



MEMORANDUM

TO: SLDMWA Water Resources Committee and Board of Directors, Alternates

FROM: Rebecca Akroyd, General Counsel

DATE: July 31, 2019

RE: Execution of the Amended and Restated Joint Exercise of Powers Agreement Creating the San Joaquin Valley Water Infrastructure Authority (SJWVIA) and Appointment of Director and Alternate to SJWVIA Board of Directors

BACKGROUND

The San Joaquin Valley Water Infrastructure Authority (SJWVIA) was formed by the counties of Fresno, Kings, Madera, Merced, and Tulare in 2015 to solicit grant funding for water infrastructure projects, with a focus on local surface storage projects, groundwater recharge projects, and construction of the Temperance Flat Dam project. The San Luis & Delta-Mendota Water Authority (Water Authority), City of Fresno, Friant Water Authority, San Joaquin River Exchange Contractors Water Authority, the City of Avenal, and the City of Orange Cove later joined as members.

After the members of the SJWVIA decided to transfer the handling of the Temperance Flat Reservoir Project to a separate entity, the SJWVIA became less active. The Water Authority last authorized dues in August 2018, for one quarter of membership (\$12,500), with the understanding that the SJWVIA would be wrapping up and shutting down. The Water Authority's representation on the SJWVIA during this wrapping up period has been Chairman Cannon Michael, with an alternate of Alternate Chris White.

Since this time, the parties to the SJWVIA have discussed the appropriate focus of the SJWVIA going into the future. In recent SJWVIA meetings, the parties have discussed revising the purpose of the entity for a "new" SJWVIA, with essentially the same membership as the original SJWVIA – the counties of Fresno, Kings, Madera, Merced, and Tulare, the City of Fresno, the Friant Water Authority, the San Joaquin River Exchange Contractors Water Authority, and the Water Authority. The SJWVIA has prepared an Amended and Restated Joint Exercise of Powers Agreement (Amended JPA). The amendments to the JPA effectively maintain the membership of the JPA while changing its primary purpose. Several of the parties listed above have already authorized execution of the Amended JPA.

If the Board authorizes execution of the Amended JPA, staff recommends that the Board approve management staff to serve as the Water Authority's representatives on the new Board of Directors, to allow direct engagement on possible projects for the SJVWIA to support.

ISSUES FOR DECISION

1. Whether the Water Resources Committee should recommend to the Board of Directors and the Board of Directors should authorize execution of the Amended JPA, in substantially the form presented to the Committee and Board.
2. Whether the Board of Directors should appoint Federico Barajas and Scott Petersen to serve as the Water Authority's Director and Alternate on the SJVWIA Board of Directors, respectively.

RECOMMENDATIONS

1. We recommend the Water Resources Committee recommend, and the Board of Directors authorize execution of the Amended JPA, in substantially the form presented to the Committee and the Board of Directors.
2. We recommend the Board of Directors appoint Federico Barajas as the Water Authority's SJVWIA Director and Scott Petersen as Alternate on the SJVWIA Board of Directors.

ANALYSIS

The "new" SJVWIA will be a structure that allows the parties to support San Joaquin Valley water infrastructure improvement and natural resource management projects through the solicitation of funding and the administration of the disbursement and expenditure of said funds on qualified projects.

The changes in the Amended JPA facilitate the transition of the SJVWIA from overseeing the Temperance Flat Reservoir Project to supporting other activities that benefit the San Joaquin Valley and its water supply. Notable areas of the proposed Amended JPA include:

- Article 3 - Purpose. *"The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the Parties. The purpose of the Authority is to use the collective knowledge, resources, expertise, and influence of its members to advance the management of water and other natural resources in the San Joaquin Valley. It is the intent of the Parties that this Authority provide advocacy, advice, and/or other proper support to counties, cities, unincorporated communities, water agencies, and/or state or federal agencies to assist with development of San Joaquin Valley water infrastructure improvement and natural resource management projects, development of which would be in the public interest. Support for such project[s] would include, but not be limited to, the solicitation of funding and the administration of the disbursement and expenditure of said funds on qualified projects."*

- Article 5 – Membership in the Authority. Places some limits on membership. For example, only one city (Fresno) and two disadvantage communities can be members. The limitations may be addressed, however, through the use of “Participation Agreements” between the SJVWIA and other public agencies that would permit such public agencies to participate in grants.
- Article 14.2 - Annual Contributions. If a party declines to pay any annual assessment within a set time period, it will be deemed have initiated a 180-day notice of intent to terminate its membership in the SJVWIA, and would also lose voting rights during any period of payment until the six-month termination period.

