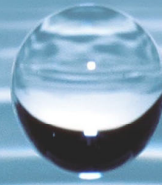




**SCV**  
**WATER**



# SCV WATER AGENCY TELECONFERENCE SPECIAL BOARD MEETING

**TUESDAY, NOVEMBER 17, 2020**

**AT 6:30 PM**

Please join the meeting from your  
computer, tablet or smartphone:

<https://global.gotomeeting.com/join/512147109>

**-OR-**

Listen in Toll Free by Phone:

1-(866)-899-4679  
Access Code: 512-147-109

When practical please provide public comment by 4:30 PM the day of the meeting\* by either e-mail, phone, or mail (please see the agenda for more specifics).

To help expedite public comment, please contact the Board Secretary the day of the meeting at 1-(661)-297-1600 to advise on what items you would like to speak on. Public comments can also be made during the meeting as specified under Item 3 of the Agenda.

\*All written comments received after 4:30 PM the day of the meeting will be posted to <https://yourscvwater.com/> the next day. Public comments can also be heard the night of the meeting.

Disclaimer: Pursuant to the Executive Order N-29-20 issued by Governor Newsom, public may not attend meetings in person. Public may use the above methods to attend and participate in the public board meetings.

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**SANTA CLARITA VALLEY WATER AGENCY  
REGULAR BOARD MEETING AGENDA**

**SANTA CLARITA VALLEY WATER AGENCY  
RIO VISTA WATER TREATMENT PLANT  
27234 BOUQUET CANYON ROAD  
SANTA CLARITA, CA 91350**

**TELECONFERENCE ONLY  
NO PHYSICAL LOCATION FOR MEETING**

**TUESDAY, NOVEMBER 17, 2020 AT 6:30 PM  
TELECONFERENCING NOTICE**

Pursuant to the provisions of Executive Order N-29-20 issued by Governor Gavin Newsom on March 17, 2020, any Director **may call into an Agency Board meeting using the Agency's Call-In Number 1-(866)-899-4679, Access Code 512-147-109 or GoToMeeting by clicking on the link <https://global.gotomeeting.com/join/512147109>** without otherwise complying with the Brown Act's teleconferencing requirements.

Pursuant to the above Executive Order, the public may not attend the meeting in person. Any member of the public may listen to the meeting or make comments to the Board using the call-in number or GoToMeeting link above. Please see the notice below if you have a disability and require an accommodation in order to participate in the meeting.

We request that the public submit any comments in writing if practicable, which can be sent to [ajacobs@scvwa.org](mailto:ajacobs@scvwa.org) or mailed to April Jacobs, Board Secretary, Santa Clarita Valley Water Agency, 27234 Bouquet Canyon Road, Santa Clarita, CA 91350. All written comments received before 4:30 PM the day of the meeting will be distributed to the Board members and posted on the Santa Clarita Valley Water Agency website prior to the start of the meeting. Anything received after 4:30 PM the day of the meeting will be posted on the SCV Water website the following day.

**OPEN SESSION BEGINS AT 6:30 PM**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **PUBLIC COMMENTS** – Members of the public may comment as to items not on the Agenda at this time. Members of the public wishing to comment on items covered in this Agenda may do so now or at the time each item is considered. (Comments may, at the discretion of the Board's presiding officer, be limited to three minutes for each speaker.) Members of the public wishing to comment on items covered in Closed Session before they are considered by the Board must request to make comment at the commencement of the meeting at 6:30 PM.

**4. APPROVAL OF THE AGENDA**

**5. SPECIAL PROCEDURES PAGE**

5.1. *	SB 387 Directors' 2024 Election Term Seat Lot Drawing	7
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**6. CONSENT CALENDAR PAGE**

6.1. *	Approve Minutes of the November 4, 2020 Santa Clarita Valley Water Agency Special Board of Directors Meeting	9
6.2. *	Approve a Resolution for a Construction Contract with GSE Construction Company, Inc. for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project	13
6.3. *	Approve a Resolution Awarding a Contract for Newhall Tank No. 2 Interior Recoat and Repair	25

**7. ACTION ITEMS FOR APPROVAL PAGE**

7.1. *	Approve a Resolution Adopting CEQA Findings for State Water Project Water Management Tools and Authorizing the General Manager to Execute a Contract Amendment for the State Water Project Water Management Tools	37
7.2. *	Adopt a Resolution Authorizing the General Manager to Enter into a Cost Sharing Agreement for Planning Activities for a Delta Conveyance Facility and Authorize SCV Water's Membership in the Delta Conveyance Design and Construction Authority	135

**8. \* UPDATE ON ENACTMENT OF AB 992 – TOM BUNN PAGE**  
243

**9. GENERAL MANAGER'S REPORT ON ACTIVITIES, PROJECTS AND PROGRAMS**

**10. COMMITTEE MEETING RECAP REPORT FOR INFORMATIONAL PURPOSES ONLY PAGE**

10.1.*	November 5, 2020 Engineering and Operations Committee Meeting Report	245
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**11. PRESIDENT'S REPORT**

**12. AB 1234 WRITTEN AND VERBAL REPORTS PAGE**

12.1.*	November 6, 2020 NWRAs Federal Affairs Committee Meeting – Vice President Gladbach	251
12.2.	November 10, 2020 ACWA Regions Virtual Event Series – Zooming Through California – President Martin, Vice President Gladbach and Directors Cooper and Atkins	
12.3.	AB 1234 Reports	

13. **DIRECTOR REPORTS**
14. **DIRECTOR REQUESTS FOR APPROVAL FOR EVENT ATTENDANCE**
15. **REQUESTS FOR FUTURE AGENDA ITEMS**
16. **ADJOURNMENT**

- \* Indicates Attachment
- ◆ Indicates Handout

**Note: The Board reserves the right to discuss or take action or both on all of the above Agenda items.**

### **NOTICES**

Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning April Jacobs, Secretary to the Board of Directors, at (661) 297-1600, or in writing to Santa Clarita Valley Water Agency at 27234 Bouquet Canyon Road, Santa Clarita, CA 91350. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that Agency staff may discuss appropriate arrangements. Persons requesting a disability-related accommodation should make the request with adequate time before the meeting for the Agency to provide the requested accommodation.

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Santa Clarita Valley Water Agency, located at 27234 Bouquet Canyon Road, Santa Clarita, CA 91350, during regular business hours. When practical, these public records will also be made available on the Agency's Internet Website, accessible at <http://www.yourscvwater.com>.

Posted on November 10, 2020.

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## BOARD MEMORANDUM

**DATE:** November 9, 2020

**TO:** Board of Directors

**FROM:** Joseph Byrne and Thomas Bunn  
General Counsel

**SUBJECT:** SB 387 Directors' 2024 Election Term Seat Lot Drawing

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### SUMMARY

The Santa Clarita Valley Water Agency Law (Agency Act) establishes election procedures for the successors to the initial members of the Board of Directors. Specifically, it divides the Agency's service area into three electoral divisions, requiring that two Directors be elected for each electoral division at the 2020 general election and every 4 years thereafter, and one Director be elected for each electoral division at the 2022 general election and every 4 years thereafter. SB 387 amended the Agency Act effective January 1, 2020 to more evenly distribute the number of directors elected between the two election cycles. It requires one of the Directors elected at the 2024 general election to be chosen by lot to serve a two-year term.

### DISCUSSION

The Agency Act, as amended by SB 387, provides that at the next regular meeting of the Board following the 2020 general election, the Board shall choose by lot the seat of one of the Directors elected at the 2020 general election, which shall result in the Director elected to that seat at the 2024 general election serving a two-year term. Subsequent elections for the seat of the Director chosen by lot to serve a two-year term shall be conducted at the 2026 general election, and on that four-year election cycle thereafter.

For the 2024 election, the seats for the division with the two-year seat will be separated into Seat 1 and 2, with one seat having a two-year term and the other having a four-year term. Any candidate, including the sitting Director who is chosen for the two-year term and any other sitting Director in that division, can decide to run for the two-year or four-year seat at the 2024 general election. The candidate who receives the most votes for each of the seats will be elected. All of the other divisions will not be separated and will remain as they currently are, with the highest one or two vote getters prevailing, depending upon the number of seats up for election.

Regarding the selection of the two-year term, due to COVID 19, the process will be virtual and will proceed as follows:

Each Director that ran in the 2020 election for each of the three divisions determined to be the candidate with the highest votes, their names will be written on a piece of paper by SCV Water

Attorney Tom Bunn who will then, on camera that night, show each name and place that folded paper in a hat, at which time the SCV Water Board Secretary April Jacobs, again on camera, will select a random piece of paper out of the hat, show the camera and the Director whose name is on said paper, will complete his or her four-year term, and at the 2224 election his or her seat will become a two-year seat, reverting to a four-year seat in the 2226 election.

MBS



Minutes of the Special Meeting of the Board of Directors of the Santa Clarita Valley Water Agency – November 4, 2020

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A special meeting of the Board of Directors of the Santa Clarita Valley Water Agency was held via teleconference at 6:30 PM on Wednesday, November 4, 2020. A copy of the Agenda is inserted in the Minute Book of the Agency preceding these minutes.

DIRECTORS PRESENT: B. J. Atkins, Ed Colley, Kathy Colley, William Cooper, Robert DiPrimio, Jeff Ford, Jerry Gladbach, Maria Gutzeit, R. J. Kelly, Gary Martin, Dan Mortensen and Lynne Plambeck via teleconference.

DIRECTORS ABSENT: None.

Also present via teleconference: General Manager Matthew Stone, General Counsel Joe Byrne, Board Secretary April Jacobs, Assistant General Manager Steve Cole, Chief Engineer Courtney Mael, Chief Financial and Administrative Officer Eric Campbell, Chief Operating Officer Keith Abercrombie, Director of Finance and Administration Rochelle Patterson, Principal Water Resources Planner Rick Viergutz, Associate Engineer Elizabeth Sobczak, Financial Analyst Darine Conner, Public Information Officer Kathie Martin, Executive Assistant Leticia Quintero, Administrative Assistant Terri Bell, IT Technician Rene Ponce and members of the public.

President Martin called the meeting to order at 6:30 PM. A quorum was present.

Upon motion of Director Plambeck, seconded by Director K. Colley and carried, the Board approved the Agenda by the following roll call votes (Item 4):

Director Atkins	Yes	Director E. Colley	Yes
Director K. Colley	Yes	Director Cooper	Yes
Director DiPrimio	Yes	Director Ford	Yes
Vice President Gladbach	Yes	Vice President Gutzeit	Yes
Director Kelly	Yes	President Martin	Yes
Director Mortensen	Yes	Director Plambeck	Yes

Upon motion of Director Cooper, seconded by Director Mortensen and carried, the Board approved the Consent Calendar which included Resolution No. SCV-180 by the following roll call votes (Item 5):

Director Atkins	Yes	Director E. Colley	Yes
Director K. Colley	Yes	Director Cooper	Yes
Director DiPrimio	Yes	Director Ford	Yes
Vice President Gladbach	Yes	Vice President Gutzeit	Yes
Director Kelly	Yes	President Martin	Yes
Director Mortensen	Yes	Director Plambeck	Yes

**RESOLUTION NO. SCV-180**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SANTA CLARITA VALLEY WATER AGENCY TO AUTHORIZE THE  
GENERAL MANAGER TO AMEND THE GSI WATER SOLUTIONS, INC.  
CONTRACT TO DEVELOP A GROUNDWATER SUSTAINABILITY PLAN**

**ON BEHALF OF THE SANTA CLARITA VALLEY GROUNDWATER  
SUSTAINABILITY AGENCY**

**<https://yourscvwater.com/wp-content/uploads/2020/11/SCV-Water-Approved-Resolution-110420-Resolution-SCV-180.pdf>**

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Upon motion of Director Ford, seconded by Vice President Gladbach and carried, the Board approved the CSDA Committee appointments for the Professional Development and Member Services Committees for President Martin, Legislative Committee for Director Atkins and the Audit and Fiscal Committees for Director Kelly by the following roll call votes (Item 6.1):

Director Atkins	Yes	Director E. Colley	Yes
Director K. Colley	Not Present	Director Cooper	Yes
Director DiPrimio	Yes	Director Ford	Yes
Vice President Gladbach	Yes	Vice President Gutzeit	Yes
Director Kelly	Yes	President Martin	Yes
Director Mortensen	Yes	Director Plambeck	Yes

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Director Cooper gave a brief update on the October 26, 2020 Central Park Ad Hoc Committee meeting where Vice President Gutzeit and Directors E. Colley, Kelly, Mortensen and himself attended. He briefly discussed the history of Central Park and how the original signage came to be selected. He then stated that a meeting with the City of Santa Clarita would need to be scheduled to further discuss the changes before any decision can be made by this Board. He anticipates being able to come back to this Board either at the next regular Board meeting, November 17, 2020, or the December 1, 2020 regular Board meeting depending on how quickly a meeting can be arranged with City staff (Item 7).

**General Manager's Report on Activities, Projects and Programs (Item 8).**

There was no General Manager's Report.

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**Committee Meeting Recap Reports for Informational Purposes Only (Item 9).**

There were no comments on the recap reports.

**Written Reports for Informational Purposes Only (Item 10).**

There were no comments on the written reports.

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**President's Report (Item 11).**

President Martin reminded the Board that there will be a regular Board meeting on December 1, 2020. He then updated the Board on upcoming virtual meetings/events.

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**AB 1234 Reports (Item 12).**

Written reports were submitted by President Martin, Vice President's Gladbach and Gutzeit and Director's Ford and Plambeck and were included in the Board packet, which is part of record. Additional written reports were submitted by Vice President Gladbach and Director Plambeck which were posted on the SCV Water website, OnBoard and are part of the record.

President Martin, Vice President Gladbach and Director Cooper reported that they attended the ACWA Regions Virtual Event Series – Zooming Through California on November 3, 2020.

Director Atkins reported that he attended the UWI Informative Virtual Discussion with Jeff Kightlinger on October 21, 2020, attended the AWAVC 25<sup>th</sup> Annual Member and Policymakers Virtual Reception on October 22, 2020, attended the Virtual State of the City held on October 22, 2020 and attended the AWA/CCWUC Annual Update: California Division of Drinking Water Regulations on October 28, 2020.

There were no further AB 1234 Reports.

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**Director Reports (Item 13).**

There were no Director reports.

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The Board went into Closed Session at 7:05 PM (Item 14).

The Board was instructed to disconnect from the current call and redial in on a separate teleconference line that was provided to them. President Martin instructed the public members and staff who wanted to stay on the call, to stay on the current teleconference line and once Closed Session has ended, the Board will reconvene for Closed Session announcements and the conclusion of the meeting.

President Martin reconvened the Open Session at 7:23 PM.

Joe Byrne, Esq., reported that there were no actions taken in Closed Session and nothing to report under the Ralph M. Brown Act (Item 15).

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**Director Requests for Approval for Event Attendance (Item 16).**

There were no Director requests for event attendance.

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**Request for Future Agenda Items (Item 17).**

Director Atkins mentioned that a letter from him was emailed to the SCV Water Board of Directors today pertaining to the Department of Water and Power's reduced releases from Bouquet Canyon Reservoir and a related water rights agreement.

Director Plambeck requested that the item also include an update on the Multi-Agency Commission that has been formed and done some work on issues pertaining to Bouquet Canyon Reservoir.

There were no further requests for future agenda items.

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The meeting was adjourned at 7:35 PM (Item 18).

\_\_\_\_\_  
April Jacobs, Board Secretary

ATTEST:

\_\_\_\_\_  
President of the Board



## BOARD MEMORANDUM

**DATE:** November 6, 2020  
**TO:** Board of Directors  
**FROM:** Courtney Mael, P.E. *CM*  
Chief Engineer  
**SUBJECT** Approve a Resolution for a Construction Contract with GSE Construction Company, Inc. for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project

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### SUMMARY

The Rio Vista Water Treatment Plant (RVWTP) Chlorine Scrubber Replacement Project (Project) has been advertised for construction bids. Bids have been received and staff is recommending award of a construction contract to GSE Construction Company, Inc., (GSE).

### DISCUSSION

On October 1, 2019, the Board of Directors approved the purchase of a new chlorine scrubber system for the RVWTP to replace the existing system. The existing chlorine scrubber system is a 'wet-type' system which utilizes caustic soda to neutralize chlorine. The new chlorine scrubber system is a 'dry-type' system which uses adsorbent media (porous pellets) to treat accidental chlorine gas releases before they are released into the environment.

The new chlorine scrubber system has been purchased and delivered from Pure Air Filtration, LLC. It is currently being stored at the RVWTP and is ready for installation. The construction work to remove the existing system and install the new chlorine scrubber system has been advertised for construction bids in accordance with the Agency's Purchasing Policy, with notices in *The Signal* on three different dates and on the Agency's website.

On October 15, 2020, four bids were received and opened. A summary of the bids is presented below:

Bidder	Bidder Location	Total Bid Price
GSE Construction Company, Inc.	Livermore, CA	\$ 214,300
Metro Builders & Engineers Group, Ltd.	Newport Beach, CA	\$ 278,497
Environmental Construction, Inc.	Woodland Hills, CA	\$ 287,790
Caliagua, Inc.	Anaheim, CA	\$ 497,366

The apparent lowest responsive bid is from GSE for a total of \$214,300. The engineer's estimate for the project is approximately \$300,000. GSE is a licensed Class A General

Engineering Contractor in California and is registered with the Department of Industrial Relations.

### CEQA DETERMINATION

The proposed actions today are to recommend approval of a Resolution for a Construction Contract with GSE for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project. The whole of the action also includes construction and operation of the project. The term "project" in CEQA refers to the whole of an action and to the underlying activity being approved, not to each governmental approval. (CEQA Guideline §15378(a), (c)–(d).) This definition ensures that the action reviewed under CEQA is not the approval itself but the development or other activities that will result from the approval.

Based on the final design, and because the project construction is a minor alteration limited to construction within the Agency's existing facility property, construction and operation of this project to be categorically exempt under the provisions of CEQA and the State CEQA Guidelines as described below:

- The project, aka the whole of the action, qualifies for an exemption under CEQA guidelines section 15301 Class 1 Minor Alterations to Existing Facilities because it is a minor alteration of an existing public facility and it concerns proposed new mechanical equipment involving no expansion of use, i.e. no additional extraction of water, beyond that existing at the time of the lead agency's determination.
- None of the exceptions listed in Section 15300.2 of the CEQA Guidelines would apply to the proposed action.

This project was previously evaluated for CEQA compliance in September 2019 and a Notice of Exemption was submitted to the County Clerk's of Los Angeles County and Ventura County on October 4, 2019.

On November 5, 2020, the Engineering and Operations Committee considered staff's recommendation to approve a resolution for a construction contract with GSE Construction, Company, Inc. for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project.

### **FINANCIAL CONSIDERATIONS**

The project is included in the SCV Water's FY 2020/21 Capital Improvement Budget for the RVWTP Chlorine Scrubber Replacement Project. As of September 30, 2020, the FY 2020/21 project expenses are \$1,540. The total estimated FY 2020/21 project expenses including construction, construction management/inspection, and engineering services during construction are anticipated to be approximately \$320,000. The expenses will be paid from the RVWTP Chlorine Scrubber budget of \$220,000 and from the Pipeline Relocations/Modifications budget of \$340,000, which have a combined FY 2020/21 budget amount of \$560,000.

### **RECOMMENDATION**

The Engineering and Operations Committee recommends that the Board of Directors approve the attached resolution awarding a construction contract to GSE Construction Co., in an amount not to exceed \$214,300 for the for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project.

