



MEMORANDUM

TO: SLDMWA Water Resources Committee and Board of Directors, Alternates

FROM: Federico Barajas, Executive Director

DATE: September 14, 2020

RE: Withdrawal from the San Joaquin Valley Water Infrastructure Authority (SJVVIA)

BACKGROUND

The San Joaquin Valley Water Infrastructure Authority (SJVVIA) was formed in 2015 by the counties of Fresno, Kings, Madera, Merced, and Tulare, with to-be-named city parties, water agency parties, and a tribal party, to solicit grant funding for water infrastructure projects, with a focus on local surface storage projects, groundwater recharge projects, and construction of the Temperance Flat Dam project. The San Luis & Delta-Mendota Water Authority (Water Authority), City of Fresno, Friant Water Authority, San Joaquin River Exchange Contractors Water Authority, the City of Avenal, and the City of Orange Cove later joined as members.

After the members of the SJVVIA decided to transfer the handling of the Temperance Flat Reservoir Project to a separate entity, the SJVVIA became less active. The Water Authority last authorized dues in August 2018, for one quarter of membership (\$12,500), with the understanding that the SJVVIA would be wrapping up and shutting down.

Throughout 2019, SJVVIA members discussed the appropriate focus of the SJVVIA going into the future, and agreed to revise the purpose of the entity via an Amended and Restated Joint Exercise of Powers Agreement (Amended JPA). The amendments to the JPA effectively maintain the membership of the JPA while changing its primary purpose. Following direction from the Water Resources Committee, Water Authority passed on its concerns with the proposed amendments to SJVVIA staff.

In March 2020, Water Authority management met with the SJVVIA Chair and communicated that the Water Authority would not be joining the amended SJVVIA. In July 2020, Water Authority staff learned that the SJVVIA would be finalizing the amended JPA, but was still listing the Water Authority as a member. Following conversation with Tulare County Counsel, staff determined that the best way to allow the SJVVIA to proceed with an amended JPA sans Water Authority would be for the Water Authority to (1) propose edits to the amended JPA that clarify

the Water Authority's status, and (2) submit a letter representing the Water Authority's withdrawal from the SJVWIA.

Once withdrawal is effective, Water Authority staff can continue maintain engagement with SJVWIA on an informal basis, by attending meetings and seeking to participate in relevant projects.

ISSUE FOR DECISION

Whether the Board should authorize withdrawal from the SJVWIA.

RECOMMENDATION

Staff recommends withdrawing from the SJVWIA, but maintaining informal engagement with the organization.

ANALYSIS

The existing SJVWIA Joint Exercise of Powers Agreement includes provisions that govern amendment and withdrawal. In relevant part, it provides:

- **Article 16(a):** "Any Party may terminate its membership in the Authority and its obligations under this Agreement upon 180 days advance written notice to the other Parties and the Authority. The written intent to terminate may be withdrawn no later than 120 days prior to the end of the 180 day termination period.
- **Article 16(b):** "Upon withdrawal of a Party from the Authority and this Agreement, any capital contributions of said Party shall be returned to the Party less that Party's share of ongoing obligations of the Authority incurred during that Party's membership to the Authority. Contributions by a Party for operating expenses and costs of preparation of any solicitation or application for grants authorized or incurred prior to the effective date of withdrawal shall not be returned upon withdrawal."
- **Article 20:** "Any matters may be modified from time to time by the written consent of the governing body of all the Parties without, in any way, affecting the remainder."

Pursuant to Article 20, amendment requires the written consent of the governing body of "all of the Parties." Without the Water Authority's written consent, the SJVWIA is unable to amend the JPA in the way that all of the members except the Water Authority desire. To allow the SJVWIA to move forward with an amended and restated JPA, it is therefore necessary for the Water Authority to withdraw from the organization.

This withdrawal would be paired with edits to the draft amended JPA already provided, which seek to clarify that the Water Authority is a party to the original JPA, but not the amended JPA,

Memo to SLDMWA Board of Directors

September 14, 2020

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and add reference to the Water Authority in the provision governing termination of the entire organization.

The Water Authority can continue to participate in the SJVWIA during the 180-day withdrawal period as a voting member, and after the withdrawal is effective, through informal engagement. There may also be an opportunity for the Water Authority to participate in future activities sponsored by the SJVWIA, e.g. through a memorandum of agreement.

