



MEMORANDUM

TO: SLDMWA Board of Directors. Alternates
SLDMWA Water Resources Committee Members, Alternates

FROM: Pablo Arroyave, Chief Operating Officer

DATE: March 2, 2022

RE: Resolution Authorizing Execution of B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement

BACKGROUND

The B.F. Sisk Dam Raise and Reservoir Expansion Project (“Reservoir Expansion Project” or “Project”) includes raising the dam crest an additional 10 feet above the 12-foot embankment raise under development by the B.F. Sisk Dam SOD Modification Project. The 10-foot embankment raise would support an increase in reservoir storage capacity of 130,000 acre-feet. In addition, the Reservoir Expansion Project includes installation of downstream stability berms and crack filters and raising the existing outlet works, intake towers, access bridge, and spillway intake by 10 feet and other modifications, including to State Route 152.

The potential benefits from the Reservoir Expansion Project include increasing long-term reliability and quantity of yearly allocations to south-of-Delta contractors dependent on San Luis Reservoir and increasing the certainty of access to supplies stored by south-of-Delta contractors in San Luis Reservoir in subsequent water years.

The Water Authority has worked with the U.S. Bureau of Reclamation (“Reclamation”) to analyze the proposed Reservoir Expansion Project over the past several years, including through the preparation of the draft B.F. Sisk Dam Raise and Reservoir Expansion Project Environmental Impact Report/ Supplemental Environmental Impact Statement a Feasibility Report, and an addendum to the Feasibility Report. The Water Authority has also executed a cost share agreement with Reclamation regarding collaboration on the planning, preliminary design, and environmental compliance for the Reservoir Expansion Project, to seek potential storage benefits of the Project for Water Authority member agencies.

The Water Authority anticipates the need to cover costs for management of this effort (i.e., a Project Manager) and to execute an additional cost share agreement with Reclamation to cover cost sharing for the next phase of planning, permitting, and design activities related to the Project. Rather than allocate costs to all Water Authority members through the existing Leg/Ops activity, the Board has directed Water Authority staff to prepare an Activity Agreement to allocate such costs to Activity Agreement participants. In the February 2022 Water Resources Committee meeting, staff discussed an initial draft Activity Agreement; the proposed draft before the committee includes revisions based on that discussion and additional comments provided by member agencies.

ISSUE FOR DECISION

Whether the Water Authority should adopt the proposed Resolution Authorizing Execution of the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement.

RECOMMENDATION

Staff recommends the Board adopt the proposed resolution authorizing execution of the proposed Activity Agreement.

ANALYSIS

Upon adoption of the resolution and upon identification of the Activity Agreement participants, the Executive Director would execute the B.F. Sisk Dam Raise and Reservoir Expansion Project 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 the Project. The Water Authority will comply with the California Environmental Quality Act (CEQA), as applicable, prior to participating or otherwise proceeding with the Project. 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 with the Project (see Article 12 of the proposed Activity Agreement).

BUDGET

No direct budget impact, due to the proposed structure of the Activity Agreement. The costs associated with the Water Authority's execution of future cost sharing agreements with Reclamation, and any additional financial obligations and liabilities associated with the planning and design phase of the Project, will be paid for by only the Activity Agreement participants.

EXHIBITS

1. Resolution No. 2022-XX Authorizing Execution of the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement
2. Draft B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2022-

RESOLUTION AUTHORIZING EXECUTION OF THE B.F. SISK DAM RAISE AND RESERVOIR EXPANSION PROJECT ACTIVITY AGREEMENT

WHEREAS, the B.F. Sisk Dam Raise and Reservoir Expansion Project (“Reservoir Expansion Project” or “Project”) includes raising the dam crest an additional 10 feet above the 12-foot embankment raise under development by the B.F. Sisk Dam Safety of Dams (“SOD”) Modification Project, which would support an increase in reservoir storage capacity of 130,000 acre-feet, and would also include installation of downstream stability berms and crack filters, raising the existing outlet works, intake towers, access bridge, and spillway intake by 10 feet, and other modifications, including to State Route 152; and

WHEREAS, the potential benefits from the Reservoir Expansion Project include increasing long-term reliability and quantity of yearly allocations to south-of-Delta contractors dependent on San Luis Reservoir and increasing the certainty of access to supplies stored by south-of-Delta contractors in San Luis Reservoir in subsequent water years; and

