



MEMORANDUM

TO: SLDMWA Finance & Administration Committee Members, Board of Directors, Alternates

FROM: Pablo R. Arroyave, Chief Operating Officer

DATE: February 2, 2020

RE: Adoption of Resolution Providing for the Prioritization of Use for OM&R Revenues

BACKGROUND

In order to finance the Jones Pumping Plant Unit Motor Rehabilitation Project, the Authority is currently pursuing an EPA Water Infrastructure Finance and Innovation Act Loan (WIFIA loan) of up to \$19,300,000 and an additional repayment contract with Reclamation of up to \$12,500,000. Given this project and other foreseeable future EO&M projects, it is advisable that the Authority establish a policy that identifies the priority of the use of OM&R revenues to meet repayment commitments. Establishment of such a policy will be an asset in the Authority's securing of loan funds and will provide certainty regarding the repayment of future financing. In addition, the policy, enacted by adoption of the attached resolution, will provide additional transparency on priority of payment of other O&M costs and additional capital improvements.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend adoption, and the Board should adopt the Resolution Providing for the Prioritization of Use for OM&R Revenues.

RECOMMENDATION

Staff's recommendation is for the Finance & Administration Committee to recommend, and the Board adopt, the Resolution Providing for the Prioritization of Use for OM&R Revenues.

ANALYSIS

By adopting the proposed resolution, the Board would establish guidance providing for the prioritization of use for OM&R Revenues. Section 3.2 of the proposed resolution prioritizes the use of OM&R Revenues in the OM&R Revenue Fund as follows:

1. Payments with respect to Operations and Maintenance Obligations (as defined in the resolution, e.g. Reclamation repayment contract, WIFIA loan, if received) are to be paid first.
2. Operation and Maintenance Costs are to be paid so long as the Authority determines that there are sufficient OM&R Revenues to pay the Operations and Maintenance Obligations in item 1.
3. If the Authority determines that there are sufficient OM&R Revenues to satisfy both 1 and 2 above, funds can be used for activities pursuant to Section 5 of the Transfer Agreement, including but not limited to capital improvements.

BUDGET IMPLICATIONS

Although there are budget implications associated with the need for the Jones Pumping Plant Unit Motor Rehabilitation Project there are no budget implications associated with the proposed resolution.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2020-___

RESOLUTION PROVIDING FOR THE PRIORITIZATION OF USE FOR OM&R REVENUES

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Board” and the “Authority,” respectively), pursuant to the Authority’s procedures and the California Government Code, from time to time, may adopt policy for the administration of the Authority; and

WHEREAS, the Authority operates and maintains certain Delta Division and San Luis Unit facilities of the Central Valley Project pursuant to the Transfer Agreement (as defined below); and

WHEREAS, the Authority receives certain revenues (as further defined below, the “OM&R Revenues”) from Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water, the Friant Water Authority, and the U.S. Bureau of Reclamation pursuant to the terms of the Transfer Agreement and the Friant MOU (as all such terms are defined below); and

WHEREAS, the Board, by adoption of this Resolution, desires to adopt guidance providing for the prioritization of use for such OM&R Revenues.

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. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein or therein have the meanings defined herein. Capitalized terms used herein and not defined herein shall have the definitions ascribed thereto in the Transfer Agreement. Such definitions are equally applicable to both the singular and plural forms of any of the terms defined herein:

(a) Authority. “Authority” means the San Luis & Delta-Mendota Water Authority, a joint exercise of powers agency duly created and existing under and by virtue of the Amended and Restated Joint Powers Agreement, dated as of January 1, 1992 among the parties listed.

(b) Authorized Officer. The term “Authorized Officer” means (i) the Executive Director of the Authority or, if there is no officer designated as the Executive Director, the highest ranking officer of the Authority (excluding members of the Board of Directors of the Authority), (ii) the Chief

Operating Officer of the Authority, or (iii) the Director of Finance of the Authority; and, in each case, the written designee thereof.

(c) Fiscal Year. “Fiscal Year” means the period beginning on March 1 of each year and ending on the last day of February of the succeeding year, or any other accounting period hereafter selected and designated by the Board of the Authority as the Fiscal Year of the Authority.

(d) Friant MOU. “Friant MOU” means that certain “Memorandum of Understanding Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Deliveries through Central Valley Project Facilities (MOU)” effective March 1, 1998 and amended September 1, 2002, with Friant Water Authority (as assignee of the Friant Water Users Authority effective June 30, 2004), as such Friant MOU may be supplemented or amended in accordance with the terms thereof.