ATTACHMENTS

1. Draft Withdrawal Letter
2. Redline edits to draft amended and restated JPA

San Luis & Delta-Mendota Water Authority



P.O. Box 2157
Los Banos, CA 93635
Phone: (209) 826-9696
Fax: (209) 826-9698

September 17, 2020

VIA Email

San Joaquin Valley Water Infrastructure Authority
Supervisor Buddy Mendes, Board President

EMAIL

Re: Notice of Withdrawal from the San Joaquin Valley Water Infrastructure Authority

Dear Mr. Mendes and Representatives of Other Parties to the SJVWIA:

The San Luis & Delta-Mendota Water Authority ("Water Authority") greatly appreciates working with the SJVWIA over the last few years in soliciting grant funding for water infrastructure projects.

As discussed during our March 11, 2020 meeting, the Water Authority will not be joining the amended SJVWIA JPA. As a result, the Water Authority hereby provides written notice of its intent to withdraw from the November 17, 2015 Joint Exercise of Powers Agreement Creating the San Joaquin Valley Water Infrastructure Authority (SJVWIA).

The Water Authority provides this notice pursuant to Article 16 of the SJVWIA Agreement, which provides that "[a]ny Party may terminate its membership in the Authority and its obligations under this Agreement upon 180 days advance written notice to the other Parties and the Authority." The Water Authority reserves its right to withdraw this notice within 120 days period to the end of the termination period without waiving any of its rights under the SJVWIA Agreement. Without further action, the Water Authority's withdrawal will occur on March 16, 2021.

The SJVWIA Agreement provides in relevant part:

Article 16(b): Upon withdrawal of a Party from the Authority and this Agreement, any capital contributions of said Party shall be returned to the Party less that Party's share of ongoing obligations of the Authority incurred during that Party's membership in the Authority. Contributions by a Party for operating expenses and costs of preparation of any solicitation or application for grants authorized or incurred prior to the effective date of withdrawal shall not be returned upon withdrawal.

Over the course of the 180-day notice period, the Water Authority intends to work with SJVWIA to reach agreement on: (1) any refund or repayment of contributions to which the Water Authority is entitled, pursuant to Article 16(b); and (2) any necessary edits to the proposed Amended and Restated JPA to reflect the Water Authority's participation in the JPA.

Regards,

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

cc: **Representatives of other SJVWIA parties**

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**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
CREATING
THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE
AUTHORITY**

EFFECTIVE DATE: _____, 2019

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1 **AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT**
2 **CREATING THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY**

3 This Amended and Restated Agreement (“Agreement”) is made and entered into effective _____ day
4 of _____, 2019, by and among the counties of FRESNO, KINGS, MADERA, MERCED, and TULARE
5 (“County Parties”); the CITY OF FRESNO (“City Party”); the FRIANT WATER AUTHORITY, ~~the SAN LUIS &~~
6 ~~DELTA-MENDOTA WATER AUTHORITY~~, and the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS
7 WATER AUTHORITY (“Water Agency Parties”), and the cities of AVENAL and ORANGE COVE (“DAC
8 Parties,” “DAC” meaning “Disadvantaged Community”). Each entity listed above is a public agency as
9 defined by California Government Code section 6500, is a “Party” to this Agreement, and all the entities
10 listed above together are “the Parties” to this Agreement.

11 **RECITALS**

12 **WHEREAS**, as of the 17th day of November, 2015, the counties of FRESNO, KINGS, MADERA,
13 MERCED, and TULARE (“County Parties” or “Original County Parties”) executed an Agreement, hereinafter
14 referred to as the “Original Agreement,” which established the San Joaquin Valley Water Infrastructure
15 Authority, hereinafter referred to as the “Authority,” and set forth the powers and duties of the Authority; and

16 **WHEREAS**, the Original Agreement includes provisions for other public agencies to become
17 members of the Authority;

18 **WHEREAS**, the City Party, the Water Agency Parties, the San Luis & Delta-Mendota Water
19 Authority, and the DAC Parties joined the Authority as members pursuant to the Original Agreement;

20 **WHEREAS**, the Parties named above desire to continue as members of the Authority;

21 **WHEREAS**, the Original Agreement provides in Article 20 that the Agreement may be amended
22 “from time to time by the written consent of the governing body of all the Parties;”

23 **WHEREAS**, the Parties desire to amend and restate the Original Agreement in its entirety;

24 **WHEREAS**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500
25 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the
26 contracting parties;

27 **WHEREAS**, the Parties each are public agencies which have the common power to make contracts
28 necessary to the exercise of their respective powers;

1 **WHEREAS**, the Parties now desire to modify and expand the purposes of the Authority to more
2 comprehensively support, assist, and benefit San Joaquin Valley people, businesses, agriculture, and other
3 industries represented by the Parties within their respective jurisdictions with activities, programs, and
4 projects directed at improving, maintaining, sustaining, and protecting water supplies and infrastructure upon
5 which the region depends, thus mitigating imbalances and other negative impacts that have been
6 experienced;

