



SRWA
STANISLAUS REGIONAL
WATER AUTHORITY

156 S. Broadway, Ste. 270, Turlock, CA 95380

(209) 668-4142 (phone) (209) 668-5695 (fax)

Special Board Meeting Agenda

August 6, 2018 at 2:00 p.m.

156 S. Broadway, Turlock, CA, Second Floor, Yosemite Conference Room

*Chair, Chris Vierra
Vice Chair, Bill DeHart
Director, Ken Lane
Director, Gil Esquer*

*General Manager, Robert Granberg
Interim Legal Counsel, Richard P. Shanahan
Board Secretary, Allison Martin*

NOTICE REGARDING NON-ENGLISH SPEAKERS: The Stanislaus Regional Water Authority (SRWA) meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

EQUAL ACCESS POLICY: If you have a disability which affects your access to public facilities or services, contact the Board Secretary at the phone number set forth above. The Board is committed to taking all reasonable measures to provide access to its facilities and services. Please allow sufficient time for the Board to process and respond to your request.

NOTICE: Pursuant to California Government Code Section 54954.3, any member of the public may directly address the Board on any item appearing on the agenda, including Consent Calendar and Scheduled Matters, before or during the Board's consideration of the item.

AGENDA PACKETS: Prior to the Stanislaus Regional Water Authority Board meeting, a complete Agenda Packet (excluding any closed session materials) is available for review on the SRWA's website at www.stanrwa.org and in the Board Secretary's Office at 156 S. Broadway, Suite 270, Turlock, during normal business hours. Materials related to an item on this Agenda submitted to the Board after distribution of the Agenda Packet are also available for public inspection in the Board Secretary's Office at the address set forth above. Such documents may be available on the SRWA's website subject to staff's ability to post the documents before the meeting.

1. A. CALL TO ORDER
- B. SALUTE TO THE FLAG
2. RECOGNITION, APPOINTMENTS, ANNOUNCEMENTS & PRESENTATIONS: None
3. A. SPECIAL BRIEFINGS: None
- B. STAFF UPDATES
 1. General Manager Update (*Granberg*)
- C. PUBLIC PARTICIPATION: This time is set aside for members of the public to address the Board concerning any item that has been described in the notice for the meeting, including Consent Calendar items, before or during consideration of that item. You will be allowed five (5) minutes for your comments. If you wish to speak regarding an item on the agenda, you may be asked to defer your remarks until the Board addresses the matter.

4. **DECLARATION OF CONFLICTS OF INTEREST AND DISQUALIFICATIONS**

5. **CONSENT CALENDAR:** Information concerning the Consent items listed below has been forwarded to each Board member prior to this meeting for study. Unless the Chair, a Board member, or member of the audience has questions concerning the Consent Calendar, the items are approved at one time by the Board. The action taken by the Board in approving the Consent items is set forth in the explanation of the individual items.

- A. *Motion:* Accept minutes of Special Meeting of May 31, 2018
- B. *Resolution:* Approve an Engagement Letter for professional auditing services with Maze & Associates Accountancy Corporation in an amount not to exceed \$4,440 for the fiscal year 2017-18 audit with two (2) optional one-year extensions
- C. *Motion:* Accept the Stanislaus Regional Water Authority's audited Financial Statements for the fiscal year ended June 30, 2017 and related reports

6. **PUBLIC HEARINGS:** None

7. **SCHEDULED MATTERS**

- A. Certify the Final Environmental Impact Report (EIR) for the Surface Water Supply Project; adopt CEQA Findings of Fact and Statement of Overriding Considerations; adopt Mitigation Monitoring and Reporting Plan; approve Project; and direct staff to file CEQA Notice of Determination (*Lilly*)

Recommended Action:

Resolution: Certifying the Final Environmental Impact Report (EIR) for the Surface Water Supply Project; adopting CEQA Findings of Fact and Statement of Overriding Considerations; adopting Mitigation Monitoring and Reporting Plan; approving Project; and directing staff to file CEQA Notice of Determination.

- B. Approve the Request for Qualifications (RFQ) in substantially the form as presented at this meeting and authorize the General Manager to finalize, sign, and issue the RFQ on behalf of the SRWA for the Raw Water Pump Station, Raw and Finished Water Pipelines and Water Treatment Plant Project elements. (*Granberg*)

Recommended Action:

Motion: Approve the Request for Qualifications (RFQ) in substantially the form as presented at this meeting and authorize the General Manager to finalize, sign, and issue the RFQ on behalf of the SRWA for the Raw Water Pump Station, Raw and Finished Water Pipelines and Water Treatment Plant Project elements.

- C. Adopt the Annual Budget for the Stanislaus Regional Water Authority for the 2018-19 Fiscal Year and Adopt a minimum cash reserve target for 2018-19 (*Lorenzi*)

Recommended Action:

Resolution: Adopting the Annual Budget for the Stanislaus Regional Water Authority for the 2018-19 Fiscal Year and Adopting a minimum cash reserve target for 2018-19.

8. MATTERS TOO LATE FOR THE AGENDA

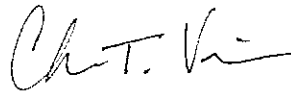
9. BOARD ITEMS FOR FUTURE CONSIDERATION

10. BOARD COMMENTS: Board members may provide a brief report on notable topics of interest. The Brown Act does not allow discussion or action by the legislative body.

11. NEXT MEETING DATE: August 23, 2018 Regular meeting

12. ADJOURNMENT

The foregoing meeting is hereby called by Chair Vierra at the above mentioned date and time pursuant to California Government Code § 54956.



Chris Vierra, Chair



1. A. **CALL TO ORDER:** Vice Chair Vierra called the meeting to order at 10:06 a.m.
PRESENT: Director Esquer, Director DeHart, Director Lane, Vice Chair Vierra
ABSENT: None

B. **SALUTE TO THE FLAG**

2. **RECOGNITION, APPOINTMENTS, ANNOUNCEMENTS & PRESENTATIONS:**

Chair Vierra welcomed Director Esquer to the SRWA Board.

A. Appointment: Chair

Director Lane recommended that Vice Chair Vierra be appointed to the position of Chair.

Action: Motion by Director Lane, seconded by Director DeHart, appointing Vice Chair Vierra to the position of Chair, effective immediately. Motion carried 4/0 by the following vote:

Director Esquer	Director Lane	Director DeHart	Chair Vierra
Yes	Yes	Yes	Yes

B. Appointment: Vice Chair

Board Chair Vierra recommended that Director DeHart be appointed to the position of Vice Chair.

Action: Motion by Chair Vierra, seconded by Director Esquer, appointing Director DeHart to the position of Vice Chair, effective immediately. Motion carried 4/0 by the following vote:

Director Esquer	Director Lane	Vice Chair DeHart	Chair Vierra
Yes	Yes	Yes	Yes

3. A. **SPECIAL BRIEFINGS:** None

B. **STAFF UPDATES:**

1. Interim General Manager Michael Brinton provided an update of items discussed at recent Technical Advisory Committee (TAC) meetings, including:
 - Participated in Executive Technical Advisory Committee (TAC) Meeting (5/15) and TAC Meeting (5/10)
 - Participated in several conference calls to discuss strategy on responses to comments and water rights issues
 - Attended walk-through with construction contractor at infiltration gallery site
 - Continued preparation of Final EIR (FEIR) and drafting of responses to public comments on the DEIR

- Submitted request for amendment to Lake and Streambed Alteration Agreement (LSAA) for wet well project
 - Prepared information for State Revolving Fund Environmental Package
 - Updated environmental schedule, master schedule, and procurement schedule
 - Investigated permit requirements and conditions
 - Reviewed design criteria for hydraulic transient analysis
 - Continued raw water quality sampling and testing
 - Prepared draft Raw Water Pump Station pre-design Technical Memorandum
 - Prepared piping and instrumentation drawings for Raw Water Pump Station
 - Prepared pre-design Technical Memorandum for raw and finished water transmission mains
 - Finalized draft Operations Technology and Cybersecurity pre-design Technical Memorandum
 - Prepared draft technical appendices to Design-Build (DB) Contract
 - Continued drafting project alternatives analysis
 - Met with potential DB contractors
 - Edited draft request for qualifications
 - Received and reviewed proposals for financial evaluation services
 - Attended onsite Wet Well progress meeting
2. Michael Cooke, stand-in for the Finance Director, provided a summary of activity for the current fiscal year through May 25, 2018, prepared by Marie Lorenzi, Finance Director.

Vice Chair Dehart questioned the lag time for invoices and revenues and the negative balances. Mr. Cooke answered that the Finance Director will be increasing invoices so funds no longer show as negative.

C. CONSULTANT UPDATES:

1. Gerry Nakano of West Yost Associates provided a project status update including the following:
- The Technical Advisory Committee developed responses to public comments received on the DEIR for the Project
 - The Technical Advisory Committee recommended a Financial Consultant to Assist in the Evaluation of Design-Build Team Financial Submittals (agenda item 7A)
 - Both cities have selected consultants to assist with the performance of Integration Studies (Water quality studies related to the integration of the new treated SRWA supplies with the local groundwater supplies)
 - The Technical Advisory Committee is continuing to move forward on critical path items (among others):
 - Preparing the draft RFQ package for design-build firms interested in providing qualifications for our design-build project
 - Preparing pre-design Technical Memorandums for the following:
 - Treated water transmission alignments
 - Raw Water Pump Station
 - Water Treatment Plant
 - Operations Technology and Cybersecurity
 - Discussions with County regarding road restoration

- Continuing to coordinate with State on our State Revolving Fund Loan Application
- Continuing to work on acquisition of easements and property
- Other Deliverables and Key Project Meetings:
 - Monthly Executive Summary Report for April
 - June 14, regular Technical Advisory Committee Meeting
 - June 18, regular quarterly check in meeting with DFA staff regarding our State Revolving Fund Loan Application
 - June 19, monthly Executive Technical Advisory Committee meeting/conference call
 - June 28, regular Board meeting (followed by Technical Advisory Committee meeting)

D. PUBLIC PARTICIPATION: None

4. DECLARATION OF CONFLICTS OF INTEREST AND DISQUALIFICATIONS: None

5. CONSENT CALENDAR:

Action: Motion by Vice Chair DeHart, second by Director Lane, adopting the consent calendar and approving the minutes of the Special Meeting of May 3, 2018. Motion carried by the following vote:

Director Esquer	Director Lane	Vice Chair DeHart	Chair Vierra
Yes	Yes	Yes	Yes

6. PUBLIC HEARINGS: None

7. SCHEDULED MATTERS:

A. Interim General Manager Michael Brinton requested to award a contract to Project Finance Advisory, Ltd. to provide financial evaluation services to the SRWA during the design-build procurement process for the Regional Surface Water Supply Project in concurrence with the Technical Advisory Committee’s recommendation in an amount not to exceed \$38,650, plus a 10% contingency of \$3,865, for a grand total of \$42,515, and appropriate \$42,515 to account number 950-53-552.43060_022 “Contract Services - Contractor Financial Evaluation” funded via contributions from SRWA participating agencies to properly account for the cost of the new contract with Project Finance Advisory, Ltd.

Discussion: Chair Vierra asked if this contract would be solely for auditing the Regional Surface Water Supply Project. Interim General Manager Brinton replied that Project Finance Advisory, Ltd., will be evaluating the Project finances prior to and during the Project.

Chair Vierra opened public participation. There being no public response, Chair Vierra closed public participation.

Action: Motion by Vice Chair DeHart, second by Director Esquer, awarding a contract to Project Finance Advisory, Ltd. to provide financial evaluation services to the SRWA during the design-build procurement process for the Regional Surface Water Supply Project in concurrence with the Technical Advisory Committee’s

recommendation in an amount not to exceed \$38,650, plus a 10% contingency of \$3,865 for a grand total of \$42,515. Motion carried by the following vote:

Director Esquer	Director Lane	Vice Chair DeHart	Chair Vierra
Yes	Yes	Yes	Yes

Action: Resolution 2018-007 appropriating \$42,515 to account number 950-53-552.43060_022 "Contract Services - Contractor Financial Evaluation" be funded via contributions from SRWA participating agencies to properly account for the cost of the new contract with Project Finance Advisory, Ltd. was introduced by Vice Chair DeHart, seconded by Director Esquer and carried by the following vote:

Director Esquer	Director Lane	Vice Chair DeHart	Chair Vierra
Yes	Yes	Yes	Yes

- 8. MATTERS TOO LATE FOR THE AGENDA: None
- 9. BOARD ITEMS FOR FUTURE CONSIDERATION: None
- 10. BOARD COMMENTS:

Director Lane inquired about providing alternates for SRWA Board members. Legal Counsel Richard Shanahan informed the Board that the City of Turlock and the City of Ceres are amending the SRWA Joint Powers Authority (JPA) to allow for board alternates. Legal counsel from each city are currently reviewing the proposed JPA changes.

- 11. NEXT MEETING DATE: June 28, 2018 Regular meeting
- 12. ADJOURNMENT: Motion by Vice Chair DeHart, second by Director Esquer, to adjourn at 10:21 a.m. Motion carried 4/0.

Respectfully submitted,

DRAFT

Allison Martin, Board Secretary



From: Marie Lorenzi, Finance Director

Prepared by: Marie Lorenzi, Finance Director

1. ACTION RECOMMENDED:

Resolution: Approving an Engagement Letter for professional auditing services with Maze & Associates Accountancy Corporation in an amount not to exceed \$4,440 for the fiscal year 2017-18 audit with two (2) optional one-year extensions

2. DISCUSSION OF ISSUE:

In accordance with the SRWA By-Laws and Joint Powers Agreement, Staff solicited for and received an engagement letter from the City of Turlock's external professional auditors containing their proposal to provide professional auditing services for the SRWA for the fiscal year ended June 30, 2018 with two (2) optional one-year extensions. The services to be provided are outlined in the attached engagement letter received from Maze & Associates who is the same audit firm that has performed the SRWA audit for the 2015-16 and 2016-17 fiscal years. The proposed fee for the 2017-18 audit is \$4,440.

3. FISCAL IMPACT / BUDGET AMENDMENT:

The proposed 2018-19 budget for the SRWA includes an appropriation for the external audit services in account number 950-53-552.43055_002 "Consultant Audit" to provide funding for the proposed audit services.

4. GENERAL MANAGER'S COMMENTS:

Recommend approval.

5. ENVIRONMENTAL DETERMINATION:

N/A

6. ALTERNATIVES:

The Board may choose not to approve this agreement. Staff does not recommend this alternative as the audit is required by the SRWA's governing documents.



SRWA
 STANISLAUS REGIONAL
 WATER AUTHORITY

BEFORE THE BOARD OF THE STANISLAUS REGIONAL WATER AUTHORITY

<p>IN THE MATTER OF APPROVING AN ENGAGEMENT LETTER FOR PROFESSIONAL AUDITING SERVICES WITH MAZE & ASSOCIATES ACCOUNTANCY CORPORATION IN AN AMOUNT NOT TO EXCEED \$4,440 FOR THE FISCAL YEAR 2017-18 AUDIT WITH TWO (2) OPTIONAL ONE-YEAR EXTENSIONS</p>	<p>} } } } } } } }</p>	<p>RESOLUTION NO. 2018-</p>
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WHEREAS, pursuant to the SRWA’s governing documents a financial audit of the Joint Power Authority’s records is required to be conducted annually; and

WHEREAS, the City of Turlock, in its capacity as custodian of the SRWA’s funds and being responsible for the financial record keeping for the SRWA, has solicited a fee proposal from the City of Turlock’s external professional audit firm – Maze & Associates Accountancy Corporation; and

WHEREAS, the proposal received from Maze & Associates is outlined in their engagement letter dated July 23, 2018; and

WHEREAS, the cost proposal before the Board totals \$4,440 for the 2017-18 fiscal year audit which will be conducted during fiscal year 2018-19. The proposal also contains two (2) optional one-year extensions.

NOW, THEREFORE, BE IT RESOLVED that the Board of the Stanislaus Regional Water Authority does hereby approve an engagement letter for professional auditing services with Maze & Associates Accountancy Corporation in an amount not to exceed \$4,440 for the fiscal year 2017-18 audit with two (2) optional one-year extensions.

PASSED AND ADOPTED at a special meeting of the Board of the Stanislaus Regional Water Authority this 6th day of August, 2018, by the following vote:

- AYES:
- NOES:
- NOT PARTICIPATING:
- ABSENT:

ATTEST:

 Allison Martin, Board Secretary



July 23, 2018

Mr. Robert Grandberg
General Manager
Stanislaus Regional Water Authority
156 S. Broadway, Suite 230
Turlock, CA 95380

Dear Mr. Grandberg:

We are pleased to confirm our understanding of the services we are to provide for the Stanislaus Regional Water Authority for the years ended June 30, 2018 through 2020. The services we have been engaged to provide are outlined below, but we are also available to provide additional services at your request:

1. Audit of the basic financial statements, preparation of Memorandum on Internal Control, and review of Management's Discussion and Analysis.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis, to supplement the Authority's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Authority's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

If the Authority's financial statements are accompanied by supplementary information other than RSI, we will subject the supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and will provide an opinion on it in relation to the financial statements as a whole.

Other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that information.

Audit Objective

The objective of our audit is to express opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of accompanying supplementary information when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the Authority's financial statements. Our reports will be addressed to the Board of the Authority. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with Authority management in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and on compliance and other matters will include a paragraph that states the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control on compliance, and that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the Authority is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the Authority or to acts by management or employees acting on behalf of the Authority. Because the determination of abuse is subjective, *Governmental Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors or any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of physical existence of inventories, and direct confirmation of cash, investments and certain other assets and liabilities by correspondence with selected customers, creditors and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill the Authority for responding to this inquiry. At the conclusion of our audit we will also require certain written representations from management about management's responsibilities for the financial statements; compliance with laws, regulations, contracts and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures - Internal Controls

Our audit will include obtaining an understanding of the Authority and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and the Board internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Authority's compliance with provisions of applicable laws, regulations, contracts, agreements and grants. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Other Services

We will also assist in preparing the financial statements and related notes in conformity with U.S. generally accepted accounting principles based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

Management Responsibilities

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; following laws and regulations; and ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. Management is also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management is also responsible for providing us with access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statements, additional information that we may request for the purpose of the audit, and unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. We understand that the Authority will provide us with the Closing Checklist information required for our audit and that the Authority is responsible for the accuracy and completeness of that information.

Management's responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Authority involving (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the Authority received in communications from employees, former employees, grantors, regulators, or others. In addition, management is responsible for identifying and ensuring that it complies with applicable laws, regulations, contracts, agreements and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts and grant agreements, or abuse that we report.

Management is responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. Management agrees to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. Management also agrees to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Management's responsibilities include acknowledging to us in the representation letter that: management is responsible for presentation of supplementary information in accordance with GAAP; that management believes the supplementary information, including its form and content, is fairly presented in accordance with GAAP; that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and management has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining of a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objective section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits or studies. Management is also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Management agrees to assume all management responsibilities relating to the financial statements and related notes and any other nonaudit services we provide. Management will be required to acknowledge in the management representation letter our assistance with the preparation of the financial statements and related notes and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, management agrees to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accepting responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We will provide copies of our reports to the Authority; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is our property and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request in a timely manner to a federal agency providing oversight of direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Maze & Associates personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

We will retain audit documentation for seven years after the report release date pursuant to state regulations. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We expect to begin our audit for the year ended June 30, 2018 in July 2018 and to issue our reports no later than February 28, 2019. Amy L. Meyer is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

Our fees for these services are billed based on our contract with the Authority. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if the Authority's account becomes thirty days or more overdue and may not be resumed until the Authority's account is paid in full.

These fees are based on anticipated cooperation from Authority personnel, the completion of schedules and data requested on our Checklists, and the assumption that there will be no unexpected increases in work scope, such as new debt issues, etc., or delays which are beyond our control, as discussed on the Fees Attachment to this letter. If significant additional time is necessary, we will discuss it with Authority management and arrive at a new fee before we incur any additional costs.

We understand you will provide us with basic workspace sufficient to accommodate the audit team assigned to your audit. We understand the basic workspace will be equipped with a telephone and direct Internet access, preferably a temporary network outside of your network, a public IP address and a wired connection. We understand you will also provide us with access to a fax machine and read only access to your general ledger system.

Government Auditing Standards require that we provide the Authority with a copy of our most recent external peer review report and any subsequent peer review reports received during the period of the contract. Our most recent peer review report accompanies this letter.

We appreciate the opportunity to be of service to the Authority and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return the entire copy to us.



Maze & Associates

RESPONSE:

This letter correctly sets forth the understanding of the Authority.

By: _____

Title: _____

Date: _____

**Stanislaus Regional Water Authority Engagement Letter
Fees Attachment
June 30, 2018 through 2020**

Our fees for the work described in the attached engagement letter will be as follows, unless they are adjusted for one or more of the items below:

Item	2018	2019	2020
Basic Financial Statements	\$4,440	\$4,590	\$4,740
Memorandum on Internal Control	Included above	Included above	Included above

2018 to 2020 Fees – Our recurring fees have been adjusted only for the change in the services component of the Bay Area Cost of Living Index for the San Francisco Bay Area of 3.3%.

PDF Copies of Reports – scanned copies of the above reports are available upon request at no charge. These scanned copies (300 dpi) are not high quality and the file sizes may be large, depending on the length of the report. **If you intend to post the BFS to your website, we do not recommend using the scanned copies to do so – one of the options below should be used.** If you would like a higher quality PDF file, there are three options. The fees shown below are based on a Comprehensive Annual Financial Report. **Please contact us if you would like us to prepare one of the following three options** for your BFS, or if you'd like a quote for the preparation of a file for another type of report. In addition, should you decide on one of the following options, please let us know at least a week in advance.

1. **INDIVIDUAL PDF BFS PAGES - \$100**

Print words, numbers, and statistics to PDF, then scan anything not available digitally (letterhead, award certificates, etc). Use WinZIP to archive individual PDF prints “as is” and send them to you, and you will then compile report. This option requires that you have a full copy of Adobe Acrobat Standard or Professional, and knowledge about the program, as well as a way to “unzip” the files. This should be used if you are willing to assemble the PDF report, but still would like to have a high quality “printed to PDF” BFS.

Quality: Medium-High
Time to Complete: 2-3 business days
File size: 1-2MB (varies with number of pages scanned)

2. **WEB PDF BFS - \$450**

Print words, numbers, and statistics to PDF, then scan anything not available digitally (letterhead, award certificates, etc). Compile into one document with embedded page numbers, linked Table of Contents, and PDF bookmarks for easy document navigation. This option is ideal for placement on a website or distribution via e-mail.

Quality: Medium-High (depending on number of pages scanned)
Time to Complete: 7-10 business days
File size: ~ 1MB (varies with number of pages scanned)

3. CAMERA READY PDF BFS - \$750

Print words, numbers, and statistics to PDF and compile into one document with embedded page numbers. Insert available digital pages (letterhead, award certificates, etc.) but *no scanning* as we do not have the facilities to scan documents at "camera ready" quality. This option could be sent to any print shop to generate an official bound copy, for placement on a website, or distribution via e-mail.

Quality: Very High

Time to Complete: 7-10 business days

File size: < 1MB

Additional Services - The above fees are for audit and assurance services described in the accompanying engagement letter. They do not include fees for assisting with closing the books nor providing other accounting services. Should the Authority require assistance beyond audit services we will provide a cost estimate before proceeding.

Report Finalization - Our fee is based on our understanding that all information and materials necessary to finalize all our reports will be provided to us before we complete our year-end fieldwork in your offices. We will provide final drafts of all our reports before we leave your offices. We will schedule a Final Changes Meeting with you for a date no more than two weeks after we complete our fieldwork. At that meeting, we will finalize all reports for printing. After that date, report changes you make and changes required because information was not received timely will be billed at our normal hourly rates.

Post-Closing Client Adjusting Entries - The first step in our year-end audit is the preparation of financial statement drafts from your final closing trial balance. That means any entries you make after handing us your closing trial balance must be handled as audit adjustments, or in extreme cases, by re-inputting the entire trial balance, even if the amounts are immaterial. If you make such entries and the amounts are in fact immaterial, we will bill you for the costs of the adjustments or re-input at our normal hourly rates.

Recurring Audit Adjustments - Each year we include the prior year's adjusting entries as new steps in our Closing Checklist, so that you can incorporate these entries in your closing. If we are required to continue to make these same adjustments as part of this year's audit, we will bill for this service at our normal hourly rates.

CAFR Printing (If a CAFR is prepared) - As a convenience, we can send your CAFR to a printer we use locally. We do not charge for delivering camera-ready print masters to any printer of your choice and delivering the CAFRs or BFS to you. However, we will bill you for any additional time spent on the CAFR printing at our normal hourly rates. This includes changes after the report goes to the printer, obtaining, reviewing and / or delivering printer's proofs, etc.

We can also help with CAFR design, including covers, tabs, dividers, color choices, bindings, organization charts, maps, etc. We will estimate these costs for you before proceeding.

Grant Programs Requiring Separate Audit - Grant programs requiring separate audits represent a significant increase in work scope, and fees for these audits vary based on the grant requirements. If you wish us to determine and identify which programs are subject to audit, we will bill you for that time at our normal hourly rates.

Changes in Authority Personnel - Our experience is that changes and /or reductions in Finance Department staff can have a pronounced impact on costs of performing the audit. If such changes occur, we will meet with you to assess their impact and arrive at a new fee before we begin the next phase of our work. However, we reserve the right to revisit this subject at the conclusion of the audit, based on your actual performance and our actual costs.



POWELL & SPAFFORD, INC.
CERTIFIED PUBLIC ACCOUNTANTS

Jessie C. Powell, CPA (Ret.)
Patrick D. Spafford, CPA

Licensed by the California Board of Accountancy
Member: American Institute of Certified Public Accountants

SYSTEM REVIEW REPORT

To the Shareholders of
Maze & Associates Accountancy Corporation
and the Peer Review Committee of the CalCPA Peer Review Program

We have reviewed the system of quality control for the accounting and auditing practice of Maze & Associates Accountancy Corporation (the firm) in effect for the year ended May 31, 2014. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*.

In our opinion, the system of quality control for the accounting and auditing practice of Maze & Associates Accountancy Corporation in effect for the year ended May 31, 2014, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Maze & Associates Accountancy Corporation has received a peer review rating of *pass*.

Powell & Spafford

August 27, 2014

**ADDENDUM TO
STANISLAUS REGIONAL WATER AUTHORITY (SRWA)
AGREEMENT FOR SERVICES**

Contractor: Maze & Associates Accountancy Corporation

Date: August 6, 2018

Scope of Work: Professional Auditing Services

1. INSURANCE:

Contractor shall not commence work under this Agreement until Contractor has obtained SRWA's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of contract. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to SRWA.

(a) **General Liability Insurance:** Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse and underground property damage hazards. Contractor's general liability policies shall be primary and not seeking contribution from the SRWA's coverages, and be endorsed using Insurance Services Office form CG 20 10 to provide that SRWA and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

(b) **Workers' Compensation Insurance:** Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Contractor shall submit to SRWA, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of SRWA, its officers, agents, employees, and volunteers.

(c) **Auto Insurance:** Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than two million dollars (\$2,000,000) per accident. If Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

(d) **Professional Liability Insurance:** When applicable, Contractor shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Contractor agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

**ADDENDUM TO
STANISLAUS REGIONAL WATER AUTHORITY (SRWA)
AGREEMENT FOR SERVICES**

Contractor: Maze & Associates Accountancy Corporation

Date: August 6, 2018

Scope of Work: Professional Auditing Services

(e) **Deductibles and Self-Insured Retentions:** Upon request of SRWA, any deductibles or self-insured retentions must be declared to and approved by SRWA. At the option of SRWA, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SRWA, its elective and appointive boards, officers, agents, employees, and volunteers; or (2) Contractor shall provide a financial guarantee satisfactory to SRWA guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(f) **Other Insurance Provisions:** The commercial general liability policy shall contain, or be endorsed to contain, the following provisions:

(1) SRWA, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the contract. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as CG 20 10 for ongoing operations and CG 20 37 for products/completed operations), or as a separate Owners and Contractors Protective Liability policy providing both ongoing operations and completed operations coverage.

(2) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects SRWA and any insurance or self-insurance maintained by SRWA shall be excess of Contractor's insurance and shall not contribute with it.

(3) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to SRWA under this Agreement, the insurer, broker/producer, or Contractor shall provide SRWA with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.

(4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(g) **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:-VII or with an insurer to which the SRWA has provided prior approval.

(h) **Verification of Coverage:** Contractor shall furnish SRWA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by SRWA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. SRWA reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements.

**ADDENDUM TO
STANISLAUS REGIONAL WATER AUTHORITY (SRWA)
AGREEMENT FOR SERVICES**

Contractor: Maze & Associates Accountancy Corporation

Date: August 6, 2018

Scope of Work: Professional Auditing Services

(i) **Waiver of Subrogation:** With the exception of professional liability, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of SRWA for all work performed by Contractor, its agents, employees, independent contractors and subcontractors. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(j) **Subcontractors:** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

2. INDEMNIFICATION:

Indemnity for Professional Liability: When the law establishes a professional standard of care for CONTRACTOR's Services, to the fullest extent permitted by law, CONTRACTOR shall indemnify, protect, defend, and hold harmless SRWA and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the CONTRACTOR (and its Subcontractors) are responsible for such damages, liabilities and costs on a comparative basis of fault between the CONTRACTOR (and its Subcontractors) and the SRWA in the performance of professional services under this Agreement. CONTRACTOR shall not be obligated to defend or indemnify SRWA for the SRWA's own negligence or for the negligence of others.

Indemnity for other than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless SRWA and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by CONTRACTOR or by any individual or agency for which CONTRACTOR is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of CONTRACTOR.

3. TERM: The term of this Agreement shall be effective August 6, 2018 and end August 6, 2019, subject to SRWA's availability of funds.

4. VOLUNTARY TERMINATION: SRWA may terminate this Agreement without cause or legal excuse by providing thirty (30) days' written notice to CONTRACTOR.

5. CONFLICT: Should any conflict exist between the terms and conditions of the Agreement and this Addendum, the terms and conditions of the Addendum shall prevail.

**ADDENDUM TO
STANISLAUS REGIONAL WATER AUTHORITY (SRWA)
AGREEMENT FOR SERVICES**

Contractor: Maze & Associates Accountancy Corporation

Date: August 6, 2018

Scope of Work: Professional Auditing Services

6. EXTENSION OF AGREEMENT: SRWA may elect to extend this Agreement for two (2) additional one-year terms, on the same terms and conditions, upon issuing an "Election to Extend Agreement" letter executed by the General Manager to CONTRACTOR thirty (30) days prior to the expiration of this Agreement. On each anniversary date, CONTRACTOR will be allowed to increase prices. Increases may not exceed increases in the San Francisco-Oakland Consumer Price Index for all urban consumers or percentage increases in CONTRACTOR's published prices, whichever is lower. In all cases, SRWA may cancel the contract if a requested price increase is not acceptable.

7. CONTRACT ADMINISTRATOR: The SRWA's contract administrator and contact person for this Agreement is:

Robert Granberg
Stanislaus Regional Water Authority
General Manager
156 S. Broadway, Suite 270, Turlock, California 95380-5456
Telephone Number: (209) 668-4142
E-mail Address: amartin@turlock.ca.us

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by and through their respective officer's thereunto duly authorized.

**ADDENDUM TO
STANISLAUS REGIONAL WATER AUTHORITY (SRWA)
AGREEMENT FOR SERVICES**

Contractor: Maze & Associates Accountancy Corporation

Date: August 6, 2018

Scope of Work: Professional Auditing Services

Stanislaus Regional Water Authority

Maze & Associates

By: _____
Chris Vierra, Board Chair

By: _____

Date: _____

Title: _____

Print name: _____

APPROVED AS TO SUFFICIENCY:

Date: _____

By: _____
Robert Granberg, General Manager

APPROVED AS TO FORM:

By: _____
Richard Shanahan, SRWA Attorney

ATTEST:

By: _____
Allison Martin, Board Secretary



From: Marie Lorenzi, Finance Director

Prepared by: Marie Lorenzi, Finance Director

1. ACTION RECOMMENDED:

Motion: Accepting the Stanislaus Regional Water Authority's audited Financial Statements for the fiscal year ended June 30, 2017 and related reports

2. DISCUSSION OF ISSUE:

The Authority's independent external auditors, Maze & Associates, have completed the Authority's annual audit for the fiscal year ended June 30, 2017 and a copy of their audit report is attached to this Staff report.

The financial statements were prepared in accordance with Generally Accepted Accounting Principles (GAAP) by Finance Staff from the City of Turlock who provide accounting assistance to the Authority. The external auditors have the responsibility to audit these statements in accordance with Generally Accepted Auditing Standards with the goal of determining whether the financial statements are free of material misstatement. If this goal can be supported with the results of their audit, the external auditor will issue an unqualified or "clean" opinion. The above listed financial statements contain an unqualified opinion.

Within the financial statements is a narrative section titled "Management's Discussion and Analysis (MD&A)" (see page 3 in the statements). The MD&A provides the reader with an introduction, overview, and analysis of the Authority's basic financial statements. It tells the "number's story" in words and helps explain the significance of the numbers in the financial statements which follow.

In addition to the financial statements, the Memorandum on Internal Controls and Required Communications is also attached to this Staff report. This document provides information in two sections of which the auditors would like the Board to take note. The first section delineates area(s) of improvement in the Authority's financial systems for Board consideration. The second section provides the governing body with information regarding new accounting policies which may impact the Authority's financial statements in the future as well as various issues that the auditors are required, under professional auditing standards, to communicate with the governing body.

3. FISCAL IMPACT / BUDGET AMENDMENT:

Funds are budgeted for the independent audit services required. There is no additional fiscal impact.

4. GENERAL MANAGER'S COMMENTS:

Recommend acceptance.

5. ENVIRONMENTAL DETERMINATION:

N/A

6. ALTERNATIVES:

A. None, as Staff is only asking for acceptance of these reports.

STANISLAUS REGIONAL WATER AUTHORITY
BASIC FINANCIAL STATEMENTS
FOR THE YEAR ENDED JUNE 30, 2017

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**STANISLAUS REGIONAL WATER AUTHORITY
BASIC FINANCIAL STATEMENTS
For the Year Ended June 30, 2017**

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INDEPENDENT AUDITOR'S REPORT

To the Board of Directors
Stanislaus Regional Water Authority
Turlock, California

Report on the Financial Statements

We have audited the accompanying financial statements of the Stanislaus Regional Water Authority (the Authority) as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the Table of Contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Authority's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Authority as of June 30, 2017, and the change in financial position and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated July 3, 2018, on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

Maye & Associates

Pleasant Hill, California
July 3, 2018

MANAGEMENT'S DISCUSSION AND ANALYSIS

The following narrative provides an overview and analysis of the financial activities of the Stanislaus Regional Water Authority (the Authority) for the year ended June 30, 2017 with comparative information for June 30, 2016. It is provided in order to enhance the information in the financial audit and should be reviewed together with that report.

THE PURPOSE OF THE AUTHORITY

The Authority was established by the Cities of Ceres, Modesto and Turlock on September 26, 2011. In November 2015, the City of Modesto formally withdrew from membership in the Authority and in December 2015 the Authority's Bylaws as well as the Joint Powers Authority Agreement were amended to reflect this change. Currently only the Cities of Ceres and Turlock (Participants) are participating members of the Authority.

The Participants are interested in finding and evaluating surface water supply options and facilities to supplement the ground-water potable water sources currently serving the municipal and industrial water customers within their service areas. Each of the cities is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law. The Participants are working with the Turlock Irrigation District (TID) to develop a Regional Surface Water Supply Project (RSWSP) that will provide a safe and reliable high quality surface water supply for the long-term drinking water needs of each participating City. The Participants have formed this Joint Powers Authority (JPA) for the purpose of making responsible decision related to the development and operation of the future RSWSP.

FINANCIAL HIGHLIGHTS

- At June 30, 2017 the Authority's assets exceed liabilities by \$2,415,457 (net position).
- Total net position increased by \$2,179,331 over the balance at June 30, 2016 of \$236,126.
- Total Authority revenues for 2016-17 were \$2,423,718 compared to expenses of \$244,387. The Authority also expended \$1,925,465 on project costs which were capitalized and are presented on the Statement of Net Position as "Capital assets not being depreciated".

THE BASIC FINANCIAL STATEMENTS

The basic financial statements comprise the statement of net position and the statement of revenues, expenses and change in net position. The Statement of Net Position provides information about the financial position of the Authority as a whole, including all its capital assets and long-term liabilities. The Statement of Revenues, Expenses and Change in Net Position explains in detail the change in net position for the year.

The Statement of Net Position presents information on Authority's assets, liabilities and deferred outflows/inflows of resources; the difference between them representing Authority's net position. Net position includes the amount invested in capital assets.

The Statement of Revenues, Expenses and Change in Net Position presents information showing total revenues versus total expenses and shows how Authority's net position changed during the fiscal year. All revenues and expenses are recognized as soon as the underlying event occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in the disbursement or collection of cash during future fiscal years.

The Notes to the Financial Statements provide additional information that is essential to a full understanding of the data provided in the financial statements. The notes describe the nature of Authority's operations and significant accounting policies and clarify unique financial information.

**Stanislaus Regional Water Authority
Management's Discussion and Analysis (continued)
For the Year Ended June 30, 2017**

The following is a condensed Statement of Net Position for the Authority as of June 30:

Statements of Net Position

	<u>2017</u>	<u>2016</u>
Assets		
Cash	\$ 719,224	\$ 493,146
Accounts receivable	106,958	
Interest receivable	631	319
Capital assets not being depreciated	1,925,465	
Total assets	<u>2,752,278</u>	<u>493,465</u>
Liabilities		
Accounts payable	336,821	257,339
Total liabilities	<u>336,821</u>	<u>257,339</u>
Net position:		
Net investment in capital assets	1,925,465	
Unrestricted	489,992	236,126
Total liabilities	<u>\$ 2,415,457</u>	<u>\$ 236,126</u>

The following is a condensed Statement of Revenues, Expenses and Change in Net Position for the years ended June 30:

Statements of Revenues, Expenses and Changes in Net Position

	<u>2017</u>	<u>2016</u>
Operating Revenues	\$ 2,420,618	\$ 760,043
Operating Expenses	<u>244,387</u>	<u>524,519</u>
Net Operating Income	2,176,231	235,524
Non-Operating Revenues	<u>3,100</u>	<u>609</u>
Change in net position	2,179,331	236,133
Net position, July 1	<u>236,126</u>	<u>(7)</u>
Net Position, June 30	<u>\$ 2,415,457</u>	<u>\$ 236,126</u>

**Stanislaus Regional Water Authority
Management's Discussion and Analysis (continued)
For the Year Ended June 30, 2017**

FINANCIAL ACTIVITIES OF THE AUTHORITY AS A WHOLE

This analysis focuses on the net position and changes in net position of the Authority's activities in the statement of net position and statement of revenues, expenses and change in net position.

As of June 30, 2017 total assets of \$2,752,278 were offset by liabilities of \$336,821. Assets primarily consist of \$1.9 million in capital assets. This represents contractual expenses incurred in the development of the RSWSP including work required to issue the Draft Environmental Impact Report; the development of the design, size and scope of the potential treatment facility; and the development of design and specifications for the construction of a wet well to assist in determining the viability of underground infrastructure previously constructed.

The completion of these tasks will provide the Authority Board with the information and documents necessary to make final decisions related to the size and scope of the RSWSP and the type of water treatment facilities that the Authority may decide to construct as well as the environmental documents necessary to proceed with the RSWSP.

CONTACTING THE AUTHORITY'S FINANCIAL MANAGEMENT

These Financial Statements are intended to provide citizens, taxpayers, investors, and creditors with a general overview of the Authority's finances. Questions about this report should be directed to the City of Turlock, Finance Department, at 156 South Broadway, Suite 110, Turlock, CA 95380.

STANISLAUS REGIONAL WATER AUTHORITY
STATEMENT OF NET POSITION
JUNE 30, 2017

ASSETS

Current Assets

City of Turlock Investment Pool (Note 2)	\$719,224
Accounts receivable	106,958
Interest receivable	<u>631</u>
Total Current Assets	826,813

Non-Current Assets

Capital assets not being depreciated (Note 3)	<u>1,925,465</u>
Total Assets	<u>2,752,278</u>

LIABILITIES

Current Liabilities

Accounts payable	<u>336,821</u>
------------------	----------------

NET POSITION

Net Investment in Capital Assets	1,925,465
Unrestricted	<u>489,992</u>
Total net Position	<u><u>\$2,415,457</u></u>

See accompanying notes to the financial statements

STANISLAUS REGIONAL WATER AUTHORITY
STATEMENT OF REVENUES, EXPENSES AND
CHANGE IN NET POSITION
FOR THE YEAR ENDED JUNE 30, 2017

OPERATING REVENUES	
Participant operating contributions	<u>\$2,420,618</u>
OPERATING EXPENSES	
Administrative services	144,157
Contractual services	<u>100,230</u>
Total Operating Expenses	<u>244,387</u>
Operating Income	2,176,231
NON-OPERATING REVENUES	
Interest income	<u>3,100</u>
Change in Net Position	2,179,331
Net Position, beginning of year	<u>236,126</u>
Net Position, end of year	<u><u>\$2,415,457</u></u>

See accompanying notes to the financial statements

STANISLAUS REGIONAL WATER AUTHORITY
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED JUNE 30, 2017

CASH FLOWS FROM OPERATING ACTIVITIES	
Cash received from participants	\$2,313,660
Payments for administrative services	(144,157)
Payments to suppliers	<u>(347,037)</u>
Net Cash Provided by Operating Activities	<u>1,822,466</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES	
Acquisition of capital assets	<u>(1,599,176)</u>
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income	<u>2,788</u>
Net Cash Flows	226,078
CASH AND INVESTMENTS AT BEGINNING OF YEAR	<u>493,146</u>
CASH AND INVESTMENTS AT END OF YEAR	<u><u>\$719,224</u></u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES:	
Operating income	\$2,176,231
Change in assets and liabilities:	
Due from participants	(106,958)
Accounts payable	<u>(246,807)</u>
Net Cash Provided by Operating Activities	<u><u>\$1,822,466</u></u>

See accompanying notes to the financial statements

STANISLAUS REGIONAL WATER AUTHORITY
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. *Description and Reporting Entity*

The Stanislaus Regional Water Authority (the Authority) was originally established by the Cities of Ceres, Modesto, and Turlock (Participants) on September 26, 2011. In November 2015, the City of Modesto formally withdrew from membership in the Authority. Subsequently, the Authority's governing documents were amended to reflect Modesto's withdrawal as well as to revise the functional administrative duties of the remaining participants and the composition of the Board of Director's, which now consists of two members of the City Council for each City participant

The Participants are interested in finding and evaluating surface water supply options and facilities to supply water to the municipal and industrial customers within their service areas. Each of the Participants is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law. The Participants are working with the Turlock Irrigation District (TID) to develop a Regional Surface Water Supply Project (RSWSP) that will provide a safe and reliable high quality surface water supply for the long-term drinking water needs of each participating city. The Participants formed the Authority as a Joint Powers Authority (JPA) for the purpose of making responsible decisions related to the development and operation of the future RSWSP. Each Participant is responsible for its share of expenditures incurred by the Authority during a fiscal year pursuant to various funding/cost sharing agreements approved by the Authority's Board of Directors and each Participant's respective governing body.

Since December 2015, the City of Turlock assumed responsibility for the processing all financial transactions and accounting for the Authority. The following is a summary of the more significant policies.

B. *Basis of Presentation*

The Authority's basic financial statements are prepared in conformity with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board is the acknowledged standard setting body for establishing accounting and financial reporting standards followed by governmental entities in the United States of America.

C. *Fund Accounting*

The Authority is accounted for as an enterprise fund. This fund is a set of self-balancing accounts which comprise its assets, deferred outflows of resources, liabilities, deferred inflows of resources, net position, revenues and expenses.

STANISLAUS REGIONAL WATER AUTHORITY
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

D. Basis of Accounting and Measurement Focus

Basis of accounting refers to when revenues and expenses are recognized. The Authority's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned, while expenses are recognized in the period in which the liability is incurred, regardless of when cash changes hands. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Operating revenues are those revenues that are generated from the primary operations of the Authority. All other revenues are reported as non-operating revenues. Operating expenses are those expenses that are essential to the primary operations of the Authority. All other expenses are reported as non-operating expenses.

When both restricted and unrestricted resources are available for use, it is the Authority's policy to use restricted resources first, then unrestricted resources as they are needed.

E. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Authority categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels based on the extent to which inputs used in measuring fair value are observable in the market.

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 inputs are inputs – other than quoted prices included within level 1 – that are observable for an asset or liability, either directly or indirectly.

Level 3 inputs are unobservable inputs for an asset or liability.

If the fair value of an asset or liability is measured using inputs from more than one level of the fair value hierarchy, the measurement is considered to be based on the lowest priority level input that is significant to the entire measurement.

F. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

STANISLAUS REGIONAL WATER AUTHORITY
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 2 – CASH AND INVESTMENTS

The Authority participates in the City of Turlock's cash and investment pool.

Cash and investments of the Authority are pooled with other City of Turlock funds. The Authority's portion of this pooled amount was \$719,244 at June 30, 2017. At June 30, 2017, the City's investment pool is unrated. The Authority can spend cash at any time without prior notice or penalty. Interest earned on pooled cash and investments is credited to each participant in the pool based on each participant's average quarterly cash and investment balance. Detailed information concerning the City of Turlock's pooled cash and investments, including information regarding the fair value of investments, may be found in the City of Turlock's Basic Financial Statements as of June 30, 2017, the fair value of the Authority's position in the pool is the same as the value of its pool shares.

Fair Value Hierarchy

The Authority categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure fair value of the assets. Level 1 inputs are quoted prices in an active market for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

The fair value of the Authority's investment in the City's investment pool, classified in level 2 of the fair value hierarchy, is valued using the Authority's share of the investment pool. Fair value is defined as the quoted market value on the last trading day of the period.

NOTE 3 – CAPITAL ASSETS

Capital assets acquired by the Authority are recorded at cost and are depreciated using the straight-line method over estimated useful lives. The Authority has set the capitalization threshold for reporting capital assets at \$5,000. Operating expenses include depreciation on all depreciable capital assets. Repairs and maintenance are charged to expense when the services are rendered.

During fiscal year 2017, the Authority began the Regional Surface Water Supply Project and costs totaling \$1,925,465 have been recorded as construction in progress as of June 30, 2017.

STANISLAUS REGIONAL WATER AUTHORITY
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2017

NOTE 4 – NET POSITION

A. Net Position

Net Position is the excess of all assets and deferred outflows of resources over all liabilities and deferred inflows of resources. Net Position is divided into three captions and are described below:

Net Investment in Capital Assets describes the portion of Net Position which is represented by the current net book value of the capital assets, less the outstanding balance of any debt issued to finance these assets.

Restricted describes the portion of Net Position which is restricted as to use by the terms and conditions of agreements with outside parties, governmental regulations, laws, or other restrictions which the Authority cannot unilaterally alter.

Unrestricted describes the portion of Net Position that does not meet the definition of “net investment in capital assets” or “restricted net position.”

NOTE 5 – RELATED PARTY TRANSACTIONS

The Authority reimburses the City of Turlock for administrative and other costs incurred by the City of Turlock on the Authority’s behalf. During the year ended June 30, 2017, contractual service expenditures of \$37,404 were allocated to the Authority from the City of Turlock.

In addition, an employee of the City of Ceres provided Interim General Manager services for the Authority during fiscal year 2017 and the cost of those services totaled \$105,734 for the fiscal year.

NOTE 6 – COMMITMENTS AND CONTINGENCIES

Program Management and Other Contracts

The Authority had the following outstanding commitments at June 30, 2017 related to the Regional Surface Water Supply Project:

Environmental Impact Review	\$341,046
Program Management	751,310
Wet Well Design	99,978
Legal Services	52,956
Governmental Consulting Services	19,666

**INDEPENDENT AUDITOR'S REPORT ON
INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH *GOVERNMENT AUDITING STANDARDS***

To the Board of Directors
Stanislaus Regional Water Authority
Turlock, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the Stanislaus Regional Water Authority (the Authority), as of and for the year ended June 30, 2017, and have issued our report thereon dated July 3, 2018.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Authority's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

We have also issued a separate Memorandum on Internal Control dated July 3, 2018, which is an integral part of our audit and should be read in conjunction with this report.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Mane & Associates

Pleasant Hill, California
July 3, 2018

STANISLAUS REGIONAL WATER AUTHORITY

**MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

FOR THE YEAR ENDED JUNE 30, 2017

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STANISLAUS REGIONAL WATER AUTHORITY
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS

For The Year Ended June 30, 2017

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MEMORANDUM ON INTERNAL CONTROL

To the Board of Directors
Stanislaus Regional Water Authority
Turlock, California

In planning and performing our audit of the basic financial statements of the Stanislaus Regional Water Authority (the Authority) as of and for the year ended June 30, 2017, in accordance with auditing standards generally accepted in the United States of America, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Authority's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Management's written responses in this report have not been subjected to the audit procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

This communication is intended solely for the information and use of management, the Authority Board, others within the organization, and agencies and pass-through entities requiring compliance with *Government Auditing Standards*, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink that reads 'Maze & Associates' in a cursive script.

Pleasant Hill, California
July 3, 2018

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MEMORANDUM ON INTERNAL CONTROL

STATUS OF PRIOR YEAR SCHEDULE OF OTHER MATTERS

2016-01 Insurance/Bonds Provisions of the Joint Exercise of Powers Agreement

Article XIV, Insurance/Bonds, of the Authority's amended Joint Exercise of Powers Agreement includes the provision that the Authority "shall at all times maintain worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary...Such insurance may be maintained in whole or in part in the form of self-insurance." And, Article XX, Participant Employees, indicates that "Each Participant shall assume all liability related to its employees who provide services in connection with this Agreement...However, the Authority may, in its sole discretion, procure a policy or policies of insurance in the types and amounts it deems appropriate. In the event such policy or policies of insurance are procured by the Authority, such insurance coverage shall be primary over any obligation of the Participant under this section."

The Authority has not obtained worker's compensation, liability or property damage insurance policies to date or documented the manner in which it is self-insured.

The Authority should review the need for insurance coverage as contemplated by Articles XIV and XX of the Agreement and formally document what policies are in place, not in place, or in what manner the Authority is self-insured.

Current Status (Prepared by Management):

The Authority continues to review its insurance needs and will bring any recommendations to the Board as the Authority's needs warrant.

2016-02 Cash Reserve Provision of the Joint Exercise of Powers Agreement

Article XV(F), Financing, of the Authority's amended Joint Exercise of Powers Agreement includes the provision that the Authority "shall determine on an annual basis, prior to the beginning of each fiscal year, a level of reasonable cash reserves to be accumulated by the Authority. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Authority. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Authority shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next fiscal year and serve to reduce each Participant's respective assessment for such subsequent fiscal year."

The Authority Board did not establish a level of cash reserve for fiscal year 2017.

We understand that the Board discussed the cash reserve and determined that it was not necessary in fiscal year 2016 due to the changing in the funding method for participant contributions, but did not document that decision in a Board action or in another formal manner.

The Authority should set a cash reserve prior to the beginning of each fiscal year in compliance with the provisions of the Joint Powers Financing Authority Agreement, or formally document the Board decision related to Article XV(F), Financing, if it is determined that the reserve is not required.

Current Status:

Implemented - The establishment of a cash reserve for fiscal year 2017-18 was included as part of that year's budget adoption process.

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REQUIRED COMMUNICATIONS

To the Board of Directors
Stanislaus Regional Water Authority
Turlock, California

We have audited the basic financial statements of the Stanislaus Regional Water Authority for the year ended June 30, 2017. Professional standards require that we communicate to you the following information related to our audit under generally accepted auditing standards, *Government Auditing Standards*.

Significant Audit Findings

Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Authority are described in Note 1 to the financial statements.

No new accounting policies were adopted, and the application of existing policies was not changed during the year.

The following pronouncements became effective, but did not have a material effect on the financial statements:

- GASB 73 - *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*
- GASB 74 - *Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans*
- GASB 77 - *Tax Abatement Disclosures*
- GASB 80 - *Blending Requirements for Certain Component Units—an amendment of GASB Statement No. 14*

Unusual Transactions, Controversial or Emerging Areas

We noted no transactions entered into by the Authority during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the Authority's financial statements was:

Estimated Fair Value of Investments: As of June 30, 2017, the Authority held approximately \$719 thousand of cash and investments in the City of Turlock's investment pool as measured by fair value as disclosed in Note 2 to the Financial Statements. Fair value is essentially market pricing in effect as of June 30, 2017. These fair values are not required to be adjusted for changes in general market conditions occurring subsequent to June 30, 2017.

Disclosures

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Professional standards require us to accumulate all known and likely uncorrected misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the Authority Board.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in a management representation letter dated July 3, 2018.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Authority's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Authority's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Information Accompanying the Financial Statements

We applied certain limited procedures to the required supplementary information that accompanies and supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the required supplementary information and do not express an opinion or provide any assurance on the required supplementary information.

This information is intended solely for the use of Authority Board and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Maye & Associates

Pleasant Hill, California
July 3, 2018

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From: Horizon Water and Environment

Prepared by: Debra Lilly, Horizon Water and Environment

1. ACTION RECOMMENDED:

Resolution: Certifying the Final Environmental Impact Report (EIR) for the Surface Water Supply Project; adopting CEQA Findings of Fact and Statement of Overriding Considerations; adopting Mitigation Monitoring and Reporting Program; approving the Project; and directing staff to file CEQA Notice of Determination

2. DISCUSSION OF ISSUE:

SRWA is the project proponent and the lead agency under CEQA. For CEQA purposes, SRWA, a joint powers authority whose member agencies consist of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) in Phase 1 (up to 50,400 AFY at buildout in 2040) of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed project would assist the Cities in achieving sustainable groundwater pumping levels. In addition, 2,000 AFY of offset water (recycled water or groundwater) provided to the Turlock Irrigation District (TID) would assist TID in implementing its water conservation and conjunctive water use programs. The proposed project was evaluated in a DEIR in accordance with CEQA and the State CEQA Guidelines and was circulated for a 45-day public review period.

In accordance with CEQA requirements, an Environmental Impact Report (EIR) was prepared and circulated for a 45-day public review period, from January 22 to March 8, 2018. The Modesto Irrigation District (MID) requested, and SRWA granted, an extension of the review period. Nine comment letters were received; those comments and responses to those comments have been provided in the Final EIR for the Proposed Project, which was provided to commenting, responsible, and trustee agencies on July 20, 2018. No new information was received during the comment period or included in the comments that would require recirculation of the EIR under State CEQA Guidelines Section 15073.5.

The EIR identified potentially significant impacts that will be reduced to a less-than-significant level with specified mitigation measures. Approval of the Project therefore

requires adoption and implementation of a Mitigation Monitoring and Reporting Program (MMRP) under CEQA.

The EIR also identified potentially significant impacts that cannot be reduced to a less-than-significant level. As a result, approval of the Project requires adoption of Findings of Fact and a Statement of Overriding Considerations.

3. FISCAL IMPACT / BUDGET AMENDMENT:

Approval of a contract for the design and construction of the Surface Water Supply Project requires subsequent Board approval. Certifying the EIR and approving the specified Surface Water Supply Project by itself does not have a direct fiscal impact. However, adoption of this Resolution is a condition precedent to approval of the planned design-build contract, which will have fiscal impacts for SRWA, as will be set forth in the analyses accompanying those items.

4. GENERAL MANAGER'S COMMENTS:

The General Manager recommends the Board concur with the staff recommendation to certify the EIR for the Surface Water Supply Project (SCH No. 2017022077) in accordance with CEQA; adopt Findings of Fact and a Statement of Overriding Considerations; adopt the MMRP; approve the Proposed Project; and direct staff to file an NOD with the State Clearinghouse and Stanislaus County Clerk within 5 days of project approval.

5. ENVIRONMENTAL DETERMINATION: N/A

6. ALTERNATIVES:

The Board could choose not to approve the Resolution, which means the Board would not certify the EIR for the Surface Water Supply Project, not adopt the Findings of Fact and Statement of Overriding Considerations, and not adopt the MMRP. SRWA must comply with CEQA before it undertakes any project that has the potential to affect the environment. If the Board found the EIR to be inadequate or otherwise decided not to adopt the Resolution, the Board could not legally approve the Surface Water Supply Project, and the Project could not proceed.



BEFORE THE BOARD OF THE STANISLAUS REGIONAL WATER AUTHORITY

**IN THE MATTER OF
CERTIFYING FINAL ENVIRONMENTAL IMPACT
REPORT FOR THE SURFACE WATER
SUPPLY PROJECT; ADOPTING CEQA FINDINGS
OF FACT AND STATEMENT OF OVERRIDING
CONSIDERATIONS; ADOPTING MITIGATION
MONITORING AND REPORTING PLAN;
APPROVING PROJECT; AND DIRECTING STAFF
TO FILE CEQA NOTICE OF DETERMINATION**

RESOLUTION NO. 2018-___

BE IT RESOLVED by the Board of Directors of the Stanislaus Regional Water Authority as follows:

1. Background Recitals. The Board of Directors finds and determines as follows:

a. The Stanislaus Regional Water Authority ("Authority") prepared the Surface Water Supply Project Draft Environmental Impact Report ("Draft EIR") for the Authority's proposed Regional Surface Water Supply Project (the "Project") pursuant to the California Environmental Quality Act and CEQA Guidelines (collectively "CEQA").

b. The Authority completed the Draft EIR, including a proposed CEQA Mitigation Monitoring and Reporting Plan, and on January 22, 2018 distributed it to public agencies and the general public for review and comment. The Authority distributed copies of the Draft EIR to those responsible and trustee public agencies that have jurisdiction by law with respect to the Project, as well as to other interested persons and agencies, and sought the comments of such persons and agencies.

c. There was a 45-day public review period for comments on the Draft EIR and comments were solicited from state agencies through the State Clearinghouse (SCH No. 2017022077).

d. Following the close of the public comment period, the Authority evaluated and prepared written responses to public comments and made appropriate revisions to the Draft EIR.

e. The Authority then prepared the Surface Water Supply Project Final Environmental Impact Report ("Final EIR"), consisting of the following: the Draft EIR; comments received on the Draft EIR; revised CEQA Mitigation Monitoring and Reporting Plan; a list of persons, organizations, and public agencies commenting on the Draft EIR; Authority responses to significant environmental points raised in the comments on the Draft EIR; and, revisions to the Draft EIR.

f. The Final EIR identified certain significant effects on the environment that, absent the adoption of mitigation measures, would be caused by the Project. Under CEQA, the Board of Directors is required to adopt all feasible mitigation measures or feasible project alternatives that can substantially lessen or avoid any significant Project-related environmental effects. As demonstrated by the CEQA Findings of Fact (attached to this resolution as Exhibit A and incorporated as part of it), most of the Project's significant environmental effects can be substantially lessened or avoided through the adoption of feasible mitigation measures, although some effects will remain significant and unavoidable despite the adoption of all feasible mitigation measures.

g. Because the adoption of all feasible mitigation measures cannot substantially lessen or avoid all significant effects on the environment associated with the Project, the Board of Directors must consider the feasibility of alternatives that will be less environmentally damaging with respect to the unavoidable significant effects associated with the Project. The Board of Directors has determined, for reasons set forth in Exhibit A, that the proposed alternatives to the Project are not environmentally preferable, are infeasible (e.g., they fail to fully meet the Project objectives), or are neither environmentally preferable nor feasible.

h. The Board of Directors has determined, for reasons set forth in Exhibit A, that the preferred Project as described in the Final EIR is feasible and meets the Project objectives.

i. The Board of Directors is required by CEQA to adopt a mitigation monitoring and reporting plan to ensure that the mitigation measures adopted by the Authority are actually implemented. A Mitigation Monitoring and Reporting Plan for the Project has been prepared and it is attached to this resolution as Exhibit B and incorporated as part of it.

j. Because the adopted mitigation measures have not fully mitigated or avoided all identified significant environmental effects associated with the Project, CEQA requires the Board of Directors to adopt a Statement of Overriding Considerations, which is included in Exhibit A.

k. The Board of Directors determines it appropriate to certify the Final EIR, adopt the Findings of Fact and Statement of Overriding Considerations, approve the Mitigation Monitoring and Reporting Plan, and approve the Project.

2. Findings Related to CEQA Proceedings. The Board of Directors further finds and determines as follows:

a. The Notice of Preparation for the Draft EIR was duly prepared, noticed and properly circulated in accordance CEQA.

b. The Draft EIR was duly prepared, properly circulated and completed in accordance with CEQA.

c. After providing adequate public notice, the Draft EIR was duly circulated in accordance with CEQA and public comments were properly solicited by the Authority in compliance with CEQA.

d. All comments received during the public review period have been duly considered and incorporated into the Final EIR, and when necessary, replied to in accordance with the CEQA.

e. The Authority provided written responses to all public agency comments received on the Draft EIR at least ten days before certification of the Final EIR.

f. The Final EIR has been properly completed in compliance with CEQA and has identified all significant environmental effects of the Project, and there are no known potential environmental effects that are not addressed in the Final EIR. By this resolution, the Project has been modified with mitigation measures to eliminate significant impacts or to reduce such impacts to a level of insignificance wherever feasible.

3. Certification of Final EIR and Adoption of Findings and Mitigation Monitoring Plan

a. The Board of Directors finds, determines and certifies that (i) the Final EIR has been completed in compliance with CEQA, (ii) the Final EIR has been presented to the Board of Directors and the Board has reviewed and considered the information and analysis contained in the Final EIR prior to approving the Project, and (iii) the Final EIR reflects the independent judgment and analysis of the Board of Directors.

b. The Board of Directors adopts and approves the Final EIR.

c. The Board of Directors adopts and approves the CEQA Findings of Fact and Statement of Overriding Considerations attached as Exhibit A. By adopting the Findings of Fact, the Board of Directors has satisfied its obligations concerning CEQA findings, in that Exhibit A (i) identifies all feasible mitigation measures that can substantially lessen or avoid the significant environmental effects associated with the Project, (ii) explains why certain proposed mitigation measures are rejected as infeasible, (iii) explains why the Project alternatives cannot feasibly and adequately satisfy the objectives of the Project, (iv) explains why the preferred Project is considered feasible and has been adopted as the Project, and (v) sets forth the Authority's Statement of Overriding Considerations concerning the Project's unavoidable significant environmental effects.

d. The Board of Directors approves the mitigation measures described in the CEQA Mitigation Monitoring and Reporting Plan attached as Exhibit B and it adopts the Mitigation Monitoring and Reporting Plan. The Board further authorizes and directs the General Manager and Authority Engineer, their designees, and other appropriate Authority staff to implement and enforce the mitigation measures in the design, construction, operation and maintenance of the Project.

4. Post-Certification Actions. The Board of Directors authorizes and directs the Authority Secretary to (a) prepare, sign and file a CEQA Notice of Determination within five working days following the date of adoption of this resolution with the Stanislaus County Clerk and the State Clearinghouse, (b) pay the applicable California Department of Fish and Wildlife CEQA fee, (c) file a copy of the Final EIR with the Stanislaus County Department of Planning and Community Development, and (d) retain a copy of the Final EIR at the Authority office for public review.

5. Project Approval. The Board of Directors approves the Project as described in the Final EIR and authorizes and directs the General Manager and Authority Engineer to complete the Project preliminary design, begin the design-build procurement process, and evaluate construction funding options. The Authority shall not proceed with Project construction without subsequent Board approval.

PASSED AND ADOPTED at a meeting of the Board of Directors of the Stanislaus Regional Water Authority on the 6th day of August 2018, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Allison Martin, Board Secretary

Stanislaus Regional Water Authority

Surface Water Supply Project

Final Environmental Impact Report



July 2018

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(top to bottom, left to right)

Stanislaus Regional Water Authority
Surface Water Supply Project
Final Environmental Impact Report

(State Clearinghouse No. 2017022077)

Prepared for: **Stanislaus Regional Water Authority**
156 South Broadway, Suite 270
Turlock, CA 95380

Contact: Robert Granberg
(209) 538-5758

Prepared by: **Horizon Water and Environment, LLC**
266 Grand Avenue, Suite 210
Oakland, CA 94610

Contact: Debra Lilly
(916) 465-8074

July 2018

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Acronyms and Abbreviations

A

AAQA	ambient air quality analysis
AFY	acre-feet per year
AIA	Air Impact Assessment

B

Bay-Delta Plan	Water Quality Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary
BUOW	burrowing owl

C

CCR	California Code of Regulations
CEQA	California Environmental Quality Act
cfs	cubic feet per second
CNDDDB	California Natural Diversity Database

D

DEIR	draft environmental impact report
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E

ESA	Endangered Species Act
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F

FEIR	final environmental impact report
FERC	Federal Energy Regulatory Commission

I

ISR	Indirect Source Rule
-----	----------------------

L

LSAA	Lake and Streambed Alteration Agreement
------	---

M

M&I	municipal and industrial use
MID	Modesto Irrigation District

N

NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOP	Notice of Preparation
NO _x	oxides of nitrogen

O

OEHHA	California Office of Environmental Health Hazard Assessment
OPR	Governor's Office of Planning and Research

P

proposed project	Surface Water Supply Project
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S

SFPUC	San Francisco Public Utilities commission
SJVAPCD	San Joaquin Valley Air Pollution Control District
SRF	State Revolving Fund
SRWA	Stanislaus Regional Water Authority
SWHA	Swainson's hawk
SWRCB	State Water Resources Control Board

T

TAC	toxic air contaminants
-----	------------------------

U

USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

V

VELB	valley elderberry longhorn beetle
VOC	volatile organic compounds

W

WTP	water treatment plant
-----	-----------------------

Chapter 1

INTRODUCTION

The Stanislaus Regional Water Authority (SRWA) as the lead agency has prepared this Final Environmental Impact Report (FEIR) to provide other responsible agencies and the public with information about the potential environmental effects of the proposed Surface Water Supply Project (proposed project). The document has been prepared in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended) and the State CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.). Together with the draft EIR (DEIR), this document constitutes the FEIR for the proposed project.

1.1 FEIR Context

SRWA, a joint powers authority whose member agencies consist of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) in Phase 1 (up to 50,400 AFY at buildout in 2040) of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed project would assist the Cities in achieving sustainable groundwater pumping levels. In addition, 2,000 AFY of offset water (recycled water or groundwater) provided to the Turlock Irrigation District (TID) would assist TID in implementing its water conservation and conjunctive water use programs. The proposed project was evaluated in a DEIR in accordance with CEQA and the State CEQA Guidelines and was circulated for a 45-day public review period.

CEQA requires the lead agency to prepare an FEIR, addressing all substantive comments received on the DEIR, before approving a project. The FEIR must include a list of all individuals, organizations, and agencies that provided comments on the DEIR, and must contain copies of all comments received during the public review period along with the lead agency's responses.

1.2 Summary of Public Participation

1.2.1 Notice of Preparation and Public Scoping

Scoping refers to the public outreach process used under CEQA to determine the coverage and content of an EIR. The scoping comment period offers an important early opportunity for public review and comment on the focus of the CEQA analysis. The scoping process for an EIR is initiated by publication of the Notice of Preparation (NOP), as required by CEQA, which provides formal notice to the public and to interested agencies and organizations that a DEIR is in preparation. Additionally, the NOP informs responsible agencies and the public whether the proposed project could have significant effects on the environment and to solicit their comments so that any concerns raised could be considered during the preparation of the

1 DEIR. During the scoping period, agencies and the public are invited to comment on the
2 project, the approach to environmental analysis, and any issues of concern to be discussed in
3 the DEIR. Scoping also can assist the lead agency with identification of project alternatives
4 and mitigation measures. CEQA does not require public meetings during the scoping phase.

5 In accordance with State CEQA Guidelines Sections 15082(a), 15103, and 15375, SRWA
6 circulated an NOP for the proposed project beginning on February 28, 2017, and ending on
7 March 30, 2017. The NOP was circulated to the public; local, state, and federal agencies; and
8 other interested parties. A copy of the NOP was included in Appendix A, *Scoping Summary*, of
9 the DEIR. Comment letters received in response to the NOP were also compiled in the scoping
10 summary and were considered during preparation of the DEIR.

11 **1.2.2 Notice of Availability of the DEIR and Public Review**

12 Upon completion of the DEIR, SRWA issued a Notice of Availability (NOA), providing agencies
13 and the public with formal notification that the document was available for review. The notice
14 was sent to the Governor's Office of Planning and Research (OPR) State Clearinghouse,
15 responsible and trustee agencies, persons and organizations that requested a copy, and the
16 Stanislaus County Clerk's office for posting. Notices were also published in the *Modesto Bee*.

17 These actions triggered a 45-day public review period, which began on January 22, 2018, and
18 concluded on March 8, 2018. A notice advertising the availability of the DEIR and the location
19 and time of the DEIR public meeting was published in the *Modesto Bee* on January 22, 2018.

20 During the review period for the DEIR, all documents related to the proposed project were
21 available for review on SRWA business days, between the hours of 8 a.m. and 5 p.m., at the
22 following location:

23 Stanislaus Regional Water Authority
24 156 South Broadway, Suite 270
25 Turlock, CA 95380

26 In addition, an electronic copy of the DEIR was available for review and download from the
27 SRWA website (www.stanrwa.org/documents), and CD copies of the DEIR were also
28 available by contacting Allison Martin, SRWA Board Secretary. Copies were also available for
29 review at public libraries in Ceres, Turlock, and Hughson.

30 **1.2.3 Comments on the DEIR**

31 Written comments or questions concerning the DEIR were accepted during the public review
32 period at the following address:

33 Michael Brinton, Interim General Manager
34 Stanislaus Regional Water Authority
35 156 South Broadway, Suite 270
36 Turlock, CA 95380

37 Email: SurfaceWaterSupply-DEIR-comment@horizonh2o.com

38 A total of 9 comment submittals (letters and emails) were received during the public review
39 period. Chapter 2 provides additional information about comments received on the DEIR.

1.3 FEIR Review and Certification

The FEIR will be distributed to public agencies that provided comments at least 10 days prior to certifying the FEIR. At the close of the 10-day public agency review period, SRWA staff will recommend to the Board of Directors whether or not to certify the FEIR. This governing body then will review the FEIR, consider staff recommendations and public testimony, and decide whether to certify the FEIR.

For significant impacts identified in the EIR that cannot be mitigated, a statement of overriding considerations must be included in the administrative record of the proposed project and, if SRWA chooses to certify the EIR and approve the proposed project, mentioned in the Notice of Determination (NOD) to be filed with OPR and at the office of the County Clerk (14 CCR Section 15093[c]).

1.4 Organization and Content of the FEIR

This FEIR contains the following chapters:

- **Chapter 1, *Introduction*.** This chapter describes the context of the FEIR; summarizes the public participation process to date, including the NOP and public scoping, the DEIR and public review, and comments on the DEIR; explains the FEIR review and certification process; and describes the organization of the document.
- **Chapter 2, *Comments on the DEIR and Responses*.** This chapter contains the substantive comments received on the DEIR and provides SRWA's responses to those comments.
- **Chapter 3, *Revisions to the DEIR*.** This chapter presents revisions to the text of the DEIR made in response to comments received during the public review period or initiated by SRWA.
- **Chapter 4, *Report Preparation*.** This chapter lists the firms and individuals who assisted in the preparation of this FEIR.
- **Chapter 5, *References*.** This chapter provides a list of sources that are cited to support responses to comments on the DEIR.

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Chapter 2
COMMENTS ON THE DEIR AND RESPONSES

2.1 Introduction

CEQA requires the lead agency to prepare an FEIR, addressing all substantive comments received on the DEIR. The FEIR must include a list of all individuals, organizations, and agencies that provided comments on the DEIR, and must contain copies of all comments received during the public review period, along with the lead agency’s responses.

This chapter provides a list of comments received, copies of the comments, and responses to those comments that address environmental issues.

Individual comments within each submittal are marked and numbered in the margin of the comment letter. The marked individual comments correspond to the responses to those comments. For example, Comment A-3 from Letter A corresponds to the response to Comment A-3.

2.2 List of Comments Received

SRWA received 9 comment submittals, including letters and emails, during or immediately following the public review period.¹ (Although three comment letters were received after the closing date, SRWA has included those letters in its considerations in this FEIR.) Table 2-1 lists the identifier for each submittal; the name and affiliation of the individual who submitted each comment; and the date the comment was sent.

¹ Modesto Irrigation District, in its comment letter submitted on March 12, requested a 30-day extension of the public comment period. SRWA granted that extension for MID, extending the comment period to April 9, 2018. A second extension requested by MID was also granted, to April 23, 2018. A letter of clarification was provided by MID on July 13, 2018, which mooted the concerns expressed in the April 23 letter. Both letters are provided in this chapter.

1

Table 2-1. List of DEIR Comment Submittals Received During the Public Review Period

Comment Letter	Commenter Name and Affiliation	Date Sent
A	Sean Maguire, Division of Water Rights, State Water Resources Control Board	March 8, 2018
B	Arnaud Marjollet, San Joaquin Valley Air Pollution Control District	March 9, 2018
C	Julie Vance, California Department of Fish and Wildlife	March 7, 2018
D	Scott Morgan, Governor's Office of Planning and Research, State Clearinghouse	March 8, 2018
E	Scott Furgerson, Modesto Irrigation District	March 12, 2018
F	Scott Morgan, Governor's Office of Planning and Research, State Clearinghouse	March 9, 2018
G	Patrick Cavanah, Stanislaus County Environmental Review Committee	March 12, 2018
H	Ronda A. Lucas, Modesto Irrigation District	July 13, 2018 April 23, 2018

2

3 **2.3 Comments and Responses**

4

5 This section contains a copy of each comment letter received during the DEIR review period.
6 Following each submittal are SRWA's responses to each comment that addresses an
7 environmental issue. Revisions to the DEIR that are indicated in these responses are provided
in Chapter 3 of this FEIR.

1 Letter A – Sean Maguire, Division of Water Rights, State Water Resources
2 Control Board



Letter A: Sean Maguire, State Water Resources Control Board



State Water Resources Control Board

March 8, 2018

In Reply Refer to
JL: A014127

Stanislaus Regional Water Authority
c/o Michael Brinton, Interim General Manager
156 South Broadway, Suite 270 Turlock, CA 95380
Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Dear Mr. Brinton:

COMMENTS ON STANISLAUS REGIONAL WATER AUTHORITY SURFACE WATER
SUPPLY PROJECT, DRAFT ENVIRONMENTAL IMPACT REPORT

State Water Resources Control Board (State Water Board), Division of Water Rights (Division), as a responsible agency, appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Stanislaus Regional Water Authority (SRWA) Surface Water Supply Project (Project). SRWA, a joint powers authority whose member agencies consist of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) of water in Phase 1 (up to 50,400 AFY at buildout in 2040) from the Tuolumne River. SRWA proposes to facilitate the Project by seeking 30,000 AFY of surface water supply through a long-term water transfer from the Turlock Irrigation District (TID). The Division's comments are specific to the long-term water transfer from TID to SRWA.

Comment 1: Page ES-7, Responsible and Trustee Agencies

The State Water Board, as a responsible agency to approve the proposed long-term water right transfer from TID to SRWA, shall be identified as a responsible agency for the Project.

Unless a separate environmental analysis for the water transfer is intended to be completed, TID, as the right holder responsible for filing the long-term water transfer with the State Water Board, should also be included as a responsible agency for purposes of the water right transfer to facilitate the Project.

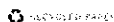
A-1

Comment 2: Chapter 2 – Project Description

Table 2-1 indicates that the maximum diversion from the Tuolumne River for the Project will be 30,000 AFY for Phase I by 2025, and it will reach 50,400 AFY by 2040 at Project buildout. The DEIR also indicates that TID would file a long-term petition to transfer 30,000 AFY of water to SRWA. It does not appear the DEIR discloses the basis of rights for the additional 20,400 AFY that SRWA plans to divert for the Project beginning in 2025 through buildout. Please provide information regarding how SRWA will pursue the additional 20,400 AFY of water from the Tuolumne River at Project buildout by 2040.

A-2

FELICIA MARQUE, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR
1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 160, Sacramento, CA 95812-0160 | www.waterboards.ca.gov



3

Mr. Brinton
Stanislaus Regional Water Authority

- 2 -

March 8, 2018

TID's petition for long-term change has yet to be submitted and reviewed by the State Water Board. Until an order approving such a change is issued, TID is not authorized to deliver water to SRWA under License 11058.

A-3

The DEIR indicates the City of Turlock would provide TID with 2,000 AFY of recycled water during the irrigation season in return for TID's river water. Please be advised that in accordance with Water Code section 1211, the proposed action may require a water right approval if the City of Turlock proposes to make any changes to the point of discharge, place of use, or purpose of use of its treated wastewater.

A-4

Comment 3: Page 3.4-10 "To meet the needs of Phase 1 water treatment operations, TID intends to make annual average releases of approximately 24 cfs, in addition to the Federal Energy Regulatory Commission (FERC) minimum flows (below La Grange Dam), resulting in net increased flows in the Tuolumne River between Don Pedro Reservoir and the infiltration gallery."

In order to provide sufficient information to evaluate potential effects to fish and wildlife resources as a result of the project, the DEIR should address TID's proposed additional releases of 24 cfs for Phase 1 of the Project, including the projected schedule for the releases. It is not clear whether the proposed additional releases correspond to SRWA's diversions at the infiltration gallery, nor is there an analysis of the impacts to water storage in Don Pedro Reservoir through changed reservoir release patterns.

A-5

The Division is aware that TID and Modesto Irrigation District are in the process of relicensing FERC project No. 2299 and seeking a new license for FERC project No. 14581, which may result in new minimum flow requirements below La Grange Dam. It does not appear that the DEIR includes information about the pending FERC licenses and the potential effects on TID's additional releases due to the Project and future water storage in Don Pedro Reservoir.

A-6

Comment 4: Chapter 3.9 Hydrology and Water Quality

Although the DEIR indicates the Project may benefit the Turlock groundwater subbasin by reducing groundwater pumping for water supplies to the Cities of Turlock and Ceres, it does not identify whether there are any impacts to groundwater recharge by changing the purpose of use of the 30,000 AFY of transfer water from irrigation use to municipal and industrial uses. The proposed changes could potentially change deep percolation of applied irrigation water and reduce return flows from agriculture for groundwater recharge.

A-7

Changes in the use of the 30,000 AFY transfer water from irrigation to municipal and industrial use could also affect reservoir refill and releases on the Don Pedro Reservoir due to the seasonal differences between municipal and industrial demand and irrigation demand. The DEIR should evaluate the Project's impact to operation of the Don Pedro Reservoir, which may cause potential impact to other water right holders downstream of the Reservoir.

A-8

In addition, moving the point of rediversion (PORD) from La Grange Dam to the infiltration gallery could potentially result in conveyance losses of a portion of the transfer water as it moves 26 miles downstream, depending on the hydrological characteristics of the Tuolumne River. For instance, if the Tuolumne River stretch between La Grange Dam and the infiltration gallery is a losing stream, a portion of the transfer water could infiltrate before it reaches the

A-9

Mr. Brinton
Stanislaus Regional Water Authority

- 3 -

March 8, 2018

infiltration gallery. The DEIR should discuss the potential impacts to stream flows due to the change in the PORD for the transfer water.

↑ A-9,
cont.

Comment 5: Page 3.17-6 "TID provides irrigation water to agricultural lands in Stanislaus County and operates the New Don Pedro Reservoir...TID uses water stored in Don Pedro Reservoir to irrigate approximately 5,800 farms within its 307-square-mile irrigation service area."

TID proposes to transfer 30,000 AFY of water to SRWA under the Project. The DEIR does not address or attempt to quantify a decrease in agricultural demand or describe the methodology for calculating such a decrease that would provide the source water for the Project. Is this amount of water currently served to the farms within TID's service area? What is TID's plan with regard to the water supply to these farms once the water transfer is effective; will these farms continue to receive water from TID's license or another source, will the farms begin to use groundwater as a supply source, or will these irrigated lands no longer be in operation? Although the DEIR indicates in Chapter 2 that the City of Turlock would provide TID with 2,000 AFY of recycled water to offset TID's transfer water, the offset recycled water is a very small amount compared to the total amount of transfer water.

A-10

Comment 6: Page 3.17-9 "While no new entitlements are needed, TID's existing water right (License 11085) would need to be amended to accommodate the changes contemplated under the proposed project. Specifically, TID would add a POD at the location of the infiltration gallery under the water right. This would be accomplished through a Petition for Change through SWRCB, in which the SWRCB would need to find that the proposed change would not adversely affect existing water right holders or instream beneficial uses. Because the project would increase flows in the reach between the reservoir and the infiltration gallery, as described in Impact BIO-3 in Section 3.4, Biological Resources, and result in no other changes upstream or downstream, there would be no potential for adverse impacts. In fact, these increased flows would have beneficial impacts on instream beneficial uses."

As indicated above in Comment 4, TID's long-term water transfer to SRWA could potentially affect the Tuolumne River flow and return flows for groundwater recharge. It does not appear that the DEIR contains sufficient information to support its claim that the proposed project would have no potential for adverse impacts to existing water right holders or instream beneficial uses. The DEIR should address the potential impacts to the Tuolumne River and the Turlock groundwater subbasin resulting from the changes in the PORD and purpose of use for the 30,000 AFY transfer water. Also, the infiltration gallery would need to be added as a PORD, not a POD under TID's water right transfer.

