

December 22, 2020

## **MEETING NOTICE**

### **WATER STORAGE EXPLORATORY COMMITTEE**

#### Board Members of the Water Storage Exploratory Committee

Director Gary Kremen, Committee Chair  
Director Richard P. Santos  
Director John L. Varela

#### Staff Support of the Water Storage Exploratory Committee

Rick Callender, Esq., Chief Executive Officer  
Melanie Richardson, Assistant Chief Executive Officer  
Aaron Baker, Chief Operating Officer, Water Utility  
Rachael Gibson, Chief of External Affairs  
Sue Tippetts, Interim Chief Operating Officer, Watersheds  
Stanly Yamamoto, District Counsel  
Brian Hopper, Senior Assistant District Counsel  
Vincent Gin, Deputy Operating Officer, Water Supply Division  
Christopher Hakes, Deputy Operating Officer, Dam Safety & Capital Delivery Division  
Heath McMahon, Deputy Operating Officer, Water Utility Capital Division  
Don Rocha, Interim Deputy Administrative Officer, Office of Government Relations  
Gregory Williams, Interim Deputy Operating Officer, Raw Water Division  
Emmanuel Aryee, Assistant Officer, Dam Safety & Capital Delivery Division  
Jerry De La Piedra, Assistant Officer, Water Supply Division  
Erin Baker, Asset Management Manager  
Cindy Kao, Imported Water Manager, Imported Water Unit  
Ryan McCarter, Pacheco Project Manager, Pacheco Project Delivery Unit  
Metra Richert, Unit Manager, Water Supply Planning & Conservation Unit  
Charlene Sun, Treasury and Debt Manager  
Katrina Jessop, Senior Engineer, Imported Water Unit  
Andrew Garcia, Senior Water Resources Specialist, Imported Water Unit  
Samantha Greene, Senior Water Resources Specialist, Water Supply Planning & Conservation Unit

A special meeting of the Santa Clara Valley Water District (SCVWD) Water Storage Exploratory Committee is to be held on **Monday, December 28, 2020, at 11:00 a.m.** [Join Zoom Meeting https://valleywater.zoom.us/j/98370230504.](https://valleywater.zoom.us/j/98370230504)

Enclosed are the meeting agenda and corresponding materials. Please bring this packet with you to the meeting.

Enclosures



# SPECIAL WATER STORAGE EXPLORATORY COMMITTEE MEETING

Join Zoom Meeting

<https://valleywater.zoom.us/j/98370230504>

Meeting ID: 983 7023 0504

One tap mobile

+16699009128,,98370230504# US (San Jose)

Dial by your location

+1 669 900 9128 US (San Jose)

Meeting ID: 983 7023 0504



# Santa Clara Valley Water District Water Storage Exploratory Committee Meeting

Teleconferencing Via Zoom  
Join Zoom Meeting  
<https://valleywater.zoom.us/j/98370230504>

## SPECIAL MEETING AGENDA

Monday, December 28, 2020  
11:00 AM

**District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.**

**WATER STORAGE EXPLORATORY  
COMMITTEE**

Gary Kremen, Chair, District 7  
Richard P. Santos, District 3  
John L. Varela, District 1

All public records relating to an item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend the committee meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

JERRY DE LA PIEDRA  
Committee Liaison

GLENNA BRAMBILL  
Management Analyst II  
Office/Clerk of the Board  
(408) 630-2408  
gbrambill@valleywater.org  
www.valleywater.org

**Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.**

**Santa Clara Valley Water District  
Water Storage Exploratory Committee**

**SPECIAL MEETING  
AGENDA**

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Monday, December 28, 2020

11:00 AM

Teleconferencing Via Zoom

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IMPORTANT NOTICES

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by members of the Committee, staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

Members of the public wishing to address the Committee during a video conferenced meeting on an item not listed on the agenda, or any item listed on the agenda, should use the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in the order requests are received and granted speaking access to address the Committee.

Santa Clara Valley Water District (Valley Water) in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Committee meetings to please contact the Clerk of the Board's office at (408) 630-2711, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

**1. Call to Order/Roll Call.**

**2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.**

*Notice to the Public: Members of the public who wish to address the Committee on any item not listed on the agenda should access the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in order requests are received and granted speaking access to address the Committee. Speakers comments should be limited to two minutes or as set by the Chair. The law does not permit Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Committee action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Committee may take action on any item of business appearing on the posted agenda.*

**3. APPROVAL OF MINUTES:**

3.1. Approval of Minutes. [20-1188](#)

Recommendation: Approve the November 9, 2020, Meeting Minutes.

Manager: Michele King, 408-630-2711

Attachments: [Attachment 1: 11092020 DRAFT WSEC Minutes](#)

**4. ACTION ITEMS:**

4.1. Update on Los Vaqueros Reservoir Expansion Project: Joint Powers Authority and Financial Model. [20-1190](#)

Recommendation: Receive and discuss information regarding the creation of a Joint Powers Authority for the construction and operation of the Los Vaqueros Reservoir Expansion Project and the latest financial model and usage fees.

Manager: Jerry De La Piedra, 408-630-2257

Attachments: [Attachment 1: JPA Agreement](#)

Est. Staff Time: 15 Minutes

4.2. Pacheco Reservoir Expansion Project Update. [20-1189](#)

Recommendation: Receive and discuss information regarding status of the Pacheco Reservoir Expansion Project. This is an information-only item and no action is required.

Manager: Christopher Hakes, 408-630-3796

Attachments: [Attachment 1: Powerpoint presentation](#)

Est. Staff Time: 15 Minutes

4.3. Standing Items Information.

[20-1191](#)

Recommendation:

- A. This agenda item allows the Committee to receive verbal or written updates and discuss the following subjects. These items are generally informational; however, the Committee may request additional information from staff:
- B. This is informational only and no action is required.  
*Staff may provide a verbal update at the 12-28-2020, meeting if there is reportable/updated information.*
  - 1. Update on Los Vaqueros Reservoir Expansion Project (LVE) Transfer Bethany Pipeline (TBP) and Update on Management of South Bay Aqueduct (SBA) Facilities (12-28-2020, agenda item)
  - 2. Lake Del Valle
  - 3. Del Puerto (Verbal Update 12-28-2020)
  - 4. Water Banking Opportunities including but not limited to Pleasant Valley Water District (Verbal Update 12-28-2020)
  - 5. Pacheco/San Luis Reservoir Low Point (12-28-2020, agenda item)
  - 6. Semitropic (Verbal Update-12-28-2020)
  - 7. Sites
  - 8. B.F. Sisk Dam Raise Project (Verbal Update 12-28-2020)
  - 9. Shasta (Verbal Update-12-28-2020)

Manager: Michele King, 408-630-2711

4.4. Review Water Storage Exploratory Committee Work Plan and the Committee's Next Meeting Agenda.

[20-1192](#)

Recommendation: Review the Committee's Work Plan to guide the Committee's discussions regarding policy alternatives and implications for Board deliberation.

Manager: Michele King, 408-630-2711

Attachments: [Attachment 1: WSEC 2020 Work Plan](#)

**5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.**

*This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.*

**6. ADJOURN:**

6.1. Adjourn.



# Santa Clara Valley Water District

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**File No.:** 20-1188

**Agenda Date:** 12/28/2020  
**Item No.:** 3.1.

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## **COMMITTEE AGENDA MEMORANDUM**

### **Water Storage Exploratory Committee**

**SUBJECT:**

Approval of Minutes.

**RECOMMENDATION:**

Approve the November 9, 2020, Meeting Minutes.

**SUMMARY:**

A summary of Committee discussions, and details of all actions taken by the Committee, during all open and public Committee meetings, is transcribed and submitted for review and approval.

Upon Committee approval, minutes transcripts are finalized and entered into the District's historical records archives and serve as historical records of the Committee's meetings.

**ATTACHMENTS:**

Attachment 1: 11092020 WSEC Draft Mins

**UNCLASSIFIED MANAGER:**

Michele King, 408-630-2711







SANTA CLARA VALLEY WATER DISTRICT (VALLEY WATER)  
WATER STORAGE EXPLORATORY COMMITTEE

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# DRAFT MINUTES

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**MONDAY, NOVEMBER 9, 2020  
1:00 PM**

(Paragraph numbers coincide with agenda item numbers)

A special meeting of the Water Storage Exploratory Committee (Committee) was held on November 9, 2020, via Zoom.

**1. CALL TO ORDER**

The Water Storage Exploratory Committee was called to order by Chair Director Gary Kremen at 1:00 p.m.

**1.1 ROLL CALL**

Valley Water Board Members in attendance were: Director Gary Kremen-District 7, Director Richard P. Santos-District 3, and Director John L. Varela-District 1.

Valley Water Staff in attendance were: Antonio Alfaro, Aaron Baker, Erin Baker, Glenna Brambill, Debra Butler, Keila Cisneros, Jerry De La Piedra, Andrew Garcia, Vincent Gin, Samantha Greene, Andrew Gschwind, Christopher Hakes, Brian Hopper, Dana Jacobson, Katrina Jessop, Cindy Kao, Eric Leitterman, Michael Martin, Ryan McCarter, Steven Peters, Melanie Richardson, Metra Richert, Donald Rocha, Eli Serrano, Charlene Sun, Jing Wu, Bhavani Yerrapotu, and Beckie Zisser.

Guests in attendance were: Jerry Brown (Sites Authority), Thomas Francis, Danielle McPherson and Nicole Sandkulla (BAWSCA), Steve Jordan (BAWSCA/Purissima Hills Water District), Chung Fu Chang, Yuan Liu, Maureen Martin, Ph.D., and Marguerite Patil (Contra Costa Water District {CCWD}), Paul Sethy and John Weed (Alameda County Water District {ACWD}).

Public in attendance were: Mourad Attalla, Jim Bowley, D. Cramer, Laura Hidas, James Nelson, Javad Shafiei, C. M. Tompkison, and Gene Z.

**2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON AGENDA**

There was no one present who wished to speak.

**3. APPROVAL OF MINUTES**

**3.1 APPROVAL OF MINUTES**

It was moved by Director Richard P. Santos, seconded by Director John L. Varela, and unanimously carried to approve the minutes of the October 30, 2020, meeting of the Water Storage Exploratory Committee by roll call vote and all Directors voting yes with one minor correction for Steve Jordan adding full name for Purissima Hills Water District.

**4. ACTION ITEMS**

**4.2 MONITORING AND ASSESSMENT PROGRAM 2020 EVALUATION OF LOS VAQUEROS RESERVOIR EXPANSION AND SITES RESERVOIR**

Mr. Vincent Gin, Ms. Samantha Greene and Ms. Cindy Kao reviewed the materials as outlined in the agenda item.

The Committee (Directors Kremen, Santos and Varela) discussed the following: staff recommendations, JPA Agreement, long-term dependent on the Delta Conveyance, costs if Valley Water did not participate and impacts if agency chooses to participate at a later date, need to do a cost analysis, is staff time included in recommendations, and reminder to have electeds (Kremen/Santos), legal and staff present at the discussions.

Mr. Steve Jordan commended staff on a clear/concise presentation on LVE. Question on amount of project demand, bringing in options in case reduction happens and BAWSCA withdrew but pays through SFPUC.

Mr. Brian Hopper was available to answer questions.

The Committee took the following action.

It was moved by Director Richard P. Santos, seconded by Director Gary Kremen, and unanimously carried by roll call vote to approve that the Board consider the Committee's recommendation from staff:

- A. Receive and discuss Monitoring and Assessment Program 2020 information regarding the Los Vaqueros Reservoir Expansion Project, including the Transfer-Bethany Pipeline, and the Sites Reservoir Project.
- B. Recommend the Board consider authorizing the CEO to execute Amendment 2 to the 2019 Multi-Party Agreement for Los Vaqueros Reservoir Expansion Project, which includes a contract extension through December 2021 and a cost-share not to exceed \$1,013,661
- C. Recommend the Board consider authorizing the CEO to execute the Second Amendment to 2019 Reservoir Project Agreement for Sites Reservoir project for continued participation through December 2021 at a 0.2% participation level and funding commitment of \$50,000.

Staff Analysis:

Staff agreed with the Committee's recommendation and the items were brought to the Board on November 17, 2020 for approval.

**5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE ACTIONS**

Ms. Glenna Brambill noted there was one action items for Board consideration. Agenda Item 4.2.

The Committee took the following action.

The Committee unanimously approved that the Board consider the Committee's recommendation from staff:

- A. Receive and discuss Monitoring and Assessment Program 2020 information regarding the Los Vaqueros Reservoir Expansion Project, including the Transfer-Bethany Pipeline, and the Sites Reservoir Project.
- B. Recommend the Board consider authorizing the CEO to execute Amendment 2 to the 2019 Multi-Party Agreement for Los Vaqueros Reservoir Expansion Project, which includes a contract extension through December 2021 and a cost-share not to exceed \$1,013,661
- C. Recommend the Board consider authorizing the CEO to execute the Second Amendment to 2019 Reservoir Project Agreement for Sites Reservoir project for continued participation through December 2021 at a 0.2% participation level and funding commitment of \$50,000.

Staff Analysis:

Staff agreed with the Committee's recommendation and the items were brought to the Board on November 17, 2020 for approval.

Chair Kremen moved to Closed Session.

**6. CLOSED SESSION**

**6.2 DISTRICT COUNSEL REPORT ON CLOSED SESSION**

Mr. Brian Hopper reported that direction was given to staff.

**7. ADJOURNMENT**

Chair Director Gary Kremen adjourned the meeting at 1:56 p.m.

Glenna Brambill  
Board Committee Liaison  
Office of the Clerk of the Board

Approved:





# Santa Clara Valley Water District

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**File No.:** 20-1190

**Agenda Date:** 12/28/2020

**Item No.:** 4.1.

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## COMMITTEE AGENDA MEMORANDUM

### Water Storage Exploratory Committee

#### **SUBJECT:**

Update on Los Vaqueros Reservoir Expansion Project: Joint Powers Authority and Financial Model.

#### **RECOMMENDATION:**

Receive and discuss information regarding the creation of a Joint Powers Authority for the construction and operation of the Los Vaqueros Reservoir Expansion Project and the latest financial model and usage fees.

#### **SUMMARY:**

The Santa Clara Valley Water District (Valley Water) continues to evaluate participating in the Los Vaqueros Reservoir Expansion Project (LVE Project) led by Contra Costa Water District (CCWD). The LVE Project would expand Los Vaqueros Reservoir storage from 160 thousand acre-feet (TAF) to 275 TAF and build the Transfer-Bethany Pipeline to connect the reservoir to the State Water Project's (SWP) South Bay Aqueduct (SBA) and California Aqueduct. The LVE Project may provide Valley Water regional storage, new wet year supplies through CCWD's diversion rights, and increased operational flexibility in the conveyance of imported water. This memo provides background on the project, an update on the draft Joint Powers Authority (JPA) Agreement, and an update on the usage fees and the financial model.

#### Background

CCWD estimates the total LVE Project development and construction 40-year life cycle costs to be \$868 million in constant 2018 dollars. The California Water Commission approved a Prop 1 WSIP grant award of up to \$459 million for the LVE Project, including \$22.95 million in early funding. The U.S. Bureau of Reclamation (USBR) received \$2.155 million of federal funding for the LVE Project through the WINN Act for Fiscal Year (FY) 2020. CCWD and the local area partners (LAPs) are continuing efforts to procure additional WINN Act funding beyond FY 2020, ultimately seeking \$223 million in total.