ES

Attachments

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**RESOLUTION NO. SCV-XXX**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SANTA CLARITA VALLEY WATER AGENCY  
AWARDING A CONSTRUCTION CONTRACT TO  
GSE CONSTRUCTION COMPANY, INC., FOR THE RIO VISTA WATER TREATMENT  
PLANT CHLORINE SCRUBBER REPLACEMENT PROJECT**

**WHEREAS**, Santa Clarita Valley Water Agency (Agency) desires to take steps to increase the reliability of its existing water treatment system; and

**WHEREAS**, the Agency's Capital Improvement Program includes construction of the Rio Vista Water Treatment Plant (RVWTP) Chlorine Scrubber Replacement Project; and

**WHEREAS**, the Agency, subsequent to approval by the Board of Directors on October 1, 2019, acquired a new chlorine scrubber system; and

**WHEREAS**, all bid proposals submitted to the Agency pursuant to the Agency's construction contract documents for construction of the Rio Vista Water Treatment Plant (RVWTP) Chlorine Scrubber Replacement Project, as amended by Addenda, were received electronically on the Agency's website/PlanetBids on Thursday, October 15, 2020 by 2:00 pm., in full accordance with law and Agency's customary procedures; and

**WHEREAS**, the Board of Directors finds, after considering the opinion of staff, that the total bid of GSE Construction Company, Inc., in the amount of \$214,300.00, is the lowest responsible bid of four bids submitted, and that said bid substantially meets the requirements of said construction contract documents as amended by Addenda; and

**WHEREAS**, it is in the Agency's best interest that the Board of Directors, on behalf of the Agency, authorize its General Manager to accept the \$214,300.00 bid; and

**WHEREAS**, Agency has determined that the proposed action that has been previously addressed and the Notice of Exemption (NOE) was submitted to the County Clerk's of Los Angeles County and Ventura County on October 4, 2019 is categorically exempt under provisions of CEQA and the State CEQA Guidelines.

**NOW, THEREFORE, BE IT RESOLVED** that the Agency's Board of Directors does authorize its General Manager to accept said low bid and does therefore authorize the Agency's General Manager or its Chief Engineer to issue a Notice of Award to GSE Construction Company, Inc., hereby found to be the "lowest responsible bidder" for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project for the total sum of \$214,300.00.

**RESOLVED FURTHER** that the Agency's General Manager or its President and Secretary are thereupon authorized, upon receipt of appropriate payment and performance bonds, appropriate certificates of insurance and an executed Contract Agreement from GSE Construction

Company, Inc., all of which must be approved by General Counsel, to execute the said Contract Agreement on behalf of the Agency.

**RESOLVED FURTHER** that the Agency's General Manager or its Chief Engineer are thereafter authorized to execute and forward to GSE Construction Company, Inc. an appropriate Notice to Proceed.



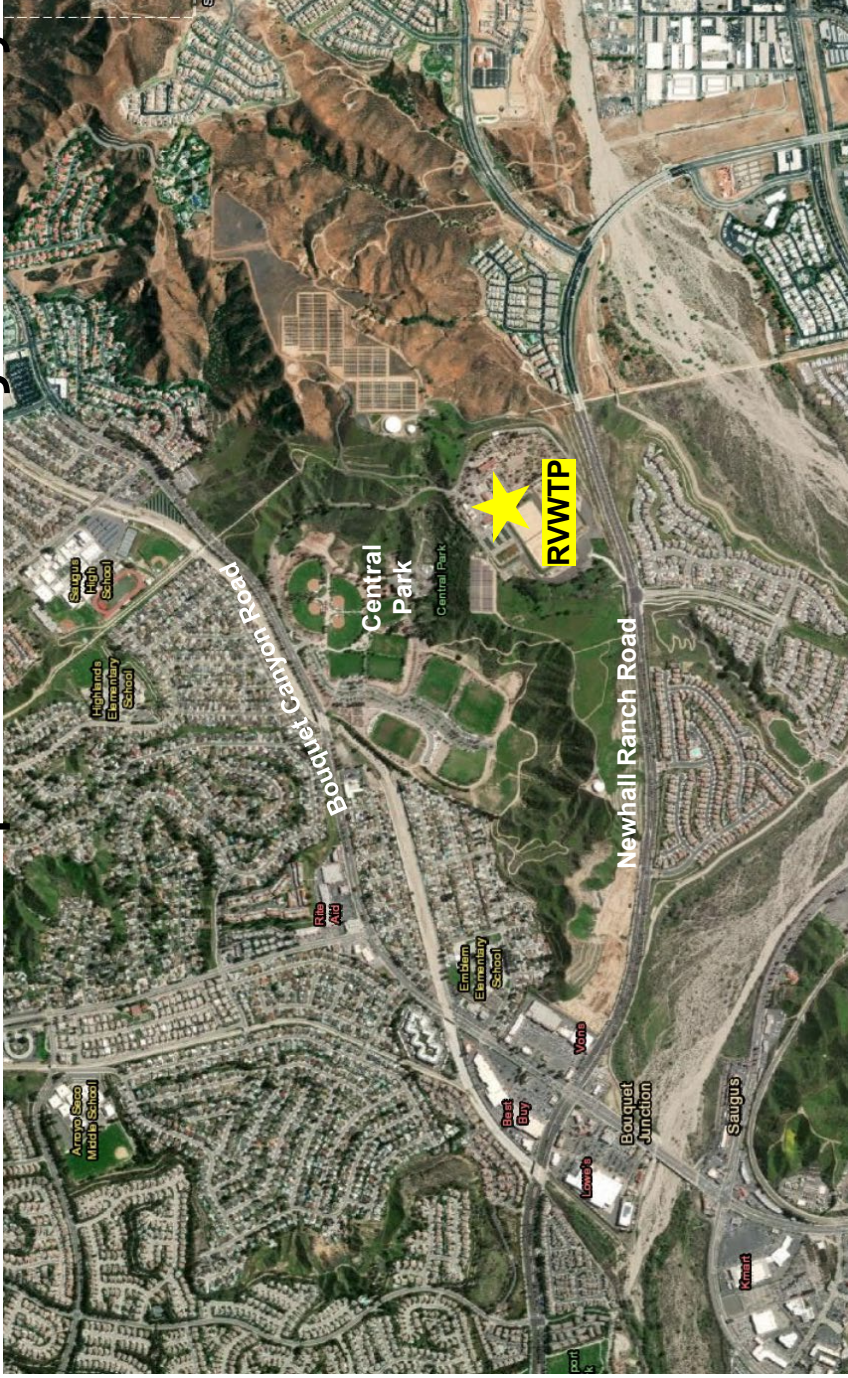


November 17, 2020

# Rio Vista Water Treatment Plant (RVWTP) Chlorine Scrubber Replacement Project

Board Meeting

# Rio Vista Water Treatment Plant (RVWTP) Chlorine Scrubber Replacement Project Vicinity Map



# RVWTP Chlorine Scrubber Replacement Project Location Map



# RVWTP Chlorine Scrubber Replacement Project

## Completed Items

- October 1, 2019: Board of Directors approved the new chlorine scrubber equipment purchase.
- Chlorine Scrubber has been purchased and delivered to the RVWTP.



Existing Equipment



Exhaust with Mounting Flange and Flexible Connector Materials

New Equipment

# RVWTP Chlorine Scrubber Replacement Project Construction Bids

- Staff advertised project on PlanetBids from September 17, 2020 thru October 15, 2020
- Project was advertised in the Signal Newspaper
- Bids were opened on October 15, 2020
- Received four (4) Construction Bids:

Bidder	Bidder Office Location	Total Bid Price
GSE Construction Company, Inc.	Livermore, CA	\$214,300
Metro Builders & Engineers Group, Ltd.	Newport Beach, CA	\$278,497
Environmental Construction Inc.	Woodland Hills , CA	\$287,790
Caliagua, Inc.	Anaheim, CA	\$497,366

\*Engineer's Estimate approximately \$300,000



## RVWTP Chlorine Scrubber Replacement Project Anticipated Project Schedule

- November 5, 2020: Engineering & Operations Committee
- November 17, 2020: Board Meeting
- December 7, 2020: Issue the Notice To Proceed
- December 7, 2020 – April 5, 2021: Construction Period (120 calendar days)



## RVWTP Chlorine Scrubber Replacement Project Recommendation

The Engineering and Operations Committee recommends that the Board of Directors:

- Adopt the resolution awarding a construction contract to GSE Construction Company, Inc., in an amount not to exceed \$214,300 for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project.



YOURSCVWATER.COM

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## BOARD MEMORANDUM

**DATE:** November 9, 2020

**TO:** Board of Directors

**FROM:** Mike Alvord   
Director of Operations & Maintenance

**SUBJECT:** Approve a Resolution Awarding a Contract for Newhall Tank No. 2 Interior Recoat and Repair

---

### SUMMARY

Staff recommends that internal roof support rafters inside Newhall Tank No. 2 be repaired, its interior coating be removed and replaced, and spot repairs be done to its exterior paint to maintain the integrity and service life of the asset, based on condition assessments and inspections by CSI Services, Inc.(CSI) and Cannon Corp (Cannon). The tank was erected in 1989 and the original coating is reaching the end of its useful life. Additionally, internal roof support rafters show signs of movement that could negatively impact the structural integrity of the tank. Bids from five (5) qualified contractors were received and staff recommends awarding the contract to Simpson Sandblasting & Special Coatings, Inc. as the lowest responsible bidder in the amount of \$260,637. The Engineer's Estimate for the structural work was \$26,000 and \$211,000 for the relining for a total of \$237,000. This Project is included in the FY 2020-21 budget.

### DISCUSSION

Newhall Tank No. 2 is one of ten (10) reservoirs in the Newhall Division distribution system, and the only reservoir in the Newhall Zone 2. Erected in 1989, it is an 80 ft x 40 ft tank with a capacity of 1.42 MG. As early as 2006, it was reported that the roof support structure had experienced movement, presumably from the 1994 Northridge Earthquake. As noted in CSI's Maintenance Inspection Report dated July 26, 2019, "It is believed that the movement of the beams may be a result of sloshing and/or uplift from the energy of the quake." Also noted is "This energy may have caused the center column to move, which could have resulted in the deformation of the connected rafters." Structural observation and analyses by Cannon concludes that the roof plates are not attached to the roof beams, and that structural repairs should be made to correct these deficiencies. In addition, the 2019 Inspection Report notes the lower internal ring is coal-tar coated and the epoxy coated areas are showing signs of wear and corrosion. Complete interior recoating and spot exterior recoating is recommended.

Staff contracted with CSI for the coating technical specifications, and Cannon to design the rafter repairs. Staff then issued a Request for Bids by posting to PlanetBids on September 16, 2020. Nine (9) bids were received on October 7, 2020. However, four (4) bids were not considered because they did not meet the minimum requirements of the request for proposal. Staff reviewed the bids and recommends awarding the contract to Simpson Sandblasting & Special Coatings, Inc. as the lowest responsible bidder.

Bid results are as follows:

<b>Contractor</b>	<b>Bid Amount</b>
Simpson Sandblasting & Special Coatings, Inc.	\$260,637
Paso Robles Tank	\$284,580
Harbor Coating and Restoration	\$319,730
Advanced Industrial Services	\$339,900
Crosno Construction	\$342,030

On November 5, 2020, the Engineering and Operations Committee considered staff's recommendation to approve a resolution awarding a contract Simpson Sandblasting & Special Coatings, Inc., for Newhall Tank No. 2 Interior Recoat and Repair.

### **FINANCIAL CONSIDERATIONS**

Funding for the Newhall Tank No. 2 Interior Recoat & Repair project is provided through the CIP budget and is included in the FY 2020-21 Budget.

### **RECOMMENDATION**

The Engineering and Operations Committee recommend that the Board of Directors adopt the attached resolution awarding a contract for Newhall Tank No. 2 Interior Recoat & Repair to Simpson Sandblasting & Special Coatings, Inc. for \$261,000.

Attachments

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**RESOLUTION NO. SCV-XXX**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SANTA CLARITA VALLEY WATER AGENCY  
AWARDING A CONTRACT TO SIMPSON SANDBLASTING & SPECIAL  
COATINGS, INC. FOR NEWHALL TANK NO. 2 INTERIOR RECOAT AND REPAIR  
IN THE AMOUNT OF \$261,000**

**WHEREAS**, all bid proposals submitted to the Agency pursuant to the Agency's specifications for the interior recoat and repair of the Newhall Tank No. 2 were received at the Agency's offices on Wednesday, October 7, 2020 at 2:00 p.m., in full accordance with the law and the Agency's customary procedures; and

**WHEREAS**, the Board of Directors finds, after considering the opinion of staff, that the total bid of Simpson Sandblasting & Special Coatings, Inc. in the amount of \$261,000 is the lowest responsible bid of nine bids submitted, and that said bid substantially meets the requirements of said construction contract documents; and

**WHEREAS**, it is in the Agency's best interest that the Board of Directors, on behalf of the Agency, authorize its General Manager to accept the \$261,000 bid.

**NOW, THEREFORE, BE IT RESOLVED** that the Agency's Board of Directors does authorize its General Manager to accept said low bid and does therefore authorize the Agency's General Manager or its Chief Operating Officer to issue a Notice of Award to Simpson Sandblasting & Special Coatings, Inc., hereby found to be the "lowest responsible bidder" for the interior recoat and repair of the Newhall Tank No. 2 for the total sum of \$261,000.

**RESOLVED FURTHER** that the Agency's General Manager or its President and Secretary are thereupon authorized, upon receipt of appropriate payment and performance bonds, appropriate certificates of insurance and an executed Contract Agreement from Simpson Sandblasting & Special Coatings, Inc., all of which must be approved by General Counsel, to execute the said Contract Agreement on behalf of the Agency.

**RESOLVED FURTHER** that the Agency's General Manager or Chief Operating Officer are thereafter authorized to execute and forward to Simpson Sandblasting & Special Coatings, Inc. an appropriate Notice to Proceed.

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# SCV Water

**Newhall Tank 2 Recoat and Repair  
Regular Board Meeting  
November 17, 2020**

# SCV Water Storage Tank Information

- 98 storage tanks
- Combined distribution storage of more than 160 MG
- Periodic inspections - weekly
- Inspection and cleaning - every 3 - 5 years (internal and external)



# Steel Storage Tank Coatings

- Epoxy coatings are designed to protect the integrity of steel tanks.
- Exterior and interior coatings are designed to last between 20 - 30 years.
- AWWA M42 recommends inspections every 3 - 5 years



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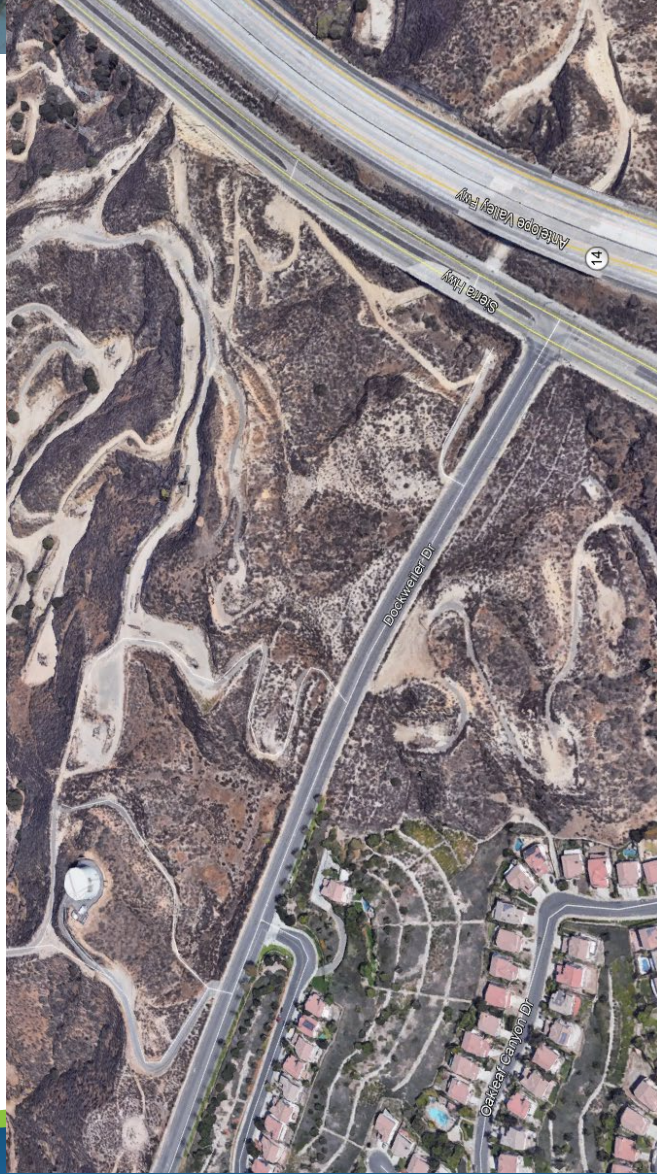
# Newhall Tank 2 Overview

- Constructed in 1989
- Condition assessment by CSI Services, Inc.
  - 2006 Dive Assessment
    - Coating in good condition (lower ring coal-tar)
    - Internal rafters fair condition (some movement)
  - 2019 Dive Assessment
    - Recoating recommended
    - Internal rafters need repair
    - Internal support column needs repair
- Structural assessment by Cannon
  - Rafter repair design





# Newhall Tank 2



# Bid Results

Contractors	Bid Amount
Simpson Sandblasting & Special Coatings, Inc.	\$260,637
Paso Robles Tank, Inc.	\$284,580
Harbor Coating and Restoration	\$319,730
Advanced Industrial Services, Inc.	\$339,900
Crosno Construction	\$342,030

- Lowest Responsible Bid is \$260,637 by Simpson Sandblasting.
- Project Funds were approved (\$500,000) in FY 2020/2021 Budget
- Three bids were rejected for not complying with RFP requirements



# Recommendations

- The Engineering & Operations Committee recommend that the Board of Directors award the contract and staff to execute an agreement to recoat the interior, spot coat the exterior, and repair interior rafters/support column of Newhall Tank 2 to Simpson Sandblasting & Special Coatings, Inc. in the amount of \$261,000



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## BOARD MEMORANDUM

**DATE:** November 4, 2020

**TO:** Board of Directors

**FROM:** Dirk Marks *DMM*  
Director of Water Resources

**SUBJECT:** Approve a Resolution Adopting CEQA Findings for State Water Project Water Management Tools and Authorizing the General Manager to Execute a Contract Amendment for the State Water Project Water Management Tools

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### SUMMARY/BACKGROUND

The proposed amendment to SCV Water's SWP Contract would provide greater opportunities to proactively manage its SWP contract to increase the effective water supply reliability and affordability of its SWP water supplies.

SCV Water has a long-term water supply contract (SWP Contract) with the State of California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water. Under the existing SWP Contract, water transfers are limited to very specific circumstance, infrequently used. In addition, while the existing SWP contract allows for bona fide exchanges of water, it lacks specificity regarding the parameters of such exchanges. Consequently, DWR considers exchanges on a case by case application, which provides less certainty for planning purposes, but has generally restricted exchanges to a maximum of 2:1.

Given changes in hydrology and further constraints placed on DWR's operation of the SWP and to provide flexibility in the future, the public water agencies (PWAs) holding long-term SWP water supply contracts and DWR conducted a series of public negotiations 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. In June 2018, PWAs and DWR reached an Agreement in Principle (AIP), which included specific principles to accomplish these goals. These principles included provisions clarifying existing practices for exchanges, providing new flexibility for single and multi-year non-permanent water transfers, allowing PWAs to set terms of compensation for transfers and exchanges, providing for the limited transfer of carryover and Article 21 water, and adding provisions to ensure transparency, among some others. In October 2018, a Draft Environmental Impact Report (DEIR) was circulated for the proposed project.

