

**SAN GORGONIO PASS WATER AGENCY**  
**1210 Beaumont Avenue, Beaumont, CA**  
**Board of Directors Engineering Workshop**  
**Agenda**  
**September 8, 2014 at 1:30 p.m.**

**1. Call to Order, Flag Salute and Roll Call**

**2. Public Comment**

Members of the public may address the Board at this time concerning items relating to any matter within the Agency's jurisdiction. To comment on specific agenda items, please complete a speaker's request form and hand it to the board secretary.

**3. EBX Operations and Maintenance Agreement Discussion\* (Page 2)**

**4. Review Procurement Policy\* (Page 32)**

**5. Flume Update – Discussion of Alternative Supply Study**

**6. Construction Update**

**7. Announcements**

- A. Water Conservation & Education Workshop, September 11, 2014 at 1:30 p.m.
- B. Regular Board Meeting, September 15, 2014 at 1:30 p.m.
- C. Finance and Budget Workshop, September 22, 2014 at 1:30 p.m.
- D. San Gorgonio Pass Regional Water Alliance – Technical Committee Meeting  
- September 24, 2014 at 4:30 p.m. – Banning City Hall Conference Room
- E. San Gorgonio Pass Regional Water Alliance Meeting  
- September 24, 2014 at 6:00 p.m. – Banning City Council Chambers

**8. Adjournment**

**\*Information included in Agenda Packet**

(1) Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for Public inspection in the Agency's office at 1210 Beaumont Avenue, Beaumont during normal business hours. (2) Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Agency's office, located at 1210 Beaumont Avenue, Beaumont, California 92223, during regular business hours. When practical, these public records will also be made available on the Agency's Internet Web site, accessible at <http://www.sgpwa.com>. (3) Any person with a disability who requires accommodation in order to participate in this meeting should telephone the Agency (951 845-2577) at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

## SCOPE OF WORK

JOINT POWERS AGREEMENT AMONG  
THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES,  
THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT,  
AND THE SAN GORGONIO PASS WATER AGENCY  
RELATING TO THE OPERATION AND MAINTENANCE OF  
THE EAST BRANCH EXTENSION

WHEREAS, the State of California, Department of Water Resources, hereinafter referred to as "State," is responsible for constructing, operating, and maintaining the State Water Project, hereinafter referred to as "SWP," which includes the East Branch Extension, of the California Aqueduct, hereinafter referred to as "EBX," and which is defined in Paragraph 1a of this Agreement; and

WHEREAS, the San Bernardino Valley Municipal Water District, hereinafter referred to as "SBVMWD", has entered into a long-term water supply contract with the State dated December 30, 1960 and subsequently amended, hereinafter referred to as "SBVMWD Water Supply Contract"; and

WHEREAS, the San Gorgonio Pass Water Agency, hereinafter referred to as "SGPWA", has entered into a long-term water supply contract with the State dated November 15, 1963 and subsequently amended, hereinafter referred to as "SGPWA Water Supply Contract" and collectively with the SBVMWD Water Supply Contract as "Water Supply Contracts"; and

WHEREAS, these Water Supply Contracts provide that the State will supply certain quantities of water to SBVMWD and SGPWA, and provide that SBVMWD and SGPWA shall make certain payments to the State, and set forth the terms and conditions of such supply and such payments; and

WHEREAS, SBVMWD at the time of execution of this Agreement has constructed, operated, and maintained transportation facilities within its service area without State participation. Those facilities include the Phase I and II Foothill Pipeline, Santa Ana River Crossing (SARC) Pipeline, Morton Canyon Connector Pipeline (~~need to verify ownership with SWPAO~~), Phase I, II and III Greenspot Pipeline, Yucaipa Pipeline, Foothill Pump Station; and

WHEREAS, SGPWA and SBVMWD entered into an agreement called the "Joint Facilities Agreement" on July 16, 1970 (the "First Joint Facilities Agreement"), an agreement called the "Second Joint Facilities Agreement" on February 10, 1986 and an agreement called the "Third Joint Facilities Agreement" on (ADD DATE) under which SGPWA purchased certain capacity rights in SBVMWD's facilities; and