The SJVWIA is proposing, at least initially, to have no permanent staff, use resources from its member agencies to provide support, and to require no initial contributions from members. This will help reduce cost.

BUDGET

The Water Authority’s membership in the amended JPA will have no immediate budget implications; the Amended JPA allows the SJVWIA Board of Directors to approve an annual budget, but the assessment of an annual contribution is not a foregone conclusion. We understand the intent is for SJVWIA members to decide whether to fund projects through separate agreement rather than through required membership contributions.

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**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
CREATING
THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE
AUTHORITY (SJVWIA)**

EFFECTIVE DATE: _____, 2019

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1 **AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT**

2 **CREATING THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY (SJVWIA)**

3 This Amended and Restated Agreement ("Agreement") is made and entered into effective ____ day of
4 _____, 2019, by and among the counties of FRESNO, KINGS, MADERA, MERCED, and TULARE
5 ("County Parties"); the CITY OF FRESNO (City Party); the FRIANT WATER AUTHORITY, the SAN LUIS &
6 DELTA –MENDOTA WATER AUTHORITY, and the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS
7 WATER AUTHORITY ("Water Agency Parties"), and the cities of AVENAL and ORANGE COVE (DAC
8 Parties). Each entity listed above is a public agency as defined by California Government Code section
9 6500, is a "Party" to this Agreement, and all the entities listed above together are "the Parties" to this
10 Agreement.

11 **RECITALS**

12 **WHEREAS**, as of the 17th day of November, 2015, the counties of FRESNO, KINGS, MADERA,
13 MERCED, and TULARE, hereinafter referred to as the "Original County Parties," executed an Agreement,
14 hereinafter referred to as the "Original Agreement," which established the San Joaquin Valley Water
15 Infrastructure Authority, hereinafter referred to as the "Authority," and set forth the powers and duties of the
16 Authority; and

17 **WHEREAS**, the Original Agreement includes provisions for other public agencies to become
18 members of the Authority;

19 **WHEREAS**, the CITY OF FRESNO, the FRIANT WATER AUTHORITY, the SAN LUIS & DELTA-
20 MENDOTA WATER AUTHORITY, the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER
21 AUTHORITY, the CITY OF AVENAL, and the CITY OF ORANGE COVE have joined the Authority as
22 members;

23 **WHEREAS**, the Parties named above desire to continue as members of the Authority;

24 **WHEREAS**, the Original Agreement provides in Article 20 that the Agreement may be amended
25 "from time to time by the written consent of the governing body of all the Parties;"

26 **WHEREAS**, the Parties desire to amend and restate the Original Agreement in its entirety;

1 **WHEREAS**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500
2 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the
3 contracting parties;

4 **WHEREAS**, the Parties each are public agencies which have the common power, pursuant to
5 California Government Code section 23004(c), to make contracts necessary to the exercise of their
6 respective powers;

7 **WHEREAS**, the Parties now desire to modify and expand the purposes of said joint powers agency
8 to more comprehensively support, assist, and benefit San Joaquin Valley people, businesses, agriculture,
9 and other industries represented by the Parties within their respective jurisdictions with activities, programs,
10 and projects directed at improving, maintaining, sustaining, and protecting water supplies and infrastructure
11 upon which the region depends, thus mitigating imbalances and other negative impacts that have been
12 experienced;

13 **WHEREAS**, said activities, endeavors and undertakings may include, but are not limited to,
14 measures of advocacy, advice, support and involvement on qualified local and regional infrastructure
15 projects and facilities such as surface water conveyance, groundwater recharge and banking, surface water
16 storage, water conservation, water reclamation and water quality improvement; and enhanced wildland,
17 forest management and related watershed practices;

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20 **WHEREAS**, the Parties can through cooperation present more comprehensive and effective grant
21 proposals with greater efficiency than they could obtain by their individual efforts;

22 **WHEREAS**, collaboration and consolidation of governmental action benefits the public and the
23 taxpayer, and if the Parties determine that it is to their mutual benefit, the Parties believe the SJVWIA should
24 provide access to other public agencies in proximity to and with interests similar to those of the Parties by
25 considering the execution of a Participation Agreement among the SJVWIA and such other public agencies
26 that would permit such other public agencies to participate in the grant formation and solicitation process in
27 the future, provided that such other public agencies make financial commitments similar to those made by
28 the Parties in connection with this Agreement, as provided herein; and

1 "Authority"), with such powers as are hereinafter set forth. The debts, liabilities and obligations of the
2 Authority shall be the debts, liabilities or obligations of the Authority alone and shall not constitute debts,
3 liabilities, or obligations of any party to this Agreement, except with respect to the retirement liabilities of
4 the agency if the agency contracts with a public retirement system, and notwithstanding the payment of
5 respective costs and expenses as referenced in the Recitals, Article 15 and throughout the Agreement. The
6 Authority, its Board, officers, membership and staff shall be governed by this Agreement, the Bylaws, and
7 other documents duly adopted by the Authority.