In addition, the AIP at the time included certain cost allocation sections for the California WaterFix project (WaterFix). In early 2019, the Governor decided not to move forward with WaterFix and DWR rescinded its approvals of the project. After this shift, the PWAs and DWR held a public negotiation and agreed to remove the WaterFix cost allocation sections from AIP, but to keep all of the water management provisions in the AIP. The AIP was finalized on May 20, 2019. DWR decided to amend and recirculate the DEIR. In February 2020, DWR published

the Partially Recirculated DEIR for the State Water Project Supply Contract Amendments for Water Management (Project) and in August 2020, DWR certified the Final EIR for the Project.

The proposed amendments to the SWP Contract for consideration by the Board of Directors are based on the AIP, which has been converted into contract amendment language developed by PWAs and DWR attorneys. If approved by the Board, the proposed amendment would be effective when 24 of the SWP PWAs execute the amendment. The proposed contract amendment language is attached to this report (Attachment 1).

## **DISCUSSION**

### Background

Existing article 56(d) provides the only mechanism for non-permanent transfers of SWP water between PWAs. This mechanism is called the Turnback Pool. As indicated above, it allows transfers in a limited and specific manner and it is rarely utilized. In addition, Section 56(f) allows PWAs to enter into bona fide exchanges of water with other PWAs, but it lacks specificity regarding the parameters. As a result, DWR has applied Section 56(f) on a case by case basis, which has provided less certainty for PWAs planning purposes.

Consequently, DWR and the PWAs worked together to find solutions to develop water supply management practices to enhance management flexibility for SWP water supplies in a changing environment. The proposed contract amendment for the Board's consideration supplements and clarifies terms of the SWP water supply contract related to water transfers and exchanges within the SWP service area to improve water management capabilities and options. The proposed amendment does not increase SWP diversions or change SWP operations.

### Transfers

Specifically, the proposed contract amendment does the following, among other things, regarding transfers:

- Removes the Turnback Pool language from the contract.
- Creates new flexibility for non-permanent transfers, including allowing PWAs to:
  - Transfer water to other PWAs outside their service area
  - Determine the duration (either single or multi-year) and terms of compensation for transfers
  - Execute Transfer Packages (2 or more transfer agreements between the same PWAs)
  - Transfer water stored outside their service territory directly to other PWAs.
- Requires certain conditions be met to avoid harm to the SWP and other PWAs.
- Requires DWR approval based on satisfaction of such conditions.
- Permits PWAs to transfer Article 21 water with DWR approval after a demonstration of special need.
- Allows PWAs to transfer or exchange up to 50% of their carryover water.
- Adds provisions to ensure transparency.
- Provides for a dispute resolution process for non-participating PWAs who feel they may be adversely impacted by a transfer.

## Exchanges

The proposed contract amendment does the following, among other things, with regards to exchanges of water:

- Establishes clear criteria for exchanges to provide more clarity.
- Sets exchange ratios based on Annual Table A water allocation percentages, up to 5 to 1.
- Sets the maximum cost compensation for an exchange.
- Allows exchanges to be carried out over a 10 year period (meaning water could be returned over 10 years).
- Permits the exchange or transfer of up to 50% of PWAs carryover water.
- Requires certain conditions to be met to avoid harm to the SWP and other PWAs.
- Adds provisions to ensure transparency.
- Provides for a dispute resolution process for non-participating PWAs who feel they may be adversely impacted by an exchange.

In addition to the above, the proposed amendment permits PWAs to participate in multiple transfers or exchanges each year, as well as to be both buyers and sellers in the same year. PWAs may also petition DWR for exceptions to the some of the above criteria upon a demonstration of special needs or circumstances. Overall, the proposed amendments provide improved flexibility for PWAs to utilize water transfers and exchanges to better manage their SWP water supplies in a dynamic environment.

## Proposed Amendment Implementation Schedule

The proposed contract amendment to SCV Water's long-term water supply contract with DWR is a uniform amendment that all PWAs are considering. Pursuant to the terms of the proposed amendment, it will go into effect on the last day of the month after 24 PWAs have executed the contract amendment. If 24 or more PWAs have not executed the amendment by February 28, 2021, DWR may decide in consultation with those PWAs who have executed it whether to allow the amendment to take effect.

## CEQA Determination

On February 28, 2020, DWR published the 2020 Partially Recirculated DEIR for the Project. The Partially Recirculated DEIR was circulated for 94 days through June 1, 2020. On August 25, 2018, DWR certified the Final EIR for the Project. The Final EIR determined that the Project would 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. On August 28, 2020, DWR filed a Notice of Determination for the Project. The Final EIR and CEQA Findings of Fact and Statement of Overriding Considerations comply with CEQA. DWR's Notice of Determination, Partially Recirculated DEIR, and Final EIR can be found on the official DWR website at: <https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>. DWR's CEQA Findings and Statement of Overriding Considerations is attached to this staff report (Attachment 2).

Before approving the proposed contract amendment, SCV Water, as a Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information in the certified Final EIR for the Project. In addition, because the certified Final EIR identified significant and unavoidable impacts to the environment, SCV Water must adopt CEQA Findings of Fact and Statement of Overriding Considerations.

On October 14, 2020, the Water Resources and Watershed Committee considered staff's recommendation to approve a resolution adopting CEQA findings for State Water Project Water Management Tools and authorizing the General Manager to execute a contract amendment for the State Water Project Water Management Tools.

### **FINANCIAL CONSIDERATIONS**

There are no direct financial impacts of approving the proposed contract amendment. Staff has concluded that the provisions contained in the contract will benefit the Agency by providing the opportunity to sell unused SWP supplies during years when such supplies are in excess of what is needed to be used within SCV Water's service area or stored in water banking programs. Further, greater flexibility to exchange water in the near-term may prove to be more cost effective than other potential reliability investments.

### **RECOMMENDATION**

The Water Resource and Watershed Committee recommends the Board of Directors adopt the attached resolution (Attachment 3) to (1) authorize the General Manager to execute the proposed amendment to Santa Clarita Valley Water Agency's long-term water supply contract with DWR to provide for enhanced water management tools and (2) make responsible agency findings pursuant to the California Environmental Quality Act for the Final Environmental Impact Report for the State Water Project Supply Contract Amendments for Water Management, and adopt CEQA Findings and Statement of Overriding Considerations for the Project.

Attachments

MBS



**ATTACHMENT 1**

STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 22 (THE WATER MANAGEMENT AMENDMENT)  
TO WATER SUPPLY CONTRACT  
BETWEEN  
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AND  
SANTA CLARITA VALLEY WATER AGENCY

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 Clarita Valley Water Agency, herein referred to as the "Agency."

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## TABLE OF CONTENTS

<b>Recitals .....</b>	<b>3</b>
<b>Amended Contract Text.....</b>	<b>5</b>
Article 1: Definitions .....	5
Article 21: Interruptible Water .....	5
Article 56: Use and Storage of Project Water Outside of Service Area and Article 56 Carryover Water .....	7
<b>New Contract Articles .....</b>	<b>17</b>
Article 57: Provisions Applicable to Both Transfers and Exchanges of Water .....	17
<b>Water Management Amendment Implementing and Administrative Provisions ...</b>	<b>20</b>
Effective Date of Water Management Amendment.....	20
Administration of Contracts Without Water Management Amendment.....	21
Other Contract Provisions.....	21
DocuSign .....	21

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## RECITALS

- A. The State and the Agency entered into and subsequently amended a water supply contract (the “contract”), dated April 30, 1963, providing that the State shall supply certain quantities of water to the Agency and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and
- B. The State and the Agency, 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 Agency, 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 Agency is also demonstrating its commitment to expand its water supply portfolio by investing in local water supplies; and
- D. The State and the Agency, 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 Agency 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 Agency, 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 Agency 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 Agency 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 Agency 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 Agency'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 Agency 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 Agency's approved deliveries of Annual Table A Amount or the Agency's allocation of water for the next year. Deliveries of interruptible water in excess of the Agency'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 Agency 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 Agency'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 Agency 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 Agency 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 Agency. 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 Agency 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 Agency within its service area and to the Agency transferring or exchanging Project Water outside its service area consistent with agreements executed under this contract.

**(b) Groundwater Storage Programs**

The Agency shall cooperate with other contractors in the development and establishment of groundwater storage programs. The Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the Agency's service area each year shall be limited to the lesser of the percent of the Agency'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 Agency can store, the final water supply allocation percentage shown in column 1 of the table below shall apply to the Agency. 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 Agency'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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency may seek an exception to the requirements of subdivisions (4)(i), (ii), and (iii) above. The Agency 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 Agency'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 Agency 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 Agency 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 Agency 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 Agency's service area. In addition, the Agency 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 Agency'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 Agency 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 Agency 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 Agency exchanging Project Water outside its service area consistent with this Article. Nothing in this Article shall prevent the Agency from entering into bona fide exchanges of Project Water for use outside the Agency'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 Agency's service area. Also, nothing in this Article shall prevent the Agency from continuing those exchange or sale arrangements entered into prior to September 1, 1995. Nothing in this Article shall prevent the Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency has determined that there is a compelling need to proceed with the transfer or exchange.

- (2) When the Agency 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 Agency 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 Agency 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 Agency has complied with all applicable laws.
  - (2) The Agency has provided any required notices to public agencies and the public.
  - (3) The Agency has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
  - (4) The Agency is informed and believes that the transfer or exchange will not harm other contractors.
  - (5) The Agency is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
  - (6) The Agency 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 Agency 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 Agency 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 CLARITA VALLEY WATER  
AGENCY

\_\_\_\_\_  
General Counsel  
Santa Clarita Valley Water Agency

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Date



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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)<sup>1</sup>. 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

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<sup>1</sup> 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.<sup>2</sup> 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 .)

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<sup>2</sup> 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 authority<sup>3</sup> 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

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<sup>3</sup> 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 PWA's 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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**ATTACHMENT 3**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARITA VALLEY WATER AGENCY (1) AUTHORIZING AMENDMENTS TO THE SANTA CLARITA VALLEY WATER AGENCY'S LONG TERM WATER SUPPLY CONTRACT WITH THE DEPARTMENT OF WATER RESOURCES TO SUPPLEMENT AND CLARIFY WATER MANAGEMENT TOOLS REGARDING TRANSFERS AND EXCHANGES OF SWP WATER; AND (2) MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO CEQA FOR THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE STATE WATER PROJECT SUPPLY CONTRACT AMENDMENTS FOR WATER MANAGEMENT, AND ADOPTING CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS**

**WHEREAS**, the Santa Clarita Valley Water Agency has a long term water supply contract (SWP Contract) with the State of California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water; 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**, the Santa Clarita Valley Water Agency, along with other public water agencies with SWP Contracts (PWAs) 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 AIP, but to retain the water management provisions, and the AIP was finalized on May 20, 2019; and

**WHEREAS**, the proposed amendment to the Santa Clarita Valley Water Agency SWP Contract for consideration by the Board articulates in contract language the principles of the final AIP; and

**WHEREAS**, DWR is the lead agency for the water management amendments, 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); and

**WHEREAS**, on 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 would 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 as Exhibit "A"); and

**WHEREAS**, the Santa Clarita Valley Water Agency and DWR propose to amend the Santa Clarita Valley Water Agency SWP Contract by approving the amendment attached as Exhibit "B" to this Resolution (Amendment), the environmental effects of which were studied in the FEIR; and

**WHEREAS**, the Santa Clarita Valley Water Agency is a responsible agency and has more limited approval and implementing authority over the Amendment than does DWR; and

**WHEREAS**, the Board of Directors of the Santa Clarita Valley Water Agency, at its scheduled public meeting on November 4, 2020, 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 the Amendment 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 Santa Clarita Valley Water Agency has endeavored in good faith to set forth the basis for its decision on the Amendment;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Santa Clarita Valley Water Agency as follows:

1. The above recitals are true and correct and are incorporated herein by reference as an operative portion of this Resolution.
2. Based on the above findings, the Board hereby approves the Amendment and authorizes the General Manger to execute it on behalf of the Santa Clarita Valley Water Agency, which is incorporated herein and attached hereto as Exhibit "B".

3. The FEIR prepared for the Project, which can be found at <https://water.ca.gov/News/Public-Notices/2020/August/SWP-Water-Supply-Contract-EIR>, is hereby received by the Board and incorporated herein by this reference
4. Pursuant to State CEQA Guidelines section 15096 and 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, and the Board incorporates those items herein by reference. As to those resources within the Santa Clarita Valley Water Agency 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 the Amendment's impacts.
5. 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, attached hereto as Exhibit "A" and incorporated herein by this reference. The Board further finds that 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, for the reasons explained in the FEIR.
6. The Board concurs with the Statement of Overriding Considerations adopted by DWR and finds that the benefits of the Amendment outweigh the adverse environmental impacts not reduced to below a level of significance.
7. 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.
8. The documents and materials that constitute the record of proceedings for this Resolution are located at Santa Clarita Valley Water Agency, 27234 Bouquet Canyon Road, Santa Clarita, CA 91350, Attn: Board Secretary.

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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)<sup>1</sup>. 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

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<sup>1</sup> 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.<sup>2</sup> 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 .)

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<sup>2</sup> 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 authority<sup>3</sup> 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

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<sup>3</sup> 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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**EXHIBIT B**

STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. «Amendment\_No\_WMT» (THE WATER MANAGEMENT  
AMENDMENT)  
TO WATER SUPPLY CONTRACT  
BETWEEN  
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AND  
«CONTRACTOR\_up»

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 «Contractor\_lc», herein referred to as the “«DistrictAgency1».”

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**TABLE OF CONTENTS**

**RECITALS ..... 3**

**AMENDED CONTRACT TEXT ..... 5**

**ARTICLE 1 IS AMENDED TO ADD THE FOLLOWING DEFINITIONS ..... 5**

1. Definitions ..... 5

**ARTICLES 21 and 56 ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING TEXT: ..... 5**

21. Interruptible Water Service ..... 5

56. Use, Storage-of Project Water Outside of Service Area and Article 56 Carryover Water ..... 7

**NEW CONTRACT ARTICLES ..... 17**

**ARTICLE 57 IS ADDED TO THE CONTRACT AS A NEW ARTICLE AS FOLLOWS: ..... 17**

57. Provisions Applicable to Both Transfers and Exchanges of Project Water.. 17

**WATER MANAGEMENT AMENDMENT IMPLEMENTING AND ADMINISTRATIVE PROVISIONS ..... 20**

1. EFFECTIVE DATE OF WATER MANAGEMENT AMENDMENT ..... 20

2. ADMINISTRATION OF CONTRACTS WITHOUT WATER MANAGEMENT AMENDMENT ..... 21

3. OTHER CONTRACT PROVISIONS..... 21

4. DocuSign..... 21

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## RECITALS

- A. The State and the «DistrictAgency1» entered into and subsequently amended a water supply contract (the “contract”), dated «WSC\_Execution\_Date», providing that the State shall supply certain quantities of water to the «DistrictAgency1» and providing that the «DistrictAgency1» 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 «DistrictAgency1», 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 «DistrictAgency1», 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 «DistrictAgency1» is also demonstrating its commitment to expand its water supply portfolio by investing in local water supplies; and
- D. The State and the «DistrictAgency1», 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 «DistrictAgency1» 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 «DistrictAgency1», 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» desire to implement continued service through the contract and under the terms and conditions of this “SWP Water Supply Contract Amendment for Water Management”;

DRAFT

**NOW, THEREFORE, IT IS MUTUALLY AGREED** that the following changes and additions are hereby made to the «DistrictAgency1 »’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 «DistrictAgency1 »’s approved deliveries of Annual Table A Amount or the «DistrictAgency1 »’s allocation of water for the next year. Deliveries of interruptible water in excess of the «DistrictAgency1 »’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 «DistrictAgency1 » 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 «DistrictAgency1»'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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1». 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, 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 «DistrictAgency1» 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 «DistrictAgency1» within its service area and to the «DistrictAgency1» transferring or exchanging Project Water outside its service area consistent with agreements executed under this contract.

**(b) Groundwater Storage Programs**

The «DistrictAgency1» shall cooperate with other contractors in the development and establishment of groundwater storage programs. The «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the «DistrictAgency1»'s service area each year shall be limited to the lesser of the percent of the «DistrictAgency1»'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 «DistrictAgency1» can store, the final water supply allocation percentage shown in column 1 of the table below shall apply to the «DistrictAgency1». 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 «DistrictAgency1»'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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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

«DistrictAgency1» 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 «DistrictAgency1» may seek an exception to the requirements of subdivisions (4)(i), (ii), and (iii) above. The «DistrictAgency1» 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 a «DistrictAgency1»'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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1»'s service area. In addition, the «DistrictAgency1» 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 «DistrictAgency1»'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) A «DistrictAgency1» electing to store Project Water in a nonproject facility within the service area of another contractor 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 «DistrictAgency1» 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 «DistrictAgency1» exchanging Project Water outside its service area consistent with this Article. Nothing in this Article shall prevent the «DistrictAgency1» from entering into bona fide exchanges of Project Water for use outside the «DistrictAgency1»'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 «DistrictAgency1»'s service area. Also, nothing in this Article shall prevent the «DistrictAgency1» from continuing those exchange or sale arrangements entered into prior to September 1, 1995. Nothing in this Article shall prevent the «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» has determined that there is a compelling need to proceed with the transfer or exchange.

- (2) When the «DistrictAgency1» 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 «DistrictAgency1» 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 «DistrictAgency1» has complied with all applicable laws.
    - (2) The «DistrictAgency1» has provided any required notices to public agencies and the public.
    - (3) The «DistrictAgency1» has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
    - (4) The «DistrictAgency1» is informed and believes that the transfer or exchange will not harm other contractors.
    - (5) The «DistrictAgency1» is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
    - (6) The «DistrictAgency1» 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 «DistrictAgency1» 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.