7 **WHEREAS**, said activities, endeavors and undertakings may include, but are not limited to,
8 measures of advocacy, advice, support and involvement on qualified local and regional infrastructure
9 projects and facilities such as surface water conveyance, groundwater recharge and banking, surface water
10 storage, water conservation, water reclamation and water quality improvement; and enhanced wildland,
11 forest management and related watershed practices;

12 **WHEREAS**, the Parties can through cooperation present more comprehensive and effective grant
13 proposals with greater efficiency than they could obtain by their individual efforts;

14 **WHEREAS**, collaboration and consolidation of governmental action benefits the public and the
15 taxpayer, and if the Parties determine that it is to their mutual benefit, the Parties believe the Authority should
16 provide access to other public agencies in proximity to and with interests similar to those of the Parties by
17 considering the execution of a Participation Agreement among the Authority and such other public agencies
18 that would permit such other public agencies to participate in the grant formation and solicitation process in
19 the future, provided that such other public agencies make financial commitments similar to those made by
20 the Parties in connection with this Agreement, as provided herein; and

21 **WHEREAS**, said activities, associations and participation shall be subject to financial commitments,
22 arrangements and agreements among and with the Authority, the member Parties, and any other
23 participating agencies to pay for their respective costs thereof as provided herein.

24 **NOW THEREFORE**, in consideration of their mutual promises, covenants and conditions, hereinafter
25 set forth, the sufficiency of which is acknowledged, the Parties agree as follows:
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ARTICLE 1

DEFINITIONS

"**Authority**" or "**SJVWIA**" shall mean the San Joaquin Valley Water Infrastructure Authority created by this Agreement.

"**Biweekly**" shall mean an event or act which only occurs once every two weeks.

"**Board of Directors**" shall mean the governing body of the Authority.

"**Fiscal year**" shall mean that period of twelve months which is established by the Board of Directors as the fiscal year of the Authority.

"**Government Code**" shall mean the California Government Code.

"**Joint Powers Law**" shall mean Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code.

"**Water Agency**" shall mean an irrigation district, reclamation district, water district or any other local governmental entity, other than a city or county, which obtains, manages and provides water to residential, industrial, commercial or agricultural users, or a joint powers authority that represents water agencies, as defined.

ARTICLE 2

CREATION OF SJVWIA

Pursuant to the Joint Powers Law, there is hereby created a public entity separate and apart from the Parties, to be known as the San Joaquin Valley Water Infrastructure Authority, with such powers as are hereinafter set forth. The debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and shall not constitute debts, liabilities, or obligations of any Party to this Agreement, except with respect to the retirement liabilities of the Authority if the Authority contracts with a public retirement system, and notwithstanding the payment of respective costs and expenses as referenced in the Recitals, Articles 14 and 15, and throughout the Agreement. The Authority, its Board, officers, membership and staff shall be governed by this Agreement, any Bylaws duly adopted by the Authority, and other documents duly adopted by the Authority.

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ARTICLE 3

PURPOSE

The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the Parties. The purpose of the Authority is to use the collective knowledge, resources, expertise, and influence of its members to advance the management of water and related natural resources in the San Joaquin Valley. It is the intent of the Parties that the Authority provide advocacy, advice, and/or other proper support to counties, cities, unincorporated communities, water agencies, and/or state or federal agencies to assist with development of San Joaquin Valley water infrastructure improvement and related natural resource management projects, development of which would be in the public interest. Support for such projects would include, but not be limited to, the solicitation of funding and the administration of the disbursement and expenditure of said funds on selected projects.

ARTICLE 4

TERM

This Agreement shall continue in full force and effect until terminated as provided herein.

ARTICLE 5

MEMBERSHIP IN THE AUTHORITY

5.1 **MEMBERS JOIN AUTHORITY BY FORMAL ADOPTION OF AGREEMENT.**

Additional public agencies may become members of the Authority and Parties of this Agreement according to the terms of this Article. Upon a four-fifths (4/5) vote of the Board of Directors, additional public agencies may join the Authority as member Parties through formal adoption and execution of this Agreement by their respective governing board or body. No amendment of this Agreement is required, provided that, the following limitations to total membership shall apply:

COUNTY PARTIES: There may be up to seven (7) County Parties;

CITY PARTY: There may be no more than one (1) City Party that is not designated a Disadvantaged Community for the purposes of this Agreement, and if there is a City Party it shall be the City of Fresno;

1 WATER AGENCY PARTIES: There may be up to six (6) Water Agency Parties;

2 TRIBAL PARTIES: Up to two (2) federally recognized Native American Tribes with Tribal Lands
3 within the jurisdiction of any of the County Parties may join the Authority as Tribal Parties. The governing
4 board or authority of the Tribe shall approve this Agreement and cause it to be signed by an authorized
5 representative. The Tribal Party shall and hereby does, as part of its approval of this Agreement, waive its
6 sovereign immunity for all purposes related to this Agreement or the Authority;

7 DISADVANTAGED COMMUNITY (DAC) PARTIES: There may be up to two (2) DAC Parties, and
8 those shall be the cities of Avenal and Orange Cove, unless either has withdrawn from membership. To
9 qualify as a DAC Party, a city must be designated by the California Environmental Protection Agency as a
10 Disadvantaged Community and lie within the jurisdiction of any of the County Parties.