A-11

Comment 7: As you are aware, the State Water Board is currently in the process of amending the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new flow objectives on the Lower San Joaquin River and its three eastside tributaries – the Merced, Stanislaus, and Tuolumne Rivers. Changes to the Bay-Delta Plan will be implemented through water rights requirements, FERC licensing requirements or other measures. The EIS/EIR should disclose that the Bay-Delta Plan update is occurring.

A-12

Mr. Brinton
Stanislaus Regional Water Authority

- 4 -

March 8, 2018

Thank you for considering these comments to the Stanislaus Regional Water Authority Surface Water Supply Project Draft Environmental Impact Report. Should you have any questions regarding this letter, please contact Jane Ling, the staff person assigned to this project, at (916) 341-5335 or via email at jane.ling@waterboards.ca.gov.

Sincerely,

ORIGINALLY SIGNED BY:

Sean Maguire, Manager
Petition, Licensing and Registration Section
Division of Water Rights

ec: Turlock Irrigation District
c/o Andrew M. Hitchings
ahitchings@somachlaw.com

Response to Comment A-1

The commenter requests that the DEIR include the State Water Resources Control Board (SWRCB) and TID as responsible agencies for purposes of the water rights transfer to facility the proposed project.

SRWA recognizes that SWRCB is a responsible agency for the proposed project and will be considering TID and SRWA's long-term water rights transfer, as is indicated in Tables ES-1 and 2-5 of the DEIR. TID is currently consulting with SWRCB on this process. The Executive Summary and Section 2.7, "Responsible and Trustee Agencies," of Chapter 2, Project Description, have been revised to explicitly indicate SWRCB's status as a responsible agency. (See Chapter 3 of this FEIR for those revisions.)

TID is already identified as a responsible agency at these locations in the DEIR. No change is necessary regarding TID's status.

Response to Comment A-2

The commenter requests information about the basis of water rights for SRWA's diversion of an additional 20,400 AFY from the Tuolumne River beginning in 2025 through buildout.

The 50,400 AFY number was provided for informational purposes only. The Water Sales Agreement between SWRA and TID only provides for the transfer of 30,000 AFY and TID's long-term petition is to transfer only 30,000 AFY to SRWA.

On page 2-20 beginning at line 11, in Section 2.4.4, "Water Treatment Plant," under the subheading "Treatment Processes," the DEIR states: "To fully meet buildout demands, approximately 43,000 AFY of water would be needed, requiring SRWA and TID to amend the 2015 Water Sales Agreement and SRWA to purchase (through a long-term lease) additional surface water from TID." Although the statement acknowledges the likelihood that SRWA would need to purchase/lease additional water rights from TID to fully meet buildout demand, any attempt to predict the potential sources of water available to meet those demands would be speculative at this time.

In addition, several ongoing regulatory activities increase the level of uncertainty surrounding potential future water sources and availability. The SWRCB is amending the Water Quality Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new flow objectives on the Lower San Joaquin River and its tributaries. The Federal Energy Regulatory Commission (FERC) is also engaged with TID, the Modesto Irrigation District (MID), and the San Francisco Public Utilities Commission (SFPUC) in the process of relicensing the operation of Don Pedro Reservoir. As a result of these multiple sources of uncertainty with regard to the sources and quantities of available water supply in the future, TID is willing to commit to the transfer of 30,000 AFY.

Response to Comment A-3

The commenter indicates that TID is not authorized to deliver water to SRWA under its existing License 11058 and cannot do so until an order approving a change to that license is issued.

1 Table 2-5 indicates that SWRCB’s approval of “TID change petition authorizing the long-term
2 transfer of water to SRWA, use of the infiltration gallery as a point of redirection, and the
3 diversion and use of water for M&I [municipal and industrial] purposes” would be required
4 for the proposed project. Operation of the proposed project would not take place until all
5 required permits and approvals have been obtained. In addition, Section 3.17, *Utilities and*
6 *Service Systems*, includes a discussion of License 11058 (mistakenly identified as “License
7 11085”) in Impact UTL 3, “Have Insufficient Water Supplies Available to Serve the Project
8 from Existing Entitlements and Resources, or Require New or Expanded Entitlements.”

9 The license number has been corrected as indicated in Chapter 3, *Revisions to the DEIR*.

10 ***Response to Comment A-4***

11 The commenter states that California Water Code Section 1211 may require the City of
12 Turlock to obtain a water right approval for changes to the point of discharge, place of use, or
13 purpose of use of its treated wastewater.

14 California Water Code Section 1211 provides that, before making any change in the point of
15 discharge, place of use, or purpose of use of treated wastewater that would result in
16 decreasing the flow of any portion of a watercourse, the owner of the wastewater treatment
17 plant must obtain SWRCB approval for the change. To the extent this provision applies, the
18 City of Turlock and TID will work with SWRCB to obtain any necessary approvals.

19 ***Response to Comment A-5***

20 The commenter requests additional information on TID’s proposed additional releases of 24
21 cubic feet per second (cfs) for Phase 1 of the Proposed Project, including the projected
22 schedule for releases.

23 TID has analyzed the impacts on Don Pedro Reservoir storage through changed release
24 patterns caused by providing an additional 30,000 AFY year-round, and the impacts are
25 negligible. For reference, TID currently manages reservoir releases to account for water
26 storage impacts caused by evaporation, which is approximately 60,000 AFY year-round. TID
27 expects to manage the reservoir in a similar manner for the proposed additional year-round
28 release of 30,000 AFY for the Proposed Project. TID monitors Tuolumne River flow using an
29 existing stream gauge to ensure required flows are met. The existing stream gauge is located
30 at river mile 16.36, which is downstream of the Infiltration Gallery located at river mile 25.95.
31 With the additional releases from the reservoir and with the new diversion at the Infiltration
32 Gallery, TID would continue to use its existing stream gauge at river mile 16.36 to ensure
33 required flows are met and to ensure there is no diminishment of flows below the Infiltration
34 Gallery.

35 ***Response to Comment A-6***

36 The commenter requests that the DEIR include information about the pending FERC licenses
37 and potential effects on TID’s additional releases.

38 The commenter is correct that TID, MID, and SFPUC are currently engaged in the FERC
39 relicensing process for Don Pedro Reservoir. Therefore, the relicensing project is reasonably
40 foreseeable. However, the relicensing process is a separate and independent action
41 undertaken by FERC and the operating agencies on an unrelated timeline; the outcome of that

1 process with respect to any changes in minimum flow requirements is currently unknown
2 and cannot be predicted with any certainty. CEQA disallows speculation about possible
3 impacts that cannot be evaluated with some level of certainty. Therefore, as stated in
4 Response to Comment A-2, any changes in releases from Don Pedro Reservoir as a result of
5 the FERC relicensing effort are not evaluated in the DEIR.

6 ***Response to Comment A-7***

7 The commenter requests information on impacts on groundwater recharge from transfer of
8 irrigation water use to municipal and industrial use as a result of the Proposed Project.

9 While a reduction in irrigation water use as a result of the Proposed Project could reduce
10 deep percolation to the aquifer, this would be more than offset by the corresponding
11 reduction in the pumping of groundwater as a result of the project by SRWA's member
12 agencies and by the transfer of 2,000 AFY of recycled water for irrigation purposes to TID by
13 the City of Turlock. SRWA's member agencies are currently entirely dependent upon
14 groundwater as their source of supply. As described on page 3.9-18 of the DEIR, the City of
15 Turlock pumps almost 22,000 AFY and the City of Ceres pumps approximately 7,000 AFY.
16 The Proposed Project would be a major element in the in-lieu groundwater recharge program
17 under the Groundwater Sustainability Plan being developed for the Turlock Subbasin. The
18 Proposed Project should be viewed within the context of a comprehensive groundwater
19 management program for the Turlock Subbasin.

20 ***Response to Comment A-8***

21 The commenter requests information regarding changes to operation of Don Pedro Reservoir
22 due to seasonal differences in irrigation demand versus municipal and industrial demand.

23 During the irrigation season, municipal and industrial demand and irrigation demand would
24 normally track closely, with higher demands during the summer and lower demands during
25 the shoulder months. During the non-irrigation season months (e.g., winter months), there
26 would be reduced municipal and industrial demand and no or very little irrigation demand.
27 Therefore, no significant shift in reservoir release patterns and no potential impact on other
28 water right holders downstream of the reservoir is anticipated.

29 ***Response to Comment A-9***

30 The commenter requests a discussion of conveyance losses resulting from the change in point
31 of redirection.

32 The commenter's requested discussion is provided in Response to Comment A-5.

33 ***Response to Comment A-10***

34 The commenter questions how TID is making 30,000 AFY available, and indicates that the
35 EIR should address the environmental impacts associated with either a reduction in
36 agricultural water demand or the need to find an alternative source of water supply for the
37 irrigators.

38 This long-term surface water transfer is being viewed within the context of a developing
39 integrated water resources plan, which seeks to integrate TID's surface water, groundwater,

1 and recycled water resources and district and on-farm water conservation measures to
2 effectively meet the various demands on TID surface water and groundwater resources.
3 Reduction in agricultural surface water demand within TID is expected to result from a
4 combination of (1) district and on-farm water conservation measures; (2) increased on-farm
5 groundwater pumping offset by a reduction in SRWA member agency pumping; (3)
6 continued urbanization of farm land; and (4) use of recycled water for irrigation. As explained
7 in Response to Comment A-7, the Proposed Project would be a major element in the in-lieu
8 groundwater recharge program under the Groundwater Sustainability Plan being developed
9 for the Turlock Subbasin.

10 ***Response to Comment A-11***

11 The commenter expresses concern that the EIR does not contain sufficient information about
12 potential effects on Tuolumne River flow and return flows for groundwater recharge, as well
13 as impacts on existing water right holders and instream beneficial uses.

14 The EIR adequately addresses the potential impacts to the Tuolumne River and the Turlock
15 groundwater subbasin resulting from releasing an additional 30,000 AFY from Don Pedro
16 Reservoir and rediverting it 26 miles downstream at the infiltration gallery. As described in
17 DEIR Section 3.9, *Hydrology and Water Quality*, in general and Section 3.4, *Biological*
18 *Resources*, in Impact BIO-3, water conveyed downstream from La Grange Dam to the
19 infiltration gallery site would have beneficial impacts on that 26-mile stretch of the Tuolumne
20 River by increasing flows over that distance. This would have no net impact on water rights
21 holders and would be beneficial to instream beneficial uses as well as to fish and wildlife
22 using the river. See also Responses to Comments A-7, A-8, A-9, and A-10.

23 SRWA acknowledges that the infiltration gallery is appropriately considered a point of
24 rediversion.

25 ***Response to Comment A-12***

26 The commenter notes that the SWRCB is currently amending the Bay-Delta Plan to establish
27 new flow objectives on the Lower San Joaquin River and its tributaries. The commenter
28 requests that the EIS/EIR disclose that the Bay-Delta Plan update is occurring.

29 Information about the Bay-Delta Plan update process has been added to Section 3.9,
30 *Hydrology and Water Quality*. Similar to the FERC relicensing process, which is also ongoing,
31 the outcome of the Bay-Delta Plan update process and any possible future changes in
32 minimum flow requirements are currently unknown and cannot be predicted at this time
33 with any certainty.

1 Letter B – Arnaud Marjollet, San Joaquin Valley Air Pollution Control
2 District

Letter B: Arnaud Marjollet, San Joaquin Valley Air Pollution Control District



March 9, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Project: Draft Environmental Impact Report for the Surface Water Supply Project

District CEQA Reference No: 20180060

Dear Mr. Brinton:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) for the project referenced above submitted by the Stanislaus Regional Water Authority (SRWA). The project consists of the design, construction, operation, maintenance, and management of new and existing water treatment facilities and infrastructure to convey treated water through transmission mains to storage facilities in Ceres and Turlock (Project). The District offers the following comments:

- 1. According to the California Environmental Quality Act Guidelines §15064, a project's environmental assessment on whether it may have potential significant impact calls for careful judgement on the part of the lead agency, such as characterization and analysis of potential impacts. This DEIR does not appear to include such assessment of impacts on sensitive receptors. Therefore, the District recommends that such an analysis be performed in order to conclude that the impact would be reduced to a less than significant level with mitigation measures. If the impact cannot be quantified at this time, the District recommends that the resulting impact be changed from a "less than significant impact with mitigation measures" to a "potentially significant impact."

B-1

As identified in Table ES-2 "Summary of Potential Impacts and Mitigation Measures" of the DEIR, specifically for Impact AQ-4 "Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations," the DEIR concludes that the Project will result in a less than significant impact with implementation of "Mitigation Measure AQ1" and "Mitigation Measure AQ2." These proposed mitigation measures include preparation of quantitative construction-related and operation-related emissions analyses.

B-2

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 657-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93728-0244
Tel: (558) 230-6000 FAX: (558) 230-6081

Southern Region
34848 Floyda Court
Bakersfield, CA 93308-9725
Tel: 861-392-5900 FAX: 861-392-5585

www.valleyair.org www.healthyairliving.com

POSTNET

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Also, these measures state that if the future emissions analyses determine that construction or operational emissions would exceed the air quality significance thresholds, then the SRWA shall identify and implement appropriate future mitigation to the extent feasible at that time to address this AQ-4 impact. It is important to note that "Mitigation Measure AQ1" and "Mitigation Measure AQ2" do not seem to be appropriate mitigation in reducing exposure of substantial pollution concentrations to sensitive receptors to a less than significant level at this time.

↑
B-2
cont.

2. As stated in the DEIR, future development projects within the scope of the Surface Water Supply Project will contribute to significant and unavoidable impacts on air quality. Such future development may require further environmental review and mitigation. The District makes the following recommendations regarding future individual development projects:

A. Health Risk Screening/Assessment – A Health Risk Screening/Assessment identifies potential Toxic Air Contaminants (TAC's) impact on surrounding sensitive receptors such as hospitals, daycare centers, schools, work-sites, and residences. TAC's are air pollutants identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) (<https://www.arb.ca.gov/toxics/healthval/healthval.htm>) that pose a present or potential hazard to human health. A common source of TACs can be attributed to diesel exhaust emitted from both mobile and stationary sources. Industry specific TACs generated must also be identified and quantified.

↓
B-3

The District recommends for new developments that may require further environmental review and mitigation at the project-level, an assessment be performed that evaluates potential health impacts to surrounding receptors (on-site and off-site) resulting from multi-year construction and operational TAC emissions.

i) The District recommends conducting a screening analysis that includes all sources of emissions. A screening analysis is used to identify projects which may have a significant health impact. A prioritization, using CAPCOA's updated methodology, is the recommended screening method. A prioritization score of 10 or greater is considered to be significant and a refined Health Risk Assessment (HRA) should be performed. The prioritization calculator can be found at: http://www.valleyair.org/busind/pto/emission_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS.

ii) The District recommends a refined HRA for projects that result in a prioritization score of 10 or greater. It is recommended that the Project proponent contact the District to review the proposed modeling protocol. The Project would be considered to have a significant health risk if the HRA demonstrates that the Project related health impacts would exceed the District's significance threshold of 20 in a million for carcinogenic risk and 1.0 for the Acute and Chronic Hazard Indices.

1

District Reference No. 20180060

Page 3

More information on toxic emission factors, prioritizations and HRAs can be obtained by:

- E-Mailing inquiries to: hramodeler@valleyair.org; or
- The District can be contacted at (559) 230-6000 for assistance; or
- Visiting the Districts website (Modeling Guidance) at http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm

B-3
cont.

B. Ambient Air Quality Analysis – An ambient air quality analysis (AAQA) uses air dispersion modeling to determine if emissions increases from a project will cause or contribute to a violation of the ambient air quality standards. The District recommends that an AAQA be performed for the Project if emissions exceed 100 pounds per day of any pollutant. If an AAQA is performed, the analysis should include emissions from both Project specific permitted and non-permitted equipment and activities. The District recommends consultation with District staff to determine the appropriate model and input data to use in the analysis. Specific information for assessing significance, including screening tools and modeling guidance is available online at the District's website www.valleyair.org/ceqa.

B-4

C. Construction Emissions – In general, mitigation measures reducing construction exhaust emissions must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines §15126.4, subd.(a)(2)). Feasible mitigation of construction exhaust emission includes use of construction equipment powered by engines meeting, at a minimum, Tier III emission standards, as set forth in §2423 of Title 13 of the California Code of Regulations, and Part 89 of Title 40 Code of Federal Regulations. The District recommends incorporating, as a condition of Project approval, a requirement that off-road construction equipment used on site achieve fleet average emissions equal to or less than the Tier III emissions standard of 4.8 NOx g/hp-hr. This can be achieved through any combination of uncontrolled engines and engines complying with Tier III and above engine standards.

B-5

D. Individual development projects would be subject to District Rule 9510 (Indirect Source Review) if, for example, upon full build-out the project would include or exceed any one of the following:

- 50 dwelling units
- 2,000 square feet of commercial space;
- 25,000 square feet of light industrial space;
- 100,000 square feet of heavy industrial space;
- 20,000 square feet of medical office space;
- 39,000 square feet of general office space; or
- 9,000 square feet of educational space; or
- 10,000 square feet of government space; or
- 20,000 square feet of recreational space; or
- 9,000 square feet of space not identified above

B-6

1

District Reference No. 20180960

Page 4

Any applicant subject to District Rule 9510 is required to submit an Air Impact Assessment (AIA) application to the District no later than applying for final discretionary approval. If approval of the subject Project constitutes the last discretionary approval by your agency, the District recommends that demonstration of compliance with District Rule 9510, including payment of all applicable fees before issuance of the first building permit, be made a condition of Project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

B-6
cont.

E. Individual development projects may require District permits. Prior to the start of construction the project proponent should contact the District's Small Business Assistance Office at (559) 230-5888 to determine if an Authority to Construct (ATC) is required.

B-7

F. Individual development projects may also be subject to the following District rules: Regulation VIII, (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the Project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

B-8

G. The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm.

B-9

2. Referral documents for new development projects should include a project summary detailing, at a minimum, the land use designation, project size, and proximity to sensitive receptors and existing emission sources.

B-10

If you have any questions or require further information, please call Stephanie Pellegrini at (559) 230-5820.

Sincerely,

Arnaud Marjollet
Director of Permit Services



Brian Clements
Program Manager

AM: sp

Response to Comment B-1

The commenter states that the DEIR does not appear to address air quality impacts on sensitive receptors and recommends that, if impacts cannot be quantified at this time, the impact conclusion be revised to “potentially significant.”

Section 3.3, *Air Quality*, of the DEIR has multiple sections that provide supporting background or methodology information, and/or address potential toxic air contaminant (TAC) impacts related to sensitive receptors. Section 3.3.4, “Sensitive Receptors,” describes the distances between various project features and the nearest sensitive receptors. The “SJVAPCD Thresholds of Significance” discussion in Section 3.3.5, “Environmental Impacts and Mitigation,” provides the criteria pollutant and TAC thresholds of significance identified in the *Guidance for Assessing and Mitigating Air Quality Impacts* (SJVAPCD 2015a) and details the CEQA lead agency’s approach to determining the impacts of potential construction-related and/or operation-related TAC emissions. Impact AQ-4, “Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations,” identifies the potential impact of both the project’s construction and operation in relation to exposing sensitive receptors to TACs and discusses the need for mitigation.

In response to the San Joaquin Valley Air Pollution Control District’s (SJVAPCD’s) comment, the discussion of TACs in Section 3.3.3, “Environmental Setting,” has been modified to explicitly discuss common TACs related to water disinfection treatment and their health effects. In addition, Impact AQ-4 has been revised to provide additional clarity on the specific reasoning and supporting information considered in that impact analysis and conclusion. In particular, the discussion has been revised to make specific reference to the distances between project features and sensitive receptors, accepted risk guidance methodology, permitting processes and requirements, and additional discussions of potential disinfection-related TACs from operation of the water treatment plant (WTP). Mitigation Measure AQ-2 has also been modified to include direct reference to permitting processes and clarify the permitting requirements related to potential TAC sources and health risk assessments. In addition, the information below provides further clarification on why a quantitative health risk assessment is not necessary under CEQA for the proposed project’s construction or operation analyses.

The California Office of Environmental Health Hazard Assessment (OEHHA) guidance indicates that an assessment of health risks from air quality emissions on sensitive receptors should be based on proximity of the receptors to the emission source and should be calculated over a 70-year life span. According to the information provided in Chapter 2, *Project Description*, of the DEIR, air pollutant emissions during construction of the proposed project would be temporary in nature—for pipeline installation, construction equipment would progress at approximately 200-400 feet per day, or 1-2 days adjacent to a particular receptor—and even the nearest sensitive receptors would not be substantially affected during that brief period. Concentrations of mobile-source diesel PM emissions are typically reduced by 70 percent at a distance of approximately 500 feet (CARB 2005). As identified in Impact AQ-2, potential construction-related TAC emissions would be reduced to the extent feasible through implementation of Mitigation Measure AQ-1, which would require construction emission reductions through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. Furthermore, given that (1) the construction period for the proposed project, which is

1 approximately 15 months for the most extensive single location (the WTP), would not involve
2 the use of substantial quantities of construction equipment, and (2) the distance between the
3 WTP site and sensitive receptors would be at least 100-140 feet from the edge of the WTP
4 site and 740-1,800 feet from the center of the WTP site, the potential for the project to expose
5 sensitive receptors to substantial pollutant concentrations during construction activities
6 would be less than significant. Because of the brief period of construction at any given
7 location near sensitive receptors and the OEHHA's recommendation that health risks be
8 evaluated over the lifetime of a receptor (i.e., approximately 70 years), a quantitative health
9 risk assessment was determined not to be necessary under CEQA for the proposed project's
10 construction activities.

11 As disclosed in the "SJVAPCD Thresholds of Significance" discussion in Section 3.3.5,
12 "Environmental Impacts and Mitigation," risks from TACs were evaluated by identifying the
13 proposed project's potential to generate TAC emissions and determining whether sensitive
14 receptors could be affected by those emissions. Permanent (i.e., long-term, stationary)
15 sources of emissions would occur at four project locations: the WTP, the infiltration
16 gallery/wet well/raw water pump station site, and the Ceres and Turlock terminal tank sites.
17 At the WTP, permanent sources would be emergency generators and chemicals involved in
18 the treatment process, which may include chlorine (either liquid or gas) and ozone. The Ceres
19 and Turlock terminal tank facilities and the infiltration gallery/wet well/raw water pump
20 station site would have emergency generators. Maintenance-related vehicle emissions of
21 TACs that occur at these locations would be short term and infrequent. Based on the
22 information in Section 3.3.4, the nearest sensitive receptors would be 100-140 feet from the
23 edge of the WTP site, at least 500 feet from the Ceres and Turlock terminal tank sites, and
24 approximately 500-1,200 feet from the infiltration gallery/wet well/raw water pump station
25 site.

26 Implementation of Mitigation Measure AQ-2 would reduce the amount of operational
27 emissions to the extent feasible through the use of late model engines, low-emission diesel
28 products, alternative fuels, engine retrofit technology, after-treatment products, add-on
29 devices such as particulate filters, and/or other options as such become available. The
30 proposed project would be designed and operated in compliance with all SJVAPCD rules and
31 regulations, including those that are specifically targeted to permitted sources and/or TACs,
32 such as Rules 2010, 2201, 2280, 2550, and those from Regulation IV, as summarized in
33 "SJVAPCD Rules" in Section 3.3.2, "Regulatory Setting," of the DEIR. Compliance with these
34 rules and regulations would include obtaining appropriate permits. The WTP's operation
35 would require SRWA to obtain a permit under SJVAPCD's Authority to Construct (Rule 2010),
36 under which a health risk screening/assessment may be required, and under the New and
37 Modified Stationary Source Review Rule (Rule 2201). Emergency generators would be
38 operated infrequently and their operation would be permitted separately by the SJVAPCD.
39 During the SJVAPCD new source review permitting process for the project, operational
40 sources of TACs would be quantitatively evaluated to ensure that they would not result in
41 health impacts above the applicable thresholds listed in the risk management policy of 20 in
42 a million cancer risk and an acute and/or chronic hazard index of 1.0. As described in
43 Mitigation Measure AQ-2, the project's permitted sources would be mitigated, if necessary,
44 by implementation of appropriate pollution control devices and/or limitations on process
45 design and throughput as determined during the new source review permitting process with
46 SJVAPCD. This would include appropriate mitigation for both criteria pollutant and TAC
47 emissions such that all impacts on sensitive receptors from long-term emissions would be
48 less than significant with mitigation. A quantitative health risk assessment is not necessary

1 under CEQA for the proposed project's operational activities but is required for permitting
2 processes instead.

3 In conclusion, the construction and operational practices described above, along with the
4 SJVAPCD permitting process, would ensure that sensitive receptors are not exposed to
5 substantial pollutant concentrations. In addition, the distances between sensitive receptors
6 and these sources would further minimize any impacts. Thus, the proposed project would not
7 pose long-term or substantial health risks to nearby residents and workers in the vicinity of
8 the project sites.

9 Revisions to Impact AQ-4 of the DEIR, Mitigation Measure AQ-2, and other portions of Section
10 3.3, *Air Quality*, as shown in Chapter 3 of this FEIR, are not in response to a new or more
11 severe significant impact, and do not change the impact conclusion. Therefore, they do not
12 raise the need for recirculation of the DEIR.

13 ***Response to Comment B-2***

14 The commenter states that Mitigation Measures AQ-1 and AQ-2 do not seem to be
15 appropriate measures to mitigate air quality impacts on sensitive receptors.

16 Mitigation Measures AQ-1 and AQ-2 require, for construction-related and operational
17 emissions, respectively, quantitative modeling of air pollutant emissions when sufficient
18 information is available to determine whether SJVAPCD thresholds would be exceeded. The
19 measures require that, in the case of an exceedance, emission reduction measures be
20 implemented to reduce the pollutants below the threshold levels. Mitigation Measure AQ-2
21 has been revised as shown in Chapter 3 of this FEIR to explicitly state that “[f]or permitted
22 sources, appropriate pollution control devices and/or limitations on process design and
23 throughput would be enacted, as determined during the new source review permitting
24 process with SJVAPCD. This would include appropriate mitigation for both criteria pollutant
25 and TAC emissions.” Thus, emissions from all permanent, stationary sources would be
26 mitigated to a less-than-significant level. In addition, for the reasons detailed in Response to
27 Comment B-1 and in the text revisions to Impact AQ-4, impacts on sensitive receptors from
28 construction or operation emissions of criteria pollutants and TACs would not be significant.

29 ***Response to Comment B-3***

30 The commenter states that, “As stated in the DEIR, future development projects within the
31 scope of the Surface Water Supply Project will contribute to significant and unavoidable
32 impacts on air quality” and suggests that further environmental review and mitigation may
33 be required. The commenter goes on to discuss the possible need for a health risk screening/
34 assessment for future projects.

35 The source of the commenter's statement is unclear. While future development projects
36 within the same air basin as the Surface Water Supply Project may contribute to significant
37 cumulative air quality impacts, no “future development projects within the scope of the
38 Surface Water Supply Project” are proposed by SRWA. The commenter may be referring to
39 SRWA's water treatment, storage, and distribution system removing an obstacle to urban
40 development and population growth within the Ceres/Turlock service area and that growth
41 resulting in associated physical environmental impacts (as disclosed in Impact PH-3 in the
42 DEIR). For the reasons described herein, health risk screenings/assessments and a

1 quantitative evaluation of air quality-related impacts of that growth cannot be conducted at
2 this time because the details of that growth are unknown. Further, this development in the
3 Ceres/Turlock service area would occur in accordance with the Cities' general plans and thus
4 would not result in unplanned or disorderly growth. In addition, each of these individual
5 projects would be required to comply with the SJVAPCD's rules and regulations, including
6 permitting requirements related to new sources, indirect sources, and Authority to Construct
7 permits (as detailed in, but not limited to, the SJVAPCD's Rules 2010, 2201, 2550, and 9510).

8 If the commenter was stating that TAC emissions from the proposed project's operation of
9 the WTP or other proposed project components should be screened and/or quantified, then
10 the commenter is referred to the Response to Comment B-1.

11 If the commenter was referring to future expansion of the WTP to accommodate buildout
12 water demands, then it is important to note that the EIR for the proposed project does not
13 evaluate that expansion because, as described in the Response to Comment A-2, many aspects
14 of that expansion are speculative at this time.

15 ***Response to Comment B-4***

16 The commenter recommends that SRWA consult with SJVAPCD regarding the need for
17 ambient air quality analysis (AAQA) and air dispersion modeling.

18 The recommended analysis would be required as part of SRWA's application to obtain an
19 Authority to Construct permit from SJVAPCD. SRWA would consult with SJVAPCD at that time
20 regarding the appropriate model and input data to use in the analysis.

21 ***Response to Comment B-5***

22 The commenter describes mitigation measures to reduce construction exhaust emissions but
23 does not provide a comment related to the DEIR. Mitigation Measure AQ-1, "Prepare
24 Quantitative Analysis of Construction-related Air Quality and Greenhouse Gas Emissions,
25 and Implement Measures to Cap Emissions," has been revised, as described in the Response
26 to Comment B-1, and contains requirements similar to those recommended.

27 ***Response to Comment B-6***

28 The commenter lists the criteria for determining whether a project is subject to District Rule
29 9510 (Indirect Source Review, or ISR) and requires an Air Impact Assessment (AIA).

30 The proposed project would be subject to SJVAPCD review under the ISR and may require
31 completion of an AIA as part of that review process. No changes to the DEIR are required, as
32 this regulatory approval is separate from the environmental review process under CEQA.

33 ***Response to Comment B-7***

34 The commenter states that individual development projects may require permits from
35 SJVAPCD.

36 Section 3.3, *Air Quality*, in the discussion of Impact AQ-1 (page 3.3-20, lines 41-43) indicates
37 that "The proposed project would follow all federal, state, and SJVAPCD regulations and
38 policies related to sources of air pollutants. In addition, construction of the proposed project

1 would follow local air district regulations for fugitive dust, VOCs, and NO_x emissions." As part
2 of this compliance and as project details are further developed, SRWA and its consultants
3 would contact SJVAPCD to identify the agency's permitting requirements and applicable rules
4 and regulations. SRWA would then implement the necessary activities to obtain applicable
5 permits, including an Authority to Construct.

6 ***Response to Comment B-8***

7 The commenter identifies additional SJVAPCD regulations that may apply to individual
8 development projects.

9 See the Response to Comment B-7 regarding project compliance with SJVPACD regulations.
10 The proposed project would not involve demolition of existing buildings.

11 ***Response to Comment B-9***

12 The commenter recommends coordination with SJVAPCD regarding permit requirements
13 and regulations that may apply to the proposed project.

14 See the Response to Comment B-7 regarding project compliance with SJVPACD permits and
15 regulations.

16 ***Response to Comment B-10***

17 The commenter indicates information that should be submitted along with referral
18 documents for new development projects.

19 See the Response to Comment B-7 regarding SRWA's intent to coordinate with SJVAPCD.

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1 **Letter C – Julie Vance, California Department of Fish and Wildlife****Letter C: Julie Vance, California Department of Fish and Wildlife**

State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Central Region
 1234 East Shaw Avenue
 Fresno, California 93710
 (559) 243-4005
 www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



March 7, 2018

Michael Brinton, Interim General Manager
 Stanislaus Regional Water Authority
 156 South Broadway, Suite 270
 Turlock, California 95380
 E-mail: Michael.Brinton@ci.ceres.ca.us

Subject: Surface Water Supply Project (Project)
 Draft Environmental Impact Report (DEIR)
 State Clearinghouse No. 2017022077

Dear Mr. Brinton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Stanislaus Regional Water Authority for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹. CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

2

Michael Brinton
Stanislaus Regional Water Authority
March 7, 2018
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code § 1800 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus Regional Water Authority, whose member agencies consist of the Cities of Ceres and Turlock.

Objective: Stanislaus Regional Water Authority proposes to operate an existing infiltration gallery to withdraw water from the Tuolumne River, convey extracted water to a new water treatment plant, and convey the treated water through transmission mains to storage facilities in the Cities of Ceres and Turlock. The initial withdrawals would be up to 30,000 acre-feet per year (AFY) in Phase I, increasing over time to up to 50,400 AFY at buildout in 2040. The proposed project is intended to serve as a major in-lieu groundwater recharge project under the Sustainable Groundwater Management Act to ensure the long-term sustainability of the groundwater resources within the Turlock Subbasin.

The proposed Project consists of the installation and operation of an infiltration gallery, a wet well, a raw water pump station, a 60-inch diameter raw water transmission main, a water treatment plant, a 30-inch and 42-inch diameter transmission mains, and terminal facilities consisting of one or more storage tanks.

Location: The Project is located in Stanislaus County, extending from Fox Grove Regional Park near Hughson on the north, to the Cities of Ceres and Turlock on the west and south, respectively. The raw water pump station would be located adjacent to the existing infiltration gallery on the south bank of the Tuolumne River west of Geer Road. A pipeline will convey water from the infiltration gallery and raw water pump station to a new Water Treatment Plant north of the Ceres Main Canal and west of Aldrich Road. Treated water will be conveyed from the Water Treatment Plant through pipelines to connect to the City of Ceres water system in the west and the City of Turlock's water system in the south.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Stanislaus Regional Water Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The DEIR prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the DEIR outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the Federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the Federal and State threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the State species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blossevillii*).



C-1

CDFW recommends that the following modifications and/or edits be incorporated into the DEIR.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-5 Page 3.4-42

Issue: Mitigation Measure BIO-6 states that if construction occurs between February 1 and August 31, surveys for SWHA and WTKI shall be conducted within a minimum 500-foot radius around the construction area. The measure also states that buffers around active nests will be 500 feet unless a qualified biologist



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determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. The mitigation measure indicates that this buffer will be sufficient to ensure that breeding is not likely to be disrupted or adversely affected, but the DEIR analysis does not explain how this buffer size was determined to be adequate to avoid significant impacts, including but not limited to take (as defined pursuant to (Fish and Game Code Section 86), as a result of Project implementation.

Specific impact: As noted in the DEIR, SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and mature trees located within the Project site and within 1/2 mile of the Project. In addition, suitable foraging habitat for SWHA and WTKI exists within the vicinity of the Project site; dairy pasture that may be used for foraging is present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: Mature trees and agricultural fields provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest, and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nesting success, significantly impacting local nesting SWHA and WTKI.

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially



C-2
cont.

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significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation, within the Project area and a ½-mile buffer around the Project area. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

SWHA Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of a State Incidental Take Permit for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision(b).

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified WTKI nest(s) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.



C-2
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COMMENT 2: Burrowing Owl (BUOW)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-6 Page 3.4-42

Issue: Mitigation Measure BIO-7 describes focused BUOW surveys within 14 days prior to construction; however, CDFW is concerned that this survey effort may not be sufficient in detecting BUOW occupying the Project area or its vicinity. This mitigation measure also describes avoidance for occupied BUOW burrows through implementation of a 160-foot buffer during the non-nesting season and a 626-foot buffer during the nesting season, unless a Project biologist determines that a smaller buffer may be implemented. For ground-disturbing activities involved in the Project, these buffers may not be sufficient to avoid impacts. In addition, the mitigation measure describes passive relocation of BUOW detected on the Project site; however, according to CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), passively relocating and excluding BUOW in and of itself is not a take avoidance, minimization, or mitigation method. The mitigation measure also doesn't specify at what time of year passive relocation would occur.

Specific impact: BUOW rely on burrow habitat year-round for their survival and reproduction. BUOW forage in areas with relatively short vegetation and only sparse shrub cover (Gervais et al. 2008). As described in the DEIR, the Project area and its vicinity is suitable for BUOW. Without appropriate avoidance and minimization measures for BUOW, potential significant impacts include nest abandonment, which may result in reduced nesting success such as reduced health or vigor of eggs or young, in addition to direct mortality at any time of the year as a result of encroachment and increased potential of vehicle strikes, impacts to foraging success, and potentially increased predation. Potentially significant direct impacts associated with eviction and passive relocation of BUOW include inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Indirect impacts associated with temporary or permanent closure of burrows include increased stress and competition.

Evidence impact is potentially significant: The Project site is within the range of BUOW and, as described in the DEIR, supports potentially suitable burrow and foraging habitat. The Project has the potential to result in loss of burrow habitat for local populations. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), passively relocating and excluding BUOW is considered a potentially significant impact under CEQA.

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Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

CDFW recommends assessing presence/absence of BUOW by conducting surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993). CDFW further recommends that the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be followed prior to and during any ground-disturbing activities associated with Project implementation. CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found to occupy a Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion in and of itself is not a take avoidance, minimization, or mitigation method. If deemed necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of a minimum 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. In addition, CDFW further recommends that burrow closure be employed only where there are adjacent natural burrows and sufficient non-impacted habitat for BUOW to occupy with permanent protection mechanisms in place. In addition, BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during project activities, at a rate that is sufficient to detect BUOW if they return.

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C-3
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II. Editorial Comments and/or Suggestions

Fisheries Analysis: CDFW has questions and comments regarding the Project description and implications for special status fisheries. It is not yet clear if adequate Project information has been provided to allow CDFW to fully evaluate potential Project-related impacts to fisheries. Mitigation Measure BIO-4 addresses impacts to special status fisheries by limiting the timing of air purging of the Infiltration Gallery to the period from April 1 to September 30, to address the effects of suspended sediments. CDFW has provided review, analysis, and comment related to the relicensing process for the Federal Energy Regulatory Commission (FERC) in the Tuolumne River (FERC No. 2299 Don Pedro, FERC No. 14581 La Grange), and the following requested information items will make clearer how the DEIR analysis is consistent with FERC relicensing. In the items that follow, CDFW recommends clarification in the DEIR for documenting certain fisheries details and the regulatory framework for fisheries; specific Project implementation details; and elaboration of potential impacts to fisheries.

C-4

Regulatory Framework: CDFW recommends that Table 2-5 on Page 2-52 of the DEIR include FERC as a regulatory agency required to approve Project activities related to the current location (La Grange) of Instream compliance monitoring and a change in the location of diversion. In addition, CDFW recommends adding National Oceanic and Atmospheric Administration (NOAA) Fisheries as another agency that addresses Endangered Species Act compliance.

C-5

CDFW recommends that Table 3.4-2 on Page 3.4-12 of the DEIR display light gray shading (i.e., potential activity) for Adult spawning of Chinook salmon in January.

C-6

CDFW recommends modifying Table 3.4-4 on Page 3.4-21 of the DEIR to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population. Spring-run strays resulting from San Joaquin River Restoration Program activity do have the potential to occur.

C-7

CDFW recommends that the description of fish species present or likely to be present in the Project vicinity on Page 3.4-10 of the DEIR note the limitations of the 2015 study that is referenced; documentation of fish at a stationary point in the river cannot reliably be used to assert the absence of steelhead from the lower Tuolumne River. CDFW also recommends that additional years of data at the weir location be used.

C-8

Infiltration Gallery Operation: CDFW requests additional clarification in the DEIR to address operation of the Infiltration Gallery. It is not clear when the Infiltration Gallery will operate, for example, if it will operate and withdraw water year-round.

C-9

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and also if it will operate and withdraw the same amount in all water year types. The 2001 study referred to in Impact BIO-3 on Page 3.4-35 of the DEIR appears to have analyzed water diversion from mid-March to mid-October, and it is not clear that FERC proceedings to date have addressed Infiltration Galley operation outside summer months. In addition, it is not clear how river flow will change after the Water Treatment Plant is operating at buildout capacity.

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 C-9
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CDFW recommends that the DEIR include additional detail on Page 3.4-10, regarding an increase in average annual flow of the Tuolumne River by 24 cubic feet per second, specifically, clarification of where measurements will be taken, and whether averaging the measurement could result in a substantially larger release over a very short time. This increase also pertains only to Phase 1 and not release when the Water Treatment Plant is operating at full capacity.

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 C-10

Air Purging and Fine Sediments: The DEIR discussion of fine sediments on Page 3.4-38 indicated that no sediment was found in stream samples taken in October 2017. CDFW notes that Tuolumne River flows from January through August 2017 were above 2,000 cubic feet per second, higher than baseline flows described in the DEIR as 150 to 300 cubic feet per second, and as a result, samples taken in October would not represent typical baseline levels of fine sediment accumulation in the Tuolumne River. CDFW recommends that additional sampling be used to inform the analysis in the DEIR to provide more representative baseline data.

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 C-11

CDFW recommends that the DEIR address whether air purging could affect or disrupt out-migrating Chinook salmon during the migration interval from April through June. Additionally, back flushing is described on Page 3.9-16 of the DEIR as occurring for approximately five days, twice annually. CDFW recommends an analysis of potential impacts such as creating a barrier during juvenile Chinook salmon migration, and also including potential indirect effects such as increasing predation pressure.

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 C-12

Change in Point of Water Diversion: The change in the point of diversion described in Impact HYD/WQ-3 appears to warrant a change in the State water right. CDFW recommends that the DEIR provide clarification of how additional water to be released from the La Grange Dam will be memorialized; for example, will FERC licensing require changes in stream flow and address a change in the location of compliance requirements?

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 C-13

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any

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bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Diurnal Bat Roosts: The DEIR includes Mitigation Measure BIO-8 to address surveys and avoidance measures for roosting bats associated with bridges that provide suitable habitat. The mitigation measure describes methods to reduce impacts to maternity roosts, such as reducing activity near a roost or excluding bats from a site prior to the maternity season; however, the mitigation measure also indicates that a biologist may develop an alternative minimization measure, and that specifications for bat exclusion from a roost will be submitted to CDFW for approval. This measure appears to defer



C-14
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C-15

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the analysis of the potential impact (i.e., consultation with CDFW) and the determination of appropriate mitigation to a later date, after Project approval and potentially during Project implementation. CDFW recommends that the DEIR include all potential mitigation measures based on any necessary consultation prior to Project approval, to avoid, minimize, and mitigate as warranted any impacts that may be significant to roosting bats, including maternity roosts and roosts of resident or migratory bats.

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C-15
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Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite, which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore, notification is warranted. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

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C-16

Water Rights: The use of unallocated stream flows are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

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C-17

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS and NOAA Fisheries prior to any ground disturbance related to this Project due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act (ESA) is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA Fisheries in order to comply with ESA is advised well in advance of Project implementation.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

C-19

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

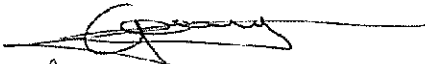
C-20

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Stanislaus Regional Water Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Annette Tenneboe, Senior Environmental Scientist (Specialist) at (559) 243-4014 ext. 231 or annette.tenneboe@wildlife.ca.gov.

Sincerely,


Julie A. Vance
Regional Manager

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cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Annette Tenneboe
John Shelton
Abirrael Leon
Bonna Newell
Steve Tsao
California Department of Fish and Wildlife

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CBOC. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The Burrowing Owl, Its Biology and Management. Raptor Research Report Number 9.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

SWHA TAC. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

Response to Comment C-1

The commenter expresses a general concern about the adequacy of the mitigation measures for several species: the state threatened Swainson's hawk (*Buteo swainsoni*), the state fully protected white-tailed kite (*Elanus leucurus*), the federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the federal and state threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the federal candidate and state species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the state species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blossevillii*). The commenter then indicates that the comment letter will set forth specific modifications and edits, which should be incorporated into the EIR.

Comments C-2, C-3, C-12, C-14, and C-15 contain specific proposed modifications and edits. For SRWA's responses, please see Responses to Comments C-2, C-3, C-12, C-14, and C-15, below.

Response to Comment C-2

The commenter indicates that the EIR does not explain the rationale used to determine the size of the buffers (500 feet) around active nests for Swainson's hawk (SWHA) and the potential loss of suitable nest trees. The commenter states that removal of known bird-of-prey nest sites, even outside of the nesting season, could result in a significant impact and possibly "take" under CESA. The commenter then recommends alternative mitigation measures for SWHA, including: avoiding impacts to known nest trees at all times of year, or replacing nesting trees that are removed with appropriate native trees planted at a ratio of 3:1; conducting preconstruction surveys no more than 10 days before the start of construction; and establishing a ½ mile non-disturbance buffer if the preconstruction surveys find an active SWHA or white-tailed kite (WTKI) nest, or obtaining a CESA Incidental Take Permit for SWHA and establishing a ½ mile non-disturbance buffer for WTKI until the breeding season has ended or a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Impact BIO-9, "Impacts on Riparian Habitat," in Section 3.4, *Biological Resources*, states on page 3.4-45 that the removal of native tree and shrub species during construction is not expected, although trimming of some individual oak trees is possible adjacent to the access road. Therefore, it is not anticipated that any suitable nest trees would be removed. However, in the event that it is necessary to remove nest trees, Mitigation Measure BIO-10 states: "Any plants of native woody species of 4 inches dbh or greater that are damaged or removed as a result of construction activity shall be replaced at a 1:1 ratio; this ratio will increase to 3:1 for native trees of 24 inches dbh and greater."

SRWA appreciates the California Department of Fish and Wildlife's (CDFW's) input and acknowledges that the requirements of regulatory permits, including a Section 1602 Streambed Alteration Agreement, would be negotiated with CDFW following project approval, before project construction would begin. In response to the commenter's recommendations, Mitigation Measure BIO-6 has been revised to indicate that surveys would cover a minimum ½-mile radius around the construction area and that, if nesting SWHA or

1 WTK are detected, buffers around active nests will be ½ mile. Mitigation Measure BIO-10 has
2 been revised to include mitigation for nesting trees that must be removed at a 3:1 ratio.

3 **Response to Comment C-3**

4 The commenter indicates that the EIR's proposed surveys for Burrowing Owl (BUOW) might
5 not be sufficient to detect BUOW occupying the Project area. The commenter also questions
6 the sufficiency of the proposed buffers (160 feet during non-nesting season and 626 feet
7 during nesting season), the potential loss of suitable burrow habitat, and the timing and
8 efficacy of passive relocation and exclusion as a mitigation measure. The commenter
9 recommends alternative mitigation measures for BUOW, including conducting surveys
10 following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and
11 Mitigation Guidelines," and following the "Staff Report on Burrowing Owl Mitigation;" if it is
12 not possible to avoid BUOW, replacing occupied burrows with artificial burrows at a 1:1 ratio;
13 closing burrows only where there are adjacent natural burrows and sufficient protected non-
14 impacted habitat for BUOW; and ongoing surveillance of the mitigation site.

15 Impact BIO-6, "Impacts to Burrowing Owls," in Section 3.4, *Biological Resources*, describes on
16 page 3.4-42 that the Proposed Project has marginal, but potentially suitable, habitat for
17 BUOW. The buffers identified in Mitigation Measure BIO-7 correspond to those
18 recommended in Comment C-3 for impacts on BUOW in low-disturbance areas. The extent of
19 disturbance from potential project impacts to BUOW and any burrows is expected to be low
20 because the amount of potential habitat present is very limited in extent, the duration of
21 construction is relatively short, and the total amount of acreage disturbed is very low and
22 would not be likely to result in habitat fragmentation.

23 As stated in Response to Comment C-2 above, SRWA appreciates CDFW's input and
24 acknowledges that the requirements of regulatory permits, including a Section 1602
25 Streambed Alteration Agreement, would be negotiated with CDFW following project
26 approval, before project construction would begin. In response to the commenter's
27 recommendations, the language of Mitigation Measure BIO-7 has been revised to clarify the
28 time of year when passive relocation would be allowed to take place.

29 **Response to Comment C-4**

30 The commenter indicates that "it is not yet clear" whether the EIR includes adequate
31 information about the Project to allow CDFW "to fully evaluate" potential project-related
32 impacts to fisheries.

33 The EIR contains sufficient information to permit an informed evaluation of the Project's
34 potential impacts on fisheries. This information is provided in Impact BIO-3, on pages 3.4-35
35 through 3.4-40. The impact analysis evaluates the potential effects of additional releases of
36 up to 24 cfs on migration, spawning, and rearing; potential for fish entrainment or
37 impingement; potential effects from mobilization of fine sediment due to air purging; and
38 potential effects of stormwater from construction site on water quality. Impacts of air purging
39 were determined to be potentially significant, and Mitigation Measure BIO-4, "Schedule Air
40 Purging to Avoid or Minimize Increased TSS and Sediment Deposition," is identified to reduce
41 this impact to a less-than-significant level.

1 The commenter also questions whether the DEIR analysis for special-status fisheries is
2 consistent with FERC relicensing for Don Pedro Reservoir.

3 TID, MID, and the San Francisco Public Utilities Commission (SFPUC) are currently engaged
4 in the FERC relicensing process for Don Pedro Reservoir. However, the relicensing process is
5 a separate and independent action undertaken by FERC and the operating agencies on an
6 unrelated timeline. The analysis of the effects of the relicensing on water and aquatic
7 resources, including special-status fisheries, is ongoing since at least 2013 and has entailed
8 at least 20 different studies (the entire list of studies may be found at www.donpedro-relicensing.com/documents.aspx
9 under Initial Study Reports). The outcome of that process
10 with respect to special-status fisheries is currently unknown and cannot be predicted with
11 any certainty. CEQA disallows speculation about possible impacts that cannot be evaluated
12 with some level of certainty. Therefore, the analysis of the potential effects of the Proposed
13 Project on special-status fisheries provided in the DEIR in Section 3.4, *Biological Resources*,
14 on pages 3.4-37 to 3.4-41, is not evaluated in terms of consistency with the FERC relicensing
15 effort.

16 With regard to the FERC relicensing process, see also the detailed information in Responses
17 to Comments C-5 and C-6 below.

18 ***Response to Comment C-5***

19 The commenter requests that the DEIR include FERC and National Oceanic and Atmospheric
20 Administration (NOAA) Fisheries as “regulatory” agencies for the Proposed Project.

21 The FERC relicensing process is a separate and independent action undertaken by FERC and
22 the operating agencies that is subject to compliance with the National Environmental Policy
23 Act (NEPA). It is uncertain at this time whether operation of the infiltration gallery that is part
24 of the proposed project will be included in FERC’s relicensing process for Don Pedro
25 Reservoir. In addition, federal entities are not responsible agencies under CEQA because their
26 involvement requires compliance with NEPA; therefore, neither FERC nor NOAA Fisheries is
27 a responsible agency for the Proposed Project under CEQA.

28 NOAA Fisheries (also known as the National Marine Fisheries Service [NMFS]) has
29 jurisdiction over anadromous fish species. NMFS and the U.S. Fish and Wildlife Service
30 (USFWS) have joint authority under Section 10(a)(1)(B) of the federal Endangered Species
31 Act (ESA) for administering the permitting program for incidental take of federally listed
32 wildlife or fish species by non-federal entities. USFWS has jurisdiction over wildlife species
33 and all non-anadromous fish. SRWA anticipates the Proposed Project may affect valley
34 elderberry longhorn beetle (VELB) and has therefore submitted an application for an
35 incidental take permit to USFWS along with the required Low-effect Habitat Conservation
36 Plan pursuant to Section 10(a) of the ESA. USFWS must conduct an intra-service consultation
37 with NMFS under Section 7(a)(2) of the ESA when there is a federal nexus that would require
38 an ESA Section 7 consultation. Section 7(a)(2) directs federal agencies to consult with USFWS
39 and NMFS regarding discretionary actions they fund, authorize, or carry out that may affect
40 a listed species or its designated critical habitat. Currently, the Proposed Project is not reliant
41 on federal funds; therefore, no other Section 7 consultation is expected.

42 However, SRWA is consulting with both USFWS and NMFS in the process of obtaining
43 approvals for the proposed project.

Response to Comment C-6

The commenter recommends that Table 3.4-2 of the DEIR be revised to show adult spawning of Chinook salmon in January. The commenter does not cite any scientific report or study to support this requested revision.

In Section 3.4.3 of the DEIR, "Biological Resources – Environmental Setting," Table 3.4-2 on page 3.4-12 presents the temporal and spatial distribution of life stages of special-status fish species known to occur in the project vicinity. As indicated in the footnotes to the table, the source of this information is the Salmonid Population Synthesis study conducted by Stillwater Sciences in 2013. The study is one of the 20 studies on water and aquatic resources required by the Don Pedro Project FERC relicensing process. The table shows peak spawning time of Chinook in the Tuolumne River as occurring in November with a potential for spawning in September, October, and December. The timing in the table is specific to the Tuolumne River and is based on at least 10 years of monitoring conducted by TID and MID in 1995-2005. Very few instances of adult chinook spawning activity have been observed in the Tuolumne River in January; however, at the request of the commenter, Table 3.4-2 has been modified to indicate that there is limited potential for Chinook salmon to spawn in the San Joaquin River and tributaries (including the Tuolumne River) in January.

Response to Comment C-7

The commenter states that stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population designation. The commenter recommends modifying Table 3.4-4 to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population.

Spring-run Chinook salmon have been restored to the mainstem San Joaquin River through the San Joaquin River Restoration Settlement Agreement and its implementing legislation. Spring-run Chinook salmon that stray into the Tuolumne River are subject to the specific provisions of Public Law 111-11 and the 4(d) Rule that was promulgated for their reintroduction. To the extent spring-run Chinook salmon are encountered in the Tuolumne River in the vicinity of the Proposed Project, SRWA will comply with all applicable laws and regulations.

Response to Comment C-8

The commenter questions whether a 2015 study used in the EIR is reliable and states that absence of steelhead cannot be demonstrated based on the lack of documentation of that species at a specific stationary point on the river.

The commenter has not cited any scientific study or report to support its conclusion. The identified text in the EIR is taken from an expert report prepared by FishBio in 2016 for the FERC relicensing project. The study and others cited in the EIR have been relied on by FERC in its relicensing effort, and SRWA finds no evidence to suggest that its findings are questionable.

Response to Comment C-9

The commenter requests information on operation of the infiltration gallery, including whether it would operate year-round and whether it would withdraw the same amount of water in all water year types. The commenter also requests information on whether operation of the infiltration gallery has been analyzed outside of the summer months (mid-October to mid-March) and how river flow would change when the water treatment plant is operating at full build-out capacity.

As described in the DEIR, the proposed project would increase flows from La Grange Dam by approximately 24 cfs and would divert that additional water at the infiltration gallery. No adverse impacts would result from increasing flows in this portion of the Tuolumne River; in fact, increased flows would be beneficial to fish and other aquatic resources. During infiltration gallery operations in Phase 1, TID would make average annual releases of approximately 24 cfs, in addition to the releases required by the 1996 FSA to meet FERC-mandated minimum flows. The analysis assumes that the same amount of water would be released and diverted year round, in other words, at a constant flow rate (of approximately 24 cfs). Under all circumstances, the project would be operated such that all regulatory flows would be complied with; it is possible that, in some years, this could result in reduced diversions based on the amount of water available from TID, as indicated in the FSA and described in DEIR Section 3.9, *Hydrology and Water Quality*.

The commenter appears to be confused because Impact BIO-3 (on page 3.4-35) refers to the 2001 IS/MND (EDAW 2001), which analyzed water diversions from the infiltration gallery occurring from mid-March to mid-October. As also stated in Impact BIO-3, however, the 2006 *Regional Surface Water Supply Project Draft Environmental Impact Report* (EIP 2006) analyzed year-round water diversion at a rate of up to 66 cfs. Although portions of the analysis in each of these previous documents provide useful information for the purposes of the DEIR, neither of the projects evaluated in those documents is identical to the proposed project. In contrast to the seasonal diversion analyzed in the 2001 IS/MND, the Proposed Project would release about 24 cfs from Don Pedro Reservoir and divert it 26 miles downstream at the infiltration gallery throughout the year.

Response to Comment C-10

The commenter requests additional information regarding the increase in average annual flow of the Tuolumne River by 24 cfs, the locations where measurements would be taken, and whether averaging the measurement could result in a substantially larger release over a very short period of time.

See Response to Comment A-5. To accommodate the withdrawal of Tuolumne River water during infiltration gallery operation and maintain instream flow minimums, flow from Don Pedro Reservoir would be increased to 150-350 cfs, depending on the water year type. The FERC minimum flow requirements are shown in Table 3.4-1 on page 3.4-9. For example, if infiltration gallery testing occurred in "Critical Year and Below" conditions, instream flows would need to be increased to 150 cfs (measured at La Grange Bridge below Don Pedro Reservoir) to maintain required minimum instream flows of 50 cfs between June 1 and September 30. In "All Years above Median Below-Normal Years" conditions, instream flows would need to be increased to 350 cfs during infiltration gallery testing to maintain required minimum flows of 250 cfs between June 1 and September 30.

1 A substantially larger release than 350 cfs would not occur as a result of operation of the
 2 infiltration gallery. However, much larger releases from La Grange Dam do occur over short
 3 periods of time as a result of dam operations unrelated to the Proposed Project.

4 **Response to Comment C-11**

5 The commenter requests additional information regarding the stream samples collected in
 6 October 2017 and indicates there is a possibility that the measurements of stream sediments
 7 taken in that year may not represent typical baseline conditions of fine sediment
 8 accumulation due to the high flows that occurred earlier in the year.

9 Average flows in the Tuolumne River exceeded 2,000 cfs during several months in 2017 as
 10 shown in **Table C-1** (U.S. Geological Survey [USGS] 2018). However, the 2016-2017 water
 11 year included record rainfall in the region and some of the greatest flooding ever observed
 12 on the Tuolumne River. Record mean monthly discharge was observed in February, March,
 13 May and June that year. Over the long term (1968-2017), October is the month with the
 14 lowest average flow (Table C-1), and so stream samples collected in that month may not be
 15 representative of conditions in higher flow months. SRWA is conducting additional sampling
 16 on an ongoing basis; however, the long-term mean data indicate that sediment measurements
 17 are typically low in October.

18 **Table C-1. Mean Discharge in the Tuolumne River (cfs)**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017	1,763	2,143	594	1,072	5,204	6,512	2,193	270	97	N/A	N/A	N/A
1968-2017	135	114	91	230	1,206	1,738	771	153	79	53	61	79

19 Note: N/A = information not available

20 Source: USGS 2018

21 **Response to Comment C-12**

22 The commenter requests information about the effects of air purging and back-flushing on
 23 out-migrating Chinook salmon from April through June.

24 Impact BIO-3 in Section 3.4, *Biological Resources*, contains a discussion of this topic under the
 25 subheading "Potential Effects from Mobilization of Fine Sediment due to Air Purging"
 26 beginning on page 3.4-38. As described previously in the section (most notably on page
 27 3.4-35 beginning on line 34), this analysis is based on information from the 2006 EIR
 28 prepared by EIP for TID's Regional Surface Water Supply Project, with modifications to
 29 account for modifications to the project.

30 Section 4.3, *Aquatic Resources*, of the 2006 EIR (pages 4.3-14 to 4.3-16) explained that
 31 turbidity resulting from air purging of the infiltration gallery would provide cover for out-
 32 migrating salmon. The following information on backflushing is taken from that document
 33 (EIP 2006):

34 Like many Central Valley streams, the amount of sediment transported by the
 35 Tuolumne River is a function of the flows, water year, land use conditions, and
 36 stream gradient. Work on the Tuolumne River indicates that most sediment

1 is moved during high flow events that are mainly in winter and spring (Figure
 2 4.3-3). The January 1997 flood moved substantial amounts of fine sediments
 3 into the Tuolumne River below La Grange Dam.³⁸ The current operational
 4 plan is to backflush the infiltration gallery once annually between mid-April
 5 and mid-May. This timing would coincide with the spring outmigration pulse
 6 flow established in the FERC license and is intended to benefit juvenile salmon
 7 outmigration. Studies have shown that increased turbidity can reduce
 8 predation because it makes it harder for predatory fish, such as largemouth
 9 bass (*Micropterus salmoides*), to find the juvenile fish. Each infiltration bay
 10 would be flushed individually, with overall backflushing not expected to take
 11 more than a few hours. This process is expected to create a noticeable plume
 12 of fine sediments, but one that is relatively short-lived and would rapidly
 13 dissipate in the river.

14 ... The proposed project includes operations of the infiltration gallery
 15 throughout the year and backflushing may need to be scheduled at other
 16 times, such as during the fall pulse attraction flow or in winter. Again, it is
 17 expected that backflushing events will only briefly raise local TSS levels and
 18 the increase in localized TSS generated by backflushing is expected to be
 19 minor if it is even noticeable against background levels. Under low flow
 20 conditions, this material will likely be deposited in nearby areas of low
 21 velocity. Under high flows, materials may be transported for some distance
 22 downstream before settling.

23 Primary spawning areas for Chinook and *O. mykiss* are upstream of SRP 9.
 24 Because of this, sedimentation resulting from backflushing will not impact
 25 spawning habitat for these species. ... Overall, none of the effects of
 26 backflushing are expected to have a substantial adverse effect on any of the
 27 sensitive species of fish that may be found within the project area. Because of
 28 this, the impact of potential increased backflushing is considered a less-than-
 29 significant impact to sensitive fish species.

30 ³⁸ Turlock Irrigation District and Modesto Irrigation District 2005. 2005 Ten year summary report
 31 pursuant to Paragraph (G) of the 1996 FERC order issued July 31, 1996. FERC Project No. 2299-024. Figures
 32 3.5.1.2-2 through 5, page 3-62 and 63).

33 Although the current EIR evaluates a project with somewhat different features than the 2006
 34 EIR, operation of the infiltration gallery would be consistent with that analysis.

35 **Response to Comment C-13**

36 The commenter requests information on the change in the point of diversion described in
 37 Impact HYD/WQ-3 and indicates that it may warrant a change in the state water right.

38 As indicated in Table 2-5 in Chapter 2, *Project Description*, TID (as a partner in the Proposed
 39 Project) intends to submit a change petition to the SWRCB Division of Water Rights for
 40 authorization of the long-term transfer of water to SRWA, use of the infiltration gallery as a
 41 point of rediversion, and the diversion and use of water for M&I purposes. The FERC
 42 relicensing process is a separate action unrelated to the Proposed Project or the change of
 43 water right.

Response to Comment C-14

The commenter provides information on nesting birds and notes that SRWA is responsible for compliance with the Migratory Bird Treaty Act and Fish and Game Code.

SRWA acknowledges responsibility for ensuring that implementation of the Project does not result in violations of the Migratory Bird Treaty Act or relevant Fish and Game Code sections. Impact BIO-6, "Impacts on Nesting Birds," in Section 3.4, *Biological Resources*, states on pages 3.4-40 and 3.4-41 that riparian woodlands present near the infiltration gallery and site of the proposed pump station provide potentially suitable nesting habitat for a variety of bird species, including special-status species, and identifies Mitigation Measure BIO-5 to address this impact.

As stated in Response to Comment C-2 above, SRWA acknowledges that the requirements of regulatory permits would be negotiated with CDFW following project approval, before project construction would begin. Mitigation Measure BIO-5 was developed in coordination with qualified biologists and in consultation with the project engineers to be sufficiently protective of nesting habitat while also allowing construction to proceed in the constrained area of the raw water pump station and transmission pipeline. At this time, no revisions to these mitigation measures are necessary.

Response to Comment C-15

The commenter states that Mitigation Measure BIO-9, "Conduct Preconstruction Surveys and Implement Measures to Avoid or Minimize Impacts on Special-status Bats," appears to defer the analysis of the potential impact and the determination of appropriate mitigation (i.e., consultation with CDFW) to a later date, after project approval and potentially during project implementation.

Mitigation Measure BIO-9 appropriately indicates the process that SRWA would undertake to determine, before construction begins, whether special-status bats could be affected in the vicinity of the Geer Road Bridge. The measure identifies protections that would be put in place, should the preconstruction survey indicate that a maternity roost is present; these protections are based on regulatory agency guidelines. No inappropriate deferral of mitigation is proposed. In fact, a qualified biologist conducted an early habitat assessment of the area on April 19, 2018, and found that no signs of bats were detected at the bridge. However, the requirement to conduct preconstruction surveys remains in place. In addition, SRWA is working with CDFW to obtain applicable permits and comply with all relevant regulatory requirements.

Response to Comment C-16

The commenter notes that the project would require a Lake and Streambed Alterations Agreement (LSAA) pursuant to Fish and Game Code Section 1602.

On March 20, 2018, CDFW issued Agreement 1600-2017-0181-R4 to SRWA for the Infiltration Gallery Testing Project, which will construct the wet well that is needed to access and test the infiltration gallery. SRWA is in the process of requesting an LSAA amendment to address construction activities in the same area for the proposed project.

1 **Response to Comment C-17**

2 The commenter notes that the use of unallocated stream flows is subject to appropriation and
3 approval by SWRCB pursuant to California Water Code Section 1225. CDFW, as a Trustee
4 Agency, is consulted by SWRCB during the water rights process to provide terms and
5 conditions designed to protect fish and wildlife prior to appropriation of the State's water
6 resources.

7 SRWA acknowledges that CDFW has a material interest in ensuring that there are adequate
8 flows in the Tuolumne River for the protection of aquatic ecosystems. As described in
9 Response to Comment C-13, SRWA's partner agency, TID, intends to file a water right petition
10 with SWRCB with regard to the proposed project.

11 **Response to Comment C-18**

12 The commenter recommends consultation with USFWS and NOAA Fisheries prior to any
13 ground disturbance related to the proposed project due to potential impacts on federally
14 listed species.

15 SRWA conducted a meeting regarding VELB ESA compliance for the Proposed Project with
16 the USFWS at the Sacramento Office on March 21, 2017. As described in Response to
17 Comment C-5, SRWA anticipates obtaining a permit to authorize the incidental take of VELB
18 as a result of the Proposed Project and has submitted an application for an incidental take
19 permit to USFWS, along with the required Low-effect Habitat Conservation Plan pursuant to
20 Section 10(a) of the ESA. Currently, because the Proposed Project is not reliant on federal
21 funds and has no other federal involvement, no intra-service Section 7 consultation with
22 NMFS is expected.

23 **Response to Comment C-19**

24 The commenter requests that any special-status species and natural communities detected
25 during project surveys be reported to the California Natural Diversity Database (CNDDDB).

26 As is common practice, biologists working with SRWA on the proposed project will complete
27 and electronically submit CNDDDB survey forms to CNDDDB@wildlife.ca.gov.

28 **Response to Comment C-20**

29 The commenter notes that projects that would have an impact on fish and/or wildlife require
30 an assessment of filing fees to help defray the cost of environmental review by CDFW.

31 SRWA acknowledges that fees are payable upon filing of the Notice of Determination by the
32 Lead Agency and will pay the required fees.

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1 Letter D – Scott Morgan, State Clearinghouse

Letter D: Scott Morgan, Governor's Office of Planning and Research



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GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEV ALEX
DIRECTOR

March 8, 2018

Michael Brinton
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Subject: Surface Water Supply Project
SCH#: 2017022077

Dear Michael Brinton:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on March 7, 2018, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

D-1

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
1-916-445-0613 FAX 1-916-558-3164 www.opr.ca.gov

2

**Document Details Report
State Clearinghouse Data Base**

SCH# 2017022077
Project Title Surface Water Supply Project
Lead Agency Stanislaus Regional Water Authority

Type EIR Draft EIR
Description SRWA proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-ft per year in phase 1 of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed project would assist the cities in achieving sustainable groundwater pumping levels. In addition, 2,000 ac-ft of offset water provided to TID would assist TID in implementing its water conservation and conjunctive water use programs.

Lead Agency Contact
Name Michael Brinton
Agency Stanislaus Regional Water Authority
Phone 209-538-5758 **Fax**
email
Address 150 South Broadway, Suite 270
City Turlock **State** CA **Zip** 95380

Project Location
County Stanislaus
City Ceres, Hughson, Turlock
Region
Lat / Long 37° 37' 0.90" N / 120° 50' 25.92" W
Cross Streets E. Hatch Road and Geer Road, John Fox Road and Berkeley Ave.
Parcel No. 018-003-006, 016-006-013, multiple
Township 4S **Range** 10E **Section** 2 **Base** MD

Proximity to:
Highways
Airports
Railways BNSF
Waterways Tuolumne River
Schools mult
Land Use mult

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Landuse; Growth Inducing; Cumulative Effects; Aesthetic/Visual; Drainage/Absorption; Economics/Jobs; Forest Land/Fire Hazard; Schools/Universities; Soptic System; Sewer Capacity; Solid Waste

Reviewing Agencies Resources Agency; Central Valley Flood Protection Board; Department of Conservation; Department of Fish and Wildlife, Region 4; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 10; State Water Resources Control Board, Division of Drinking Water; State Water Resources Control Board, Division of Drinking Water, District 10; Regional Water Quality Control Bd., Region 5 (Sacramento); Delta Protection Commission; Delta Stewardship Council; Native American Heritage Commission; Public Utilities Commission; State Lands Commission

Date Received 01/22/2018 **Start of Review** 01/22/2018 **End of Review** 03/07/2018

Note: Blanks in data fields result from insufficient information provided by lead agency.

1 ***Response to Comment D-1***

2 The commenter indicates that the 30-day circulation period for the SRWA DEIR was closed
3 on March 7, 2018, and that SRWA has complied with the applicable CEQA requirement.

4 This is a standard letter provided at the close of every CEQA comment period. No response is
5 required.

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1 Letter E – Scott Furgerson, Modesto Irrigation District

Letter E: Scott Furgerson, Modesto Irrigation District



1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95362
(209) 526-7373

March 12, 2018

Via Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Michael F. Brinton, SRWA Interim General Manager
c/o City Turlock Administrative Services
156 South Broadway, Suite 230
Turlock, CA 95380

Re: Stanislaus Regional Water Authority Surface Water Project Draft Environmental Report – Request for Documents

Dear Mr. Brinton:

Modesto Irrigation District (MID), the second oldest irrigation district in the State of California, was formed in 1887 and is a not for profit publically owned utility. MID, in partnership with Turlock Irrigation District (TID), owns and operates the New Don Pedro Dam, Don Pedro Reservoir and La Grange Dam, collectively referred to as (“Project”) as well as jointly holding certain water rights. For more than a century, the Project has proudly contributed to California’s position as the sixth largest economy in the world providing a reliable source of clean, affordable surface water to over 3,000 agricultural customers irrigating close to 60,000 acres. The Project supports approximately \$4.109 billion in economic output and \$734.8 million in labor income. MID’s 130 year track record of pro-active, scientifically sound environmental stewardship within the Tuolumne River watershed and our early implementation of innovative conjunctive use management practices has allowed MID to be a leader in groundwater management as well. None of this legacy would be possible without the prudent, responsible management of our water rights portfolio.

MID is currently reviewing the Stanislaus Regional Water Authority’s (SRWA) Draft Environmental Impact Report (DEIR) for the proposed Surface Water Project.

We appreciate the extension of our comment deadline to April 9, 2018 due, in part, to the inadvertent failure to provide MID the Notice of Preparation given your identification of MID as a Responsible Agency in Section 2.7 of the DEIR. As stated at the March 1, 2018 public hearing, MID’s primary focus centers around the treatment of and potential impact to our jointly held water rights which may be affected by SRWA’s project, particularly in light of the current state and federal regulatory climate we and TID are experiencing.

In order to thoroughly review the DEIR, we request that you please provide the below documents that are not included, but are referenced, in the DEIR.

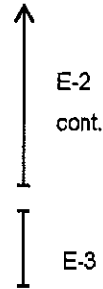
E-1
E-2

ORGANIZED 1887 • IRRIGATION WATER 1904 • POWER 1923 • DOMESTIC WATER 1994

2

March 12, 2018
Page 2

- 2015 Water Sales Agreement between Turlock Irrigation District (TID) and SRWA¹
- Final EIR for the TID Regional Surface Water Supply Project
- Stillwater Sciences temperature studies referenced in § 3.4-11
- McBain and Trust study entitled *Habitat Restoration Plan for the Lower Tuolumne River Corridor* referenced in § 3.9-13



Also, please provide all writings² that reflect communications with the State Water Resources Control Board, or any other person or entity, concerning TID's Petition for Change to Water Right License Number 11085.

Thank you for your assistance on this matter. Should you have any questions regarding this matter, please do not hesitate to contact Kelsey Gowans at (209) 526-7386.

Sincerely,

Scott Furgerson
General Manager

cc: Ronda Lucas, General Counsel
Kelsey Gowans, Staff Attorney
John Davids, Assistant General Manager, Water Operations

¹ Chapter 7 of the DEIR does reference the Water Sales Agreement; however, the URL provided includes TID's PowerPoint presentation regarding the Water Sales agreement, not the actual contract itself.

² As used in this letter, "writings" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recordings upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Govt. Code § 6252(g)). Further, we request that any writing in an electronic format be made available in an electronic format. (*Id.* at § 6253.9.)

1 ***Response to Comment E-1***

2 The commenter notes that SRWA granted MID a 30-day extension of the public comment
3 period for the DEIR. The commenter states that MID's primary focus is the joint water rights
4 held by MID and TID.

5 The comment is informational; no response is required.

6 ***Response to Comment E-2***

7 The commenter requests copies of several documents cited in the DEIR to assist MID in its
8 review of the document.

9 SRWA provided the requested documents to MID on March 14, 2018. No additional response
10 is required.

11 ***Response to Comment E-3***

12 The commenter requests copies of communications between SRWA and SWRCB or others
13 regarding the water right petition.

14 SRWA provided the requested documents to MID. No additional response is required.

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1 Letter F – Scott Morgan, State Clearinghouse

Letter F: Scott Morgan, Governor's Office of Planning and Research



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STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

March 9, 2018

Michael Brinton
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Subject: Surface Water Supply Project
SCH#: 2017022077

Dear Michael Brinton:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on March 7, 2018. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2017022077) when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

F-1

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
1-916-445-0613 FAX 1-916-558-3164 www.opr.ca.gov

2



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



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3-7-18
E

March 7, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, California 95380
E-mail: Michael.Brinton@ci.ceres.ca.us

Secretary's Office of Planning & Research
MAR 09 2018
STATE CLEARINGHOUSE

Subject: Surface Water Supply Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2017022077

Dear Mr. Brinton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Stanislaus Regional Water Authority for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹. CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

F-2

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus Regional Water Authority, whose member agencies consist of the Cities of Ceres and Turlock.

Objective: Stanislaus Regional Water Authority proposes to operate an existing infiltration gallery to withdraw water from the Tuolumne River, convey extracted water to a new water treatment plant, and convey the treated water through transmission mains to storage facilities in the Cities of Ceres and Turlock. The initial withdrawals would be up to 30,000 acre-feet per year (AFY) in Phase I, increasing over time to up to 50,400 AFY at buildout in 2040. The proposed project is intended to serve as a major in-lieu groundwater recharge project under the Sustainable Groundwater Management Act to ensure the long-term sustainability of the groundwater resources within the Turlock Subbasin.

The proposed Project consists of the installation and operation of an infiltration gallery, a wet well, a raw water pump station, a 60-inch diameter raw water transmission main, a water treatment plant, a 30-inch and 42-inch diameter transmission mains, and terminal facilities consisting of one or more storage tanks.

Location: The Project is located in Stanislaus County, extending from Fox Grove Regional Park near Hughson on the north, to the Cities of Ceres and Turlock on the west and south, respectively. The raw water pump station would be located adjacent to the existing infiltration gallery on the south bank of the Tuolumne River west of Gear Road. A pipeline will convey water from the infiltration gallery and raw water pump station to a new Water Treatment Plant north of the Ceres Main Canal and west of Aldrich Road. Treated water will be conveyed from the Water Treatment Plant through pipelines to connect to the City of Ceres water system in the west and the City of Turlock's water system in the south.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Stanislaus Regional Water Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The DEIR prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the DEIR outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the Federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the Federal and State threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the State species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blaslevillii*).

CDFW recommends that the following modifications and/or edits be incorporated into the DEIR.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-5 Page 3.4-42

Issue: Mitigation Measure BIO-6 states that if construction occurs between February 1 and August 31, surveys for SWHA and WTKI shall be conducted within a minimum 500-foot radius around the construction area. The measure also states that buffers around active nests will be 500 feet unless a qualified biologist

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determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. The mitigation measure indicates that this buffer will be sufficient to ensure that breeding is not likely to be disrupted or adversely affected, but the DEIR analysis does not explain how this buffer size was determined to be adequate to avoid significant impacts, including but not limited to take (as defined pursuant to (Fish and Game Code Section 86), as a result of Project implementation.

Specific impact: As noted in the DEIR, SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and mature trees located within the Project site and within ½ mile of the Project. In addition, suitable foraging habitat for SWHA and WTKI exists within the vicinity of the Project site; dairy pasture that may be used for foraging is present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: Mature trees and agricultural fields provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest, and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nestling success, significantly impacting local nesting SWHA and WTKI.

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially

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significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation, within the Project area and a ¼-mile buffer around the Project area. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

SWHA Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ¼-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

SWHA Take Authorization

If a ¼-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of a State Incidental Take Permit for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision(b).

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ¼-mile no-disturbance buffer around identified WTKI nest(s) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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COMMENT 2: Burrowing Owl (BUOW)

**Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation,
Impact BIO-6 Page 3.4-42**

Issue: Mitigation Measure BIO-7 describes focused BUOW surveys within 14 days prior to construction; however, CDFW is concerned that this survey effort may not be sufficient in detecting BUOW occupying the Project area or its vicinity. This mitigation measure also describes avoidance for occupied BUOW burrows through implementation of a 160-foot buffer during the non-nesting season and a 626-foot buffer during the nesting season, unless a Project biologist determines that a smaller buffer may be implemented. For ground-disturbing activities involved in the Project, these buffers may not be sufficient to avoid impacts. In addition, the mitigation measure describes passive relocation of BUOW detected on the Project site; however, according to CDFW's *"Staff Report on Burrowing Owl Mitigation"* (CDFG 2012), passively relocating and excluding BUOW in and of itself is not a take avoidance, minimization, or mitigation method. The mitigation measure also doesn't specify at what time of year passive relocation would occur.

Specific Impact: BUOW rely on burrow habitat year-round for their survival and reproduction. BUOW forage in areas with relatively short vegetation and only sparse shrub cover (Gervais et al. 2008). As described in the DEIR, the Project area and its vicinity is suitable for BUOW. Without appropriate avoidance and minimization measures for BUOW, potential significant impacts include nest abandonment, which may result in reduced nesting success such as reduced health or vigor of eggs or young, in addition to direct mortality at any time of the year as a result of encroachment and increased potential of vehicle strikes, impacts to foraging success, and potentially increased predation. Potentially significant direct impacts associated with eviction and passive relocation of BUOW include inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Indirect impacts associated with temporary or permanent closure of burrows include increased stress and competition.

Evidence impact is potentially significant: The Project site is within the range of BUOW and, as described in the DEIR, supports potentially suitable burrow and foraging habitat. The Project has the potential to result in loss of burrow habitat for local populations. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). In addition, and as described in CDFW's *"Staff Report on Burrowing Owl Mitigation"* (CDFG 2012), passively relocating and excluding BUOW is considered a potentially significant impact under CEQA.

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Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related Impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

CDFW recommends assessing presence/absence of BUOW by conducting surveys following the California Burrowing Owl Consortium's "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993). CDFW further recommends that the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012) be followed prior to and during any ground-disturbing activities associated with Project Implementation. CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found to occupy a Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion in and of itself is not a take avoidance, minimization, or mitigation method. If deemed necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of a minimum 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. In addition, CDFW further recommends that burrow closure be employed only where there are adjacent natural burrows and sufficient non-impacted habitat for BUOW to occupy with permanent protection mechanisms in place. In addition, BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during project activities, at a rate that is sufficient to detect BUOW if they return.

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II. Editorial Comments and/or Suggestions

Fisheries Analysis: CDFW has questions and comments regarding the Project description and implications for special status fisheries. It is not yet clear if adequate Project information has been provided to allow CDFW to fully evaluate potential Project-related impacts to fisheries. Mitigation Measure BIO-4 addresses impacts to special status fisheries by limiting the timing of air purging of the Infiltration Gallery to the period from April 1 to September 30, to address the effects of suspended sediments. CDFW has provided review, analysis, and comment related to the relicensing process for the Federal Energy Regulatory Commission (FERC) in the Tuolumne River (FERC No. 2299 Don Pedro, FERC No. 14581 La Grange), and the following requested information items will make clearer how the DEIR analysis is consistent with FERC relicensing. In the items that follow, CDFW recommends clarification in the DEIR for documenting certain fisheries details and the regulatory framework for fisheries; specific Project implementation details; and elaboration of potential impacts to fisheries.

Regulatory Framework: CDFW recommends that Table 2-5 on Page 2-52 of the DEIR include FERC as a regulatory agency required to approve Project activities related to the current location (La Grange) of instream compliance monitoring and a change in the location of diversion. In addition, CDFW recommends adding National Oceanic and Atmospheric Administration (NOAA) Fisheries as another agency that addresses Endangered Species Act compliance.

CDFW recommends that Table 3.4-2 on Page 3.4-12 of the DEIR display light gray shading (i.e., potential activity) for Adult spawning of Chinook salmon in January.

CDFW recommends modifying Table 3.4-4 on Page 3.4-21 of the DEIR to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population. Spring-run strays resulting from San Joaquin River Restoration Program activity do have the potential to occur.

CDFW recommends that the description of fish species present or likely to be present in the Project vicinity on Page 3.4-10 of the DEIR note the limitations of the 2015 study that is referenced; documentation of fish at a stationary point in the river cannot reliably be used to assert the absence of steelhead from the lower Tuolumne River. CDFW also recommends that additional years of data at the weir location be used.

Infiltration Gallery Operation: CDFW requests additional clarification in the DEIR to address operation of the Infiltration Gallery. It is not clear when the Infiltration Gallery will operate, for example, if it will operate and withdraw water year-round.

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and also if it will operate and withdraw the same amount in all water year types. The 2001 study referred to in Impact BIO-3 on Page 3.4-35 of the DEIR appears to have analyzed water diversion from mid-March to mid-October, and it is not clear that FERC proceedings to date have addressed Infiltration Gallery operation outside summer months. In addition, it is not clear how river flow will change after the Water Treatment Plant is operating at buildout capacity.

