



## MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Harms, Deputy General Counsel  
Cindy Meyer, Special Programs Manager  
Frances Mizuno, Mizuno Consulting

DATE: September 14, 2023

RE: Resolution Authorizing Execution of North to South Water Transfers Activity Agreement and Actions Related Thereto

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### **BACKGROUND**

In October 2012, the San Luis & Delta-Mendota Water Authority (“Water Authority”) Board of Directors adopted Resolution No. 2012-356, which authorized execution of a Long-Term North to South Water Transfer Program Activity Agreement. That Activity Agreement allowed the Water Authority, on behalf of Activity Agreement members, to facilitate environmental review of north-to-south water transfers and to provide the mechanism for those Activity Agreement Members to acquire water through north-to-south water transfers.

In August 2022, the Water Authority Board adopted Resolution No. 2022-508, which authorized execution of the First Amendment to the Long Term North to South Water Transfer Program Activity Agreement and actions related thereto. The First Amendment revised certain provisions governing the allocation and payment of litigation-related Activity Agreement Expenses and extended the term of the Activity Agreement by one year, to December 31, 2024, or until all obligations arising under each of the water transfer agreements have been satisfied, whichever comes later.

The National Environmental Policy Act (“NEPA”)-California Environmental Quality Act (“CEQA”) environmental document that is currently in effect provides coverage for a range of potential annual water transfers from willing sellers north of the Delta and from tributaries of the San Joaquin River to willing buyers south of the Delta and in the San Francisco Bay Area through 2024, consistent with the term of the Long-Term North to South Water Transfer Program Activity Agreement.

The Water Authority is now cooperating with the U.S. Bureau of Reclamation (“Reclamation”) and local agencies to complete environmental review for a range of potential annual north-to-south water transfers initiated beginning in 2025 (“Water Transfers EIS/EIR”). The Water Authority has developed a new North to South Water Transfers Activity Agreement (“Activity

Agreement”) for Water Authority members who desire to participate in the water transfers covered by the Water Transfers EIS/EIR. The Activity Agreement authorizes annual coordination of water transfer activities and specifies that the costs of the water transfers, including preparation and/or defense of the documents prepared pursuant to NEPA and CEQA, will be paid by Activity Agreement Members, and not by non-participating members of the Water Authority.

**ISSUE FOR DECISION**

Whether the Water Authority should adopt the proposed Resolution Authorizing Execution of the North to South Water Transfers Activity Agreement and Actions Related Thereto.

**RECOMMENDATION**

Staff recommends the Board adopt the proposed resolution.

**ANALYSIS**

Upon adoption of the resolution and following execution of the Activity Agreement by at least two member agencies, the Executive Director would execute the North to South Water Transfers Activity Agreement. As drafted, the Activity Agreement would become effective on a date certain (60 days after Board approval).

Execution of the proposed Activity Agreement does not legally bind or otherwise commit the Water Authority or the Activity Agreement participants to participate in or otherwise proceed with water transfers. The Water Authority will comply with CEQA, as applicable, prior to participating in or otherwise proceeding with water transfers. Further, executing the Activity Agreement is an administrative and organizational action 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).

The Water Authority’s participation in the Activity Agreement will require staff time to manage the project and coordinate with the Activity Agreement participants. Activity Agreement participants would be responsible for all financial (including Water Authority staff time) obligations and liabilities associated with the Water Authority’s engagement (see Section 12 of the proposed Activity Agreement).

**BUDGET**

No direct budget impact due to the proposed structure of the Activity Agreement whereby the cost for the Water Authority’s coordination of water transfer activities pursuant to the Activity Agreement, and any additional financial obligations and liabilities associated with the coordination of transfer activities or individual transfers, will be paid for by only the Activity Agreement Members.

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Memo to SLDMWA Board of Directors

September 14, 2023

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**EXHIBITS**

1. Resolution No. 2012-356 Authorizing Execution of Long-Term North to South Water Transfer Program Activity Agreement, and Authorizing Related Actions
2. Resolution No. 2022-508 Authorizing Execution of the First Amendment to the Long Term North to South Water Transfer Program Activity Agreement and Authorizing Actions Related Thereto
3. Resolution No. 2023-XX Authorizing Execution of the North to South Water Transfers Activity Agreement and Actions Related Thereto
4. Draft North to South Water Transfers Activity Agreement

## RESOLUTION NO. 2012-356

### RESOLUTION AUTHORIZING EXECUTION OF LONG-TERM NORTH TO SOUTH WATER TRANSFER PROGRAM ACTIVITY AGREEMENT, AND AUTHORIZING RELATED ACTIONS RELATED

WHEREAS, on December 9, 2010, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the "Board" and the "Water Authority," respectively) adopted Resolution No. 2010-334, authorizing Notice of Preparation under the National Environmental Protection Act ("NEPA") and the California Environmental Quality Act ("CEQA") for a 10-year program of transfers from willing sellers in the Sacramento Valley, Merced Irrigation District and South San Joaquin Irrigation District to willing purchasers who are members of the Water Authority and to certain other Central Valley Project contractors between 2013 and 2022 (the "Long Term Water Transfers 2013-2022 EIS-EIR" or "EIS-EIR").