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ARTICLE 6

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POWERS OF THE AUTHORITY

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The Authority shall have all powers set forth in the Joint Powers Law, and is hereby authorized to do
all acts necessary for the exercise of said powers in furtherance of its purposes. Such powers include, but
are not limited to, the following:

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(a) To make and enter into contracts, including but not limited to contracts with the Parties
and/or the Federal Government, the State of California, other local governments, public agencies, special
districts, private parties, or companies.

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(b) To incur debts, liabilities, and obligations.

(c) To acquire, hold, and/or dispose of property, contributions, and donations of property, funds,
services, and other forms of assistance from persons, firms, corporations, and government entities.

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(d) To sue and be sued in its own name, and to settle any claim against it.

(e) To receive and use contributions and advances from the Parties as provided in Government
Code Section 6504, including contributions or advances of personnel, equipment, or property.

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(f) To invest any money in its treasury that is not required for its immediate necessities,
pursuant to Government Code Section 6509.5.

1 (g) To develop and submit solicitations or applications for funding from the Federal Government,
2 the State of California, other local governments, public agencies, special districts, private parties, or
3 companies for water infrastructure or natural resource management projects.

4 (h) To carry out all provisions of this Agreement.

5 (i) The powers listed in paragraphs (a) through (h), above, shall be exercised pursuant to the
6 terms hereof and in the manner provided by law.

7 (j) The responsibility for financing, funding or providing matching funds for the actual
8 construction of any project shall be the responsibility of the individual local governmental agency or agencies
9 performing or authorizing such construction and shall not be an obligation of the Authority. However, the
10 Authority, if it determines a project will have substantial general benefit throughout the jurisdictions of the
11 County Parties, may take actions to secure financing, funding, or matching funds and to disburse such funds
12 in furtherance of construction of the project.

13 (k) The Authority may not appropriate, expend, or encumber funds in excess of any amounts
14 actually approved and contributed by the Parties or actually received from any other source.

15 Pursuant to Government Code section 6509, the aforementioned powers shall be subject to those
16 restrictions upon the manner of exercising the power as of Tulare.

17 **ARTICLE 7**

18 **BOARD OF DIRECTORS**

19 7.1 Composition of the Board of Directors

20 The Authority shall be governed by the Board of Directors, which shall be composed as follows:

21 (a) **COUNTY DIRECTORS:** One director appointed by the Board of Supervisors of each
22 County Party who shall be a member of the Board of Supervisors of the respective Party, for a total of
23 up to seven (7) directors. Each Board of Supervisors of each Party shall also appoint an alternate
24 director who shall be a member of the respective Party's Board of Supervisors who shall serve in the
25 absence of the regular director appointed by that Party.

26 (b) **CITY DIRECTOR:** One (1) director appointed by the City Party for a total of one (1)
27 director. The director may be an elected official or staff member of the City Party. The City Party shall
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1 appoint an alternate director who shall serve in the absence of the regular director appointed by that
2 Party. Alternate directors may also be elected officials or staff of the City Party.

3 (c) **WATER AGENCY DIRECTORS:** One (1) director appointed by each Water Agency
4 Party for a total of up to six (6) directors. The director shall be a director, officer, or employee of their
5 respective Water Agency Party. Each Water Agency Party shall appoint an alternate director who
6 shall serve in the absence of the regular director appointed by that Party.

7 (d) **TRIBAL DIRECTORS:** One (1) director appointed by each Tribal Party for a total of
8 up to two (2) directors. The Tribal Party shall appoint an alternate director who shall serve in the
9 absence of the regular director appointed by the Tribal Party.

10 (e) **DISADVANTAGED COMMUNITY DIRECTORS:** One (1) director appointed by each
11 Disadvantaged Community (DAC) Party, for a total of up to two (2) directors. The DAC Parties shall
12 appoint alternate directors who shall serve in the absence of the regular directors appointed by the
13 DAC Parties.

14 (f) **GENERAL AT-LARGE DIRECTOR:** One (1) director who lives or works within the
15 jurisdiction of the County Parties, appointed by a majority of the Board of Directors. The At-Large
16 Director shall be appointed to serve a two (2) year term, beginning from the date of seating on this
17 Board of Directors following appointment.

