project planning, design and construction is necessary by the Delta Conveyance Design and Construction Authority, Delta Conveyance Finance Authority as well as the California Department of Water Resources.

APPENDIX A
Valley Water Public Meetings Regarding Delta Conveyance

Board Agenda Items and Workshops

1. May 10, 2011 - Overview of Delta Issues
2. August 26, 2011 (Board Workshop)- Secretary of California Natural Resources Agency, John Laird, and several representatives of environmental groups discussed the ecosystem restoration goal of the BDCP.
3. October 14, 2011 (Board Workshop) - Deputy Secretary of the California Natural Resources Agency, Gerald Meral, and several general managers of California water agencies discussed the water supply reliability goal of the BDCP.
4. March 28, 2012 (Board Workshop) - Several elected officials and residents of Delta counties discussed the in-Delta perspective on BDCP, along with perspectives from Senior Policy Fellow at the Public Policy Institute of California, Ellen Hanak.
5. May 15, 2012 (Board Agenda Item)- Staff prepared a BDCP update following release of the preliminary administrative draft of the BDCP.
6. August 7, 2012 (Board Agenda Item) - Following the July 25th announcement by the Governor and Obama Administration on key elements of the BDCP proposed project, staff provided an update on the Bay Delta Conservation Plan and results of an opinion survey.
7. February 26, 2013 – (Board Agenda Item) Prior to the release of the second Administrative Draft of the BDCP, staff provided an update on the BDCP and established a Board Ad Hoc Committee to assist the Board with developing policies relating to the District's engagement in the BDCP.
8. October 11, 2013 (Board Workshop)- Director of California Department of Water Resources, Mark Cowin, Undersecretary of California Department of Food and Agriculture, Sandra Schubert, and Economist David Sunding provided an overview of BDCP in relation to other State planning efforts and discussed the statewide economic impacts and perspective on BDCP.
9. November 8, 2013 (Board Workshop) - California Department of Fish and Wildlife staff and several representatives of environmental and in-Delta interests discussed habitat restoration and conservation in the Delta and the perspectives of in-Delta users
10. November 13, 2013 (Board Workshop) - Director of Department of Fish and Wildlife Chuck Bonham, technical experts in Delta risks, and BDCP project managers discussed Delta risks, the relevance of BDCP to Delta fisheries, and plan components and analysis.

11. December 9, 2013 (Board Workshop) - Secretary of California Natural Resources Agency, John Laird and other invited guests provided perspectives on the importance of BDCP to the State, County and economy of Silicon Valley. Staff provided a preliminary analysis of BDCP benefits and costs to Santa Clara County
12. January 27, 2014 (Board Workshop) - Former Director of the San Francisco Public Utilities Commission's Water System Improvement Program, Julie Labonte, and President and CEO of Hallmark Group Capital Program Management, Chuck Gardner, described implementation of large water supply infrastructure construction projects.
13. May 27, 2014 (Board Agenda Item) - Following the five 2013–2014 District Board Workshops on BDCP, staff provided an update on Bay Delta Conservation Plan, a summary of the workshops, and responses to Board questions raised during and after the workshops
14. July 22, 2014 (Board Agenda Item) - Staff presented draft District comments on the Public Review Draft BDCP and its EIR/EIS and on the draft BDCP Implementing Agreement for Board review for consistency with Board Policy. Staff also presented an update on the BDCP and responses to additional Board questions.
15. September 23, 2014 (Board Agenda Item) - Staff responded to questions and concerns raised by Board Members and the League of Women Voters of California with various aspects of the BDCP
16. January 22, 2015 (Board Workshop) - Staff and a panel of invited guests described the BDCP adaptive management strategy and the current scientific understanding of habitat restoration in general as well as with respect to BDCP restoration actions.
17. May 26, 2015 (Board Agenda Item) - Staff provided an update on the BDCP and described the new approach proposed by the State to separately develop California WaterFix and EcoRestore.
18. October 27, 2015 (Board Agenda Item) - Staff provided an update on the BDCP and the re-circulated draft environmental documents including draft staff comments on the re-circulated documents.
19. January 26, 2016 (Workshop) - A panel of guests provided updated information and resource agency perspectives on the California WaterFix and California EcoRestore.
20. April 15, 2016 (Board Agenda Item) - Staff provided an overview of imported water and current issues
21. July 12, 2016 (Board Agenda Item) - Staff provided an updated business case analysis and a draft District policy statement for the State Water Board hearing on the petition to change the point of diversion for the SWP and CVP
22. September 27, 2016 (Board Agenda Item) - Update on Implementation of the 2012 Water Supply and Infrastructure Master Plan and Development of the 2017 Water Supply Master Plan (WSMP)

23. January 31, 2017 (Board Agenda Item) - Update on the 2017 Water Supply Master Plan and Potential Storage Options
24. March 14, 2017 (Board Agenda Item) – Review and confirm proposed Principles related to the Waterfix and receive WaterFix update
25. April 25, 2017 (Board Agenda Item) - Update on the 2017 Water Supply Master Plan and Alternative Water Supply Strategies
26. May 9, 2017(Board Agenda Item) – Updated information on the Delta Stewardship Council's Delta Plan, the District's CWF Principles relevant to the Delta Plan amendments
27. May 25, 2017 (Board Workshop) Guests Chuck Gardner, John Bednarski, Pat Pettiette, and Bob Goodfellow provide presentation on cost estimation, risk assessment and management, and cost control for the WaterFix
28. July 11, 2017 (Board Agenda Item) – Update on WaterFix and providing a schedule for future presentations through Fall 2017
29. August 22, 2017 – 1) Analysis of issues facing imported water supply reliability; 2) Update on WaterFix including proposed design and construction management and governance.
30. September 12, 2017 (Board Agenda Item) – California WaterFix water supply analysis, cost and water allocations, and financing.
31. October 17, 2017 (Board Workshop) – Conditional Support for California WaterFix
32. May 2, 2018 (Board Workshop) – Update on California WaterFix, Authorization to Execute Agreements, Designation of District Representative, and Adoption of CEQA Findings.
33. May 8, 2018 (Board Workshop) - Update on California WaterFix, Authorization to Execute Agreements, Designation of District Representative, and Adoption of CEQA Findings (Continued from May 2, 2018)
34. July 6, 2018 - (Board Agenda Item) Update on California WaterFix; Approve and Execute the Delta Conveyance Finance Authority Joint Powers Agreement; and Adopt a Resolution for approval of the Delta Conveyance Finance Authority Joint Powers Agreement.
35. August 14, 2018 (Board Agenda Item) - Update on California WaterFix to Execute agreement between the Department of Water Resources (DWR) and Santa Clara Valley Water District for the advance contribution of money to DWR for preconstruction planning costs for the California WaterFix.
36. January 22, 2019 (Board Agenda Item) – Receive an update on California WaterFix including updates on implementation and governance, regulatory processes, and various agreements.

37. August 13, 2019 (Board Agenda Item) -- Update on Delta Conveyance Project and Request for Board Direction on Participation in the Delta Conveyance Project

Ad Hoc and Advisory Committee Meetings

1. March 18, 2013 – BDCP – Initial meeting, discuss and define the BDCP Ad Hoc Committee's purpose and intended outcome
2. April 9, 2013 – BDCP – 1) Review scope and purpose of the Committee; 2) Discuss the Delta Stewardship Council's Delta Plan; 3) Overview of BDCP, Chapters 104; 4) Discuss the Natural Resource Defense Council's proposed portfolio-based BDCP alternative
3. April 22, 2013 - BDCP – 1) Overview of BDCP, Chapters 104 (continued from 4/9/13); 2) Overview of BDCP, Chapters 5-7; 3) Discuss the Natural Resource Defense Council's proposed portfolio-based BDCP alternative (continued from 4/9/13)
4. May 28, 2013 – BDCP – 1) Discussion of BDCP EIR/EIS alternatives; 2) Discussion of Conservation Measure 1 Construction Mgmt Structure; 3) delta Dialogues – Discussion Group; 4) BDCP Schedule and Board Workshops
5. June 25, 2013 – BDCP – 1) Overview and discussion of Chapters 8-10; 2) Discussion of Board member communication and outreach
6. August 22, 2013 – BDCP – 1) Overview of the role of science in Delta planning; 2) Schedule for Bay Delta issues and Board communication
7. October 9, 2013 – BDCP – 1) Overview of the Role of Science in Delta Planning (carryover from August 22, 2013 meeting); 2) Update on BDCP; 3) Schedule and future agendas
8. December 17, 2013 – BDCP – 1) Discuss 2013 Board Workshops on BDCP; 2) Discuss potential 2014 Board items; 3) Discuss next steps for public outreach and engagement
9. January 13, 2014 – BDCP – 1) Discuss 2013 Special Board Workshops on BDCP; 2) Report out by Committee members on BDCP and related issues
10. January 24, 2014 – BDCP - Discuss 2013 Special Board Workshops on BDCP (Continued from 1/13/14); 2) Report out by Committee members on BDCP and related issues
11. June 3, 2014 – BDCP – 1) Updates on the BDCP and BDCP EIR/EIS; 2) Report out by Committee members on BDCP and related issues
12. July 10, 2014 – BDCP - 1) Updates on the BDCP and BDCP EIR/EIS; 2) Report out by Committee members on BDCP and related issues
13. September 9, 2014 – BDCP – 1) Discuss staff responses to Board member questions on the BDCP; 2) Discuss staff responses to the BDCP comment letter from the League of Women Voters of CA; 3) Schedule for Board communication on BDCP
14. October 6, 2014 – Agricultural Water Advisory Committee (BDCP Update)

15. May 13, 2015 – BDCP – 1) Update on BDCP; 2) Election of Chair and Vice Chair; 3) Report out by Committee members on BDCP and related issues
16. October 5, 2015 – Agricultural Water Advisory Committee (BDCP Update)
17. October 13, 2015 – BDCP – 1) Update on BDCP and the recirculated draft environmental documents; 2) Report out by Committee members on BDCP and related issues
18. November 24, 2015 – BDCP 1) Update on WaterFix Business Case; 2) Report out by Committee members on BDCP and related issues
19. February 22, 2016 – BDCP 1) Update on Waterfix Business Case; 2) Update on the Design Construction Enterprise and related agreements; 3) Draft Policy Statement for State Water Resources Control Board proceedings
20. April 4, 2016 – Agricultural Water Advisory Committee (BDCP Update)
21. June 21, 2016 – BDCP – Update on WaterFix
22. October 3, 2016 – Agricultural Water Advisory Committee - Water Supply Update, including WSMP
23. October 17, 2016 – Environmental & Water Resources Committee - Water Supply Update, including WSMP
24. October 25, 2016 – BDCP – Update on WaterFix, EcoRestore and other Delta planning efforts
25. October 26, 2016 – Santa Clara Valley Water Commission - Water Supply Update, including WSMP
26. November 8, 2016 - BDCP disbanded
27. January 17, 2017 – Joint Board meeting with Open Space Authority - WSMP Update
28. April 12, 2017 – Santa Clara Valley Water Commission - 2017 WSMP Update
29. August 2, 2017 – Agricultural Water Advisory Committee – Update on California WaterFix
30. August 2, 2017 - Joint Water Resources Committee (South County) – Update on WaterFix
31. August 16, 2017 – Environmental & Water Resources Committee – Update on Cal WaterFix
32. August 25, 2017 – Santa Clara Valley Water Commission – Update on Cal WaterFix

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Delta Conveyance Project Information

At the September 24, 2019 Board meeting, the Santa Clara Valley Water District (Valley Water) Board of Directors approved Resolution 19-69 “Support of Governor Newsom’s Proposed Delta Conveyance (‘Governor’s Proposed Project’)” and adopted Guiding Principles to shape Valley Water’s participation in the Delta Conveyance Project (Project or DCP) (Attachment 12). Since that time, several significant developments have occurred:

- A. State Water Project (SWP) contract negotiations were completed and an Agreement in Principle (AIP) was developed on how to allocate benefits and costs of the Project;
- B. SWP contractor staff have identified possible participation percentages that may be approved by their respective Boards;
- C. Potential participants have been asked to execute new funding agreements to support planning and design costs over the next four years;
- D. Amendments to the Delta Conveyance Design and Construction Authority (DCA) Joint Powers Agreement have been proposed;
- E. The DCA developed an updated cost estimate for the Project; and
- F. The State Water Contractors (SWC) developed a high-level analysis of Project benefits.

This document describes each of these developments and lays out recommended Board actions in response.

A. State Water Project (SWP) Contract Amendment for Delta Conveyance (DCP Amendment)

At the end of April 2020, the Department of Water Resources (DWR) and the SWP Contractors completed negotiations of the Draft Agreement in Principle for the SWP Water Supply Contract Amendment on a Delta Conveyance Project (AIP) (Attachment 14). The AIP provides the basis for how DWR will allocate costs and benefits of the Project through a future SWP contract amendment that will be executed only if a project is ultimately approved and only after necessary environmental review is completed. The AIP provides for SWP Contractors to (1) opt out of the Project, or (2) assume a share of Project costs and benefits that is equal to or greater than their existing proportional share of SWP water supplies (Table A percentage). The SWP Contractors did not specify participation percentages during negotiations of the AIP but have subsequently identified tentative participation levels, as described in part B below. The benefits identified in the AIP include:

- Rights to SWP water attributable to the Project;
- Rights to surplus water (Article 21 water) attributable to the Project;
- Rights to use the Project to convey non-SWP water supplies, including transfer and exchange supplies;
- Rights to use the Project if sea level rise, seismic events, flooding or other events impair the ability to pump directly from the south Delta; and
- Right to carriage water savings due to operation of the Project (i.e., water that otherwise would have been lost if conveyed through the Delta as is currently done).

Although Non-Participants would not receive surplus water produced by the Project that is allocated to Participants, the DCP Amendment would give Non-Participants the right to receive surplus water from the Project beyond the needs of Participants. DWR also reserves the right to use the Project to support Non-Participants under emergency situations.

Recommended Board Action: None. Information only.

B. SWP Contractor Provisional Participation Percentages

On October 23, 2020, DWR sent a letter to the State Water Contractors asking SWP Contractors to indicate their likely participation percentages (“AIP Section V table of percentages”) to confirm that the proposed Project is fully supported, and to allocate planning costs accordingly (Attachment 15). As described in the AIP, SWP Contractors can either opt out or choose to participate at a level that is equal to or greater than their Table A percentage. Valley Water’s percentage of the total SWP contract supply is approximately 2.5 percent.

Since April of this year, SWP contractors have discussed participation percentages. SWP contractors north of the Delta and most of the agricultural agencies south of the Delta have stated that they will not participate in the project (Non-Participants). Metropolitan Water District may seek their Board’s approval to increase their participation percentage to cover Kern County Water Agency’s agricultural water supply Table A percentage. The remaining 16 participating SWP Contractors are considering increases in their standard Table A percentage of about 14 percent on average in order to absorb the share of project costs associated with the Non-Participants. Two or three agencies may participate at levels higher than their proportionate share of the Non-Participants’ share. Valley Water’s participation percentage consistent with this coordination effort would be 2.73 percent. It is possible that SWP contractors’ Board decisions result in additional project shares becoming available, which may require participating agencies to increase their participation percentage to ensure full funding for the project. Staff expects SWP contractors to complete their board decisions by the end of 2020 or early 2021. For the California WaterFix, staff had identified a total participation percentage of 5 percent as a reasonable proxy for participation both on the

SWP and CVP which is roughly the same participation percentage that is currently included in Valley Water's rate projections.

Approval of a provisional participation percentage determines Valley Water's share of additional planning costs as defined in the Gap Funding Agreement described in section C below. It would also create a placeholder for Valley Water's final decision on whether to participate in the Project, a decision that will likely not be made for several years pending completion of environmental documentation, drafting of contract language, and completion of Project analysis. However, because the participation percentages of the participating agencies must sum to 100 percent, any deviation from preliminary participation percentages would require additional coordination and negotiation with other participants.

Given the lower demand projections in the Water Supply Master Plan Monitoring and Assessment Program (MAP) 2020 report and the current state of the economy, staff is not recommending participation at a 5 percent level; however, because this project is critical for securing Valley Water's baseline SWP supplies into the future, staff is recommending approval of a provisional participation percentage of 2.73 percent, and authorization for up to an additional 0.5 percent in the event additional shares become available, for a total provisional participation percentage of 3.23 percent.

Recommended Board Action: Approve a provisional participation percentage in the Project of 2.73 percent and authorize the CEO to increase Valley Water's provisional participation percentage up to a total of 3.23 percent if additional shares become available.

C. Gap Funding Agreement to Support Planning and Design Costs

DWR has stated that it has existing authority to issue revenue bonds for the Project, but filed a validation action on August 6, 2020 to provide the requisite assurance to the financial community for the sale of Project revenue bonds. DWR anticipates an appellate court ruling in 2024, at which time DWR plans to issue the Project revenue bonds. To fund the Project in the interim four years, and to credit those SWP contractors who advanced funding prior to the effective date of this Gap Funding Agreement, DWR requests participating SWP contractors to enter into a funding agreement (Gap Funding Agreement) to provide \$340.7 million for environmental review, planning, and design of the proposed Project (Attachment 16).

Staff anticipates interim funding will be reimbursed or credited upon first issuance of revenue bonds for the Project. However, there is a chance that funds will not be reimbursed or credited if DWR determines that such reimbursement or credit is not consistent with applicable law, judicial rulings, or contractual obligations of DWR, or if the terms of the future agreements to accomplish the reimbursement or credit are not

acceptable to DWR. In addition, if the Project does not proceed to construction, no reimbursements of this funding will occur.

The Gap Funding Agreement provides Valley Water with the option to approve its entire obligation for the next four years of Project planning, or to limit the commitment to just the first two years, with the remaining amount subject to future Board action without requiring an amendment to the agreement. Table 1 illustrates Valley Water's share of interim funding costs for a range of potential participation percentages. Attachment 17 shows costs for each 0.1 percent participation percentage increment. The attached Gap Funding Agreement is currently written to reflect a two-year funding commitment, with an option to commit to an additional two years in the future, subject to future Board approval. The Gap Funding Agreement will be revised to reflect the funding commitment commensurate with the final provisional participation percentage.

Table 1: Potential Gap Funding Costs

Participation Level	Two Years of Funding (\$M)	Four Years of Funding (\$M)
2.5%	\$3.1	\$8.5
2.73%	\$3.4	\$9.3
3.0%	\$3.7	\$10.2
3.23%	\$4.0	\$11.0
4.0%	\$5.0	\$13.6
5.0%	\$6.2	\$17.0
6.0%	\$7.5	\$20.4

Recommended Board Action: Adopt the Resolution APPROVAL OF PROVISIONAL PARTICIPATION PERCENTAGE AND AUTHORIZING NEGOTIATION AND EXECUTION OF A FUNDING AGREEMENT FOR PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A POTENTIAL DELTA CONVEYANCE PROJECT

(Attachment 18) and authorize the CEO to negotiate and execute a funding agreement with the Department of Water Resources committing up to \$4,034,001 for Project environmental planning and design costs incurred in Calendar Years 2021 and 2022, with an option to commit up to an additional \$6,972,348, upon future Board approval, for Project environmental planning and design costs incurred in Calendar Years 2023 and 2024.

D. Amendments to the DCA Joint Powers Authority Formation Agreement

In May 2018, certain SWP Contractors, including Valley Water, entered into a Joint Powers Agreement and formed the DCA, whose purpose was to actively participate with DWR in the design and construction of California WaterFix. The DCA subsequently entered into a Joint Exercise of Powers Agreement with DWR (JEPA). Shortly after DWR rescinded its approvals of WaterFix and the Governor indicated support for a single tunnel project, the JEPA was amended and its purpose shifted to provide preliminary design, planning and other preconstruction activities to assist the environmental process for a potential Delta Conveyance Project. Given these changes, some SWP Contractors are seeking to reorganize the governance structure to better align with current participation in the proposed Project. The proposed amendments would primarily amend the governance structure. Attachment 19 is a redline-strike out copy of the proposed amendments to the DCA Joint Powers Agreement.

The proposed amendments include the following:

- Changes the number of DCA Board of Directors' seats from five to seven. Valley Water retains a designated seat;
- Board officers are selected by the Board, eliminating the fixed rotation;
- Voting thresholds are changed to a simple majority of the Board for all actions;
- A reconsideration provision is added for items that previously needed a supermajority vote; and
- Amendments to the agreement can be made by approval of two-thirds of the Members instead of requiring all Members to approve; and
- Formation of the Environmental Compliance and Monitoring Committee is deferred to after Project approval.

Recommended Board Action: Approve and Authorize the Chief Executive Officer to execute the Amended and Restated Joint Powers Agreement Forming the Delta Conveyance Design and Construction Joint Powers Authority.

E. Delta Conveyance Design and Construction Authority (DCA) Cost Assessment

On August 20, 2020, the DCA released a preliminary cost assessment of \$15.9 billion for the proposed Project in undiscounted 2020 dollars that includes capital costs for design and construction, soft costs, and environmental mitigation. It does not include financing costs. The proposed facilities include two intakes each with a capacity of

3,000 cubic feet per second (cfs), one tunnel with a length of 42 miles and a capacity of 6,000 cfs, and a complex of facilities in the south Delta including a pumping station, forebay, and connection to the California Aqueduct.

The DCA characterized its preliminary cost estimate as being very conservative due to the Project's early stage of development. The construction cost includes a 38 percent contingency such that together with an estimate of \$354 million for risk mitigation, total Project contingency levels are 44 percent. DCA engineers believe this is an appropriately conservative contingency given the current level of project development.

The assessment will be refined over time as planning and environmental review proceeds and more precise design and engineering are available to increase confidence in the potential costs based on industry standard methodologies.

The \$15.9 billion preliminary cost estimate for the Project is larger than the previously estimated cost for the SWP portion of the California WaterFix, which in 2018 DWR estimated to be \$11.09 billion in undiscounted 2017 dollars (*Economic Analysis of Stage I of the California WaterFix*, The Brattle Group, 2018). This is equivalent to about \$12.6 billion in 2020 dollars. The primary reasons for the difference in costs include a more conservative approach to ground improvements at the intake structures and southern forebay, and a more advanced design approach to the southern complex facilities. The DCA also adopted a larger contingency given the early stages of design. The three alternative tunnel alignments currently being considered differ from those considered by the California WaterFix project and incorporate substantial input from local Delta stakeholders to reduce impacts. Attachment 17 shows Valley Water's potential total project costs for each 0.1 percent participation percentage increment.

Recommended Board Action: None. Information only.