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9 **ARTICLE 3**

10 **PURPOSE**

11 The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common
12 to each of the Parties. The purpose of the Authority is to use the collective knowledge, resources, expertise,
13 and influence of its members to advance the management of water and other natural resources in the San
14 Joaquin Valley. It is the intent of the Parties that this Authority provide advocacy, advice, and/or other proper
15 support to counties, cities, unincorporated communities, water agencies, and/or state or federal agencies to
16 assist with development of San Joaquin Valley water infrastructure improvement and natural resource
17 management projects, development of which would be in the public interest. Support for such projects would
18 include, but not be limited to, the solicitation of funding and the administration of the disbursement and
19 expenditure of said funds on qualified projects.

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21 **ARTICLE 4**

22 **TERM**

23 This Agreement shall continue in full force and effect until terminated as provided herein.

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25 **ARTICLE 5**

26 **MEMBERSHIP IN THE AUTHORITY**

27 5.1 **PARTIES JOIN AUTHORITY BY FORMAL ADOPTION OF AGREEMENT.**

1 Additional public agencies may become Parties to the Authority according to the terms of this Article.
2 Upon a four-fifths (4/5) vote of the Board, additional public agencies may join the Authority as Parties through
3 formal adoption and execution of this Agreement by their respective governing board or body. No
4 amendment of this Agreement is required, provided that, including the Parties named above, the following
5 limitations to total membership shall apply:
6 COUNTY PARTIES: There may be up to seven (7) County Parties;
7 CITY PARTY: There shall be one (1) City Party which is not designated a Disadvantaged Community for the
8 purposes of this Agreement, and that shall be the City of Fresno;
9 WATER AGENCY PARTIES: There may be up to six (6) Water Agency Parties;
10 TRIBAL PARTIES: Up to two (2) federally recognized Native American Tribes with Tribal Lands within the
11 jurisdiction of any of the County Parties may join the Authority as Tribal Parties. The governing board or
12 authority of the Tribe shall approve this Agreement and cause it to be signed by an authorized
13 representative. The Tribal Party shall and hereby does, as part of its approval of this Agreement, waive its
14 sovereign immunity for all purposes related to this Agreement or the Authority;
15 DISADVANTAGED COMMUNITY (DAC) PARTIES: There may be up to two (2) DAC Parties, and those shall
16 be the cities of Avenal and Orange Cove, unless either has withdrawn from membership To qualify as a DAC
17 Party, a city must be designated by CalEPA as a Disadvantaged Community and lie within the jurisdiction of
18 any of the County Parties.

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20 **ARTICLE 6**

21 **POWERS OF THE AUTHORITY**

22 The Authority shall have all powers set forth in the Joint Powers Law, and is hereby authorized to do
23 all acts necessary for the exercise of said powers in furtherance of its purposes. Such powers include, but
24 are not limited to, the following:

25 (a) To make and enter into contracts, including but not limited to contracts with the Parties
26 and/or the Federal Government, the State of California, other local governments, public agencies, special
27 districts, private parties, or companies.
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- 1 (b) To incur debts, liabilities, and obligations.
- 2 (c) To acquire, hold, and/or dispose of property, contributions, and donations of property, funds,
3 services, and other forms of assistance from persons, firms, corporations, and government entities.
- 4 (d) To sue and be sued in its own name, and to settle any claim against it.
- 5 (e) To receive and use contributions and advances from the Parties as provided in Government
6 Code Section 6504, including contributions or advances of personnel, equipment, or property.
- 7 (f) To invest any money in its treasury that is not required for its immediate necessities,
8 pursuant to Government Code Section 6509.5.
- 9 (g) To develop and submit solicitations or applications for funding from the Federal Government,
10 the State of California, other local governments, public agencies, special districts, private parties, or
11 companies for water infrastructure or natural resource management projects.
- 12 (g) To carry out all provisions of this Agreement. Said powers shall be exercised pursuant to
13 the terms hereof and in the manner provided by law. The responsibility for financing, funding or providing
14 matching funds for the actual construction of any project shall be the responsibility of the individual local
15 governmental agency or agencies performing or authorizing such construction and shall not be an obligation
16 of the Authority. However, the Authority, if it determines ~~the a~~ project will have substantial general benefit
17 throughout the jurisdictions of the County Parties, may take actions to secure financing, funding, or matching
18 funds and to disburse such funds in furtherance of construction of the project.
- 19 (i) The Authority may not appropriate, expend, or encumber funds in excess of any amounts
20 actually approved and contributed by the Parties or actually received from any other source.