WHEREAS, both SGPWA and SBVMWD have assigned to the State their capacity rights and right of way in certain existing SBVMWD transportation facilities through the "Agreement to Assign Capacity Rights and Right of Way in Existing Facilities," dated July 14, 1998, which is attached hereto, as Exhibit A — Attachment 3; and, which has been amended in a document referred to below; and

WHEREAS, as part of the design and construction of the EBX Phase I project, the Parties entered into a final design and construction agreement, entitled "California Aqueduct East Branch Extension to San Gorgonio Pass Participation Agreement [Final Design and Construction]", dated August 20, 1996, which is attached hereto as Exhibit A — Attachment 4, and which has been amended in a document referred to below; and

WHEREAS, the Parties amended the Final Design and Construction Agreement, referred to above, and the Agreement to Assign Capacity Rights and Right of Way in Existing Facilities, referred to above, in a single document entitled "Amendment 1 to California Aqueduct East Branch Extension to San Gorgonio Pass Participation Agreement [Final Design and Construction] and to California East Branch Extension to San Gorgonio Pass Agreement to Assign Capacity Rights and Right of Way in Existing Facilities," dated August 20, 1999, which is attached hereto as Exhibit A — Attachment 5 ; and

WHEREAS, the State has completed the design and construction of the Phase I and subsequent improvements of transportation, pumping, turnout, and related facilities for the East Branch Extension and is designing and constructing the Phase II transportation, pumping, turnout, reservoirs and related facilities for the East Branch Extension. Phase II for the East Branch Extension is anticipated to be operational in 2016; and

WHEREAS, SBVMWD has constructed and owns the Foothill Pump Station upstream of the Greenspot Pump Station on the Foothill Pipeline. SBVMWD shall continue to operate and maintain the Foothill Pump Station in coordination with the EBX to ensure adequate deliveries to the Greenspot Pump Station, but that such Foothill Pump Station operation and maintenance shall not be governed by this Agreement; and

WHEREAS, SBVMWD and SGPWA are contractually obligated to pay one hundred percent (100%) of all costs for the construction, operation, and maintenance of the EBX; and

WHEREAS, SBVMWD and SGPWA have a substantial financial interest in assuring that the EBX will be operated and maintained in a cost effective manner, inasmuch as SBVMWD, SGPWA, and their water customers will be paying one hundred percent (100%) of the costs of the EBX; and

WHEREAS, SBVMWD and SGPWA are qualified to provide assistance to the State in the operation and maintenance of the EBX, and will perform similar activities for any local extensions from the EBX; and

WHEREAS, consistent with the State's authority and responsibility to operate and maintain the SWP, including the EBX, the State has determined it is in the best interest of the State to enter into this Joint Powers Agreement ("Agreement") for SBVMWD and SGPWA to operate and maintain the EBX.

NOW, THEREFORE, the State, SBVMWD, and SGPWA agree as follows:

1. Definitions

For the purposes of this Agreement, the following definitions shall apply:

- a. "EBX" or "EBX System" shall be defined to mean all facilities, property, and right of way of Phase I, subsequent Phase I Improvements, and Phase II of the East Branch Extension of the California Aqueduct owned by the State, and the facilities and property in which capacity rights and right of way were assigned pursuant to the "Agreement to Assign Capacity Rights and Right of Way in Existing Facilities," dated July 14, 1998 (attached hereto as Exhibit A — Attachment 3), as amended by Amendment 1 (attached hereto as Exhibit A — Attachment 5), as amended by Amendment 2 (attached hereto as Exhibit A — Attachment 6), between the Devil Canyon Powerplant First Afterbay turnout to the SBVMWD Foothill Pipeline at the pipeline isolation slidegate and the terminus in SGPWA's service area near South Noble Creek.
- b. "Commercial Operation Date I" for Phase I of the East Branch Extension was March 20, 2003, (ADD DATE) for Phase I Improvements. Thereafter, SBVMWD and SGPWA assumed certain responsibilities for operation and maintenance of the Phase 1 of the East Branch Extension system, as specified in this Agreement.
- c. "Commercial Operation Date II" for Phase II of the East Branch Extension shall mean the milestone date marking the completion of start-up and testing of the EBX System. Thereafter, SBVMWD and SGPWA shall assume certain responsibilities for operation and maintenance of the EBX System, as specified in this Agreement.
- d. "Emergency Work" shall mean those maintenance activities, including repair, replacement, or reconstruction of existing facilities (but only to the extent such repair, replacement, or reconstruction is necessary to address the immediate

emergency), carried out on the EBX in response to a sudden, unexpected occurrence, involving loss or damage or threat of loss or damage to the EBX, life, property, wildlife, or essential public services.