F. State Water Contractors High Level Analysis of Project Benefits

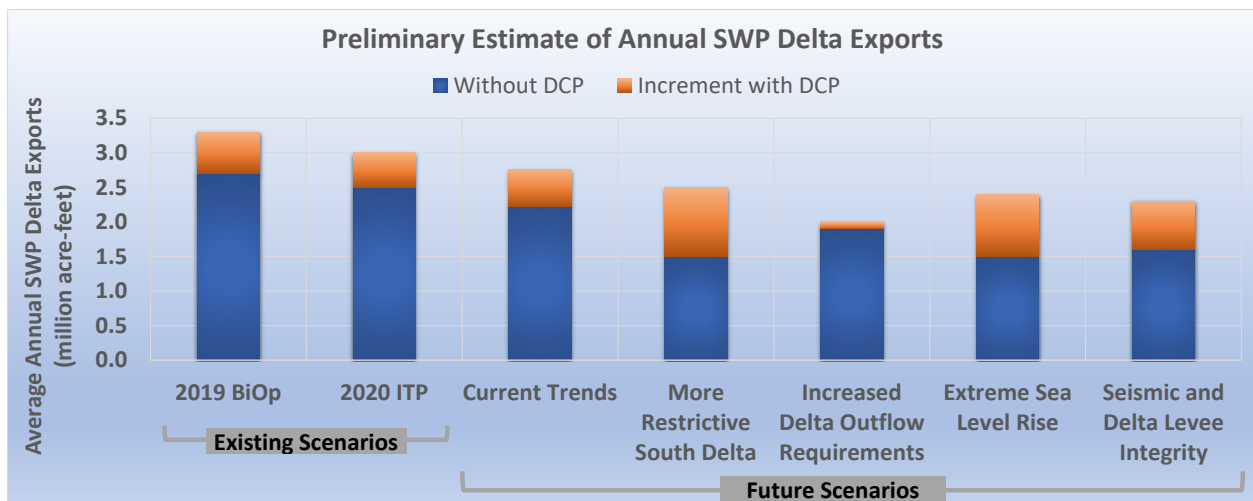
The Project is expected to improve SWP resiliency under multiple potential future risks that can be low frequency-high impact (e.g. seismic risks in the Delta) or sustained impacts (e.g. climate change and sea level rise or Delta regulations). See Table 3 for a summary of potential benefits.

Table 3. Summary of Potential Benefits

Benefit	Analysis of the Delta Conveyance Project
Sustained water supplies	Increases water supply reliability in the event of a temporary or permanent physical, regulatory, or contractual disruption of southern Delta diversions; mitigates losses under many of the future plausible risks; restores 100 thousand acre-feet (TAF) to 1 million acre-feet (MAF) per year of SWP water supplies that could be lost under these future risk scenarios without the Project
Improved aquatic conditions	Provides flexibility to improve aquatic conditions and respond to future regulatory constraints; minimizes impacts to fish with state-of-the-art fish screens; improves flow patterns in the south Delta for fish
Improved water quality	Decreases average annual salinity of water delivered; reduces salt loading to drinking water treatment plants and county groundwater basins
Resiliency during Delta levee failure events	Minimizes public health and safety impacts from reduced quality and quantity of water if Delta levees fail from earthquakes, sea level rise, or extreme flood events; restores about 700 TAF of water supply that could be lost under levee failure scenarios without the Project
Resiliency to climate change including sea level rise	Diverts where salinity intrusion will be minimal under sea level rise scenarios; facilitates diversion during extreme storm events; restores about 900 TAF of water supply that could be lost under extreme sea level rise scenario without the Project
Improvements to water transfers	Conveys transfer water when existing system cannot; reduces water loss during transport
Operational flexibility	Increases operational flexibility to capture peak storm flows, which may become increasingly valuable under future climate change conditions where water is likely to come in concentrated and shorter wet periods

Although DWR has not yet defined project operations or secured necessary permits that may affect project performance, the State Water Contractors conducted a preliminary analysis of potential total Project water supply benefits under a range of potential future scenarios to assess the Project's ability to maintain or improve SWP reliability and resiliency. While no single scenario likely represents the true future, the analysis does provide some indication of how the Project could perform under those types of potential futures. The analysis evaluated a range of regulatory scenarios, including continuing the existing regulations and considering how the Project might perform if future regulations require additional outflow or impose additional restrictions on south Delta operations. That analysis indicates that future regulatory scenarios could reduce SWP system-wide supplies by anywhere from about 300 thousand acre-feet (TAF) to over 1 million acre-feet (MAF), depending on the regulatory scenario. Under these scenarios, the Project could restore available SWP system-wide deliveries by anywhere from about 100 TAF to 1 MAF per year on average, showing the least benefits if future regulations require greater outflows and the most benefits with additional south Delta restrictions. The modeling also indicates that late century sea level rise could result in over 1 MAF of reduced supplies without the Project. Under this future scenario, the Project could potentially restore approximately 900 TAF of system-wide deliveries.

Figure 1. Preliminary modeled average annual SWP exports under existing and future scenarios and corresponding increment resulting with the Delta Conveyance Project (DCP). Source: State Water Contractors.



If Valley Water invests in the Project, then Valley Water would receive a portion of that water supply reliability benefit. However, the timing and volume of when water is available could impact the level of benefits Valley Water could experience from the Project. For example, if most of the reliability or increased delivery is provided during infrequent wet years, then it may be difficult for Valley Water to use the water effectively

without also investing in new storage since local supplies will generally also be abundant in wet years.

In addition to the water supply benefits estimated above, the Project is expected to provide additional benefits including improved flow patterns in the south Delta for fish, operational flexibility to capture peak storm flows, water quality improvements for SWP deliveries, additional conveyance capacity for water transfers, and potential carriage water savings. As Project planning progresses, Valley Water will continue to evaluate potential benefits of the Project.

Recommended Board Action: None. Information only.

G. Background

Valley Water has been engaged in planning efforts to improve the conveyance of SWP and CVP supplies across the Delta since 2006, recognizing that the current approach of diverting directly from rivers in the vulnerable southern end of the Delta is unsustainable. Plans to build twin tunnels beneath the Delta evolved from development of the Bay Delta Conservation Plan to the California WaterFix, with staff presenting information about the risks, costs, and benefits of the evolving planning effort, as well as various stakeholder perspectives, in over 60 public meetings.

As described in DWR's Notice of Preparation, the proposed Project would construct and operate new conveyance facilities in the Delta that would be operated as part of the existing SWP infrastructure. Specifically, two new points of diversion with intake facilities would be located in the north Delta along the Sacramento River between Freeport and the confluence with Sutter Slough and would include a single tunnel to convey water from the new intakes to the existing Banks Pumping Plant in the south Delta.

The new intake and conveyance facilities would be sized to convey up to 6,000 cfs of water from the Sacramento River to the SWP facilities in the south Delta. As part of the environmental review process, DWR is considering a range of capacities from 3,000 to 7,500 cfs, three tunnel alignments, and participation with and without the CVP.

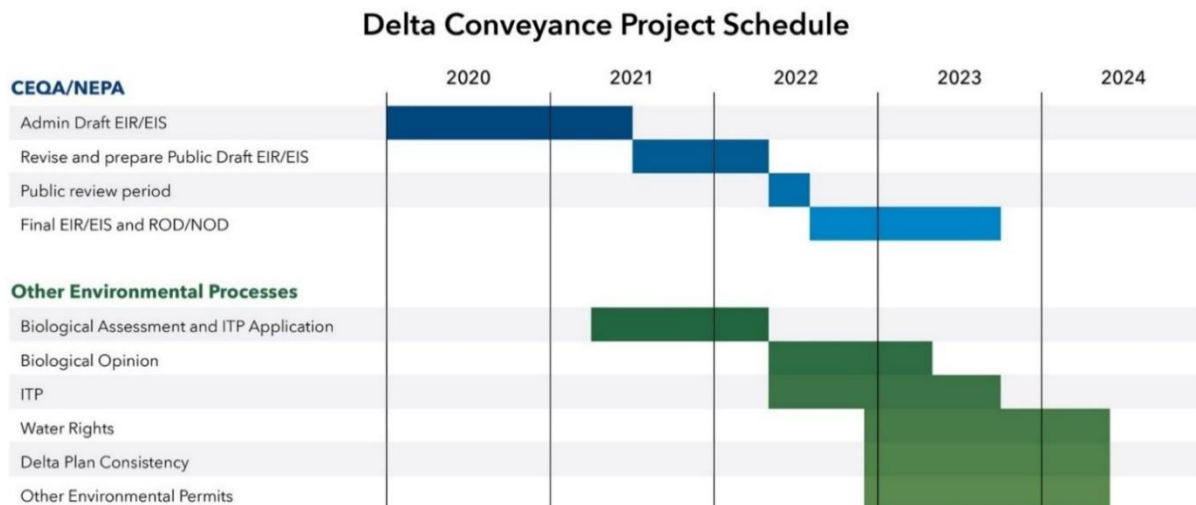
The Project's overarching objective is to protect the SWP's ability to continue to deliver water south of the Delta. Additional objectives include improving SWP resiliency to the impacts of climate change and extreme weather events; minimizing the potential public health and safety impacts from reduced quantity and quality of water caused by earthquakes; and providing SWP operational flexibility to improve aquatic conditions and better manage risks of additional future regulatory constraints on project operations.

Since 2007 Valley Water has provided \$15.1 million towards planning costs for the Bay Delta Conservation Plan and California WaterFix projects through a number of

agreements with DWR, the United States Bureau of Reclamation, and the San Luis and Delta-Mendota Water Authority. Of this amount, approximately \$4.7 million has been credited towards Valley Water's share of operations and maintenance costs on the CVP and \$895,621 was returned through Valley Water's 2021 SWP Statement of Charges. Valley Water anticipates that the balance of these contributions will be reimbursed upon DWR's issuance of bond financing for the Project such that Valley Water would only be responsible for its proportionate share of projects costs, commensurate with its ultimate participation percentage.

H. Next Steps and Schedule

DWR's preliminary schedule has the environmental review being completed in 2023 and other environmental, permitting and regulatory processes being completed in 2024. Once the Project receives all necessary approvals and permits and has complied with all legal requirements, including but not limited to obtaining a change in point of diversion to DWR's existing water rights permit, and permits under the federal and State Endangered Species Acts, construction could begin.



AGREEMENT IN PRINCIPLE

April 30, 2020

This Agreement in Principle has been developed from the State Water Contractor Public Water Agencies' offers presented from July 24, 2019 to present, Department of Water Resources' offers presented from July 31, 2019 to present, and information discussed and presented by the technical and legal work groups.

Agreement in Principle for the State Water Project Water Supply Contract Amendment

on a

Delta Conveyance Project

This Agreement in Principle (**AIP**) is by and between certain State Water Project Public Water Agencies (**PWAs**) and the State of California through the Department of Water Resources (**DWR**) for the purpose of amending the State Water Project Water Supply Contracts.

AIP Objective:

1. Develop an agreement between the State Water Project Contractor Public Water Agencies and Department of Water Resources to equitably allocate costs and benefits of a potential Delta Conveyance Facility that preserves operational flexibility such that the Department of Water Resources can manage the State Water Project to meet regulatory requirements, contractual responsibilities, and State Water Project purposes.

AIP Outline:

- I. Definitions
- II. Objective 1 - Availability of an option to opt out of costs and benefits of Delta Conveyance Facilities of the State Water Project
- III. Objective 2 - Availability of an option to assume, or partially assume, costs and benefits of Delta Conveyance Facilities of the State Water Project
- IV. Objective 3 - Pursuit of State Water Project Delta Conveyance Facilities under the State Water Project Water Supply Contracts
- V. Objective 4 - Delta Conveyance Facility billing
- VI. Objective 5 - Delta Conveyance Facility benefits allocation
- VII. Objective 6 - Affect upon other Water Supply Contract provisions
- VIII. Other Provisions
- IX. Environmental Review Process
- X. Authorized Representative Signatures

I. Definitions

- a. **Clifton Court Forebay** shall mean the existing State Water Project diversion at Clifton Court Forebay facility through its intake located on Old River in the southern Delta and the associated Skinner Fish Facility.
- b. **Delta** shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code on the date of approval of the Bond Act by the votes of the State of California.
- c. **Delta Conveyance Facility (DCF)** shall mean those facilities of the State Water Project consisting of a water diversion intake structure, or structures, located on the Sacramento River and connected by facilities to Banks Pumping Plant in the southern Delta with a single tunnel that will serve the water supply purposes of the State Water Project.
- d. **DCF Benefits** shall mean those water supply and capacity benefits attributable to the DCF including but not limited to: (1) Table A water supplies; (2) Article 21 water supplies; (3) carriage water savings; (4) reliable water supply and use of DCF available capacity in the event of a temporary or permanent physical, regulatory, or contractual disruption of southern Delta diversions; and (5) use of DCF available capacity to move non-project water through the proposed DCF.
- e. **Fair Compensation** shall include but is not limited to capital recovery, operations and maintenance, replacement, and variable charges associated with the use of the DCF capacity.
- f. **State Water Project (SWP)** shall mean the State Water Resources Development System as described in California Water Code section 12931.
- g. **State Water Project Contractor Public Water Agencies (PWAs)** shall include the 29 entities holding State Water Project Water Supply Contracts with the Department of Water Resources.

II. Objective 1 - Availability of an option to opt out of costs and DCF Benefits

- a. This AIP makes available to each PWA an option to opt out of the costs and benefits of the DCF through a contract amendment that establishes a Statement of Charges (SOC) percentage of DCF Benefits based on the percentages in the Delta Conveyance Allocation Factors table to water attributable to the DCF, as described in Section VI of this AIP.
- b. PWAs indicating an intent to opt out of costs and benefits of the DCF shall be described in Section VI(a) of this AIP.
- c. An option to opt out of DCF costs and benefits are limited such that a PWA must opt out of at least a minimum 100% of its Municipal and Industrial Table A or 100% of its Agricultural Table A. This provision doesn't prohibit a PWA from taking more than their Table A share, if available, in the Delta Facilities Allocation Factor table.

III. Objective 2 - Availability of an option to assume additional costs and benefits of the DCF

- a. This AIP makes available to each PWA an option to assume additional costs and benefits of the DCF through a contract amendment that establishes additional costs on the SOC in exchange for DCF Benefits based on the percentages in the Delta Conveyance Allocation Factors table to water attributable to the DCF, as described in Section VI of this AIP.
- b. PWAs indicating an intent to assume DCF costs and benefits shall be described in Section VI(b) of this AIP.

IV. Objective 3 - Pursuit of State Water Project Delta Conveyance Facilities under the State Water Project Water Supply Contracts

- a. The DCF shall be constructed and operated as an integrated component of the State Water Project, and DWR will continue to operate the State Water Project at its sole discretion.
- b. The DCF is an authorized component of the State Water Project pursuant to California Water Code sections 11100 et seq. and 12930 et seq.
- c. Effective Date: A contract amendment pursuant to this AIP shall have an effective date no sooner than the billing transition date set forth in State Water Project Water Supply Contract Amendment known as The Contract Extension Amendment.
- d. Administration of DCF: DWR will forecast and account for Project Water attributable to the DCF and DWR will determine whether or not that Project Water would not have been available at Clifton Court Forebay. A whitepaper describing the DWR's and the PWAs' current understanding of the approach on forecasting, administration, and accounting is contained in Attachment 1. Attachment 1 will not be incorporated into contract language.

V. Objective 4 - Delta Conveyance Facility billing

- a. These costs would be billed to and collected from SWP PWAs consistent with the Delta Facilities Allocation Factor table below through their annual SOC.
- b. **Delta Conveyance Facilities Charge Components:** All capital and minimum operations, maintenance, power and replacement (OMP&R) costs associated with the DCF are 100% reimbursable and shall be recovered by DWR from PWAs through their annual SOC consistent with the Delta Facilities Allocation Factor table. These costs shall be allocated to and billed under two new charges as follows:

(1) Delta Conveyance Facilities Capital Charge Component.

(2) Delta Conveyance Facilities Minimum OMP&R Component.

c. Delta Conveyance Facilities Capital Charge Component Method of Computation

1. This computation will recover actual annual debt service created by financing activities (Financing Method) for DCF.
2. Each Financing Method shall provide an annual repayment schedule, which includes all Financing Costs.
3. Financing Costs shall mean the following: Principal of and interest on Revenue Bonds, debt service coverage required by the applicable bond resolution or indenture in relation to such principal and interest, deposits to reserves required by the bond resolution or indenture in relation to such Revenue Bonds, and premiums for insurance or other security obtained in relation to such Revenue Bonds.

d. Financing Method shall be divided into four categories: DCF Capital Costs paid with the proceeds of Revenue Bonds; DCF Capital Costs paid with amounts in the State Water Resources Development System Reinvestment Account; DCF Capital Costs paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and DCF Capital Costs prepaid by the PWAs consistent with the Delta Facilities Allocation table.

e. DCF Capital Charge Component should be allocated to the PWAs in proportion to the Delta Conveyance Facilities Allocation Factors for each calendar year and consistent with the Delta Facilities Allocation Factor table.

f. Delta Conveyance Facilities Minimum OMP&R Charge Component Method of Computation

1. Recovery will be estimated and/or actual annual OMP&R costs determined for the DCF each year.
2. DCF Minimum OMP&R Charge Component shall be allocated to the PWAs in proportion to the Delta Conveyance Facilities Allocation Factors for each calendar year.

g. Delta Conveyance Facilities Energy Charges: The DCF energy costs are 100% reimbursable by the PWAs and the methodology will be determined by DWR, reviewed in the SWRDS Finance Committee, and approved by the Director.

- h. Redetermination:** These charges shall be subject to redetermination.
- i. Step-up:** PWAs that execute a contract amendment to opt out will not be allocated any portion of a step-up required in the event of a default on a DCF Capital Charge.
- j. Delta Conveyance Facilities Allocation Factors:** The following table is a preliminary allocation of DCF participation percentages. Only PWAs with a greater than 0 percentage would be billed for DCF Charge Components through their annual SOC, using the Delta Conveyance Facility Allocation Factors described in the table. PWAs with a zero allocation factor would not be billed for repayment of costs for construction, operation and maintenance of facilities associated with DCF, except to the extent there is a permanent transfer of Table A which would increase a PWA from a greater than zero allocation factor through a subsequent contract amendment.

Public Water Agency	Delta Conveyance Facilities Allocation Factors
City of Yuba City	0
County of Butte	0
Plumas County FC&WCD	0
Napa County FC&WCD	0
Solano County Water Agency	0
Alameda County FC&WCD, Zone 7	
Alameda County Water District	
Santa Clara Valley Water District	
Dudley Ridge Water District	
Empire-West Side Irrigation District	0
Kern County Water Agency-Total	
County of Kings	0
Oak Flat Water District	0
Tulare Lake Basin Water Storage District	0
San Luis Obispo County FC&WCD	
Santa Barbara County FC&WCD	0
Antelope Valley-East Kern Water Agency	
Santa Clarita Valley Water Agency	
Coachella Valley Water District	
Crestline-Lake Arrowhead Water Agency	
Desert Water Agency	
Little Rock Creek Irrigation District	0
Mojave Water Agency	
Palmdale Water District	

San Bernardino Valley Municipal Water District	
San Gabriel Valley Municipal Water District	
San Geronio Pass Water Agency	
The Metropolitan Water District of Southern California	
Ventura County Watershed Protection District	
Total	100.000%

VI. Objective 5 - Delta Conveyance Facility Benefits Allocation

- a. PWAs that execute a contract amendment to opt out of DCF costs and benefits will agree, within that amendment, to the following:
 - i. Charges as set forth in Section V of this AIP will not appear on its SOC.
 - ii. Forego and waive any contractual rights to the following:
 - a. Right to or delivery of Project Water attributable to the DCF, provided that DWR determines that such water would not have been available for diversion at Clifton Court Forebay. This AIP will not modify the amounts within Table A but will memorialize this limited reduction for DCF Benefits by adding a footnote to the PWA's Table A to reflect their zero allocation for DCF Benefits.
 - b. Any contractual rights to or delivery of Article 21 Interruptible Water prior to the point(s) in time each year DWR determines that a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF in the SWP share of San Luis Reservoir storage will be displaced or evacuated by a quantity of exports equal to the quantity of exports from Clifton Court Forebay that would have been stored in San Luis Reservoir absent the DCF. Provided that, when Article 21 Interruptible Water supply is greater than demand from PWAs with a greater than zero Delta Conveyance Facility Allocation factor, Article 21 Interruptible Water will be made available to all PWAs based on Table A percentage.
 - c. Any contractual rights to or delivery of Article 21 Interruptible Water attributable to the DCF after a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF has been evacuated or displaced by the exports from Clifton Court Forebay that would have been stored in San Luis Reservoir absent DCF. Provided that, when Article 21 Interruptible Water supply is greater than demand from PWAs with a greater than zero Delta

Conveyance Facility Allocation Factor, Article 21 Interruptible Water will be made available to all PWAs based on Table A percentage.

- d. Right to use DCF conveyance capacity unused by DWR for SWP purposes to convey non-project water, except as provided in subsection h.
 - e. Right to use available DCF conveyance capacity to convey Project Water in the event that pumping directly from the south Delta is prevented or impaired by a physical, regulatory or contractual disruption, including but not limited to sea level rise, seismic events, flooding, or other uncontrollable event.
 - f. Right to carriage water savings that DWR determines are realized during its operation of any DCF for purposes of conveying Project Water.
 - g. Right to any credit from Fair Compensation collected by DWR for use of available DCF conveyance capacity.
 - h. Rights to use of the DCF, unless a subsequent contract with DWR is entered that provides for payment of Fair Compensation associated with such use.
- iii. For the North of Delta PWAs, DWR will not change the current administrative process for determining the availability of Article 21 due to the DCF. This process will be documented in the Article 21 administration that is distributed via a Notice to Contractors.
- b. PWAs that execute a contract amendment to assume costs and benefits of the DCF will agree, within that amendment, to the following:
- i. Charges will appear on the SOC as set forth in the table in the percentages shown in Section V of this AIP.
 - ii. DCF Benefits in proportion to the percentage table in Section V of this AIP, including but not limited to:
 - a) Delivery of Table A amounts diverted at and conveyed through the DCF. This AIP will not modify the amounts within Table A but will memorialize this DCF Benefits by amending the PWA's Table A with a footnote. The footnote will recognize each PWA's DCF Benefits consistent with the Delta Conveyance Facilities Allocation Factors.
 - b) Article 21 Interruptible Water attributable to DCF.
 - c) Available DCF conveyance capacity unused by DWR for SWP purposes, to convey non-project water for ultimate use within that PWA's service area.
 - d) Carriage water savings that DWR determines are realized during its operation of any DCF for purposes of conveying Project Water.
 - e) Available DCF conveyance capacity to convey Project Water in the event that pumping in the south Delta is prevented or impaired by a physical, regulatory or contractual disruption, including but not limited to sea level rise, seismic events, flooding, or other uncontrollable event.

- f) A credit from Fair Compensation collected by DWR for use of available DCF conveyance capacity.
- c. Nothing in this AIP changes Article 18(a) in the existing State Water Project Water Supply Contracts.

