



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Frances Mizuno, Special Projects Administrator

DATE: August 5, 2021

RE: Resolution Authorizing Execution of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and Los Vaqueros Reservoir Joint Exercise of Powers Agreement, and Authorizing Actions Related Thereto

BACKGROUND

The Los Vaqueros Reservoir Expansion Project (LVE) includes expansion of the Los Vaqueros Reservoir from its current capacity of 160 TAF to 275 TAF, construction of a pipeline between CCWD's Transfer Pump Station and the State Water Project's California Aqueduct at Bethany Reservoir (the "Transfer-Bethany Pipeline"), upgrades to the existing Transfer Pump Station Facilities, and construction of the Neroly High Lift Station.

The potential benefits from the LVE Project include the operational flexibility to Reclamation to move CVP water south of Delta, conveyance and storage of water purchased through water transfers, and storage of rescheduled and/or transfer water for CVP contractors and Level IV Refuge Water for Grasslands Water District.

The Water Authority on December 12, 2011 entered into a Memorandum of Understanding (MOU) regarding CalFed Bay-Delta Program Studies on the expansion of LVE with Contra Costa Water District (CCWD) and other water agencies. Since the Water Authority's participation in the MOU, individual member agencies (Byron-Bethany Irrigation District, Del Puerto Water District, Grassland Water District, San Luis Water District, Santa Clara Valley Water District, and Westlands Water District) also entered into the MOU to seek potential storage/conveyance benefits directly for their respective districts.

On April 1, 2019, Byron Bethany Irrigation District, Del Puerto Water District, Panoche Water District and Westlands Water District entered into the San Luis & Delta-Mendota Water Authority Los Vaqueros Reservoir Expansion Project Activity Agreement to participate in the LVE Cost Share Agreement for LVE Project Planning.

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An Amendment No 1 of the LVE Cost Share Agreement was executed on June 22, 2019 to extend the termination date to December 30, 2020. Amendment 2 was executed on December 2, 2020 to add additional scope of work and increase the funding cost. Amendment No. 3 is scheduled to be executed in August, 2021 to further increase the scope of work and cost by \$5,956,055 with Activity Agreement Members' share of \$850,865. Amendment 3 shall terminate once the new Los Vaqueros Reservoir Joint Powers Authority (LVR JPA) is operating.

Over the past year, Local Agency Partners (LAPs) have worked on the development of the new LVR JPA to govern the implementation of the Phase 2 Los Vaqueros Reservoir Project, including by drafting the Los Vaqueros Reservoir Joint Exercise of Powers Agreement (JPA Agreement). The LAPs are expected to execute the JPA Agreement by mid-September.¹ Since the current LVE Activity Agreement is for the purpose of participating in the LVE Cost Share Agreement, the Activity Agreement participants wish to amend the LVE Activity Agreement to incorporate participation in the LVR JPA. In addition, under the LVR JPA, the Board will be required to appoint an Authority representative and alternate to serve of the LVE JPA Board of Directors.

ISSUE FOR DECISION

Whether the Water Authority should adopt the proposed Resolution Authorizing Execution of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and Los Vaqueros Reservoir Joint Exercise of Powers Agreement, and Authorizing Actions Related Thereto.

RECOMMENDATION

Staff recommends the Board adopt the proposed Resolution Authorizing Execution of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and Los Vaqueros Reservoir Joint Exercise of Powers Agreement, and Authorizing Actions Related Thereto, including the appointment of Anthea Hansen as the Water Authority's LVR JPA Director and Jose Gutierrez as the alternate.

ANALYSIS

Current LVE Activity Agreement Members Byron Bethany Irrigation District, Del Puerto Water District, Panoche Water District, and Westlands Water District have expressed desire to participate in the LVR JPA through the amended and restated LVE Activity Agreement. The City

¹ The LAPs include expected to join the LVR JPA as members include: (1) Alameda County Flood Control & Water Conservation District, Zone 7; (2) Alameda County Water District; (3) Contra Costa Water District (to include City of Brentwood); (4) East Bay Municipal Utility District; (5) Grassland Water District; (6) Santa Clara Valley Water District; (6) San Francisco Public Utilities Commission (to include Bay Area Water Supply & Conservation Agency); and (7) San Luis & Delta-Mendota Water Authority. The Department of Water Resources will also be an ex officio, non-voting member.

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of Tracy has also indicated interest in participating through the Water Authority, but any action to admit the City of Tracy to the Activity Agreement will occur at a later date.

Upon adoption of the resolution, the Executive Director would execute the First Amended and Restated Activity Agreement. Then, following execution by the four above-named Activity Agreement Members, the Water Authority would be authorized to execute the JPA Agreement and notify the LVR JPA of the appointment of Ms. Hansen and Mr. Gutierrez as the Water Authority's representatives.

Execution of the First Amended and Restated Activity Agreement and the JPA Agreement does not legally bind or otherwise commit the Water Authority or the Activity Agreement Members to participate in or otherwise proceed with the LVE Project. The Water Authority and the LVR JPA will comply with the California Environmental Quality Act (CEQA), as applicable, prior to participating or otherwise proceeding with the LVE Project.² Further, executing the First Amended and Restated Activity Agreement and joining the LVR JPA are both administrative and organizational actions that will not result in a direct physical change in the environment or a reasonably foreseeable indirect change to the environment, and thus are not projects as defined by CEQA Guidelines section 15378(b)(5).

The Water Authority's participation in the First Amended and Restated Activity Agreement and the LVR JPA will require staff time to manage the project and coordinate with the Activity Agreement participating members. Activity Agreement Members would be responsible for all financial (including Water Authority staff time) obligations and liabilities associated with the Water Authority's engagement with the Project and the LVR JPA (see Article 14 of the First Amended and Restated Activity Agreement). In addition, both the JPA Agreement and the amended and restated Activity Agreement contain provisions that expressly allow for adjustments in the manner in which the Activity Agreement Members participate in the LVR JPA. For example, the documents include provisions that would allow Activity Agreement Members to withdraw from the Activity Agreement and participate in the LVR JPA alongside the Water Authority, and provisions that would allow one or more Activity Agreement Members to take the place of the Water Authority in the LVR JPA in certain circumstances.

It is also important to note that any interests in the LVE Project ultimately held by the Water Authority (e.g. storage and conveyance usage rights) will be held by the Water Authority for the benefit of the participating members.

BUDGET

² It is worth noting that the Project has been the subject of prior review in compliance with CEQA and that CCWD, as lead agency, has completed and certified an environmental impact report concerning the Project.

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No direct budget impact, due to the proposed structure of the Activity Agreement, whereby the cost for the Water Authority's participation in the LVE JPA, and any additional financial obligations and liabilities associated with execution of the LVE JPA, will be paid for by only the Activity Agreement Members.

EXHIBITS

1. Resolution No. 2021-XX Authorizing Execution of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and Los Vaqueros Reservoir Joint Exercise of Powers Agreement, and Authorizing Actions Related Thereto
2. Draft First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement
3. Draft Los Vaqueros Reservoir Joint Exercise of Powers Agreement
4. Phase 2 Los Vaqueros Reservoir Expansion Project Near Term Milestones Handout

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2021-

RESOLUTION AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED LOS VAQUEROS RESERVOIR EXPANSION PROJECT ACTIVITY AGREEMENT AND LOS VAQUEROS RESERVOIR JOINT EXERCISE OF POWERS AGREEMENT, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, the Los Vaqueros Reservoir Expansion Project (“LVE Project”) includes expansion of the Los Vaqueros Reservoir from its current capacity of 160,000 acre-feet to 275,000 acre-feet, construction of a pipeline between Contra Costa Water District’s (“CCWD”) Transfer Pump Station and the State Water Project’s California Aqueduct at Bethany Reservoir (the “Transfer-Bethany Pipeline”), upgrades to the existing Transfer Pump Station Facilities, and construction of the Neroly High Lift Station; and

WHEREAS, the potential benefits from the LVE Project include the operational flexibility to the United States Bureau of Reclamation (“Reclamation”) to move Central Valley Project (“CVP”) water south of the Delta, conveyance and storage of water purchased through water transfers, and storage of rescheduled and/or transfer water for CVP contractors and Level IV Refuge Water for Grasslands Water District; and

WHEREAS, on December 12, 2011, the San Luis & Delta-Mendota Water Authority (“Water Authority”) entered into a Memorandum of Understanding regarding CalFed Bay-Delta Program Studies on the expansion of Los Vaqueros Reservoir (“LVE MOU”) with CCWD and other water agencies; and

WHEREAS, subsequently, individual Water Authority member agencies Byron-Bethany Irrigation District, Del Puerto Water District, Grassland Water District, San Luis Water District, Santa Clara Valley Water District, and Westlands Water District also entered into the LVE MOU to seek potential storage and/or conveyance benefits directly for their respective districts; and

WHEREAS, on April 1, 2019, Byron Bethany Irrigation District, Del Puerto Water District, Panoche Water District, and Westlands Water District (together, “Activity Agreement Members”) entered into the San Luis & Delta-Mendota Water Authority Los Vaqueros Reservoir Expansion Project Activity Agreement to participate in the LVE Cost Share Agreement for LVE Project Planning; and

WHEREAS, over the past year, the Water Authority and other “Local Agency Partners” that were signatories to the LVE MOU and/or the LVE Cost Share Agreement and subsequent amendments have worked on the development of a new Los Vaqueros Reservoir Joint Powers Authority (“LVR JPA”) to govern the implementation of the Phase 2 Los Vaqueros Reservoir

Project, including by drafting the Los Vaqueros Reservoir Joint Exercise of Powers Agreement (“JPA Agreement”); and

WHEREAS, the Activity Agreement Members desire to provide cost-sharing through the Water Authority’s execution of the LVR JPA Agreement, to participate through the Water Authority in the LVR JPA; to appointment representatives to the LVR JPA Board of Directors; and to share the obligations of the LVE Project through an amended activity agreement; and

WHEREAS, the Board has considered that certain form of the JPA Agreement (**Attachment 1**), a copy of which has been presented to the Board and is on file with the Secretary hereof; and

WHEREAS, the Board has further considered that certain form of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement (**Attachment 2**) setting forth the terms by which the certain Members of the Water Authority are willing to participate in the benefits and are willing to incur the obligations of the JPA Agreement, through the joint exercise of the powers common to each of the parties, a copy of which has also been presented to the Board and is on file with the Secretary hereof; and

WHEREAS, the Water Authority’s execution of the JPA Agreement will be contingent upon execution of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement by the Water Authority and the four above-named Activity Agreement Members; and

WHEREAS, authorizing execution of the First and Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and the JPA Agreement does not legally bind or otherwise commit the Water Authority or the Activity Agreement Members to participate in or otherwise proceed with the LVE Project, and further, executing the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement and joining the LVR JPA are both administrative and organizational actions that will not result in a direct change in the environment or a reasonably foreseeable indirect change to the environment, and thus do not constitute projects under the California Environmental Quality Act (CEQA Guidelines Section 15378(b)(5)).

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby authorizes the Executive Director to execute the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement in substantially the form presented to the Board, subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution.

Section 3. The Board hereby authorizes the Executive Director to execute the Los Vaqueros Reservoir Joint Exercise of Powers Agreement in substantially the form presented to the Board, subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution and further subject to the contingencies described in Section 5 of this Resolution.

Section 4. The Board hereby authorizes the designation and appointment of Anthea Hansen, General Manager of Activity Agreement Member Del Puerto Water District, to act as the Water Authority's Director on the LVR JPA Board of Directors, and Jose Gutierrez, Chief Operating Officer of Activity Agreement Member Westlands Water District, to act as an alternate to Ms. Hansen on the LVR JPA Board of Directors, with notice of such designation and appointment to be provided the LVR JPA within thirty (30) days of the effective date of the Los Vaqueros Reservoir Joint Exercise of Powers Agreement, and subject to the contingencies described in Section 5 of this Resolution.

Section 5. The authorization to execute the Los Vaqueros Reservoir Joint Exercise of Powers Agreement and to designate and appoint Ms. Hansen and Mr. Gutierrez as the Water Authority's representatives on the LVR JPA Board of Directors conferred by this Resolution shall be contingent upon the occurrence of the following action execution by the four above-named Activity Agreement Members of the First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement.

Section 6. In the event the contingency described in Section 5 fails to occur, the authorization conferred by this Resolution for which the contingency is not satisfied is revoked *ab initio* as to the document not achieving the signatures as required by said Section 5, and any documents executed or designations and appointments made by the Water Authority in reliance upon it shall have no binding force or effect.

Section 7. The Executive Director, Chief Operating Officer, or such Water Authority employee or consultant as either of such officers may designate, is further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution, subject to the budgets and approvals as set forth in the respective documents.

PASSED, APPROVED AND ADOPTED this 5th day of August, 2021, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution No. 2021- was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 5th day of August, 2021.

Federico Barajas, Secretary

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
FIRST AMENDED AND RESTATED LOS VAQUEROS RESERVOIR EXPANSION
PROJECT ACTIVITY AGREEMENT

This **FIRST AMENDED AND RESTATED LOS VAQUEROS RESERVOIR EXPANSION PROJECT ACTIVITY AGREEMENT** (“**Activity Agreement**”) is made effective as of the date it is executed by and among the San Luis & Delta-Mendota Water Authority, a joint powers agency of the State of California (“**Authority**”), and Byron-Bethany Irrigation District, Del Puerto Water District, Panoche Water District, and Westlands Water District (collectively the “**Members**”). Capitalized terms used in this Activity Agreement shall have the meanings set forth in Section 2 below.

1. RECITALS

A. The Members, together with certain other local agencies, have entered into an amended and restated Joint Exercise of Powers Agreement-San Luis & Delta-Mendota Water Authority dated as of January 1, 1992 (the “**JPA**” or “**JPA Agreement**”), by and among the parties indicated therein, establishing the Authority for the purpose of exercising the common powers of the Members, including those powers described in this Activity Agreement.

B. The Members are each empowered, among other powers, to provide water service to lands within their boundaries; to operate and maintain works and facilities for the development, distribution and use of water for irrigation and for any drainage or reclamation works connected therewith or incidental thereto and/or to operate and maintain works and facilities for the development, distribution and use of water for municipal and industrial use; to contract with the United States, the State and other public agencies and, effective January 1, 1995, with mutual water companies, for such purposes; to control the quality of water accepted into their respective systems; to exercise powers related to the construction, operation, or maintenance of water storage and delivery facilities; and to adopt rules and regulations necessary to the exercise of such powers.

C. The Members have each entered into contracts with the United States for water from the Central Valley Project (“**CVP**”) and receive water conveyed through the Delta-Mendota Canal and/or the San Luis Canal.

D. For several years to come, because of hydrologic conditions and/or regulatory constraints, the operation of the CVP by the United States Bureau of Reclamation (“**Reclamation**”) will likely result in shortages of supply, which would result in less water being made available to the members of the Authority than required to meet the demands of their customers.

E. On December 12, 2011, the Authority entered into a Memorandum of Understanding regarding CalFed Bay-Delta Program Studies on the expansion of Los Vaqueros Reservoir (“**LVE MOU**”) with Contra Costa Water District (“**CCWD**”) and other water agencies.

F. Subsequently, Water Authority member agencies Byron-Bethany Irrigation District, Del Puerto Water District, Grassland Water District, San Luis Water District, Santa Clara Valley Water District, and Westlands Water District also entered into the MOU and individual cost share agreements to seek potential storage and/or conveyance benefits directly for their respective districts.

G. The Authority and certain Water Authority member agencies, together with Reclamation and other public agencies have considered the feasibility of a Phase 2 Los Vaqueros Reservoir Expansion Project (“**LVE Project**” or “**Project**”) to, among other things, develop regional water supplies for environmental water management, to improve regional water supply reliability, and to improve regional water quality, while maintaining benefits from the existing Los Vaqueros Reservoir.

H. In early 2019, the Project included, but was not limited to, planning for the construction of an expanded reservoir with a capacity of 275,000 acre-feet, construction of a pipeline between CCWD’s Transfer Pump Station and the California Department of Water Resources’ California Aqueduct at Bethany Reservoir (the “**Transfer-Bethany Pipeline**”), upgrades to the existing Transfer Pump Station facilities, and construction of the Neroly High Lift Pump Station.

I. The LVE MOU participants were in receipt of a proposed CCWD Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning (“**LVE Cost Share Agreement**”). The LVE Cost Share Agreement was for the purpose of providing cost-sharing to complete planning and preconstruction activities related to the LVE Project.

J. The Members previously entered into the LVE MOU and individual cost share agreements desired to provide cost-sharing through the Water Authority and its execution of the LVE Cost Share Agreement.

K. In March and April of 2019, the Members executed the Los Vaqueros Expansion Project Activity Agreement to enable them to participate in the benefits and incur the obligations of the LVE Cost Share Agreement (individually, “**Activity Agreement Member**” or collectively, “**Activity Agreement Members**”).

L. By the Water Authority executing the LVE Cost Share Agreement, the Water Authority became a “Local Agency Partner”, to participate in coordination with and on behalf of the Participating Member Agencies.

M. The various “Local Agency Partners” in the LVE Project are now in the process of finalizing a “Los Vaqueros Reservoir Joint Exercise of Powers Agreement” (“**LVR JPA Agreement**”) to create a “Los Vaqueros Reservoir Joint Powers Authority” (“**LVR JPA**”).

N. The Activity Agreement Members desire to provide cost-sharing through the Water Authority’s execution of the LVR JPA Agreement, and the joint exercise of their common powers under this Activity Agreement.