- e. "Operation and Maintenance Instructions" shall mean the instructions for the performance of Operation and Maintenance prepared pursuant to Paragraph 4.
- f. "Operation and Maintenance" shall mean "Ordinary Operation and Maintenance" and "Emergency Maintenance" as defined in this Paragraph.
- g. "Ordinary Operation and Maintenance" shall mean the necessary operation and maintenance activities performed on the EBX, which are routinely performed on pump stations and appurtenant structures, pipeline systems transporting water, reservoirs, control systems, communication systems, and on the right of way used of such facilities, including minor repair, replacement, or reconstruction of existing facilities.
- h. "Major Repair, Replacement or Reconstruction Work" shall mean an activity which has a commercial contract value of more than \$281,000.
- i. "FERC" known as the Federal Energy Regulatory Commission which regulates the movement of power such as natural gas and electricity. FERC sets reliability standards for the power grid to maintain a reliable Bulk Electric System (BES).
- j. "NERC" known as The North American Electric Reliability Corporation (NERC) whose mission is to ensure the reliability of the bulk power system in North America. NERC develops and enforces Reliability Standards; annually assesses seasonal and long-term reliability; monitors the bulk power system through system awareness; and educates, trains, and certifies industry personnel. NERC is the electric reliability organization (ERO) for North America, subject to oversight by the Federal Energy Regulatory Commission (FERC) and governmental authorities in Canada. NERC's jurisdiction includes users, owners, and operators of the bulk power system, which serves more than 334 million people.
- k. "WECC" known as the Western Electricity Coordinating Council, one of the 8 regions, which regulates power in the region known as the Western Interconnection. The Western Interconnection includes two provinces of Canada, 14 Western states in the United States and the north part of Baja California, Mexico. WECC's main goal is to ensure that the Western Interconnection's electrical system is up to date and working for a reliable Bulk Electric System (BES).
- l. "CIP" means Critical Infrastructure Protection.

- m. "O&P" means Operation and Planning
- n. "SWP Annual Maintenance Schedule" shall mean the annual schedule of maintenance, expected outages, and other maintenance activities that affect the water through SWP facilities compiled by the State. The SWP Annual Maintenance Schedule compares the identified maintenance with operations forecasts at each SWP plant on a calendar year basis.

2. Authority to Perform Ordinary Operation and Maintenance

- a. Subject to the provisions of this Agreement, SBVMWD and SGPWA shall have the responsibility to perform the Ordinary Operation and Maintenance activities for the EBX within their respective service areas to ensure water delivery to SBVMWD and SGPWA consistent with the Water Supply Contracts. Such Operation and Maintenance shall be performed in a manner such that the EBX is kept in good condition and protected to ensure its long-term operation. SBVMWD and SGPWA shall have the responsibility to ensure operations and activities, including required records, are in compliance with applicable Regulatory standards and DWR policies complying therewith. SBVMWD, SGPWA and the State will establish and agree to Emergency Maintenance and Ordinary Maintenance Call-out procedures for resolution to issues impacting safety and system operations. The State will maintain an issues log and record when resolved. Operation and Maintenance duties include, but are not limited to, those described in Exhibit A – Attachment 1.
- b. SBVMWD and SGPWA, may request in writing that a non-regularly scheduled Management Meeting be convened within 30 calendar days of such request. These urgent Management Meetings are intended to provide SBVMWD and SGPWA expeditious resolution to operations and maintenance items that are either 30 days past due previously agreed upon completion dates in the Coordination Meetings or the need for which has arisen unexpectedly.
- c. All of SBVMWD and SGPWA costs associated with Ordinary Operation and Maintenance and/or repair activities shall be charged as described in Paragraph 12. In performing Ordinary Operation and Maintenance and/or repair activities, each entity shall comply with Paragraph 13.
- d. In the event the State performs any of the Ordinary Operation and Maintenance and/or repair activities, the State shall be responsible for the performance of such work.