21 Pursuant to Government Code section 6509, the aforementioned powers shall be subject to those
22 restrictions as apply to any of the Parties.

23 **ARTICLE 7**

24 **BOARD OF DIRECTORS**

25 7.1 Composition of the Board of Directors

26 The Authority shall be governed by the Board of Directors, which shall be composed as follows:
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1 (a) **COUNTY DIRECTORS:** One director appointed by the Board of Supervisors of each
2 County Party who shall be a member of the Board of Supervisors of the respective Party, for a total of
3 up to seven (7) directors. Each Board of Supervisors of each Party shall also appoint an alternate
4 director who shall be a member of the respective Party's Board of Supervisors who shall serve in the
5 absence of the regular ~~member-director~~ appointed by that Party.

6 (b) **CITY DIRECTOR:** One (1) ~~member-director~~ appointed by the City Party for a total of
7 one (1) director. The ~~member-director~~ may be an elected official or staff member of the City Party.
8 The City Party shall appoint an alternate director who shall serve in the absence of the regular
9 director appointed by that Party. Alternate ~~members-directors~~ may also be elected officials or staff of
10 the City Party.

11 (c) **WATER AGENCY DIRECTORS:** One (1) director appointed by each Water Agency
12 Party for a total of up to six (6) directors. The director shall be a ~~Director~~director, officer, or employee
13 of their respective Water Agency Party. Each Water Agency Party shall appoint an alternate ~~member~~
14 ~~director~~ who shall serve in the absence of the regular ~~member-director~~ appointed by that Party.

15 (d) **TRIBAL DIRECTORS:** One (1) director appointed by each Tribal Party for a total of
16 up to two (2) directors. The Tribal Party shall appoint an alternate director who shall serve in the
17 absence of the regular director appointed by the Tribal Party.

18 (e) **DISADVANTAGED COMMUNITY DIRECTORS:** One (1) director appointed by each
19 Disadvantaged Community (DAC) Party, for a total of up to two (2) directors. The DAC Parties shall
20 appoint alternate directors who shall serve in the absence of the regular directors appointed by the
21 DAC Parties.

22 (f) **GENERAL AT-LARGE DIRECTOR:** One (1) director who lives or works within the
23 jurisdiction of the County Parties, appointed by a majority of the Board of Directors. The At-Large
24 Director shall be appointed to serve a two (2) year term, beginning from the date of seating ~~as-on~~
25 ~~thea~~ Board of Directors ~~member~~ following appointment.

26 7.2 Replacement by Alternate Directors

27 County Directors shall serve until removed or replaced by the Board of Supervisors of their
28 respective County. If, for any reason, a County Director resigns, leaves office, or cannot fulfill the duties of

1 that position, the Board of Supervisors of the relevant Party County shall appoint a new regular director to
2 the Board.

3 If, for any reason, the General At-Large Director resigns or cannot fulfill the duties of that position,
4 the remaining members of the Board of Directors shall appoint a new General At-Large Director to complete
5 the remainder of the General At-Large Director's term.

6 If for any reason, the City Director, a Water Agency Director, a DAC Director, or a Tribal Director
7 resigns or cannot fulfill the duties of that position, the alternate director appointed by the respective Party
8 shall become the regular director for the remainder of the applicable term, if any.

9 7.3 Voting Protocols

10 A majority of the membership of the Board of Directors shall constitute a quorum for the transaction
11 of business. Approval of proposed actions requires a simple majority vote of the full Board of Directors
12 except as provided herein.

13 **ARTICLE 8**

14 **POWERS OF THE BOARD OF DIRECTORS**

15 The Board of Directors shall have the following powers and functions:

16 (a) The Board of Directors shall exercise all powers and conduct all business of the Authority,
17 either directly or by delegation to its officers and any staff.