O. The Water Authority and each of the Activity Agreement Members have shared, and continue to share, a common interest in sharing information and resources reasonably necessary to accomplish the purpose in this Activity Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the true and correct facts recited above, and of the covenants, terms, and conditions set forth herein, the Activity Agreement Members and the Authority agree as follows:

2. DEFINITIONS

2.1. “**Activity Agreement**” or “**Agreement**” shall mean this First Amended and Restated Los Vaqueros Reservoir Expansion Project Activity Agreement.

2.2. “**Activity Agreement Expenses**” shall mean all expenses directly incurred by the Authority pursuant to this Activity Agreement and any agreements executed in conjunction with

this Activity Agreement, together with a share of Authority Operating Costs allocable to Activity Agreement Members.

2.3. “**Activity Agreement Member**” shall mean the Members and any other member of the Authority that signs this Activity Agreement pursuant to Section 17 below. The Activity Agreement Members are listed on Exhibit “A” attached hereto, and such list may be updated without amendment to this Activity Agreement.

2.4. “**Administration Agreements**” shall mean those certain agreements between the Authority and Activity Agreement Members for the undertaking of activities and sharing of costs and benefits pursuant to Sections 22 and 23 of the JPA.

2.5. “**Authority**” shall mean the San Luis & Delta-Mendota Water Authority.

2.6. “**Authority Operating Costs**” shall mean the Authority’s rent and other occupancy charges, acquisition costs of office furniture and equipment, including telephone, telecopy, photocopy, cost of cars and other vehicles, insurance premiums, salaries and wages of employees including payments in connection with retirement programs and other benefit programs, fees of creditors, lawyers, engineers and other consultants, travel, telephone, telecopy, and photocopy expenses, and any other general administrative expenses.

2.7. “**Board of Directors**” shall mean the Board of Directors of the San Luis & Delta-Mendota Water Authority.

2.8. “**Capacity Usage Rights**” means the LVR JPA members’ rights to Project water transmission and storage capacity, which will be assigned to the Authority and held by the Authority on behalf of Activity Agreement Members under the terms of one or more Service Agreements. The Authority’s share of Capacity Usage Rights, held on behalf of one or more Activity Agreement Members, shall be the basis for the Activity Agreement Members’ share of the Costs of Service.

2.9. “**Costs of Service**” means the costs of services included in the payments, or other non-monetary benefits, the LVR JPA will receive from LVR JPA members pursuant to the Service Agreements or any Related Activity Agreement based on Capacity Usage Rights. The Costs of Service, which shall be as fully described and specified in the respective Service Agreements or any Related Activity Agreement, include, but are not limited to, all Project capital costs and operating expenses, such as Project development costs; debt service, to the extent applicable under any agreed upon financing vehicle, including interest, on any Bonds; amounts payable to CCWD

and EBMUD under the Facilities Usage Agreements; operations and maintenance costs of the Project or of any Related Activity; LVR JPA administrative expenses; capital reserve payments; and payments to a renewal and replacement fund the LVR JPA will establish.

2.10. “**Fiscal Year**” shall mean the Authority’s March 1 – February 28/29 fiscal year.

2.11. “**JPA**” or “**JPA Agreement**” shall mean that certain Amended and Restated Joint Exercise of Powers Agreement effective January 1, 1992, establishing the Authority, as it may be amended or restated over time.

2.12. “**Participation Percentage**” shall mean each Activity Agreement Member’s allocated share of Activity Agreement Expenses determined as described in Section 9 of this Agreement and set forth on Exhibit “B” as updated from time to time.

2.13. “**LVE Cost Share Agreement**” shall mean the Contra Costa Water District Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning and Amendments entered into by the Authority on behalf of the Activity Agreement Members.

2.14. “**Los Vaqueros Reservoir Joint Powers Authority**” or “**LVR JPA**”) shall mean the Los Vaqueros Reservoir Joint Powers Authority that is anticipated to be created through execution of the Los Vaqueros Reservoir Joint Exercise of Powers Agreement.

2.15. “**Los Vaqueros Reservoir Joint Exercise of Powers Agreement**” or “**LVR JPA Agreement**” shall mean the Los Vaqueros Reservoir Joint Exercise of Powers Agreement that is anticipated to be entered into by the Authority on behalf of the Activity Agreement Members.

2.16. “**LVE Project**” or “**Project**” shall mean the second phase of the efforts to expand existing conveyance facilities, and construct new conveyance facilities, at the Los Vaqueros Reservoir owned and operated by CCWD. The Project will expand Los Vaqueros Reservoir to a capacity up to 275,000 acre-feet and will interconnect CCWD’s intake system to new and existing conveyance facilities.

2.17. “**Service Agreement(s)**” shall mean the agreement(s) pursuant to which the LVR JPA will provide services and/or Capacity Usage Rights to the Authority on behalf of Activity Agreement Members and the Authority on behalf of Activity Agreement Members will be obligated to make payments, or provide other non-monetary benefits to the LVR JPA with respect to the costs thereof, as consideration for those services and/or Capacity Usage Rights, all in accordance with the terms and conditions of any such Service Agreement(s), which are anticipated to be entered into

by the Authority on behalf of the Activity Agreement Members. The Service Agreements shall allocate the Costs of Service among the LVR JPA Members in proportion to their anticipated use of Project facilities and other benefits the LVR JPA Members derive from the Project in accordance with their shares of Capacity Usage Rights as expressed by the “beneficiary pays” principle.

2.18. “**Special Project Agreement**” shall mean an agreement entered into between the Authority and certain Activity Agreement Members that desire to collectively carry out a special project or execute a Service Agreement that is either not carried out or executed by all of the Activity Agreement Members or that provides different benefits to the affected Activity Agreement Members. A Special Project Agreement shall be required for each and every Service Agreement executed by the Authority on behalf of an Activity Agreement Member or Activity Agreement Members.

2.19. “**Special Project Expenses**” shall mean costs and expenses allocable to Activity Agreement Members incurred pursuant to a Special Project Agreement, including in some instances Costs of Service, and shall also include Authority Operating Costs allocated to the Special Project Agreement.

2.20. “**Special Project Participants**” shall mean those Activity Agreement Members who execute a Special Project Agreement.

2.21. All other capitalized terms used herein shall have the meanings ascribed to them in the LVR JPA Agreement.

3. PURPOSE OF AGREEMENT

3.1. The purpose of this Activity Agreement is to allow, through the joint exercise of some or all of the common powers of the Activity Agreement Members described in the Recitals above, as appropriate, the Activity Agreement Members to participate through the Authority in the LVR JPA Agreement to allow the Authority obtain for each of the Activity Agreement Members the benefits, and to share the obligations of the LVR Project.

3.2. The parties acknowledge and agree that the Authority’s role in this Activity Agreement is to: 1) provide the umbrella joint powers agreement pursuant to which the Activity Agreement Members may exercise their common powers and the Authority may provide coordinated services at the expense of the Activity Agreement Members; 2) negotiate, implement, and administer the LVR JPA Agreement and Special Project Agreements on behalf of and in

coordination with the Activity Agreement Members; 3) provide the mechanism and authority for the Authority to execute the LVR JPA Agreement and Service Agreements on behalf of the Activity Agreement Members; 4) provide the mechanism for the Activity Agreement Members to select the Authority's representatives on the LVR JPA Board of Directors and how that representative will act on behalf of the Activity Agreement Members; 5) provide administrative services for implementation of the LVR JPA Agreement and Special Project Agreements, including, but not limited to, providing notices, providing billing and accounting services to the Activity Agreement Members during the term hereof; and 6) undertake such additional activities and responsibilities as may be requested and funded by the Activity Agreement Members.

4. ORGANIZATION

The business of this Activity Agreement shall be initially conducted by the Authority at large and therefore be governed by the Board of Directors of the Authority. However, it is recognized that at some time in the future the Activity Agreement Members may wish to form a separate body specifically for the purpose of directing the business of the Activity Agreement. Within eighteen (18) months of the effective date of this Agreement, the Activity Agreement Members will evaluate whether to facilitate the formation of an Activity Agreement steering committee. If the Activity Agreement Members unanimously agree, upon that agreement, the Board of Directors of the Authority will establish the organizational structure proposed by the Activity Agreement Members, which will be described in an amendment to this Activity Agreement, and which shall then serve as the governing body for this Activity Agreement.

5. ROLE OF AUTHORITY; POWERS RESERVED TO BOARD OF DIRECTORS AND LIMITATIONS THEREON

5.1. Role of the Authority. The role of the Authority under this Activity Agreement will be to provide, through Authority staff or contracts with consultants, coordinated services to assist the Activity Agreement Members in conducting the activities contemplated by this Agreement and any related Service Agreements and/or Special Project Agreements. The Authority will provide only those services supported with funding from the Activity Agreement Members, grant funding, or other means that will not impose costs on members of the Authority that are not Activity Agreement Members, in accordance with budgets recommended by staff, and approved by the

Activity Agreement Members and the Board of Directors, as more specifically provided under the terms of this Agreement.

5.2. Powers Reserved to Board of Directors and Limitations Thereon.

a) The Board of Directors shall have ultimate approval authority over all Activity Agreement annual budgets based upon the recommendation of staff and approval of the Activity Agreement Members; provided, the Board of Directors may only alter an Activity Agreement annual budget in a manner consistent with the Activity Agreement Members recommendation.

b) The Board of Directors shall have the right, upon recommendation of or in consultation with staff and Activity Agreement Members, to approve all amendments to this Activity Agreement.

c) The Board of Directors shall have the right, upon the recommendation of one or more affected Activity Agreement Members in the form of formal Board action, to authorize execution of all Service Agreements and Special Project Agreements, and other agreements relating to the LVE Project.

d) The Board of Directors shall have the right, upon the recommendation of or in consultation with the Activity Agreement Members, to act on any claims and to make decisions concerning the prosecution of, defense of, or other participation in actions or proceedings at law brought against the Authority arising from this Activity Agreement; provided if that action is taken at the request of the Activity Agreement Members then the costs for such action shall be borne by the Activity Agreement Members.

e) The Board of Directors delegates to staff the authority to conduct the activities described in this Activity Agreement pursuant to the terms of this Activity Agreement, without the required approval of the Board of Directors except as specifically provided in this Section 5.2. Also, except as set forth in this Section 5.2, this delegation shall specifically include, but not be limited to, the authority to enter into contracts within approved Activity Agreement budgets.

5.3. Execution of the LVR JPA Agreement. The Board of Directors shall have the right to authorize the Authority to execute the LVR JPA Agreement (1) upon execution of this Activity

Agreement by the Activity Agreement Members, and (2) upon a recommendation of the Activity Agreement Members to proceed with executing the LVR JPA Agreement in its final form.

6. BUDGETARY RESPONSIBILITIES OF ACTIVITY AGREEMENT MEMBERS

To the extent that the Authority prepares budgets for this Activity Agreement, the Authority shall coordinate with Activity Agreement Members in the development of any such budgets for the activities authorized by this Activity Agreement, annually or more frequently as needed, for presentation to the Board of Directors of the Authority in accordance with Section 22 of the JPA Agreement. The Authority staff will not present to the Authority Board a budget for this Activity Agreement unless and until supported by each of the Activity Agreement Members. Budgeted amounts for this Activity Agreement will be collected through the invoicing process described in Section 9 of this Activity Agreement, and, provided each of the Activity Agreement Members is in agreement, formal amendment of such budgets through Board of Directors of the Authority approval is not required for adjustments of expenditure for activities authorized by this Activity Agreement.

7. ACCOUNTABILITY, REPORTS, AND AUDITS

7.1. Full books and accounts for this Activity Agreement shall be maintained by the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for public entities. The books and records shall be open to inspection by the Activity Agreement Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

7.2. There shall be strict accountability of all funds deposited on behalf of the Activity Agreement with the Authority. The Treasurer of the Authority, directly or acting through its Accounting Department, shall provide regular reports of Activity Agreement accounts. Funds of the Activity Agreement shall be subject to audit by the official auditor of the Authority. An Activity Agreement Member may request an independent audit of the Activity Agreement funds; such audit shall be conducted at the expense of the requesting Activity Agreement Member.

8. ACTIVITY AGREEMENT EXPENSES AND ALLOCATION OF OPERATING COSTS

8.1. The Authority and the Activity Agreement Members agree that all Activity Agreement Expenses incurred by the Authority under this Activity Agreement are the costs of the

Activity Agreement Members, and not of the Authority, and shall be paid by the Activity Agreement Members.

8.2. The Activity Agreement Members further agree that the Board of Directors is authorized to allocate a share of Authority Operating Costs, which includes a portion of costs addressed by the Administration Agreements, as part of the Activity Agreement Expenses to cover the cost to the Authority of administering this Activity Agreement.

9. PARTICIPATION PERCENTAGES, INVOICING, PAYMENTS

9.1. Initial Participation Percentages. Each Activity Agreement Member agrees to reimburse the Authority for an equal share of the actual costs due by the Authority under the LVR JPA Agreement, plus an equal share of any Activity Agreement Expenses. For example, if there are five (5) Activity Agreement Members, each Activity Agreement Member would agree to reimburse the Authority one-fifth (1/5th) of those costs.

9.2. Changing Participation Percentages Due to Withdrawal. The Participation Percentages shall be revised in response to the withdrawal of one or more Activity Agreement Members pursuant to Section 16 of this Activity Agreement or a change in the participation status of one or more Activity Agreement Member as follows:

9.3. Upon withdrawal of one or more of the Activity Agreement Members from participation in this Activity Agreement and in the LVE Project, each of the remaining Activity Agreement Members will be allocated an equal share of all Activity Agreement Expenses and all remaining rights in the LVE Project held by the Authority for Activity Agreement Members.

9.4. Upon withdrawal of one or more of the Activity Agreement Members from participation in this Activity Agreement, but where the withdrawing Activity Agreement Member(s) will continue participation in the LVE Project (a "Change," as that term is defined in the LVR JPA Agreement), (i) the Authority and Activity Agreement Members that will remain Activity Agreement Members after the withdrawal is complete will work in good faith and take all actions necessary to provide, after the withdrawal is complete, the withdrawing Activity Agreement Member(s) the rights and obligations to the LVE Project which it(they) had prior to withdrawing from the Activity Agreement, and (ii) after the withdrawal is complete, each of the remaining Activity Agreement Member(s) will be allocated an equal share of all Activity Agreement Expenses and all remaining rights in the LVE Project held by the Authority for Activity Agreement Members.

9.5. Changing Participation Percentages Due to Addition. The Participation Percentages shall be revised in response to the addition of one or more members of the Authority pursuant to Section 17 of this Activity Agreement.

9.6. Ongoing Documentation of Participation Percentages. The Participation Percentages of each Activity Agreement Member shall be dated and attached as Exhibit “B” to this Agreement, effective upon the date approved by all Parties, without any further amendment of this Agreement being required. Any further amendments to Exhibit “B” may be made using the procedure included in this Section 9.2 without any further separate amendment of this Agreement being required.

9.7. Invoicing and Payment.

a) The Authority shall invoice each of the Activity Agreement Members for all Activity Agreement Expenses in their respective Participation Percentages on the same schedule as it utilizes for collecting membership dues to implement the Authority budget for each March 1 through February 28/29 fiscal year, generally twice yearly in mid-March and August of such year. Payments are due thirty (30) days following the receipt of the Authority’s invoice.

b) The Authority shall promptly invoice each of the Activity Agreement Members for any Special Project Expenses and/or Costs of Service, with payments due thirty (30) days following the receipt of the Authority’s invoice.

10. SOURCE OF PAYMENTS

Each Activity Agreement Member agrees that it will timely take actions necessary to provide sufficient money to meet its obligations hereunder. Each Activity Agreement Member hereby confirms that the Authority and other Activity Agreement Members are third party beneficiaries of such Activity Agreement Member’s obligations under this Agreement and may take such actions in law or in equity as may be desirable to enforce payments hereunder.

11. SERVICE AGREEMENTS, OTHER AGREEMENTS, AND PAYMENTS FOR COSTS OF SERVICE

11.1. The Authority may enter into a Service Agreement, Service Agreements, and other agreements, including but not limited to Interim Funding Agreements, with the LVR JPA, pursuant to which the LVR JPA will provide services or Capacity Usage Rights, or conduct Project development activities, on behalf of some or all Activity Agreement Members. Any Capacity

Usage Rights assigned to the Authority will be exercised by the Activity Agreement Members; the Authority shall not independently have any right to Project water transmission or storage capacity.

11.2. No Service Agreement will be executed unless and until formal action is taken by the one or more affected Activity Agreement Members to both (1) recommend the Authority's execution of the Service Agreement on the Member's or Members' behalf and (2) to authorize the payment of Costs of Service via execution of a Special Project Agreement.

11.3. The Authority will be obligated to make payments, or provide other non-monetary benefits to the LVR JPA with respect to the costs thereof, as consideration for those services, Capacity Usage Rights, or activities, all in accordance with the terms and conditions of any such Service Agreement(s) or other agreements.

11.4. Each Activity Agreement Member shall be bound to accept and pay for the actual costs of such Member's allocated share of the Costs of Service or other costs under any Service Agreement or other agreement executed by the Authority on the Activity Agreement Member's behalf. Payments will be made consistent with Section 9.4 above, and in accordance with any Special Project Agreement executed pertaining to the Service Agreement, consistent with Section 12 below.

12. SPECIAL PROJECTS

12.1. Fewer than all of the Activity Agreement Members may enter into a Special Project Agreement to achieve any of the purposes or activities authorized by this Activity Agreement, and to share in the expenses and costs of such activity. Special Project Agreements must be in writing and may be documented by completion and execution of a form agreement developed for such purpose.