WHEREAS, the San Luis & Delta-Mendota Water Authority (“Water Authority”) has worked with the U.S. Bureau of Reclamation (“Reclamation”) to analyze the proposed Reservoir Expansion Project over the past several years, including through the preparation of the draft B.F. Sisk Dam Raise and Reservoir Expansion Project Environmental Impact Report/ Supplemental Environmental Impact Statement, Feasibility Report, and Addendum to the Feasibility Report; and

WHEREAS, the Water Authority has also executed a cost share agreement with Reclamation regarding collaboration on the planning, preliminary design, and environmental compliance for the Reservoir Expansion Project, to seek potential storage benefits of the Project for Water Authority member agencies; and

WHEREAS, the Water Authority anticipates the need to cover costs for management of this effort and to execute an additional cost share agreement with Reclamation to cover cost sharing for the next phase of planning, permitting, and design activities related to the Project; and

WHEREAS, the Board has considered that certain form of the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement (**Attachment 1**) setting forth the terms by which the certain members of the Water Authority are willing to participate in the benefits and are willing to incur the obligations of the anticipated cost share agreement, through the joint exercise of the powers common to each of the parties; and

WHEREAS, authorizing execution of the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement does not legally bind or otherwise commit the Water Authority or the Activity Agreement Members to participate in or otherwise proceed with the Reservoir

Expansion Project, and further, executing the B.F. Sisk Dam Raise and Reservoir Expansion Project 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 the California Environmental Quality Act (CEQA Guidelines Section 15378(b)(5)).

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

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

Section 2. The Board hereby authorizes the Executive Director to execute the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement in substantially the form presented to the Board, subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution 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 date of this Resolution, and (2) at least two (2) members of the Water Authority executing the Activity Agreement.

Section 4. In the event the contingencies described in Section 3 fails to occur, the authorization conferred by this Resolution for which the contingency is not satisfied is revoked *ab initio* as to the document not achieving the signatures as required by said Section 3, and any documents executed by the Water Authority in reliance upon it 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 may designate, is further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution, subject to the budgets and approvals as set forth in the respective documents.

PASSED, APPROVED AND ADOPTED this 10th day of March, 2022, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

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

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2022- 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 10th day of March, 2022.

Federico Barajas, Secretary

DRAFT

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

**B.F. SISK DAM RAISE AND RESERVOIR EXPANSION PROJECT
ACTIVITY AGREEMENT**

Commented [A1]: Questions raised in WRC/BOD review:
-What happens to agreement when construction is complete? Any continuing role for operations?
-How is the AA binding on Non-Member Participating Parties?
-If there is no steering committee, how are “votes” recorded?

This **B.F. SISK DAM RAISE AND RESERVOIR EXPANSION PROJECT ACTIVITY AGREEMENT** (“**Activity Agreement**”) is entered into and made effective as of this ___ day of 2022 (“**Effective Date**”), by and among the San Luis & Delta-Mendota Water Authority, a joint powers agency of the State of California (“**Authority**”), 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 shall have the meanings set forth in Section 2 below. This Activity Agreement shall become effective when all Activity Agreement Members that execute this Activity Agreement later agree in writing as to their respective “Initial Participation Percentage” as set forth in Sections 2, 10.1, and 13 below.

Commented [A2]: For discussion.

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 Authority for the purpose of exercising the common powers of the Activity Agreement Members, including those powers described in this Activity Agreement.

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

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

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

E. The Authority has authorized execution of a series of cost-share agreements with federal parties regarding collaboration on the planning, preliminary design, and environmental compliance for the B.F. Sisk Dam Raise and Reservoir Expansion Project (“**Reservoir Expansion Project**” or “**Project**”), to seek potential storage benefits of the Project for Authority member agencies.

F. Authority member agencies, including the Activity Agreement Members, have paid the costs associated with planning to date.

G. The Authority, together with Reclamation, has considered the feasibility of the Reservoir Expansion Project to, among other things, increase long-term reliability and quantity of yearly allocations to south-of-Delta CVP contractors dependent on San Luis Reservoir, increase the certainty of access to supplies stored by south-of-Delta CVP contractors in San Luis Reservoir in subsequent water years, and provide additional surface water access during drought periods, while maintaining benefits from the existing San Luis Reservoir.