18 7.2 Replacement by Alternate Directors

19 County Directors shall serve until removed or replaced by the Board of Supervisors of their
20 respective County. If, for any reason, a County Director resigns, leaves office, or cannot fulfill the duties of
21 that position, the Board of Supervisors of the relevant Party County shall appoint a new regular director to
22 the Board.

23 If, for any reason, the General At-Large Director resigns or cannot fulfill the duties of that position,
24 the remaining members of the Board of Directors shall appoint a new General At-Large Director to complete
25 the remainder of the General At-Large Director's term.

26 If for any reason, the City Director, a Water Agency Director, a DAC Director, or a Tribal Director
27 resigns or cannot fulfill the duties of that position, the alternate director appointed by the respective Party
28 shall become the regular director for the remainder of the applicable term. If the alternate director resigns or

1 cannot fulfill the duties of that position, the Party shall appoint a replacement director for the remainder of the
2 applicable term.

3 7.3 Voting Protocols

4 A majority of the membership of the Board of Directors shall constitute a quorum for the transaction
5 of business. Approval of proposed actions requires a simple majority vote of the full Board of Directors
6 except as provided herein.

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8 **ARTICLE 8**
9 **POWERS OF THE BOARD OF DIRECTORS**

10 The Board of Directors shall have the following powers and functions:

11 (a) The Board of Directors shall exercise all powers and conduct all business of the Authority,
12 either directly or by delegation to its officers and any staff.

13 (b) The Board of Directors shall elect the officers of the Authority and shall appoint or hire
14 necessary staff in accordance with Articles 10 and 11 hereof.

15 (c) The Board of Directors shall cause to be prepared, and shall review, modify as necessary,
16 and adopt the annual operating budget of the Authority.

17 (d) The Board of Directors may develop, or cause to be developed, and may review, modify as
18 necessary, any solicitation or grant application for any selected project(s) and administrative services
19 necessary to carry out such solicitation or grant application or the receipt, administration and disbursement of
20 any grant funds received.

21 (e) The Board of Directors shall provide for necessary services to the Authority and the Parties,
22 by contract or otherwise, which may include, but shall not be limited to, accounting, auditing, and legal
23 services.

24 (f) The Board of Directors shall provide general supervision and policy direction to any staff of
25 the Authority.

26 (g) The Board of Directors shall have such other powers and duties as are reasonably
27 necessary to carry out the purposes of the Authority, including, but not limited to, establishing Ad Hoc or
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1 Standing Committees of the Authority.

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ARTICLE 9

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MEETINGS OF THE BOARD OF DIRECTORS

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(a) The Board of Directors shall hold at least one regular meeting each year and shall provide for such other regular meetings and for such special meetings as it deems necessary.

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(b) The staff of the Authority shall provide for the keeping of minutes of regular and special meetings of the Board of Directors, and shall provide a copy of the draft minutes to each member of the Board of Directors for approval at the next scheduled meeting.

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(c) All meetings of the Board of Directors shall be called, noticed, held and conducted in accordance with the provisions of Government Code Section 54950 et seq.

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ARTICLE 10

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OFFICERS

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The Board of Directors shall elect from its membership a President and Vice President of the Board of Directors, to serve for two-year terms. The President, or in his or her absence, the Vice President, shall preside at and conduct all meetings of the Board of Directors. In the absence of the President and Vice President, those members of the Board of Directors present may elect a Temporary Presiding Officer.

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ARTICLE 11

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ADMINISTRATION

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11.1 Staff Appointment. The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

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(a) **Auditor-Treasurer**. The duties of the Auditor-Treasurer are set forth in Articles 12 and 13 of this Agreement. Pursuant to Government Code Section 6505.5, the Auditor-Treasurer may be a Certified Public Accountant or the county auditor-controller of one of the County Parties, at the selection of the Authority and subject to the consent of the applicable county auditor controller. If a county auditor-controller is selected, pursuant to Government Code Section 6505, the charges to the Authority for the services of the

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1 Auditor-Treasurer shall be determined by the Board of Supervisors of the county from which the Auditor-
2 Treasurer is appointed, subject to approval by the Authority's Board of Directors.

3 (b) **Other Staff.** The Board of Directors shall provide for the appointment or hire of such other
4 staff as may be necessary for the administration of the Authority.

5 11.2 Competitive Selection of Experts. If the Authority determines to retain an expert or experts,
6 the selection of said expert(s) shall be made through a competitive process unless the expert falls within the
7 category of professional expertise which may be properly selected through a Request for Proposal or other
8 non-competitive process.