- e. In the event of a dispute between the State and SBVMWD and SGPWA jointly or independently, as to which Party shall perform any work, or acts or omissions in the performance of such work, such a dispute shall be attempted to be resolved through the regularly scheduled Coordination and Management meetings or an extraordinary Management meeting as defined in 2b in resolving the dispute.
- f. In the case when the dispute cannot be resolved through the Management meeting, DWR ...

3. Emergency Maintenance

If a situation exists requiring Emergency Maintenance to the EBX, SBVMWD and SGPWA, as appropriate, shall promptly undertake action as required. SBVMWD and SGPWA, as appropriate, shall promptly notify the State's Southern Field Division Area Control Center of such action at the following telephone number (661) 944-8600. (The State may change this telephone number by providing written notice to SBVMWD and SGPWA). After consultation with SBVMWD and SGPWA, including a reasonable opportunity under the particular circumstances for SBVMWD and SGPWA to provide comments to the State, the State may modify or direct such actions. All costs associated with responding to an emergency shall be charged as described in Paragraph 12. In addition, SBVMWD and SGPWA, as appropriate, shall provide to the State, as soon as practicable, an estimate of the costs incurred or to be incurred in performing Emergency Maintenance. In performing Emergency Maintenance, if not exempt under their respective emergency ordinances or an emergency resolution, SBVMWD and SGPWA shall comply with Paragraph 13 to the extent practicable, taking into account the emergency situation.

4. Preparation of Operation and Maintenance Instructions and of Annual Maintenance Schedule

The State, SBVMWD, and SGPWA shall cooperate to ensure that Operation and Maintenance of the EBX is carried out in a safe, reliable, and cost effective manner. During project start-up and testing for EBX I, SBVMWD and SGPWA worked cooperatively and shall continue to cooperate with the State to develop, document, and update the Operation and Maintenance Instructions for the EBX System. The instructions shall describe all the operation and maintenance activities for the EBX System. From time to time, the State may request or SBVMWD and SGPWA may propose that the Operation and Maintenance Instructions be revised to reflect system changes or incorporate new construction. If SBVMWD and/or SGPWA makes revisions or new construction to the EBX System, SBVMWD and SGPWA shall prepare such proposed

revisions and submit them to the State for review and approval. If possible, such requests should be initially presented to the State at Coordination or Management meetings. By the end November of each year of this Agreement, SBVMWD and SGPWA shall also submit to the State for its review and approval an Annual Maintenance Schedule, including expected outages, and other maintenance activities that can affect the delivery of water through the facility for the following year. These will be incorporated in the State's SWP Annual Maintenance Schedule. The State shall complete its review and approval as soon as possible, but in no event later than 60 calendar days after it receives the schedule. Approval of any of these documents shall not subject the State to any liability, nor shall such action modify or qualify SBVMWD's and SGPWA's liability under Paragraph 15 of this Agreement. The Annual Maintenance Schedule may include references to the instructions as appropriate.

5. State's Reservation of Rights

- a. The State reserves the right to participate in any Operation and Maintenance activities or any other activities carried out by SBVMWD and SGPWA under this Agreement upon prior written notification to them. Convening of a Management Meeting to discuss the State's need described in writing will be held within 30 calendar days of such written notice. Such participation may include performing maintenance activities with the State or other forces, drafting specifications, participating in contractor selection, evaluating work performance, administering contracts, and resolving contract claims. The written notification to SBVMWD and SGPWA shall, to the extent practicable, specify which activities the State intends to participate in, the reasons for the State's decision to participate, and the location and time period of such participation.
- b. The State may also require prior approval of any documents including, but not limited to, plans and specifications, solicitation documents, drawings, data, addenda, change orders, and contracts by written notice to SBVMWD and SGPWA. Approval of any of these documents shall not subject State to any liability, nor shall such DWR document approval action modify or qualify SBVMWD's and SGPWA's liability under Paragraph 15 of this Agreement. In exercising its rights under this Paragraph, the State shall take all reasonable steps to minimize or avoid any delays to the Operation and Maintenance schedules.
- c. The State, at its option, after giving SBVMWD and SGPWA 60 calendar days written notice, may perform additional Operation and Maintenance activities of the EBX for a period of time (including Operation and Maintenance activities otherwise assigned to SBVMWD and SGPWA). Such notice shall specify the type of work and the period of time in which the State intends to perform Operation and Maintenance activities. In the event the State gives such notice, a



Management Meeting will be convened to discuss the State's need within the 60-day period to ensure that Operation and Maintenance of the EBX are properly carried out.