H. The planning to date for the Project included, but was not limited to, planning for the construction of an expanded San Luis Reservoir with a total additional capacity of 130,000 acre-feet, and related modification to Highway 152.

I. The Authority anticipates the need to ~~cover future costs of managing this effort (i.e., hire a Project Management Consultant) to manage this effort~~ and to execute a cost share agreement with Reclamation for Reservoir Expansion Project Planning (“**Cost Share Agreement**”) in the near future, for the purpose of providing cost-sharing to complete planning, permitting, and design activities related to the Project. For design activities, the separate project components are the Sisk Dam Raise, Recreation Sites, Tower, Highway 152, bridge, and spillway. The Cost Share Agreement will specify ~~which the components on which~~ Reclamation will take the design lead ~~on~~

and on which the Authority will take the lead-~~on~~. Subsequent amendments would be expected for construction related activities.

J. Individual Authority member agencies desire to provide cost-sharing, including through the Authority’s execution of the anticipated Cost Share Agreement on their behalf.

K. Each of the parties to this Activity Agreement desires to participate in the benefits and incur the obligations associated with project management and the anticipated Cost Share Agreement, through the joint exercise of their common powers under this Activity Agreement.

AGREEMENT

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

2. DEFINITIONS

2.1. **“Activity Agreement”** or **“Agreement”** shall mean this B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement.

2.2. **“Activity Agreement Expenses”** shall mean all expenses directly incurred by the Authority pursuant to this Activity Agreement and any agreements executed in conjunction with this Activity Agreement, together with a share of Authority Operating Costs allocable to Members of this Activity Agreement and allocable to any Non-Member Participating Parties through Memoranda of Understanding executed in conjunction with this Activity Agreement.

2.3. **“Activity Agreement Member”** shall mean a member of the Authority who is signatory to this Activity Agreement. The Activity Agreement Members are listed on Exhibit “A” attached hereto.

2.4. **“Activity Participants”** shall mean the Activity Agreement Members and the Non-Member Participating Parties, as defined below.

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

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

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

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

2.9. “**Cost Share Agreement**” shall mean the Cost Share Agreement for the B.F. Sisk Dam Raise and Reservoir Expansion Project planning entered into by the Authority on behalf of the Activity Agreement Members.

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

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

2.12. “**Memorandum of Understanding**” or “**MOU**” shall mean an agreement in the form approved by the Activity Agreement Members and Authority Board of Directors between the Authority and a local agency, city, county, or mutual water company that is not a member of the Authority but which desires to participate in this Activity Agreement as a Non-Member Participating Party; “**Memoranda of Agreement**” or “**MOUs**” shall refer collectively to all such Memoranda of Understanding.

2.13. “**Non-Member Participating Party**” shall mean a local agency, city, county, or mutual water company that is not a member of the Authority but which by execution of an MOU agrees to undertake the same obligations and is accorded the same benefits as a member of the Authority that has executed this Activity Agreement. The Non-Member Participating Parties are listed on Exhibit “A” attached hereto.

2.14. “**Participation Percentage**” shall mean each Activity Participant’s allocated share of Activity Agreement Expenses determined as described in Section 10 of this Agreement and set forth on Exhibit “B” as updated from time to time.

2.15. “**Reservoir Expansion Project**” or “**Project**” shall mean the proposed project pertaining to the planning, design, permitting, and other preconstruction activities associated with the B.F. Sisk Dam Raise and Reservoir Expansion Project.

3. **PURPOSE OF AGREEMENT**

3.1. The purpose of this Activity Agreement is to allow, through the joint exercise of some or all of the common powers of the Activity Agreement Members described in the Recitals above, as appropriate, the Activity Agreement Members to participate through the Authority in the anticipated Cost Share Agreement to obtain the benefits; and ~~to~~ share the obligations of ~~the anticipated~~said Cost Share Agreement under the terms set forth herein.