WHEREAS, Resolution 2010-334 further directed the Assistant Executive Director of the Water Authority to cause an Activity Agreement to be developed for participation in the Long Term North to South Water Transfer Program, by the terms of which the costs of the water transfers within the Program, including preparation of the documents required by CEQA, will be paid by Activity Agreement Members, and not by non-participating Members of the Water Authority.

WHEREAS, the Board has considered that certain Long Term North to South Water Transfers Activity Agreement ("Activity Agreement"), a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, Activity Agreement Members who execute the Activity Agreement agree to indemnify and hold harmless the Water Authority and its Members who do not participate in the Activity Agreement with respect to any and all costs, losses, damages, claims and liabilities arising under the Activity Agreement.

WHEREAS, development of the EIS-EIR is ongoing and is expected to be completed for transfers initiated beginning in 2013.

WHEREAS, authorizing execution of the Activity Agreement does not constitute a project under the California Environmental Quality Act because it does not commit the Water Authority to enter into any transfer agreement until and unless the Board certifies the EIS-EIR, makes any required findings and files Notice of Determination, and the Water Authority subsequently negotiates the terms of specific transfers covered by the certified EIS-EIR.

WHEREAS, establishing the Activity Agreement involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the CEQA guidelines) and also represents administrative activities of the Water Authority that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of

the CEQA Guidelines); further, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the CEQA guidelines).

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

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

Section 2. The Board hereby authorizes the Executive Director to execute the Long Term North to South Water Transfers 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 and further subject to the contingencies described in Section 3 of this Resolution.

Section 3. This authorization conferred by this Resolution shall be contingent upon at least one participating Member of the Water Authority executing the Long-Term Water Transfer Activity Agreement; in the event the contingency described in this Section 3 shall fail to occur, the authorization conferred by this Resolution is revoked *ab initio* and any document executed by the Water Authority in reliance upon it shall have no binding force or effect.

Section 4. The Water authority shall not enter into any transfer agreement until and unless the Board certifies the EIS-EIR, makes any required findings and files Notice of Determination, and the Water Authority subsequently negotiates the terms of specific transfers covered by the certified EIS-EIR.

Section 5. Except as provided in Sections 3 and 4, the Executive Director, Assistant Executive Director 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.

PASSED AND ADOPTED, this 4th day of October, 2012, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

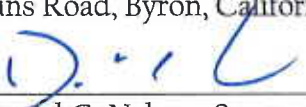
  
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Michael Stearns, Chairman  
SANLUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

  
\_\_\_\_\_  
Daniel G. Nelson, Secretary

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I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a regular meeting of the Board of Directors thereof duly called and held at the office of the Byron-Bethany Irrigation District, 7995 Bruns Road, Byron, California on the 4th day of October, 2012.

  
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Daniel G. Nelson, Secretary

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**RESOLUTION NO. 2022-508**

**RESOLUTION AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO THE  
LONG TERM NORTH TO SOUTH WATER TRANSFER PROGRAM ACTIVITY  
AGREEMENT AND AUTHORIZING ACTIONS RELATED THERETO**

**WHEREAS**, the San Luis & Delta-Mendota Water Authority (“Water Authority”) and Byron-Bethany Irrigation District; Del Puerto Water District; Eagle Field Water District; Mercy Springs Water District; Pacheco Water District; Panoche Water District; San Benito County Water District; San Luis Water District; Santa Clara Valley Water District; and Westlands Water District have executed that certain Long Term North to South Water Transfer Program Activity Agreement (the “Activity Agreement Members” and “Activity Agreement”), made effective as of October 30, 2012; and

**WHEREAS**, on March 18, 2019, the Water Authority executed an Agreement re Cooperation and Cost Sharing for the Revised Long Term Water Transfer Environmental Impact Statement/ Environmental Impact Report (“Cost Sharing Agreement”) with non-Water Authority members Contra Costa Water District (“CCWD”) and East Bay Municipal Utility District (“EBMUD”), in which CCWD and EBMUD agreed to “each reimburse 1/12th of the Water Authority’s actual reasonable attorney’s fees and out-of-pocket expenses incurred by the Water Authority for defending the NEPA/CEQA document, and any monetary award associated therewith;” and

**WHEREAS**, subsequent to execution of the Activity Agreement, Byron-Bethany Irrigation District and Del Puerto Water District withdrew from participation, effective February 10, 2020, with Valley Water and Westlands Water District assuming their allocated shares for transfers; and

**WHEREAS**, the remaining eight Activity Agreement Members now desire to revise certain provisions governing the allocation and payment of litigation-related Activity Agreement Expenses and to extend the term of the Activity Agreement by one year, to December 31, 2024; and

**WHEREAS**, the Activity Agreement authorizes amendments in Section 13, Amendments, which provides: “This Agreement may be amended in writing by the parties hereto;” and

**WHEREAS**, the Board has considered that certain First Amendment to the Long Term North to South Water Transfer Program Activity Agreement (**Attachment 1**), a copy of which has been presented to the Board and is on file with the Secretary hereof; and

**WHEREAS**, authorizing execution of the First Amendment to the Activity Agreement is an administrative and organizational action 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 a project under the California Environmental Quality Act (CEQA Guidelines Section 15378(b)(5)); further, because it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (CEQA Guidelines section 15061(b)(3)).