- i. Any claim to a significant adverse impact may only be made after the «DistrictAgency1» has submitted the relevant terms pursuant to Article 57(g)(3) and before the State approves a transfer or an exchange agreement.
- ii. 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.
- iii. 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:

«CONTRACTOR\_up»

\_\_\_\_\_  
General Counsel  
«Contractor\_lc»

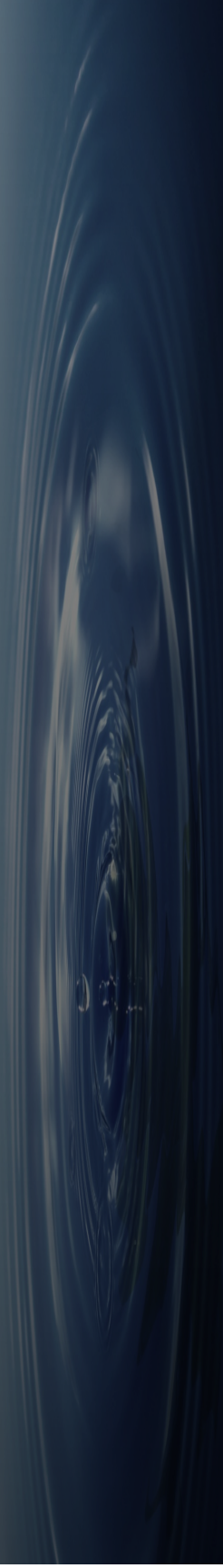
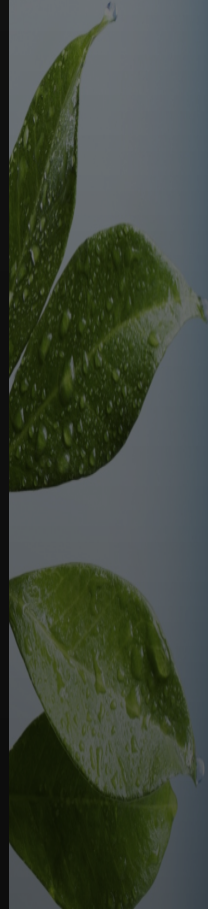
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General Manager

\_\_\_\_\_  
Date

DRY

# Water Management Tools Contract Amendment

Board of Directors  
November 17, 2020  
Item 7.1



## Value of Water Management Tools to Agency

- Agency Experience with Water Transfers of non-project water
  - BVRRB Water Transfers
    - 70,400 AF
    - \$17,892,500 Revenues
- Agency Experience with Water Exchanges
  - 2020 – 16,400 AF returned (AVEK, Rosedale, West Kern)

# Water Transfers

Table A

- Permanent
- Multi-year (generally not allowed)
- Single Year (Turn Back Pool)

Table A

- Permanent
- Multi-year authorized
- Single Year
- May Sell and Store water in the same year

Article 21

- Not allowed

Article 21

- Allowed for certain Ag contractors
- Others at DWR Director's discretion

Date

3

# Water Transfers (continued)

**Stored Water**

- Can't transfer water in a year when storing water
- Prohibits transfer of stored water

**Stored Water**

- May transfer and store water in same year (thereby facilitating multi-year transfers)
- May transfer or exchange stored water

**Carryover Water**

- Generally not allowed

**Carryover Water**

- Up to 50% may be transferred
- Delivery into contractor service area required

D

4



# Water Exchanges

Table A

- Maximum Ratios unclear, generally about 2:1
- Limits on monetary compensation unclear

Table A

- Maximum Ratio 5:1 on sliding scale related to Table A allocation at time of execution
- Limits on monetary compensation defined

Stored Water and Carryover Water

- Generally not allowed

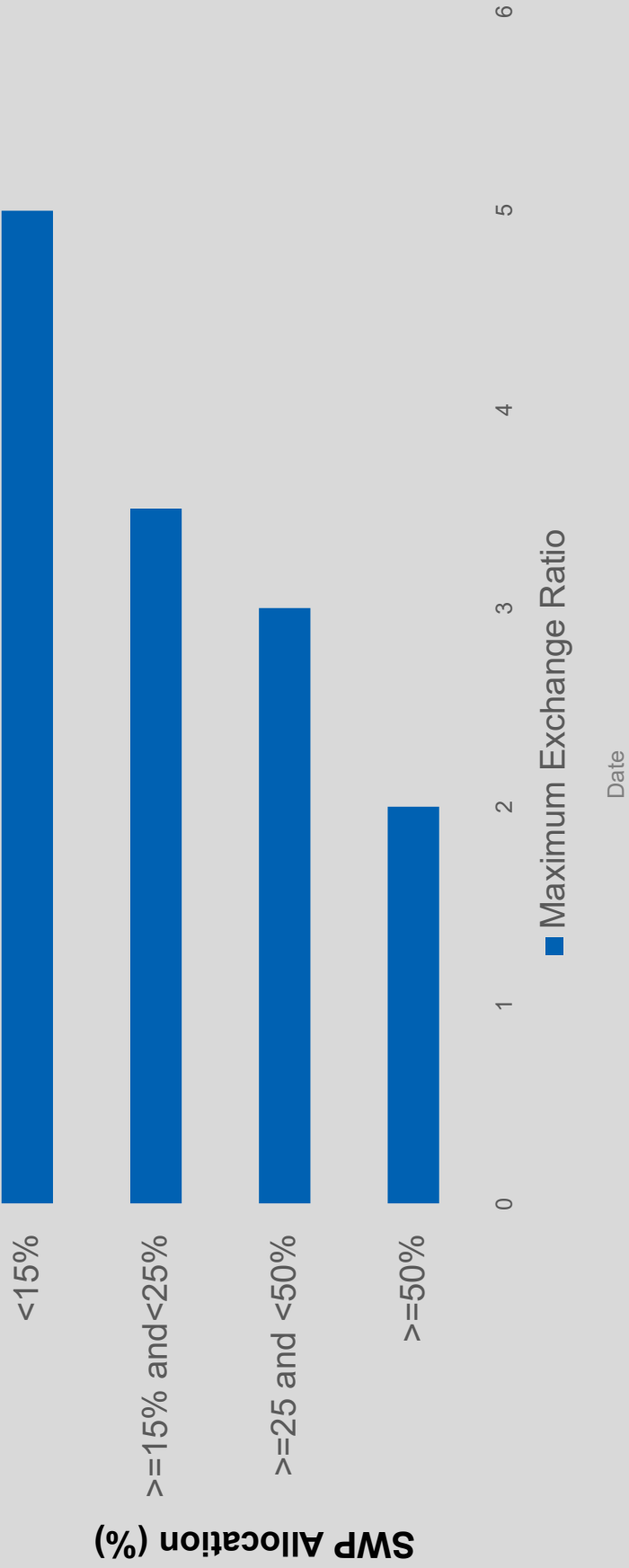
Stored Water and Carryover Water

- Up to half of carryover water may be exchanged

Date

5

# Maximum Exchange Ratio for SWP Allocations



Agency Name

# Water Exchanges

## Cost Compensation

$\$/AF =$   
Maximum  
Compensation

Sum of SWP Fixed Charges

Allocation of SWP

Date

7

## Implementation Language

- Effective when 24 or more contractors have executed the amendment
- If a court determines portions are invalid, State and at least 24 contractors must agree that remaining provisions are still in effect
- If 24 contractors have not signed by February 28, 2021, State may waive the 24-contractor requirement and implement
- If a contractor does not execute the amendment within 60 days of the amendment going into effect, then it will not take effect as to such contractor unless DWR subsequently agrees (in its discretion)

## Recommendation to Board

- Execution of the State Water Project Contract Amendment for enhanced Water Management Tools and Actions
- Make appropriate CEQA Findings and adopt CEQA Findings and Statement of Overriding Considerations.

Date

9

# Questions

Date

10



## BOARD MEMORANDUM

**DATE:** October 15, 2020

**TO:** Board of Directors

**FROM:** Dirk Marks *DM*  
Director of Water Resources

**SUBJECT:** Adopt a Resolution Authorizing the General Manager to Enter into a Cost Sharing Agreement for Planning Activities for a Delta Conveyance Facility and Authorize SCV Water's Membership in the Delta Conveyance Design and Construction Authority

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### SUMMARY

This item proposes authorizing SCV Water to enter into a cost sharing agreement with DWR to fund SCV Water's share of projected environmental review, planning, and design costs for the proposed Delta Conveyance Facility through 2024. SCV Water's cost share (net of prior funding credits) is estimated at up to \$8.96 million over that period. These costs would be funded from the Agency's State Water Project fund.

In addition, this item seeks authorization of SCV Water's membership in the Delta Conveyance Design and Construction Authority (DCA), a joint powers authority comprised of contracting agencies. The DCA is conducting the planning and design effort in conjunction with DWR. The DCA is governed by its participating contracting agency members.

On July 21, 2017, the Department of Water Resources (DWR) approved the project known as the California WaterFix Project (WaterFix), 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 Project water pumping facilities in the South Delta. SCV Water's predecessor (Castaic Lake Water Agency) Board of Directors previously approved participating in WaterFix and participating in a funding agreement to pay a share of preconstruction planning activities associated with the WaterFix project. The Agency joined the Delta Conveyance Finance Authority which was anticipated to issue financial instruments to facilitate design and construction of the project. In addition, in 2018 several SWP contractors entered into a Joint Powers Agreement forming the Delta Conveyance Design and Construction Joint Powers Authority (DCA). It was anticipated that other participating contractors could join the DCA in the future. At the time, the WaterFix project had approvals under California Environmental Quality Act (CEQA), federal Endangered Species Act (ESA), and California Endangered Species Act (CESA).

In the State of the State address in January 2019, Governor Newsom announced that he did not support WaterFix as configured but that he did support a one tunnel conveyance project. Consistent with this, in May 2019, the Department of Water Resources (DWR) rescinded its approvals of the WaterFix project and began planning for a single tunnel option. Shortly thereafter, DWR began public negotiations with the State Water Project (SWP) public water agencies (PWAs) to agree upon a framework, referred to as an Agreement in Principle (AIP), for

the amendment of SWP water supply contracts to allocate costs and benefits in the event that a potential single tunnel facility was ultimately approved. The AIP will be the basis for a future contract amendment only if a project is ultimately approved and only after necessary environmental review is completed.

In January 2020, DWR released a Notice of Preparation of an Environmental Impact Report (EIR) pursuant to CEQA for a proposed single tunnel project with 6,000 cfs of capacity referred to as the Delta Conveyance Project (DCP). DWR is currently conducting environmental review and is relying on the DCA for engineering work related to defining the Project's footprint.

After fifteen public negotiation sessions, DWR and PWAs have developed a draft AIP that contains provisions for the allocation of costs and benefits for a potential Delta Conveyance Project. As a Delta Conveyance Facility is authorized under the existing SWP Contract, the AIP allows PWAs an option to: 1) execute a contract to increase their participation above their Table A percentage (to the extent other contractors chose not to participate), or 2) opt out of the Delta Conveyance Project costs and benefits entirely. In the draft AIP, there is a table with the names of each SWP contractor and a space to fill in the participation percentage in order to complete the AIP and proceed with the planning and the environmental review efforts related to the Delta Conveyance Project. DWR is asking SWP contractors to fill in the allocation factor table with each PWA's participation percentage assuming a 6,000 cfs facility. Currently, the proposed project is a SWP project only, as the CVP has not indicated any interest in pursuing Delta Conveyance at this time. Again, the participation options are 100% of Table A, zero (opting out), or more than 100% of Table A. This participation percentage will first be used to inform the percentage of planning funding allocated to participating PWAs.

Included in the discussion below is a description of the proposed project, including the anticipated preliminary benefits, information about DWR's estimated schedule for the completion of environmental review and potential planning/permitting processes, and the preliminary cost estimate, as well as the draft AIP. Upon completing the environmental process, the AIP will be converted into contract amendment language and PWAs will consider an amendment to their contracts consistent with the AIP. At this time, each PWA's participation percentage in the Delta Conveyance Project will be decided. Attached to this staff report is the current version of the draft AIP (Attachment 1) with the blank allocation factor table, which must be completed. However, the current action before you is limited to approving a participation percentage for planning funding as described below.

DWR is asking that PWAs enter into a new funding agreement with DWR to advance their participation percentage of up to \$340.7 Million that is needed for the preliminary design, environmental planning, and other preconstruction activities to assist in the environmental process for the proposed project. These funds would support DWR's environmental planning work as well as DCA work that is needed to inform environmental planning. The funding agreements provide that PWAs would be reimbursed or receive a credit for the advanced funds upon the first sale of revenue bonds to pay for the Delta Conveyance Project. To the extent the Delta Conveyance Project does not proceed, the advanced funds would not be recovered. Attached to this staff report is a copy of a proposed funding agreement with DWR (Attachment 2).

Additionally, given the shift from a two tunnel WaterFix project to a potential single-tunnel Delta Conveyance Project and changes in the mix of agencies anticipating participation in the Delta Conveyance Project, the existing and prospective members of the DCA have been discussing amendments to the Joint Powers Agreement that created the DCA. The purpose is to better align representation with PWA participation.



Lastly, the proposed actions discussed herein do not constitute the approval by SCV Water of the Delta Conveyance 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” requiring environmental review under the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines 15378. Further, and even were the actions to be considered a CEQA “project,” these actions would be statutorily exempt from environmental review pursuant to CEQA Guidelines 15262 because the actions merely call for the funding and completion and feasibility and planning studies, including the completion of CEQA review itself.

## **DISCUSSION**

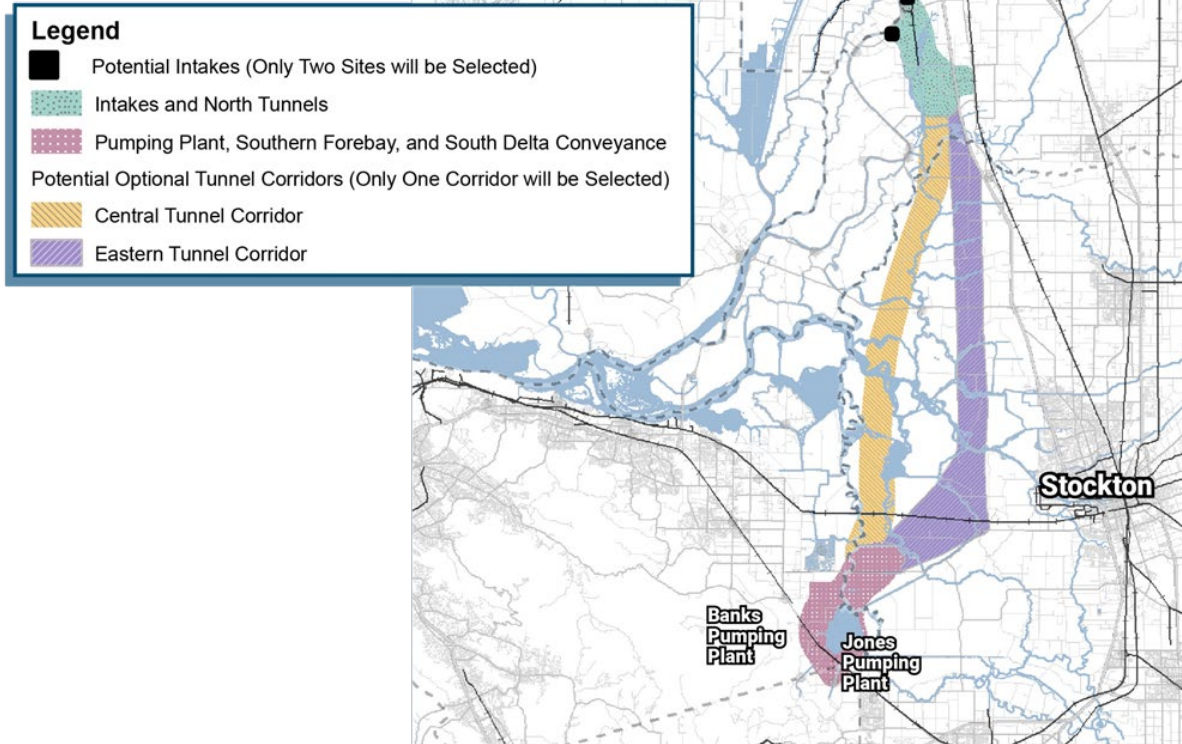
### Background on the Proposed Delta Conveyance Project

The existing SWP Delta water conveyance facilities, which include Clifton Court Forebay and Banks Pumping Plant in the south Delta, enable DWR to divert water and lift it into the California Aqueduct for south-of-Delta PWAs. As described in DWR’s Notice of Preparation, the proposed Delta Conveyance Project would construct and operate new conveyance facilities in the Delta that would add to and be operated as part of the existing SWP infrastructure. Specifically, 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 facilities would provide an alternate location to divert Delta water while maintaining DWR’s ability to divert water through existing facilities in the South Delta. Thus, this results in “dual conveyance” option because there would be two complimentary methods to divert and convey water. Dual conveyance does not mean DWR is seeking to expand their water rights, rather it refers to operating both the new points of diversion and the existing points of diversion in a manner that allows DWR flexibility to meet water quality standards and operating permit restrictions.

The proposed project is anticipated to be sized to convey up to 6,000 cfs of water from the Sacramento River to the SWP facilities in the south Delta, and would include: two intakes (3,000 cfs each), one underground tunnel (two routes are being considered), intermediate and southern forebays, a pumping plant, south Delta conveyance facilities, and other ancillary facilities. DWR is considering other alternatives as part of the environmental review process, with capacities ranging from 3,000 to 7,500 cfs and participation with and without the CVP.

The Delta Conveyance Project overarching objective is to protect the SWPs ability to continue to deliver water south of the Delta. Additional objectives articulated in the Notice of Preparation are to make the SWP more resilient to the impacts of climate change and extreme weather events, minimize the potential public health and safety impacts from reduced quantity and quality of water caused by earthquakes, and provide SWP operational flexibility to improve aquatic conditions and better manage risks of additional future regulatory constraints on project operations.

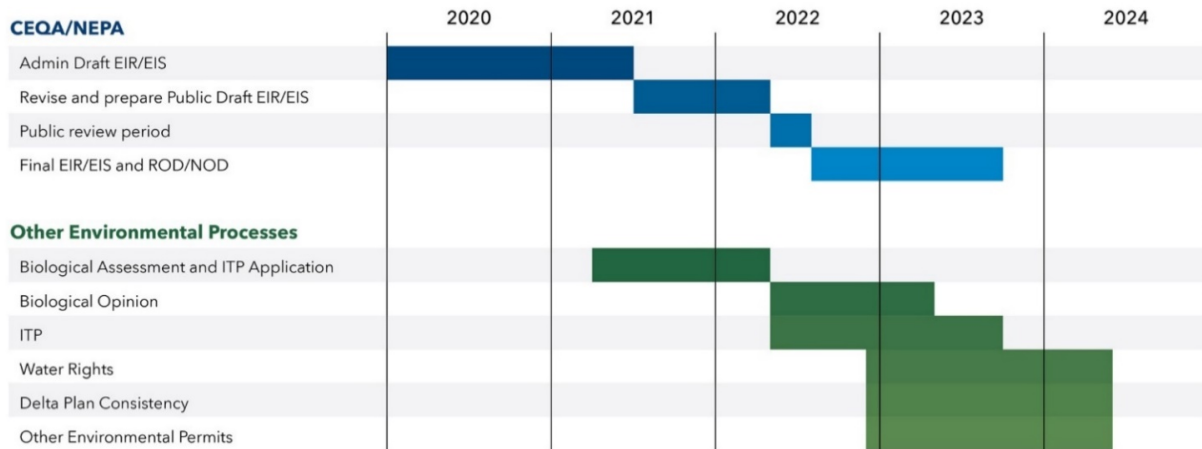
## Delta Conveyance Project Proposed New Facilities



### Status of Proposed Project and Schedule

DWR's preliminary schedule has a final EIR being completed in 2023 and other environmental review, permitting and regulatory processes being completed in 2024. Once the Delta Conveyance 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, construction could begin. At present, DWR is engaged in a CEQA scoping process and has solicited comments on potential impacts and alternatives. DWR is currently screening and refining project alternatives to come up with a reasonable range of project alternatives that avoid or substantially reduce potentially significant impacts.

## Delta Conveyance Project Schedule



### Preliminary Benefits of the Proposed Project

DWR is currently developing the Delta Conveyance Proposed Project. At this time DWR has not defined the project operations and has not completed regulatory processes that may impact project operations. The primary objective of the DCP, as stated in the Notice of Preparation is to restore and protect the ability to deliver SWP supplies to the south-of-Delta PWAs. The DCP is also expected to improve SWP resiliency under multiple future risks that can be low frequency-high impact such as seismic risks in the Delta, or sustained impacts including climate change and sea level rise or Delta regulations. It is not possible to know the exact future conditions under which the DCP would operate, but the conditions are likely a combination of many of the known and unknown risks.

The State Water Contractors, Inc. conducted a preliminary SWP water supply analysis under a range of existing and future scenarios, with and without the Delta Conveyance Project, to help assess the DCP’s ability to maintain or improve SWP reliability and resiliency. The selected range of future scenarios are intended to represent potential SWP operating conditions under future regulatory, climate change, sea level rise, and seismic risks. Each selected future scenario was simulated with and without the DCP. For this analysis the modeling assumed a 6,000 cfs diversion capacity and north Delta diversion operations criteria consistent with permitting from California WaterFix<sup>1</sup>. The specific Proposed Project, including operational criteria, that DWR will ultimately select may be different. DWR’s CalSim II model, representing the SWP facilities, regulations and operations, was used to develop coarse estimates of potential water supply changes with the DCP. As the Proposed Project is further defined and permitted, and this coarse modeling is further refined, the estimated water supply benefits with the DCP may change.