CCWD completed a Draft Feasibility Report with the USBR in January 2018, and the Final Supplement to the EIR/EIS was published in the Federal Register in February 2020. CCWD certified the Final Supplement to the Final EIS/EIR and approved the LVE Project in May 2020. Neither the Draft Feasibility Report nor the EIR/EIS received legal challenges or significant public opposition.

Valley Water is considering participating in either solely the conveyance portion of the project or both conveyance and storage. Valley Water continues to work with CCWD and the LAPs to evaluate long-term participation levels, how it translates to water storage and/or supply benefits, costs, and risks. In addition, Valley Water is working with regional partners to evaluate how storage and conveyance components could support other regional projects, such as the Bay Area Regional Desalination Project and the Refinery Recycled Water Project.

#### Formation of a Joint Power Authority

LAPs, including CCWD, have been working to develop a JPA for the LVE Project. Until the JPA is formed, CCWD is leading the project planning, which includes environmental review and initial design. After JPA formation, project planning, construction, and post-construction activities will transition to the JPA. Post-construction activities include operating the facilities, ensuring adequate funding, facility maintenance and repair, and delivering project water.

The JPA will have a Board of Directors with a representative from each JPA member agency. The JPA agreement as drafted allows member agencies to appoint any member of its governing bodies or a management-level employee and an alternate to serve on the JPA board.

The development of the JPA agreement has been led by an independent counsel (Lagerlof, LLP) working with a Legal Working Group made up of legal staff from CCWD and the LAPs. At the Water Storage Committee meeting of October 30, 2020, the Committee appointed Director Kremen to coordinate with staff and Valley Water's counsel regarding the draft JPA. Staff are briefing Director Kremen on the draft JPA so that he may convey concerns over any of the draft terms.

The December 3, 2020 draft of the agreement is attached as Attachment 1. A JPA Legal Working Group meeting took place on December 18, 2020, and these discussions focused on sections 7.11.2-7.11.3 of the draft agreement which involves financial liability limitations sought by the SFPUC based upon their city charter requirements. The other parties have expressed concern regarding the application of the proposed language, and further discussions on this provision are still needed. Additional subjects of the agreement requiring further discussion include, but are not limited to:

- Facility Definition Clarifications (Sections 1.1.8, 1.1.14, 1.1.20 & 1.1.21);
- O&M of Facilities (Sections 1.1.21-1.1.22);
- Rights regarding future project expansion (Section 1.1.23);
- Directors (Section 2.2 et seq);
- Voting rights and thresholds (section 3.3 et seq.);
- Veto rights sought by EBMUD and CCWD (section 3.3.4);
- Off-Ramps (Section 8.3);
- Member liability (Section 9.2.2);
- Dispute Resolution (Section 10.2);
- Construction of Agreement (Section 10.8); and
- Assignment (Section 10.11).

Further JPA Legal Working Group meetings will be scheduled in December and January. Staff will continue to brief and solicit input from Director Kremen as these negotiations proceed.

#### Usage Fees and Financial Model

LAPs, through the Usage Fees Working Group, have been working with CCWD and EBMUD to negotiate usage fees for existing facilities. CCWD provided their initial usage fee proposal in October 2018. To support the evaluation of the first draft and subsequent negotiations, participants hired Bartle Wells and Associates as a financial consultant. CCWD updated the usage fees memo in March, June, and August of 2020 to address comments raised in a report from Bartle Wells and ongoing dialogue with the Usage Fees Working Group. Under the original proposal, CCWD would have charged the LAPs approximately \$7.0 million per year for use of existing CCWD conveyance facilities and \$4.3 million per year in storage fees to reimburse CCWD for a fair share of land costs and foundational elements provided by CCWD. The current proposal would result in \$3.7 million per year conveyance facility fees and \$4.2 million per year storage fees. With the current draft usage fees memo from CCWD, the LAPs still have two primary concerns that they provided in a joint letter to CCWD:

- 1) The LAPs are expected to pay 1) for the excess capacity and redundancy built into the CCWD system that is associated with the facilities LAPs will use. CCWD states that the LAPs benefit from the redundancy and excess capacity; LAPs argue that they should only pay for capacity used.
- 2) The LAPs think more work is needed to determine a fair cost for the use of land inundated by the reservoir expansion and inclusion of watershed lands that protect reservoir water quality.

CCWD has drafted a joint Letter of Intent (LOI) with the LAPs to memorialize the discussion, cost calculation methodology, and CCWD's usage fees determination while other aspects of the LVE project (and the JPA) are negotiated. The LOI represents the intention of CCWD and the LAPs to negotiate in good faith the usage fees associated with the use of CCWD's existing facilities as part of the LVE Project; it does not create any binding financial commitments. Usage fees will be negotiated further between CCWD and the JPA, pending Board direction from each LAP. The discussion on usage fees is expected to resume later next year after the JPA is formed and other costs associated with the project are better defined.

CCWD released an updated financial model (version 4.0) on December 4, 2020, that focuses on the updated (August 2020) CCWD usage fees. The financial model released by CCWD is at the full project level and costs are not broken down by project partner. The next version of the financial model (version 5.0) is anticipated to be released in early 2021 and will include projected cost allocations by each project partner. Staff will be able to present updated cost allocation for Valley Water once Version 5.0 is released.

#### **Next Steps**

The following are the key long-term decision points and milestones for the LVE Project:

- Early to mid-2021: WSEC Committee meeting to consider Valley Water participation in JPA

and Board meeting to consider Valley Water participation in JPA.

- Late-2021: JPA executes Service Agreements (storage and/or conveyance services) with CCWD and the LAPs. The JPA executes Facilities Usage Agreements with CCWD and EBMUD for existing facilities (i.e., establishes user fees).
- 2022: Construction starts on the initial LVE Project elements
- 2023-2025: Construction of Transfer-Bethany Pipeline.
- 2027-2029: Construction of Los Vaqueros dam raise, upgraded pumping facilities, and other conveyance improvements.

**ATTACHMENTS:**

Attachment 1: Draft JPA Agreement

**UNCLASSIFIED MANAGER:**

Jerry De La Piedra, 408-630-2257



**LOS VAQUEROS RESERVOIR  
JOINT EXERCISE OF POWERS AGREEMENT**

**THIS JOINT POWERS AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date defined below, by and between the parties listed on Exhibit A attached hereto, which is incorporated herein by this reference. Those parties are referred to in this Agreement individually as a “Member” and collectively as the “Members.”

**RECITALS**

- A. Each Member is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- B. Each Member has the power to plan for, design, construct, operate, maintain, repair, and replace water-related facilities, as contemplated in the Project, as defined in Section 1.1.23, below; and
- C. The Members desire to use any and every power common to them for the purpose of designing, constructing, operating, repairing and maintaining the Project, or taking such other actions that will make the use of the Project more efficient or effective providing the Members and their respective ratepayers a more reliable water supply;
- D. The Members desire, by means of this Agreement, to establish a new public agency that is separate and apart from each of the Members for the design, construction, operation, and administration of the Project, and for related purposes.

**NOW THEREFORE**, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Members agree as follows:

**ARTICLE 1  
GENERAL PROVISIONS**

**1.1** **Definitions.** Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

1.1.1 **Act** means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.

1.1.2 **Administrative Agreement** means the agreement between the Authority and the Administrator under which the Administrator will provide administrative services to the Authority and will be reimbursed for the costs of those services.

1.1.3 **Administrator** means the person or entity engaged by the Board of Directors to manage and administer the financial and administrative activities of the Authority in accordance with Section 4.5, below.

1.1.4 Agreement means this Joint Exercise of Powers Agreement.

1.1.5 Authority means the Los Vaqueros Reservoir Joint Powers Authority, which is created by this Agreement.

1.1.6 Board or Board of Directors means the Board of Directors referred to in Article 2 of this Agreement, which is the governing body of the Authority.

1.1.7 CCWD means Contra Costa Water District, a county water district formed under Division 12 of the Water Code, and the owner of the Los Vaqueros Reservoir.

1.1.8 CCWD-Provided Facility means an existing facility owned and operated by CCWD with excess capacity that has been made available for use by the Authority in accordance with the Facilities Usage Agreement between CCWD and the Authority. CCWD-Provided Facilities are listed and identified in Exhibit B, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.9 Costs of Service mean the costs of Services included in the payments, or other non-monetary benefits, the Authority will receive from Members pursuant to the Service Agreements. The Costs of Service, which shall be as fully described and specified in the respective Service Agreements, are anticipated to include, but are not limited to, Project development costs; debt service, to the extent applicable under any agreed upon financing vehicle, including interest, on bonds the Authority will issue; amounts payable to CCWD and EBMUD under the Facilities Usage Agreements; operations and maintenance costs of the Project; Authority administrative expenses; capital reserve payments; and payments to a renewal and replacement fund the Authority will establish.

1.1.10 Design & Construction Agreement means the design and construction agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the builder and operator on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the builder and operator on Exhibit B hereto. Those agreements will address the design and construction services to be provided by the contracting party in accordance with industry standards.

1.1.11 Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement or a duly appointed alternate acting for the appointed Board member in his or her absence.

1.1.12 Early Funding Agreement means the agreement between the California Water Commission and CCWD, dated December 20, 2018, to provide advances of up to \$22.95 million to partially fund Project development activities.

1.1.13 EBMUD means East Bay Municipal Utility District, a municipal utility district formed under Division 6 of the Public Utilities Code.

1.1.14 EBMUD-Provided Facility means an existing facility owned and operated by EBMUD, that may be made available for use by the Authority in accordance with, and to the extent provided by, the Facilities Usage Agreement between EBMUD and the Authority. EBMUD-Provided Facilities are listed and identified in Exhibit B as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.15 Effective Date means [\_\_\_\_\_].

1.1.16 Facilities Usage Agreement means the agreements entered into by the Authority and CCWD as to CCWD-Provided Facilities and by the Authority and EBMUD as to EBMUD-Provided Facilities, pursuant to which the use of capacity in those facilities is made available to the Project and paid for by the Authority through payments to be specified in those agreements.

1.1.17 Fiscal Year means the period commencing on July 1 of each year and ending on and including the following June 30.

1.1.18 Interim Funding Agreement means the agreement entered into among CCWD and the Members, following formation of the Authority, to provide an interim source of funding for Project development costs, including the initial expenses related to the formation of the Authority, prior to the time where permanent sources of Authority revenues are in place. The Interim Funding Agreement is separate from the Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning, as amended, which has provided funding for Project-related functions prior to formation of the Authority, and from the Service Agreements, which are expected to provide funding to the Authority once it is in a position to provide Services to the Members. It is contemplated the above-referenced Cost Share Agreement, as amended, will provide funding before formation of the Authority, the Interim Funding Agreement will provide funding in the early stages after formation of the Authority and the Service Agreements will provide permanent, ongoing funding for the Authority.

1.1.19 Member means any of the members of the Authority, as listed on Exhibit A hereto, and any other entity added to this Agreement by a subsequent amendment. As used herein, the term "Member" shall not include the Department of Water Resources, which pursuant to Water Code Section 79759(b), shall be an ex officio non-voting member of the Authority.

1.1.20 Modified Facilities means existing facilities owned by CCWD or EBMUD that will be modified as part of the Project, funded in whole or in part through the Authority's proportional share of the costs of development, design, construction, operations and maintenance which are expected to be financed or paid through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, or through one or more Sub-Project Agreements among those Members benefitting from specific Modified Facility(ies), which agreements shall set forth the Authority's rights and obligations with respect to any particular Modified Facility. The Modified Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below. A Modified Facility may also be referred to as a "specific component" of the Project for purposes of describing specific Modified Facilities to be included in particular financings the Authority will undertake.

1.1.21 New Facilities means facilities necessary for the Project that are expected to be financed by the Authority and designed, built, owned, operated and maintained by CCWD or EBMUD through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, or through one or more Sub-Project Agreements among those Members benefitting from specific New Facility(ies), which agreements shall set forth the Authority's rights and obligations with respect to any particular New Facility. The Authority, including CCWD and EBMUD in their capacity as Members, is expected to be solely responsible for all costs and liabilities related to the New Facilities. The New Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below. A New Facility may also be referred to as a "specific component" of the Project for purposes of describing specific New Facilities to be included in particular financings the Authority will undertake.

1.1.22 O & M Agreement means the operations and maintenance agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the builder and operator on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the builder and operator on Exhibit B hereto. Those agreements will address operations and maintenance services to be provided by the contracting party in accordance with industry standards, and the payment for such services the Authority will be obligated to make.

1.1.23 Project means generally the second phase of the efforts to expand existing conveyance facilities, and construct new conveyance facilities, at the Los Vaqueros Reservoir owned and operated by CCWD. The Project will expand Los Vaqueros Reservoir to a capacity up to 275,000 acre-feet and will interconnect CCWD's intake system to new and existing conveyance facilities that will serve the Members to create a regional system. The Project is expected to provide statewide public benefits, including ecosystem benefits to south-of-Delta wildlife refuges, drought and non-drought emergency water supply benefits for the Members, and recreation benefits. The Project is also expected to provide benefits to regional water supply agencies, integration with state and federal water systems, Central Valley Project operational flexibility, and enhanced opportunities for sustainable groundwater and recycled water management. The Project includes the components specified in Exhibit B hereto as to be more specifically described in subsequent agreements, including New Facilities, Modified Facilities, CCWD-Provided Facilities and EBMUD-Provided Facilities. The Project may include any Sub-Projects approved by the Board of Directors and facilities associated therewith.

1.1.24 Services mean the services of the Project provided to the Members pursuant to the respective Service Agreements, consisting, in general, of water storage and conveyance through the various facilities to which the Authority has contracted to have access and use in accordance with the Facilities Usage Agreements. Specific services to be provided to Members will depend on Members' requests, water delivery priorities specified in the Service Agreements, hydrological conditions and permit and regulatory conditions.

1.1.25 Service Agreement means an agreement entered into by a Member and the Authority pursuant to which the Authority provides Services to the Member and the Member is obligated to make payments, or provide other non-monetary benefits to the Authority with respect to the costs thereof, as consideration for those Services, all in accordance with the terms and conditions of any such Service Agreement. It is the intent of the Members that the Service Agreements shall allocate the Costs of Service among the Members in proportion to their anticipated use of Project facilities and other benefits a Member derives from the Project in accordance with the "beneficiary pays" principle. It is also the intent of the Members that the Service Agreements will also allocate costs in a manner to negate any cross-subsidy among Members (i.e., where any Member obtains an unreasonable financial benefit through financial contributions of another Member or other Members), taking into consideration any grant funding the Authority or any Member has received for Project-related costs.

1.1.26 Sub-Project means an effort, not deemed to be of general benefit to all Members, but consistent with this Agreement's purposes and the Authority's objectives, which is undertaken through the Authority by a subset of Members which choose to voluntarily participate in the particular Sub-Project, and with respect to which only such participating Members shall receive benefits or incur financial or other obligations.

1.2. Findings. The Members find and declare the following:

1.2.1. The Members represent a diverse group of government entities engaged in water management, conservation, and/or delivery in the San Francisco Bay-Delta and Central Valley region. This area's regional water systems are vulnerable to water shortages due to emergencies such as earthquakes, fire, or drought, and to dry year supply decreases due to insufficient regional storage.

1.2.2. The Project will improve Bay-Delta and Central Valley water supply reliability and water quality while providing additional habitat and Delta ecosystem benefits.