18 (b) The Board of Directors shall elect the officers of the Authority and shall appoint or hire
19 necessary staff in accordance with Articles 10 and 11 hereof.

20 (c) The Board of Directors shall cause to be prepared, and shall review, modify as necessary,
21 and adopt the annual operating budget of the Authority.

22 (d) The Board of Directors shall develop, or cause to be developed, and shall review, modify as
23 necessary, any solicitation or grant application for a ~~Qualified Water Project~~ project and administrative services
24 necessary to carry out such solicitation or grant application or the receipt, administration and disbursement of
25 any grant funds received.

26 (e) The Board of Directors shall provide for necessary services to the Authority and the Parties,
27 by contract or otherwise, which may include, but shall not be limited to, accounting, auditing, and legal
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1 services.

2 (f) The Board of Directors shall provide general supervision and policy direction to ~~the any~~ staff
3 of the Authority.

4 (g) The Board of Directors shall have such other powers and duties as are reasonably
5 necessary to carry out the purposes of the Authority, including, but not limited to, establishing Ad Hoc or
6 Standing Committees of ~~participating entities~~ the Authority.

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8 **ARTICLE 9**

9 **MEETINGS OF THE BOARD OF DIRECTORS**

10 (a) The Board of Directors shall hold at least one regular meeting each year and shall provide
11 for such other regular meetings and for such special meetings as it deems necessary.

12 (b) The staff or a delegate of the Authority shall provide for the keeping of minutes of regular
13 and special meetings of the Board of Directors, and shall provide a copy of the minutes to each member of
14 the Board of Directors at the next scheduled meeting.

15 (c) All meetings of the Board of Directors shall be called, noticed, held and conducted in
16 accordance with the provisions of Government Code Section 54950 et seq.

17 (d) The Authority shall provide each of the Parties the agenda, including any supplements
18 thereof, and any supporting agenda materials of all meetings of the Board of Directors not later than the time
19 that the Authority publishes notice of such meetings pursuant to paragraph (c), immediately above.

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21 **ARTICLE 10**

22 **OFFICERS**

23 The Board of Directors shall elect from its membership a President and Vice President of the Board
24 of Directors, to serve for two-year terms. The President, or in his or her absence, the Vice President, shall
25 preside at and conduct all meetings of the Board of Directors. In the absence of the President and Vice
26 President, those members of the Board of Directors present may elect a Temporary Presiding Officer.

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28 **ARTICLE 11**

1 **ADMINISTRATION**

2 The following staff members shall be appointed by and serve at the pleasure of the Board of
3 Directors:

4 (a) **Auditor-Treasurer.** The duties of the Auditor-Treasurer are set forth in Article 12 of this
5 Agreement. Pursuant to Government Code Section 6505.5, the Auditor-Treasurer may be a Certified Public
6 Accountant or the county auditor-controller of one of the Parties, at the selection of the Authority and subject
7 to the consent of the applicable county auditor controller to serve as the Authority's Auditor-Treasurer. If a
8 county auditor-controller is selected, pursuant to Government Code Section 6505, the charges to the
9 Authority for the services of the Auditor-Treasurer shall be determined by the Board of Supervisors of the
10 county from which the Auditor-Treasurer is appointed, subject to approval by the Authority.

11 (b) **Other Staff.** The Board of Directors shall provide for the appointment or hire of such other
12 staff as may be necessary for the administration of the Authority.

13 (c) **Competitive Selection of Experts.** If the Authority determines to retain an expert or
14 experts to prepare any solicitation or grant application, the selection of said expert(s) shall be made through
15 a competitive process unless the expert falls within the category of professional expertise which may be
16 properly selected through a Request for Proposal or other non-competitive process.

17 **ARTICLE 12**

18 **ACCOUNTS AND RECORDS**

19 (a) **Annual Budget.** The Board shall annually adopt an operating budget for the Authority.

20 (b) **Funds and Accounts.** The Auditor-Treasurer of the Authority shall establish and maintain
21 such funds and accounts as may be required by good accounting practices and by the Board of Directors.
22 Separate accounts shall be established and maintained for each project under development or adopted and
23 implemented by the Authority. Books and records of the Authority in the hands of the Auditor-Treasurer shall
24 be open to inspection at all reasonable times by authorized representatives of the Parties.

25 The Authority shall adhere to the standard of strict accountability for funds set forth in
26 Government Code Section 6505.
27

1 (c) **Auditor's Report.** The Auditor-Treasurer, within one hundred and twenty (120) days after
2 the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year
3 to the Board of Directors and Parties.

