

**STANISLAUS REGIONAL WATER AUTHORITY**

P.O. Box 642, Modesto, CA 95353  
(209) 577-5213 FAX (209) 577-5477

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## **Special Board Meeting Agenda**

**November 20, 2015**

**10:00 a.m.**

**2<sup>nd</sup> Floor – Room 2001**

**1010 Tenth Street, Modesto CA**

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**Chair**  
**Chris Vierra**

**Vice Chair**  
**Gary Soiseth**

**Director**  
**Bill Zoslocki**

**Interim General Manager**  
**Steve Stroud**

**Board Secretary**  
**Judy Rosa / Jennifer Land**

**Interim General Counsel**  
**Phaedra A. Norton**

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**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, please contact the Board Secretary. 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 Stanislaus Regional Water Authority Board on any item appearing on the agenda, including Consent Calendar and Scheduled items, 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 is available for review on the SRWA's website at [www.stanrwa.org](http://www.stanrwa.org) and in the Board Secretary's Office at 156 S. Broadway, Suite 230, 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. 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**

**2. PROCLAMATIONS, RECOGNITIONS, APPOINTMENTS, ANNOUNCEMENTS & PRESENTATIONS: None**

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

**B. STAFF UPDATES: None**

**C. PUBLIC PARTICIPATION**

This is the time set aside for members of the public to directly address the Stanislaus Regional Water Authority Board on any item of interest to the public that is within the subject matter jurisdiction of the SRWA and to address the Board on any item on the agenda, including Consent Calendar items. 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.

No action or discussion may be undertaken on any item not appearing on the posted agenda, except that the Board may refer the matter to staff or request it be placed on a future agenda.

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

5. **CONSENT CALENDAR:** None

6. **PUBLIC HEARINGS:** None

7. **SCHEDULED MATTERS**

- A. Request to approve amendments to the Joint Powers Authority (JPA) Agreement to allow a Participant to voluntarily withdraw from the SRWA, update the voting structure of the Board, and other housekeeping changes as directed by the Board. (*Stroud*)

**Recommended Action:**

*Motion:* Approving amendments to the Joint Powers Authority (JPA) Agreement to allow a Participant to voluntarily withdraw from the SRWA, updating the voting structure of the Board, and other housekeeping changes as directed by the Board

- B. Request to acknowledge the City of Modesto's request to withdraw from participation in the Stanislaus Regional Water Authority (SRWA). (*Stroud*)

**Recommended Action:**

*Motion:* Acknowledging the City of Modesto's request to withdraw from participation in the Stanislaus Regional Water Authority (SRWA)

8. **MATTERS TOO LATE FOR THE AGENDA**

9. **BOARD ITEMS FOR FUTURE CONSIDERATION**

10. **BOARD COMMENTS**

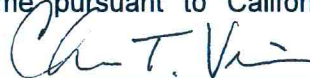
Board members may provide a brief report on notable topics of interest. The Brown Act does not allow discussion or action by the legislative body.

11. **NEXT MEETING DATE**

12. **CLOSED SESSION:** None

13. **ADJOURNMENT**

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



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Chris Vierra, Chair

From: Steve Stroud, Interim General Manager

Prepared by: Phaedra Norton, Interim General Counsel

**1. ACTION RECOMMENDED:**

Motion: Approving amendments to the Joint Powers Authority (JPA) Agreement to allow a Participant to voluntarily withdraw from the SRWA, updating the voting structure of the Board, and other housekeeping changes as directed by the Board

**2. DISCUSSION OF ISSUE:**

On September 24, 2015, the SRWA Board directed staff to amend the JPA Agreement.

In addition, on November 10, 2015, the Modesto City Council provided direction to their staff to withdraw from participation in the SRWA. In order for Modesto to withdraw, it is necessary to amend the JPA to include language that allows for voluntary withdrawal from the Governing Board and the Authority.

Attached is the amended JPA Agreement, in track changes format. The proposed amendments set forth in the attachment reflect the changes necessary to allow for voluntary withdrawal and other housekeeping changes as discussed by the Board.

Once the SRWA Board approves the amendments, the Legislative Body of each Participating Agency will need to approve the amended JPA Agreement. Once approved by the Legislative Bodies and executed by the Participating Agencies, the amended agreement will be filed with the California Secretary of State.

**3. FISCAL IMPACT / BUDGET AMENDMENT:**

N/A

**4. INTERIM GENERAL MANAGER’S COMMENTS:**

The Interim General Manager recommends approval.

**5. ENVIRONMENTAL DETERMINATION:**

N/A

**6. ALTERNATIVES:** None



AMENDED DRINKING WATER SUPPLY PROJECT

Field Code Changed

JOINT EXERCISE OF POWERS AGREEMENT  
BETWEEN  
THE CITIES OF CERES, MODESTO AND TURLOCK,  
FOR THE PURPOSE OF CREATING A JOINT POWERS  
AUTHORITY RESPONSIBLE FOR DECISIONS IN CERTAIN MATTERS  
PERTAINING TO THE MUNICIPAL AND INDUSTRIAL WATER SUPPLY  
PROGRAMS FOR THE AFOREMENTIONED PUBLIC ENTITIES

**THIS AMENDED AGREEMENT**, ~~dated for convenience as of originally entered~~ into on September 27, 2011, is hereby amended and updated on November 20, 2015, and is by and between the Cities of Ceres, Modesto & Turlock, hereinafter "Participants", being municipal corporations duly organized and existing under the laws of the State of California.

**WHEREAS**, the intent of the parties to this Agreement is to create a Joint Powers Authority that would purchase water from the Turlock Irrigation District (hereinafter referred to as "TID"), would treat such water and would make such treated water available At Cost to the Participants; and

**WHEREAS**, the Participants are interested in finding and evaluating surface water supply options and facilities to serve municipal and industrial water to the customers within their service areas; and

**WHEREAS**, the Participants desire to develop a safe, dependable, economical and long-term municipal and industrial water supply system; and

**WHEREAS**, the Participants desire to tailor the ~~p~~Project to individual community needs; and

**WHEREAS**, each of the Participants has heretofore been participating in a Project to seek an alternative surface water supply; and

**WHEREAS**, ~~A~~All Participants desire to establish a joint powers authority by this Agreement so they may collectively discuss, develop and negotiate alternatives regarding the aforementioned Project; and

**WHEREAS**, ~~T~~The Participants desire to secure a reliable source of surface water for municipal and industrial water and other municipal purposes; and

**WHEREAS**, each of the Participants is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law.

**NOW, THEREFORE**, the Participants, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:



## ARTICLE I. DEFINITIONS:

~~Section 1.01. Definitions.~~—Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meaning herein specified.

- A. “Act” means Articles ~~1~~ through 4 (commencing with section 6500) of ~~e~~Chapter 5, ~~d~~Division 7, Title 1 of the Government Code of the State of California.
- B. “Agreement” means this Agreement.
- C. “At Cost” means the actual cost per million gallons of project water paid by each Participant. The components of cost will include engineering costs, construction costs, project operating and maintenance costs, raw water costs, project sunk costs, and financing costs.
- D. “Authority” means the Stanislaus Regional Water Authority established pursuant to this Agreement.
- E. “Bonds” means certificates of participation or bonds of the Authority issued pursuant to Article 2 (commencing with section 6540) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.
- F. “Capital Improvements” means any facility or facilities, whether newly constructed, expanded, rehabilitated, or otherwise acquired, including but not limited to purchase of land or water rights, which are for the purposes of carrying out the purposes of the Project.
- G. “Capital Costs” mean the project-related costs of construction, financing, acquiring, planning, designing, environmental documentation and permitting (including any mitigation costs or filing fees related to permitting) and the funding of a reasonable capital reserve. Capital Costs include the initial Pproject construction and subsequent Capital Costs of Pproject repair, replacement, modification, and improvement.
- H. “Fixed Operating Costs” mean those Pproject-related operating, maintenance and management costs that are incurred irrespective of the amount of water conveyed through the Project, including, but not limited to, consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued to finance the Capital Costs, bond reserve funds, and the cost of bond or financing agreements.
- I. “Variable Operating Costs” mean those Pproject-related operating and maintenance costs and other costs that are dependent on, and vary based on, the volume of water actually conveyed through the Project (including, but not limited to, the costs of water (e.g., supplied under a water supply contract) and power), length or size of the Transmission Piping, or such other method as may be established by the ~~unanimous~~ Governing Board ~~approval~~.

- J. "Construction" means the ~~P~~project-related procurement of materials, parts and equipment, construction, construction management, and related field services including project management activities, contractor management, design assistance during construction, as-built-drawings, and start-up testing.
- K. "Directors" means the representatives of the Participants appointed to the governing body pursuant to Article V.
- L. "Finance Director" shall mean the person designated by Article XVI of this Agreement.
- M. "Governing Board" means the governing board established pursuant to Article V, Paragraph A.
- N. "Fiscal Year" means the period from July 1 to and including the following June 30.
- O. "Participants and Participant" means all of the original parties to this Agreement.
- P. "Project" means the acquisition of a safe, reliable, economical long-term municipal and industrial water supply system or systems, including without limitation, scoping and data collection, program planning, facilities planning, design and construction, program start up and contracting for, and acquisition of water rights and/or water delivery.
- Q. "General Manager" means the person selected by the Governing Board to manage the day-to-day operations of the Project, in an at-will employment relationship to the Board, which shall have overall ~~P~~project management responsibility.
- R. "Public Agency" means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Participants.
- S. "Secretary" means the Secretary of Authority.
- T. "State" means the State of California.
- U. "Ex-officio" means non-voting Director of the Governing Board serving in an advisory capacity.
- V. "Project Facility" or "Project Facilities" means each facility or facilities as identified as a Project Facility in Exhibit B, attached hereto and incorporated herein.
- W. "Dedicated Capacity" means the water capacity of the Project Facilities dedicated to each Participant as set forth in "Exhibit A".

## ARTICLE II. PURPOSE:

- A. The purpose of this Agreement is to establish a Joint Powers Authority responsible for representing the Participants in decisions and matters relating to the Project.
- B. Objectives: The Authority created by this Agreement has the following objectives to accomplish its purpose:
1. Plan and develop the implementation of surface water supplies;
  2. Function as the community focal point for all grant/aid applications related to the Project;
  3. Develop a support staff;
  4. Develop the procedures for establishing and conducting this Authority's coordination functions;
  5. Design, construct, finance, own, and operate the Project Facilities; and
  6. Provide treated water At Cost and on the same terms and on an equitable basis to the Participants.
  7. The method by which the purposes of this Agreement shall be financed is through the sale of Certificates of Participation, the issuance of Bonds, or such other method as agreed upon by the Participants.

## ARTICLE III. FORMATION:

Upon the effective date of this Agreement, there is hereby established the Stanislaus Regional Water Authority pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with Section 6500, hereinafter "Act". As provided in Section 6507 of the Act, the Authority shall be a public entity separate from each of the Participants.

## ARTICLE IV. TERM:

This Agreement will become effective upon the date of its execution by all of the original Participants and shall continue in full force and effect until terminated. This Agreement may be terminated at any time by mutual agreement of all Participants thereof.



ARTICLE V. GOVERNING BOARD:

A. Governing Board: The Authority shall be administered by a Governing Board which shall be comprised of the following: One member from each City Council of each City which is an original Participant. Within 60 days after the execution of this Agreement by the Participants, each Participant shall designate its Governing Board member (Director) and an alternate. Each Director of the Governing Board shall have one vote which shall be equal in weight to the vote of each other Director. ~~In the event of a tie vote, and only in that event, the General Manager shall have a vote equal in weight to that of a Director.~~ The Mayor of each Participant may be a Director in lieu of a City Council person and termination of a Director's status as a Councilmember or Mayor shall constitute automatic termination of that person's Directorship on the Authority's Governing Board. The appointing City may appoint a new Director or alternate Director immediately upon the occurrence of any vacancy in that party's representation, or the alternate Director appointed pursuant to this Article V may serve until a new Director is appointed. Each City shall appoint one alternate Director to serve the Authority during the absence of any regular Director from any meeting of the Authority, and that Director's alternate shall be entitled to participate in all respects as a regular Director of the Authority. The Governing Board shall have Ex-officio Directors as the Governing Board shall from time-to-time designate. Each Ex-officio Director shall serve in a non-voting, advisory capacity.

B. 1. Automatic termination from the Governing Board and the Authority: Prior to commencement of the construction of the Project Facilities an agreement or agreements detailing ownership and operation will have to be consummated. Failure of any Participant or Participants to approve and endorse such agreement or agreements shall automatically terminate the entity from participation in the pProject and terminate their membership in the Authority.

B.2. Voluntary withdrawal from the Governing Board and the Authority: Any Participant may withdraw from membership in the Authority at any time prior to the completion of Phase I work for the project (Phase I work includes environmental work and environmental compliance, but does not include construction) by providing ten (10) days written notice to the other Participants. Because the City of Modesto has provided ten (10) days written notice of its decision to withdraw, given to the other Participants on November 20, 2015, its withdrawal shall be effective upon the effective date of this Amended Agreement.

If a Participant withdrawals, the Participant shall be financially responsible for its share of any and all costs incurred up through the effective date of the termination, unless the Participants have agreed otherwise; the Participants hereby agree to the limitations on financial responsibilities and liabilities set forth in the City of Modesto's November 20, 2015 written notice of withdrawal.

Upon withdrawal by a Participant, the Board shall have the authority to update

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and amend this Agreement to reflect the Participant's withdrawal including making amendments to Article V, Section C without further action of the legislative bodies of the Participants.

- C. Meeting: The Governing Board shall hold at least one (1) regular meeting each calendar quarter. All meetings shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.). At such time that Modesto is no longer a Participant, a minimum of ~~three (3)~~two (2) Directors shall constitute a quorum for the transaction of business and ~~the affirmative vote of at least three (3) Directors~~a majority vote of the entire Board shall be required for the approval of any action taken by the Governing Board, unless otherwise stated herein.

The Secretary shall keep minutes of all meetings of the Governing Board and shall, as soon as possible after each meeting, forward a copy of the minutes to each Director of the Governing Board.

- D. Officers: The Governing Board shall select a Chair and a Vice Chair. It shall then appoint a General Manager, a Secretary and any other officers as determined necessary by the Governing Board. The Chair shall preside at all Authority meetings. The Vice Chair shall act in place of the Chair at meetings should the Chair be absent. All officers shall serve at the pleasure of the Board.
- E. Bylaws: The Governing Board may, from time to time, adopt such bylaws and regulations for the conduct of its meetings as are necessary for the purposes herein.

The duties of certain officers are as follows:

1. The Chair of the Governing Board shall be elected annually by the Governing Board ~~on a rotating basis~~ and the Chair shall coordinate the work of officers and committees of the Authority in order that the Authority's purposes may be promoted; preside at all meetings of the Authority; appoint such ad hoc committees as may be desirable, subject to the approval of the Governing Board; serve as the official spokesperson of the SRWA; ~~perform such other duties as assigned to him or her by the Governing Board;~~ and be the approved signatory on legal or formal documents of the Authority; and perform such other duties as assigned to him or her by the Governing Board.
2. The Vice Chair shall assist the Chair in the performance of his or her duties; perform the duties of the Chair in the absence or inability of that officer to act; and perform such other duties as may be assigned to him or her by the Governing Board.



3. The General Manager shall be in charge of the day-to-day operations of the ~~p~~Project, including but not limited to, operations, maintenance, budget and capital projects. The General Manager shall serve at the pleasure of the Governing Board, and shall have the power to hire and discipline employees in accordance with the personnel rules of the Authority.
4. General Counsel. The General Counsel shall provide legal advice and services to the Authority. The General Counsel shall be appointed by and shall serve at the pleasure of the Governing Board.
5. The Secretary shall keep, or cause to be kept, accurate records of the proceedings of all meetings of the Authority; be responsible to prepare, or cause to be prepared, meeting schedules, notices, resolutions and agendas; make such records of the proceedings available to the Governing Board Directors for their approval at each meeting; keep Directors and agencies informed of meeting proceedings and activities of the Authority; conduct all necessary correspondence of the Authority; be responsible for preparing, or causing to be prepared, any annual reports required by law; prepare such notices and reports as may be requested by the Governing Board; prepare, or cause to be prepared, periodic reports on the financial status of the Authority; and be responsible for coordinating the annual audit of the Authority, as required by this Agreement.

ARTICLE VI. POWERS OF THE AUTHORITY:

Consistent with Government Code Section 6509, so long as Modesto remains a Participant, ~~T~~the Authority shall have and shall exercise powers attributable to the City of Modesto (the 6509 agency), except as herein prohibited and otherwise prohibited by law. At such time that Modesto is no longer a Participant, the authority shall have and shall exercise the powers attributable to the City of Turlock and it shall become the 6509 agency. The Authority is hereby authorized, in its own name acting through the Governing Board, to do all acts necessary or convenient for the exercise of its powers to accomplish its objectives, including, but not limited to:

- A. Employ agents, consultants, advisors, independent contractors, and employees;
- B. Make and enter into contracts;
- C. Acquire, hold and convey real and personal property;
- D. Incur debts, obligations and liabilities;
- E. Accept contributions, grants, or loans from any public or private agency or individual of the United States or any department, instrumentality, or agency



thereof for the purpose of financing its activities;

- F. Invest money that is not needed for immediate necessities, as the Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code;
- G. Reimburse Directors for reasonable and necessary expenses incurred in performing the duties of their office;
- H. Reimburse Participants for the direct costs incurred in the formation of the Authority and continued testing of the source waters.
- I. Sue and be sued in its own name, all as provided in Section 6508 of the Act, as well as the power of eminent domain;
- J. Exercise any powers, as agreed to by the parties; **and**
- K. Do all other acts reasonable and necessary to carry out the purpose of this Agreement.;
- L. To acquire, construct, manage or maintain or operate any building, works or Capital improvements.; and
- M. To levy and collect revenue and funding as authorized by law.

Such powers shall be exercised in the manner provided by the Act and except as expressly set forth herein, subject only to the restriction of exercising its powers, imposed upon the ~~City of Modesto~~<sup>6509</sup> agency in the exercise of similar powers. Notwithstanding the generality of the foregoing, and except as expressly authorized by this Agreement including, but not limited to, Article VII, IX and XV, the Authority shall have no power to bind any of the Participants to any monetary obligation whatsoever other than expressly authorized by the mutual written consent of the Participants. The Authority shall be strictly accountable for all funds received, held, and disbursed by it.

#### ARTICLE VII. DUTIES AND RESPONSIBILITIES OF THE AUTHORITY:

- A. The Authority shall perform various functions that are necessary to fulfill its objectives and goals and carry out the purposes of the Authority.
- B. The Authority shall function as the community focal point for all grant/aid applications in regard to the Project.
- C. The Authority shall develop the necessary support staff.

- D. The Authority shall develop the procedures for establishing and conducting the Authority's functions.
- E. The Authority shall establish a funding basis for initial and sustained operations.
- F. Within 120 days after the first meeting of the Governing Board, and thereafter prior to the commencement of the fiscal year, the Governing Board shall adopt a budget.
- G. The Authority shall prepare a budget for the Project at least thirty (30) days prior to the beginning of each fiscal year.
  - 1. All Project budgets shall include fixed operating, variable operating, and Capital costs.
  - 2. Budget principle: In preparing and reviewing budgets for the Project, the Authority shall be guided by the principle that the Project shall be operated in as economic manner as practical in accordance with generally accepted municipal and industrial water practices as evidenced by similar size municipal and industrial water systems in Northern California.

ARTICLE VIII. FUNDS DEPOSIT IN PARTICIPANTS TREASURY:

- A. The Authority may accept and expend funds from public or private sources, subject to the restrictions of law, for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.
- B. Subject to the provisions of this Agreement and any applicable law, the Finance Director shall receive, have custody and disburse Authority funds pursuant to the procedures established by the Authority.

ARTICLE IX. EXPENDITURES AND OBLIGATIONS:

- A. The Directors and every other official or employee of the Authority shall be limited in the making of expenditures or incurring of liabilities to the amount of the appropriations allowed by the budget as adopted by the Governing Board or thereafter revised by the Board, in accordance with procedural rules for expenditures and obligations of funds as adopted by the Governing Board.
- B. Except as otherwise provided by law, warrants issued, expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the

Authority or a liability of any party to this Agreement.

- C. Pursuant to Section 6508.1 of the [California Government Code Act](#), the debts, liabilities, and obligations of the Authority shall be those of the Authority and not of the Participants in this Joint Powers Agreement.

#### ARTICLE X. PURCHASES:

The Governing Board of the Authority shall designate a Purchasing Agent for the Authority.

#### ARTICLE XI. RECORDS AND ACCOUNTS:

- A. The Authority shall be strictly accountable for all funds.
- B. The Governing Board of the Authority shall cause to be kept proper books, ~~of~~ records and accounts in which a complete and detailed entry shall be made of all of the transactions of the Project including all receipts and disbursements. The books and records shall be kept in accordance with Section 6505 of the Act and rules and regulations of the State Controller. The books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the Participants in this Agreement.
- C. The Governing Board of the Authority shall cause to be prepared an annual financial and operational report pursuant to Section 6505 of the Act, including a report of all receipts and disbursements of funds which shall be available at the office of the Secretary and a copy thereof shall be delivered to each party to this Agreement. The report shall be filed within 180 days of the close of each fiscal year.
- D. The Finance Director, within 100 days after the close of each Fiscal Year, shall give a ~~complete preliminary~~ written [auditor](#) report of all financial activities [to the Governing Board, and give a final written auditor report no later than January of each year for the previous fiscal year](#) ~~for such fiscal year to the Participants to this Agreement.~~

#### ARTICLE XII. CLAIMS:

All claims against the Authority, including but not limited to contested claims by public entities, or public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title I of the Government Code or in accordance with claims procedures approved by the Treasurer and established by



the Governing Board of the Authority pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code.

ARTICLE XIII. ALLOWANCE OF CLAIMS BY FINANCE DIRECTOR:

The Finance Director shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Governing Board of the Authority in any of the following cases: Expenditures which have been authorized by purchase orders issued by an officer of the Authority authorized by said Governing Board to make purchases. Expenditures which have been authorized by contract, resolution or order of the Governing Board acting within the scope of its authority.

ARTICLE XIV. INSURANCE/BONDS:

The Authority shall at all times maintain worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the Authority, its officers, employees or agents and the Participants to this Agreement. Such insurance may be maintained in whole or in part in the form of self-insurance.

ARTICLE XV. FINANCING:

- A. It is the intent of the Participants that the Joint Powers Authority shall become financially self-sufficient. Each of the Participants shall contribute a percentage of the budget based on its anticipated participation as set forth in Exhibit "A" attached hereto.
- B. Each of the Participants agrees that its Water Enterprise Fund or such other fund as a Participant may determine, but not the Participant's General Fund, shall be responsible for paying its respective share of the budget as set forth in Exhibit "A" attached hereto.
- C. Each of the Participants to this Agreement may, but is not required to, contribute additional money, office space, furnishings, equipment, supplies or services as the respective Participants, thereof may deem appropriate.
- D. Funds may also be derived through State subvention funds, Federal grants, bonds or other available sources. The Authority may also apply for available State or Federal funds and shall make new and additional applications from time to time as appropriate. The Authority may also establish and collect various fees, leases or rents as may be authorized by law.
- E. The initial budget shall not exceed \$100,000.00 unless specifically authorized by

unanimous vote of the Governing Board.

- F. 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.

ARTICLE XVI. FINANCE DIRECTOR DESIGNATED AS TREASURER:

The ~~Finance Director of Modesto is hereby designated to be Treasurer of~~ Governing Board of Authority shall designate a Finance Director for the Authority. Subject to the applicable provisions of any resolution, trust agreement or indenture authorizing the sale of certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Finance Director is designated as the depository of the Authority to have custody of all money of the Authority from whatever source in accordance with Section 6505.5 of the LawAct, and, as such, shall have the powers, duties and responsibilities specified in such Section 6505.5 of the LawAct; provided, however, that moneys of the Authority shall be kept separate and apart from, and shall not be commingled with, ~~money~~ ies of the Finance Director's City.

ARTICLE XVII. AUDITOR:

The Auditor, ~~being of~~ shall be from the same public agency as the Finance Director, and is hereby designated as Auditor of the Authority in accordance with Section 6505.5 of the LawAct. Subject to the applicable provisions of any resolution, trust agreement, or indenture authorizing the sale of Certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Auditor shall have the powers, duties and responsibilities specified in such Section 6505.5 of the LawAct.

ARTICLE XVIII. CHARGES FOR SERVICE OF TREASURER, ~~AND~~ AUDITOR, ~~AND~~ SECRETARY:

~~City Council of the City of Modesto, being t~~ The governing body City Council of the ~~same public entity~~ participating agency that provides the services of ~~as~~ the Treasurer, ~~and~~ Auditor, and Secretary shall determine the charges to be made against the Authority for such services of the Secretary, and the Treasurer, ~~the~~ Auditor, as provided in Section 6505.5 of the LawAct. All charges assessed by City's Council shall relate to



direct costs incurred by the City of ~~Modesto~~ for the services provided to the Authority by the Depository, ~~and the Auditor,~~ and Secretary and are subject to the approval of the Governing Board.

#### ARTICLE XIX. BONDING PERSONS HAVING ACCESS TO PROPERTY:

The Participants acting through the Governing Board shall designate the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond with the Secretary of the Authority in the amount fixed by the Governing Board, all as required by Section 6505.1 of the LawAct. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond obtained in connection with another public office.

#### ARTICLE XX. PARTICIPANT EMPLOYEES:

Each Participant shall assume all liability related to its employees who provide services in connection with this Agreement and shall indemnify and hold harmless the Authority, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising therefrom. 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.

#### ARTICLE XXI. FINANCIAL ACCOUNTABILITY AND REPORTING:

The Authority shall provide for strict accountability of all funds and report of all receipts and disbursements, in accordance with Section 6505 of the LawAct, and shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any resolution of the Authority providing for the sale of Certificates of Participation or the issuance of Bonds. The Authority shall maintain during the term of the Agreement, appropriate books, records, accounts, and files relating to its revenues and expenses, all of which shall be open to inspection at all reasonable times by the Participants, the Directors, and their designated representatives.

#### ARTICLE XXII. CONTRACT WITH CERTIFIED PUBLIC ACCOUNTANT:

The Auditor of the Authority shall either make or contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, as required by Section 6505 of the LawAct. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally acceptable auditing standards. When such an audit of accounts and records is made by a certified public accountant, a report thereof shall be filed with each



Director and with each Participant. Such report shall be filed within six (6) months of the end of the fiscal year under examination. Any costs of the audit, including contract with, or employment of, certified public accountants in making an audit pursuant to this section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the [eat](#) purpose.

#### ARTICLE XXIII. ADJUSTMENTS TO DEDICATED CAPACITY

Any two or more of the Participants may adjust their respective Dedicated Capacity shares and redistribute their respective shares among themselves, so long as the total Dedicated Capacity share percentages of the Participants in the redistribution remains the same after the redistribution. The redistribution may be temporary or permanent. The redistribution shall be in writing, approved and signed by the involved Participants who are participating in the redistribution, and filed with the Authority. If temporary, the writing shall indicate the effective dates of the redistribution. The redistribution also may reallocate the Participants' respective payment shares under Exhibit A, in which case the writing also shall indicate the changes to the Exhibit A shares, whether temporary or permanent, and, if temporary, the effective dates of the changes.

#### ARTICLE XXIV. BREACH:

If default shall be made by a Participant of any covenant contained in the Agreement, such default shall not excuse the other Participants from fulfilling their obligations under the Agreement and the other Participants shall continue to be liable for obligations herein contained. The Participants hereby declare that the Agreement is entered into for the benefit of the Authority created hereby and the Participants hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each Participant hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of any one right or remedy shall not impair the right of the Authority to any or all other remedies.

#### ARTICLE XXV. DISPOSITION OF ASSETS ON TERMINATION OF AGREEMENT:

At the termination of this Agreement, all funds on hand shall be returned to the respective Participants as nearly as possible in the proportion to the contribution that Participant made to the funds then on hand. Any equipment, furniture or furnishing that can be identified as having been contributed by any Participant to this Agreement shall be transferred to and become the property of the Participant contributing such equipment, furniture or furnishings. Any other property of the Authority shall be converted to cash and distributed among the Participants to this Agreement in proportion to their contributions.

#### ARTICLE XXVI. NOTICES:

Notices hereunder shall be sufficient if delivered to:

<del>Art deWerk</del>	<del>Greg Nyhoff</del>	<del>Roy Wasden</del>
City Manager	City Manager	City Manager
City of Ceres	City of Modesto	City of Turlock
2720 Second Street	P.O. Box 642	156 South Broadway, <a href="#">Ste. 230</a>
Ceres, CA 95307	Modesto, CA 95353	Turlock, CA 95381

ARTICLE XXVII. MISCELLANEOUS:

- A. The article headings herein are for convenience only and are not to be construed as modifying or governing the language of the article referred to.
- B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.
- C. This Agreement is made in California under the Constitution and laws of California and is to be so construed.
- D. To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there will be one or more additional agreements executed and amended from time to time which will further define the rights and obligations of the participants regarding owning, operating, maintaining and financing the Project.
- E. This Agreement may be amended any time by mutual agreement of the Participants provided that before any amendments shall be operative or valid, they shall be reduced to writing and executed by all of the Participants.

ARTICLE XXVIII. PARTIAL INVALIDITY:

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXIX. INCORPORATION OF THE ACT:

Notwithstanding any other provision of this Agreement, it is the intent of the Participants that all actions of the Authority and the Governing Board shall be in conformance with the Act or regulations adopted pursuant thereto as they exist on the effective date of this Agreement or as they may be subsequently amended.

ARTICLE XXX. LIMITATION ON FISCAL OBLIGATIONS AND PARTIES' LIABILITY:

Notwithstanding the general powers of the Authority set forth in this Agreement, the Authority shall not incur any financial or contractual obligations unless it has already obtained sufficient funds or a binding commitment for funds to pay for the full cost of said obligations. The Authority shall specify in all contracts for purchase of goods and services that responsibility for payment is that of the Authority and shall not be the debts, liabilities or obligations of the Participants to this Agreement or any of them.

ARTICLE XXXI. INDEMNIFICATION:

The Authority shall indemnify, defend, and save harmless each Participant, their officers, agents and employees, from and against any and all claims and losses whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services-, materials or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury or death arising out of, relating to, or connected with the Authority's performance of its obligations under this Agreement.

ARTICLE XXXII. CONFLICT OF INTEREST CODE:

The Authority shall adopt a Conflict of Interest Code in accordance with the Political Reform Act (commencing with Section 81000 of the Government Code of the State-).

ARTICLE XXXIII. CERTIFICATES OF PARTICIPATION AND BONDS:

The Authority shall have the power to sell or cause to be sold Certificates of Participation and to sell bonds from time to time in accordance with the provisions of the Act for the purpose of raising funds necessary to finance or refinance the Project and to carry out its powers under this Agreement.



**IN WITNESS WHEREOF**, the Participants have caused their names to be affixed hereto by the proper officers thereof. This Agreement shall be effective as of the date and year first written above.

CITY OF CERES

By: \_\_\_\_\_  
~~Art deWerk~~ Toby Wells, ~~Acting~~ City

Manager  
ATTEST:

By: \_\_\_\_\_  
~~CINDY HEIDORN~~ Lori Frontella, ~~Interim~~ City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
~~MICHAEL LYIONS~~ Tom Hallinan, City Attorney

CITY OF MODESTO

By: \_\_\_\_\_  
~~GREG NYHOFF~~ Jim Holgersson, City

Manager  
ATTEST:

By: \_\_\_\_\_  
Stephanie Lopez, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
~~ROLAND STEVENS~~ Adam E. Lindgren, ~~Assistant~~ City Attorney

CITY OF TURLOCK

By: \_\_\_\_\_  
Gary Soiseth, Mayor OR  
~~Roy Wasden~~ Michael I. Cooke,  
Interim City Manager

ATTEST:

By: \_\_\_\_\_  
~~RHONDA GREENLEE~~ Kellie E. Weaver, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

~~PHAEDRA NORTON~~ [Phaedra A. Norton](#), City Attorney

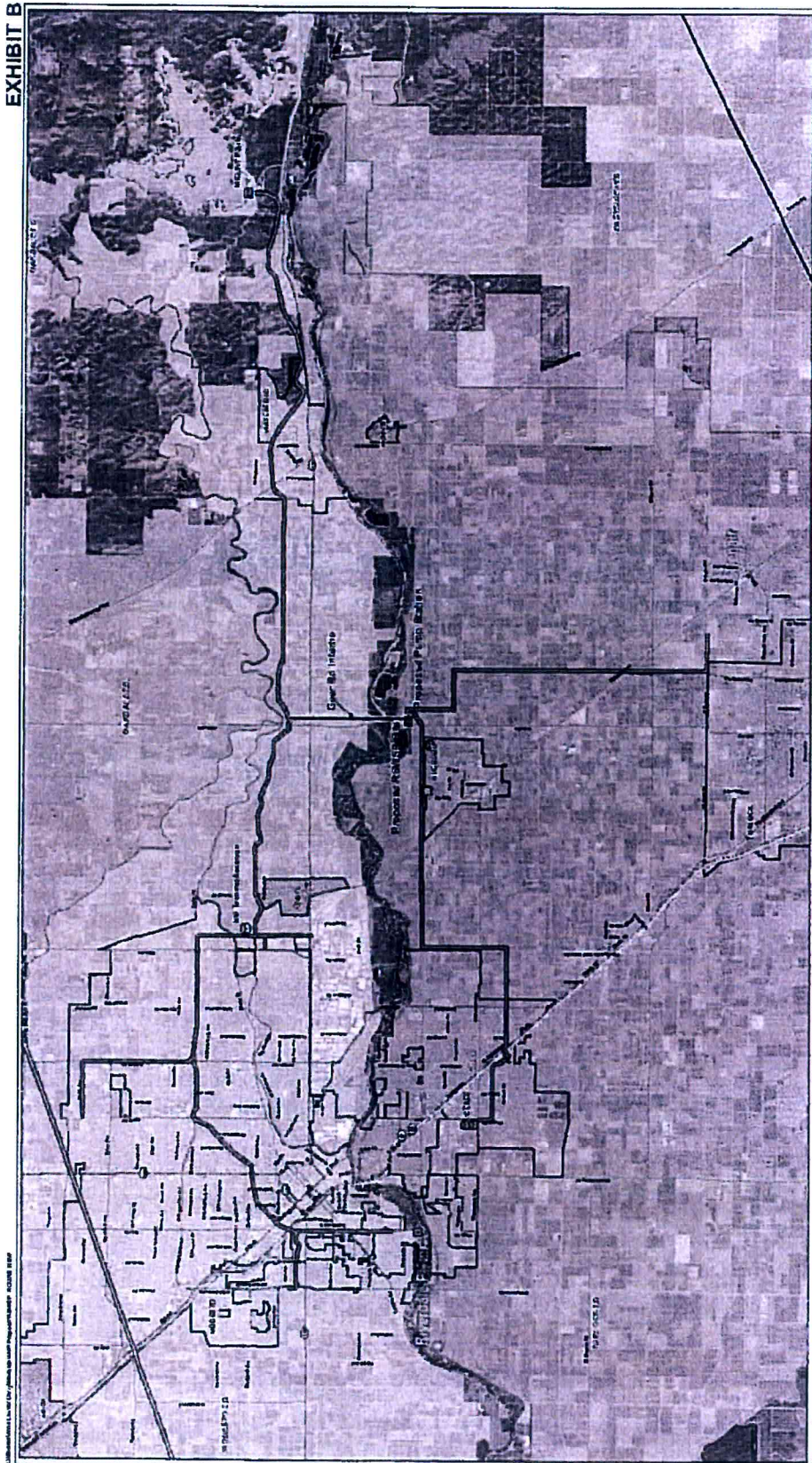
**EXHIBIT "A"**

**JPA FINANCING PERCENTAGES\***

	<b>Phase 1</b>	<b>Phase 2</b>
<b>TURLOCK</b>	<b>56.0%</b>	<b>38.0%</b>
<b>CERES</b>	<b>22.0%</b>	<b>31.0%</b>
<b>MODESTO</b>	<b>22.0%</b>	<b>31.0%</b>

**\*Based on percentage of capacity**





**REGIONAL SURFACE WATER SUPPLY PROJECT**  
 Potential Alternative Project Phasing Plans  
 (last revised July 29, 2011)

**Legend**

County/County	USA Major Road	Existing Water Treatment Plant	Proposed RSWSP Pipelines
City/County Service Area	Freeway or Other Major Road	Proposed Water Treatment Plant	Existing MID Transmission Main
Water District Boundary	Major Road Less Important than a Freeway	Existing Reservoir	SFPUC San Joaquin Pipeline
EASTVALE WD	Other Major Road	Proposed RSWSP Reservoir	Potential RSWSP Intertie
MOBILE ID	Secondary Road	Proposed Pump Station	Geer Rd Intertie
SOUTH SAN JOAQUIN ID	Local Unimproved Road	Wastewater Treatment Plant	
TULLOCK ID	Imperfect Local Road		
De Puma/Wee District			

From: Steve Stroud, Interim General Manager

Prepared by: Phaedra Norton, Interim General Counsel

**1. ACTION RECOMMENDED:**

Motion: Acknowledging the City of Modesto's request to withdraw from participation in the Stanislaus Regional Water Authority (SRWA)

**2. DISCUSSION OF ISSUE:**

On November 10, 2015, the Modesto City Council provided direction to their staff to withdraw from participation in the SRWA.

The City of Modesto has submitted the attached Notice of Withdrawal from the SRWA. The withdrawal will be effective once the Legislative Body of each participating agency approves the amended JPA.

**3. FISCAL IMPACT / BUDGET AMENDMENT:**

If the City of Modesto's request to withdraw from participation is approved, Modesto will be responsible for its share of costs incurred through the effective date of the termination.

**4. INTERIM GENERAL MANAGER'S COMMENTS:**

The Interim General Manager supports the Board's recommendation.

**5. ENVIRONMENTAL DETERMINATION:**

N/A

**6. ALTERNATIVES: None**





November 20, 2015

Stanislaus Regional Water Authority  
P.O. Box 642  
Modesto, CA 95353

Toby Wells, City Manager  
City of Ceres  
2720 Second Street  
Ceres CA 95307

Michael Cooke, Interim City Manager  
City of Turlock  
156 South Broadway, Suite 230  
Turlock, CA 95381

Subject: Notice of Withdrawal from SRWA

Dear Toby and Michael,

At its meeting held on November 10, 2015, the Modesto City Council discussed and considered whether the City of Modesto should continue as a participant in the Stanislaus Regional Water Authority (SRWA). Following the presentation of a staff report on this topic, the City Council moved that Modesto try to remove itself from the SRWA JPA. The motion passed unanimously.

The City Council has not yet reviewed the attached draft revisions to the JPA agreement that would provide it with permission to withdraw. It has been reviewed by the City Attorney who will advise the City's representative on the JPA that as amended the JPA Agreement would permit the City of Modesto to withdraw immediately upon the effective date of the amended JPA and thus has been drafted in furtherance of the City Council's expressed desire to remove itself from the JPA. Following approval of this amended JPA by the SRWA Board, the amended JPA will be placed on the next City Council agenda for its consideration and approval with the expectation that Turlock and Ceres City Councils would do likewise, with the goal of having this amendment and the City's withdrawal effective before the end of the calendar year.

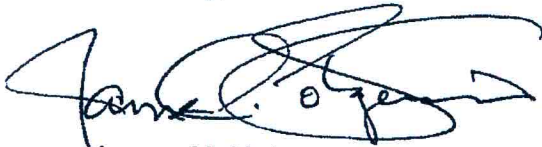


November 18, 2015

Toby Wells, Ceres City Manager  
Michael Cooke, Turlock Interim City Manager  
Notice of Withdrawal from SRWA

Upon withdrawal, Modesto will be responsible for its share of routine costs incurred for SRWA through November 30, 2015. Modesto will not be responsible for any costs or liabilities arising out of outside service consultant contracts or other contracts, including legal, environmental or other contracts, entered into by SRWA on or after November 20, 2015. Modesto will provide the SRWA an agreed upon procedures audit report of the SRWA financial transactions incurred from July 1, 2015 through November 30, 2015. Modesto will not be responsible for any additional audit costs incurred by the SRWA after November 30, 2015 for completion of the SRWA FY15/16 financial audit. It is anticipated that the transfer of all financial responsibilities for SRWA shall be completed by December 31, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "James N. Holgersson", written over a horizontal line.

James N. Holgersson  
Modesto City Manager

Attachment

cc: Larry Parlin, Director of Utilities  
Adam Lindgren, City Attorney