12.2. The Authority and one or more Activity Agreement Members must execute a Special Project Agreement before the Authority and the LVR JPA may execute a Service Agreement. As described above in Section 11.2, (i) formal action by each Activity Agreement Member(s) is required before the Authority would be authorized to execute a Special Project Agreement for the benefit of each of those Activity Agreement Member(s), and to recommend the Authority's execution of a Service Agreement, as well as the Authority's execution of the Special Project Agreement pursuant to Section 5.2(c).

12.3. Activity Agreement Members that sign Special Project Agreements agree that all Special Project Expenses, including Costs of Service, incurred by the Authority under this Activity Agreement for each such Special Project are the costs of the Special Project Participants, respectively, and not of the Authority or of the Activity Agreement Members not participating in the Special Project. The Special Project Agreements shall specify the allocation of Special Project Expenses to the Special Projects Agreement participants, and the Special Project Expenses shall be made by the respective Special Project Participants.

12.4. Special Project Participants shall hold the Authority and each Activity Agreement Member that is not a member of the Special Project Agreement free and harmless from and indemnify each of them against any and all costs, losses, damages, claims, and liabilities arising from the Special Project Agreement. The indemnification obligation of Special Project Participants arising from the Special Project Agreement shall be the same as specified in Section 14 for Activity Agreement Members in general, except that it shall be limited to those costs, losses, damages, claims, and liabilities arising from the Special Project Agreement.

13. REPRESENTATION ON THE LVR JPA BOARD OF DIRECTORS

13.1. Representation on the LVR JPA Board of Directors.

a) Within thirty (30) days of the Effective Date of the LVR JPA Agreement, provided the Authority is a party thereto, the Authority will be entitled to designate and appoint, by a formal action of the Authority's Board of Directors, one (1) individual to act as its representative (Director) on the LVR JPA Board of Directors, and one (1) other individual to act as an alternate to that Director so appointed. However, this action to designate and appoint may precede the Effective Date of the LVR JPA Agreement, as it may occur concurrently with formal action by the Authority's Board of Directors to authorize execution of the LVR JPA Agreement.

b) The designation and appointment of a Director and alternate will be acted upon by the Authority Board of Directors following unanimous recommendation by the Activity Agreement Members.

c) Although the LVR JPA Agreement is not expected to impose a term of office for Directors or alternates on the LVR JPA Board of Directors, the Activity Agreement Members intend to rotate the Authority's representatives on the LVR JPA Board of Directors no less frequently than every two (2) years, with the alternate presumed to fill the seat of the vacating

Director. Each Director and alternate shall hold office until a successor is selected by the Authority Board of Directors.

13.2. Engagement by the Authority's Representative(s) on the LVR JPA Board of Directors. The vote of the Authority's Director or alternate regarding particular action items before the LVR JPA Board of Directors will occur following discussion with the Activity Agreement Members and obtaining informal concurrence among the Activity Agreement Members regarding the same. Participation by the Authority's Director or alternate on the LVR JPA Board of Directors more generally will also occur following discussion with and input from the Activity Agreement Members whenever possible.

14. INDEMNIFICATION OF AUTHORITY MEMBERS WHO DO NOT PARTICIPATE IN THIS ACTIVITY AGREEMENT

The Activity Agreement Members shall hold the Authority and each of its members who are not Activity Agreement Members, free and harmless from and indemnify each of them against any and all costs, losses, damages, claims, and liabilities arising from this Activity Agreement. This indemnification obligation includes the obligation of the Activity Agreement Members to defend the Authority, and all members of the Authority that are not participants in this Activity Agreement, at the sole expense of the Activity Agreement Members, in any action or proceeding brought against the Authority or any of its members not participating in this Activity Agreement to recover any such costs, losses, damages, claims, or liabilities arising from this Activity Agreement.

15. TERM

This Activity Agreement shall take effect on the date it is executed by the Authority and the four named Activity Agreement Members and shall remain in full force and effect until: (1) this Activity Agreement is restated, rescinded, or terminated by the Authority and the Activity Agreement Members, (2) the LVR JPA Agreement is rescinded, terminated, or expires, or (3) the Authority withdraws from or is no longer a party to the LVR JPA Agreement.

16. WITHDRAWAL FROM FURTHER PARTICIPATION

16.1. An Activity Agreement Member may withdraw from this Activity Agreement at any time by providing written notice to the Authority and the other Activity Agreement Members. The withdrawal shall be effective thirty (30) days after sending the written notice.

16.2. Payment of Obligations. Withdrawal is conditioned upon the withdrawing Activity Agreement Member ensuring to the satisfaction of the other Activity Agreement Members that there are no adverse impacts to those members for the withdrawal. This may occur via the withdrawing Activity Agreement Member's payment or agreement to pay its share of all debts, liabilities, and obligations of the Water Authority pursuant to this Activity Agreement and incurred prior to the effective date of such withdrawal, including both debt service and principal under any debts, liabilities, and obligations incurred under this Agreement, the LVR JPA Agreement, or any relevant Service Agreement or Special Project Agreement. A withdrawing party shall, within thirty (30) days of the withdrawal date, pay all such Activity Agreement Member's financial obligations incurred prior to such withdrawal date pursuant to the terms of this Activity Agreement or enter into an agreement acceptable to the Authority for continuing payment of such obligations until fully paid.

16.3. Rights Following Withdrawal. As of the withdrawal date, all rights of participation in this Activity Agreement shall cease for the withdrawing Activity Agreement Member.

16.4. Obligations Following Withdrawal. Withdrawal shall not excuse the withdrawing Activity Agreement Member's performance of obligations imposed upon that party by any judgment which has been entered by a court of competent jurisdiction or regulation to which the Authority or the Activity Agreement Members are subject and that arise from or are related to activities of the Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in this Activity Agreement. Furthermore, the indemnification obligations set forth in Section 14 of this Activity Agreement shall survive a party's withdrawal from this Activity Agreement for activities under this Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in this Agreement.

16.5. Effect of Withdrawal on an Activity Agreement Member's Capacity Usage Rights. Withdrawal of an Activity Agreement Member from this Activity Agreement does not foreclose said Activity Agreement Member from seeking to maintain its share of Capacity Usage Rights and to either become an independent voting member of the LVR JPA or become a member of the LVR JPA that shares in the Authority's rights and obligations, assuming compliance with Sections 9, 16.2, and 16.4 above and Article 8 of the LVR JPA Agreement.

16.6. Withdrawal from the LVR JPA. At the Activity Agreement Members' unanimous direction, the Authority will take action to withdraw from the LVR JPA in accordance with the terms in the LVR JPA Agreement.

16.7. If all but one of the Activity Agreement Members provide notice of withdrawal from this Agreement, the Authority shall: (1) notify the LVR JPA of the Authority and the remaining Activity Agreement Member's intent for the remaining Activity Agreement Member to substitute for the Authority as a Member of the LVR JPA, and (2) cooperate with the remaining Activity Agreement Member to ensure that the Activity Agreement Member is assigned: (a) the Authority's rights and obligations under the LVR JPA Agreement and any related agreements, including Service Agreements, and (b) the Authority's Capacity Usage Rights.

16.8. If the Authority withdraws from the LVR JPA Agreement and, the LVR JPA returns to the Authority money paid, the Authority shall use its best efforts to ensure that money is refunded proportionately to the Activity Agreement Members that initially contributed it.

17. ADMISSION OF NEW MEMBERS

Other members of the Authority may become Activity Agreement Members upon (1) the prior written agreement of all of the parties to this Agreement, which will include terms, if necessary, to ensure the Activity Agreement Members do not bear undue financial obligations, e.g., payment of an equal share of the costs previously paid by Activity Agreement Members, including pursuant to the Activity Agreement executed in April 2019, and (2) each member of the Authority seeking to join agreeing in writing to the terms and conditions of this Activity Agreement; provided, however, upon admission of a new Activity Agreement Member, the parties shall agree to the (1) participation percentage of such new Activity Agreement Member, (2) the revised participation percentages of all other Activity Agreement Members, and (3) any necessary modifications to existing Service Agreements and/or Special Project Agreements as may be required.

18. MISCELLANEOUS

18.1. California Environmental Quality Act. The physical, operational, and financial details of the LVE Project have been analyzed by CCWD as lead agency pursuant to the California Environmental Quality Act ("CEQA") in the Supplement to the Final Environmental Impact Statement/Final Environmental Impact Report ("EIR") [SCH No. 2006012037]. CCWD certified the Final Supplement to the EIR and approved the LVE Project on May 13, 2020. CCWD also

adopted CEQA Findings of Fact, Mitigation Measures, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations, and filed a Notice of Determination. The Authority and/or Activity Agreement Members or other public agencies may be responsible agencies under CEQA for actions related to the LVE Project; however, the actions contemplated by this Activity Agreement have no potential for physical effects on the environment. Each potential improvement, project and/or activity subject to this Activity Agreement and potential Service Agreements or other agreements, including but not limited to Interim Funding Agreements, has been or will be fully evaluated in compliance with CEQA, as applicable. This Activity Agreement does not, and is not intended to, bind any party to a definite course of action or limit in any manner the discretion of the Authority and/or Activity Agreement Members, or any other public agency, as applicable, in connection with consideration of Service Agreements or other agreements for the projects described in this Activity Agreement, including without limitation, all required environmental review, all required public notice and proceedings, consideration of comments received, and the Authority's and/or Activity Agreement Members' or other public agencies' evaluation of mitigation measures and alternatives, including the "no project" alternative.

18.2. Amendments. This Activity Agreement may be amended in writing by the parties hereto.

18.3. Assignment; Binding on Successors. Except as otherwise provided in this Activity Agreement, the rights and duties of the Activity Agreement Members may not be assigned or delegated without the written consent of the Authority and without providing a right of refusal to other Activity Agreement Members. Any attempt to assign or delegate such rights or duties in contravention of this Activity Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations of the Authority then in effect. This Activity Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority and the Activity Agreement Members.

18.4. Counterparts. This Activity Agreement may be executed by the Authority and the Activity Agreement Members in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

18.5. Choice of Law. This Activity Agreement shall be governed by the laws of the State of California.

18.6. Severability. If one or more clauses, sentences, paragraphs or provisions of this Activity Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Activity Agreement Members and the Authority that the remainder of the Activity Agreement shall not be affected thereby.

18.7. Headings. The titles of sections of this Activity Agreement are for convenience only and no presumption or implication of the intent of the parties as to the construction of this Activity Agreement shall be drawn therefrom.

18.8. Reasonable Cooperation. The Authority and Activity Agreement Members will reasonably cooperate with each other and the Authority to perform the obligations under this Activity Agreement, assist each other when necessary in carrying out their obligations under the LVR JPA Agreement, and in carrying out the purpose and intent of this Activity Agreement.

IN WITNESS WHEREOF, the Members and the Authority have executed this Activity Agreement as of the date appearing next to their respective signature lines:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

ACTIVITY AGREEMENT MEMBERS

Agency Name: _____

Agency Name: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Agency Name: _____

Agency Name: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Agency Name: _____

Agency Name: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
LVE PROJECT ACTIVITY AGREEMENT MEMBERS

Byron-Bethany Irrigation District

Del Puerto Water District

Panoche Water District

Westlands Water District

EXHIBIT B
ALLOCATION OF ACTIVITY AGREEMENT EXPENSES AMONG ACTIVITY
AGREEMENT MEMBERS*

Activity Agreement Members	Allocation (%)
Byron-Bethany Irrigation District	Equal Share (1/4th or 25%)
Del Puerto Water District	Equal Share (1/4th or 25%)
Panoche Water District	Equal Share (1/4th or 25%)
Westlands Water District	Equal Share (1/4th or 25%)

* Special Project Expenses and/or Costs of Service to be allocated in accordance with provisions in the Special Project Agreements and/or Service Agreements

**LOS VAQUEROS RESERVOIR
JOINT EXERCISE OF POWERS AGREEMENT**

THIS JOINT POWERS AGREEMENT (“Agreement”) is made and entered into as of the Effective Date defined below, by and between the parties listed on Exhibit A attached hereto, which is incorporated herein by this reference. Those parties are referred to in this Agreement individually as a “Member” and collectively as the “Members,” as further defined in Section 1.1.22, below.

RECITALS

- A. Each Member is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- B. Each Member has the power to plan for, design, construct, operate, maintain, repair, and replace water-related facilities, as contemplated in the Project, as defined in Section 1.1.26, below; and
- C. The Members desire to use any and every power common to them for the purpose of designing, and for their potential participation in, constructing, operating, repairing and maintaining the Project, or taking such other actions that will make the use of the Project more efficient or effective in providing the Members and their respective ratepayers a more reliable and affordable water supply, but nothing in this Agreement shall provide any power to Contra Costa Water District to unilaterally suspend the delivery of Project benefits to a Member; and
- D. Contra Costa Water District’s Board of Directors adopted Resolution No. 21-006 at a regularly scheduled meeting on April 7, 2021 that found and determined the Project, as contemplated by this Agreement, is consistent with the applicable principles of that district included in its Resolution 03-24, adopted on June 25, 2003; and
- E. The Members desire, by means of this Agreement, to establish a new public agency that is separate and apart from each of the Members, to provide for its governance and administration, and to create a structure for Members to assist in the design, construction, operation, and administration of the Project as the Members may elect, and for related purposes. This Agreement does not legally bind or otherwise commit the Authority or the Members to participate in or otherwise proceed with the Project. The Members will comply with the California Environmental Quality Act (“CEQA”), as applicable, prior to participating or otherwise proceeding with the Project. The Members further acknowledge the Project has been the subject of prior review in compliance with CEQA and that Contra Costa Water District, as lead agency, has completed and certified an environmental impact report concerning the Project; and
- F. Establishing and joining the Authority are administrative and organizational actions that will not result in a direct physical change in the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by CEQA Guidelines section 15378(b)(5).

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Members agree as follows:

**ARTICLE 1
GENERAL PROVISIONS**

1.1 **Definitions.** The words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

1.1.1 Act means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies, as amended or supplemented from time to time.

1.1.2 Administrative Agreement means the agreement between the Authority and the Administrator under which the Administrator will provide administrative services to the Authority and will be reimbursed for the costs of those services.

1.1.3 Administrator means the person or entity engaged by the Board of Directors to manage and administer the financial and administrative activities of the Authority in accordance with Section 4.5, below.

1.1.4 Agreement means this Joint Exercise of Powers Agreement.

1.1.5 Authority means the Los Vaqueros Reservoir Joint Powers Authority, which is created by this Agreement.

1.1.6 Board or Board of Directors means the Board of Directors referred to in Article 2 of this Agreement, which is the governing body of the Authority.

1.1.7 Bonds means bonds, notes, commercial paper, and any other evidence of indebtedness of the Authority authorized and issued pursuant to the Act, any indebtedness issued or incurred by the Authority pursuant to any act supplementary to the Act, including, but not limited to, refunding bonds authorized and issued pursuant to Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

1.1.8 Capacity Usage Rights means the Authority's rights to Project water transmission and storage capacity, which the Authority may then assign to each Member under the terms of the Service Agreements.

1.1.9 CCWD means Contra Costa Water District, a county water district formed under Division 12 of the Water Code, and the owner of the Los Vaqueros Reservoir.

1.1.10 CCWD-Provided Facility means an existing facility owned and operated by CCWD with excess capacity that has been made available for use by the Authority in accordance with the Facilities Usage Agreement between CCWD and the Authority. CCWD-Provided Facilities are listed and identified in Exhibit B, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below; provided that inclusion of a CCWD-Provided Facility on Exhibit B does not give the Authority any Capacity Usage Rights to use that facility, except as provided in the Facilities Usage Agreement between CCWD and the Authority.

1.1.11 Costs of Service mean the costs of Services included in the payments, or other non-monetary benefits, the Authority will receive from Members pursuant to the Service Agreements or any Related Activity Agreement. The Costs of Service, which shall be as fully described and specified in the respective Service Agreements or any Related Activity Agreement, include, but are not limited to, all Project capital costs and operating expenses, such as Project development costs; debt service, to the extent applicable under any agreed upon financing vehicle, including interest on

any Bonds; amounts payable to CCWD and EBMUD under the Facilities Usage Agreements; operations and maintenance costs of the Project or of any Related Activity; Authority administrative expenses; capital reserve payments; and payments to a renewal and replacement fund the Authority will establish.

1.1.12 Design & Construction Agreement means the design and construction agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the builder on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the builder on Exhibit B hereto. Those agreements will address the design and construction services to be provided by the contracting party in accordance with industry standards, and the Authority's payment obligations for such design and construction services.

1.1.13 Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement or a duly appointed alternate acting for the appointed Board member in his or her absence.

1.1.14 Early Funding Agreement means the agreement between the California Water Commission and CCWD, dated December 20, 2018 and as amended on July 24, 2020, and as it may subsequently be amended, to partially fund Project development activities. The Early Funding Agreement cannot be assigned to the Authority.

1.1.15 EBMUD means East Bay Municipal Utility District, a municipal utility district formed under Division 6 of the Public Utilities Code.

1.1.16 EBMUD-Provided Facility means an existing facility owned and operated by EBMUD, that may be made available for use by the Authority in accordance with, and to the extent provided by, the Facilities Usage Agreement between EBMUD and the Authority. EBMUD-Provided Facilities are listed and identified in Exhibit B as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below; provided that inclusion of an EBMUD-Provided Facility on Exhibit B does not give the Authority any Capacity Usage Rights to use that facility, except as provided in the Facilities Usage Agreement between EBMUD and the Authority.