4 (d) **Audit.** Pursuant to Government Code Section 6505, the Authority shall either make or
5 contract with a certified public accountant to make an audit of all accounts and records of the Authority,
6 conforming in all respects with the requirements of that section. Pursuant to 6505(f), ~~r~~-said audit shall cover a
7 two-year period. A report of the audit shall be filed as a public record with the Parties and with the county
8 auditor of the county where the home office of the Authority is located, and shall be sent to any public agency
9 or person in California that submits a written request to the Authority. The report shall be filed within six
10 months of the end of the fiscal year or years under examination. Costs of the audit shall be considered a
11 general expense of the Authority.

12 (e) **Records Retention.** The Authority shall retain records in accordance with applicable laws
13 and a policy to be established in the Bylaws.

14 **ARTICLE 13**

15 **RESPONSIBILITIES FOR FUNDS AND PROPERTY**

16 (a) The Auditor-Treasurer shall have the custody of and disburse the Authority's funds. He or
17 she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to
18 perform that function, subject to the requirements of (b) below. The Auditor-Treasurer shall hold and
19 prudently invest any funds for which he or she has custody consistent with the Investment Policy of the
20 Authority. The Auditor-Treasurer's primary objective in holding and investing such funds shall be: first, to
21 safeguard the principal of such funds under his or her control; second, to meet the liquidity needs of the
22 Authority; and third, to achieve a return on such funds under his or her control.

23 (b) Pursuant to Government Code Section 6505.5:

24 (1) Receive and acknowledge receipt for all funds of the Authority and place them in the
25 treasury of the Treasurer to the credit of the Authority.

26 (2) Be responsible upon his or her official bond for the safekeeping and disbursements
27 of all Authority funds so held by him or her.
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1 (3) Pay any sums due from the Authority, as approved for payment by the Board of
2 Directors or by any body or person to whom the Board of Directors has delegated approval authority, making
3 such payments from Authority funds upon warrants drawn by the Auditor-Treasurer.

4 (4) Verify and report in writing to the Authority and to the Parties, as of the first day of
5 each quarter of the fiscal year, the amount of money then held for the Authority, the amount of receipts since
6 the last report, and the amount paid out since the last report.

7 (c) Pursuant to Government Code Section 6505.1, the President, the Vice-President, and such
8 other persons as the Board of Directors may designate, shall have charge of, handle, and have access to the
9 property of the Authority.

10 (d) The Authority shall secure and pay for a fidelity bond or bonds, in an amount or amounts and
11 in the form specified by the Board of Directors, covering all officers and staff of the Authority, and all officers
12 and staff who are authorized to have charge of, handle, and have access to property of the Authority.

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14 **ARTICLE 14**

15 **RESPONSIBILITIES OF PARTIES**

16 The Parties shall have the following responsibilities under this Agreement:

17 14.1 Appointments.

18 (a) The governing board or authority of each Party shall appoint representative(s) to the Board
19 of Directors, pursuant to Article 7 hereof.

20 (b) Each Party shall appoint an officer or employee of the Party to be responsible and serve as
21 a liaison between the Party and the Authority for all matters relating to the Authority.

22 14.2 Annual Contributions.

23 If the approved Budget assesses an annual contribution from the Parties, each Party shall contribute
24 that annual assessment amount prior to and/or during each fiscal year as determined by the Board of
25 Directors. County Parties, the City Party, Water Agency Parties, and any Tribal Parties shall pay an equal
26 assessment. At the Board's discretion, DAC Parties may be assessed a reduced contribution.

27 Each Party, through its appointed Director on the Board, shall make a commitment at the date of the
28 Budget's passing that it will pay its assessment. If a Party's budgeted annual contribution payment is not

1 made within sixty (60) days of the commencement of the fiscal year, the Director representing the Party in
2 default may not vote until the contribution payment is made, and the defaulting Party will be deemed to have
3 initiated a 180-day notice intent to terminate membership pursuant to Article 15.

4 All regular contributions toward the operating and/or administrative expenses of the Authority as
5 determined by the Board of Directors shall be made in equal amounts from each of the Parties, except, at the
6 Board's discretion, DAC Parties may be assessed a reduced share.

7 1514.3 General Obligations

8 (a) Each Party shall cooperate with and assist the Authority and other contractors in all matters
9 relating to this Agreement, and shall comply with all Bylaws, and other rules by the Board of Directors.