**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 Amendment to the Long Term North to South Water Transfer Program 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 and further subject to the contingencies described in Section 3 of this Resolution.

Section 3. The authorization to execute the First Amendment to the Long Term North to South Water Transfer Program Activity Agreement conferred by this Resolution shall be contingent upon the occurrence of the following action: execution by the eight above-named Activity Agreement Members of the Long Term North to South Water Transfer Program Activity Agreement.

Section 4. In the event the contingency described in Section 3 fails to occur, the authorization conferred by this Resolution for which the contingency is not satisfied is revoked *ab initio* and any document executed by the Water Authority in reliance upon it shall have no binding force or effect.

Section 5. Except as provided in Section 3, the Executive Director and Chief Operating Officer, and 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.

**PASSED, APPROVED AND ADOPTED** this 4th day of August, 2022, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

A handwritten signature in blue ink, appearing to read "Cannon Michael", is written over a horizontal line. The signature is fluid and cursive.

Cannon Michael, Chairman  
San Luis & Delta-Mendota Water Authority



Attest:



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Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution No. 2022-508 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 4th day of August, 2022.

  
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Federico Barajas, Secretary

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**RESOLUTION NO. 2023-**

**RESOLUTION AUTHORIZING EXECUTION OF NORTH TO SOUTH WATER TRANSFERS ACTIVITY AGREEMENT AND ACTIONS RELATED THERETO**

**WHEREAS**, in October 2012, the San Luis & Delta-Mendota Water Authority (“Water Authority”) Board of Directors adopted Resolution No. 2012-356, which authorized execution of a Long-Term North to South Water Transfer Program Activity Agreement; and

**WHEREAS**, in August 2022, the Water Authority Board adopted Resolution No. 2022-508, which authorized execution of the First Amendment to the Long Term North to South Water Transfer Program Activity Agreement and actions related thereto, revising certain provisions governing the allocation and payment of litigation-related Activity Agreement Expenses and extended the term of the Activity agreement by one year, to December 31, 2024, or until all obligations arising under each of the water transfer agreements have been satisfied, whichever comes later; and

**WHEREAS**, the National Environmental Policy Act (“NEPA”) / California Environmental Quality Act (“CEQA”) environmental document that is currently in effect provides coverage for a range of potential annual water transfers from willing sellers north of the Delta and from tributaries of the San Joaquin River to willing buyers south of the Delta and in the San Francisco Bay Area through 2024, consistent with the term of the Long-Term North to South Water Transfer Program Activity Agreement; and

**WHEREAS**, the Water Authority is now cooperating with the U.S. Bureau of Reclamation (“Reclamation”) and local agencies to complete environmental review for a range of potential annual north-to-south water transfers initiated beginning in 2025 (“Water Transfers EIS/EIR”); and

**WHEREAS**, the Water Authority has developed a new North to South Water Transfers Activity Agreement (“Activity Agreement”) for Water Authority members who desire to participate in the water transfers covered by the Water Transfers EIS/EIR, by the terms of which the costs of the water transfers, including preparation and/or defense of the documents prepared pursuant to NEPA and CEQA, will be paid by Activity Agreement Members, and not by non-participating members of the Water Authority; and

**WHEREAS**, the Board has considered that certain Activity Agreement, a copy of which has been presented to the Board and is on file with the Secretary hereof; and

**WHEREAS**, Activity Agreement Members who execute the Activity Agreement agree to indemnify and hold harmless the Water Authority and its Members who do not participate in the Activity Agreement with respect to any and all costs, losses, damages, claims and liabilities arising under the Activity Agreement; and

**WHEREAS**, authorizing execution of the Activity Agreement does not legally bind or otherwise commit the Water Authority or the Activity Agreement Members to participate in or otherwise proceed with water transfers, and further, executing the Activity Agreement is an administrative and organizational action that will not result in a direct change in the environment or a reasonably foreseeable indirect change to the environment, and thus does not constitute a project under CEQA. (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 and directs the Executive Director to execute the North to South Water Transfers Activity Agreement in substantially the form presented to the Board, subject to additions, deletions, and other revisions as the said Executive Director shall approve prior to execution and further subject to the contingencies described in Section 3 of this Resolution.

Section 3. The authorization conferred by this Resolution, and the documents executed in reliance upon it, shall be contingent upon the occurrence of the following actions: (1) the passage of sixty (60) days from the adoption of this Resolution, and (2) at least two (2) members of the Water Authority executing this Activity Agreement.

Section 4. In the event the contingencies described in Section 3 fail to occur, the authorization conferred by this Resolution is revoked *ab initio*, and any documents executed by the Water Authority in reliance upon this Resolution or the Activity Agreement shall have no binding force or effect.

Section 5. The Executive Director, Chief Operating Officer, or such Water Authority employee or consultant, as either of such officers designate, are 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.

**PASSED, APPROVED AND ADOPTED** this 14th day of September, 2023, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

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Cannon Michael, Chairman

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

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Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution No. 2023-█ 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 14th day of September, 2023.