3.2. The parties acknowledge and agree that the Authority’s role in this Activity Agreement is to: 1) provide the umbrella joint powers agreement pursuant to which the parties may exercise their common powers and to provide coordinated services at the expense of the Activity Agreement Members; 2) negotiate, implement, and administer the anticipated Cost Share Agreement in coordination with the Activity Agreement Members; 3) provide administrative services for implementation of the Cost Share Agreement, including, but not limited to, providing notices, ~~providing~~ billing, and accounting services to the Activity Agreement Members during the term hereof; and 4) undertake such additional activities and responsibilities as may be requested and funded by the Activity Agreement Members.

4. **ORGANIZATION**

The business of this Activity Agreement shall be conducted by the Authority at large and therefore be governed by the Board of Directors of the Authority. However, it is recognized that at some time in the future the Activity Agreement Members may wish to form a separate body specifically for the purpose of directing the business of the Activity Agreement. Within eighteen (18) months of the Effective Date, 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 ~~shall~~may then serve as the governing body for this Activity Agreement.

Commented [A3]: For discussion: If there isn’t a Steering Committee, how are the activities to be overseen? O&M technical committee?

Should members ask the question of a Steering Committee upfront, rather than potentially waiting?

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

5.1. Role of the Authority. The role of the Authority under this Activity Agreement will be to provide, through Authority staff or contracts with consultants, coordinated services to assist the Activity Participants in conducting the activities contemplated by this Agreement. The Authority will provide only those services supported with funding from the Activity Participants, grant funding, or other means that will not impose costs on members of the Authority that are not Activity Agreement Members, in accordance with budgets recommended by staff, and approved by the Activity Participants and the Board of Directors, as more specifically provided under the terms of this Agreement.

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

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

b) The Board of Directors shall have the right, upon recommendation of or in consultation with staff, and the approval of Activity Participants, to approve all amendments to this Activity Agreement, including any amendment terminating the Activity Agreement, and to approve the MOU with each entity seeking to become a Non-Member Participating Party; provided, that no amendment of this Activity Agreement shall be required to add new Activity Agreement Members prior to [DATE], 2022.

c) The Board of Directors shall have the right, upon the recommendation of or in consultation with staff, and the approval of Activity Participants, in the form of formal Board action, to authorize execution of all agreements relating to the Reservoir Expansion Project.

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

Commented [A4]: For discussion.

Commented [A5]: Suggest 60-day period from Board approval.

Commented [A6]: For discussion.

Commented [A7]: For discussion.

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

6. APPROVAL BY AN ACTIVITY PARTICIPANT OR ACTIVITY PARTICIPANTS

6.1. When the terms of this Activity Agreement or applicable law require the approval of an Activity Participant, written documentation of such approval, whether by Resolution, motion, or other form of authorization, must be provided to the Authority and to each of the other Activity Participants.

a) For actions requiring the approval of only the particular Activity Participant, approval by such Activity Participant is required.

b) When approval of the Activity Participants is required for a particular action, unanimous approval of the Activity Participants will be required relative to the following actions:

6.1.b.1. Admitting a new Activity Agreement Members following the expiration of the date in Section 5.2.b and Section 15.1;

6.1.b.2. Admitting a Non-Member Participating Party at any time;

6.1.b.3. Establishing or modifying the Participant Percentage applicable to the Activity Participants; and

6.1.b.4. Amendment of this Activity Agreement.

c) For all other actions that require approval of the Activity Participants, including approval of an annual budget, the approval of a majority of the Activity Participants will constitute approval of the action.

7. BUDGETARY RESPONSIBILITIES

To the extent that the Authority prepares budgets for this Activity Agreement, the Authority shall coordinate with Activity Participants in the development of any such budgets for the activities authorized by this Activity Agreement, annually or more frequently as needed, for presentation to the Board of Directors of the Authority in accordance with Section 22 of the JPA Agreement. The Authority staff will not present to the Board of Directors a budget for this Activity Agreement

Commented [A8]: For discussion: Should we think separately about borrowing authority? More than simple majority, less than unanimous?

unless and until supported by each of the Activity Participants. Budgeted amounts for this Activity Agreement will be collected through the invoicing process described in Section 10 of this Activity Agreement, and, provided each of the Activity Participants is in agreement, formal amendment of such budgets through Board of Directors of the Authority approval is not required for adjustments of expenditure for activities authorized by this Activity Agreement.