CDFW recommends that the DEIR include additional detail on Page 3.4-10, regarding an increase in average annual flow of the Tuolumne River by 24 cubic feet per second, specifically, clarification of where measurements will be taken, and whether averaging the measurement could result in a substantially larger release over a very short time. This increase also pertains only to Phase 1 and not release when the Water Treatment Plant is operating at full capacity.

Air Purging and Fine Sediments: The DEIR discussion of fine sediments on Page 3.4-38 indicated that no sediment was found in stream samples taken in October 2017. CDFW notes that Tuolumne River flows from January through August 2017 were above 2,000 cubic feet per second, higher than baseline flows described in the DEIR as 150 to 300 cubic feet per second, and as a result, samples taken in October would not represent typical baseline levels of fine sediment accumulation in the Tuolumne River. CDFW recommends that additional sampling be used to inform the analysis in the DEIR to provide more representative baseline data.

CDFW recommends that the DEIR address whether air purging could affect or disrupt out-migrating Chinook salmon during the migration intama from April through June. Additionally, back flushing is described on Page 3.9-16 of the DEIR as occurring for approximately five days, twice annually. CDFW recommends an analysis of potential impacts such as creating a barrier during juvenile Chinook salmon migration, and also including potential indirect effects such as increasing predation pressure.

Change in Point of Water Diversion: The change in the point of diversion described in Impact HYD/WQ-3 appears to warrant a change in the State water right. CDFW recommends that the DEIR provide clarification of how additional water to be released from the La Grange Dam will be memorialized; for example, will FERC licensing require changes in stream flow and address a change in the location of compliance requirements?

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any

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bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Diurnal Bat Roosts: The DEIR includes Mitigation Measure BIO-8 to address surveys and avoidance measures for roosting bats associated with bridges that provide suitable habitat. The mitigation measure describes methods to reduce impacts to maternity roosts, such as reducing activity near a roost or excluding bats from a site prior to the maternity season; however, the mitigation measure also indicates that a biologist may develop an alternative minimization measure, and that specifications for bat exclusion from a roost will be submitted to CDFW for approval. This measure appears to defer

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the analysis of the potential impact (i.e., consultation with CDFW) and the determination of appropriate mitigation to a later date, after Project approval and potentially during Project implementation. CDFW recommends that the DEIR include all potential mitigation measures based on any necessary consultation prior to Project approval, to avoid, minimize, and mitigate as warranted any impacts that may be significant to roosting bats, including maternity roosts and roosts of resident or migratory bats.

Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite, which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore, notification is warranted. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

Water Rights: The use of unallocated stream flows are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS and NOAA Fisheries prior to any ground disturbance related to this Project due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act (ESA) is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA Fisheries in order to comply with ESA is advised well in advance of Project implementation.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

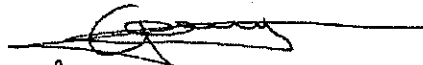
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Stanislaus Regional Water Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Annette Tenneboe, Senior Environmental Scientist (Specialist) at (559) 243-4014 ext. 231 or annette.tenneboe@wildlife.ca.gov.

Sincerely,


Julie A. Vance
Regional Manager

Michael Brinton
Stanislaus Regional Water Authority
March 7, 2018
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cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Annette Tenneboe
John Shelton
Abimael Leon
Bonna Newall
Steve Tsao
California Department of Fish and Wildlife

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Stanislaus Regional Water Authority
March 7, 2018
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REFERENCES

CBOC. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The Burrowing Owl, Its Biology and Management. Raptor Research Report Number 9.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

SWHA TAC. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

1 ***Response to Comment F-1***

2 The commenter indicates that, after the close of the 30-day circulation period for the SRWA
3 DEIR, comments were received from CDFW.

4 No response is required.

5 ***Response to Comment F-2***

6 The comment letter provided as an attachment to the SCH letter is responded to fully in
7 Responses to Comments C-1 through C-20. No additional response is required.

1 **Letter G – Patrick Cavanah, Stanislaus County Environmental Review**
2 **Committee**

Letter G: Patrick Cavanah, Stanislaus County Environmental Review Committee



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
Chief Executive Officer

Patricia Hill Thomas
Chief Operations Officer/
Assistant Executive Officer

Kelth D. Boggs
Assistant Executive Officer

Patricia M. Dietrich
Assistant Executive Officer

STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

March 12, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

**SUBJECT: ENVIRONMENTAL REFERRAL – STANISLAUS REGIONAL WATER
AUTHORITY (SRWA) – HORIZON WATER AND ENVIRONMENT, LLC. –
SRWA'S SURFACE WATER SUPPLY PROJECT – NOTICE OF PUBLIC
REVIEW AND NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL
IMPACT REPORT (DEIR)**

Mr. Brinton:

Thank you for the opportunity to review the above-referenced project.

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time.

I G-1

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Patrick Cavanah
Sr. Management Consultant
Environmental Review Committee

PC:ss

cc: ERC Members

STRIVING TOGETHER TO BE THE BEST!

1015 10th Street, Ste. 6000, Modesto, CA 95354 Post Office Box 3404
Modesto, California 95353 Phone: 209.526.6333 Fax: 209.544.6226

1 ***Response to Comment G-1***

2 The commenter indicates that the Stanislaus County Environmental Review Committee has
3 no comments on the SRWA DEIR.

4 No response is required.

1 Letter H – Ronda A. Lucas, Modesto Irrigation District

Letter H: Ronda A. Lucas, Modesto Irrigation District



1231 Eleventh Street
P. O. Box 4060
Modesto, CA 95352
(209) 526-7373

July 13, 2018

Bob Granberg, General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Re: Stanislaus Regional Water Authority – Surface Water Project DEIR

Dear Mr. Granberg:

In 2015, Turlock Irrigation District (TID) entered into a Water Sales Agreement wherein TID agreed to annually sell and deliver up to 30,000 acre feet of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a Stanislaus Regional Water Authority (SRWA) owned and operated water treatment plant under TID’s post-1914 water rights License 11058.¹

Pursuant to the California Environmental Quality Act, the SRWA released a Draft Environmental Impact Report (DEIR) for the Surface Water Project (Project) on January 22, 2018. The DEIR identified Modesto Irrigation District (MID) as a responsible agency and acknowledged that, in order to obtain the surface water, TID must submit a Petition for Change to the State Water Resources Control Board to change the point of diversion and the type of use because, currently, TID’s portion of License Number 11058 is for agricultural use only. MID testified at the public hearing on March 1, 2018 and submitted comments on April 23, 2018. As you may recall, MID, throughout this process, has sought adequate assurances that the Project and/or the change petition will not adversely affect our jointly-held water right under License 11058. On this basis, MID ultimately objected to the Project in its April comment letter.

Prior to submitting that letter and since the close of the comment period, MID has held meetings and discussions with TID in the hopes of reaching a legally binding solution that, in MID’s opinion, adequately protects MID’s water rights. I am pleased to inform you that we have reached such an agreement. On June 26, 2018, both the MID and TID boards executed the attached Clarification Agreement (Agreement). This Agreement ensures that the Project and corresponding Petition for Change will be implemented in a manner that is not injurious to MID’s water rights and provides MID the adequate assurances it has been seeking. Thus, MID’s concerns regarding our water rights expressed in both our testimony and written comments, have been satisfactorily addressed, and we consider them to be mooted by the Agreement. Due to the assurances and contractual obligations set forth in the attached Agreement, MID now supports the Project.

H-1

¹ Water Right License number 11058 is a water right that is jointly held by both Modesto Irrigation District and TID.

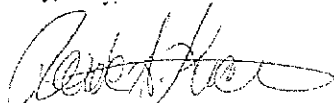
ORGANIZED 1887 • IRRIGATION WATER 1904 • POWER 1923 • DOMESTIC WATER 1994

2

July 13, 2018
Page 2

Should you have any questions regarding this matter, please do not hesitate to contact this office at (209) 526-7330.

Sincerely,



Ronda A. Lucas
General Counsel

Attachment: 1

cc: Scott Furgerson, General Manager
Casey Hashimoto, Turlock Irrigation District
Roger Masuda, Turlock Irrigation District

ORGANIZED 1887 ● IRRIGATION WATER 1904 ● POWER 1923 ● DOMESTIC WATER 1994

CLARIFICATION AGREEMENT

This Agreement is entered into as of June 26, 2018, between the Modesto Irrigation District (MID) and the Turlock Irrigation District (TID), both irrigation districts, collectively "Districts," with reference to the following:

RECITALS

A. The Districts are joint owners of the Don Pedro Project and of State Water Resources Control Board (SWRCB)-issued Water Right License 11058.

B. The Districts along with the California Department of Fish and Game, City and County of San Francisco, Friends of the Tuolumne, San Francisco Bay Area Water Users Association, Tuolumne River Expeditions, Tuolumne River Preservation Trust, and U.S. Fish and Wildlife Service entered into that certain Settlement Agreement (1995 FERC Settlement Agreement), in which the parties agreed, among other things, to amend Article 37 of the Federal Energy Regulatory Commission (FERC) license for the Don Pedro Project.

C. Section 11, Fishery Flows, of the 1995 FERC Settlement Agreement prescribed the required minimum fish flow volumes for ten different water year types. The Section then went on to state the following:

In addition, the participants agree to work cooperatively in an effort to obtain additional flows in the Tuolumne River.

The participants will have fully complied with this cooperative effort to obtain additional flows by implementing, to the extent practicable, the following actions:

* * *

- TID will promote the proposed Turlock Area Drinking Water Project, the diversion for which is proposed to be located between river miles 19 and 26. The project will be implemented so that it will not be injurious to MID's water rights. FWS and CDFG agree to expedite the review of any permits and applications necessary for the drinking water project.

In addition, Section 18, Support for Ancillary Programs stated the following:

The participants to the settlement agree to support the following ancillary programs. Those participants with permitting, licensing, or approval authority agree to work with the applicant to develop acceptable options and to expedite the review and approval process. All other participants [e.g., MID] agree not to oppose or delay the following:

- Turlock Area Drinking Water Project, the diversion for which is proposed to be located between river miles 19 and 26. The project will be implemented so that it will not be injurious to MID's water rights.

D. In 1995, the referenced Turlock Area Drinking Water Project was a project proposed by TID to provide treated drinking water to cities and other public water purveyors within TID's irrigation boundaries via a river diversion to be located between Tuolumne River miles 19 and 26. In 2001, TID constructed an infiltration gallery with an engineered diversion capacity of 100 cfs at river mile 26 within the river reach specified in the 1995 FERC Settlement Agreement.

E. In 2006, TID completed a Final Environmental Report for the Turlock Irrigation District Regional Surface Water Supply Project (EIR). The 2006 EIR states that TID "intends to use its pre-1914 water rights and to treat and deliver a maximum of 42.5 mgd or 47,606 AFY of its pre-1914 water for domestic uses to be served by the communities of Ceres, Hughson, Keyes, South Modesto and Turlock." The 2006 EIR also noted that the contemplated uses were within the existing place of use for both TID's pre-1914 and post-1914 water rights, and that the Water Code permits TID and other pre-1914 water right holders to change the place of diversion and purpose of use of a portion of their pre-1914 water rights without the approval of the SWRCB if others are not injured by the change. The more extensive Project contemplated and analyzed in the 2006 EIR was never completed and will not be in the future.

F. In 2015, TID and the Stanislaus Regional Water Authority (SRWA), a joint powers authority, now consisting of the City of Turlock and the City of Ceres, entered into a Water Sales Agreement dated July 28, 2015, wherein among other things, TID agreed to sell and deliver up to 30,000 AFY of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a SRWA owned and operated water treatment plant under TID's post-1914 water rights license 11058. The SRWA project is known as the Stanislaus Regional Water Authority Regional Surface Water Supply Project (SRWA Project).

G. The Districts agree it is in their best interest to clarify the change in the project name.

NOW, THEREFORE, the Districts agree as follows:

1. As between the Districts, the references in the 1995 FERC Settlement Agreement to the TID "Turlock Area Drinking Water Project" shall now be considered to refer to the "Stanislaus Regional Water Authority Regional Surface Water Supply Project."

2. TID will be filing a Petition for Change Involving Water Transfers for Water Right License 11058 with the SWRCB. TID agrees any Petition for Change filed will only apply to the portion of License 11058 allowing for use of post-1914 water by TID south of the Tuolumne River. TID further agrees the SRWA Project will be implemented


so that it will not be injurious to MID's water rights.

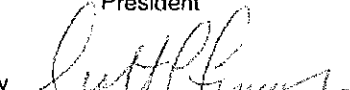
3. MID agrees that upon approval of this agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018 comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required. In consideration of TID's obligations under Paragraph 2, MID further agrees that MID will not oppose or protest TID's Petition for Change so long as the Petition is implemented so that it will not be injurious to MID's water rights.

Modesto Irrigation District

Turlock Irrigation District

By 
President

By 
President

By 
General Manager

By 
General Manager

Approved as to form

Approved as to form

By 
General Counsel

By 
General Counsel

RESOLUTION NO. 2018 – 26**RESOLUTION APPROVING THE CLARIFICATION AGREEMENT BETWEEN THE
MODESTO IRRIGATION DISTRICT AND THE TURLOCK IRRIGATION DISTRICT
REGARDING THE STANISLAUS REGIONAL WATER AUTHORITY
REGIONAL SURFACE WATER SUPPLY PROJECT**

WHEREAS, the Turlock Irrigation District (TID) previously proposed to construct a domestic water supply project, known as the Turlock Area Drinking Water Project; and

WHEREAS, a 1995 Federal Energy Regulatory Commission (FERC) Settlement Agreement involving the Modesto Irrigation District (MID), TID and others specified that TID planned to construct the Turlock Area Drinking Water Project and would do so in a manner that would not be injurious to MID's water rights; and

WHEREAS, the drinking water project is now proposed to be constructed by the Stanislaus Regional Water Authority (SRWA) and is now known as the Stanislaus Regional Water Authority Regional Surface Water Supply Project; and

WHEREAS, MID desires to clarify the drinking water project's name; and

WHEREAS, the Clarification Agreement between MID and TID specifies that all references in the 1995 FERC Settlement Agreement to the TID "Turlock Area Drinking Water Project" shall now be considered to refer to the "Stanislaus Regional Water Authority Regional Surface Water Supply Project;" and

WHEREAS, upon approval of the Clarification Agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018, comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required; and

WHEREAS, MID agrees not to oppose or protest TID's Petition for Change with the State Water Resources Control Board so long as the Petition is implemented in a manner that will not be injurious to MID's water rights.


NOW THEREFORE, BE IT HEREBY RESOLVED by the Board of Directors of the Turlock Irrigation District that:

- 1) The Board approves the Clarification Agreement between MID and TID regarding the SRWA Regional Surface Water Supply Project, and
- 2) The General Manager and his designee are hereby authorized and directed to execute all documents necessary to carry out this resolution.

Moved by Alamo, seconded by Santos, that the foregoing resolution be adopted.

Ayes: Directors Santos, Frantz, Alamo, Macedo, Fernandes
Noes: Directors - None
Absent: Directors - None
Abstain: Directors - None

I, Tami Wallenburg, Executive Secretary to the Board of Directors of the TURLOCK IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held the 26th day of June, 2018.



Executive Secretary to the Board of
Directors of the Turlock Irrigation District

**RESOLUTION 2018-42
APPROVING AND AUTHORIZING THE GENERAL MANAGER AND
BOARD PRESIDENT TO EXECUTE A CLARIFICATION AGREEMENT BETWEEN
THE MODESTO IRRIGATION DISTRICT AND THE TURLOCK IRRIGATION DISTRICT
REGARDING THE PROTECTION OF THE DISTRICT'S WATER RIGHTS WITH RESPECT TO THE
STANISLAUS REGIONAL WATER AUTHORITY'S SURFACE WATER PROJECT**

WHEREAS, on July 28, 2015, Turlock Irrigation District (TID) and the Stanislaus Regional Water Authority (SRWA), a joint powers authority consisting of the cities of Ceres and Turlock, entered into a Water Sales Agreement wherein TID agreed to sell and deliver up to 30,000 Acre Feet per Year of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a SRWA owned and operated water treatment plant under TID's post-1914 water rights license 11058; and

WHEREAS, on January 22, 2018, SRWA released a Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act for a Surface Water Treatment Project (Project) that would use the water in the Water Sales Agreement between TID and SRWA; and

WHEREAS, TID must file a Petition for Change to jointly held water right Number 11058 with the State Water Resources Control Board to provide the water to SRWA; and

WHEREAS, on April 23, 2018, Modesto Irrigation District (MID) submitted comments in opposition to the Project because of the failure to ensure that MID's water rights would not be impacted by the Petition for Change or the Project generally; and

WHEREAS, TID agreed to enter into a Clarification Agreement, wherein TID agrees to file the Petition for Change so that it only applies to TID's portion of License Number 11058 and further agrees that the SRWA Project will be implemented such that it will not be injurious to MID's water rights.

BE IT RESOLVED, That the Modesto Irrigation District Board of Directors hereby finds, determines, and/or declares as follows:

1. The Board of Directors declares its intent to adopt a resolution approving and authorizing the Board President and General Manager to execute a Clarification Agreement between MID and TID regarding the protection of MID's water rights with respect to the SRWA Surface Water Project.
2. Upon approval of the Clarification Agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018 comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required.

3. MID will not oppose or protest TID's Petition for change so long as the Petition is implemented so that it will not be injurious to MID's water rights.

Moved by Director Byrd, seconded by Director Gilman, that the foregoing resolution be adopted.

The following vote was had:

Ayes: Directors Blom, Byrd, Campbell, Gilman and Mensinger

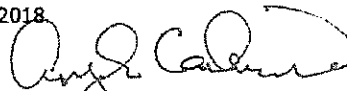
Noes: Director None

Absent: Director None

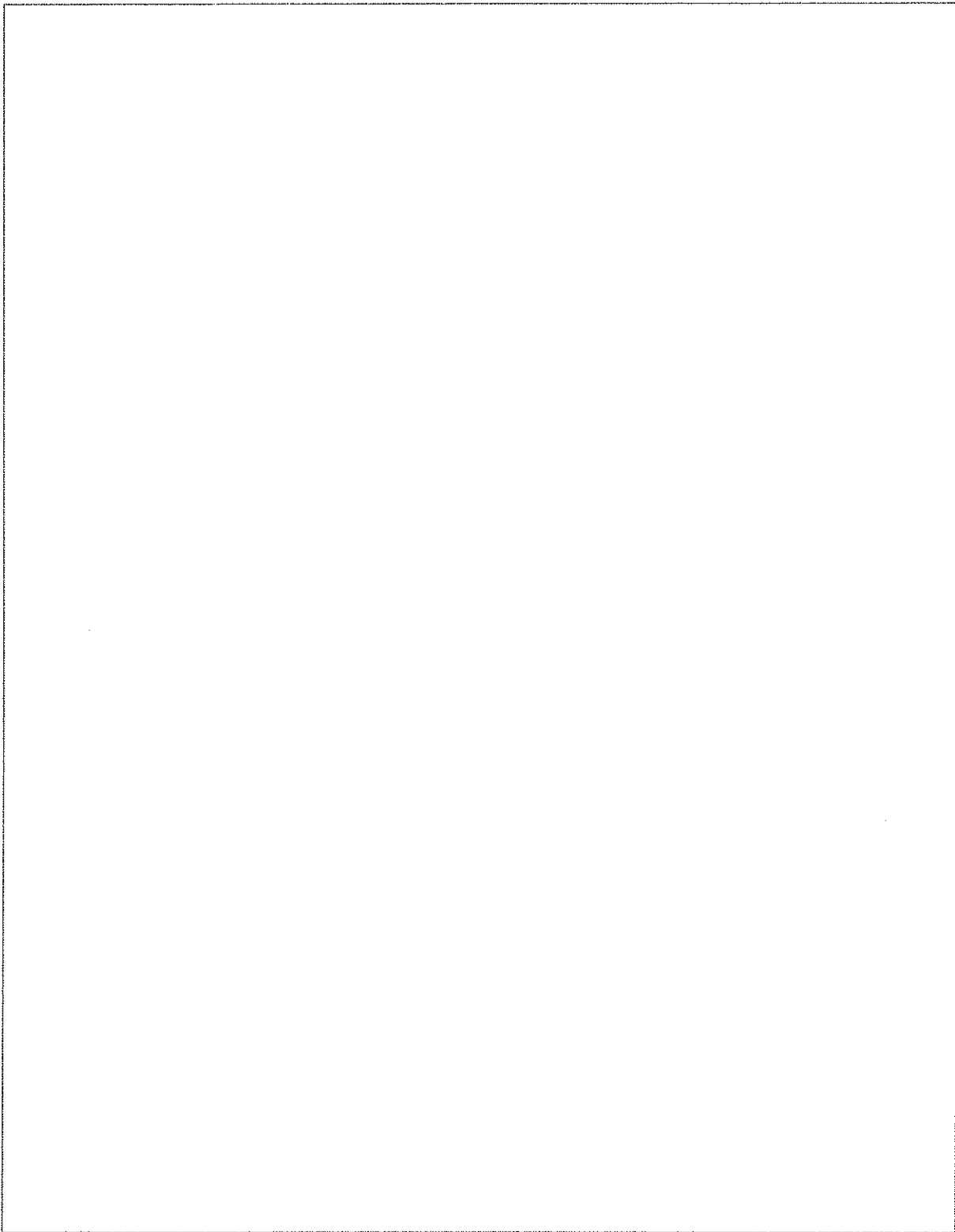
The President declared the resolution adopted.

o0o

I, Angela Cartisano, Board Secretary of the Modesto Irrigation District, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a special meeting of said Board of Directors held the twenty-sixth day of June 2018.



Board Secretary of the
Modesto Irrigation District



1



1231 Eleventh Street
P.O. Box 4080
Modesto, CA 95352
(209) 526-7373

April 23, 2018

Michael F. Brinton, SRWA Interim General Manager
c/o City Turlock Administrative Services
156 South Broadway, Suite 230
Turlock, CA 95380

Via Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Re: Stanislaus Regional Water Authority Surface Water Project Draft Environmental Report – MID Comments

Dear Mr. Brinton:

Modesto Irrigation District (MID), the second oldest irrigation district in the State of California, was formed in 1887 and is a not for profit publically owned utility. MID, in partnership with Turlock Irrigation District (TID), owns and operates the New Don Pedro Dam, Don Pedro Reservoir and La Grange Dam, collectively referred to as (Don Pedro Project) as well as jointly holding certain water rights. For more than a century, the Don Pedro Project has proudly contributed to California's position as the sixth largest economy in the world providing a reliable source of clean, affordable surface water to over 3,000 agricultural customers irrigating close to 60,000 acres. The Don Pedro Project supports approximately \$4.109 billion in economic output and \$734.8 million in labor income. MID's 130 year track record of pro-active, scientifically sound environmental stewardship within the Tuolumne River watershed and our early implementation of innovative conjunctive use management practices has allowed MID to be a leader in groundwater management as well. None of this legacy would be possible without the prudent, responsible management of our water rights portfolio.

MID has reviewed the Stanislaus Regional Water Authority's (SRWA) Draft Environmental Impact Report (DEIR) for the proposed Surface Water Project (Project) and appreciates the opportunity to comment.

I. GENERAL COMMENTS

MID received the DEIR when it was released on January 22, 2018. This was the first time the District was identified as a Responsible Agency. After preliminary review of the document, MID staff attended the SRWA public hearing on March 1, 2018¹ and testified that MID had several questions regarding the planned treatment of and potential impact to our jointly-held water right affected by this Project, particularly in light of the current regulatory

¹ SRWA originally scheduled the public hearing for February 22, 2018 but canceled that hearing due to a lack of a quorum.

Mr. Michael Brinton

April 23, 2018

Page 2

environment at the state and federal level.² Despite our efforts to express our concerns, including testifying at the sole public hearing and a California Public Records Act request (PRA) for documents³ SRWA and TID staff have not reached out to MID to date.⁴ This omission is even more troubling because SRWA identified MID as a Responsible Agency. Per MID's request, TID staff did meet with MID on two separate occasions. The first was a brief meeting wherein MID expressed its concerns regarding our jointly-held water right. Due, in part to a lack of meaningful answers, the parties agreed a follow-up meeting would be necessary. At the second meeting, MID again expressed our concerns and asked for written confirmation that, should the State Water Resources Control Board (SWRCB) include any conditions on the Petition for Change (Petition), TID would not move forward with the Petition. Unfortunately, TID staff was only able to ensure that, "should the SWRCB propose any condition that is unacceptable to TID, then TID would withdraw the petition. The Water Sales Agreement with SRWA allows TID to make that determination in TID's sole discretion." See Exhibit 1. Because MID does not have adequate assurances the Project and/or the Petition will not adversely affect our jointly-held water right and has not received the information necessary for the District to accurately analyze the Project, unfortunately, we have no other option but to object to the Project at this present time. However, we continue to hope that we can work together to reach a solution.

As evidenced by MID's actions, as a general matter, MID strongly advocates innovative, comprehensive solutions to ensuring a stable water supply for the betterment of the entire region. Unfortunately, as currently written, this Project and its environmental document do not appear, at this time, to represent such a solution. As explained in greater detail below, additional information is needed within the DEIR to properly address and analyze the material changes that appear to have occurred between previous California Environmental Quality Act (CEQA) documents concerning this Project and this DEIR in the critical area of water rights. Information regarding the water right, specifically the Petition with the SWRCB, is critical to fully analyzing the environmental setting of the Project. Failure to include an analysis of the SWRCB's SED proceedings and the FERC relicensing process, especially as it relates to the Petition, leaves the DEIR with an insufficient environmental setting description, therefore causing the cumulative impacts section of the document to be inadequate. In addition to failing to thoroughly analyze the regulatory setting of the Project, the DEIR improperly piecemeals the project because construction has begun on parts of the project even though this EIR process is still ongoing. Not only does the DEIR piecemeal the project, but it also references phases of the project to be carried out in the future, but fails to identify the document as programmatic. These deficiencies coupled with the fact MID is identified as a Responsible Agency and has not been given the proper notice or ability to comment on all phases of the CEQA process cause the document to run counter to the intent of CEQA, as the public and decision-makers have not been properly

² Specifically the Federal Energy Regulatory Commission (FERC) Don Pedro Project relicensing, the FERC La Grange Project licensing, and the State Water Resources Control Board's (SWRCB) release of the Bay Delta Water Quality Control Plan's Phase One Substitute Environmental Document (SED).

³ See Exhibit 15 for all responsive documents provided pursuant to MID's PRA request.

⁴ SRWA staff did produce documents in compliance with the PRA.

Mr. Michael Brinton

April 23, 2018

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alerted of the environmental effects of the project in order to provide meaningful feedback. Further information and a recirculation in the public arena are necessary to ensure this Project does, in fact, result in a water-supply solution that creates a win-win for the entire region.

II. SPECIFIC COMMENTS

A. The DEIR fails to address a material change between this project document and the TID Final EIR regarding the surface water supply used to sustain the Project.

If "significant new information is added to an environmental impact report" after the close of the public comment period, but before the certification of the final EIR, it must be recirculated. Cal. Pub. Resources Code §21092.1.⁵ Information is considered "significant" if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. . . ." *Laurel Heights Improvement Association v. Regents of the University of California*, 864 P.2d 502, 510 (Cal. 1993). The CEQA Guidelines specifically state information is "significant" if "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." Code Reg. tit. 14 §15088.5(a)(4).

In 2006, TID released a Draft Environmental Impact Report (TID DEIR) evaluating the environmental impact of the same project proposed in the current DEIR⁶. However, the TID DEIR states, "[f]or the proposed project, TID intends to use its pre-1914 water rights. . . . TID has the right to change the place of diversion and purpose of use of a portion of its pre-1914 water rights without the approval of the State Water Resources Control Board (SWRCB) if others are not injured by such change." Exhibit 2⁷, TID DEIR, Ch. 4.2 at pg. 7-8. The TID DEIR concludes, in the Cumulative Impacts section, that because the project "would not exceed TID's pre-1914 Tuolumne River water rights nor adversely affect other Tuolumne River users" the cumulative impact is less than significant. *Id.* at 31-32.

Unlike the TID DEIR, which anticipates using TID's pre-1914 water rights to supply surface water to the Project, this DEIR indicates that TID will use its water supply under License No. 11058.⁸ SRWA DEIR, Ch. 3.17 at pg. 6. The DEIR briefly states TID holds existing water rights pursuant to License No. 11058. *Id.* TID will have to file a Petition with the SWRCB to amend the existing water right. *Id.* at pg. 9. There is no acknowledgement of the previous plan to use pre-1914 water rights and no explanation for this change or its potential impacts on the

⁵ All citations are to California authorities unless otherwise noted.

⁶ As noted below, parts of the project analyzed in the TID DEIR are already under construction; however, all parts analyzed in the current DEIR were also analyzed in the TID DEIR.

⁷ All documents cited herein are attached as Exhibits to and hereby made part of the record.

⁸ License No. 11058 is a joint water right that is owned by both MTD and TID.

Mr. Michael Brinton

April 23, 2018

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environment, specifically because pre-1914 water rights do not require a Petition with the SWRCB while utilizing License No. 11058 does require SWRCB permission to change the license under an entirely independent and new permitting process which is also subject to CEQA. Furthermore, there is no analysis of how the Petition may impact License No. 11058 specifically with regard to MID's water rights. This new plan for utilizing post-1914 water rights is a significant change precluding meaningful public input on the critically important issue of water supply impacts. This shift regarding water rights necessarily imposes another, independent regulatory and permitting process governed by the SWRCB and in which the SWRCB is the ultimate decision-maker regarding the Petition. Moreover, TID's pre-1914 water rights, which were originally going to be used, are not jointly-held by MID. However, this new approach will impact a water right of which MID is a co-owner.⁹ As such, the DEIR should be recirculated for comments because the public should be given the opportunity to fully evaluate the impact of using a license-based water right as opposed to a pre-1914 water right.

B. The DEIR lacks sufficient information and analysis regarding the Petition TID must file with the SWRCB for water right License No. 11058.

The Legislature's intent in adopting CEQA was to ensure that California "...take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." Pub. Res. Code, §21001(a). An EIR is considered the "heart of CEQA" and its responsibility is to "alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Lawel Heights Improvement Assn. v. Regents of University of California*, 764 P.2d 278, 282 (Cal. 1988). As explained in greater detail below, the DEIR fails to include information regarding the Petition to MID and TID's jointly-held water right under License No. 11058, and therefore, fails to alert the public to the potential impacts of the project.

The SWRCB has the authority to "consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use." Water Code §1735. The SWRCB must first provide notice and an opportunity for hearing, and may approve the petition if "the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses." *Id.* at §1736. Because the Petition process allows for public notice and a public hearing where interested parties, including government agencies, can express concerns with the project's effects and file specific protests to the project, it is possible the SWRCB would impose conditions on the Petition impacting our water right and the water resources.

⁹ Although MID co-owns the water right SRWA is now contemplating using, neither TID nor SRWA has had a single substantive discussion with MID regarding this change prior to the end of the Project's original comment period, notwithstanding numerous internal meetings between the agencies, preliminary meetings with SWRCB, and outside agencies submitting official comments to SRWA raising questions concerning this very topic. See Exhibits 5, 6, 11, 12 and 13. After significant outreach by MID, TID and MID finally had a meetings on April 18, 2018 and April 17, 2018 but our concerns remain. See Exhibit 1.

Mr. Michael Brinton

April 23, 2018

Page 5

Though the DEIR states it provides a “new and complete environmental analysis,” it fails to explain the Petition process. SWRA DEIR, Ch. 1 at pg. 2. The DEIR briefly mentions TID will have to file a Petition with the SWRCB to amend the existing water right¹⁰, but fails to thoroughly explain how the water right will be amended or the amount of water to be impacted.¹¹ Furthermore, the DEIR fails to analyze the potential impacts of the Petition, including potential conditions on the license. If the Petition is not approved or is approved with conditions such as environmental flows for fish, TID may not be able to provide surface water for the Project. The public does not have adequate information to provide meaningful comments on the Project without a detailed analysis of how TID will change our jointly-held water rights under License 11058 to provide surface water to SRWA. Further, as MID is co-owner of this water right and has been designated a responsible agency for this Project, MID lacks any basis to provide meaningful analysis and comment and fulfil its legal responsibilities as a responsible agency.¹² Unfortunately, SRWA did not properly notify or inform MID about its responsible agency designation or the decision to utilize MID’s co-owned water right as the Project’s water source.¹³ Instead MID received the DEIR as part of the general public, in violation of CEQA, and neither TID nor SRWA has had substantive discussions with MID regarding how our jointly-held water right may be used. Once again, it is currently impossible for MID to assess what impacts, if any, this Project poses to our water right, and MID simply cannot assess or analyze the Project’s potential impacts to water supply. Until both SRWA and/or TID identify, with some degree of specificity, the proposal for and treatment of our jointly-held water right and inform both MID and the general public of this information, the DEIR carves out the “heart of CEQA” and must be rescinded.

C. The DEIR fails to adequately describe the environmental setting of the Project with respect to the FERC Relicensing process and the SED.

An EIR must include a description of the physical environmental conditions in the vicinity of the project. Code Regs. tit. 14 §15125(a). This environmental setting will “constitute

¹⁰ The DEIR mentions that TID will “file a petition with the SWRCB to request approval of a long-term water transfer, the use of the infiltration gallery as a point of redirection, and the addition of M&I water uses...”, but fails to provide any additional information regarding the Petition process. SWRA DEIR Ch. 2 at Pg. 33, 52; Ch. 3.17 at Pg. 9.

¹¹ The California Department of Fish and Wildlife submitted comments during the Notice of Preparation (NOP) phase of the CEQA process and specifically recommended that the DEIR “outline water rights associated with all Project-related diversion and storage flows, and fully describe all available water supplies that will be used for the project. This should include information on whether any water right applications or change petitions will be filed with the State Water Resources Control Board.” Exhibit 5, Pg. 5, Comment 8. However, even after receiving the request from an agency involved in the SWRCB Petition, SRWA failed to do any more than mention that TID would be filing a Petition.

¹² Discussion of Responsible Agency responsibilities can be found in Section G.

¹³ In an email dated December 20, 2017, counsel for TID notified SRWA staff that MID needed to be listed as a responsible agency. See Exhibit 3. Though it is not clear exactly when SRWA decided to identify MID as a responsible agency, it is clear that they knew for at least a month prior to the release of the DEIR and yet failed to contact MID.

Mr. Michael Brinton

April 23, 2018

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the baseline physical conditions by which a lead agency determines whether an impact is significant” and the setting is “critical to the assessment of environmental impacts.” *Id.* at (a), (c). By ensuring the environmental setting is adequate, a lead agency is also ensuring that analysis of significant effects is as accurate as possible. *Friends of Eel River v. Sonoma County Water Agency*, 134 Cal. Rptr. 2d 322, 335 (Cal. App. 1st Dist. 2003). (*Friends of Eel River*). In *Friends of Eel River*, the Court determined the lead agency should have considered the proposals before FERC because failure to do so “fails to alert the public and the decision makers to the real possibility that these diversions, on which the Agency depends, will be curtailed.” *Id.* The lead agency did not properly “set the stage” for discussion of the cumulative impact of the FERC proceeding. *Id.*

Similarly here, SRWA failed to include an analysis of the FERC relicensing proceedings or the SWRCB’s release of the SED even though both could potentially reduce the amount of water available for the Project. SRWA does explain the current flow proposal on the Tuolumne River pursuant to the 1995 FERC Settlement Agreement; however, their analysis stops there.¹⁴ SRWA DEIR, Ch. 3 at Pgs. 9-10. Though, as explained below, SRWA and TID are intimately aware of both the FERC and SWRCB proceedings, the DEIR fails to include either in its description of the environmental setting. This omission fails to alert the public and decision makers to the fact that the water supply necessary for the Project may not be available should environmental flows increase on the Tuolumne River.

- D. The DEIR is inadequate in its cumulative impacts analysis because it fails to address the FERC Don Pedro Project relicensing or the SWRCB’s release of the SED, both of which could greatly impact the water supply for the project.**

Pursuant to CEQA Guidelines, an EIR must include a detailed evaluation of cumulative impacts. Code Regs. tit. 14 §15130(a). The EIR must use a list or projection approach to identify related projects, summarize the possible effects of those projects, reasonably analyze the cumulative contribution of the proposed project, and suggest potential mitigation measures for the project’s contribution. *Id.* at §15130(b). “The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence...” *Id.* A cumulative effects analysis should include past, present and probable future projects. *Id.* at §15130(b)(1)(A).

In *Friends of Eel River*, the lead agency prepared an EIR for a project that would increase the agency’s withdrawal of water from the Russian River. Plaintiffs/Appellants challenged the EIR for its inadequate cumulative impacts and alternatives analysis¹⁵ because the agency failed to analyze the impacts of the Potter Valley Project FERC relicensing process on the Eel River¹⁶

¹⁴ Interestingly, the environmental analysis of the impact on special species does cite to multiple studies that are currently being conducted “as part of the Don Pedro Project relicensing process,” making it clear that SRWA is aware of the ongoing proceedings. SRWA DEIR, Ch. 3 at Pgs. 36-37. However, this blurb is the only mention of those proceedings.

¹⁵ The Plaintiffs also challenged the EIR on other grounds not relevant to this matter.

¹⁶ Though the Lead Agency’s project would increase water withdrawal on the Russian River, not the Eel River, the Russian River water supply was greatly dependent on the diversions from the Eel River, so the FERC proposals to

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and the Court of Appeals agreed. 134 Cal. Rptr. 2d at 327-8. At the time the lead agency had released the EIR, the FERC process had progressed to the point that, according to the Court, it would be reasonably foreseeable that curtailment of Eel River diversions would occur, specifically because every proposal before FERC posited a decrease in the amount of water available.¹⁷ *Id.* at 331. Furthermore, not only did the agency have knowledge of the FERC process, but actively participated in the proceedings. *Id.* at 332. Nonetheless, the agency failed to include any analysis of the impacts of the curtailment in the cumulative impacts section of the EIR, and, therefore, their alternatives analysis was insufficient because the project's environmental setting was not "accurately and fully assessed." *Id.* at 334. "Because the discussion of alternatives omitted relevant, crucial information, it subverted the purposes of CEQA and is legally inadequate." *Id.*

Like the lead agency in *Friends of Eel*, SRWA and TID not only have knowledge of both the FERC relicensing process and also the SED, but TID is an owner of the Don Pedro Project and has actively participated in both relicensing and the SED.¹⁸ Though SRWA is aware of the potential impacts of both processes, it fails to analyze either in its cumulative impacts report. This failure makes it impossible for the public to adequately understand the true impacts of the project.¹⁹ Furthermore, it makes the alternatives analysis inadequate because relevant, crucial information is missing. As discussed below, SRWA fails to alert the public and decision makers to the possibility that it will not be able to supply water to its customers should either (or both) of these proceedings require increased environmental flows on the Tuolumne River.

The DEIR fails to consider the FERC relicensing process for the Don Pedro Project.

MID and TID are currently in the process of relicensing the Don Pedro dam and licensing the La Grange dam with FERC. This process has been ongoing for years, and has involved numerous meetings with interested parties. On October 11, 2017, the Districts submitted their final license application for La Grange and amendment of final license application for Don Pedro to FERC. At the time of the filing of SRWA's NOP²⁰, the amended final license application had not been submitted; however, the Districts originally filed their Final License Application on April 28, 2014, workshops with interested parties were ongoing, and TID was intimately

curtail those diversions to protect fish species on the Eel River could greatly impact the agency's access to water on the Russian River for the project.

¹⁷ This is also the case for both the FERC relicensing process and the SED process. Though MID and TID argue that their science shows that non-flow measures will also better improve habitat on the Tuolumne River, both proposals acknowledge at least a minimal increase in environmental flows in conjunction with these non-flow measures.

¹⁸ The cities that comprise SRWA also actively participated in the SED process.

¹⁹ Specifically the availability of water for the project.

²⁰ March 1, 2017.

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involved in the process as an owner of the Don Pedro Project.²¹ Furthermore, the National Marine Fisheries Service (NMFS), West Coast Region submitted comments during the NOP comment period stating that, "NMFS is currently engaged in a lengthy relicensing process for the Federal Energy Regulatory Commission (FERC) project in the Tuolumne River... We encourage SRWA to take into account the interim FERC flow schedule when drafting the EIR." Exhibit 6, Pg. 3, Comment 2. These comments, in addition to all of the other ongoing workshops and FERC activities, should provide adequate information for SRWA to thoroughly analyze the impacts of the relicensing process.

The relicensing process allows agencies with mandatory conditioning authority to include prescriptions on the license. These conditions may increase the required environmental flows on the Tuolumne River for the benefit of fish populations. Additionally, FERC has its own authority to require additional flows as part of the licensing process. Should the license include additional flows, it is possible that the Districts will have less water to provide to their customers. If this is the case, TID may not have as much surface water to provide to SRWA for the Project. Though the license conditions could dramatically affect the conditions on the river, the DEIR fails to consider those impacts.

ii. The DEIR fails to consider the SWRCB's release of the Substitute Environmental Document (SED).

In addition to the relicensing process, the Districts also face potential impacts to their water supply from the SWRCB's SED. On September 15, 2016, the SWRCB released the draft SED for public comment.²² The SED proposes an increase in flows on the Tuolumne River of 30%-50% with a starting point of 40%.²³ This would be a dramatic increase in the amount of environmental flows that the Districts are required to release, reducing the amount of water available to MID and TID customers.

SRWA filed its NOP on March 1, 2017. Though this was approximately two weeks after the SED comment deadline, comments were originally due November 15, 2016.²⁴ Furthermore, TID²⁵, the City of Ceres and the City of Turlock all submitted comments on the project. See Exhibit 7. The City of Turlock even noted that, as a member of SRWA, they are in the planning stages of pursuing a surface water treatment plant on the Tuolumne River. Exhibit 8, Page 2,

²¹ An email from SRWA staff dated April 14, 2017 specifically addresses the need to consider the FERC process, further showing that not only did TID staff have intimate knowledge of the process, but so did SRWA staff. See Exhibit 4.

²² Following the release of the document, the SWRCB held five public workshops, two in Sacramento, one in Merced, one in Modesto, and one in Stockton.

²³ The SED also proposes increased flows on the Merced and Stanislaus Rivers.

²⁴ After extensive public outreach, the SWRCB extended its comment deadline to March 17, 2017.

²⁵ Please note that TID also submitted joint technical comments with MID and as part of the San Joaquin Tributaries Association.

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Paragraph 3. In addition to filing their own comments on the SED (in their individual capacities as the City of Ceres and the City of Turlock), SRWA also received comments from the California Department of Fish and Wildlife during the NOP comment period recommending that the DEIR “evaluate potential cumulative impacts that the Project could have on the watershed, including an analysis of the relationship of all flow prescriptions, and any surface and ground water diversions that the project may affect...”²⁶ Exhibit 5, Pg. 5-6, Comment 9. It is clear the cities of Ceres and Turlock (the same parties that make up SRWA) and TID were well aware of the SED’s release and its potential impacts on the project. However, the SED is not mentioned at all in the DEIR. Specifically, the DEIR fails to consider the SED in the cumulative impacts section even though, as the City of Turlock noted in their SED comments, should the SED be adopted, “[u]nfortunately, preliminary estimates from TID indicate that they will lack an adequate supply of Tuolumne River water to make the SRWA’s drinking water project viable.” Exhibit 8, Page 4, Paragraph 3.

The DEIR is inadequate because it fails to consider the cumulative impacts of both the FERC relicensing process and the SED, even though the lead agency and TID would have had intimate knowledge of the potential effects of both.

E. The DEIR improperly piecemeals the project because SRWA has begun construction on part of the project²⁷ making it difficult for them to stop the project regardless of the environmental analysis in the DEIR.

Lead agencies are required to prepare an EIR for any project which “they propose to carry out or approve that may have a significant effect on the environment.” Pub. Resources Code §21100(a). “Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” Pub. Resource Code §15004(b). The intent of CEQA is to allow decision makers and the public an opportunity to thoroughly evaluate projects before too much of a commitment has been made for the lead agency to stop work. Lead agencies should not begin the EIR process before enough information is available to allow for meaningful evaluation. However, the later the EIR process begins, “the more bureaucratic and financial momentum there is behind a proposed project, thus providing strong incentives to ignore environmental concerns...” *Save Tara v. City of West Hollywood*, 194 P.3d 344, 354 (Cal. 2008). Approval of the EIR after the project has begun would allow for *post hoc* rationalizations of actions already taken. *Id.*

In 2006, TID approved the Final EIR for the Turlock Irrigation District Regional Surface Water Supply Project. SRWA DEIR, Ch. 1 at pg. 2. That document analyzed the entire surface water project, including the pieces analyzed in the current DEIR. SRWA then filed this DEIR on

²⁶ This comment likely refers to both the FERC relicensing project and the SED.

²⁷ Please note the portion of the project that is currently under construction was not analyzed in the DEIR, but was analyzed in the 2006 TID Final Environmental Impact Report for the Turlock Irrigation District Regional Surface Water Supply Project. SRWA DEIR, Ch. 2 at Pg. 3, Footnote 1.

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January 22, 2018 and analyzed all of the project except for the infiltration galleries and the raw water pump station. SRWA has approved the contract to begin construction of the Raw Water Pump Station, Phase 1. Exhibit 9, pgs. 2-4, Items A-C, E. This approval shows the agency has essentially already decided to approve the Project regardless of the environmental impacts identified in the EIR. Should SRWA fail to adopt a final EIR approving the Project, then the raw water pump station would be useless, and the agency would have invested money for no reason. SRWA has violated the spirit of CEQA through improper piecemealing by beginning construction on parts of the Project prior to completing this EIR process.

F. The DEIR references two phases of the project, but fails to identify the Project as programmatic.

CEQA allows lead agencies to tier their projects so that a lead agency can focus on "issues ripe for decision at each level of environmental review." Pub. Resources Code §21093. "'Tiering' refers to the coverage of general matters in broader EIRs...with subsequent narrower EIRs or ultimately site-specific EIRs..." Code Regs. tit. 14 §15385. A program EIR may be appropriate when a lead agency is preparing an EIR on a "series of actions that can be characterized as one large project and are related..." *Id.* at §15168.

Throughout the DEIR, SRWA indicates the project will initially provide up to 30,000 acre-feet per year (AFY) of water, increasing to up to 50,400 AFY by 2040.²⁸ However, the DEIR is never identified as a programmatic document nor indicates the agency will file a second EIR (or negative declaration) to explore the environmental impacts of Phase 2. Instead, the DEIR notes: (1) the needed facilities for build out "would be phased in, as needed and as determined by the Cities"; (2) provides a list of the needed buildout improvements; and (3) ends the discussion. SRWA DEIR, Ch. 2 at Pgs. 25-26. Because the amount of water TID will provide is increased over 20,000 AFY, it is possible this increase will have significant environmental impacts. The DEIR also fails to indicate how much water will be included in the SWRCB Petition. SRWA DEIR, Ch. 3.17 at Pg. 6. For example, will TID have to go back to the SWRCB before increasing the water provided to Phase 2 numbers? SRWA does not analyze these impacts, nor do they state they will be doing additional environmental reviews prior to increasing the volume of water provided. SRWA fails to address Phase 2 of the project and fails to identify the project as programmatic, thus violating CEQA.

G. The DEIR identifies MID as a responsible party, but SRWA has failed to communicate with MID to ensure they have the opportunity to actively participate in the CEQA process.

Pursuant to CEQA, a "responsible agency" is a public agency that "has the responsibility of carrying out or approving a project." Pub. Resources Code §21069. A responsible agency must actively participate in the CEQA process, review the lead agency's CEQA document, and approve or disapprove of the project. Code Regs. tit. 14 §15050, 15096. A responsible agency's

²⁸ All locations where the DEIR references two phases of the project can be found as follows: Notice of Availability of an Environmental Impact Report, Pg. 1: Executive Summary, Pg. 1: Ch. 2, Pgs. 1, 13-14, 16, 20, 25, 34; Ch. 3.2, Pg. 15; Ch. 3.4, Pg. 10, 36; Ch. 3.9, Pg. 19-21.

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comments should include "those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency." *Id.* at §15096(d).²⁹

SRWA, as the lead agency, and TID, as the party submitting the Petition to the SWRCB have not contacted MID.³⁰ MID and TID share a jointly-held water right under License No. 11058, and to comply with CEQA, MID must determine if the District's jointly-held water rights are impacted. As noted above, in an attempt to determine what SRWA and TID have done regarding the Petition, MID submitted a PRA request to SRWA requesting "all writings that reflect communications with the State Water Resources Control Board, or any other person or entity, concerning TID's Petition to Water Right License Number 11085."

Based on the information SRWA provided, it is clear that the parties have had at least two meetings with the SWRCB regarding the Petition. See Exhibit 11 and 12.³¹ An email following the parties' February 21, 2018 meeting with the SWRCB states, "...TID to provide a description of the separation/water sharing arrangement with MID for water rights license 11058..." See Exhibit 13, Pg. 2, Paragraph c. The SWRCB staff must have had questions about MID's water rights interests in regard to the Petition. However, MID staff has not received any information from SRWA or TID that would give the District the opportunity to thoughtfully comment on the project or determine whether our water rights would be impacted.³² Contrary to the intent of CEQA, SRWA and TID have failed to communicate with MID, as a responsible agency, in order to ensure that MID can provide comments within the District's area of expertise.

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²⁹ Once a lead agency decides to prepare an EIR, it must send a copy of the NOP to any responsible or trustee agencies involved in the project. Code Regs. tit. 14 §15082(a). Within thirty days of the notice of the NOP, the responsible agency must send a written reply providing the agency with a record showing that the notice was received and specifying "the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project." *Id.* at §15096(b)(2). The lead agency must then include this information in the DEIR. *Id.* SRWA identified MID as a responsible agency, however MID never received notice of the NOP, and therefore, was unable to provide comments. However, the District noted in its PRA that our "primary focus centers around the treatment of and potential impact to our jointly-held water rights which may be effected by SRWA's project, particularly in light of the current state and federal regulatory climate we and TID are experiencing." See Exhibit 10, pg. 1.

³⁰ The CEQA guidelines encourage early consultation with interested parties to solve "many potential problems that would arise in more serious forms later in the review process." Code Regs. tit. 14 §15083(n) "Scoping has been found to be an effective way to bring together and resolve the concerns of the affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds." *Id.* at (b).

³¹ Exhibit 11 references a meeting "tomorrow" (January 26, 2018) and Exhibit 12 references a meeting "tomorrow" (February 21, 2018).

³² An email dated January 16, 2018 does note that TID would like to contact MID regarding the Project to "advise them there's no impact to their water rights." Exhibit 14. However, MID was never contacted.

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III. CONCLUSION

MID has a one hundred thirty year track record of actions evidencing innovative, comprehensive, and balanced solutions to ensure a stable water supply for the entire region. As a general principal, MID practices and supports sound conjunctive use water management approaches in order to ensure stable ground and surface water supplies. Unfortunately, as currently written, MID cannot support this Project, in its present form, as an example of such a balanced solution because of the insufficient information regarding the impacts on the Tuolumne River. Specifically, SRWA's failure to analyze the FERC relicensing and SWRCB permitting and their failure to include meaningful information regarding the SWRCB Petition to MID and TID's jointly-held water right, MID is unable to support the project at this time, but we look forward to working with you to address our concerns. Again, thank you for the opportunity to comment on this Project.

Sincerely,



RONDA LUCAS

GENERAL COUNSEL

cc: Mr. Scott Furgerson, General Manager, Modesto Irrigation District
Mr. Casey Hashimoto, General Manager, Turlock Irrigation District

KG:sm

1 ***Response to Comment H-1***

2 The commenter states that a letter was submitted by MID on April 23, 2018, noting concerns
3 about TID's petition for change with regard to its water right jointly held with MID under
4 License 11058. The commenter explains that, prior to and since the close of the comment
5 period, MID has held meetings and discussions with TID to address those concerns and that,
6 on June 26, 2018, both MID and TID boards executed a Clarification Agreement that provides
7 MID the adequate assurances it has been seeking. As a result, MID's concerns have been
8 satisfactorily addressed and mooted.

9 SRWA appreciates the efforts by MID and TID to address and clarify the water rights concerns
10 expressed by MID. SRWA appreciates MID's statement of support for the project and agrees
11 to treat the April 23, 2018 letter as moot. No additional responses is necessary.

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Chapter 3 REVISIONS TO THE DEIR

3

This chapter presents revisions to the DEIR in response to the public review and comment process. Changes made in response to comments are discussed in FEIR Chapter 3 and indicated below. Text added to the DEIR is underlined, and deleted text is shown in ~~strikeout~~. DEIR text changes are presented in the order they would appear in the DEIR; page numbers and line numbers from the DEIR are provided to assist in identifying the location of the revisions.

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Executive Summary

10

On page ES-11, beginning at line 1, the section titled "Responsible and Trustee Agencies" has been revised as follows:

11

12

The following responsible agencies have been identified for the proposed project under CEQA:

13

14

- State Water Resources Control Board

15

- California Department of Fish and Wildlife

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- City of Ceres

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- City of Turlock

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- Modesto Irrigation District

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- Turlock Irrigation District

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21

Chapter 2, Project Description

22

On page 2-52, beginning at line 9, Section 2.7, "Responsible and Trustee Agencies," has been revised as follows:

23

24

The following responsible agencies have been identified for the proposed project under CEQA:

25

26

- State Water Resources Control Board

27

- California Department of Fish and Wildlife

28

- City of Ceres

29

- City of Turlock

- 1 ▪ Modesto Irrigation District
- 2 ▪ Turlock Irrigation District
- 3

4 **Section 3.3, Air Quality**

5 On page 3.3-6, beginning with line 22, the list under “SJVAPCD Rules” has been revised as
6 follows:

- 7 ▪ **Rule 2010 – Permits Required** requires an applicant to obtain an Authority to
8 Construct and Permit to Operate for certain types of stationary air pollution sources.
- 9 ▪ **Rule 2201 – New and Modified Stationary-Source Review Rule** applies to all new
10 stationary sources and all modifications to existing stationary sources subject to
11 SJVAPCD permit requirements that, after construction, emit or may emit one or
12 more pollutants regulated by the rule.
- 13 ▪ **Rule 2280 – Portable Equipment Registration** applies to portable emissions units
14 that may operate in participating districts throughout California. The rule requires
15 applicable portable equipment to be registered.
- 16 ▪ **Rule 2550 – Federally Mandated Preconstruction Review for Major Sources of**
17 **Air Toxics provides an administrative mechanism for implementing the**
18 **preconstruction review requirements of 40 CFR part 63.40 through 63.44 at major**
19 **air toxics sources.**
- 20 ▪ **Rule 3135 – Dust Control Plan Fees** requires the applicant to submit a fee in
21 addition to a dust control plan. The purpose of this rule is to recover SJVAPCD’s cost
22 for reviewing these plans and conducting compliance inspections.
- 23 ▪ **Regulation IV – Prohibitions is a series of rules (4001 to 4905) that detail**
24 **requirements related to specific equipment, chemicals, industries, and/or processes,**
25 **to limit emissions from these various sources.**
- 26 ▪ **Rule 4001 – New Source Performance Standards** applies to new or modified
27 sources of air pollution that must comply with standards, criteria, and requirements
28 for the applicable sources. This incorporates by reference the federal New Source
29 Performance Standards.
30

31 The remainder of the list is unchanged.

32 On page 3.3-13, beginning with line 24, the discussion under “Toxic Air Contaminants” has
33 been revised as follows:

34 Additional sources of TACs commonly used at WTP facilities include chlorine and
35 ozone. Chlorine is a commonly used disinfectant in water treatment processes that
36 kills most of the serious disease-causing bacteria in the water (Washington University
37 1999). It is typically stored as chlorine pellets but may be stored in gaseous form.
38 Potential health effects of chlorine include potent irritation of the eyes, upper
39 respiratory tract, and lungs (USEPA 2016). For workers, chronic (long-term)
40 exposure to chlorine gas has resulted in respiratory effects, including eye and throat
41 irritation and airflow obstruction (USEPA 2016). Ozone (O₃) is a reactive gas used in

1 water treatment processes for disinfection; removal of water quality issues (color,
2 taste, and odors); reduction of chlorine-related disinfection byproducts; and
3 removal/oxidation of metals, sulfides, and/or organic compounds (Water Research
4 Foundation 2016). In the stratosphere, O₃ exists naturally and shields the earth from
5 harmful incoming ultraviolet radiation; however, at the earth's surface it causes
6 numerous adverse health effects and is a pollutant regulated by state and federal air
7 quality agencies. It is a major component of smog. High concentrations of ground-
8 level O₃ can adversely affect the human respiratory system and aggravate
9 cardiovascular disease and many respiratory ailments (USEPA 2018).

10 On page 3.3-21, beginning with line 7, the first paragraph has been revised as follows:

11 Due to the variable nature of construction activity, the generation of TAC emissions
12 in most cases would be temporary, especially considering the short amount of time
13 such equipment is typically operating within an influential distance that would result
14 in the exposure of sensitive receptors to substantial concentrations. Chronic and
15 cancer-related health effects estimated over short periods are uncertain. Cancer
16 potency factors are based on animal lifetime studies or studies of workers with long-
17 term exposure to the carcinogenic agent. The California Office of Environmental
18 Health Hazard Assessment (OEHHA) guidance indicates that an assessment of health
19 risks from air quality emissions on sensitive receptors should be based on proximity
20 of the receptors to the emission source and should be calculated over a 70-year life
21 span. There is considerable uncertainty in trying to evaluate the cancer risk from
22 exposure that would last only a small fraction of a lifetime. Some studies indicate that
23 the dose rate may change the potency of a given dose of a carcinogenic chemical. In
24 others words, a dose delivered over a short period may have a different potency than
25 the same dose delivered over a lifetime (OEHHA 2017). Given that the construction
26 period for the proposed project, which is approximately 15 months for the most
27 extensive single location (the WTP), would not involve the use of substantial
28 quantities of construction equipment, a qualitative analysis was determined to be the
29 appropriate level of detail required to determine the impact of potential TAC
30 emissions.

31 On page 3.3-22, on line 40, the following typographical error has been corrected:

32 [...] and, should an ~~SJVPACD~~ SJVAPCD significance threshold be exceeded, [...]

33 On page 3.3-23, on line 24, the following typographical error has been corrected:

34 [...] and, should an ~~SJVPACD~~ SJVAPCD significance threshold be exceeded, [...]

35 On page 3.3-25, Mitigation Measure AQ-2 has been revised as follows:

36 **Mitigation Measure AQ-2. Prepare Quantitative Analysis of Operation-related**
37 **Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap**
38 **Emissions.**

39 As future project design details are further defined to a level that operational
40 emissions can be estimated and evaluated, and prior to construction, SRWA and the
41 Cities shall prepare a quantitative air quality and GHG analysis for the proposed
42 project.

1 The quantitative operational air quality and GHG analysis shall be based on the types,
2 locations, numbers, and operations of equipment to be used; the amount and distance
3 of material to be transported; and worker trips required. In addition, the analysis
4 shall be based on the projected quantity and frequency of vehicle and truck trips and
5 other activities that generate emissions, including estimates of water treatment plant
6 operations of permitted and unpermitted sources including GHG emissions, fugitive
7 emissions of VOCs, emissions of TACs, and particulate matter. The analysis shall
8 determine whether the quantified emissions of the project's operational activities
9 exceed the SJVAPCD's permitted and unpermitted air quality thresholds (see the
10 SJVAPCD thresholds presented in Table 3.3-3) or the 10,000 MT CO₂e per year
11 threshold for industrial sources.

12 If the analysis determines that operational emissions would exceed the air quality or
13 GHG significance thresholds, then SRWA shall identify and implement appropriate
14 mitigation to the extent feasible. As a performance standard, the mitigation measures
15 shall demonstrate that off-road equipment (greater than 50 hp) and material hauling
16 vehicles used during project operation (i.e., owned, leased, and subcontracted
17 vehicles) achieve emission reductions to the extent feasible. Any on-road equipment
18 and material hauling vehicles shall achieve at least a project-wide fleet average
19 equivalent to a Tier III engine for both NO_x and PM. Any off-road eEquipment and
20 material hauling vehicles shall achieve at least a project-wide fleet average of 20
21 percent NO_x reduction, 45 percent DPM reduction, and equal the GHG emissions
22 compared to the most recent CARB fleet average up to a Tier IV-equivalent engine.
23 This can also be achieved by replacing existing equipment with more efficient and
24 lower emitting equipment (e.g., new emergency generators). Examples of
25 appropriate mitigation may include, but not be limited to, alternative fueled
26 equipment, phasing of material hauling trips, use of chemical additives or after-
27 market devices to reduce emissions on existing equipment, use of electrically
28 powered equipment, reduction in total equipment hours, use of newer equipment
29 models, use of alternative fuels, engine retrofit technology, adopting a vehicle idling
30 policy requiring all vehicles to adhere to a 5-minute idling policy, and sourcing of
31 material from local sources. For unpermitted sources in particular, fugitive VOC and
32 particulate matter potential emission reduction options include use of vegetative
33 filtration (i.e., through tree planting) around areas of fugitive emissions, and any
34 other measures deemed appropriate. For permitted sources, appropriate pollution
35 control devices and/or limitations on process design and throughput will be enacted,
36 as determined during the new source review permitting process with SJVAPCD. This
37 will include appropriate mitigation for both criteria and TAC emissions.

38 In addition, for GHG emissions the following measures will be considered and
39 implemented to the extent feasible: implement energy efficiency improvements of
40 pumps through design, construction, and refurbishment methods; investigate and
41 implement opportunities for renewable energy development at the facilities subject
42 to safety, emergency, and environmental considerations; and implement a
43 construction worker commute strategy to minimize GHG emissions from workers
44 commuting to the site. This may include encouraging use of carpools, vanpools, and
45 public transportation.

1 On page 3.3-26, beginning with line 28, Impact AQ-4 has been revised as follows:

2 As described in Impact AQ-2, construction ~~and operations~~ associated with the
3 proposed project would potentially generate PM10 and PM2.5 contained in fugitive
4 dust, and both construction and operations would potentially generate DPM from
5 heavy equipment that would affect sensitive receptors. Furthermore, operational
6 activities would include the use of fossil-fuel-powered engines for emergency
7 generators and the use of chemicals for water treatment processes, including chlorine
8 and O₃, that may generate (or be considered) TACs at the proposed WTP location.
9 Maintenance-related activities may generate PM₁₀ and PM_{2.5} from fossil-fueled
10 vehicles or equipment. The proximity measurements of sensitive receptors to the
11 proposed project's locations are provided in Section 3.3.4, "Sensitive Receptors," and
12 were considered in this qualitative evaluation of the project's potential to expose
13 sensitive receptors to substantial pollutant concentrations during construction,
14 operation, or maintenance activities.

15 The control of particulates and fugitive dust is discussed in Impact AQ-2, and SJVAPCD
16 Regulation VIII would be implemented during construction to minimize exposure to
17 fugitive dust. As identified in Impact AQ-2, potential construction-related TAC
18 emissions would be reduced to the extent feasible through implementation of
19 Mitigation Measure AQ-1, which would require construction emission reductions
20 through the use of late model engines, low-emission diesel products, alternative fuels,
21 engine retrofit technology, after-treatment products, add-on devices such as
22 particulate filters, and/or other options as such become available. In addition,
23 potential construction-related TAC emissions at any given location of the proposed
24 project would be temporary in nature—for pipeline installation, construction
25 equipment would progress at approximately 200-400 feet per day, or 1-2 days
26 adjacent to a particular receptor—and even the nearest sensitive receptors would not
27 be substantially affected during that brief period. Furthermore, given that (1) the
28 construction period for the proposed project, which is approximately 15 months for
29 the most extensive single location (the WTP), would not involve the use of substantial
30 quantities of construction equipment, and (2) the distance between the WTP site and
31 sensitive receptors would be at least 100-140 feet from the edge of the WTP site and
32 740-1,800 feet from the center of the WTP site, the potential for the project to expose
33 sensitive receptors to substantial pollutant concentrations during construction
34 activities would be less than significant.

35 Permanent (i.e., long-term, stationary) sources of emissions would occur at four
36 project locations: the WTP, the infiltration gallery/wet well/raw water pump station
37 site, and the Ceres and Turlock terminal tank sites. At the WTP, permanent sources
38 would be pumps, emergency generators, and chemicals involved in the treatment
39 process, which may include chlorine (either pellets or gas) and ozone. The Ceres and
40 Turlock terminal tank facilities, and the infiltration gallery/wet well/raw water pump
41 station site would have pumps and emergency generators. Maintenance-related
42 vehicle emissions of TACs that occur at these locations would be short term and
43 infrequent. Based on the information in Section 3.3.4, the nearest sensitive receptors
44 would be 100-140 feet from the edge of the WTP site, at least 500 feet from the Ceres
45 and Turlock terminal tank sites, and approximately 500-1,200 feet from the
46 infiltration gallery/wet well/raw water pump station site.

1 Implementation of Mitigation Measures ~~AQ-1 and~~ AQ-2 would reduce the amount of
 2 ~~construction and~~ operational emissions to the extent feasible through the use of late
 3 model engines, low-emission diesel products, alternative fuels, engine retrofit
 4 technology, after-treatment products, add-on devices such as particulate filters,
 5 and/or other options as such become available. The proposed project would be
 6 designed and operated in compliance with all SJVAPCD rules and regulations,
 7 including those that are specifically targeted to permitted sources and/or TACs, such
 8 as Rules 2010, 2201, 2280, 2550, and those from Regulation IV, as summarized in
 9 “SJVAPCD Rules” in Section 3.3.2, “Regulatory Setting” above. Compliance with these
 10 rules and regulations would include obtaining appropriate permits, such as an
 11 Authority to Construct permit. During the SJVAPCD new source review permitting
 12 process for the project, operational sources of TACs would be quantitatively
 13 evaluated to ensure that they will would not result in health impacts above the
 14 applicable thresholds listed in the risk management policy of 20 in a million cancer
 15 risk and an acute and/or chronic hazard index of 1.0. As described in Mitigation
 16 Measure AQ-2, the project’s permitted sources would be mitigated, if necessary, by
 17 implementation of appropriate pollution control devices and/or limitations on
 18 process design and throughput as determined during the new source review
 19 permitting process with SJVAPCD. This would include appropriate mitigation for both
 20 criteria pollutant and TAC emissions.

21 In conclusion, tThese construction and operational practices described above, along
 22 with the SJVAPCD permitting process, would ensure that health effects from the
 23 proposed project are minimized for nearby sensitive receptors. In addition, the
 24 distances between sensitive receptors and these sources would further minimize any
 25 impacts. Thus, the proposed project would not pose long-term or substantial health
 26 risks to nearby residents and workers in the vicinity of the project sites. The impact
 27 on sensitive receptors from fugitive dust and other pollutants would be less than
 28 significant with mitigation.

29 **Section 3.4, Biological Resources**

30 On page 3.4-11, beginning with line 23, the final paragraph under “Salmonid Habitat” has
 31 been revised as follows:

32 Water temperature is an important factor controlling egg incubation rates, as well as
 33 juvenile and adult growth rates. Egg incubation requires temperatures less than 55
 34 degrees Fahrenheit (°F) (13 degrees Celsius [°C]), temperatures suitable for early
 35 juvenile rearing need to remain below 61°F, and the smoltification process is
 36 inhibited for Chinook at temperatures above 59°F and for steelhead above 57°F
 37 (California Department of Fish and Game [CDFG] 2010 Stillwater Sciences 2013b).
 38 Spawning salmon are assumed to avoid locations with a water temperature above
 39 60°F (16°C). Warm water temperatures can decrease dissolved oxygen in the water,
 40 can act as a barrier to migration, decrease egg hatchability, decrease the survival of
 41 fry once they emerge from the eggs, and impair or reverse the physiological function
 42 of smoltification (California Department of Fish and Game [CDFG] 2010).

43 On page 3.4-36, beginning with line 25, the second full paragraph has been revised as follows
 44 to correct a mathematical error:

1 During infiltration gallery operation in Phase 1, TID would release 24 cfs in addition
 2 to the releases required by the 1996 FSA to meet FERC-mandated minimum flows.
 3 The result would be a year-round release (and corresponding downstream diversion)
 4 of up to 24 cfs from La Grange Dam for domestic drinking water purposes that could
 5 increase baseline flows during the migration and spawning season (from October to
 6 May) from the existing 150-300 cfs to ~~150-174~~-324 cfs (Table 3.4-1). From June
 7 through September, existing flows of 50-250 cfs could increase to ~~50-74~~-274 cfs.

8 On page 3.4-42, beginning with line 9, Mitigation Measure BIO-6 has been revised as follows:

9 **Mitigation Measure BIO-6. Conduct Nesting Raptor Surveys and Establish**
 10 **Buffers to Avoid or Minimize Impacts on Swainson's Hawk and White-tailed**
 11 **Kite.**

12 If construction occurs between February 1 and August 31, SRWA or its contractor(s)
 13 shall require that a qualified biologist conduct surveys no more than 10 days before
 14 the start of construction for Swainson's Hawk and White-tailed Kite in accordance
 15 with the recommended timing and methodology developed by the Swainson's Hawk
 16 Technical Advisory Committee (2000 or most recent). Surveys will cover a minimum
 17 ~~500-foot-1/2-mile~~ radius around the construction area. If nesting Swainson's Hawk or
 18 White-tailed Kite are detected, buffers shall be established around active nests that
 19 are sufficient to ensure that breeding is not likely to be disrupted or adversely
 20 affected by construction. Buffers around active nests will be ~~500-foot-1/2 mile~~ unless a
 21 qualified biologist determines, based on a site-specific evaluation, that a smaller
 22 buffer is sufficient to avoid impacts on nesting raptors. Factors to be considered when
 23 determining buffer size include the presence of natural buffers provided by
 24 vegetation or topography, nest height, locations of foraging territory, and baseline
 25 levels of noise and human activity. Buffers shall be maintained until a qualified
 26 biologist has determined that the young have fledged and are no longer reliant on the
 27 nest or parental care for survival.

28 On page 3.4-43, beginning with line 1, Mitigation Measure BIO-7 has been revised as follows:

29 **Mitigation Measure BIO-7. Conduct Preconstruction Surveys for Burrowing**
 30 **Owls, and Avoid or Minimize Impacts**

31 SRWA or its contractor(s) shall require that a qualified biologist conduct a
 32 preconstruction survey in all accessible areas of suitable Burrowing Owl habitat
 33 within 500 feet of construction activity. Surveys shall be conducted within 14 days
 34 before the start of construction activity in accordance with protocols established in
 35 the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or current version). If no
 36 Burrowing Owls or signs of Burrowing Owls are detected during the survey, no
 37 further mitigation shall be required.

38 If a preconstruction survey detects occupied burrows, a buffer shall be established,
 39 within which no ground-disturbing or vegetation removal activity is permissible. In
 40 accordance with guidance provided by CDFW, buffers around occupied burrows shall
 41 be a minimum of 656 feet (200 meters) during the breeding season (February 1
 42 through August 31), and 160 feet (100 meters) during the non-breeding season,
 43 unless a qualified biologist determines, based on a site-specific evaluation, that a
 44 smaller buffer is sufficient to avoid impacts on the Burrowing Owl burrow.

1 This protected area will remain in effect until the end of the Burrowing Owl nesting
 2 season (February 1 through August 31) or until CDFW approves a passive relocation
 3 plan. Burrowing Owls will be relocated from burrows only during the ~~Burrowing Owl~~
 4 ~~nesting-non-breeding~~ season.

5 If occupied burrows are to be relocated, a passive relocation plan shall be developed
 6 by a qualified biologist and approved by CDFW prior to implementation. SRWA shall
 7 enhance or create burrows in appropriate habitat at a 1:1 ratio (burrows destroyed
 8 to burrows enhanced or created) one week prior to implementation of passive
 9 relocation techniques. If burrowing owl habitat enhancement or creation takes place,
 10 SRWA shall develop and implement a monitoring and management plan to assess the
 11 effectiveness of the mitigation. The plan shall be subject to the approval of CDFW.

12 On page 3.4-45, beginning with line 35, Mitigation Measure BIO-10 has been revised as
 13 follows:

14 **Mitigation Measure BIO-10. Implement Revegetation in Riparian Habitat and**
 15 **Sensitive Natural Communities Disturbed during Construction.**

16 SRWA or its contractor(s) shall require that, upon completion of construction,
 17 disturbed soils within areas of native vegetation shall be revegetated with site-
 18 appropriate native species to limit subsequent encroachment of non-native weeds.
 19 Any plants of native woody species of 4 inches dbh or greater that are damaged or
 20 removed as a result of construction activity shall be replaced at a 1:1 ratio; this ratio
 21 will increase to 3:1 for nesting trees and native trees of 24 inches dbh and greater.
 22 Replaced woody plant species shall be maintained and monitored to ensure a
 23 minimum of 65 percent survival of woody plantings after 3 years.

24 **Section 3.17, Utilities and Service Systems**

25 On page 3.17-9, beginning with line 15, Impact UTL-3 has been revised as follows:

26 While no new entitlements are needed, TID's existing water right (License ~~11085~~
 27 11058) would need to be amended to accommodate the changes contemplated
 28 under the proposed project.

29 **Chapter 7, References**

30 The following references cited in the revisions to Section 3.3, *Air Quality*, have been added to
 31 Chapter 7:

32 U.S. Environmental Protection Agency. 2016. Chlorine: Hazard Summary. Available:
 33 www.epa.gov/sites/production/files/2016-09/documents/chlorine.pdf. Accessed
 34 June 5, 2018.

35 _____ . 2018. Health Effect of Ozone Pollution. Available: [www.epa.gov/ozone-](http://www.epa.gov/ozone-pollution/health-effects-ozone-pollution)
 36 [pollution/health-effects-ozone-pollution](http://www.epa.gov/ozone-pollution/health-effects-ozone-pollution). Accessed June 5, 2018.

37 USEPA. See U.S. Environmental Protection Agency.

1 Washington University. 1999. Treating the Public Water Supply: What Is in Your Water, and
2 How Is it Made Safe to Drink? Authors: Rachel Casiday, Greg Noelken, and Regina
3 Frey. Department of Chemistry, Washington University. Available: [www.chemistry.](http://www.chemistry.wustl.edu/~edudev/LabTutorials/Water/PublicWaterSupply/PublicWaterSupply.html)
4 [wustl.edu/~edudev/LabTutorials/Water/PublicWaterSupply/PublicWaterSupply.h](http://www.chemistry.wustl.edu/~edudev/LabTutorials/Water/PublicWaterSupply/PublicWaterSupply.html)
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6 Water Research Foundation. 2016. Advance Treatment: Ozone and Advanced Oxidation.
7 Fact Sheet, Ozonation Disinfects, Oxidizes, & Reduces Chlorinated DPBs. Available:
8 [www.waterrf.org/knowledge/advanced-treatment/FactSheets/advanced-](http://www.waterrf.org/knowledge/advanced-treatment/FactSheets/advanced-treatment%20ozone%20factSheet.pdf)
9 [treatment ozone factSheet.pdf](http://www.waterrf.org/knowledge/advanced-treatment/FactSheets/advanced-treatment%20ozone%20factSheet.pdf). Accessed May 31, 2018.

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Chapter 4
REPORT PREPARATION

Stanislaus Regional Water Authority

156 South Broadway, Suite 270
Turlock, CA 95380
(209) 538-5758

Robert Granberg General Manager

Technical Advisory Committee

- Michael Cooke City of Turlock
- Garner Reynolds City of Turlock
- Stephen Fremming City of Turlock
- Toby Wells City of Ceres
- Jeremy Damas City of Ceres
- Daryl Jordan City of Ceres
- Tou Her Turlock Irrigation District
- Phil Govea Turlock Irrigation District
- Bill Penney Turlock Irrigation District

West Yost Associates

2020 Research Park Drive, Suite 100
Davis, CA 95618
(530) 756-5905

- Gerry Nakano Program Manager
- Lindsay Smith Deputy Program Manager
- Andy Smith Predesign Lead

1 **Horizon Water and Environment, LLC**

2 266 Grand Avenue, Suite 210
3 Oakland, CA 94610
4 (510) 986-1850
5

Tom Engels, Ph.D.	Principal-in-Charge
Debra Lilly	Project Manager
Megan Giglini	Senior Associate
Alison Stanton	Associate
Lorrie Jo Williams	Word Processing

6

Chapter 5 REFERENCES

Chapter 1, Introduction

None cited.

Chapter 2, Comments on the DEIR and Responses

California Air Resources Board. 2005. *Air Quality and Land Use Handbook: A Community Health Perspective*. April.

EDAW. 2001. Initial Study/Mitigated Negative Declaration – Infiltration Gallery Project in Special Run Pool 9. (SCH No. 2001022029.) Sacramento, CA. Prepared for Turlock Irrigation District. February.

EIP Associates. 2006. Final Environmental Impact Report – Turlock Irrigation District Regional Surface Water Supply Project. September. Prepared for Turlock Irrigation District.

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U.S. Geological Survey. 2018. USGS Water-Year Summary for Site USGS 11276500. Available: waterdata.usgs.gov/ca/nwis/wys_rpt/?site_no=11276500&agency_cd= USGS. Accessed on May 16, 2018.

Chapter 3, Revisions to the DEIR

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- 1 Water Research Foundation. 2016. Advance Treatment: Ozone and Advanced Oxidation,
- 2 Fact Sheet, Ozonation Disinfects, Oxidizes, & Reduces Chlorinated DPBs. Available:
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- 4 [treatment_ozone_factSheet.pdf](http://www.waterrf.org/knowledge/advanced-treatment/FactSheets/advanced-treatment_ozone_factSheet.pdf). Accessed May 31, 2018.

STANISLAUS REGIONAL WATER AUTHORITY

CEQA FINDINGS OF FACT

FOR THE

**SURFACE WATER SUPPLY PROJECT
ENVIRONMENTAL IMPACT REPORT**

STANISLAUS REGIONAL WATER AUTHORITY *RESOLUTION NO.* _____, *EXHIBIT A*

I. INTRODUCTION AND BACKGROUND

The Stanislaus Regional Water Authority (SRWA) is proposing, through the Surface Water Supply Project (SWSP), to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) in Phase 1 (up to 50,400 AFY at buildout in 2040) of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed Project would assist the Cities in achieving sustainable groundwater pumping levels. In addition, 2,000 AFY of offset water (recycled water or groundwater) provided to the Turlock Irrigation District (TID) would assist TID in implementing its water conservation and conjunctive water use programs.

These findings of fact have been prepared and adopted pursuant to the requirements of the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*) and CEQA Guidelines (collectively “CEQA”).

The SRWA completed the Draft EIR in January 2018 and on January 22, 2018, distributed it to public agencies and the general public for review and comment. The SRWA distributed copies of the Draft EIR to those responsible and trustee public agencies that have jurisdiction by law with respect to the Project, as well as to other interested persons and agencies, and sought the comments of such persons and agencies. There was a 45-day public review period for comments on the Draft EIR and comments were solicited from state agencies through the State Clearinghouse (SCH #2017022077). Following the close of the public comment period, the SRWA evaluated and prepared written responses to public comments, and submitted responses to comments to commenting agencies for their review. Minor revisions to the Draft EIR were made in response to comments, but these revisions did not substantially alter the analysis or the conclusions of the Draft EIR. The SRWA then prepared the *Stanislaus Regional Water Authority Surface Water Supply Project Final Environmental Impact Report* (“Final EIR”), consisting of the following: the Draft EIR; comments received on the Draft EIR; a list of persons, organizations, and public agencies commenting on the Draft EIR; responses of the SRWA to significant environmental points raised in the review and consultation process; and revisions to the Draft EIR. A Mitigation Monitoring and Reporting Program was circulated as an appendix to the Draft EIR and has been included as part of the Final EIR.

II. RECORD OF PROCEEDINGS

For the purposes of CEQA and these findings, the administrative record for the Project consists of those items listed in Public Resources Code section 21167.6(e). The record of proceedings for the SRWA’s decision on the Project consists of the following documents, at a minimum:

- CEQA Notice of Preparation dated February 2017, and all other public notices issued by the SRWA in conjunction with the Project;
- Draft EIR (January 2018), including all appendices;
- All comments submitted by agencies or members of the public during the comment period on the Draft EIR;
- All comments and correspondence submitted to the SRWA with respect to the Project;
- Final EIR (July 2018);

- SRWA Board Resolution No. 2018-XX adopting these findings and minutes of the meeting at which that resolution was considered and adopted;
- Mitigation Monitoring and Reporting Program for the Project;
- All reports, studies, memoranda, maps, staff reports and other documents relating to the Project prepared by the SRWA, consultants to the SRWA, or responsible or trustee agencies with respect to the SRWA's compliance with the requirements of CEQA and with respect to the SRWA's action on the Project;
- Matters of common knowledge to the SRWA, including, but not limited to federal, state, and local laws and regulations;
- Any other documents incorporated by reference or cited in the Final EIR or these findings; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6(e).

Location and Custodian of Documents: The administrative record of proceedings is on file and available for public review at the SRWA office, 156 South Broadway, Suite 270, Turlock, California 95380, (209) 538-5758. The SRWA Board Secretary (currently Allison Martin) at the above address is the custodian of the administrative record.

III. FINDINGS REGARDING SIGNIFICANCE OF IMPACTS AND MITIGATION MEASURES

Public Resources Code section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects," that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects," and that "in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

Public Resources Code section 21002 is implemented, in part, through the requirement that agencies adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code § 21081(a); CEQA Guidelines § 15091(a).) For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that "[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR." (CEQA Guidelines § 15091(a)(1).) The second permissible finding is that "[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency." (CEQA Guidelines § 15091(a)(2).) The third potential conclusion is that "[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR." (CEQA Guidelines § 15091(a)(3).) Public Resources Code section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors."