Figure 1 shows preliminary modeled average annual SWP exports under existing and future scenarios and corresponding increment resulting with the DCP. All future scenarios modeled indicate potentially lower SWP exports than the existing scenarios. DCP shows potential to alleviate reductions to SWP reliability under many plausible future risk scenarios. The Current

<sup>1</sup> This included operations required by the federal Biological Opinions, CESA Incidental Take Permit specifically for the proposed north Delta diversion intakes under California WaterFix.

Trends<sup>2</sup> future scenario, which provides a reasonable representation of conditions expected at the start of the DCP operations, indicates approximately 300 TAF reduction in average annual SWP exports without DCP, compared to existing scenarios. DCP, under same circumstances, potentially provides about 500 TAF increment on average, with the greatest increase in the wetter years. On average, about 60% of the increased SWP deliveries are Table A and 40% are Article 21. Furthermore, preliminary modeling results shown in Figure 1 also indicate that on average, the DCP is estimated to result in about 100 TAF to 1 MAF per year of increased SWP exports under potential greater Delta regulations scenarios in the future, about 700 TAF per year under seismic risks and long-term south Delta export disruption due to long-term Delta island flooding, and about 900 TAF per year under extreme sea level rise in the future, all when compared to the respective scenarios without the DCP.

Preliminary water supply estimates also indicate that the DCP would maintain existing water supply reliability under a broad range of future conditions that may occur while the DCP is operational<sup>3</sup>. Without the DCP, SWP exports are estimated to be reduced by about 300 TAF to 1,000 TAF on average per year under various future scenarios modeled due to regulatory changes, sea level rise in the Delta, and seismic risk, when compared to the existing conditions. When the DCP was included, estimated annual SWP exports in the future scenarios were similar to the existing export values under most scenarios as shown in Figure 2, demonstrating the improved resilience of the SWP with the DCP.

In addition to the water supply benefits estimated above, the DCP is expected to provide additional benefits including improved flow patterns in the south Delta for fisheries, operational flexibility to capture peak storm flows, water quality improvements for SWP deliveries, conveyance capacity for water transfers and potential carriage water savings.

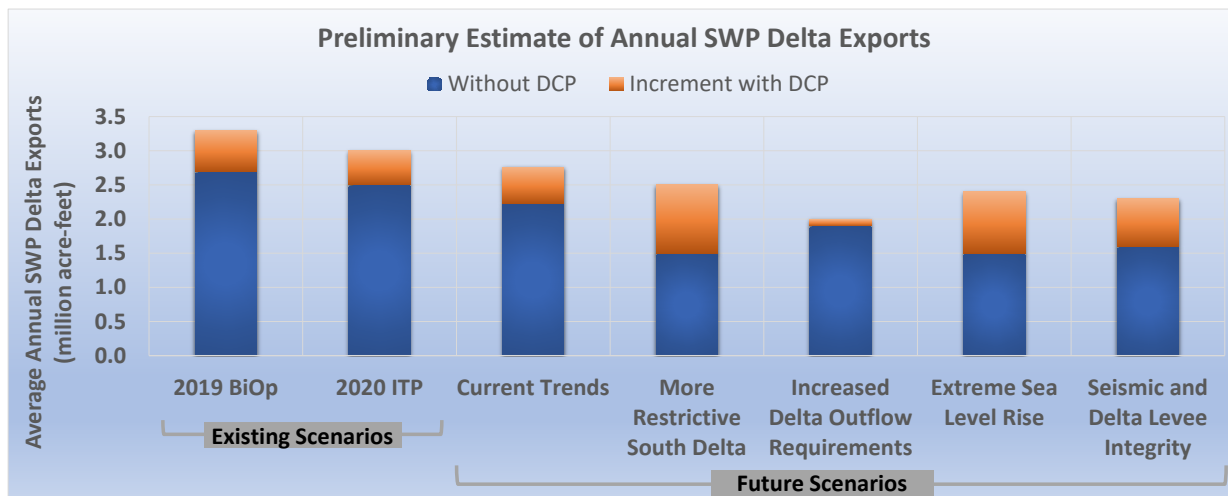


Figure 1: Preliminary modeled average annual SWP exports under existing and future scenarios and corresponding increment resulting with the DCP

<sup>2</sup> Current Trends scenario assumes operating to the current regulatory requirements including 2019 federal biological opinions for CVP and SWP and 2020 incidental take permit for SWP, existing Delta levee configuration, and projected climate change and sea level rise around 2040.

<sup>3</sup> Extreme Sea Level Rise scenario assumes projected sea level rise value of 140 cm at around 2065. The future scenarios selected for this analysis are not intended to fully encompass all the future conditions during the life of the Delta Conveyance Project.

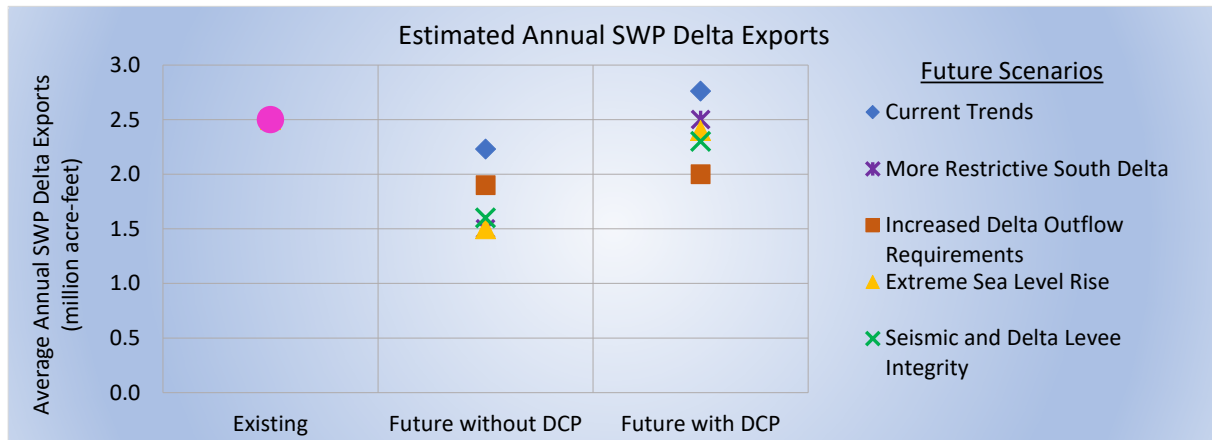


Figure 2: Preliminary modeled average annual SWP exports under the future scenarios with and without the DCP compared to the existing scenario

### Preliminary Estimated Costs of the Project

In consideration of SCV Water and certain PWA's advancing planning funds for the proposed project, the DCA, following industry standards, developed preliminary cost information based on information currently available for the proposed Delta Conveyance Project. It is important to emphasize that the DCA is still very early in the planning process and the cost estimate is only a snapshot based on the current status. This snapshot does not represent the final conceptual design, the final mitigation costs, or all cost items such as community benefits, DWR planning costs, or financing costs. The snapshot includes an estimate for construction costs, soft costs, and environmental mitigation costs in undiscounted 2020 dollars. This means the cost information excludes future inflation. In other words, it assumes that the project would all be built in 2020.

The proposed project features included in the cost information are as follows:

- Two intakes at 3,000 cfs each, for a total capacity of 6,000 cfs
- 42 miles of tunnels and associated shafts
- Southern Complex Facilities:
  - Pump Station
  - Forebay
  - Connections to existing CA Aqueduct

The DCA cost information includes a 38% composite contingency for unforeseeable elements of cost within the construction cost estimate. The DCA has provided their best estimate for unknown items where their professional experience indicates that there will likely be additional risk. The DCA identified contingency levels for each feature of the proposed project listed above to reflect the uncertainty at the time the cost information was developed. The DCA's contingency reflects the DCA's assessment of the proposed projects design status, identified risks, and professional judgment of unforeseeable elements of cost. As the engineering work advances and the unknown elements of the proposed project are revealed or resolved, contingency levels will decrease, and the identified project elements will be included in the construction estimates.

It is the DCA's opinion, based on the information available to the DCA today and the estimated contingency levels, that there is a 50% probability that the proposed Delta Conveyance Project would be within the estimated total of \$15.9 billion in 2020 dollars. AECOM reviewed the DCA estimate and found that based on industry standards the cost range may be reduced between \$2.28 to \$4.37 billion. AECOM's assessment did not perform a bottom up estimate of the project but reviewed the cost estimate in light of industry standards, in particular contingencies. The AECOM work found that the DCA estimate assumed conservative design, included in design elements risk mitigation, and additionally added a 38% contingency. This resulted in roughly a 44% contingency for the DCA estimate. The AECOM work serves as a useful guidepost for identifying a possible range of costs but should not be considered as a cost estimate for the DCP. As planning proceeds, more information will become available to inform potential construction and associated costs, and cost information will be updated and refined.

### Draft Agreement In Principle

As indicated above, the draft AIP is a framework to amend the Agency's SWP water supply contract with DWR and it allocates the Delta Conveyance Project's costs and benefits discussed above. Specifically, the AIP includes the following:

- Provides an option for PWAs to opt out of the costs and benefits of the proposed project, meaning those who opt out will put zero in the allocation table and will not pay for the costs nor be entitled to the benefits.
- Participating PWAs must be in for at least 100% of their Table A percentage.
- PWAs may opt to participate at more than 100% to the extent that other PWAs do not participate and there is additional project participation available. For example, if the Board were to decide to participate in the proposed project at an amount higher than the Agency's Table A percentage, the Agency's would be in for a minimum of 100% of its Table A percentage plus the additional percentage of the proposed project, assuming other PWAs decided to opt out and there was additional participation percentage available. It is likely that certain PWAs will opt out.
- Indicates that the proposed project will be constructed and operated as an integrated component of the SWP and any contract amendment will go into effect no sooner than the transition date in the Contract Extension Amendment.
- DWR will determine the amount of water attributable to the proposed project each year, which will inform what is available for participants.
- Describes the details of how costs will be determined and charged, including that participating PWAs will be responsible for costs equal to each of their project participation percentage.
- Describes the benefits of the project that participants will receive, including water, both Table A and Article 21, attributable to the proposed project and conveyance capacity in the new facility.

### Requested Action on Participation Level

DWR is requesting that contractors fill out the table in the AIP and indicate the participation percentage so DWR can confirm that the proposed project is 100% subscribed and planning costs can be allocated accordingly. To that end, staff is asking the Board to make a decision as to its desired participation percentage in the proposed project for planning funds. As described above, when the AIP becomes contract language, each PWA will have to approve the proposed contract language, including the participation percentage.

The SWC conducted a straw poll among SWP contractors regarding their likely participation. As anticipated, contractors North of the Delta, most agricultural contractors and Santa Barbara County indicated they did not anticipate participating in the project. Participating contractors generally agreed that they would recommend to that their agencies proportionately take up this anticipated shortfall. Thus, Agency staff is recommending a participation level of 2.6% of the project.

As indicated above, the Board at this time is only indicating its desired participation percentage in the proposed project, and is not approving the execution of a contract amendment to its SWP water supply contract. Consideration of a contract amendment will take place after environmental review is complete and contract language is drafted. The Board is, however, also being asked to make a decision to advance funding for the planning costs, which include preparation of EIR, regulatory processes and permitting, and necessary design work to inform the environmental planning portion of the proposed project.

### Funding Agreements

As indicated above, DWR is requiring those contractors who choose to participate in the proposed project to enter into a funding agreement to advance funds for environmental review, planning, and design of the proposed project through 2024. The current estimate of these environmental related planning costs of up to \$340.7 million. The Agency's share of these funds would be up to \$8,852,849. The funding agreements provide that PWAs would be reimbursed or receive a credit for the advanced funds for the previously authorized WaterFix project. The Agency's share of these funds is \$852,631 bringing the net cost to the Agency to \$8,000,218. Pursuant to the Delta Conveyance Facility (DCF) agreement with DWR, the Agency at this time has the option to approve advancing either the entire amount, or an amount for the first two years, which would be equal to \$2,968,406 at which time additional information on potential costs, benefits and regulatory framework would be known. Staff's recommendation is that the General Manager be authorized to enter into an agreement for the entire amount and after two years assess the likelihood of the success of the project and potentially terminate the agreement. Again, these funds would support the environmental review, planning, and design work necessary to inform environmental planning, and participating PWAs would be reimbursed or receive a credit for the advanced funds upon the first sale of revenue bonds to pay for the Delta Conveyance Project. If the Delta Conveyance Project does not proceed, the advanced funds would not be recovered.

### DCA JPA Amendment

In May 2018, certain contractors 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 Powers Agreement with DWR (JEPA). Shortly after the Governor indicated support for a single tunnel project and DWR rescinded its approvals of WaterFix, 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 the shift to the Delta Conveyance Project, issuance of the NOP, and completion of a draft of the AIP, staff of participating PWAs have been discussing an update to the DCA Joint Powers Agreement. In particular, there is a desire to reorganize the governance structure to better align with current participation in the proposed project.

The proposed amendment would restructure the DCA Board of Directors as follows:

- Change the number of DCA Board of Directors from four (4) to seven (7) and representation would parallel that of the State Water Contractor's, Inc. Board with various classes representing various regions as indicated below:
  - (1) seat for Class 2 members representing South Bay contractors (excluding Santa Clara Valley Water District)
  - (1) seat for participating agencies within Classes 7, 5 and 3 representing West Branch contractors, Coastal Branch contractors and agricultural contractors. Based on initial indications of participation, this group would consist of SCV Water, Ventura County Watershed Protection District, San Luis Obispo County Flood Control and Water Conservation District, and Dudley Ridge Water District.
  - Two seats for Class 8 members representing the East Branch Contractors
- Continue one (1) seat each for:
  - Metropolitan Water District of Southern California (State Water Project)
  - Kern County Water Agency
  - Santa Clara Valley Water District

If the Agency joins the DCF, its Director would potentially represent Dudley Ridge Water District, San Luis Obispo County and Ventura County, along with SCV Water. SCV Water has the largest Table A amount among these contractors.

Decisions would be made based on a majority of Board members, however, any Board member may request a redetermination be conducted for board items dealing with issuance of notes or other forms of indebtedness, including entering into leases for real property or equipment, adoption or amendment of the budget, consultant contracts greater than \$1 Million or future construction contracts greater than \$10 Million. That redetermination vote would be based on each Board member's proportionate DCF participation amount and require at least a certain 70% threshold to pass. The revised draft agreement was not available at the time this report was prepared, but is anticipated to be available for review by the Board.

On October 14, 2020, the Water Resources and Watershed Committee considered staff's recommendation to adopt a resolution authorizing the General Manager to enter into a cost sharing agreement for planning activities for a Delta Conveyance Facility and authorize SCV Water's membership in the Delta Conveyance Design and Construction Authority.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE**

The recommended actions do not qualify as a "project" subject to CEQA because the actions constitute (1) continuing administrative or maintenance activities, such as general policy and procedure making; (2) government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment; and (3) organizational or administrative activities of a public agency that will not result in direct or indirect physical changes in the environment. (State CEQA Guidelines, § 15060(c)(3).) The recommended actions do not constitute an approval by the Agency of the DCP nor do the actions authorize or approve construction of the DCP. The recommended actions do not authorize or commit the Agency or DWR to expenditure of the funding on any site-specific project. In addition, the recommended actions do not authorize or approve any actions by the DCA or DWR that may cause direct or reasonably foreseeable indirect environmental impacts. As such, the actions recommended herein are not a "project" requiring environmental review under the California



Environmental Quality Act (“CEQA”) pursuant to State CEQA Guideline § 15378, subdivisions (a) and (b)(2), (b)(4) and (b)(5).

Further, and even were the actions to be considered a CEQA “project,” these actions would be statutorily exempt from environmental review pursuant to CEQA Guideline § 15262 because the actions merely call for the funding and completion of feasibility and planning studies, including the completion of CEQA review itself. In addition, the actions are exempt under the “common sense” exemption in CEQA Guidelines § 15061, subd. (b)(3) because it can be seen with certainty that there is no possibility that the actions may have a significant effect on the environment. Finally, none of the exceptions to the use of the “common sense” exemption as identified in CEQA Guidelines § 15300.2 exist here.

### **FINANCIAL CONSIDERATIONS**

Participation in the DCF agreement to fund planning activities would commit the Agency to fund up to \$10,002,372. Recognizing credits due from the WaterFix Project, an estimated expenditure of \$8,961,859 from the State Water Project Fund would be required if the agreement were to extend to completion.

### **RECOMMENDATION**

The Water Resources and Watershed Committee recommends that the Board of Directors adopt a resolution:

- (1) Authorizing the General Manager to inform the Department of Water Resources that the Agency desires to participate in the Delta Conveyance Project at a 2.6% participation level.
- (2) Authorizing the General Manager to execute a funding agreement with the Department of Water Resources for environmental planning costs associated with the Delta Conveyance Project in the amount of up to \$10,002,372.
- (3) Authorizing the General Manager to enter the amended Delta Conveyance Design and Construction Authority Joint Powers Agreement; and
- (4) Directing the General Manager to have staff prepare and file a Notice of Exemption within five working days of the approval of said resolution that the Agency’s actions are not a “project” requiring environmental review pursuant to State CEQA Guidelines 15378 and, alternatively, are statutorily exempt from CEQA review pursuant to State CEQA Guidelines 15262.

Attachments

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**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 SOCs 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.

<b>Public Water Agency</b>	<b>Delta Conveyance Facilities Allocation Factors</b>
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	
Littlerock 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	
<b>Total</b>	<b>100.000%</b>



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.



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.

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## ATTACHMENT 2

### Three groups:

- **Group A: Contractors who did not sign 2018**
- **Group B:**
  - **Signed 2018 but no reimbursement**
  - **Signed 2018 but reimbursed**
- **Group C: Signed 2018 and signed 2019 reauthorization (re-authorize use of x and add some sum) **Use this form agreement****

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**State of California  
California Natural Resources Agency  
DEPARTMENT OF WATER RESOURCES**

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**AGREEMENT FOR  
THE ADVANCE OR CONTRIBUTION OF MONEY TO  
THE DEPARTMENT OF WATER RESOURCES  
BY  
THE [ \_\_\_\_\_ ] 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 [ \_\_\_\_\_ ] 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**, 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**, Contractor in 2019 provided further authorization to DWR to expend the funds contributed pursuant to the 2018 Gap Funding Agreement for the Work in accordance with the JEPA, as the same may be amended from time to time; and

**WHEREAS**, Contract desires to provide additional funding consistent with this Agreement; and

**WHEREAS**, a copy of the resolution or other Board authorization of the Board of Directors of Contractor authorizing its General Manager 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; and

**WHEREAS**, Contractor agreed to advance or contribute to DWR \$[ ] pursuant to the 2018 Gap Funding Agreement; and

**WHEREAS**, in 2019 Contractor entered into a funding agreement with DWR wherein Contractor reauthorized DWR to use remaining 2018 Contributed Funds for purposes consistent with that agreement; and

**WHEREAS**, DWR and Contractor desire to enter into this funding Agreement to provide additional funding to be spent consistent with this Agreement.