VII. Objective 6 - Affect Upon Other Water Supply Contract Provisions

- a. Unless specifically stated in this AIP and incorporated into a subsequent contract amendment, there are no changes to the PWAs' rights and obligations under the existing State Water Project Water Supply Contracts.
- b. Transfers and exchanges are not intended to be modified under this AIP and shall be subject to the provisions of the then existing State Water Project Water Supply Contracts.

VIII. Other Provisions

- a. Clifton Court Forebay Diversion Priority: In the event that DWR uses its discretion to move Project Water through the DCF that could have been moved through Clifton Court Forebay Intake, PWAs with a greater than zero Delta Conveyance Facilities Allocation Factor will be given a first priority of available capacity, as determined by DWR, based on their percentage in section V to move up to that same amount of non-project water at Clifton Court Forebay Intake.

IX. Environmental Review Process

DWR and the PWAs agree that this AIP is intended to be used during the environmental review process for the California Environmental Quality Act (CEQA), to define the proposed project description for the purposes of CEQA, and to permit the next steps of the SWP water supply contract amendment process, including scoping and the preparation of the EIR. The AIP principles are not final contract language and do not represent a contractual commitment by either DWR or the PWAs to approve any proposed project or to sign contract amendments. By concurring with the AIP, DWR and the PWAs express their intent to move forward with the CEQA process with DWR as lead agency and the PWAs as responsible agencies, and ultimately develop a proposed project consisting of contractual amendments consistent with the AIP principles and prepare the EIR for consideration by DWR and the PWAs.

At the end of the CEQA process and in compliance with CEQA, DWR and the PWAs will each individually evaluate the EIR and Contract Amendment, exercise their independent judgment, and determine whether or not to certify the EIR, approve the proposed project and sign the contract amendment or to approve an alternative project. Consequently, even though DWR and the PWAs have agreed to the AIP

for the purposes described in the preceding paragraphs, DWR and each PWA retain their full discretion under CEQA to consider and adopt mitigation measures and alternatives, including the alternative of not going forward with the proposed project.

Attachment 1: Final White Paper

I. Background

This white paper describes current understanding of how the Department of Water Resources (DWR) would account for and administer the Delta Conveyance Facility (DCF) Benefits. DWR will include information regarding the accounting and administration of water attributable to DCF in relevant Notice(s) to State Water Project Contractors consistent with prior practice. No legally binding obligations are created by this white paper. This white paper may be updated from time to time by DWR, in consultation with the Public Water Agencies (PWAs), in response to factors including, but not limited to, changes in laws, regulations or permits applicable to DWR and/or the State Water Project (SWP). Capitalized terms not defined herein shall have the meanings ascribed to them in the DCF Agreement in Principle (AIP).

II. Draft Delta Conveyance Accounting and Administration Concepts

The DCF will be integrated into the State Water Project and operated to provide maximum flexibility to meet water supply, regulatory requirements and contractual obligations. There are some PWAs that may opt out of the DCF Benefits and charges. For this reason, it will be necessary to account for DCF Benefits. DCF Benefits are described in the AIP and are “those water supply and capacity benefits attributable to the DCF including but not limited to: (1) Table A water supplies; (2) Article 21 water supplies; (3) carriage water savings; (4) reliable water supply and use of DCF available capacity in the event of a temporary or permanent physical, regulatory, or contractual disruption of southern Delta diversions; and (5) use of DCF available capacity to move non-Project Water through the proposed DCF.” To account for DCF Benefits, DWR will need to determine the amount of water attributable to the DCF. DWR will primarily use two tools: 1) **forecasting** Project Water attributable to the DCF for the coming year; and, 2) **accounting** for Project Water attributable to the DCF in a timely manner. Both are described below.

A. Forecasting- DWR will forecast, as shown below, to quantify the amount of Project Water attributable to DCF.

1. DWR anticipates that it will provide three water supply allocation forecasts:
 - a. North of Delta allocation that includes water attributable to the south Delta diversions (similar to current practice).
 - b. South of Delta allocation that includes water attributable to the south Delta diversions (similar to current practice).
 - c. Allocation of water attributable to the DCF.
2. The allocation forecasts will continue to be updated monthly and each forecast will include updated information on hydrology including runoff projections, SWP storage conditions, PWA demands, regulatory requirements, and actual exports attributable to the south Delta diversions and the DCF.

3. DWR will continue to include in the allocation forecasts any potential DCF capacity available for conveyance of non-Project Water.
4. Seasonal Forecast: Should conditions warrant additional forecasts, (i.e. wet hydrological conditions and/or DWR determines that San Luis Reservoir is likely to fill) DWR will provide more frequent forecasts on one or more of the following:
 - a. San Luis Reservoir fill projection.
 - b. Potential Article 21 availability.

B. Accounting

1. DWR will continue to create operational schedules for the south Delta and the DCF which will include any operational constraints and in accordance with applicable regulatory requirements and contractual obligations in order to account for water attributable to the DCF.
2. DWR will reconcile water exports attributable to DCF and the south Delta facilities in a timely manner.
3. If there is a difference in the amount of water conveyed through the south Delta facilities between the planned operations and actual operations there will be a determination about the cause of any identified differences. If the difference is due to a physical, regulatory, or contractual disruption of south Delta diversions or other south Delta restrictions, then water conveyed through the DCF will be considered water attributable to DCF. If the difference is the result of DWR's discretionary decision to convey Table A water through the DCF instead of south Delta, no charge/credit will occur. However, DWR will estimate the carriage water savings associated with the discretionary use of DCF and carriage water savings will be considered water attributable to DCF.
4. Carriage water savings that DWR determines are realized by conveying Project Water through the DCF that would have otherwise been moved through the south Delta facilities, will be credited to Participants. PWAs with a zero Delta Conveyance Allocation Factor that make arrangements with DWR to pay for use of available capacity in the DCF for non-Project Water may be credited carriage water savings associated with this use.
5. Available DCF capacity, as determined by DWR, to convey transfers and exchanges of Project Water between PWAs with a Delta Conveyance Facility Allocation Factor of zero and PWAs with a greater than zero Delta Conveyance Facility Allocation Factor is interpreted as capacity in the DCF attributed to the PWAs with a greater than zero Delta Conveyance Facility Allocation Factor and no additional capital or minimum operations, maintenance, power and replacement (OMP&R) charges for use of DCF capacity will apply notwithstanding any PWA's interpretation of existing contract language to the contrary. Nothing in this provision shall be construed as altering any party's position regarding the application for use of facility charges in other contexts.
6. **Article 21 attributable to DCF for South of Delta PWAs:** As set forth in the AIP, PWAs opting out of the DCF will influence the administration of water made available pursuant to Article 21. To determine the quantity of Article 21 water that PWAs with a zero Delta Conveyance Facilities

Allocation Factor will initially forego and the quantity of Article 21 water those PWAs with a Delta Conveyance Facilities Allocation Factor greater than zero will receive, it is necessary to determine the amount of water attributable to the DCF in the San Luis Reservoir at Point A. Determining this water quantity will provide the basis upon which DWR can administer the DCF Benefits contained in the contract amendment that results from the AIP.

a. Process (See Table 1):

- i. **Point A:** The point at which DWR determines Article 21 water attributable to DCF will be available. DWR will determine volume of Project Water for Table A attributable to the DCF in San Luis Reservoir.
- ii. DWR will work with PWAs to develop an accounting methodology that considers exports attributed to DCF, exports from south Delta facilities, deliveries to PWAs, San Luis Reservoir fill point and the PWAs DCF allocation factors to determine the volume of Project Water for Table A in San Luis Reservoir attributable to DCF at Point A.
- iii. **Point B:** The point at which DWR determines Article 21 water would have been made available absent Project Water for Table A attributable to DCF in San Luis Reservoir, and/or DWR determines through the accounting process that San Luis Reservoir would have filled absent current year Project Water attributable to DCF. This point is reached when a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF at Point A has been displaced or evacuated by the quantity that would have been exported from Clifton Court Forebay and stored in San Luis Reservoir absent the DCF.

b. Deliveries of Article 21 water attributable to DCF Between Point A and Point B:

- i. PWAs may submit Article 21 requests to DWR prior to point A. DWR will satisfy those requests according to the following priority:
 1. PWAs up to their Delta Conveyance Facility Allocation Factor;
 2. All PWAs based on Table A percentage. Only Variable and DCF Energy charges will apply for those PWAs with a greater than zero Delta Conveyance Facility Allocation Factor. For those PWAs with a zero Delta Conveyance Facility Allocation Factor, Article 21 water will be made available at the following charges:
 - a. the Variable and DCF Energy charges for the amount up to Article 56(c)(1) and Article 56(c)(2) water spilled within the PWAs proportionate share of San Luis Reservoir storage at Point A;
 - b. Fair Compensation for any additional amounts.

c. Deliveries of Article 21 water attributable to DCF After Point B:

- i. PWAs may submit requests to DWR. DWR will satisfy those requests according to the following priority:

1. PWAs' proportion based upon the Delta Conveyance Facility Allocation Factors;
2. All PWAs based on Table A percentage. Only Variable and DCF Energy charges will apply for those PWAs with a greater than zero Delta Conveyance Allocation Factor. For those PWAs with a zero Delta Conveyance Facility Allocation Factor, this water will be provided at Fair Compensation.

TABLE 1: Article 21 Interruptible Water Attributable to the Delta Conveyance Facilities		
PWA	Point A - Point B	At/After Point B
<u>FIRST PRIORITY:</u> PWAs participating in DCF (PWAs with a greater than zero DCF Allocation Factor %)	<ul style="list-style-type: none"> • Quantity (AF): Up to DCF Allocation Factor % • Charge (\$): Variable and DCF Energy Charges 	<ul style="list-style-type: none"> • Quantity (AF): Up to DCF Allocation Factor % • Charge (\$): Variable and DCF Energy Charges
<u>SECOND PRIORITY:</u> All PWAs	<ul style="list-style-type: none"> • Quantity (AF): Based on Table A % • Charge to DCF Participant (\$): Variable and DCF Energy Charges • Charge to DCF Non-Participant for AF ≤ to spilled carryover water (\$): Variable and DCF Energy Charges • Charge to DCF Non-Participant for AF > spilled carryover water (\$): Fair Compensation 	<ul style="list-style-type: none"> • Quantity (AF): Based on Table A % • Charge to DCF Participant (\$): Variable and DCF Energy Charges • Charge to DCF Non-Participant (\$): Fair Compensation

C. Collaborative Development of Administrative Procedures

As a subset to the Water Operations Committee, a DCF workgroup will be created similar to the current San Luis Reservoir Workgroup. This group will meet and confer as needed, and may discuss items such as forecasting, operations, accounting, and administration of the DCF. Members may include representatives from DWR (SWPAO and OCO) and PWAs and will report back to the PWA Water Operations Committee.

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DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



October 23, 2020

Jennifer Pierre
General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, CA 95814

Dear Ms. Pierre:

We are encouraged that many of your members are interested in participating in the Delta Conveyance Project and will be considering their contribution to further planning activities to advance the development of the project. As these potential participants bring action items before their boards this fall relative to project planning and funding, we are requesting that they include two important items for board consideration.

1. An indication of likely participation percentage as described in the public negotiation process of the Agreement in Principle (AIP)
2. Authorization for funding consistent with these participation levels

Providing the likely participation percentage and associated funding authorization will not only advance the necessary planning work in 2021 and beyond but will also provide the ability to take the next steps in completing the AIP.

As a reminder of the discussions at the public negotiations, a Public Water Agency may choose to participate at a percentage equal to or greater than its percentage of State Water Project Table A, or alternatively choose not to participate in the Delta Conveyance contract amendment. In either case, the PWA will have a participation percentage recorded in the AIP.

The Department looks forward to board action by your members.

Sincerely,

Karla Nemeth
Karla A. Nemeth
Director

cc: Steve Arakawa – MWD
Tom McCarthy – KCWA

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**State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT FOR
THE ADVANCE OR CONTRIBUTION OF MONEY TO
THE DEPARTMENT OF WATER RESOURCES
BY
THE SANTA CLARA VALLEY WATER DISTRICT**

**FOR PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A
POTENTIAL DELTA CONVEYANCE PROJECT**

THIS AGREEMENT is made, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources (“Department” or “DWR”), and the Santa Clara Valley Water District (“Contractor”), each herein referred to individually as a “Party” and collectively as the “Parties”.

Recitals

WHEREAS, DWR and the Contractor listed on the signature page hereto have entered into and subsequently amended a long-term water supply contract, herein referred to as a “Water Supply Contract,” providing that DWR will supply certain quantities of water to the Contractor, providing that Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) process was initiated in 2005-2006 and the Delta Habitat Conservation and Conveyance Program (“DHCCP”) was initiated in 2008; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) and (“DHCCP”) resulted in development of a project known as the California WaterFix (“WaterFix”); and

WHEREAS, on July 21, 2017, DWR approved the California WaterFix project; and

WHEREAS, certain Contractors have entered into that certain Joint Powers Agreement dated May 14, 2018 forming the Delta Conveyance Design and Construction Authority (“DCA”); and

WHEREAS, DWR and DCA have entered into that certain Joint Powers Agreement (“JEPA”), dated May 22, 2018, as amended and restated, and as the same has or may be further amended, wherein the DCA will provide preliminary design, planning and other preconstruction activities to

assist the environmental planning process for a potential Delta conveyance project under the supervision of DWR (the “Work” as defined in the JEPA); and

WHEREAS, Contractor previously entered into a funding agreement with DWR dated August 24, 2018 to provide a share of preconstruction planning activity costs for California WaterFix (“2018 Gap Funding Agreement”); and

WHEREAS, Contractor agreed to advance or contribute to DWR \$1,092,975 pursuant to the 2018 Gap Funding Agreement; and

WHEREAS, DWR expended \$197,354 of the \$1,092,975 Gap Funding Agreement amount towards the California WaterFix project; and

WHEREAS, on May 2, 2019, DWR rescinded its approval of the California WaterFix project and subsequently notified Contractor by letter on May 24, 2019 that DWR would not expend funds contributed under the 2018 Gap Funding Agreement to pay invoices for DCA costs incurred after May 2, 2019, absent further Contractor authorization (see Exhibit A); and

WHEREAS, DWR will return to the Contractor the remaining \$895,621 of unspent funds from the 2018 Gap Funding Agreement as reflected in a credit to Contractor’s 2021 Statement of Charges; and

WHEREAS, DWR now seeks \$340.7 million from SWP Contractors to fund the estimated costs of the preliminary planning and design costs for a potential DCP from January 1, 2021 through December 31, 2024; and

WHEREAS, Contractor desires to contribute \$_____ for Calendar Years 2021 and 2022, and to retain the sole option to contribute an additional \$_____ for Calendar Years 2023 and 2024; and

WHEREAS, Contractor’s contribution of \$_____ for Calendar Years 2021 and 2022 and optional contribution of \$_____ for Calendar Years 2023 and 2024 is consistent with its tentative _____ participation percentage in the proposed DCP; and

WHEREAS, a copy of the resolution of the Board of Directors of Contractor authorizing its Chief Executive Officer to execute this Agreement is attached hereto as Exhibit B; and

WHEREAS, a State Agency may advance or contribute funds to DWR for SWP purposes pursuant to Water Code section 11135 and (ii) DWR may accept such advanced or contributed funds and thereafter use such funds in accordance with the terms of this Agreement pursuant to Water Code section 11141.

NOW, THEREFORE, it is mutually agreed by the Parties as follows:

1. When used in this Agreement, terms defined in the Water Supply Contract (as defined herein) shall be defined by reference to the Water Supply Contractor. In addition, the following definitions shall apply:
 - a. **“Calendar Year”** means the period January 1 through December 31.
 - b. **“Contributed Funds”** means money contributed or advanced to DWR by Contractor pursuant to this Agreement. The total initial amount Contractor agrees to provide is \$_____ and is comprised of the following annual amounts of \$_____ for Calendar Year 2021, \$_____ for Calendar Year 2022, and if and when subsequently authorized by Contractor in accordance with section 5 hereof an additional \$_____ for Calendar Year 2023 and \$_____ for Calendar Year 2024, in each case to be paid to DWR in the manner described in Section 5 of this Agreement.
 - c. **“2018 Contributed Funds”** means money contributed by Contractor pursuant to the 2018 Gap Funding Agreement.
 - d. **“Contribution Payment(s)”** means the payments of Contributed Funds that Contractor agrees to provide to DWR pursuant this Agreement.
 - e. **“Contractor”** means a State Agency that is a party to a Water Supply Contract with DWR.
 - f. **“Department”** or **“DWR”** means the California Department of Water Resources.
 - g. **“Effective Date”** has the meaning ascribed to it in section 11 hereof.
 - h. **“JEPA”** means the Joint Exercise of Powers Agreement between DWR and the DCA dated May 22, 2018, as amended and restated and as may be further amended from time to time.
 - i. **“Pay-Go Charge”** means the charge included on Contractor’s Statements of Charges for the purpose of collecting Contributed Funds that Contractor agrees to advance or contribute to DWR pursuant to this Agreement.
 - j. **“Party”** or **“Parties”** means DWR, the undersigned Contractor, or all signatories to this Agreement.
 - k. **“State Agency”** has the meaning ascribed to it by Water Code section 11102.
 - l. **“SWP”** or **“State Water Project”** means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in California Water Code section 12934(d), and certain facilities authorized by the Central Valley Project Act at section 11100 *et. seq.*

- m. **“Water Supply Contract”** means the long-term water supply contract, as amended and as may be amended in the future, between Contractor and DWR.
- n. **“Work”** has the meaning ascribed to it in the Recitals to this Agreement.
2. Effect of Agreement. DWR and Contractor agree that this Agreement supersedes the 2018 Gap Funding Agreement, which is hereby terminated as of the Effective Date. DWR and Contractor agree that nothing in this Agreement supersedes previous funding agreements or the obligations under those funding agreements unless specifically addressed in this Agreement.
3. Purposes of Agreement. This Agreement documents Contractor’s agreement to provide Contributed Funds to DWR for the purposes set forth in Section 4, the manner of providing those funds as set forth in Section 5, and the means by which future contributions may be made.
4. Use of Funds. DWR shall use the 2018 Contributed Funds, Contributed Funds and any future Contributed Funds collected from Contractor pursuant to section 5 hereof, for the payment of DCA invoices submitted to DWR on or after October 1, 2020 for the Work done or costs incurred by DCA, or for Delta conveyance project planning work done by DWR through the Delta Conveyance Office (“DCO”) and any other purpose consistent with the JEPA, as the same has been, and may be, amended from time to time. DWR will not use funds provided under this Agreement for the activities described in the Mitigated Negative Declaration entitled “Soil Investigations for Data Collection in the Delta” adopted by DWR on July 9, 2020.
5. Charge Procedure. Contractor shall pay its Pay-Go Charge on the date(s) and in the amount(s) set forth on the revised Statement of Charges for 2021, and subsequent Statements of Charges issued to Contractor by DWR. The annual amounts will be paid in twelve monthly installments. Contractor may agree, without amending this Agreement, to advance additional funds after the Effective Date, including the optional additional contribution of funds for calendar years 2023 and 2024 described in section 1(b) hereof, which shall be considered Contributed Funds, by delivery to DWR of a letter in substantially the form attached hereto as Exhibit C, which letter shall specify the amount to be advanced or contributed, whether the payments will be in the form of one or more lump sums or in 12 equal installments, and together with such other information the Parties deem necessary or desirable to effectuate the advance or contribution. A copy of the resolution, or other Board authorization, of Contractor’s Board of Directors approving the subject contribution shall be enclosed with the letter. Upon receipt of a contribution letter DWR shall indicate its agreement by returning a counter signed copy of the letter to Contractor. The agreed upon advance or contribution shall thereafter be included in Contractor’s Statement of Charges or a revised Statement of Charges, as appropriate. The charge shall be designated by reference to the year in which the charge is to begin, followed, if there be

more than one such subsequent advance or contribution in a year by a dash and an integer followed by the words Pay-Go Charge.

6. Limitation. With respect to the Work and the DCA, nothing in this Agreement imposes any duty or obligation either expressly or by implication on DWR other than the duty to use 2018 Contributed Funds and other Contributed Funds to pay the undisputed portion of DCA invoices submitted to DWR during the term of this Agreement in accordance with the terms of this Agreement and the JEPA if, as and when Contributed Funds have been received by DWR under this Agreement and other similar agreements or arrangements with other Contractors for purposes substantially the same as those described herein and is available for the payment thereof.
7. Reporting. DWR, through its DCO and in coordination with its State Water Project Analysis Office (SWPAO), shall annually prepare a report summarizing the advances or contributions received, and expenditures made pursuant to, this Agreement. The first such report shall be completed not later than March 31, 2021 and thereafter not later than March 31 of each subsequent year. Contractor may request in writing a summary of the advances, contributions, and expenditures at any time during the term of this Agreement and DWR shall provide such within thirty (30) days of such written request.
8. Status of Project. Contractor recognizes that the funds contributed pursuant to this Agreement are for the planning activities in support of DWR's environmental review and permitting process, including but not limited to the Work, for a potential Delta conveyance project. The advance or contribution of Contributed Funds is not contingent on, or in exchange for, DWR's agreement to exercise its discretion in future to approve a Delta conveyance project.
9. Unspent Funds. Upon termination of this Agreement, it is the intent of the Parties that any unspent Contributed Funds remaining after payment of all costs for which the funds were contributed will be returned to Contractor as a credit on Contractor's Statement of Charges in proportion to its percentage share of advances or contributions made by all Contractors that entered into Agreements similar to this Agreement.
10. Reimbursement of Contributed Funds. If a Delta conveyance project is approved by DWR and is implemented it is the intent of the Parties hereto that the Contributed Funds spent in accordance with this Agreement and the 2018 Gap Funding Agreement be reimbursed or credited to Contractor according to the relative amount each such Contractor paid pursuant to this Agreement and the 2018 Gap Funding Agreement, upon the issuance and sale of revenue bonds by either the Department or a Joint Powers Authority established, whichever occurs earlier, for the purpose of, among other things, funding a future Delta conveyance facility. The Department shall be under no obligation to issue and sell bonds for the purpose(s) described in the foregoing sentence or to undertake any reimbursement or credit as so described, unless a determination is first made by DWR in its sole discretion that such issuance and sale of revenue bonds, such reimbursement, or such credit as applicable is consistent with applicable law, applicable judicial rulings, and applicable contractual obligations of DWR, and the Parties have negotiated and executed such further agreements

as may be necessary to accomplish such credit or reimbursement on terms acceptable to DWR.