(e) OM&R Revenue Fund. “OM&R Revenue Fund” means the “Fund 01-Operations & Maintenance of the DMC” maintained by the Authority.

(f) OM&R Revenues. “OM&R Revenues” means, with respect to any Fiscal Year or other period, all amounts received by the Authority for OM&R under the Transfer Agreement, including but not limited to Section 12 thereof, and all income from the investment of any OM&R Revenues in the OM&R Revenue Fund.

(g) Operation and Maintenance Costs. “Operation and Maintenance Costs” means costs associated with OM&R as defined in the Transfer Agreement.

(h) Operation and Maintenance Obligation. “Operation and Maintenance Obligation” means any contractual obligation to repay amounts borrowed by the Authority for the payment of Operation and Maintenance Costs, so long as in each case the payments thereunder are designated as Operation and Maintenance Costs by the Board; including but not limited to the Reclamation Repayment Contract.

(i) Reclamation. “Reclamation” means the United States of America, Department of the Interior, Bureau of Reclamation, including any successor thereto or assignee thereof.

(j) Reclamation Repayment Contract. “Reclamation Repayment Contract” shall mean the “Contract between the United States of America and San Luis & Delta-Mendota Water Authority for the Repayment of Extraordinary Maintenance Costs for the C.W. “Bill” Jones Pumping Plant constituting Contract No. 17-WC-20-5100, dated February 5, 2018, between Reclamation and the Authority, as such Reclamation Repayment Contract may be supplemented or amended in accordance with the terms thereof.

(k) Transfer Agreement. “Transfer Agreement” means the “Agreement between the United States of America and San Luis & Delta-Mendota Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, C.W. “Bill” Jones Pumping Plant, Delta-Mendota Canal/ California Aqueduct Intertie Pumping Plant, O’Neill Pumping/Generating Plant, San Luis Drain and Associated

Works,” effective January 14, 2020, between the United States of America and the Authority, as such Transfer Agreement may be supplemented or amended in accordance with the terms thereof.

(1) WIFIA Loan. “WIFIA Loan” means a loan from the United States Environmental Protection Agency to the Authority under the Water Infrastructure Finance and Innovation Act, as amended.

Section 3. Prioritization of Use for OM&R Revenues.

Section 3.1. OM&R Revenue Fund.

The Authority hereby continues and agrees to maintain, so long as any Operation and Maintenance Obligations remain unpaid, the OM&R Revenue Fund to be held by the Authority. Amounts in the OM&R Revenue Fund shall be disbursed, allocated and applied solely to the uses and purposes hereinafter described in this Resolution and as permitted under the Transfer Agreement, and shall be accounted for separately and apart from all other accounts, funds, money or other resources of the Authority.

All OM&R Revenues and all amounts on deposit in the OM&R Revenue Fund are hereby allocated to the payment of the Operation and Maintenance Obligations, Operation and Maintenance Costs and other costs as set forth in Section 3.2. The OM&R Revenues and all amounts on deposit in the OM&R Revenue Fund shall not be used for any other purpose while any Operation and Maintenance Obligations remain unpaid.

Section 3.2. Prioritization of Use for OM&R Revenues.

In order to carry out and effectuate the obligations of the Authority hereunder, the Authority agrees and covenants that all OM&R Revenues received by it shall be deposited when and as received in the OM&R Revenue Fund.

The Authority shall transfer or make payments from the OM&R Revenue Fund of the amounts set forth below at the following times and in the following order of priority:

(a) Payments with respect to Operation and Maintenance Obligations at the times and in the amounts required thereby;

(b) So long as the Authority reasonably determines that there will be sufficient OM&R Revenues to make the transfers in (a) above for the remainder of the Fiscal Year, such amounts at such times as the Authority shall require to provide for the payment of Operation and Maintenance Costs; and

(c) So long as the Authority reasonably determines that there will be sufficient OM&R Revenues to make the transfers in (a) and (b) above for the remainder of such Fiscal Year, for any lawful purpose, including but not limited to Capital Improvements funded or financed by the Authority pursuant to Section 5 of the Transfer Agreement.