10 (b) Each Party shall have such other responsibilities as are provided elsewhere in this
11 Agreement, and as are established by the Board of Directors in order to carry out the purposes of this
12 Agreement.

13 1514.4 Projects

14 The responsibility for financing, funding, or providing matching funds for the actual construction of
15 any project shall be the responsibility of the individual public agency or agencies performing or authorizing
16 such construction and shall not be an obligation of the Authority. However, the Authority, if it determines ~~the~~
17 a project will have substantial general benefit throughout the jurisdictions of the County Parties, may take
18 actions to secure financing, funding, or matching funds and to disburse such funds in furtherance of the
19 project.

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21 **ARTICLE 15**

22 **WITHDRAWAL AND TERMINATION**

23 (a) Any Party may withdraw membership in the Authority and its obligations under this
24 Agreement upon 180 days advance written notice to the other Parties and the Authority. The written intent to
25 withdraw may be revoked no later than 120 days prior to the end of the 180 day termination period.

26 (b) Upon withdrawal of a Party from the Authority and this Agreement, no capital contributions of
27 said Party shall be returned to the Party.
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1 (c) Should the Board of Directors determine that need and cause exist to dissolve the Authority,
2 any and all Board actions related to termination of this Agreement shall require unanimous consent of
3 directors of all original Authority County Parties – namely FRESNO, TULARE, KINGS, MADERA and
4 MERCED – that remain as members, and four-fifths (4/5) of directors of other member Parties.

5 (d) Upon termination of this Agreement, all assets of the Authority remaining after all existing
6 obligations of the Authority have been disposed of, shall be distributed among the Parties in proportion to
7 their cash and in-kind contributions and property contributed (at market value when contributed). The Board
8 of Directors shall determine such distribution within six (6) months after disposal of the last obligation of the
9 Authority.

10 (e) This Agreement and the Authority shall continue to exist until such time as the final
11 disposition of all claims, distribution of all assets, and performance of all other functions necessary to
12 conclude the affairs of the Authority.

13
14 **ARTICLE 16**

15 **LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS AND LEGAL ADVISORS**

16 The members of the Board of Directors, officers, committee members and legal advisors to any
17 board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their
18 powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any
19 mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action
20 taken or omitted by any agent or employee selected with reasonable care, nor for loss incurred through
21 investment of Authority funds, or failure to invest, performed in good faith.

22 No director, officer, committee member, or legal advisor to any board or committee shall be
23 responsible for any action taken or omitted by any other director, officer, committee member, or legal advisor
24 to any board or committee. No director, officer, committee member or legal advisor to any board or
25 committee shall be required to give a bond or other security to guarantee the faithful performance of their
26 duties pursuant to this Agreement.

27 The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority, the,
28 the Auditor-Treasurer of the Authority, any director, officer, committee member, contractor or retained expert

1 or other staff appointed by the Authority or loaned to the Authority by any Party, or any County Counsel
2 acting as legal advisor to any board or committee for their actions taken within the scope of the authority of
3 the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such
4 coverage as is hereinabove set forth.

5 **ARTICLE 17**

6 **BYLAWS**

7 The Board of Directors may adopt Bylaws consistent with this Agreement which shall provide for the
8 administration and management of the Authority. To be effective, adopted Bylaws and any changes or
9 amendments thereto must be approved by a majority of the Board of Directors.

10 **ARTICLE 18**

11 **NOTICES**

12 The Authority shall address notices, billings and other communications to the member Parties as
13 directed by the Parties. Each Party and the General At-Large Director shall provide the Authority with the
14 address to which communications are to be sent. Each Party and the General At-Large Director shall
15 address notices and other communications to the Authority at the office address of the Authority as set forth
16 in the Bylaws.

17 The Authority shall promptly give each Party and the General At-Large Director a copy of any notice
18 provided to the Authority from anyone, including but not limited to any notice from any other Party or the
19 General At-Large Director, or of any notice provided by the Authority to anyone.

20 **ARTICLE 19**

21 **AMENDMENT**

22 Any terms or provisions of this Agreement may be modified from time to time by the written consent
23 of the governing body of all the Parties without, in any way, affecting the remainder.

24 **ARTICLE 20**

25 **PROHIBITION AGAINST ASSIGNMENT**

1 No Party may assign any right, claim or interest, or delegate any obligation that it may have under
2 this Agreement, and no creditor, assignee or third party beneficiary of either Party shall have any right, claim
3 or title to any part, share, interest, fund, premium or asset of the Authority.