1.2.3. The Authority is created to enable local governments responsible for water distribution to work collaboratively with a regional focus to improve water supply reliability.

1.3 Purposes and Objectives. The purposes of this Agreement are to: (1) create the Authority; (2) provide for the administration of the Authority; (3) plan for, design, construct, operate, maintain, repair, and replace the Project for the benefit of the Members and the region; and (4) coordinate the performance of services related to the Project and approved by the Board of Directors. The primary objectives of the Authority are to:

1.3.1 Provide governance of the Project by the Members;

1.3.2 Ensure sufficient stable funding for the Project and related administrative and support activities to be provided through the Service Agreements and Administrative Agreement;

1.3.3 Ensure costs are reasonable and cost allocations are equitable and transparent, as provided through the Service Agreements; and

1.3.4 Ensure reliable delivery of water to the Members consistent with the terms of the Service Agreements, such that the Members are provided with the contemplated benefits from their respective investments in the Project.

1.4 Creation of Authority. Pursuant to the Act, there is hereby created a public entity known as the "Los Vaqueros Reservoir Joint Powers Authority." The Authority shall be a public entity separate and apart from the Members.

1.5 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Members as provided in Article 8 of this Agreement.

1.6 Powers of Authority.

1.6.1 General Powers. The Authority shall exercise, in the manner herein provided, the powers common to the Members, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.

1.6.2 Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- (a) To make and enter contracts;
- (b) To employ agents and employees;

- (c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- (d) To acquire, hold or dispose of property;
- (e) To supervise and manage the Project so as to deliver state, federal, and Member benefits commensurate with state, federal, and Member investment in the Project;
- (f) To incur debts, liabilities, or obligations which do not constitute a debt, liability, or obligation of any Member;
- (i) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions, and donations;
- (j) To prescribe the duties, compensation, and other terms and conditions of employment of other agents, officers, and employees;
- (k) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;
- (l) To apply for, accept, receive, and disburse grants and loans from local, state, or federal agencies or from individuals or businesses;
- (m) To sue and be sued in its own name;
- (n) To fund and maintain adequate reserve funds to support debt and operational requirements;
- (o) To invest money in its treasury, pursuant to Government Code Section 6505.5 et seq., that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- (p) To enter into state funding agreements and federal funding agreements relating to the Project, and assume rights and obligations pursuant to these agreements;
- (q) To finance Project development activities through a combination of early Water Storage Investment Program funding and pay-as-you-go contributions from the Members;
- (r) To enter into one or more Design & Construction Agreements and O & M Agreements with CCWD and EBMUD, as applicable;
- (s) To enter into the Facilities Usage Agreements with CCWD and EBMUD in connection with the Authority's use of CCWD-Provided Facilities and EBMUD-Provided Facilities, respectively;

- (t) To enter into the Administrative Agreement with CCWD;
- (u) To enter into agreements with individuals or entities providing program management, Watermaster, legal, financial, accounting, auditing, and other services as required;
- (v) To enter into agreements with the California Department of Water Resources, the California Department of Fish and Wildlife, the United States Department of Interior, the United States Bureau of Reclamation, and other local, state or federal entities as may be required to comply with the requirements of any state or federal funding agreements and to implement the Project, including the administration of public benefits;
- (w) To issue Project revenue bonds, secured by revenues of the Project and other Member financial commitments that may be required in connection with that issuance, to provide financing for the Project;
- (x) To deliver Services to the Members, and receive payment from the Members, pursuant to the Service Agreements;
- (y) To exercise any and all powers which are provided for in the Act and in Government Code Section 6584 *et seq.*, including, without limitation Government Code Section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended;
- (z) To take action by resolution, ordinance, or motion, as approved by the Board of Directors as specified herein;
- (aa) To carry out and enforce all provisions of this Agreement with respect to the activities necessary to undertake the development, construction, and operation of the Project;
- (bb) To conduct such other activities as are necessary and appropriate to the above; and
- (cc) To exercise any power necessary or incidental to the foregoing powers.

1.7 Manner of Exercising Authority Powers. The Authority shall exercise its powers in the manner by which Contra Costa Water District exercises its powers, except to the extent this Agreement or the Act specifically provide otherwise.

## **ARTICLE 2 BOARD OF DIRECTORS**

2.1 Creation. The Authority shall be governed by a Board of Directors, which is hereby established, consisting of one (1) Director for each Member, along with one (1) Director appointed by the Department of Water Resources, which is required by law to be a non-voting ex officio member of the Authority pursuant to Water Code Section 79759(b). The governing board shall be known as the "Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority." All voting power shall reside in the Board and be exercised as specified in Section 3.3, below. By establishing the Authority and creating the Board of Directors, the Members do not intend to create any incompatibility between the service of a Member's governing body member on the Member's governing body, and

his or her service as a Director of the Authority, and this Agreement shall be interpreted, if and where necessary, so that no such incompatible office exists.

## 2.2 Directors.

2.2.1 Directors Appointed; Term. Within thirty (30) days of the Effective Date of this Agreement, each Member shall designate and appoint, by a formal action of its governing body, either one (1) member of its governing body (provided that any Member which itself consists of one or more member agencies may appoint any member of one of its member agencies' governing bodies), or a management-level employee of the Member, or of any member agency of a Member, to act as its representative on the Board of Directors; and one (1) other governing body member or Member employee, either by name or position title, to act as an alternate to that Director so appointed. If a Director's or alternate's membership on the appointing Member's governing body ceases or that person ceases to be on the governing body of a Member's member agency, if applicable, or if the Director or alternate is an employee of the Member, or of a Member's member agency, and the Director's or alternate's employment by the Member ceases, his or her membership on the Board or position as an alternate, as applicable, shall also immediately cease. The alternate appointed by each Member shall have the authority to attend and participate in any meeting of the Board, but shall only be allowed to vote at any meeting of the Board when the regular Director is absent. At any meeting of the Board when the regular Director is absent, the alternate shall have the full authority of the Member to vote on any issue before the Board. Each Director shall hold office until his or her successor is selected by the appointing Member, except where immediate cessation of Board membership is expressly provided for by this section. Directors shall serve at the pleasure of the governing board of the appointing Member and may be removed at any time, with or without cause, in the sole discretion of the appointing Member's governing board. If a Director ceases to serve on the Board, the Member that appointed that Director shall select that Director's replacement, and may allow the alternate then serving to fill that Director's position on a temporary or permanent basis, in that Member's discretion.

2.2.2 Board Compensation. The Board shall serve without compensation from the Authority. Compensation may be provided as approved by the Member that appoints its representative Director and alternate, and any such compensation will be the responsibility of that Member.

2.3 Powers and Responsibilities of the Board. All of the power and authority vested in the Authority shall be exercised by the Board of Directors, which may delegate such power in its discretion. Notwithstanding the above, the Board shall not delegate its legislative powers. In exercising these powers, the Board shall undertake the following roles and responsibilities:

2.3.1 Fulfill the Authority's purposes;

2.3.2 Engage key Authority executives, including the Executive Director, as desired by the Board, and the Attorney;

2.3.3 Approve the engagement of a Financial Manager, Program Manager, Watermaster, and other consultants and advisors;

2.3.4 Approve annual or two-year budgets;

2.3.5 Approve agreements through which Project will be implemented;



2.3.6 Fund the Authority and Project through issuance of bonds and collections from Members; and

2.3.7 Establish committees for activities such as design, construction, and operations.

2.4 Provision for Bylaws. The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member shall receive a copy of any bylaws developed and adopted under this section.

### ARTICLE 3 MEETINGS OF THE BOARD

3.1 Meetings. The Board shall meet as frequently as the Board deems necessary to conduct the Authority's business, but at least quarterly, and shall provide for the date, hour, and place of its regular meetings by Resolution of the Board filed with the governing body of each Member. The Board may meet by teleconference or by video conferencing, and in joint session with other public agencies and advisory bodies in accordance with California law.

3.2 Ralph M. Brown Act. All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with Section 54950 of the Government Code.

3.3 Voting. ***[Consensus from October 20 Legal Work Group call was reached to have only one level of super-majority voting, with some issues, such as PERS participation and commencement of any litigation by the JPA to be unanimous. Consensus was to not have weighted voting.]***

3.3.1 Simple Majority Votes. Subject to the veto rights provided in Section 3.3.4, below, and the provisions of Section 3.4, below, each Member shall have one vote, to be exercised by that Member's Director. Except as otherwise provided by law or as set forth in Sections 3.3.2 and 3.3.3, below, all actions of the Board, including, but not limited to, approval of Authority budgets under Article 7, below, and approval of the issuance or refunding of bonds or other indebtedness of the Authority, shall be approved on the affirmative vote of a majority of the total number of Directors. In the event of a tie vote among the Directors, the matter will not be considered to have passed.

3.3.2 Items Requiring at Least Three-Quarters Votes for Approval. Notwithstanding Section 3.3.1, above, the following actions of the Board must be approved by at least three-quarters (seventy-five percent (75%)) of the total number of Directors, but subject to Section 3.4, below:

3.3.2.1 Approval of the admission of a new Member;

;

3.3.2.2 Approval of an amendment to the Agreement; provided that if the proposed amendment (i) is to change the requirement for unanimous approval of an action as set forth in Section 3.3.3, or (ii) relates to the veto right provided by Section 3.3.4, then any such amendment must have unanimous Board approval; and

3.3.2.3 Termination of the Agreement.

3.3.3 Items Requiring Unanimous Approval. Notwithstanding Section 3.3.1, above, the following actions of the Board must be unanimously approved by the Board:

3.3.3.1 Commencement of litigation by the Authority against any local, state or federal agency relating to the funding or operation of the Project; or against any Member to interpret or enforce this Agreement or otherwise relating to the Member's obligations concerning the Project; provided that the Member against whom that litigation is contemplated shall not be included in that unanimous vote requirement;

3.3.3.2 Approval of any additional funding contributions under Section 7.9.2, below;

3.3.3.3 Any disproportionate disbursement made upon termination of this Agreement pursuant to Section 8.5, below;

3.3.3.4 Any decision by the Board to approve the creation of positions of employment for the Authority; and

3.3.3.5 Approval of any contract with Cal-PERS or any other public retirement system.

3.3.4. Veto Rights of CCWD and EBMUD. Notwithstanding any other provision of this Agreement, for any proposed decision by the Board of Directors that either CCWD or EBMUD determines would have an adverse and material effect upon a CCWD-Provided Facility or an EBMUD-Provided Facility, respectively, or upon one or more New Facilities or Modified Facilities, CCWD or EBMUD, as applicable in connection with the facility(ies) to be affected, shall have the right to veto that decision. The Board representative of the affected Member (i.e., either CCWD or EBMUD) shall exercise the veto by declaring an intention to veto a proposed decision during a Board meeting at the time the matter is discussed or considered for action. If such intent is declared, the Board may (i) proceed immediately with a vote on the matter, or (ii) by majority vote, delay the vote on that matter to a future meeting to allow the development of an alternative or modified recommended action. If the Board elects to hold a vote, the affected Member may veto the proposed action, which veto shall be final and conclusive. In the event of such a veto, the Authority shall not proceed with the action specified in that proposed decision. If the Board elects to delay the matter to a future meeting, the Members shall meet and confer in good faith to attempt to develop a revised action which addresses the adverse and material effect, to be proposed at the next Board meeting, or as soon thereafter as Authority staff, the Administrator, the Executive Director (if one has been appointed), or the

Members can obtain any further information or clarifying direction as needed to propose an alternative or modified recommended action. Any revised action proposed to the Board shall be subject to the veto rights described in this section. No proposed action shall be delayed pursuant to this section more than once, except with the consent of the Member which declared its intent to veto the action.

For purposes of this subdivision, an “adverse and material effect” includes the following: (a) a decision that would unreasonably increase the affected Member’s operational costs as compared to that Member’s existing operational costs; (b) a decision that would decrease capacity of the subject facility; (c) a decision that would materially restrict the affected Member in its operation of the subject facility or in its ability to provide an adequate water supply within its service area; (d) a decision that would result in a material adverse impact on the quality of water conveyed from the Project; and/or (e) a decision that would cause the Project in CCWD’s determination to fail to meet one or more of the conditions set forth in Resolution No. 03-24 adopted by CCWD’s Board of Directors on June 18, 2003.

3.4 Special Voting Rules Applicable to Grassland Water District. Due to the fact that Grassland Water District will not be making monetary contributions to the Authority, Grassland Water District will not be entitled to vote on financial matters impacting the Authority, including those items specified in Section 3.3.2, above; provided, however, that Grassland Water District shall be entitled to vote on financial matters concerning the administration of public benefits or the delivery of ecosystem benefits to south-of-Delta refuges. In any situation where Grassland Water District is not permitted to vote, for purposes of the determination of the vote needed for approval, Grassland Water District shall not be counted as a voting Member, such that the total number of voting Members is reduced by one in calculating total number of votes that may be cast and utilized in determining any applicable threshold for the Board’s approval of any such action.

3.5 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business.

3.6 Board Action. The Board may act by resolution, ordinance, or motion. Unless otherwise provided in the bylaws or by law, ordinances shall not be required to be introduced and adopted at separate meetings of the Board.

3.7 Minutes. The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Member.

3.8 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its and the Authority’s affairs as may be required.

#### **ARTICLE 4 OFFICERS AND EMPLOYEES OF THE AUTHORITY**

4.1 Chair. At the Board of Directors’ first meeting, and then in its first quarterly meeting of each calendar year, it shall elect one of the Directors as Chair of the Board. The term of office for the Chair shall be one year. A Chair may not serve more than four (4) consecutive terms as Chair, and the foregoing term limit shall also apply to the Member on whose behalf the Chair is serving, such that no Member shall be allowed to have any Director or combination of Directors serve on its behalf as Chair for more than four (4) consecutive terms. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors. Subject to

the foregoing, the position of Chair shall be elected on the basis of the individual Director and not on the basis of the underlying Member with which the Chair is affiliated.

4.2 Vice-Chair. At the Board of Directors' first meeting, and then in its first quarterly meeting of each year, it shall elect one of the Directors as Vice-Chair of the Board. The term of office for the Vice-Chair shall be one year. The Vice-Chair shall perform all the duties of the Chair in the absence of the Chair, or in the event the Chair of the Board is unable to perform such duties, and shall perform such other duties as are specified by the Board of Directors.

4.3 Secretary. The Board may appoint the Authority's Secretary or may delegate the appointment of the Authority's Secretary to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Secretary. If the Board does not elect to appoint an individual of its own choosing as the Secretary, the Secretary shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator. The Secretary shall be responsible for the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as specified by the Administrator pursuant to the Administrative Agreement, as applicable. If the Board elects to appoint another individual of its own choosing, the Secretary shall perform such other duties as the Board of Directors specifies.

4.4 Treasurer and Auditor/Controller. Pursuant to Government Code Sections 6505.5 and 6505.6, the Board may appoint the Authority's Treasurer and Auditor/Controller or may delegate the appointment of the Authority's Treasurer and Auditor/Controller to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Treasurer and Auditor/Controller. If the Administrator is an entity, it may appoint its senior financial officer (such as its chief financial officer, director of finance, or finance manager, as designated by the Administrator) as the Treasurer and Auditor/Controller. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. The Treasurer shall also manage the Authority's billing and cash management, financial reporting and debt; engage the independent auditor to review the Authority's financial statements; and report to the Authority's Executive Director or to the Administrator if no Executive Director has been appointed. The offices of Treasurer and Auditor/Controller may be held by separate individuals, or combined and held by one individual as the Board may elect. If the Board does not elect to appoint another individual of its own choosing as the Treasurer and Auditor/Controller, the Treasurer and Auditor/Controller shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator.