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Federico Barajas, Secretary

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**  
**NORTH TO SOUTH WATER TRANSFERS**  
**ACTIVITY AGREEMENT**

This Activity Agreement (“**Activity Agreement**”) is entered into as of this \_\_\_\_ day of \_\_\_\_ 2023, by and among the San Luis & Delta-Mendota Water Authority (“**Water Authority**”), a joint powers agency of the State of California, and its members who execute this Agreement, who are hereinafter referred to jointly by the plural term “**Activity Agreement Members.**” Capitalized terms used in this Activity Agreement will have the meanings set forth in Section 2 below.

**1. RECITALS**

A. The parties to this Activity Agreement, 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 Water Authority for the purpose of exercising the common powers of the members, including the powers described in this Activity Agreement.

B. The Activity Agreement Members each are empowered, among other powers, to provide water service to lands within their boundaries; to contract with the United States, the State and other public agencies, mutual water companies, and other private parties for such purposes; to control the quality of water accepted into their respective systems; to transfer water and to purchase water in order to maximize the efficient, beneficial use of the water supplies available; and to adopt rules and regulations necessary to exercise such powers.

C. The Activity Agreement Members have each entered into repayment contracts with the United States for water service from the Central Valley Project (“**CVP**”) for irrigation and/or M&I purposes within their respective jurisdictional areas and receive water conveyed through the Delta-Mendota Canal, the San Luis Canal, and/or the Pacheco Pumping Plant and Tunnel.

D. Since 1992, the Activity Agreement Members in most years have received less than the full contract allocations provided for in their CVP repayment contracts because of hydrologic conditions and/or regulatory constraints, and the Bureau of Reclamation (“**Reclamation**”) has projected continued shortages of such allocations in the future.

E. To plan more efficiently in advance for water shortages, the Water Authority is cooperating with Reclamation and local agencies to prepare environmental review documents under the California Environmental Quality Act (“**CEQA**”) and the National Environmental Protection Act (“**NEPA**”) that would facilitate water transfers to supplement irrigation and/or municipal and industrial water supplies during years of south-of-Delta water shortages.

F. The proposed North to South Water Transfers Environmental Impact Statement/Environmental Impact Report (“**Water Transfers EIS/EIR**”) is intended to provide the environmental analysis and coverage for annual water transfers from willing sellers north of the Delta and from tributaries of the San Joaquin River, as will be more particularly described in the EIS/EIR, to willing buyers south of the Delta and in the San Francisco Bay Area, as will be more particularly described in the EIS/EIR; the EIS/EIR would analyze supplemental water transfer agreements.

G. While the Water Transfers EIS/EIR will consider the environmental effects of a prescribed quantity of potential annual water transfers developed and delivered in accordance within specific parameters, individual transfers made pursuant to the EIS/EIR will be negotiated separately by the Water Authority or by individual Activity Agreement Members and each seller.

H. Water transfers arranged by the Water Authority for the benefit of the Activity Agreement Members through water transfer agreements covered by the Water Transfers EIS/EIR will be administered according to the terms of this Activity Agreement, and consistent with the provisions of those individual water transfer agreements.

I. Water transfers arranged by individual Activity Agreement Members for their own respective benefit through water transfer agreements covered by the Water Transfers EIS/EIR will be administered by the respective Activity Agreement Member(s) and will not be subject to this Activity Agreement, except with respect to Activity Agreement Expenses applicable to the Water Transfers EIS/EIR and the provisions of Section 8.A. below.

J. Each of the participants of this Agreement desires to join in the benefits and is willing to incur the obligations of preparing and if necessary, defending, the Water Transfers EIS/EIR and of receiving the benefits and incurring obligations necessary to arrange and implement water transfers covered by the Water Transfers EIS/EIR.

K. Nothing in this agreement restricts Activity Agreement members from pursuing water transfers that are not covered by the Water Transfers EIS/EIR.

L. 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 Water Authority agree as follows:

### **2. DEFINITIONS**

A. “**Activity Agreement**” or “**Agreement**” will mean this North to South Water Transfers Activity Agreement.

B. “**Activity Agreement Expenses**” will mean the direct expenses described in this subsection that are incurred by the Water Authority in order to implement this Activity Agreement, together with a share of Water Authority Administration Costs allocable to members of this Agreement; “Activity Agreement Expenses” will expressly include, but not be limited to the following categories of expenses:

i. Costs and fees incurred by the Water Authority to prepare, approve and certify the Water Transfers EIS/EIR, including related consultant and legal expenses;

ii. Costs and fees incurred by the Water Authority to defend the Water Transfers EIS/EIR, including related consultant and legal expenses, e.g. attorneys’ fees, court filing fees, and out-of-pocket expenses (“Litigation Costs”);

iii. Other Water Authority costs and fees associated with the Water Transfers EIS/EIR;

iv. Costs and fees associated with developing, implementing, maintaining, amending or terminating this Activity Agreement; and

v. All costs incurred by the Water Authority in pursuing, negotiating, providing environmental review, defending litigation, holding third parties harmless or administering any executed or proposed Water Authority Transfer Agreement.

C. “**Activity Agreement Member**” will mean a member of the Water Authority who is signatory to this Agreement. Water Authority members must inform the Water Authority by mail, e-mail or fax of their decision to participate in this Agreement on or before October 31, 2023.