4
5 **ARTICLE 21**
6 **GOVERNING LAW**

7 The Parties agree that for the purposes of venue, performance under this Agreement is to be in
8 Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of
9 this Agreement shall be governed in all respects by the laws of the State of California.

10
11 **ARTICLE 22**
12 **SEVERABILITY**

13 In the event any provisions of this Agreement are held by a court of competent jurisdiction to be
14 invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to
15 mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this
16 Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

17
18 **ARTICLE 23**
19 **AGREEMENT COMPLETE**

20 This Agreement constitutes the entire agreement between the Parties with respect to the subject
21 matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writings,
22 advertisements, publications, and understandings of any nature whatsoever unless expressly included in this
23 Agreement. This Agreement may be executed in one or more original counterparts, all of which together will
24 constitute one and the same agreement.

25
26 **ARTICLE 24**
27 **FILING WITH STATE AND COUNTY**
28

1 The ~~Chair~~President of the Board of Directors of the Authority shall cause the following to be done
2 upon signature of this document or any amendment hereto by all parties:

3 (a) file the required form of notice of this Agreement, and any amendment hereto, with the Office
4 of California Secretary of State, within thirty (30) days of its effective date, as required by Government Code
5 Section 6503.5:

6 (b) file a full copy of this Agreement, and any amendment hereto, with the State Controller and
7 the Local Agency Formation Commissions (LAFCOs) of each applicable county within thirty (30) days of its
8 effective date, as required by Government Code Section 6503.6;

9 (c) file the required form of notice with the Secretary of State and with the Tulare County Clerk
10 within seventy (70) days of its effective date, as required by Government Code Section 53051;

11 (d) File notice of any changes to the information filed under (c) within ten (10) days of the
12 change.

13
14 IN WITNESS WHEREOF, the COUNTY OF FRESNO, the COUNTY OF KINGS, the COUNTY OF
15 MADERA, the COUNTY OF MERCED, the COUNTY OF TULARE, the CITY OF FRESNO, the FRIANT
16 WATER AUTHORITY, the SAN LUIS & DELTA ~~—~~MENDOTA WATER AUTHORITY, the SAN JOAQUIN
17 RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, the CITY OF AVENAL, and the CITY OF
18 ORANGE COVE have executed this Amended and Restated Joint Exercise of Powers Agreement Creating
19 the SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY as of the day and year first
20 hereinabove written.

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23 [SIGNATURES FOLLOW]

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27 **COUNTY OF FRESNO**

COUNTY OF KINGS

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Nathan Magsig
Chairman, Board of Supervisors
Bernice Seidel, Clerk of the Board
By _____

COUNTY OF MADERA

Brett Frazier
Chairman, Board of Supervisors
_____, Clerk of the Board
By _____

COUNTY OF TULARE

Kuyler Crocker
Chairman, Board of Supervisors
Jason T. Britt, Clerk of the Board/
County Administrative Officer
By _____

FRIANT WATER AUTHORITY

Chris Tantau
Chairman, Board of Directors
Director
By _____

[SIGNATURES CONTINUE ON NEXT PAGE]
SAN JOAQUIN RIVER EXCHANGE

Joe Neves
Chairman, Board of Supervisors
Catherine Venturella, Clerk of the Board
By _____

COUNTY OF MERCED

Lloyd Pareira
Chairman, Board of Supervisors
_____, Clerk of the Board
By _____

CITY OF FRESNO

Lee Brand
Mayor
By _____

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

~~Cannon Michael~~ Federico Barajas
~~Chairman, Board of Directors~~ Executive
By _____

CITY OF AVENAL

1 **CONTRACTORS WATER AUTHORITY**

2 _____
3 James O'Banion
4 Chairman, Board of Directors

5 By _____

6 **CITY OF ORANGE COVE**

7 _____
8 Victor Lopez
9 Mayor

10 By _____

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Melissa Whitten
City Manager

By _____

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APPROVED AS TO LEGAL FORM

Daniel C. Cederborg,
County Counsel, County of Fresno

Regina A. Garza,
County Counsel, County of Madera

David Prentice,
Interim County Counsel, County of Kings

Friant Water Authority

San Joaquin River Exchange
Contractors Water Authority

City of Orange Cove

APPROVED AS TO LEGAL FORM

Deanne Peterson,
County Counsel, County of Tulare

James N. Fincher
County Counsel, County of Merced

City of Fresno

Rebecca Akroyd, General Counsel,
San Luis & Delta-Mendota Water
Authority

City of Avenal