

SUMMERS ENGINEERING

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MEMORANDUM

TO: Grassland Basin Drainers Steering Committee

FROM: Joseph C. McGahan

DATE: August 18, 2021

SUBJECT: Memorandum of Understanding Regarding Use of the Supplemental Mitigation Project Fund

BACKGROUND

Under the 2009 Use Agreement for Use of the San Luis Drain, the San Luis & Delta Mendota Water Authority (SLDMWA) has collected mitigation fees (from 2015-2019) from Grassland Bypass Project participants for selenium discharges into Mud Slough from the San Luis Drain (the “Supplemental Mitigation Project Fund” or “SMPF”). The SMPF accumulated \$435,245 through the end of the 2009 Use Agreement in 2019. A Mitigation Sub-Committee was organized in accordance with the 2009 use Agreement. Members of the Sub-Committee included local representatives from the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service and the Grassland Resource Conservation District. The Sub-Committee met over a period of months in the fall and winter of 2020 and have developed a proposal for use of the mitigation funding.

Reclamation is in the process of receiving approval from the Oversight Committee that was organized as part of the 2009 Use Agreement.

This MOU will memorialize the process for project approval, distribution and administration of funds, and acknowledgment that mitigation requirements of the 2009 Use Agreement have been met.

ISSUE FOR DECISION

Whether to recommend to the Board of Directors of the San Luis & Delta-Mendota Water Authority that they approve the Memorandum of Understanding.

RECOMMENDATION

I recommend recommending approval of the Memorandum of Understanding to the Authority Board and that they execute the agreement pending receipt of final Oversight Committee approval from Reclamation.

BUDGET

The funds for the mitigation fund have been set aside in the Grassland Basin Drainers Activity Agreement Budget and are available for transfer.

ATTACHMENTS

1. Proposed Memorandum of Understanding Regarding Use of the Supplemental Mitigation Project Fund
2. Supplemental Mitigation Subcommittee Proposal to the Oversight Committee

**MEMORANDUM OF UNDERSTANDING REGARDING USE OF THE
SUPPLEMENTAL MITIGATION PROJECT FUND**

This Memorandum of Understanding (this “MOU”) is made and entered into this _____ day of _____, 2021, by and between the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, a California joint powers agency (the “Authority”), on behalf of its members participating in the Grassland Basin Drainage Management Activity Agreement; and the GRASSLAND WATER DISTRICT, a California water district (“GWD”). The Authority and GWD may be referred to herein individually as “Party,” or collectively as “Parties.”

RECITALS

A. **WHEREAS**, the Authority has entered into that certain agreement dated July 6, 1995, and effective July 11, 1995, and amended and restated on March 7, 1996, with certain of its members entitled the Grassland Basin Drainage Management Activity Agreement (the “GBD”).

B. **WHEREAS**, the Authority and the GBD participants, in partnership with the United States Bureau of Reclamation (“Reclamation”) and in cooperation with the other Parties, have operated the Grassland Bypass Project to improve water quality in the wildlife refuges and wetlands in Central California, and to address issues relating to the control, management, distribution and discharge of agricultural drainage and storm water to the San Joaquin River; and

C. **WHEREAS**, the Authority and Reclamation previously entered into that certain agreement entitled Agreement For Continued Use of the San Luis Drain For the Period January 1, 2010 through December 31, 2019 (the “2009 Use Agreement”); and

D. **WHEREAS**, beginning in 2015, the 2009 Use Agreement required GBD participants to pay a Supplemental Mitigation Fee for each pound of selenium discharged into Mud Slough from the San Luis Drain for mitigation in connection with such discharges; and

E. **WHEREAS**, since 2015, the Authority has collected the Supplemental Mitigation Fees, and the Authority has maintained such fees in a separate fund as instructed by the 2009 Use Agreement (the “Supplemental Mitigation Project Fund”). Upon the expiration of the 2009 Use Agreement on December 31, 2019, the total amount held by the Authority in the Supplemental Mitigation Project Fund accumulated to Four Hundred Thirty-Five Thousand Two Hundred Forty-Five and 27/100 Dollars (\$435,245.27); and

F. **WHEREAS**, the 2009 Use Agreement also defined the role of the Drainage Oversight Committee (the “OSC”), comprised of representatives from Reclamation, the Environmental Protection Agency (“EPA”), the United States Fish and Wildlife Service (“USFWS”), California Department of Fish and Wildlife (“CDFW”), and the Central Valley Regional Water Quality Control Board (“Regional Board”) to confer, make determinations, and recommend appropriate mitigative actions, including use of the Supplemental Mitigation Project Fund; and

G. **WHEREAS**, the 2009 Use Agreement identified the members to the Supplemental Mitigation Sub-Committee (the “SMSC”), comprised of individual local representatives from the Grassland Resource Conservation District, USFWS, and CDFW; and

H. **WHEREAS**, the SMSC has held several public meetings to discuss, prioritize, and propose projects for approval by the OSC for the utilization of the Supplemental Mitigation Project Fund (the “Projects”). On December 3, 2020, the SMSC approved submittal of its proposal entitled “Grassland Bypass Project – Supplemental Project Fund” for submission to the OSC, and the Parties have obtained authorization from the OSC and Reclamation for utilization of the Supplemental Mitigation Project Fund for the Projects; and

I. **WHEREAS**, GWD has agreed to accept the funds on behalf of the SMSC for implementation and management of the Projects.