4.5 Administrator.

4.5.1 Generally. The Board of Directors shall select the Administrator, which shall provide management and administrative services for the Authority, as more specifically described in Section 4.5.2, below. CCWD shall serve as the initial Administrator, and its rights and responsibilities in that role shall be set forth in the Administrative Agreement. The Board may, in its discretion, upon the termination or assignment of the Administrative Agreement, appoint a subsequent Administrator to replace CCWD, may transfer some or all of the Administrator's duties to the Executive Director appointed under Section 4.6, below, or may combine the Administrator's position with the Executive Director; subject, however, to ensuring that any contractual obligations CCWD has undertaken with respect to the administration of the Project, including under the Early Funding Agreement, are met. Until such time as an Executive Director is appointed, the Administrator shall report to the Board.

After an Executive Director is appointed, the Administrator shall report to the Executive Director and be subject to the Executive Director's supervision, subject to compliance with any existing contractual obligations of the Administrator.

4.5.2 Administrator Services. Subject to the Board's revision of duties of the Administrator, which may be transferred to the Executive Director in the Board's discretion, the Administrator shall perform all services reasonably necessary for the management and administration of the Authority including, but not limited to:

- (a) coordinating the planning, design, permitting (including compliance monitoring), operations modeling and analysis, and procurement activities necessary to construct and operate the Project, including through funds provided by the Early Funding Agreement, which CCWD shall continue to manage as the initial Administrator, and Interim Funding Agreement;
- (b) coordinating and preparing for Board meetings;
- (c) identifying and selecting key staff that will provide services to the Board and the Authority, including staff who may potentially serve as Secretary and Treasurer and Auditor/Controller, as the Board or Administrator may determine;
- (d) being responsible for the appointment, employment, management, and/or termination of any personnel (other than the Executive Director and Authority Attorney), contractors, or consultants providing services to the Authority including, but not limited to, contractors and consultants necessary for the financing, planning, design, permitting and procurement of the Project;
- (e) performing administrative tasks related to the Board's selection and appointment of the Authority Attorney;
- (f) implementing the policies, decisions, and directions of the Board, as provided to the Administrator;
- (g) conducting communications and outreach support and website hosting;
- (h) coordinating and conferring with the Members' technical staffs relative to Project-related functions; and
- (i) such other duties as are determined by and assigned by the Board.

4.5.3 Compensation. The Administrator shall be compensated for the services it renders to the Authority as specified in the Administrative Agreement, or in any other contractual arrangement between the Administrator and the Authority.

4.5.4 Administrator Staff. If the Administrator is an entity, the Administrator shall identify key staff that shall provide services required of the Administrator, including one employee who shall serve as the main point of contact for the Authority. Such key staff identified by the Administrator shall be qualified to perform services required of the Administrator. Unless otherwise

agreed in writing by the Authority, such key staff shall at all times remain under the exclusive direction and control of the Administrator and the Authority shall not have any right to discharge or discipline any member of the Administrator's staff. Subject to payment by the Authority as provided in the Administrative Agreement or other agreement, the Administrator shall be responsible for all compensation, supervision, and administrative costs relating to its staff. If the Administrator is an individual, the Administrator shall coordinate the retention of any outside staff with the Board and obtain approval of such staff positions from the Board before hiring or retaining any such staff.

4.5.5 Independent Contractor; Authority Employees. Until such time, if any, as the Administrator is hired as an Authority employee, as provided under this Agreement and to the extent allowed by law, the Administrator shall be retained as an independent contractor and not an employee of Authority. No employee or agent of the Administrator shall become an employee of the Authority, except as may be agreed in writing. Any Administrator employees or agents assigned to provide services under this Agreement shall remain under the exclusive control of the Administrator. The Authority may only create positions of employment with unanimous approval by the Board.

4.6 Executive Director. The Board of Directors may appoint an Executive Director to work with the Administrator in connection with the duties specified under Section 4.5.2, above. The Executive Director may be an employee of the Administrator. Upon the appointment of an Executive Director, the Board may transfer any of the Administrator's duties to the Executive Director, as may be feasible based on applicable contractual limitations set forth in the Early Funding Agreement. As determined by the Board, the Executive Director may be an independent contractor; an employee of the Administrator, of a Member or of a non-Member firm or entity; or, upon unanimous approval of the Board, an employee of the Authority. It is contemplated that the Executive Director would report directly to the Board and would manage Authority activities, ensure that the Board receives appropriate and timely information, supervise the Administrator, including coordinating Project activities with the Administrator, and ensure that the Authority provides services to the Members in accordance with the respective Service Agreements.

4.7 Authority Attorney.

4.7.1 Appointment. The Attorney for the Authority shall be appointed by the Board of Directors, provided that an individual, office, or firm providing general counsel services to one of the Members shall not serve as the Authority Attorney. Such individuals, offices, or firms may, however, provide special counsel services to the Authority. Notwithstanding the above, the general counsel to one of the Members may provide interim general counsel services until the Board appoints an Authority Attorney.

4.7.2 Duties. The Attorney for the Authority or a designated deputy shall attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties as the Board of Directors specifies, including, but not limited to, obtaining specialized legal services.

4.8 Program Manager. The Board may authorize the hiring of a Program Manager, who shall report to the Executive Director. The Program Manager shall coordinate with the Administrator and/or Executive Director regarding various design and construction activities for the Project, including coordination with CCWD and EBMUD in accordance with the Design and Construction Agreement and O & M Agreements with respect to decisions likely to have a cost impact on the Authority and the Members. Such coordination shall include, but not be limited to, budget tracking, scheduling and quality control/quality assurance, with the understanding that CCWD and EBMUD have primary responsibility for the design and construction of their respective facilities, as will be specified in the Design & Construction Agreements. The Program Manager, in consultation with the

Executive Director and subject to Board approval in accordance with Authority policies, may contract for additional services that may be required.

4.9 Watermaster. The Board may authorize the hiring of a Watermaster, who shall report to the Executive Director. The Watermaster shall oversee the operations of the Project in coordination with CCWD as to CCWD-Provided Facilities and with EBMUD as to EBMUD-Provided Facilities. The Watermaster's duties shall include scheduling necessary diversions and deliveries of stored water in response to Members' requests on behalf of the Members, coordinating Members' storage and conveyance needs with CCWD's system operator, tracking the delivery of Services to the Members, and ensuring compliance with all reporting requirements and coordinated operations agreements with the United States Department of Interior, Bureau of Reclamation and the California Department of Water Resources. The Watermaster shall perform his or her duties in accordance with the Facilities Usage Agreements and operating protocols to be adopted by the Board of Directors, but such protocols shall not restrict CCWD's or EBMUD's ability to manage their respective facilities. Any Watermaster decision shall be subject to an appeals process to be established by the Board.

4.10 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Board of Directors of the Authority.

4.11 Additional Officers and Employees. The Board shall have the power to appoint such additional officers and to make modifications to the Authority's organization chart—and the Executive Director, upon consultation with the Board and with the Board's required approval, as applicable, shall have the power to hire and terminate such employees, assistants, contractors, consultants, and others, as may be appropriate.

## **ARTICLE 5 COMMITTEES**

5.1 Committees. The Board of Directors, by a majority vote, may form committees for any purpose. Such vote shall designate the method for appointing committee members, the scope of the duties and responsibility of the committee, whether the committee is a standing or ad hoc committee, and such other matters as the Board may deem appropriate. Standing committee meetings are subject to the Ralph M. Brown Act, commencing with Section 54950 of the Government Code. Committees may, but need not, consist solely of Members' staffs to provide technical review and input concerning Project-related issues.

## **ARTICLE 6 PROJECT OPERATIONS**

6.1 Sub-Projects. Upon approval by a majority of the Board of Directors, some of the Members may establish a Sub-Project that such Members will undertake through the Authority for matters not deemed to be of general benefit to all Members, provided that no Member shall be involved in any such Sub-Project without the approval of its governing body. A specific written Sub-Project Agreement between the Members who consented to participate in the specific Sub-Project and the Authority shall be established for each Sub-Project to set forth the respective obligations, functions, and rights of the participating Members and of the Authority. A budget for each Sub-Project shall be established in accordance with Section 7.5, below. The Directors representing the Members who will be involved in financing and implementing the specific Sub-Project, or their respective designees, shall constitute a "Sub-Project Committee," for purposes of administration and implementation of the specific Sub-Project. Notwithstanding the foregoing, no debt shall be incurred by the Authority for a specific Sub-Project without the unanimous consent of the Board. Any

contributions approved by the Sub-Project Committee and approved by the participating Members shall be paid by the participating Members. To the extent allowed by law, the Members participating in any Sub-Project shall indemnify and hold harmless the Authority and the Members not participating in the Sub-Project from any and all claims, demands, damages, liabilities, fines, expenses and related costs and fees, including attorneys' and experts' fees, arising from or related to the particular Sub-Project, except to the extent of the Authority's or non-participating Member's negligent or intentional acts or omissions.

6.2 CCWD Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, CCWD will retain a veto right with respect to any decision by the Board of Directors that would have an adverse and material effect on either or both of the following: (i) a New Facility or Modified Facility for which CCWD is designated as the builder and operator on Exhibit B hereto, and/or (ii) a CCWD-Provided Facility. CCWD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Design & Construction Agreements and O & M Agreements.

6.3 EBMUD Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, EBMUD will retain a veto right with respect to any decision by the Board of Directors that would have an adverse and material effect on either or both of the following: (i) a New Facility or Modified Facility for which EBMUD is designated as the builder and operator on Exhibit B hereto, and/or (ii) an EBMUD-Provided Facility. EBMUD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Design & Construction Agreements and O & M Agreements.

## **ARTICLE 7 FINANCES**

7.1 Fiscal Year. The Fiscal Year of the Authority shall be as defined in Section 1.1 of this Agreement.

7.2 Budget. The Board of Directors shall adopt a budget (the "Budget") prior to the start of each Fiscal Year. The Budget may be adopted on a single Fiscal Year or bi-annual basis, in the Board's discretion. The Budget shall include components to fund the Authority's administrative and operational costs, debt service on any bonds or other indebtedness (as applicable) of the Authority and any capital improvements; provided the Authority shall provide the Members with the draft capital component of the Budget at least six (6) months prior to the start of the Fiscal Year(s) to which the proposed Budget relates. The Board may update and revise the Budget as necessary throughout the period to which the Budget applies. The Budget shall equitably allocate expenses under the Budget to a Member in proportion to that Member's proportionate use of Project facilities, operational priorities and other benefits, in accordance with the Member's Service Agreement, and shall take into account any non-monetary contributions being received from Grassland Water District. The Authority shall coordinate with CCWD regarding the establishment of the capital components of the Budget to ensure that costs are properly allocated as between the Authority and CCWD. The contributions approved by the Board shall be paid by the Member Agencies pursuant to Section 7.5, below. Any Member which has opted under Section 7.6, below, to self-fund its share of a specific portion of Project capital costs through a lump sum contribution, rather than financing that contribution through participating in the Authority's bond issuance(s), shall not be required to make further payments under the capital component of the Budget until that lump sum contribution is exhausted and further contribution from that Member is necessary to meet that Member's share of Authority capital costs that would be payable under the Budget.



7.3 Specific Sub-Project Budgets. In addition to the foregoing Budget, Authority staff, in consultation with the applicable Sub-Project Committee, shall develop a budget for any Sub-Project established in accordance with Section 6.1, above. Any contributions approved by the Sub-Project Committee and approved by the participating Members shall be paid by the participating Member Agencies pursuant to Section 7.5, below.

Each Sub-Project budget shall include, without limitation, the following:

- (a) Administrative expenses;
- (b) Studies and planning costs;
- (c) Engineering and construction costs;
- (d) The allocation of costs, including debt service costs, if any, among participating Members;
- (e) Annual maintenance and operating expenses for the Sub-Project; and
- (f) A formula for allocating annual maintenance and operating expenses, if any.

7.4 Failure to Obtain Budget Approvals. In the event the Board does not approve the Budget prior to the start of a Fiscal Year, the Authority shall continue to operate at the level of expenditure as authorized below:

7.4.1. Operating Expenses. The operational cost components of the Budget shall be set at the expenditure level authorized by the last approved Budget, and the allocation of such Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget. Any shortfall in revenues will be made up from available reserves dedicated by the Board for such a purpose, and if those available reserves are insufficient to cover the shortfall, any other available reserve funds not designated by the Board for other purposes or otherwise not legally restricted may be used to meet that shortfall. In the event that a shortfall in available funds exceeds available unrestricted reserves of the Authority, such resulting unfunded shortfall shall be carried forward into the subsequent Fiscal Year. Members shall have no obligation to cure such unfunded shortfall other than as may be provided in the applicable Service Agreement. As used herein, "reserves" shall mean any available cash or investments.

7.4.2. Debt Service. The debt service component of the Budget shall automatically be established at the required level necessary to meet the Authority's annual debt service requirements, including any revenue coverage covenants and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget.

7.4.3. Capital Costs. The capital component of the Budget shall automatically be established at the required level necessary to implement capital projects previously approved by the Authority and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Budget.

7.5 Payments of Amounts Due; True-Up of Costs. The payments owed for contributions

from each Member to the Authority shall conform to amounts payable, or any non-monetary contributions to be provided to the Authority, under each Member's Service Agreement and in accordance with the Budget approved by the Board pursuant to Section 7.2, above. Amounts to be paid to the Authority may be divided into a fixed, annual component and a variable component payable on a monthly or other periodic basis. Any amounts to be paid to the Authority shall be due, payable, and delivered by the Members to the Authority within forty-five (45) days after receipt of a billing therefor from the Authority. To the extent permitted by state law, the Authority may impose interest at the rate of ten percent (10%) per annum on any unpaid and past due contributions, from the date due to the date payment is received by the Authority. At the end of each period covered by the Budget, the Authority will compare the actual costs incurred as compared to the budgeted costs paid by Members. If a Member has paid in excess of its share of the Authority's actual costs, the Member shall have the option to either receive a refund of that excess or have that excess carry over as a credit to the benefit of that Member for the next Budget period. If a Member's share of the Authority's actual costs exceeds what that Member has previously paid to the Authority, the Authority shall invoice that Member, which amount shall be due and payable as specified above.

7.6 Member Self-Funding of Project Capital Costs. Notwithstanding any other provision of this Agreement, a Member may elect to self-fund its share of capital costs for specific Project components to be constructed, with the proportion of that self-funding determined under the Member's Service Agreement, in lieu of participating in the issuance of bonds or other indebtedness the Authority will issue for that Project component. Any such self-funded payments shall be used to offset that Member's share of Project capital costs applicable to that specific Project component that are included in the applicable component of the Budget, until such time as the self-funded amount has been exhausted. In the event the self-funded amount is nearing exhaustion (that is, has reached a level of \$10,000 or less), the Authority shall provide written notice to the Member of the need to deposit additional amounts with the Authority, in such amount as the Authority, acting through its Administrator or Executive Director, shall determine in its reasonable discretion, and the Member shall deposit that amount within sixty (60) days of receipt of notice from the Authority.

7.7 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements.