7.1. Initial Budget. To initially fund the budget for this Activity Agreement, the Activity Participants agree to contribute a total of \$1,000,000 according to the Participation Percentages referenced in Section 10 below and described in Exhibit “B” to this Activity Agreement. This initial budget amount will be used, among other purposes, to reimburse the Authority for costs paid to support the Reservoir Expansion Project from March 1, 2022~~3~~ onward using funds from the Authority’s Fiscal Year 2023 Leg/Ops budget.

Commented [A9]: Subject to revision.

7.2. Budget to Actual Adjustments. The Authority shall true up budgeted amounts collected from the Activity Participants, grant funding, or other means to actual expenditures annually following the end of each fiscal year. Any over-payments between budgeted and actual expenditures, taking into account any year-end carryover reserve, shall be credited or refunded to each Activity Participant for the period through February 28, 2023, and for each year thereafter, based upon its Participation Percentage. Each Activity Participant shall be billed for any under-payment following the true-up, with payment due thirty (30) days after the invoice is received.

Commented [A10]: For discussion: should there be an end date, i.e., until execution of Activity Agreement?

8. ACCOUNTABILITY, REPORTS, AND AUDITS

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

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

9. ACTIVITY AGREEMENT EXPENSES AND ALLOCATION OF OPERATING COSTS

9.1. The Authority and the Activity Participants agree that all Activity Agreement Expenses incurred by the Authority under this Activity Agreement are the costs of the Activity Participants, and not of the Authority, and shall be paid by the Activity Participants. Fundamentally, Activity Agreement Members and Non-Member Participating Agencies, if any, shall be primarily responsible for determining, among themselves, a fair and equitable apportionment of Activity Agreement Expenses at all stages of the Project and throughout the term of this Activity Agreement.

Commented [A11]: For discussion.

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

10. PARTICIPATION PERCENTAGES

10.1. Initial Participation Percentages. Within forty-five (45) days of the Effective Date, the Activity Agreement Members will reach agreement as to the initial participation percentages that will dictate each Activity Agreement Member’s respective share of the initial budget amount referenced above in Section 7.1, plus any subsequent Activity Agreement Expenses.

Commented [A12]: For discussion: What happens if the signatories do not reach agreement?

10.2. Changing Participation Percentages. Once established by unanimous agreement, ~~The~~ Participation Percentages ~~will shall~~ be reconsidered and ~~may be for~~ revised in each of the following circumstances:

Commented [A13]: Alternative Proposal: “Within forty-five (45) days of [DATE], all proposed Activity Agreement Members will attempt to reach agreement as to the initial participation percentages between themselves that will dictate each Activity Agreement Member’s respective share of the initial budget amount referenced above in Section 7.1, plus any subsequent Activity Agreement Expenses. The intent of these initial participation percentages is to match the anticipated percentage of expansion water storage that each Activity Agreement Member will receive from the Project. As set forth below, this Agreement will not become effective until all Activity Agreement Members reach agreement on their initial participation percentages.”

- a) Execution of Cost Share Agreement;
- b) Addition of Activity Participant(s); and
- c) Withdrawal of Activity Participant(s). Upon the withdrawal of one or more

Activity Participants pursuant to Section 14, the remaining Activity Participants agree that each of them will be allocated a proportionate share of all Activity Agreement Expenses and any associated interests in the Reservoir Expansion Project. Any Activity Participant may be relieved of its obligation to assume the additional proportionate share created by the withdrawal of an Activity Participant if the remaining Activity Participants agree to assume that share of obligations and benefits.

Commented [A14]: For discussion: consider adding fourth circumstances “Completion of project construction.”

In addition to the circumstances listed above, the Participation Percentages may be revised at other times if the Activity Participants unanimously agree to a revision.

Commented [A15]: For discussion: Will any adjustment of past costs occur?

Commented [A16]: For discussion: Will cost allocation for planning vs. construction/financing be different?

10.3. Ongoing Documentation of Participation Percentages. The Participation Percentages of each Activity Participant shall be dated and attached as Exhibit “B” to this Activity Agreement, effective upon the date approved by all Parties, without any further amendment of this Agreement being required. Any further amendments to Exhibit “B” may be made using the procedure included in this Section 10 without any further separate amendment of this Activity Agreement being required.