1.1.17 Effective Date means the date the last Member signs this Agreement, as CCWD shall confirm in written notice to the Members.

1.1.18 Facilities Usage Agreement means the agreements entered into by the Authority and CCWD as to CCWD-Provided Facilities and, as may be applicable, any New Facilities and Modified Facilities for which CCWD is designated as the operator on Exhibit B hereto; and by the Authority and EBMUD as to EBMUD-Provided Facilities and, as may be applicable, any New Facilities and Modified Facilities for which EBMUD is designated as the operator on Exhibit B hereto. Each Facilities Usage Agreement shall provide the Authority with Capacity Usage Rights in some or all of those facilities in exchange for making payments to CCWD or EBMUD, as applicable. Each Facilities Usage Agreement shall specify the nature and extent of Capacity Usage Rights conveyed, the terms and conditions under which those rights may be exercised, and the payment to be made in return for obtaining or exercising Capacity Usage Rights. The Authority may assign its Capacity Usage Rights obtained through Facilities Usage Agreements to one or more Members through the Service Agreements.

1.1.19 Final Funding Agreement means the agreement entered into by the Authority and the California Water Commission under which the California Water Commission agrees to provide funding of approximately \$435 million (subject to adjustment) to partially finance design and

construction of the Project, and the Authority agrees to construct the Project and comply with related contractual obligations in providing public benefits.

1.1.20 Fiscal Year means the period commencing on July 1 of each year and ending on and including the following June 30.

1.1.21 Interim Funding Agreement means the agreement entered into among the Members and the Authority, following formation of the Authority, to provide an interim source of funding for Project development costs, including the initial expenses related to the formation of the Authority, prior to the time where permanent sources of Authority revenues are in place. The Interim Funding Agreement is separate from the Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning, as amended, among the agencies who will become Members, which has provided funding for Project-related functions prior to formation of the Authority, and from the Service Agreements, which are expected to provide funding to the Authority once it is in a position to provide Services to the Members. It is contemplated the above-referenced Cost Share Agreement, as amended, will provide funding before formation of the Authority, the Interim Funding Agreement will provide funding in the early stages after formation of the Authority and the Service Agreements will provide permanent, ongoing funding for the Authority.

1.1.22 Member means any of the members of the Authority, as listed on Exhibit A hereto, and any other entity added to this Agreement by a subsequent amendment to Exhibit A that executes this Agreement. As used herein, the term "Member" shall not include the Department of Water Resources, which pursuant to Water Code Section 79759(b), shall be an ex officio non-voting member of the Authority.

1.1.23 Modified Facilities means existing facilities owned by CCWD or EBMUD that will be modified as part of the Project, funded in whole or in part through the Authority's proportional share of the costs of development, design, construction, operations and maintenance which are expected to be financed or paid through the Service Agreements the Members enter into with the Authority, and through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, or through one or more Related Activity Agreements among those Members benefitting from specific Modified Facility(ies). The Modified Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below; provided that inclusion of a Modified Facility on Exhibit B does not give any Member other than CCWD or EBMUD, as the operator of that facility, any Capacity Usage Rights in that facility, except as provided in any Facilities Usage Agreement. A Modified Facility may also be referred to as a "specific component" of the Project for purposes of describing specific Modified Facilities to be included in particular financings the Authority will undertake.

1.1.24 New Facilities means facilities necessary for the Project that are expected to be financed by the Authority and designed, built, owned, operated and maintained by CCWD or EBMUD through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, or through one or more Related Activity Agreements among those Members benefitting from specific New Facility(ies). The Authority may also own New Facilities. New Facilities which are owned by the Authority may be operated by a Member or by the Authority, as the Board shall determine with the written agreement of the Member to be charged with operational responsibility. The Authority, including CCWD and EBMUD in their capacity as Members, is expected to be solely responsible for all costs and liabilities related to the New Facilities. The New Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below; provided that inclusion of a New Facility on Exhibit B does not give any Member other than CCWD or EBMUD, as the operator of that facility, any Capacity Usage Rights in that facility, except as provided in any Facilities Usage

Agreement. A New Facility may also be referred to as a “specific component” of the Project for purposes of describing specific New Facilities to be included in particular financings the Authority will undertake.

1.1.25 O & M Agreement means the operations and maintenance agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the operator on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the operator on Exhibit B hereto. Those agreements will address operations and maintenance services to be provided by the contracting party in accordance with industry standards, and the payment for such services the Authority will be obligated to make.

1.1.26 Project means generally the second phase of the efforts to expand existing conveyance facilities, and construct new conveyance facilities, at the Los Vaqueros Reservoir owned and operated by CCWD. The Project will expand Los Vaqueros Reservoir to a capacity up to 275,000 acre-feet and will interconnect CCWD’s intake system to new and existing conveyance facilities that will serve the Members to create a regional system. The Project is expected to provide statewide public benefits, including ecosystem benefits to the Project Service Area, including south-of-Delta wildlife refuges, drought and non-drought emergency water supply benefits for the Members, and recreation benefits. The Project is also expected to provide benefits to regional water supply agencies that are Members located within the Project Service Area, integration with state and federal water systems, Central Valley Project operational flexibility, and enhanced opportunities for sustainable groundwater and recycled water management. The Project includes the components specified in Exhibit B hereto as to be more specifically described in subsequent agreements, including New Facilities, Modified Facilities, CCWD-Provided Facilities and EBMUD-Provided Facilities. The Project may include any Related Activity approved by the Board and facilities associated therewith.

1.1.27 Project Service Area means the San Francisco Bay Area (consisting of the counties of Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma) and the Central Valley Project service area (as it may be modified from time to time).

1.1.28 Recreational Facilities means those facilities owned, managed and controlled by CCWD that provide recreational opportunities in the Watershed for fishing, boating and hiking, and educational opportunities. The Recreational Facilities are included as a Modified Facility for purposes of this Agreement, which CCWD shall continue to own, manage and control. Funding issues with respect to Recreational Facilities shall be addressed in a Member’s Service Agreement.

1.1.29 Related Activity means an effort, not deemed to be of general benefit to all Members, but consistent with this Agreement’s purposes and the Authority’s objectives, which is undertaken through the Authority by a subset of Members which choose to voluntarily participate in the particular Related Activity, and with respect to which only such participating Members shall receive benefits or incur financial or other obligations.

1.1.30 Related Activity Agreement means the agreement entered into among the Authority and those Members participating in a Related Activity, which sets forth the Authority’s and participating Members’ rights and obligations with respect to that Related Activity.

1.1.31 Reservoir System means the Los Vaqueros Dam, Reservoir, the other CCWD-Provided Facilities listed on Exhibit B, related buildings and structures and any appurtenant facilities.

1.1.32 Reservoir System Operator means CCWD in its capacity as the owner and operator of the Reservoir System.

1.1.33 Services mean the services of the Project provided to the Members pursuant to the respective Service Agreements, consisting, in general, of water storage and conveyance through the various facilities to which the Authority has contracted to have access and use in accordance with each Member's share of Capacity Usage Rights held by the Authority pursuant to the Facilities Usage Agreements. Specific services to be provided to Members will depend on Members' requests, water delivery priorities specified in the Service Agreements, hydrological conditions and permit and regulatory conditions.

1.1.34 Service Agreement means an agreement entered into by a Member and the Authority pursuant to which the Authority provides Services to the Member and the Member is obligated to make payments, or provide other non-monetary benefits to the Authority with respect to the costs thereof, as consideration for those Services, all in accordance with the terms and conditions of any such Service Agreement. It is the intent of the Members that the Service Agreements shall allocate the Costs of Service among the Members in proportion to their anticipated use of Project facilities and other benefits a Member derives from the Project in accordance with the "beneficiary pays" principle. It is also the intent of the Members that the Service Agreements will also allocate costs in a manner to negate any cross-subsidy among Members (i.e., where any Member obtains an unreasonable financial benefit through financial contributions of another Member or other Members), taking into consideration any grant funding the Authority or any Member has received for Project-related costs.

1.1.35 Watershed means the Los Vaqueros Watershed, which is owned and managed by CCWD, consisting of approximately 20,000 acres of protected watershed land that surrounds the Los Vaqueros Reservoir. CCWD shall continue to own and manage the Watershed throughout the term of this Agreement.

1.2. Findings. The Members find and declare the following:

1.2.1. The Members represent a diverse group of public agencies engaged in water management, conservation, and/or delivery in the Project Service Area. This area's regional water systems are vulnerable to water shortages due to emergencies such as earthquakes, fire, or drought, and to dry year supply decreases due to insufficient regional storage.

1.2.2. The Project will improve Bay-Delta and Central Valley water supply reliability and water quality while providing additional habitat and Delta ecosystem benefits.

1.2.3. The Authority is created to enable public agencies responsible for water distribution to work collaboratively with a regional focus to improve water supply reliability through the development and operation of the Project.

1.3 Purposes and Objectives. The purposes of this Agreement are to: (1) create the Authority; (2) provide for the administration of the Authority; (3) provide the organizational framework to plan for, design, construct, operate, maintain, repair, and replace the Project for the benefit of the Members and the region; and (4) coordinate the performance of services related to the Project and approved by the Board. The primary objectives of the Authority are to:

1.3.1 Provide governance of the Project by the Members;

1.3.2 Ensure sufficient stable funding for the Project and related administrative and support activities to be provided through the Service Agreements and Administrative Agreement;

1.3.3 Ensure costs are reasonable and cost allocations are equitable and transparent, as provided through the Service Agreements;

1.3.4 Acquire and maintain sufficient Capacity Usage Rights in water storage and conveyance facilities as may be necessary to provide Services to the Members, consistent with the terms of all Project-related agreements; and

1.3.5 Ensure reliable delivery of water to the Members consistent with the terms of the Service Agreements and Facilities Usage Agreements, such that the Members are provided with the contemplated benefits from their respective investments in the Project.

1.4 Creation of Authority. Pursuant to the Act, there is hereby created a public agency known as the “Los Vaqueros Reservoir Joint Powers Authority.” The Authority shall be a public agency separate and apart from the Members.

1.5 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Members as provided in Article 8 of this Agreement.

1.6 Powers of Authority.

1.6.1 General Powers. The Authority shall exercise, in the manner herein provided, the powers common to the Members, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.

1.6.2 Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- (a) To make and enter into contracts;
- (b) To employ agents and employees;
- (c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- (d) To acquire, hold or dispose of property or the right to use property or facilities;
- (e) To supervise and manage the Project so as to deliver state, federal, and Member benefits commensurate with state, federal, and Member investment in the Project consistent with contractual obligations;
- (f) To incur debts, liabilities, or obligations which do not constitute a debt, liability, or obligation of any Member;
- (g) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions, and donations;
- (h) To prescribe the duties, compensation, and other terms and conditions of employment of other agents, officers, and employees;

- (i) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;
- (j) To apply for, accept, receive, and disburse grants and loans from local, state, or federal agencies or from individuals or businesses;
- (k) To sue and be sued in its own name;
- (l) To fund and maintain adequate reserve funds to support debt and operational requirements;
- (m) To invest money in its treasury, pursuant to Government Code Section 6505.5 et seq., that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- (n) To enter into state funding agreements and federal funding agreements relating to the Project, and assume rights and obligations pursuant to these agreements;
- (o) To finance Project development activities;
- (p) To enter into Design & Construction Agreements and O & M Agreements with CCWD and EBMUD, as applicable;
- (q) To enter into Facilities Usage Agreements with CCWD and EBMUD;
- (r) To enter into an Administrative Agreement with the Administrator;
- (s) To enter into agreements with individuals or entities providing program management, Water Supply Manager, legal, financial, accounting, auditing, and other services as required;
- (t) To enter into agreements with the California Department of Water Resources, the California Department of Fish and Wildlife, the United States Department of Interior, Bureau of Reclamation, and other local, state or federal entities as may be required to comply with the requirements of any state or federal funding agreements and to implement the Project, including the administration of public benefits;
- (u) To issue Bonds; provided, however, that the Authority shall not issue any Bonds until the Facilities Usage Agreement with CCWD, all Service Agreements, all O & M Agreements with CCWD and all Contracts for Administration of Public Benefits required by the California Water Commission have been executed by the Authority;
- (v) To deliver Services to the Members, and receive payment from the Members, pursuant to the Service Agreements;
- (w) To exercise any and all powers which are provided for in the Act and in Government Code Section 6584 et seq., including, without limitation

Government Code Section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended;

- (x) To take action by resolution, ordinance, or motion, as approved by the Board as specified herein;
- (y) To carry out and enforce all provisions of this Agreement with respect to the activities necessary to undertake the development, construction, and operation of the Project;
- (z) To conduct such other activities as are necessary and appropriate to the above; and
- (aa) To exercise any power necessary or incidental to the foregoing powers.

1.6.3 Limitation on Powers. Notwithstanding the general and specific powers listed in Sections 1.6.1 and 1.6.2, the Authority shall not have any power to modify CCWD's role in owning, managing and operating the Watershed and Los Vaqueros Reservoir System, and Recreational Facilities.

1.7 Intent of the Agreement. Nothing in this Agreement shall be interpreted to limit or restrict a Member's operations of its water systems and facilities, including such operations that may involve areas outside of the Project Service Area. The Members acknowledge that entering into this Agreement does not constitute a commitment to fund or to carry out the Project, but such commitments to construct and implement the Project may be undertaken in the future through the execution of subsequent agreements, including, but not limited to, the Service Agreements. Consistent with the intent specified in Recital E, above, each Member shall have the discretion to determine the extent of its participation in the Project and, except as expressly provided in this Agreement, nothing in this Agreement shall be interpreted to require any level of Project participation of any Member, or to require the specific nature of any such Member's Project participation, such as participation in conveyance only, pooled storage or dedicated storage.

1.8 Manner of Exercising Authority Powers. In accordance with Government Code Section 6509, the Authority shall exercise its powers in the manner by which CCWD exercises its powers, except to the extent this Agreement or the Act specifically provide otherwise.

ARTICLE 2 BOARD OF DIRECTORS

2.1 Creation. The Authority shall be governed by a Board of Directors, which is hereby established, consisting of one (1) Director for each Member, along with one (1) Director appointed by the Department of Water Resources, which is required by law to be a non-voting ex officio member of the Authority pursuant to Water Code Section 79759(b). The governing board shall be known as the "Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority." All voting power shall reside in the Board and be exercised as specified in Section 3.3, below. By establishing the Authority and creating the Board, the Members do not intend to create any incompatibility between the service of a Member's governing body member on the Member's governing body, and his or her service as a Director of the Authority, and this Agreement shall be interpreted, if and where necessary, so that no such incompatible office exists.

2.2 Directors.

2.2.1 Directors Appointed; Term. Within thirty (30) days of the Effective Date of this Agreement, each Member shall designate and appoint, by a formal action of its governing body, either one (1) member of its governing body (provided that any Member which itself consists of one or more member agencies may appoint any member of one of its member agencies' governing bodies), or a management-level employee of the Member, or of any member agency of a Member, to act as its representative on the Board; and one (1) other governing body member or Member employee, either by name or position title, to act as an alternate to that Director so appointed. If a Director's or alternate's membership on the appointing Member's governing body ceases or that person ceases to be on the governing body of a Member's member agency, if applicable, or if the Director or alternate is an employee of the Member, or of a Member's member agency, and the Director's or alternate's employment by the Member ceases, his or her membership on the Board or position as an alternate, as applicable, shall also immediately cease. The alternate appointed by each Member shall have the authority to attend and participate in any meeting of the Board, but shall only be allowed to vote at any meeting of the Board when the regular Director is absent. At any meeting of the Board when the regular Director is absent, the alternate shall have the full authority of the Member to vote on any issue before the Board. Each Director shall hold office until his or her successor is selected by the appointing Member, except where immediate cessation of Board membership is expressly provided for by this section. Directors shall serve at the pleasure of the governing board of the appointing Member and may be removed at any time, with or without cause, in the sole discretion of the appointing Member's governing board. If a Director ceases to serve on the Board, the Member that appointed that Director shall select that Director's replacement, and may allow the alternate then serving to fill that Director's position on a temporary or permanent basis, in that Member's discretion; provided that any alternate who is a non-managerial employee of a Member may only serve in the Director's position on a temporary basis, until that Member permanently fills that Director position in accordance with the requirements set forth above.

2.2.2 Board Compensation. The Board shall serve without compensation from the Authority. Compensation may be provided as approved by the Member that appoints its representative Director and alternate, and any such compensation will be the responsibility of that Member.

2.3 Powers and Responsibilities of the Board. All of the power and authority vested in the Authority shall be exercised by the Board, which may delegate such power in its discretion. Notwithstanding the above, the Board shall not delegate its legislative powers. In exercising these powers, the Board shall undertake the following roles and responsibilities:

2.3.1 Fulfill the Authority's purposes;

2.3.2 Engage key Authority executives, including the Executive Director, as desired by the Board, and the Authority attorney;

2.3.3 Approve the engagement of a Program Manager, Water Supply Manager, and other consultants and advisors, including those related to issuance of any Bonds;

2.3.4 Approve annual or two-year budgets;

2.3.5 Approve agreements through which Project will be implemented;

2.3.6 Fund the Authority and Project through issuance of Bonds (subject to the provisions of subdivision (u) of Section 1.6.2, above) and collections from Members; and

2.3.7 Establish committees for activities such as design, construction, and operations.

2.4 Provision for Bylaws. The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member shall receive a copy of any bylaws developed and adopted under this section.