The Activity Agreement Members are listed on Exhibit “A” attached hereto, as updated by agreement of the Activity Agreement Members from time to time; such updated Exhibit “A” shall be attached hereto and replace all prior versions of Exhibit “A”.

D. “**Administration Agreement(s)**” will mean those certain agreements between the Water 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.

E. “**Allocation Ratio**” will mean an Activity Agreement Member’s respective share of benefits and obligations under this Agreement and will be based upon each Activity Member’s respective CVP water supply contract quantity for irrigation (including contract assignment quantities) as of the date hereof compared to the total CVP water supply contract quantity for irrigation (including contract assignment quantities) of Activity Agreement Members sharing in the specified benefit or obligation. “Allocation Ratio” for Transfer Participants is further described in Section 8.D of this Agreement.

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

G. “**Fiscal Year**” will mean the Water Authority’s March 1 through February 28/29 fiscal year.

H. “**Independent Covered Sacramento River Transfer**” will mean a Transfer from one of the potential Sacramento River sellers identified in the Water Transfers EIS/EIR’s “Sacramento River Area of Analysis” that relies on the Water Transfers EIS/EIR, and that an Activity Agreement member intends to, or does in fact pursue and/or implement, independent of the Water Authority.

I. “**JPA**” or “**JPA Agreement**” will mean that certain Amended and Restated Joint Exercise of Powers Agreement effective January 1, 1992, establishing the Water Authority.

J. “**Transfer Agreement**” and “**Transfer(s)**” and “**Transfer Water**” will mean or refer to a transfer agreement or the water acquired by means of a transfer agreement with a seller identified in the Water Transfers EIS/EIR.

K. “**Transfer Costs**” will mean any and all annual costs, such as option payments or payments for water purchased and Water Authority Administration Costs that are incurred by the Water Authority to acquire water in any Water Year under the terms of a Transfer Agreement.

L. **“Transfer Participant”** means an Activity Agreement Member that has elected to participate for the respective Water Year in a Transfer Agreement and **“Transfer Participants”** means the group of such Activity Agreement Members.

M. **“Water Authority”** will mean the San Luis & Delta-Mendota Water Authority.

N. **“Water Authority Administration Costs”** will mean Water Authority general administration expenses, including 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 payment 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, a percentage of which will be allocated to this Activity Agreement by the Water Authority.

O. **“Water Year”** will mean the period March 1-February 28/29.

P. **“Year”** will mean a calendar year.

Q. All other capitalized terms used herein will have the meanings ascribed to them in this Activity Agreement, and capitalized terms in any of the water transfer agreements being pooled for administration under this Activity Agreement will have the meanings ascribed under such individual agreement; provided, that in the event of any conflicts, the terms of this Activity Agreement will prevail to determine such meanings.

### **3. PURPOSE OF AGREEMENT**

A. 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 Water Authority in the benefits, and to share the obligations of, preparing, adopting, and defending environmental documentation for Transfer Agreements under the terms set forth herein and as set forth in each of the Transfer Agreements, respectively.

B. The parties acknowledge and agree that the Water Authority’s role in this Activity Agreement is to: (1) provide the umbrella joint powers agreement pursuant to which the parties may exercise their common powers and to provide services at the expense of the Activity Agreement Members; (2) facilitate environmental reviews for potential annual north to south Transfers; and (3) provide administrative services relating to acquiring Transfer Water pursuant to

this Activity Agreement, including, but not limited to, providing notices; negotiating and acquiring the purchase of Transfer Water; coordinating and executing conveyance/forbearance agreements; calculating water allocations; collecting and submitting schedules from Activity Agreement Members to the California Department of Water Resources (“DWR”) or Reclamation if necessary under any of the Transfer Agreements anticipated herein; providing advance funding for water acquired through said agreements; and providing billing and accounting services to the Activity Agreement Members during the term thereof.

C. Transfers arranged by individual Activity Agreement Members for their own respective benefit from sellers other than the Independent Covered Sacramento River Transfers that are covered by the Water Transfers EIS/EIR will be administered by the respective Activity Agreement Member(s) and will not be subject to this Agreement, except that such Activity Agreement Members will remain obligated to pay their Allocation Ratios of Activity Agreement Expenses.

#### **4. ORGANIZATION**

A. The business of this Activity Agreement will be conducted by the Water Authority at large and therefore governed by the Board of Directors. 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 twenty-four (24) months of the Effective Date, 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 consider establishing the organizational structure proposed by the Activity Agreement Members, which will be described in an amendment to this Activity Agreement, and that organizational structure may then serve as the governing body for this Activity Agreement.

#### **5. POWERS RESERVED TO BOARD OF DIRECTORS AND LIMITATIONS THEREON**

A. The Board of Directors will 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 will have the right, upon recommendation of or in consultation with staff and the approval of Activity Agreement Members, to approve all amendments to this Activity Agreement, including any amendment terminating the Activity Agreement; providing, that no amendment of this Activity Agreement will be required to add new Activity Agreement Members prior to completion of the Water Transfers EIS/EIR.