11. Effective Date and Term. This Agreement shall become effective on the date the last Party hereto signs the Agreement as set forth on the signature page(s) hereto (“Effective Date”) and shall continue in effect until terminated in writing by the Parties. The Parties obligations under Section 10 shall survive termination of this Agreement.
12. Invoices, Notices or Other Communications. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i) served personally on the Party to whom notice is to be given; (ii) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Pedro Villalobos
Chief, State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 94236
Sacramento, California 94236-0001

Copy to
Anthony Meyers
Executive Director, Delta Conveyance Office
Department of Water Resources
901 P Street, Room 413
Sacramento, California 94236-0001

Copy to
Christopher Martin
Office of the Chief Counsel
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 94236
Sacramento, California 94236-0001

Contractor:

Rick L. Callender, Esq.
Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway

San Jose, CA 95118

Copy to:
District Counsel
Office of the District Counsel
5750 Almaden Expressway
San Jose, CA 95118

13. No Delegation of Authority. Nothing in this Agreement constitutes a delegation by any Party of its existing authority to make any decision it is mandated to make. Nothing in this Agreement shall limit DWR's final decision-making authority at the time of consideration of future Delta conveyance facility related approvals. All provisions of this Agreement are intended to be, and shall to the extent reasonable be interpreted to be, consistent with all applicable provisions of State and federal law. The undersigned recognize that the Parties are public agencies and have specific statutory responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this Agreement is intended to, nor will have the effect of, constraining or limiting any public agency in carrying out its statutory responsibilities or requiring an agency to take any action inconsistent with applicable law. Nothing in this Agreement constitutes an admission by any Party as to the proper interpretation of any provision of law, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under applicable law except as expressly provided elsewhere in this Agreement. Execution of this Agreement does not constitute pre-approval of any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized or granted by, State and federal law.
14. Waiver. As of the Effective Date, Contractor hereby forever and unconditionally waives and releases and discharges and covenants not to sue or otherwise institute or cause to be instituted or in any way participate in any proceedings, processes or actions against DWR with respect to any and all claims, demands, costs, liabilities, objections, rights, damages, expenses, and actions and causes of action of every nature, whether in law or equity, known or unknown, or suspected or unsuspected, which Contractor ever had or now has against DWR in connection with or arising from the use of funds contributed under the 2018 Gap Funding Agreement.
15. Amendment. Except as otherwise set forth above, this Agreement may only be amended or modified by a subsequent written agreement approved and executed by both Parties.
16. Applicable Law. This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.
17. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

Exhibits attached and incorporated herein:

Exhibit A Letter from DWR dated May 21, 2019

Exhibit B Board Resolution

Exhibit C Form of Letter Regarding Future Contributions

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the date(s) set forth below.

Approved as to Legal Form
and Sufficiency

State of California
Department of Water Resources

Spencer Kenner, Chief Counsel

Karla A. Nemeth,
Director

Date

Date

Approved as to Legal Form
and Sufficiency

Santa Clara Valley Water District

Signature

Signature

Anthony T. Fulcher,
Sr. Assistant District Counsel

Rick L. Callender, Esq.,
Chief Executive Officer

Date

Date

Exhibit A

Letter from DWR to Contractor

Exhibit C

Form of Contribution Letter

[date]
[address]

Re: Contribution or Advance of Money for Delta Conveyance Planning Activities

Dear Mr. Villalobos:

This letter is sent pursuant to section 5 of the Agreement for the Advance of Contribution of Money to the Department of Water Resources for Preliminary Planning and Design Costs Related to a Potential Delta Conveyance Project dated _____, 2020 between Department of Water Resources and the [agency] ("Funding Agreement").

On [date] the Board of Directors of [agency] approved the contribution or advance of \$[amount] to the Department for use in accordance with the terms of the Funding Agreement. A copy of the Board's resolution is enclosed with this letter. The contribution or advance will be collected from [agency] in [a lump sum][equal monthly installments] by inclusion of a charge [on its Statement of Charges for [year]][on a revised Statement of Charges for [year] that Department will issue to [agency]]. The charge shall be referred to as the [year] Pay-go Charge. As provided by section 5 of the Agreement the contribution or advance described herein will be subject to the terms and conditions of the Agreement.

Please confirm your agreement to the foregoing by countersigning in the space provided below and returning an original copy of this letter agreement to [agency] at [address].

[signature blocks for agency and Department]

Enclosure(s)

cc:

Exhibit B

Resolution of the Board of Directors of Contractor

TO BE INSERTED ONCE EXECUTED

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



May 24, 2019

Ms. Norma J. Camacho
Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

Subject: Use of Contributed Funds following Director Nemeth's
May 2, 2019 Announcement

Dear Ms. Camacho:

This letter is to notify the Santa Clara Valley Water District (the Contractor) of changes regarding the use of funds contributed to the Department of Water Resources (DWR) pursuant to the Agreement for the Advance or Contribution of Money to the Department of Water Resources, executed on November 6, 2018, between DWR and Agency (Agreement). Pursuant to the Agreement, the Santa Clara Valley Water District agreed to contribute funds for the payment of WaterFix related preconstruction costs incurred by the Delta Conveyance Design and Construction Authority (Authority).

On May 2, 2019, DWR issued a notice to Contractors informing all State Water Project Contractors of Director of Water Resources Nemeth's rescission of DWR's approval of WaterFix (see attached Notice). As a result of the actions described in the Notice, funds contributed pursuant to the Agreement will not be used by DWR to pay costs incurred by Authority after May 2, 2019, absent further authorization by the Contractor.

The Contractor should continue making remaining payments, if any, required by the Agreement and contained in the most recent Statement of Charges sent issued to the Contractor. Appropriate adjustments to the Contractor's Statement of Charges will be made by DWR in accordance with normal SWP billing practices.

If you have any questions regarding this letter or any of the matters referenced herein, please contact Hong Lin, my Advisor, at (916) 651-0762 or by e-mail at Hong.Lin@water.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Lippner'.

Gary Lippner, Deputy Director
Delta Conveyance

Enclosure: May 2, 2019 Notice to State Water Project Contractors

cc: Cindy Kao, Imported Water Unit Manager, Santa Clara Valley Water District
Christopher Martin, Office of Chief Counsel, DWR
Pedro Villalobos, State Water Project Analysis Office, DWR

Attachment 16
Page 13 of 13

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Table of Potential Valley Water Costs for Delta Conveyance Project
at Different Participation Percentages (\$millions).

Participation Percentage	Gap Funding		Total Project Costs ¹
	Two Years of Funding	Four Years of Funding	
2.40%	\$3.0	\$8.2	\$382
2.50%	\$3.1	\$8.5	\$398
2.60%	\$3.2	\$8.9	\$413
2.70%	\$3.4	\$9.2	\$429
2.73%	\$3.4	\$9.3	\$434
2.80%	\$3.5	\$9.5	\$445
2.90%	\$3.6	\$9.9	\$461
3.00%	\$3.7	\$10.2	\$477
3.10%	\$3.9	\$10.6	\$493
3.20%	\$4.0	\$10.9	\$509
3.23%	\$4.0	\$11.0	\$514
3.30%	\$4.1	\$11.2	\$525
3.40%	\$4.2	\$11.6	\$541
3.50%	\$4.4	\$11.9	\$557
3.60%	\$4.5	\$12.3	\$572
3.70%	\$4.6	\$12.6	\$588
3.80%	\$4.7	\$12.9	\$604
3.90%	\$4.9	\$13.3	\$620
4.00%	\$5.0	\$13.6	\$636
4.10%	\$5.1	\$14.0	\$652
4.20%	\$5.2	\$14.3	\$668
4.30%	\$5.4	\$14.7	\$684
4.40%	\$5.5	\$15.0	\$700
4.50%	\$5.6	\$15.3	\$716
4.60%	\$5.7	\$15.7	\$731
4.70%	\$5.9	\$16.0	\$747
4.80%	\$6.0	\$16.4	\$763
4.90%	\$6.1	\$16.7	\$779
5.00%	\$6.2	\$17.0	\$795
5.10%	\$6.4	\$17.4	\$811
5.20%	\$6.5	\$17.7	\$827
5.30%	\$6.6	\$18.1	\$843
5.40%	\$6.7	\$18.4	\$859
5.50%	\$6.9	\$18.7	\$875
5.60%	\$7.0	\$19.1	\$890
5.70%	\$7.1	\$19.4	\$906
5.80%	\$7.2	\$19.8	\$922
5.90%	\$7.4	\$20.1	\$938
6.00%	\$7.5	\$20.4	\$954

¹ Total Project costs are in undiscounted 2020 dollars and include capital costs for design and construction, soft costs, and environmental mitigation. Total Project costs do not include financing costs.

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**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 20-

**APPROVAL OF PROVISIONAL PARTICIPATION PERCENTAGE
AND AUTHORIZING NEGOTIATION AND EXECUTION OF A FUNDING
AGREEMENT FOR PRELIMINARY PLANNING AND DESIGN COSTS
RELATED TO A POTENTIAL DELTA CONVEYANCE PROJECT**

WHEREAS, the Santa Clara Valley Water District (Valley Water) has a long-term water supply contract with the State of California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water; and

WHEREAS, on July 21, 2017, DWR approved the California WaterFix (WaterFix) project, which was a dual conveyance project that involved two new diversion points and two tunnels moving water from the Sacramento River north of the Delta under the Delta to State Water Project and Central Valley Project (CVP) water pumping facilities in the South Delta; and

WHEREAS, the purpose of the WaterFix was to improve the reliability of SWP and CVP water for Valley Water and other contractors; and

WHEREAS, Valley Water's Board of Directors (Board) previously approved Valley Water's participation in the WaterFix, and authorized entering into a funding agreement ("2018 Gap Funding Agreement") with DWR dated August 24, 2018, to fund a share of preconstruction planning activity costs for the WaterFix; and

WHEREAS, in 2019, the Governor announced that he did not support the WaterFix, but instead supported a one tunnel conveyance project. DWR subsequently rescinded its approvals of the WaterFix and began planning for a single tunnel option; and

WHEREAS, in January 2020, DWR released a Notice of Preparation of an Environmental Impact Report pursuant to CEQA for a proposed single tunnel project with 6,000 cubic feet per second of capacity referred to as the Delta Conveyance Project (DCP), and DWR is currently conducting environmental review of that project; and

WHEREAS, DWR seeks \$340.7 million from SWP contractors to fund preliminary planning and design costs for a potential DCP (DCP Preconstruction Funding) that will occur from January 1, 2021, through December 31, 2024; and

WHEREAS, Valley Water seeks to enter into the *Agreement for the Advance or Contribution of Money to the Department of Water Resources by the Santa Clara Valley Water District for Preliminary Planning and Design Costs Related to a Potential Delta Conveyance Project* (2020 Gap Funding Agreement), of which this Resolution shall be incorporated, upon its adoption, as Exhibit B, which will commit Valley Water to provide funding commensurate with its provisional participation percentage for a portion of the DCP preconstruction activities expended from January 1, 2021, through December 31, 2022, with an option to commit additional funding to pay for DCP preconstruction activities that occur from January 1, 2023, through December 31, 2024.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District:

1. That the Board does hereby approve a provisional participation percentage in the Delta Conveyance Project of 2.73 percent and authorize the CEO to increase Valley Water's provisional participation percentage up to a total of 3.23 percent if additional shares become available.
2. That the Chief Executive Officer is hereby authorized to negotiate and execute on behalf of the Santa Clara Valley Water District a 2020 Gap Funding Agreement substantially similar to the agreement attached hereto as Exhibit A, with a commitment to provide up to \$4,034,001 for preconstruction activities expended from January 1, 2021, through December 31, 2022, with an option to commit up to an additional \$6,972,348, upon future approval by the Board, to pay for DCP preconstruction activities that occur from January 1, 2023, through December 31, 2024.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on November 17, 2020:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

NAI HSUEH
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

EXHIBIT A COVERSHEET

DRAFT AGREEMENT FOR THE ADVANCE OR CONTRIBUTION OF MONEY TO THE DEPARTMENT OF WATER RESOURCES BY THE SANTA CLARA VALLEY WATER DISTRICT FOR THE PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A POTENTIAL DELTA CONVEYANCE PROJECT

No. of Pages: 13

**State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT FOR
THE ADVANCE OR CONTRIBUTION OF MONEY TO
THE DEPARTMENT OF WATER RESOURCES
BY
THE SANTA CLARA VALLEY WATER DISTRICT**

**FOR PRELIMINARY PLANNING AND DESIGN COSTS RELATED TO A
POTENTIAL DELTA CONVEYANCE PROJECT**

THIS AGREEMENT is made, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources (“Department” or “DWR”), and the Santa Clara Valley Water District (“Contractor”), each herein referred to individually as a “Party” and collectively as the “Parties”.

Recitals

WHEREAS, DWR and the Contractor listed on the signature page hereto have entered into and subsequently amended a long-term water supply contract, herein referred to as a “Water Supply Contract,” providing that DWR will supply certain quantities of water to the Contractor, providing that Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) process was initiated in 2005-2006 and the Delta Habitat Conservation and Conveyance Program (“DHCCP”) was initiated in 2008; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) and (“DHCCP”) resulted in development of a project known as the California WaterFix (“WaterFix”); and

WHEREAS, on July 21, 2017, DWR approved the California WaterFix project; and

WHEREAS, certain Contractors have entered into that certain Joint Powers Agreement dated May 14, 2018 forming the Delta Conveyance Design and Construction Authority (“DCA”); and

WHEREAS, DWR and DCA have entered into that certain Joint Powers Agreement (“JEPA”), dated May 22, 2018, as amended and restated, and as the same has or may be further amended, wherein the DCA will provide preliminary design, planning and other preconstruction activities to

assist the environmental planning process for a potential Delta conveyance project under the supervision of DWR (the “Work” as defined in the JEPA); and

WHEREAS, Contractor previously entered into a funding agreement with DWR dated August 24, 2018 to provide a share of preconstruction planning activity costs for California WaterFix (“2018 Gap Funding Agreement”); and

WHEREAS, Contractor agreed to advance or contribute to DWR \$1,092,975 pursuant to the 2018 Gap Funding Agreement; and

WHEREAS, DWR expended \$197,354 of the \$1,092,975 Gap Funding Agreement amount towards the California WaterFix project; and

WHEREAS, on May 2, 2019, DWR rescinded its approval of the California WaterFix project and subsequently notified Contractor by letter on May 24, 2019 that DWR would not expend funds contributed under the 2018 Gap Funding Agreement to pay invoices for DCA costs incurred after May 2, 2019, absent further Contractor authorization (see Exhibit A); and

WHEREAS, DWR will return to the Contractor the remaining \$895,621 of unspent funds from the 2018 Gap Funding Agreement as reflected in a credit to Contractor’s 2021 Statement of Charges; and

WHEREAS, DWR now seeks \$340.7 million from SWP Contractors to fund the estimated costs of the preliminary planning and design costs for a potential DCP from January 1, 2021 through December 31, 2024; and

WHEREAS, Contractor desires to contribute \$_____ for Calendar Years 2021 and 2022, and to retain the sole option to contribute an additional \$_____ for Calendar Years 2023 and 2024; and

WHEREAS, Contractor’s contribution of \$_____ for Calendar Years 2021 and 2022 and optional contribution of \$_____ for Calendar Years 2023 and 2024 is consistent with its tentative _____ participation percentage in the proposed DCP; and

WHEREAS, a copy of the resolution of the Board of Directors of Contractor authorizing its Chief Executive Officer to execute this Agreement is attached hereto as Exhibit B; and

WHEREAS, a State Agency may advance or contribute funds to DWR for SWP purposes pursuant to Water Code section 11135 and (ii) DWR may accept such advanced or contributed funds and thereafter use such funds in accordance with the terms of this Agreement pursuant to Water Code section 11141.

NOW, THEREFORE, it is mutually agreed by the Parties as follows:

1. When used in this Agreement, terms defined in the Water Supply Contract (as defined herein) shall be defined by reference to the Water Supply Contractor. In addition, the following definitions shall apply:
 - a. **“Calendar Year”** means the period January 1 through December 31.
 - b. **“Contributed Funds”** means money contributed or advanced to DWR by Contractor pursuant to this Agreement. The total initial amount Contractor agrees to provide is \$_____ and is comprised of the following annual amounts of \$_____ for Calendar Year 2021, \$_____ for Calendar Year 2022, and if and when subsequently authorized by Contractor in accordance with section 5 hereof an additional \$_____ for Calendar Year 2023 and \$_____ for Calendar Year 2024, in each case to be paid to DWR in the manner described in Section 5 of this Agreement.
 - c. **“2018 Contributed Funds”** means money contributed by Contractor pursuant to the 2018 Gap Funding Agreement.
 - d. **“Contribution Payment(s)”** means the payments of Contributed Funds that Contractor agrees to provide to DWR pursuant this Agreement.
 - e. **“Contractor”** means a State Agency that is a party to a Water Supply Contract with DWR.
 - f. **“Department”** or **“DWR”** means the California Department of Water Resources.
 - g. **“Effective Date”** has the meaning ascribed to it in section 11 hereof.
 - h. **“JEPA”** means the Joint Exercise of Powers Agreement between DWR and the DCA dated May 22, 2018, as amended and restated and as may be further amended from time to time.
 - i. **“Pay-Go Charge”** means the charge included on Contractor’s Statements of Charges for the purpose of collecting Contributed Funds that Contractor agrees to advance or contribute to DWR pursuant to this Agreement.
 - j. **“Party”** or **“Parties”** means DWR, the undersigned Contractor, or all signatories to this Agreement.
 - k. **“State Agency”** has the meaning ascribed to it by Water Code section 11102.
 - l. **“SWP”** or **“State Water Project”** means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in California Water Code section 12934(d), and certain facilities authorized by the Central Valley Project Act at section 11100 *et. seq.*

m. **“Water Supply Contract”** means the long-term water supply contract, as amended and as may be amended in the future, between Contractor and DWR.

n. **“Work”** has the meaning ascribed to it in the Recitals to this Agreement.

2. Effect of Agreement. DWR and Contractor agree that this Agreement supersedes the 2018 Gap Funding Agreement, which is hereby terminated as of the Effective Date. DWR and Contractor agree that nothing in this Agreement supersedes previous funding agreements or the obligations under those funding agreements unless specifically addressed in this Agreement.
3. Purposes of Agreement. This Agreement documents Contractor’s agreement to provide Contributed Funds to DWR for the purposes set forth in Section 4, the manner of providing those funds as set forth in Section 5, and the means by which future contributions may be made.
4. Use of Funds. DWR shall use the 2018 Contributed Funds, Contributed Funds and any future Contributed Funds collected from Contractor pursuant to section 5 hereof, for the payment of DCA invoices submitted to DWR on or after October 1, 2020 for the Work done or costs incurred by DCA, or for Delta conveyance project planning work done by DWR through the Delta Conveyance Office (“DCO”) and any other purpose consistent with the JEPA, as the same has been, and may be, amended from time to time. DWR will not use funds provided under this Agreement for the activities described in the Mitigated Negative Declaration entitled “Soil Investigations for Data Collection in the Delta” adopted by DWR on July 9, 2020.
5. Charge Procedure. Contractor shall pay its Pay-Go Charge on the date(s) and in the amount(s) set forth on the revised Statement of Charges for 2021, and subsequent Statements of Charges issued to Contractor by DWR. The annual amounts will be paid in twelve monthly installments. Contractor may agree, without amending this Agreement, to advance additional funds after the Effective Date, including the optional additional contribution of funds for calendar years 2023 and 2024 described in section 1(b) hereof, which shall be considered Contributed Funds, by delivery to DWR of a letter in substantially the form attached hereto as Exhibit C, which letter shall specify the amount to be advanced or contributed, whether the payments will be in the form of one or more lump sums or in 12 equal installments, and together with such other information the Parties deem necessary or desirable to effectuate the advance or contribution. A copy of the resolution, or other Board authorization, of Contractor’s Board of Directors approving the subject contribution shall be enclosed with the letter. Upon receipt of a contribution letter DWR shall indicate its agreement by returning a counter signed copy of the letter to Contractor. The agreed upon advance or contribution shall thereafter be included in Contractor’s Statement of Charges or a revised Statement of Charges, as appropriate. The charge shall be designated by reference to the year in which the charge is to begin, followed, if there be

more than one such subsequent advance or contribution in a year by a dash and an integer followed by the words Pay-Go Charge.

6. Limitation. With respect to the Work and the DCA, nothing in this Agreement imposes any duty or obligation either expressly or by implication on DWR other than the duty to use 2018 Contributed Funds and other Contributed Funds to pay the undisputed portion of DCA invoices submitted to DWR during the term of this Agreement in accordance with the terms of this Agreement and the JEPA if, as and when Contributed Funds have been received by DWR under this Agreement and other similar agreements or arrangements with other Contractors for purposes substantially the same as those described herein and is available for the payment thereof.
7. Reporting. DWR, through its DCO and in coordination with its State Water Project Analysis Office (SWPAO), shall annually prepare a report summarizing the advances or contributions received, and expenditures made pursuant to, this Agreement. The first such report shall be completed not later than March 31, 2021 and thereafter not later than March 31 of each subsequent year. Contractor may request in writing a summary of the advances, contributions, and expenditures at any time during the term of this Agreement and DWR shall provide such within thirty (30) days of such written request.
8. Status of Project. Contractor recognizes that the funds contributed pursuant to this Agreement are for the planning activities in support of DWR's environmental review and permitting process, including but not limited to the Work, for a potential Delta conveyance project. The advance or contribution of Contributed Funds is not contingent on, or in exchange for, DWR's agreement to exercise its discretion in future to approve a Delta conveyance project.
9. Unspent Funds. Upon termination of this Agreement, it is the intent of the Parties that any unspent Contributed Funds remaining after payment of all costs for which the funds were contributed will be returned to Contractor as a credit on Contractor's Statement of Charges in proportion to its percentage share of advances or contributions made by all Contractors that entered into Agreements similar to this Agreement.
10. Reimbursement of Contributed Funds. If a Delta conveyance project is approved by DWR and is implemented it is the intent of the Parties hereto that the Contributed Funds spent in accordance with this Agreement and the 2018 Gap Funding Agreement be reimbursed or credited to Contractor according to the relative amount each such Contractor paid pursuant to this Agreement and the 2018 Gap Funding Agreement, upon the issuance and sale of revenue bonds by either the Department or a Joint Powers Authority established, whichever occurs earlier, for the purpose of, among other things, funding a future Delta conveyance facility. The Department shall be under no obligation to issue and sell bonds for the purpose(s) described in the foregoing sentence or to undertake any reimbursement or credit as so described, unless a determination is first made by DWR in its sole discretion that such issuance and sale of revenue bonds, such reimbursement, or such credit as applicable is consistent with applicable law, applicable judicial rulings, and applicable contractual obligations of DWR, and the Parties have negotiated and executed such further agreements

as may be necessary to accomplish such credit or reimbursement on terms acceptable to DWR.