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines § 15091(a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, nevertheless may approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines §§ 15093, 15043(b); see also Pub. Resources Code § 21081(b).)

These findings constitute SRWA's best efforts to set forth the evidentiary and policy bases for its decision to approve the Project in a manner consistent with the requirements of CEQA. To the extent that these findings conclude that various proposed mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, SRWA hereby binds itself to implement these measures.

A Mitigation Monitoring and Reporting Program (MMRP) was prepared for the Project and was approved by SRWA by the same resolution that adopted these findings. (See Pub. Resources Code, § 21081.6(a)(1); CEQA Guidelines § 15097.) SRWA will use the MMRP to track and ensure compliance with Project mitigation measures. The MMRP will remain available for public review during the compliance period.

The SRWA now makes the findings and determinations set forth below for the significant and potentially significant environmental impacts of the Project. The following analysis summarizes the potentially significant environmental impacts. The impacts are described in more detail in Chapter 3 of the Draft EIR.

Aesthetics

Impact AES-3: The Project would substantially degrade the visual character or quality of the site and its surroundings. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AES-1, AES-2, and AES-3. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction and operation of the raw water pump station, water treatment plant (WTP), storage tanks, and offset water facilities would alter the visual character or quality of the sites. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures AES-1, AES-2, and AES-3.

(Supporting evidence: see Draft EIR section 3.1.)

Impact AES-4: The Project would create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure AES-4. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction and operation of the raw water pump station, water treatment plant (WTP), storage tanks, and offset water facilities would create new sources of substantial light and glare. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure AES-4.

(Supporting evidence: see Draft EIR section 3.1.)

Agriculture and Forestry Resources

Impact AG-1: The Project would convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to nonagricultural use. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AG-1 and AG-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact but would not fully avoid or compensate for the loss of Prime Farmland.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR. Mitigation Measures AG-1 and AG-2 would reduce the loss of Prime Farmland but would not ultimately avoid the net conversion of some Prime Farmland out of agricultural use, and as such, this impact would remain significant, and no additional feasible mitigation has been identified that could reduce the impact to a level of insignificance.

Explanation: Construction and operation of the WTP and the terminal tank facility in Turlock would result in conversion of up to 55 acres of Prime Farmland. The EIR determined that this is a potentially significant impact. As explained in the EIR, implementation of Mitigation Measures AG-1 and AG-2 would reduce this impact but would not fully avoid or compensate for the loss of Prime Farmland. No other feasible mitigation measures, such as restoration of Prime Farmland that has been previously converted or participation in an agricultural conservation easement program, have been identified to further reduce this impact.

(Supporting evidence: see Draft EIR section 3.2.)

Air Quality

Impact AQ-1: The Project could conflict with or obstruct implementation of an applicable air quality plan. This is considered a *significant* impact.

Mitigation Measures: As described in the Final EIR and MMRP, no mitigation measures are available that will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Significant and unavoidable.

Finding: No changes or alterations have been identified that avoid or lessen the significant environmental effect to a level of insignificance, as identified in the Final EIR.

Explanation: Construction of the proposed Project may result in NO_x emissions that exceed the 10 tons per year emission threshold and could result in other criteria pollutant emissions that exceed SJVAPCD's thresholds; therefore, construction could obstruct implementation of applicable air quality plans, which would be a significant impact. It is unknown at this time if the amount of operational emissions would exceed any significance threshold. Mitigation measures that would address construction emissions and unpermitted operational emissions are discussed under Impact AQ-2. Emissions from Project facilities requiring a permit to operate would be addressed under the applicable permit process and SRWA would purchase offsets for any excess emissions as required to obtain permits; however, this would not address construction-related or unpermitted operational emissions. The Project would potentially generate emissions greater than those accounted for in the applicable air quality plans. Therefore, the proposed Project would potentially obstruct or conflict with applicable air quality plans and would be a significant and unavoidable impact.

(Supporting evidence: see Draft EIR section 3.3.)

Impact AQ-2: The Project could violate an air quality standard or contribute substantially to an existing or projected air quality violation. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact; however, it may not be feasible to reduce criteria pollutant emissions below the significance thresholds.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, these mitigation measures may not be sufficient to reduce the impact to a *less-than-significant* level.

Explanation: While construction-related and operational impacts can be reduced with implementation of Mitigation Measures AQ-1 and AQ-2, construction and operation of the proposed Project may result in emissions that exceed SJVAPCD thresholds. At the time the Draft EIR was being prepared, insufficient design information was available to quantitatively assess emissions that would be generated by the proposed Project. Thus, even with implementation of Mitigation Measures AQ-1 and AQ-2, the impact remains significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.3.)

Impact AQ-3: The Project could result in a cumulatively considerable net increase of any criteria pollutant for which the Project's region is in non-attainment under an applicable federal or state ambient air quality standard. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact, but not to a level that would necessarily be less than considerable.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, these mitigation measures may not be sufficient to reduce the impact to a less-than-significant level, and no other feasible mitigation has been identified that would further reduce this impact.

Explanation: The proposed Project could result in mass emissions above the applicable significance thresholds even after implementation of Mitigation Measures AQ-1 and AQ-2, resulting in a significant impact by making a considerable contribution to cumulative impacts related to criteria pollutant emissions for which the region is in non-attainment. Mitigation Measures AQ-1 and AQ-2 would reduce the proposed Project's contribution, but not to a level that would necessarily be less than considerable. No other feasible mitigation has been identified that would further reduce this impact. Thus, the impact remains significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.3.)

Impact AQ-4: The Project could expose sensitive receptors to substantial pollutant concentrations. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Impacts on sensitive receptors from fugitive dust and other TAC emissions during construction or operation of the proposed Project would be potentially significant because sensitive receptors could be exposed to substantial pollutant concentrations. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures AQ-1 and AQ-2.

(Supporting evidence: see Draft EIR section 3.3.)

Biological Resources

Impact BIO-2: The Project could have significant impacts on special-status invertebrates, specifically valley elderberry longhorn beetle (VELB). This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures BIO-1, BIO-2, and BIO-3. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Impacts on VELB and individual elderberry shrubs could result from direct damage to elderberry plants during construction or operation of the proposed Project. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures BIO-1, BIO-2, and BIO-3.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-3: The Project could have significant impacts on special-status fish. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-4. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Air purging during fall-run Chinook migration, spawning, juvenile emergence and rearing or the peak migration period for steelhead could result in increased total suspended solids and/or increased sediment deposition from mobilized sediment. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-4.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-4: The Project could have significant impacts on nesting birds. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-5. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities during the breeding season could disturb nesting by generating noise, creating visual distractions, or having a direct impact on occupied nests (e.g., vegetation or structure removal). The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-5.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-5: The Project could have significant impacts on nesting raptors, including Swainson's Hawk and White-tailed Kite. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-6. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction in the vicinity of raptor nest sites could disturb breeding through generation of noise and visual distraction. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-6.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-6: The Project could have significant impacts on Burrowing Owls. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-7. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: If Burrowing Owls were to be present at portions of the Project site, construction activities could disturb them through noise, visual distraction, or destruction of burrows. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-7.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-7: The Project could have significant impacts on special-status amphibians and reptiles. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-8. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Although nesting within the Project area is not likely, construction activities could directly or indirectly affect western pond turtles or their nests (e.g., removal of nests or logs, rocks, or other vegetation required for basking). The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-8.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-8: The Project could have significant impacts on special-status mammals. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure BIO-9. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Potential construction-related impacts on bat roosts would be temporary but could lead to the disturbance or abandonment of a special-status bat maternity roost. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure BIO-9.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-9: The Project could have significant impacts on riparian habitat or other sensitive natural communities. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures BIO-1, BIO-2, BIO-3, and BIO-10. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Temporary and permanent disturbance to riparian habitat or other sensitive natural communities could result during construction activities for the raw water pump station and transmission main. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures BIO-1, BIO-2, BIO-3, and BIO-10.

(Supporting evidence: see Draft EIR section 3.4.)

Impact BIO-11: The Project could have significant impacts on the movement of any native resident or migratory fish or wildlife species. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures BIO-4, BIO-5, BIO-6, BIO-7 and BIO-10; and Mitigation Measures NOI-1, NOI-2, and NOI-5. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction and operations of the proposed raw water pump station would generate noise, light, and an increased level of human activity relative to existing conditions; operation of the infiltration gallery could include maintenance air purging; and some construction activities could take place during the breeding season for birds and raptors that may nest in the riparian corridor. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures BIO-4, BIO-5, BIO-6, BIO-7 and BIO-10; and Mitigation Measures NOI-1, NOI-2, and NOI-5.

(Supporting evidence: see Draft EIR section 3.4.)

Cultural Resources

Impact CUL-2: The Project could have a substantial adverse impact on archaeological resources from construction. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures CUL-1 and CUL-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Excavations related to construction of the WTP and terminal facilities, open trenching for the water lines, and boring activities could uncover buried archaeological deposits. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures CUL-1 and CUL-2.

(Supporting evidence: see Draft EIR section 3.5.)

Impact CUL-3: The Project could directly or indirectly destroy a unique paleontological resource or site, or unique geological feature. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure CUL-3. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Fossils could be encountered during construction that would be determined to be a unique paleontological resource or site. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure CUL-3.

(Supporting evidence: see Draft EIR section 3.5.)

Impact CUL-4: The Project could disturb human remains, including those interred outside of dedicated cemeteries. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure CUL-4. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: The potential for human remains to be identified in the Project area during construction is considered low, although their presence cannot be entirely discounted. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure CUL-4.

(Supporting evidence: see Draft EIR section 3.5.)

Greenhouse Gas Emissions and Energy Use

Impact GHG-1: The Project could generate a substantial amount of greenhouse gas (GHG) emissions. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact, but not to a level that would necessarily be less than significant.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, these mitigation measures may not be sufficient to reduce the impact to a less-than-significant level, and no other feasible mitigation has been identified that would further reduce this impact.

Explanation: On the whole, because specific details regarding the proposed Project are not yet available, construction and operation impacts of the Project have been conservatively and qualitatively determined to generate GHG emissions that are substantial. Implementation of Mitigation Measures AQ-1 and AQ-2 would reduce these effects; however, these measures may not fully reduce the Project's GHG emissions below the applicable threshold. Thus, the impact remains significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.7.)

Impact GHG-2: The Project could conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing emissions of GHGs. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact, but not to a level that would necessarily be less than significant.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, these mitigation measures may not be sufficient to reduce the impact to a less-than-significant level, and no other feasible mitigation has been identified that would further reduce this impact.

Explanation: GHG emissions for the proposed Project may be significant and, as such, may impede the state from reaching the goals of AB 32 and SB 32, and Executive Order S-3-05, to reduce GHG emissions within California. Mitigation Measures AQ-1 and AQ-2 would reduce this impact, but not necessarily to less-than-significant levels, and may not be consistent in the future with new strategies. Thus, the impact remains significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.7.)

Impact GHG-3: The Project could cause wasteful, inefficient, and unnecessary consumption of energy during construction, operation, and/or maintenance. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AQ-1 and AQ-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities and operation of the Project facilities could result in additional consumption of energy. The EIR determined that this is a potentially significant impact. As explained in the EIR, the Project's consumption of energy is not wasteful, inefficient, or unnecessary, and this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures AQ-1 and AQ-2.

(Supporting evidence: see Draft EIR section 3.7.)

Hazards and Hazardous Materials

Impact HAZ-1: The Project could create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures HAZ-1 and HYD/WQ-1. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities and operation of the proposed Project would require handling of hazardous materials, such as fuels, lubricating fluids, and solvents, and use of electric and/or diesel/gas-powered pumps on the Project sites. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures HAZ-1 and HYD/WQ-1.

(Supporting evidence: see Draft EIR section 3.8.)

Impact HAZ-2: The Project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures HAZ-1 and HYD/WQ-1. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction and operation of the proposed Project could result in upset or accident conditions involving the release of hazardous materials into the environment. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures HAZ-1 and HYD/WQ-1.

(Supporting evidence: see Draft EIR section 3.8.)

Impact HAZ-6: The Project could impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure TRANS-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: An increase in traffic and temporary partial or total lane closures (if necessary) during Project construction could impair the response times of emergency responders during the construction

period. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure TRANS-1.

(Supporting evidence: see Draft EIR section 3.8.)

Hydrology and Water Quality

Impact HYD/WQ-5: The Project could place within a 100-year flood hazard area structures that would impede or redirect flood flows. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure HYD/WQ-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Structures included as part of the WTP that are located in this flood hazard area could restrict or redirect flood flows, which could increase flood hazards to nearby properties. The EIR determined that this is a potentially significant impact. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure HYD/WQ-1.

(Supporting evidence: see Draft EIR section 3.9.)

Noise

Impact NOI-1: The Project could expose persons to noise levels in excess of standards established in a local General Plan or noise ordinance or in the applicable standards of other agencies. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures NOI-1 and NOI-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction and operation of the Project could expose people (particularly residential receptors) to noise levels outside the permitted timeframe and could exceed other standards in the local General Plan and ordinances. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures NOI-1 and NOI-2.

(Supporting evidence: see Draft EIR section 3.11.)

Impact NOI-2: The Project could expose persons to excessive groundborne vibration or groundborne noise levels. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure NOI-3. Implementation of this mitigation measures as described in the Final EIR and MMRP will reduce this impact, but not to a level that would necessarily be less than significant.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, this mitigation may not be sufficient to reduce the impact to a less-than-significant level.

Explanation: Construction activities associated with the operation of heavy equipment may generate localized groundborne vibration. Implementation of Mitigation Measure NOI-3 would reduce impacts, but there may still be some noise vibrations that would exceed applicable thresholds that could be felt by nearby sensitive receptors, in particular during trenching of pipelines that are in close proximity to sensitive receptors. Therefore, in an abundance of caution, this impact has been determined to be significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.11.)

Impact NOI-3: Project operations could permanently increase ambient noise levels above levels existing without the Project. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure NOI-2. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Operation of Project facilities could expose people to noise levels in excess of established noise levels. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure NOI-2.

(Supporting evidence: see Draft EIR section 3.11.)

Impact NOI-4: The Project could result in substantial temporary or periodic increases in ambient noise levels in the Project vicinity above levels existing without the proposed Project. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure NOI-4. Implementation of this mitigation measures as described in the Final EIR and MMRP will reduce this impact, but not to a level that would necessarily be less than significant.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, this mitigation may not be sufficient to reduce the impact to a less-than-significant level.

Explanation: Temporary increases in noise levels associated with construction activities, as well as short-term increases in noise associated with operations, would increase ambient noise levels above the levels existing without the proposed Project. Implementation of Mitigation Measure NOI-4 would reduce impacts, but may not fully reduce construction noise impacts for all sensitive receptors located near individual Project features. Thus, because feasible measures to reduce impacts below the threshold may not exist, the proposed Project's temporary impacts related to increases in ambient noise levels has been determined to be significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.11.)

Population and Housing

Impact PH-2: The Project could displace substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure TRANS-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: The treated water transmission main from the WTP to Ceres would be installed in the right-of-way for East Hatch Road along the Turlock Irrigation District Main Canal. Access to residences along this alignment could be affected for brief periods. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure TRANS-1.

(Supporting evidence: see Draft EIR section 3.12.)

Impact PH-3: The Project could result in long-term inducement of substantial population growth, both directly and indirectly. This is considered a *significant* impact.

Mitigation Measures: As described in the Final EIR and MMRP, no feasible mitigation measures are available that will reduce this impact to a level that would necessarily be less than significant.

Significance After Mitigation: Significant and unavoidable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR; however, this mitigation may not be sufficient to reduce the impact to a less-than-significant level.

Explanation: Proposed development of SRWA's water treatment, storage, and distribution system would remove an obstacle to urban development and population growth within the Ceres-Turlock service area. Although the policies contained in General Plans would reduce the secondary effects of growth, they would not necessarily reduce secondary environmental effects to a less-than-significant level. It would be speculative to forecast potential significant impacts and effectiveness of potential mitigation measures associated with future development projects that may be served by the proposed Project. For these reasons, this impact would be significant and unavoidable.

(Supporting evidence: see Draft EIR section 3.12.)

Recreation

Impact REC-1: The Project could increase use of existing parks or recreational facilities, resulting in substantial deterioration of those facilities. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures TRANS-1 and REC-1. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities at Fox Grove Regional Park would involve traffic and construction activities that may temporarily interfere with visitors' ability to access the Fox Grove parking lot entrance and the riverbank, and could also affect the ability of the County to implement maintenance activities or planned improvements at the park. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures TRANS-1 and REC-1.

(Supporting evidence: see Draft EIR section 3.14.)

Transportation and Traffic

Impact TRANS-1: The Project could conflict with applicable circulation plans, ordinances, policies, or congestion management programs during construction. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure TRANS-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities could result in degradation of traffic levels of service on area roadways. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure TRANS-1.

(Supporting evidence: see Draft EIR section 3.15.)

Impact TRANS-4: The Project could increase traffic hazards due to design features. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure TRANS-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Construction activities could result in increased traffic hazards on area roadways. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure TRANS-1.

(Supporting evidence: see Draft EIR section 3.15.)

Impact TRANS-5: The Project could result in inadequate emergency access during construction. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measure TRANS-1. Implementation of this mitigation measure as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Traffic could be delayed and lanes temporarily closed when construction material or vehicles are being moved on and off the proposed Project sites. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measure TRANS-1.

(Supporting evidence: see Draft EIR section 3.15.)

Tribal Cultural Resources

Impact TCR-5: The Project could result in a substantial adverse impact on tribal cultural resources from Project construction. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures CUL-2 and CUL-4. Implementation of these mitigation measures as described in the Final EIR and MMRP will mitigate this potential impact to a *less-than-significant* level.

Significance After Mitigation: Less than significant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Explanation: Native American archaeological remains or Native American human remains could be identified during the course of construction that are subsequently determined to be tribal cultural resources. As explained in the EIR, this impact can be mitigated to a less-than-significant level by the implementation of Mitigation Measures CUL-2 and CUL-4.

(Supporting evidence: see Draft EIR section 3.16.)

Cumulative Impacts

Impact CUM-2: The Project would have a cumulative impact on agriculture and forestry resources. This is considered a *significant* impact.

Mitigation Measures: The SRWA Board hereby adopts Mitigation Measures AG-1 and AG-2. Implementation of these mitigation measures as described in the Final EIR and MMRP will reduce this impact but would not fully avoid or compensate for the loss of Prime Farmland.

Significance After Mitigation: Cumulatively considerable.

Finding: Changes or alterations have been required in, or incorporated into, the Project that lessen the significant environmental effect as identified in the Final EIR. Mitigation Measures AG-1 and AG-2 would reduce the loss of Prime Farmland but would not ultimately avoid the net conversion of some Prime Farmland out of agricultural use, and no additional feasible mitigation has been identified that could reduce the impact to a level of insignificance.

Explanation: The proposed Project would result in the conversion of Farmland to non-agricultural use associated with development of the WTP and the Turlock terminal tank. Given the importance of agriculture to Stanislaus County and given that loss of Prime Farmland has been occurring in recent years and is an ongoing concern with increasing urban development in the region, the loss of Prime Farmland is a significant cumulative impact. Mitigation Measures AG-1 and AG-2 would reduce the loss of Prime Farmland but would not ultimately avoid the net conversion of some Prime Farmland out of agricultural use, and as such, this impact would be cumulatively considerable.

(Supporting evidence: see Draft EIR section 3.2 and section 4.4.)

SURFACE WATER SUPPLY PROJECT

MITIGATION MONITORING AND REPORTING PLAN

This mitigation monitoring and reporting plan (MMRP) identifies the mitigation measures identified in the Stanislaus Regional Water Authority's (SRWA's) Surface Water Supply Project Environmental Impact Report (EIR). For each mitigation measure, the MMRP identifies monitoring and reporting actions that shall be carried out and the applicable schedule for monitoring activities. This MMRP also includes a column where responsible parties can check off monitoring and reporting actions as they are completed.

As lead agency, SRWA (for activities involving the infiltration gallery, water treatment plant, and transmission pipelines) and the Cities of Ceres and Turlock (for activities involving their respective terminal tank facilities) will be responsible for ensuring that mitigation measures identified in this EIR are fully implemented. Some mitigation measures would be implemented by the contractor(s) on behalf of SRWA and the Cities. Contract documents for the proposed project will identify the obligations of the contractor, including relevant mitigation measures. SRWA and the Cities will require that the contractor(s) provide them with documentation that the contractor has adequately implemented all contractual obligations, including applicable mitigation measures.

Thus, in the descriptions of the mitigation measures provided in below, while SRWA and the Cities may be specifically referenced in implementing a mitigation measure (i.e., where the measure states "SRWA and the Cities shall"), this is intended to be inclusive of the contractor's role in implementing certain mitigation measures during construction or as part of design.

Acronyms and Abbreviations

ANSI	American National Standards Institute
APE	area of potential effect
CARB	California Air Resources Board
CDFG	California Department of Fish and Game
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
Cities	the City of Turlock and the City of Ceres
CNDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CO ₂ e	carbon dioxide equivalent
CRHR	California Register of Historical Resources
CVFPB	Central Valley Flood Protection Board
dB	decibel
dBA	A-weighted decibel
FEMA	Federal Emergency Management Agency
GHG	greenhouse gas

GPS	global positioning system
HAZCOM	Hazardous Materials Communication
HMWMP	Hazardous Materials and Waste Management Plan
hp	horsepower
MLD	Most Likely Descendent
MMRP	mitigation monitoring and reporting plan
MT	million tons
NAHC	Native American Heritage Commission
NMFS	National Marine Fisheries Service
NO _x	oxides of nitrogen
NRHP	National Register of Historic Places
OSHA	Occupational Safety and Health Administration
Pub. Res. Code	Public Resources Code
SJVAPCD	San Joaquin Valley Air Pollution Control District
SRWA	Stanislaus Regional Water Authority
TAC	toxic airborne contaminant
TSS	total suspended solids
USFWS	U.S. Fish and Wildlife Service
VELB	valley elderberry longhorn beetle
VOC	volatile organic compound
WPT	western pond turtle
WTP	water treatment plant

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Table 1. Mitigation Measures and Implementation Requirements

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Aesthetics</p> <p>Mitigation Measure AES-1: Implement Maintenance Practices for Construction Staging Areas and Construction Sites. SRWA and the Cities shall require that the contractor(s) keep construction work areas clean and neat by storing construction materials and equipment at proposed construction staging areas or in areas that are generally shielded from public view (to the extent feasible), and by removing construction debris promptly and at regular intervals.</p>	<ol style="list-style-type: none"> 1. Include maintenance requirements in construction documents 2. Inspect construction sites on a regular basis for compliance 	<ol style="list-style-type: none"> 1. During construction 2. During construction 	
<p>Mitigation Measure AES-2: Use Design Elements to Provide Visual Screening of Wells, Storage Tanks, Pump Stations, and Other Facilities. SRWA and the Cities shall require that the contractor(s) use design elements to provide visual screening of proposed facilities and to integrate them with the existing visual setting. Such design elements may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> ▪ Paint proposed storage tank facilities and water treatment plant or include appropriate concrete admixtures to achieve low-glare, earth-tone colors that blend with the surrounding terrain and visual setting. ▪ Wherever feasible, avoid the use of unpainted metallic surfaces and other reflective sources that may cause increased levels of reflectivity. ▪ Wherever feasible, install native landscaping and/or fencing to provide screening for views of the pump station, water storage tanks, and wells from public roads and adjacent residences. ▪ Use downward-facing, shielded lighting fixtures to avoid spillover light from affecting adjacent properties. 	<ol style="list-style-type: none"> 1. Include screening design requirements in design contract 2. Review design to ensure compliance with requirements 3. Include screening requirements in construction documents 	<ol style="list-style-type: none"> 1. During final design 2. During final design 3. During construction 	
<p>Mitigation Measure AES-3: Develop and Implement a Landscape Plan for the Water Treatment Plant. SRWA or its contractor(s) shall develop a landscaping plan that provides adequate screening along the perimeter of the water treatment plant</p>	<ol style="list-style-type: none"> 1. Include landscaping plan design requirements in design contract 	<ol style="list-style-type: none"> 1. During final design 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>(WTP) site in effort to screen views and improve the overall aesthetics of the site. The landscaping plan shall be developed and implemented as part of the construction contract to provide immediate screening of the WTP for sensitive viewers. To the extent feasible, SRWA shall retain (during construction) or plant (following completion of construction) mature trees around the perimeter of the WTP site to buffer views from adjacent residences and Fox Grove Regional Park. Due to the height of the WTP facilities, landscape berms may also be appropriate to screen views from nearby receptors. Landscaping shall rely mostly on native trees, shrubs, and grassland vegetation to minimize water consumption. SRWA shall monitor landscape plantings annually for at least 5 years after project completion to ensure that sufficient ground coverage has developed, and will implement additional measures, such as replanting or modifying irrigation systems, as determined necessary.</p>	<ol style="list-style-type: none"> 2. Review design to ensure compliance with requirements 3. Include landscaping requirements in construction documents 4. Monitor survival of landscaping for at least 5 years after project completion 	<ol style="list-style-type: none"> 2. During final design 3. During construction 4. Annually following completion of construction 	
<p>Mitigation Measure AES-4: Use Shielded Lighting if Nighttime Construction Is Necessary. If nighttime construction is performed, SRWA and the Cities shall require the contractor(s) to use lighting that is shielded and oriented downward to minimize effects on any nearby receptors. Lighting shall be directed toward active construction areas only, and shall have the minimum brightness necessary to ensure worker safety</p>	<ol style="list-style-type: none"> 1. Include lighting requirements in construction documents 2. Inspect construction sites on a regular basis for compliance 	<ol style="list-style-type: none"> 1. During construction 2. During construction 	
<p>Agriculture and Forestry Resources</p>			
<p>Mitigation Measure AG-1: Stockpile Soils and Other Excavated Earth Material During Construction. SRWA or its contractor(s) shall implement the following measures. Topsoil and other earth material removed from Prime Farmland during construction of the WTP and Turlock terminal tank site shall be stockpiled for later reuse after excavation. Soil shall be stored in a designated area for the entirety of these areas' construction. The stockpiles shall be located in an area where construction activities would not affect agricultural or biological resources. All stockpiled soil shall be covered with tarps at all times to prevent the generation of</p>	<ol style="list-style-type: none"> 1. Include soil stockpiling and reuse requirements in construction documents 2. Inspect construction sites on a regular basis for compliance 	<ol style="list-style-type: none"> 1. During construction 2. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>fugitive dust. Excavated soil will then be backfilled at the sites and restored to an appropriate level of compaction following construction.</p> <p>Mitigation Measure AG-2: Replant Undeveloped Areas of Prime Farmland following Construction Where Feasible. SRWA and the Cities shall implement the following measure. Where feasible, following construction in areas of Prime Farmland, SRWA shall distribute stockpiled topsoil and replant agricultural products that are determined to be compatible with the operational and maintenance requirements of the adjacent proposed project facilities.</p>	<ol style="list-style-type: none"> Identify areas feasible for replanting in agricultural production. Replant these areas using stockpiled soils (see MM AG-1). 	<ol style="list-style-type: none"> During final project design Following construction 	
Air Quality			
<p>Mitigation Measure AQ-1: Prepare Quantitative Analysis of Construction-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions. As the project design is further defined to a level that construction emissions can be estimated and evaluated, and prior to construction, SRWA and the Cities shall prepare a quantitative analysis of construction-related air quality and greenhouse gas (GHG) emissions for the proposed project. The quantitative construction air quality and GHG analysis shall be based on the types, locations, numbers, and operations of equipment to be used; the amount and distance of material to be transported; and worker trips required. In addition, the analysis shall be based on the projected quantity and frequency of vehicle and truck trips, and other activities that generate emissions. The analysis shall determine whether the combined emissions of the quantified construction activities exceed the San Joaquin Valley Air Pollution Control District's (SJVAPCD's) construction-related air quality thresholds (Table 3.3-2) or the 10,000 million tons (MT) of carbon dioxide equivalents (CO₂e) per year threshold for industrial sources. If the analysis determines that construction emissions would exceed the air quality and/or GHG significance thresholds, then SRWA shall identify and implement appropriate mitigation to the extent feasible. As a performance standard, the mitigation measures shall demonstrate that</p>	<ol style="list-style-type: none"> Develop quantitative estimate of construction-related emissions using the identified information If emissions would exceed SJVAPCD construction thresholds, work with SJVAPCD to identify appropriate implement measures that will achieve emissions reductions to the extent feasible Inspect construction sites on a regular basis to ensure compliance 	<ol style="list-style-type: none"> During final project design During final project design During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>off-road equipment (greater than 50 horsepower [hp]) and material hauling vehicles used during construction (i.e., owned, leased, and subcontracted vehicles) will achieve emission reductions to the extent feasible. Equipment and material hauling vehicles shall achieve at least a project-wide fleet average of 20 percent oxides of nitrogen (NOx) reduction and 45 percent DPM reduction compared to the most recent California Air Resources Board (CARB) fleet average up to a Tier IV-equivalent engine. Examples of appropriate mitigation may include, but not be limited to, alternative-fueled equipment, phasing of material hauling trips, phasing of construction activities, use of chemical additives or after-market devices to reduce emissions on existing equipment, use of electrically powered equipment, reduction in total equipment hours, use of newer equipment models, use of alternative fuels, engine retrofit technology, adopting a vehicle idling policy requiring all vehicles to adhere to a 5-minute idling policy, and sourcing of material from local sources. Actual emissions efficiency for off-road equipment and motor vehicles shall be at least as efficient as the most recent CARB fleet average for off-road equipment and motor vehicles for the current calendar year.</p> <p>For GHG emissions, the following measures will be considered and implemented to the extent feasible: implement energy efficiency improvements of pumps through design, construction, and refurbishment methods; investigate and implement opportunities for renewable energy development at the facilities, subject to safety, emergency, and environmental considerations; and implement a construction worker commute strategy to minimize GHG emissions from workers commuting to the site. This may include encouraging use of carpools, vanpools, and public transportation.</p>			
<p>Mitigation Measure AQ-2: Prepare Quantitative Analysis of Operation-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions.</p> <p>As future project design details are further defined to a level that operational emissions can be estimated and evaluated, and prior to</p>	<ol style="list-style-type: none"> 1. Develop quantitative estimate of operations-related emissions using the identified information 2. If emissions would exceed SJVAPCD operational thresholds, work with SJVAPCD to identify appropriate implement measures 	<ol style="list-style-type: none"> 1. During final project design 2. During final project design 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>construction, SRWA and the Cities shall prepare a quantitative air quality and GHG analysis for the proposed project.</p> <p>The quantitative operational air quality and GHG analysis shall be based on the types, locations, numbers, and operations of equipment to be used; the amount and distance of material to be transported; and worker trips required. In addition, the analysis shall be based on the projected quantity and frequency of vehicle and truck trips and other activities that generate emissions, including estimates of water treatment plant operations of permitted and unpermitted sources including GHG emissions, fugitive emissions of volatile organic compounds (VOCs), emissions of TACs, and particulate matter. The analysis shall determine whether the quantified emissions of the project's operational activities exceed the SJVAPCD's permitted and unpermitted air quality thresholds (see the SJVAPCD thresholds presented in Table 3.3-3) or the 10,000 MT CO_{2e} per year threshold for industrial sources.</p> <p>If the analysis determines that operational emissions would exceed the air quality or GHG significance thresholds, then SRWA shall identify and implement appropriate mitigation to the extent feasible. As a performance standard, the mitigation measures shall demonstrate that off-road equipment (greater than 50 hp) and material hauling vehicles used during project operation (i.e., owned, leased, and subcontracted vehicles) achieve emission reductions to the extent feasible. Any on-road equipment and material hauling vehicles shall achieve at least a project-wide fleet average equivalent to a Tier III engine for both NO_x and PM. Any off-road equipment and material hauling vehicles shall achieve at least a project-wide fleet average of 20 percent NO_x reduction, 45 percent DPM reduction, and equal the GHG emissions compared to the most recent CARB fleet average up to a Tier IV-equivalent engine. This can also be achieved by replacing existing equipment with more efficient and lower emitting equipment (e.g., new emergency generators). Examples of appropriate mitigation may include, but not be limited to, alternative fueled equipment, phasing of material hauling trips, use of chemical additives or after-market devices to reduce emissions on existing equipment, use of electrically powered</p>	<p>that will achieve emissions reductions to the extent feasible</p> <p>3. Inspect facilities on a regular basis to ensure compliance</p>	<p>3. Ongoing during facility operations</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>equipment, reduction in total equipment hours, use of newer equipment models, use of alternative fuels, engine retrofit technology, adopting a vehicle idling policy requiring all vehicles to adhere to a 5-minute idling policy, and sourcing of material from local sources. For unpermitted sources in particular, fugitive VOC and particulate matter potential emission reduction options include use of vegetative filtration (i.e., through tree planting) around areas of fugitive emissions, and any other measures deemed appropriate. For permitted sources, appropriate pollution control devices and/or limitations on process design and throughput will be enacted, as determined during the new source review permitting process with SJVAPCD. This will include appropriate mitigation for both criteria and TAC emissions.</p> <p>In addition, for GHG emissions the following measures will be considered and implemented to the extent feasible: implement energy efficiency improvements of pumps through design, construction, and refurbishment methods; investigate and implement opportunities for renewable energy development at the facilities subject to safety, emergency, and environmental considerations; and implement a construction worker commute strategy to minimize GHG emissions from workers commuting to the site. This may include encouraging use of carpools, vanpools, and public transportation.</p>			
Biological Resources			
<p>Mitigation Measure BIO-1: Avoid Impacts on Valley Elderberry Longhorn Beetle (VELB), Where Feasible.</p> <p>To the extent feasible, SRWA and its contractor(s) shall comply with and implement the following avoidance measures (based on the U.S. Fish and Wildlife Service's [USFWS] <i>Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle</i> [USFWS 2017]):</p> <ul style="list-style-type: none"> ▪ No less than 15 days prior to commencing construction, document the locations and condition of elderberry plants within 165 feet of construction areas, including photographing the base, stems, and canopy of those shrubs. 	<ol style="list-style-type: none"> 1. Include mitigation requirements in construction documents 2. Retain a qualified biologist. 3. Conduct required surveys; mark avoidance areas with fencing and signage; provide worker training 4. Inspect construction sites weekly 5. Limit trimming; use of herbicides, insecticides, chemicals; and mechanical weed removal 6. Implement erosion controls 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 4. During construction 5. Before and during construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ Fence and flag all areas to be avoided during construction activities, including the access road corridor and the 20-foot buffer from the dripline of the canopy of all established elderberry shrubs within 165 feet of the access road. ▪ A qualified biologist shall provide training for all contractors, work crews, and any on-site personnel on the status of the VELB, its host plant and habitat, the need to avoid damaging the elderberry shrubs, and the possible penalties for noncompliance. ▪ A qualified biologist will conduct weekly site inspections during the VELB flight season (March-July) to examine elderberry shrub condition. ▪ To the extent feasible, all activities that could occur within 165 feet of an elderberry shrub shall be conducted outside of the flight season of the VELB (March-July). ▪ Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs will be maintained for the duration of construction. ▪ If required, trimming of elderberry shrubs shall occur between November and February and shall avoid the removal of any branches or stems that are 1 inch or greater in diameter. ▪ Herbicides shall not be used within the dripline of an elderberry shrub. Insecticides shall not be used within 100 feet of an elderberry shrub. All chemicals shall be applied using a backpack sprayer or similar direct application method. ▪ Mechanical weed removal within the dripline of elderberry shrubs shall be limited to the season when VELB adults are not active (August-February) and shall avoid damaging the shrubs. 	<p>7. Revegetate with appropriate native plants</p>	<p>6. During construction 7. After construction</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ Erosion control shall be implemented and the affected area shall be revegetated with appropriate native plants. <p>Mitigation Measure BIO-2: Implement VELB Compensatory Mitigation, If Necessary. Where VELB shrub avoidance is not feasible, SRWA shall implement the following compensatory mitigation measures (based on USFWS' <i>Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle</i> [USFWS 2017]):</p> <ul style="list-style-type: none"> ▪ Impacts on VELB habitat shall be mitigated through purchase of compensatory mitigation credits from a USFWS-approved mitigation bank or through on- or off-site mitigation. If on- or off-site mitigation is planned, a Compensatory Mitigation Proposal shall be developed and shall be subject to approval by USFWS. ▪ Mitigation ratios shall be based on impacts on riparian habitat, as well as impacts to individual shrubs. Impacts on riparian habitat shall be mitigated at a ratio of 3 acres of mitigation bank credits or replacement habitat for every 1 acre of elderberry shrubs in riparian habitat that would be disturbed (a 3:1 mitigation ratio). For disturbance to elderberry shrubs in non-riparian habitat, a 1:1 ratio shall be used. ▪ Impacts on individual shrubs in riparian areas may be mitigated by the purchase of 2 credits at a USFWS-approved bank for each shrub affected (a 2:1 ratio), regardless of the presence of exit holes. Impacts on individual shrubs in non-riparian areas shall be replaced at a 1:1 ratio if exit holes have been found in any shrub on or within 165 feet of the project area. 	<ol style="list-style-type: none"> 1. Compensatory Mitigation Proposal shall be developed with and approved by USFWS. 2. Mitigation credits will be purchased by SRWA. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 	
<p>Mitigation Measure BIO-3: Where Avoidance Is Not Feasible, Transplant Elderberry Shrubs. Where VELB shrub avoidance is not feasible, SRWA or its contractor(s) shall transplant elderberry shrubs according to the following methodology (based on USFWS' <i>Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle</i> [USFWS 2017]):</p>	<ol style="list-style-type: none"> 1. Retain a qualified biologist. 2. Transplant shrubs that cannot be avoided, where feasible and appropriate. 3. Monitor transplanting activities. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ If an elderberry shrub cannot be avoided or if indirect effects will result in the death of stems or the entire shrub, then, in addition to implementation of Mitigation Measure BIO-2, the shrub shall be transplanted, if feasible. Any elderberry shrub that would be extremely difficult to move or is unlikely to survive transplanting may not be appropriate for transplanting. ▪ Elderberry shrubs shall be transplanted as close as possible to their original location. Elderberry shrubs may be relocated adjacent to the project footprint if: (1) the planting location is suitable for elderberry growth and reproduction; and (2) SRWA and its contractor(s) are able to protect the shrub and ensure that the shrub becomes reestablished. If these criteria cannot be met, the shrub may be transplanted to an appropriate USFWS-approved mitigation site. ▪ Elderberry shrubs shall be transplanted in accordance with the following guidelines: <ul style="list-style-type: none"> - A qualified biologist shall be present on site for the duration of transplanting activities to ensure compliance with avoidance and minimization measures and other conservation measures identified in Mitigation Measures BIO-1 and BIO-2 (described above), as well as in the USFWS' framework document (USFWS 2017). - Exit-hole surveys shall be completed immediately before transplanting. The number of exit holes found, the global positioning system (GPS) location of the plant to be relocated, and the GPS location of the site where the plant is transplanted shall be reported to USFWS and California Natural Diversity Database (CNDDDB). - Elderberry shrubs shall be transplanted when the shrubs are dormant (November through the first 2 weeks in February) and after they have lost their leaves. - Transplanting shall follow the most current version of the Tree Care Industry Association's American National Standards 	<p>4. Conduct exit hole surveys immediately before transplanting.</p>	<p>4. Before construction</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Institute (ANSI) A300 (Part 6) guidelines for transplanting (Tree Care Industry Association 2017).</p> <p>Mitigation Measure BIO-4: Schedule Air Purging to Avoid or Minimize Increased TSS or Sediment Deposition.</p> <p>To the extent feasible, SRWA and its contractor(s) shall limit air purging of the infiltration gallery to the work period between April 1 and September 30 to avoid increased total suspended solids (TSS) and sediment deposition during peak salmonid spawning migration and sensitive development stages. If air purging must be conducted outside the period between April 1 and September 30, SRWA shall consult with the National Marine Fisheries Service (NMFS), USFWS, and California Department of Fish and Wildlife (CDFW) to identify a suitable work period, based on the hydrologic and biological conditions for the year of testing, that will not result in substantial increases in TSS and sediment deposition to avoid adverse effects on special-status fish.</p>	<p>1. Work with NMFS, USFWS, and CDFW to schedule air purging during a suitable period.</p>	<p>1. Before construction</p>	
<p>Mitigation Measure BIO-5: Minimize Impacts on Nesting Birds with Site Assessments, Surveys, and Avoidance Measures.</p> <p>If vegetation clearing or ground-disturbing activities commence between February 15 and August 31, SRWA or its contractor(s) shall require that a qualified biologist conduct a nesting bird survey within 2 weeks prior to the start of work. If a lapse in project-related work of 2 weeks or longer occurs during this period, another focused survey shall be conducted before project work can be reinitiated.</p> <p>If nesting birds are found, a buffer shall be established around the nest and maintained until the young have fledged. Appropriate buffer widths are 300 feet for non-listed raptors and special-status passerines and 100 feet for non-listed passerines, unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. Work shall not commence within the buffer until fledglings are fully mobile and no longer reliant upon the nest or parental care for survival.</p>	<p>1. Retain a qualified biologist</p> <p>2. Conduct a nesting bird survey within 2 weeks before construction.</p> <p>3. If a lapse of 2 weeks or longer occurs during construction, conduct another focused survey before construction is reinitiated.</p> <p>4. If birds are found, establish an appropriate buffer.</p> <p>5. Monitor nests to determine when construction activities can begin within the buffer.</p>	<p>1. Before construction</p> <p>2. Before construction</p> <p>3. During construction</p> <p>4. Before and during construction</p> <p>5. During construction</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Mitigation Measure BIO-6: Conduct Nesting Raptor Surveys and Establish Buffers to Avoid or Minimize Impacts on Swainson's Hawk and White-tailed Kite.</p> <p>If construction occurs between February 1 and August 31, SRWA or its contractor(s) shall require that a qualified biologist conduct surveys no more than 10 days before the start of construction for Swainson's Hawk and White-tailed Kite in accordance with the recommended timing and methodology developed by the Swainson's Hawk Technical Advisory Committee (2000 or most recent). Surveys will cover a minimum ½-mile radius around the construction area. If nesting Swainson's Hawk or White-tailed Kite are detected, buffers shall be established around active nests that are sufficient to ensure that breeding is not likely to be disrupted or adversely affected by construction. Buffers around active nests will be ½ mile unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. Factors to be considered when determining buffer size include the presence of natural buffers provided by vegetation or topography, nest height, locations of foraging territory, and baseline levels of noise and human activity. Buffers shall be maintained until a qualified biologist has determined that the young have fledged and are no longer reliant on the nest or parental care for survival.</p>	<ol style="list-style-type: none"> 1. Retain a qualified biologist 2. Conduct surveys for Swainson's Hawk and White-tailed Kite within a minimum ½ mile radius around construction areas. 3. Establish buffers around active nests. 4. Monitor nests to determine when construction activities can begin within the buffer. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 4. During construction 	
<p>Mitigation Measure BIO-7: Conduct Preconstruction Surveys for Burrowing Owls and Avoid or Minimize Impacts.</p> <p>SRWA or its contractor(s) shall require that a qualified biologist conduct a preconstruction survey in all accessible areas of suitable Burrowing Owl habitat within 500 feet of construction activity. Surveys shall be conducted within 14 days before the start of construction activity in accordance with protocols established in the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game [CDFG] 2012 or current version). If no Burrowing Owls or signs of Burrowing Owls are detected during the survey, no further mitigation shall be required. If a preconstruction survey detects occupied burrows, a buffer shall be established, within which no ground-disturbing or vegetation removal</p>	<ol style="list-style-type: none"> 1. Retain a qualified biologist 2. Conduct surveys for Burrowing Owls and burrows. 3. Establish buffers around occupied burrows. 4. Monitor burrows to determine when construction activities can begin within the buffer. 5. If burrows are to be relocated, prepare and implement a relocation plan with CDFW approval that includes a 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 4. During construction 5. Before and during construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>activity is permissible. In accordance with guidance provided by CDFW, buffers around occupied burrows shall be a minimum of 656 feet (200 meters) during the breeding season (February 1 through August 31), and 160 feet (100 meters) during the non-breeding season, unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on the Burrowing Owl burrow.</p> <p>This protected area will remain in effect until the end of the Burrowing Owl nesting season (February 1 through August 31) or until CDFW approves a passive relocation plan. Burrowing Owls will be relocated from burrows only during the non-breeding season.</p> <p>If occupied burrows are to be relocated, a passive relocation plan shall be developed by a qualified biologist and approved by CDFW prior to implementation. SRWA shall enhance or create burrows in appropriate habitat at a 1:1 ratio (burrows destroyed to burrows enhanced or created) one week prior to implementation of passive relocation techniques. If burrowing owl habitat enhancement or creation takes place, SRWA shall develop and implement a monitoring and management plan to assess the effectiveness of the mitigation. The plan shall be subject to the approval of CDFW.</p>	<p>monitoring and management plan.</p>		
<p>Mitigation Measure BIO-8: Conduct Preconstruction Surveys, Establish Buffers around Nests, and Implement Measures to Avoid or Minimize Impacts on Western Pond Turtle (WPT).</p> <p>SRWA or its contractor(s) shall require that preconstruction surveys for WPT are conducted by a qualified biologist 14 days before and 24 hours before the start of construction activities in areas where suitable habitat exists (i.e., riparian areas, freshwater emergent wetlands, and adjacent uplands). If WPTs or their nests are observed during preconstruction surveys, the following measures shall be implemented.</p> <p>WPTs found within the construction area will be allowed to leave on their own volition or will be relocated by a qualified biologist out of harm's way to suitable habitat immediately upstream or downstream of the project site. To be qualified to move turtles, the biologist shall</p>	<ol style="list-style-type: none"> 1. Retain a qualified biologist 2. Conduct surveys for WPT 14 days before and 24 hours before construction activities begin in areas of suitable habitat. 3. Allow WPTs to leave the construction area or relocate WPTs to suitable habitat. 4. Establish buffers around WPT nests. 5. Monitor nests to determine when construction activities can begin within the buffer. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. During construction 4. Before or during construction 5. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>possess a valid memorandum of understanding from CDFW authorizing the capture and relocation of turtles.</p> <p>If a WPT nest is identified in the work area during preconstruction surveys, a 50-foot no-disturbance buffer shall be established between the nest and any areas of potential disturbance unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on the nest. Buffers will be clearly marked with temporary fencing. Construction will not be allowed to commence in the exclusion area until hatchlings have emerged from the nest or the nest is deemed inactive by a qualified biologist.</p>			
<p>Mitigation Measure BIO-9: Conduct Preconstruction Surveys and Implement Measures to Avoid or Minimize Impacts on Special Status Bats.</p> <p>SRWA or its contractor(s) shall require that a preconstruction survey is conducted by a qualified bat biologist between May 1 and July 15 to maximize detection of bats during maternity season. The survey shall focus on the Geer Road Bridge and consist of a daytime pedestrian survey to inspect the bridge for indications of bat use (e.g., occupancy, guano, staining, smells, or sounds) and a night roost/emergence survey using night vision equipment and/or infrared-sensitive optical or video equipment. Suitable large trees in the surrounding area will also be inspected for evidence of bat use. Bioacoustic detectors (bat detectors) may be deployed to maximize detection.</p> <p>If the bat biologist determines that the bridge is being used, or is likely to be used, as a bat maternity roost and may be affected by construction, then specific measures will be developed and implemented to minimize impacts on the roost. Such measures may include minimizing construction activity (including truck traffic) under the bridge during the maternity season (May 1-July 15), excluding bats from the roost site prior to the maternity season during the year(s) of construction, or other measures developed by a qualified bat biologist that will minimize the disturbance. If bat exclusion is feasible for the Geer Road Bridge, a plan detailing the specifications for exclusion</p>	<ol style="list-style-type: none"> 1. Retain a qualified biologist 2. Conduct surveys for bats during maternity season. 3. If bats are using the construction area, develop and implement measures with CDFW approval to minimize impacts on roosts or exclude bats from roost sites. 4. Monitor roosts to determine when construction activities can begin within the buffer. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 4. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>measures shall be developed by a qualified bat biologist and submitted to CDFW for approval.</p> <p>Mitigation Measure BIO-10: Implement Revegetation in Riparian Habitat and Sensitive Natural Communities Disturbed during Construction.</p> <p>SRWA or its contractor(s) shall require that, upon completion of construction, disturbed soils within areas of native vegetation shall be revegetated with site-appropriate native species to limit subsequent encroachment of non-native weeds. Any plants of native woody species of 4 inches dbh or greater that are damaged or removed as a result of construction activity shall be replaced at a 1:1 ratio; this ratio will increase to 3:1 for nesting trees and native trees of 24 inches dbh and greater. Replaced woody plant species shall be maintained and monitored to ensure a minimum of 65 percent survival of woody plantings after 3 years.</p>	<ol style="list-style-type: none"> 1. Develop a revegetation plan for riparian habitat. 2. Revegetate following construction. 3. Monitor the site to determine success, and replace plants as needed. 	<ol style="list-style-type: none"> 1. Before construction 2. After construction 3. After construction 	
<p>Cultural Resources</p>			
<p>Mitigation Measure CUL-1: Conduct Archaeological Survey of the Proposed Water Treatment Plant and Offset Water Facility Locations.</p> <p>Prior to completing the design for the proposed WTP and identifying the locations of offset water facilities and initiating construction, the WTP location, access roads, staging areas, connecting water transmission line routes, and offset water facility locations shall be surveyed for archaeological resources. If an archaeological resource is identified and appears to be more than a superficial scatter of surface materials, and the resource cannot be avoided by project redesign, the resource shall be evaluated for National Register of Historic Places (NRHP)/ California Register of Historical Resources (CRHR) eligibility. Resource evaluation shall be conducted by individuals who meet the U.S. Secretary of the Interior's professional standards in archaeology. If any of the resource meets the eligibility criteria identified in 36 Code of Federal Regulations (CFR) Part 60.4, Public Resources Code (Pub. Res. Code) Section 5024.1, or State California Environmental Quality Act (CEQA) Guidelines Section</p>	<ol style="list-style-type: none"> 1. Retain a qualified archaeologist 2. Conduct archaeological surveys of the WTP site and offset water facility sites. 3. If resources are identified and cannot be avoided, evaluate for NRHP/CRHR eligibility. 4. Develop and implement mitigation measures for any eligible resources. 	<ol style="list-style-type: none"> 1. Before construction 2. Before construction 3. Before construction 4. Before construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>21083.2(g), SRWA will develop and implement mitigation measures in accordance with State CEQA Guidelines Section 15126.4(b).</p> <p>Mitigation Measure CUL-2: Suspend Construction Immediately if Cultural Resources Are Discovered, Evaluate All Identified Cultural Resources for CRHR Eligibility, and Implement Appropriate Mitigation Measures for Eligible Resources.</p> <p>Not all cultural resources are visible on the ground surface. If any cultural resources, including structural features, unusual amounts of bone or shell, flaked or ground stone artifacts, historic-era artifacts (e.g., glass, ceramics, metal objects, bricks), human remains, or architectural remains, are encountered during proposed project construction activities, work shall be suspended immediately at the location of the find and within a radius of at least 50 feet and SRWA will be contacted. SRWA will engage a qualified archaeologist to evaluate the nature of the finds.</p> <p>All archaeological resources uncovered during construction within the proposed project area of potential effect (APE) shall be evaluated for eligibility for inclusion in the NRHP/CRHR. Resource evaluations shall be conducted by individuals who meet the U.S. Secretary of the Interior's professional standards. If any of the resources meet the eligibility criteria identified in 36 CFR Part 60.4, Pub. Res. Code Section 5024.1, or State CEQA Guidelines Section 21083.2(g), SRWA will develop and implement mitigation measures in accordance with State CEQA Guidelines Section 15126.4(b) before construction resumes.</p> <p>If the discovered resource is identified as eligible for listing in the NRHP/CRHR and it would be rendered ineligible by the proposed project construction, additional mitigation measures shall be implemented. Mitigation measures for archaeological resources may include (but are not limited to) avoidance; incorporation of sites within parks, greenspace, or other open space; capping the site; deeding the site into a permanent conservation easement; or data recovery excavation. Mitigation measures for archaeological resources shall be developed in consultation with responsible agencies and, as appropriate, interested parties such as Native American tribes. Native American consultation is</p>	<ol style="list-style-type: none"> 1. Retain a qualified archaeologist 2. Halt construction activities in the event any cultural resources are encountered. 3. If cultural resources are uncovered, retain a qualified individual who meets the U.S. Secretary of the Interior's standards to conduct resource evaluations. 4. If uncovered resources meet eligibility criteria, implement mitigation measures consistent with State CEQA Guidelines Section 15126.4(b). 5. If cultural resources are uncovered, mitigation measures will be developed in consultation with SRWA and Native American tribes before construction resumes. 	<ol style="list-style-type: none"> 1. Before construction 2. During construction 3. During construction 4. During construction 5. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>required if an archaeological site is determined to be a tribal cultural resource. Implementation of any SRWA-approved mitigation is required before resuming any construction activities with the potential to affect identified eligible resources at the site.</p> <p>Mitigation Measure CUL-3: Suspend Construction Immediately if Paleontological Resources Are Discovered, Evaluate the Significance of the Resources, and Implement Appropriate Mitigation Measures as Necessary.</p> <p>Paleontological resources are not necessarily visible on the ground surface. If any items of paleontological interest are discovered during construction, work shall be suspended immediately within 50 feet of the discovery site, or to the extent needed to protect the site, and SRWA shall be notified. SRWA will retain a qualified paleontologist to examine the discovery.</p> <p>Any discovery of paleontological resources during construction shall be evaluated by the qualified paleontologist. If it is determined that the proposed project could damage a unique paleontological resource, mitigation shall be implemented in accordance with Pub. Res. Code Section 21083.2 and State CEQA Guidelines Section 15126.4. If avoidance is not feasible, the paleontologist shall develop a treatment plan in consultation with SRWA. Work shall not be resumed until authorization is received from SRWA and any additional mitigation directed by SRWA has been implemented.</p>	<ol style="list-style-type: none"> 1. In the event a paleontological item is discovered, halt construction activities within 50 feet of discovery site, or to the extent needed to protect the site, and notify SRWA. 2. Ensure that a qualified paleontologist evaluates the discovery. 3. If the proposed project is determined to cause damage to a unique paleontological resource, mitigation shall be implemented. 4. Paleontologist shall develop a treatment plan if avoidance is not feasible. 5. Authorization will be required from SRWA before work resumes. 	<ol style="list-style-type: none"> 1. During construction 2. During construction 3. During construction 4. During construction 5. During construction 	
<p>Mitigation Measure CUL-4: Halt Construction Immediately if Human Remains Are Discovered and Implement Applicable Provisions of the California Health and Safety Code.</p> <p>If human remains are discovered during construction activities, the requirements of Section 7050.5 of the California Health and Safety Code shall be followed. Potentially damaging excavation shall halt on the proposed project site within a minimum radius of 100 feet of the remains and the County Coroner shall be notified. The Coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health and</p>	<ol style="list-style-type: none"> 1. Retain a qualified archaeologist 2. In the event that human remains are encountered, halt work and contact the County Coroner. 3. If discovered remains are those of a Native American, he or she must contact the NAHC by phone within 24 hours of making that determination. 	<ol style="list-style-type: none"> 1. Before construction 2. During preparation of plans and specifications 3. During construction 4. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Safety Code Section 7050.5[b]). If the Coroner determines that the remains are those of a Native American, he or she must contact the NAHC by phone within 24 hours of making that determination (Health and Safety Code Section 7050[c]). In accordance with the provisions of Pub. Res. Code Section 5097.98, the Native American Heritage Commission (NAHC) shall identify a Most Likely Descendent (MLD). The MLD designated by the NAHC shall have at least 48 hours to inspect the site and propose treatment and disposition of the remains and any associated grave goods. SRWA or its designee shall work with the MLD to ensure that the remains are removed to a protected location and treated with dignity and respect.</p>	<p>4. NAHC shall identify a MLD, upon which this person shall be notified and given at least 48 hours to inspect the site and propose treatment and disposition of the remains and any associated grave goods.</p> <p>5. Cooperation with MLD is required.</p>	<p>5. During construction</p>	
<p>Geology, Soils, Seismicity, and Mineral Resources</p>			
<p>None required</p>			
<p>Greenhouse Gas Emissions and Energy Use</p>			
<p>Mitigation Measure AQ-1: Prepare Quantitative Analysis of Construction-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions. See full description above</p>	<p>1. See above</p>	<p>1. See above</p>	
<p>Mitigation Measure AQ-2. Prepare Quantitative Analysis of Operation-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions. See full description above</p>	<p>1. See above</p>	<p>1. See above</p>	
<p>Hazards and Hazardous Materials</p>			
<p>Mitigation Measure HAZ-1. Prepare and Implement a Hazardous Materials and Waste Management Plan for Construction and Operation. SRWA or its contractor(s) shall prepare and implement a Hazardous Materials and Waste Management Plan (HMWMP). The HMWMP shall specify hazardous materials handling and spill response procedures applicable to construction activities and to operation of the project sites, including the following information:</p>	<p>1. Develop a HMWMP that contains the required information and protocols. 2. Implement the HMWMP.</p>	<p>1. Before construction 2. During construction and operation</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ A list of hazardous materials present on site during construction and operation, to be updated as needed along with product Safety Data Sheets and other information regarding storage, application, transportation, and disposal requirements; ▪ A Hazardous Materials Communication (i.e., HAZCOM) Plan; ▪ Assignments and responsibilities of proposed project hazardous materials handling and spill response roles; ▪ Standards for any secondary containment and countermeasures that will be required for any hazardous materials spill; ▪ Spill response procedures based on product and quantity, which shall include materials to be used, location of such materials within the proposed project area, and disposal protocols; and ▪ Protocols for the management, testing, reporting, and disposal of potentially contaminated soils or groundwater observed or discovered during construction, which will address possible termination of work within the area of suspected contamination, sampling by an Occupational Safety and Health Administration (OSHA)-trained individual, and testing at a certified laboratory. 			
<p>Mitigation Measure HYD/WQ-1. Construct Structures Outside of the FEMA 100-Year Flood Hazard Area or Conduct Floodflow Study and Implement Measures to Reduce the Project's Effects on Flood Flows. See full description below</p>	<p>1. See below</p>	<p>1. See below</p>	
<p>Mitigation Measure TRANS-1. Prepare and Implement a Construction Traffic Management Plan. See full description below</p>	<p>1. See below</p>	<p>1. See below</p>	
Hydrology and Water Quality			
<p>Mitigation Measure HYD/WQ-1. Construct Structures Outside of the FEMA 100-Year Flood Hazard Area or Conduct Floodflow Study and Implement Measures to Reduce the Project's Effects on Flood Flows. Prior to final design of the WTP, SRWA or its contractor(s) shall determine if proposed structures associated with the WTP would be located within the 100-year flood hazard area mapped by the Federal</p>	<p>1. Determine if proposed WTP structures would be located within the FEMA 100-year flood hazard area.</p>	<p>1. During final design 2. During final design</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Emergency Management Agency (FEMA). If proposed structures would be located within the flood hazard area, SRWA or its contractor(s) shall modify the design, if feasible, to construct such structures outside of the flood hazard area.</p> <p>If it is not feasible to construct such structures outside of the flood hazard area, then SRWA or its contractor(s) shall conduct or commission a floodflow study to determine the effects of WTP structures on water surface elevations and flow velocities in the project area and at adjacent properties. This study may be part of the permit application/coordination process with the Central Valley Flood Protection Board (CVFPB). If the floodflow study determines that the proposed project would increase average water surface elevations at the project site or adjacent properties, SRWA or its contractor shall develop and install flood protection infrastructure to protect existing structures and assets on adjacent properties from inundation during the 100-year flood event. Such infrastructure may include floodwalls, weirs, levees, or similar works.</p>	<ol style="list-style-type: none"> 2. If so, modify the design to remove structures from the flood hazard area, if feasible. 3. If design modification is not feasible, conduct a floodflow study. 4. If the project would increase average water surface elevations in the flood hazard area, develop and install flood protection infrastructure. 	<ol style="list-style-type: none"> 3. During final design 4. During final design 	
Land Use and Planning			
None required			
Noise			
<p>Mitigation Measure NOI-1. Limit Nighttime Construction Noise. SRWA and its contractor(s) shall ensure that no construction activities are conducted in close proximity to a residence outside the hours of 7:00 a.m.–7:00 p.m. on weekdays and 9:00 a.m.–7:00 p.m. on Saturdays, Sundays, and state or federal holidays unless the project has received a variance or special permit, following procedures outlined in the applicable noise ordinance, to operate outside of these hours.</p>			
<p>Mitigation Measure NOI-2. Prepare Detailed Noise Analysis for Proposed Project Operations. As the proposed project is further designed to a level where operational noise levels can be estimated, and prior to commencing operation, SRWA and/or its contractor(s) shall prepare a noise analysis for proposed project operation. The noise study will identify appropriate</p>	<ol style="list-style-type: none"> 1. Include mitigation requirements in construction documents. 2. Confirm that construction is taking place within identified hours. 	<ol style="list-style-type: none"> 1. During preparation of plans and specifications. 2. During construction. 	
<p>Mitigation Measure NOI-2. Prepare Detailed Noise Analysis for Proposed Project Operations. As the proposed project is further designed to a level where operational noise levels can be estimated, and prior to commencing operation, SRWA and/or its contractor(s) shall prepare a noise analysis for proposed project operation. The noise study will identify appropriate</p>	<ol style="list-style-type: none"> 1. Conduct a noise study for proposed project operations. 2. Design the project to reduce noise levels below the required limits. 	<ol style="list-style-type: none"> 1. During final design 2. During final design 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>measures that can be implemented to reduce noise levels to the relevant Community Noise Equivalent Level (CNEL) exterior noise level required by the applicable jurisdictions (Table 3.11-5 for all project features except those located in Ceres, and Table 3.11-8 for the Ceres terminal tank and possibly offset water facilities), or a 3-decibel (dB) increase if existing levels are above the ambient noise level at the property line. If the analysis demonstrates that significant operational noise impacts are likely to occur, measures shall be implemented to achieve the required noise reduction. Example measures may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> ▪ locating stationary equipment as far as practical from noise-sensitive land uses; ▪ using electrified or otherwise quieter equipment when practical; ▪ using sound-control devices on equipment that are more effective than devices originally provided on the equipment; ▪ installing permanent barriers between noise sources and noise-sensitive land uses, or taking advantage of existing barrier features (terrain and structures) to block sound transmission; ▪ limiting operations and maintenance-related trucking to specific routes, times, or speeds that minimize adverse effects on sensitive land uses such as schools and residential areas; and ▪ using sound attenuation enclosures designed to achieve noise reductions sufficient to comply with City and County standards for noise-generating elements of the operation, when no other feasible control method is available. 	<p>3. Where operations will remain above required limits, implement noise-reducing measures as indicated.</p>	<p>3. During final design</p>	
<p>Mitigation Measure NOI-3. Implement Vibration Reduction Measures. SRWA and/or its contractor(s) shall implement the following vibration-reducing measures during all construction activities, unless specified below, to minimize impacts on nearby sensitive receptors:</p> <ul style="list-style-type: none"> ▪ Ensure proper tuning of vibration-causing equipment. ▪ Use vibration-damping devices to the extent feasible. 	<p>1. Include mitigation requirements in construction documents. 2. Confirm that contractor(s) implement identified measures.</p>	<p>1. During preparation of plans and specifications 2. During construction</p>	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ Limit use of vibratory equipment to the extent feasible and do not overlap use of multiple pieces of vibratory equipment. Where possible, maintain a distance of 15 feet or more from buildings. ▪ Require contractor(s) to ensure that impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for construction be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, require use of an exhaust muffler on the compressed air exhaust; this muffler can lower noise levels from the exhaust by up to about 10 A-weighted decibels (dBA). External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible. ▪ Use electric stationary equipment (e.g., generators) where feasible. ▪ Implement noise and/or vibration shields, such as sound aprons or temporary enclosures with sound-absorbing material, on or around construction equipment, particularly if construction activities are conducted after 7:00 p.m. For all construction activities occurring within 60 feet of residences at any time of day, install a temporary noise and vibration barrier between the project site and the nearest sensitive receptors. Following the completion of construction activities within that distance, the barrier will be removed. 			
<p>Mitigation Measure NOI-4. Employ Noise-reducing Construction and Maintenance Practices.</p> <p>The following measures shall be implemented by SRWA, the Cities, and/or their contractor(s) to reduce adverse effects from construction and maintenance noise:</p> <ul style="list-style-type: none"> ▪ locating stationary equipment as far as practical from noise-sensitive land uses, ▪ using electrified or otherwise quieter equipment when practical, ▪ using sound-control devices on equipment that are more effective than devices originally provided on the equipment, 	<ol style="list-style-type: none"> 1. Include mitigation requirements in construction documents. 2. Confirm that contractor(s) implement identified measures. 	<ol style="list-style-type: none"> 1. During preparation of plans and specifications 2. During construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ using noise-reducing enclosures around noise-generating equipment, ▪ installing temporary barriers between noise sources and noise-sensitive land uses, or taking advantage of existing barrier features (terrain and structures) to block sound transmission, and ▪ limiting construction-related trucking to specific routes, times, and speeds that minimize adverse effects to sensitive receptors. 			
Population and Housing			
<p>Mitigation Measure TRANS-1. Prepare and Implement a Construction Traffic Management Plan. See full description below</p>	1. See below	1. See below	
Public Services			
None required			
Recreation			
<p>Mitigation Measure REC-1. Coordinate Construction Activities with Stanislaus County Parks and Recreation Department. SRWA or its contractor(s) shall coordinate construction activities with the Stanislaus County Parks and Recreation Department to ensure that reasonable access is maintained to the park to the extent practicable. SRWA or its contractor(s) shall also consult with the County to identify any potential conflicts with planned improvements/enhancements at Fox Grove Regional Park (Stanislaus County 2017). If improvements are planned during the construction period for the proposed project, SRWA and the County shall coordinate their schedules such that project-related construction traffic would not prevent or unreasonably restrict the progress of the County improvements.</p>	<ol style="list-style-type: none"> 1. Coordinate with Stanislaus County Parks and Recreation Department regarding scheduling of construction activities. 2. Adjust schedules as necessary to avoid interfering with planned projects at Fox Grove Regional Park. 	<ol style="list-style-type: none"> 1. Before construction 2. Before and during construction 	
<p>Mitigation Measure TRANS-1. Prepare and Implement a Construction Traffic Management Plan. See full description below</p>	1. See below	1. See below	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<p>Transportation and Traffic</p> <p>Mitigation Measure TRANS-1. Prepare and Implement a Construction Traffic Management Plan.</p> <p>SRWA shall require that the contractor(s) prepare and implement a construction traffic management plan to manage traffic flow during construction, reduce potential interference with local emergency response plans, reduce potential traffic safety hazards, and ensure adequate access for emergency responders. Development and implementation of this plan shall be coordinated with Stanislaus County, the City of Ceres, the City of Turlock, and the City of Hughson. SRWA, the Cities, and/or the construction contractor(s) shall ensure that the plan is implemented during construction. The plan shall include, but will not be limited to, the following measures:</p> <ul style="list-style-type: none"> ▪ Identify construction truck haul routes and timing to limit conflicts between truck and automobile traffic on nearby roads. The identified routes will be designed to minimize impacts on vehicular and pedestrian traffic, circulation, and safety. ▪ Implement comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, warning and detour signs (if required), lane closure procedures (if required), and traffic cones for drivers indicating potential road hazards or detours (if required). ▪ Coordinate construction activities to ensure that one lane of traffic in each direction remains open at all times on East Hatch Road and Berkeley Road, unless flaggers or temporary traffic controls are in place, to provide emergency access. ▪ Evaluate the need to provide flaggers or temporary traffic control on East Hatch Road and Berkeley Road or at key intersections along the construction route during all or some portion of the construction period. ▪ Notify affected adjacent property owners and public safety personnel regarding timing of major deliveries, detours, and lane closures. 	<ol style="list-style-type: none"> 1. SRWA will ensure that the Construction Traffic Management Plan is implemented during construction. 2. Identified haul routes will be recorded in the contract documents. 3. Implement traffic control measures. 4. Evaluate need for traffic control flaggers. 5. Notify adjacent property owners and public safety personnel regarding timing of major deliveries, detours, and lane closures. 6. Develop process for responding and tracking issues related to construction activity. 7. Post 24-hour contact information for the traffic manager on site. 8. Document road pavement conditions for all routes used for construction. 	<ol style="list-style-type: none"> 1. During construction 2. During construction 3. During construction 4. Before and during construction 5. Before construction 6. Before construction 7. Before construction 8. Before and after construction 	

Mitigation Measure	Monitoring and Reporting Action	Monitoring Schedule	Completion Date and Initials
<ul style="list-style-type: none"> ▪ Develop a process for responding to and tracking issues pertaining to construction activity impacts on traffic, including identification of an on-site traffic manager. Post 24-hour contact information for the traffic manager on all construction sites. ▪ Document road pavement conditions for all routes that would be used by construction vehicles before and after project construction. Make provisions to monitor the condition of roads used for haul routes so that any damage or debris attributable to haul trucks can be identified and corrected. Roads damaged by construction vehicles shall be repaired to their preconstruction condition. 			
<i>Tribal Cultural Resources</i>			
<p>Mitigation Measure CUL-2: Suspend Construction Immediately if Cultural Resources Are Discovered, Evaluate All Identified Cultural Resources for CRHR Eligibility, and Implement Appropriate Mitigation Measures for Eligible Resources. See full description above</p>	1. See above	1. See above	
<p>Mitigation Measure CUL-4: Halt Construction Immediately if Human Remains Are Discovered and Implement Applicable Provisions of the California Health and Safety Code. See full description above</p>	1. See above	1. See above	
<i>Utilities and Service Systems</i>			
None required			

Tables Cited in MMRP**Table 3.3-2. Attainment Status of the San Joaquin Valley Air Basin (within Stanislaus County) for the State and Federal Ambient Air Quality Standards**

Contaminant	Averaging Time	Concentration	State Standards Attainment Status ¹	Federal Standards Attainment Status ²
Ozone (O ₃)	1-hour	0.09 ppm	N (Severe)	See footnote 3
	8-hour	0.070 ppm	N	
		0.075 ppm		N (Extreme)
Carbon Monoxide (CO)	1-hour	20 ppm	U/A	
		35 ppm		U/A
	8-hour	9.0 ppm	U/A	U/A
Nitrogen Dioxide (NO ₂)	1-hour	0.18 ppm	A	
		0.100 ppm ⁵		U/A
	Annual arithmetic mean	0.030 ppm	A	
		0.053 ppm		U/A
Sulfur Dioxide (SO ₂)	1-hour	0.25 ppm	A	
		0.075 ppm		U/A
	24-hour	0.04 ppm	A	
		0.14 ppm		U/A
	Annual arithmetic mean	0.030 ppm		U/A
Particulate Matter (PM ₁₀)	24-hour	50 µg/m ³	N	
		150 µg/m ³		A
	Annual arithmetic mean	20 µg/m ³	N	
Fine Particulate Matter (PM _{2.5})	24-hour	35 µg/m ³		N (Moderate)
	Annual arithmetic mean	12 µg/m ³	N	N (Moderate)
Sulfates	24-hour	25 µg/m ³	A	
Lead (Pb) ⁶	30-day average	1.5 µg/m ³	A	
Hydrogen Sulfide (H ₂ S)	1-hour	0.03 ppm	U	
Vinyl Chloride ⁶ (chloroethene)	24-hour	0.010 ppm	A	

Contaminant	Averaging Time	Concentration	State Standards Attainment Status ¹	Federal Standards Attainment Status ²
Visibility-Reducing Particles	8-hour (10:00 to 18:00 PST)	See footnote 4	U	

A – attainment ppm – parts per million km – kilometer
N – nonattainment µg/m³ – micrograms per cubic meter PM₁₀ – particulate matter of aerodynamic radius of 10 microns or less
U – unclassified PST – Pacific Standard Time PM_{2.5} – particulate matter of aerodynamic radius of 2.5 microns or less

Notes:

- ¹ California standards for O₃, CO (except Lake Tahoe), SO₂ (1-hour and 24-hour averages), NO₂, PM₁₀, and visibility-reducing particles are values that are not to be exceeded. The standards for sulfates, Lake Tahoe CO, Pb, H₂S, and vinyl chloride are not to be equaled or exceeded. If the standard is for a 1-hour, 8-hour, or 24-hour average (i.e., all standards except for Pb and the PM_{2.5} and PM₁₀ annual standards), some measurements may be excluded. In particular, measurements are excluded that the California Air Resources Board (CARB) determines would occur an average of less than once per year.
- ² National standards shown are the "primary standards" designed to protect public health. National air quality standards are set by the U.S. Environmental Protection Agency (USEPA) at levels determined to be protective of public health with an adequate margin of safety. National standards other than for O₃, particulates, and those based on annual averages are not to be exceeded more than once per year. The 1-hour O₃ standard is attained if, during the most recent 3-year period, the average number of days per year with maximum hourly concentrations above the standard is less than or equal to one. The 8-hour O₃ standard is attained when the 3-year average of the fourth highest daily concentrations is 0.075 ppm (75 parts per billion) or less. The 24-hour PM₁₀ standard is attained when the 3-year average of the ninety-ninth percentile of monitored concentrations is less than 150 µg/m³. The 24-hour PM_{2.5} standard is attained when the 3-year average of ninety-eighth percentiles is less than 35 µg/m³. Except for the national particulate standards, annual standards are met if the annual average falls below the standard at every site. The national annual particulate standard for PM₁₀ is met if the 3-year average falls below the standard at every site. The annual PM_{2.5} standard is met by spatially averaging annual averages across officially designated clusters of sites and then determining whether the 3-year average of these annual averages falls below the standard.
- ³ The national 1-hour O₃ standard was revoked by USEPA on June 15, 2005. On October 1, 2015, the national 8-hour ozone primary and secondary standards were lowered from 0.075 to 0.070 ppm. However, the attainment status has not yet been updated based on this revised 8-hour standard. It is likely that the region will remain in nonattainment.
- ⁴ Statewide Visibility-Reducing Particle Standard (except Lake Tahoe Air Basin): Particles in sufficient amount to produce an extinction coefficient of 0.23 per km when the relative humidity is less than 70 percent. This standard is intended to limit the frequency and severity of visibility impairment resulting from regional haze and is equivalent to a 10-mile nominal visual range.
- ⁵ To attain this standard, the 3-year average of the ninety-eighth percentile of the daily maximum 1-hour average at each monitoring station within an area must not exceed 0.100 ppm (effective January 22, 2010).
- ⁶ CARB has identified Pb and vinyl chloride as toxic air contaminants with no threshold level of exposure below which there are no adverse health effects determined. Although the vinyl chloride CAAQS remains in force, current regulatory efforts are under CARB's Air Toxics Program.

Sources: SJVAPCD 2017, CARB 2017, USEPA 2017

Table 3.3-3. Applicable SJVAPCD Construction and Operational Significance Thresholds under CEQA

Pollutant	Construction Emissions Threshold (tons/year)	Operational Permitted Activities (tons/year)	Operational Non-permitted activities (tons/year)
Carbon monoxide (CO)	100	100	100
Oxides of nitrogen (NO _x ; ozone precursor)	10	10	10
Reactive organic gases (ROG; ozone precursor)	10	10	10
Sulfur oxides (SO _x)	27	27	27
Particulate matter (PM ₁₀)	15	15	15
Fine particulate matter (PM _{2.5})	15	15	15

Source: SJVAPCD 2015

Table 3.11-5. Maximum Allowable Noise Exposure from Stationary Noise Sources

	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Hourly L_{eq} , dBA	55	45
Maximum level, dBA	75	65

Notes: dBA = A-weighted decibel; L_{eq} = equivalent noise level

Each of the noise level standards specified in [General Plan] Table IV-24 [as reproduced here] shall be reduced by five (5) dBA for pure tone noises, noise consisting primarily of speech or music, or for recurring impulsive noises. The standards in this table should be applied at a residential or other noise-sensitive land use and not on the property of a noise-generating land use. Where measured ambient noise levels exceed the standards, the standards shall be increased to the ambient levels.

Source: Stanislaus County 2016, Table IV-24

Table 3.11-8. Noise Level Performance Standards for New Projects Affected by or Including Non-Transportation Sources

Noise Level Descriptor	Daytime (7a.m. to 10 p.m.)	Nighttime (10 p.m. to 7 a.m.)
Hourly L_{eq} , dB	55	45
Maximum level, dB	75	65

Note: Each of the noise levels specified above shall be lowered by five dB for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises. These noise level standards do not apply to residential units established in conjunction with industrial or commercial uses (e.g., caretaker dwellings).

Source: City of Ceres 1997, Table 7-1.

Notice of Determination

Appendix D

To:

[X] Office of Planning and Research
U.S. Mail: P.O. Box 3044
Sacramento, CA 95812-3044
Street Address: 1400 Tenth St., Rm 113
Sacramento, CA 95814

[X] County Clerk
County of: Stanislaus
Address: 1021 I Street, Suite 101
Modesto, CA 95354

From:

Public Agency: SRWA
Address: 156 South Broadway, Suite 270
Turlock, CA 95307
Contact: Robert Granberg
Phone: (209) 538-5758

Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2017022077

Project Title: Surface Water Supply Project

Project Applicant: Stanislaus Regional Water Authority

Project Location (include county): Stanislaus County, incl. portions of Ceres and Turlock

Project Description:

SRWA, a joint powers authority consisting of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) in Phase 1 (up to 50,400 AFY at buildout) of water from the Tuolumne River; convey it to a water treatment plant; and convey the treated water to storage facilities in Ceres and Turlock. The surface water provided as part of the proposed project would assist the Cities in achieving sustainable groundwater pumping levels. In addition, 2,000 AFY of offset water (recycled water/groundwater) provided to TID would assist in implementing TID's water conservation and conjunctive water use programs.

This is to advise that the Stanislaus Regional Water Authority has approved the above (X) Lead Agency or () Responsible Agency

described project on August 6, 2018 and has made the following determinations regarding the above described project. (date)

- 1. The project [X] will [] will not] have a significant effect on the environment.
2. [X] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [] were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [] was not] adopted for this project.
5. A statement of Overriding Considerations [X] was [] was not] adopted for this project.
6. Findings [X] were [] were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

SRWA offices, 156 South Broadway, Suite 270, Turlock, CA 95380

Signature (Public Agency): Title: General Manager

Date: August 6, 2018 Date Received for filing at OPR: August 7, 2018



From: Robert Granberg, General Manager and
Technical Advisory Committee
Prepared by: Robert Granberg, General Manager

1. ACTION RECOMMENDED:

Motion: Approve the Request for Qualifications (RFQ) in substantially the form as presented at this meeting and authorize the General Manager to finalize, sign, and issue the RFQ on behalf of the SRWA for the Raw Water Pump Station, Raw and Finished Water Pipelines and Water Treatment Plant Project elements.

2. DISCUSSION OF ISSUE:

On May 3, 2017, the Board approved a lump-sum design-build procurement project delivery method authorized by Senate Bill 373. In accordance with this direction, the Technical Advisory Committee (TAC) has developed the necessary documents to implement the first in a two-step procurement approach to design-build project delivery of the Raw Water Pump Station, Raw and Finished Water Pipelines and Water Treatment Plant project elements. The two-step process begins with a Request for Qualifications to elicit Statements of Qualifications (SOQ) from interested design-build entities that will be scored according to prescribed criteria. Subsequent to scoring by the selection committee comprised of TAC members, a shortlist of three respondents will be recommended to the Board for receipt of the Request for Proposal (RFP).

The RFQ will request information from interested design-build entities and their statement of qualifications will be scored in accordance with the associated percentages or pass/fail criteria provided below:

- Respondent team composition (40%)
- Approach to project delivery (30%)
- Technical qualifications (30%)
- Financial qualifications (pass/fail)
- Safety record, conflict of interests and skilled and trained workforce (pass/fail)

Included with the RFQ is the draft design-build contract for the purpose of obtaining feedback on contract principles that may lead to further contract language amendments. The Board is not being asked at this time to approve the design-build contract because the current draft will be subject to revisions through the

procurement process. The Board will consider approval of the design-build contract at a later date in the procurement process.

SRWA plans to follow these next steps in the design-build procurement process:

- Issue RFQ
- Conduct workshop and meetings with respondents
- Receive/evaluate SOQs
- Select three final proposers and authorize RFP (Board action)
- Issue RFP
- Conduct meetings with proposers
- Receive/evaluate proposals
- Select preferred proposer (Board action)
- Negotiate design-build contract
- Award design-build contract (Board action)

3. FISCAL IMPACT / BUDGET AMENDMENT:

There is no fiscal impact associated with this action. The cost to conduct the procurement process is funded through existing program management contracts. The future design-build contract award will be accompanied by a full financial summary and funding plan.

4. GENERAL MANAGER'S COMMENTS:

Recommend approval to issue RFQ.

5. ENVIRONMENTAL DETERMINATION: N/A

6. ALTERNATIVES:

The Board could choose to direct the General Manager to proceed with these project elements under a design-bid-build procurement method; however, that would require additional budget appropriations and would result in schedule delays. This also would not be consistent with prior Board actions on this matter.