ARTICLE 3 MEETINGS OF THE BOARD

3.1 Meetings. The Board shall meet at least monthly, and more frequently as the Board deems necessary to conduct the Authority's business. The Board shall provide for the date, hour, and place of its regular meetings by Resolution of the Board filed with the governing body of each Member. The Board may suspend the holding of regular meetings so long as there is no need for Authority business. The Board shall hold its first meeting within sixty (60) days after the Effective Date. The Board may meet by teleconference or by video conferencing, and in joint session with other public agencies and advisory bodies in accordance with California law.

3.2 Ralph M. Brown Act. All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with Section 54950 of the Government Code.

3.3 Voting.

3.3.1 Simple Majority Votes. Subject to the veto rights provided in Section 3.3.4, below, and the provisions of Section 3.4, below, each Director representing his or her appointing Member shall have one vote. Except as otherwise provided by law or as set forth in Sections 3.3.2 and 3.3.3, below, all actions of the Board, including, but not limited to, approval of Authority budgets under Article 7, below, and approval of the issuance or refunding of Bonds shall be approved on the affirmative vote of a majority of the total number of Directors of the Authority pursuant to Section 2.1. In the event of a tie vote among the Directors, the matter will not be considered to have passed.

3.3.1.1 The approval of the admission of a new Member will be by simple majority vote, subject to Sections 3.3.1.1.1, 3.3.1.1.2 and 3.3.1.1.3, below.

3.3.1.1.1 If the admission of a new Member may have an adverse and material effect, as described in Section 3.3.1.1.3, on a current Member, the Director appointed by the affected Member may request that the Members meet and confer, and then the Members shall meet and confer in good faith to attempt to address the claimed adverse and material effect. The Director appointed by the affected Member who declared that the admission of a new Member will have an adverse and material effect shall, as soon as practicable thereafter, provide relevant information to substantiate the adverse and material effect on the Member. In addition, the affected Member's governing body shall adopt a resolution setting forth specific findings of all adverse and material effects which are expected to result from the proposed admission of the new Member. The Board, in the Authority's Bylaws, shall adopt specific procedures for when and how that meet and confer process and subsequent decisions regarding the claimed adverse and material effect will be determined, including, but not limited to, process and decision timing, allocation of the burden to confirm any such adverse and material effect and the standard to be applied to any determination the Board will make regarding the claimed adverse and material effect. If the Board confirms an adverse and material effect cannot be eliminated or resolved through mutually agreeable revisions to the affected Member's Service Agreement, then the proposed new Member will not be admitted to the Authority.

3.3.1.1.2 The Members to this Agreement recognize that the Authority was created, in part, to provide benefits to regional water supply agencies located within the Project Service Area, including to address water supply and emergency water needs in urban, exurban, agricultural and refuge service areas, and that certain state funding arrangements are based on the regional benefits of the Project to the Project Service Area. The Members also acknowledge that the current Members represent a diverse coalition of parties, which together are able to deliver regional impacts and benefits from the Project. Therefore, if a Member withdraws from the Authority pursuant to this Agreement, and the withdrawal results in the loss of benefit to a particular service area, then any regional wholesale customer, supplier, or member agency of a current or former Member in the service area impacted by the withdrawing Member will have a priority to seek to join the Authority as a new Member over other agencies that are not directly connected to a current or former Member in the impacted service area and, if approved by a majority of the Members, will have a right of first refusal to join the Authority. Notwithstanding the foregoing, if a San Luis & Delta-Mendota Water Authority (“SLDMWA”) member listed in Exhibit A seeks to join the Authority, the terms by which that SLDMWA member will become a member of the Authority shall be governed by Section 8.6.

3.3.1.1.3 For purposes of this subdivision, an “adverse and material effect” means one or more of the following: (a) a decision that would unreasonably increase the affected Member’s operational costs as compared to that Member’s existing operational costs; (b) a decision that would decrease capacity of a Project facility used by the affected Member; (c) a decision that would materially restrict the affected Member in its ability to provide an adequate water supply within its service area, including, but not limited to, causing the affected Member to violate any operational permit or water rights permit or license; and/or (d) a decision that would result in a material adverse impact on the quality of water conveyed from the Project.

3.3.2 Items Requiring at Least Three-Quarters Votes for Approval. Notwithstanding Section 3.3.1, above, the following actions of the Board must be approved by at least three-quarters (seventy-five percent (75%)) of the total number of Directors, but subject to Section 3.4, below:

3.3.2.1 Approval of an amendment to the Agreement other than to Exhibits A or B; provided that amendments described in Section 3.3.3.6 must have unanimous Board approval; and provided further that if the proposed amendment relates to Section 7.12, then any such amendment’s approval must include a vote of approval by the SFPUC;

3.3.2.2 Termination of a Member’s membership pursuant to Section 9.2; and

3.3.2.3 Termination of the Agreement.

3.3.3 Items Requiring Unanimous Approval. Notwithstanding Sections 3.3.1 and 3.3.2, above, the following actions of the Board must be unanimously approved by the Board:

3.3.3.1 Commencement of litigation by the Authority relating to the funding or operation of the Project; or against any Member to interpret or enforce this Agreement or otherwise relating to the Member’s obligations concerning the Project; provided that the Member against whom that litigation is contemplated shall not be included in that unanimous vote requirement;

3.3.3.2 Approval of any additional funding contributions under Section 7.7.2, below;

3.3.3.3 Any disproportionate disbursement to a Member or Members made upon termination of this Agreement, as described in Section 8.5, below;

3.3.3.4 Any decision by the Board to approve the creation of positions of employment for the Authority;

3.3.3.5 Approval of any contract with Cal-PERS or any other public retirement system;

3.3.3.6 Approval of an amendment to the Agreement which would change the requirement for unanimous approval of an action listed in Section 3.3.3, or which relates to the veto right provided by Section 3.3.4; and

3.3.3.7 Approval of the incurrence of debt in connection with a Related Activity pursuant to Section 6.1.

3.3.4. Veto Rights of CCWD and EBMUD.

3.3.4.1 Notwithstanding any other provision of this Agreement, for any proposed decision by the Board that either CCWD or EBMUD determines would have an adverse and material effect, as described in Section 3.3.4.4, upon a CCWD-Provided Facility or an EBMUD-Provided Facility, respectively, or upon one or more New Facilities or Modified Facilities owned and operated by CCWD or EBMUD, CCWD or EBMUD, as applicable in connection with the facility(ies) to be affected, acting through the Director it appointed, shall have the right to veto that decision in accordance with the provisions of this Section 3.3.4.

3.3.4.2 The Director appointed by the affected Member (i.e., either CCWD or EBMUD) shall exercise the veto by declaring an intention to veto a proposed decision during a Board meeting at the time the matter is discussed or considered for action. If such intent is declared, the Board may (i) proceed immediately with a vote on the matter, or (ii) by majority vote, delay the vote on that matter to a future meeting to allow the development of an alternative or modified recommended action.

3.3.4.3 If the Board elects to hold an immediate vote on the matter, the Director appointed by the affected Member may veto the proposed action, which veto shall be final and conclusive. In the event of such a veto, the Authority shall not proceed with the action specified in that proposed decision. If the Board elects to delay the vote on the matter to a future meeting, the Members shall meet and confer in good faith to attempt to develop a revised action which addresses the adverse and material effect. The Director appointed by the affected Member which declared its intent to exercise the veto shall, as soon as practicable after declaring its intent to veto, provide relevant information to substantiate the adverse and material effect on the affected Member which is expected to result from the Authority's proposed action. In addition, that Member's governing body shall adopt a resolution setting forth specific findings of all adverse and material effects which are expected to result from the Authority's proposed action. The meet and confer session shall occur at the next Board meeting, or as soon thereafter as Authority staff, the Administrator, the Executive Director (if one has been appointed), or the Members can obtain any further information, in addition to the information provided by the Director appointed by the affected Member which declared its intent to veto, or clarifying direction as needed to propose an alternative or modified recommended action. Any revised action proposed to the Board shall be subject to the veto rights described in this section. No proposed action shall be delayed pursuant to this section more than once, except with the consent of the Director affected by the affected Member which declared its intent to veto the action.

3.3.4.4 For purposes of this subdivision, an “adverse and material effect” includes the following: (a) a decision that would unreasonably increase the affected Member’s operational costs as compared to that Member’s existing operational costs; (b) a decision that would decrease capacity of the subject facility; (c) a decision that would materially restrict the affected Member in its operation of the subject facility or in its ability to provide an adequate water supply within its service area, including, but not limited to, causing the affected Member to violate any operational permit or water rights permit or license; and/or (d) a decision that would result in a material adverse impact on the quality of water conveyed from the Project.

3.4 Effect of Recusal. If any Director recuses himself or herself from voting on any matter before the Board where the Director, in the Director’s sole discretion, determines it is inappropriate for that Director to participate in the vote on that matter, then that Director shall not be counted as a voting Director, such that the total number of voting Directors is reduced by one in calculating the required quorum and in calculating the total number of votes that may be cast and utilized in determining any applicable threshold for the Board’s approval of that matter.

3.5 Special Voting Rules Applicable to Grassland Water District. Due to the fact that Grassland Water District will not be making monetary contributions to the Authority, Grassland Water District shall only be entitled to vote on non-financial matters and those financial matters that concern the administration of public benefits or the delivery of ecosystem benefits to south-of-Delta refuges. In any situation where Grassland Water District is not permitted to vote, for purposes of the determination of the vote needed for approval, Grassland Water District shall not be counted as a voting Member, including for purposes of determining whether a quorum is present pursuant to Section 3.6, such that the total number of voting Members is reduced by one in calculating total number of votes that may be cast and utilized in determining any applicable threshold for the Board’s approval of any such action.

3.6 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business, but subject to the voting approval requirements specified in Section 3.3.

3.7 Board Action. The Board may act by resolution, ordinance, or motion. Unless otherwise provided in the bylaws or by law, ordinances shall not be required to be introduced and adopted at separate meetings of the Board.

3.8 Closed Session. Closed sessions of the Board shall be confidential. However, confidential information from closed sessions may be disclosed to each Member’s governing body as permitted and limited by Government Code Section 54956.96. The Board may include provisions in the Authority’s Bylaws to implement this section. In addition, when any closed session is held pertaining to any matter in which a Member holds a position adverse to the Authority (including, but not limited to pending or potential litigation or ongoing real estate negotiations), the Director appointed by that adverse Member shall be recused from any such closed session. Prior to the Authority conducting any closed session involving liability claims or potential litigation where a Member may have a position adverse to the Authority, the Authority and Member shall comply with any meet and confer requirements set forth in this Agreement; provided, however, that the Authority may waive, by majority vote of the Board, any such meet and confer requirement in the event a statute of limitation would otherwise expire.

3.9 Minutes. The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Member.

3.10 Rules and Regulations. The Board may adopt from time to time such rules and regulations for the conduct of its and the Authority’s affairs as may be required.

ARTICLE 4
OFFICERS AND EMPLOYEES OF THE AUTHORITY

4.1 Chair. At the Board's first meeting, and then in its first meeting of each calendar year or as soon thereafter as practicable, it shall elect one of the Directors as Chair of the Board. The term of office for the Chair shall be one year, or until his or her successor is elected. A Chair may not serve more than four (4) consecutive terms as Chair, and the foregoing term limit shall also apply to the Member on whose behalf the Chair is serving, such that no Member shall be allowed to have any Director or combination of Directors serve on its behalf as Chair for more than four (4) consecutive terms. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board through order, resolution or motion. Subject to the foregoing, the position of Chair shall be elected on the basis of the individual Director and not on the basis of the underlying Member with which the Chair is affiliated.

4.2 Vice-Chair. At the Board's first meeting, and then in its first meeting of each year or as soon thereafter as practicable, it shall elect one of the Directors as Vice-Chair of the Board. The term of office for the Vice-Chair shall be one year. The Vice-Chair shall perform all the duties of the Chair in the absence of the Chair, or in the event the Chair of the Board is unable to perform such duties, and shall perform such other duties as are specified by the Board.

4.3 Secretary. The Board may appoint the Authority's Secretary or may delegate the appointment of the Authority's Secretary to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Secretary. If the Board does not elect to appoint an individual of its own choosing as the Secretary, the Secretary shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator. The Secretary shall be responsible for the minutes and other records of the proceedings of the Board and shall perform such other duties as specified by the Administrator pursuant to the Administrative Agreement, as applicable. If the Board elects to appoint another individual of its own choosing, the Secretary shall perform such other duties as the Board specifies.

4.4 Treasurer and Auditor/Controller. Pursuant to Government Code Sections 6505.5 and 6505.6, the Board may appoint the Authority's Treasurer and Auditor/Controller (in which case the Treasurer and/or Auditor/Controller shall serve at the Board's discretion) or may delegate the appointment of the Authority's Treasurer and Auditor/Controller to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Treasurer and Auditor/Controller. If the Administrator is an entity, it may appoint its senior financial officer (such as its chief financial officer, director of finance, or finance manager, as designated by the Administrator) as the Treasurer and Auditor/Controller. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. However, in no event shall any person or entity that is not a public agency or an employee of a public agency be appointed as Treasurer or Auditor/Controller or have authority to have custody of Authority monies, and the Authority will establish a depository account with a financial institution on behalf of and in the name of the Authority for purposes of holding the Authority's money. The Treasurer shall also manage the Authority's billing and cash management, financial reporting and debt; engage the independent auditor to review the Authority's financial statements; and report to the Authority's Executive Director or to the Administrator if no Executive Director has been appointed. Subject to the limitations set forth in this Section 4.4, the offices of Treasurer and Auditor/Controller may be held by separate individuals, or combined and held by one individual as the Board may elect. If the Board does not elect to appoint another individual of its own choosing as the Treasurer and Auditor/Controller, the Treasurer and Auditor/Controller shall serve at the pleasure of the

Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator.

4.5 Administrator.

4.5.1 Generally. The Board shall select the Administrator, which shall provide management and administrative services for the Authority, as more specifically described in Section 4.5.2, below. CCWD shall serve as the initial Administrator, and its rights and responsibilities in that role shall be set forth in the Administrative Agreement, or other agreement between CCWD and the Authority. The Board may, in its discretion, upon the termination or assignment of the Administrative Agreement, appoint a subsequent Administrator to replace CCWD, may transfer some or all of the Administrator's duties to the Executive Director appointed under Section 4.6, below, or may combine the Administrator's position with the Executive Director; subject, however, to ensuring that any contractual obligations CCWD has undertaken with respect to the administration of the Project, including under the Early Funding Agreement, are met. Until such time as an Executive Director is appointed, the Administrator shall oversee and manage any consultants and (if any) employees of the Authority, and the Administrator shall report to the Board. After an Executive Director is appointed, the Administrator shall report to the Executive Director and be subject to the Executive Director's supervision, subject to compliance with any existing contractual obligations of the Administrator.

4.5.2 Administrator Services. Subject to the Board's revision of duties of the Administrator, which may be transferred to the Executive Director in the Board's discretion, the Administrator shall perform all services reasonably necessary for the management and administration of the Authority including, but not limited to:

- (a) coordinating the planning, design, permitting (including compliance monitoring), operations modeling and analysis, and procurement activities necessary to construct and operate the Project, including through funds provided by the Early Funding Agreement, which CCWD shall continue to manage as the initial Administrator, and Interim Funding Agreement;
- (b) coordinating and preparing for Board meetings;
- (c) identifying and selecting key staff that will provide services to the Board and the Authority, including staff who may potentially serve as Secretary and Treasurer and Auditor/Controller, as the Board or Administrator may determine;
- (d) being responsible for the appointment, employment, management, and/or termination of any personnel (other than the Executive Director and Authority attorney), contractors, or consultants providing services to the Authority including, but not limited to, contractors and consultants necessary for the planning, design, permitting and procurement of the Project;
- (e) performing administrative tasks related to the Board's selection and appointment of the Executive Director and Authority attorney;
- (f) implementing the policies, decisions, and directions of the Board, as provided to the Administrator;

- (g) conducting communications and outreach support and website hosting;
- (h) coordinating and conferring with the Members' technical staffs relative to Project-related functions; and
- (i) such other duties as are determined by and assigned by the Board.

4.5.3 Compensation. The Administrator shall be compensated for the services it renders to the Authority as specified in the Administrative Agreement, or in any other contractual arrangement between the Administrator and the Authority.

4.5.4 Administrator Staff. If the Administrator is an entity, the Administrator shall identify key staff that shall provide services required of the Administrator, including one employee who shall serve as the main point of contact for the Authority. Such key staff identified by the Administrator shall be qualified to perform services required of the Administrator. Unless otherwise agreed in writing by the Authority, such key staff shall at all times remain under the exclusive direction and control of the Administrator and the Authority shall not have any right to discharge or discipline any member of the Administrator's staff. Subject to payment by the Authority as provided in the Administrative Agreement or other agreement, the Administrator shall be responsible for all compensation, supervision, and administrative costs relating to its staff. If the Administrator is an individual, the Administrator shall coordinate the retention of any outside staff with the Board and obtain approval of such staff positions from the Board before hiring or retaining any such staff.

4.5.5 Independent Contractor; Authority Employees. Until such time, if any, as the Administrator is hired as an Authority employee, as provided under this Agreement and to the extent allowed by law, the Administrator shall be retained as an independent contractor and not an employee of Authority. No employee or agent of the Administrator shall become an employee of the Authority, except as may be agreed in writing. Any Administrator employees or agents assigned to provide services under this Agreement shall remain under the exclusive control of the Administrator, subject to Section 4.6 if an Administrator's employee serves as Executive Director. The Authority may only create positions of employment with unanimous approval by the Board.