## **AGREEMENT**

**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 Contract. 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 [amount] and is comprised of the following annual amounts to be paid to DWR in the manner described in Section 5 of this Agreement are [amount] for 2020, [amount] 2021...
- c. "**2018 Contributed Funds**" means money contributed by Contractor pursuant to the 2018 Gap Funding Agreement.
- d.
- e. "**2019 Funding Agreement**" means the agreement that authorized DWR to use remaining 2018 Contributed Funds for planning of a Delta conveyance project.
- f. "**Contribution Payment(s)**" means the payments of Contributed Funds that Contractor agrees to provide to DWR pursuant this Agreement
- g. "**Contractor**" means a State Agency that is a party to a Water Supply Contract with DWR.
- h. "**Department**" or "**DWR**" means the California Department of Water Resources.
- i. "**Effective Date**" has the meaning ascribed to it in section 11 hereof.
- j. "**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.
- k. "**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.
- l. "**Party**" or "**Parties**" means DWR, the undersigned Contractor, or all signatories to this Agreement.
- m. "**State Agency**" has the meaning ascribed to it by Water Code section 11102.
- n. "**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.*
- o. "**Water Supply Contract**" means the long-term water supply contract, as amended and as may be amended in the future, between Contractor and DWR.
- p. "**Work**" has the meaning ascribed to it in the Recitals to this Agreement.

2. Effect of Agreement. Effect of Agreement. 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 Contractors 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 any remaining 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 for Soil Investigations for Data Collection in the Delta adopted by DWR on July 9, 2020.
5. Charge Procedure. [Option 1: 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.] [Option 2: Contractor agrees to pay its Contribution Payments on or before the dates set forth in the Contributed Funds definition.] Contractor may agree, without amending this Agreement, to advance additional funds after the Effective Date, 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 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, the 2018 Gap Funding Agreement, and the 2019 Funding Agreement be reimbursed or credited to Contractor according to the relative amount each such Contractor paid pursuant to this Agreement, the 2019 Funding 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:

*Copy to:*  
[insert name]  
General Manager  
[insert Agency name]  
[insert address]  
[insert city, CA zip code]

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. 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.
15. 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.
16. 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.
17. 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 or other Board Authorization

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

**[\_\_\_\_\_] Water District**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit A**

Letter from DWR to Contractor

[This page intentionally left blank.]



**Exhibit B**

Resolution of the Board of Directors of Contractor

[This page intentionally left blank.]

## 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 \_\_\_\_\_, 2019 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: Gary Lippner, Deputy Director of Delta Conveyance

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**ATTACHMENT 3**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARITA VALLEY WATER AGENCY (1) AUTHORIZING A LEVEL OF PARTICIPATION IN THE DELTA CONVEYANCE PROJECT; (2) AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A FUNDING AGREEMENT FOR ENVIRONMENTAL PLANNING COSTS FOR THE PROJECT; (3) AUTHORIZE ENTERING INTO THE DELTA CONVEYANCE DESIGN AND CONSTRUCTION AUTHORITY JOINT POWERS AGREEMENT; AND (4) DETERMINING THAT THE ACTIONS ARE EXEMPT FROM CEQA**

**WHEREAS**, the Santa Clarita Valley Water Agency (“Agency”) 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 project known as the California WaterFix, 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 Project water pumping facilities in the South Delta; and

**WHEREAS**, the purpose of the WaterFix project was to improve the reliability of SWP water for the Agency and other contractors; and

**WHEREAS**, the Agency previously approved participating in WaterFix and participating in a funding agreement to pay a share of preconstruction planning activities associated with the WaterFix project; and

**WHEREAS**, in 2019, Governor Newsom announced that he did not support the WaterFix project but he instead supported a one tunnel conveyance project. DWR subsequently rescinded its approvals of the WaterFix project and began planning for a single tunnel option; and

**WHEREAS**, DWR began public negotiations with the SWP contractors to agree upon a framework, referred to as an Agreement in Principle (AIP), for the amendment of SWP water supply contracts to allocate costs and benefits in the event that a potential single tunnel facility is ultimately approved; and

**WHEREAS**, In January 2020, DWR released a Notice of Preparation of an Environmental Impact Report (EIR) pursuant to CEQA for a proposed single tunnel project with 6,000 cfs of capacity referred to as the Delta Conveyance Project (DCP), and DWR is currently conducting environmental review; and

**WHEREAS**, after fifteen public negotiations, DWR and SWP contractors have developed a draft AIP that contains provisions for the allocation of costs and benefits for a potential Delta Conveyance Project; and

**WHEREAS**, DWR has requested that the Agency identify the level of its desired participation in the DCP assuming a 6,000 cfs facility, which will be used to inform the percentage of planning funding allocated to the Agency; and

**WHEREAS**, DWR has also requested that the Agency enter into a new funding agreement with DWR for an amount equal to the Agency’s participation percentage of the preliminary design, environmental planning, and other preconstruction activities for DCP, which is up to \$8,852,489 and

**WHEREAS**, the Delta Conveyance Design and Construction Authority (DCA) was created by certain SWP contractors to actively participate with DWR in the design and construction of California WaterFix. The DCA subsequently entered into a Joint Powers Agreement with DWR; and

**WHEREAS**, given the shift from a two tunnel WaterFix project to a potential single-tunnel DCP project and a significant change in the anticipated participation for DCP, the existing and prospective members of the DCA desire to amend the DCA Joint Powers Agreement to better align representation with Public Water Agency (“PWA”) participation; and

**WHEREAS**, the recommended actions do not qualify as a “project” subject to CEQA because the actions constitute (1) continuing administrative or maintenance activities, such as general policy and procedure making; (2) government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment; and (3) organizational or administrative activities of a public agency that will not result in direct or indirect physical changes in the environment. (State CEQA Guidelines, § 15060(c)(3).) The recommended actions do not constitute an approval by the Agency of the DCP nor do the actions authorize or approve construction of the DCP. The recommended actions do not authorize any amendment to the long-term water supply contract with DWR. Further, the recommended actions do not authorize or approve 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” requiring environmental review under the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guideline § 15378, subdivisions (a) and (b)(2), (b)(4) and (b)(5).

**WHEREAS**, even if the actions were considered a CEQA “project,” these actions would be statutorily exempt from environmental review pursuant to CEQA Guideline § 15262 because the actions merely call for the funding and completion of feasibility and planning studies, including the completion of CEQA review itself. In addition, the actions are exempt under the “common sense” exemption in CEQA Guidelines § 15061, subd. (b)(3) because it can be seen with certainty that there is no possibility that the actions may have a significant effect on the environment. Finally, none of the exceptions to the use of the “common sense” exemption as identified in CEQA Guidelines § 15300.2 exist here.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SANTA CLARITA VALLEY WATER AGENCY:**

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

2. The General Manager is authorized to inform DWR that the Agency desires to participate in the Delta Conveyance Project at a 2.6 percent participation level.

3. The General Manager is authorized to execute a funding agreement with DWR for environmental planning costs associated with the Delta Conveyance Project in the amount of up to \$8,852,849. The funding agreement is attached as Exhibit A.

4. The General Manager is authorized to execute a Joint Powers Agreement to become a member of the Delta Conveyance Design and Construction Authority. The joint powers agreement is attached as Exhibit B.

5. For the reasons set forth above, the Agency's actions are not a "project" requiring environmental review pursuant to State CEQA Guidelines § 15060, subdivision (c)(3) and §15378, subdivisions (a) and (b)(2), (b)(4) and (b)(5). Alternatively, the actions are statutorily exempt from CEQA review pursuant to State CEQA Guidelines § 15262 and exempt under the "common sense" exemption identified in State CEQA Guidelines § 15061, subdivision (b)(3). None of the exceptions to the use of the "common sense" exemption as identified in Government Code § 15300.2 exist.

6. Agency staff is directed to prepare and file a Notice of Exemption within five working days of the approval of this Resolution.

7. The custodian of the records upon which this Resolution is based is the Board Secretary, who may be contacted at the Agency's office, located at 27234 Bouquet Canyon Road, Santa Clarita, California 91350.

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## EXHIBIT A

### Three groups:

- **Group A: Contractors who did not sign 2018**
- **Group B:**
  - **Signed 2018 but no reimbursement**
  - **Signed 2018 but reimbursed**
- **Group C: Signed 2018 and signed 2019 reauthorization (re-authorize use of x and add some sum) **Use this form agreement****

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**State of California  
California Natural Resources Agency  
DEPARTMENT OF WATER RESOURCES**

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**AGREEMENT FOR  
THE ADVANCE OR CONTRIBUTION OF MONEY TO  
THE DEPARTMENT OF WATER RESOURCES  
BY  
THE [ \_\_\_\_\_ ] 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 [ \_\_\_\_\_ ] 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**, 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**, Contractor in 2019 provided further authorization to DWR to expend the funds contributed pursuant to the 2018 Gap Funding Agreement for the Work in accordance with the JEPA, as the same may be amended from time to time; and

**WHEREAS**, Contract desires to provide additional funding consistent with this Agreement; and

**WHEREAS**, a copy of the resolution or other Board authorization of the Board of Directors of Contractor authorizing its General Manager 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; and

**WHEREAS**, Contractor agreed to advance or contribute to DWR \$[ ] pursuant to the 2018 Gap Funding Agreement; and

**WHEREAS**, in 2019 Contractor entered into a funding agreement with DWR wherein Contractor reauthorized DWR to use remaining 2018 Contributed Funds for purposes consistent with that agreement; and

**WHEREAS**, DWR and Contractor desire to enter into this funding Agreement to provide additional funding to be spent consistent with this Agreement.

## **AGREEMENT**

**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 Contract. 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 [amount] and is comprised of the following annual amounts to be paid to DWR in the manner described in Section 5 of this Agreement are [amount] for 2020, [amount] 2021...
- c. "**2018 Contributed Funds**" means money contributed by Contractor pursuant to the 2018 Gap Funding Agreement.
- d.
- e. "**2019 Funding Agreement**" means the agreement that authorized DWR to use remaining 2018 Contributed Funds for planning of a Delta conveyance project.
- f. "**Contribution Payment(s)**" means the payments of Contributed Funds that Contractor agrees to provide to DWR pursuant this Agreement
- g. "**Contractor**" means a State Agency that is a party to a Water Supply Contract with DWR.
- h. "**Department**" or "**DWR**" means the California Department of Water Resources.
- i. "**Effective Date**" has the meaning ascribed to it in section 11 hereof.
- j. "**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.
- k. "**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.
- l. "**Party**" or "**Parties**" means DWR, the undersigned Contractor, or all signatories to this Agreement.
- m. "**State Agency**" has the meaning ascribed to it by Water Code section 11102.
- n. "**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.*
- o. "**Water Supply Contract**" means the long-term water supply contract, as amended and as may be amended in the future, between Contractor and DWR.
- p. "**Work**" has the meaning ascribed to it in the Recitals to this Agreement.

2. Effect of Agreement. Effect of Agreement. 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 Contractors 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 any remaining 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 for Soil Investigations for Data Collection in the Delta adopted by DWR on July 9, 2020.
5. Charge Procedure. [Option 1: 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.] [Option 2: Contractor agrees to pay its Contribution Payments on or before the dates set forth in the Contributed Funds definition.] Contractor may agree, without amending this Agreement, to advance additional funds after the Effective Date, 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 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, the 2018 Gap Funding Agreement, and the 2019 Funding Agreement be reimbursed or credited to Contractor according to the relative amount each such Contractor paid pursuant to this Agreement, the 2019 Funding 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:

*Copy to:*  
[insert name]  
General Manager  
[insert Agency name]  
[insert address]  
[insert city, CA zip code]

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. 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.
15. 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.
16. 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.
17. 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 or other Board Authorization

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

**[\_\_\_\_\_] Water District**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit A**

Letter from DWR to Contractor

[This page intentionally left blank.]

**Exhibit B**

Resolution of the Board of Directors of Contractor

[This page intentionally left blank.]

## 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 \_\_\_\_\_, 2019 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: Gary Lippner, Deputy Director of Delta Conveyance

[This page intentionally left blank.]



**EXHIBIT B**

**AMENDED JOINT POWERS AGREEMENT  
FORMING  
THE DELTA CONVEYANCE DESIGN AND  
CONSTRUCTION JOINT POWERS  
AUTHORITY**

Effective \_\_\_\_\_, 2020

[This page intentionally left blank.]

**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 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 Exhibit A 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.

1.10 “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.

1.11 “Conveyance Project” means the project described in the Department of Water Resources Notice of Preparation dated January 15, 2020.

1.12 “Delta” has the meaning set forth in the Recitals.

1.13 “Delta Conveyance Design and Construction Joint Powers Authority” or “Construction Authority” means the public agency created by this Agreement.

1.14 “Director” means a Director of the Board appointed in accordance with Article 6 (Directors and Officers).

1.15 “DWR” has the meaning set forth in the Recitals.

1.16 “Effective Date” means the date set forth in Section 3.1.

1.17 “Member” means a public entity that satisfies the requirements of Article V (**MEMBERSHIP**) of this Agreement.

1.18 “Members” mean all of the public entities that satisfy the requirements of Article V (**MEMBERSHIP**) of this Agreement.

1.19 “Officer” means an Officer of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.2.

1.20 “President” means the President of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.3.

1.21 “Reclamation” means the United States Bureau of Reclamation.

1.22 “Secretary” means the Secretary of the Delta Conveyance Design and Construction Joint Powers Authority appointed in accordance with Section 6.3.

1.23 “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.

1.24 “State” means the State of California.

1.25 “State Water Project” or “SWP” means the State Water Facilities, as defined in California Water Code section 12934(d).

1.26 “Treasurer” means the Treasurer of the Conveyance Project Coordination Agency appointed in accordance with Section 6.3.

1.27 “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**

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, 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.

## **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. The Construction Authority shall have up to seven (7) Directors and seven (7) 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.

6.1.2 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, 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, Class of Members, or Classes of Members appoint 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. 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.

## **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 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.

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 agendaized 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 also appoint one or more advisory committees or establish standing committees. The Board shall within 60 days of an approved Conveyance Project establish an Environmental Compliance and Mitigation Committee. 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.

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 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ALAMEDA COUNTY FLOOD CONTROL ZONE 7 WATER DISTRICT

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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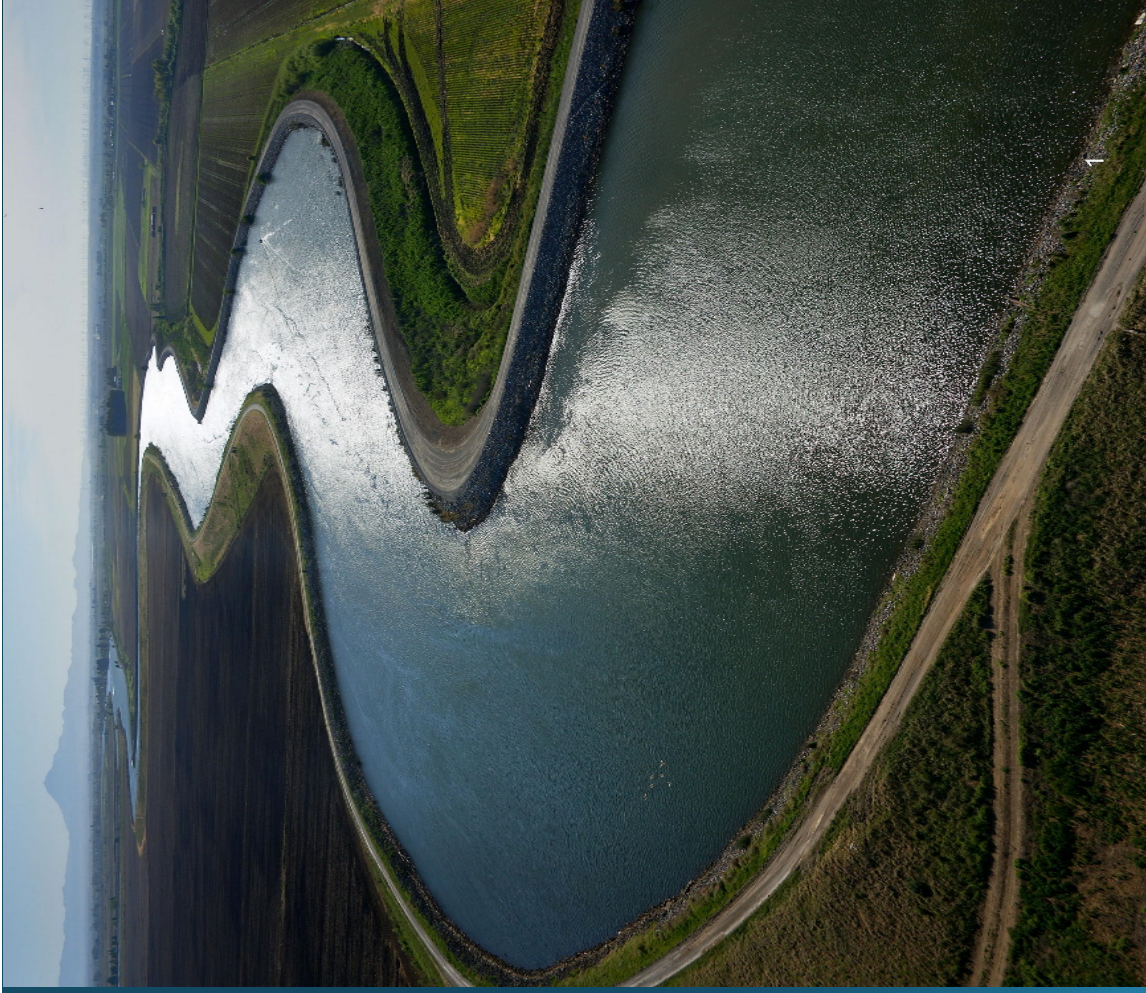
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# Delta Conveyance Project

BOARD OF DIRECTORS  
NOVEMBER 17, 2020  
ITEM No. 7.2



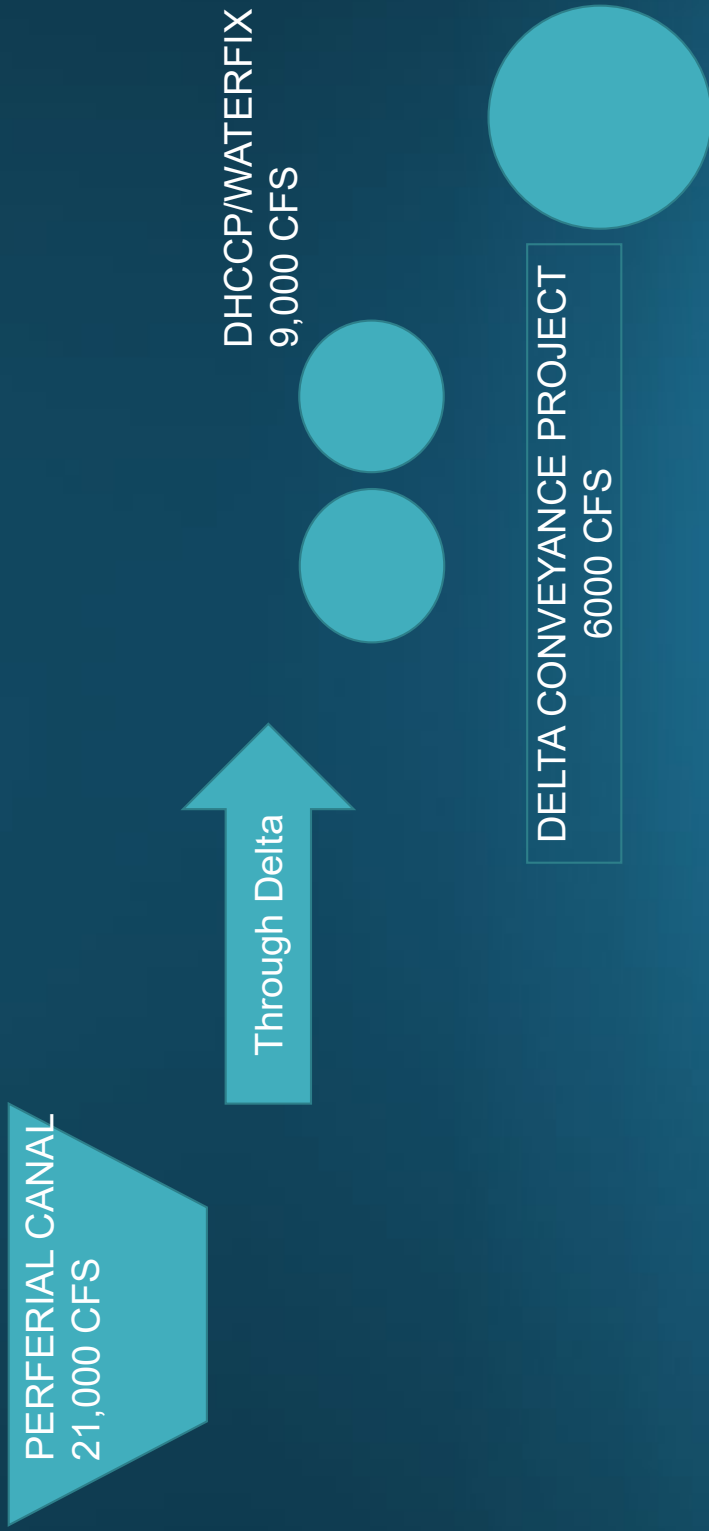
# Presentation Outline

- Background Previous Related Actions
- Notice of Preparation – Project Definition
- DCF Preliminary Benefits
- DCF Costs
- Planning Related Agreements
- Design and Construction Agency Participation
- Recommendations