7.7.1 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- (a) Grants, donations, and loans received by the Authority from local, state, or federal agencies, including any amounts received under the Early Funding Agreement.
- (b) Funds collected from Members under the Service Agreements.
- (c) Funds collected from Members, including, but not limited to, funds paid pursuant to the Interim Funding Agreement.
- (d) Funds received from state and federal disaster relief agencies.
- (e) Funds obtained by issuing bonds, notes, warrants and other evidences of indebtedness.
- (f) "In kind" contributions from Members, include refuge resources provided by Grassland Water District; provided that the Board of Directors shall establish a procedure to ensure that any "in kind"

contributions comply with any applicable contractual or regulatory requirements and are fair and reasonable in relation to the benefits provided to the contributing Member, and further the Authority's interests.

(g) Funds from any other source derived.

7.7.2 Interim Funding Plans. The Members intend for the Authority to fund initial Authority costs through the Interim Funding Agreement, and other agreements and revenue sources available to the Authority for such purposes, including through the Service Agreements. Notwithstanding the foregoing, in the event the Board unanimously determines that certain costs cannot be funded through such revenue sources and additional monies are required to be contributed by the Members, each Member agrees that it will contribute to a fund or budget approved by the Board in such proportion as the Board shall reasonably determine, as set forth in this article, taking into consideration any non-monetary contributions being received from Grassland Water District. Notwithstanding the foregoing, any financial obligation of San Francisco under this section is subject to Section 7.11.

7.7.3 Long-Term Funding Plans. The Members intend that all Authority activities will ultimately be funded through various Service Agreements under which the Members will pay or otherwise contribute for services provided by the Authority. The Members intend that the Service Agreements will, when taken together, be sufficient to fund all activities of the Authority, including, but not limited to, all administrative, capital expense, and operation and maintenance costs of the Authority and the Project.

7.7.4 Accounts. Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

7.7.5 Reports. The Treasurer shall, within one hundred and eighty (180) days after the close of each Fiscal Year, give a complete written report of all financial activities for such Fiscal Year to the Board of Directors and to each Member. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member. The Treasurer shall prepare and provide such additional reports, including audited financial statements and ongoing disclosure reports, as are required by separate agreements entered into by the Authority.

7.8 Payments and Advances. No expenditures in excess of those budgeted shall be made unless otherwise approved by the Authority's Board.

7.9 Audit. In accordance with Sections 6505 through 6505.6 of the Government Code, the Treasurer shall cause an annual audit of the accounts and records of the Authority to be made and reported. The audit shall be conducted by an independent certified public accountant or public accountant. The audit shall conform to generally accepted auditing standards. Such report shall be filed within twelve (12) months of the end of the Fiscal Year under examination.

7.10 Procurement Methods. The Board may adopt such policies relating to procurement of services, equipment, supplies, and other materials needed to accomplish the purposes of this Agreement.

7.11 Member Budgetary and Fiscal Requirements; San Francisco Certification of Funds; Budget and Fiscal Provisions.

7.11.1 The Members acknowledge and agree that the financial obligations of each Member under this Agreement are subject to and contingent upon each Member's budgetary and fiscal requirements.

7.11.2 The financial obligations of the City and County of San Francisco (the "City," acting through the San Francisco Public Utilities Commission ("SFPUC") as a Member of the Authority) under this Agreement are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter. Except as provided in Section 7.11.3, below, charges will accrue to SFPUC only after prior written authorization certified by the City's Controller, and the amount of SFPUC's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization, as required under Charter Sections 3.105 and 9.113. SFPUC's funding obligations under this Agreement will terminate without penalty, liability or expense of any kind to SFPUC at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, SFPUC's funding obligations under this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. SFPUC has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. This section controls against any and all other provisions of this Agreement.

7.11.3 Notwithstanding Section 7.11.2. above, the certification requirements set forth in Section 7.11.2 shall not apply to any SFPUC commitment to either (1) participate in the Authority's bond financing of the Project's capital costs or (2) issue its own bonds to finance its share of the Project's capital costs. Instead, such bond financing commitment shall be subject to the requirement in San Francisco Charter Section 9.111 that the City Controller certifies that sufficient unencumbered balances are expected to be available in the proper fund to meet all SFPUC payment obligations as they become due, as well as the terms and conditions contained in any such debt instrument, which may include a pledge by the SFPUC of certain SFPUC rate revenues. The execution of this Agreement is not a commitment to participate in any financing or to incur debt which will occur, if at all, at a later date.

## **ARTICLE 8 TERMINATION / AMENDMENT; WITHDRAWAL**

8.1 Duration and Termination. This Agreement shall become effective as of the Effective Date and, subject to the terms of any agreement between the Authority or CCWD and any state or federal agency, shall continue in full force and effect until terminated by action taken by at least three-quarters (3/4ths) of the Board and ratified by at least three-quarters (3/4ths) of the governing bodies of the Members. If at any time there are only two (2) Members of the Authority and one (1) of those Members intends to withdraw, the other Member's written consent to terminate this Agreement shall not be unreasonably conditioned or delayed. Notwithstanding the prior provisions of this Section 8.1, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

8.2 Amendment. This Agreement may be amended at any time by action taken by at least three-quarters (3/4ths) of the Board and ratified by at least three-quarters (3/4ths) of the governing bodies of the Members; provided that if the proposed amendment is to change the requirement for

unanimous approval of an action required under Section 3.3.3 or relates to the veto right provided by Section 3.3.4, then any such amendment must have unanimous Board approval, and provided further that Exhibits A and B to this Agreement may be amended by the Administrator or Executive Director, with majority vote of the Board approving such amendment to Exhibit A or B, to reflect changes to the Members of the Authority, or to the Project's facilities approved by the Board of Directors.

8.3 Withdrawal. A Member may only withdraw from the Authority as follows:

8.3.1 Failure to Execute Interim Funding Agreement. In the event a Member does not execute the Interim Funding Agreement or other agreement provided under Section 7.7.2 to provide interim funding to the Authority within six (6) weeks after that Member receives the execution version of that agreement, or such later date as the Board shall establish, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement.

8.3.2 Failure to Execute Service and Certain Other Agreements.

8.3.2.1 In the event a Member does not execute its Service Agreement within six (6) weeks after that Member receives the execution version of that agreement, or such later date as the Board shall establish, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement.

8.3.2.2 In the event EBMUD does not execute a Design & Construction Agreement or an O & M Agreement on or before [\_\_\_\_], or such later date as the Board shall establish, EBMUD shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement. The Board may approve only one extension of the date set forth in this section, except with the consent of EBMUD.

[prior Section 8.3.3 deleted in light of revised requirement that additional contributions under Section 7.7.2 must now be unanimous]

8.3.3 Engineer's Estimate is Too Expensive or Construction Bids are Too High. Subject to Section 8.3.8, in the event that (i) a Member concludes the engineer's estimate for any work on a specific component of the Project is too expensive, or (ii) where the bid of the lowest responsible bidder exceeds the engineer's estimate for such a specific component by at least twenty percent (20%), then a Member may initiate a meet and confer process among the Members to discuss those cost issues, which meeting shall take place within thirty (30) days after the Member gives notice of its desire for that meeting. If upon conclusion of that meet and confer process the Member that initiated that process is not satisfied with the estimate or bids, then that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.4 Withdrawal of Other Member. Subject to Section 8.3.8, in the event that another Member has withdrawn from the Authority under this Section 8.3 and the result of such withdrawals has made remaining in the Authority cost prohibitive for a Member, then any other Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.5 Revocation or Unacceptable Conditioning of State or Federal Funding. In the event the State of California or the federal government withdraws any previously approved funding for a specific component of the Project or conditions such funding in a manner a Member deems unacceptable prior to the time when the Authority has issued any revenue bonds for that component

of the Project, any Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.6 Unacceptable Permit Conditions. Subject to Section 8.3.8, in the event any entity or jurisdiction whose approval must be obtained to design, construct, or operate the Project conditions its approval in a manner a Member deems unacceptable, such Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.7 Water Supply Conditions for Withdrawal. Subject to Section 8.3.8, in the event a Member determines that it cannot timely obtain: (i) long-term water supply for the Project, including any necessary water rights, upon terms it finds reasonable and consistent with its needs and objectives; (ii) any rights or entitlements needed to acquire or convey such a water supply; or (iii) agreements with the California Department of Water Resources, the South Bay Aqueduct (SBA) Contractors or any other entity to allow for the conveyance of water supplies through the SBA or other conveyance facility for use by the Member or any of its wholesale customers, that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.8 Approval once Revenue Bonds or Other Indebtedness are Issued. Notwithstanding the foregoing subsections in this Section 8.3, after such time as the Authority has issued revenue bonds or other indebtedness in connection with the construction of a specific component of the Project, a Member may withdraw from the Authority only (i) if approved by a majority of the Board, or (ii) if some or all of the other Members have agreed to assume the withdrawing Member's obligations under such bonds or other indebtedness, unless the withdrawing Member has self-funded its prior financial obligations to the Authority and accordingly has not pledged its revenues towards repayment of the bonds or other indebtedness. The Authority shall not issue revenue bonds for any specific component of the Project before all construction bids for that component have been received and any meet and confer process undertaken pursuant to Section 8.3.3 has concluded.

#### 8.4 Effect of Withdrawal.

8.4.1 A withdrawal from the Authority constitutes a withdrawal of that Member's representative Director from the Board of Directors, including in the event a Member's obligations under any revenue bonds or other indebtedness have been assumed by another Member as stated in Section 8.3.8, above. If at any time there are only two (2) Members, any desired withdrawal shall be subject to the termination provisions of this Agreement. Unless otherwise agreed upon by all of the remaining Members, the withdrawal of a Member shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority, as determined by the Board of Directors based upon that Member's obligations under the Interim Funding Agreement, its respective Services Agreement (if the Member has executed that agreement), or otherwise under this Agreement, or to perform any other obligation arising from a separate agreement or other legally binding obligation, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member (including any future obligations arising from retirement benefits for past and existing employees of the Authority, if any) or (2) budgeted expenses for the Budget period in which notice of intent to withdraw is given. Except as the withdrawing Member may agree in writing with the Authority, the withdrawing Member shall automatically relinquish all rights as a Member under this Agreement, on the effective date of the withdrawal.

8.4.2 For any Member that has self-funded any financial obligation to the Authority for a specific component of the Project and subsequently decided to withdraw from the Authority, the Board shall determine an equitable allocation of such monies previously paid to the Authority and return to that withdrawing Member any uncommitted funds, provided that any such refund may be

structured to ensure it does not materially adversely impact the Authority's financial condition. The Board's determination of that equitable allocation shall take into consideration the amount of Project costs that have been paid through payment of principal under any revenue bonds or other indebtedness the Authority has issued in the period since the withdrawing Member self-funded its financial obligation.

8.5 Disbursement Upon Termination; Post-Termination Liabilities. Upon termination of this Agreement and after payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement, the Board may, in its discretion and by a unanimous vote of the then-current Directors, distribute all remaining assets of the Authority based on an apportionment the Board deems equitable. In the event the Board cannot reach a unanimous vote on that distribution, then the Members shall proceed in accordance with Section 10.2 to attempt to resolve any disputed issue in connection with the distribution of assets. Any further liabilities that may accrue after termination of this Agreement shall be allocated among the former Members in the same proportion as the Authority's expenses are allocated under the Budget at the time of the termination; provided that the Board shall take into consideration any non-monetary contributions Grassland Water District may provide with respect to its share of such liabilities.

## **ARTICLE 9 SPECIAL PROVISIONS**

9.1 Insurance. The Authority shall maintain types and levels of insurance coverage for the Authority as the Board of Directors determines to be reasonably adequate.

9.2 Liability of Authority and Members.

9.2.1 As allowed by Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority, with the exception of retirement liabilities of the Authority if the Authority contracts with a public retirement system, shall be the debts, liabilities, and obligations solely of the Authority and not the debts, liabilities, and obligations of any of the Members or any of their respective members, officers, directors, employees, or agents. The Authority, its Directors, officers, employees, staff, and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement.

9.2.2 No Member, its officers, directors, or employees shall be responsible for any action taken or omitted by any other Member, or its members, officers, directors, or employees. To the extent allowed by law, the Members repudiate the provision for joint and several tort liability provided under Government Code Section 895.2, and agree, pursuant to Government Code Section 895.4, that each Member shall fully indemnify and hold harmless each other Member and its agents, officers, employees, and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any negligent or wrongful act or omission of such Member in the performance of this Agreement, and the Members intend that each Member provide indemnity or contribution in proportion to that Member's responsibility for any such claim, damage, loss, judgment, liability, expense or other cost, as determined under principles of comparative negligence.

9.3 New Members. It is recognized that public agencies other than the original Members to this Agreement may wish to participate in the Authority. As determined by the Board of Directors, in its sole discretion, any such public agency must have the common powers specified in Recitals A and B, above, must be credit worthy, and must provide benefits to the Project and other Members. Any proposed new Member must meet all established principles or requirements adopted by any Member with respect to potential participation in the Project that are in effect at the time the

proposed new Member applies to become a Member. Additional public agencies may become Members upon such terms and conditions as approved by at least three-quarters (3/4ths) of the Board, including establishment of an appropriate cost allocation for that new Member and payment by the new Member of an acceptable financial contribution to offset prior expenses incurred by the existing Members in developing and operating the Project. Any new Member must be approved by at least three-quarters (3/4ths) of the governing boards of the existing Members of the Authority, evidenced by the execution of a written amendment to this Agreement signed by the new Member. [NOTE: BAWSCA is in the process of providing language that would provide it with the right to join the Authority in the event SFPUC were to withdraw from the Authority]

9.4 Retirement System. The Authority shall not enter into a contract with the California Public Employees' Retirement System and/or any other public retirement system without the unanimous approval of the Board and ratification by all of the governing bodies of the Members. The Members acknowledge that if the Authority enters into any such contract, as referenced in Section 9.2, above, the Members may have responsibility under Government Code Section 6508.2 for the Authority's retirement liabilities in the event this Agreement is terminated or the Authority terminates that contract. In such a situation, the Members shall attempt to reach mutual agreement on the allocation of those liabilities among the Members, and understand that if they unable to reach such a mutual agreement, those liabilities shall be allocated among the Members in the same proportion as the Authority's expenses are allocated under the Budget at the time of the termination of this Agreement or of the retirement system contract.

9.5 Indemnity by the Authority. The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Members, and their members, officers, directors, employees, and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the negligent or willful misconduct of any individual Member, or their members, officers, directors, employees, and agents. The Authority's duty to indemnify each Member pursuant to this Agreement shall survive that Member's withdrawal from the Agency.

9.6 Conflict of Interest Code. The Authority shall, by resolution, adopt a conflict of interest code as required by law.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

10.1 Severability. If any section, clause or phrase of this Agreement or the application thereof to any Member or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Member or to other persons or circumstances shall not be affected thereby. In the event a provision is held to be invalid, the Members shall work in good faith to restore the intent of any provision that held to be invalid. Each Member hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

10.2 Dispute Resolution. If a dispute arises as to the construction, interpretation or implementation of any portion of this Agreement or any matters that arise in connection with this Agreement, the Members in dispute (including the Authority if the dispute is between one or more Members and the Authority, in which case the Board shall determine who will represent the Authority in the meet and confer and mediation processes) shall meet and confer in person in an



attempt to resolve that dispute within thirty (30) days of a Member or the Authority giving the other Members or the Authority notice of the dispute. If the Members or the Authority cannot resolve the dispute through that meet and confer process, the Members or the Authority in dispute shall proceed to non-binding mediation of the dispute in front of an independent, neutral mediator agreed to by those Members or the Authority, unless they both agree to waive that mediation. If the Members or the Authority in dispute cannot agree upon a mediator, the mediation service selected shall choose the mediator. The Members or the Authority in dispute shall equally divide and pay the mediation costs.