11. Effective Date and Term. This Agreement shall become effective on the date the last Party hereto signs the Agreement as set forth on the signature page(s) hereto (“Effective Date”) and shall continue in effect until terminated in writing by the Parties. The Parties obligations under Section 10 shall survive termination of this Agreement.
12. Invoices, Notices or Other Communications. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i) served personally on the Party to whom notice is to be given; (ii) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Pedro Villalobos
Chief, State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 94236
Sacramento, California 94236-0001

Copy to
Anthony Meyers
Executive Director, Delta Conveyance Office
Department of Water Resources
901 P Street, Room 413
Sacramento, California 94236-0001

Copy to
Christopher Martin
Office of the Chief Counsel
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 94236
Sacramento, California 94236-0001

Contractor:

Rick L. Callender, Esq.
Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway

San Jose, CA 95118

Copy to:
District Counsel
Office of the District Counsel
5750 Almaden Expressway
San Jose, CA 95118

13. No Delegation of Authority. Nothing in this Agreement constitutes a delegation by any Party of its existing authority to make any decision it is mandated to make. Nothing in this Agreement shall limit DWR's final decision-making authority at the time of consideration of future Delta conveyance facility related approvals. All provisions of this Agreement are intended to be, and shall to the extent reasonable be interpreted to be, consistent with all applicable provisions of State and federal law. The undersigned recognize that the Parties are public agencies and have specific statutory responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this Agreement is intended to, nor will have the effect of, constraining or limiting any public agency in carrying out its statutory responsibilities or requiring an agency to take any action inconsistent with applicable law. Nothing in this Agreement constitutes an admission by any Party as to the proper interpretation of any provision of law, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under applicable law except as expressly provided elsewhere in this Agreement. Execution of this Agreement does not constitute pre-approval of any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized or granted by, State and federal law.
14. Waiver. As of the Effective Date, Contractor hereby forever and unconditionally waives and releases and discharges and covenants not to sue or otherwise institute or cause to be instituted or in any way participate in any proceedings, processes or actions against DWR with respect to any and all claims, demands, costs, liabilities, objections, rights, damages, expenses, and actions and causes of action of every nature, whether in law or equity, known or unknown, or suspected or unsuspected, which Contractor ever had or now has against DWR in connection with or arising from the use of funds contributed under the 2018 Gap Funding Agreement.
15. Amendment. Except as otherwise set forth above, this Agreement may only be amended or modified by a subsequent written agreement approved and executed by both Parties.
16. Applicable Law. This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.
17. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

Exhibits attached and incorporated herein:

Exhibit A Letter from DWR dated May 21, 2019

Exhibit B Board Resolution

Exhibit C Form of Letter Regarding Future Contributions

DRAFT

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the date(s) set forth below.

Approved as to Legal Form
and Sufficiency

State of California
Department of Water Resources

Spencer Kenner, Chief Counsel

Karla A. Nemeth,
Director

Date

Date

Approved as to Legal Form
and Sufficiency

Santa Clara Valley Water District

Signature

Signature

Anthony T. Fulcher,
Sr. Assistant District Counsel

Rick L. Callender, Esq.,
Chief Executive Officer

Date

Date

Exhibit A

Letter from DWR to Contractor

DRAFT

Exhibit C

Form of Contribution Letter

[date]
[address]

Re: Contribution or Advance of Money for Delta Conveyance Planning Activities

Dear Mr. Villalobos:

This letter is sent pursuant to section 5 of the Agreement for the Advance of Contribution of Money to the Department of Water Resources for Preliminary Planning and Design Costs Related to a Potential Delta Conveyance Project dated _____, 2020 between Department of Water Resources and the [agency] (“Funding Agreement”).

On [date] the Board of Directors of [agency] approved the contribution or advance of \$[amount] to the Department for use in accordance with the terms of the Funding Agreement. A copy of the Board’s resolution is enclosed with this letter. The contribution or advance will be collected from [agency] in [a lump sum][equal monthly installments] by inclusion of a charge [on its Statement of Charges for [year]][on a revised Statement of Charges for [year] that Department will issue to [agency]]. The charge shall be referred to as the [year] Pay-go Charge. As provided by section 5 of the Agreement the contribution or advance described herein will be subject to the terms and conditions of the Agreement.

Please confirm your agreement to the foregoing by countersigning in the space provided below and returning an original copy of this letter agreement to [agency] at [address].

[signature blocks for agency and Department]

Enclosure(s)

cc:

Exhibit B

Resolution of the Board of Directors of Contractor

TO BE INSERTED ONCE EXECUTED

DRAFT

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



May 24, 2019

Ms. Norma J. Camacho
Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

Subject: Use of Contributed Funds following Director Nemeth's
May 2, 2019 Announcement

Dear Ms. Camacho:

This letter is to notify the Santa Clara Valley Water District (the Contractor) of changes regarding the use of funds contributed to the Department of Water Resources (DWR) pursuant to the Agreement for the Advance or Contribution of Money to the Department of Water Resources, executed on November 6, 2018, between DWR and Agency (Agreement). Pursuant to the Agreement, the Santa Clara Valley Water District agreed to contribute funds for the payment of WaterFix related preconstruction costs incurred by the Delta Conveyance Design and Construction Authority (Authority).

On May 2, 2019, DWR issued a notice to Contractors informing all State Water Project Contractors of Director of Water Resources Nemeth's rescission of DWR's approval of WaterFix (see attached Notice). As a result of the actions described in the Notice, funds contributed pursuant to the Agreement will not be used by DWR to pay costs incurred by Authority after May 2, 2019, absent further authorization by the Contractor.

The Contractor should continue making remaining payments, if any, required by the Agreement and contained in the most recent Statement of Charges sent issued to the Contractor. Appropriate adjustments to the Contractor's Statement of Charges will be made by DWR in accordance with normal SWP billing practices.

If you have any questions regarding this letter or any of the matters referenced herein, please contact Hong Lin, my Advisor, at (916) 651-0762 or by e-mail at Hong.Lin@water.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Lippner'.

Gary Lippner, Deputy Director
Delta Conveyance

Enclosure: May 2, 2019 Notice to State Water Project Contractors

cc: Cindy Kao, Imported Water Unit Manager, Santa Clara Valley Water District
Christopher Martin, Office of Chief Counsel, DWR
Pedro Villalobos, State Water Project Analysis Office, DWR

Attachment 18
Page 16 of 16

**AMENDED AND RESTATED JOINT
POWERS AGREEMENT
FORMING
THE DELTA CONVEYANCE DESIGN AND
CONSTRUCTION JOINT POWERS
AUTHORITY**

Effective , ~~2020 May 14, 2018~~

Joint Powers Agreement – The Delta Conveyance Design and Construction Joint Powers Authority

This AGREEMENT is made and entered into by and among the parties on the attached Exhibit A, which are referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS, each of the Parties is a public agency organized and operating under the laws of the State of California; and

WHEREAS, California Government Code Sections 6500, et seq., (“Act”) provide that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, Government Code section 6584 also confers powers on a joint powers agency that are independent of, complete and supplementary to any common powers delegated in a joint powers agreement; and

WHEREAS, the Parties desire to allow for the protection of both the Sacramento-San Joaquin Delta (“Delta”) ecosystem and the more than 25 million people and 2,000,000 acres of highly productive farm land that currently depend upon water conveyed through the Delta; and

WHEREAS, the Parties desire to provide such protections, in part, through improvements in water infrastructure; and

WHEREAS, the California Department of Water Resources (“DWR”) is a department within the State of California Natural Resources Agency and is responsible for constructing, operating, and maintaining the State Water Resource Development System, more commonly known as the State Water Project (“SWP”), and

WHEREAS, DWR desires to design and construct new Delta water conveyance facilities (“Conveyance Project”) to be owned and operated by DWR, that would convey water from the Sacramento River north of the Delta directly to the existing SWP and, potentially, Central Valley Project (“CVP”) facilities ~~pumping plant~~ located in the south Delta, and

WHEREAS, the purposes of the Conveyance Project are to make physical and operational improvements to the SWP and, potentially, the CVP necessary to: protect and maintain ecosystem health; maintain water quality; and restore and protect water supplies so that the SWP and CVP are capable of readily delivering water within a stable regulatory framework at costs that are not so high as to preclude, and in amounts that are sufficient to support, the financing of the investments necessary to fund construction and operation of facilities and/or improvements, and

WHEREAS, the Parties constitute certain public water agencies that will each bear at least some of the financial obligation the Conveyance Project, and

WHEREAS, the Parties desire that the Conveyance Project be completed in a safe, timely, cost-effective and efficient manner, and

WHEREAS, DWR has determined that the timely and efficient design and construction of the Conveyance Project will require additional resources not available to DWR and that, therefore, it is in the best interest of the State of California and its citizens to partner with the Parties in the design and construction of the Conveyance Project; and

WHEREAS, the Delta Conveyance Design and Construction Joint Powers Authority (“Construction Authority”) proposes to enter into an agreement with DWR establishing that the Construction Authority will undertake those activities required to complete the design and construction of the Conveyance Project; and

WHEREAS, the agreement with DWR is intended to obtain cost savings by allowing more flexible means of designing, contracting, constructing, and financing the Conveyance Project; and

WHEREAS, the Parties each have and possess the powers to design, construct, and implement water infrastructure projects; and

WHEREAS, the Parties each desire to exercise those powers regarding the design and construction of the Conveyance Project as provided in the Joint Exercise of Powers Agreement between the Department of Water Resources and the Construction Authority, and

WHEREAS, the aforementioned activities may best be achieved through the cooperative action of the Parties operating through a joint powers authority; and

WHEREAS, the Parties intend that upon acceptance of the Conveyance Project by DWR, the Construction Authority will be dissolved.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

ARTICLE I: DEFINITIONS

For the purpose of this Agreement, the meaning of the terms hereinafter set forth shall be the following:

1.1 “Addenda” means any addenda, amendments, modifications, supplements or exhibits to the Agreement that are executed, approved or added in accordance with the terms of this Agreement after the Effective Date.

1.2 “Agreement” means this Joint Powers Agreement, including Exhibits A ~~and B~~ attached, which creates the Delta Conveyance Design and Construction Joint Powers Authority.

1.3 “Alternate Director” means an Alternate Director of the Board appointed in accordance with Article VI (**DIRECTORS AND OFFICERS**).

1.4 “Applicable” means applicable as determined by the Board or an Officer, whichever is appropriate, in their sole discretion.

1.5 “Article” means an article of this Agreement and, unless otherwise specified, refers to all Sections within that article.

1.6 “Board” or “Board of Directors” means the governing body of the Delta Conveyance Design and Construction Joint Powers Authority.

1.7 “Central Valley Project” or “CVP” means the federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.

1.8 “Class or Classes of Members” means the following for purposes of this Agreement:

- Class 2: Those Members who are entitled to the delivery of State Water Project water along the South Bay Aqueduct, except Santa Clara Valley Water District..
- Class 3: Those Members who are entitled to the delivery of State Water Project water within the San Joaquin Valley, except Kern County Water Agency.
- Class 5: Those Members who are entitled to the delivery of State Water Project water along the Coastal Aqueduct downstream of the Devil’s Den Pumping Plant.
- Class 7: Those Members who are entitled to the delivery of State Water Project water along the West Branch of the California Aqueduct, except the Metropolitan Water District of Southern California.
- Class 8: Those Members who are entitled to the delivery of State Water Project water along the East Branch of the California Aqueduct, except the Metropolitan Water District of Southern California.

1.9 “Construction Authority Stand Up Costs” mean the stand up costs for the Construction Authority as described in Article XII (**BUDGET AND EXPENSES**) of this Agreement.

1.71.10 “Contracted Proportionate Share” means the percentage of Conveyance Project costs and benefits that a Member has contracted for under a Long Term Water Supply Contract with DWR, or the percentage of Conveyance Project planning funding that a Member has contracted with DWR to fund.

~~1.81.11~~ “Conveyance Project” means the project described in ~~the Department of Water Resources Notice of Preparation dated January 15, 2020. Section 2(a) of the Joint Exercise of Powers Agreement between the Department of Water Resources, State of California and the Construction Authority.~~

~~1.91.12~~ “Delta” has the meaning set forth in the Recitals.

~~1.101.13~~ “Delta Conveyance Design and Construction Joint Powers Authority” or “Construction Authority” means the public agency created by this Agreement.

~~1.111.14~~ “Director” means a Director of the Board appointed in accordance with Article 6 (Directors and Officers).

~~1.121.15~~ “DWR” has the meaning set forth in the Recitals.

~~1.131.16~~ “Effective Date” means the date set forth in Section 3.1.

~~1.141.17~~ “Member” means a public entity that satisfies the requirements of Article V (**MEMBERSHIP**) of this Agreement.

~~1.151.18~~ “Members” mean all of the public entities that satisfy the requirements of Article V (**MEMBERSHIP**) of this Agreement.

~~1.161.19~~ “Officer” means an Officer of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.2.

~~1.171.20~~ “President” means the President of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.3.

~~1.181.21~~ “Reclamation” means the United States Bureau of Reclamation.

~~1.191.22~~ “Secretary” means the Secretary of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.3.

~~1.201.23~~ “Section” means a section, subsection or sub-subsection within an Article of this Agreement and, unless otherwise specified, refers to all numbered and lettered divisions within that section, subsection or sub-subsection.

~~1.211.24~~ “State” means the State of California.

~~1.221.25~~ “State Water Project” or “SWP” means the State Water Facilities, as defined in California Water Code section 12934(d).

~~1.231.26~~ “Treasurer” means the Treasurer of the Conveyance Project Coordination Agency appointed in accordance with Section 6.3.

~~1.241.27~~ “Vice-President” means the Vice-President of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.7.

ARTICLE II: CREATION OF THE DELTA CONVEYANCE DESIGN AND CONSTRUCTION JOINT POWERS AUTHORITY~~PROJECT COORDINATION AGENCY~~

There is hereby created pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 *et seq.*, a public entity to be known as the “Delta Conveyance Design and Construction Authority.” Delta Conveyance Design and Construction Joint Powers Authority shall be a public entity separate from its Members.

ARTICLE III: TERM

This Agreement shall become effective when at least two Members (1) execute this Agreement and (2) agree there is sufficient representation to fund the Construction Authority’s Stand Up Costs.

This Agreement shall remain in effect until terminated pursuant to the provisions of Article XIV (**WITHDRAWAL OF MEMBERS**) of this Agreement.

ARTICLE IV: PURPOSES AND POWERS

4.1 Purpose. The purpose of this Agreement is to establish a public entity separate and apart from its Members to undertake those activities required to complete the design and construction of the Conveyance Project.

4.2 Powers. The Construction Authority shall have the power in the name of the Construction Authority to exercise those common powers, and all independent, complete and/or supplementary powers authorized by Government Code section 6584 *et. seq.* or as otherwise authorized by law, necessary or appropriate to design and construct the Conveyance Project including, but not limited to, the following:

- 4.2.1 To make and enter into contracts necessary for the full exercise of the Construction Authority powers;
- 4.2.2 To incur debts, liabilities, or obligations subject to the limitation herein set forth;
- 4.2.3 To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, or devise, to hold, manage, lease and dispose of any such property;
- 4.2.4 To hold, manage, operate and maintain all Construction Authority property, facilities, buildings, structures, vehicles, apparatus and equipment;
- 4.2.5 To contract for the services of engineers, attorneys, technical specialists, financial consultants, and to employ such other persons as it deems necessary;

- 4.2.6 To apply for, accept, and receive state, federal or local licenses, permits, grants, loans, or other aid from any agency of the United States, the State or other public or private entities as the Construction Authority deems necessary for the full exercise of its powers;
- 4.2.7 To undertake any investigations, studies, and matters of general administration;
- 4.2.8 To develop, collect, provide, and disseminate to the Members and others information that furthers the purposes of the Construction Authority;
- 4.2.9 To sue and be sued in its own name;
- 4.2.10 To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity;
- 4.2.11 To procure bonds, insurance and self-insurance as it deems advisable to protect the Parties and Construction Authority and its property, officers, employees, contractors and agents;
- 4.2.12 To perform all acts necessary or proper to carry out fully the purposes of this Agreement; and
- 4.2.13 To also exercise the independent, complete and/or supplementary powers of a joint powers agency, as provided by law.

~~4.3 To the extent required under Government Code section 6509, in the event that the State Water Project Contractors Authority becomes a party to this Agreement, and upon approval of the Board, the Construction Authority shall exercise its powers in the manner and according to the methods provided under the laws applicable to the State Water Project Contractors Authority. Prior to such event, t~~
4.3 To the extent required under Government Code section 6509, the Construction Authority shall exercise its powers in the manner and according to the methods provided under the laws applicable to the Metropolitan Water District of Southern California. This designation may be changed by approval of the Board.

4.4 Except as expressly provided herein, nothing in this Agreement shall be construed as affecting the rights or obligations of the Parties, including but not limited to any rights or obligations pursuant to contracts for delivery of water from the CVP or SWP.

ARTICLE V: MEMBERSHIP

5.1 Members. Membership in the Construction Authority shall be limited to those public entities (1) that possess the common powers described in Article IV (**PURPOSES AND POWERS**) of this Agreement, (2) that will bear at least some of the financial obligation for the Conveyance Project, and (3) that execute this Agreement within five (5) months of it becoming effective and any addenda thereto. The Members will be listed in Exhibit A and, upon direction

from the Board, Exhibit A may be modified without constituting an amendment to this Agreement.

5.2 New Members. It is recognized that entities, other than the original Members may wish to participate in the Construction Authority. Additional entities may become Members of the Authority upon such terms and conditions as provided by the Board upon affirmative vote of a majority of Directors. ~~four (4) out of five (5) or 80% of all the Directors, whichever number is less.~~

ARTICLE VI: DIRECTORS AND OFFICERS

6.1 Board of Directors. The Construction Authority shall be governed by a Board of Directors.

- 6.1.1 Directors Representing SWP Contractor Members. ~~Initially, there shall be~~ The Construction Authority shall have up to seven ~~five (5)~~ Directors and seven ~~five (75)~~ Alternative Directors, with each pair appointed by and representing the following Members:
- i. Metropolitan Water District of Southern California (State Water Project) _____
 - ii. Kern County Water Agency
 - iii. Santa Clara Valley Water District
 - iv. Class 8 Members
 - v. Class 8 Members
 - vi. Class 2 Members
 - vii. Class 3, 5 and 7 Members. ~~State Water Project contractor, selected by otherwise non-represented State Water Project contractors.v. _____ Metropolitan Water District of Southern California (Non State Water Project capacity)~~

~~The number of Directors may be expanded to seven (7) Directors and seven (7) Alternative Directors if, at any point after the execution of this Agreement, there are three or more CVP contractors, other than Santa Clara Valley Water District, that desire to become Members. CVP contractors may be assigned Director and Alternative Director positions upon such terms and conditions as provided by the Board upon affirmative vote of four (4) out of five (5) or 80% of all the Directors.~~

- 6.1.2 ~~As set forth in Article VII (BOARD MEETINGS) of this Agreement, each Director and Alternative Director shall be appointed prior to the initial meeting, or within 30 days of an entity becoming a Member. On or before July 1 of each year, Members and the Classes of Members for each Board of Director seat shall provide to the Construction Authority in writing the names of the Directors and Alternative Directors for each group identified in 6.1.1 for the year.~~

- 6.1.3 Directors and Alternative Directors shall receive such compensation from the Authority for services as may from time to time be established by the Board. In addition, Directors and Alternative Directors shall be reimbursed for expenses incurred by such Director or Alternative Directors in the conduct of the Construction Authority's business.
- 6.1.4 The names of all Directors and Alternative Directors shall be on file with the Board.
- 6.1.5 (a) For those Board of Director positions representing one Member, The Directors and Alternative Directors shall be directors, officers or employees of the Member or class of Members he or she represents.
- (b) For those Board of Director and Alternate Director positions representing more than one Member, one shall be an elected director, officer or employee of the represented Members, and one shall be an employee of the represented Members. Notwithstanding the previous sentence, both Directors may be an elected director, officer, or employee of the represented Members if at least 80% of the Total Contracted Proportionate Share of all the Members represented by a respective Board position agree to such.
- 6.1.6 The vote, assent, or approval of the Member for the appointment of the Director and Alternate Director shall be evidenced by a copy of the resolution of the governing board, the board minutes of the relevant meeting, or a letter of the governing board or executive officer of the Member or an association of a class of Members filed with the Construction Authority.
- 6.1.7 Process to Fill Vacancies. In the event of a vacancy on the Board, the Member, Class of Members, or Classes of Members for which the Board vacancy exists shall fill such vacancy according to reasonable procedures determined by the Construction Authority consistent with this Article VI **(DIRECTORS AND OFFICERS)**.
- 6.1.8 Each Director and Alternate Director shall hold office from the first meeting of the Board after his or her appointment by the Member, Class of Members, or Classes of Members he or she represents until a successor is selected and the Construction Authority is notified.
- 6.1.9 Directors and Alternate Directors serve at the pleasure of the Member, ~~or~~ Class of Members, or Classes of Members. A Director and Alternate Director office shall be declared vacant if the person serving dies, resigns, the Member the Director or Alternate Director serves withdraws from this Agreement, the membership of the Member the Director or Alternate Director serves is terminated, or whenever, at the discretion of the particular Member, Class of Members, or Classes of Members, the

Director or Alternative Director is incapable of serving. Upon the Director office becoming vacant, the Alternate Director, if the office is not vacant, shall serve as Director, until the Member ~~or class of Members~~ Class of Members, or Classes of Members appoints a Director.

6.1.10 All the power and authority of the Construction Authority will be exercised by the Board, subject however to the rights reserved by the Members as herein set forth; provided, however, that the Board may delegate such powers and authority to the President or Executive Director as the Board may determine by motion, resolution or ordinance. The Board may also appoint and delegate such powers and authority to advisory committees or subcommittees composed of Directors and Officers as the Board may determine by motion, resolution or ordinance.

6.1.11 The Board may adopt from time to time such bylaws, rules and regulations for the conduct of its affairs as may be required.

6.2 Officers. Officers of the Construction Authority shall be a President, Vice President, Secretary, and Treasurer. Any number of offices may be held by the same person provided that the President shall not also serve as the Vice President, Secretary, or Treasurer. The Vice President, or in the Vice President's absence, the Secretary shall exercise all powers of the President in the President's absence or inability to act. The President, the Vice President, and the Secretary must be members of the Board of Directors. The President shall chair meetings of the Board. In the absence of the President, the Vice President shall be the chair such meetings. In the absence of the President and Vice President, the Secretary shall chair the meeting.

6.3 Appointment of Officers. Officers shall serve two (2) year terms and, except for the offices of President and Vice President, serve at the pleasure of the Board. ~~The offices of President and Vice President shall be filled in accordance with Exhibit B and the terms of the initial President and Vice President shall commence at the initial Board meeting or as soon as practical thereafter.~~ As provided for in Article VII (**BOARD MEETINGS**) of this Agreement, the Secretary and Treasurer shall be chosen at the initial Board meeting or as soon as practical thereafter. The Secretary and Treasurer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Board.