Date

Delta Conveyance Project

# Delta Facility Planning Efforts



Date

Delta Conveyance Project

3

## Recent Recent Developments

**May 2018**

Authorized Gap Fund

- Approximately \$2 Million for continued funding of planning costs

**July 2018**

CA WaterFix

- Approved Agency Participation

**Nov 2018**

Joined Finance JPA

- General Manager assigned to Board

**FEB 2019**

Governor Newsom

- Shifts State's direction and initiates planning to a support a single tunnel

**JAN 2020**

Department of Water Resources (DWR)

- Released Delta Conveyance NOP
- Single Tunnel (6,000 cfs)

**APR 2020**

Department of Water Resources (DWR)

- Completes DCF AIP negotiations except for contractor participation

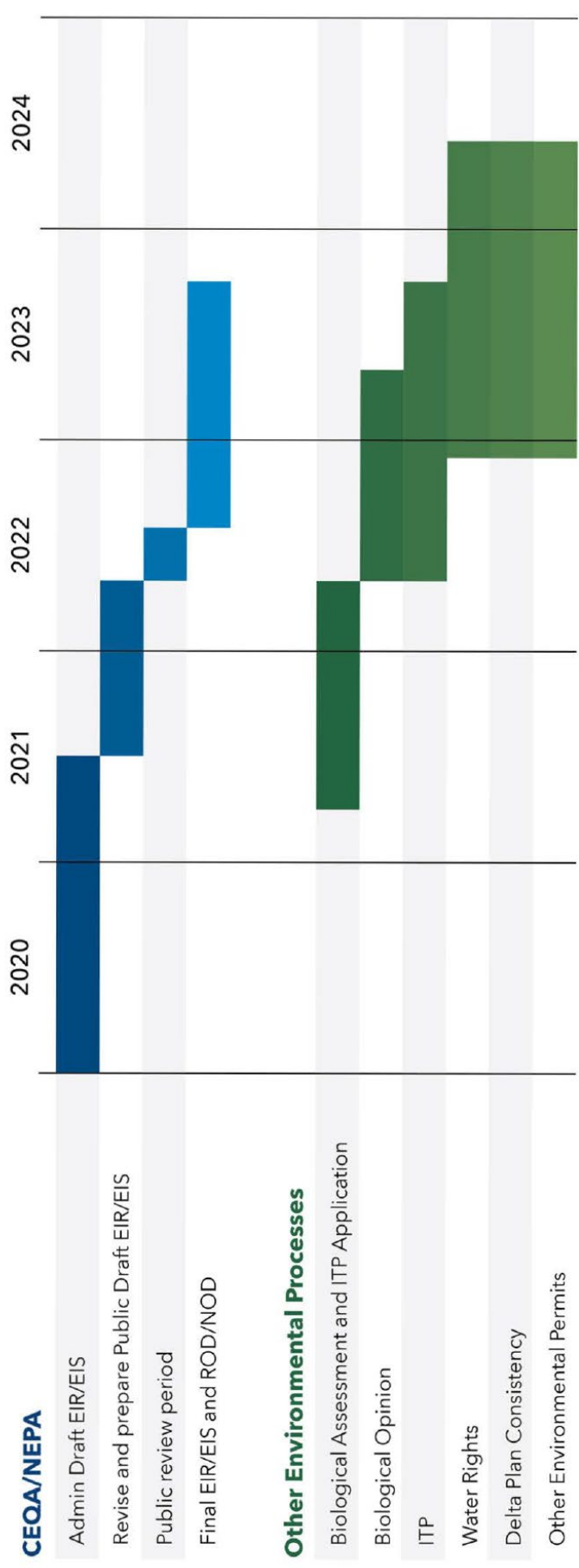
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Delta Conveyance Project

4

# Preliminary Project Schedule

Delta Conveyance Project Schedule



Date

Delta Conveyance Project

# Notice of Preparation

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Date

Delta Conveyance Project

# Delta Conveyance Objectives

## To restore and protect ability to deliver SWP Water Supply

- **CLIMATE RESILIENCY:**

Addresses climate change, extreme weather, and rising sea-levels in the Delta for the SWP

- **SEISMIC RESILIENCY:**

Minimizes health/safety risk to public from earthquake-caused reductions in water delivery quality and quantity from the SWP

- **WATER SUPPLY RELIABILITY:**

Restores and protects ability to deliver SWP water in compliance with regulatory and contractual constraints

- **OPERATIONAL RESILIENCY:**

Provides SWP operational flexibility to improve aquatic conditions and manage risks of additional future constraints

Date

Delta Conveyance Project

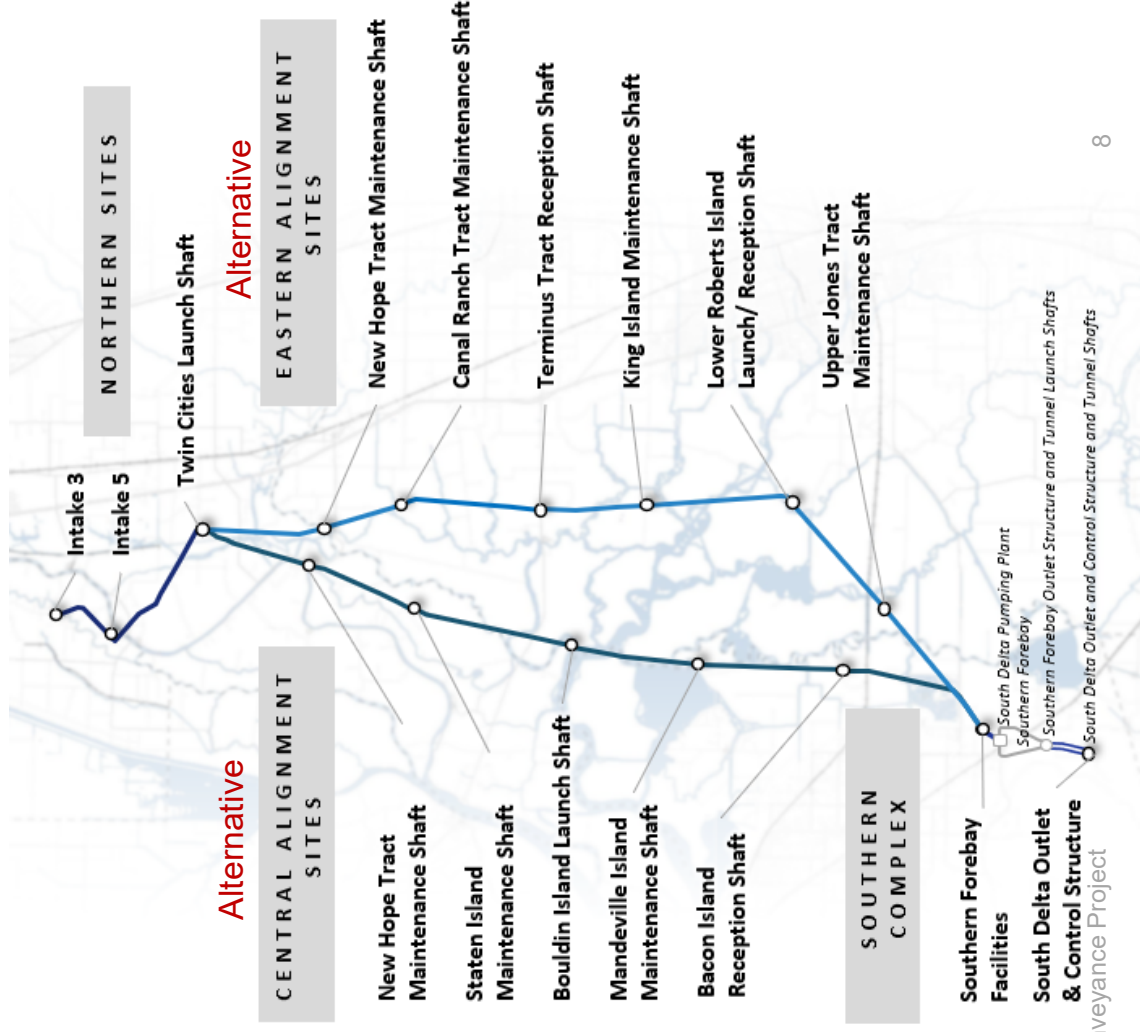
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# Notice of Preparation

- Proposed Project: Single tunnel up to 6,000 cfs (~42 miles)
- Alternatives include
  - Capacities ranging from 3,000 to 7,500 cfs
  - Varying degrees of involvement of the CVP, including no involvement
- Final choice of potentially feasible alternatives TBD in Draft EIR

Date

Delta Conveyance Project





# DCP Preliminary Benefits

Date

Delta Conveyance Project

9

## Preliminary Water Supply Assessment Scenarios

- 5 plausible future conditions
  - Current regulatory w/climate change
  - Increased South Delta constraints
  - Increased Delta Outflow
  - Extreme sea level rise
  - Seismic/levee failure



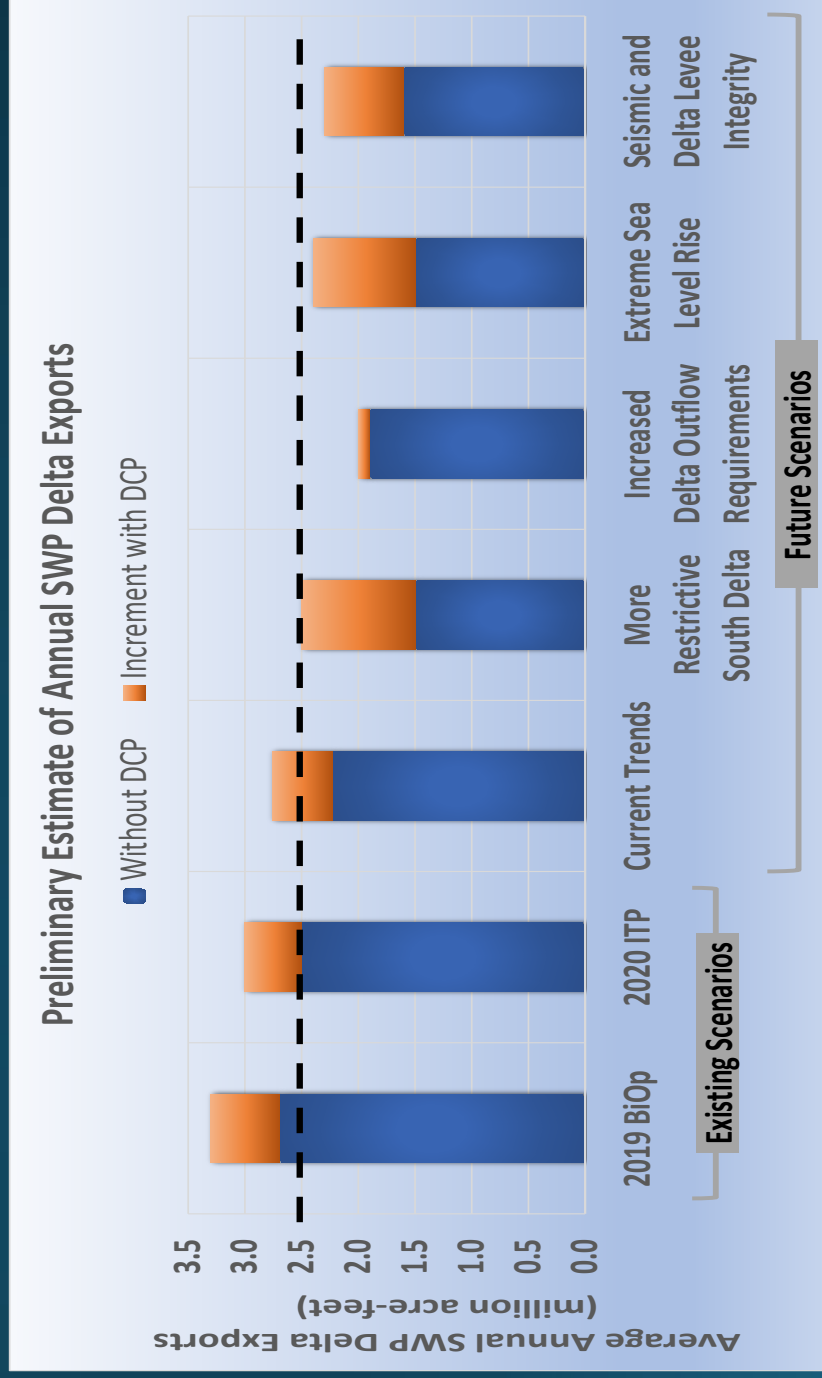
Date

Delta Conveyance Project

10

# SWP Reliability Compared to Future Conditions Without DCP

- All future conditions show decline in SWP reliability without DCF
- DCF mitigates reliability declines
  - ~100 TAFY to 1000 TAFY under greater regulatory restrictions
  - ~700 TAFY under seismic risks and delta island flooding
  - ~900 TAFY under extreme sea level rise



Date

Delta Conveyance Project

11

# DCF Preliminary Costs and Cost Allocation

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Date

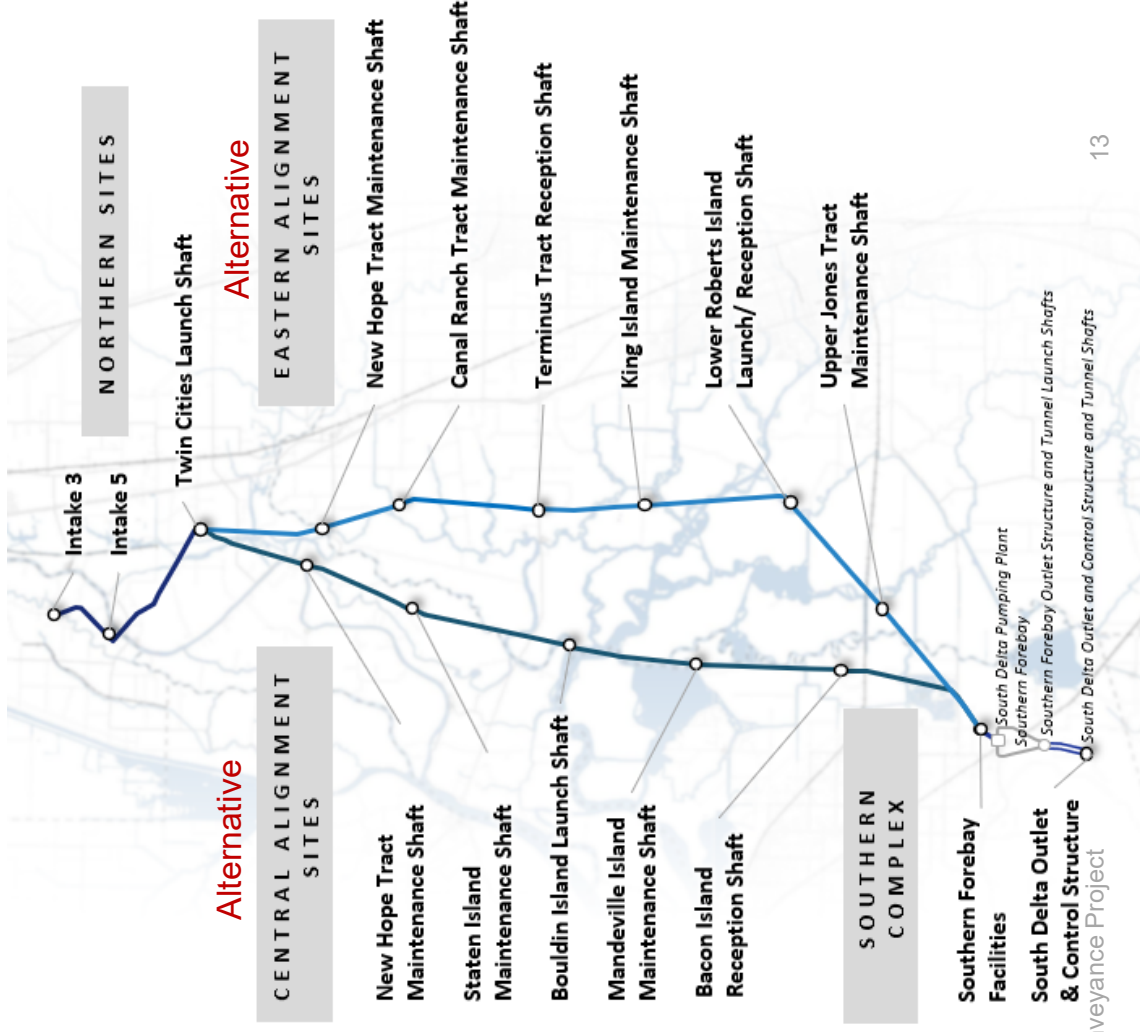
Delta Conveyance Project

# Cost Information Assumptions

- **Proposed Facilities Included in Estimate:**
  - One Tunnel - Total capacity 6,000 cfs
  - Two intakes at 3,000 cfs each
  - ≈42 miles of tunnels and associated shafts
  - Southern Complex Facilities
    - Pump Station
    - Forebay
    - Connections to existing CA Aqueduct

Date

Delta Conveyance Project



# DCA Cost Assessment

## DCA Program Scope:

Cost assessment based on DWR's Proposed Project in NOP Conceptual Engineering Report (CER) is not completed

## Purpose:

Early cost assessment to inform PWA's investment in project planning

## DCA Cost Assessment:

\$15.9 billion in 2020 dollars (including 44% construction contingency)

## Included:

Based on preliminary engineering, but includes project costs for construction, management, oversight, mitigation, planning, soft costs and contingencies