C. The Board of Directors will have the right, upon the recommendation of or in consultation with staff, and the approval of the Activity Agreement Members, in the form of formal Board action, to authorize execution of all Transfer Agreements pursuant to this Activity Agreement.

D. The Board of Directors will have the right, upon the recommendation of or in consultation with staff, and the approval of 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 Water 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 will be borne by the Activity Agreement Members.

E. The Board of Directors delegates to staff the power 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. This delegation will specifically include, but not be limited to, the power to enter into contracts within approved Activity Agreement budgets.

## **6. ACCOUNTABILITY, REPORTS, AND AUDITS**

A. Full books and accounts for this Activity Agreement will be maintained by the Water 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 will be open to inspection by Activity Agreement Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

B. There will be strict accountability of all funds deposited on behalf of the Activity Agreement with the Water Authority. The Treasurer of the Water Authority, directly or acting through its Accounting Department, will provide regular reports of Activity Agreement accounts. Funds of the Activity Agreement will be subject to audit by the official auditor of the Water Authority. An Activity Agreement Member may request an independent audit of the Activity

Agreement funds; such audit will be conducted at the expense of the requesting Activity Agreement Member.

**7. AUTHORIZATION TO ALLOCATE ACTIVITY AGREEMENT EXPENSES**

Each member of the Water Authority has entered into an Administration Agreement which authorizes agreement(s) by and among the Water Authority and any of its members or other entities (including Friends of the Water Authority) to provide for undertaking and sharing costs and benefits of any authorized activity of the Water Authority.

A. The Water Authority and the Activity Agreement Members agree that all Activity Agreement Expenses incurred by the Water Authority under this Agreement are the expenses of the Activity Agreement Members, and not of the Water Authority, and will be paid by the Activity Agreement Members based upon the terms of this Agreement and their respective Allocation Ratios for such costs.

B. The Activity Agreement Members agree that Transfer Costs are the expenses of the Transfer Participants of each respective Transfer Agreement during a particular Water Year and not of non-participating Activity Agreement Members or of the Water Authority; such costs will be paid by the Transfer Participants of each respective Transfer Agreement based upon the terms of this Agreement and their respective Allocation Ratios for such costs.

**8. PARTICIPATION IN ANNUAL TRANSFERS**

A. Process for Participation:

i. On or before January 1, the Water Authority will conduct by written instrument a survey of the Activity Agreement Members to determine the preliminary quantity of Transfer Water desired by such Activity Agreement Member during such Water Year. Included in the survey response, each Activity Agreement Member shall include a notice of intent (affirmative or negative) to conduct an Independent Covered Sacramento River Transfer. Activity Agreement Member(s) responding in the affirmative will not be included in any negotiations or development of terms or conditions of potential Water Authority Transfers with sellers in the Sacramento River Area of Analysis included in the Water Transfers EIS/EIR. However, without compromising the confidentiality of negotiations with the Activity Agreement Members not seeking an Independent Covered Sacramento River Transfer, the Water Authority may coordinate with the Activity Agreement Member(s) seeking such Independent Covered Sacramento River Transfer. The

response to surveys will be the basis for the Water Authority to initiate activities to obtain transfers needed to meet the preliminary quantity desired by Activity Agreement Members.

ii. On or before March 1 of each Water Year, those Activity Agreement Members seeking an Independent Covered Sacramento River Transfer shall provide final written notice of their intent to conduct such a Transfer. If any member provides affirmative notice to conduct such a Transfer(s), it shall be excluded from any Water Authority Water Transfer(s) from potential sellers in the Sacramento River Area of Analysis included in the Water Transfers EIS/EIR for that Water Year.

iii. On or before April 15 of each Water Year, each Activity Agreement Member will notify the Water Authority of its election to participate in or to opt out of each Transfer available for such Water Year, and the total quantity of water it desires to acquire through such Transfer(s).

iv. For Activity Agreement Members seeking to acquire water hereunder during a particular Water Year, the Water Authority will allocate shares of water under each respective Transfer for such Water Year, until the requested amounts have been fully allocated or until no Transfer Water remains.

B. Negotiation for Transfer Agreements:

i. After obtaining information from potential sellers, the Water Authority will: (1) circulate to the Activity Agreement Members proposed term sheets for each proposed Transfer for such Water Year, (2) consult with Activity Agreement Members as to their interest in each proposed Transfer for such year, and (3) obtain their directions for any counter-proposals. These steps may be repeated until the Water Authority has sufficient information to proceed to negotiate final terms with proposed sellers.

ii. The Water Authority will execute any Transfer Agreement only when it has the commitment in writing of at least one Activity Agreement Member to participate in such agreement to the full extent of the required purchase of such Transfer Water.

C. Election Binds Transfer Participants: Except for costs identified as Activity Agreement Expenses and as otherwise set forth in this Section C, once an Activity Agreement Member has provided notice of its election to participate in specific Transfers for such Water Year, it becomes a Transfer Participant for such Transfers and is obligated to pay for its Allocation Ratio of the Annual Costs for such Transfers for that Water Year.

Any Transfer Participant may be relieved of its obligations under any particular Transfer Agreement if it obtains the written agreement of one or more Activity Agreement Members, with notice to the Water Authority, to fully assume the Allocation Ratio of obligations and benefits of such Activity Agreement Member relating to the particular Transfer for such Water Year.