AGREEMENT

NOW, THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the Parties agree as follows:

1. Purpose of MOU. The purpose of this MOU is to facilitate cooperation among the Parties to ensure the Supplemental Mitigation Project Fund is utilized in the manner ascribed by the 2009 Use Agreement so that the Authority fulfills its obligations thereunder. This MOU shall define the roles and responsibilities of the Parties, and lay out the process for project approval, distribution and administration of the Supplemental Mitigation Project Fund.

2. Term of MOU. This MOU shall become effective upon written notice by Reclamation to the Authority authorizing the release of the Supplemental Mitigation Project Fund to GWD and shall remain in effect until terminated by the Parties, or until the Supplemental Mitigation Project Fund has been fully expended. The written notice, once received, will be appended to this MOU as Attachment 1.

3. Scope of Activities. The SMSC has identified several projects and has proposed to use the Supplemental Mitigation Project Fund for (1) groundwater well investigation; (2) rehabilitation of existing wells; (3) repair or enhancement of mechanical structural components of existing wells, surface water diversions, or low lift pumps that will generate additional water supply; and (4) replacement of existing groundwater wells. Improvements on USFWS and CDFW lands within the Grassland Ecological Area shall be of highest priority. The Projects will help augment refuge water supplies, make water conveyance more reliable, and improve wetland habitat in the Grasslands region, and are more particularly described in the attached Exhibit A, incorporated herein by this reference.

4. Roles and Responsibilities of the Parties.

(a) Supplemental Mitigation Sub-Committee. The Parties, in cooperation with the SMSC, shall hold meetings on a regular basis (at least quarterly) to monitor progress, to

discuss the Projects, and to provide timely updates to the Authority and other parties in relation to the Projects. The SMSC has obtained authorization from the OSC to proceed with the Projects. Under such authorization, the Parties acknowledge that the SMSC has discretion to modify the Projects, or implement additional projects in the event the Supplemental Mitigation Project Fund is not fully expended at the completion of the originally proposed Projects.

(b) Grassland Water District. GWD agrees to administer the Projects, including administration of contracts, agreements, and obtaining environmental coverage. GWD further agrees to administer funds received from the Authority, to maintain such funds separate from the funds of the GWD, and to provide an accounting of expenditures to the OSC and the Authority at the completion of the Projects or upon request of the Parties.

(c) San Luis & Delta-Mendota Water Authority. The Authority, on behalf of the GBD participants, agrees to pay in full the Supplemental Mitigation Project Fund to GWD upon OSC's authorization of the Projects and acknowledgement from Reclamation.

(d) Oversight Committee. The OSC has reviewed and approved the Projects submitted by the SMSC. By its approval, the OSC authorizes and directs the Authority to release payment in full of the Supplemental Mitigation Project Fund held by the Authority to GWD for the implementation of the Projects.

5. Cooperation / Acknowledgment. The Parties hereby agree to cooperate with third-parties for implementation of the Projects, including assisting in obtaining required permitting, drafting access agreements, and compliance with environmental laws and regulations. The Parties acknowledge that upon the Authority's full payment to GWD of the Supplemental Mitigation Project Fund for implementation of the Projects, the Authority will have fulfilled its obligations to provide mitigation under the 2009 Use Agreement.

6. Notices. All notices authorized or required to be given under this MOU shall be in writing and shall be deemed to have been given when electronically mailed, or mailed, postage prepaid, or delivered during normal business hours of the recipient. Notice must be sent to the respective Parties at the addresses set forth for each of the Parties beneath their signatures on this MOU, or to such other address for a Party as shall be specified in a notice given in accordance with this section.

7. Amendments. This MOU may only be amended by a written agreement executed by both Parties.

8. Assignment; Successors and Assigns. No rights and duties of any of the Parties under this MOU may be assigned or delegated without the express written consent of all of the other Parties either prior or subsequent to such assignment or delegation, and any attempt to assign or delegate such rights or duties in contravention of this MOU shall be null and void. This MOU shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

9. Counterparts. This MOU may be executed by the Parties in any number of 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.

10. Choice of Law. This MOU shall be governed by the laws of the State of California.

11. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this MOU.

12. Severability. If any term or provision of this MOU shall be held to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this MOU, and it is hereby agreed by the Parties that the remainder of the MOU shall remain in full effect.

13. Representations and Warranties. The Parties hereto acknowledge their agreement with the foregoing terms and represent that the individuals signing this MOU have authority to enter into this MOU on behalf of the principal whom they claim to represent.

14. Entire Agreement. This MOU, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the Effective Date.

Federico Barajas, Executive Director
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WATER AUTHORITY
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EXHIBIT A

**Grassland Bypass Project – Supplemental Mitigation Project Fund Supplemental
Mitigation Subcommittee Proposal to the Oversight Committee**

DRAFT

ATTACHMENT 1

[Letter from Reclamation]

DRAFT