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10 **ARTICLE 12**

11 **ACCOUNTS AND RECORDS**

12 (a) **Funds and Accounts.** The Auditor-Treasurer shall establish and maintain such funds and
13 accounts as may be required by good accounting practices and by the Board of Directors. Separate
14 accounts shall be established and maintained for each project under development or adopted and
15 implemented by the Authority. Books and records of the Authority in the hands of the Auditor-Treasurer shall
16 be open to inspection at all reasonable times by authorized representatives of the Parties. The Authority
17 shall adhere to the standard of strict accountability for funds set forth in Government Code Section 6505.

18 (b) **Auditor's Report.** The Auditor-Treasurer, within one hundred and twenty (120) days after
19 the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year
20 to the Board of Directors, and shall make a copy available to each member of the Authority.

21 (c) **Audit.** Pursuant to Government Code Section 6505, the Authority shall either make or
22 contract with a certified public accountant to make an audit of all accounts and records of the Authority,
23 conforming in all respects with the requirements of that section. Pursuant to 6505(f), said audit shall cover a
24 two-year period. A report of the audit shall be filed as a public record with the Parties and with the county
25 auditor of the county where the home office of the Authority is located, and shall be sent to any public agency
26 or person in California that submits a written request to the Authority. The report shall be filed within six
27 months of the end of the fiscal years under examination. Costs of the audit shall be considered a general
28 expense of the Authority.

1 (d) **Records Retention.** The Authority shall retain records in accordance with applicable laws
2 and a policy to be established in the Bylaws.

3 **ARTICLE 13**

4 **RESPONSIBILITIES FOR FUNDS AND PROPERTY**

5 (a) The Auditor-Treasurer shall have the custody of and disburse the Authority's funds. He or
6 she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to
7 perform that function, subject to the requirements of (b) below. The Auditor-Treasurer shall hold and
8 prudently invest any funds for which he or she has custody consistent with the Investment Policy of the
9 Authority. The Auditor-Treasurer's primary objective in holding and investing such funds shall be: first, to
10 safeguard the principal of such funds under his or her control; second, to meet the liquidity needs of the
11 Authority; and third, to achieve a return on such funds under his or her control.

12 (b) Pursuant to Government Code Section 6505.5:

13 (1) Receive and acknowledge receipt for all funds of the Authority and place them in the
14 treasury of the Treasurer to the credit of the Authority.

15 (2) Be responsible upon his or her official bond for the safekeeping and disbursements
16 of all Authority funds so held by him or her.

17 (3) Pay any sums due from the Authority, as approved for payment by the Board of
18 Directors or by any body or person to whom the Board of Directors has delegated approval authority, making
19 such payments from Authority funds upon warrants drawn by the Auditor-Treasurer.

20 (4) Verify and report in writing to the Authority and to the Parties, as of the first day of
21 each quarter of the fiscal year, the amount of money then held for the Authority, the amount of receipts since
22 the last report, and the amount paid out since the last report.

23 (c) Pursuant to Government Code Section 6505.1, the President, the Vice-President, and such
24 other persons as the Board of Directors may designate, shall have charge of, handle, and have access to the
25 property of the Authority, excluding funds in the custody of the Auditor-Treasurer under paragraph (a) of this
26 Article.

1 (d) The Authority shall secure and pay for a fidelity bond or bonds, in an amount or amounts and
2 in the form specified by the Board of Directors, covering all officers and staff of the Authority, and all officers
3 and staff who are authorized to have charge of, handle, and have access to property of the Authority.
4

5 **ARTICLE 14**

6 **RESPONSIBILITIES OF PARTIES**

7 The Parties shall have the following responsibilities under this Agreement:

8 14.1 Appointments.

9 (a) The governing board or authority of each Party shall appoint representative(s) to the Board
10 of Directors, pursuant to Article 7 hereof.

11 (b) Each Party shall appoint an officer or employee of the Party to be responsible and serve as
12 a liaison between the Party and the Authority for all matters relating to the Authority.

13 14.2 Annual Contributions.

14 If the approved Budget assesses an annual contribution from the Parties, each Party shall contribute
15 that annual assessment amount prior to and/or during each fiscal year as determined by the Board of
16 Directors. County Parties, the City Party, Water Agency Parties, and any Tribal Parties shall pay an equal
17 assessment. At the Board's discretion, DAC Parties may be assessed a reduced contribution.

18 Each Party, through its appointed Director on the Board, shall make a commitment at the date of the
19 Budget's passing that it will pay its assessment. If a Party's budgeted annual contribution payment is not
20 made within sixty (60) days of the commencement of the fiscal year, the Director representing the Party in
21 default may not vote until the contribution payment is made, and the defaulting Party will be deemed to have
22 initiated a 180-day notice intent to terminate membership pursuant to Article 15.