10.4. Invoicing and Payment. The Authority shall bill the Activity Participants for all Activity Agreement Expenses in their respective Participation Percentages on the same schedule as it utilizes for collecting membership dues to implement the Authority budget for each March 1 through February 28/29 fiscal year, generally twice yearly in mid-March and August of such year. The schedule for billing Activity Participants for any additional costs associated with the anticipated Cost Share Agreement will be determined at a later date. In all cases, payments are due thirty (30) days following the receipt of the Authority’s invoice.

Commented [A17]: For discussion: If we get to construction, would bi-annual billing be too much?

Commented [A18]: For discussion: What is the difference between “all Activity Agreement Expenses” referenced above and “any additional costs” here?

11. SOURCE OF PAYMENTS

Each Activity Participant agrees that it will timely take actions necessary to provide sufficient money to meet its obligations hereunder. Each Activity Participant hereby confirms that the Authority and other Activity Participants are third party beneficiaries of such Activity Participant’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 Participants shall hold the Authority and each of its members who are not Activity Participants, free and harmless from and indemnify each of them against any and all costs, losses, damages, claims, and liabilities arising actions or inactions taken under this Activity Agreement or the MOUs. This indemnification obligation includes the obligation of the Activity Participants to defend the Authority, and all members of the Authority that are not participants in this Activity Agreement, at the sole expense of the Activity Participants, in any action or proceeding brought against the Authority or any of its members not participating in this Activity Agreement, to recover any such costs, losses, damages, claims, or liabilities arising from this Activity Agreement, as well as the obligation to pay for any and all costs of litigation incurred by the Authority as a result of entering into this Activity Agreement. Such costs may include, but are not

limited to, attorneys' fees and costs incurred by the Authority pursuant to approved budgets to defend its provision of services under this Activity Agreement.

13. TERM

This Activity Agreement shall take effect on DATE, 2022 (“Effective Date”), and shall remain in full force and effect until this Activity Agreement is rescinded or terminated by the Authority and the Activity Agreement Members, with approval by the Non-Member Participating Parties, if any.

Commented [A19]: Alternative Proposal: “This Activity Agreement shall take effect on the date that all Activity Agreement Members agree in writing on their Initial Participation Percentage (“Effective Date”), and shall remain in place . . .”

14. WITHDRAWAL FROM FURTHER PARTICIPATION

14.1. An Activity Participant may withdraw from this Activity Agreement at any time by providing written notice to the Authority and the other Activity Participants. The withdrawal shall be effective fifteen (15) days after sending the written notice. A withdrawing Activity Participant shall not be entitled to a return of any money paid pursuant to Section 10.5. However, if a withdrawing Activity Participant withdraws prior to execution of the anticipated Cost Share Agreement, the withdrawing Activity Participant shall have no obligation to pay any future share of the Authority’s cost under the anticipated Cost Share Agreement or any additional Activity Agreement Expenses.

Commented [A20]: For discussion: Is longer time period required?

Commented [A21]: For discussion: Does this change if another entity is willing to take over the withdrawing participant’s share of the project?

If money is borrowed, is the remaining debt then reshuffled based upon the remaining participants’ resultant allocations?

14.2. If the Authority withdraws from the anticipated Cost Share Agreement and, Reclamation returns to the Authority any money paid, the Authority shall use its best efforts to ensure that money is refunded proportionately to the Activity Agreement Members that initially contributed it.

15. INITIAL MEMBERSHIP/ADMISSION OF NEW MEMBERS

15.1. Authority Members. Members of the Authority may become Members of this Activity Agreement without Board action through [DATE], 2022. After [DATE], 2022, admission of new Members shall require amendment of this Activity Agreement and approval by the Board of Directors and the Activity Agreement Members. Such approval of new Members will include terms, if necessary, to ensure the Activity Participants do not bear undue financial obligations, e.g., payment of an equal share of the costs previously paid and opportunity costs by Activity Agreement Members under this Activity Agreement.