- d. Subject to Subparagraph "c" of this Paragraph 5, which shall control over this Subparagraph "d", a Party may submit a proposal to the other Parties to add, eliminate, or modify the Operation and Maintenance responsibilities of one or more Parties under this Agreement. The Parties shall consider and discuss the proposal as soon as reasonably practicable. If, and only if the Parties agree, the Operation and Maintenance responsibilities shall be added, eliminated, or modified pursuant to this Subparagraph "d" and such changes shall take effect as agreed to in writing by the Parties.
- e. Any change to the Operation and Maintenance responsibilities of the Parties made pursuant to either Subparagraph "c" or "d" of this Paragraph 5 shall be reflected in a revised Attachment 1 to Exhibit A; provided, however, that the changes in Operation and Maintenance responsibilities that are made pursuant to Subparagraph "c" or "d" of this Paragraph 5 shall take effect in accordance with those provisions regardless of whether the corresponding revisions have yet been made to Attachment 1 of Exhibit A; and provided further that any such revisions to Attachment 1 to Exhibit A may be made and shall be effective without the need to formally amend this Agreement.
- f. Any dispute arising from Paragraph 5 between the Parties shall be resolved through Management Meetings and/or under the dispute resolution procedures set forth in Section 2 of this Agreement. If a resolution is not agreed to by the parties through this process, applicable State statutes and the SWP water supply contracts with SBMVWD and SGPWA shall apply.

6. Inspections and Reports

- a. The State reserves the right of access at all times to the EBX for the purposes of observation and inspection, to respond to emergencies, or for other purposes deemed necessary by the State. In addition, joint inspections with representatives from specific areas of expertise shall take place biennially or upon some other mutually agreed upon interval, consistent with practices for other State Water Project facilities. The joint inspection interval and the availability and access of inspection records and reports for audit purposes may be specified in the Operations and Maintenance Instructions.
- b. For purposes of dam safety regulatory compliance, inspections of facilities under state or federal dam safety regulatory authority can occur with less than 24-hours'

notice and may require SBVMWD and SGPWA provide for immediate review all records pertaining to operation and maintenance of reservoir valves, reservoir elevations, controlled and uncontrolled reservoir discharges, and daily visual inspections.

- c. SBVMWD and SGPWA shall keep Operation and Maintenance records on the EBX necessary to demonstrate that the facilities and right of way are being kept in good condition and are in compliance with mandated Regulatory standards. SBVMWD and SGPWA shall provide the records for the State inspection at the request of the State. During Regulatory audits and data requests, records and reports will be provided by SBVMWD and SGPWA for the specified dates and within the deadlines established by the Regulatory entity. Such records shall include, but are not limited to, monthly turnout deliveries, water quality, cathodic protection, equipment outages, and control and communication system modifications including associated system documentation. Reporting processes, including the requisite format and/or forms, shall be specified in the Operation and Maintenance Instructions.
- d. By March 1 of each year of this Agreement, SBVMWD and SGPWA shall submit to the State written reports summarizing Operation and Maintenance activities performed during the previous year.
- e. SBVMWD and SGPWA shall keep records of all costs incurred under this Agreement. Such costs shall be maintained in sufficient detail to allow the State to allocate costs among the reaches and/or facilities designated by the State.

7. Licenses and Permits

- a. This Agreement shall not affect the State's ownership of, and statutory responsibilities and powers relating to, the EBX. After consultation with SBVMWD and SGPWA, the State, at its option, may grant encroachment permits, licenses, easements, or other interests in real property owned by the State, or may convey any EBX real property owned by the State that the State deems surplus and not a critical or necessary component of State Water Resources Development System.
- b. SBVMWD and SGPWA shall forward all requests for encroachments on State right of way (other than requests addressed in Subparagraph c of this Paragraph 7), including SBVMWD's and SGPWA's recommended actions, to the State for processing at the address below. The State shall forward copies of encroachment requests made directly to the State to SBVMWD and SGPWA, and shall include SBVMWD and SGPWA in the review process. Except as otherwise provided in

Subparagraph c of this Paragraph 7, the State shall retain exclusive authority to grant or deny encroachment requests on State right of way.