23 All regular contributions toward the operating and/or administrative expenses of the Authority as
24 determined by the Board of Directors shall be made in equal amounts from each of the Parties, except, at the
25 Board's discretion, DAC Parties may be assessed a reduced share.

26 14.3 General Obligations

27 (a) Each Party shall cooperate with and assist the Authority and its contractors in all matters
28 relating to this Agreement, and shall comply with all Bylaws, and other rules by the Board of Directors.

1 (b) Each Party shall have such other responsibilities as are provided elsewhere in this
2 Agreement, and as are established by the Board of Directors and specifically consented to by the Party in
3 order to carry out the purposes of this Agreement.

4 14.4 Projects

5 The responsibility for financing, funding, or providing matching funds for the actual construction of
6 any project shall be the responsibility of the individual public agency or agencies performing or authorizing
7 such construction and shall not be an obligation of the Authority. However, the Authority, if it determines the
8 project will have substantial general benefit throughout the jurisdictions of the County Parties, may take
9 actions to secure financing, funding, or matching funds and to disburse such funds in furtherance of that
10 project.

11 **ARTICLE 15**

12 **WITHDRAWAL AND TERMINATION**

13
14 (a) Any Party may withdraw membership in the Authority and its obligations under this
15 Agreement upon 180 days' advance written notice to the other Parties and the Authority. The written intent
16 to withdraw may be revoked no later than 120 days prior to the end of the 180-day termination period.

17 (b) Whether withdrawal occurs voluntarily under subsection (a) above, or as a result of a default
18 as provided under section 14.2 above, the withdrawing Party will not be liable for (1) the annual contribution
19 assessment, if the assessment occurs during the withdrawal period, or (2) any additional financial
20 commitments made by the Authority following the initiation of withdrawal.

21 (c) Upon withdrawal of a Party from the Authority, no capital contributions of said Party shall be
22 returned to the Party.

23 (d) Should the Board of Directors determine that need and cause exist to dissolve the Authority,
24 any and all Board actions related to termination of this Agreement shall require unanimous consent of
25 directors of the Original County Parties that remain as members, and four-fifths (4/5) of directors of other
26 member Parties.

1 (e) Upon termination of this Agreement, all assets of the Authority remaining after all existing
2 obligations of the Authority have been disposed of, shall be distributed among the Parties to this Agreement
3 and the San Luis & Delta-Mendota Water Authority (as a party to the original Agreement) in proportion to
4 their total cash and in-kind contributions and property contributed (at market value when contributed). The
5 Board of Directors shall determine such distribution within six (6) months after disposal of the last obligation
6 of the Authority.

7 (f) This Agreement and the Authority shall continue to exist until such time as the final
8 disposition of all claims, distribution of all assets, and performance of all other functions necessary to
9 conclude the affairs of the Authority.

10
11 **ARTICLE 16**

12 **LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS AND LEGAL ADVISORS**

13 The members of the Board of Directors, officers, committee members and legal advisors to any
14 board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their
15 powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any
16 mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action
17 taken or omitted by any agent or employee selected with reasonable care, nor for loss incurred through
18 investment of Authority funds, or failure to invest, performed in good faith.

19 No director, officer, committee member, or legal advisor to the Board of Directors or any committee
20 shall be responsible for any action taken or omitted by any other director, officer, committee member, or legal
21 advisor to any board or committee. No director, officer, committee member or legal advisor to any board or
22 committee shall be required to give a bond or other security to guarantee the faithful performance of their
23 duties pursuant to this Agreement.

24 The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority, the,
25 the Auditor-Treasurer of the Authority, any director, officer, committee member, contractor or retained expert
26 or other staff appointed by the Authority or loaned to the Authority by any Party, or any legal advisor to the
27 Board of Directors or any committee for their actions taken within the scope of the authority of the Authority.

1 Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is
2 hereinabove set forth.

3 **ARTICLE 17**

4 **BYLAWS**

5 The Board of Directors may adopt Bylaws consistent with this Agreement which shall provide for the
6 administration and management of the Authority. To be effective, adopted Bylaws and any changes or
7 amendments thereto must be approved by a majority of the Board of Directors.

8 **ARTICLE 18**

9 **NOTICES**

10 The Authority shall address notices, billings and other communications to the member Parties as
11 directed by the Parties. Each Party and the General At-Large Director shall provide the Authority with the
12 address to which communications are to be sent. Each Party and the General At-Large Director shall
13 address notices and other communications to the Authority at the office address of the Authority as set forth
14 in the Bylaws.

15 The Authority shall promptly give each Party and the General At-Large Director a copy of any notice
16 provided to the Authority from anyone, including but not limited to any notice from any other Party or the
17 General At-Large Director, or of any notice provided by the Authority to anyone.