Section 3.3. Additional Operation and Maintenance Obligations. The Authority may at any time execute Operation and Maintenance Obligations payable from OM&R Revenues in accordance with Section 3.2(a); provided:

(a) The OM&R Revenues for the most recent audited Fiscal Year preceding the date of execution of such Operation and Maintenance Obligations, including adjustments to give effect as of the first day of such Fiscal Year to increases or decreases in OM&R rates and charges approved and in effect as of the date of calculation, as evidenced by a certificate of an Authorized Officer on file with the Authority, shall have produced a sum equal to at least one hundred ten percent (110%) of the payments under all Operation and Maintenance Obligations for such Fiscal Year plus Operation and Maintenance Obligations executed since the end of such Fiscal Year assuming such Operation and Maintenance Obligations had been executed at the beginning of such Fiscal Year; and

(b) The estimated OM&R Revenues for the then current Fiscal Year and for each of the next two Fiscal Years thereafter, as evidenced by a certificate of an Authorized Officer of the Authority on file with the Authority, including an allowance for estimated OM&R Revenues for each of such Fiscal Years arising from any increase in OM&R Revenues which are economically feasible and reasonably considered necessary based on projected operations for such period, as evidenced by a certificate of an Authorized Officer on file with the Authority, shall produce a sum equal to at least one hundred ten percent (110%) of the estimated payments under Operation and Maintenance Obligations for each of such Fiscal Years.

Nothing herein shall prevent the Authority from incurring obligations payable from OM&R Revenues, the OM&R Revenue Fund and amounts on deposit in the OM&R Revenue Fund on a basis subordinate to Operation and Maintenance Obligations.

Notwithstanding the foregoing, the Authority may enter into a WIFIA Loan in an amount not to exceed \$19,300,000 and an additional repayment contract with Reclamation in an amount not to exceed \$12,500,000 to finance the cost of the Jones Pumping Plant Unit Motor Rehabilitation Project without compliance with the provisions of Section 3.3(a) and (b).

Section 3.4. Setting of OM&R Rates and Charges.

(a) To the fullest extent permitted by law, the Authority will fix and prescribe rates, fees and charges for OM&R costs at the commencement of each Fiscal Year in accordance with the Transfer Agreement and the Friant MOU, which, together with other OM&R Revenues, are reasonably expected to be at least sufficient to yield during each Fiscal Year OM&R Revenues an amount equal to or greater than the sum of (i) 1.10 times payments due on Operation and Maintenance Obligations and (ii) 1.00 times other Operation and Maintenance Costs. The Authority may make adjustments from time to time in such rates, fees and charges for OM&R Costs and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges for OM&R costs then in effect unless the OM&R Revenues from such reduced rates, fees and charges are reasonably expected to be sufficient to meet the requirements of this section.

(b) So long as the Authority has complied with its obligations set forth in subsection (a) above, the failure of OM&R Revenues to meet the threshold in the prior subsection (a) shall not constitute a default or an event of default hereunder.

Section 3.5. Compliance with Transfer Agreement. The Authority will comply with, keep, observe and perform all material provisions of agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in the Transfer Agreement. The Authority will not terminate the Transfer Agreement so long as any Operation and Maintenance Obligation

remains unpaid unless the obligation is transferred to Reclamation in accordance with the Transfer Agreement.

Section 4. Miscellaneous.

Section 4.1. Benefits of this Resolution Limited to Certain Parties. Nothing contained herein, expressed or implied, is intended to give any person other than the Authority or the parties to an Operation and Maintenance Obligation any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the Authority shall be for the sole and exclusive benefit of such other parties. Notwithstanding the foregoing, parties to an Operation and Maintenance Obligation may be designated by the Authority as a third-party beneficiary hereunder to the extent set forth in such Operation and Maintenance Obligation.

Section 4.2. Successor is Deemed Included in all References to Predecessor. Whenever the Authority is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority, and all agreements and covenants required hereby to be performed by or on behalf of the Authority shall bind and inure to the benefit of the successors thereof whether so expressed or not.

Section 4.3. Amendments. Except as may be otherwise provided in Operation and Maintenance Obligations, the Authority may amend the provisions of this Resolution without the approval of any other party.

Section 4.4. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Authority shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Authority hereby declares that it would have adopted this Resolution, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 4.5. Investments. Any money held by the Authority in the OM&R Fund shall be invested in lawful investments of Authority funds and in accordance with the Board-adopted Authority investment policy.

Section 4.6. Repeal of Inconsistent Resolutions. Any resolution of the Authority and any part of any resolution inconsistent herewith is hereby repealed to the extent of such inconsistency.

Section 4.7. Effective Date. This Resolution shall take effect immediately.

PASSED, APPROVED AND ADOPTED this 6th day of February, 2020, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

AYES:

NOES:

ABSENT:

APPROVED:

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. 2020-█ 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 6th day of February, 2020.

Federico Barajas, Secretary