Encroachment Permits  
Division of Engineering  
Department of Water Resources  
Post Office Box 942836  
1416 Ninth Street, Room 425  
Sacramento, California 94236-0001  
PHONE (toll free): (800) 600-4397  
FAX: (916) 654-0738

- c. SBVMWD and SGPWA may grant temporary access to EBX right of way for surveys, studies and testing using the State's Temporary Entry Permit process. Temporary Entry Permits shall not be granted for construction or other similarly intrusive activities of any kind or nature. In proceeding with such action, SBVMWD and SGPWA shall hold the State harmless, and shall notify the State prior to granting temporary access by sending a copy of the signed permit to the address above.

8. Authority to Comply with Existing Permits

In exercising their obligations under this Agreement, the State, SBVMWD and SGPWA shall be responsible for complying with all applicable laws and regulations concerning Operation and Maintenance of the EBX, including all environmental and industrial safety laws and regulations, which the State, SBVMWD, or SGPWA may be obligated to satisfy. The State, SBVMWD and SGPWA also shall abide by conditions in consents, permits, orders, and agreements secured or entered into by the State applicable to the EBX, which the State is obligated to comply with and which are specified in Exhibit A — Attachment 2, including conditions relating to environmental mitigation and monitoring during Operation and Maintenance. The State may amend Exhibit A — Attachment 2 by giving written notice to SBVMWD and SGPWA. To the extent practicable, the State, SBVMWD and SGPWA, as applicable, shall contact the agencies responsible for issuing such consents, permits, orders and agreements, and shall cooperate with the agencies to have these authorizations modified so that the State, SBVMWD and SGPWA, as applicable, are directly responsible for complying with them instead of the other Parties, as applicable.

9. Control of Water Pollution

No material capable of water pollution shall be discarded on lands covered by this Agreement except as provided in the "Water Discharge and Spill Contingency Plan," which shall be included in the Operation and Maintenance Instructions. Such material shall be stored in such a manner as to prevent its discharge.

10. Control and Responsibility for Hazardous substances

In carrying out their obligations under this Agreement, the State, SBVMWD, SGPWA, as applicable, and their agents shall comply with all applicable federal, State, or local laws existing during the term of this Agreement pertaining to the use, storage, transportation and disposal of any hazardous substance as that term is defined in such applicable law. In the event the State, SBVMWD, or SGPWA, as applicable, or any of its officers, employees, or agents should incur any liability, cost or expense, including attorneys' fees and costs, as a result of the State's, SBVMWD's or SGPWA's use, storage, transportation or disposal of any hazardous material relating to the State's, SBVMWD's or SGPWA's respective Operation and Maintenance under this Agreement, including any petroleum derivative in addition to any responsibility the State, SBVMWD and SGPWA have under this Paragraph or Paragraph 15 and notwithstanding Government Code Section 895.2, SBVMWD and SGPWA, as applicable, shall indemnify, defend, and hold harmless the State against such liability. Where either SBVMWD or SGPWA is found in breach of this provision due to the issuance of a government order directing it to cease and desist any illegal action in connection with a hazardous substance, or to remedy a contaminated condition caused by it or any person acting under its direction, control or authority, that agency shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by the State in connection with or response to such government order.

11. Notice of Contamination

Should the State, SBVMWD, SGPWA, as applicable, or any of their agents, employees or contractors discharge or release any hazardous materials, as defined under State or federal law, within the State's right of way, the State, SBVMWD and SGPWA, as applicable, shall immediately respond in accordance with the provisions of their respective Emergency Action Plans, which are approved by the State, the provisions in the Operation and Maintenance Instructions and all applicable laws. If the discharge or release is thereupon determined to be sufficiently insignificant that localized remediation without regulatory supervision is permissible, either the State, SBVMWD or SGPWA, as appropriate, shall immediately undertake such remediation in a manner consistent and compliant with California Occupational Safety and Health Administration requirements. If the discharge or release is thereupon determined to be significant so that local, State or federal regulatory agency supervision is necessary, the State, SBVMWD and SGPWA, as applicable, shall comply with the requirements of the applicable agency or agencies.