Commented [A22]: Alternative Proposal: “After [DATE], admission of new Members shall require approval by the Board of Directors and all Activity Agreement Members. Such approval of new Members will include terms, if necessary, to ensure that all Activity Participants (existing and prospective) do not bear undue financial obligations, e.g. payment of an equal share of the costs previously paid and opportunity costs by Activity Agreement Members under this Activity Agreement. At all times the financial contributions and obligations of all Activity Agreement Members should be proportionate to all other Activity Agreement Members and proportionate to their anticipated Project benefits relative to all other Activity Agreement Members, taking into account past financial contributions.”

15.2. Non-Authority Members. A local agency, city, county, or mutual water company that is not a member of the Authority may become a Non-Member Participating Party (and Activity

Participant) at any time following the Effective Date, if the existing Activity Agreement Members unanimously approve the admission of the Non-Member Participating Party. Such admission will occur through execution of a MOU and action by the Board of Directors. Such MOU, as appropriate, will include terms, if necessary, to ensure that existing Activity Participants do not bear undue financial obligations, e.g., payment of an equal share of the costs previously paid and opportunity costs by Activity Participants under this Activity Agreement. At all times the financial contributions and obligations of all Activity Agreement Members and Non-Member Participating Parties should be proportionate to all other Activity Participants and proportionate to their anticipated Project benefits relative to all other Activity Participants, taking into account past financial contributions.

Commented [A23]: Alternative Proposal: “Such admission will occur through execution of an MOU with the Authority and with all other Activity Agreement Members and approval by the Board of Directors.”

Commented [A24]: For discussion.

15.3. Documentation. The admission of any Activity Participant pursuant to this section shall be documented by that new Activity Agreement Member signing this Activity Agreement or that new Non-Member Participating Party entering into a MOU with the Authority, subject to this Activity Agreement. Upon admission of a new Activity Participant, the parties shall agree to the participation percentage of such new Activity Participant, to be documented in the above-referenced amendment or MOU and Exhibit “B” to this Activity Agreement.

16. MISCELLANEOUS

16.1. California Environmental Quality Act. The physical, operational, and financial details of the Reservoir Expansion Project have been analyzed by the Authority as lead agency pursuant to the California Environmental Quality Act (“CEQA”) in the Final Environmental Impact Statement/Final Environmental Impact Report (“EIR”). The Authority has not yet certified the EIR or approved the Reservoir Expansion Project, but plans to do so in the near future. The 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 Authority and/or Activity Participants and other public agencies may be responsible agencies under CEQA for actions related to the Reservoir Expansion Project; however, the actions contemplated by this Activity Agreement have no potential for physical effects on the environment. Each potential improvement, project, and/or activity subject to this Activity Agreement or other related agreements, have been or will be fully evaluated in compliance with CEQA, as applicable. This Activity Agreement does not, and is not intended to, bind any party to a definite course of action or

limit in any manner the discretion of the Authority and/or Activity Participants, or any other public agency, as applicable, in connection with consideration of agreements relating to the Reservoir Expansion Project, including without limitation, all required environmental review, all required public notice and proceedings, consideration of comments received, and the Authority’s and/or Activity Participants’ or other public agencies’ evaluation of mitigation measures and alternatives including the “no project” alternative.

16.2. Amendments. This Agreement may be amended in writing by the Authority and the Activity Agreement Members, with approval from the Non-Member Participating Parties, if any.

Commented [A25]: For discussion: should their consent be required as well?

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

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

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

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

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

16.8. Reasonable Cooperation. Activity Participants will reasonably cooperate with each other and the Authority to perform the obligations under this Activity Agreement and to carry out the purpose and intent of this Activity Agreement.

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

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

ACTIVITY AGREEMENT MEMBERS

Agency Name: _____ Agency Name: _____

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Agency Name: _____ Agency Name: _____

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Agency Name: _____ Agency Name: _____

DRAFT – 3/2/22

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT

EXHIBIT A

B.F. SISK DAM RAISE AND RESERVOIR EXPANSION PROJECT ACTIVITY AGREEMENT MEMBERS AND NON-MEMBER PARTICIPATING PARTIES

Agency Name	Participation Status (AA Member or Non-Member Participating Party)

DRAFT

EXHIBIT B
ALLOCATION OF EXPENSES AMONG ACTIVITY PARTICIPANTS

Activity Participants	Allocation (%)

DRAFT