18 **ARTICLE 19**

19 **AMENDMENT**

20 Any terms or provisions of this Agreement may be modified from time to time by the written consent
21 of the governing body of all the Parties without, in any way, affecting the remainder.

22 **ARTICLE 20**

23 **PROHIBITION AGAINST ASSIGNMENT**

1 No Party may assign any right, claim or interest, or delegate any obligation that it may have under
2 this Agreement, and no creditor, assignee or third party beneficiary of either Party shall have any right, claim
3 or title to any part, share, interest, fund, premium or asset of the Authority.

4
5 **ARTICLE 21**
6 **GOVERNING LAW**

7 The Parties agree that for the purposes of venue, performance under this Agreement is to be in
8 Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of
9 this Agreement shall be governed in all respects by the laws of the State of California.

10
11 **ARTICLE 22**
12 **SEVERABILITY**

13 In the event any provisions of this Agreement are held by a court of competent jurisdiction to be
14 invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to
15 mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this
16 Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

17
18 **ARTICLE 23**
19 **AGREEMENT COMPLETE**

20 This Agreement constitutes the entire agreement between the Parties with respect to the subject
21 matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writings,
22 advertisements, publications, and understandings of any nature whatsoever unless expressly included in this
23 Agreement. This Agreement may be executed in one or more original counterparts, all of which together will
24 constitute one and the same agreement.

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26 **ARTICLE 24**
27 **FILING WITH STATE AND COUNTY**
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The President of the Board of Directors of the Authority shall cause the following to be done upon signature of this document or any amendment hereto by all Parties:

- (a) File the required form of notice of this Agreement, and any amendment hereto, with the Office of California Secretary of State, within thirty (30) days of its effective date, as required by Government Code Section 6503.5;
- (b) File a full copy of this Agreement, and any amendment hereto, with the State Controller and the Local Agency Formation Commissions (LAFCOs) of each applicable county within thirty (30) days of its effective date, as required by Government Code Section 6503.6;
- (c) File the required form of notice with the Secretary of State and with the Tulare County Clerk within seventy (70) days of its effective date, as required by Government Code Section 53051;
- (d) File notice of any changes to the information filed under (c) within ten (10) days of the change.

IN WITNESS WHEREOF, the COUNTY OF FRESNO, the COUNTY OF KINGS, the COUNTY OF MADERA, the COUNTY OF MERCED, the COUNTY OF TULARE, the CITY OF FRESNO, the FRIANT WATER AUTHORITY, ~~the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY~~, the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, the CITY OF AVENAL, and the CITY OF ORANGE COVE have executed this Amended and Restated Joint Exercise of Powers Agreement Creating the SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY as of the day and year first hereinabove written.

[SIGNATURES FOLLOW]

COUNTY OF FRESNO

COUNTY OF KINGS

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Nathan Magsig
Chairman, Board of Supervisors

Bernice Seidel, Clerk of the Board

By _____

COUNTY OF MADERA

Brett Frazier
Chairman, Board of Supervisors

_____, Clerk of the Board

By _____

COUNTY OF TULARE

Kuyler Crocker
Chairman, Board of Supervisors

Jason T. Britt, Clerk of the Board/
County Administrative Officer

By _____

FRIANT WATER AUTHORITY

Chris Tantau
Chairman, Board of Directors

By _____

[SIGNATURES CONTINUE ON NEXT PAGE]
**SAN JOAQUIN RIVER EXCHANGE
CONTRACTORS WATER AUTHORITY**

Joe Neves
Chairman, Board of Supervisors

Catherine Venturella, Clerk of the Board

By _____

COUNTY OF MERCED

Lloyd Pareira
Chairman, Board of Supervisors

_____, Clerk of the Board

By _____

CITY OF FRESNO

Lee Brand
Mayor

By _____

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

~~Federico Barajas~~
~~Executive Director~~

By _____

CITY OF AVENAL

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James O'Banion
Chairman, Board of Directors

Melissa Whitten
City Manager

By _____

By _____

CITY OF ORANGE COVE

Victor Lopez
Mayor

By _____

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

Daniel C. Cederborg,
County Counsel, County of Fresno

Deanne Peterson,
County Counsel, County of Tulare

Regina A. Garza,
County Counsel, County of Madera

Forrest W. Hansen
County Counsel, County of Merced

David Prentice,
Interim County Counsel, County of Kings

City of Fresno

Friant Water Authority

~~Rebecca Akroyd, General Counsel
San Luis & Delta-Mendota Water
Authority~~

San Joaquin River Exchange
Contractors Water Authority

City of Avenal

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City of Orange Cove