6.3.1 The offices of President and Vice President shall be selected and serve at the pleasure of the Board. ~~rotate in accordance with Exhibit B. However, Exhibit B shall not become effective until the Members that will initially fill the offices of President and Vice President, as prescribed in Exhibit B, have executed this Agreement. The Board may choose an interim President and Vice President that will serve until Exhibit B becomes effective. Exhibit B may be modified by a unanimous vote of all the Directors without constituting an amendment to this Agreement.~~

ARTICLE VII: BOARD MEETINGS

7.1 Initial Meeting. The initial meeting of the Board of Directors shall be held within 15 days of completion of the appointments of initial Directors and Alternative Directors, and held in Sacramento, California. The Board shall, at its first meeting or as soon thereafter as practicable, appoint the Secretary and Treasurer, and select an Auditor. Unless changed by the Board, the principle office of the Construction Authority shall be located in Sacramento County.

7.2 Time and Place. The Board shall meet at least twice per year at a time and place set by the Board, and at such other times as may be determined by the Board.

7.3 Special Meetings. Special meetings of the Directors may be called by the President or a majority of all the Directors.

7.4 Conduct. All meetings of the Board, including special and emergency meetings, shall be noticed, held, adjourned, and conducted in accordance with the Ralph M. Brown Act, to the extent applicable. The Board and Alternate Directors may use tele-conferencing or video-conferencing in connection with any meeting in conformance with and to the extent authorized by the applicable laws.

ARTICLE VIII: MEMBER VOTING

8.1 Quorum. A quorum of any meeting of the Board shall consist of a majority of the Directors. In the absence of a quorum, any meeting of the ~~Directors-Board~~ may be adjourned from time to time by a vote of a majority present, but no other business may be transacted.

8.2 Director Votes. Each Director shall have one (1) vote. All decisions by the Board shall be made by a majority vote of all the Directors, ~~except the vote of four (4) out of five (5) or 80% of Directors, whichever number is less, shall be required to (1) endorse or otherwise support any legislation, (2) terminate the membership of a Member as provided in Article XIV (WITHDRAWAL OF MEMBERS), (3) as provided in Article V (MEMBERSHIP), and (4) as provided in Article XII (BUDGET AND EXPENSES), for the issuance of notes or other forms of indebtedness, including entering into leases for real property or equipment. Alternate Directors shall have no vote if the Director is present. If the Director is not present, the Alternate Director may cast a vote.~~

8.2.1 Requests to Reconsider. Any Director may move to reconsider any action that pertains to items contained in Article XII (BUDGET AND EXPENSES) including, but not limited to, the issuance of notes or other forms of indebtedness, including entering into leases for real property or equipment, the approval or modification of the annual budget, and for construction contracts 10 million dollars or more or service contracts that exceed 1 million dollars over the life of the contract. A request for reconsideration must be made at the meeting the item is being considered. If a request for reconsideration is made, it must be agendized for the following meeting, which may not be less than 14 days and not more than 30 days from the date of the original action. In the event of such a request, that action shall be deemed suspended. If at least 70 percent of the

Contracted Proportionate Share votes against the action at the meeting it is reconsidered, the original action shall be deemed disapproved.

8.2.2 Determination of Contracted Proportionate Share. For purposes of determining Contracted Proportionate Share for section 8.2.1, the Contracted Proportionate Share for those Board of Director positions representing more than one Member shall be the combined Contracted Proportionate Share of all the Members who are represented by that position, except that the Contracted Proportionate Share represented by each of the Class 8 Directors shall equal one half of the total combined Contracted Proportionate Share of all Class 8 Members.

8.3 Alternative Director. Alternate Directors shall have no vote if the Director is present. If the Director is not present, the Alternate Director may cast a vote.

ARTICLE IX: EXECUTIVE DIRECTOR

9.1 Appointment. The Board shall hire an Executive Director. The Executive Director shall be compensated for his/her services, as determined by the Board.

9.2 Duties. The Executive Director shall be the chief administrative officer of the Construction Authority, shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Construction Authority. The Executive Director shall have the powers that the Board delegate by motion, resolution or ordinance. The Executive Director will be delegated requisite authority to carry out such responsibilities as permitted by law.

9.3 Staff. The Executive Director shall employ such additional full-time and/or part-time employees, assistants and independent contractors that may be necessary from time to time to accomplish the purposes of the Construction Authority.

9.4 Term and Termination. The Executive Director will serve until he/she resigns or the Board decides to terminate his/her employment.

ARTICLE X: COMMITTEES

The Board ~~may shall~~ also appoint one or more advisory committees or establish standing committees. ~~The Board shall within 60 days of an approved Conveyance Project establish, including an Environmental Compliance and Mitigation Committee, to be chaired in accordance with Exhibit B. As stated in Article 6.3.1, Exhibit B may be modified by a unanimous vote of all the Directors without constituting an amendment to this Agreement.~~ The Board shall determine the purpose and need for such committees and the necessary qualifications for individuals appointed to them. Each advisory or standing committee shall include at least one Director and the Director shall act as the chair thereof. The Board President shall appoint Directors and chairs of committees. The Board may delegate such powers and authority to advisory committees or standing committees as the Board may determine by motion, resolution or ordinance.

ARTICLE XI: ACCOUNTING PRACTICES

11.1 General. The Board shall establish and maintain such funds and accounts as may be required by generally accepted utility accounting practice.

11.2 Fiscal Year. Unless the Directors decide otherwise, the fiscal year for the Authority shall be July 1 through June 30.

11.3 Auditor.

11.3.1 An Auditor shall be chosen annually by, and serve at the pleasure of the Board. As provided for in Article VII (**BOARD MEETINGS**) of this Agreement, the Auditor shall be chosen at the first Board meeting. An Auditor may serve for multiple consecutive terms. The Auditor may resign at any time upon written notice to the Board.

11.3.2 The Auditor shall make an annual audit of the accounts and records of the Authority. A report shall be filed as a public record with the Auditor of the county where the Authority is domiciled consistent with Government Code section 6505, and with each agency that is a Member. Such report also shall be filed with the Secretary of State within twelve (12) months of the end of the fiscal year under examination.

11.4 Treasurer. The Board, or its designated representative, shall contract with an independent certified public accountant or the Treasurer or Chief Financial Officer of any Member, to serve as Treasurer of the Authority. The Treasurer shall be the depository of and have custody of funds, subject to the requirements of Government Code sections 6505-6505.6. The Treasurer shall have custody of all money of the Construction Authority from whatever source and shall perform the duties specified in Government Code section 6505.5. The Treasurer shall be bound in accordance with Government Code section 6505.1 and shall pay demands against the Construction Authority that have been approved by the Board. All funds of the Construction Authority shall be strictly and separately accounted for, and regular reports shall be rendered to the Board of all receipts and disbursements at least quarterly during the fiscal year. The books and records of the Construction Authority shall be open to inspection by a Director at all reasonable times upon reasonable notice.

ARTICLE XII: BUDGET AND EXPENSES

12.1 Budget. The Board shall adopt an annual budget before the beginning of a fiscal year. The budget shall include, at a minimum, individual contract estimates with a contingency amount and all administrative costs to be incurred by the Construction Authority to perform the purposes of this Agreement.

12.2 Construction Authority Stand Up Costs. ~~Members who were Members prior to the first amendment to this Agreement who contributed Stand Up Costs should be reimbursed any remaining Stand Up Costs within thirty days of the effective date of the first amendment. The Construction Authority Stand Up Costs, which is to be used for the purpose of funding general overhead and administrative expenses for the initial operations of the Construction Authority, is budgeted not to exceed one million dollars (\$1,000,000.00). Each Member shall contribute two hundred thousand dollars (\$200,000) per Board seat. Any Member that does not~~

~~make its respective contribution to the Construction Authority Stand Up Costs within forty-five (45) days after a Treasurer and depository of funds has been selected by the Board or within forty five (45) days of joining the Construction Authority, whichever is later, shall be deemed to have withdrawn as a Member and ceased to be a Party to this Agreement.~~

12.3 Contribution; Payments: Advances. In accordance Section 6504 of the Government Code of the State of California, as amended, the Members may make such contributions, payments and advances, including in-kind services, to the Construction Authority as are approved from time to time by the Board of Directors.

12.4 Return of Contributions. In accordance with Government Code Section 6512.1, repayment or return to the Members of all or any part of any contributions made by Members may be directed by the Board at such time and upon such terms as the Board may decide.

12.5 Funding for the Construction Authority. Except for the Construction Authority Stand Up Costs actually expended, funding for the Authority which shall include but not be limited to all costs incurred and associated with the design and construction of the Conveyance Project pursuant to this Agreement shall be derived exclusively from DWR. However, in the event that DWR does not have the authority to fund, construct or own the Conveyance Project as part of the State Water Project, funding for the Construction Authority may be derived from other sources.

The Members of the Construction Authority shall not be responsible for any costs incurred by the Construction Authority in fulfillment of its purposes pursuant to this Agreement and any relevant Bylaws. The Construction Authority shall hold title to all funds and property acquired by the Construction Authority during the term of this Agreement.

12.6 Indebtedness. The issuance of bonds, notes or other forms of indebtedness, including entering into leases for real property or equipment, shall be approved at a meeting of the Directors.

ARTICLE XIII: LIABILITIES

13.1 No Member Liability. The debt, liabilities and obligations of the Construction Authority shall be the debts, liabilities and obligations of the Authority alone, and not the individual Members.

13.2 Indemnity. Funds of the Construction Authority may be used to defend, indemnify and hold harmless the Construction Authority, each Member, each Director, and any officers, agents and employees of the Construction Authority for their actions taken within the course and scope of their duties while acting on behalf of the Construction Authority, including pursuant to a future project agreement. Other than for gross negligence or intentional acts, the Construction Authority shall indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted hereunder and shall defend each of them against any claim, cause of action, liability, or damage resulting therefrom. The directors, officers, employees, agents and volunteers of the Agency shall be entitled to defense and indemnification by the Construction Authority as provided under

Government Code title 1, division 3.6, part 2, chapter 1, article 4 (commencing with Section 825) and title 1, division 3.6, part 7 (commencing with section 995). The indemnification and hold harmless provisions of this section 13.2 shall apply in lieu of the right of contribution provisions at Government Code Sections 895-895.8.

ARTICLE XIV: WITHDRAWAL OF MEMBERS

14.1 Termination of Membership. The Board of Directors may terminate the membership of any Member upon a finding that the Member (1) does not possess powers common to the other Members, or (2) does not agree to bear its share of the Conveyance Project's costs.

14.2 Unilateral Withdrawal. Upon sixty (60) days' prior written notice, a Member may unilaterally withdraw from this Agreement for any reason, without causing or requiring termination of this Agreement. A member that withdraws shall be held to its financial obligations to the Construction Authority incurred while a member. Unless the notice is retracted, the withdrawal shall be effective as of the date the Member provided written notice or after written confirmation from the Construction Authority that the Member's outstanding obligations have been resolved.

14.3 Termination and Distribution.

14.3.1 This Agreement shall continue until terminated. However, it may not be terminated until such time as (1) DWR has accepted the Conveyance Project in accordance with Joint Exercise of Powers Agreement between the Department of Water Resources, State of California and the Construction Authority and (2) DWR has taken over all activities related to the design and construction of the Conveyance Project, and all principal of and interest on any liabilities or other forms of indebtedness of the Construction Authority are paid in full. Thereafter, this Agreement may be terminated by the written consent of 80% of the then current Members; provided, however, that this Agreement and the Construction Authority continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of the Construction Authority.

14.3.2 After completion of the Construction Authority's purposes, all assets and any surplus money on deposit in any fund or account of the Construction Authority will be distributed in accordance with the Board's direction. The Board is vested with all powers of the Delta Conveyance Design and Construction Joint Powers Authority.

ARTICLE XV: BYLAWS

At, or as soon as practicable after, the first meeting of the Board of Directors, the Board shall draft and approve Bylaws of the Construction Authority to govern the day-to-day operations of the Construction Authority.

ARTICLE XVI: MISCELLANEOUS PROVISIONS

16.1 Non-Waiver of Sovereign Authority. Nothing herein shall constitute a waiver or relinquishment of sovereign authority of any Member with respect to any decision related hereto, including, but not limited to, the decision to participate in any action hereunder or to participate in an action separate and apart herefrom.

16.2 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination that any action, including the Conveyance Project, shall be undertaken or that any irretrievable commitment of resources shall be made, until such time as the required compliance with the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

16.3 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the principal office of the respective Director or Member and addressed to the Director or Member. Delivery may be accomplished by U.S. Postal Service, private mail service, or electronic mail.

16.4 Amendments To Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by a two-thirds vote majority each of the Members.

16.5 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

16.6 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with Government Code sections 6500 *et seq.*, this Agreement shall terminate.

16.7 Withdrawal by Operation of Law. Should the participation of any Member to this Agreement be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, the validity of the Agreement as to the remaining Members shall not be affected thereby.

16.8 Assignment. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

16.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share interest, fund, or asset of the Construction Authority.

16.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

16.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

16.12 Limitations on Liability. Section 13.2 of this Agreement defines the scope of the Construction Authority's duty to defend, indemnify and hold harmless any Director, officer, agent or employee. The Construction Authority may purchase such insurance as the Board may deem appropriate for this purpose. A Member may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Construction Authority. Notwithstanding any other provision of this Agreement, no fee, assessment or charge may be levied against a current Member without express consent of the Member.

16.13 Official Bonds. The Executive Director and the Auditor are designated as officers required having and filing official bonds pursuant to Government Code section 6505.1 in amounts to be fixed by the Board.

16.14 Closed Session. Closed sessions of the Board shall be confidential. However, confidential information from closed sessions may be disclosed to Members as permitted by Government Code section 54956.96. The Board may include provisions in its bylaws to implement this section.

16.15 Amended and Restated Agreement. Upon the effective date of this Agreement, the previous Joint Powers Agreement Forming the Delta Conveyance Design and Construction Joint Powers Authority is hereby superseded and replaced in full by this Agreement and the new Board shall be seated. The Board shall amend the Bylaws as necessary to reflect this Agreement.

IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____

Title: _____

Date: _____

KERN COUNTY WATER AGENCY

By: _____
Title: _____
Date: _____

SANTA CLARA VALLEY WATER DISTRICT

By: Rick L. Callender, Esq.
Title: Chief Executive Officer
Date: _____

ALAMEDA COUNTY FLOOD CONTROL ZONE 7 WATER DISTRICT

By: _____
Title: _____
Date: _____

AGENCY: _____

By: _____
Title: _____
Date: _____

AGENCY: _____

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Approximate Timeline for LVE, Sites, and DCP Project Evaluation and Decision Points

YEAR	QUARTER	LVE MILESTONES	SITES MILESTONES	DCP MILESTONES
2020	Q4	<ul style="list-style-type: none"> WSEC considers project participation Board considers Amendment 2 to 2019 Cost Share Agreement Cost Share payments 1 and 2 due WSEC update on JPA 	<ul style="list-style-type: none"> WSEC considers project participation Board considers Amendment 2 to 2019 Project Agreement Cost share payment 1 due 	<ul style="list-style-type: none"> Board considers project participation Board considers gap funding agreement Board considers amendments to DCA formation agreement
2021	Q1	<ul style="list-style-type: none"> Cost share payment 3 due WSEC Update on Project 	<ul style="list-style-type: none"> WIIN Act Feasibility Determination Project Agreement Member Go/No-Go discussions WSEC Update on Project 	
	Q2	<ul style="list-style-type: none"> Board considers JPA Formation Cost share 4 due 	<ul style="list-style-type: none"> Cost share payment 2 due Draft EIR Released 	
	Q3	<ul style="list-style-type: none"> WSEC considers JPA interim funding agreement 	<ul style="list-style-type: none"> Project Agreement Member Go/No-Go discussions WSEC considers next Continued Funding Agreement 	<ul style="list-style-type: none"> Admin Draft EIR/EIS Released
	Q4	<ul style="list-style-type: none"> Board considers JPA interim funding agreement for January 2022 through the release of construction bonds 	<ul style="list-style-type: none"> Board considers next Continued Funding Agreement Amendment 2 expires 	
2022	Q1	<ul style="list-style-type: none"> Board considers Service Agreements with JPA (provides for the terms and conditions under which the JPA will provide services) 	<ul style="list-style-type: none"> Proposition 1 Water Storage Investment Program funding validation 	
	Q2			
	Q3			<ul style="list-style-type: none"> Public Draft EIR/EIS Released
	Q4			<ul style="list-style-type: none"> Board considers additional gap funding

LVE Offramps:

- Withdraw from Cost Share agreement without incurring further cost
- Fail to approve JPA Agreement (early 2021)
- Fail to approve Interim Funding (late 2021)
- Fail to approve Service Agreement with JPA (early 2022)
- An agency may withdraw if Engineer's estimate is too expensive or bids exceed the estimate by 20% after the meet and confer process with 60 days notice (time TBD)
- If two or more members withdraw, any other member may withdraw with 60 days notice
- An agency may withdraw if unacceptable permit conditions are attached to the Project with 60 days notice



Los Vaqueros Reservoir, Sites Reservoir, and Delta Conveyance Project MAP Evaluation

Presented by: **Vincent Gin**, Deputy Operating Officer

Samantha Greene, Ph.D., Senior Water Resources Specialist

Cindy Kao, Ph.D., P.E., Imported Water Unit Manager



**Board of Directors Meeting
November 17, 2020**

Attachment 21
Page 1 of 40

Water Supply Master Plan 2040



Secure

- Capital Improvement Program Projects
- Delta Conveyance Project

Expand

- Water Conservation
- Stormwater Capture
- Potable Reuse

Optimize

- Pacheco Reservoir Expansion
- Transfer-Bethany Pipeline
- South County Recharge

Master Plan Back-up Projects

- Bay Area Regional Desalination
- Countywide Water Reuse Master Plan (in excess of 24 MGD reuse project)
- Groundwater Banking
- Lexington Pipeline
- Local Land Fallowing
- **Los Vaqueros Reservoir**
- Montevina Water Treatment Plant
- Refinery Recycled Water Exchange
- **Sites Reservoir**
- San Pedro Ponds Recharge Improvement
- South County Water Treatment Plant
- Shallow Groundwater Reuse

Looking Ahead

- Current Board Action

Los Vaqueros Expansion (LVE)

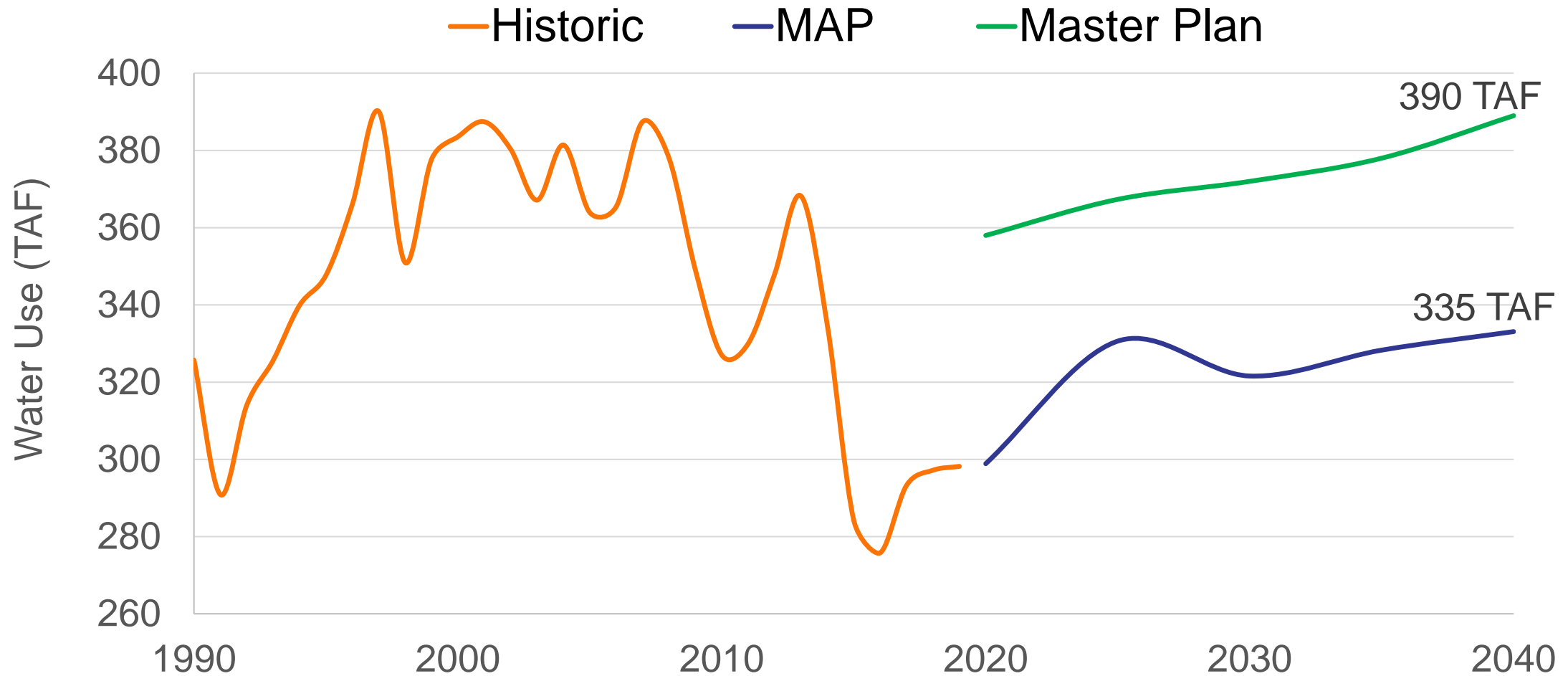
Sites Reservoir (Sites)

Delta Conveyance Project (DCP)