4.6 Executive Director. The Board may appoint an Executive Director to work with the Administrator in connection with the duties specified under Section 4.5.2, above. Upon the appointment of an Executive Director, the Board may transfer any of the Administrator's duties to the Executive Director, as may be feasible based on applicable contractual limitations set forth in the Early Funding Agreement. As determined by the Board, the Executive Director may be an independent contractor; an employee of the Administrator, of a Member or of a non-Member firm or entity; or, upon unanimous approval of the Board, an employee of the Authority. It is contemplated that the Executive Director would report directly to the Board and would manage Authority activities, oversee and manage the Authority's consultants and (if any) employees, ensure that the Board receives appropriate and timely information, supervise the Administrator, including coordinating Project activities with the Administrator, and ensure that the Authority provides services and fulfills its obligations to the Members in accordance with the respective Service Agreements and in accordance with all other Project-related agreements.

4.7 Authority Attorney.

4.7.1 Appointment. The attorney for the Authority shall be appointed by the Board, provided that an individual, office, or firm providing general counsel services to one of the Members shall not serve as the Authority attorney. Such individuals, offices, or firms may, however, provide special counsel services to the Authority. Notwithstanding the above, the general counsel to one of

the Members may provide interim general counsel services until the Board appoints an Authority attorney.

4.7.2 Duties. The attorney for the Authority or a designated deputy shall attend all meetings of the Board; provided, however, that the absence of the Authority attorney shall not affect the validity of any meeting. The attorney shall take charge of all suits and other legal matters to which the Authority is a party or in which it is legally interested. The attorney shall provide legal counsel to the Authority and its Board, ensure the legal sufficiency of all contracts, ordinances, resolutions, and other legal instruments of the Authority, and perform such other duties as the Board specifies, including, but not limited to, obtaining specialized legal services.

4.8 Program Manager. The Board may engage one or more persons or entities to provide program management services as a Program Manager, who shall report to the Executive Director or Administrator if no Executive Director has been appointed. The Program Manager shall coordinate with the Administrator and/or Executive Director regarding various design and construction activities for the Project, including coordination with CCWD and EBMUD in accordance with the Design and Construction Agreement and O & M Agreements with respect to decisions likely to have a cost impact on the Authority and the Members. Such coordination shall include, but not be limited to, budget tracking, scheduling and quality control/quality assurance, with the understanding that CCWD and EBMUD have primary responsibility for the design and construction of their respective facilities, as will be specified in the Design & Construction Agreements. The Program Manager, in consultation with the Executive Director and subject to Board approval in accordance with Authority policies, may contract for additional services that may be required.

4.9 Water Supply Manager. The Board may engage one or more persons or entities to provide the services as a Water Supply Manager, who shall report to the Executive Director or Administrator if no Executive Director has been appointed. The Water Supply Manager shall oversee the operations of the Project in coordination with CCWD as to CCWD-Provided Facilities and any Modified Facilities or New Facilities that CCWD operates, and with EBMUD as to EBMUD-Provided Facilities and any Modified Facilities or New Facilities that EBMUD operates. The Water Supply Manager shall coordinate with all Members who are South Bay Aqueduct Contractors, as well as the SFUC, regarding operations that will foreseeably impact South Bay Aqueduct facilities. The Water Supply Manager's duties shall include scheduling necessary diversions and deliveries of stored water in response to Members' requests on behalf of the Members, coordinating Members' storage and conveyance needs with CCWD's system operator, tracking the delivery of Services to the Members, and ensuring compliance with all Project agreements, reporting requirements and coordinated operations agreements with the United States Department of Interior, Bureau of Reclamation and the California Department of Water Resources. The Water Supply Manager shall perform his or her duties in accordance with the terms of the Service Agreements and the Facilities Usage Agreements, as well as with operating protocols to be adopted by the Board. The operating protocols shall not unreasonably restrict: (1) CCWD's or EBMUD's ability to manage their respective facilities; or (2) the exercise of the Authority's Capacity Usage Rights expressed in any Facilities Usage Agreement, and as allocated to the Members in the respective Service Agreements. Any Water Supply Manager decision shall be subject to an appeal process to be established by the Board.

4.10 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Board.

4.11 Additional Officers and Employees. The Board shall have the power to appoint additional officers as it deems necessary, and to make modifications to the Authority's organization chart. The Executive Director, upon consultation with the Board and with the Board's required approval, as applicable relative to the hiring of any Authority employees, shall have the power to hire

and terminate employees, assistants, contractors, consultants, and others, as the Executive Director deems appropriate, but subject to the terms of any applicable agreement and to the Authority's bylaws or policies.

ARTICLE 5 COMMITTEES

5.1 Committees. The Board, by a majority vote, may form committees for any purpose. Any such Board action to create a committee shall include the purpose of the committee and details concerning the appointment of the chair and members of such committee.

ARTICLE 6 PROJECT OPERATIONS

6.1 Related Activity. Upon approval by a majority of the Board, one or more of the Members may establish a Related Activity that such Member or Members will undertake through the Authority for matters not deemed to be of general benefit to all Members, provided that no Member shall be involved in any such Related Activity without the approval of its governing body. A specific written Related Activity Agreement between the Member or Members who consented to participate in the specific Related Activity and the Authority shall be established for each Related Activity to set forth the respective obligations, functions, and rights of the participating Members and of the Authority. A budget for each Related Activity shall be established in accordance with Section 7.3, below. The Directors representing the Member or Members who will be involved in financing and implementing the specific Related Activity, or their respective designees, shall constitute a "Related Activity Committee," for purposes of administration and implementation of the specific Related Activity. Notwithstanding the foregoing, no debt shall be incurred by the Authority for a specific Related Activity without the unanimous consent of the Board, and of the Related Activity Committee. Any contributions approved by the Related Activity Committee and approved by the participating Member or Members shall be paid by the participating Member or Members. Such contributions by a Related Activity's Members shall be held and accounted for separately from other Authority monies and any Related Activity expenses or liabilities shall be paid from such monies held on account of that Related Activity. To the extent allowed by law, the Member or Members participating in any Related Activity shall indemnify and hold harmless the Authority and the Members not participating in the Related Activity from any and all claims, demands, damages, liabilities, fines, expenses and related costs and fees, including attorneys' and experts' fees, arising from or related to the particular Related Activity, except to the extent of the Authority's or non-participating Member's negligent or intentional acts or omissions. A Related Activity shall not have a material adverse effect impact, as defined in Section 3.3.4.4, above, on any Member that is not participating in the Related Activity. The unanimous consent of the Board to incur debt for a Related Activity as required pursuant to this Section 6.1 shall be conclusive evidence that such Related Activity has been determined not to have a material adverse effect on any Member that is not participating in such Related Activity.

6.2 CCWD Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, CCWD will retain a veto right with respect to any decision by the Board that would have an adverse and material effect on either or both of the following: (i) a New Facility or Modified Facility for which CCWD is designated as the builder and operator on Exhibit B hereto, and/or (ii) a CCWD-Provided Facility. CCWD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Facilities Usage Agreement, Design & Construction Agreements and O & M Agreements.

6.3 EBMUD Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, EBMUD will retain a veto right with respect to any decision by the Board that would have an adverse and material effect on either or both of the following: (i) a New Facility or Modified Facility

for which EBMUD is designated as the builder and operator on Exhibit B hereto, and/or (ii) an EBMUD-Provided Facility. EBMUD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Facilities Usage Agreement, Design & Construction Agreements and O & M Agreements.

ARTICLE 7 FINANCES

7.1 Fiscal Year. The Fiscal Year of the Authority shall be as defined in Section 1.1 of this Agreement.

7.2 Budget. The Board shall adopt a budget (the "Budget") prior to the start of each Fiscal Year. The Budget may be adopted on a single Fiscal Year or bi-annual basis, in the Board's discretion. The Budget shall include components to fund the Authority's administrative and operational costs, debt service on any Bonds and any capital improvements; provided the Authority shall provide the Members with the draft capital component of the Budget at least six (6) months prior to the start of the Fiscal Year(s) to which the proposed Budget relates. The Board may update and revise the Budget as necessary throughout the period to which the Budget applies. The Budget shall equitably allocate expenses under the Budget to a Member in proportion to that Member's proportionate use of Project facilities, operational priorities and other benefits, as determined in accordance with the Member's Service Agreement, or if a Member's Service Agreement is not in place, the Interim Funding Agreement or any other funding agreement specified by the Board in accordance with Section 7.7, below. The Budget shall take into account any non-monetary contributions being received from Grassland Water District. The Authority shall coordinate with CCWD regarding the establishment of the capital components of the Budget to ensure that costs are properly allocated as between the Authority and CCWD. The contributions approved by the Board shall be paid by the Member Agencies pursuant to Section 7.5, below. Any Member which has opted under Section 7.6, below, to self-fund its share of a specific portion of Project capital costs through a lump sum contribution, rather than financing that contribution through participating in the Authority's Bonds, shall not be required to make further payments under the capital component of the Budget until that lump sum contribution is exhausted and further contribution from that Member is necessary to meet that Member's share of Authority capital costs that would be payable under the Budget. Any funds contributed by a Member that are not used in a Fiscal Year shall roll over to the subsequent Fiscal Year's Budget.

7.3 Specific Related Activity Budgets. In addition to the foregoing Budget, Authority staff, in consultation with the applicable Related Activity Committee, shall develop a budget for any Related Activity established in accordance with Section 6.1, above. The Related Activity Committee shall recommend such Related Activity budget for approval by the Board, which may then approve that Related Activity budget by majority vote in accordance with Section 3.3.1. Any contributions approved by the Related Activity Committee and approved by the participating Members shall be paid by the participating Member Agencies pursuant to Section 7.5, below.

Each Related Activity budget shall include, without limitation, the following:

- (a) Administrative expenses;
- (b) Studies and planning costs;
- (c) Engineering and construction costs;
- (d) The allocation of costs, including debt service costs, if any, among participating Members;
- (e) Annual maintenance and operating expenses for the Related Activity,

including any reserve requirements necessitated by the Related Activity; and

- (f) A formula for allocating annual maintenance and operating expenses, if any.

7.4 Failure to Obtain Budget Approvals. In the event the Board does not approve the Budget or any Related Activity budget prior to the start of a Fiscal Year, the Authority shall continue to operate at the level of expenditure as authorized below:

7.4.1. Operating Expenses. The operational cost components of the Budget shall be set at the expenditure level authorized by the last approved Budget, and the allocation of such Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget. Any shortfall in revenues for such operational cost components will be made up from available reserves dedicated by the Board for such a purpose, and if those available reserves are insufficient to cover the shortfall, any other available reserve funds not designated by the Board for other purposes or otherwise not legally restricted may be used to meet that shortfall. Such reserves shall be drawn from among the Members in proportion to the allocation of Costs of Service in the last approved Budget. In the event that a shortfall in available funds exceeds available unrestricted reserves of the Authority, such resulting unfunded shortfall shall be carried forward into the subsequent Fiscal Year. Members shall have no obligation to cure such unfunded shortfall other than as may be provided in the applicable Service Agreement or, if applicable, Related Activity Agreement. As used herein, “reserves” shall mean any available unrestricted cash or investments.

7.4.2. Debt Service. The debt service component of the Budget shall automatically be established at the required level necessary to meet the Authority’s annual debt service requirements, including any revenue coverage covenants and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget.

7.4.3. Capital Costs. The capital component of the Budget shall automatically be established at the required level necessary to implement capital projects previously approved by the Authority and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget.

7.5 Payments of Amounts Due; True-Up of Costs. The payments owed for contributions from each Member to the Authority shall conform to amounts payable, or any non-monetary contributions to be provided to the Authority, under each Member’s Service Agreement and in accordance with the Budget approved by the Board pursuant to Section 7.2, above, and any Related Activity Budget under Section 7.3, above. Amounts to be paid to the Authority may be divided into a fixed, annual component and a variable component payable on a monthly or other periodic basis as authorized by the Board.

7.6 Member Self-Funding of Project Capital Costs. Notwithstanding any other provision of this Agreement, a Member may elect to self-fund its share of capital costs for specific Project components to be constructed, with the proportion and timing of that self-funding determined under the Member’s Service Agreement, in lieu of participating in the issuance of Bonds for that Project component. Any such self-funded payments, including remaining unexpended funds deposited in a previous Fiscal Year, shall be used to offset that Member’s share of Project capital costs applicable to that specific Project component that are included in the applicable component of the Budget, until such time as the self-funded amount has been exhausted. In the event the Authority, in its discretion, determines an additional funding contribution from a Member who has self-funded is needed, then the Authority may provide written notice to that Member of the need to deposit additional monies

with the Authority, in such amounts as the Authority, acting through its Administrator or Executive Director, shall determine in its reasonable discretion. The Member shall deposit that amount within six (6) months of receipt of notice from the Authority. The Authority shall refund or credit to a Member who has self-funded any remaining unexpended funds contributed by that Member within sixty (60) days of the completion of the specific component of the Project for which that Member has made self-funded payments, unless the Board finds and determines that the return or credit of such unexpended funds would adversely impact the Authority's financial condition.

7.7 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements, including through operation and maintenance and capital reserve accounts.

7.7.1 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- (a) Grants, donations, and loans received by the Authority from local, state, or federal agencies, including any amounts received under the Early Funding Agreement. Such funds can be used for any Project facility.
- (b) Funds collected from Members under the Service Agreements and any Related Activity Agreements.
- (c) Funds collected from Members, including, but not limited to, funds paid pursuant to the Interim Funding Agreement.
- (d) Funds received from state and federal disaster relief agencies.
- (e) Funds obtained by issuing Bonds.
- (f) "In kind" contributions from Members, include refuge resources provided by Grassland Water District; provided that the Board shall establish a procedure to ensure that any "in kind" contributions comply with any applicable contractual or regulatory requirements and are fair and reasonable in relation to the benefits provided to the contributing Member, and further the Authority's interests.
- (g) Funds from any other source derived.

7.7.2 Interim Funding Plans. The Members intend for the Authority to fund initial Authority costs through the Interim Funding Agreement, and other agreements and revenue sources available to the Authority for such purposes. Notwithstanding the foregoing, in the event the Board unanimously determines that certain costs cannot be funded through such revenue sources and additional monies are required to be contributed by the Members, each Member agrees that it will contribute to a fund or budget approved by the Board in such proportion as the Board shall reasonably determine, as set forth in this article, taking into consideration any non-monetary contributions being received from Grassland Water District. Notwithstanding the foregoing, any financial obligation of the City and County of San Francisco, acting through the San Francisco Public Utilities Commission as a Member of the Authority, payable pursuant to this section is subject to Section 7.12.

7.7.3 Long-Term Funding Plans. The Members intend that all Authority activities will ultimately be funded through various Service Agreements, and Related Activity Agreements, if

any, under which the Members will pay or otherwise contribute for services provided by the Authority. The Members intend that the aforementioned agreements will, when taken together, be sufficient to fund all activities of the Authority, including, but not limited to, all administrative, capital and/or debt service expense, and operation and maintenance costs of the Authority, the Project and Related Activities.

7.7.4 Accounts. Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

7.7.5 Reports. The Treasurer shall, within one hundred and eighty (180) days after the close of each Fiscal Year, give a complete written report of all financial activities for such Fiscal Year to the Board and to each Member. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member. The Treasurer shall prepare and provide such additional reports, including audited financial statements and ongoing disclosure reports, as are required by separate agreements entered into by the Authority.

7.8 Payments and Advances. No expenditures in excess of those budgeted shall be made unless otherwise approved by the Authority's Board.

7.9 Audit. In accordance with Sections 6505 through 6505.6 of the Government Code, the Treasurer shall cause an annual audit of the accounts and records of the Authority to be made and reported. The audit shall be conducted by an independent certified public accountant or public accountant. The audit shall conform to generally accepted auditing standards. Such report shall be filed within twelve (12) months of the end of the Fiscal Year under examination.

7.10 Procurement Methods. The Board may adopt such policies relating to procurement of services, equipment, supplies, and other materials needed to accomplish the purposes of this Agreement.

7.11 Reserve Accounts. The Authority and each Member shall establish in that Member's Service Agreement, or in any Related Activity Agreement, and each Member shall pay into, reserve accounts established for administrative, operational, debt service and capital costs. The respective Service Agreements and, if applicable, Related Activity Agreements, shall specify how the reserve accounts will be replenished in the event such reserves are used. The Authority shall hold those reserves to provide readily available funds in the event a Member is not able to pay its share of the applicable type of costs as provided in that Member's Service Agreement and herein.