REGIONAL SURFACE WATER SUPPLY PROJECT
DESIGN-BUILD SOLICITATION
REQUEST FOR QUALIFICATIONS

DUE: September 18, 2018

Communications and submittal to:

Lindsay Smith, PE
Project Engineer
SRWA Regional Surface Water Supply Project
2020 Research Park Drive, Suite 100
Davis, CA 95618
530-756-5905
lsmithSRWA@westyost.com

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Attachment C. SOQ Submittal Forms

— Attachment C-1. Transmittal Letter Form and Certification

— Attachment C-2. Design, Construction, Acceptance Testing and Startup Experience

— Attachment C-3. Key Project Staff

— Attachment C-4. Financial Resources Data Form

— Attachment C-5. Safety Record

Attachment D. SRWA Procurement Process Conflict of Interest Policy

Attachment E. Certificate Committing to Use a Skilled and Trained Workforce

Attachment F. Draft Reference Document List

Request for Qualifications

1.0 INTRODUCTION

1.1 Project Overview

The Stanislaus Regional Water Authority (SRWA), a joint powers authority formed by the Cities of Ceres and Turlock (Cities), is soliciting Statements of Qualifications (SOQs) from interested firms describing their collaborative delivery, technical, and financial qualifications to design, construct, acceptance test, startup, and obtain governmental approvals for an SRWA-owned water treatment plant (WTP) and related facilities in Stanislaus County (collectively, the Project). The Project facilities will be designed and constructed to initially deliver 15 million gallons per day (MGD) of finished water to the Cities. Site planning will accommodate the ultimate WTP capacity of 45 MGD. The Cities will separately construct local facilities to provide for the distribution of the treated surface water to their customers.

The SRWA Regional Facilities consist of the following components:

1. Raw Water Pump Station (Wet Well being constructed under a separate contract)
2. Raw Water Transmission Main
3. 15 MGD WTP (initial capacity)
4. Ceres and Turlock Finished Water Transmission Mains

Attachment A presents a Project overview map that shows the general location of the Regional Facilities.

This Request for Qualifications (RFQ) is the first step in a two-step procurement process. By using a design-build (DB) project delivery approach, the SRWA expects to secure substantial benefits for its customers. These expected benefits include timely, efficient, and cost-effective scheduling; optimal risk allocation; competitive design-build team selection; clear assignment of performance responsibilities to a single contracting entity; and cost savings. Another expected benefit is the full integration of key design, construction, and quality assurance/quality control (QA/QC) personnel in all aspects of the Project development.

Only those firms that respond to this RFQ and are short-listed by the SRWA in accordance with the requirements of this RFQ will be issued a Request for Proposals (RFP) and invited to submit a proposal in response to the RFP. The SRWA intends to short-list three firms as eligible to participate in the RFP stage of this procurement. Failure to submit information in accordance with the requirements of this RFQ may be cause for disqualification.

The SRWA's intent in developing this RFQ and subsequent RFP is to encourage qualified firms to provide the best solution for the Project within the confines of the SRWA's requirements as described in the RFQ and RFP documents. The SRWA expects to enter into an agreement (Design-Build Contract) with a private entity (DB Contractor) for the Project. The Design-Build Contract will reflect experience gained on similar DB projects, but will be a document uniquely suited to the needs of the SRWA. Security for the DB Contractor's payment and performance obligations

Request for Qualifications

under the Design-Build Contract will be provided through performance and payment bonds and, in some cases (as discussed further below), a separate guaranty agreement. The detailed technical requirements for the Project are being developed and will be presented with the RFP. The presentation of the technical requirements in this RFQ is for general understanding only and is not necessarily indicative of the RFP requirements.

The SRWA has developed a procurement strategy to be administered by its Technical Advisory Committee (TAC) that includes the following steps:

RFQ Process

1. RFQ issuance
2. Joint meeting with all potential Respondents
3. Respondent comments on RFQ and addenda issuance on RFQ (if necessary)
4. Receipt of SOQs
5. Evaluation of SOQs and interview of SOQ Respondents
6. SRWA selection of pre-qualified Respondents for receipt of the RFP

RFP Process

7. Issue draft RFP to pre-qualified Respondents (Proposers)
8. Meetings with Proposers to discuss draft RFP comments
9. Proposers comment on draft RFP
10. Issuance of final RFP to Proposers
11. Proposers submit Initial Design Concepts
12. Meetings with Proposers to discuss Initial Design Concepts
13. Issue RFP addenda to Proposers (if necessary)
14. Proposers submit Priced proposals
15. proposal evaluation by the TAC
16. TAC interviews with Proposers
17. Revised Technical proposal and Price proposal submission by Proposers (if necessary)
18. TAC recommendation to Board of the preferred Proposer to enter into contract negotiations
19. SRWA Board selection of preferred Proposer

Design-Build Contract Process

20. Design-Build Contract negotiations with preferred Proposer

Request for Qualifications

21. Design-Build Contract execution with the successful Proposer

Pursuant to California labor and public works laws, the construction and certain pre-construction components of the work will be considered a public work, and are therefore subject to various labor and public works requirements and limitations, including the requirement to pay prevailing wage rates. In addition, the SRWA plans to finance the project through a loan under the California Drinking Water State Revolving Fund (SRF) program, or through other available state or federal loan or grant funding programs. Proposers should therefore be prepared that it may be necessary to meet federal or state statutory requirements in the event that such funding is obtained for the Project. If the SRWA secures such funding, then the construction and procurement components of the work also would be subject to additional labor and other requirements under the SRF loan (or other loan or grant program(s)), including “cross-cutting” state and federal requirements and conditions, disadvantaged business enterprise requirements, and federal wage requirements under the Davis-Bacon Act.

1.2 SRWA Background

The Cities of Ceres and Turlock are planning to supplement their primary source of water supply from groundwater wells by diverting surface water from the Tuolumne River. The Regional Surface Water Supply Project and scope of the Design-Build Contract include: facilities to convey water from the river infiltration gallery and Wet Well to the treatment plant; a water treatment plant; and finished water transmission mains delivering water to the Cities. To complete delivery of water to their users, each City will also construct improvements to their local distribution facilities. These local facilities will be implemented individually by each City and thus are not part of the Regional Facilities contracted as part of the Design-Build Contract. Once the construction of all Project facilities is complete and acceptance testing is successful, the SRWA intends to conduct the long-term operations.

At this time, the SRWA intends to finance the construction of the Project through SRF loans, revenue bonds, or grant funds, or a combination of these sources. These obligations will be repaid from City water service rates and charges. The total design and construction cost of the Regional Facilities is expected to be in the range of \$180 million to \$195 million.

In 2011, the Cities created the SRWA to design, build, and operate the Regional Facilities. To provide assistance and advice in the delivery of the Project, the SRWA has created the TAC, composed of the General Manager and staff representatives of each City and Turlock Irrigation District. As part of this RFQ process, recommendations will be made by the TAC that the General Manager will then deliver to the Board of the SRWA. The Board of the SRWA will make the determination of which Respondents will be prequalified under this RFQ process for receipt of the subsequent RFP and submittal of a proposal in response to such RFP.

1.3 SRWA Advisor

The SRWA has retained an advisory team (SRWA Advisor) to serve as its management consultant for this Project. West Yost Associates is the SRWA Engineer of the team. Legal services are provided by Bartkiewicz, Kronick, and Shanahan. Environmental consulting services are provided

Request for Qualifications

by Horizon Water and Environment (Horizon). Financial consulting services are provided by Project Finance Advisory Limited (PFAL). This group is collectively referred to as the SRWA Advisor.

The SRWA Advisor will provide assistance to the SRWA (Robert Granberg is the SRWA General Manager) and the TAC in preparing the RFQ and RFP, evaluating SOQs and proposals, and negotiating the Design-Build Contract. The SRWA Advisor will also provide Project oversight, including design reviews, Design-Build Contract compliance, and monitoring during construction and acceptance testing. Horizon will provide environmental compliance oversight.

1.4 Definitions

The following terms when used in this RFQ shall have the following meaning:

- “SRWA Advisor” is defined in section 1.3 of this RFQ.
- “City” or “Cities” means either the City of Ceres, California or the City of Turlock, California, or both.
- “DB Contractor” means the selected Respondent with which the SRWA enters into a Design-Build Contract to design, construct, acceptance test, and obtain governmental approvals for the Regional Facilities.
- “Design-Build” or “DB” means a project delivery system where the SRWA contracts with a single entity (DB Contractor) for the implementation of the Project services.
- “Design-Build Contract” means the contract executed by the SRWA and the DB Contractor.
- “Guarantor” is defined in section 2.6.1 of this RFQ.
- “Project Engineer” is responsible for technical management of the Project and is Lindsay Smith of West Yost Associates.
- “Project” or “Regional Surface Water Supply Project” means the design, construction, acceptance testing, and obtaining of governmental approvals for the Regional Facilities to treat and deliver up to 15 MGD of drinking water to the Cities.
- “Proposer” means a Respondent that is short-listed by the SRWA pursuant to this RFQ and issued an RFP by the SRWA for the Project.
- “Regional Facilities” means the water treatment plant, raw water pump station, raw water transmission main, and finished water transmission mains, which are the subject of this procurement.
- “Respondent” means an entity submitting an SOQ in response to this RFQ.
- “Stanislaus Regional Water Authority” or “SRWA” means the Project owner, created pursuant to a Joint Powers Agreement between the Cities, dated December 15, 2015.

Request for Qualifications

1.5 Acronyms and Abbreviations

- Cal/OSHA – The Division of Occupational Safety and Health
- CEQA – California Environmental Quality Act
- DB – Design-Build
- DBO – Design-Build-Operate
- DBP – Disinfection By-Product
- DDW – Division of Drinking Water
- EIR – Environmental Impact Report
- Horizon – Horizon Water and Environment
- IESWTR – Interim Enhanced Surface Water Treatment Rule
- LT2ESWTR – Long-Term 2 Enhanced Surface Water Treatment Rule
- MGD – Million Gallons per Day
- No. – Number
- NPDES – National Pollution Discharge Elimination System
- OTC – Operations Technology and Cybersecurity
- PE – Professional Engineer
- PFAL – Project Finance Advisory Limited
- PLC – Programmable Logic Controller
- PST – Pacific Standard Time
- QA/QC – Quality Assurance/Quality Control
- RFP – Request for proposal
- RFQ – Request for Qualifications
- RMPPs – Risk Management and Prevention Programs
- SCADA – Supervisory Control and Data Acquisition
- SEC – Securities and Exchange Commission
- SOCs – Synthetic Organic Compounds
- SOQ – Statement of Qualifications
- SRWA – Stanislaus Regional Water Authority
- SRF – State Revolving Fund
- SWRCB – State Water Resources Control Board
- SWTR – Surface Water Treatment Rule
- TAC – Technical Advisory Committee
- TOC – Total Organic Carbon
- U.S. – United States
- WTP – SRWA’s Regional Water Treatment Plant

Request for Qualifications

2.0 PROJECT SPECIFIC INFORMATION

2.1 Project Background and Need

The Project concept results from many years of planning prompted by concerns about long-term water supply reliability for the region. Many options were analyzed throughout the planning process, with the Regional Surface Water Supply Project emerging as the best, most feasible among them. The primary driver for the Project is that water from the Cities' municipal water wells has increasing concentrations of nitrates, total dissolved solids, arsenic, and trichloropropane.

Both the Cities of Turlock and Ceres have long histories of delivering affordable and reliable drinking water to their customers, but new investments are needed now to meet increasingly restrictive public health and environmental regulations and to ensure that the Cities can continue to deliver safe water to customers and to meet all applicable water quality standards.

The primary objectives of the Project are to: 1) improve drinking water quality; 2) provide environmental benefits to Tuolumne River aquatic species by increasing flows in the Tuolumne River downstream of Don Pedro Reservoir; 3) improve supply reliability by diversifying the water supply portfolio of the Cities; 4) provide in-lieu aquifer recharge to support groundwater sustainability; and 5) increase operational flexibility. These objectives were developed in response to challenges posed by aging water systems, increasingly stringent drinking water standards, and projected water demands consistent with adopted land-use plans.

In addition, Project costs and environmental impacts will be reduced through the construction and operations of shared Regional Facilities.

2.2 Introduction to Scope of Services

The DB Contractor shall provide the SRWA with the following integrated design-build services, the details of which will be outlined in the RFP:

- Pre-Development
- Design
- Construction
- Start-Up and Testing

2.2.1 Pre-Development

- Conceptual design of all Regional Facilities
- Precise WTP siting and pipeline alignments
- Permit acquisition responsibilities
- Compliance with California Environmental Quality Act (CEQA) mitigation measures, in coordination with and supplementary to work completed by the SRWA
- Project communications plan supplemental to the SRWA's existing program

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2.2.2 Design

- Design of the WTP and storage, which includes clearwells
- Design of the raw water pump stations and associated facilities to be located above and adjacent to the Wet Well
- Design of raw water and finished water transmission mains and related connections including coordination with current and planned City local facilities
- Support and collaboration during the SRWA design review process and the SRWA communications program

2.2.3 Construction

- Construction of the Regional Facilities and related connections
- Compliance with all SRWA and industry construction standards
- Compliance with all environmental mitigation, permitting and regulatory requirements
- Assistance in implementing the communications program, including landowner outreach and response to citizen concerns

2.2.4 Start-Up and Testing

- Process testing and commissioning in preparation for acceptance testing
- Successful completion of all required equipment, treatment, and transmission main facility acceptance tests
- Training of SRWA operations staff and transition of operation and maintenance responsibilities to the SRWA

2.3 General Treatment Requirements

The basic objectives for the performance of the WTP are to reliably meet all present and anticipated future drinking water standards. In general, the Regional Facilities should provide a high level of public health protection and quality that is acceptable to consumers in both communities. The required water quality Acceptance Test performance guarantees will be detailed in the appendices to the Design-Build Contract and may impose stricter requirements for water quality than prevailing regulations. Proposers shall be required to fully comply during the testing and startup phase of the Design-Build Contract with all applicable federal and state drinking water regulations (including water quality regulations) and the required water quality performance standards specified in the Design-Build Contract. Some examples of water quality parameters to be addressed during performance testing are listed below:

- **Turbidity** – This parameter is a measure of the cloudiness of water that results from the presence of both inorganic and organic particles. Elevated turbidity levels negatively affect the appeal of the water to the consumer and reduce the effectiveness of disinfection. Turbidity is a State and Federally regulated parameter, and its presence is an indicator of the effectiveness of pathogen removal through treatment.

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- **Total Organic Carbon (TOC)** – TOC is a concern because of the role it plays in disinfectant byproduct (DBP) formation.
- **Final Disinfection (Residual Maintenance)** – Final disinfection is required for maintenance of a residual disinfectant in the finished water. The SRWA is requiring free chlorine final disinfection, and is thus not allowing the use of chloramine. Finished water free chlorine residual must be compatible with the distribution system configuration of each city.
- **Microbial Contaminants** – The Interim Enhanced Surface Water Treatment Rule (IESWTR) requires public water systems using surface water to provide 3-log *Giardia* removal/inactivation, 4-log virus removal/inactivation, and 2-log *Cryptosporidium* removal. Pursuant with the SWRCB Division of Drinking Water (DDW) Surface Water Treatment Rule (SWTR) guidance document, additional *Giardia* and virus treatment may be required by DDW in accordance with measured total coliform bacteria levels in the source water, as per monitoring requirements also established in the IESWTR. Based on the first year of monitoring, levels of total coliform in the source water indicate 4-log *Giardia* removal/inactivation and 5-log virus removal/inactivation will be required.

In addition, the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) requires two years of source water monitoring for *Cryptosporidium* to determine if additional treatment for *Cryptosporidium* is required. Based on the first year of raw water *Cryptosporidium* data, the source water falls into “Bin 1”, so the new treatment facility may not be required to provide additional *Cryptosporidium* treatment unless later samples result in greater required removal/inactivation.

- **Corrosion Control** – A surface water/groundwater integration study will be performed by the Cities in parallel with the DB procurement process and Project design phase. The Integration plan will assess:
 - Lead and Copper Rule – Adjustments in treatment and/or chemical addition may be required to meet the lead and copper rule.
 - Colored Water – Adjustments in treatment may be required to prevent colored water (i.e., red or black) in the Cities’ distribution systems.
- **Synthetic Organic Compounds (SOCs)** – Removal of SOC’s is an important concern (e.g. pharmaceuticals, endocrine disruptors and pesticides).
- **Aesthetic Quality** – While not necessarily an indicator of harmfulness, aesthetic quality problems may cause customers to subjectively consider the water undrinkable. Accordingly, the following treatment steps may be required:
 - Taste and odor elimination
 - Iron and manganese removal from the source water, per secondary standards
 - Prevention of red water (iron) or black water (manganese) due to corrosion in the distribution systems

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The SRWA has identified a conventional treatment train that includes intermediate ozone as the preferred treatment process. The SRWA has determined that direct filtration, with granular media or membranes, is not applicable. The treatment process must be amendable to storm-related TOC increases and turbidity fluctuations and have the ability to minimize DBP formation. The SRWA's overall design objective is an uninterrupted water supply, except for reduced flow periods during planned maintenance. Other requirements will include requirements such as: redundancy, noise control, and air quality standards compliance.

2.4 Selected Sites, Permitting and Available Information

2.4.1 Facilities Description and Contractor Responsibilities During Construction

Feasibility studies have described the following Regional Facility characteristics: 1) raw water will be diverted from the Tuolumne River through the existing infiltration gallery and new Wet Well (constructed under separate contract), as described below; 2) raw water will be conveyed from the Wet Well to the WTP through a single 60-inch diameter transmission main; 3) the WTP will be located on an approximately 47.9-acre site located east of the City of Ceres; 4) treated water will be conveyed westward to the City of Ceres through a single 30-inch diameter finished water transmission main; and 5) treated water will be conveyed southward to the City of Turlock through a single 42-inch diameter finished water transmission main. The aforementioned sizing of the pipelines is preliminary and subject to further development in the DB process. For purposes of this RFQ, it shall be assumed that all necessary rights-of-way and property acquisitions will be provided by the SRWA. However, for the pipelines to be installed within county and city road rights-of-way, the DB Contractor will be required to obtain necessary county and city encroachment permits, as described in detail in the RFP.

The DB Contractor will be responsible for obtaining all temporary electrical power supplies and will work diligently with the SRWA to provide all technical support necessary to obtain electrical power supplies for construction of the Project. The DB Contractor may utilize existing temporary power at the Wet Well site for construction of the raw water pump station, if the existing temporary power is sufficient to meet construction demands. The DB Contractor will also be responsible for construction of human and process waste disposal facilities. On site water usage at the Wet Well site will be designed by the DB Contractor to achieve regulatory compliance and long-term efficiency.

The construction of the Wet Well facility, which will divert water from the Tuolumne River to the Raw Water Transmission Main, will begin in July 2018. The DB Contractor will be responsible for design and construction of all other elements of the SRWA raw water pump station, including the pumps, infiltration gallery air purge equipment, motors, motor control centers, instrumentation and controls, standby power, and any other needed appurtenant facilities. The DB Contractor will also be responsible for coordination of construction activities with the Wet Well contractor.

The DB Contractor will also be responsible for design, installation, and programming of the Regional Facilities' Operations Technology and Cybersecurity (OTC) systems, which include instrumentation, Programmable Logic Controllers (PLC), control panels, signal terminations, servers and computer hardware, network security equipment and Supervisory Control and Data Acquisition (SCADA) software.

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2.4.2 Permitting

Although some permit requests have been and will be initiated by the SRWA, the DB Contractor will be responsible for identifying, preparing applications, obtaining and maintaining all necessary approvals, certifications, permits, and utility services for the Project. The following is a preliminary list of permits identified for the Project:

- Electrical power service during construction and for constructed facilities (as applicable)
- Telephone and broadband internet service during construction and for constructed facilities (as applicable)
- County and City road right-of-way encroachment permit(s) (as applicable)
- Compliance with the California Building Standards Code, including applicable building, plumbing, mechanical, electrical and fire codes and applicable Fire Marshall approvals
- National Pollutant Discharge Elimination System (NPDES)/State Water Resources Control Board (SWRCB) storm water discharge permits (as applicable)
- Central Valley Regional Water Quality Control Board/NPDES Permit and/or Waste Discharge Requirements for disposal of construction dewatering and acceptance test water
- SWRCB DDW Domestic Water Supply Permit
- San Joaquin Valley Air Pollution Control District permits (as applicable)
- The Division of Occupational Safety and Health (Cal/OSHA) construction activity permits (as applicable)
- Material hauling and landfill disposal permits (as applicable)
- Risk Management and Prevention Programs (RMPPs)
- Compliance with federal and state Endangered Species Acts
- California Department of Fish and Wildlife Streambed Alteration Agreement
- Various pre-development and CEQA compliance/mitigation measures (to be identified)
- Burlington Northern Santa Fe Railroad encroachment permit
- California Wildlife Conservation Board/Stanislaus County Department of Parks and Recreation Fox Grove Park Access permit
- Central Valley Flood Protection Board encroachment permit

The list provided above is not all-inclusive and should not be relied upon by Respondents as being indicative of the full-range of RFP permitting requirements. The SRWA will be the permit holder for all permits that remain in force after completion of construction. The SRWA will also be responsible for obtaining the water supply for the Project.

DDW staff agreed that each Proposer, accompanied by SRWA staff and/or representatives, may meet with DDW one time for up to an hour during the proposal preparation process.

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2.4.3 Available Untreated Water Quality Data

In anticipation of treatment process selection and permitting, a water quality monitoring program began in October 2016 and will continue through December 2018. Each Respondent is solely responsible for determining the adequacy of the untreated water quality data and any process performance data to be used as the basis for design of the Project. A statement shall be included in the SOQ documenting the adequacy (or any concerns with the quality or quantity of information provided) of the raw water quality data and process performance data. Two reports are available in which existing Tuolumne River water quality data are compiled and discussed: 1) a summary of historical water quality data covering the period from 2005 to 2015¹; and 2) a summary of year-long sampling program orchestrated by the SRWA and covering the period from October 2016 to October 2017². In a third document, the two datasets were combined, and a statistical summary was presented³. The untreated water data provided in these reference documents do not necessarily represent the full range of future untreated water quality conditions, nor are they representative of changes in water quality that may occur as raw water enters the sub-surface infiltration gallery intake.

2.4.4 Geotechnical Investigations

The SRWA has conducted an investigation that addresses the geotechnical aspects of the transmission main and WTP components of the Project. Reports summarizing the results of these investigations will be made available to the Respondents in accordance with Section 2.7 of this RFQ.

The Design-Build Contract will require the DB Contractor to agree that the geotechnical conditions are acceptable and suitable for the construction and operation of the Project. The SRWA will provide each Proposer with opportunities to visit the Sites, review referenced technical memoranda, including geotechnical reports, to satisfy themselves of the nature and extent of the Design-Build Work.

2.4.5 Cultural Survey

The SRWA has completed a Cultural Resources Survey of some portions of the Project area. The results of this survey are summarized in the Stanislaus Regional Water Authority Surface Water Supply Project Draft Environmental Impact Report (EIR), January 2018, State Clearinghouse No. 2017022077. A cultural resources survey of the WTP site must be completed by Horizon before construction can begin. The Draft EIR is available to the Respondents on the SRWA website (www.stanrwa.org/documents). The Final EIR is expected to be certified by the SRWA Board on August 6, 2018.

¹ Trussell Technologies, Inc. September 2016. *Tuolumne River Historical Water Quality Assessment*

² Trussell Technologies, Inc. February 2018. *Draft-Source Water Quality Assessment, Oct 2016 to Oct 2017*.

³ Trussell Technologies, Inc. February 2018. *Draft-Predesign TM for SRWA Water Treatment Plant*.

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2.4.6 Biological and Wetlands Delineation Surveys

The SRWA has completed a Biological Survey and Wetland Delineation of the Project area. The results of these surveys are summarized in the Stanislaus Regional Water Authority Surface Water Supply Project Draft EIR January 2018, State Clearinghouse No. 2017022077. Pre-construction surveys for a variety of species must be completed by Horizon before construction can begin. The following two regulatory permits are in process: Section 1602 Agreement (California Department of Fish and Wildlife) and Endangered Species Act Section 10 authorization (United States (U.S.) Fish and Wildlife Service).

2.5 Project Ownership and Financing

The SRWA will, at all times, own the Project site and Regional Facilities, except for the raw water facilities, which are owned by Turlock Irrigation District and leased by the SRWA, and which include the Wet Well, raw water pump station, and raw water transmission main. The Project will be financed using SRWA or City debt instruments, the majority of which is planned to be SRF financing. The SRWA will provide more information with respect to the financing plan in the RFP.

2.6 Business Terms and Conditions

The successful DB Contractor will enter into a Design-Build Contract with the SRWA to design, construct, acceptance test, and obtain governmental approvals for the Regional Facilities. A preliminary draft of the terms of the Design-Build Contract is included in Attachment B. Because it is preliminary, Attachment B should not be considered as all-inclusive or definitive as to the form or substance of the final contract provisions. The SRWA seeks Respondent input regarding the draft Design-Build Contract. The final proposed Design-Build Contract will be included in the RFP. The following sections describe several important elements of the SRWA's overall risk posture for business terms and conditions for the Project.

2.6.1 Guarantor

Section 4.3.3 requires Respondents to identify the legal design-build entity (the DB Contractor) that will sign and be a party to the Design-Build Contract with the SRWA. The DB Contractor must have sufficient financial capability and net worth to assure the SRWA that it is capable of performing its obligations under the Design-Build Contract both competently and on-time. The SRWA may require the DB Contractor to provide a separate guaranty from its parent company (or a substantially capitalized affiliate company) as additional security to guarantee performance under the Design-Build Contract if the SRWA determines (in consultation with its financial advisor Project Finance Advisory Limited) that a) the DB Contractor is a newly formed or limited purpose joint venture, limited liability company, limited partnership, or similar entity with limited net worth or design and construction experience, or b) the DB Contractor may be undercapitalized or may lack sufficient net worth (relative to the size of the Design-Build Contract) to support and perform its obligations under the Design-Build Contract and that a separate guaranty is appropriate to adequately protect the interests of the SRWA and the Cities and to assure the competent and timely completion of the Project. If the SRWA determines that a separate guaranty will be required, the Respondent will be so informed when it is selected as one of the Proposers. If required, the guaranty agreement would

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need to be approved and signed concurrent with the Design-Build Contract. The draft Design-Build Contract (Attachment B) assumes that a separate guaranty will be needed and it includes the form of the guaranty agreement that would be required. If the SRWA determines that the DB Contractor is substantially capitalized so as to assure the competent and timely performance and completion of its obligations under the Design-Build Contract, then the contract would be revised to delete the provisions concerning the separate guaranty agreement. A Respondent will not be pre-qualified pursuant to this RFQ based on financial information provided for an entity that will not have a contractual relationship with the SRWA.

2.6.2 Performance and Payment Bonds

The DB Contractor shall also provide as additional security for its design, construction, and acceptance obligations under the Design-Build Contract, a Bond for Faithful Performance (Performance Bond) and a Payment Bond issued by a California admitted surety company: 1) having received a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; 2) listed in the United States Treasury Departments Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties of Federal Bonds and as Acceptable Reinsurance Companies”; and 3) holding a valid certificate of authority to transact surety business in the State of California. The Performance Bond and the Payment Bond are each required to be in an amount equal to the DB Contractor’s fixed design-build price for the Project.

As described in Section 4.23.6.2, Respondents are required to furnish evidence of their ability and intention to provide these security instruments. The SRWA reserves the right to require other security enhancements in addition to, or to delete any of, the foregoing instruments.

2.6.3 Insurance Requirements

The DB Contractor shall obtain the following insurance coverage:

- Commercial general liability
- Automobile liability
- Workers’ compensation
- Excess or umbrella liability
- Professional errors and omissions liability
- Pollution liability

In addition, the SRWA may consider requiring an all risk (Special Form) Builders’ Risk policy and may specify coverage for earthquake, machinery & equipment (including testing) or other enhancements. The RFP will address these and any additional requirements if necessary.

2.7 Reference Documents Available

Respondents may access the project reference documents indicated in this RFQ by submitting a Letter of Interest (described in Section 4.1). Reference documents will be made available on the

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Project procurement SharePoint website (as described in Section 4.1). A current draft reference document list can be found in Attachment F, however, the list provided on the Project procurement SharePoint site will be updated as additional reference documents are added. Respondents should recognize that the SRWA, through the DB solicitation process, seeks private-sector expertise in the development of the Project. The reference documents indicated in the RFQ are being provided to Respondents solely for their informational purposes and this list shall not be considered an appropriate or exhaustive list of all the information necessary for a Respondent to meet the DB Contractor's obligations under the Design-Build Contract. These documents do not represent the optimal and specific Project features that will be included in the RFP and the Design-Build Contract.

The recommendations, conclusions, findings, analyses, results, or views expressed in the reference documents have not been approved or endorsed by the SRWA, and accordingly should not be construed as representing the policy of the SRWA.

The SRWA neither makes any representation or warranty with respect to nor assumes any responsibility for the appropriateness, completeness, or the accuracy of this RFQ or any reference documents or other materials provided to the Respondents or made available on the Project website. Respondents are solely responsible for conducting their own independent research and due diligence for the preparation of SOQs and the subsequent delivery of services under the Design-Build Contract. No information derived from any part of the reference documents, the RFQ, or the SRWA, or any of its agents, employees, contractors, advisors, or consultants (including the SRWA Advisor) shall relieve the DB Contractor from any risk or from fulfilling all terms and conditions of the Design-Build Contract.

2.8 Legal Authority

This procurement process and Design-Build Contract are authorized and will be governed by California Public Contract Code Sections 22160-22169, as may be amended (the "Authorizing Statute") and other applicable California laws regarding public works contracts. The Authorizing Statute provides that the SRWA may select a design-build entity through a best value selection method as described in the statute.

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3.0 PROJECT PROCUREMENT

3.1 Procurement Objectives

It is the SRWA's intent to contract directly with a single DB Contractor for the design, construction, and startup of the Regional Facilities. This entity will be the single point of contact and have contractual responsibility for all services contracted by the SRWA for the Project. In order to receive proposals from qualified parties, the SRWA will implement a competitive procurement process to select a highly qualified, financially sound team for the planning, design, construction, and startup of the Regional Facilities. The DB process has been used in the U.S. to harness the innovation and efficiency of the private sector. In contrast to traditional approaches, the DB process links project design and construction responsibilities, encouraging the formation of multi-discipline teams that address the project as a whole. By combining the responsibilities within a single team, consortiums and individual firms are able to deliver high-quality services, assume substantial risk, and provide significant project schedule and cost efficiencies.

3.2 Procurement Process

As indicated on Figure 3-1, the SRWA is implementing a qualification and best value-based procurement process to select the most qualified DB Contractor for the design, construction, and startup of the Regional Facilities. The SRWA will follow a two-step procurement process designed to achieve the SRWA's goals for the implementation of the Project. This RFQ is the first step in the procurement process for the Project. In order for a Respondent to be eligible to submit a proposal in response to the forthcoming RFP, the Respondent must submit an SOQ in response to this RFQ and the Respondent must be pre-qualified by the SRWA, in accordance with the procedures and standards set forth herein.

The RFQ process requires Respondents to achieve a superior ranking to continue in the selection process.

The SRWA intends to prequalify three Respondents to receive the RFP.

Only those Respondents that have been pre-qualified by the SRWA under this RFQ process will receive the RFP and be allowed to submit a proposal. The RFP will include a detailed description of the Project, as well as DB performance requirements to be addressed and met by the DB Contractor. The draft Design-Build Contract, included in Attachment B of this RFQ, provides terms and conditions for all elements of the Project. Specific economic and non-economic evaluation criteria will be presented in the RFP, and may include, but are not limited to, the following:

- Technical reliability and redundancy of solution
- Project implementability (i.e., ability to secure all approvals from third parties)
- Environmental requirements (i.e., conformance with EIR mitigation measures and applicable permits, etc.)
- Proposer's experience as a team

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- Technical qualifications of individuals assigned to the Project
- Approach to collaboration with the SRWA
- Financial qualifications
- References
- Acceptance of Design-Build Contract provisions and risk posture
- Approach to training of and transition to SRWA operations and maintenance staff
- Project schedule
- Capital costs
- Energy consumption guarantees
- Life-cycle costs

The SRWA desires to optimize creativity and cost-competitiveness in the DB process and therefore will provide flexibility, within the guardrails identified in the RFP, to Proposers with respect to the design, construction, and operation of the treatment processes. The Regional Facilities shall be subject to all required regulatory approvals.

During the procurement process, the SRWA staff will, at a minimum, seek Board approval for the following specific milestones:

- Selection of the short-listed Respondents to receive the RFP
- Draft RFP and Technical Appendices
- Selection of Proposer for Design-Build Contract negotiations
- Final Design-Build Contract

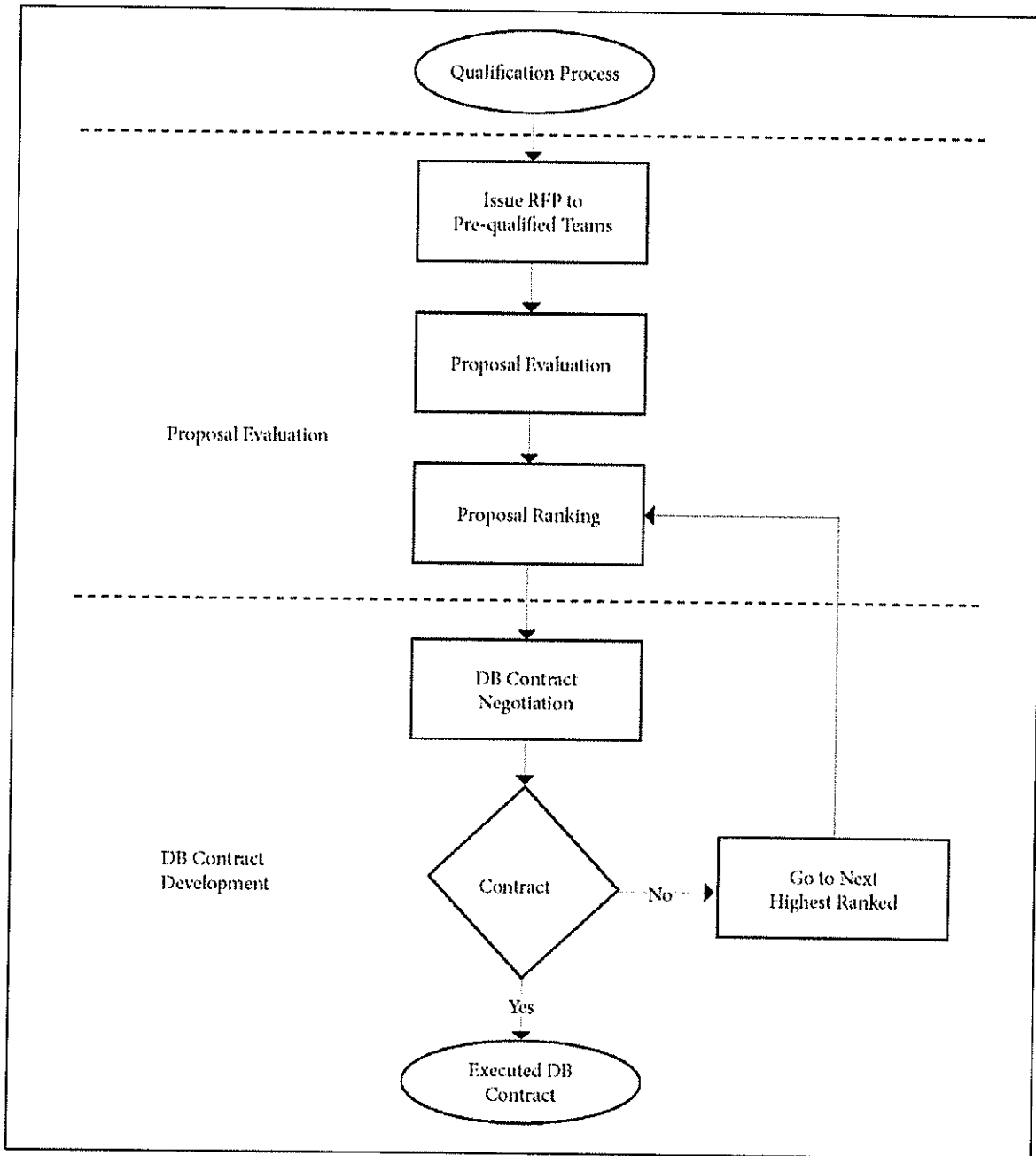


Figure 3-1. Procurement Process

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3.3 Rights of the SRWA

The issuance of this RFQ constitutes only an invitation to present qualifications. The rights reserved by the SRWA, which shall be exercised in its sole and absolute discretion, include, without limitation, the rights to:

1. Require additional information, including financial information, from one or more Respondents and to conduct discussions with Respondents at any time to supplement or clarify the SOQs submitted.
2. Conduct investigations with respect to the qualifications and experience of each Respondent, request additional evidence to support any such information, and take such other action as may be appropriate to verify the information provided by the Respondent.
3. Visit and examine any of the projects referenced in the SOQs and to observe and inspect the operations of such projects.
4. Waive any defect, technicality, irregularity, or informality in any SOQ received or in the procurement process.
5. Determine which Respondents are best qualified to be pre-qualified to receive the RFP and submit proposals in response to the RFP.
6. Reject any SOQ found to be irregular, incomplete, conditional, not in compliance, or otherwise not responsive with respect to the requirements and instructions contained herein. An SOQ will be found to be irregular or nonresponsive for reasons including, but not limited to: failure to strictly comply with the criteria stated herein; failure to submit information needed to evaluate the SOQ based on the evaluation criteria; failure to provide or complete required forms; improper signatures; submittal of more than one SOQ by the same firm; or evidence of collusion.
7. Supplement, amend, or otherwise modify this RFQ prior to the date of submission of the SOQs, or allow a Respondent to correct an error or omission.
8. Receive written questions concerning this RFQ from Respondents and to provide such questions, and the SRWA's responses, to all Respondents.
9. Cancel this procurement process in whole or in part with or without substitution of another RFQ for any reason whatsoever.
10. Take any action affecting the RFQ process, the RFP process, or the Project that would be in the best interests of the SRWA.
11. Reject any and all SOQs, or part of any and all SOQs, or withdraw the RFQ if it is deemed in the best interest of the SRWA.
12. Change or alter the schedule for any events associated with this procurement process.
13. Amend any of the services set forth herein to remove services or to include services not currently contemplated at any time prior to execution of the Design-Build Contract.

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14. Simultaneously negotiate with two or more Proposers.
15. Request revised proposals or best and final offers from Proposers following receipt of all proposals.
16. Determine that any or all Respondents will not be pre-qualified for further consideration.
17. Decide not to award a Design-Build Contract as a result of this procurement process for any reason whatsoever.

3.4 Communications Protocol

The SRWA is committed to a fair, open process for interested parties to receive information about the Project and the competitive procurement process that the SRWA is using for selection of a DB Contractor and award of the Design-Build Contract. All questions concerning this procurement process must be directed in writing to the Project Engineer:

Lindsay Smith, PE
Project Engineer
SRWA Regional Surface Water Supply Project
2020 Research Park Drive, Suite 100
Davis, CA 95618
530-756-5905
lsmithSRWA@westyost.com

All communications to the Project Engineer must be submitted in writing.

Any contact with SRWA staff, Board members, City employees or representatives, the SRWA Advisor (other than the Project Engineer), or other key Project stakeholders by a Respondent concerning any matter relating to this procurement may result in a Respondent's disqualification from eligibility for the procurement, unless a meeting is scheduled where such aforementioned individuals are present and Respondents are invited to attend and participate. The foregoing relates only to discussions, issues, comments, and other communications related to this procurement process, and is not intended to limit unrelated contact with any of the individuals identified above. If a Respondent has any reason, not related to the Project, to contact any of the above parties, Respondents are required to specifically disclose to that party that they are a Respondent in this solicitation. Failure to adhere to these requirements may result in disqualification from the solicitation process. The SRWA Advisor (other than the Project Engineer) is not permitted to solicit or answer questions or to provide information or advice to any Respondent/Proposer during the procurement process concerning any matter related to this procurement.

3.5 RFQ and Qualifications Submittal

As described in Section 3.2, this RFQ is the first step in the procurement process for the selection of a firm to design, construct, perform acceptance testing, and obtain governmental approvals for the Regional Facilities. In order to be eligible to submit a proposal in response to the forthcoming RFP, a response must be received to this RFQ, the Respondent must be pre-qualified, and an RFP issued to the Proposer by the SRWA. Only those persons or firms who have obtained an official copy of this

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RFQ from the SRWA or have notified the SRWA of their intent to participate in the solicitation process in accordance with Section 4.1 of this RFQ will receive official addenda (if necessary) to this RFQ.

Submission of a responsive SOQ requires Respondents to affirmatively declare their intention to participate in the RFP and proposal process. SOQs shall comply with Section 4 of this RFQ.

3.6 Pre-SOQ Workshop

On August 23, 2018, the SRWA will hold a pre-SOQ workshop located at the Ceres Community Center at 9:00 a.m. pacific standard time (PST). Attendance at the pre-SOQ workshop is not mandatory. All SRWA responses to questions submitted in writing will be issued via addendum to the RFQ. The RFQ addendum, if necessary, is expected to be released September 4, 2018.

Written questions related to the RFQ are encouraged and can be submitted in advance for clarification during the pre-SOQ workshop or can be asked at the pre-SOQ workshop. The SRWA will continue to accept comments through August 28, 2018 until 5:00 p.m. PST. Questions should be submitted to Lindsay Smith, Project Engineer, according to the Communications Protocol described in Section 3.4.

3.7 SOQ Evaluation

Using the qualification criteria established in Section 5 of this RFQ, the SRWA will evaluate the technical, financial, and other qualifications of Respondents based on SOQ submittals, as well as any clarifications submitted by Respondents in response to SRWA requests, project and personnel references, and analysis of other publicly available information. The SRWA expects to pre-qualify three Respondents to receive the RFP.

3.8 Procurement Schedule

A preliminary and approximate schedule of the major activities associated with this DB solicitation process is presented in Table 3-1 below.

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Table 3-1. Design-Build Tentative Milestones	
Date	Activity
August 7, 2018	Issuance of Request for Qualifications
August 23, 2018	Letter of Interest due to the SRWA prior to pre-SOQ Workshop
August 23, 2018	Pre-SOQ Workshop
September 18, 2018	SOQs due to the SRWA
November 2018	Completion of DB Team Pre-Qualifying
November 2018	Issuance of Draft RFP
December 2018	Issuance of RFP
January 2019	Meetings with Proposers to discuss Initial Design Concepts
May 2019	proposals due to the SRWA
May 2019	Conduct Proposer Interviews
June 2019	Completion of proposal Evaluation Process/DB Team Recommendation
July 2019	Commencement of Design-Build Contract Negotiations
September 2019	Completion of Design-Build Contract Negotiations/Board Award of Design-Build Contract
November 2022	Completion and Acceptance of Regional Facilities
November 2022	Commencement of Regional Facilities Operations

Any and all of the activities and dates listed in Table 3-1 are subject to modification by the SRWA at its sole discretion at any time during this procurement process.

3.9 Information Disclosure to Third Parties

All SOQs and subsequent proposals received in response to the procurement documents shall become the property of the SRWA and shall not be returned. The SRWA shall have the right to copy, review, discuss, retain, and dispose of each SOQ and related materials. All information submitted to the SRWA in response to this RFQ shall be confidential and not open to public inspection under the California Public Records Act (Government Code Section 6250 et seq.), except for information provided that is otherwise a public record (see Public Contract Code Section 22164(b)(4)).

Notwithstanding the foregoing, each Respondent recognizes (and in submitting an SOQ agrees) that the SRWA will not be responsible or liable in any way for any loss that the Respondent may suffer as a result of any disclosure of information or materials by the SRWA to third parties.

3.10 Honorarium

An honorarium will not be paid to Respondents for responding to this RFQ, nor will an honorarium be paid to Proposers for responding to the RFP. All costs of response and SOQ preparation shall be borne by the Respondent. The SRWA shall not be liable for any pre-contractual expenses incurred by the Respondent, including any time and costs associated with the preparation and submission of the SOQ and any meetings.

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3.11 Local Outreach

The SRWA is not including a goal or requirement for the inclusion of local businesses and workers in the Project. However, Proposers will be required to propose and (upon selection) execute an outreach program for local hiring and local procurement of materials and services. “Local” is defined as within Merced, San Joaquin, and Stanislaus Counties. Proposers shall require their subcontractors to participate in the same outreach program.

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4.0 SUBMITTAL OF QUALIFICATIONS

4.1 Letter of Interest

Potential Respondents to this RFQ should indicate their interest by submitting a letter addressed to the Project Engineer prior to the scheduled SOQ pre-submittal workshop on August 23, 2018. Firms that intend to submit SOQs should notify the SRWA of their intent as soon as possible by email to the Project Engineer in accordance with Section 3.4 of this RFQ. At a minimum, the following information must be provided in connection with such notification: i) contact name and title; ii) Respondent name and location, including mailing address; and iii) contact phone number and email address. Upon receipt of this letter of interest, the SRWA will provide each team with access to the Project procurement SharePoint website. The SharePoint site will include reference documents noted in Section 2.7, addenda, SOQ submittal forms, and all other information made available to all of the Respondents. The SharePoint site will also include confidential pages for each Respondent to submit their SOQ, proposal, and other necessary electronic submittals (see Section 4.2 for submittal requirements).

The SRWA cannot assure that Respondents who have not submitted notification will receive communications from the SRWA regarding the procurement process or, upon notification, that they will receive any communications from the SRWA that were transmitted prior to notification. The SRWA will make an effort to notify potential Respondents by email of the posting of addenda; however, it cannot guarantee that every potential Respondent will be notified each time. Therefore, it is the responsibility of all Respondents to check the Project SharePoint website periodically for addenda and to obtain this information in a timely manner.

4.2 General Instructions

Firms interested in providing the requested services for the Project are invited to submit a SOQ. Four (4) hard copies of the SOQ, one unofficial electronic version on CD, and one electronic version (see posting instructions below) are required for a SOQ submittal to be considered complete. The electronic SOQ shall be posted to the SRWA's confidential SharePoint website, on the bidder's private page, at or before 3:00 p.m. PST on September 18, 2018. SOQs received after this deadline will not be considered and will be returned unopened. Sealed hard copies and CD SOQs must also be addressed and submitted at or before 3:00 p.m. PST on September 18, 2018 to:

Lindsay Smith, PE
Project Engineer
SRWA Regional Surface Water Supply Project
2020 Research Park Drive, Suite 100
Davis, CA 95618

Re: Statement of Qualifications for the SRWA Regional Surface Water Supply Project

Respondents shall include the following information on the outside of the sealed envelope(s) or box(es): 1) name of Respondent, and 2) "Statement of Qualifications for the SRWA Regional Surface Water Supply Project." SOQs will not be opened publicly.

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Requests for interpretation or clarification by any Respondent must be made in writing to the Project Engineer, as described in Section 3.4 of this RFQ. Any and all such interpretations and clarifications will be made in the form of written addenda to this RFQ. No interpretation or clarification of the meaning of any part of this RFQ made orally by the Project Engineer, the SRWA Advisor, or the SRWA to any potential Respondent will be binding on the SRWA. Receipt of all addenda shall be acknowledged by Respondents in its SOQ transmittal letter. Each Respondent shall be responsible for obtaining all addenda from the Project SharePoint website prior to submitting an SOQ.

4.3 Information Requirements of Qualifications Submittal

The SOQ must be separated, by tabs, into eight sections as follows:

1. Transmittal Letter
2. Table of Contents
3. Respondent Team Composition
4. Technical Qualifications
5. Relevant Project Experience and References
6. Financial Qualifications
7. Completed SOQ Submittal Forms
8. Comments on Project Concepts (optional)

The format of the SOQ shall be as indicated above. Narrative pages are to be 8-1/2 inches by 11 inches and shall be bound into the applicable section. A minimum of 12-point font size and 1.25 line spacing is required for text. The SOQ and all information contained therein shall be in the English language. In addition, all financially-related numeric amounts shall be in U.S. dollars and shall include the exchange rate used for such conversion, if applicable. A clear and concise presentation of information is encouraged. **A page limit of 30 pages is set for the SOQ, not including the Transmittal Letter, SOQ Submittal Forms, resumes of key Project staff, and financial information and supporting data.** Audio-visual materials including audio tapes, video tapes, and CD presentations will not be accepted. Additional information concerning the submittal requirements to this RFQ is set forth below.

Respondents are urged to be complete, yet concise in their responses. Respondents are instructed to limit the information included in the SOQ to the information necessary to demonstrate their technical and financial qualifications for the Project and any other information specifically requested herein. The SRWA is not interested in receiving marketing brochures, generic narratives, or lists of experience unless directly related to the SOQ and referenced in the text. Technical experience and financial strength will constitute the principal proposal evaluation factors, and Respondents will be required to submit detailed experience and updated financial information in their proposals.

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4.3.1 Transmittal Letter

The SOQ must include a signed transmittal letter on the Respondent's letterhead containing, at a minimum, the name, title, address, telephone number, and email address of the Respondent and its principal contact person. The transmittal letter shall also include a complete listing of all companies that form the Respondent's team. The transmittal letter must be substantially in the form of and contain the information in Attachment C-1 (Transmittal Letter Form and Certification). The Respondent may include other relevant information in the transmittal letter.

The transmittal letter must be signed by a representative of the Respondent who is authorized to sign such material, to certify the accuracy of the SOQ's contents, and to commit the Respondent to the obligations contained in the SOQ (the "Designated Signatory"). If the Respondent is a partnership, the transmittal letter shall be signed by one or more of the general partners. If the Respondent is a corporation, an authorized officer shall sign his or her name and indicate his or her title beneath the full corporate name. If the Respondent is a joint venture, an authorized representative of each firm in the joint venture shall sign the transmittal letter. All forms that require the signature of the Respondent shall be signed by the Designated Signatory.

Failure to include acknowledgment of all addenda may be cause for rejection of the SOQ. Respondents shall state in its transmittal letter that it has received all addenda issued on the Project SharePoint site (Facilities Procurement – General Information site) through the date of the SOQ.

4.3.2 Table of Contents

A Table of Contents shall be included in the SOQ itemizing the contents of the Respondent's submission.

4.3.3 Respondent Team Composition

The SOQ shall indicate the form of business structure (corporation, partnership, joint venture, limited liability company, etc.) that will serve as the DB Contractor and provide single-entity responsibility for the Project. A Respondent organization chart is required. All shareholders, partners, or members of Respondent who will perform work on the Project shall be listed. If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, the proposed DB Contractor shall submit a copy of the organizational documents or agreement committing to form the organization. If the proposed DB Contractor is a partnership or joint venture, all members of such DB Contractor shall be listed. Additionally, the SOQ shall identify the portions of the work that will be undertaken directly by the DB Contractor and what portions of the work will be subcontracted to which firms. At a minimum, the SOQ shall identify the parties that will undertake the responsibilities for public relations, permitting, design, construction, and startup and testing of the Regional Facilities.

The proposed contractual relationships between the Respondent and all major partners and subcontractors (responsible for greater than five percent of the total Project effort) identified at the time of the SOQ submittal, relative to the various phases of the Project (e.g., design, construction) shall be outlined in the SOQ. The Respondent shall describe the history of the relationships among the team members including a description of past working relationships and a clear, definitive

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statement of the number of years the Respondent and its Project team members have been in the business of providing design and construction services for water treatment, pumping and conveyance facilities.

The history, ownership, organization, and background of the Respondent (and proposed DB Contractor, if different from the Respondent) shall be provided. If the Respondent is a joint venture, the required information shall be submitted for each member of the joint venture firm and the SOQ shall indicate which partner will manage the joint venture during each phase of the Project.

If the DB Contractor anticipates that the SRWA may require it to provide a separate parent company guaranty (as discussed above in section 2.6.1), then the SOQ also may include the identity of the proposed guarantor together with financial information about the guarantor.

4.3.4 Technical Qualifications

Respondents shall demonstrate their ability to undertake the Project by providing evidence of the technical experience and qualifications of the Respondent, its subcontractors, and any additional team members related to the design, construction, acceptance testing, and obtaining of governmental approvals for treatment and conveyance projects comparable to the Project. The SRWA reserves the right to conduct an investigation of the Respondent's and its team members' technical qualifications by contacting project references or accessing public information. Additional information may be requested during the technical qualifications review. As a minimum, the Respondent shall provide the following information to demonstrate technical qualifications:

- 1. Design Experience** – The Respondent shall provide a detailed summary of its engineering and design experience for the development and implementation of water treatment facilities serving the public and incorporating similar treatment processes to those contemplated for the Project. The information submitted should demonstrate experience with pipeline and design and construction engineering as reflected on completed, currently operating projects. It should include familiarity with water treatment unit processes, and understanding of the interrelationship between design, construction, and operation of water treatment facilities. The information shall include projects similar to this Project where the design was completed in the last ten years in which the individual team members identified in the SOQ have been involved. Information on any innovative approaches incorporated in these designs should be presented. Design experience shall be demonstrated by design firms and key Project staff for relevant treatment processes capable of achieving the preliminary performance standards presented in Section 2.3 of this RFQ. Emphasis shall be placed on design experience in connection with DB projects and on design experience with water treatment facilities of similar or greater capacity to the Project. The Respondent shall identify the team member responsible for key aspects of the design (i.e., architectural, structural, mechanical, process, instrumentation, QA/QC, etc.) and indicate current licenses and registrations.
- 2. Regulatory Compliance and Permitting Experience** – The Respondent shall submit a detailed summary of its team's experience with permitting and regulatory

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compliance. The Respondent shall describe experience in obtaining the permits and approvals such as those listed in Section 2.4.2. If the experience in obtaining these permits is not local (i.e., not issued by the same agency as would issue the permit for the Project), the Respondent shall describe in detail how it would approach obtaining the permits and approvals. Demonstration of this experience shall include:

- Identification of state regulatory agencies that Respondent has worked with for the regulation of public water treatment plants. Experience should include the duration and record of regulatory dealings and the comparability of regulatory issues handled to the Project. Local and State of California experience shall be highlighted.
- Demonstration of ability in both achieving and on-time achievement of final regulatory approval of project plans that support capital improvement projects.
- Experience and capability in permitting new water treatment plants.
- Evidence of compliance with EIR mitigation measures, permits, licenses, approvals, consent decrees and agreements, and other regulatory actions applicable to water treatment plants and systems.
- Corrective actions taken.

Emphasis shall be on experience with projects in the United States and with state and local permitting agencies in efforts relevant to this Project.

1. **Construction Experience** – The Respondent shall provide its experience with construction management, construction and maintaining quality control of construction on water treatment facilities and large diameter pipelines completed in the last ten years. The Respondent shall provide information on its record of budget and schedule performance for projects performed or being performed and significant disputes that have arisen during the design or construction of the project. Additionally, the Respondent shall provide information on any litigation and shall describe philosophy and experience with preparation and implementation of quality control plans and procedures. The Respondent may also provide descriptions of relevant experience related to other types of major processing facilities, including but not limited to wastewater treatment facilities. Types of construction experience shall be identified with each project presented, i.e., construction only, DB, design-build-operate (DBO), etc. Emphasis shall be placed on construction experience in connection with DB and DBO projects, and on construction experience with pipeline and water treatment facilities of similar or greater capacity to the Project. Respondent shall provide its experience with safety programs established and the safety records accumulated by the members of the Respondent DB team. Identify any safety awards obtained in the last five years.

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2. **Start-up and Acceptance Testing Experience** – Respondents shall provide a description of startup and acceptance testing procedures and protocols employed on similar facilities, including a description of the procedures employed to ensure optimal efficiencies of the facilities. Respondents shall demonstrate the ability to perform 30-day startup and commissioning of the Regional Facilities, including experience in the start-up of similar facilities, problems encountered, and methods of resolving the problems. Respondents shall also demonstrate experience with developing procedures for and implementing final acceptance testing of similar facilities.
3. **DB Experience** – The Respondent shall provide a general description of its individual member and collective experience in DB project delivery methods, and other collaborative project delivery methods, especially for drinking water treatment and wastewater treatment facilities serving the public, and for other environmental management and processing facilities. When describing projects, the project name, project delivery method, type of project and the size of the project shall be identified. The Respondent shall demonstrate an understanding of the interrelationship between design and construction of water treatment facilities under the DB project delivery approach.
4. **Key Project Staff** – The Respondent shall provide the relevant qualifications of all key staff assigned to this Project. Utilizing the SOQ Submittal Form C-3 in Attachment C, the Respondent shall, in Section 7 of its SOQ, provide the qualifications of all key Project staff, including, but not limited to: Project Manager, Design Manager, lead Engineer(s) for each major design segment, Construction Manager, Construction Superintendents (if identified), QA/QC Manager(s) (design and construction), Start-Up and Testing Manager, and Safety Manager. The Project Manager is expected to be available for in-person meetings in Ceres and Turlock on a regular basis and often without much advance notice during both design, construction and startup phases of the work.

Information on the key individuals shall include length of time practicing in profession, licenses and certifications, familiarity with water treatment plant permitting, design, construction, testing, and DB or DBO projects, and proposed project leadership. Respondents shall also indicate which team members will be involved in each phase of startup and acceptance testing from initial startup through final acceptance testing. The SOQ shall include the information for all key Project staff of the contracting firm, its parent (if applicable), partner firms, and major subcontractors. For all key personnel, Respondents shall provide full resumes containing the relevant qualifications as an attachment to the SOQ. For each of the key Project staff identified, Respondents shall indicate on which of the projects identified pursuant to Section 4.3.5 of this RFQ that individual played a key role and identify the role.

Respondents must recognize that its key Project staff, along with subcontractors and their key employees included in the SOQ, shall be used as a basis for determining pre-qualified Respondents for eligibility to submit responses to the RFP. Any changes to Respondent teams, including major subcontractors and key employees, shall not be allowed except for extenuating circumstances such as corporate takeovers, buyouts, and other unforeseen changes. Respondents shall be evaluated based on the strength of “key project staff” as well as the depth of experienced staff resources available within the Respondent’s structure. Respondents may strengthen their teams prior to

Request for Qualifications

submission of their proposals by adding additional experienced personnel and subcontractor members. The SRWA shall have the right to determine, in its sole discretion, the acceptability of any changes in the Proposer's proposed team as prescribed in its SOQ. Any changes to the Proposer's proposed team found to be unacceptable by the SRWA may result in disqualification of the Proposer.

5. **Licenses** – The Respondent shall list the licenses, registration, and credentials required to design and construct the Project, and shall also include information on the revocation or suspension of any license, credential, or registration.

4.3.5 Relevant Project Experience and References

In addition to providing technical qualifications and experience, the Respondent shall provide a list of up to ten (10) directly relevant projects completed within the past ten years that the Respondent has been involved with as a designer, builder, or combination thereof. A brief description of these selected projects shall be provided, including a description of the Respondent team's specific involvement in these projects and their relationship to the relevant experience information provided in accordance with Section 4.3.4 of this RFQ. Although these projects may be located in the United States or abroad, emphasis shall be on experience in the United States. In the projects presented, the Respondent must demonstrate qualifications and experience consistent with the development and implementation of the Project. These projects will be used as references and will be considered by the SRWA in the evaluation of the Technical Qualifications under Section 5 of this RFQ. Respondents are required to complete the SOQ Submittal Form C-2 in Attachment C that provides detailed information about the relevant project experiences described in this Section and provide such forms in Section 7 of its SOQ.

4.3.6 Financial Qualifications

The SOQ shall include the following subsections related to financial qualification:

- Financial information
- Security requirements
- Previous experience with and willingness to accept the risk allocation set forth in the Preliminary Design-Build Contract included as Attachment B
- Experience in providing project guarantees
- Liability insurance that the Respondent has normally provided for a project of this scope and size

4.3.6.1 Financial Information

The Respondent shall provide full disclosure of the financial position of the proposed DB Contractor proposed to guarantee all the DB Contractor's obligations under the Design-Build Contract. To assist in the evaluation of financial information, Respondents shall include a completed Financial Resources Data Form (SOQ Submittal Form C-4 in Attachment C) for the proposed DB Contractor. The Respondent shall include a hard copy of Form C-5 in their submission, as well as an electronic

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completed version of the Microsoft Excel spreadsheet provided as part of the SOQ. The following additional financial-related information shall be included as part of the SOQ:

A. Financial Statements and Highlights

The Respondent shall provide a covering summary, highlighting key features pertinent to its financial qualifications. The Respondent should consider supplementing this summary with additional commentary which may not be fully articulated in the Financial Statements such as:

- The DB Contractor's backlog and business outlook;
- A review of any significant changes or trends over the last five (5) years impacting the financial profile of the DB Contractor.

This summary should be no longer than two (2) pages.

The SOQ must also include copies of the most recent five (5) years of audited annual reports filed with the Securities and Exchange Commission (SEC) on Form 10-K, supporting documents, and all quarterly reports filed with the SEC on Form 10-Q since the last 10-K was filed. If 10-K or 10-Q reports reference other reports that describe the Proposed DB Contractor's financial condition, copies of such reports shall be provided to the SRWA by the Respondents as part of the SOQ.

If the proposed DB Contractor is not required to make periodic filings with the SEC, the Respondent shall submit for the proposed DB Contractor, as applicable: a) audited financial statements for the past five (5) fiscal years, including income statements, balance sheets, and a statement of changes in financial position; and b) copies of the latest quarterly financial reports for the prior three (3) months.

All financial information requested herein shall be prepared in accordance with Generally Accepted Accounting Principles (or equivalent) and be provided in U.S. dollars. If the audited financial statements provided with the SOQ are not in the English language, then a certified English translation shall be provided for this project.

B. Credit Ratings

If the Respondent has short-term or long-term obligations rated by Moody's Investors Service, Standard & Poor's or Fitch Ratings, or similar such ratings shall be provided on SOQ submittal Form C-4 in Attachment C.

C. Insurance

Respondents shall specify the limits of liability insurance that they normally provide for a project of this scope and size, including the amount of any deductibles or self-insured retentions. The Respondent shall provide evidence of coverage, or evidence of the ability to secure insurance coverage, at those limits.

Respondents shall provide a letter from the Respondent's proposed insurance company acknowledging, among other things, that the Respondent's insurance company has reviewed and understands the requirements of this RFQ and that the insurance company intends to furnish the required insurance set forth in Section 2.6.3

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of this RFQ for the Project in the event an acceptable Design-Build Contract is negotiated between the DB Contractor and the SRWA based on this RFQ, the RFP, and the proposal. Such letter shall be included in Section 7 of the Respondent's SOQ.

D. Direct Financial Questions

The purpose of this subsection is to elicit information pertaining to unfavorable factors or events that have the potential to adversely impact the proposed DB Contractor's ability to honor its contractual commitments. To the extent that any of these questions are answered in a manner that indicates that any of these unfavorable factors or events are present or have occurred, it is the Respondent's sole responsibility to: 1) describe in detail the unfavorable factor or event; and 2) provide sufficient information to demonstrate to the SRWA that the unfavorable factor or event will not adversely impact the proposed DB Contractor's ability to honor its contractual commitments.

Each Respondent shall provide responses to each of the following questions concerning the proposed DB Contractor during the past five (5) years (except where otherwise noted):

1. Material Adverse Changes in Financial Position
 - a) Describe any material historical, existing, or anticipated changes in financial position of the proposed DB Contractor including, but not limited to, any material changes in the mode of conducting business, mergers, acquisitions, takeovers, joint ventures, and divestitures.
2. Bankruptcy
 - a) Has the proposed DB Contractor ever filed for bankruptcy? If so, state when and where and describe the circumstances and the impact it could have on the ability to honor contractual commitments.
3. Liabilities and Potential Liabilities
 - a) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) and any contingent liabilities (i.e., financial or performance commitments, open letters of credit, and guarantees) in which the proposed DB Contractor, or any parents, affiliates, and subsidiaries of the proposed DB Contractor was or is a party that could adversely affect the proposed DB Contractor's financial position or ability to honor its contractual commitments to the SRWA.
 - b) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) in which the proposed DB Contractor, or any parents, affiliates, and subsidiaries of the proposed DB Contractor is or was a party within in the last ten (10) years concerning projects of a similar nature, including DB and DBO projects.
 - c) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) and any contingent liabilities (i.e., financial or

Request for Qualifications

performance commitments, open letters of credit, and guarantees) in which any other member of the Respondent's proposed Project team, or any parents, affiliates, and subsidiaries of the such team members was or is a party that could adversely affect the such team member's financial position or ability to honor its contractual commitments in relation to the Project.

4. Completion of Contracts

Briefly describe any situation in which the Respondent, proposed DB Contractor, or any other member of the Respondent's proposed Project team failed to complete any construction or public works contract or had any such contract terminated by the other party due to alleged poor performance, default, or litigation.

5. Violation of Laws

Has the Respondent, proposed DB Contractor, or any other member of the Respondent's proposed Project team been convicted of any criminal conduct or, in the past ten (10) years, been found in violation of any federal, state, or local statute, regulation, or ordinance or court order concerning antitrust, public contracting, employment discrimination, public works, or labor or prevailing wage requirements or limitations? If so, describe the circumstances.

6. Debarred from Bidding

Has the Respondent, proposed DB Contractor, or any other member of the Respondent's proposed Project team been debarred, or are under consideration for debarment, or determined to be non-responsible, for public contracts by the federal government or by any governmental entity in California or any other state? If so, describe the circumstances and explain whether the decision is under review or was upheld by formal legal or grievance process.

4.3.6.2 Security Requirements

Respondents are required to furnish evidence of their ability and intention to provide the Performance Bond and the Payment Bond as discussed in Section 2.6.2.

Respondents shall provide a letter from the Respondent's proposed surety company acknowledging, among other things, that the Respondent's surety company has reviewed and understands the requirements of this RFQ and that the surety company intends to furnish the Performance Bond and Payment Bond set forth in Section 2.6.2 of this RFQ in favor of the SRWA as security for the performance of the DB Contractor's design-build work obligations, in the event an acceptable Design-Build Contract is negotiated between the DB Contractor and the SRWA based on this RFQ, the RFP and the proposal. Such letter shall be included in Section 7 of the Respondent's SOQ.

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4.3.7 Conflicts of Interest

The SRWA has adopted a conflict of interest policy concerning this procurement (see Attachment D). The Respondent, the proposed DB Contractor, and their affiliates will be subject to, and must comply with, this policy. In the SOQ, the Respondent must confirm that it is, and will be, in compliance with the policy. In addition, list and describe all engagements: 1) between the Respondent, the proposed DB Contractor, or any of their affiliates, with any of the persons and firms listed in Section 1.3 of this RFQ; and 2) between any other member of the Respondents proposed Project team, or any of their affiliates, with any of the persons and firms listed in Section 1.3 of this RFQ.

4.3.8 Skilled and Trained Workforce Requirement

California Public Contract Code 22164(c) provides that the SRWA cannot short-list a Respondent unless the Respondent: 1) provides an enforceable commitment to the SRWA that the Respondent and its subcontractors at every tier will use a “skilled and trained workforce” (as defined at Public Contract Code Section 2601) to perform all work on the Project; or 2) has entered into a project labor agreement (as defined at Public Contract Code Section 2500) that will bind the Respondent and all of its subcontractors to use a skilled and trained workforce. Therefore, the Respondent must sign the certificate form included in Attachment E to: 1) commit itself and all subcontractors to use a skilled and trained workforce to perform all work on the Project and acknowledge that the requirement will be incorporated in the Design-Build Contract; or 2) confirm that the Respondent is a party to an applicable project labor agreement. The skilled and trained workforce requirement generally means that all the workers performing work in an apprenticeable occupation are either skilled journeypersons or apprentices registered in an apprenticeship program and that at least a certain specified percentage of the skilled journeypersons on the job are graduates of an apprenticeship program. See Public Contract Code Sections 2601-2602 for more detail concerning this requirement. To be considered for the short-list, a Respondent must include the signed certificate form in Attachment E in its SOQ. If a Respondent certifies that it is a party to an applicable project labor agreement, then it also must submit a copy of the agreement. A Respondent will be disqualified as nonresponsive if the certificate is not completed, signed, and submitted.

4.4 SOQ Submittal Forms

Respondents must complete and submit SOQ Submittal Forms C-1, C-2, C-3, C-4, and C-5 in Attachment C and include all such forms in Section 7 of the SOQ. An electronic version of the SOQ Submittal Forms has also been posted to the Project SharePoint site. In addition, Respondents shall include the letters from insurers and sureties required by Sections 4.3.6.1(c) and 4.3.6.2, respectively, in Section 7 of the SOQ.

4.5 Comments on Project Concepts

Respondents may, but are not required to, provide comments concerning the SRWA’s Project approach, Project schedule, contractual concepts, or other elements of the Project described in this RFQ. The comments should reflect the Respondent’s suggestions that in the opinion of the Respondent might improve achievement of the SRWA’s objectives. Comments provided by Respondents will be considered under the terms of Section 5 and may be helpful to the SRWA in

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developing the Project procurement process. All such information will be considered confidential until a Design-Build Contract with the successful proposer is executed (except as otherwise provided by Section 3.9).

In particular, the SRWA may incorporate reasonable suggestions in the RFP and draft Design-Build Contract, regardless of whether the SRWA awards the Design-Build Contract to the Respondent who made the suggestions. All such comments shall be included in Section 8 of the Respondent's SOQ.

Respondents are encouraged to provide comments related to any or all of the following:

- Treatment processes that are reasonable and worthy of consideration
- The need for pilot testing
- Key process issues that could affect long-term performance and economic efficiency, while maintaining flexibility to accommodate changing water quality requirements
- Additional Project site related information needs
- Phasing and flexibility
- Design-Build Contract security requirements as discussed in this RFQ and the Preliminary DB Contract
- Risk sharing as presented in the Preliminary DB Contract
- Regional Facilities communication systems and concepts
- Other

Comments on the evaluation and selection criteria for the RFP will not be considered.

A statement shall be included in the SOQ documenting the adequacy (or any concerns with the quality or quantity of information provided) of the raw water quality data and process performance data as described in Section 2.4.3.

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5.0 EVALUATION AND RANKING OF SUBMISSIONS

The preceding sections of this RFQ have outlined the Project and the qualifications that will be used to create a short-list of prequalified Respondent proposers that will receive an RFP for the Project. The SRWA intends to review the SOQs for responsiveness to the requirements of this RFQ and to evaluate all responsive SOQs according to the following criteria and weighting:

1. **Team Composition (40 percent)**
 - Team organization
 - Previous working history as a team
 - References (related to project delivery)
 - Key staff experience, including alternative delivery experience, and startup/testing
 - Key staff percent of time available to the Project (design phase and construction phase)
 - History (for proposed team) of meeting project budgets and schedules
 - Interview performance
2. **Approach to Project Delivery (30 percent)**
 - Approach to collaboration with the SRWA
 - Approach to providing training and a smooth transition to the SRWA operations and maintenance staff
 - Organization and presentation of the SOQ
3. **Technical Qualifications (30 percent)**
 - Technical experience relevant to the project, including identified subcontractors
 - Design
 - Construction
 - Permitting
 - Start-up and testing
 - Management of multi-discipline teams on complex water projects
 - References (related to treatment facility reliability and performance, and pumping and conveyance systems)
4. **Financial Qualifications and Safety Record (Pass/Fail)**
 - Respondent financial stability
 - Claims history
 - Bonding capacity
 - Insurance requirements
 - Willingness to sign Contract (allowing for reasonable changes)
 - Safety record of construction team
 - Ability to comply with the SRWA's conflict of interest policy
 - Ability to certify the use of "a trained and skilled workforce"

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The evaluation of the qualifications will be based on the submittals received as required by Section 4 of this RFQ and correspondence with Respondent teams and personnel references and analysis of other publicly available information and information otherwise made available to the SRWA.

5.1 Team Composition

The criteria for the evaluation of the Respondent's team composition will include:

1. Respondent DB team information:
 - Team structure, management and working history
 - Team and Project organization
 - Work to be performed by Respondent and work to be subcontracted
 - Proposed staffing and description of staff working together on existing and past projects
 - Key staff experience, including collaborative delivery experience and startup/testing
 - Key staff percent of time available to project (design phase and construction phase)
 - Project history (for proposed team) meeting budget and schedule
 - Interview performance. The following team members will be required to attend the interview:
 - Project Manager
 - Design Manager
 - Construction Manager
 - Construction Superintendent
 - Start-Up and Testing Manager

In addition to the required five (5) team members listed above, the Respondent may bring an additional three (3) team members to the interview.

2. DB experience and performance on similar projects:
 - Extent of past experience with DB and DBO and references related to project delivery
 - Understanding of interrelationship between design, construction, and operation of water treatment facilities

5.2 Approach to Project Delivery

The criteria for the evaluation of the Respondent's Approach to Project Delivery will include:

- Approach to collaboration with the SRWA
- Approach to training and providing a smooth transition to the SRWA operations and maintenance staff
- Organization and presentation of the SOQ

Request for Qualifications

5.3 Technical Qualifications

In evaluating technical qualifications and experience, the SRWA will give most consideration to experience related to drinking water treatment projects providing service to the public, particularly in the United States and the State of California. Non-United States experience will be considered where demonstrated by the Respondent to be comparable and of equivalent value to United States experience in achieving objectives similar to the Project.

The criteria for the evaluation of the Respondent DB team's technical qualifications will include:

1. Design and Permitting Experience

- Design experience and past performance on similar projects, including:
 - Similar projects completed in the last ten (10) years in which individual team members have been involved
 - Experience with innovative design solutions for issues similar to those for the Project
 - Experience designing aesthetically pleasing facilities
 - Design experience in DB and DBO projects
 - Key design staff experience and ability
- Permitting experience and past performance on similar DB projects
 - Experience obtaining permits and approvals or types of permits and approvals listed in Section 2.4.2 of this RFQ, including California regulatory agencies worked with and comparability of issues handled to this Project
 - Record in achieving, and on-time achievement of, final regulatory approval of facility plans supporting water or wastewater treatment plant projects
 - Key permitting staff experience and ability

2. Construction Experience

- Construction experience and past performance on similar projects, including:
 - Similar projects completed in the last ten (10) years in which team members have been involved as builder
 - Construction experience in DB and DBO projects
- Experience with preparation and implementation of quality control plans and procedures
- Construction safety programs established and construction safety records accumulated, including:
 - Adequacy of safety programs established
 - Accumulated safety records
 - Safety awards obtained in last five (5) years
 - Current worker's compensation rate for construction team members
- Key construction staff experience and ability
- Start-up and acceptance testing experience and past performance on similar projects

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5.4 Financial Qualifications and Safety Record

In this section, regarding financial qualifications and safety record, the Respondent's capabilities and financial strength (and, if submitted by the Respondent, financial information provided for the proposed guarantor) will be evaluated with respect to the performance of the Design-Build Contract over its entire term. The criteria for the evaluation of the Respondent capabilities and team financial qualifications will include, but not be limited to:

1. Respondent
 - The experience and management capability of the Respondent to integrate the required expertise for the overall benefit of the Project
 - Experience and management capability of the Respondent's key personnel
2. Financial Resources:
 - Liquidity
 - Leverage
 - Cashflow/Debt Service Coverage; and
 - Profitability
3. Security, Insurance, and Credit Ratings:
 - Evidence of ability to meet the security requirements described in this RFQ
 - Evidence of ability to provide the insurance coverage described in this RFQ
 - Bond, credit, and other ratings
4. Responses to Direct Financial Questions

Various analytical techniques will be used to assess the financial strength and stability of each proposed DB Contractor, focusing on profitability and growth, solvency, efficiency, market strength, and ratings from credit agencies. The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are directly comparable among Respondents and Guarantors. Other factors that may influence the financial position of a proposed DB Contractor or that provide additional evidence of the financial strength of a proposed DB Contractor will also be assessed.

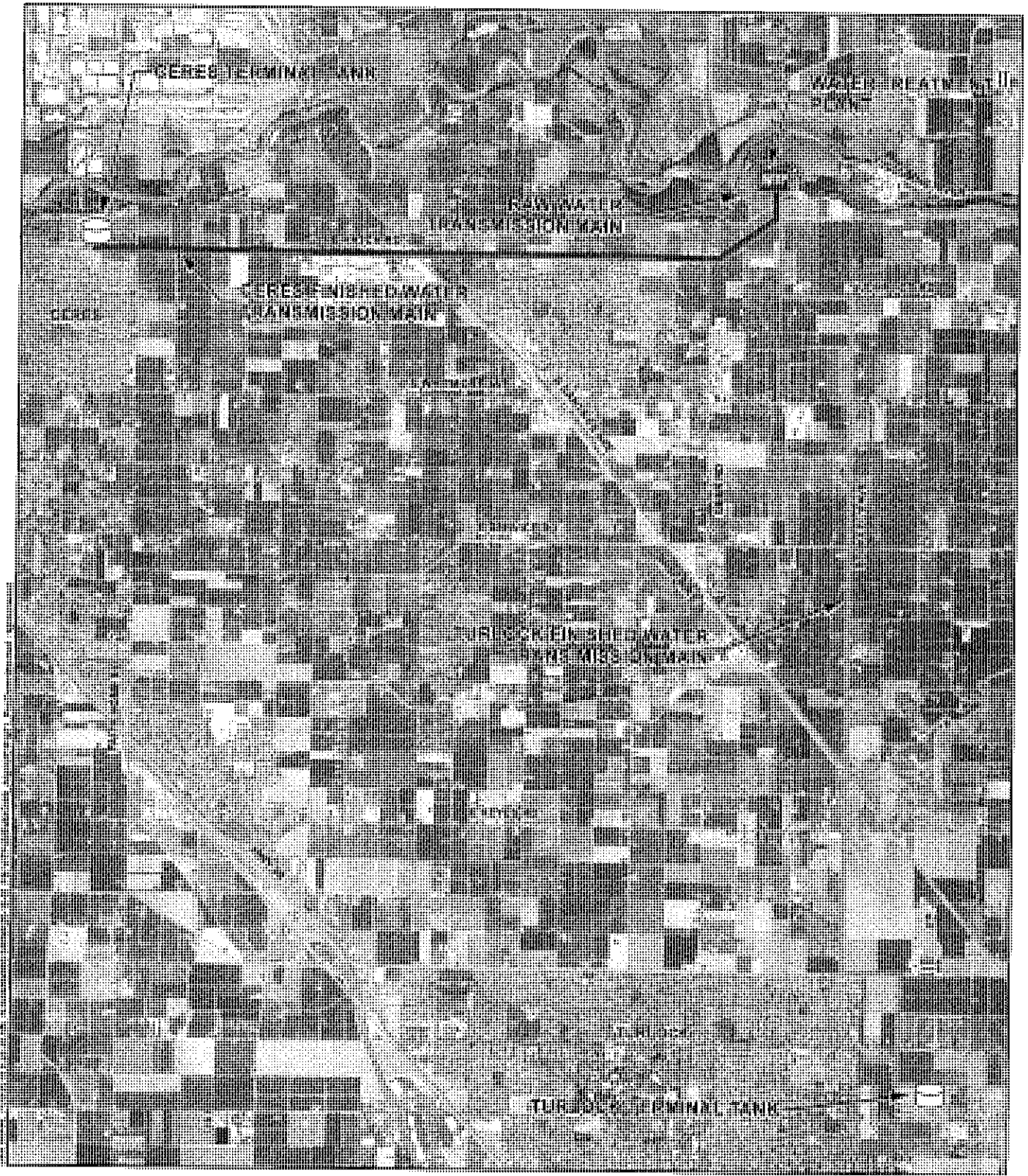
When performing the financial evaluation, the SRWA will place an emphasis on those financial criteria that relate to the proposed DB Contractor's and Guarantor's financial strength and solvency, including such factors as Total Net Worth, Current Liability Coverage, and Market to Book Ratio, as well as bond and credit ratings. Respondents are advised that information indicating inadequate financial strength for the Project or evidence of financial distress or potential financial distress may prevent the Respondent from advancing to the next stage of the selection process.

In addition to the financial evaluation, the safety record of the construction team will be considered, including the adequacy of established safety programs. Safety records will be evaluated against the criteria described in California Public Contract Code 22164(b)(3)(g).






The Respondent's ability to comply with the SRWA's conflict of interest policy and to certify the use of "a trained and skilled workforce" are required.

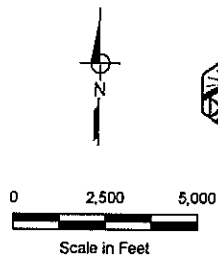
ATTACHMENT A

Project Overview Map



Symbology

-  Water Treatment Plant
-  Tank
-  Raw Water Transmission Main
-  Turlock Finished Water Transmission Main
-  Ceres Finished Water Transmission Main



Project Overview

Stanislaus Regional Water Authority
Regional Surface Water Supply Project

ATTACHMENT B

Preliminary Design-Build Contract

DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

between

STANISLAUS REGIONAL WATER AUTHORITY

and

XXX

Dated

_____, 2019

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DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

THIS DESIGN-BUILD CONTRACT is made and entered into as of _____, 2019, between the Stanislaus Regional Water Authority, a joint powers authority organized and existing under the California Joint Exercise of Powers Act (the "SRWA"), and _____, a _____ organized and existing under the laws of the State of _____ and authorized to do business in the State of California (the "Company"), who agree as follows:

RECITALS. This Contract is made with reference to the following background recitals:

(A) SRWA is a joint powers authority established pursuant to the Amended Drinking Water Supply Project Joint Exercise of Powers Agreement Between the Cities of Ceres and Turlock for the Purpose of Creating a Joint Powers SRWA Responsible for Decisions in Certain Matters Pertaining to the Municipal and Industrial Water Supply Programs for the Aforementioned Public Entities a Joint Powers Agreement dated December 15, 2015, as amended _____, 2018, for the purpose of jointly pursuing the development and implementation of the Regional Surface Water Supply Project that will provide a new supply of treated surface water to customers of the Cities to help meet existing and future water needs, improve drinking water quality, and aid the sustainable management of the groundwater basin.