10.3 Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally, by registered or certified mail, postage prepaid, by nationally-recognized overnight courier, or by e-mail to the respective Members, at the addresses provided in Exhibit A attached hereto. With respect to delivery by e-mail, any such e-mail message shall be sent using a system that provides reasonable assurance: (i) that the message was sent; (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient, along with a verifiable electronic record of the exact content of the message sent. The Members may from time to time change the address to which notice may be provided by providing notice of the change to the other Members.

10.4 Consent. Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be arbitrarily or capriciously withheld or delayed.

10.5 Other Agreements Not Prohibited. Other agreements by and between the Members or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

10.6 Section Headings. The section headings herein are for convenience of the Members only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

10.7 Governing Law; Venue. Any judicial action or proceeding that relates to the Agreement, the Authority or the Project between or among any or all of the Members and/or the Authority shall be initially brought in Contra Costa County Superior Court and will be transferred to a neutral venue. The litigants shall attempt to stipulate to a mutually agreeable neutral venue, and if unable to agree will resolve any venue dispute through a motion to transfer brought pursuant to California Code of Civil Procedure section 394. The parties to any litigation will support transfer to a neutral venue and will not object to transfer to a neutral venue.

10.8 Construction of Language. It is the intention of the Members that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. Additionally, any dispute concerning determination of an "adverse and material effect" pursuant to Section 3.3.4 shall be determined under an arbitrary and capricious standard in connection with the affected Member's exercise of its veto right.

10.9 Cooperation. The Members recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

10.10 Successors. Subject to Section 10.11, this Agreement shall be binding upon and shall inure to the benefit of the successors of the Members.

10.11 Assignment. A Member may not assign its membership in the Authority without the consent of all of the other Members; provided, however, that a Member may assign its rights to utilize the Project in accordance with the provisions of its Service Agreement and any applicable Facilities Usage Agreement. In addition, any such assignment of rights to use of the Project must be consistent with the Project's permits and approvals.

10.12 Enforcement. The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

10.13 Integration. This Agreement constitutes the full and complete Agreement of the Members regarding the creation and administration of the Authority.

10.14 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SIGNATURES ON FOLLOWING PAGE(S)

**IN WITNESS WHEREOF**, the Members have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below.

[signature blocks to come; to include Member addresses]

**EXHIBIT A**  
**AUTHORITY MEMBERS**

- Alameda County Flood Control & Water Conservation District, Zone 7
- Alameda County Water District
- Contra Costa Water District (to include City of Brentwood)
- East Bay Municipal Utility District
- Grassland Water District
- Santa Clara Valley Water District
- San Francisco Public Utilities Commission (to include Bay Area Water Supply & Conservation Agency)
- San Luis & Delta-Mendota Water Authority, consisting of:
  - Byron-Bethany Irrigation District
  - Del Puerto Water District
  - Panoche Water District
  - Westlands Water District
- Department of Water Resources (ex officio, non-voting)

**EXHIBIT B**  
**LIST OF FACILITIES**

<b>No.</b>	<b>Description</b>	<b>Type</b>	<b>Builder</b>	<b>Operator</b>
1	Delta-Transfer Pipeline	New Facility	CCWD	CCWD
2	Los Vaqueros Dam Raise	New Facility	CCWD	CCWD
3	Neroly High-Lift Pump Station	New Facility	CCWD	CCWD
4	Transfer Facility Expansion	New Facility	CCWD	CCWD
5	Transfer-Bethany Pipeline	New Facility	CCWD	CCWD
6	Los Vaqueros Recreation Facilities	Modified Facility	CCWD	CCWD
7	Rock Slough PP#1 Replacement	Modified Facility	CCWD	CCWD
8	Transfer Facilities Improvements	Modified Facility	CCWD	CCWD
9	Mokelumne Aqueduct Lining	Modified Facility	EBMUD	EBMUD
10	Walnut Creek VFDs	New Facility	EBMUD	EBMUD
11	Mokelumne Aqueduct	EBMUD-Provided Facility	EBMUD is responsible for construction, operation, and maintenance and is compensated through the EBMUD Facilities Usage Agreement	
12	Freeport Intake	EBMUD-Provided Facility		
13	EBMUD-CCWD Intertie	CCWD-Provided Facility	CCWD is responsible for construction, operation, and maintenance and is compensated through the CCWD Facilities Usage Agreement	
14	Los Vaqueros Dam	CCWD-Provided Facility		
15	Los Vaqueros Pipeline	CCWD-Provided Facility		
16	Middle River Intake	CCWD-Provided Facility		
17	Middle River Pipeline	CCWD-Provided Facility		
18	Old River Intake	CCWD-Provided Facility		
19	Old River Pipeline	CCWD-Provided Facility		
20	Rock Slough Facilities	CCWD-Provided Facility		
21	Transfer Pipeline	CCWD-Provided Facility		





# Santa Clara Valley Water District

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**File No.:** 20-1189

**Agenda Date:** 12/28/2020

**Item No.:** 4.2.

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## COMMITTEE AGENDA MEMORANDUM

### Water Storage Exploratory Committee

**SUBJECT:**

Pacheco Reservoir Expansion Project Update.

**RECOMMENDATION:**

Receive and discuss information regarding status of the Pacheco Reservoir Expansion Project. This is an information-only item and no action is required.

**SUMMARY:**

The Pacheco Reservoir Expansion Project (PREP) recently provided an updated project plan for the Capital Improvement Program (CIP). This update was prompted by changes in project costs and schedule identified in a Feasibility Level Design Assessment performed for the San Luis Reservoir Low Point Improvement Project (SLLPIP) effort. The prior project plan costs and schedule were based upon the information in the 2017 Water Storage Investment Program (WISIP) application estimates and actual consultant agreement costs for the Project Management, Planning, Design, Environmental Documentation and Permitting consultant services.

The Feasibility Level Design Assessment included incorporation of geotechnical data, evaluation of construction sequencing, and estimated production rates for various elements of the proposed project. Major changes to the spillway and inlet/outlet works configuration, as well as updated design elements related to the earthfill dam, have contributed to revising the construction sequencing and extending the schedule estimate. The construction schedule for the earthfill dam has been estimated to be over seven years while the schedule in the 2017 funding application estimated five years.

The Feasibility Level Cost Estimate presented significant increases in construction costs primarily due to the following factors.

1. Findings of the initial geotechnical field investigations have resulted in:
  - a. Tripling the amount of excavation needed to reach the dam foundation and resulting cost increases for both foundation excavation and dam fill materials,
  - b. Substantial excavation and landslide stabilization costs for the spillway,
  - c. A more complex inlet/outlet works configuration including a tunnel and shaft with adits.
2. Increased unit prices and quantities for the following items:
  - a. Dam filter/drain material unit price and quantity
  - b. Embankment/shell material unit price and quantity
  - c. Conveyance pipe (steel) unit price
3. Other drivers:

- a. Highway 152 access improvements
- b. Onsite access roads
- c. Mitigation land acquisition costs
- 4. Contingencies and schedule:
  - a. Increase in design contingency from 10% to 25%
  - b. Construction schedule extended from five to eight years

The cost increases result in a construction cost increase of about \$1 Billion. With inflation considered, the CIP cost for the project increased from \$1.3 Billion to \$2.5 Billion. The PREP team has begun developing variations to the project that could result in significant construction cost savings and reduction of the construction schedule. The variations include analysis of an alternate dam site upstream and assessing feasibility, cost, and construction of a hardfill dam structure in place of the proposed earthfill.

**ATTACHMENTS:**

Attachment 1: PowerPoint Presentation

**UNCLASSIFIED MANAGER:**

Christopher Hakes, 408-630-3796



Unique Opportunity for Ecosystem Enhancement,  
Improved Water Supply Reliability, and Emergency  
Water Supply

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Valley Water – Water Storage Exploratory Committee  
December 28, 2020

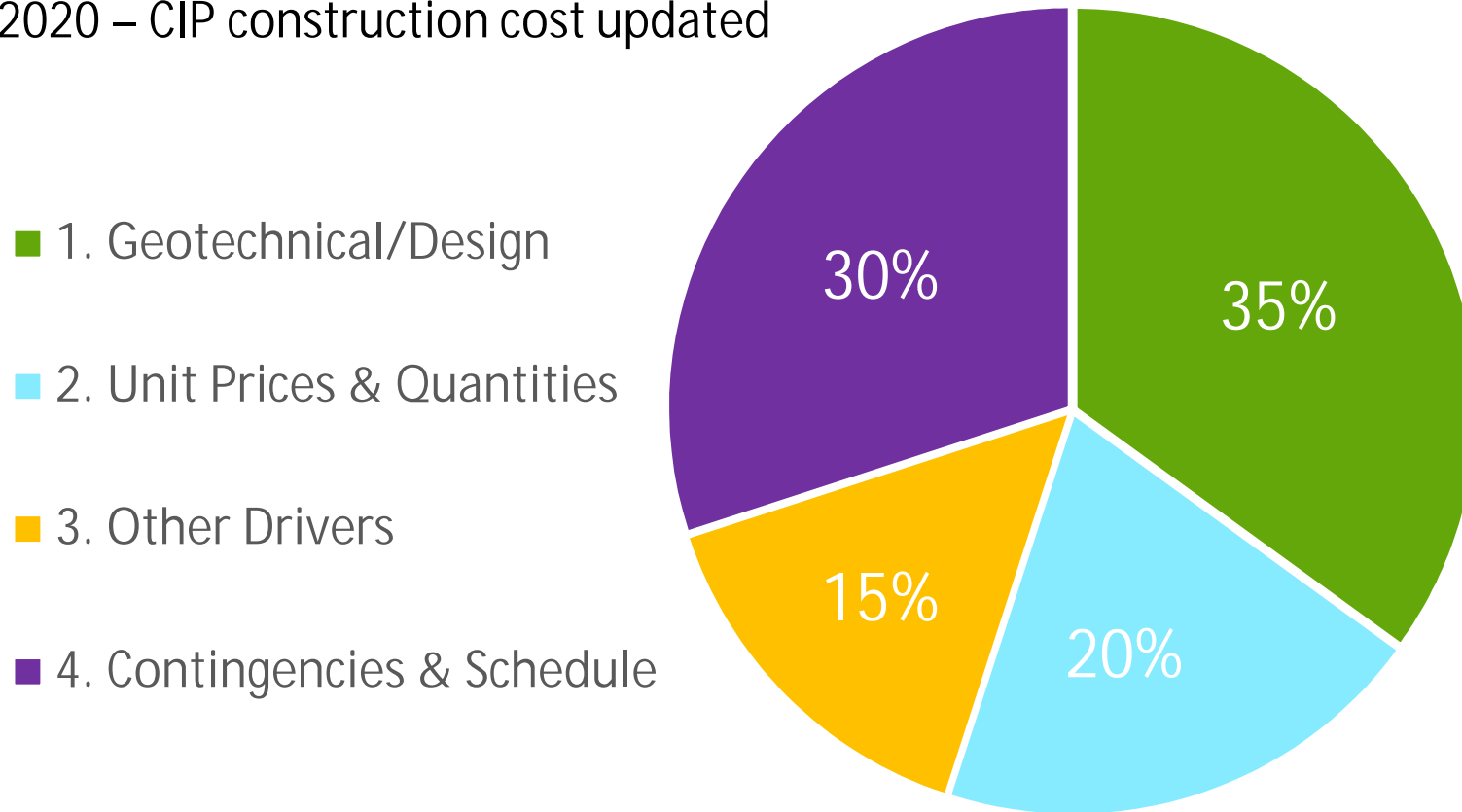
## Pacheco Reservoir Expansion Project: Construction Cost Estimate Update

Presented by Ryan McCarter, Pacheco Project Delivery Unit Manager



# Factors contributing to \$1B construction cost increase

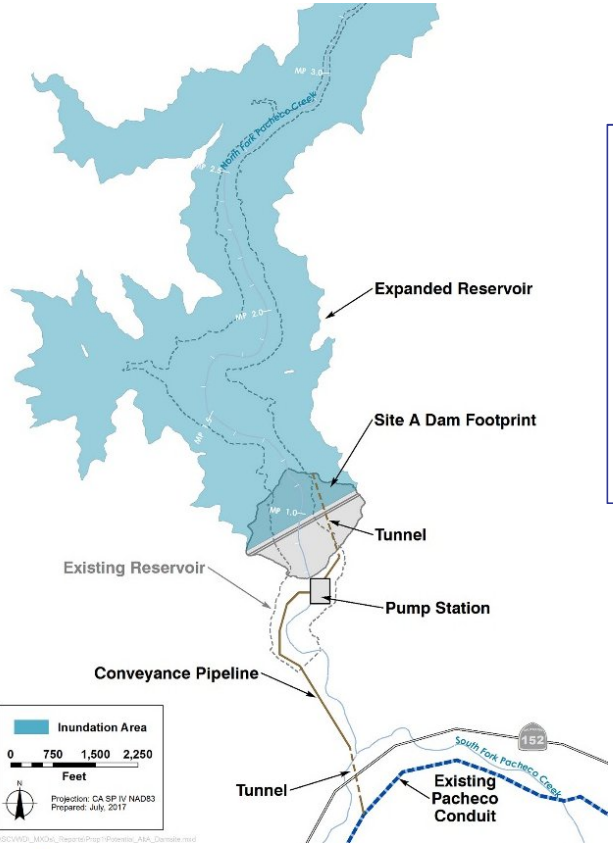
2020 – CIP construction cost updated



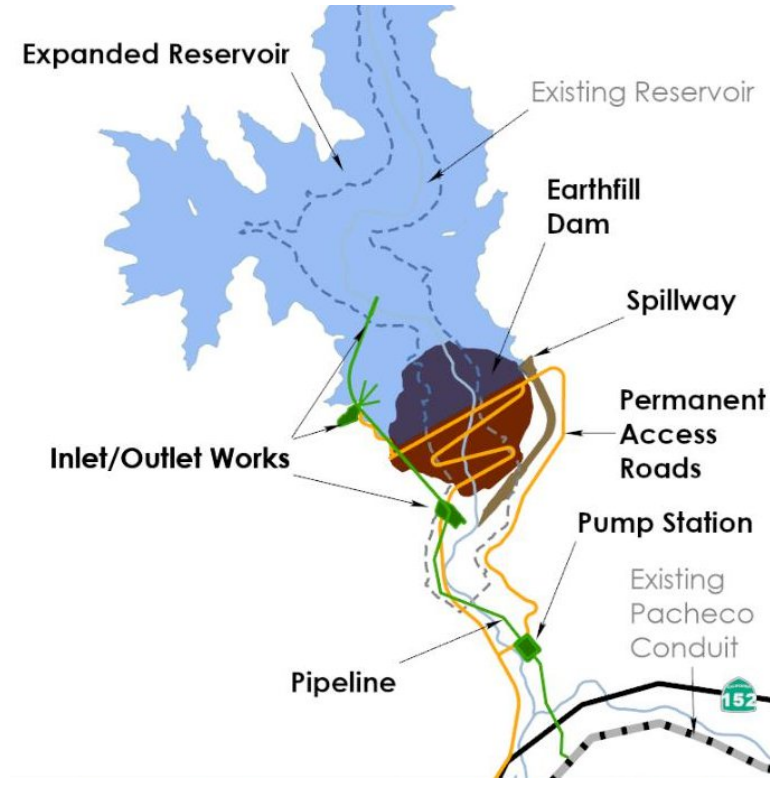
2

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# 1. Geotechnical/Design Updates



- Dam foundation excavation
- Spillway
- Inlet/Outlet



## 2. Unit Prices and Quantities

### Estimated Unit Prices

- Filter/drain material costs
- Embankment/shell cost
- Conveyance pipe cost

### Estimated Quantities

- Total embankment volume





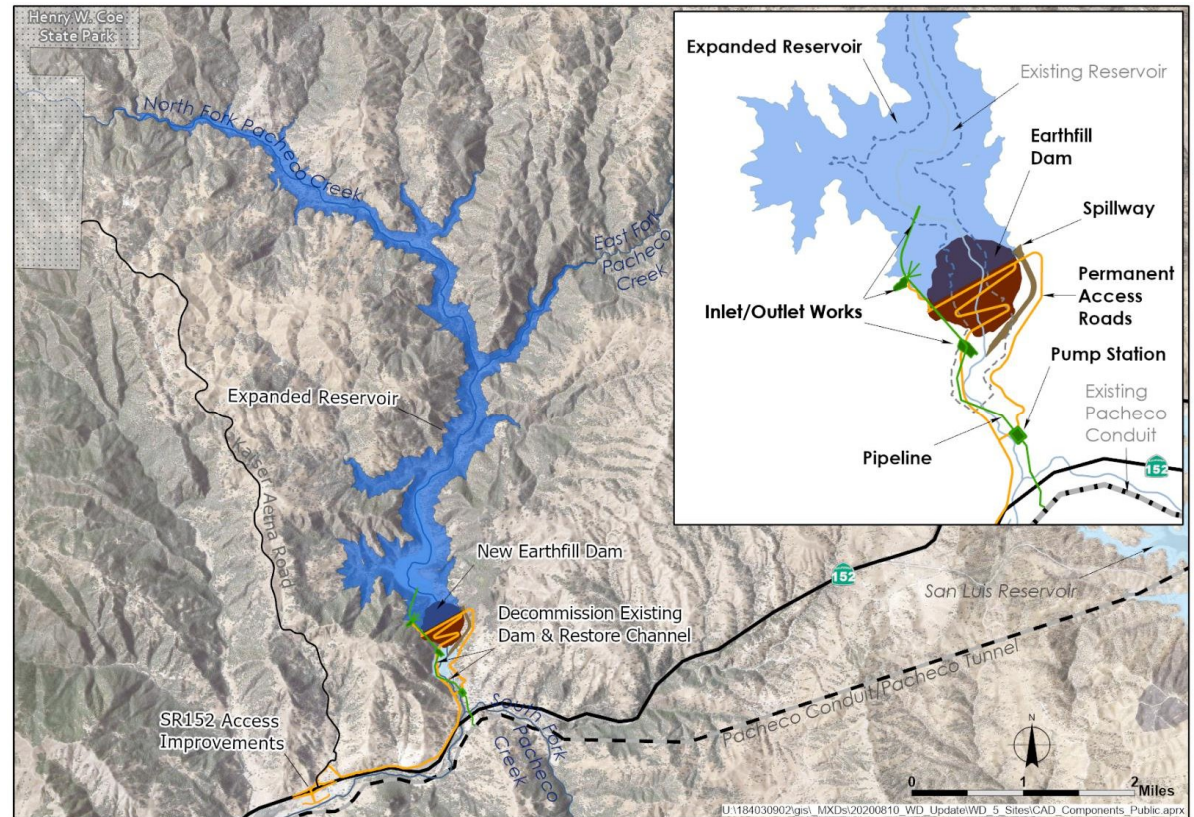
### 3. Other Drivers

#### Additional Updated Items

- Site and access roads
- Power transmission

#### Environmental/Permitting

- Land acquisition costs for mitigation



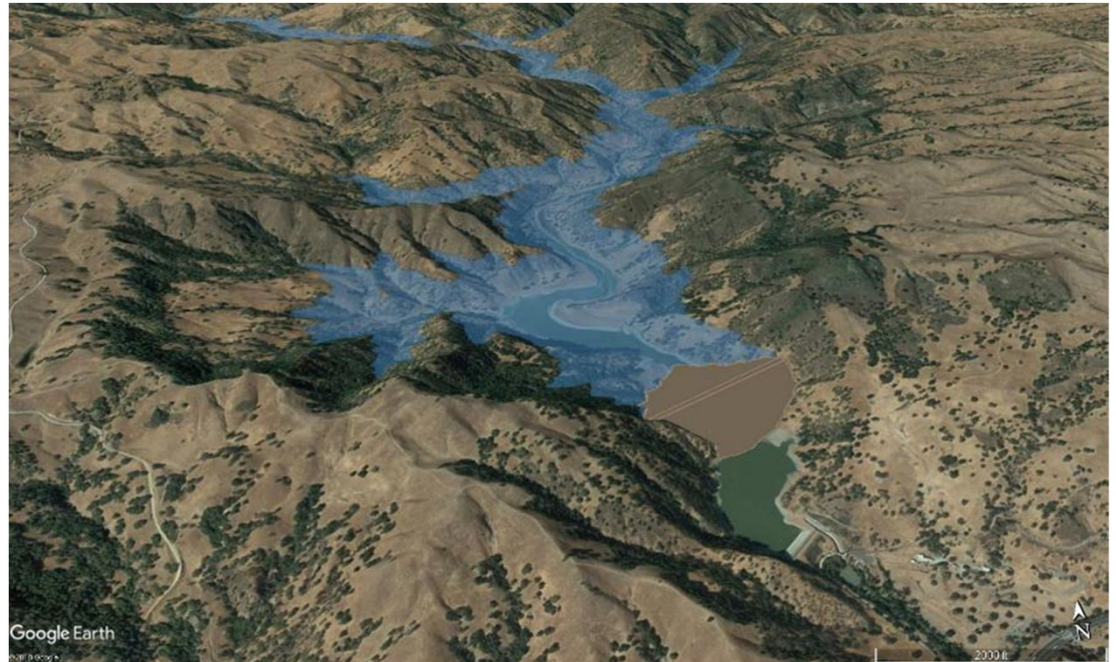
# 4. Contingencies and Schedule

## Contingencies

- Increase in Design Contingency: 10% to 25%
- Construction Contingency: 20%

## Construction Sequencing

- Schedule: 5 to 8 years



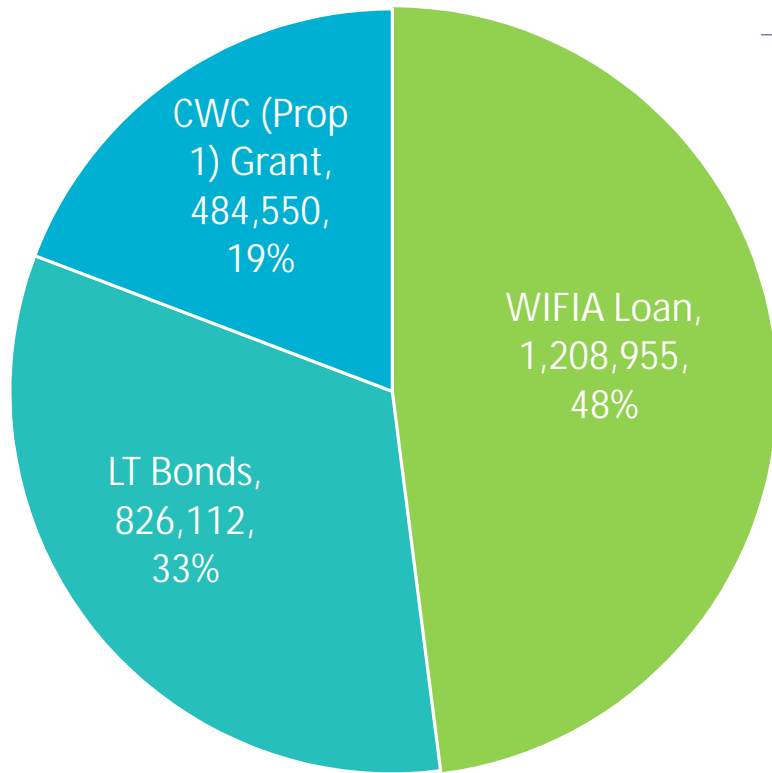
# Project Cost Estimate History

Year	CIP Estimate	Estimate with future inflation (CIP calc.)	
2017	\$969,000,000	N/A	2015 dollars for WSIP Application
2019	\$1,182,004,000	\$1,345,000,000	No construction cost changes from WSIP estimate
<b>2020</b>	\$2,203,321,000	\$2,519,622,000	<b>*NEW CONSTRUCTION ESTIMATE*</b>

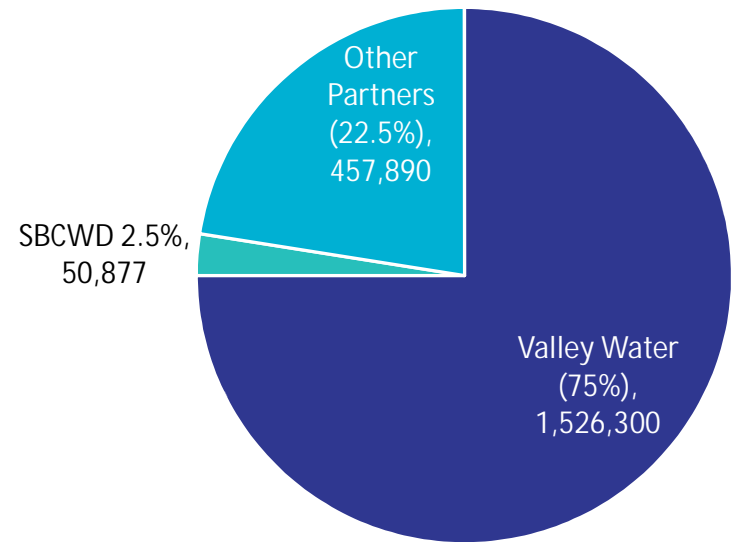


# Financing Plan for 2020 Project Cost: \$2.5B

(Amounts shown in \$thousands)



Allocation of Debt Financing: \$2B



Total Financing Costs (Principal + Interest): \$3.8B\*  
Average Annual Debt Service: \$81M\*



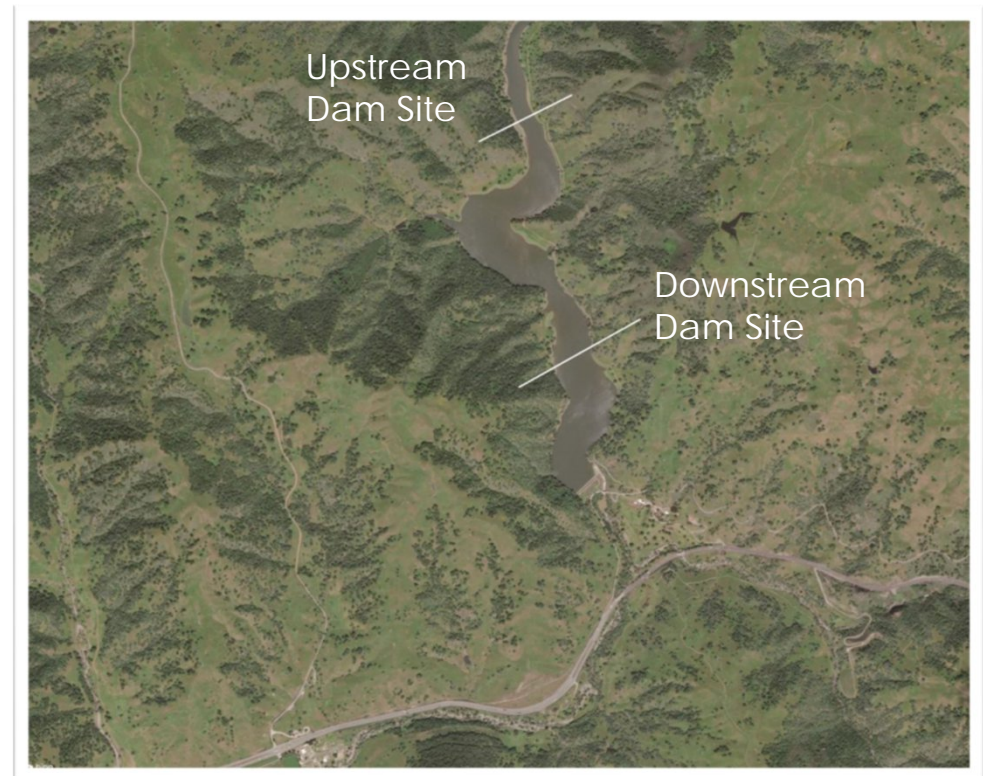
\* Preliminary financing estimates based on FY 2022 budgetary rates, subject to change pending timing, amount, and market conditions at time of debt issuance



# Potential Reductions to Construction Cost

## Alternative dam site upstream

- Geotechnical investigations indicate more favorable conditions
- Reduced quantities due to topography (shorter dam)
- Longer conveyance pipeline, extended creek restoration

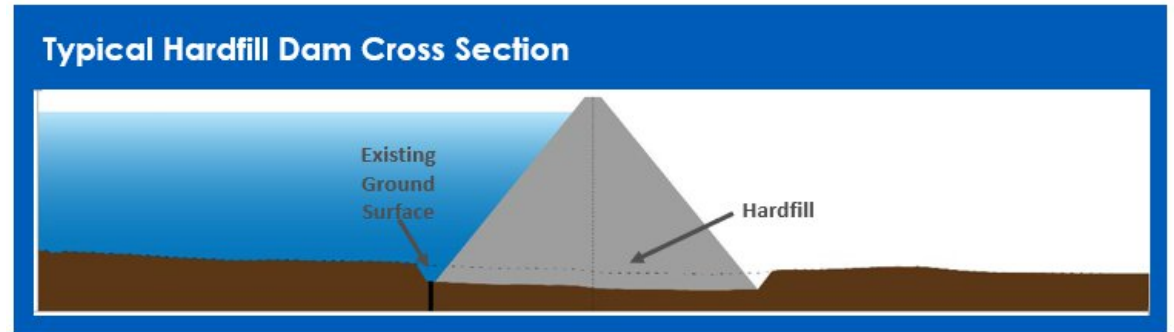
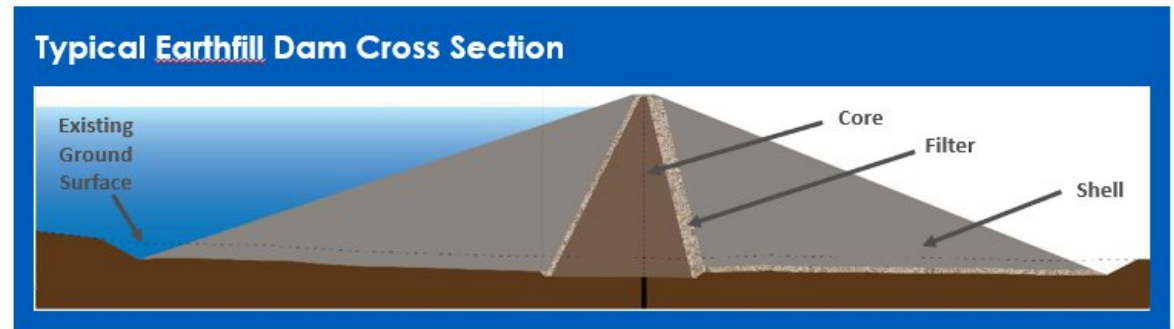


# Potential Reductions to Construction Cost

10

## Alternative dam type

- Hardfill dam (similar to Roller Compacted Concrete)
- Spillway and inlet/outlet works integrated into structure
- Reduced construction duration



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# Questions?

<https://www.valleywater.org/pachecoexpansion>



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media

# Alternatives (lowest to highest cost at 5% design)

12

Preliminary Alternative #	Facilities Variations			Notes
	Dam Site Location	Expanded Reservoir Size	Dam Type	
5	Upstream	96,000 AF	Earthfill	<ul style="list-style-type: none"> <li>Narrower and smaller dam</li> <li>Spillway and inlet/outlet works are separate from dam</li> <li>Provides 31% less reservoir capacity</li> </ul>
4	Upstream	140,000 AF	Hardfill	<ul style="list-style-type: none"> <li>Narrower dam (less embankment volume)</li> <li>Spillway and inlet/outlet works are integrated into dam</li> <li>Potentially shorter construction duration</li> <li>Technical/permitting challenges</li> <li>Encroaches into Henry Coe Park at full pool</li> </ul>
2	Downstream	140,000 AF	Hardfill	<ul style="list-style-type: none"> <li>Spillway and inlet/outlet works are integrated into dam</li> <li>Potentially shorter construction duration</li> <li>Technical/permitting challenges</li> </ul>
3	Upstream	140,000 AF	Earthfill	<ul style="list-style-type: none"> <li>Narrower dam (less embankment volume)</li> <li>Spillway and inlet/outlet works are separate from dam</li> <li>Encroaches into Henry Coe Park at full pool</li> </ul>
1	Downstream	140,000 AF	Earthfill	<ul style="list-style-type: none"> <li>Similar to WSIP application</li> <li>Spillway and inlet/outlet works are separate from dam</li> </ul>

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# Santa Clara Valley Water District

File No.: 20-1191

Agenda Date: 12/28/2020

Item No.: 4.3.

## COMMITTEE AGENDA MEMORANDUM

### Water Storage Exploratory Committee

#### SUBJECT:

Standing Items Information.

#### RECOMMENDATION:

- A. This agenda item allows the Committee to receive verbal or written updates and discuss the following subjects. These items are generally informational; however, the Committee may request additional information from staff:
  - B. This is informational only and no action is required.  
*Staff may provide a verbal update at the 12-28-2020, meeting if there is reportable/updated information.*
1. Update on Los Vaqueros Reservoir Expansion Project (LVE) Transfer Bethany Pipeline (TBP) and Update on Management of South Bay Aqueduct (SBA) Facilities  
*(12-28-2020, agenda item)*
  2. Lake Del Valle
  3. Del Puerto *(Verbal Update-12-28-2020)*
  4. Water Banking Opportunities including but not limited to Pleasant Valley Water District  
*(Verbal Update-12-28-2020)*
  5. Pacheco/San Luis Reservoir Low Point *(12-28-2020, agenda item)*
  6. Semitropic *(Verbal Update-12-28-2020)*
  7. Sites
  8. B.F. Sisk Dam Raise Project *(Verbal Update-12-28-2020)*
  9. Shasta *(Verbal Update-12-28-2020)*

#### SUMMARY:

Standing Items will allow regular reports from staff on subjects that may be of interest to the committee members.

#### ATTACHMENTS:

None.

#### UNCLASSIFIED MANAGER:

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**File No.:** 20-1191

**Agenda Date:** 12/28/2020  
**Item No.:** 4.3.

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Michele King, 408-630-2711



# Santa Clara Valley Water District

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**File No.:** 20-1192

**Agenda Date:** 12/28/2020

**Item No.:** 4.4.

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## **COMMITTEE AGENDA MEMORANDUM**

### **Water Storage Exploratory Committee**

#### **SUBJECT:**

Review Water Storage Exploratory Committee Work Plan and the Committee's Next Meeting Agenda.

#### **RECOMMENDATION:**

Review the Committee's Work Plan to guide the Committee's discussions regarding policy alternatives and implications for Board deliberation.

#### **SUMMARY:**

The Committee's Work Plan outlines the Board-approved topics for discussion to be able to prepare policy alternatives and implications for Board deliberation. The work plan is agendaized at each meeting as accomplishments are updated and to review additional work plan assignments by the Board.

#### **BACKGROUND:**

##### **Governance Process Policy-8:**

The District Act provides for the creation of advisory boards, committees, or committees by resolution to serve at the pleasure of the Board.

Accordingly, the Board has established Advisory Committees, which bring respective expertise and community interest, to advise the Board, when requested, in a capacity as defined: prepare Board policy alternatives and provide comment on activities in the implementation of the District's mission for Board consideration. In keeping with the Board's broader focus, Advisory Committees will not direct the implementation of District programs and projects, other than to receive information and provide comment.

Further, in accordance with Governance Process Policy-3, when requested by the Board, the Advisory Committees may help the Board produce the link between the District and the public through information sharing to the communities they represent.

#### **ATTACHMENTS:**

Attachment 1: WSEC 2020 Work Plan

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**File No.:** 20-1192

**Agenda Date:** 12/28/2020  
**Item No.:** 4.4.

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**UNCLASSIFIED MANAGER:**  
Michele King, 408-630-2711



# 2020 Work Plan: Water Storage Exploratory Committee

Update: December 2020

The annual work plan establishes a framework for committee discussion and action during the annual meeting schedule. The committee work plan is a dynamic document, subject to change as external and internal issues impacting the District occur and are recommended for committee discussion.

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
1	<p>Standing Items:</p> <ol style="list-style-type: none"> <li>1. Update on Los Vaqueros Reservoir Expansion Project (LVE) Transfer Bethany Pipeline (TBP) and Update on Management of South Bay Aqueduct (SBA) Facilities</li> <li>2. Lake Del Valle</li> <li>3. Del Puerto</li> <li>4. Water Banking Opportunities including but not limited to Pleasant Valley Water District</li> <li>5. Pacheco/ San Luis Reservoir Low Point</li> <li>6. Semitropic</li> <li>7. Sites</li> <li>8. B.F. Sisk Dam Raise Project</li> <li>9. Shasta</li> </ol>	<p>1-15-2020 10-14-2020 10-30-2020 12-28-2020</p>	<ul style="list-style-type: none"> <li>• Receive quarterly reports on standing items. <b>(Information)</b></li> </ul>	<p><b>Accomplished January 15, 2020:</b> The Committee took the following action:</p> <ul style="list-style-type: none"> <li>• That the Board consider the Committee's recommendation to the Board to accelerate the partnerships discussion for the Pacheco Reservoir Expansion Project.</li> </ul> <p>Board received this information on February 25, 2020 and took the following action: Approved the Water Storage Exploratory Committee's recommendation.</p> <p>Pacheco and San Luis Reservoir Low Point Projects will be joined as one work plan item</p> <p><b>Accomplished October 14, 2020:</b> The Committee received quick updates on Los Vaqueros Reservoir Expansion Project (LVE) B.F. Sisk Dam Raise Project and Shasta.</p> <p><b>Accomplished October 30, 2020:</b> The Committee did not receive any project updates.</p>
2	<p>Review of 2020 Water Storage Exploratory Committee Work Plan</p>	<p>1-15-2020 7-13-2020 8-21-2020 10-14-2020 10-30-2020 12-28-2020</p>	<ul style="list-style-type: none"> <li>• Review the Committee's 2020 Work Plan.</li> </ul>	<p><b>Accomplished January 15, 2020:</b> The Committee reviewed the Committee's 2020 work plan and took no action.</p> <p><b>Accomplished July 13, 2020:</b> The Committee reviewed the Committee's 2020 work plan and took no action.</p>

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors

Attachment 1

Page 1 of 6

# 2020 Work Plan: Water Storage Exploratory Committee

Update: December 2020

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
				<p><b>Accomplished August 21, 2020:</b> The Committee reviewed the Committee's 2020 work plan and took no action.</p> <p><b>Accomplished October 14, 2020:</b> The Committee reviewed the Committee's 2020 work plan and took no action.</p> <p><b>Accomplished October 30, 2020:</b> The Committee reviewed the Committee's 2020 work plan and took no action.</p>
3	Del Puerto Canyon Reservoir Update	7-13-2020	<ul style="list-style-type: none"> <li>Receive information regarding the status of Del Puerto Canyon Reservoir.</li> </ul>	<p><b>Accomplished July 13, 2020:</b> Special guests Mr. Chris White and Ms. Anthea Hansen gave a presentation of the Del Puerto Canyon Reservoir. The Committee took no action.</p>
4	Update on Los Vaqueros Reservoir Expansion Project: Storage, Transfer-Bethany Pipeline, and South Bay Aqueduct Capacity	7-13-2020 8-21-2020 10-30-2020	<ul style="list-style-type: none"> <li>Receive and discuss information regarding the Los Vaqueros Reservoir Expansion Project: Storage, Transfer-Bethany Pipeline, and South Bay Aqueduct Capacity</li> <li>Recommend update as action item for next Board of Directors meeting.</li> </ul>	<p><b>Accomplished July 13, 2020:</b> The Committee received an update on the Los Vaqueros Reservoir Expansion Project: Storage, Transfer-Bethany Pipeline, and South Bay Aqueduct Capacity and discussed taking the following action: The Committee recommended to approve staff's recommendation to bring Amendment 2 to the 2019 Multi-Party Agreement to the Board of Directors for its consideration by roll call vote and Directors voting aye! One footnote, Committee requested that updated information come back to the Committee before going to the full Board.</p> <p><b>Accomplished August 21, 2020:</b> The Committee received an update on the Los Vaqueros Reservoir Expansion Project: Storage, Transfer-Bethany Pipeline, and South Bay Aqueduct capacity and discussed taking no</p>

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors

Attachment 1

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# 2020 Work Plan: Water Storage Exploratory Committee

Update: December 2020

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
				<p>action.</p> <p><b>Accomplished October 30, 2020:</b> The Committee received an update and discussed the Los Vaqueros Reservoir Expansion Project: Storage, Transfer-Bethany Pipeline, and South Bay Aqueduct capacity taking no action.</p>
5	Update on the B.F. Sisk Dam Raise Project	7-13-2020	<ul style="list-style-type: none"> <li>Receive and discuss information on the B.F. Sisk Dam Raise Project.</li> </ul>	<p><b>Accomplished July 13, 2020:</b> The Committee received an update on the B.F. Sisk Dam Raise Project and discussed taking no action.</p>
6	Second Amendment to 2019 Reservoir Project Agreement for Continued Participation in the Sites Reservoir Project	7-13-2020 8-21-2020 10-30-2020	<ul style="list-style-type: none"> <li>Receive and discuss information regarding Sites Reservoir Project.</li> </ul>	<p><b>Accomplished July 13, 2020:</b> The Committee received an update on the Sites Reservoir Project and discussed without taking action, however, before taking action, requested more information on the agreement/project for further discussion at the next meeting.</p> <p><b>Accomplished August 21, 2020:</b> The Committee received an update and discussed the Sites Reservoir Project taking no action. The Committee still has some concerns and questions so that staff will bring back for the next meeting.</p> <p><b>Accomplished October 30, 2020:</b> The Committee received an update and discussed the Sites Reservoir Project taking no action.</p>
7	Update on Pacheco/San Luis Reservoir Low Point Projects	7-13-2020 10-30-2020 12-28-2020	<ul style="list-style-type: none"> <li>Receive and discuss information regarding the status of Pacheco/San Luis Reservoir Low</li> </ul>	<p><b>Accomplished July 13, 2020:</b> The Committee received an update on the Pacheco/San Luis Reservoir Low Point Projects</p>

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors

Attachment 1

Page 3 of 6

# 2020 Work Plan: Water Storage Exploratory Committee

Update: December 2020

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
			Point Projects.	and discussed taking no action.  <b>Accomplished October 30, 2020:</b> The Committee received an update and Discussed the Pacheco/San Luis Reservoir Low Point Projects taking no action.
8	Semitropic Groundwater Bank Update	10-14-2020	<ul style="list-style-type: none"> <li>Receive and discuss information regarding the status of Semitropic Groundwater Bank</li> </ul>	<b>Accomplished October 14, 2020:</b> The Committee received an update and discussed the status of Semitropic Groundwater Bank taking no action.
9	Potential Groundwater Banking Projects (Comparison Matrix)	10-14-2020 10-30-2020	<ul style="list-style-type: none"> <li>Receive and discuss information regarding ongoing development of staff comparison tools to analyze and compare potential groundwater banking projects.</li> </ul>	<b>Accomplished October 14, 2020:</b> The Committee received an update of ongoing development of staff comparison tools to analyze and compare potential groundwater banking projects and discussed taking no action. However, have staff update the matrix as much as possible (evaluate wider range of investments of the portfolio, expand framework and criteria) for the next meeting.  <b>Accomplished October 30, 2020:</b> The Committee received an update and discussed the potential groundwater banking projects taking no action.
10	Monitoring and Assessment Program 2020 Evaluation of Los Vaqueros Reservoir Expansion and Sites Reservoir	11-9-2020	<ul style="list-style-type: none"> <li>Receive information on Monitoring and Assessment Program 2020 Evaluation of Los Vaqueros Reservoir Expansion and Sites Reservoir</li> </ul>	<b>Accomplished November 9, 2020:</b> The Committee received an update and Discussed the Monitoring and Assessment Program 2020 Evaluation of Los Vaqueros Reservoir Expansion and Sites Reservoir and took the following action: The Committee unanimously approved that the Board consider the Committee's recommendation from staff:

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors

Attachment 1

Page 4 of 6

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
				<p>A. Receive and discuss Monitoring and Assessment Program 2020 information regarding the Los Vaqueros Reservoir Expansion Project, including the Transfer-Bethany Pipeline, and the Sites Reservoir Project.</p> <p>B. Recommend the Board consider authorizing the CEO to execute Amendment 2 to the 2019 Multi-Party Agreement for Los Vaqueros Reservoir Expansion Project, which includes a contract extension through December 2021 and a cost-share not to exceed \$1,013,661</p> <p>C. Recommend the Board consider authorizing the CEO to execute the Second Amendment to 2019 Reservoir Project Agreement for Sites Reservoir project for continued participation through December 2021 at a 0.2% participation level and funding commitment of \$50,000.</p> <p><u>Staff Analysis:</u> Staff agreed with the Committee's recommendation and the items were brought to the Board on November 17, 2020 for approval.</p> <p>Board received this information and approved on November 17, 2020.</p>

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors

# 2020 Work Plan: Water Storage Exploratory Committee

Update: December 2020

ITEM	WORK PLAN ITEM	MEETING	INTENDED OUTCOME(S)	ACCOMPLISHMENT DATE AND OUTCOME
11	Update on Los Vaqueros Reservoir Expansion Project: Joint Powers Authority and Financial Model.	12-28-2020	<ul style="list-style-type: none"> <li>• Receive an update on Los Vaqueros Reservoir Expansion Project: Joint Powers Authority and Financial Model.</li> </ul>	

Yellow = Update Since Last Meeting

Blue = Action taken by the Board of Directors