7.12 San Francisco Certification of Funds, Budget and Fiscal Provisions.

7.12.1 The financial obligations of the City and County of San Francisco (the "City," acting through the SFPUC as a Member of the Authority) under this Agreement, including all related agreements such as a Service Agreement to which it is a party or a Related Activity Agreement to which it is a party, are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter. Except as provided in Section 7.12.2, below, for each budgetary cycle of the City, charges may accrue to the SFPUC for such budgetary cycle only after the prior written certification of the City's Controller, and the amount of the SFPUC's financial obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization, as required under Charter Sections 3.105 and 9.113. The SFPUC's financial obligations under this Agreement will terminate without penalty, liability or expense of any kind to the SFPUC at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year, subject to the one (1) year suspension process described in this Section 7.12.1. If funds

are appropriated for a portion of the fiscal year, the SFPUC's financial obligations under this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, subject to the one (1) year suspension process described in this Section 7.12.1. The SFPUC has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. This section controls against any and all other provisions of this Agreement, except Section 7.12.2 and Section 8.4.2. In the event the City fails to appropriate adequate funds in any fiscal year to meet the City's financial obligations under this Agreement, or fails to timely obtain the certification described in Section 7.12.2 relating to funding commitments for the Project or a Related Activity, the Authority may, in the sole discretion of the Authority's Board of Directors, suspend any benefits the City would receive from this Agreement until such time as all financial obligations owed to the Authority under this Agreement are satisfied, provided that the Authority has first given the City a minimum of sixty (60) days' advance written notice of such suspension. If the City does not satisfy its financial obligations under this Agreement following receipt of the Authority's written notice for a period of one (1) year from the effective date of the suspension, the City shall be deemed to have withdrawn from the Authority, including the withdrawal of its representative Director from the Board. The Authority shall not impose interest on the City's financial obligations under this Agreement during this one (1) year period. If the SFPUC is deemed to have withdrawn from the Authority under this Section 7.12.1, the SFPUC's financial obligations under this Agreement shall not be governed by the provisions of Section 8.4.1, but Section 8.4.2 shall apply and the SFPUC shall be responsible for its share of the costs incurred by the Authority up until the end of the last fiscal year for which funds were appropriated, or the end of the term for which funds were last appropriated in the event that funds are appropriated for a portion of the fiscal year.

7.12.2 The financial obligations of the City under a Service Agreement to which it is a party or a Related Activity Agreement to which it is a party, may include an SFPUC commitment to (1) participate in Bonds issued to fund the Project's capital costs, (2) participate in Bonds issued to fund a Related Activity's capital costs or (3) indebtedness evidencing the SFPUC's obligation to fund the City's share of capital costs of the Project or the Related Activity, as applicable, specified in the related Service Agreement or Related Activity Agreement. Notwithstanding Section 7.12.1, above, any SFPUC funding commitment described in (1), (2), or (3) in the previous sentence shall be subject to the requirement in San Francisco Charter Section 9.111 that the City Controller certifies that sufficient unencumbered balances are expected to be available in the proper fund to meet all SFPUC payment obligations as they become due, as well as the terms and conditions contained in any debt instrument, which may include a pledge by the SFPUC of certain SFPUC rate revenues, which certification must be obtained prior to the time the Authority commits to issue Bonds for the Project or Bonds for a Related Activity, as applicable, and shall not be subject to the City Controller certification requirements of Charter Sections 3.105 and 9.113. Upon receipt of the certification by the City Controller pursuant to San Francisco Charter Section 9.111, SFPUC shall be obligated under any Bonds or other indebtedness described in Items (1), (2) or (3) of this section in accordance with terms of such Bonds or other indebtedness.

7.13 No Commitment to Bond Financing. The execution of this Agreement is not a commitment to participate in any Bonds or to incur debt which will occur, if at all, at a later date.

ARTICLE 8
TERMINATION / AMENDMENT; WITHDRAWAL

8.1 Duration and Termination. Subject to the terms of any agreement between the Authority or CCWD and any state or federal agency, this Agreement shall continue in full force and effect until terminated by action taken by at least three-quarters (3/4ths) (seventy-five percent (75%)) of the Board and ratified by at least three-quarters (3/4ths) (seventy-five percent (75%)) of the governing bodies of the Members. If at any time there are only two (2) Members of the Authority and one (1) of those Members intends to withdraw, the other Member's written consent to terminate this Agreement shall not be unreasonably conditioned or delayed. Notwithstanding the prior provisions of this Section 8.1, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority, and the Authority shall have a continuing obligation following termination of this Agreement with respect to the payment of debt service on any Bonds or other outstanding financial commitments of the Authority.

8.2 Amendment. This Agreement may be amended at any time by action taken by at least three-quarters (3/4ths) of the Board and ratified by at least three-quarters (3/4ths) (seventy-five percent (75%)) of the governing bodies of the Members; provided that if the proposed amendment is to change the requirement for unanimous approval of an action required under Section 3.3.3 or relates to the veto right provided by Section 3.3.4, then any such amendment must have unanimous Board approval; and provided further that if the proposed amendment relates to Section 7.12, then any such amendment's approval must include a vote of approval by the SFPUC; and provided further that Exhibit B to this Agreement may be amended by the Administrator or Executive Director, with majority vote of the Board approving such amendment to Exhibit B, to reflect changes to the Project's facilities approved by the Board. Exhibit A shall be updated by the Administrator or Executive Director as necessary to reflect any changes in the Members that occurs with the Board approval required herein for new Members or withdrawing Members. Notwithstanding the foregoing, the number and list of SLDMWA members listed on Exhibit A participating through the SLDMWA may be changed or a SLDMWA member that decides to no longer participate through the SLDMWA may be added to the list of Authority members without requiring amendment of the Agreement.

8.3 Withdrawal. A Member may only withdraw from the Authority as follows:

8.3.1 Failure to Execute Interim Funding Agreement. In the event a Member does not execute the Interim Funding Agreement or other agreement provided under Section 7.7.2 to provide interim funding to the Authority within eight (8) weeks after that Member receives the execution version of that agreement, or such later date as the Board shall establish, or does not agree in writing to make the financial contributions described in Section 7.7.2 within twelve (12) weeks of receiving a written demand from the Authority for it do so, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement, except as provided in Section 8.4.

8.3.2 Failure to Execute Service Agreement. In the event a Member decides not to proceed with the completion of its Service Agreement and provides written notice to the Authority of that decision, or does not execute its Service Agreement within twelve (12) weeks after that Member receives the execution version of that agreement, or such later date as the Board shall establish, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement, except as provided in Section 8.4.

8.3.3 Engineer's Estimate is Too Expensive. Subject to Section 8.3.8, in the event that a Member concludes the engineer's estimate for any work on a specific component of the Project is too expensive, then a Member may initiate a meet and confer process among the Members'

respective staffs to discuss those cost issues, which meeting shall take place within thirty (30) days after the Member gives notice of its desire for that meeting. If upon conclusion of that meet and confer process the Member that initiated that process is not satisfied with the estimate, then that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.4 Withdrawal of Other Member. Subject to Section 8.3.8, in the event that another Member has withdrawn from the Authority under this Section 8.3 and the result of such withdrawals has made remaining in the Authority either cost prohibitive for a Member or adversely affects the operational feasibility of the Project for that Member, then that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.5 Revocation or Unacceptable Conditioning of State or Federal Funding. In the event the State of California or the federal government withdraws any previously approved funding for a specific component of the Project or conditions such funding in a manner a Member deems unacceptable prior when the Authority executes the Final Funding Agreement, then any Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.6 Unacceptable Permit Conditions. Subject to Section 8.3.8, in the event any entity or jurisdiction whose approval must be obtained to design, construct, or operate a specific component of the Project conditions its approval in a manner a Member deems unacceptable, such Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.7 Water Supply Conditions for Withdrawal. Subject to Section 8.3.8, in the event a Member determines that it cannot timely obtain: (i) long-term water supply for the Project, including any necessary water rights, upon terms it finds reasonable and consistent with its needs and objectives; (ii) any rights or entitlements needed to acquire or convey such a water supply; or (iii) agreements with the California Department of Water Resources, the South Bay Aqueduct (SBA) Contractors or any other entity to allow for the conveyance of water supplies through the SBA or other conveyance facility for use by the Member or any of its wholesale customers, that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.8 Approval once Final Funding Agreement is Executed. Notwithstanding the foregoing subsections in this Section 8.3, after the Authority executes the Final Funding Agreement, a Member may withdraw from the Authority only if (a) approved by at least seventy-five percent (75%) of the total number of Directors, who must find and determine in connection with such approval that there would be no adverse and material effect, as defined in this Section 8.3.8, or (b) if some or all of the other Members have agreed to assume the withdrawing Member's obligations under such Bonds to finance Project facilities described on Exhibit B, and/or have agreed to assume the withdrawing Member's outstanding payment of capital costs to which it has committed in its Service Agreement. For purposes of this Section 8.3.8, "adverse and material effect" means any effect that would result in a downgrade or suspension on the rating of the Bonds or cause delays or increased costs with respect to construction of the Project. Where the withdrawal of a Member pursuant to this Section 8.3.8 does not occur with the approval of the Board in accordance with subdivision (a), then notwithstanding the assumption of the withdrawing Member's obligations with respect to any Bonds or payment of capital costs, as applicable, if the Member or Members assuming those obligations fails or fail to make the assumed portion of any debt service payment or capital costs, as applicable, the withdrawing Member shall be obligated for any such shortfall in payment, for as long as such Bonds remain outstanding or until construction of the Project component has been completed, as applicable. Notwithstanding any withdrawal permitted under subdivision (b) of this Section 8.3.8, a Member, or its successor if applicable, shall remain obligated under this Agreement to make any payments with respect to any specific component of the Project to which that Member

previously committed, either as self-funded or under any Bonds. Such a withdrawing Member shall have no obligation under this Agreement for any financial commitments for any specific component of the Project in which the withdrawing Member did not commit to participate prior to its withdrawal. The Authority shall not issue Bonds for any specific component of the Project before all construction bids for that component have been received and any meet and confer process undertaken pursuant to Section 8.3.3 has concluded.

8.4 Effect of Withdrawal.

8.4.1 A withdrawal from the Authority constitutes a withdrawal of that Member's representative Director from the Board and from any committee on which that Director is serving, including in the event a Member's obligations under any Bonds have been assumed by another Member as stated in Section 8.3.8, above, so that the assuming Member does not obtain a second Director position by reason of its assumption of those obligations. If at any time there are only two (2) Members, any desired withdrawal shall be subject to the termination provisions of this Agreement. Unless otherwise agreed upon by all of the remaining Members, the withdrawal of a Member shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority on or before the date the withdrawing Member gives written notice of intent to withdraw, as determined by the Board based upon that Member's obligations under the Interim Funding Agreement, its respective Service Agreement (if the Member has executed that agreement), or otherwise under this Agreement, or to perform any other obligation arising from a separate agreement or other legally binding obligation, including amounts determined by the Board for (1) liabilities and claims accrued during the time prior to that Member giving written notice of intent to withdraw, or is deemed to have withdrawn (including any future obligations arising from retirement benefits for past and existing employees of the Authority, if any), or (2) budgeted expenses for the Budget period in which notice of intent to withdraw is given. A withdrawing Member therefore shall remain obligated to pay its portion of debt service on any outstanding obligations for which such Member was obligated to pay prior to withdrawal, or remain obligated to pay any portion of ongoing capital costs for a Project component in which the withdrawing Member was participating prior to such withdrawal.

8.4.2 Except as the withdrawing Member may agree in writing with the Authority, the withdrawing Member shall automatically relinquish all rights as a Member under this Agreement, on the effective date of the withdrawal and shall not accrue any financial obligations under this Agreement or any other Project-related agreement after the date that notice of intent to withdraw is given. The withdrawing Member's share of Project rights and benefits shall be distributed among the remaining Members in proportion to their allocations of such rights and benefits as of the effective date of the withdrawal, unless the Members otherwise agree to a different distribution; provided, however, that the distribution of the withdrawing Member's share of Project rights and benefits shall not occur until such time as the Board confirms the proportionate distribution of those rights and benefits or approves the plan for such distribution.

8.4.3 For any Member that has self-funded any financial obligation to the Authority for a specific component of the Project and subsequently withdrawn from the Authority, the Board shall determine an equitable allocation of such monies previously paid to the Authority and return to that withdrawing Member any uncommitted funds, provided that any such refund may be structured to ensure it does not materially adversely impact the Authority's financial condition. The Board's determination of that equitable allocation shall take into consideration the amount of Project costs that have been paid through payment of principal under any Bonds issued in the period since the withdrawing Member self-funded its financial obligation.

8.5 Disbursement Upon Termination; Post-Termination Liabilities. Upon termination of this Agreement and after payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement, the Board may, in its discretion and by a unanimous vote of the then-current

Directors, distribute all remaining assets of the Authority based on an apportionment the Board deems equitable. In the event the Board cannot reach a unanimous vote on that distribution, then the Members shall proceed in accordance with Section 11.2 to attempt to resolve any disputed issue in connection with the distribution of assets. Any further liabilities of the Authority that may accrue after termination of this Agreement shall be allocated among the former Members in the same proportion as the Authority's expenses are allocated under the Budget at the time of the termination; provided that the Board shall take into consideration any non-monetary contributions Grassland Water District may provide with respect to its share of such liabilities.

8.6 SLDMWA Member Participation. In addition to adjustments to the SLDMWA members listed in Exhibit A as authorized under Section 8.2, this section authorizes: (1) SLDMWA to assign to a SLDMWA member listed on Exhibit A all of SLDMWA's rights and obligations previously held by SLDMWA as a Member of the Authority (referred to herein as a "substitution"), and (2) for a SLDMWA member listed on Exhibit A to terminate its participation through SLDMWA and for that SLDMWA member to become a member of the Authority (referred to herein as a "change"). A substitution or change may necessitate revisions to SLDMWA's Service Agreement, and any SLDMWA member involved in a change will need to enter into or be assigned rights and obligations under a Service Agreement. Under no circumstance will the rights and obligations of SLDMWA and the SLDMWA members participating separately in the Authority that exist after the substitution or change exceed the rights and obligations of SLDMWA that existed prior to the substitution or change. To the extent the terms of this section conflicts with the terms of any other section of the Agreement or any other agreement referenced herein, the terms of this section shall control.

8.6.1 Substitution. If SLDMWA and a SLDMWA member notify the Authority of their intent for the SLDMWA member to substitute for SLDMWA as a Member of the Authority, such substitution will take effect immediately upon notice, with the SLDMWA member assuming all rights and obligations previously held by SLDMWA as a Member of the Authority.

8.6.2 Change. If one or more SLDMWA member(s) notifies the Authority of the intent to participate in the Authority separate from SLDMWA, but two or more SLDMWA members will maintain their participation in the Authority through SLDMWA, then such change will take effect immediately upon notice. To be effective, the notice will inform the Authority of how the rights and obligations of SLDMWA that existed prior to the change will be exercised by SLDMWA and the SLDMWA members after the change. In the event a change occurs, then SLDMWA and the applicable SLDMWA member agency(ies) must determine how they will address any resulting governance issue, but the change shall not result in any increase in the voting power of SLDMWA and any SLDMWA member agency participating in the Authority as a result of that change, and SLDMWA and any such member agency(ies) shall not obtain more than a total of one (1) vote by reason of that change on matters coming before the Board, unless such SLDMWA member agency proceeds under the new member provisions of Section 10.3.

ARTICLE 9 BREACH AND MEMBERSHIP TERMINATION

9.1 Compliance with Agreement. Each Member shall comply with the terms of this Agreement and fulfill its obligations hereunder, as well as under its Service Agreement, including all financial obligations it undertakes in connection with the Project.

9.2 One-Year Suspension Period – Monetary Breaches. If any Member fails to meet that Member's financial obligations under this Agreement, the Authority may, in the sole discretion of the Authority's Board of Directors, suspend any benefits that Member would receive from this Agreement until such time as all of that Member's financial obligations owed to the Authority under this Agreement are satisfied, provided that the Authority has first given that Member a minimum of

sixty (60) days' advance written notice of such suspension. If that Member does not satisfy its financial obligations under this Agreement following receipt of the Authority's written notice for a period of one (1) year from the effective date of the suspension, that Member shall be deemed to have withdrawn from the Authority and the provisions of Section 8.4 shall apply. The Authority shall not impose interest on that Member's financial obligations under this Agreement during this one (1) year period. Notwithstanding the foregoing, if the Member's breach relates to a failure to pay administrative and/or operational expenses, that Member shall not be subject to termination until such time as that Member's funds held by the Authority as administrative and/or operational reserves are exhausted. For the purposes of this Section 9.2, any failure by SFPUC to appropriate adequate funds in any Fiscal Year to meet its obligation under its Service Agreement or other financial obligations under this Agreement is not a breach of this Agreement and Section 7.12 shall apply.

9.3 Breach of Agreement – Non-Monetary Breaches. In the event the Board determines a Member has breached any non-monetary obligation under this Agreement by failing to perform any obligation hereunder, other than the payment of monies to the Authority, the Authority shall give that Member written notice of that breach and an opportunity for sixty (60) days to cure that breach, or such longer period of time as the Board determines is reasonable, in its sole and absolute discretion, to cure the breach. If that Member fails to cure that breach within that sixty (60) day or longer period, then that Member may have its rights under this Agreement terminated and may be excluded from further participation in the Authority by the vote of at least three-quarters (seventy-five percent (75%)) of the total number of Directors. Any such termination shall be deemed a withdrawal from the Authority for the purposes of Section 8.4, and such defaulting Member shall continue to be liable for its obligations to the extent and as provided in Section 8.4, including, but not limited to, such defaulting Member's obligation to pay its share of any debt service on any outstanding Bonds, or its share of any capital costs relating to a specific Project component.

9.4 Enforcement. Subject to the one-year suspension period under Section 9.2 with respect to any Member's failure to meet its financial obligations, if a Member defaults in any undertaking contained in this Agreement, that default shall not excuse such Member or any other Member from fulfilling its obligations under this Agreement and each Member shall continue to be liable for the performance of all conditions herein contained. Each Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby and for each Member and hereby grants to the Authority the right to enforce by whatever means, legal and equitable, the Authority deems appropriate in consideration of all obligations of each of the Members hereunder. The foregoing provisions in this Section 9.4 do not pertain to any failure by SFPUC to appropriate adequate funds in any Fiscal Year to meet its obligation under its Service Agreement or other financial obligations under this Agreement. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

ARTICLE 10 SPECIAL PROVISIONS

10.1 Insurance. The Authority shall maintain types and levels of insurance coverage for the Authority as the Board determines to be reasonably adequate.