During remediation, either the State, SBVMWD or SGPWA, as appropriate, shall keep the Parties informed of the remediation efforts and progress.

12. Operation and Maintenance Charges

- a. All costs arising out of Operation and Maintenance activities shall be allocated between SBVMWD and SGPWA pursuant to the percentages contained in Exhibit B1 of the August 20,1999 Amendment 1 to the Final Design and Construction Agreement attached hereto as Exhibit A — Attachment 5. If the Parties hereafter amend such Exhibit B-1, the new percentages specified in the amended Exhibit B-1 shall apply as of the effective date specified in such amendment. However, the Parties may change the method for allocating costs between SBVMWD and SGPWA as specified in this Subparagraph a upon the agreement in writing of all Parties and such change shall be effective without the need to amend this Agreement.
- b. For costs incurred by SBVMWD and SGPWA in the performance of their Operation and Maintenance responsibilities under this Agreement, the two Parties shall determine the amounts owed by one Party to the other Party in accordance with the allocations made pursuant to Subparagraph a of this Paragraph 12, and the owing Party shall pay such amounts directly to the other Party. If any costs of Operation and Maintenance incurred by one Party which are allocable to the other Party are not paid directly by the owing Party to the Party incurring the costs, the Party which is owed money may bill the State as provided in Exhibit B. For all such charges accepted, in its sole discretion, by the State, the State shall seek reimbursement from the owing Party in a manner consistent with the applicable Water Supply Contract.

13. Performance of Operation and Maintenance

- a. The State, SBVMWD and SGPWA, as applicable, shall perform activities described in this Agreement through its employees, agents, consultants and contractors.
- b. The State, SBVMWD and SGPWA, as applicable, may enter into contracts for activities to be performed under this Agreement. Except for “indemnity” specified in Paragraph 15, the entity making the contract shall be fully responsible for all contracted work, including its quality and timeliness. Except for contracts already in effect, in soliciting contracts for services to be performed under this Agreement, the State, SBVMWD and SGPWA, as applicable, shall comply with the provisions of Subparagraph c of this Paragraph. At the request of the

applicable Party(ies), the other Party(ies) shall provide the applicable Party(ies) with documentation that evidences substantial compliance with those provisions for contracts already in effect.

c. Contracted Services:

- (1) For service and consulting service agreements, the State, SBVMWD and SGPWA, as applicable, shall solicit for such services in accordance with the provisions of the Public Contract Code and Government Code applicable to the State, SBVMWD and SGPWA, as applicable.
- (2) For the types of services covered by Government Code Section 4525 et seq., the State, SBVMWD and SGPWA, as applicable, shall solicit for such services in accordance with those Government Code provisions.
- (3) For public works agreements as defined in section 1101 of the Public Contract Code or other applicable statutes, the State, SBVMWD and SGPWA, as applicable, shall comply with the provisions of the Public Contract Code applicable to the State, SBVMWD and SGPWA.
- (4) To the extent any of the services specified in Subparagraphs (1), (2) or (3) above may be procured in accordance with another law not identified above, SBVMWD or SGPWA, as applicable, may use such other law to procure such services upon the approval in writing of the State.
- (5) The applicable Party(ies) may request written documentation evidencing compliance with Subparagraph c of this Paragraph.

d. Management Meetings: Periodically, but in no case less than twice per calendar year, the General Managers of SBVMWD and SGPWA shall meet with the SWP Deputy Director to discuss recent, ongoing, or projected operations and maintenance issues where there have been past conflicts or there could be future conflicts among the Parties. The purpose of these meetings shall be to work out any such conflicts at the management level to ensure that they are resolved and will not occur in the future. All parties will confer and agree on the agendas for these meetings.