(B) The Regional Surface Water Supply Project will consist of the design, construction, start-up and testing of a new regional water treatment plant, raw water pump station, raw water transmission main, finished water transmission mains, and all appurtenant and related facilities. The Tuolumne River will be the source of water for the Project. SRWA will provide the water supply pursuant to the Amended Water Sales Agreement between SRWA and Turlock Irrigation District dated _____, 2018.

(C) In 2002-2003, Turlock Irrigation District constructed an infiltration gallery (i.e., subsurface perforated pipes that collect river water) within the riverbed of the Tuolumne River. SRWA will divert river water from an intake/diversion facility that will consist of two major structures: a wet well (i.e., a large, buried concrete "box" used to hold water drawn from the infiltration gallery) constructed in connection with the existing infiltration gallery; and a pump station structure (with pumps, piping, electrical, and other equipment) that will be constructed above the wet well. SRWA constructed the wet well and associated improvements in 2018-19 pursuant to its separate, but related Raw Water Pump Station, Phase 1 project (aka Infiltration Gallery Testing Project).

(D) SRWA plans to enter into a contract with a private design-build entity for the design, permitting, construction, start up, commissioning, initial testing, and acceptance testing of the remaining Project facilities (defined below as the Regional Water Facilities).

(E) Public Contract Code Sections 22160-22169 authorizes SRWA to conduct a design-build procurement process utilizing best value as a method to select the design-build entity to provide the services described in this Contract.

(F) SRWA issued a Request for Qualifications in August 2018 to interested design-build entities capable of designing and building the Project. Following evaluation of the statements of qualifications submitted in response to the request for qualifications and based upon the criteria set

forth in the Request for Qualifications, SRWA selected three firms for receipt of the Request for Proposals (RFP).

(G) The RFP was issued by SRWA to the three prequalified teams in _____ 2018. RFP addenda were issued on _____, 2018. Proposals submitted in response to the RFP were received by SRWA in _____ 2019. The proposals were reviewed by SRWA Technical Advisory Committee and evaluated based on the criteria set forth in the RFP. Based on the evaluations of the proposals and discussions with the proposers, the Technical Advisory Committee determined that the proposal submitted by the Company offers the best value (as described in the RFP and Public Contract Code Sections 22161 and 22164) to the public and it recommended to SRWA Board of Directors that the Board authorize this Contract with the Company.

(H) Certain significant Project background and reference documents were attached to and referenced in the RFP and, through the RFP, SRWA disclosed these documents and their contents and information to the Company. The Company had the opportunity to review and consider these documents as it evaluated and developed its Proposal.

(I) On _____, 2019, SRWA Board of Directors adopted a resolution approving and authorizing the execution, delivery, and performance of this Contract.

(J) _____, an Affiliate of the Company, will guaranty the payment and performance of the obligations under this Contract pursuant to a separate guaranty agreement executed concurrently with this Contract

(K) Prior to approving this Contract, SRWA certified an environmental impact report for the Project in accordance with the California Environmental Quality Act.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Contract, the following words and terms shall have the meanings set forth below:

“Acceptance” means demonstration by the Company in accordance with Article 5 (Testing, Start-up, and Acceptance) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) that the Acceptance Tests have been conducted, the Acceptance Test Procedures and Standards have been achieved, and all other Acceptance Date Conditions have been achieved.

“Acceptance Date” means the date on which Acceptance of the Project occurs or is deemed to have occurred under Article 5 (Testing, Start-up, and Acceptance).

“Acceptance Date Conditions” has the meaning specified in Section 5.5 (Acceptance Date Conditions).

“Acceptance Test” means the testing for Acceptance to be performed by the Company in accordance with Article 5 (Testing, Start-up, and Acceptance), Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), and the Acceptance Test Plan.

“Acceptance Test Plan” means the testing protocols, procedures and processes for the performance of the Acceptance Tests prepared and documented by the Company and approved by SRWA in accordance with Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

“Acceptance Test Procedures and Standards” means the test procedures and standards for Acceptance set forth in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person, (b) is controlled by or is under direct or indirect common control with the specified Person, or (c) is an officer, director, or senior management employee of the Person. For purposes of this definition, “control” means (a) the power to directly or indirectly control or direct the management or policies of the specified Person, whether through the ownership of voting rights, partnership or limited liability company interests, contract, or otherwise, or (b) direct or indirect ownership of 50% or more of the voting securities or interests of that Person.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Contract, and identified as such in the Table of Contents. The Appendices are part of the Contract.

“Applicable Law” means (1) any federal, State or local statute, law, code, regulation, court decision or order; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case applicable from time to time to the permitting, design, acquisition, construction, equipping, start-up, testing, and initial operation of the Regional Water Facilities, or any other transaction or matter contemplated by this Contract (including, without limitation, any of the foregoing that pertain to water treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). Applicable Law includes the California Building Standards Code

(California Code of Regulations Title 24), including applicable building, plumbing, mechanical, electrical, and fire codes, OSHA requirements, and Environmental Mitigation Measures.

“Assumed Approval Issuance Date” has the meaning specified in subsection 4.6(J) (Governmental Approval Dates).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S. Code Section 101 et seq., as amended from time to time and any successor statute. “Bankruptcy Code” also includes (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

“Base Design-Build Price” has the meaning specified in Section 6.2 (Design-Build Price).

“Base Design-Build Price Adjustments” has the meaning specified in Section 6.2 (Design-Build Price).

“Board of Directors” means the Board of Directors of SRWA.

“Business Days” means Monday through Friday, excluding holidays recognized by the City of Turlock.

“Ceres Finished Water Transmission Main” means the transmission main for the conveyance of Finished Water from the Plant to the Ceres Water Supply System, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Ceres Finished Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Ceres Finished Water Transmission Main is to be constructed by the Company.

“Ceres Water Supply System” means the City of Ceres wells, pump stations, treatment facilities, reservoirs, pipes, mains and all other facilities, equipment and structures used by the City for the production, storage, treatment and conveyance of drinking water in the City of Ceres.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of either party:

1. except as provided below, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;
2. except as provided below, the order, decision, or judgment of any Governmental Body issued on or after the Contract Date enforcing any Change in Law described in subsection (1) of this definition to the extent such order, decision, or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of SRWA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order, decision, or

- judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence;
3. except as provided below, the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of SRWA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence; or
 4. a Change in Law pertaining to Taxes, the effect of which is the adoption of a new or increased State or local Tax imposed on building materials used in the construction of the Regional Water Facilities.

However, none of the following shall constitute a Change in Law:

1. acts, events and circumstances with respect to the Governmental Approvals, to the extent that the Company has expressly assumed the permitting risk under Section 4.6 (Design-Build Work Permitting Responsibilities);
2. acts, events and circumstances with respect to the New Domestic Water Supply Permit or an Interim Operations Approval, to the extent that the Company has expressly assumed the permitting risk under Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit);
3. a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Contract Date;
4. any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date; and
5. any act, event or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Company by the Contract Standards in effect as of the Contract Date.

“Change Order” means a written order issued by SRWA and agreed to in writing by the Company prior to Final Completion making a Design and Construction Requirement Change (whether made at Company request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of SRWA), making a Base Design-Build Price Adjustment, adjusting the Scheduled Acceptance Date, or making other change to the terms and conditions of this Contract.

“Cities” means the City of Ceres and the City of Turlock.

“City of Ceres” means the City of Ceres, California, a municipal corporation organized and existing under and by virtue of the laws of the State.

“City of Turlock” means the City of Turlock, California, a municipal corporation organized and existing under and by virtue of the laws of the State.

“City Property” means any buildings, structures, improvements, equipment, alarm systems, wastewater and water mains, valves, pumping systems, hydrants, hydrant connections, duct lines, lamps, lampposts, monuments, sidewalks, curbs, trees, lawns, roadways, utilities or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by either City.

“City Water Supply Systems” means the Ceres Water Supply System and the Turlock Water Supply System.

“Company” means _____, a _____ organized and existing under the laws of the State of _____, and its permitted successors and assigns.

“Company Construction Superintendent” means the employee of the Company or a Subcontractor who is primarily responsible for the construction of the Regional Water Facilities, as designated in Section 4.19(B) and Appendix 10 (Key Personnel and Approved Subcontractors).

“Company Contract Representative” means the individual specified in writing by the Company as the representative of the Company from time to time for all purposes of this Contract.

“Company Engineer” means a professional engineer licensed in the State in good standing who is designated as such by the Company, and acceptable to SRWA, acting reasonably, and is responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to the Design-Build Work.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, non-performance or non-compliance by the Company with respect to its obligations and responsibilities under this Contract to the extent not attributable to any Uncontrollable Circumstance or SRWA Fault, and which materially and adversely affects SRWA’s rights, obligations or ability or costs to perform under this Contract.

“Company Senior Supervisors” has the meaning specified in subsection 10.5(A) (Company Representatives).

“Construction Date” means the date, following satisfaction of the Construction Date Conditions by the Company, upon which the Company shall have the right to proceed with the physical construction of the Regional Water Facilities as determined in accordance with Section 4.2 (Construction Date Conditions).

“Construction Date Conditions” has the meaning specified in subsection 4.2(A) (Construction Date Conditions Generally).

“Contract” means this Design-Build Contract for the Regional Surface Water Project between the Company and SRWA, including the Appendices and the Transaction Forms, as the same may be amended or modified by the parties from time to time.

“Contract Administration Memorandum” has the meaning set forth in subsection 10.3(B) (Contract Administration Memoranda).

“Contract Date” means the date this Contract is fully approved, executed and delivered, as set forth at the top of page 1 of the Contract.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) Design and Construction Requirements, (3) Secondary Technical Criteria; (4) Performance Guarantees; (5) Good Engineering and

Construction Practice; (6) Good Industry Practice; (7) Design-Build Quality Management Plan; (8) applicable written equipment manufacturers' specifications and recommendations; (9) all Insurance Requirements; (10) the Appendices; and (11) any other standard, term, condition or requirement specifically provided in this Contract to be implemented or complied with by the Company.

"Cost Substantiation" means the process of providing evidence of actual costs in accordance with Section 10.8 (Cost Substantiation of Work Already Performed).

"DDW" means the Division of Drinking Water of the State Water Resources Control Board, or any predecessor or successor State agency responsible for permitting and regulation of public water systems.

"Deliverable Material" means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Company to SRWA pursuant to this Contract, including the Design Documents.

"Design and Construction Requirements" means the requirements designated as the "Design and Construction Requirements" in Article 4 (Permitting, Design, and Construction) and Appendix 5 (Project Technical Requirements) with which the Company must comply.

"Design and Construction Requirement Change" means a change in the Design and Construction Requirements made by a Contract Administration Memorandum or a Change Order pursuant to Section 4.10 (Design and Construction Requirements; Changes) or a Unilateral Change Directive pursuant to Section 4.12 (Unilateral Change Directives), (1) as a result of a Company request agreed to by SRWA, (2) on account of Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Governmental Body, or (4) at the direction of SRWA.

"Design-Build Price" means the sum of the Base Design-Build Price and any Base Design-Build Price Adjustments.

"Design-Build Quality Management Plan" means the Company's plan for quality assurance and quality control in implementing the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 4 (Design-Build Quality Management).

"Design-Build Work" means everything required to be performed and furnished for and relating to the design, permitting, construction and Acceptance of the Regional Water Facilities by the Company pursuant to this Contract. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, bonds, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company's design, engineering, construction, start-up, Acceptance Testing, obtaining and maintaining Governmental Approvals and related obligations with respect to the design and construction of the Regional Water Facilities under this Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Company's administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under this Contract pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and includes any Design and Construction Requirement Changes and variations in the final design from the Secondary Technical Criteria authorized by a Contract Administration Memorandum, Change Order or Unilateral Change Directive.

"Design Documents" means the Company's plans, technical specifications, Drawings, Record Drawings and other design and construction documents prepared in connection with the Design-Build Work.

“Differing Site Conditions” means (1) subsurface or latent conditions at one of the Sites that differ from those described in the geotechnical baseline conditions set forth in Appendix 5 (Project Technical Requirements) or otherwise indicated by information about the Sites made available to proposers prior to the deadline for submitting Proposals, or (2) unknown physical conditions at one of the Sites of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. Differing Site Conditions shall not include subsurface groundwater levels or other subsurface water conditions as described in Section 4.4(B) (Differing Site Conditions).

“Disinfection Plan” means the Company’s plan for cleaning and disinfecting those portions of the Regional Water Facilities that are in direct contact with Finished Water, prepared in accordance with Appendix 5 (Project Technical Requirements).

“Document Submittal Plan” has the meaning specified in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures).

“Drawing” means any drawing, diagram, illustration, brochure, schedule or other data prepared by the Company, any Affiliate or any Subcontractor to illustrate specific portions of the Design-Build Work.

“Encumbrances” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project, other than Permitted Encumbrances.

“Environmental Mitigation Measures” means the mitigation measures set forth in Appendix 9 (Governmental Approvals and Utility Coordination).

“Event of Default” means, with respect to the Company, those items specified in Section 7.2 (Events of Default by the Company) and, with respect to SRWA, those items specified in Section 7.4 (Events of Default by SRWA), which may lead to termination of this Contract upon election of the non-defaulting party.

“Extension Period” means the period commencing on the day after the Scheduled Acceptance Date and ending 180 days following the Scheduled Acceptance Date, or in the event of one or more delays caused by Uncontrollable Circumstances occurring during such period, the date determined by adding to such 180-day period the aggregate number of days of delay caused by such Uncontrollable Circumstances.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other Persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Completion” means completion of the Design-Build Work in compliance with the Technical Standards, Drawings, and the applicable requirements of this Contract, as more particularly described in Section 4.23 (Final Completion).

“Final Punch List” has the meaning specified in Section 4.22 (Final Punch List).

“Finished Water” means water that has been treated at the Plant in accordance with the Contract requirements, including Appendix 6 (Performance Guarantees), and delivered to the City Water Supply Systems.

“Finished Water Transmission Mains” means the Ceres Finished Water Transmission Main and the Turlock Finished Water Transmission Main.

“Finished Water Pumping Station” means the pumping station (to be located at the Plant site) for the conveyance of Finished Water to each City Water Supply System, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Flow Rate” means the aggregate rate of flow of Finished Water volume delivered to the Ceres Water Supply System and the Turlock Water Supply System, as measured by the water meters at each City point of interconnection (adjusted for any Finished Water withdrawn for use at the Plant).

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning and testing practices for the design, construction and improvement of capital assets in the municipal water treatment industry as followed in central California.

“Good Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal water treatment industry as observed in central California.

“Governmental Approval Application Date” has the meaning specified in subsection 4.6(J) (Governmental Approval Dates).

“Governmental Approvals” means all orders, decisions, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any Person with respect to the Design-Build Work, and include the permits, licenses and approvals described in Appendix 9 (Governmental Approvals and Utility Coordination).

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental agency, department, board, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Guarantor” means _____, a _____ organized and existing under the laws of the State of _____, and its successors and assigns permitted thereunder.

“Guaranty Agreement” means the Guaranty Agreement entered into concurrently with this Contract from the Guarantor to SRWA in the form set forth in the Transaction Forms, as the same may be amended from time to time.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous substances” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. Code Section 9601 et seq., and applicable regulations promulgated thereunder, and “hazardous waste” as defined in the Resource Conservation and Recovery Act, 42 U.S. Code Section 6901 et seq., and applicable regulations promulgated thereunder, and California Health and Safety Code Section 25117, as the same may be amended from time to time

“Hazardous Materials Management Plan” means the Company’s plan for safe storage, containment, and disposal of chemicals and Hazardous Materials during the performance of the Design-Build Work, prepared in accordance with Appendix 9 (Governmental Approvals and Utility Coordination).

“Insurance Requirement” means any rule, regulation, code, policy condition, or requirement issued by any insurance company which has issued a policy of Required Insurance under this Contract, compliance with which is a condition to the effectiveness of such policy.

“Interim Operations Approval” has the meaning set forth in Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit).

“Joint Powers Agreement” means the Amended Drinking Water Supply Project Joint Exercise of Powers Agreement Between the Cities of Ceres and Turlock for the Purpose of Creating a Joint Powers SRWA Responsible for Decisions in Certain Matters Pertaining to the Municipal and Industrial Water Supply Programs for the Aforementioned Public Entities a Joint Powers Agreement dated December 15, 2015, as amended _____, 2018, and as may be further amended by the Cities from time to time.

“Key Personnel” means any individual identified by the Company as having a lead capacity or a high level of authorization in a supervisory capacity, as set forth in Appendix 10 (Key Personnel and Approved Subcontractors).

“Legal Proceeding” means every action, lawsuit, litigation, arbitration, administrative proceeding, claim, and other legal or equitable proceeding having a material bearing upon this Contract or the performances of the parties hereunder, and all appeals therefrom.

“Lien” means any and every lien or encumbrance against the Regional Water Facilities or any of the Sites or against any monies due or to become due from SRWA to the Company under this Contract, for or on account of the Design-Build Work, including mechanics’, materialmen’s, and laborers’ liens.

“Loss and Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, Tax, expense, or Fees and Costs relating to any claim or Legal Proceeding for which the Company is obligated to indemnify an SRWA Indemnitee hereunder, except as excluded or limited under this Contract.

“Materials Price Adjustment” has the meaning specified in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations).

“Materials Price Adjustment Date” has the meaning specified in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations).

“Material Subcontract” means any Subcontract between the Company and a Significant Subcontractor.

“New Domestic Water Supply Permit” means the domestic water supply permit to be issued by DDW to SRWA following Substantial Completion, authorizing SRWA to use the Project and Finished Water as a source of potable water for public consumption.

“Notice of Completion” means the SRWA notice of completion filed in the Office of the Stanislaus County Recorder pursuant to Applicable Law and standard public works project practices.

“Operation and Maintenance Manual” means the Operation and Maintenance Manual to be prepared by the Company as required by Appendix 5 (Project Technical Requirements).

“OSHA” means applicable federal and State statutes and regulations regulating and governing occupational, worker, and workplace safety and health, including, but not limited to, Code of Federal Regulations Title 29, Chapter 17, and California Code of Regulations, Title 8, Division 1, as the same may be amended from time to time.

“Payment Bond” means the payment bond provided by the Company pursuant to subsection 9.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

“Performance Bond” means the performance bond provided by the Company pursuant to subsection 9.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

“Performance Guarantees” means the guarantees of performance made by the Company specifically set forth in Article 4 (Permitting, Design, and Construction) and Appendix 6 (Performance Guarantees).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

1. encumbrances for utility charges, Taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;
2. any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Company to perform the Design-Build Work;
3. any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workers’, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;
4. servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges that will not in the aggregate materially and adversely impair the performance of the Design-Build Work by the Company;
5. zoning and building laws, regulations, ordinances, and restrictive covenants, which do not materially interfere with the performance of the Design-Build Work by the Company;
6. encumbrances that are created on or before the Contract Date;
7. encumbrances that are created by a Change in Law on or after the Contract Date; and
8. any encumbrance created by an act or omission by SRWA or with respect to which SRWA has given its consent.

“Person” means an individual, corporation, firm, general partnership, limited partnership, limited liability partnership, limited liability company, company, joint venture, association, trust, Governmental Body, or other legal entity.

“Phase 1 Project” means the Raw Water Pump Station, Phase 1 project referred to in Recital C and as further described in the Agreement for the Construction of SRWA Raw Water Pump Station, Phase 1 dated March 1, 2018 and entered into between SRWA and C. Overaa & Co.

“Plant” or “Water Treatment Plant” means the surface water treatment plant, including all pumping, process, storage and chemical feed facilities to be designed, constructed, and Accepted and Tested by the Company pursuant to the Contract Standards. The Plant includes the Raw Water treatment facilities, chemical facilities, Finished Water storage facilities, electrical, instrumentation and controls, back-up power generating facilities and associated fuel storage facilities, operations building, maintenance building, the yard piping, any related structures and equipment, and all roads, grounds, fences and landscaping appurtenant thereto, as more particularly described in Appendix 5 (Project Technical Requirements).

“Plant Site” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Plant is to be constructed by the Company.

“Producers Price Index” or “PPI” means the final non-seasonally adjusted Producers Price Index for the different commodities set forth in this Contract, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“Project” means the SRWA Regional Surface Water Supply Project.

“Project Equipment and Structures” means that portion of the Regional Water Facilities consisting of the structures, buildings, tanks, basins, piping, electrical instrumentation and controls, remote monitoring and communications, heating, ventilation and air conditioning equipment, chemical and other storage and feed systems, cranes, hoists, and any other equipment or facilities.

“Proposal” means the documents submitted by the Company to SRWA in response to the RFP.

“Raw Water” means water pumped or to be pumped from the Tuolumne River by the Raw Water Pump Station and conveyed to the Plant through the Raw Water Transmission Main.

“Raw Water Pump Station” means the pump station (including pumps, motors, motor control centers, instrumentation and controls, piping, valves, structures, and other equipment) to be installed and constructed at the existing wet well for the diversion and pumping of Raw Water as more particularly described in Appendix 5 (Project Technical Requirements).

“Raw Water Pump Station Site” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Raw Water Pump Station is to be constructed by the Company.

“Raw Water Transmission Main” means the transmission main for the conveyance of Raw Water to the Plant, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Raw Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Raw Water Transmission Main is to be constructed by the Company.

“Record Adjustment” has the meaning specified in subsection 6.2(D) (Record Adjustments).

“Record Adjustment Date” means one of the dates for making a Record Adjustment set forth in Table 6-2 in item (3) of subsection 6.2(D) (Record Adjustments).

“Record Adjustment Factor” has the meaning specified in subsection 6.2(D) (Record Adjustments).

“Record Drawings” means the record Drawings as described in Appendix 3 (Construction Work Requirements).

“Reference Cost Amounts” has the meaning specified in subsection 6.2(D)(2) (Reference Cost Amounts).

“Regional Water Facilities” means the Raw Water Pump Station, Raw Water Transmission Main, Water Treatment Plant, Finished Water Pumping Station, Ceres Finished Water Transmission Main, and Turlock Finished Water Transmission Main.

“Regulated Site Condition” means (1) surface or subsurface structures, materials or conditions having historical, archaeological, religious or similar significance; (2) the presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law; (3) the presence anywhere in, on or under the Sites on the Contract Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances (in each of items (1), (2) and (3), however, only to the extent not disclosed to the Company in writing as set forth in the RFP or a document attached to or referenced in the RFP); and (4) the presence of Regulated Substances anywhere in, on or under the Sites (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Company. A Regulated Site Condition shall not include any Regulated Substance used, stored or otherwise brought to the Sites by the Company or any Subcontractor as provided in subsection 4.4(C) (Specified Subsurface Conditions and Regulated Site Conditions; Company).

“Regulated Substance” means any (1) oil, petroleum or petroleum product; (2) pollutant, contaminant, Hazardous Material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law; or (3) material that the Company believes may be material that is hazardous waste, as defined California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

“Required Insurance” means the required insurance as set forth in Appendix 11 (Required Insurance).

“Requisition” means a written submission by the Company on the form of requisition as agreed to by the parties, together with accompanying submittals, requesting progress payments or final payment with respect to the Design-Build Price, and which is to be accompanied by such supporting documentation as required by Article 6 (Project Funding and Payment of the Design-Build Price).

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. “Response Actions” include any action which constitutes a “removal”, “response”, or “remedial action” as defined by 42 U.S. Code Section 9601.

“RFP” means SRWA’s Request for Proposals for the Regional Surface Water Supply Project issued on _____, as amended.

“Scheduled Acceptance Date” means _____, 2022 or such other Scheduled Acceptance Date as may be approved by Change Order.

“Schedule of Values” means the detailed itemized list that establishes the value or cost of each detailed part of the Design-Build Work, and which is used as the basis for preparing progress payments and is in the form required by Appendix 1 (General Design-Build Requirements and Procedures).

“Secondary Technical Criteria” means those portions of the Technical Standards, as further described in Section 4.11 (Secondary Technical Criteria; Variations), and designated as “Secondary Technical Criteria” in Appendices 5 (Project Technical Requirements).

“Security Instruments” means the Guaranty Agreement, the Performance Bond, and the Payment Bond.

“Service Life” means the total period during which an individual item of Project Equipment and Structures is reasonably expected to remain in use, or be available for use, in a productive process, determined in accordance with Good Industry Practice.

“Significant Subcontractor” means any Subcontractor identified as a “Significant Subcontractor” in Appendix 10 (Key Personnel and Approved Subcontractors) which is engaged for any portion of the Design-Build Work representing at least 5% of the Design-Build Price.

“Sites” mean the real property parcels and easements on which the Regional Water Facilities are to be constructed by the Company, including the Raw Water Pump Station Site, Raw Water Transmission Main Right of Way, Plant Site, Ceres Finished Water Transmission Main Right of Way, and Turlock Finished Water Transmission Main Right of Way, as more particularly described and shown in Appendix 8 (Property, Easements, and Landowner Coordination).

“Site Health and Safety Plan” means the Company’s plan for the implementation of a health and safety program that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections, hazard communications and other site-specific safety training during the performance of the Design-Build Work.

“Specified Subsurface Condition” means the presence at the Sites of: (1) any man-made object or structure; or (2) functioning subsurface structures used by Utility providers on or underneath the Sites. However, a Specified Subsurface Condition shall not include any (i) condition that could reasonably have been identified or detected by the Company through its inspections and investigations of the Sites prior to the Contract Date, (ii) underground utilities that are or should have been disclosed to the Company pursuant to the Underground Service Alert system and the Company’s obligations pursuant to Section 4.4(E) (Protection of Underground Utilities), or (iii) condition disclosed to the Company in writing as set forth in an Appendix, the RFP, or a document attached to or referenced in the RFP.

“SRF Program” has the meaning set forth in subsection 6.1(A) (SRF Program Procurement Phase Requirements).

“SRWA” or “Stanislaus Regional Water Authority” means the Stanislaus Regional Water Authority, created by the Cities pursuant to the Joint Powers Agreement.

“SRWA Construction Manager” means a consulting construction manager or construction management firm designated as SRWA Construction Manager by SRWA.

“SRWA Contract Representative” means the SRWA General Manager or such other representative as may be designated in writing as SRWA General Manager by the Board of Directors.

“SRWA Engineer” means an engineer or firm of engineers designated as SRWA Engineer by SRWA.

“SRWA Fault” means any breach (including the untruth or breach of any SRWA representation or warranty herein set forth), failure, non-performance or non-compliance by SRWA with respect to its obligations or responsibilities under this Contract to the extent not attributable to any

Uncontrollable Circumstance or Company Fault, and which materially and adversely affects the Company's rights, obligations or ability or costs to perform under this Contract.

"SRWA General Manager" means the General Manager of SRWA.

"SRWA Indemnitee" has the meaning specified in Section 8.5 (Indemnification by the Company).

"SRWA Property" means any buildings, structures, improvements, equipment, alarm systems, pipelines, valves, pumping systems, hydrants, sidewalks, curbs, trees, lawns, roadways, utilities or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by SRWA.

"State" means the State of California.

"Subcontract" means an agreement or purchase order by the Company, or a Subcontractor to the Company, as applicable.

"Subcontractor" means every Person (other than employees of the Company) employed or engaged by the Company or any Person directly or indirectly under contract with the Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design-Build Work, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

"Substantial Completion" has the meaning specified in Section 4.21 (Substantial Completion).

"SWRCB" means the California State Water Resources Control Board, or any predecessor or successor agency.

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to the tax.

"Technical Standards" means the Design and Construction Requirements and the Secondary Technical Criteria.

"Term" has the meaning specified in Section 3.1 (Effective Date and Term).

"Termination Date" means the last day of the Term resulting from either a termination under Article 7 (Breach, Default, Remedies and Termination) or expiration under Article 3 (Term).

"TID" means Turlock Irrigation District, a California special district formed under the Irrigation District Law and located in Stanislaus County.

"TID Utility System Improvements" has the meaning set forth in subsection 4.1(K) (Electrical Power Required for Operations).

"Transaction Form" means any of the forms of Guaranty Agreement, Payment Bond, or Performance Bond appended to this Contract. The final, signed Transaction Forms are part of the Contract.

"Turlock Finished Water Transmission Main" means the transmission mains for the conveyance of Finished Water from the Plant to the Turlock Water Supply System, including all related buildings, structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Turlock Finished Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Turlock Finished Water Transmission Main is to be constructed by the Company.

“Turlock Water Supply System” means the City of Turlock wells, pump stations, treatment facilities, reservoirs, pipes, mains and all other facilities, equipment and structures used by the City for the production, storage, treatment and conveyance of drinking water in the City of Turlock.

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of such party under this Contract, and (2) materially expands the scope of, materially interferes with, or materially delays or increases the cost of performing the party’s obligations under this Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include the following:

- (a) a Change in Law;
- (b) any injunction or similar order issued by a Governmental Body, provided that the Company is in compliance with the Contract Standards;
- (c) the existence of a Differing Site Condition, a Specified Subsurface Condition, or a Regulated Site Condition to the extent provided in Section 4.4 (Geotechnical and Site Conditions);
- (d) naturally occurring events (except weather conditions normal for the Sites) such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
- (e) explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (f) labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors, which affect the performance of the Design-Build Work;
- (g) the failure of any Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly, and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;
- (h) a delay in completion of the TID Utility System Improvements, as and to the extent provided in subsection 4.1(K) (Electrical Power Required for Operations);
- (i) any failure of title to the Sites or any portion of the Sites or any placement or enforcement of any Encumbrance on the Sites or any portion of the Sites not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby, other than Permitted Encumbrances;
- (j) variations in the nature, condition or quality of Raw Water as and to the extent provided in Appendix 6 (Performance Guarantees);
- (k) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Sites;
- (l) a violation of Applicable Law by a Person other than the affected party or its Subcontractors;
- (m) with respect to the Company, any SRWA Fault; or
- (n) with respect to SRWA, any Company Fault.

(2) Exclusions. None of the following acts, events or circumstances shall constitute an Uncontrollable Circumstance:

- (a) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
- (b) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices (except as provided in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations)), currency values, exchange rates, or other general economic conditions;
- (c) with respect to SRWA, any changes in the financial condition of SRWA, and with respect to the Company, any changes in the financial condition of the Company, the Guarantor or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;
- (d) the consequences of error, neglect or omission by the Company, the Guarantor, any Subcontractor, any of their Affiliates or any other Person in the performance of the Design-Build Work;
- (e) union or labor work rules, requirements or demands that have the effect of increasing the number of employees employed on the Design-Build Work or otherwise increasing the cost to the Company of performing the Design-Build Work;
- (f) any impact of prevailing wage or similar laws, customs or practices on the Company's costs in connection with the performance of the Design-Build Work;
- (g) weather conditions normal for the Sites;
- (h) any surface, subsurface, or other condition affecting the Sites (including subsurface groundwater levels or other subsurface water conditions, and any soil or water conditions that may affect trench bottom stability), which may increase costs of performing or cause delay in the performance of the Design-Build Work, except those constituting a Differing Site Condition, Specified Subsurface Condition, or Regulated Site Condition, as and to the extent provided in Section 4.4 (Geotechnical and Site Conditions);
- (i) any act, event, circumstance or Change in Law occurring outside of the United States, except as provided in subsection (h) of the "Inclusions" section of this definition with respect to the failure of any Subcontractor to furnish equipment which is critical to the Design-Build Work and which is manufactured only at facilities located outside of the United States;
- (j) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;
- (k) failure of the Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work; or
- (l) a Change in Law pertaining to Taxes.

"Unilateral Change Directive" has the meaning set forth in Section 4.12 (Unilateral Change Directives).

"Utilities" means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

SECTION 1.2. INTERPRETATION. This Contract shall be interpreted and construed according to the following provisions, except to the extent the context or the express provisions of this Contract otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) References Particular Terms. The words "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Contract. The words "include," "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively.

(C) References to Days and Time of Day. All references to days are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(D) References to Statutes. Each reference to a statute includes any statute that amends, extends, consolidates or replaces the statute or which has been amended, extended, consolidated or replaced by the statute, and includes any orders, regulations, bylaws, or ordinances adopted under the relevant statute.

(E) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(F) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as may be amended, supplemented, substituted, novated or assigned.

(G) References to All Reasonable Efforts. The expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person's own benefit.

(H) Entire Contract. The parties intend this document to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter of this document. This Contract supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Contract, except those other documents that may be expressly referenced in this Agreement.

(I) Governing Law. This Contract shall be governed by and construed in accordance with the applicable laws of the State.

(J) Severability. Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Contract as nearly as possible to its original intent and effect.

(K) Drafting Responsibility. The parties agree and acknowledge that this Contract has been arrived at through negotiation, and that each party (and its counsel) has had a full and fair

opportunity to revise the terms of this Contract. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Contract.

(L) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(M) Applicability of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

(N) Delivery of Documents in Digital Format. In this Contract, the Company is obligated to deliver the Deliverable Material and other reports, records, designs, plans, Drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to SRWA both in printed form (in the number of copies indicated or reasonably requested by SRWA) and, at SRWA's request, in digital form. Digital copies shall consist of computer readable, usable and editable data submitted in any standard interchange format which SRWA may reasonably request to facilitate the administration and enforcement of this Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the hard copy shall govern.

(O) Third-Party Rights. This Contract is exclusively for the benefit of SRWA and the Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party SRWA Indemnitees as provided in Section 8.5 (Indemnification by the Company)) with any remedy, claim, liability, reimbursement, cause of action or other rights. This Contract does not create and shall not be construed to create any third party beneficiaries.

(P) Discretion. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Contract.

(Q) Liquidated Damages. This Contract provides for the payment by the Company of liquidated damages in certain circumstances. The parties agree that SRWA's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place SRWA in the same economic position as it would have been in had the circumstance not occurred. Except where additional remedies are otherwise specifically provided for herein, such liquidated damages shall constitute the only damages payable by the Company to SRWA in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit any of the other remedies for breach specifically provided for in this Contract, including SRWA's right to terminate this Contract in accordance with Section 7.2 (Events of Default by the Company). The parties acknowledge and agree that the additional remedies specifically provided for in this Contract are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy.

(R) Standards of Workmanship and Materials. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and of good quality. Where this Contract does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified

elsewhere in the Technical Standards, and the Technical Standards are to be interpreted accordingly.

(S) Appendix Terms and Definitions. Capitalized terms used in any Appendix and not otherwise defined or described in the Appendix will have the meanings set forth in this Contract.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. SRWA REPRESENTATIONS. SRWA represents and warrants that:

(A) Existence and Powers. SRWA is a joint powers authority of the Cities created pursuant to the Joint Powers Agreement, organized and existing under and by virtue of the Joint Exercise of Powers Act (California Government Code Title 1, Division 7, Chapter 5) and Joint Powers Agreement, with full legal right and authority to enter into and to perform its obligations under this Contract.

(B) Due Authorization. This Contract has been duly executed by SRWA General Manager pursuant to authority granted by action of the Board of Directors taken at its meeting on _____, 2019, and constitutes a legal, valid and binding obligation of SRWA, enforceable against SRWA in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by SRWA of this Contract nor the performance by SRWA of its obligations in connection with the transactions contemplated hereby or the fulfillment by SRWA of the terms or conditions hereof conflicts with, violates or results in a breach of (1) any Applicable Law, or (2) any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which SRWA is a party or by which SRWA or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or voter approval is required for the valid execution, delivery and performance by SRWA of this Contract, except as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against SRWA, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by SRWA or the validity, legality or enforceability of this Contract against SRWA, or on the ability of SRWA to perform its obligations hereunder.

(F) Claims and Demands. Except as disclosed in writing to the Company, to the best of its knowledge, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against SRWA with respect to providing potable water for public consumption.

(G) Applicable Law Compliance. Except as disclosed in writing to the Company, to the best of its knowledge, (1) SRWA is not in material violation of any Applicable Law pertaining to the provision of potable water for public consumption, and (2) SRWA has not received notice of a violation or an alleged violation of any such Applicable Law.

(H) SRWA Ownership Interest in the Sites. SRWA owns the Plant Site in fee simple, subject to the easements and other exceptions to title indicated in Appendix 8 (Property, Easements, and Landowner Coordination). SRWA leases the Raw Water Pump Station Site from TID. The Raw Water Transmission Main Right of Way, the Ceres Finished Water Transmission Main Right of Way, and the Turlock Finished Water Transmission Main Right of Way are either easements owned by

SRWA or located within County of Stanislaus, City of Ceres, City of Hughson, or City of Turlock public road rights-of-way where the Company is required to obtain County and city encroachment permits as set forth in Appendix 9 (Governmental Approvals and Utility Coordination), in each case sufficient for the construction of the Regional Water Facilities as contemplated by this Contract.

SECTION 2.2. COMPANY REPRESENTATIONS. In addition to any other representations and warranties made by the Company in this Contract, the Company represents and warrants that:

(A) Existence and Powers. The Company is a _____ duly organized, validly existing and in good standing under the laws of the State of _____, and has the authority to do business in this State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Contract.

(B) Due Authorization and Binding Obligation. This Contract has been duly authorized, executed and delivered by all necessary corporate action of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Company of this Contract nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof conflicts with, violates or results in a breach of (1) any Applicable Law or bylaws or articles of incorporation applicable to the Company, or (2) any order, judgment or decree, or any contract, agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing. The Company has reviewed SRWA Design-Build Conflict of Interest Policy (which was part of the RFP), has completed and submitted SRWA Disclosure of Potential Conflict of Interest Form together with the Proposal, and certifies that the completed form is true and correct.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution, delivery and performance of this Contract by the Company except as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to SRWA, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Company's knowledge, overtly threatened or publicly announced against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution or delivery of this Contract by the Company or the validity, legality or enforceability of this Contract against the Company, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) Claims and Demands. Except as disclosed in writing to SRWA, to the best of its knowledge, there are no material and adverse claims and demands based in environmental, contract or tort law pending or threatened against the Company with respect to any water or wastewater treatment plant providing service to the general public designed, constructed, operated, or maintained by the Company.

(G) Applicable Law Compliance. Except as disclosed in writing to SRWA, neither the Company, the Guarantor nor any Affiliate has knowledge of any material violation of any Applicable Law pertaining to any water or wastewater treatment plant providing service to the general public

within the United States, which has been designed, constructed, operated, or maintained by the Company.

(H) Patents and Licenses. The Company owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Design-Build Work without any known material conflict with the rights of others.

(I) Information Supplied by the Company and the Guarantor. The information supplied and representations and warranties made by the Company and the Guarantor in the Proposal and all related submittals and in all post-Proposal submittals with respect to the Company and the Guarantor (and to the Company's knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM. This Contract shall become effective on the Contract Date and shall continue in effect until the completion of the Design-Build Work or the earlier termination of the Contract in accordance with its terms (the "Term"). At the end of the Term, all other obligations of the parties hereunder shall terminate, except as provided in Sections 3.2 (Survival of Certain Provisions Upon Termination) and 7.7 (Company Obligations at Termination or Expiration).

SECTION 3.2. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. The following provisions shall survive the expiration or earlier termination of this Contract:

- (1) Article 2 (Representations and Warranties);
- (2) Section 4.18 (Deliverable Material);
- (3) Section 4.20 (Guarantees and Warranties);
- (4) Section 6.6 (Construction Books and Records; Audit)
- (5) Article 7 (Breach, Default, Remedies and Termination), as applicable to the rights and obligations of the parties following the Termination Date;
- (6) Section 8.1 (Insurance) and Appendix 11 (Required Insurance), to the extent provided by the applicable insurance policies; and
- (7) Section 8.5 (Indemnification by the Company);
- (8) Section 10.6 (Property Rights);
- (9) Section 10.13 (Fair Employment and Contracting Policy); and
- (10) all other provisions of this Contract that so provide shall survive the termination of this Contract;

together with any other provision(s) necessary to give effect to the above provisions. No termination or expiration of this Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties accrued prior to the date of such termination or expiration, (2) the Company's liability or responsibility imposed by this Contract or Applicable Law with respect to completed Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud, or (3) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

ARTICLE 4

PERMITTING, DESIGN, AND CONSTRUCTION

SECTION 4.1. DESIGN-BUILD WORK GENERALLY

(A) Commencement of Design-Build Work. On the Contract Date, the Company shall promptly proceed to undertake, perform, and complete the Design-Build Work in accordance with the Contract Standards. The Company shall be paid the Design-Build Price pursuant to Section 6.2 (Design-Build Price) as its entitlement to portions of the Design-Build Price arises in accordance with that Section. The Company shall achieve Acceptance on or before the Scheduled Acceptance Date. The Company's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages in accordance with Section 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages). Failure to achieve Acceptance by the by the end of the Extension Period shall constitute a Company Event of Default upon which SRWA may terminate this Contract for cause in accordance with Section 7.2 (Events of Default by the Company).

(B) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Company shall, in accordance with the Contract Standards and without limitation: (1) apply for, obtain and maintain all Governmental Approvals required for the Design-Build Work; (2) comply with all reporting obligations set forth herein; (3) prepare, grade and excavate the Sites; (4) remove from the Sites and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom; (5) design and construct the Regional Water Facilities; (6) conduct initial testing and start-up operations; (7) conduct the Acceptance Tests and achieve Acceptance; and (8) achieve Final Completion; all so that the Regional Water Facilities are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Sites, as indicated in Appendix 1 (General Design-Build Requirements and Procedures), or at other locations approved by SRWA and any other appropriate Governmental Body and arranged and paid for by the Company. In performing the Design-Build Work, the Company shall use care and diligence, and shall take all appropriate precautions to protect the Regional Water Facilities from loss, damage or destruction in accordance with the Contract Standards.

(C) Points of Interconnection. The two points of interconnection between the Regional Water Facilities and the City Water Supply Systems shall be the points at which each Finished Water Transmission Main enters the respective City terminal tank as generally shown in Appendix ____ (____). The Design-Build Work shall include the design and installation of a water meter, on-line analyzer (as described in Appendix 5 (Project Technical Requirements)), and sampling station (to be owned and operated by SRWA) located at each point of interconnection. The points of interconnection and sampling stations shall be the places where the Finished Water quality is sampled and tested for purposes of the Acceptance Test Procedures and Standards. In accordance with Appendix 1 (General Design-Build Requirements and Procedures), the Company shall coordinate with SRWA and Cities regarding any City Water Supply System shutdown required for the interconnection and other interfaces between the Regional Water System and City Water Supply Systems in performing the Design-Build Work. SRWA will facilitate and implement, as applicable, such shutdowns as required in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures).

(D) Sequencing and Staging of Design-Build Work. The Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. SRWA understands and acknowledges that the Company intends to complete the Design-Build Work in stages whereby particular segments of the Design-Build Work may be designed and built prior to the completion of the design of the Regional Water Facilities as a whole. Although this Contract does not require the Company to fully complete the entire design of all

Regional Water Facilities prior to proceeding with particular segments of the physical construction of the Regional Water Facilities, the Company shall comply with all requirements of the Contract Standards and Applicable Law in performing the Design-Build Work and shall comply with the design submittal requirements set forth in subsection 4.9(C) (SRWA Review of Design Documents). The Company shall comply with Good Engineering and Construction Practice in all aspects of the performance of the Design-Build Work. In no event shall the Company proceed with the physical construction of any segment of the Regional Water Facilities prior to the Construction Date established in accordance with Section 4.2 (Construction Date Conditions). If the Company splits the design into different phases of work and prepares the Design Documents in phased packages, the Company shall not proceed with the physical construction of any segment of the Regional Water Facilities addressed in a particular Design Documents package until the Company has fully completed that design package and the Design Documents have been reviewed by SRWA pursuant to Section 4.9 (Company Design - General); provided, however, that, upon request by the Company and at Company's risk, the SRWA Contract Representative may approve in writing minor exceptions to this limitation. If the Company proceeds with phased Design Documents packages and it chooses to construct some portions of the Regional Water Facilities prior to completing 100% design of the entire Regional Water Facilities, the Company assumes all risks and costs associated with any consequences of its decisions regarding the phasing of design and construction.

(E) Project Schedule and Reports. The Company shall prepare and provide to SRWA a "critical path method" schedule for Design-Build Work relating to Project Equipment and Project Structures in accordance with Appendix 1 (General Design-Build Requirements and Procedures). No later than 60 days following the Contract Date, the Company shall prepare and submit a Project management plan to SRWA, which shall include an organizational structure, list of individual participants representing the Company and SRWA, a schedule of regular progress meetings, topics to be reviewed at such progress meetings, and a communications protocol. The Company shall submit to SRWA, the SRWA Construction Manager and the SRWA Engineer a monthly progress report and schedule in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures). The Company agrees that the Company's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for SRWA's, the SRWA Construction Manager's and the SRWA Engineer's information only and shall not limit or otherwise affect the Company's obligations to achieve Acceptance by the Scheduled Acceptance Date. SRWA's, SRWA Construction Manager's and the SRWA Engineer's receipt, review, or comment on a monthly progress schedule and report (or any revised progress schedule and report) shall not bind SRWA in any manner or imply or indicate SRWA approval or consent to any of the matters set forth therein.

(F) Quality Assurance and Quality Control. The Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, which shall be developed by the Company in accordance with Appendix 4 (Design-Build Quality Management).

(G) Subcontracting and Contractor Licensing. The Company and any Subcontractor that performs any construction portion of the Design-Build Work shall (i) possess and maintain a State contractor's license, classification A (General Engineering Contractor) (except as otherwise may be provided in Appendix 10 (Key Personnel and Approved Subcontractors) for a particular Subcontractor), and (ii) be registered with the State Department of Industrial Relations and qualified to perform public works in the State pursuant to California Labor Code Section 1725.5. This Project is subject to compliance monitoring and enforcement by the State Department of Industrial Relations in accordance with California Labor Code Section 1771.4

(H) Public Works, Labor and Wage Requirements. The Company and its Subcontractors shall comply with all applicable requirements set forth in Appendix 12 (Public Works, Labor and Wage Requirements) with respect to the performance of the Design-Build Work. In particular, the

Company shall comply with the prevailing wage and other public works-related requirements set forth in California Labor Code Division 2, Part 7, Chapter 1 (commencing with Section 1720).

(I) Title, Encumbrances, and Risk of Loss. Title to the structures, buildings, improvements, fixtures, machinery, equipment and materials constituting the Regional Water Facilities shall pass to SRWA upon incorporation in the Project or payment therefor by SRWA, whichever first occurs, free and clear of all Liens and other Encumbrances. The Company shall not directly or indirectly, without SRWA's consent, create or permit to be created or to remain any Encumbrance on or against the Regional Water Facilities, Sites, or Design-Build Work, other than Permitted Encumbrances. The Company shall promptly discharge or post a release bond for any such Encumbrance arising from or out of the Design-Build Work. However, the Company shall bear all risk of loss concerning such structures, buildings, improvements, fixtures, machinery, equipment and materials until the filing of the Notice of Completion, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(J) Electrical Power Required For Construction. The Company acknowledges that as of the Contract Date, there are no TID or other facilities available to supply electrical power for the construction or operation of the Regional Water Facilities; except, however, that there may be temporary TID power for construction at the Raw Water Pump Station Site due to the Phase 1 Project. Accordingly, the Company shall provide or arrange temporary electrical power (e.g., by utilizing on-site power generators, making arrangements with TID for the continuation of any existing temporary power at the Raw Water Pump Station Site, or making other arrangements with TID) as needed for the performance of the Design-Build Work. All costs related to the arranging and supply of temporary electrical power incurred in the performance of the Design-Build Work prior to the Acceptance Date shall be borne by the Company.

(K) Electrical Power Required For Operations. As of the Contract Date, insufficient electricity is available to the Sites to operate the Raw Water Pump Station, Plant, and transmission mains. SRWA shall apply to and make arrangements with TID for TID to extend and install regular electrical service and related improvements to the Raw Water Pump Station Site and Plant Site (the "TID Utility System Improvements") and to provide sufficient electricity for the operation of the Raw Water Pump Station, Plant, and transmission mains. SRWA shall bear all costs associated with work performed by or on behalf of TID for the extension and installation of the TID Utility System Improvements to the extent such costs are not borne by TID, and the Company shall have no responsibility with respect such costs to extend a permanent electricity supply to the Raw Water Pump Station or Plant. However, the Company shall cooperate with and assist TID with its installation of the TID Utility System Improvements, including (i) providing timely (i.e., in sufficient time so as to accommodate TID's planning and construction schedule) and accurate information to TID regarding the electricity capacity needs of the Raw Water Pump Station and Plant, (ii) providing a construction schedule to TID with information about when the Company will need regular TID electrical service to complete the Design-Build Work, and (iii) coordinating with and accommodating the TID construction crew or contractor in performing the TID Utility System Improvements work on the Sites. In the event that the TID Utility System Improvements are not constructed with sufficient capacity to provide electricity to operate the Raw Water Pump Station and Plant by the dates required for the Company to conduct initial testing of the Regional Water Facilities or perform the Acceptance Test, the Company shall be entitled to Uncontrollable Circumstance relief as provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), to the extent such delay materially and adversely affects the Company's ability to perform such Design-Build Work. All costs related to the supply of electrical power to operate the Regional Water Facilities after the Acceptance Date shall be borne by SRWA.

(L) Other Utilities. The Company shall make all arrangements necessary to secure the availability of, and construct all connections for, all Utilities (other than electricity, as and to the

extent provided in subsection (K) of this Section) that are necessary for the performance of the Design-Build Work. In the event SRWA is required to grant Utility easements on the Sites in connection with the Design-Build Work, the Company shall provide complete right-of-way descriptions and Drawings (in recordable form) of all Utility connections and routes on the Sites necessary for such purposes.

(M) Software Programming. The Company's obligation to perform the Design-Build Work includes the obligation to provide all software programming for the monitoring instrumentation, controls, and cybersecurity relating to the Regional Water Facilities, as specifically set forth in Appendices 5 (Project Technical Requirements).

(N) Payment of Costs. The Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments and Required Insurance; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar Taxes on building supplies, materials and equipment; general supervision by the Company of all Design-Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Final Completion.

(O) Notice of Default. The Company shall provide to SRWA, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval or Subcontract.

(P) Required Company Engineer Certification. Any notice, certification, report or application delivered by the Company to SRWA in connection with the Design-Build Work, or payment therefor, under this Article, Article 5 (Testing, Start-up, and Acceptance) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed and sealed certificate of the Company Engineer in compliance with all requirements of Applicable Law for engineer certifications.

(Q) Statement Required by California Business and Professions Code Section 7030. □
"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826."

SECTION 4.2. CONSTRUCTION DATE CONDITIONS

(A) Construction Date Conditions Generally. The Construction Date shall be established pursuant to subsection (C) of this Section upon satisfaction by the Company of its obligations under to subsection (B). The requirements and conditions set forth in subsection (B) shall be the "Construction Date Conditions."

(B) Conditions to Commencement of Physical Construction. In no event shall the Company commence with the physical construction of the Regional Water Facilities prior to the satisfaction of the following Construction Date Conditions:

(1) The Company shall have provided SRWA with the Performance Bond and Payment Bond and shall certify that the Performance Bond and the Payment Bond are in full force and effect and in compliance with the requirements of Section 9.2 (Bonds).

(2) The Company shall have provided SRWA with certificates for all Required Insurance in accordance with Section 8.1 (Insurance) and Appendix 11 (Required Insurance).

(3) The Company shall have certified that it has completed all pre-construction requirements set forth in Appendices 3 (Construction Work Requirements), 4 (Design-Build Quality Management), 5 (Project Technical Requirements), and SRWA, acting reasonably, shall have received and reviewed for compliance with the Contract: (a) the Company's communications protocol to facilitate communication between the Company, SRWA and other relevant Project stakeholders prepared in accordance with Appendix 1 (General Design-Build Requirements and Procedures); (b) the Corrosion Control Plan, the Disinfection Plan, and the Instrumentation and Control Plan required to be prepared in accordance with Appendix 5 (Project Technical Requirements); (c) the stormwater pollution prevention plan and any other plans required to be submitted to SRWA in accordance with Appendix ____ (____); (d) the Design-Build Quality Management Plan to be prepared in accordance with Appendix 4 (Design-Build Quality Management); (e) the Site Health and Safety Plan for performance of the Design-Build Work to be prepared in accordance with Appendix 3 (Construction Work Requirements); (f) the Hazardous Materials Management Plan required to be prepared in accordance with Appendix 9 (Governmental Approvals and Utility Coordination); (g) Basis of Design Report to be prepared in accordance with Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures); (h) Schedule of Values and baseline schedule to be prepared in accordance with Section 6.3 (Payment Procedure and Amount) and Appendix 1 (General Design-Build Requirements and Procedures); and (i) Emergency Response Plan to be prepared in accordance with Appendix 1 (General Design Build Requirements and Procedures).

(4) The Company shall have obtained all Governmental Approvals required for the commencement of the physical construction of the Regional Water Facilities, including a letter from DDW indicating conditional approval of the proposed design of the Regional Water Facilities on the basis of which construction is to be commenced, and all such Governmental Approvals shall be in full force and effect.

(5) SRWA, acting reasonably, shall have approved the Document Submittal Plan required to be submitted to SRWA and prepared in accordance with the requirements of Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures), and the Company shall have complied with the design submittal requirements set forth in subsection 4.9(C) (SRWA Review of Design Documents) to the extent necessary to commence with the physical construction of the Regional Water Facilities.

(C) Establishment of the Construction Date. The Company shall provide 10 days' written notice to SRWA as to the satisfaction of the Construction Date Conditions and the date it proposes to establish as the Construction Date. The date proposed by the Company shall constitute the Construction Date unless SRWA, by written notice to the Company delivered not later than three days prior to the Construction Date proposed by the Company, determines that the Construction Date Conditions have not been satisfied or that SRWA has determined, acting reasonably, to delay the Construction Date (notwithstanding the satisfaction of the Construction Date Conditions) until SRWA delivers a subsequent written notice to the Company (the "Notice to Proceed"). In the event SRWA determines that the Company has not satisfied the Construction Date Conditions, SRWA shall indicate which conditions the Company has failed to satisfy in its notice to the Company, the Company shall satisfy all such conditions prior to the establishment of the Construction Date, and there shall be no adjustment to the Scheduled Acceptance Date or price relief under this subsection. In the event SRWA determines to delay the Construction Date notwithstanding the satisfaction of

the Construction Date Conditions, (1) the Construction Date shall be the date stipulated as such by SRWA in the Notice to Proceed, (2) the Scheduled Acceptance Date shall be extended by the number of days between the Construction Date proposed by the Company and the actual Construction Date established by SRWA in its Notice to Proceed, and (3) the Company may be entitled to reasonable price relief to the extent provided by Section 8.3 (Uncontrollable Circumstances – Entitlement to Relief).

(D) Effect of the Establishment of the Construction Date. Upon the establishment of the Construction Date, the Company shall have the right to proceed with the physical construction of the Regional Water Facilities and shall have full access to the Sites in accordance with subsection 4.3(C) (Access to the Sites) and Appendix 8 (Property, Easements, and Landowner Coordination).

SECTION 4.3. ACCESS TO AND SUITABILITY OF THE SITES

(A) Familiarity with the Sites. The Company acknowledges that the Company's agents and representatives have visited, inspected and are familiar with the Sites and surface physical conditions relevant to the obligations of the Company pursuant to this Contract, including normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; that the Company is familiar with all local and other conditions that may be material to the Company's performance of its obligations under this Contract (including transportation; seasons, climate, and precipitation; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); that the Company has received and reviewed all information regarding the Sites provided to it as part of the Sites-related information or obtained in the course of performing its obligations hereunder and has made any other Sites investigations that it deems appropriate to make a determination as to the suitability of the Sites; and that, based on the foregoing and except as provided in subsection (D), the Sites constitute acceptable and suitable locations for the construction of the Regional Water Facilities in accordance herewith, and the Regional Water Facilities can be constructed on the Sites within the Base Design-Build Price and by the Scheduled Acceptance Date. The Regional Water Facilities shall be located in and on the Sites in a manner that takes into account the easements and other exceptions to title indicated in Appendix 8 (Property, Easements, and Landowner Coordination).

(B) Independent Verification. The Company acknowledges that, except with respect to any Specified Subsurface Conditions set forth in Appendices 5 (Project Technical Requirements) and 8 (Property, Easements, and Landowner Coordination), it is responsible for the independent verification and confirmation of all information supplied to it by or on behalf of SRWA and upon which it elects to rely in connection herewith. No error or omission in any information supplied to the Company by or on behalf of SRWA shall constitute an Uncontrollable Circumstance, or relieve the Company from any of its obligations or entitle the Company to any increase in compensation hereunder, except to the extent provided in Section 4.4 (Geotechnical and Site Conditions).

(C) Access to the Sites. The execution of this Contract shall be deemed to constitute the granting of a license to the Company to access the Sites for the purposes of performing such investigation, engineering and analysis, including such additional subsurface and geotechnical studies or tests as deemed necessary by the Company for the performance of the Design-Build Work prior to the Construction Date. Such pre-Construction Date access shall be subject to SRWA's prior approval, which shall not be unreasonably withheld, as to time and scope. Following the Construction Date, the Company shall be authorized to access the Sites as may be necessary or appropriate for the performance of the Design-Build Work during the Term and such access rights shall not be subject to prior SRWA approval. The Company shall perform all such activities on the Sites in accordance with and subject to the Contract Standards. Except to the extent provided in Section 4.4 (Geotechnical and Site Conditions), the Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless SRWA Indemnitees in accordance

with and to the extent provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting from access to and work on the Sites.

(D) Raw Water Pump Station Site. As explained in Recital C, the Parties acknowledge that SRWA recently has constructed, or (at the Contract Date) is completing construction of, the Phase 1 Project, including construction of a wet well and related improvements, at the Raw Water Pump Station Site pursuant to a separate construction agreement with C. Overaa & Co. and that some of the Design-Build Work will be constructed and installed on and connected to the completed Phase 1 Project. SRWA assumes responsibility for the satisfactory completion of the Phase 1 Project in accordance with the plans and specifications incorporated in the SRWA/C. Overaa & Co. Agreement for the Construction of SRWA Raw Water Pump Station, Phase 1 dated March 1, 2018. If the Phase 1 Project is not completed in accordance with such plans and specifications and that circumstance materially expands the scope of, materially interferes with, or materially delays the Company's Design-Build Work at the Raw Water Pump Station Site, then the circumstance will constitute an Uncontrollable Circumstance entitling the Company to relief as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

SECTION 4.4. GEOTECHNICAL AND SITE CONDITIONS

(A) General. Except with respect to Differing Site Conditions, Specified Subsurface Conditions, or Regulated Site Conditions, which constitute Uncontrollable Circumstances entitling the Company to relief as and to the extent provided in this Section and Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), the Company assumes the risk of all surface and subsurface geotechnical conditions at the Sites as they may affect the Company's performance of the Design-Build Work, including the structural suitability of the Sites or the Company's excavation, dewatering, or construction costs or schedules, and agrees that any such subsurface geotechnical condition revealed or encountered during the Design-Build Work that has such an affect shall not constitute an Uncontrollable Circumstance. The Parties acknowledge that this Contract is subject to California Public Contract Code section 7104 and that the provisions of this Section 4.4 and related definitions have been prepared so as to implement and comply with the standards and procedures in section 7104.

(B) Differing Site Conditions. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any surface or subsurface geotechnical conditions that would constitute a Differing Site Condition hereunder other than those disclosed by SRWA or discovered by the Company and disclosed to SRWA prior to the Contract Date. In the event that the Company encounters a Differing Site Condition in the performance of the Design-Build Work, the Company shall provide prompt written notice to SRWA of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been disturbed or altered and shall notify SRWA of its intended course of action to address the Differing Site Condition. SRWA then promptly shall investigate or cause to be investigated the alleged Differing Site Condition set out in the Company's notice. If SRWA finds that the condition claimed by the Company does constitute a Differing Site Condition, then the Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Sections 8.3 and 8.4 (Uncontrollable Circumstances - Entitlement to Relief & Claim Procedures). The Company understands and acknowledges that, prior to submitting its Proposal, it was informed by SRWA that (1) the Company or its Subcontractor may encounter subsurface groundwater levels or other subsurface water conditions at or under the Sites, (2) a 2007 evaluation encountered groundwater at numerous locations along the planned transmission main rights-of-way, (3) the subsurface water conditions are dependent on variable factors (e.g., precipitation, irrigation, well pumping) and may fluctuate at or under the Sites, (4) the subsurface water conditions may adversely affect construction work and the condition and stability of pipeline trench bottoms and other excavated areas, and

(5) the subsurface water conditions may result from or be exacerbated by the Company's own dewatering activities. Subsurface groundwater levels or other subsurface water conditions at or under the Sites therefore shall not constitute Differing Site Conditions.

(C) Specified Subsurface Conditions and Regulated Site Conditions; Company. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any Specified Subsurface Condition or Regulated Site Condition other than those disclosed by SRWA or discovered by the Company and disclosed to SRWA prior to the Contract Date. In performing the Design-Build Work, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Specified Subsurface Condition or Regulated Site Condition after the location and existence of such condition has been disclosed to the Company or becomes known by the Company through physical observation (including any such observation made during excavations). Upon encountering a Specified Subsurface Condition or Regulated Site Condition, the Company shall provide prompt written notice to SRWA of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Specified Subsurface Condition or Regulated Site Condition has been disturbed or altered. The Company shall not be responsible for any Specified Subsurface Condition or Regulated Site Condition and may be entitled to Uncontrollable Circumstance relief as provided in subsection (D). However, if the Company fails to timely provide such notice or exercise due care with respect to such disclosed or known Specified Subsurface Condition or Regulated Site Condition, the scope of the Uncontrollable Circumstances relief may be adjusted as provided by Section 8.3(B) (Mitigation). Regulated Site Conditions shall not include any condition involving Regulated Substances used, stored or otherwise brought to the Sites by the Company or any Subcontractor. The Company shall comply, and shall cause all Subcontractors to comply, with the Contract Standards in using or storing any Regulated Substances on the Sites and shall assume all risks associated with such activities and indemnify, defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting therefrom.

(D) Specified Subsurface Conditions and Regulated Site Conditions; SRWA. If SRWA receives notice from the Company about a Specified Subsurface Condition or Regulated Site Condition or such a condition otherwise is determined to exist at one of the Sites that may (1) reasonably require a Response Action or other action in order to comply with Applicable Law, (2) interfere with the performance of the Design-Build Work, or (3) increase the cost to the Company of performing the Design-Build Work, then SRWA promptly shall investigate or cause to be investigated the alleged condition and, if appropriate, commence and diligently prosecute Response Actions or other actions as may be necessary under Good Engineering and Construction Practice to dispose of, remediate or otherwise correct the Specified Subsurface Condition or Regulated Site Condition or otherwise make the Specified Subsurface Condition or Regulated Site Condition comply with Applicable Law. If SRWA finds that a condition claimed by the Company does constitute a Specified Subsurface Condition or Regulated Site Condition, then the Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Sections 8.3 and 8.4 (Uncontrollable Circumstances - Entitlement to Relief & Claim Procedures).

(E) Protection of Underground Utilities. Prior to and in connection with conducting any excavation or trenching, the Company shall contact the appropriate Underground Service Alert regional notification center and perform such other actions required by an excavator pursuant to California Government Code Sections 4216 to 4216.24. Because the Company will be performing the final engineering design work for the Regional Water Facilities and SRWA is not preparing and providing detailed plans and specifications to the Company, the parties acknowledge and agree that California Government Code Section 4215 (concerning responsibility for the removal, relocation or protection of existing main or trunkline utility facilities not indicated on the plans and specifications) does not apply to the Design-Build Work or this Contract. Consequently, SRWA shall not have any

responsibility or obligation under section 4215, the Company shall be responsible for the timely identification, removal, relocation, and protection of any existing Utility facilities located on or under the Sites, and the Company shall not have any claim or entitlement to compensation from SRWA pursuant to section 4215.

(F) Sheeting and Shoring Plan. In accordance with California Labor Code Section 6705, prior to the excavation of any trench five feet or more in depth, the Company shall submit to SRWA for its acceptance and comment, as appropriate, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches. The plan shall comply with applicable OSHA laws, regulations, construction safety orders, and shoring system standards, or be prepared by a registered civil or structural engineer who certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the applicable construction safety orders and shoring system standards.

SECTION 4.5. ENVIRONMENTAL REVIEW. SRWA has prepared and certified a final environmental impact report for the Project under the California Environmental Quality Act. The final EIR requires specific environmental mitigation measures to be performed, implemented or completed in connection with the Design-Build Work. The Environmental Mitigation Measures as set forth in Appendix 9 (Governmental Approvals and Utility Coordination) constitute part of the Design and Construction Requirements, which the Company is obligated to carry out and comply with.

SECTION 4.6. DESIGN-BUILD WORK PERMITTING RESPONSIBILITIES

(A) Governmental Approval Applications. The Company shall make all filings, applications and reports and take all other action as necessary or appropriate to obtain and maintain, and shall obtain and maintain, all Governmental Approvals (except for those Governmental Approvals that are the responsibility of SRWA, as set forth in Appendix 9 (Governmental Approvals and Utility Coordination)) necessary to commence, continue and complete the Design-Build Work and achieve Acceptance. Where required under Applicable Law or requested by SRWA in its discretion, Governmental Approvals shall be obtained in the name of SRWA, name SRWA as a co-permittee, or recognize SRWA as beneficiary of the Governmental Approval. In connection with applications for Governmental Approvals, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions thereof; (4) attend all required meetings and hearings and, at the request of SRWA, assume the lead role in handling any such meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms thereof. All permit and filing fees and related costs required in order to apply for, obtain, and maintain the Governmental Approvals (other than Governmental Approvals required as a result of an Uncontrollable Circumstance), shall be paid by the Company, regardless of the identity of the applicant or permittee. SRWA shall have the right to attend any meetings or proceedings associated with a Governmental Approval. The final terms and conditions of any Governmental Approval to be obtained and maintained by the Company shall be subject to SRWA's approval, which approval shall not be unreasonably withheld or delayed.

(B) Data and Information. All data, information and action required to be supplied or taken by the Company in connection with the Governmental Approvals shall be supplied and taken on a timely basis considering the requirements of Applicable Law' the responsibilities of SRWA as the legal and beneficial owner of the Project, and the review requirements included in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures). The data and information supplied by the Company to SRWA and all Governmental Bodies in connection therewith shall be

correct and complete in all material respects. The Company shall be responsible for any schedule and cost consequences which may result from the submission of incorrect or incomplete information.

(C) Non-Compliance and Enforcement. The Company shall report to SRWA and, as appropriate, other Governmental Bodies, immediately upon obtaining knowledge of any violation of the terms and conditions of any Governmental Approval, Environmental Mitigation Measures or Applicable Law pertaining to the Project. SRWA shall have the right to independently enforce compliance with this Contract regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(D) Reports to Governmental Bodies. The Company shall prepare all reports, make all information submittals and provide all notices to all Governmental Bodies required under Applicable Law, by all Governmental Approvals, and by Environmental Mitigation Measures required to be performed by the Company, with respect to the Design-Build Work. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for SRWA, if such are acceptable to the Governmental Body. The Company first shall provide SRWA with copies of such regulatory reports for review, comment and signature, as applicable, at least 10 Business Days before their filing with the Governmental Body, and then with the Governmental Body; provided, however, that in the event that Applicable Law requires immediate filing with the Governmental Body, the Company shall provide such copies to SRWA concurrently with the filing with the Governmental Body. The Company is responsible for the accuracy and completeness of all reports, submittals, data and other information proposed for filing.

(E) Potential Regulatory Change. The Company shall keep SRWA regularly advised as to any potential Change in Law affecting the Design-Build Work of which the Company has knowledge, and shall provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on SRWA should a Change in Law actually occur.

(F) Assistance to SRWA. The Company shall reasonably cooperate with and assist SRWA in obtaining and maintaining all Governmental Approvals that are the responsibility of SRWA, as set forth in Appendix 9 (Governmental Approvals and Utility Coordination). Such cooperation and assistance shall include compliance with any specific requirements set forth in Appendix 9 (Governmental Approvals and Utility Coordination) and providing to SRWA and all appropriate Governmental Bodies all data, information, plans and documentation that are within its possession or control (including all information specific to the Design-Build Work that may exist or be required by such Governmental Bodies to be developed by the Company or SRWA), which may be required in order to properly apply for, obtain and maintain such Governmental Approvals. All such data, information, plans and documentation shall be correct and complete in all material respects and, as applicable, shall be developed by the Company in accordance with the Contract Standards.

(G) Limited Permitting Assistance by SRWA. Upon request by the Company, SRWA shall provide reasonable assistance to the Company in connection with the Company's obligation to obtain and maintain the Governmental Approvals required to be obtained by the Company under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Governmental Approvals, and providing the Company with existing relevant data and documents that are within SRWA's custody or control or are reasonably obtainable by SRWA and which are reasonably required for such purpose. However, SRWA's obligation to provide such reasonable assistance shall be limited, in light of the Company's primary role in the permitting, design and construction of the Regional Water Facilities, to those actions that are legally required to be taken by SRWA as permittee or co-permittee or that involve providing information in the possession of or reasonably obtainable by SRWA.

(H) Company Assumption of Permitting Risk for Design-Build Work. The Company assumes the risk of obtaining and maintaining the Governmental Approvals required to be obtained by the Company pursuant to this Section, including the risk of delay, non-issuance, or the imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Change in Law described in items (1) and (2) of the definition thereof and to the extent provided under subsections (I), (J) and (K) of this Section. In assuming this risk, the Company acknowledges in particular that (except as otherwise specifically provided in this Section) the delay or non-issuance of any Governmental Approval required for the commencement of construction will have the effect of compressing the period within which the completion of construction, testing and all other Design-Build Work must be completed hereunder in order to avoid delay liquidated damages pursuant to Section 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages) and termination pursuant to Section 7.2 (Events of Default by the Company). The Company further acknowledges that a Governmental Body, in issuing any Governmental Approval, may impose terms and conditions that require the Company to make changes or additions to the Design-Build Work, which may increase the cost, time or risk to the Company of performing the Design-Build Work. Any such terms and conditions that impose requirements that are different from or that are in addition to those imposed by the Technical Standards shall not constitute a Change in Law, and any changes to the Design-Build Work resulting therefrom shall be subject to review and approval by SRWA, acting reasonably.

(I) Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations. If in seeking to obtain a Governmental Approval set forth in subsection (J) of this Section, (1) the Company has complied with the requirements of this Contract, (2) the Company has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval, (3) the Company has in all respects used its best efforts to obtain the Governmental Approval, (4) the Company has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law, and (5) there has been a failure to issue a Governmental Approval by the Assumed Approval Issuance Date set forth in Table 4-6 below, then the Company shall be entitled to an adjustment to the Scheduled Acceptance Date to the extent provided in subsection (J) of this Section.

(J) Governmental Approval Dates. The Company shall submit completed applications for each of the Governmental Approvals listed below in Table 4-6 by the applicable "Governmental Approval Application Date," which is the number of days from the Contract Date as indicated in the table. The Company shall obtain each listed Governmental Approval by the "Assumed Approval Issuance Date" set forth below, which is the date by which the applicable Governmental Approval is expected to be obtained, as measured from the Governmental Approval Application Date and assuming the adopted administrative practice of the applicable issuing Governmental Body and the Governmental Body's compliance with Applicable Law. The Scheduled Acceptance Date shall be adjusted to account for the number of days of delay by a Governmental Body in issuing any required Governmental Approval listed below in Table 4-6 beyond the Assumed Approval Issuance Date, reduced by (i) the number of days of Company delay in submitting a complete application in accordance with this Section beyond the applicable Governmental Approval Application Date, and (ii) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Company to exercise reasonable diligence in accordance with this Section in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually causes delay in the Company's critical path completion schedule after the exercise of all reasonable mitigation efforts by the Company. The

Company shall bear the burden of proving any claim of entitlement to an adjustment to the Scheduled Acceptance Date under this Section, and shall promptly and regularly inform SRWA as matters arise which may culminate in any such claim in order to permit timely intervention by SRWA should it so elect. The Company shall not be entitled to an adjustment of the Base Design-Build Price in connection with any delay caused by the applicable Governmental Body in accordance with this subsection.

Table 4-6

Governmental Approval	Issuing Governmental Body	Governmental Approval Application Date (Number of days from Contract Date)	Assumed Approval Issuance Date (Number of days from Governmental Approval Application Date)
New Domestic Water Supply Permit	DDW	TBD	TBD As explained in Sec. 5.2, the Company is responsible for applying for the New Domestic Water Supply Permit, obtaining the Interim Operations Approval, and assisting with the New Domestic Water Supply Permit application; however, SRWA is responsible for obtaining the final New Domestic Water Supply Permit if not obtained by Final Completion.
Interim Operations Approval	DDW	TBD	TBD
National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Stormwater	Central Valley Regional Water Quality Control Board	TBD	TBD
Construction Dewatering Discharge Permit	State Water Resources Control Board / Central Valley Regional Water Quality Control Board	TBD	TBD
NPDES Permit for any Finished or Raw Water Discharge from the Plant	Central Valley Regional Water Quality Control Board	TBD	TBD

Governmental Approval	Issuing Governmental Body	Governmental Approval Application Date (Number of days from Contract Date)	Assumed Approval Issuance Date (Number of days from Governmental Approval Application Date)
Land Discharge Permit for any Finished or Raw Water Discharges from the Plant	Central Valley Regional Water Quality Control Board	TBD	TBD
Cal OSHA Construction Safety Permits	State Department of Industrial Relations	TBD	TBD
Cal OSHA Confined Space Permit	State Department of Industrial Relations	TBD	TBD
Cal OSHA Tunneling Permit	State Department of Industrial Relations	TBD	TBD
Authority to Construct/Permit to Operate – For Construction Activities	San Joaquin Valley Air Pollution Control District	TBD	TBD
Authority to Construct/Permit to Operate – For Operation of Permanent Facilities	San Joaquin Valley Air Pollution Control District	TBD	TBD
Road Encroachment Permit	City of Ceres	TBD	TBD
Transportation Permit	City of Ceres	TBD	TBD
Road Encroachment Permit	City of Turlock	TBD	TBD
Transportation Permit	City of Turlock	TBD	TBD
Road Encroachment Permit	City of Hughson	TBD	TBD
Road Encroachment Permit	County of Stanislaus	TBD	TBD
Traffic Control Management Plan	County of Stanislaus	TBD	TBD
Transportation Permit	County of Stanislaus	TBD	TBD
Truck Oversize/Overweight Permit	State Department of Transportation	TBD	TBD
Encroachment Permits	TID	TBD	TVD
Monitoring Well/Boring and Well Destruction Permits	County of Stanislaus	TBD	TBD

(K) Failure of a Governmental Body to Comply with Applicable Law. The Company shall be entitled to claim Uncontrollable Circumstance relief in accordance with and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief) in the event that a Governmental Body fails to comply with Applicable Law in connection with a Governmental Approval application or with respect to the imposition of arbitrary and capricious terms and conditions in connection with a Governmental Approval. Any price relief associated with a Governmental Body delay under this subsection shall be limited to the Company's reasonable daily general conditions costs, subject to Cost Substantiation in accordance with Section 10.8 (Cost Substantiation of Work Already Performed), for the number of days of delay caused by the applicable Governmental Body but only to the extent any such Governmental Body delay actually causes delay in the Company's critical path completion schedule after the exercise of all reasonable mitigation efforts by the Company.

SECTION 4.7. PILOT TESTING. Notwithstanding any testing that may have been conducted by SRWA or the Company prior to the Contract Date, the Company shall be responsible, at its sole cost and expense, for performing any pilot testing associated with the Water Treatment Plant as may be required by any Governmental Body in connection with any Governmental Approval. The Company specifically bears all risk associated with any requirements imposed by a Governmental Body with respect to such pilot testing except to the extent that such requirements are imposed as a result of any Change in Law described in items (1) and (2) of the definition thereof.

SECTION 4.8. DDW REQUIREMENTS. The parties acknowledge that, although the New Domestic Water Supply Permit is not required under Applicable Law to commence and continue performance of the construction elements of the Design-Build Work, obtaining the Interim Operations Approval is a requirement for introducing Finished Water into the City Water Supply Systems and must be obtained in order to achieve Acceptance. The obligations of the parties with respect to obtaining the Interim Operations Approval and New Domestic Water Supply Permit are set forth in Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit). The Company acknowledges that DDW intends to provide comments and advice to the Company concerning the Design-Build Work and that such comments and advice are likely to have a bearing on the ability of the parties to obtain the Interim Operations Approval and New Domestic Water Supply Permit. Accordingly, the Company shall cooperate with DDW and shall prepare all submittals relating to the Project and perform all pilot testing required or reasonably requested by DDW in accordance with Sections 4.7 (Pilot Testing) and 5.2 (Interim Operations Approval and New Domestic Water Supply Permit). The Company bears the risk of proceeding in contravention of any comments or advice from DDW, whether such comments or advice rise to the level of Applicable Law or otherwise. The Company shall assume all risks set forth in subsection 5.2(D) (Company Assumption of Risk) with respect to the Interim Operations Approval and DDW approval under Section 4.23(A)(2) (Final Completion).

SECTION 4.9. COMPANY DESIGN – GENERAL

(A) Performance of the Design Work. The Company shall undertake, perform, and complete the designs and plans for the Regional Water Facilities in accordance with the Contract Standards and shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Contract Date, the Company's design for the Regional Water Facilities is not complete. All Company working and final Design Documents shall comply with the Contract Standards, including applicable requirements and provisions set forth in the Appendices,. The Company shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Design Documents.

(B) Sole Responsibility and Liability. The Technical Standards are intended to include the basic design principles, concepts and requirements for the Design-Build Work, but do not include the

final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the Design-Build Work or for achieving Acceptance. The Company assumes responsibility for the final design and agrees to prepare all necessary and required, complete and detailed designs, plans, Drawings and specifications and to furnish and perform the Design-Build Work in conformity with the Contract Standards and its final designs, plans, Drawings and specifications based thereon. The Company further agrees that it shall not have the right to bring any claim whatsoever against SRWA, the SRWA Engineer, or any of SRWA consultants or subcontractors arising out of any design Drawings, specifications or Technical Standards included in the RFP or made available during the procurement process. Rather, the Company shall have the sole and exclusive responsibility and liability for the design and construction of the Regional Water Facilities and performance of the Design-Build Work. The Company acknowledges that, in the Proposal and negotiation and clarification process leading to the execution of this Contract, the Company had the unrestricted right and opportunity to negotiate changes and clarifications to the Contract, not submit a Proposal, or not approve this Contract if the Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Company's ability to perform the Design-Build Work in compliance herewith.

(C) SRWA Review of Design Documents. The Company shall provide SRWA with the Document Submittal Plan in accordance with the requirements set forth in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures) and thereafter the Company shall submit Design Documents to SRWA for its review, comment on, and approval in accordance with this subsection, the Document Submittal Plan, and Appendix 2. However, SRWA review and approval will be limited to confirming whether, based on SRWA's review (which may be incomplete or selective), the Design Documents appear to be in compliance with the Contract, Technical Standards, and applicable Appendices. SRWA review and approval will not extend to construction means, methods, techniques, sequences, or procedures or to safety-related precautions, programs, or requirements. SRWA review and approval of the Design Documents is solely for the benefit of SRWA and the Cities. The Company remains fully responsible for the preparation of the Design Documents in accordance with the Contract Standards and liable for any defects in design, even though SRWA will be reviewing and approving the Design Documents for the limited purpose described above. The Company shall not rely on SRWA approval as validating or confirming its design or the Design Documents. SRWA will complete its review of each submittal in a timely manner in accordance with the procedures and deadlines set forth in Appendix 2 (Design-Build Work Submittal Requirements). In no event shall the Company proceed with the physical construction of any particular segment of the Design-Build Work without first obtaining SRWA approval under this subsection and otherwise complying with the requirements of this subsection, the Document Submittal Plan, and Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures) with respect to that segment of the Design-Build Work (except as otherwise provided by Section 4.1(D) (Sequencing and Staging of Design-Build Work)). The Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures), to any comments provided by SRWA as to the Company's design submittals. SRWA review, comment on, or approval of the Company's Design Documents (or SRWA's failure or delay in commenting on or approving any Design Document) shall not in any way (1) transfer any design-related liability to SRWA, or (2) relieve the Company of full responsibility for the satisfactory preparation of the Design Documents or the design and construction of the Regional Water Facilities and performance of the Design-Build Work in accordance with the Contract Standards.

(D) Documents at the Sites. The Company shall maintain at the Sites all design and construction documents, including a complete set of Record Drawings, specifications, addenda, approved shop drawings, samples, photographs, Change Orders, Contract Administration Memoranda, design change notices, other modifications of SRWA documents, survey data, and Company or construction Subcontractor field orders in accordance with Appendix 3 (Construction

Work Requirements). These documents shall be available to SRWA for reference, copying and use, and a complete set thereof shall be delivered to SRWA upon completion of the Design-Build Work.

SECTION 4.10. DESIGN AND CONSTRUCTION REQUIREMENTS; CHANGES

(A) Purpose and SRWA Interest. The Design and Construction Requirements shall form the basis of the minimum Project design and criteria for the Regional Water Facilities and all design work shall be completed in accordance therewith. The Company acknowledges SRWA's material interest in the Design and Construction Requirements and the Company agrees that no change to the Design and Construction Requirements shall be made except with the written consent of SRWA, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders). In addition for design review concerning compliance with Appendix 5 (Project Technical Requirements) and other Contract Standards, SRWA reserves the right to review and comment upon the final design of the Regional Water Facilities insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Regional Water Facilities are in compliance with Appendices 3 (Construction Work Requirements) and 5 (Project Technical Requirements) with respect to such matters.

(B) Changes Made at Company Request. The Company shall give SRWA written notice of, and reasonable opportunity to review and comment upon, any Design and Construction Requirement Change proposed to be made at the Company's request. The notice shall contain sufficient information for SRWA to determine whether the Design and Construction Requirement Change: (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Regional Water Facilities; (3) is reasonably necessary or is advantageous for the Company to fulfill its obligations under this Contract; and (4) is feasible. SRWA shall have the right in its discretion to accept, reject or modify any Design and Construction Requirement Change proposed by the Company. Any such Design and Construction Requirement Change accepted or modified by SRWA, and any related change in the terms and conditions of this Contract, shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

(C) Changes Made due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance prior to the Acceptance Date, SRWA shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), to make or cause to be made all Design and Construction Requirement Changes reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with SRWA concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and SRWA shall cooperate in order to minimize any delay, lessen any additional cost, and modify the Project so as to permit the Company to continue providing the Design-Build Work in light of such Uncontrollable Circumstance. The design and construction costs resulting from any such Design and Construction Requirement Change shall be borne by SRWA, except to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief). Without limiting the right of SRWA to issue a Unilateral Change Directive under Section 4.12 (Unilateral Change Directives), any Design and Construction Requirement Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of this Contract, shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

(D) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval that require a Design and Construction Requirement Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, SRWA shall promptly proceed to make or cause to be made all Design and Construction Requirement Changes reasonably necessary or appropriate to comply with such additional terms and conditions. Pursuant to and to the extent provided in Sections 4.6 (Design-Build Work Permitting Responsibilities) and 5.2 (Interim Operations Approval and New Domestic Water Supply Permit), the Company shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Accordingly, the design and construction costs resulting from any Design and Construction Requirement Change required under this Section shall be borne by the Company. Without limiting the right of SRWA to issue a Unilateral Change Directive under Section 4.12 (Unilateral Change Directives), any such Design and Construction Requirement Change and any related change in the terms and conditions of this Contract shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

(E) Changes Made at SRWA Direction. SRWA shall have the right to make Design and Construction Requirement Changes at any time prior to the Acceptance Date at its discretion. Except as provided in subsection (D) of this Section, any increased design and construction costs resulting from any such Design and Construction Requirement Change made at SRWA's direction shall be borne by SRWA through a Base Design-Build Price Adjustment. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Contract shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

SECTION 4.11. SECONDARY TECHNICAL CRITERIA; VARIATIONS

(A) Relation to Design and Construction Requirements. The Secondary Technical Criteria contained in Appendix 5 (Project Technical Requirements) are provided in order to establish in further detail (1) the manner in which the design work is reasonably expected to be developed and carried to full completion, and (2) the standards of quality, integrity, durability and reliability to which the Project is to be designed and constructed.

(B) Permissible Variations. The design portion of the Design-Build Work shall be completed in accordance with the Secondary Technical Criteria. In light of the design-build nature of this Contract and the partially completed level of the design work as of the Contract Date, however, reasonable, minor variations from the Secondary Technical Criteria shall be permitted in the final design of the Regional Water Facilities, to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements of the Secondary Technical Criteria from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms and buildings (to the extent overall functionality is not impaired or total square footage materially decreased); routes and depth of pipe work; exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical, power and control cables, switchgear, transformers and control panels. No such variations shall be inconsistent with the Design and Construction Requirements, with the purposes of the Secondary Technical Criteria as set forth in subsection (A) of this Section, or with any limits specifically provided in the Secondary Technical Criteria regarding the range or nature of permissible variations or with any standards or principles regarding permissible deviations set forth therein. Variations in the final design from the Secondary Technical Criteria which conform to the provisions of this Section shall not require affirmative SRWA consent, but shall be identified in the monthly progress schedule and report

provided in accordance with subsection 4.1(E) (Progress Schedule and Reports). However, if SRWA determines, in its discretion, that any such variation does not conform to this Section, then the variation shall require the written consent of SRWA, which shall not be unreasonably withheld or delayed. Any variation requiring the consent of SRWA shall be evidenced by a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

SECTION 4.12. UNILATERAL CHANGE DIRECTIVES

(A) Generally. The parties intend to negotiate the terms of any Change Order providing for a Design and Construction Requirement Change pursuant to Section 4.10 (Design and Construction Requirements; Changes) prior to the Company incurring any costs with respect to any such change or adjustment. The Company shall consult with SRWA concerning possible means of addressing any proposed Design and Construction Requirement Change pursuant to Section 4.10 (Design and Construction Requirements; Changes) and the Company and SRWA shall cooperate in order to minimize any delay and lessen any additional cost in light of such proposed Design and Construction Requirement Change. However, notwithstanding the foregoing, SRWA shall have the right to issue a written order prepared and signed by an authorized representative of SRWA and authorized by SRWA, directing a Design and Construction Requirement Change pursuant to this subsection, which order shall specify any appropriate price, performance or schedule relief, if any, associated with the Design and Construction Requirement Change (a "Unilateral Change Directive"). Upon receipt of a Unilateral Change Directive, the Company shall promptly proceed with the performance of any change in the Design-Build Work as instructed by the Unilateral Change Directive and shall promptly advise SRWA in writing of the Company's agreement or disagreement with any price, performance or schedule relief, if any, as may be proposed by SRWA in the Unilateral Change Directive. If the Company receives a written communication signed by SRWA, which the Company believes is a Unilateral Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work until it receives written confirmation from SRWA that such communication is in fact a Unilateral Change Directive. A Unilateral Change Directive that is signed by the Company and SRWA reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order.

(B) Limitations on SRWA's Right to Issue Unilateral Change Directives. Except with respect to Design and Construction Requirement Changes requested by the Company, as described in subsection 4.10(A) (Changes Made at Company Request) or required by Governmental Bodies where the Company has assumed the terms and conditions risk associated with the Governmental Approval, as described in subsection 4.10(C) (Changes Required By Governmental Bodies), no Unilateral Change Directive shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, unless SRWA affords the Company appropriate price, schedule, performance or other relief necessary to avoid any such material effect. In addition, no Unilateral Change Directive shall be made that would be contrary to Applicable Law.

(C) Disagreement with Terms of a Unilateral Change Directive. If the Company disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Unilateral Change Directive, the Company shall provide written notice of the disagreement within 15 days after receipt of the Unilateral Change Directive. Upon receipt of a notice of disagreement, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution Procedures) and Appendix 14 (Resolution of Company Claims). In such case, the Company shall proceed with the performance of the Design-Build Work in accordance with the Unilateral Change Directive and shall keep and present, in such form as SRWA may request, an itemized accounting with the appropriate supporting data with respect to the Company's position.

SECTION 4.13. COMPLIANCE WITH APPLICABLE LAW

(A) Compliance with Applicable Law and Other Standards. In designing, constructing, initially testing, starting up and Acceptance Testing the Regional Water Facilities, the Company shall comply with the Contract Standards. The Company shall ensure that all Persons performing Design-Build Work, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise required by Applicable Law. The Company shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Design-Build Work.

(B) Governmental Approvals Necessary for Continued Construction. The Company shall make all necessary filings, applications and reports as needed to obtain and maintain all Governmental Approvals required under Applicable Law in connection with the continuance of the Design-Build Work once commenced. SRWA, subject to the limitations set forth in subsection 4.6(G) (Limited Permitting Assistance by SRWA), shall cooperate with the Company in connection with the foregoing undertaking.

(C) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law a Governmental Approval with respect to the Design-Build Work, the Company shall: (1) immediately correct such failure and resume compliance with Applicable Law or Governmental Approval; (2) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (3) indemnify, defend and hold harmless SRWA Indemnitees in accordance with Section 8.5 (Indemnification by the Company) from any Loss and Expense resulting therefrom; (4) make all changes in performing the Design-Build Work which are necessary to assure that the failure of compliance with Applicable Law or Governmental Approval will not recur; and (5) comply with any corrective or remediation action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law or Governmental Approval.

(D) Assignment of Anti-Trust Claims. In accordance California Public Contract Code Section 7103.5, in entering into this Contract, the Company offers and agrees to assign to SRWA all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S. Code Section 15) or under the Cartwright Act (California Business and Professions Code Division 7, Part 2, Chapter 2), arising from purchases of goods, services or materials pursuant to this Contract. The assignment shall be made and become effective at the time SRWA tenders final payment to the Company for the Design-Build Work, without further acknowledgement by the parties.

SECTION 4.14. CONSTRUCTION PRACTICE. The Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Sites; construction trade management; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Sites; temporary utilities; potable water; sanitary services; Subcontractor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and

construction coordination; and all other plans, equipment, materials, labor, and other work necessary or appropriate to successfully and safely construct the Regional Water Facilities.

SECTION 4.15. SRWA ENGINEER AND CONSTRUCTION MANAGER

(A) Overlap of Responsibilities. The Company acknowledges that SRWA will be advised by both the SRWA Engineer and SRWA Construction Manager in connection with the Company's performance of the Design-Build Work. The SRWA Construction Manager's general responsibilities shall be to review and respond to Company requests for information, review submittals, and monitor construction field work and the SRWA Engineer's general responsibilities shall relate to permitting, preconstruction work, design review, review request for information and submittals during the construction phase, and Acceptance Test monitoring. The Company acknowledges that notwithstanding the general responsibilities of the SRWA Construction Manager and SRWA Engineer, as described in this Section, there may be overlap in the responsibilities of the SRWA Construction Manager and SRWA Engineer, and the Company shall cooperate with both the SRWA Construction Manager and SRWA Engineer as and to the extent required pursuant to this Contract.

(B) Duties of SRWA Construction Manager. The Company shall fully cooperate with the SRWA Construction Manager in connection with the administration of this Contract and the performance of the duties of the SRWA Construction Manager hereunder. In the performance of such services, the Company agrees that the SRWA Construction Manager may, without limiting other possible services to SRWA: review and monitor construction progress, payments and procedures; review baseline schedule; review schedule of values; review monthly progress reports; attend weekly construction meetings; issue construction non-compliance notices and recommend to SRWA that payment be withheld for work that is not completed satisfactorily; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements and proposed variations in the Secondary Technical Criteria; attend monthly Project status meetings; review plans, Drawings and specifications of the Regional Water Facilities for compliance with the Design and Construction Requirements and the Secondary Technical Criteria; review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; observe and monitor the Company's compliance with the Design-Build Quality Management Plan, Governmental Approvals and related conditions, Environmental Mitigation Measures and the critical path method schedule; review Company submittals and construction-related requests for information; review Record Documents; review before and after construction photographs; and perform such other duties as may be specifically conferred on the SRWA Construction Manager hereunder.

(C) Duties of SRWA Engineer. The Company shall fully cooperate with the SRWA Engineer in connection with the administration of this Contract and the performance of the duties of the SRWA Engineer hereunder. In the performance of such services, the Company agrees that the SRWA Engineer may, without limiting other possible services to SRWA: review construction progress; review payment requests; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements and proposed variations in the Secondary Technical Criteria; attend regular design review meetings; attend monthly Project status meetings; review plans, Drawings and specifications of the Regional Water Facilities for compliance with the Design and Construction Requirements and the Secondary Technical Criteria; monitor the Acceptance Tests undertaken by the Company and review the Company's certified Acceptance Test report to determine whether the Acceptance Test Procedures and Standards have been satisfied pursuant to Article 5 (Testing, Start-up, and Acceptance) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements); review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; monitor the Company's compliance with the Design-Build Quality Management Plan, Governmental Approvals and related conditions; review Company submittals and construction-related requests for information; review

record Drawings; review of before and after construction photographs; and perform such other duties as may be specifically conferred on the SRWA Engineer hereunder. It is understood that the services intended to be provided by the SRWA Engineer shall be of an observational and review nature only, and that the SRWA Engineer shall not have SRWA to interfere with, halt, or delay in any way the construction of the Regional Water Facilities or, except as provided in subsection (D) of this Section, to require or approve changes to the Design and Construction Requirements and the Secondary Technical Criteria or the Company's plans and specifications made in accordance therewith.

(D) SRWA Engineer Approval of Variations from Secondary Technical Criteria. The parties acknowledge and agree that the SRWA Engineer shall have authority to approve and sign Contract Administration Memoranda on behalf of SRWA approving variations in the final design from the Secondary Technical Criteria requiring the consent of SRWA pursuant to Section 4.11 (Secondary Technical Criteria; Variations). Except with respect to the foregoing, the Company understands and agrees that the SRWA Engineer has only limited authority with respect to the implementation of this Contract, and cannot bind SRWA with respect to any Change Order or to incurring costs in excess of the amounts appropriated therefor. Only the SRWA Contract Representative shall have the authority to approve and sign Contract Administration Memoranda or Change Orders relating to Design and Construction Requirement Changes.

(E) SRWA Extra Work Attributable to Company. The Company shall reimburse to SRWA any fees and costs (including overtime) of the SRWA Construction Manager, SRWA Engineer, and other SRWA personnel to the extent any fees and costs and related extra work are attributable to the failure of the Company to cause Acceptance to occur on or before the Scheduled Acceptance Date, the repetition of any Acceptance Tests in excess of the Acceptance Tests identified in the SRWA-approved Acceptance Test Plan, or any other Company-caused rework by SRWA staff that results in additional cost to the SRWA. However, the Company shall not be required to reimburse such fees and costs if the additional or repeated Acceptance Tests are required as a result of Uncontrollable Circumstances.

SECTION 4.16. CONSTRUCTION MONITORING, TESTING, AND UNCOVERING WORK

(A) Observation and Design Review Program. During the progress of the Design-Build Work through Final Completion, the Company shall at all times afford SRWA, the SRWA Construction Manager, and the SRWA Engineer every reasonable opportunity for observing all Design-Build Work, and shall comply with the procedures and requirements set forth in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures) and Appendix 4 (Design-Build Quality Management). The Company shall use its best efforts to provide SRWA personnel with safe access to the Design-Build Work. During any such observation, all representatives of SRWA, the SRWA Construction Manager and SRWA Engineer shall comply with the Site Health and Safety Plan for the Design-Build Work applicable to areas visited, and shall in no material way interfere with the Company's performance of any Design-Build Work.

(B) Company Tests and Inspections. The Company shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Company shall give SRWA, the SRWA Construction Manager and the SRWA Engineer reasonable advance notice (at least 10 Business Days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of SRWA, the SRWA Construction Manager or the SRWA Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. The Company shall engage an engineer or architect licensed in the State at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by Persons appearing on lists of laboratories authorized to perform such tests by the State or federal SRWA

having jurisdiction and shall be subject to the approval of SRWA, which approval shall not be unreasonably withheld. In addition to the foregoing, Acceptance Testing of the performance of the completed Regional Water Facilities shall be conducted in accordance with Article 5 (Testing, Startup and Acceptance).

(C) SRWA Tests, Observations and Inspections. SRWA, its personnel, agents, representatives and contractors, and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests, as SRWA deems necessary or desirable to ascertain whether the Design-Build Work complies with the Contract Standards. Such observations, inspections and tests may be conducted on-site or anywhere off-site, and may include factory inspections of piping and equipment. The costs of such test, observation or inspection shall be borne by SRWA unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Contract or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Company shall secure and deliver to SRWA promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Company shall provide to SRWA, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Company under or in connection with any Governmental Approval, Subcontract or Security Instrument.

(E) Notice of Covering Design-Build Work. The Company shall give SRWA notice of its upcoming schedule with respect to the completion and covering of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five Business Days) before such completion and covering. SRWA shall give the Company reasonable notice (a minimum of 72 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford SRWA a reasonable opportunity to conduct a full inspection of such Design-Build Work. At SRWA's written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that SRWA's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by SRWA as to whether the disputed Design-Build Work complies with the requirements of this Contract. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) by the Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which SRWA was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) in all other cases, as follows: by the Company, if such observation or test reveals that the Design-Build Work does not comply with this Contract; or, by SRWA, if such observation or test reveals that the Design-Build Work complies with this Contract.

In the event such Design-Build Work does comply with this Contract, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and

any costs incurred with respect to such observation or test shall be borne by SRWA (through and only through a Base Design-Build Price Adjustment).

SECTION 4.17. CORRECTION OF NON-CONFORMING WORK. The Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work which does not conform with the Contract Standards. SRWA may elect by Change Order, at the Company's request, to accept non-conforming Design-Build Work and charge the Company (through a Base Design-Build Price Adjustment) for the amount agreed upon by the parties by which the value of the Company's services or Design-Build Work has been reduced.

SECTION 4.18. DELIVERABLE MATERIAL. As the Design-Build Work progresses (or upon the termination of the Company's right to perform the Design-Build Work), the Company shall deliver to SRWA all Deliverable Material. The provisions of Section 10.6 (Property Rights) shall apply to any Deliverable Material used by the Company in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. Deliverable Material provided to SRWA shall be the property of SRWA, and SRWA shall have the right to use, reuse, reproduce, publish, display, broadcast and distribute the Deliverable Material and to prepare derivative and additional documents or works based on the Deliverable Material without further compensation to the Company or any other party. SRWA shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by SRWA in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. SRWA's use of any such Deliverable Material for any purpose other than the Project shall be at its own risk and the Company shall have no liability therefor.

SECTION 4.19. PERSONNEL

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's and Subcontractors' employees and personnel. All Persons engaged by the Company for Design-Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. The Company shall replace any Company or Subcontractor employee or worker at the request of SRWA, after notice and a reasonable opportunity for corrective action, in the event SRWA determines, in its discretion, that such employee or worker does not have the requisite skills for the tasks assigned or has engaged in unlawful, unruly or objectionable conduct.

(B) Company Construction Superintendent. The Company shall designate an employee of the Company, an Affiliate, or a Subcontractor (the "Company Construction Superintendent"), who shall be present on the Sites with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design-Build Work. The Company Construction Superintendent shall, among other things: be familiar with the Design-Build Work and all requirements of this Contract; coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision; maintain a daily status log of the Design-Build Work; and attend all weekly and monthly construction progress meetings with SRWA, the SRWA Construction Manager and the SRWA Engineer. The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of subsection (C) of this Section.

(C) SRWA Rights with Respect to Key Design-Build Work Personnel. The Company acknowledges that the identity of the key Design-Build Work management and supervisory personnel proposed by the Company and its Subcontractors in its Proposal submitted in response to the RFP was a material factor in the selection of the Company to perform this Contract. Such personnel and their affiliations are set forth in Appendix 10 (Key Personnel and Approved

Subcontractors). The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown by the Company. "Good cause" includes termination for cause, employee death, disability, retirement or resignation, but shall not include performing services on other projects for the Company or any of its Affiliates. In the event of any such permissible unavailability, the Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to SRWA for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(D) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors, whether pertaining to organization or requirements of the Design-Build Work, employee hiring, or any other matters. SRWA shall have no responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless SRWA Indemnitees in accordance with Section 8.5 (Indemnification by the Company) from any and all Loss and Expense resulting from any such labor dispute.

SECTION 4.20. GUARANTEES AND WARRANTIES

(A) Workmanship Guaranty. The Company warrants to SRWA that the materials, machinery, structures, improvements, and equipment furnished as part of the Design-Build Work will be new, of recent manufacture, and of good quality; that the Design-Build Work will be free from defects; and that the Design-Build Work will conform to the Contract Standards. If, at any time during the period beginning with the Acceptance Date and ending one year thereafter (the "Guaranty Period"), any of the Design-Build Work is found to be malfunctioning, defective, nonconforming, or otherwise not in accordance with the Contract Standards, the Company shall take appropriate action to repair, replace, or otherwise correct it promptly after receipt of written notice from SRWA to do so. SRWA shall give such notice promptly after discovery of the condition. The Company shall respond to critical or emergency service calls from SRWA within 24 hours and non-critical or non-emergency calls within five Business Days. Such response shall require that a competent representative familiar with the specific equipment used in the Design-Build Work inspect the facility and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time. In critical or emergency situations, that time period shall not exceed 48 hours after the on-site inspection. For non-emergencies, such period shall not exceed 10 days. The Guaranty Period for any work repaired, replaced, or corrected under this Section shall be extended for one year from the date of SRWA's acceptance of the work.

(B) Relief from Guaranty. The Company shall be provided relief from the guaranty under this Section in the event the malfunctioning, defective, or nonconforming work is due to (1) the failure of SRWA to operate and maintain the Project in accordance with Good Industry Practice and generally consistent with the Operation and Maintenance Manual, (2) an error or defect in any software programming provided by SRWA for the monitoring instrumentation and controls, (3) any damage or defect caused by a Project modification not executed by the Company, (4) SRWA's sole negligence, fraud, or willful misconduct, or (5) normal wear and tear under normal use. However, the Company shall not be relieved pursuant to clause (1) of this subsection to the extent that any such SRWA failure to operate or maintain the Project is attributable to any error or defect in the Operation and Maintenance Manual prepared by the Company.

(C) Guaranty Not Exclusive. The guaranty in this Section is in addition to, and not in limitation of, any other rights or remedies available under this Contract or Applicable Law. Nothing in this Section will be construed to limit the Company's liability or responsibility imposed by this

Contract or Applicable Law with respect to the Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud. The Guaranty Period applies only to the specific Company guaranty obligations under this Section and it does not establish a limitations period with respect to any other obligation. The guarantees under this Section do not excuse the Company from any claim based on breach of Contract arising from defective or nonconforming work that is discovered more than one year after the Acceptance Date.

(D) Guaranty Work. Any guaranty work under this Section shall be performed in accordance with the Contract Standards and in a manner that minimizes interference with SRWA's ongoing Project operations. Any guaranty work shall be performed at the sole cost and expense of the Company. The Company acknowledges that it incorporated the costs and risks associated with these guarantees into the Base Design-Build Price. The Performance Bond, which continues in effect for one year after the recording of the Notice of Completion, applies to and secures the guaranty under this Section.

(E) Assignment of Manufacturer Warranties. The Company shall obtain from all Subcontractors, vendors, suppliers and other Persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Regional Water Facilities such warranties and guarantees as are normally provided with respect thereto and as are specifically required in Appendix 5 (Project Technical Requirements) and the Contract Standards, each of which shall be given and assigned to SRWA to the full extent of the terms thereof. No such warranty shall relieve the Company of any obligation hereunder, and no failure of any warranted or guaranteed structure, improvement, fixture, machinery, equipment or material shall be the cause for any increase in the Design-Build Price or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to an Uncontrollable Circumstance.

SECTION 4.21. SUBSTANTIAL COMPLETION

(A) Conditions to Substantial Completion. "Substantial Completion" shall occur only when all of the following conditions have been satisfied, unless waived in writing by SRWA:

- (1) the Company has submitted and SRWA has approved in writing, such approval not to be unreasonably withheld, a certification by the Company that construction of the Regional Water Facilities is physically complete and all other Design-Build Work, except the Acceptance Tests and the items on the Final Punch List, is complete and in all respects is in compliance with this Contract;
- (2) a preliminary or temporary certificate of occupancy has been issued for the Regional Water Facilities, if required by Applicable Law;
- (3) the Company has delivered to SRWA a red-lined set of construction Record Drawings as required by Appendix 3 (Construction Work Requirements);
- (4) all Utilities specified or required under this Contract to be arranged for by the Company are connected and functioning properly;
- (5) the Company and SRWA have agreed in writing upon the Final Punch List in accordance with Section 4.22 (Final Punch List) (or, if they are unable to agree, SRWA shall have prepared and issued the Final Punch List to the Company within 15 Business Days of the Company having submitted its proposed Final Punch List to SRWA);
- (6) the Company has delivered to SRWA written certification from the equipment manufacturers (including manufacturers of information technology systems and

instrumentation and controls) that all major items of machinery and equipment included in the Regional Water Facilities have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;

(7) the Company has delivered to SRWA a statement setting forth in detail all claims, if any, of every kind whatsoever against or involving the Company or any Subcontractor and connected with, or arising out of, the Design-Build Work (and current up to the date when the Company gives such statement to SRWA);

(8) the Company is authorized by all appropriate Governmental Bodies to perform the procedures necessary to achieve Acceptance and to conduct the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended;

(9) the Company has submitted to SRWA and SRWA has reviewed and approved the plan for Acceptance Testing as required by Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements);

(10) the Company has delivered to SRWA a draft, complete Operation and Maintenance Manual prepared by the Company in accordance with Appendix 5 (Project Technical Requirements);

(11) the Company has completed all necessary operations and maintenance training as required by Section 5.9 (Operations Training by Company) and Appendix 7; and

(12) the Company has submitted written certification that all of the foregoing conditions have been satisfied and SRWA has approved the Company's certification, which approval shall be effective as of the date of the Company's certification.

(B) Notice of Substantial Completion. The Company shall give the SRWA Contract Representative at least 30 days' prior written notice of the expected date of Substantial Completion.

SECTION 4.22. FINAL PUNCH LIST. As required by Section 4.21 (Substantial Completion), the Company shall submit a proposed Final Punch List to SRWA and the SRWA Construction Manager when the Company believes that the Design-Build Work has been substantially completed in compliance with this Contract. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Company's opinion:

(1) the Company can complete before the Final Completion deadline provided in Section 4.23 (Final Completion), and with minimal interference to the occupancy, use and lawful operation of the Regional Water Facilities; and

(2) would represent, to perform or complete, a total cost of not more than one percent of the portion of the Base Design-Build Price applicable to the construction of the Regional Water Facilities.

In no event shall the Final Punch List contain any incomplete items necessary for full, automated operation of the Regional Water Facilities. The Final Punch List shall be approved by SRWA, and completion of the Final Punch List work shall be verified by a final walk-through of the Regional Water Facilities conducted by SRWA and the SRWA Construction Manager with the Company and the Company Construction Superintendent.

SECTION 4.23. FINAL COMPLETION

(A) Final Completion Requirements. "Final Completion" shall occur when all of the following conditions have been satisfied:

(1) Acceptance Achieved. The Company has achieved Acceptance of the Regional Water Facilities in accordance with Article 5 (Testing, Start-up, and Acceptance);

(2) DDW Approval. DDW has issued the New Domestic Water Supply Permit or DDW has provided other written information, satisfactory to SRWA, indicating that the Regional Water Facilities have been completed in accordance with DDW requirements;

(3) Design-Build Work Completed. All Design-Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Contract;

(4) Certificate of Occupancy Issued. A final certificate of occupancy has been issued for the Regional Water Facilities or any component thereof, if required by Applicable Law;

(5) Final Operation and Maintenance Manual. The Company has delivered to SRWA the final Operation and Maintenance Manual prepared by the Company in accordance with Appendix 5 (Project Technical Requirements);

(6) Deliverable Material. The Company shall have delivered to SRWA all Deliverable Material required by Section 4.18 (Deliverable Material);

(7) Final Record Documents. The Company shall have delivered to SRWA the final and complete set of construction Record Drawings as required by Appendix 3 (Construction Work Requirements);

(8) Equipment Warranties and Manuals. The Company shall have delivered to SRWA copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Regional Water Facilities required to be obtained under Section 4.20 (Guarantees and Warranties), together with copies of all related operating manuals supplied by any equipment supplier;

(9) Spare Parts In Storage. All spare parts required by the applicable Design and Construction Requirements and Secondary Technical Criteria have been delivered and are in storage at the Regional Water Facilities;

(10) Payment of Claims. The Company shall have certified to SRWA that all of its claims against SRWA have been paid as provided in Section 6.5 (Final Requisition and Payment); and

(11) Indemnity for Subcontractor Claims. The Company has provided evidence to SRWA that no Encumbrances (other than Permitted Encumbrances) exist with respect to the Regional Water Facilities and has provided a written representation that there exist no outstanding claims from Subcontractors or, if there are outstanding claims from Subcontractors, the Company shall state the nature and amount of the claims, identify the claimant, and indemnify defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in subsection 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting therefrom.

(B) Deadline to Achieve Final Completion. [The Company shall achieve Final Completion within 90 days after the Acceptance Date. If the Company fails to achieve any of the items set forth in subsection (A) of this Section by the last day of the applicable period specified in the subsection (B), an Event of Default by the Company will be deemed to have occurred under Section 7.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder. Upon such a default, SRWA may terminate this Contract upon written notice to the Company. Upon any such termination, SRWA shall have all of the rights provided in Article 7 (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

SECTION 4.24. BOARD APPROVAL AND NOTICE OF COMPLETION. Promptly following Final Completion, the Board of Directors shall accept the Design-Build Work as complete and authorize the filing of the Notice of Completion in accordance with Section 6.5 (Final Requisition and Payment). Upon the recording of the Notice of Completion, the parties' obligations under this Contract shall terminate (except as provided in Sections 3.2 (Survival of Certain Provisions Upon Termination) and 7.7 (Company Obligations at Termination or Expiration)), the Company shall have no further obligation to furnish and maintain the Required Insurance, and, the Company shall be entitled to payment of the undisputed balance of the Base Design-Build Price, including retention amounts, subject to and in accordance with Section 6.5 (Final Requisition and Payment).

ARTICLE 5

TESTING, START-UP, AND ACCEPTANCE

SECTION 5.1. INITIAL TESTING

(A) General. The Company shall perform initial testing (including all required commissioning) of and start-up the Project and completed Regional Water Facilities, test equipment and subsystems, and conduct post-start-up operations prior to pre-acceptance testing in accordance with the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). The cost of all such initial testing activities, regardless of their extent or duration, has been priced into the Base Design-Build Price.

(B) Water Deliveries and Disposal During Initial Testing. Any water, whether or not Finished Water, produced by the Regional Water Facilities during initial testing or prior to Acceptance Testing shall be recycled within the Project, delivered to the Cities for beneficial use, or disposed of in accordance with Applicable Law. The Company may deliver Finished Water to the City Water Supply Systems during initial testing and prior to Acceptance Testing provided that it has obtained an Interim Operations Approval (as discussed below in Section 5.2) specifically authorizing such delivery during initial testing, and has provided SRWA with reasonable notice of its intention to deliver Finished Water to the City Water Supply Systems. Any such Finished Water delivered to the City Water Supply Systems shall meet all requirements of Applicable Law. SRWA shall have no obligation to pay the Company for Finished Water delivered to the City Water Supply Systems pursuant to this Article 5.

SECTION 5.2. INTERIM OPERATIONS APPROVAL AND NEW DOMESTIC WATER SUPPLY PERMIT

(A) Authorization of Operation and Water Introduction. The Company acknowledges that the operation of the Project and the introduction of Finished Water into the City Water Supply Systems are prohibited by Applicable Law until an Interim Operations Approval, as defined in this subsection, or the New Domestic Water Supply Permit is issued by DDW. DDW may issue a letter, permit with provisions, or other instrument (an "Interim Operations Approval") authorizing temporary operation of the Project and introduction of Finished Water into the City Water Supply Systems until such time as the conditions of such Interim Operations Approval have been satisfied and the New Domestic Water Supply Permit is issued. The Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of DDW.

(B) SRWA's Responsibilities with Respect to the New Domestic Water Supply Permit. It is expected the DDW will require submittals with respect to the Regional Water Facilities in connection with its review and consideration of the New Domestic Water Supply Permit application and the issuance of the New Domestic Water Supply Permit for the Project. In the event DDW requires submittals that do not pertain to the Project, SRWA shall have sole responsibility, on a timely basis, to prepare all information and take all actions that may be necessary in order to submit the requested materials with respect to the aspects not pertaining to the Project.

(C) Company Obligations Generally. The Company shall cooperate with DDW and, except as provided in subsection (B) of this Section, shall make all applications and take all other action necessary, including performing all required pilot testing under Section 4.7 (Pilot Testing), to obtain the Interim Operations Approval and process the New Domestic Water Supply Permit application, and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of SRWA, subject to SRWA's rights hereunder. The Company shall manage the process of obtaining the Interim Operations Approval

and New Domestic Water Supply Permit in a manner that affords SRWA a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures). The Company shall not knowingly take any action in any application, material submittal, or other communication with any Governmental Body regarding the Interim Operations Approval or New Domestic Water Supply Permit or the terms and conditions thereof that would impose any unreasonable cost or burden on SRWA or that would contravene any SRWA policies with respect to the matters contained therein. SRWA reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company that would have the effect described in the preceding sentence.

(D) Company Assumption of Risk. The Company assumes the risk of obtaining the Interim Operations Approval and the DDW approval described at Section 4.23(A)(2) (Final Completion), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Company shall be afforded relief from the assumption of such risk: (1) in the event of the occurrence of any Change in Law described in items (1) and (2) of the definition thereof; and (2) to the extent provided in subsections 4.6(I) (Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations), 4.6(J) (Governmental Approval Dates), and 4.6(K) (Failure of a Governmental Body to Comply with Applicable Law). In assuming this risk, the Company acknowledges in particular that (1) the delay or non-issuance of the Interim Operations Approval or DDW approval under Section 4.23(A)(2) may delay or prevent the delivery of Finished Water to the City Water Supply Systems, the commencement of the Acceptance Tests, or the occurrence of Acceptance, and thereby give SRWA the right to impose delay liquidated damages or terminate this Contract as provided in Sections 4.23(B) (Deadline to Achieve Final Completion), 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages), 5.8 (Failure to Achieve Acceptance), and 7.2 (Events of Default by the Company), and (2) DDW may impose or enforce terms and conditions that require the Company to make changes or additions to the Project that may increase the cost or risk to the Company of performing the Design-Build Work. The exercise by DDW of any of its rights with respect to the Interim Operations Approval or New Domestic Water Supply Permit shall not constitute a Change in Law. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Company assumes the risk.

(E) Final New Domestic Water Supply Permit. If, by the time of Final Completion, DDW has not issued the final New Domestic Water Supply Permit and the Company has satisfied all of the other conditions of Final Completion, then the Parties shall proceed to Final Completion and SRWA shall assume the obligation and responsibility to obtain the final New Domestic Water Supply Permit. In this event, following Final Completion (and extending beyond final payment if needed), the Company shall provide ongoing technical support to and reasonably cooperate with and assist SRWA and DDW and their staffs and consultants as appropriate to pursue and obtain the final permit, including making all reasonable efforts to provide such information and documents as may be reasonably requested by SRWA or DDW.

SECTION 5.3. ACCEPTANCE TESTING

(A) Submittal of Acceptance Test Plan. At least 270 days before the earlier of the Scheduled Acceptance Date or the date upon which the Company plans to begin Acceptance Testing, the Company shall prepare and submit to SRWA for its approval a detailed Acceptance Test Plan, which shall conform to the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) in all respects. If the Company and SRWA are unable to agree upon an acceptable

Acceptance Test Plan within 90 days of such submittal, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution Procedures).

(B) Notice of Commencement of the Acceptance Tests. The Company shall provide SRWA with at least 30 days' prior written notice of the expected initiation of the Acceptance Tests in accordance with the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). At least 10 days prior to the actual commencement of Acceptance Testing, the Company shall certify in writing that it is ready to begin Acceptance Testing in accordance with the Acceptance Test Plan and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

(C) Conditions to Commencement of the Acceptance Tests. The Company shall not commence the Acceptance Tests until the following events have occurred:

- (1) The requirements of subsections (A) and (B) of this Section have been met and SRWA has approved the Acceptance Test Plan;
- (2) If required by Applicable Law, DDW has approved the Acceptance Test Plan proposed by the Company and approved by SRWA;
- (3) Substantial Completion has occurred;
- (4) The New Domestic Water Supply Permit or an Interim Operations Approval has been issued by DDW, and contains sufficient authorization to permit the Acceptance Tests and post-Acceptance Test operations (including the delivery of Finished Water to the City Water Supply Systems) to be conducted in accordance herewith; and
- (5) The Company has certified that it has complied with the pre-Acceptance Testing requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

(D) Conduct of the Acceptance Tests. The Company shall conduct the Acceptance Tests in accordance with Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) and the Acceptance Test Plan, and shall notify SRWA when the test shall occur. The Company shall permit the SRWA Engineer and the other designated representatives of SRWA to inspect the preparations for the Acceptance Tests and to be present for the conduct of the Acceptance Tests for purposes of ensuring compliance with Appendix 7 and the Acceptance Test Plan and the integrity of the Acceptance Tests results.

(E) Test Report. Within 30 days following the last day of any Acceptance Test, the Company shall furnish SRWA and the SRWA Engineer with 10 copies of a written Acceptance Test report consistent with the requirements specified in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), certified as true, complete and correct by the Company Engineer.

SECTION 5.4. WATER DELIVERIES DURING ACCEPTANCE TEST AND PRIOR TO ACCEPTANCE

(A) Acceptance Tests. During any Acceptance Test, the Company shall deliver Finished Water to the City Water Supply Systems in volumes and on the schedule established by the approved Acceptance Test Plan. The cost of all Acceptance Test activities, including any repetition of the Acceptance Tests, has been priced in the Base Design-Build Price.

(B) Prior to the Acceptance Date. Following the Acceptance Tests and prior to Acceptance, the Company shall deliver Finished Water to the City Water Supply Systems at Flow Rates as determined by SRWA in consultation with the Company and Cities. SRWA shall employ or retain water treatment plant operators who are properly licensed by DDW to operate the Plant. During the

time from and after delivering Finished Water to the City Water Supply Systems and until the Acceptance Date, Company shall operate the Regional Water Facilities in coordination with SRWA water treatment plant operators. Finished Water deliveries pursuant to this subsection shall continue until (1) the Acceptance Date, (2) this Contract is terminated by SRWA for the Company's failure to achieve Acceptance by the end of the Extension Period, or (3) any authority to operate the Project contained in an Interim Operations Approval, if applicable, expires or terminates.

SECTION 5.5. ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by the Company in order for the Company to achieve Acceptance, and each of which must be and remain satisfied as of the Acceptance Date:

(1) Achievement of Acceptance Test Procedures and Standards. The Company shall have completed the Acceptance Tests and such tests shall have demonstrated that the Project and completed Regional Water Facilities have met the Acceptance Test Procedures and Standards, as certified by the Company pursuant to Section 5.3 (Acceptance Testing) and agreed to by SRWA pursuant to Section 5.7 (Concurrence or Disagreement with Test Results);

(2) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Interim Operations Approval, that are necessary for the operation of the Project shall have been duly obtained by the Company and shall be in full force and effect. Certified copies of all such Governmental Approvals, to the extent not in SRWA's possession, shall have been delivered to SRWA; and

(3) No Default. SRWA has not asserted and Event of Default by the Company existing under this Contract or by the Guarantor under the Guaranty Agreement, and the Company has certified that there is no Event of Default by the Company existing under this Contract or by the Guarantor under the Guaranty Agreement or an event that, with the giving of notice or the passage of time, would constitute an Event of Default by the Company or Guarantor.

SECTION 5.6. SCHEDULED ACCEPTANCE DATE AND DELAY LIQUIDATED DAMAGES. □
The Company shall achieve Acceptance by the Scheduled Acceptance Date. In the event that Acceptance occurs after the Scheduled Acceptance Date, the Company shall pay to SRWA daily delay liquidated damages in accordance with this subsection for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Contract for an Event of Default. The amount of such daily delay liquidated damages payable shall be \$_____ per day. Such damages shall be payable on the first day of each month and, upon any termination for failure to achieve Acceptance, upon the date of termination.

SECTION 5.7. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS

(A) Acceptance Date Concurrence. If the Company verifies in the written report delivered pursuant to subsection 5.3(E) (Test Report) that the Acceptance Date Conditions have been satisfied, SRWA shall determine, within 60 days of its receipt of such report, whether it concurs with such certification. If SRWA states in writing that it concurs with the Company's certification, the Company shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on a permanent basis from the date of SRWA's written concurrence.

(B) Acceptance Date Disagreement. If SRWA determines at any time during such 60-day review period that it does not concur with the Company's certification delivered pursuant to subsection 5.3(E) (Test Report), SRWA shall promptly send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by SRWA, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution

Procedures). Acceptance shall not be deemed to have been achieved unless the Acceptance Tests, conducted as provided in the Acceptance Test Plan and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), demonstrate that all of the Acceptance Test Procedures and Standards have been met. In the event the Company, in conducting the Acceptance Tests, does not successfully meet the Acceptance Test Procedures and Standards, the Company shall re-test the Regional Water Facilities in accordance with Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). Nothing in this Section shall prevent the Company from repeating any Acceptance Test in order to establish the achievement of Acceptance. The Company shall provide SRWA with at least three days' written notice of any re-test of the Acceptance Tests.

SECTION 5.8. FAILURE TO ACHIEVE ACCEPTANCE. If the Company has not achieved Acceptance by the last day of the Extension Period, then an Event of Default by the Company will be deemed to have occurred under Section 7.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and SRWA shall thereupon have the right to terminate this Contract upon written notice to the Company. Upon any such termination, SRWA shall have all of the rights provided in Article 7 (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

SECTION 5.9. OPERATIONS TRAINING BY COMPANY. During the start-up and Acceptance period and continuing for 30 days after the Acceptance Date, the Company shall provide training to SRWA and its operations staff concerning the operation, maintenance, and management of the Regional Water Facilities and related equipment. The scope and type of the training is described in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

SECTION 5.10. COMMENCE SRWA PROJECT OPERATIONS. Commencing on the Acceptance Date, SRWA and its operations staff shall begin the use, operation and management of the Regional Water Facilities and other Project facilities. Accepting and assuming Project operations shall not affect any of SRWA's rights and remedies under this Contract, the Performance Bond, or Applicable Law.

ARTICLE 6

PROJECT FUNDING AND PAYMENT OF THE DESIGN-BUILD PRICE

SECTION 6.1. STATE REVOLVING FUND FINANCING

(A) SRF Program Procurement Phase Requirements. The parties acknowledge that SRWA plans to finance the Design-Build Price (in whole or in part) with loan funds through the California Safe Drinking Water State Revolving Fund (SRF), which is administered by the SWRCB. In the alternative or additionally, SRWA may pursue a loan from another government low interest loan program such as the Water Infrastructure Finance and Innovation Act (WIFIA) program or a grant from a government grant program. (The SRF, WIFIA, or other government loan or grant program is referred to collectively as the "SRF Program"). In SRF Program funded projects, the lender or grantor will require that the project construction contract and prime contractor implement and comply with special terms and conditions. These expected terms and conditions are set forth in Appendix 13 (State Revolving Fund Requirements). Appendix 13 includes a part labelled the SRF Program Procurement Phase Requirements. Commencing on the Contract Date, the Company shall implement and comply with the "SRF Program Procurement Phase Requirements" set forth in Appendix 13. The cost of compliance with the SRF Program Procurement Phase Requirements has been priced in the Base Design-Build Price (Section 6.2(B)).

(B) Implementation of Additional SRF Program Requirements. If the SWRCB awards SRF Program funds to the Project, then SRWA shall provide written notice to the Company advising it about the applicability of the SRF Program requirements. Upon receipt of such a notice from SRWA, the Company shall implement and comply with all other requirements (i.e., the other requirements set forth in Appendix 13 (State Revolving Fund Requirements) that are in addition to the "SRF Program Procurement Phase Requirements").

(C) Adjustment to the Base Design-Build Price for State Revolving Fund Financing. If SRWA issues a notice to the Company under subsection (B) implementing SRF Program requirements pursuant to this Section, then the Base Design-Build Price shall be increased by the sum set forth at Section 6.2(C)(4) (Base Design-Build Price Adjustments). The addition to the Base Design-Build Price shall fully compensate the Company for all costs (other than the SRF Program Procurement Phase Requirements under Subsection (A)) associated with implementing and complying with the requirements set forth in Appendix 13 (State Revolving Fund Requirements), including the following: meetings, phone calls and correspondence with SWRCB; preparation and review of deliverables and other documents for SWRCB filing and approval; additional recordkeeping; Davis-Bacon Act compliance; Project signage requirements; documentation for invoicing, reporting, and payroll management in accordance with SRF Program requirements; disadvantaged business enterprise, minority business enterprise, women's business enterprise and fair share objectives/goals procurement requirements; compliance with American iron and steel procurement requirements; and, responding to and participating in audit requests as needed. The addition to the Base Design-Build Price pursuant to this Section does not include compensation for any Company costs relating to Federal Acquisition Regulations (FAR) Part 31 procurement adherence and compliance requirements, which, if such requirements become applicable, would be treated as an Uncontrollable Circumstance entitling the Company to relief as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

SECTION 6.2. DESIGN-BUILD PRICE

(A) Design-Build Price Generally. SRWA shall pay the Company the Design-Build Price for the Design-Build Work. The "Design-Build Price" shall be the sum of the Base Design-Build Price and any Base Design-Build Price Adjustments. The Company acknowledges that the construction materials and supplies to be acquired by the Company or any Subcontractor in connection with the

Design-Build Work are subject to State sales and use tax and that these taxes have been priced into the Base Design-Build Price. Company therefore shall pay all such taxes without reimbursement from SRWA. The Company agrees that the Design-Build Price shall be the Company's entire compensation and reimbursement for the performance of the Design-Build Work and for all costs and expenses incurred by the Company in performing the Design-Build Work through to Final Completion.

(B) Base Design-Build Price. The "Base Design-Build Price" is \$_____. Except as provided subsection (C) of this Section, the Base Design-Build Price shall not be subject to adjustment. The Base Design-Build Price includes all costs for design, construction through Final Completion, permitting, initial testing, start-up, Acceptance Testing, and interim operations prior to the Acceptance Date, including costs for labor, materials, chemicals and Utilities.

(C) Base Design-Build Price Adjustments. The adjustments to the Base Design-Build Price provided for in this subsection shall be deemed the "Base Design-Build Price Adjustments" and any such adjustments must be approved through a Change Order. The Base Design-Build Price shall be subject to adjustment only for the following:

(1) Adjustment for Change Orders. The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from any Change Orders or Unilateral Change Directives issued by SRWA with respect to Design and Construction Requirement Changes pursuant to and to the extent provided in Sections 4.11 (Changes to the Design and Construction Requirements) and 4.12 (Unilateral Change Directives).

(2) Adjustment for Uncontrollable Circumstances. The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from Uncontrollable Circumstances not reflected in item (1) above, as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

(3) Adjustment for Certain Raw Materials Cost Fluctuations. The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from fluctuations in certain raw materials costs, as and to the extent provided in subsections (D) and (E) of this Section.

(4) Adjustment for State Revolving Fund Financing. If SRWA furnishes the Company with written notice implementing SRF Program requirements pursuant to Section 6.1(B) (State Revolving Fund Financing), then the Base Design-Build Price shall be increased by \$_____.

(D) Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations. The Base Design-Build Price shall be subject to an adjustment (increase or decrease) pursuant to this subsection to account for fluctuations in the costs of the materials indicated in Table 6-2, below. Such adjustment to the Base Design-Build Price shall occur on the date which is six months following the final Record Adjustment Date set forth in Table 6-2 (the "Materials Price Adjustment Date"), and shall be calculated by adding or subtracting the Materials Price Adjustment to the Base Design-Build Price in the manner set forth in this subsection. The Company shall submit the Materials Price Adjustment in the Requisition in the month following the Materials Price Adjustment Date. Any adjustment to the Base Design-Build Price based on the Materials Price Adjustment under this subsection shall be subject to the limitation set forth in subsection (E) of this Section.

(1) Materials Price Adjustment. The "Materials Price Adjustment" shall equal the sum of the Record Adjustments, which shall be calculated in accordance with item (3), below. Record Adjustments reflecting a decrease in the applicable Producers Price Index shall offset Record Adjustments reflecting an increase in the applicable PPI. The Materials Price Adjustment shall

serve to increase the Base Design-Build Price in the event that the sum of the Record Adjustments equals a positive number and shall serve to reduce the Base Design-Build Price in the event that the sum of the Record Adjustments equals a negative number.

(2) **Reference Cost Amounts.** The “Reference Cost Amounts” for each material shall be as set forth in Table 6-2, below. The Company represents that the Reference Cost Amounts consist only of the cost of the material (as included in the Company’s material take-offs upon which the Company based its Proposal) and excludes all associated procurement costs, labor costs, and tax and freight charges. These Reference Cost Amounts shall be used to calculate the Record Adjustments in accordance with item (3), below.

(3) **Record Adjustments.** The parties shall calculate a “Record Adjustment” for each material indicated in Table 6-2, below, within 30 days after the applicable Record Adjustment Date in accordance with this subsection. Record Adjustments shall be based on the PPI indicated in Table 6-2. Record Adjustments shall be calculated by multiplying the applicable Baseline Cost Amount associated with the particular material by the Record Adjustment Factor. The “Record Adjustment Factor” shall be based on the change in the applicable PPI from the Contract Date (“IC”), to the applicable PPI on the Record Adjustment Date (“IE”), and shall be calculated in accordance with the following formula:

$$\text{Record Adjustment Factor} = \text{IE/IC} - 1.00$$

The parties agree that the PPI for any month reflects prices as of the 13th day of the month. The parties shall use linear interpolation to determine the PPI for any particular date and shall approve and sign a Contract Administration Memorandum setting forth each Record Adjustment within 45 days after the applicable Record Adjustment Date. The parties acknowledge that each PPI is subject to a one-time revision four months after original publication. Accordingly, the parties will review each PPI four months after the applicable Record Adjustment Date to determine if the index value for the applicable Record Adjustment Date has been revised. In the event of any such revision, the applicable Record Adjustment shall be revised through the execution of a subsequent Contract Administration Memorandum to reflect the revised PPI for the applicable Record Adjustment Date. Except as provided in item (1), above, with respect to the calculation of the Materials Price Adjustment, Record Adjustments shall not serve to increase or decrease the Base Design-Build Price.

Table 6-2

Dept of Labor PPI Series ID	Material	Reference Cost Amounts ⁽¹⁾	Material Quantity ⁽²⁾	Record Adjustment Date ⁽³⁾
WPU05810112	Asphalt	TBD	TBD	TBD
WPU1017	Steel Mill Products	TBD	TBD	TBD
WPU057	Refined Petroleum Products	TBD	TBD	TBD
WPU102501	Aluminium Mill Shapes	TBD	TBD	TBD
WPU10260314	Copper and Copper Alloy Wire and Cable, bare and timme	TBD	TBD	TBD
WPU11710216	Electrical Conduit	TBD	TBD	TBD

Dept of Labor PPI Series ID	Material	Reference Cost Amounts ⁽¹⁾	Material Quantity ⁽²⁾	Record Adjustment Date ⁽³⁾
WPU1331	Masonry Block and Brick	TBD	TBD	TBD
WPU101708	Cold Finished Bars	TBD	TBD	TBD
WPU072106	Plastic Construction Products	TBD	TBD	TBD
WPU101706	Steel Pipe and Tubing	TBD	TBD	TBD
WPU101502	Pressure and Soil Pipe and Fittings, Cast Iron	TBD	TBD	TBD
WPU1174	Transformers and Other Power Regulators	TBD	TBD	TBD
WPU114902	Metal Valves	TBD	TBD	TBD
WPU1334	Pre-cast Concrete	TBD	TBD	TBD
WPU133201	Concrete Pipe	TBD	TBD	TBD
WPU132101	Construction sand, gravel and stone	TBD	TBD	TBD
WPU1175	Switchgear, switchboard equipment	TBD	TBD	TBD
WPU1149	Misc. general purpose equipment	TBD	TBD	TBD
WPU1173	Motors and Generators	TBD	TBD	TBD
WPU114102	Industrial Pumps	TBD	TBD	TBD

(1) Reference Cost Amounts are amounts proposed by the Company as of the Contract Date and shall consist only of the cost of the material, excluding all associated procurement costs, labor costs and tax and freight charges.

(2) Material quantity shall be consistent with the Reference Cost Amount.

(3) Each Record Adjustment Date shall be the number of days indicated from the Contract Date. No Record Adjustment Date may be more than 365 days from the Contract Date.

(E) Cap on Adjustment to the Base Design-Build Price for Certain Raw Materials Cost Fluctuations. [The aggregate amount of any increase in the Base Design-Build Price for fluctuations in certain Raw Material Costs provided for in subsection (D) of this Section shall not exceed \$500,000 and the aggregate amount of any decrease in the Base Design-Build Price for fluctuations in certain Raw Material Costs provided for in subsection (D) of this Section shall not exceed \$1,000,000.

SECTION 6.3. PAYMENT PROCEDURES AND AMOUNTS

(A) Schedule of Values. The Company shall prepare and submit to SRWA for its approval preliminary and final drafts of the Schedule of Values in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures). After the final Schedule of Values is accepted by SRWA, it shall be used to assist in the estimating of the value of the Design-Build Work performed for progress payment purposes. The Company shall not submit requests for progress payments until a final Schedule of Values has been approved.

(B) Design-Build Work Requisitions. Following the approval of the final Schedule of Values under subsection (A) and the establishment of the Construction Date in accordance with Section 4.2 (Construction Date Conditions), the Company shall be entitled to submit monthly Requisitions and receive from SRWA the payments, which (1) shall be made on a percent complete basis in accordance with the completed work and Schedule of Values, and (2) shall be subject to the conditions to payment set forth in this Section. Each Requisition must be accompanied by a monthly requisition report, which shall include:

(1) a reasonably detailed description of all Design-Build Work actually completed to date;

(2) revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Company's construction schedule since the date of the last Requisition;

(3) revisions to the cost-loaded critical path schedule, which shall reflect changes in the critical path schedule since the date of the last Requisition;

(4) construction progress photographs;

(5) a certificate of the Company Construction Superintendent and the Company Engineer certifying (a) the portion of the Base Design-Build Price that is payable to the Company, (b) that the Company is neither in default under this Contract nor in breach of any material provision of this Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (c) that all items applicable to the Design-Build Work entitling the Company to the requested payment under the Schedule of Values have been completed in accordance with the Contract Standards;

(6) a certified copy of each weekly payroll record containing a statement of compliance verifying compliance with applicable prevailing wage and related laws and regulations and signed under penalty of perjury pursuant to California Labor Code Sections 1771.5 and 1776.

(7) notice of any Encumbrances that have been filed together with evidence that the Company has discharged or bonded against any such Encumbrances or made timely notification to the Payment Bond or Performance Bond surety regarding such Encumbrances; and

(8) any other documents or information relating to the Design-Build Work or this Contract reasonably requested by SRWA, the SRWA Construction Manager, or the SRWA Engineer or as may be required by Applicable Law or this Contract.

(C) TID-Related Cost Breakout. The parties acknowledge that the Amended Water Sales Agreement between SRWA and TID dated _____, 2018 requires TID to fund 20% of the capital costs to design and construct the Raw Water Pump Station and Raw Water Transmission Main components of the Regional Water Facilities and that SRWA plans to bill TID for its 20% share of that portion of the Design-Build Price. In order to facilitate and aid SRWA with this cost allocation

and billing to TID, the Company shall fairly and reasonably allocate and apportion its Design-Build Work costs between (1) the Raw Water Pump Station and Raw Water Transmission Main (up to and including the delivery meter at the Plant), and (2) other components of the Regional Water Facilities. The Schedule of Values and Requisitions shall reflect and incorporate this allocation.

(D) SRWA Review of Requisitions. The SRWA Construction Manager and SRWA Engineer shall share responsibility for the review and processing of Requisitions. The SRWA Engineer will be primarily responsible for Requisitions relating to design work, permitting, acceptance testing, and other non-construction work and the SRWA Construction Manager will be primarily responsible for Requisitions relating to construction work. The SRWA Construction Manager or the SRWA Engineer shall review the Company's certified Requisitions to SRWA for each Design-Build Price payment and within seven days after receipt of the Company's written report delivered pursuant to this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Company's certification that the Company has achieved the level of progress indicated and is entitled to payment. If the SRWA Construction Manager or SRWA Engineer determine that the Design-Build Work has progressed to the level indicated in the Company's certified Requisition and the SRWA Construction Manager or the SRWA Engineer provide written notice thereof to the Company and SRWA, then SRWA shall pay the Company within 30 days after SRWA's receipt of the complete, certified and properly submitted Requisition. Disputes regarding payments of the Base Design-Build Price shall be resolved in accordance with subsection (E). Any undisputed portion of a complete, certified and properly submitted Requisition shall be paid within 30 days after receipt of the Requisition. If SRWA does not pay a properly submitted and undisputed payment request within this 30-day period, then SRWA shall pay interest on the overdue amount to the Company at the rate set forth at California Code of Civil Procedure section 685.010. The parties acknowledge that progress payments shall be reviewed and paid in accordance with California Public Contract Code section 20104.50 and that the procedures in this Section incorporate the requirements of that code section. The parties further acknowledge that payment may be delayed if SRWA funds are not available for payment or if payment is delayed due to an audit inquiry by the financial officer of SRWA.

(E) Disbursement Dispute Procedures. If the SRWA Construction Manager or SRWA Engineer determine, pursuant to subsection (D), that the Design-Build Work required for any payment has not progressed as indicated by the Company, or otherwise disputes any Requisition, the SRWA Construction Manager or SRWA Engineer shall provide prompt written notice to the Company as to the SRWA Construction Manager's or SRWA Engineer's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such notice, the Company may make the necessary corrections or changes and resubmit a certified Requisition to the SRWA Construction Manager or SRWA Engineer, as applicable, or SRWA and Company otherwise may agree on a revised Requisition amount to be paid. If the Company is unable to reach agreement with the SRWA Construction Manager or SRWA Engineer, as applicable, as to the progress of the Design-Build Work, the Company may exercise its right to contest the SRWA Construction Manager's or SRWA Engineer's, as applicable, determination in accordance with Section 7.10 (Dispute Resolution Procedures) and Appendix 14 (Resolution of Company Claims). In the event that upon resolution of any such dispute, it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount for the period of dispute calculated at the rate set forth in California Code of Civil Procedure Section 685.010.

(F) Payment of the Design-Build Price. For any payments to the Company under this Section, SRWA shall (1) pay an amount equal to 95% of the Design-Build Price to the Company on a progress payment basis, as provided in subsection (G), and (2) pay an amount equal to 5% of the

Design-Build Price to the Company as a lump sum following Final Completion, as provided in subsection (H).

(G) 95% Progress Payments of the Design-Build Price. Once each Requisition for a progress payment based on the Schedule of Values has been received, reviewed and approved by SRWA in accordance with subsection (D) or (E), SRWA shall pay the Company an amount equal to 95% of the approved Requisition amount. In lieu of withholding 5% from the progress payments, the Company may substitute securities or request payment of retentions to an escrow agent in accordance with the provisions of California Public Contract Code section 22300. For any items of work contained on the Final Punch List, SRWA may reasonably estimate the cost to make each correction or to complete each such item and SRWA may withhold from payment of the final progress payment or payments an amount equal to 150% of the aggregate value of such items.

(H) 5% Lump Sum Final Payment of the Design-Build Price. SRWA shall pay the Company the 5% amount retained from the Design-Build Price within 30 days following Final Completion as determined by the Board of Directors under Sections 4.24 (Board Approval and Notice of Completion) and 6.5 (Final Requisition and Payment), less any sums withheld by SRWA pursuant to Section 6.4 (Permissible Withholdings).

(I) Certification of Amounts Due. Whenever requested by SRWA, the Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Company for the Design-Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

(J) No Waiver or Release. No progress payments made by SRWA to the Company pursuant to this Section shall constitute an acceptance of the Design-Build Work, or any portion thereof, or a waiver or release by SRWA of any rights relating to the Company's obligations under this Contract.

SECTION 6.4. PERMISSIBLE WITHHOLDINGS. In addition to the amounts to be retained pursuant to subsection 6.3 (Payment Procedures and Amounts), SRWA may disapprove, withhold and retain all or any portion of any payment requested in any Requisition (including the final Requisition) in an amount sufficient to pay the expenses SRWA reasonably expects to incur in correcting any deficiency set forth in the SRWA Construction Manager's or SRWA Engineer's written finding pursuant to subsection 6.3(E) (Disbursement Dispute Procedure). Without limiting the foregoing, the Company agrees that SRWA may disapprove, withhold and retain, as applicable and to the extent permitted by the Contract or Applicable Law, amounts associated with the following:

- (1) any liquidated damages that are due and owing to SRWA hereunder;
- (2) any indemnification amounts that are due and owing to SRWA hereunder and with respect to which a claim has been filed against SRWA by a third party in accordance with Applicable Law;
- (3) any deductions or withholdings that are required by Applicable Law;
- (4) any payments with respect to which documents to be delivered in connection therewith are not correct or complete;
- (5) any payments with respect to which the Design-Build Work covered by such Requisition (or any previous Requisition) does not comply with this Contract;

(6) any payments with respect to which any Person has asserted a Lien or stop notice resulting from the acts or omissions of the Company in performing the Design-Build Work and such stop notice or Lien remains unreleased or un-bonded;

(7) in the event of any payment dispute between SRWA and Company, SRWA may withhold from the final payment an amount not to exceed 150% of the disputed amount, in accordance with California Public Contract Code Section 7107(c); and

(8) in the event the Company fails to pay any Taxes, penalties or fees imposed by any Governmental Body and that are the obligation of the Company under this Contract, then the Company authorizes SRWA to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

SECTION 6.5. FINAL REQUISITION AND PAYMENT

(A) Final Requisition. Upon achieving Final Completion in accordance with Section 4.23 (Final Completion), the Company shall prepare and submit to SRWA a final Requisition. The final Requisition shall include:

(1) AIA Document G707 (Consent of Surety Company to Final Payment) or equivalent certifying that the surety agrees that final payment of the Design-Build Price shall not relieve the surety of any of its obligations under the Performance Bond or the Payment Bond;

(2) AIA Document G706 (Contractor's Affidavit of Payment of Debts and Claims) or equivalent certifying that the Company has been paid the Design-Build Price in full, except for any listed exceptions;

(3) a conditional waiver and release on final payment or unconditional waiver and release on final payment submitted by the Company in the form provided by California Civil Code Section 8136 or 8138 and acceptable to SRWA;

(4) an unconditional waiver and release on final payment submitted by each Material Subcontractor in the form provided by California Civil Code Section 8138 and acceptable to SRWA (if any Material Subcontractor refuses or fails to furnish such release or waiver, the Company shall provide to SRWA a bond or other security acceptable to SRWA to indemnify SRWA Indemnitees against any payment claim by the Material Subcontractor); and

(5) a list of all pending property damage, personal injury, or death insurance claims arising out of or resulting from the Design-Build Work, identifying the claimant and the nature of the claim.

(B) Final Payment. If based on the SRWA Construction Manager's or SRWA Engineer's (1) observation of the Design-Build Work, (2) final inspection, and (3) review of the final Requisition and other documents required by subsection (A) of this Section and Section 4.23 (Final Completion), the SRWA Engineer is satisfied that conditions for Final Completion have been satisfied or waived in writing by the parties, then the SRWA Engineer shall within 30 days after receipt of the final Requisition, furnish to SRWA and the Company recommendation to approve final payment and Final Completion. If the SRWA Engineer within seven days shall return the final Requisition to the Company, indicating in writing the reasons for not recommending final payment, then the Company shall either (1) make the necessary corrections or changes and resubmit the final Requisition, or (2) contest the SRWA Engineer's determination in accordance with subsection 6.3(E) (Disbursement Dispute Procedures).

(1) SRWA Board Concurrence. If SRWA Board of Directors concurs with the SRWA Engineer's recommendation of final payment and Final Completion, then the Board of Directors shall accept the Design-Build Work as complete, confirm Final Completion, and authorize the filing of the Notice of Completion. SRWA then shall record the Notice of Completion within 30 days following the Board approval and make final payment to the Company, including payment pursuant to Section 6.3(H) (5% Lump Sum Final Payment of the Design-Build Price).

(2) SRWA Non-Concurrence. If SRWA Board of Directors does not concur with the SRWA Engineer's determination, SRWA shall return the Requisition to the Company indicating in writing its reasons for refusing final payment and Final Completion. The Company then shall either (1) make the necessary corrections or changes and resubmit the final Requisition, or (2) contest the SRWA Engineer's determination in accordance with subsection 6.3(E) (Disbursement Dispute Procedures).

Final payment does not constitute a waiver by SRWA of any rights relating to the Company's obligations under this Contract or Applicable Law. Final payment constitutes a waiver of all claims by the Company against SRWA relating to the Design-Build Work and the payment of the Design-Build Price, except for any unresolved claims or disputes listed by the Company or a Material Subcontractor in the documents submitted to SRWA under subsection (A) of this Section and still unsettled.

SECTION 6.6. CONSTRUCTION BOOKS AND RECORDS; AUDIT

(A) Construction Books and Records. The Company shall prepare and maintain proper, accurate and complete books and records regarding the Design-Build Work and all other transactions related to the design, permitting, construction, and testing of the Design-Build Work, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design-Build Work, this Contract, any Subcontract or any operations or transactions in which SRWA has or may have a financial or other material interest hereunder. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards for governmental institutions. In the event the Company fails to prepare or maintain any books, records or accounts as required under this subsection, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required under this Contract to the extent such failure prevented Cost Substantiation. To the extent any such information is delivered or made available to SRWA, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The Company shall keep and maintain all such construction books and records for the Design-Build Work separate and distinct from other records and accounts, and shall keep and maintain all such books and records for at least five years after the date of the filing of the Notice of Completion, or such longer period during which any Legal Proceeding with respect to the Design-Build Work commenced within five years after the filing of the Notice of Completion may be pending.

(B) Audit Rights and Requirements. To the extent provided in this Section, all payments whatsoever by SRWA to the Company and all Design-Build Work of the Company shall be subject to audit at any time by the State Auditor, SRWA and the Cities. The Company and its Subcontractors shall comply with State audit requirements and, to the extent that SRWA receives federal funding or uses tax-exempt financing for the Project, federal audit requirements. The Company shall produce the construction books and records required to be kept and maintained by the Company pursuant to subsection (A) for examination and copying by the State Auditor, SRWA or the Cities in connection with the costs of Change Orders, Unilateral Change Directives, Uncontrollable Circumstance costs,

or other costs in addition to the Base Design-Build Price under circumstances in which such costs are the responsibility of SRWA hereunder and are required to be Cost Substantiated pursuant to this Contract. Except as otherwise required by Applicable Law, the Company shall not be required to produce such construction books and records with respect to costs incurred in connection with work performed on a fixed price, negotiated basis. Notwithstanding any of the foregoing, the Company shall produce all books and records required to be maintained pursuant to subsection (A) of this Section to the extent that such books and records pertain directly to Contract performance if there is reasonable indication of fraud or corrupt practices. The provisions of this Section shall survive the termination of this Contract. This Contract and all payments made hereunder shall be subject to audit in accordance with this Section for up to three years after final payment is made under this Contract.

ARTICLE 7
BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 7.1. REMEDIES FOR BREACH. Except as otherwise provided in this Contract with respect to termination rights, in the event that either party breaches this Contract, the other party may exercise any legal rights it may have under this Contract, the Security Instruments, or Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Contract for cause except upon the occurrence of an Event of Default.

SECTION 7.2. EVENTS OF DEFAULT BY COMPANY

(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity. Each of the following shall constitute an Event of Default by the Company upon which SRWA, by notice to the Company, may terminate this Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Company to obtain or maintain any Security Instrument required by Article 9 (Security for Performance) as security for the performance of this Contract (unless SRWA has released the Company from its obligation to provide a Security Instrument pursuant to Section 9.3 (Cost of Security Instruments));

(2) Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to achieve Acceptance prior to the end of the Extension Period as provided in Section 5.8 (Failure to Achieve Acceptance);

(3) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(4) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company or the Guarantor to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

(5) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or the filing against the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively; or

(6) Default of Guarantor. The failure of the Guarantor to make any payment or perform any other obligation under the Guaranty Agreement in a timely manner.

(B) Events of Default Requiring Previous Notice and Cure Opportunity. It shall be an Event of Default by the Company upon which SRWA may terminate this Contract, by notice to the Company, if:

(1) Representations and Warranties. Any representation or warranty of the Company hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Contract or the Guaranty Agreement or the

ability of the Company to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations thereunder is thereby materially and adversely affected;

(2) Payment or Performance. The Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to SRWA under this Contract within 60 days following the due date for such payment, or (b) to perform any material obligation under this Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein);

No such default under this subsection (B) shall constitute an Event of Default giving SRWA the right to terminate this Contract for cause under this subsection unless (a) SRWA has given prior written notice to the Company and the surety providing the Performance Bond by stating that a specified default has occurred which gives SRWA a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail, and (b) the Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

(C) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Contract is terminated by SRWA for an Event of Default by the Company, SRWA shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Contract, the Security Instruments, or Applicable Law.

(D) Relationship to Liquidated Damages. Any liquidated damages payable by the Company under this Contract shall cease to accrue on the Termination Date. The Company shall be liable for all liquidated damages that have accrued up to the Termination Date. The parties acknowledge and agree that such liquidated damages are intended solely to compensate SRWA for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that SRWA is likely to suffer in the event of a Company Event of Default under this Article. Accordingly, except as specifically provided in Section 7.3 (Limitation on Company Liability) and except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this Contract, the payment of any such liquidated damages by the Company shall not serve to limit or otherwise affect SRWA's right to pursue and recover damages under this Section.

SECTION 7.3. LIMITATION ON COMPANY LIABILITY. The Company's aggregate liability under this Contract and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages to SRWA arising out of the performance or unexcused nonperformance of the Design-Build Work as a consequence of a claim or lawsuit initiated by SRWA shall not exceed an amount equal to 50% of the Base Design-Build Price. This limitation on liability does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Company or the Guarantor in connection with this Contract, including without limitation (a) any loss, cost or expense sustained by the Company in the performance of the Design-Build Work, or in seeking to cure or prevent any breach of this Contract; (b) any fine, penalty, fee, charge, or Tax levied or imposed by any Governmental Body; (c) any claims, losses or penalties incurred by the Company or the Guarantor to third parties in any legal proceedings; (d) any Loss and Expense or other indemnity payment (resulting from third party claims) paid or incurred by the Company or the Guarantor; and (e) payment of any defense costs, including attorneys' fees, to, for, or on behalf of the City with respect to any third party claim. Nothing in this Section shall limit the scope of SRWA's right to pursue any remedy under the Payment Bond or Performance Bond.

SECTION 7.4. EVENTS OF DEFAULT BY SRWA

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by SRWA upon which the Company, by notice to SRWA, may terminate this Contract:

(1) Representations and Warranties. Any representation or warranty of SRWA hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of SRWA to carry out its obligations hereunder is thereby materially and adversely affected;

(2) Failure to Pay or Perform. The failure, refusal or other default by SRWA in its duty: (1) to pay the amount required to be paid to the Company under this Contract within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein); or

(3) Bankruptcy. The authorized filing by SRWA of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Company the right to terminate this Contract for cause under this subsection unless (1) the Company has given prior written notice to SRWA stating that a specified default has occurred which gives the Company a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail, and (2) SRWA has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

(C) Limitation of Liability Upon SRWA Event of Default. If this Contract is terminated by the Company for cause as a result of an Event of Default by SRWA during the Term, the damages payable by SRWA upon any such termination shall not exceed the amounts specified in subsections 7.5(B) (SRWA Convenience Termination Right Option Prior to the Construction Date) or 7.5(C) (SRWA Convenience Termination Right Option After the Construction Date), as applicable and calculated as provided therein, which would be payable as if this Contract were terminated for convenience by SRWA.

(D) Payment of Amounts Owed Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price under Article 6 (Project Funding and Payment of the Design-Build Price), but not yet paid as of the Termination Date.

SECTION 7.5. SRWA TERMINATION OPTIONS

(A) SRWA Termination for Cause. SRWA shall have the right to terminate this Contract for cause and to pursue all remedies available pursuant to this Article, without cost or liability to SRWA, based upon the occurrence of any Event of Default by the Company under Section 7.2 (Events of Default by the Company).

(B) SRWA Convenience Termination Right Option Prior to the Construction Date. SRWA shall have the right at any time prior to the Construction Date, exercisable in its discretion, for its

convenience and without cause, to terminate this Contract upon 30 days' written notice to the Company. Upon any such termination, SRWA shall pay the Company an amount equal to \$500,000 plus payment of any sum owing the Company as of the Termination Date under subsection (D).

(C) SRWA Convenience Termination Right Option After the Construction Date. SRWA shall have the right at any time after the Construction Date and prior to the Acceptance Date, exercisable in its discretion, for its convenience and without cause, to terminate this Contract upon 30 days' written notice to the Company. Upon any such termination, SRWA shall pay the Company an amount equal to the \$1,000,000 plus payment of any sum owing the Company as of the Termination Date under subsection (D).

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price under Article 6 (Project Funding and Payment of the Design-Build Price), but not yet paid as of the Termination Date.

(E) Delivery of Work Product to SRWA. Concurrently with payment by SRWA to the Company of the amount due upon any termination of this Contract under this Section, the Company shall deliver to SRWA all of its work product (including all Deliverable Material) produced during the period commencing on the Contract Date to the Termination Date, which work product immediately shall become the property of SRWA. SRWA's use of any such work product for any purpose other than the Project shall be at its own risk and the Company shall have no liability therefor.

SECTION 7.6. PROVISIONS REGARDING CONVENIENCE TERMINATION

(A) Termination Fee Payment Contingent Upon Surrender of Possession. SRWA shall have no obligation to pay the applicable termination fee provided for in Section 7.5 (SRWA Termination Options), except concurrently with the surrender of possession and control by the Company of the Regional Water Facilities and Sites to SRWA.

(B) Adequacy of Termination Payment. The Company agrees that the applicable termination fee provided in Section 7.5 (SRWA Termination Options) shall fully and adequately compensate the Company and all Subcontractors for all costs of undertaking their obligations under subsection 7.7(A) (Company Obligations), foregone potential profits, and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition, and other similar wind-down costs attributable to the termination of the Company's right to perform this Contract.

(C) Consideration for Convenience Termination Payment. The right of SRWA to terminate this Contract for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Contract, and the Company hereby waives any right it may have under Applicable Law to assert that SRWA owes the Company a duty of good faith and fair dealing in the exercise of such right.

(D) Completion or Continuance by SRWA. After the date of any termination under this Article, SRWA may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Design-Build Work so terminated, including entering into contracts with other contractors.

SECTION 7.7. COMPANY OBLIGATIONS AT TERMINATION OR EXPIRATION

(A) Company Obligations. Upon a termination of the Company's right to perform this Contract under Section 7.5 (SRWA Termination Options), or upon the expiration of this Contract under Section 3.1 (Effective Date and Term), the Company shall, as applicable:

- (1) stop the Design-Build Work on the date and to the extent specified by SRWA;
- (2) promptly deliver to SRWA all Design Documents and construction record Drawings prepared by the Company in carrying out the Design-Build Work which have not previously been delivered to SRWA, and all supporting design notebooks, calculations, record files, design meeting memoranda, and construction meeting memoranda;
- (3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (4) promptly remove from the Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
- (5) clean the Sites, and leave them in a neat and orderly condition;
- (6) subject to subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the Sites;
- (7) promptly deliver to SRWA a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Regional Water Facilities;
- (8) provide SRWA with a list of all computer and other files relevant to the Design-Build Work and access, user names, passwords and security codes with instructions and demonstrations that show how to open and change such codes;
- (9) deliver to SRWA a copy of all books and records in its possession relating to the performance of the Design-Build Work, and including all books, records, documents and computer data relating to the operation, maintenance, activities and administration of the Project and its various components and facilities;
- (10) promptly deliver to SRWA copies of all Subcontracts, together with a statement of the items ordered and not yet delivered pursuant to each Subcontract; the expected delivery date of all such items; the total cost of each Subcontract and the terms of payment; the estimated cost of canceling each Subcontract; and, any special circumstances that might limit or prohibit cancellation of any Subcontract;
- (11) assign to SRWA any Subcontract that SRWA elects in writing, at its sole election and without obligation, to have assigned to it (SRWA shall assume, and the Company shall be relieved of, the obligations under any Subcontract so assigned);
- (12) unless SRWA directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(13) provide SRWA with a list of all Project Equipment and Structures subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which SRWA will be responsible for paying on or after the Termination Date;

(14) promptly transfer to SRWA all warranties given by any manufacturer or Subcontractor with respect to particular components of the Design-Build Work;

(15) notify SRWA promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the Design-Build Work (or any Subcontracts);

(16) retain on the Sites, computer systems to be delivered to SRWA including all Project-related files, data, information and software and to not delete any such files, data, information or software; and

(17) take such other actions, and sign such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize SRWA's costs, and take no action which shall increase any amount payable by SRWA under this Contract.

(B) Hiring of Company Personnel. Upon the termination or expiration of this Contract under any provision hereof, SRWA shall have the right to offer employment on any terms it may choose to any Company employee employed on the Design-Build Work. No Company employment agreement, personnel rules, job offer, letter or similar document shall contravene this right. The Company shall assist and cooperate with any such employee transition in the manner reasonably requested by SRWA.

SECTION 7.8. NO WAIVERS. No action of SRWA or Company pursuant to this Contract (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Contract. No course of dealing or delay by SRWA or Company in exercising any right, power or remedy under this Contract shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of SRWA or the Company under this Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 7.9. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Contract, or the material inaccuracy of any representation made in this Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between SRWA and the Company, and specifically is not intended to limit the scope of the indemnity provisions in Section 8.5 (Indemnification by the Company), which indemnity includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 7.10. DISPUTE RESOLUTION PROCEDURES

(A) Generally. Each party shall follow the dispute resolution procedures set forth in this Section and, if applicable, Appendix 14 (Resolution of Company Claims) to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated

resolution of disputes in a prompt and efficient manner without resort to arbitration or litigation, which should be a last resort.

(B) Informal Negotiations. Representatives of SRWA and the Company with day-to-day involvement in the administration of this Contract and the performance of the Design-Build Work shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Contract. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Contract. Any dispute resolved informally shall be documented by the SRWA Engineer and, if the dispute resolution involves a change in the Design-Build Work, increase or decrease in the Design-Build Price due the Company, or adjustment in the time to complete the work, then the informal dispute resolution shall be confirmed by a Change Order.

(C) Rights to Request and Decline Non-Binding Mediation. Either party may request non-binding mediation of any dispute arising under this Contract. The non-requesting party may decline the request in its discretion. If the parties agree to mediation, the costs of such non-binding mediation shall be divided equally between SRWA and the Company. The mediator shall be a professional engineer, attorney, or other professional mutually acceptable to the parties who has no current or on-going relationship with either party. Each party shall participate in good faith in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation. The parties may pursue their remedies under subsections D and E without having first attempted mediation under this subsection.

(D) Company Claim. Any Company claim against SRWA for additional money or a time extension (a "claim" as further defined in Appendix 14) that is not resolved under this Section shall be resolved in accordance with Appendix 14 (Resolution of Company Claims).

(E) SRWA Claim. For any SRWA claim against the Company that is not resolved under this Section, SRWA may pursue any remedy authorized by Applicable Law.

(F) Court Venue. All Legal Proceedings related to this Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in the County of Stanislaus, California or in federal courts located in the Eastern District of California. The Company and SRWA each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have regarding the jurisdiction or venue of any such Legal Proceeding.

(G) Survival. The provisions of this Section shall survive the termination of this Contract.

ARTICLE 8

INSURANCE, DAMAGE, UNCONTROLLABLE CIRCUMSTANCES, AND INDEMNIFICATION

SECTION 8.1. INSURANCE

(A) Company Insurance. At all times during the Term, the Company shall obtain and maintain the Required Insurance in accordance with Appendix 11 (Required Insurance), and shall pay all premiums with respect thereto as the same become due and payable. The Required Insurance, excluding the builder's risk insurance, shall be provided concurrently with the execution and delivery of this Contract. The builder's risk insurance shall be provided as a condition precedent to the Construction Date in accordance with Section 4.2 (Construction Date Conditions). All Required Insurance shall remain in effect for the periods specified in Appendix 11 (Required Insurance). The Company shall comply with all applicable Insurance Requirements pertaining to the Regional Water Facilities and Sites under any policy of Required Insurance and take all steps necessary to assure that the Design-Build Work remains continuously insured in accordance with the requirements of this Contract during the Term.

(B) Certificates, Policies and Notice. The Required Insurance, including any renewals thereof, shall be evidenced by certificates of insurance as provided herein and in Appendix 11 (Required Insurance). The delivery by the Company to SRWA of certificates of insurance is required by this Contract as a condition precedent to the execution of this Contract for all Required Insurance, excluding builder's risk, which shall be delivered as a condition precedent to the occurrence of the Construction Date pursuant to Section 4.2 (Construction Date Conditions). On an annual basis during the Term, the Company shall furnish updated certificates of insurance to SRWA to confirm the continued effectiveness of the Required Insurance. In addition, the Company shall supply SRWA, upon request, with certified copies of all Project-specific policies of Required Insurance. All Required Insurance furnished through the Company's corporate insurance policies shall be made available for review by SRWA or its designated representatives at a location acceptable to SRWA upon the reasonable request of SRWA; provided, however, that, in order to help protect the confidentiality of such corporate insurance policies, the Company shall not be required to provide SRWA with copies of such policies (other than as mandated by Applicable Law) and may redact pricing information and provisions unrelated to the Project from such policies prior to review. Notwithstanding the foregoing, SRWA accepts no responsibility for the confidentiality of the Company's corporate insurance policies and shall not be liable in any manner for any inadvertent disclosure of such policies to any third party.

(C) Subcontractors. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 11 (Required Insurance) and shall provide SRWA with certificates evidencing such insurance. Notwithstanding the insurance coverages and limits specified in Appendix 11, the Company may, with the approval of SRWA acting reasonably, require Subcontractors to obtain and maintain lower levels of insurance coverage that are commensurate to the Subcontractor's scope of work and risk.

(D) Maintenance of Insurance Coverage. If the Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, SRWA may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by SRWA the amount thereof shall be immediately reimbursable to SRWA by the Company. The Company shall not perform Design-Build Work during any period when any policy of Required Insurance is not in effect. The failure of the Company to obtain and maintain, or cause to be obtained and maintained, any Required Insurance shall not

relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify, defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company), from and against any and all Loss and Expense arising out of such failure.

SECTION 8.2. LOSS, DAMAGE OR DESTRUCTION TO THE PROJECT

(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Regional Water Facilities from loss, damage or destruction in accordance with Good Engineering and Construction Practice, Good Industry Practice, Applicable Law and the Insurance Requirements. The Company shall report to SRWA and any other appropriate Governmental Body and insurer under any applicable Required Insurance, promptly upon obtaining knowledge thereof, any loss, injury, death, damage, or destruction in connection with the Design-Build Work or any OSHA recordable injury accident on the Sites related to the Design-Build Work, and as soon as practicable thereafter (but in no event later than 72 hours) shall submit a full written report to SRWA. The Company shall also submit to SRWA within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Regional Water Facilities to at least the character or condition thereof existing immediately prior to the loss, damage or destruction.

(B) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third-party, each party shall assist the other in exercising such rights as it may have to effect such recovery. All available insurance or other third-party payment proceeds shall be applied for such repair, replacement and restoration purposes in accordance with subsection (C) of this Section. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection to provide the other party with documents subject to the attorney-client privilege under State law.

(C) Payment for Restoration Work and Insurable Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Regional Water Facilities shall be for the account of SRWA. SRWA shall pay for restoration work required pursuant to this Section with such proceeds and recoveries and, as necessary, such other funds obtained by SRWA in the event insurance proceeds or other third-party payments are not sufficient to pay for restoration work pursuant to this Section. Notwithstanding the foregoing, the following costs of repairing, replacing and restoring the Regional Water Facilities following any event or occurrence of loss, damage or destruction shall be borne by the Company: cost of all applicable Required Insurance deductibles; costs for which insurance proceeds are not available due to the failure of the Company to obtain or maintain any applicable policy of Required Insurance; and; costs caused by Company Fault and with respect to which no insurance proceeds are available.

(D) Exceptions. Repair, replacement and restoration costs resulting from the following perils shall be borne by SRWA: (1) terrorism; (2) war, civil war, or armed conflict; (3) nuclear explosion or nuclear, radioactive, chemical or biological contamination; (4) epidemics, pandemics or quarantine, or related health alerts issued by a Governmental Body; and (5) tidal waves.

(E) Repair of SRWA, City and Private Property. The Company shall promptly repair or replace any Regional Water Facilities, City Property, or private property damaged by the Company

or a Subcontractor or any of their officers, directors, employees, representatives or agents in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

SECTION 8.3. UNCONTROLLABLE CIRCUMSTANCES – ENTITLEMENT TO RELIEF

(A) Relief Available to the Company. If and to the extent that an Uncontrollable Circumstance interferes with, delays, or increases the cost to the Company to performing the Design-Build Work, the Company shall be entitled to either relief from its performance obligations or an increase in the Design-Build Price (except as and to the extent provided in this Section, Section 8.4 (Uncontrollable Circumstances - Claim Procedures) and Section 8.5 (Indemnification by the Company)). The Company shall perform all other Design-Build Work not affected by the Uncontrollable Circumstance. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Company pursuant to subsection (B) upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Design-Build Price would have otherwise been increased or shall serve to reduce the Design-Build Price to reflect such mitigation measures, as applicable. The Company shall not be entitled to any price relief through an adjustment to the Design-Build Price on account of any costs incurred as the result of an act, event, or circumstance that the Company or the Guarantor is obligated to insure against under Section 8.1 (Insurance) and Appendix 11 (Required Insurance), irrespective of any limits of coverage or any deductible applicable under any policy of insurance.

(B) Mitigation. Whenever an Uncontrollable Circumstance occurs, the Company shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to the parties, and resume or continue full performance under this Contract. Any relief to which the Company is entitled under this Section on account of an Uncontrollable Circumstance shall be adjusted to account for the effect of such measures and any other mitigation measures that were or should have been taken by the Company in compliance with its duty to mitigate.

(C) SRWA Ownership of Construction Schedule Float. The parties acknowledge that the Project completion schedule anticipates early and late finish dates for each major element of the Design-Build Work and for completion of the Design-Build Work prior to the Scheduled Acceptance Date. This "float" in schedule shall be "owned" by SRWA for any purpose relating to the determination of whether an Uncontrollable Circumstance has occurred or the relief to which the Company is entitled on account thereof. In particular, if the Acceptance Date occurs on or before the Scheduled Acceptance Date, no act, event or circumstance occurring prior to the Scheduled Acceptance Date that affects the Company's schedule shall be deemed to constitute an Uncontrollable Circumstance entitling the Company to additional compensation for delay, notwithstanding the impact of any such act, event or circumstance on the Company's planned schedule for completion of the Design-Build Work.

SECTION 8.4. UNCONTROLLABLE CIRCUMSTANCES – CLAIM PROCEDURES

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Company shall give written notice of the occurrence of the Uncontrollable Circumstance to SRWA as soon as practicable, and in any event within 10 days of the date the Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement to relief under this Contract. The Company's notice shall include a written report: (a) describing the Uncontrollable Circumstance and the cause thereof, to the extent known; (b) stating the date on which the Uncontrollable Circumstance began and its estimated duration; (c) summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the

performance of the Company's obligations under this Contract; and (d) indicating the nature and scope of the Company's potential entitlement to relief. The Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(B) Updates. The Company shall provide SRWA with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in subsection (A). In particular, the Company shall notify SRWA as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Specific Relief Request. The Company shall submit to SRWA a further notice making its request for specific relief, the basis therefor, and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A). If the specific relief cannot reasonably be ascertained within such 30-day period, the Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Company to SRWA after the dates required under this Section, then any Company entitlement to relief shall be offset to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Burden of Proof and Mitigation. The Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Company complied with its mitigation obligations under subsection 8.3(B) (Mitigation).

(F) SRWA Response: Agreement or Dispute. Within 30 days after receipt of a relief request by the Company pursuant to subsection (C) of this Section, SRWA shall issue a written determination as to the extent, if any, to which it concurs with the Company's request and the reasons therefor. If the parties agree as to the specific relief to be given the Company on account of an Uncontrollable Circumstance, the agreement shall be evidenced by a Contract Administration Memorandum or a Change Order, as applicable. If the parties do not agree as to the specific relief to be given the Company on account of an Uncontrollable Circumstance, SRWA may issue a Unilateral Change Directive pursuant to Section 4.12 (Unilateral Change Directives). Any issue in dispute relating to the assertion of the occurrence of an Uncontrollable Circumstance may be referred to the dispute resolution procedures set forth in Section 7.10 (Dispute Resolution Procedures).

SECTION 8.5. INDEMNIFICATION BY THE COMPANY

(A) Indemnity: General. The Company shall indemnify, defend, protect, and hold harmless SRWA, the Cities, and their respective elected officials, appointed officers, employees, representatives, agents and contractors (each, an "SRWA Indemnitee"), from and against (and pay the full amount of) any and all Loss and Expense incurred by an SRWA Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with):

- (1) any failure of the Company to perform its obligations under this Contract;
- (2) any negligent act, error or omission, willful misconduct, or failure to comply with Applicable Law of or by the Company or a Subcontractor or any of their officers, directors, employees, representatives, agents in connection with this Contract;

(3) disputes among unions or trade organizations representing employees of the Company or a Subcontractor in connection with the performance of the Design-Build Work, as provided in subsections 4.19(D) (Labor Disputes) and 10.12(B) Labor Disputes), respectively;

(4) any Subcontractor claims, as provided in subsections 4.23(A)(10) (Indemnity for Subcontractor Claims) and 10.10(B) (Indemnity for Claims); or

(5) the infringement or unauthorized use of any patent, trademark, copyright or trade secret, as and to the extent provided in subsection 10.6(A) (Protection from Infringement).

The Company acknowledges and agrees that its indemnification obligations under item (1) of this Section shall apply with respect to any failure by the Company to perform under this Contract, notwithstanding that indemnification is specifically mentioned with respect to certain obligations in this Contract but not other obligations.

(B) Indemnity: Design Professional. This subsection (B) applies if the claim or Legal Proceeding arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of a State-registered professional engineer or other "design professional" (as that term is defined at California Civil Code Section 2782.8) performing any of the Design-Build Work. Company shall indemnify, defend, protect, and hold harmless SRWA Indemnitees (as defined in Subsection (A)) from and against any Loss and Expense that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of a design professional. This subsection shall be applied and construed in accordance with California Civil Code Section 2782.8; however, the parties acknowledge and agree that any design professional working under this Contract "is a party to a written design-build joint venture agreement" within the meaning of Section 2782.8, subsection (e)(2).

(C) Limitations. The Company's indemnity obligations under subsections (A) and (B) shall not be limited by any insurance the Company does or does not maintain or by any matter relating to insurance. The Company shall not, however, be required to reimburse or indemnify any SRWA Indemnitee for any Loss and Expense to the extent caused by the negligence or willful misconduct of any SRWA Indemnitee, to the extent attributable to any Uncontrollable Circumstance, or as may be limited by Applicable Law. These indemnification provisions are for the protection of SRWA Indemnitees only and shall not be deemed to create any right in favor of any third parties. The Company's obligations under this indemnification provision shall survive the termination of, or completion of work under, this Contract.

ARTICLE 9

SECURITY FOR PERFORMANCE

SECTION 9.1. GUARANTOR

(A) Guaranty Agreement. Prior to or concurrent with the execution of this Contract, the Company shall cause to be executed and provided the Guaranty Agreement in the form attached hereto as a Transaction Form.

(B) Guarantor Reports. Within 180 days after the end of each fiscal year of the Guarantor, the Company shall furnish SRWA with a copy of the Guarantor's audited year-end financial statements for that fiscal year. If the Company files an annual Form 10-K report with the Securities and Exchange Commission, then, in lieu of providing the audited financial statements, the Company may provide Guarantor's Form 10-K report or provide SRWA with a link to access such information posted on a public website.

(C) Notice of Material Event; Credit Enhancement. For purposes of this Section, a "Material Event" shall be deemed to have occurred if (1) in the event that the Guarantor has long-term senior debt outstanding with a credit rating by either Moody's Investors Service or Standard & Poor's Rating Services (each a "Rating Service") and such rating by either Rating Service is established at or is reduced below investment grade level, or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, the credit standing of the Guarantor declines to a level that is insufficient to support an investment grade credit rating by either Rating Service on long-term senior debt of the Guarantor, whether or not any such debt is outstanding. The Company immediately shall notify SRWA of any Material Event. If Guarantor is a publicly traded company, the notification shall be made simultaneously with public disclosure in accordance with Applicable Law. If a Material Event occurs, the Company shall cause to be provided credit enhancement of the Guaranty Agreement obligation within 30 days after such occurrence. Such credit enhancement shall be in the form either of (1) an unconditional guarantee of all of the Company's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is or would be rated investment grade by either Rating Service, or (2) a letter of credit securing the Company's obligations hereunder in the face amount of \$10,000,000 provided by a bank or financial institution whose long-term senior debt is or would be rated investment grade by either Rating Service.

SECTION 9.2. BONDS

(A) Performance and Payment Bonds. The Company shall provide SRWA with the Performance Bond and the Payment Bond as a Construction Date Condition pursuant to Section 4.2 (Construction Date Conditions). The Payment Bond shall be in the form attached in Transaction Form B and the Performance Bond shall be in the form attached as Transaction Form C. Each of the Payment Bond and the Performance Bond shall be in an amount equal to 100% of the Base Design-Build Price. The Performance Bond and the Payment Bond shall be issued by a California admitted surety company (1) approved by SRWA and having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of SRWA as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a valid certificate as an admitted surety authorized to transact surety business in the State. The Performance Bond and the Payment Bond shall comply with and shall be subject to the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.). The Performance Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Base Design-Build Price Adjustments, until one year after the filing of the Notice of Completion. The Payment Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Base Design-Build Price

Adjustments, for the statutory period following the filing of the Notice of Completion, as required by Applicable Law.

(B) Monitoring of Sureties. The Company shall be responsible throughout the Term for monitoring the financial condition of any surety company issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the Company promptly shall notify SRWA of such event and take steps to ensure continued compliance with this Section, by either furnishing or arranging for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless SRWA agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Company of such an event, SRWA shall not unreasonably withhold its approval of such assurance.

SECTION 9.3. COSTS OF SECURITY INSTRUMENTS. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder is included in the Base Design-Build Price and shall be borne by the Company without further reimbursement or payment from SRWA.

ARTICLE 10

GENERAL PROVISIONS

SECTION 10.1. OWNERSHIP AND USE OF SITES. The Regional Water Facilities and Sites shall be owned by SRWA at all times (except for the Raw Water Pump Station Site that is leased by SRWA). The Company shall not have any legal, equitable, or other ownership or leasehold interest in any of the Sites, except for the license conveyed by Section 4.3(C) (Access to the Sites).

SECTION 10.2. RELATIONSHIP OF PARTIES. The Company's relationship to SRWA is that of an independent contractor. All persons hired by the Company or any Subcontractor and performing the Design-Build Work shall be the Company's or Subcontractor's employees or agents. The Company shall pay, and SRWA shall not be responsible for, the salary, wages, workers' compensation, unemployment insurance, disability insurance, tax withholding, and benefits to and on behalf of the Company's and Subcontractor's employees. Company shall, to the fullest extent permitted by law, indemnify SRWA, and its directors, officers, employees, and agents from and against any and all liability, penalties, expenses and costs resulting from any adverse determination by the federal Internal Revenue Service, California Franchise Tax Board, other federal or state agency, or court concerning the Company's independent contractor status or employment-related liability.

SECTION 10.3. CONTRACT ADMINISTRATION

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters routinely will arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Contract.

(B) Contract Administration Memoranda. The principal tool for the administration and memorialization of routine matters arising under this Contract that do not require a Change Order shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by SRWA and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Contract in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other matters relating to Contract administration or performance. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Contract.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of SRWA reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Company Contract Representative or designee and signed by the SRWA Contract Representative or designee. SRWA and Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Change Orders and all other documents relating to the administration and performance of this Contract.

SECTION 10.4. CHANGE ORDERS

(A) Generally. No material change, alteration, revision, or modification of the terms and conditions of this Contract shall be made except through a written Change Order or other written amendment to this Contract, duly authorized and signed by SRWA (as and to the extent authorized by the Board of Directors) and duly authorized and signed by the Company.

(B) Procedure. Change Orders shall be serially numbered, dated and signed by the Company Contract Representative or designee or designee and by the SRWA Contract Representative or designee. SRWA and the Company each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Contract.

SECTION 10.5. CONTRACT REPRESENTATIVES

(A) Company Representatives. The Company shall appoint and inform SRWA from time to time of the identity of (1) the Company Engineer, (2) the Company Construction Superintendent, (3) the Company Contract Representative, and (4) one or more corporate officials of the Company and the Guarantor with senior supervisory responsibility for the Project and the performance of this Contract (the "Company Senior Supervisors"). The Company shall promptly notify in writing to SRWA of any changes to these representatives. The Company Senior Supervisors shall cooperate with SRWA in any reviews of the performance of the Company Contract Representative, Company Engineer, or Company Construction Superintendent, which SRWA may undertake from time to time, and shall give full consideration to any issues or concerns raised by SRWA in conducting such performance reviews.

(B) SRWA Representatives. SRWA shall appoint and inform the Company from time to time of the identity of the (1) SRWA Engineer, (2) SRWA Construction Manager, and (3) SRWA Contract Representative. SRWA shall promptly notify the Company in writing about any changes to these representatives. When this Contract requires any approval or consent by SRWA to a Company submission, request or report, the approval or consent shall be given by the SRWA Contract Representative (unless otherwise provided by this Contract) in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by SRWA with the Applicable Law that governs its affairs.

SECTION 10.6. PROPERTY RIGHTS

(A) Protection from Infringement. The Company shall indemnify, defend and hold harmless SRWA Indemnitees in the manner provided in Section 8.5 (Indemnification by the Company) from and against any and all Loss and Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Design-Build Work. At its option, the Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, Service Life and technical characteristics and development so that such equipment does not so infringe.

(B) Intellectual Property Developed by the Company. All intellectual property developed by the Company in connection with the Design-Build Work shall be owned by the Company subject to the terms and conditions of this Section and Section 4.18 (Deliverable Materials), and is hereby licensed to SRWA on a non-exclusive, cost free, perpetual basis for use by SRWA. Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. SRWA shall have an irrevocable, perpetual, royalty-free and unrestricted right to use, reuse, reproduce, publish, display, broadcast and distribute such intellectual property, and to prepare derivative and additional documents based on such intellectual property, for any SRWA purpose, whether before or following the Termination Date. Neither SRWA nor the Company shall license, transfer or otherwise make

available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration; provided, however, that SRWA may transfer and make available to the Cities all such intellectual property for their respective use to the same extent and subject to the same restrictions as govern use by SRWA under this Section. The use by SRWA or either City of any such intellectual property for purposes other than in connection with the Project shall be at their own risk and the Company shall have no liability therefor.

SECTION 10.7. NEGOTIATED FIXED PRICE WORK

(A) Base Design-Build Price. The Base Design-Build Price has been fixed and agreed to by the parties based on the Company's Proposal and is not subject to Cost Substantiation.

(B) Negotiated Lump Sum Pricing for Other Work. This Contract obligates SRWA to pay for certain costs resulting from Uncontrollable Circumstances, SRWA Fault, and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that SRWA will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance of the Company's performance of the work and reflected in an approved Change Order. To facilitate such negotiations, the Company shall furnish SRWA with all information reasonably requested by SRWA regarding the Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 10.8. COST SUBSTANTIATION OF WORK ALREADY PERFORMED

(A) Cost Substantiation Generally. The Company shall provide Cost Substantiation for the costs for which SRWA is financially responsible hereunder, other than the Base Design-Build Price and the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 10.7 (Negotiated Fixed Price Work). In incurring costs that are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$50,000), and shall enter into subcontracts on reasonable terms and prices in light of the work to be performed and SRWA's potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Company. Examples of costs which require substantiation include (1) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and (2) situations where the parties agree that the Company shall perform work on a cost-plus basis. All Design-Build Work costs which are subject to Cost Substantiation shall be further subject to the terms, conditions and limitations set forth in Article 6 (Project Funding and Payment of the Design-Build Price).

(C) Cost Substantiation Certificate. The Company shall prepare and provide to SRWA a Cost Substantiation certificate to substantiate and document the cost. The certificate must state and describe the amount of the cost, the provision(s) of this Contract under which the cost is chargeable to SRWA, the competitive or other process utilized by the Company to obtain the reasonable price, and how such work, services, or materials are reasonably required to perform the Design-Build Work. The Cost Substantiation certificate shall be accompanied by copies of such documentation (e.g., timesheets, invoices, canceled checks, expense reports, receipts) as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to SRWA and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed

work, (1) the amount and character of materials, equipment and services furnished or utilized, the vendors or other Persons from whom purchased, and the amounts payable therefor; (2) a statement of any equipment used and any rental payable therefor; (3) employee hours, duties, wages, salaries, benefits and assessments; and (4) profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Design-Build Work to governmental entities. The Company shall use reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

(D) Mark-Up. On all costs incurred by the Company for work performed directly by the Company or any of its Affiliates that are subject to Cost Substantiation, the Company shall be entitled to a mark-up of 10% for risk, profit, administration, and all other overhead and shall not be entitled to any other additional compensation. On all costs incurred by the Company for work performed by a Subcontractor, the Company shall be entitled to a mark-up of 5% for risk, profit, administration, and all other overhead and shall not be entitled to any other additional compensation. The price payable to any Subcontractors, including Subcontractor overhead and mark-ups for risk and profit, must be reasonable. No mark-up will be added to the Company's or a Subcontractor's costs for lodging, meals or travel.

SECTION 10.9. USE OF SUBCONTRACTORS AND KEY PERSONNEL

(A) Use of Subcontractors and Key Personnel. SRWA acknowledges that the Company will carry out portions of the Design-Build Work by contracting such obligations to one or more Subcontractors. The Company shall use the Subcontractors and Key Personnel listed in Appendix 10 (Key Personnel and Approved Subcontractors) or such others as SRWA may approve, acting reasonably and without unreasonable delay, for the performance of the Design-Build Work. The addition of any such SRWA-approved Subcontractors and Key Personnel in Appendix 10 shall be reflected in a Contract Administration Memorandum.

(B) Restricted Persons. In providing the Design-Build Work, the Company shall not employ or contract with, or allow any of the Subcontractors to employ or contract with, any Person who, in the reasonable opinion of SRWA, is any of the following:

(1) Is debarred, suspended, or otherwise disqualified from federal, State, SRWA, or City contracting for any services similar in nature to the Design-Build Work (including those debarred by the California Division of Labor Standards Enforcement; see www.dir.ca.gov/dlse/debar.html);

(2) Was or is subject to any material claim of the United States, State, SRWA, or City in any proceedings (including regulatory proceedings) that have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in SRWA's view, in either case, be reasonably likely to materially affect the ability of the Company to perform its obligations under this Contract;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal felony less than five years prior to the date at which the determination of whether the Person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

SECTION 10.10. SUBCONTRACTS

(A) Terms and Actions. The Company shall retain full responsibility to SRWA under this Contract for all matters related to the Design-Build Work. No failure of any Subcontractor used by the Company in connection with the provision of the Design-Build Work shall relieve the Company from its obligations to perform the Design-Build Work. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising from the actions or inactions of the Company or a Subcontractor.

(B) Indemnity for Claims. The Company shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against SRWA for labor, services, materials or equipment furnished for the Design-Build Work, except as provided by Payment Bond and stop notice remedies. The Company acknowledges that its indemnity obligations under Section 8.5 (Indemnification by the Company) shall include all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work to the extent that those claims fall within the scope of the indemnity in Section 8.5 (Indemnification by the Company).

(C) Assignability. All Subcontracts entered into by the Company with respect to the Design-Build Work shall be assignable to SRWA, solely at SRWA's election and without cost or penalty, upon the expiration or termination of this Contract.

SECTION 10.11. MATERIAL SUBCONTRACTS

(A) SRWA Consents. The Company shall not take any of the following actions, unless SRWA has consented to such action in writing, such consent not to be unreasonably withheld or delayed: (1) terminate, or agree to or permit the termination of, all or any material part of any Material Subcontract; (2) make, or agree to or permit the making of, any material amendment of any Material Subcontract or any departure by any party from any material provision of any Material Subcontract; (3) permit any Significant Subcontractor to assign or transfer to any Person all or substantially all of the obligations under the Material Subcontract; or (4) enter into, or permit the entering into of, any Material Subcontract other than those entered on or before the Contract Date.

(B) Process and Timeframe for Consent. SRWA shall give or deny such consent within (1) 10 Business Days of receipt of such notice and all relevant documentation, if the Company is seeking to terminate a Material Subcontract immediately, or (2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases. If SRWA fails to give or deny its consent within such time periods it shall be deemed to have given its consent.

(C) Costs of Request for Consent. The Company shall pay SRWA's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with reviewing and processing any request for consent by the Company pursuant to this Section. At the time of the request the Company shall make a payment to SRWA against its obligation under this Section of \$15,000. After SRWA's decision is rendered, SRWA will either refund any overpayment or invoice the Company for any additional amounts due under this Section.

SECTION 10.12. LABOR RELATIONS DISPUTES

(A) Labor Relations. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company and Subcontractors. SRWA shall have no

responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless SRWA Indemnitees in accordance with Section 8.5 (Indemnification by the Company) from any and all Loss and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Company has knowledge of an actual or potential labor dispute that may affect any of the Design-Build Work, the Company shall promptly (1) give notice about the dispute to SRWA, including all relevant information related to the dispute of which the Company has knowledge, and (2) take all reasonable and appropriate steps to ensure that such labor dispute does not affect the performance of any of the Design-Build Work, including by applying for relief to appropriate courts or Governmental Bodies.

SECTION 10.13. FAIR EMPLOYMENT AND CONTRACTING POLICY

(A) Compliance with SRWA Non-Discrimination Policy. During the Term, the Company will not discriminate against any employee, applicant for employment, Subcontractor, guest, visitor or invitee, because of race, religion, creed, color, sex, age (over 40), marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless allowed by Applicable Law (e.g., as a bona fide occupational qualification). The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The terms used in this Section shall have the same meaning as defined in State statutes and regulations governing the same subject matter.

(B) Compliance with Statutes. The Company shall comply with Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and the Americans with Disabilities Act of 1990, and any other Applicable Law pertaining to nondiscrimination, anti-harassment, disability rights, and fair employment practices.

(C) Indemnification. The Company shall indemnify, defend and hold harmless SRWA Indemnitees in the manner provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense which any of them may incur arising from any claim of wrongful employment practices (e.g., discrimination or harassment) arising from the conduct of the Company, a Subcontractor, or any of their officers, employees, or agents.

SECTION 10.14. ASSIGNMENT

(A) By the Company. The Company shall not assign, transfer, convey, lease, encumber, or otherwise dispose of this Contract, its right to execute the same, or its right, title or interest in all or any part of this Contract or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of SRWA. Any such consent given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of SRWA to any further assignment. Any such assignment of this Contract that is approved by SRWA shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Contract, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this Contract unless such approval specifically provides otherwise.

(B) By SRWA. SRWA shall not assign its rights or obligations under this Contract without the prior written consent of the Company. SRWA may, however, assign its rights and obligations under this Contract, without the consent of the Company, to another Governmental Body if such assignee assumes, and is legally capable of discharging, the duties and obligations of SRWA hereunder.

SECTION 10.15. BINDING EFFECT. This Contract shall bind and inure to the benefit of SRWA and the Company and any assignee acquiring an interest hereunder consistent with Section 10.14 (Assignment).

SECTION 10.16. PARTY BEARING COST OF PERFORMANCE. All obligations, tasks and responsibilities to be undertaken by a party under this Contract will be performed at the sole cost and expense of the party required to perform or undertake the obligation, task or responsibility, unless otherwise expressly provided by this Contract or otherwise explicitly agreed to in writing by the parties.

SECTION 10.17. NOTICES

(A) Procedure. Any notice, consent, approval, or other communication (collectively "Notice") required or permitted to be given under this Contract shall be in writing and delivered or sent either (1) in person, (2) by prepaid, first class U.S. mail, (3) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (4) by email with a confirmed receipt. Any such Notice must be addressed as provided in subsection (B). Any Notice so delivered or sent will be deemed given (1) when delivered in person, (2) three days after deposited in prepaid, first class U.S. mail, (3) on the date of delivery as shown on the overnight courier service receipt, or (4) upon the sender's receipt of an email from the other party confirming the receipt of the emailed Notice.

(B) Notice Addresses. Notices required or permitted to be given under this Contract shall be addressed as follows:

To SRWA:

Stanislaus Regional Water Authority
156 S. Broadway, Suite 270
Turlock, CA 95380
Attn: Robert Granberg, P.E., General Manager
Email: granbergassociates@gmail.com

with a copy to:

Lindsay Smith, P.E.
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618
Email: lsmith@westyost.com

and

Richard P. Shanahan
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816
Email: rps@bkslawfirm.com

To the Company:

XXX

with a copy to:

XXX

Any party may change its contact information by notifying the other party of the change in the manner provided above.

SECTION 10.18. NOTICE OF CLAIMS AND LITIGATION. In the event the Company or SRWA receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims (including any third-party claim subject to California Public Contract Code Section 9201(b)), or investigations in connection with the Design-Build Work, the party receiving such notice or undertaking such defense or prosecution promptly shall give the other party notice of such proceedings.

SECTION 10.19. FURTHER ASSURANCES. In order to carry out and give full effect to this Contract, each party will use all reasonable efforts to provide such information, sign and deliver such further instruments and documents, and take such actions as may be reasonably requested by the other party, so long as not inconsistent with the provisions of this Contract and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Contract. The parties will reasonably cooperate with each other to carry out the purpose and intent of this Contract, including providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Contract.

[SIGNATURE PAGE FOLLOWS]

The parties have caused this Contract to be approved and executed by their duly authorized representatives as of the day and year first above written.

STANISLAUS REGIONAL WATER AUTHORITY

By: _____
Robert Granberg, General Manager

Attest:

Allison Martin, Secretary

Approved as to form:

Richard P. Shanahan, General Counsel

XXX

By _____
_____ [name]
_____ [title]

By _____
_____ [name]
_____ [title]

TRANSACTION FORMS
TO THE
DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

- Form A Guaranty Agreement Form
- Form B Payment Bond Form
- Form C Performance Bond Form

TRANSACTION FORM A
GUARANTY AGREEMENT FORM

REGIONAL SURFACE WATER SUPPLY PROJECT
GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and entered into as of _____, 2019, between the Stanislaus Regional Water Authority, a joint powers authority organized and existing under the California Joint Exercise of Powers Act ("SRWA"), and _____, a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of California ("Guarantor"), who agree as follows:

RECITALS. This Contract is made with reference to the following background recitals:

A. SRWA and _____, a _____ organized and existing under the laws of the State of _____ (the "Company"), have entered into the Design-Build Contract for the Regional Surface Water Supply Project dated _____, 2019, as may be amended from time to time (the "Contract"). The Company has agreed under the Contract to obtain governmental approvals for, design, construct, start up, commission, and acceptance test a raw water pump station, raw water transmission main, water treatment plant, finished water pumping station, finished water transmission mains, and other facilities and improvements, all as more particularly set forth in the Contract.

B. The Company is a _____ of the Guarantor.

C. Performance by SRWA and the Company of their obligations under the Contract will result in a direct and substantial benefit to the Guarantor.

D. SRWA will enter into the Contract only if, concurrently with the Company's approval and execution of the Contract, the Guarantor guarantees the performance by the Company of all of the Company's Obligations under the Contract as set forth in this Guaranty Agreement.

E. The Guarantor approves this Guaranty Agreement in order to induce the execution and delivery of the Contract by SRWA and in consideration thereof.

1. Definitions and Interpretation

1.1. As used in this Guaranty Agreement, the following words and terms shall have the meanings set forth below. Any other capitalized word or term used but not defined herein is used as defined in the Contract.

A. "Guaranty Agreement" means this Regional Surface Water Supply Project Guaranty Agreement, as the same may be amended by the parties from time to time.

B. "Obligations" means the covenants and agreements of, and the amounts payable by, the Company pursuant to the terms of the Contract.

C. "Transaction Agreement" means the Contract, any Material Subcontract, the Performance Bond, and the Payment Bond, and including any amendment or supplement to any of these documents.

1.2. In this Guaranty Agreement, unless the context otherwise requires:

A. References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty Agreement.

B. Plurality. Words importing the singular number mean and include the plural number and vice versa.

C. Entire Agreement. The parties intend this document to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter of this document. This Guaranty Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Guaranty Agreement, except those other documents that may be expressly referenced in this Guaranty Agreement.

D. Applicable Law. This Guaranty Agreement shall be governed by and construed in accordance with the applicable laws of the State of California.

E. Severability. If any clause, provision, section, or subsection shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, section, or subsection shall not affect any of the remaining provisions hereof, and this Guaranty Agreement shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

F. Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

G. Payments. All payments required to be made by the Guarantor under this Guaranty Agreement shall be made in lawful money of the United States of America.

2. Representations and Warranties. The Guarantor represents and warrants that:

2.1. Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty Agreement.

2.2. Due Authorization and Binding Obligation. This Guaranty Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

2.3. No Conflict. To the best of its knowledge, neither the execution and delivery by the Guarantor of this Guaranty Agreement nor the performance by the Guarantor of its obligations under the Guaranty Agreement: (a) conflicts with, violates or results in a breach of any Applicable Law; or (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's articles of incorporation, bylaws, or other corporate charter, or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

2.4. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty Agreement by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

2.5. No Litigation. Except as disclosed in writing to SRWA, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an

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unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty Agreement against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

2.6. Consent to Design-Build Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Contract.

3. Guaranty Covenants

3.1. Guaranty to SRWA. The Guarantor absolutely, presently, irrevocably and unconditionally guarantees to SRWA for the benefit of SRWA and the Cities (a) the full and timely performance and observance of each and all of the Obligations, and (b) the full payment when due of each and all of the payments required to be credited or made by the Company under the Contract to, or for the account of, SRWA, when the same shall become due and payable pursuant to this Guaranty Agreement. However, the Guarantor shall have the right to assert the defenses provided in Section 3.4 against claims made under this Guaranty Agreement and the combined liability of the Guarantor under this Guaranty Agreement and the Company under the Contract shall be subject to the applicable limitations of liability set forth in Section 7.3 (Limitation on Company Liability) of the Contract.

3.2. SRWA Right to Proceed against Guarantor. This Guaranty Agreement constitutes a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, SRWA shall have the right to proceed first and directly against the Guarantor under this Guaranty Agreement and without proceeding against the Company or exhausting any other remedies against the Company which SRWA may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that SRWA: (a) file a lawsuit or proceed to obtain a judgment against the Company or any other Person that may be liable for the Obligations or any part of the Obligations; (b) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Contract or required to be given to the Company under Applicable Law; (c) foreclose against or seek to realize upon any security for the Obligations; or (d) exercise any other right or remedy to which SRWA is or may be entitled in connection with the Obligations or any security therefor or any other guaranty thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Contract. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and the Guarantor as may be required in connection with such Obligation and this Guaranty Agreement, the liability of the Guarantor shall be effective and shall immediately be performed or paid.

3.3. Guaranty Absolute and Unconditional. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms and conditions of the Contract, and, except as provided in Section 3.4, shall not be subject to any counterclaim, setoff, deduction, or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, SRWA, or any other Person. Without limiting the foregoing, the obligations of the Guarantor shall not be released, discharged, or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

A. the extension or renewal of this Guaranty Agreement or the Contract up to the specified Terms of each agreement;

B. any failure, omission or delay by SRWA in the exercise of any right, power or remedy conferred on SRWA with respect to this Guaranty Agreement or the Contract, except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

C. any permitted transfer or assignment of rights or obligations under the Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance, or other transfer of any of their respective interests in the Project or in, to, or under any of the Transaction Agreements;

D. any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of SRWA or any other Person in any Transaction Agreement or in the Project;

E. any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

F. any failure of title with respect to all or any part of the respective interests of any Person in the Sites or the Project;

G. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceeding against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty Agreement or any Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty Agreement shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty Agreement that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

H. except as permitted by Section 5.1 below, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

I. any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

J. the failure on the part of SRWA to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty Agreement and to the Company as a condition to the enforcement of Obligations pursuant to the Contract;

K. any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

L. the merger or consolidation of any party to the Transaction Agreements into or with any other Person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any Person;

M. any legal disability or incapacity of any party to the Transaction Agreements; or

N. the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty Agreement not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (A) through (N) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty Agreement.

3.4. Defenses, Setoffs, and Counterclaims. The Guarantor may exercise or assert any and all legal or equitable rights or defenses that the Company may have under the Contract or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Contract or the Guarantor has expressly waived in Section 3.5 or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, setoffs, or deductions that the Company is permitted to assert pursuant to the Contract, if any. To the extent that any of the matters specified in Section 3.3, subparagraphs (A) through (F) and (H) through (N) would provide a defense to, release, discharge or otherwise affect an Obligation of the Company, the Guarantor's obligations under this Guaranty Agreement shall be treated the same.

3.5. Waivers by Guarantor. The Guarantor unconditionally and irrevocably waives:

A. notice from SRWA of its acceptance of this Guaranty Agreement;

B. notice of any of the events referred to in Section 3.3, except to the extent that notice is required to be given under the Contract as a condition to the enforcement of an Obligation;

C. to the fullest extent lawfully possible, all notices to the Guarantor that may be required by statute or regulation to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Contract or Applicable Law as a condition to the performance of any Obligation;

D. to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period that may be applicable to guarantors (or parties in similar relationships) that is shorter than the applicable statute of limitations period for the underlying claim;

E. any right to require a lawsuit or other proceeding first against the Company;

F. any right to require a lawsuit or other proceeding first against any Person or the security provided by or under any Transaction Agreement, except to the extent such Transaction Agreement specifically requires a proceeding first against any Person (except the Company) or security;

G. any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

H. the requirement of, or the notice of, the filing of a claim by SRWA in the event of the receivership or bankruptcy of the Company; and

I. all demands upon the Company or any other Person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

3.6. **Payment of Costs and Expenses.** The Guarantor agrees to pay SRWA on demand all Fees and Costs incurred by or on behalf of SRWA in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty Agreement against the Guarantor, other than the Fees and Costs that SRWA incurs in performing any of its obligations under a Transaction Agreement when required as a condition to performance by the Company of its Obligations.

3.7. **Subordination of Rights.** The Guarantor agrees that any right of subrogation or contribution that it may have against the Company as a result of any payment or performance hereunder is fully subordinated to the rights of SRWA hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company or the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty Agreement.

3.8. **Separate Obligations.** The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations under this Guaranty Agreement shall: (a) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty Agreement; (b) give rise to separate and independent causes of action against the Guarantor; and (c) apply irrespective of any waiver or indulgence granted from time to time by SRWA. The Guarantor agrees that this Guaranty Agreement shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by SRWA, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Contract, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

4. **Term.** This Guaranty Agreement shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully performed and paid.

5. General Covenants

5.1. Consolidation, Merger, Sale or Transfer

A. The Guarantor covenants that during the term of this Guaranty Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (3) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another Person, or permit one or more other Persons to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor Person (if other than the Guarantor) assumes in writing all the obligations of the Guarantor hereunder and, if required by Applicable Law, is duly qualified to do business in the State of California; (2) the successor Person (if other than the Guarantor) delivers to SRWA an opinion of counsel to the effect that its obligations under this Guaranty Agreement are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (3) any such transaction does not result in a change in the Guarantor's financial condition that would adversely affect the ability of the Guarantor to perform its obligations under this Guaranty Agreement.

B. **Continuance of Obligations.** If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the

effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty Agreement as provided in this Section.

5.2. Assignment. Except as provided in Section 5.1, this Guaranty Agreement may not be assigned by the Guarantor without the prior written consent of SRWA.

5.3. Qualification in California. The Guarantor agrees that, so long as this Guaranty Agreement is in effect, if required by Applicable Law, the Guarantor will be duly qualified to do business in the State of California.

5.4. Consent to Jurisdiction. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty Agreement or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in Stanislaus County, California or in federal courts located in the Eastern District of California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection that it may have to the laying of the jurisdiction or venue of any such Legal Proceeding in any such court.

5.5. Binding Effect. This Guaranty Agreement shall bind and inure to the benefit of SRWA and Guarantor and, subject to Sections 5.1 and 5.2, their successors and assigns.

5.6. Amendments. This Guaranty Agreement may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of SRWA and the Guarantor. Any amendment by SRWA requires action by its Board of Directors.

5.7. Liability Limited to Guarantor. This Guaranty Agreement does not create any obligation of, or right to pursue a remedy against, any director, officer, employee or stockholder of the Guarantor or any Affiliate of the Guarantor for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty Agreement shall be taken against any such director, officer, employee, stockholder, or Affiliate.

5.8. Notices

A. Procedure. Any notice, consent, approval, or other communication (collectively "Notice") required or permitted to be given under this Contract shall be in writing and delivered either (1) in person, (2) by prepaid, first class U.S. mail, (3) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (4) by email with a confirmed receipt. Any such Notice must be addressed as provided in subsection (B). Any Notice so delivered will be deemed given (1) when delivered in person, (2) three days after deposited in prepaid, first class U.S. mail, (3) on the date of delivery as shown on the overnight courier service receipt, or (4) upon the sender's receipt of an email from the other party confirming the receipt of the emailed Notice.

B. Notice Addresses. Notices required or permitted to be given under this Contract shall be addressed as follows:

To SRWA:

Stanislaus Regional Water Authority
156 S. Broadway, Suite 270
Turlock, CA 95380
Attn: Robert Granberg, P.E., General Manager
Email: granbergassociates@gmail.com

with a copy to:

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Richard P. Shanahan
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816
Email: rps@bkslawfirm.com

To the Company:

XXX

with a copy to:

XXX

Any party may change its contact information by notifying the other party of the change in the manner provided above.

The Guarantor has caused this Guaranty Agreement to be approved and executed by its duly authorized officers as of the day and year first above written.

XXX

By _____
_____ [name]
_____ [title]

By _____
_____ [name]
_____ [title]

The Guaranty Agreement is accepted and agreed to by the Stanislaus Regional Water Authority:

By: _____
Robert Granberg, General Manager

Attest:

Allison Martin, Secretary

Approved as to form:

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Richard P. Shanahan, General Counsel

TRANSACTION FORM B

PAYMENT BOND FORM

PAYMENT BOND

Bond No.: _____

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, the Stanislaus Regional Water Authority ("SRWA") has awarded to _____ ("Company") the Design-Build Contract for the Regional Surface Water Supply Project (the "Contract") for the work generally described as follows: the design and construction of the Regional Surface Water Supply Project facilities and related work as set forth in the Contract;

WHEREAS, the Company is required by the Contract and by the provisions of California Civil Code division 4, part 6 to furnish a payment bond in connection with the Contract, as hereinafter set forth; and,

WHEREAS, the Contract by this reference is made a part hereof;

NOW, THEREFORE, we, the undersigned Company, as Principal, and _____, as Surety, a corporation organized and existing under the laws of the State of _____, duly authorized and in good standing to transact business under the laws of the State of California, as an admitted surety, are held and firmly bound unto SRWA in the sum of \$ _____, the sum being not less than 100% of the total Contract amount payable by SRWA, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Company, its heirs, executors, administrators, successors, assigns or subcontractor shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any of the persons named in California Civil Code section 9100, or shall fail to pay for amounts due under the California Unemployment Insurance Code with respect to such work or labor as required by the provisions of California Civil Code division 4, part 6, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the California Employment Development Department from the wages of employees of the Company and subcontractors pursuant to California Unemployment Insurance Code section 13020 with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that Code, the Surety or Sureties hereon will pay for the same in amount not exceeding the sum specified in the Contract, otherwise the above obligation shall be void.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under California Civil Code section 9100, so as to give a right of action to them or to their assigns in any suit brought upon this bond. The Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

The surety waives the provisions of California Civil Code sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties), and 2849 (regarding a surety's rights as to other security held by the creditor).

In the event suit is brought upon this bond and judgment is recovered, the non-prevailing party shall pay all costs incurred by the prevailing party in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, we have signed this bond this _____ day of _____.

For Company as Principal:

Name: _____

Title: _____

For Surety:

Name: _____

Title: _____

Address to serve Principal and Surety with notices, papers and other documents:

(Seal)

(NOTE: The date of this bond must not be prior to the date of the Contract. Notary acknowledgement for surety and surety's power of attorney must be attached.)

CERTIFICATE OF ACKNOWLEDGMENT BY NOTARY PUBLIC
[California Civil Code § 1189]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

TRANSACTION FORM C
PERFORMANCE BOND FORM

PERFORMANCE BOND

Bond No.: _____

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, the Stanislaus Regional Water Authority ("SRWA") has awarded to _____ ("Company") the Design-Build Contract for the Regional Surface Water Supply Project (the "Contract") for the work generally described as follows: the design and construction of the Regional Surface Water Supply Project facilities and related work as set forth in the Contract;

WHEREAS, the Company is required under terms of the Contract to furnish a bond for the faithful performance of the Contract; and,

WHEREAS, the Contract is by reference made a part hereof;

NOW, THEREFORE, we, the undersigned Company, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized and in good standing to transact business under the laws of the State of California, as an admitted Surety, are held and firmly bound unto SRWA in the penal sum of \$ _____, the sum being not less than 100% of the total Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above bounden Company, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless SRWA, its directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation in above-stated amount shall hold good for a period of one year after the recording of the notice of completion, during which time if the Company, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect SRWA from loss or damage made evident during the period of one year from the date of recording of the notice of completion, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the above-stated amount shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Company remains.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

The surety waives the provisions of California Civil Code sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties), and 2849 (regarding a surety's rights as to other security held by the creditor).

In the event suit is brought upon this bond and judgment is recovered, the non-prevailing party shall pay all costs incurred by the prevailing party in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, we have signed this bond this _____ day of _____.

For Company as Principal:

Name: _____

Title: _____

For Surety:

Name: _____

Title: _____

Address to serve Principal and Surety with notices, papers and other documents:

(Seal)

(NOTE: The date of this bond must not be prior to the date of the Contract. Notary acknowledgement for surety and surety's power of attorney must be attached.)

CERTIFICATE OF ACKNOWLEDGMENT BY NOTARY PUBLIC
[California Civil Code § 1189]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

APPENDICES
TO THE
DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

1. General Design-Build Requirements and Procedures
2. Design-Build Work Submittal Requirements and Review Procedures
3. Construction Work Requirements
4. Design-Build Quality Management
5. Project Technical Requirements
6. Performance Guarantees
7. Pre-Acceptance Testing and Acceptance Test Requirements
8. Property, Easements, and Landowner Coordination
9. Governmental Approvals and Utility Coordination
10. Key Personnel and Approved Subcontractors
11. Required Insurance
12. Public Works, Labor and Wage Requirements
13. State Revolving Fund Requirements
14. Resolution of Company Claims

ATTACHMENT C

SOQ Submittal Forms

SOQ Submittal Form C-1 – Transmittal Form and Certification

(To be typed on Respondent Letterhead)

Lindsay Smith, PE
Project Engineer
SRWA Regional Surface Water Supply Project
2020 Research Park Drive, Suite 100
Davis, CA 95618
530-756-5905
lsmithSRWA@westyost.com

Dear Ms. Smith:

_____ (the “Respondent”) hereby submits its Statement of Qualifications (SOQ) in response to the Request for Qualifications (RFQ) issued by the Stanislaus Regional Water Authority (SRWA) on _____, 2018.

As a duly authorized representative of the Respondent, I hereby certify, represent and warrant as follows in connection with the SOQ:

1. The Respondent acknowledges receipt of the RFQ and the following addenda:

<u>Addenda No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

2. The submittal from the Respondent has been duly authorized by, and in all respects is binding upon, the Respondent. A Certification of Authorization that evidences my authority to submit the SOQ and bind the Respondent is attached hereto.
3. The insurance coverage required by the RFQ will be provided or brokered by _____, as evidenced by such firm’s letter of intent submitted herewith.
4. All firms that will be significant participants in providing services under the Design-Build Contract (the “Participating Firms” and key management personnel “Key Project Team Members”) are identified in the SOQ.
5. The Respondent and each major Participating Firm have submitted all information that is required by the RFQ. To the best knowledge of the Respondent, all such information is correct and complete.

6. All information and statements contained in the SOQ are current, correct and complete, and are made with full knowledge that the SRWA will rely on such information and statements in evaluating Respondents.
7. The SOQ has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFQ.
8. Neither the Respondent nor any Participating Firm is currently suspended or debarred from doing business with any governmental entity.
9. Neither the Respondent nor any Participating Firm is currently a debtor in any bankruptcy proceeding.
10. The Respondent and all Participating Firms have paid all taxes and fees due by the United States Government, the State of California (if applicable), Stanislaus County (if applicable) and are in good standing with these parties.
11. The Respondent has reviewed all of the engagements and pending engagements of the Respondent, and no potential exists for any conflict of interest or unfair advantage.
12. Neither the Respondent nor any Participating Firm has been convicted of any criminal conduct or been found to be in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wage.
13. The Respondent has carefully examined all documents constituting the RFQ and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFQ and such addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFQ and SOQ.
14. The Respondent has reviewed and understands the requirements of the RFQ and all addenda thereto and, if selected as a Proposer, agrees to all substantive terms and conditions of the RFQ, except as otherwise noted by the Respondent in its SOQ.
15. The Respondent has reviewed, understood and complied with Federal, State and Local equal opportunity requirements and SRWA contract compliance requirements for this RFQ process and will do so in subsequent stages of this selection process.
16. The Respondent, if selected as a Proposer, intends to submit a proposal in response to the Request for proposals to be issued by the SRWA for the Project.
17. The Contact Person who will serve as the primary interface between the SRWA and the Respondent is:

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____
CELL: _____
FAX: _____
EMAIL: _____

We declare under penalty of perjury under the laws of the State of California that the information provided in Respondent's Statement of Qualifications and related submittal forms and attachments is true and correct.

Name of Respondent: _____

Date: _____

By: _____

_____ *[name]*

_____ *[title]*

By: _____

_____ *[name]*

_____ *[title]*

[If the Respondent is a corporation, the certification must be signed by two authorized corporate officers; if a general partnership, by two or more general partners; if a limited partnership, by one general partner and one general or limited partner; if a limited liability company, joint venture, or other entity, by two authorized members, managers or officers.]

SOQ Submittal Form C-2 – Design, Construction, Acceptance Testing and Startup Experience

1) Design, Construction Acceptance Testing and Startup Experience: provide information requested in Section 4.3.5 in the format shown below. Individual sections of the form may be resized to accommodate project information. Supplemental sheets may also be attached to this form with the project name identified on each sheet.

Project Name & Location:			
Type of Project:	<input type="checkbox"/> Design	<input type="checkbox"/> Construction	<input type="checkbox"/> Design/Build
	<input type="checkbox"/> Design/Build/Operate	<input type="checkbox"/> Other _____	
Respondent Role on Project:	<input type="checkbox"/> Design	<input type="checkbox"/> Construction	<input type="checkbox"/> Design/Build
	<input type="checkbox"/> Design/Build/Operate	<input type="checkbox"/> Other _____	
Description of Respondent Role:			
A. Applicability and relevance of referenced project to the Project:			
B. SOQ submittal team participants (firms):			
C. Other key participants (firms):			
D. Team structure, management description (describe responsible parties and their roles):			
E. Customer and owner (include name, title, organization, address, telephone, email):			

F. Current status of project (design, construction, or operations phase) and number of years of operation:

G. Description of systems and processes, including size and capacity:

H. Original construction contract amount:

I. Percent change orders through construction and cause:

J. Was the project completed within the original project schedule?

Please explain if the answer is "no".

K. Procedure for gaining governmental approvals on project and a description of responsible parties:

L. Description of any ingenuity and innovation employed on project:

M. Respondent's key personnel:

N. Key project contact of Respondent, if different than contact information included in "E" above (name, title, organization, address, telephone, email):

SOQ Submittal Form C-3 – Key Project Staff

Key Project Staff: provide the information requested on this form for key project staff members as defined in Section 4.3.4. Attach additional pages if necessary.

<u>General Information</u>				
Name:				
Firm:				
Title:				
Years employed by firm:	years			
Total Professional Experience:	years			
Professional Registration and Licenses (type/state/year):				
SRWA Regional Surface Water Supply Project –Specific Information				
Title/Assignment:				
Description of Role/Responsibilities:				
Commitment⁽¹⁾:	Permitting:	%	Design:	%
	Construction:	%	Startup and Testing:	%
	Other:	%		
Relevant Project Experience ⁽²⁾ :				
Project:				
Location:				

SOQ Submittal Form C-4 – Financial Resources Data Form

Respondent Team Member: _____

Section I Financial Data Summary⁽¹⁾

Category	FY -4	FY -3	FY -2	FY -1	FYTD
Income Statement					
Operating Revenues					
Operating Expenses					
Depreciation / Amortization					
EBIT / Operating Profit					
Interest Income					
Other Non-Operating Income (Expense)					
EBIT					
Gross Interest					
EBT					
Total Tax Expenses					
Net Income					
Balance Sheet					
Cash					
Marketable Securities					
Receivables					
Other Receivables					
Work in Progress / Unbilled Revenue					
Inventory					
Prepaid Expenses					
<i>Total Current Assets</i>					
PP&E					
Investments					
Intangibles					
Non-Operating, Non-Current Assets					
Other Assets					
<i>Total long term assets</i>					
<i>Total assets</i>					
Short Term Debt					
Accounts Payable					
Accrued Expenses					
Income Tax Payable					
Other Current Operating Liabilities					
<i>Total current liabilities</i>					
Post-Retirement Benefits					
Other Long Term Liabilities					
Deferred Income Tax					
Senior Long Term Debt					
Subordinated Debt					
<i>Total long term liabilities</i>					
Shareholder's Equity					

Category	FY -4	FY -3	FY -2	FY -1	FYTD
Retained Earnings					
<i>Total Equity</i>					
<i>Total Liabilities and Equity</i>					
Statement of Cash Flow					
Cash Flow from Operations					
Cash Flow from Financing Activities					
Cash Flow from Investing Activities					

1. Additional spaces provided to ensure balance sheet is balanced and matches totals from the submitted financial statements

Section II Credit Rating Summary¹

Bond Ratings (please list all bond issues within the last five years with issue date and rating):

Rating Date/Issuance Name of Rating Agency Uninsured Credit Rating

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Credit and Other Ratings (please list all credit and other ratings within the last two years along with date of rating):

	Rating Date	Name of Rating Authority	Credit Rating
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

Bond Ratings (please list all bond issues within the last five years with issue date and rating):

Rating Date/ Issuance Name of Rating Agency Uninsured Credit Rating

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Rating Date/ Issuance	Name of Rating Agency	Uninsured Credit Rating

Credit and Other Ratings (please list all credit and other ratings within the last two years along with date of rating):

Rating Date Name of Rating Agency Credit Rating

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Rating Date	Name of Rating Agency	Credit Rating

1. In the event that no credit rating is available for the DB Contractor from a nationally recognized rating agency, then the DB Contractor, as applicable, shall provide:

- (a) a current (30 days or less) Dun & Bradstreet report (or an independent report of similar quality and content) attached to this Financial Resources Data Form; and
- (b) a narrative discussion of the long-term credit strength of the DB Contractor.

DB Contractors shall also provide an explanation or state the reasons that no such credit rating from a nationally recognized credit rating Authority is available.

Section III Other Financial Information

As required by Section 4.3.6.1 of the RFQ, provide the DB Contractor's audited financial statements for the past 5 fiscal years, including auditor's opinion, footnotes and other required supplementary information as well as the DB Contractor's most recently available quarterly statements.

Note: All data is to be provided in U.S. Dollars and in English.

Name of DB Contractor

Name of Designated/Authorized Signatory

Signature

Title

SOQ Submittal Form C-5 – Safety Record

Per Public Contract Code 22164, a Respondent's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

**Experience Modification Rate
for the most recent three-year
period:**

**Average Total Recordable
Injury or Illness Rate for the
most recent three-year period:**

**Average Lost Work Rate for the
most recent three-year period:**

**Is the DB Contractor a party to
an alternative dispute resolution
system as provided for in Section
3201.5 of the Labor Code?**

Yes

No

ATTACHMENT D

SRWA Procurement Process Conflict of Interest Policy

**STANISLAUS REGIONAL WATER AUTHORITY
DESIGN-BUILD CONFLICT OF INTEREST POLICY**

1. Purpose and Authority. The purpose of this policy is to adopt and implement a standard organizational conflict of interest policy to govern the Authority design-build solicitation and contract award process. This policy affects the ability of a design-build entity and its team to be considered for the design-build contract. This policy is adopted pursuant to Public Contract Code section 22162 and other applicable law.

2. Definitions. The following definitions apply to this policy:

a. "Affiliate" of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, or senior management employee of the Person. For purposes of this definition, "control" means the (i) power to directly or indirectly control or direct the management or policies of the specified Person, whether through the ownership of voting rights, partnership or limited liability company interests, contract, or otherwise, or (ii) direct or indirect ownership of 50% or more of the voting securities or interests of that Person.

b. "Authority" means the Stanislaus Regional Water Authority.

c. "City" means the City of Ceres or City of Turlock.

d. "Contract" means the design-build contract for the design and construction of the Project that the Authority intends to enter into with the successful Proposer.

e. "Person" means an individual, corporation, firm, general partnership, limited partnership, limited liability partnership, limited liability company, company, joint venture, association, trust, federal, state or local government agency, or other legal entity.

f. "Project" means the Authority Regional Surface Water Supply Project.

g. "Proposer" means a design-build entity seeking to enter into the Contract and the design-build entity's material subcontractors, engineers, subconsultants, and vendors who would perform Contract work.

3. General

a. Organizational conflicts of interest can occur when, because of business relationships with other Persons or other factors or activities (i) the Proposer is unable or potentially unable to render impartial assistance to or advise Authority, (ii) the Proposer's objectivity in performing the Contract work is or might be impaired, or (iii) the Proposer has an unfair competitive advantage.

b. The Authority recognizes that a Proposer must maintain business relationships with other public and private sector entities in order to continue as a viable business. The Authority will take this reality into account as it evaluates any potential organizational conflict of interest and the appropriateness of proposed measures to mitigate or avoid

potential conflicts. The Authority does not intend to disqualify a Proposer based merely on the existence of a business relationship with another entity. Rather, the Authority would disqualify a Proposer only when the relationship causes a conflict that potentially impairs the Proposer's ability to provide objective advice and service to the Authority and the potential conflict cannot be avoided or adequately mitigated.

c. In addition to this policy, the design-build procurement also shall be subject to applicable California conflict of interest statutes and regulations.

d. While participating in the design-build procurement and, for the successful Proposer, during the term of the Contract, the Proposer and its Affiliates are prohibited from entering into or seeking an agreement with the Authority to provide construction management, inspection, or other services on the Project.

4. Conflicts. An organizational conflict of interest may exist in the following instances:

a. The Proposer or an Affiliate is under contract to the Authority or a City.

b. The Proposer or an Affiliate has performed engineering or other services for (i) the Authority, or (ii) a City in connection with the Project.

c. The Proposer or an Affiliate has obtained any confidential advice or information from the Authority or a City relating to the Project or the design-build procurement.

d. The Proposer or an Affiliate owns real property in a location where there may be a positive or adverse impact on the value of such property based on the design-build work to be performed under the Contract.

e. The Proposer or an Affiliate is providing services to another Person and the Proposer knows or has reason to believe that the other Person's interest are, or may be, adverse to the Authority's or a City's interest with respect to the Project.

f. The Proposer or an Affiliate has a business, consulting, or contracting arrangement with a Person who is employed or retained by the Authority.

g. The Proposer or an Affiliate has a business, consulting, or contracting arrangement with a member of the Authority Technical Advisory Committee.

h. Any circumstance or situation that could violate Government Code sections 1090 to 1099 concerning financial conflicts of interest in connection with the making of local government agency contracts.

5. Procedure

a. A Disclosure of Potential Conflict of Interest Form (see Attachment A) will be provided to and is to be used by each Proposer to assist in screening for potential organizational conflicts of interest. Each Proposer must review this Design Build Conflict of Interest Policy, review and evaluate its potential organizational conflicts of interest under the policy, and complete the Disclosure of Potential Conflict of Interest Form and submit it together with both the design-build procurement statement of qualifications and (if invited

to submit a proposal) the proposal. If the Proposer determines a potential conflict of interest exists, it also must (i) disclose and explain the potential conflict of interest to the Authority, and (ii) propose remedial, mitigation, or other measures to avoid or adequately mitigate the potential conflict. Disclosure of a potential conflict will not necessarily disqualify a Proposer from becoming shortlisted or awarded the Contract.

b. If the Proposer becomes aware of any changes concerning its disclosure form after the submission of the form and before Contract award, the Proposer shall prepare and submit to the Authority an updated disclosure form.

c. The Authority will review the disclosure forms, any disclosed conflicts, and the appropriateness of any proposed remedial, mitigation, or other measures. The Authority also may request additional information from the Proposer. If a Proposer discloses a potential conflict, the Authority will review and consider the information provided by the Proposer and other available information and determine whether the Proposer has an organizational conflict of interest that (i) makes the Proposer unable or potentially unable to render impartial service to the Authority, (ii) impairs or may impair the Proposer's objectivity in performing the Contract work, or (iii) gives the Proposer an unfair competitive advantage in the procurement. If the Authority determines that the Proposer does have an organizational conflict of interest, then the Authority will consider whether the conflict may be avoided or adequately mitigated by the proposed remedial, mitigation, or other measures. If the Authority determines that the Proposer has an organizational conflict of interest and that it cannot be avoided or adequately mitigated, then the Authority will disqualify the Proposer from further participation in the design-build procurement. The determination of a disqualifying conflict of interest shall be at the sole discretion of the Authority.

Attachment A

STANISLAUS REGIONAL WATER AUTHORITY
DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM

The below-named Proposer declares that it has reviewed the Stanislaus Regional Water Authority Design-Build Conflict of Interest Policy and has determined, to the best of its knowledge and belief, that (check one):

A potential organizational conflict of interest exists as follows:

Describe nature of the potential conflict(s) (attach additional sheets as necessary):

Describe measures proposed to mitigate or avoid the potential conflict(s) (attach additional sheets as necessary):

A potential organizational conflict of interest does not exist.

Proposer: _____

Signature: _____

Title: _____

Date: _____

If a potential conflict has been identified, please provide the name, phone number, and email address for a contact person authorized to discuss this disclosure form with the Authority.

Name: _____

Phone: _____

Email: _____

ATTACHMENT E

Certificate Committing to Use a Skilled and Trained Workforce

Certificate Committing to Use a Skilled and Trained Workforce

I certify and commit on behalf of the Respondent as follows:

[Check one provision as applicable]

_____ If awarded the Design-Build Contract for the Project, Respondent and all of its subcontractors at every tier shall implement and comply with the requirements of Public Contract Code sections 22164(c) and 2601-2602 regarding the use of a skilled and trained workforce (as defined at Public Contract Code section 2601) to perform all the work on the Project. Respondent also acknowledges and agrees that contract terms concerning the skilled and trained workforce requirement, including a provision requiring the contractor to prepare and submit monthly reports demonstrating compliance, will be incorporated into the Design-Build Contract.

_____ Respondent is a party to an applicable project labor agreement (as defined at Public Contract Code section 2500) that binds Respondent and all of its subcontractors at every tier to use a skilled and trained workforce. A copy of the agreement is attached to this certificate.

Dated: _____

Signature of Authorized Representative

Name

Title

ATTACHMENT F

Draft Reference Document List

Reference Documents List

Disclaimer

The following is a list of Reference Documents for the Project, which is available to Proposers. These documents are provided to Proposers solely for their informational purposes, and this list shall not be considered an appropriate or exhaustive list of information necessary for interested bidders to meet its obligations under the Service Contract. These documents do not represent the optimal and specific Project features that are defined by the RFP and the Service Contract. The recommendations, conclusions, findings, analyses, results or views expressed in the Reference Documents have not been approved or endorsed by the SRWA, and accordingly should not be construed as representing SRWA policy.

The SRWA neither makes any representation nor warranty with respect to, nor assumes any responsibility for the appropriateness, completeness or the accuracy of the Reference Documents. Proposers are solely responsible for conducting their own independent research and due diligence for the preparation of their Proposals and the subsequent delivery of services under the Service Contract. No information derived from any part of the Reference Documents, the RFP or from the SRWA or any of its agents, employees, contractors, advisors or consultants, shall relieve the Proposer from any risk or from fulfilling all terms of the Service Contract.

No.	Description	Organization	Date	Included with RFQ	Included with RFP
1	1A - Transmission Main Predesign Geotechnical Report	Crawford	July 2018	X	
	1B - Raw Water Pump Station Geotechnical Amendment	Crawford	August 2018 (anticipated)		X
	1C - WTP Predesign Geotechnical Report	Kleinfelder	August 2018 (anticipated)		X
2	2A - Historical Water Quality Assessment TM	Trussell Technologies	Sep 2016	X	
	2B - Source Water Quality Assessment TM	Trussell Technologies	Mar 2018	X	
	2C - Tuolumne River Water Quality Assessment TM Update	Trussell Technologies	TBD		X
3	3A – Bench Test Results TM - Enhanced Coagulation, Ozone, DBP, and Manganese	Trussell Technologies	Oct 2017	X	
	3B - Seasonal Ozone Demand TM	Trussell Technologies	August 2018 (anticipated)		X
	3C - Manganese Removal TM	Trussell Technologies	August 2018 (anticipated)		X
4	4A – Raw Water Pump Station Soil Corrosivity Report	JDH	April 2018	X	
	4B – Raw Water Pipeline Soil Corrosivity Report	JDH	April 2018	X	
	4C – Water Treatment Plant Soil Corrosivity Report	JDH	April 2018	X	

DRAFT – ADDITIONAL DOCUMENTS MAY BE ADDED

No.	Description	Organization	Date	Included with RFQ	Included with RFP
	4D – Ceres Finished Water Transmission Mains Soil Corrosivity Report	JDH	April 2018	X	
	4E – Turlock Finished Water Transmission Mains Soil Corrosivity Report	JDH	April 2018	X	
5	5A – Wet Well Conformed Bid Set Specifications, Volumes 1 and 2	West Yost Associates	Apr 2018	X	
	5B – Wet Well Conformed Bid Set Drawings	West Yost Associates	Apr 2018	X	
6	6A – WTP Predesign TM	Trussell Technologies	July 2018	X	
	6B – Aldrich Road Bridge Replacement Predesign TM	West Yost Associates	September 2018 (anticipated)		X
7	Raw Water and Finished Water Transmission Mains Predesign TM	West Yost Associates	Aug 2018 (anticipated)		X
8	Raw Water Pump Station Predesign TM	West Yost Associates	July 2018	X	
9	Mote Property Phase I Environmental Site Assessment	West Yost Associates	July 2018	X	
10	10A – Draft Environmental Impact Report	Horizon Water & Environment	May 2018	X	
	10B – Draft Environmental Impact Report Appendices	Horizon Water & Environment	May 2018	X	
	10C – Final Environmental Impact Report	Horizon Water & Environment	August 2018 (anticipated)	X	
	10D – Draft Notice of Determination	Horizon Water & Environment	August 2018 (anticipated)	X	
11	Non-Environmental Permit References 11A – Central Valley Regional Water Quality Control Board – Information Related to Waste Discharge Requirements 11B – State Water Resources Control Board – Information Related to General Permit for Stormwater 11C – Division of Drinking Water – Information Related to Permit to Operate 11D – San Joaquin Valley Air Pollution Control District – Information Related to Authority to Construct/Permit to Operate 11E – Stanislaus County – Information Related to Building	Varies	Varies		X

DRAFT – ADDITIONAL DOCUMENTS MAY BE ADDED

No	Description	Organization	Date	Included with RFQ	Included with RFP
	Permit, Encroachment Permit, Transportation Permit, Traffic Control Requirements 11F – City of Turlock – Information Related to Encroachment Permit, Transportation Permit, Traffic Control Requirements 11G – City of Ceres – Information Related to Encroachment Permit, Traffic Control Requirements 11H – City of Hughson – Information Related to Encroachment Permit, Traffic Control Requirements 11I – Burlington Northern Santa Fe Railroad – Information Related to Railroad Crossing License				
12	Utility References 12A – TID Power 12B – AT&T 12C – Level 3 Communications 12D – Stanislaus County 12E – City of Ceres 12F – PG&E 12G – Charter Communications 12H – CVIN LLC (Vast Networks) 12I – City of Turlock	Varies	Varies		X
13	Pavement Investigations	Crawford	TBD		X
14	City of Turlock Water Rate Schedule	City of Turlock	November 2017	X	
15	City of Ceres Water Rate Schedule	City of Ceres	December 2017	X	
16	Stanislaus Regional Water Authority Joint Powers Agreement and Amendments	Stanislaus Regional Water Authority	Varies	X	
17	SRF Construction Contract Guidance 18A - DBE Compliance 18B - Davis-Bacon Compliance 18C – American Iron and Steel	State Water Resources Control Board	Varies		X
18	Operations Technology Predesign TM	West Yost Associates	September 2018 (anticipated)		X



From: Marie Lorenzi, Finance Director

Prepared by: Marie Lorenzi, Finance Director

1. ACTION RECOMMENDED:

Resolution: Adopting the Annual Budget for the Stanislaus Regional Water Authority for the 2018-19 Fiscal Year and Adopting a minimum cash reserve target for 2018-19

2. DISCUSSION OF ISSUE:

In accordance with Article VII (F) of the Joint Powers Agreement (JPA), the Governing Board of the Stanislaus Regional Water Authority (SRWA) is hereby presented with the proposed 2017-18 annual budget for the JPA. The proposed budget is prepared based on the estimated unexpended balance of the JPA's existing contracts plus the estimated administrative costs for 2018-19 based on how those functions are currently being executed.

In addition to the unexpended balance of previously approved contracts, the proposed budget contains appropriations for the following: a *Water Shed Sanitary Survey* and the potential acquisition of Environmental Mitigation credits. There may be other contracts and/or projects that the Board will be asked to consider and approve in 2018-19 as the project progresses. Any budget implications of these items will be included as a budget amendment at that time.

Article XV(F) of the Joint Powers Agreement states that the following with regard to the JPA's cash reserves:

The Governing Board shall determine on an annual basis, prior to the beginning of each fiscal year, a level of reasonable cash reserves to be accumulated by the Authority. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Authority. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Authority shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next fiscal year and serve to reduce each Participant's respective assessment for such subsequent fiscal year.

As part of the 2017-18 budget, Staff recommended and the Board approved a minimum cash reserve sufficient to fund 3 months of projected expenditures. Staff is currently working on perfecting the process used to project the future 3 months expenditures in order to meet this target.

3. FISCAL IMPACT / BUDGET AMENDMENT:

The proposed 2018-19 annual budget for the SRWA totals \$15,717,360. The following summarizes the major components of the 2018-19 proposed budget:

Wet Well Construction contract with Overaa Construction	\$ 7,297,400
Project Management contract with West Yost Associates	4,817,610
Property Acquisitions	1,487,375
Wet Well Construction Management contract with Inferrera Construction Management Group	607,755
Legal services contract (both general and specialized with Bartkiewicz, Kronick & Shanahan	440,505
General Manager Services with Granberg & Associates	300,000
Other project related contracts	732,675
Other administrative expenses	34,040
Total 2018-19 proposed budget	<u>\$ 15,717,360</u>

Funding for the proposed budget is allocated among the City of Ceres, City of Turlock, and the Turlock Irrigation District based on the benefit each participant receives from each component of the project. Administrative costs are shared equally between Ceres and Turlock.

Attached to the Resolution is the detail for the proposed 2018-19 budget along with a second schedule summarizing the project's total revenues and expenses since December 2015.

The Resolution also authorizes the Finance Director to adjust the 2018-19 appropriations related to the following contracts to the previously approved, unexpended portions of their contracts at June 30, 2018 without bringing formal action back before the Board. If any of these contracts is amended beyond the approved contract amount at June 30, 2018, that amendment would also require a budget adjustment

- ✓ West Yost Associates for program management;
- ✓ West Yost Associates for wet well design;
- ✓ Horizon Water & Environment for both Phase I and Phase II environmental services;
- ✓ Bartkiewicz Kronick & Shanahan for outside legal services;
- ✓ C Overaa & Company for wet well construction;
- ✓ Inferrera Construction Management Group, Inc. for wet well construction management services;
- ✓ Gualco Group for government relations services; and
- ✓ Project Finance Advisory Limited for financial evaluation services related to the projected design-build contractor selection;

4. GENERAL MANAGER'S COMMENTS:

Recommend approval.

5. ENVIRONMENTAL DETERMINATION:

N/A

6. ALTERNATIVES:

The Board may approve amendments as desired to the proposed 2018-19 annual budget for the SRWA.



SRWA
 STANISLAUS REGIONAL
 WATER AUTHORITY

BEFORE THE BOARD OF THE STANISLAUS REGIONAL WATER AUTHORITY

**IN THE MATTER OF ADOPTING THE ANNUAL }
 BUDGET FOR THE STANISLAUS REGIONAL }
 WATER AUTHORITY FOR THE 2018-19 FISCAL }
 YEAR AND ADOPTING A MINIMUM CASH }
 RESERVE TARGET FOR 2018-19 }**

RESOLUTION NO. 2018-

WHEREAS, the Finance Director presented the proposed 2018-19 fiscal year budget to the Stanislaus Regional Water Authority (SRWA) Board for their consideration; and

WHEREAS, the SRWA Board reviewed the submitted budget and desires to adopt the 2018-19 fiscal year budget as detailed in Exhibit A to this resolution; and

WHEREAS, contained in the proposed budget are appropriations for various contracts for project expenses approved by the Board during prior fiscal years for which the scope of work is anticipated to span more than one fiscal year; and

WHEREAS, Staff provided their best estimate as to the amount of the previously approved appropriation related to these contracts that should be carried from the 2017-18 fiscal year to the 2018-19 fiscal year; and

WHEREAS, the SRWA Board considered the recommendation by the Finance Director to authorize the automatic adjustment (without additional formal Board action) in fiscal year 2018-19 to the proposed appropriations for these contracts to the actual unexpended amount as of June 30, 2018; Said amount to be determined upon the completion of the accounting for the 2017-18 fiscal year; and

WHEREAS, in accordance with Article XV(F) of the Joint Powers Agreement, Staff recommends a targeted cash reserve level of three (3) months of expenditures as projected by the Finance Director in consultation with the Project Manager and General Manager.

NOW, THEREFORE, BE IT RESOLVED that the Board of the Stanislaus Regional Water Authority does hereby:

1. Adopt the annual budget for the SRWA for the 2018-19 fiscal year in the amount of \$15,717,360 as detailed in Exhibit A. The funding for these expenses is based on cost sharing methodologies approved by each participating agency in relative proportion to the benefit received from the project.

2. Authorize the Finance Director to review the unexpended portions of the following previously approved contracts with

- ✓ West Yost Associates for program management;
- ✓ West Yost Associates for wet well design;
- ✓ Horizon Water & Environment for both Phase I and Phase II environmental services;
- ✓ Bartkiewicz Kronick & Shanahan for outside legal services;
- ✓ C Overaa & Company for wet well construction;
- ✓ Inferrera Construction Management Group, Inc. for wet well construction management services;
- ✓ Gualco Group for government relations services; and
- ✓ Project Finance Advisory Limited for financial evaluation services related to the projected design-build contractor selection;

as of 6-30-2018 and adjust the 2018-19 fiscal year budget for unexpended portions not already carried over to the 2018-19 fiscal year.

3. Approve a target cash reserve balance equal to three (3) months of expenditures as projected by the Finance Director in consultation with the Project Manager and General Manager and authorize the Finance Director to send invoices to the Cities of Ceres and Turlock and the Turlock Irrigation District for their proportionate share of projected expenditures.

PASSED AND ADOPTED at a special meeting of the Board of the Stanislaus Regional Water Authority this 6th day of August, 2018, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Allison Martin, Board Secretary

Stanislaus Regional Water Authority
Proposed Budget for 2018-19

ATTACHMENT A.1

	2015-16 Final	2016-17 Final	2017-18 Amended Budget	2017-18 YTD as of 7-26-2018	2017-18 Projected for Full Year	2018-19 Proposed Budget	Approved Contract	Completed Contract
REVENUES								
33000 Interest Income	(609.16)	(3,092.54)	(750)	0.00	(3,000)			
34900 001 Member Agency Contributions Turlock, City of	(347,487.50)	(1,175,000.00)	(8,272,572)	(1,090,500.00)	(1,160,500)	(8,198,150)		
34900 002 Member Agency Contributions Ceres, City of	(379,561.50)	(1,138,659.60)	(5,889,897)	(656,176.00)	(1,055,176)	(5,456,850)		
TID Contribution		(106,958.25)	(1,919,403)	(109,507.52)	(114,508)	(2,062,360)		
Total Revenues	(727,658.16)	(2,423,710.39)	(16,082,622)	(1,856,183.52)	(2,333,184)	(15,717,360)		
EXPENSES								
Project Expenses								
43011 Gov't Relations / Public Affairs		60,334.40	103,200	57,203.70	61,735	37,350	64,350	27,000
43060 012 Contract Services - Program Management Services	410,015.90	1,383,584.12	6,692,018	1,874,412.45	2,074,140	4,817,610	8,485,618	3,668,012
43060 022 Contract Services - Contractor Financial Evaluation			42,515		0	42,515	42,515	0
43195 Special Legal Counsel	12,547.49	34,496.26	553,920	113,408.77	119,990	440,505	600,960	160,453
43329 Environmental Services	13,545.45	245,700.05	341,050	234,098.49	240,243	100,805	600,292	499,488
43332 Permitting		6,000.00	56,000	6,261.17	6,261	53,500		
51001 Property Acquisition			30,000					
Land/Easement Purchase - Delivery Facilities						1,436,675		
Land/Easement Purchase - Regional Facilities						50,700		
51800 001 SRWA Capital Projects Wet Well Design		290,180.59	99,980	53,511.95	69,237	46,465	390,159	343,693
51801 001 Wet Well Construction - Construction Contract			7,297,400		0	7,297,400	7,297,400 (*)	0
51801 002 Wet Well Construction - Contract Management			612,691	4,935.00	15,985	607,755	612,691 (*)	4,935
51801 005 Wet Well Construction - Environmental Services			278,663	31,193.23	46,625	232,040	278,663	46,625
Watershed Sanitary Survey						100,000		
Environmental Mitigation						120,000		
Administrative Expenses								
43055 002 Consultant Audit		5,400.00	5,750	2,100.00	5,750	4,440	5,750	2,100
43060 021 Contract Services - General Manager			40,000	6,125.00	26,230	300,000	300,000/ year	6,125
43105 003 Interdepartmental Admin Support	23,165.12		49,500					
Clerical		7,121.87		10,175.00	10,175	12,500		
Accounting		8,082.04		8,038.22	8,038	10,000		
Interim JPA Attorney		22,200.00		8,277.02	8,277	0		
43106 001 Administrative Support Ceres - Interim General Manager	32,074.00	105,733.60	125,000	106,176.00	106,176	0		
44001 000 Supplies General	115.51	29.98	500	0.00	0	100		
44035 Photo Copies	45.51	95.57	250	144.17	200	200		
44040 000 Postage General	8.58	486.77	5,000	813.31	1,000	5,000		
47010 Bank Charges	14.91	31.46	100	0.00	50	50		
47040 000 Dues Miscellaneous		375.00	500	750.00	750	750		
47090 001 Testing & Recruitment - General Manager				2,426.00	2,426	0		
47095 000 Training General	0.00		1,000	102.29	102	1,000		
Total Expenses	491,532.47	2,169,851.71	16,335,037	2,520,151.77	2,803,390	15,717,360		
Revenues (over) under Expenses	(236,125.69)	(253,858.68)	252,415	663,968.25	470,206	0		
(Unexpended) Member Contributions	(236,125.69)	(489,984.37)			(19,778)	(19,778)		

(*) includes 10% contingency

Stanislaus Regional Water Authority
Revenue and Expenses Since December 2015

ATTACHMENT A.2

	City of Ceres	City of Turlock	TID	Project to Date Total Since Dec 2015	Actual 2015-16	Actual 2016-17	Projected 2017-18	Projected 2018-19	Total
REVENUES									
Agency Contributions									
Received from Agencies - 2015-16	379,562	347,488		727,049	727,049				727,049
Received from Agencies - 2016-17	1,138,660	1,175,000	106,958	2,420,618		2,420,618			2,420,618
Received from Agencies - 2017-18	1,005,176	1,090,500	109,508	2,205,184			2,205,184		2,205,184
Receivable from Agencies for 2017-18	50,000	70,000	5,000	125,000			125,000		125,000
Received from Agencies - 2018-19 - projected	5,456,850	8,198,150	2,062,360	15,717,360				15,717,360	15,717,360
Interest Income	3,351	3,351		6,702	609	3,093	3,000		6,702
Total Revenues	8,033,598	10,884,488	2,283,826	21,201,913	727,658	2,423,710	2,333,184	15,717,360	21,201,913
EXPENSES									
Government Relations	(79,710)	(79,710)		(159,419)		60,334	61,735	37,350	159,419
Project Management Services	(4,127,304)	(4,361,189)	(196,856)	(8,685,350)	410,016	1,383,584	2,074,140	4,817,610	8,685,350
Contractor Financial Evaluation	(20,839)	(20,839)	(837)	(42,515)				42,515	42,515
Special Legal Expenses	(300,416)	(300,416)	(6,706)	(607,538)	12,547	34,496	119,990	440,505	607,539
Environmental Services (Phase I)	(277,414)	(277,414)	(45,466)	(600,293)	13,545	245,700	240,243	100,805	600,294
Permitting	(32,881)	(32,881)		(65,761)		6,000	6,261	53,500	65,761
Property Acquisition									0
Land/Easement Purchase - Delivery Facilities	(383,161)	(766,179)	(287,335)	(1,436,675)				1,436,675	1,436,675
Land/Easement Purchase - Regional Facilities	(25,350)	(25,350)	0	(50,700)				50,700	50,700
									0
Wet Well Design (West Yost)	(153,154)	(169,734)	(80,722)	(403,610)		290,181	69,237	46,465	405,883
Fees to Stan County-CEQA related to wet well	(1,137)	(1,137)		(2,273)					0
Watershed Sanitary Survey	(50,000)	(50,000)	0	(100,000)				100,000	100,000
Environmental Mitigation	(32,004)	(63,996)	(24,000)	(120,000)				120,000	120,000
Wet Well Construction									0
Construction Contract	(1,946,217)	(3,891,703)	(1,459,480)	(7,297,400)				7,297,400	7,297,400
Construction Management	(166,356)	(332,636)	(124,748)	(623,740)			15,985	607,755	623,740
Environmental (Phase II)	(74,334)	(148,598)	(55,733)	(278,665)			46,625	232,040	278,665
Administrative Support									
External Audit	(7,795)	(7,795)		(15,590)		5,400	5,750	4,440	15,590
General Manager	(163,115)	(163,115)		(326,230)			26,230	300,000	326,230
Clerical Services	(16,024)	(16,024)		(32,047)	4,388	7,122	8,038	12,500	32,047
Accounting Services	(16,093)	(16,093)		(32,187)	5,828	8,082	8,277	10,000	32,187
Interim JPA attorney	(22,663)	(22,663)		(45,325)	12,950	22,200	10,175	0	45,325
Interim General Manager	(121,992)	(121,992)		(243,984)	32,074	105,734	106,176	0	243,984
Supplies and other Miscellaneous Expenses	(6,416)	(6,416)		(12,831)	185	1,019	4,528	7,100	12,831
Total Expenses	(8,024,373)	(10,875,878)	(2,281,884)	(21,182,134)	491,532	2,169,852	2,803,390	15,717,360	21,182,134
Revenues over (under) Expenses - project to date	9,225	8,610	1,943	19,778	236,126	253,859	(470,206)	0	19,778