D. Allocation Ratio for Transfers: Transfer Water and Transfer Costs for each Transfer during the Water Year will be allocated among the Transfer Participants that have given notice of their election to participate in the respective transfers based upon the Allocation Ratio for each Transfer Participant obtained by dividing such participant's Exhibit "A" Contract Quantity by the total of the Exhibit "A" Contract Quantities for all the Transfer Participants in each such Transfer in that Water Year.

E. Documentation of Transfers: It is the intent of the Water Authority and the Activity Agreement Members to enter into Transfer Agreements with willing sellers as opportunities arise. A copy of each Transfer Agreement will be provided to an Activity Agreement Member upon request. Additional supplemental Transfer Water will be administered and allocated amongst the Activity Agreement Members according to the terms set forth in this Agreement without further action required by the Water Authority, its Board of Directors, or the Activity Agreement Members.

## **9. SCHEDULING**

The Water Authority, in consultation with Reclamation and/or DWR and the Activity Agreement Members, will develop a process for the scheduling of the water allocated that will be subject to modification from time to time by agreement of the parties, without formal amendment of this Agreement being required.

## **10. PAYMENT FOR ACTIVITY AGREEMENT EXPENSES AND FOR TRANSFER COSTS**

A. The Water Authority, in consultation with the Activity Agreement Members, will develop a process for payment of costs and timing of payments based on the principles set forth below.

i. Following annual budget approval, the Water Authority will bill each Activity Agreement Member for approved Activity Agreement Expenses as part of the first billing it prepares for such Activity Agreement Member each year, and payment will be due at the same

time as payment for all other amounts included on such billing. Additional Activity Agreement Expenses will be included in subsequent billings as approved and/or incurred, on a quarterly basis.

ii. The Water Authority will bill each Activity Agreement Member for Activity Agreement Expenses relating to the Water Transfers EIS/EIR, including Litigation Costs, as incurred, in accordance with the allocation ratios identified in Exhibit “A.”

iii. The Water Authority will bill the respective Transfer Participants in each Transfer Agreement set forth in Exhibit “B” for a particular Water Year for the Transfer Costs for all Transfers in which such Transfer Participant is participating. The Water Authority will provide a monthly billing to each such Transfer Participant and each such Transfer Participant will remit payment within thirty (30) days of receipt of such bill. The Water Authority will promptly remit such sums to the appropriate selling agency consistent with each respective seller’s Transfer Agreement. Complete details for pricing and payments required under each of the Transfer Agreements, and the timing of those payments, is set forth in each respective Transfer Agreement. Terms for payment to the Water Authority may be adjusted annually without formal amendment of this Agreement.

iv. The Water Authority will bill each Transfer Participant for DWR wheeling charges and energy charges allocated to such Transfer Participants share of Transfer Water promptly following receipt of invoices for such charges. Payment will be due within ten (10) days of such billing, and the Water Authority will promptly remit such sums as appropriate.

B. In the event a Transfer Participant obtains the agreement of one or more Activity Agreement Members to fully assume the Allocation Ratio of such Transfer Participant as discussed in Section 8.C, the Water Authority will have no responsibility to track resulting changes in allocations of Transfer Water or Transfer Costs until it receives a copy of the writing memorializing the allocation adjustment.

C. Within sixty (60) days following the end of each Fiscal Year during the term of this Activity Agreement, the Water Authority will calculate adjustments to take into account differences between amounts collected from each Activity Agreement Member and actual expenditures made pursuant to the Activity Agreement, including Activity Agreement Expenses and Transfer Costs, on behalf of such Activity Agreement Member. Immediately following such calculation of adjustments, the Water Authority will provide notice of credits or bills for additional charges to the Activity Agreement Members. Each Activity Agreement Member may elect to



obtain refunds or to apply any credit balance and will remit payment of bills for additional amounts within thirty (30) days.

D. Litigation Costs will be billed to the Activity Agreement Members consistent with the Allocation Ratio identified in Exhibit “A” to the Activity Agreement in all years in which litigation is pending.

E. Within sixty (60) days following the end of each Fiscal Year during the term of this Activity Agreement, each Activity Agreement Member will report to the Water Authority and all other Activity Agreement Members the total quantity of water delivered to that Activity Agreement Member in the prior Fiscal Year pursuant to the Water Transfers EIS/EIR, including Transfers made outside of the Water Authority’s Transfer activities, including but not limited to Independent Covered Sacramento River Transfer(s).

F. Within sixty (60) days following the final resolution of any litigation relating to the Water Transfers EIS/EIR, the Water Authority will calculate the total amount of Litigation Costs for that litigation. The amount of Litigation Costs allocated to each Activity Agreement Member will be based on the total quantity of water delivered to each Activity Agreement Member. The Water Authority will then make adjustments to each Activity Agreement Member’s share of such Litigation Costs. Immediately following such calculation of adjustments, the Water Authority will provide notice of credits or bills for additional charges to the Activity Agreement Members. Each Activity Agreement Member may elect to obtain refunds or to apply any credit balance and will remit payment of bills for additional amounts within thirty (30) days.

## **11. SOURCE OF PAYMENTS**

Each Activity Agreement Member agrees that it will at all times have sufficient money to meet its obligations hereunder and under the JPA Agreement. Each Activity Agreement Member hereby confirms that the Water 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.

## **12. INDEMNIFICATION OF AUTHORITY MEMBERS WHO DO NOT PARTICIPATE IN THIS ACTIVITY AGREEMENT**

The Activity Agreement Members will hold the Water Authority and each of its members who is not an Activity Agreement Member, free and harmless from and indemnify each of them

against any and all costs, losses, damages, claims and liabilities arising from this Agreement. This indemnification obligation includes the obligation of the Activity Agreement Members to defend the Water Authority, and all members of the Water 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 Water 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, as well as the obligation to pay for any and all costs of litigation incurred by the Water Authority as a result of entering into this Agreement. Such costs may include, but are not limited to, attorney's fees and costs incurred by the Water Authority pursuant to approved budgets to defend the Water Transfers EIR/EIS, to defend any action of the Water Authority relating to acquisition of any Transfer Water, any award of attorneys' fees and/or costs of litigation awarded to a complaining party, and any other costs of litigation or defense, including any such costs incurred by the Water Authority arising under any of the water transfer agreements.

### **13. TERM**

This Agreement will take effect on November 13, 2023 ("**Effective Date**"), assuming execution by the Water Authority and at least two (2) Water Authority members prior to that date, and will be retroactive for costs incurred in pursuit of the Water Transfers EIS/EIR or the development of this Activity Agreement and will remain in full force and effect through the term of the Water Transfers EIS/EIR, or until all obligations arising under each of the water transfer agreements have been satisfied, whichever comes later.

### **14. WITHDRAWAL FROM FURTHER PARTICIPATION**

A. An Activity Agreement Member may withdraw from this Agreement at any time by obtaining the agreement of one or more other Activity Agreement Members to fully assume the benefits and the obligations pertaining to the withdrawing Activity Agreement Member and by satisfying the process and requirements set forth in this Section 14.

B. Notice and Effective Date: 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.

C. 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 from 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. 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.

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

E. 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 12 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.

## **15. ADMISSION OF NEW MEMBERS**

No additional members of the Water Authority may become participants of this Agreement without the written consent of all of the other Activity Agreement Members and of the Board of Directors. The admission of any Activity Agreement Member pursuant to this section shall be documented by that new Activity Agreement Member signing this Activity Agreement. Upon admission of a new Activity Agreement Member, the parties shall agree to the participation percentage of such new Activity Agreement Member, to be documented in an amendment to this Activity Agreement and Exhibit "B" to this Activity Agreement.

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**16. MISCELLANEOUS**

A. California Environmental Quality Act: The physical, operational, and financial details of the identified range of potential annual north to south water transfers over a ten to 20-year period will be analyzed by the Water Authority as lead agency pursuant to the California Environmental Quality Act (“CEQA”) in its planned Water Transfers EIS/EIR prepared with Reclamation. The Water Authority has not yet prepared or certified an EIR, but plans to do so in the future. The Water Authority plans to concurrently consider adoption of CEQA Findings of Fact, Mitigation Measures, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations. The Water Authority and/or Activity Agreement Members may be responsible agencies under CEQA for actions related to water transfers; however, the actions contemplated by this Activity Agreement have no potential for physical effects on the environment. Each potential activity subject to this Activity Agreement or other related 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 Water Authority and/or Activity Agreement Members, or any other public agency, as applicable, in connection with the consideration Transfer Agreements, including without limitation, all required environmental review, all required public notice and proceedings, consideration of comments received, and the Water Authority’s and/or Activity Agreement Members’ or other public agencies’ evaluation of mitigation measures and alternatives including the “no project” alternative.

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

C. 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 Water Authority. Any attempt to assign or delegate such rights or duties in contravention of this Agreement will be null and void. Any approved assignment or delegation will be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Water Authority then in effect. This Activity Agreement will inure to the benefit of, and be binding upon, the successors and assigns of the Water Authority and the Activity Agreement Members.

D. Counterparts: This Activity Agreement may be executed by the Water Authority and the Activity Agreement Members in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument This Agreement, if executed in counterparts, will be valid and binding on a Party as if fully executed an on one original.

E. Choice of Law: This Activity Agreement will be governed by the laws of the State of California.

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

G. 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 will be drawn therefrom.

H. Reasonable Cooperation: Activity Agreement Members will reasonably cooperate with each other and the Water Authority to perform the obligations under this Activity Agreement, assist the Water Authority, when necessary, in carrying out its obligations under any and all of the water transfer agreements contemplated herein, and to carry out the purpose and intent of this Agreement.

IN WITNESS WHEREOF, the Activity Agreement Members and the Water 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: \_\_\_\_\_

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**ACTIVITY AGREEMENT MEMBERS**

Agency Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agency Name: \_\_\_\_\_  
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**EXHIBIT A**  
**ACTIVITY AGREEMENT MEMBERS AND ALLOCATION RATIOS**

<b>Activity Agreement Member</b>	<b>Activity Agreement Member Contract Quantity (AF)</b>	<b>Allocation Ratio of Members (%)</b>
<b>TOTAL:</b>		100%