10.2 Liability of Authority and Members.

10.2.1 To the full extent authorized by Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority, with the exception of retirement liabilities of the Authority if the Authority contracts with a public retirement system, shall be the debts, liabilities, and obligations solely of the Authority and not the debts, liabilities, and obligations of any of the Members or any of their respective members, officers, directors, employees, or agents. The Authority, its Directors,

officers, employees, staff, and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement.

10.2.2 No Member, its officers, directors, or employees shall be responsible for any action taken or omitted by any other Member, or its members, officers, directors, or employees. To the extent allowed by law, the Members repudiate the provision for joint and several tort liability provided under Government Code Section 895.2, and agree, pursuant to Government Code Section 895.4, that each Member shall fully indemnify and hold harmless each other Member and its agents, officers, employees, and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any negligent or wrongful act or omission of such Member in the performance of this Agreement, and the Members intend that each Member provide indemnity or contribution in proportion to that Member's responsibility for any such claim, damage, loss, judgment, liability, expense or other cost, as determined under principles of comparative negligence.

10.3 New Members. It is recognized that public agencies other than the original Members to this Agreement may wish to participate in the Authority. As determined by the Board of Directors, in its sole discretion, any such public agency must have the common powers specified in Recitals A and B, above, must be located within the Project Service Area, must be credit worthy, and must provide benefits to the Project and other Members. Any proposed new Member must meet all established principles or requirements adopted by any Member with respect to potential participation in the Project that are in effect at the time the proposed new Member applies to become a Member. Additional public agencies may become Members upon such terms and conditions as approved by at least a simple majority vote of the Board, including establishment of an appropriate cost allocation for that new Member and payment by the new Member of an acceptable financial contribution to offset prior expenses incurred by the existing Members in developing and operating the Project. Any new Member must be approved by at least a simple majority of the governing boards of the existing Members of the Authority, evidenced by the execution of a written amendment to this Agreement signed by the new Member. Notwithstanding the foregoing, a change in the SLDMWA's participation structure shall be governed by Section 8.6, unless a SLDMWA member elects to pursue membership pursuant to this Section 10.3.

10.4 Retirement System. The Authority shall not enter into a contract with the California Public Employees' Retirement System or any other public retirement system without the unanimous approval of the Board and ratification by all of the governing bodies of the Members. The Members acknowledge that if the Authority enters into any such contract, as referenced in Section 10.2, above, the Members may have responsibility under Government Code Section 6508.2 for the Authority's retirement liabilities in the event this Agreement is terminated or the Authority terminates that contract. In such a situation, the Members shall attempt to reach mutual agreement on the allocation of those liabilities among the Members and understand that if they are unable to reach such a mutual agreement, those liabilities shall be allocated among the Members in the same proportion as the Authority's expenses are allocated under the Budget at the time of the termination of this Agreement or of the retirement system contract.

10.5 Indemnity by the Authority. The Authority shall indemnify, defend and hold harmless the Board, each Member, and their members, officers, directors, employees, and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the negligence or willful misconduct of any Member, or their members, officers, directors, employees, and agents. The Authority's duty to indemnify each Member pursuant to this Agreement shall survive that Member's withdrawal from the Agency.

10.6 Conflict of Interest Code. The Authority shall, by resolution, adopt a conflict of interest code as required by law.

10.7 No Policy Advocacy. The Authority shall only engage in policy advocacy or legislative, lobbying, or governmental affairs activities directly related to the Project, including third party funding and financial issues. Such functions may also be performed by individual Members in their sole discretion.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Severability. If any section, clause or phrase of this Agreement or the application thereof to any Member or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Member or to other persons or circumstances shall not be affected thereby. In the event a provision is held to be invalid, the Members shall work in good faith to restore the intent of any provision that held to be invalid. Each Member hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

11.2 Dispute Resolution. If a dispute arises as to the construction, interpretation or implementation of any portion of this Agreement or any matters that arise in connection with this Agreement, the Members in dispute (including the Authority if the dispute is between one or more Members and the Authority, in which case the Board shall determine who will represent the Authority in the meet and confer and mediation processes) shall meet and confer in person in an attempt to resolve that dispute within thirty (30) days of a Member or the Authority giving the other Members or the Authority notice of the dispute. If the Members or the Authority cannot resolve the dispute through that meet and confer process, the Members or the Authority in dispute shall proceed to non-binding mediation of the dispute in front of an independent, neutral mediator agreed to by those Members or the Authority, unless they both agree to waive that mediation. If the Members or the Authority in dispute cannot agree upon a mediator, the mediation service selected shall choose the mediator. The Members or the Authority in dispute shall equally divide and pay the mediation costs.

11.3 Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally, by registered or certified mail, postage prepaid, by nationally-recognized overnight courier, or by e-mail to the respective Members, at the addresses provided in Exhibit C attached hereto. With respect to delivery by e-mail, any such e-mail message shall be sent using a system that provides reasonable assurance: (i) that the message was sent; (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient, along with a verifiable electronic record of the exact content of the message sent. The Members may from time to time change the address to which notice may be provided by providing notice of the change to the other Members.

11.4 Consent. Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be arbitrarily or capriciously withheld or delayed.

11.5 Other Agreements Not Prohibited. Other agreements by and between the Members or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

11.6 Section Headings. The section headings herein are for convenience of the Members only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

11.7 Governing Law; Venue. Any judicial action or proceeding that relates to the Agreement, the Authority or the Project between or among any or all of the Members and/or the Authority shall be initially brought in Contra Costa County Superior Court and will be transferred to a neutral venue. The litigants shall attempt to stipulate to a mutually agreeable neutral venue, and if unable to agree will resolve any venue dispute through a motion to transfer brought pursuant to California Code of Civil Procedure section 394. The parties to any litigation will support transfer to a neutral venue and will not object to transfer to a neutral venue.

11.8 Construction of Language. It is the intention of the Members that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. Additionally, any dispute concerning determination of an “adverse and material effect” pursuant to Section 3.3.4 shall be determined under an arbitrary and capricious standard in connection with the affected Member’s exercise of its veto right.

11.9 Cooperation. The Members recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

11.10 Successors. Subject to Section 11.11, this Agreement shall be binding upon and shall inure to the benefit of the successors of the Members.

11.11 Assignment. Except as provided for SLDMWA and the SLDMWA members, a Member may not assign its membership in the Authority without the consent of all of the other Members. Any assignment of a membership in the Authority made under this Section 11.11 upon the consent of all of the other Members will not result in the novation of the assignor Member’s obligations with respect to this Agreement, the Member’s Service Agreement or any other agreement which may obligate the assignor Member, unless such novation is agreed to in writing by such consenting Members, the assignee and the assignor Member. Notwithstanding the foregoing, a Member may assign its rights to utilize the Project in accordance with the provisions of its Service Agreement and any applicable Facilities Usage Agreement; but in such a case, the assignor Member that holds those rights will remain obligated for the payment of debt service, capital costs or operating expenses to the extent such costs are not paid by the assignee. In addition, any such assignment of rights to use of the Project must be consistent with the Project’s permits and approvals and be limited to use within the Project Service Area.

11.12 Enforcement. The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

11.13 Integration. This Agreement constitutes the full and complete Agreement of the Members regarding the creation and administration of the Authority.

11.14 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Members have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below.

Ed Stevenson, General Manager
Alameda County Water District

Date

Approved as to Form:
Patrick Miyaki, General Counsel

Date

Stephen J. Welch, General Manager
Contra Costa Water District

Date

Approved as to Form:
Douglas E. Coty, General Counsel

Date

Clifford C. Chan, General Manager
East Bay Municipal Utility District

Date

Approved as to Form:
Jonathan D. Salmon, Assistant General Counsel

Date

Ricardo Ortega, General Manager
Grassland Water District

Date

Approved as to Form:
Ellen L. Wehr, General Counsel

Date

Michael Carlin, Acting General Manager
San Francisco Public Utilities Commission

Date

Approved as to Form:
Dennis J. Herrera, City Attorney

Date

By

Joshua Milstein
Deputy City Attorney

Date

Federico Barajas, Executive Director
San Luis & Delta-Mendota Water Authority

Date

Approved as to Form:
Rebecca Akroyd, General Counsel

Date

Rick L. Callender, Esq. Chief Executive Officer
Santa Clara Valley Water District

Date

Approved as to Form:
Carlos Orellana, District Counsel

Date

Valerie Pryor, General Manager
Zone 7 Water Agency

Date

Approved as to Form:
Rebecca Smith, General Counsel

Date

EXHIBIT A
AUTHORITY MEMBERS

- Alameda County Flood Control & Water Conservation District, Zone 7
 - Alameda County Water District
 - Contra Costa Water District (to include City of Brentwood*)
 - East Bay Municipal Utility District
 - Grassland Water District
 - Santa Clara Valley Water District
 - San Francisco Public Utilities Commission (to include Bay Area Water Supply & Conservation Agency*)
 - San Luis & Delta-Mendota Water Authority, consisting of:
 - Byron-Bethany Irrigation District
 - Del Puerto Water District
 - Panoche Water District
 - Westlands Water District
- [NOTE: The number and list of SLDMWA-member agencies participating through SLDMWA may change without requiring amendment of this Exhibit A or the Agreement]
- Department of Water Resources (ex officio, non-voting pursuant to Water Code Section 79759(b))

*The City of Brentwood and the Bay Area Water Supply & Conservation Agency are not signatory parties to the JPA, and are not bound by, and do not independently benefit from, its terms and conditions. Rather, these parties contract for project benefits through their wholesale providers.

EXHIBIT B
LIST OF FACILITIES*

No.	Description	Type	Builder	Operator
1	Los Vaqueros Dam Raise	New Facility	CCWD	CCWD
2	Neroly High-Lift Pump Station	New Facility	CCWD	CCWD
3	Transfer Facility Expansion	New Facility	CCWD	CCWD
4	Transfer-Bethany Pipeline	New Facility	CCWD	CCWD
5	Los Vaqueros Recreation Facilities	Modified Facility	CCWD	CCWD
6	Rock Slough PP#1 Replacement	Modified Facility	CCWD	CCWD
7	Transfer Facilities Improvements	Modified Facility	CCWD	CCWD
8	Mokelumne Aqueduct Lining	Modified Facility	EBMUD	EBMUD
9	Walnut Creek VFDs	New Facility	EBMUD	EBMUD
10	Mokelumne Aqueduct	EBMUD-Provided Facility	EBMUD is responsible for construction, operation, and maintenance and is compensated through the EBMUD Facilities Usage Agreement	
11	Freeport Intake	EBMUD-Provided Facility		
12	Walnut Creek Pumping Plant	EBMUD-Provided Facility		
13	EBMUD-CCWD Intertie	CCWD-Provided Facility	CCWD is responsible for construction, operation, and maintenance and is compensated through the CCWD Facilities Usage Agreement	
14	Los Vaqueros Dam	CCWD-Provided Facility		
15	Los Vaqueros Pipeline	CCWD-Provided Facility		
16	Middle River Intake	CCWD-Provided Facility		
17	Middle River Pipeline	CCWD-Provided Facility		
18	Old River Intake	CCWD-Provided Facility		
19	Old River Pipeline	CCWD-Provided Facility		
20	Rock Slough Facilities	CCWD-Provided Facility		
21	Transfer Pipeline	CCWD-Provided Facility		

*This Exhibit B lists those facilities that have been included in various Project application and agreement documents. Some facilities listed on Exhibit B will provide differing levels of benefits (or no benefits) to certain Members. The Service Agreements and Facilities Usage Agreements will address those specific levels of

benefits and related cost allocations. Facilities listed in this Exhibit B are subject to modification as to the nature and type of the facility, and additional facilities may be added to Exhibit B prior to JPA formation as circumstances may warrant, including obtaining of additional state or federal grant funding. No rights to the use of any facility are provided by reason of the listing of that facility on Exhibit B. Such rights of use are only provided through the Facilities Usage Agreements and Service Agreements to be entered into.

EXHIBIT C
MEMBER ADDRESSES

Member	Addresses
Alameda County Water District	43885 S. Grimmer Blvd., Fremont, California 94538
Contra Costa Water District	1331 Concord Avenue, Concord, California 94520 P.O. Box H20 Concord, California 94524
East Bay Municipal Utility District	375 Eleventh Street, M.S. 407, Oakland, California 94607
San Luis & Delta Mendota Water Authority	15990 Kelso Road, Byron, California 94514 P.O. Box 2157, Los Banos, California 93635
Grassland Water District	200 W. Willmott Avenue, Los Banos, California 93635
San Francisco Public Utilities Commission	525 Golden Gate Avenue, 10 th Floor San Francisco, California 94102
Santa Clara Valley Water District	5750 Almaden Expressway, San Jose, California 95118
Zone 7 Water Agency	100 N. Canyon Parkway, Livermore, California 94551
EX OFFICIO MEMBER: California Department of Water Resources	1416 9 th Street, Room 1115-1, Sacramento, California 95814 P. O. Box 942836, Room 1115-1, Sacramento, California 94236-0001

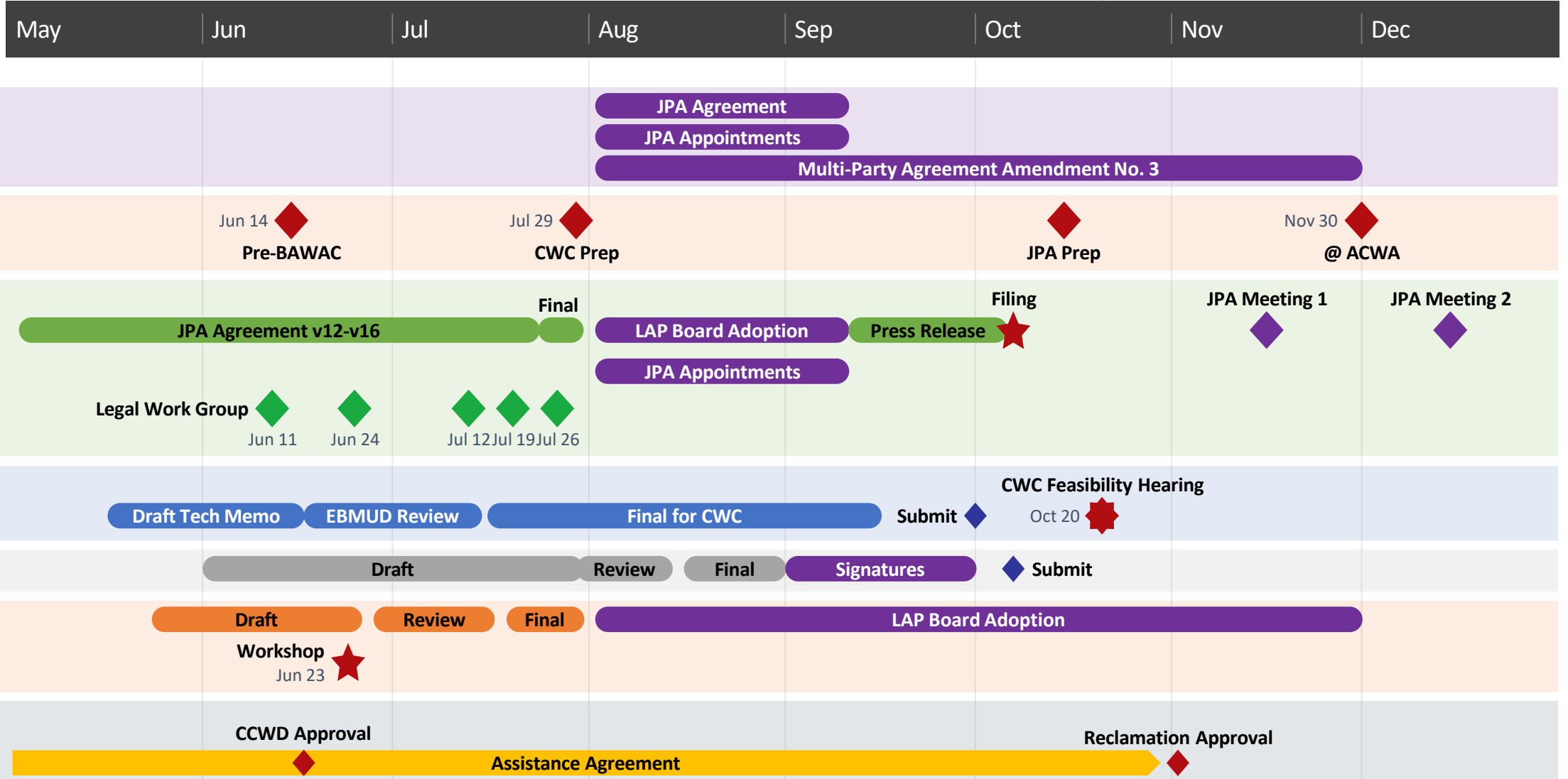
Phase 2 Los Vaqueros Reservoir Expansion Project

Near Term Milestones

Draft 7/23/21

CWC Feasibility Hearing
Oct 20

2021



California Water Commission Requirements prior to 1/1/22:

- ✓ Maximum Conditional Eligibility Determination (\$470,274,000) – Updated Jan 2021
- ✓ Draft Environmental Documentation – Completed June 2017

- ➔ Determination of Feasibility – CWC Hearing on October 20, 2021
- ➔ Letter of Support (demonstrating support for not less than 75 percent of the non-public benefit cost share of the project) – prior to CWC Hearing