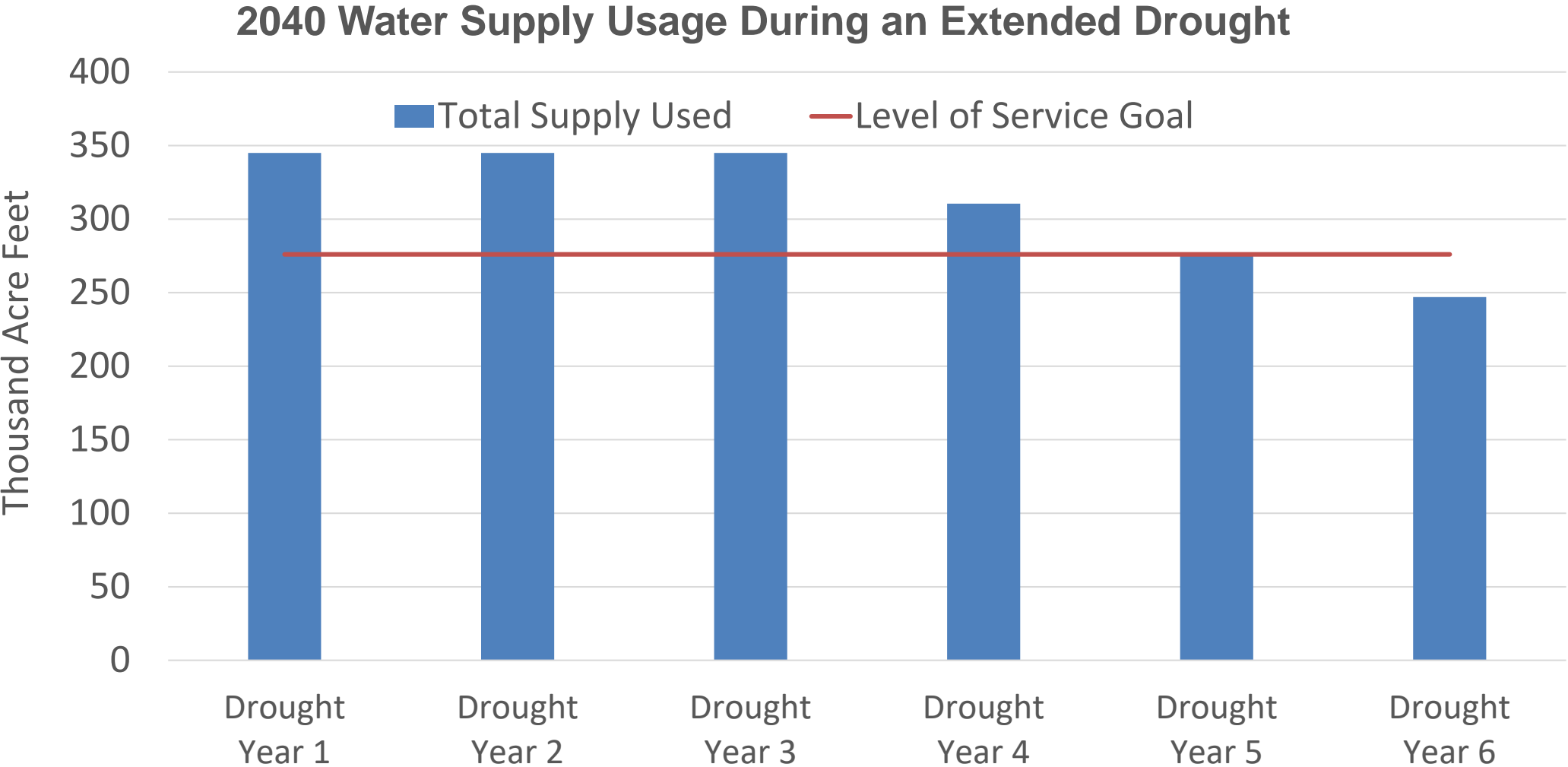
- Upcoming Updates

Pacheco Reservoir Expansion	Early	2021
Annual MAP	Summer	2021
Purified Water Project	Fall	2021
LVE, Sites, DCP	Throughout	2021

New Map Demand Projection

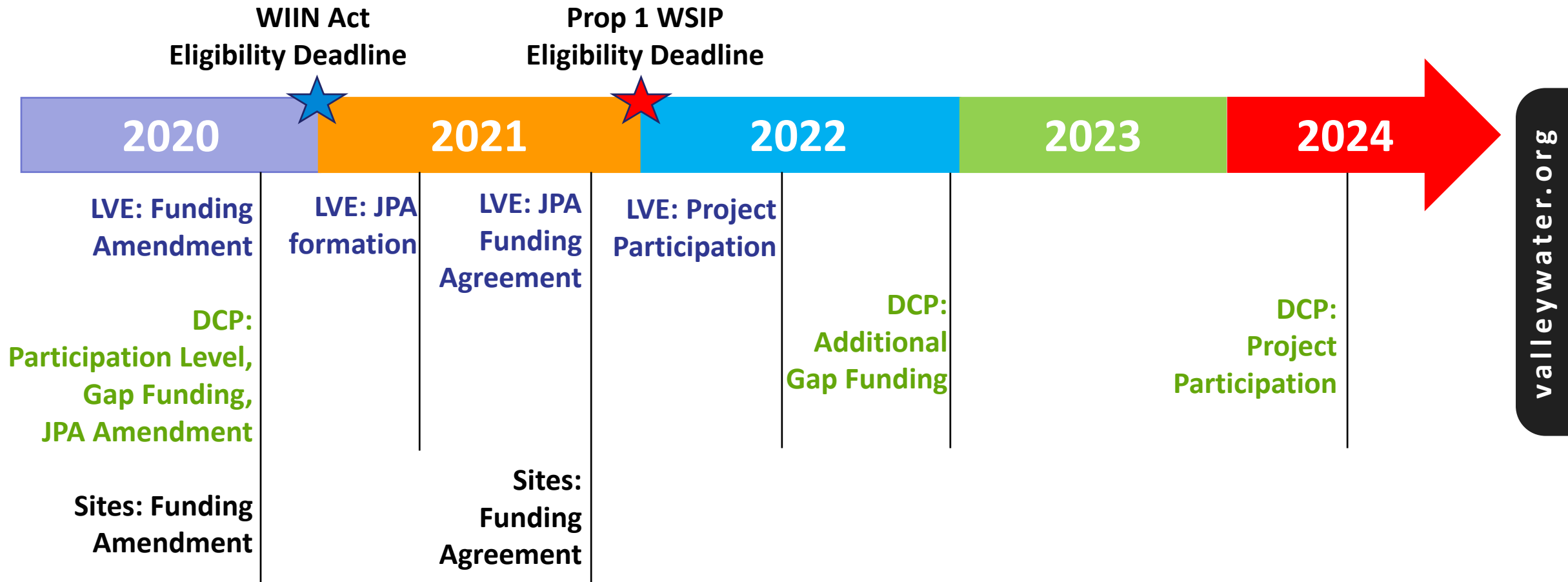


Baseline Investments with New 2040 Demands



Major Decision Points

7



Decisions for Three Projects

A. Los Vaqueros Expansion & Transfer-Bethany Pipeline

- Cost share agreement not to exceed approximately \$1.0 Million

B. Sites Reservoir Project

- Minimal participation level, \$50,000 funding authorization

C. Delta Conveyance Project

- Provisional participation percentage of 2.73% with authorization up to 3.23%
- Gap funding agreement for up to about \$4.0 million for 2021 / 2022, optional up to about \$7.0 million for 2023 / 2024 with future Board approval
- Amendments to the Delta Conveyance Design and Construction Authority JPA



Update on Los Vaqueros Expansion

Samantha Greene, Ph.D., Senior Water Resources Specialist
Board of Directors Meeting, November 17, 2020

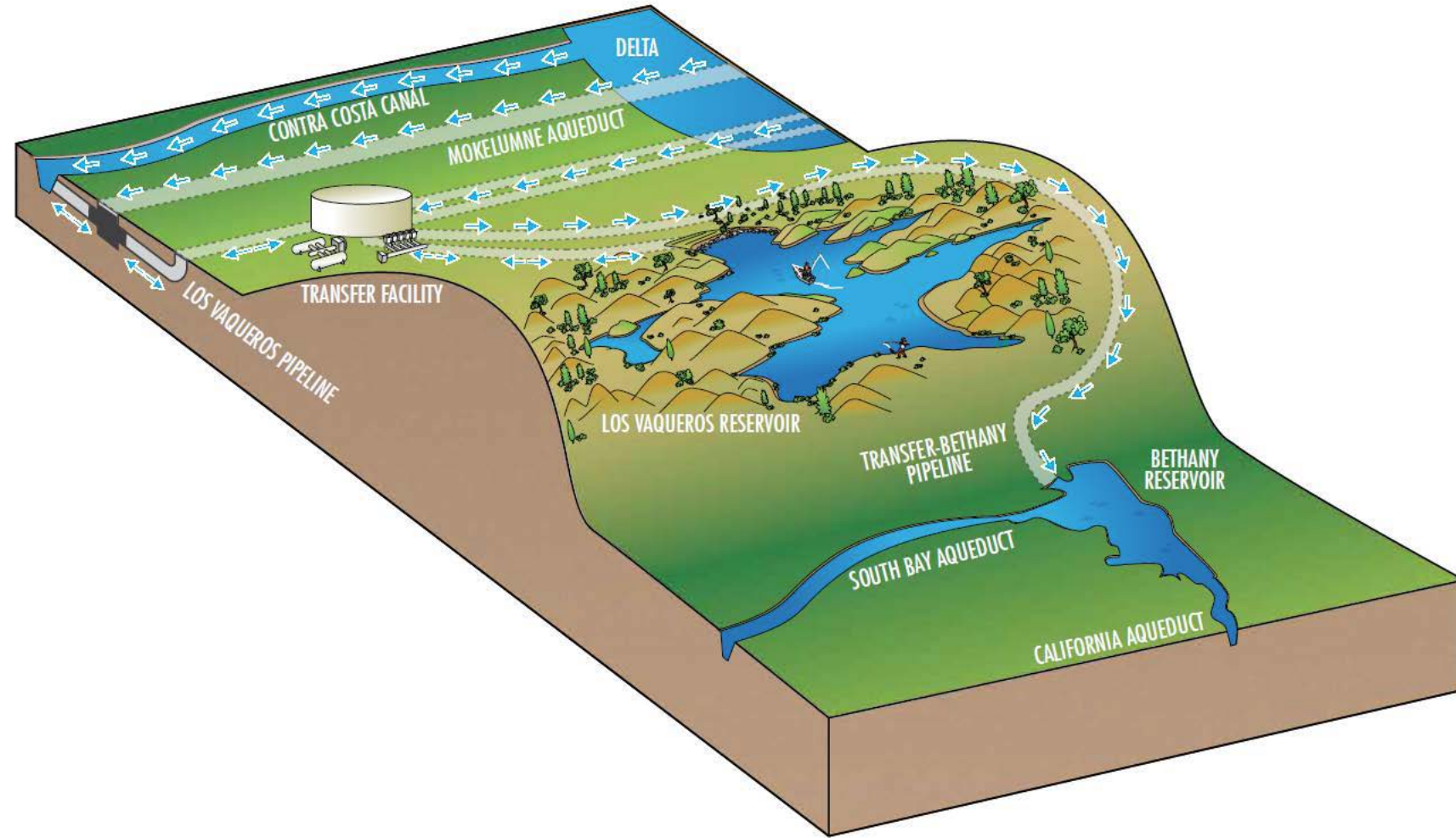
Recommendation

- Approve Amendment 2 to the 2019 Multi-Party Agreement for contract extension through December 2021 and a cost-share not to exceed approximately \$1.0 Million.

Project Location and Description

11

- 275 thousand acre-foot reservoir
 - 115 thousand acre-feet of new storage
 - New storage available to partners
- Upgraded and new conveyance facilities



Project Costs and Benefits

12

Storage:

- Diversify Semitropic Bank
- Provide emergency supply

Transfer Bethany Pipeline:

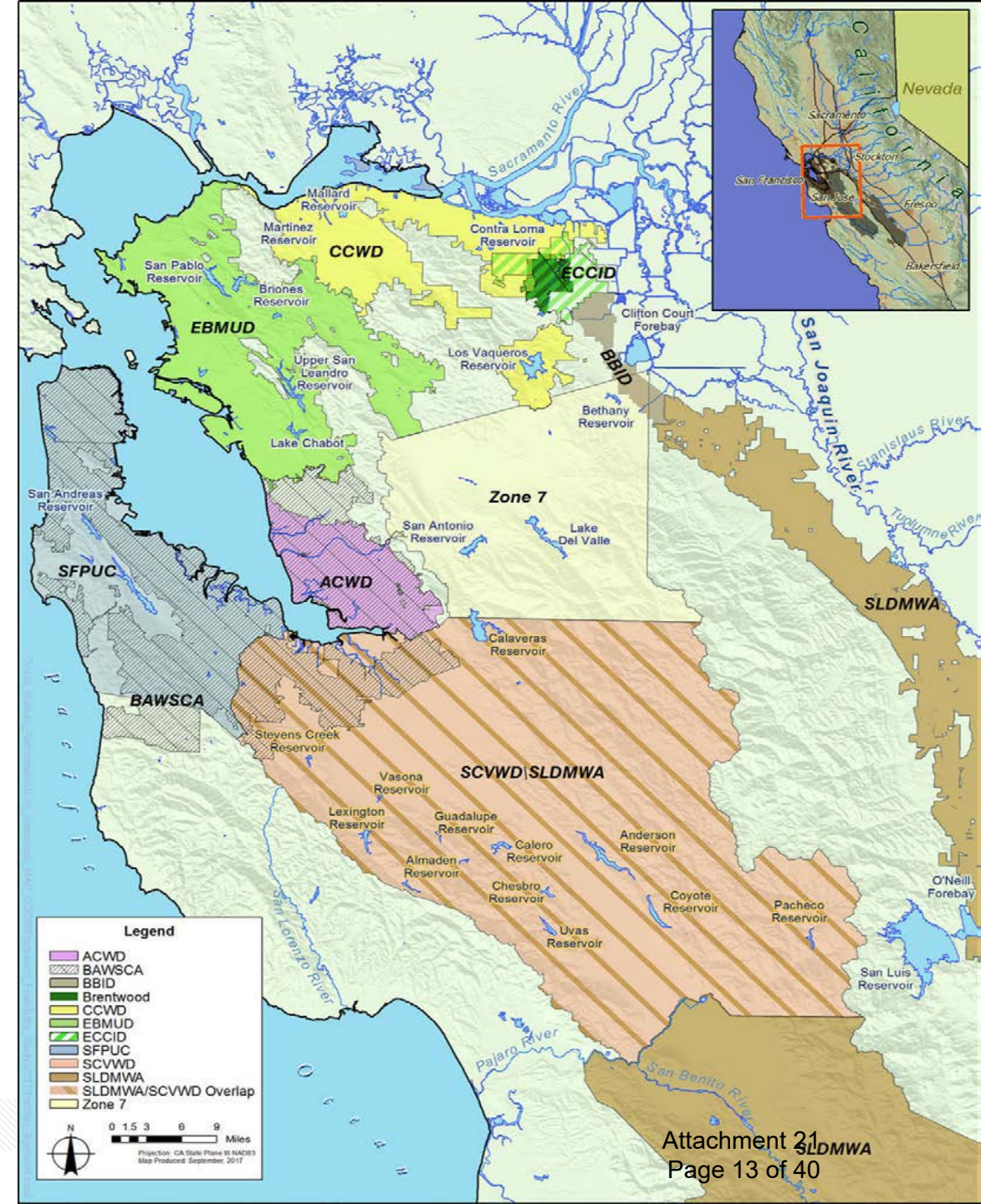
- Provide operational flexibility
- Support potential regional projects
- Access to new Delta water supplies during wet periods (Delta surplus)

STORAGE AND CONVEYANCE	Dedicated Storage (30 TAF)	Pooled Storage (up to 20 TAF)	Transfer Bethany Pipeline Only
PV Life Cycle Cost to Valley Water (2019\$)	\$200 Million	\$50 Million	\$50-250 Million ¹
Average Storage Volume (TAF/yr)	13	3	-
PV life cycle unit cost (\$/AF)	\$1,000	\$1,300	\$700

¹Range represents participation of between 1-7% in the Transfer Bethany Pipeline

LVE Local Agency Partners (LAPs)

1. Contra Costa Water District
2. Alameda County Water District
3. East Bay Municipal Utility District
4. Grassland Water District (Refuge)
5. Santa Clara Valley Water District
6. San Francisco Public Utilities Commission
 - Bay Area Water Supply and Conservation Agency
7. Zone 7 Water Agency
8. San Luis & Delta-Mendota Water Authority
 - Byron Bethany Irrigation
 - Del Puerto Water District
 - Westlands Water District
 - Panoche Water District



Recommendation: Continue Participation

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- Extends project agreement and funding through December 2021
- Provides time to evaluate effectiveness for supporting Valley Water needs
- Can withdraw at any time
- No commitment to the JPA is included in Amendment 2



Update on Sites Reservoir Project: Second Amendment to 2019 Reservoir Project Agreement for Continued Participation

Cindy Kao, Ph.D., P.E., Imported Water Manager
Board of Directors Meeting, November 17, 2020

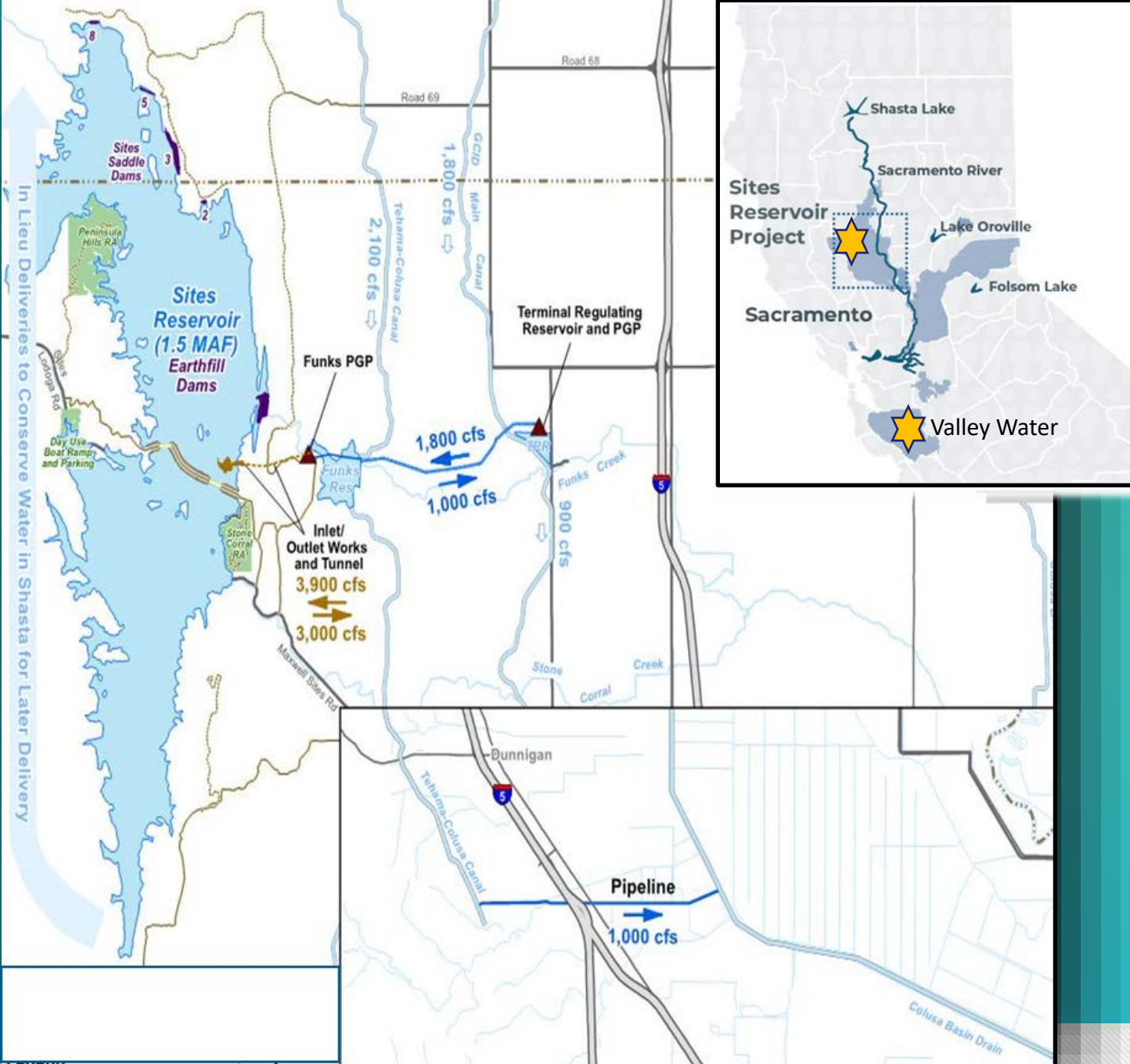
Recommendations

- A. Receive and discuss updated information.
- B. Authorize execution of Second Amendment to 2019 Reservoir Project Agreement at a 0.2% participation level - \$50,000 cost
- C. Direct staff to continue engagement.

Sites Reservoir Project

Location: Colusa and Glenn Counties, California

- Size: 1.5 million acre-foot
- Preliminary Estimated Average Annual Yield: 240,000 acre-foot (AF)
- Preliminary Estimated Dry/Critical (Drier) Annual Yield: 330,000 AF
- Total Project Cost (2019 Dollars): [\$3 - \$3.3] Billion



Potential Benefits to Valley Water

Direct benefits:

- Long term (beyond 2040) water supply reliability
 - New water supplies
 - New storage capacity

Indirect benefits:

- Improved CVP reliability
- Access to new transfer supplies
- Potential to facilitate groundwater banking withdrawals through exchanges

Major Project Risk and Challenges

Water Supply:

- Transportation across Delta
- Projected yield and storage capacities
- Coordinated operations with State and Federal facilities

Permitting & Construction:

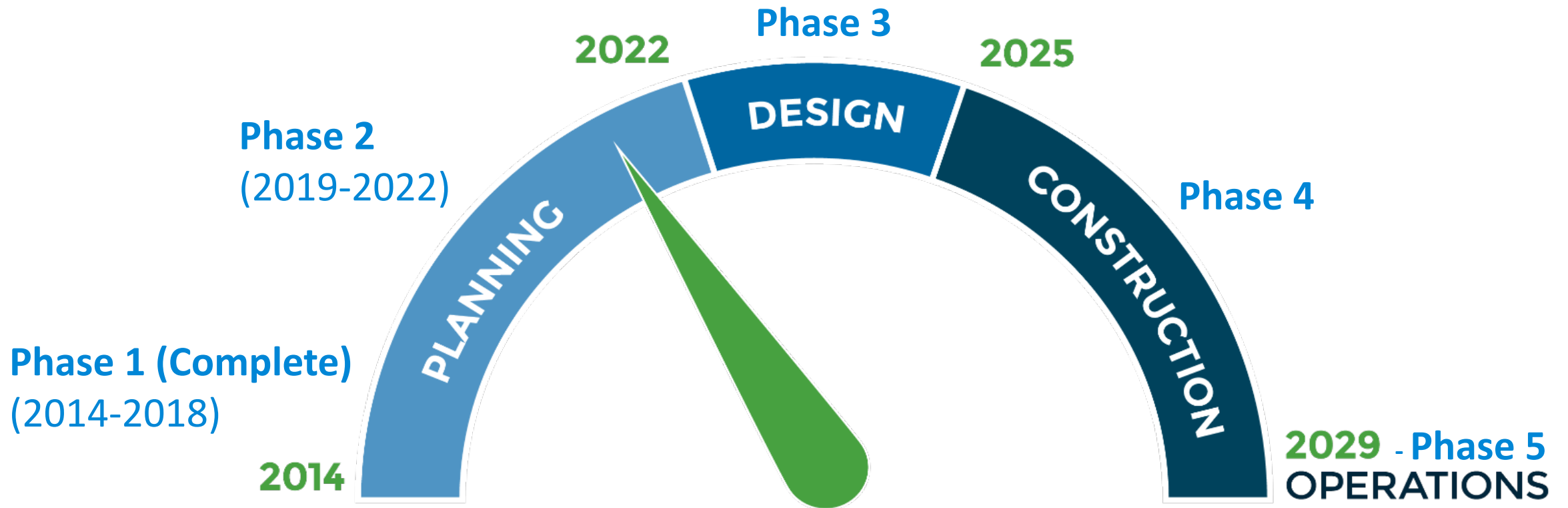
- Secure water rights
- CEQA/NEPA approvals
- Environmental opposition
- Geotechnical uncertainties

Cost:

- Secure adequate participation
- Proposition 1 funding compliance
- Construction cost increases

Path Forward: Project Phasing

Phase 2: Planning - EIR/EIS completion, feasibility studies, predesign, critical permits, and water rights. (In Progress)



Preliminary Amendment 2 Participation

All existing participants, except Valley Water, have approved continued participation

South of Delta: (approx. 75% funding)

- 9 SWP contractors
- 1 SWP and CVP contractor (Valley Water, Pending)
- Requested Yield(s): 500 AF to 50,000 AF

North of Delta: (approx. 25% funding)

- 10 CVP contractors
- 1 SWP contractor
- Requested Yield(s): 300 AF to 10,000 AF



Valley Water Participation Options

- ***Option 1 – Reduce but maintain significant benefits***
 - Reduce requested yield from 16,000 AF to 7,800 AF
 - 3.2% participation, \$780,000 commitment
- ***Option 2 – Reduce participation by half***
 - Reduce requested yield 16,000 AF to 4,000 AF
 - 1.6% participation, \$400,000 commitment
- ***Option 3 (RECOMMENDED) – Reduce to a minimal participation level***
 - Reduce requested yield to 500 AF, insignificant benefits
 - 0.2% participation, \$50,000 commitment
 - Maintains participation in Sites Reservoir Project Committee
- ***Option 4 – Withdraw from the project***
 - Withdraw completely from project and Sites Project Reservoir Committee.

Valley Water Participation Options (Cont.)

Option	Level of Participation		Estimated Benefits (Storage and Yield)			Cost		
	Total Project (%)	Request (AF)	Average Delivered Yield (AF)	Average Drier Year Delivered Yield (AF)	Storage Share (AF)	Total Capital Cost, 2019 Dollars (\$ Million)	Total Capital Cost Fully Inflated (\$ Million)	Funding Commitment (\$ Million)
Feb. 2019	3.2	16,000	11,100	21,500	55,000	192	242	0.96
1	3.2	7,800	4,700 to 6,100	6,500 to 8,200	45,000	97	125	0.78
2	1.6	4,000	2,400 to 3,100	3,300 to 4,200	23,000	50	64	0.40
3	0.2	500	300 to 400	400 to 500	2,800	6	8	0.05
4	0.0	0	0	0	0	0	0	0

- Possibility for reimbursement of funding commitment if reduce participation or withdraw later

Next Steps

- Early 2021: WIIN Act feasibility determination, draft EIR released
- April 1, 2021: 2nd funding payment
- Fall 2021: Consideration of new funding agreement
- Jan 1, 2022: WSIP funding validation



Update on Delta Conveyance Project

Cindy Kao, Ph.D., P.E., Imported Water Manager
Board of Directors Meeting, November 17, 2020

Recommendations

- A. Provisional participation of 2.73% with authorization up to 3.23% total;
- B. Funding agreement for up to about \$4.0 million for 2021 and 2022 planning and design costs, with an option for up to about \$7.0 million, upon future Board approval, for 2023 and 2024; and
- C. Amendment to the Delta Conveyance Design and Construction Authority Joint Powers Agreement

Outline

- A. Agreement in Principle
- B. Provisional Participation Level
- C. Gap Funding Agreement
- D. Design & Construction Authority Amendments
- E. Preliminary Cost Estimate
- F. Preliminary Water Supply Benefits

Guiding Principles

1. **Santa Clara County needs are primary**
2. **All parties pay fair share**
3. **Addresses stakeholder & community input**
4. **Water supply is affordable**
5. **Equity and costs are important**
6. **Flexibility to acquire supplemental water**
7. **Keep negotiating for Santa Clara County**
8. **Public engagement is paramount to success**

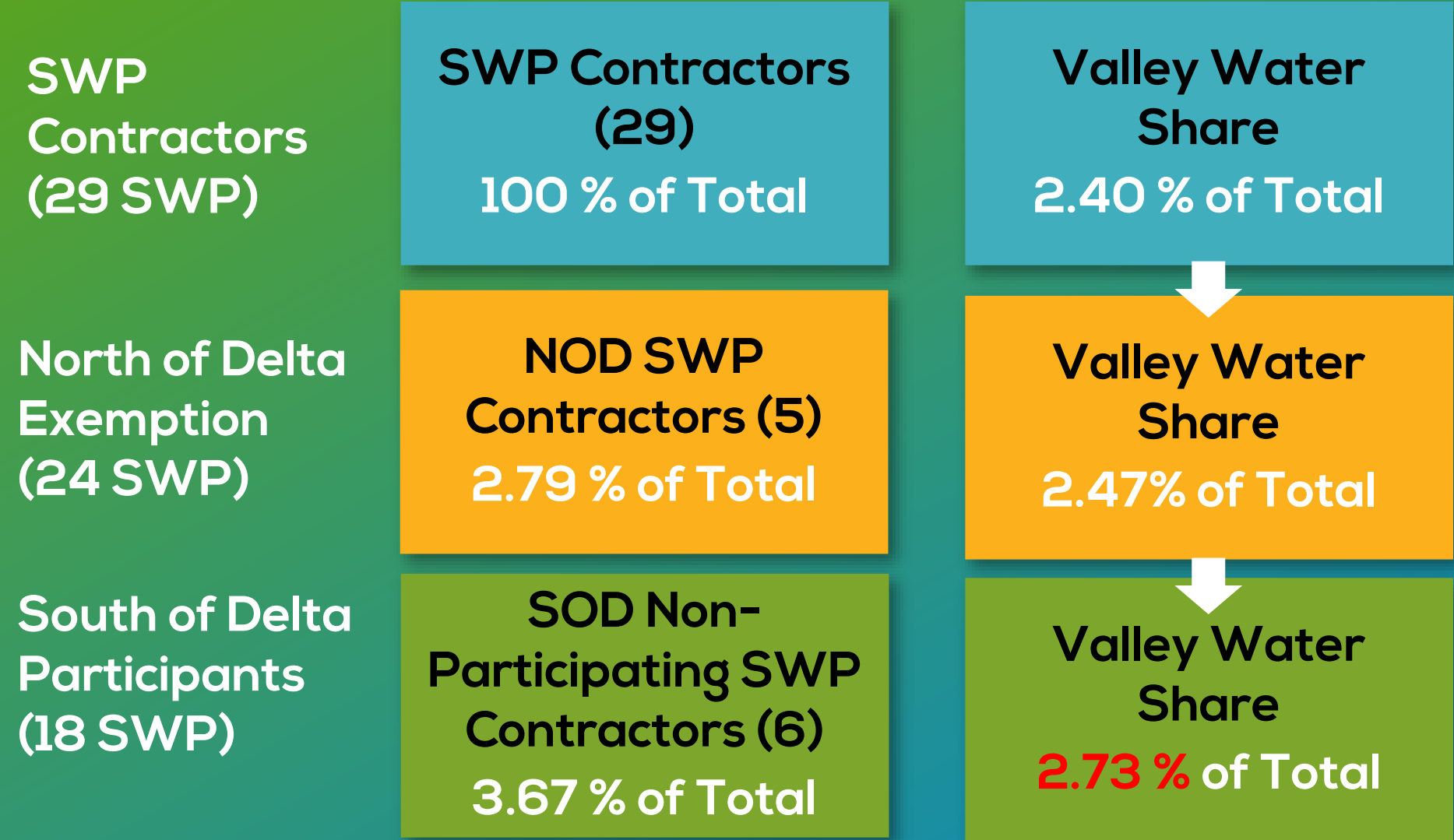
Valley Water Board Resolution 19-69, adopted September 24, 2019

Agreement in Principle

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- **Basis for future SWP Contract Amendment**
- **Allocates costs and benefits**
- **Option to opt-out of costs & benefits**
- **Option to assume additional costs & benefits**
- **Project Table A and Article 21 supplies**
- **Conveyance capacity for non-Project water, transfers, exchanges**
- **Protection from sea level rise and levee failure events**
- **Carriage water savings**

Provisional Participation Levels



Gap Funding Agreement

Environmental review,
planning and design

Total = \$340.7 million

Option to fund 2 years
or all 4 years

Potential Valley Water

share:	Two Years of Funding	Four Years of Funding
2.5%	\$3.1M	\$8.5M
2.73%	\$3.4M	\$9.3M
3.0%	\$3.7M	\$10.2M
3.23%	\$4.0M	\$11.0M
4.0%	\$5.0M	\$13.6M
5.0%	\$6.2M	\$17.0M
6.0%	\$7.5M	\$20.4M

Proposed Amendments to DCA

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Current	Proposed
<p>5 Directors (only 4 filled)</p> <p>Simple majority of Board for all decisions except,</p> <p>80% of Directors needed to:</p> <ol style="list-style-type: none">1. Endorse legislation2. Terminate membership3. Article XII Budget and Expense <p>No Reconsideration Option</p> <p>Approval of all Members needed to amend Agreement</p>	<p>7 Directors</p> <p>Simple majority of Board for all decisions</p> <p>Reconsideration option for Article XII Budget and Expense and certain contracts:</p> <ul style="list-style-type: none">• Construction Contracts >\$10 M• Service Contracts >\$1M <p>Reconsideration requires 70 % Contracted Proportionate Share vote to disapprove motion</p> <p>Approval of two-thirds of Members needed to amend Agreement</p>

Delta Conveyance Alternatives

All Alternatives

Intakes and North Tunnels

East Alternative

Eastern Tunnel Corridor

Central Alternative

Central Tunnel Corridor

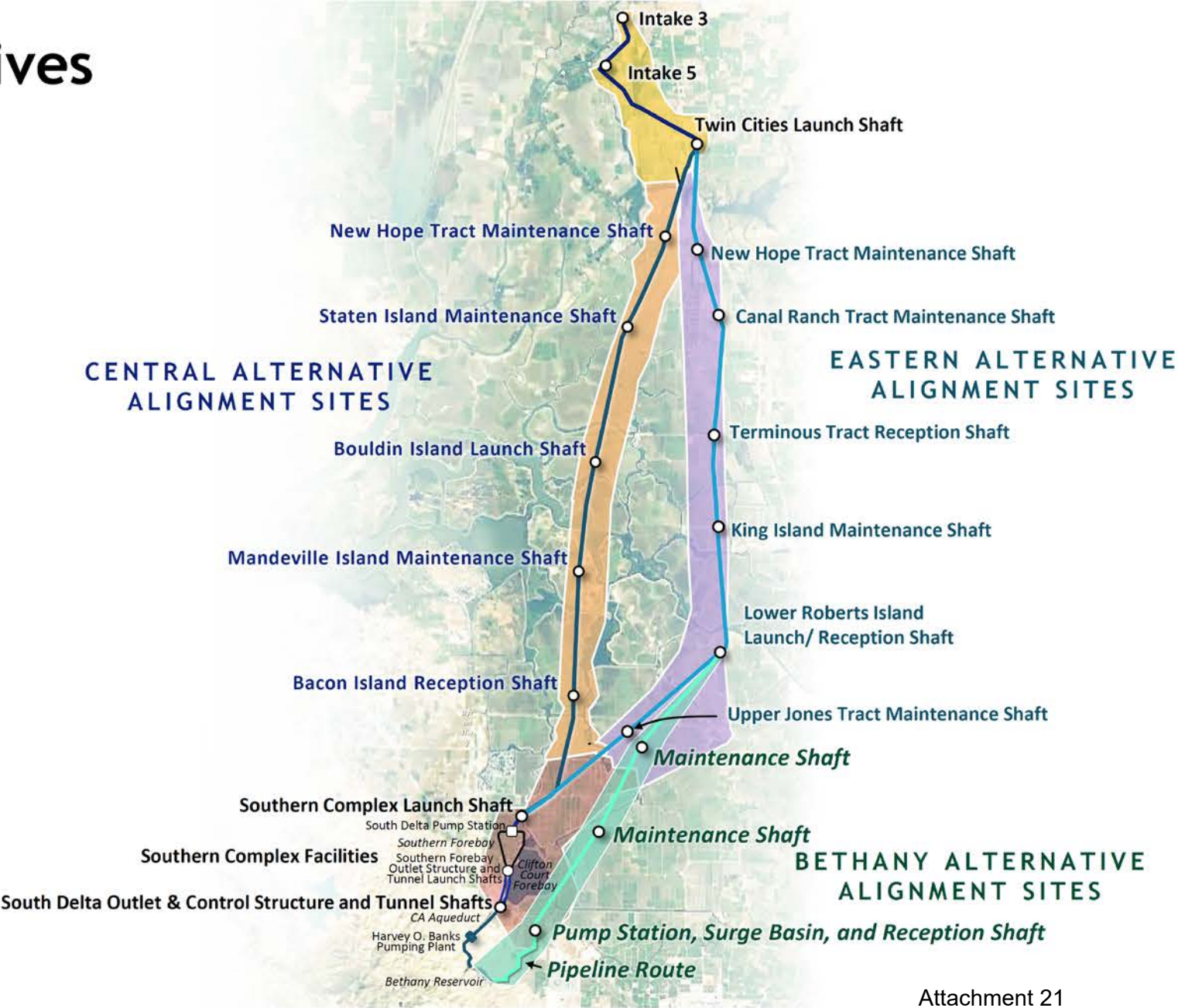
East & Central Alternatives

Pump Station, Southern Forebay & South Delta Conveyance

Bethany Alternative

Eastern Tunnel Corridor

Bethany Corridor, Pump Station, Surge Relief Basin and Pipelines



DCP Preliminary Cost Summary

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	Costs (2020 dollars)
CONSTRUCTION	\$ 8.77 billion
CONTINGENCY (38%)	\$ 3.33 billion
SOFT COSTS	\$ 3.40 billion
ENVIRONMENTAL MITIGATION	\$ 0.40 billion
TOTAL	\$15.90 billion



Valley Water's Potential Share of Total Capital Costs

Participation Level	Share of Capital Costs ¹
2.5%	\$398 million
2.73%	\$434 million
3.0%	\$477 million
3.23%	\$514 million
4.0%	\$636 million
5.0%	\$795 million
6.0%	\$954 million

valleywater.org



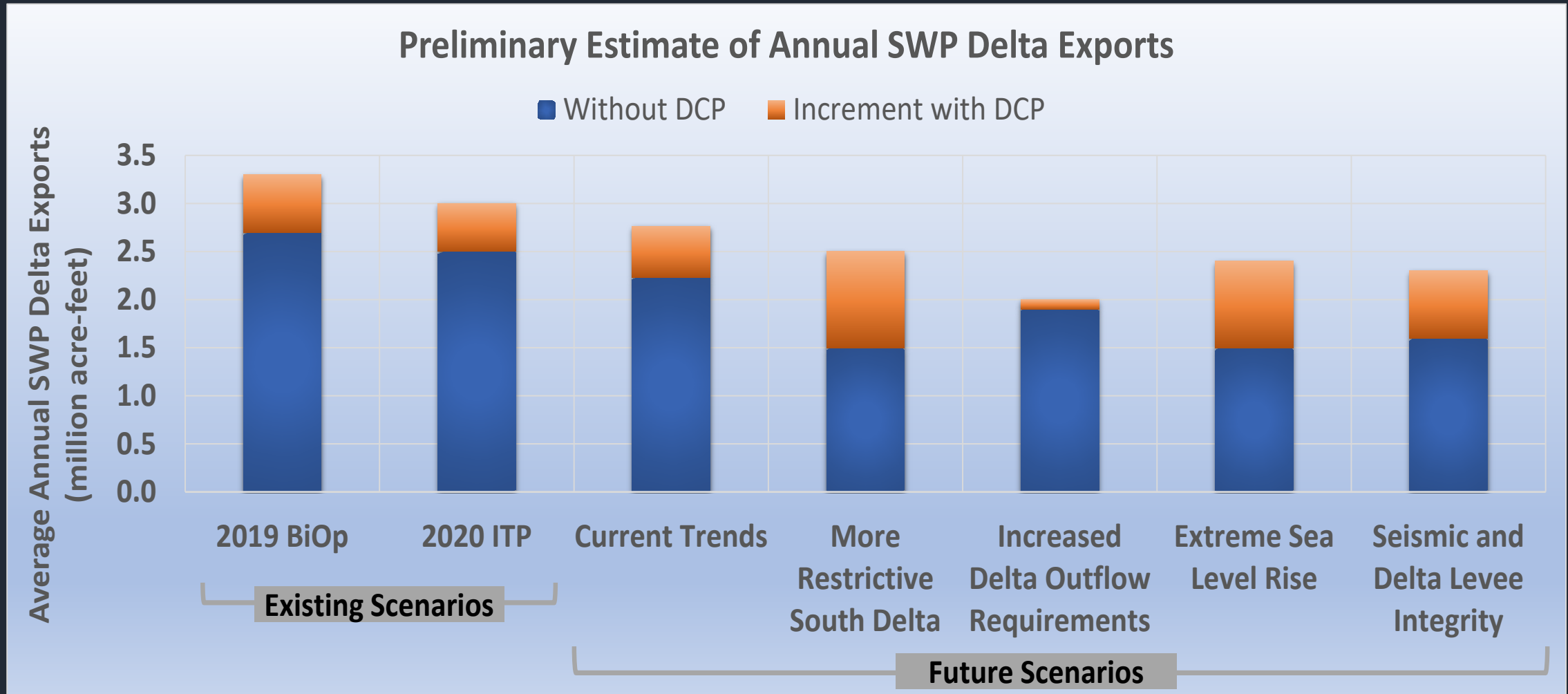
¹Total Project costs are in undiscounted 2020 dollars and do not include financing costs.

Potential Water Supply Benefits

- Climate Change
- Sea Level Rise
- Levee Stability
- Stormwater Capture
- Operational Flexibility
- Water Transfer Capacity
- Carriage Water Savings
- Flow Patterns
- Water Quality

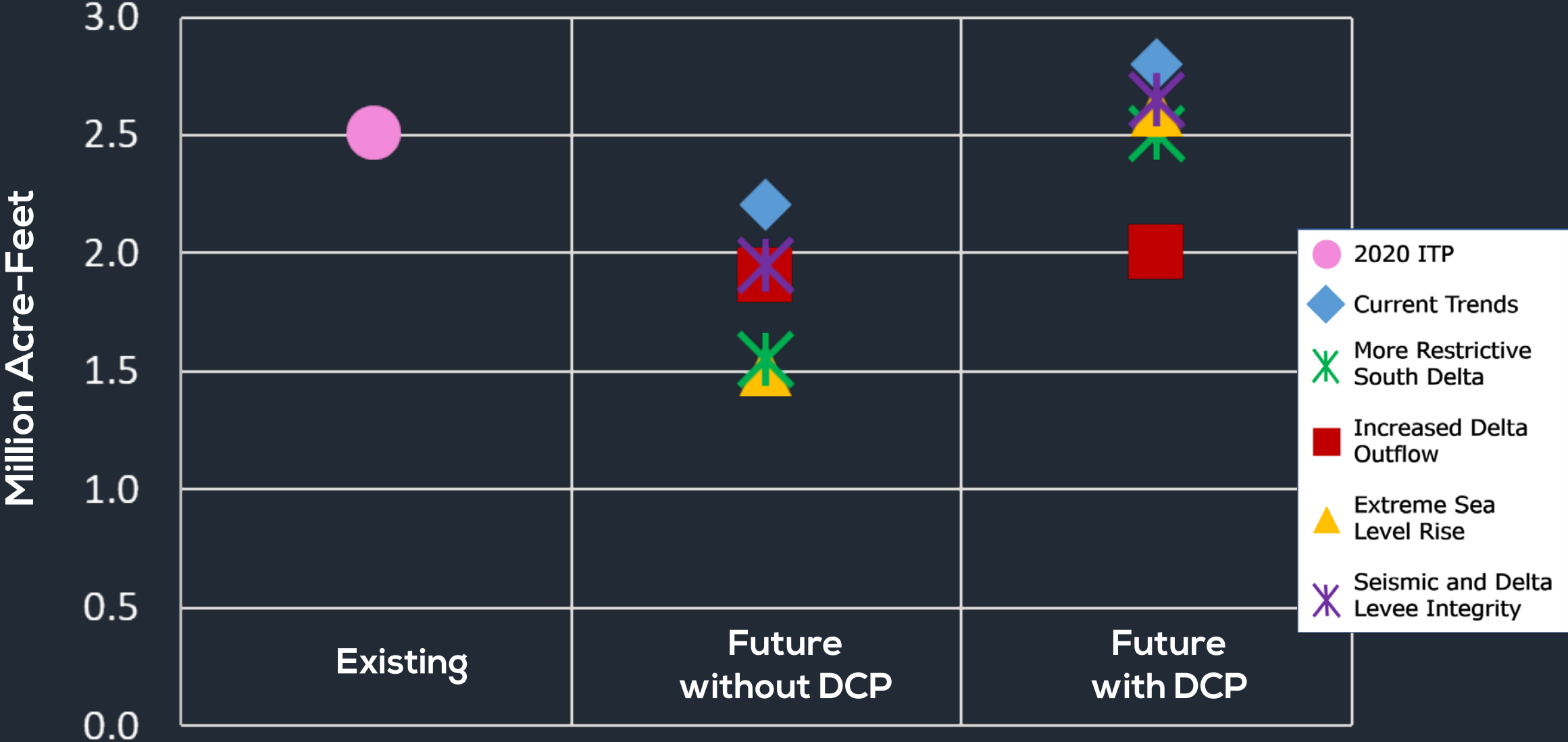


Preliminary SWP Benefits - Estimated Annual Exports



Source: State Water Contractors

Preliminary SWP Benefits - Estimated Annual Exports



Source: State Water Contractors

Delta Conveyance Project Schedule

VW Decision Points

Potential Additional
Gap Funding

Potential Decision on
Project Participation

2021

2022

2023

2024

Project Milestones

Public Draft EIR/EIS

- Final EIR/EIS
- ROD/NOD
- CESA/ESA Permits

- Water Rights
- Delta Plan Consistency
- Other Environmental Permits

Decisions for Three Projects

A. Los Vaqueros Expansion & Transfer-Bethany Pipeline

- Cost share agreement not to exceed approximately \$1.0 Million

B. Sites Reservoir Project

- Minimal participation level, \$50,000 funding authorization

C. Delta Conveyance Project

- Provisional participation percentage of 2.73% with authorization up to 3.23%
- Gap funding agreement for up to about \$4.0 million for 2021 / 2022, optional up to about \$7.0 million for 2023 / 2024 with future Board approval
- Amendments to the Delta Conveyance Design and Construction Authority JPA