# Agreements

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Date

Delta Conveyance Project

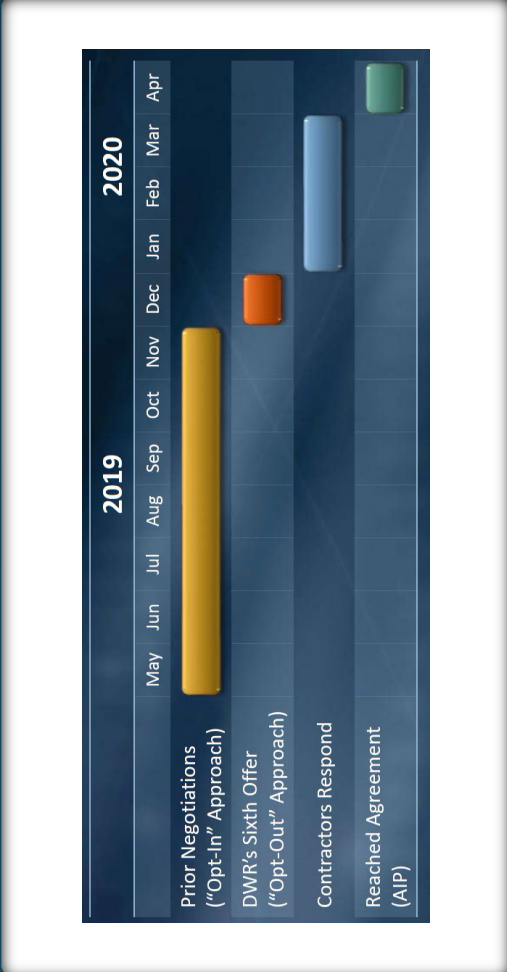
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## Agreements for Board Consideration

1. Agreement in Principle (AIP) for the SWP Delta Conveyance Contract Amendment
  - Defines Agency's Participation Factor for Potential DCF
2. Funding Agreement for DCF Planning Costs
3. Delta Conveyance Design and Construction Authority (DCA) JPA Agreement



# Agreement in Principle (AIP) for SWP Delta Conveyance Contract Amendment



## Delta Conveyance AIP

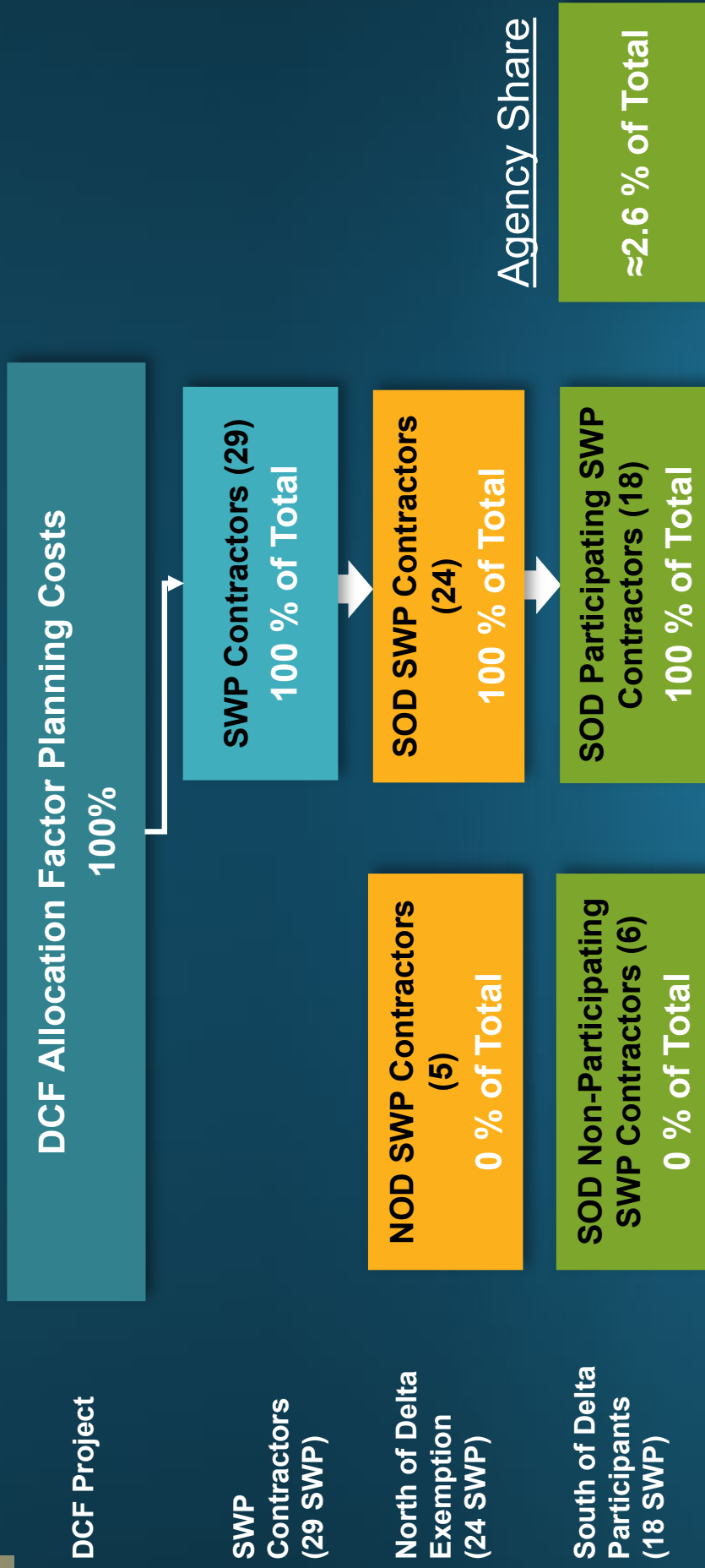
- Option to opt-out of DCF costs and benefits
- Option to assume additional DCF costs and benefits
- Effective Date will be on or after the contract extension billing transition date
- Costs and DCF water supply are allocated based on the DCF Participation Table
- Adopt “Pay-As-You-Go” Billing Provisions for both the Capital and Minimum Components

Date

Delta Conveyance Project

18

# DCF Allocation Factor (%) – Planning Costs



DCF Project

SWP Contractors (29 SWP)

North of Delta Exemption (24 SWP)

South of Delta Participants (18 SWP)

Date

Delta Conveyance Project

19

# Planning Cost Funding Agreement

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Date

Delta Conveyance Project

## Key Provisions

- Funding Agreements for up to \$341 Million for planning costs through 2024
- SCV Water share up to ≈\$8.9 Million
- Allows for collection through SWP billings
- Authorizes contributed funds to be spent on DCA invoices
- Does not allow funds to be spent to reimburse DWR previously contributed funds

Date

Delta Conveyance Project

21

# Design and Construction Authority (DCA) Membership

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Date

Delta Conveyance Project

## Design and Construction Authority

- Original functions delayed
- Shifted interim focus
  - Support DWR lead planning effort
    - Engineering information technical
    - Impact avoidance/mitigation
  - Conduct and support outreach and stakeholder engagement efforts

Date

Delta Conveyance Project t

23

## DCA Governance

- Governance shifting to be more like SWC Inc.
- Board of Directors representing various classes
- Single Agency Representation – MWDSC, KCWA, SCVWD
- Multi Agency Representation –
  - South Bay
  - East Branch (2 representatives)
  - West Branch and others
- Provision for possible CVP participation
- Reconsideration for financial decisions based 70% participation levels



## Recommendation to the Board

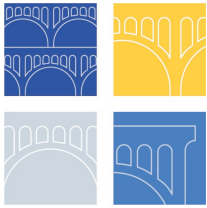
- Inform DWR through AIP process of 2.6% level for purposes of planning funding and participation in a potential project
- Authorize execution of Funding Agreement for purposes of DCF planning costs
- Authorize joining the Design and Construction Authority

Date

Delta Conveyance Project

25

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**Lagerlof**  
LAWYERS LLP**MEMORANDUM**

To: Board of Directors, SCV Water

From: Thomas S. Bunn III

Re: Enactment of AB 992

Date: November 17, 2020

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On Friday, September 18, Governor Newsom signed into law AB 992, which amended the Brown Act with respect to social media postings by members of a local agency governing body (i.e., boards of directors). AB 992 is the first amendment to the Brown Act to address public officials' use of social media. The law includes a sunset date of January 1, 2026.

The Brown Act generally prohibits a majority of members of a legislative body from engaging in a "series of communications," directly or through intermediaries, to "discuss, deliberate, or take action on an item" that is within the legislative body's subject matter jurisdiction. AB 992 amends Government Code section 54952.2 to clarify the types of communications a public official can make on social media that are permissible under the Brown Act, and what communications are prohibited under the Act.

AB 992 allows a public official to communicate via social media (such as Facebook, Twitter or Instagram) to answer questions, provide information to the public or to solicit information from the public regarding a matter within the governing board's jurisdiction. However, that communication is allowed only as long as a majority of the members of the legislative body do not use the social media platform to "discuss among themselves" official business. The new law defines "discuss among themselves" to include making posts, commenting and even using emojis that express reactions to communications made by other members of the legislative body. Thus, board members will need to take care to ensure they do not make responsive comments or posts where other board members have already commented.

AB 992 also expands the Brown Act's prohibition on intra-board communications by prohibiting a board member from responding "directly to any communication on an Internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared *by any other member* of the legislative body." Under that new prohibition, if one director posted a comment in response to another

director's post about an agency issue, that would be a Brown Act violation. This expands the Brown Act's application, which previously was limited to prohibiting communications among a majority of the governing board's members.

AB 992 applies to Internet-based social media platforms that are open and accessible to the public and encompasses activity on many types of social media platforms, including, but not limited to, Snapchat, Instagram, Facebook, Twitter, chatrooms and blogs. That means AB 992 will affect social media commenting, tweeting, retweeting, liking, disliking, responding with positive or negative emojis and/or screenshotting (photographing) and reposting.

AB 992 also raises issues with respect to the Public Records Act, as it makes it more likely that social media postings will be interpreted to be public records subject to disclosure and thus need to be archived and retained by public agencies.

Please let us know if you have any questions regarding this new law and its potential impact.

M65



## BOARD MEMORANDUM

**DATE:** November 6, 2020  
**TO:** Board of Directors  
**FROM:** Courtney Mael, P.E., Chief Engineer *CM*  
Keith Abercrombie, Chief Operating Officer *KA*  
**SUBJECT:** November 5, 2020 Engineering and Operations Committee Meeting Report

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The Engineering and Operations Committee met at 5:30 PM on Thursday, November 5, 2020 via teleconference. In attendance were Committee Chair William Cooper; Directors Ed Colley, Robert DiPrimio, Jeff Ford, Gary Martin and Lynne Plambeck. Staff members present were General Manager Matt Stone; Assistant General Manager Steve Cole; Chief Engineer Courtney Mael; Chief Operating Officer Keith Abercrombie; Director of Technology Services Cris Perez; Director of Operations and Maintenance Mike Alvord; Board Secretary April Jacobs; Executive Assistant Leticia Quintero; Administrative Analyst Elizabeth Gallo; Safety Officer Mark Passamani; Emergency Preparedness & Safety Coordinator Jose Diaz; Safety Specialist Jon Wallace; Principal Engineer Jason Yim; Principal Engineer Brent Payne; Senior Engineer Jim Leserman; Senior Engineer Shadi Bader; Associate Engineer Elizabeth Sobczak and Engineering Technician II Jim Moreno. Two members of the public were present on the call. A copy of the agenda is attached.

**Item 1: Public Comments** – There was no public comment.

**Item 2: Quarterly Safety Presentation** – Mark Passamani, Jose Diaz and Jon Wallace reviewed the reviewed the Agency's Safety Program for the first quarter of FY 2020/21.

**Item 3: Recommend Approval of a Resolution Awarding a Contract for Newhall Tank No. 2 Interior Recoat and Repair** – Recommended actions for this item are included in a separate report being submitted at the November 17, 2020 regular Board meeting.

**Item 4: Recommend Approval of a Resolution Awarding a Construction Contract to GSE Construction Company, Inc. for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project** – Recommended actions for this item are included in a separate report being submitted at the November 17, 2020 regular Board meeting.

**Item 5: Monthly Operations and Production Report** – Staff and the Committee reviewed the Operations and Production Report.

**Item 6: Capital Improvement Projects Construction Status Report** – Staff and the Committee reviewed the Capital Improvement Projects Construction Status Report.

**Item 7: Third Party Funded Agreements Quarterly Report** – Staff and the Committee reviewed the Third Party Funded Agreements Quarterly Report.

**Item 8: Committee Planning Calendar** – Staff and the Committee reviewed the FY 2020/21 Committee Planning Calendar.

**Item 9: General Report on Treatment, Distribution, Operations and Maintenance Services Section Activities** – Keith Abercrombie shared with the Committee updates on various Agency projects such as the installation of PFAS lab equipment and the PVC replacement piping projects.

**Item 10: General Report on Engineering Services Section Activities** – Courtney Mael shared with the Committee the ongoing coordination efforts between Engineering and Operations, as well as Engineering's coordination on numerous projects with the City of Santa Clarita, LA County Fire and Developers through the Santa Clarita Valley.

**Item 11: Adjournment** – The meeting adjourned at 6:37 PM.

CM/KA

Attachment

MBS



**Date:** October 28, 2020

**To:** **Engineering and Operations Committee**  
William Cooper, Chair  
Ed Colley  
Robert DiPrimio  
Jeff Ford  
Gary Martin  
Lynne Plambeck

**From:** Courtney Mael, Chief Engineer *CM*  
Keith Abercrombie, Chief Operating Officer *KA*

The **Engineering and Operations Committee** is scheduled to meet via teleconference on **Thursday, November 5, 2020 at 5:30 PM**, dial in information is listed below.

**TELECONFERENCE ONLY  
NO PHYSICAL LOCATION FOR MEETING**

**TELECONFERENCING NOTICE**

Pursuant to the provisions of Executive Order N-29-20 issued by Governor Gavin Newsom on March 17, 2020, any Director may call into an Agency Committee meeting using the Agency's **Call-In Number 1-877-309-2073, Access Code 269-215-005, or GoToMeeting by clicking on the link <https://global.gotomeeting.com/join/269215005>** without otherwise complying with the Brown Act's teleconferencing requirements.

Pursuant to the above Executive Order, the public may not attend the meeting in person. Any member of the public may listen to the meeting or make comments to the Committee using the call-in number or GoToMeeting link above. Please see the notice below if you have a disability and require an accommodation in order to participate in the meeting.

We request that the public submit any comments in writing if practicable, which can be sent to **[egallo@scvwa.org](mailto:egallo@scvwa.org)** or mailed to **Elizabeth Gallo, Administrative Analyst**, Santa Clarita Valley Water Agency, 26521 Summit Circle, Santa Clarita, CA 91350. All written comments received before 4:00 PM the day of the meeting will be distributed to the Committee members and posted on the Santa Clarita Valley Water Agency website prior to the meeting. Anything received after 4:00 PM the day of the meeting will be posted on the SCV Water website the following day.

## MEETING AGENDA

<u>ITEM</u>		<u>PAGE</u>
1.	Public Comments – Members of the public may comment as to items not on the Agenda at this time. Members of the public wishing to comment on items covered in this Agenda may do so now or at the time each item is considered. (Comments may, at the discretion of the Committee Chair, be limited to three minutes for each speaker.)	
2. *	Quarterly Safety Presentation	1
3. *	Recommend Approval of a Resolution Awarding a Contract for Newhall Tank No. 2 Interior Recoat and Repair	11
4. *	Recommend Approval of a Resolution Awarding a Construction Contract to GSE Construction Company, Inc., for the Rio Vista Water Treatment Plant Chlorine Scrubber Replacement Project	23
5. *	Monthly Operations and Production Report	35
6. *	Capital Improvement Projects Construction Status Report	137
7. *	Third Party Funded Agreements Quarterly Report	139
8. *	Committee Planning Calendar	145
9.	General Report on Treatment, Distribution, Operations and Maintenance Services Section Activities	
10.	General Report on Engineering Services Section Activities	
11.	Adjournment	
*	Indicates attachments	
◆	To be distributed	

### NOTICES:

Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning Elizabeth Gallo, Administrative Analyst, at (661) 259-2737, or in writing to Santa Clarita Valley Water Agency at 27234 Bouquet Canyon Road, Santa Clarita, CA 91350. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that Agency staff may discuss appropriate arrangements. Persons requesting a disability-related accommodation should make the request with adequate time before the meeting for the Agency to provide the requested accommodation.



October 28, 2020

Page 3 of 3

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Santa Clarita Valley Water Agency, located at 27234 Bouquet Canyon Road, Santa Clarita, CA 91350, during regular business hours. When practical, these public records will also be made available on the Agency's Internet Website, accessible at <http://www.yourscvwater.com>.

Posted on October 29, 2020.

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ITEM NO. 12.1
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## DIRECTORS AB1234 REPORT

Director Name: Jerry Gladbach

Meeting Attended: NWRA's Federal Affairs Committee

Date of Meeting: November 6, 2020

Meeting to be Presented at: November 17, 2020

Points of Interest:

It was pointed out that this would be a strange meeting, because the election results are not final.

An Omnibus bill will likely be passed, there has been a lot of work already done on it, but there is a question as to how much of COVIG relief will be attached WRDA will likely be passed also

Many Committee Chairs in the Senate will change because of term limits for being a Chair

If Vice-President Biden wins there is fear he would put back in place many of the regulations that President Trump had eliminated, however there is a Congressional Review Act that would prevent this from happening since the Senate has a Republican Majority

In Congress, 45 members decided not to run and 12 others were defeated, so there are 57 new members of Congress. NWRA staff and members will be meeting with them to educate them on water issues

The new Senator from Colorado is very reasonable when it comes to environmental issues

If Vice-President Biden wins It will not be good for Congress to push the Administration hard on their issues

If Vice-President Biden wins we need to put forward names for the new Administration, although they have very likely chosen the Cabinet members, there are many positions at the next level below the Cabinet to be appointed Wildfires have wrecked havoc in California and Colorado, and therefore it is likely that legislation will get passed, and hopefully it will include funding for recycling waste

The NWRA's January meeting is a strategic planning meeting, and it will be a critical meeting this time. It will be in Phoenix but be limited to 40 members in person and other will be virtual

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From: NWRA [nwra@nwra.org](mailto:nwra@nwra.org)  
Subject: NWRA Alert: November 6th Federal Affairs Call Agenda  
Date: Nov 5, 2020 at 4:09:44 PM  
To: [ejglad@aol.com](mailto:ejglad@aol.com)



National Water Resources Association

November 5, 2020

**To:** NWRA Federal Affairs Committee

**From:** NWRA Fed Affairs Team

**Re:** Agenda - Federal Affairs Call - Friday November 6th

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Federal Affairs Committee members,

Below please find the meeting login/call information for tomorrow's Federal Affairs Committee call. We will cover a number of areas including what is on deck for the lame duck session of Congress, as well as some of the election implications for water providers.

Join online:

[https://us02web.zoom.us/j/88479182890?](https://us02web.zoom.us/j/88479182890?pwd=aldmWktSSIA4WFFhNkxMSmtpbW8wUT09)  
[pwd=aldmWktSSIA4WFFhNkxMSmtpbW8wUT09](https://us02web.zoom.us/j/88479182890?pwd=aldmWktSSIA4WFFhNkxMSmtpbW8wUT09)

Join by Phone:

Call in number: [646-558-8656](tel:646-558-8656)

Meeting ID: [884 7918 2890](https://us02web.zoom.us/j/88479182890)

Passcode: 791442

NWRA November 2020 Federal Affairs Committee Call  
Friday, November 6, 2020  
12:30 Eastern, 11:30 Central, 10:30 Mountain, 9:30 Pacific

I. Welcome

II. Election

III. Lame duck outlook

a. Appropriations

- b. WRDA
- c. COVID-19 Relief

IV. Task Force Updates

- a. Forest Health - Wildfire
- b. Army Corps – Nationwide Permit
- c. Water Supply – Reclamation Historical Preservation
- d. Environment – Barrasso ESA Hearing
- e. Litigation Review
- f. Water Power
- f. Water Quality
- g. Groundwater

V. NWRA Annual Conference

VI. Other Business

Please let us know if we can provide any additional information prior to the call.

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NWRA | (202) 698-0693 | [nwra@nwra.org](mailto:nwra@nwra.org) | [nwra.org](http://nwra.org)  
STAY CONNECTED



NWRA | 4 E Street SE, Washington, DC 20003

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