e. Coordination Meetings: Periodically, but in no case less than four per calendar year, operations and maintenance staff from the State, SBVMWD, and SGPWA shall meet in an effort to understand and coordinate ongoing operation and maintenance issues better, to foster better working relationships among the Parties, and to enhance the safety of operators and maintenance workers. The State shall call these meetings but the location of the meetings may change from

time to time in order to provide each Party with opportunities to host the coordination meetings or to discuss safety issues at a particular facility. The State shall provide a summary of these meetings within 30 calendar days after each meeting for review and concurrence by SBVMWD and SGPWA on the agreed upon outcome of these meetings. At a minimum, operations and maintenance staff shall include:

- (1) The State: the Lead Planner Scheduler, Operations Superintendent, Plant Maintenance Superintendent, Civil Maintenance Superintendent, Engineering Branch Chief, Control Branch Chief, Communications Branch Chief, Dam Safety Branch Chief, or their designees
  - (2) SBVMWD: the Operations Manager, Manager of Engineering, or their designees
  - (3) SGPWA: the Operations and Maintenance Manager, or his designee.
- f. Operations and Maintenance Safety Training: Upon execution of this agreement, SBVMWD and SGPWA EBX System operations and maintenance personnel shall be required to attend, pass, and follow current DWR mandated safety training including but not limited to:
- (1) Project O&M Instruction No. OP-2, General Operating Procedures for Safe Clearances.
  - (2) Project O&M Instruction No. ST-19, Electrical Safety Program
  - (3) Additional training may be required during the contract period.

14. Recommendations for Major Repair, Replacement, or Reconstruction Work

- a. SBVMWD and SGPWA shall recommend to the State any major repair, replacement, or reconstruction work that, in the opinion of SBVMWD and SGPWA, is required to keep the EBX Project in good working condition. After consultation with SBVMWD and SGPWA, including a reasonable opportunity under the particular circumstances for both SBVMWD and SGPWA to provide prior comments to the State, the State shall determine whether such recommended work or other major repair, replacement, or reconstruction work should be performed and the schedule for performing and arrangements for financing such work. As determined by the State, major repair, replacement, or reconstruction work will ordinarily be capitalized. The State shall be responsible for performing such work, provided that the State may, with the consent of SBVMWD and

SGPWA, request SBVMWD and SGPWA to perform or arrange for the performance of such work.

- b. If, in the opinion of SBVMWD and SGPWA, the major repair, replacement or reconstruction costs estimated by the State are significantly higher than expected, SBVMWD and/or SGPWA can request a Management Meeting be convened within 30 calendar days of written notice of such concerns. Engineering efforts to reduce costs may include SBVMWD and SGPWA assessing the major repair, replacement or reconstruction project, outside consultant providing a value engineering review, outside consultants providing design services and/or SBVMWD and SGPWA bidding and procuring contracts for the major repair, replacement or reconstruction projects. A value engineering process as defined by the U.S. Federal Office of Management and Budget (OMB) Circular A-131 may be also be considered. Emergency Work is not covered by this clause.
- c. If SBVMWD and SGPWA perform any work described in Subparagraph a and b above, SBVMWD and SGPWA may charge costs associated with such work to the State in a manner to be agreed to by the parties. In performing any such work, SBVMWD and SGPWA shall comply with Paragraph 13.

15. Indemnity

- a. Operation and Maintenance of the EBX Project:

In performance of this Agreement, the State, SBVMWD, and SGPWA and their officers, employees, or agents shall act in an independent capacity and not as officers, employees, or agents of the other parties. Other than that expressly provided for in this Agreement, none of parties assumes any liability for the activities of the other. SBVMWD and SGPWA are responsible for all claims, liabilities, and costs of defense and attorneys' fees which may arise out of the Operation and Maintenance of the EBX by SBVMWD or SGPWA under this Agreement, except to the extent such injury, damage, or loss is caused by the negligence or willful misconduct of the State or its officers, employees, or agents, including, without limitation, direction given to SBVMWD or SGPWA under this Agreement which constitutes negligence or willful misconduct. In the event any claim of liability for which SBVMWD or SGPWA is responsible is instituted against the State, or any of its officers, employees, or agents, SBVMWD and SGPWA shall defend, indemnify, and hold the State harmless from such claim. This Agreement is made in contemplation of California Government Code sections 895, 895.2, 895.4, 895.6, and California Civil Code section 2778.

- b. Delivery and Distribution of Water: