

**SAN GORGONIO PASS WATER AGENCY**  
**1210 Beaumont Avenue, Beaumont, CA**  
**Board of Directors Meeting**  
**Agenda**  
**January 22, 2019 at 1:30 p.m.**

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

**2. Adoption and Adjustment of Agenda**

**3. 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. Speakers are requested to keep their comments to no more than five minutes. Under the Brown Act, no action or discussion shall take place on any item not appearing on the agenda, except that the Board or staff may briefly respond to statements made or questions posed for the purpose of directing statements or questions to staff for follow up.

**4. Consent Calendar:** If any board member requests that an item be removed from the Consent Calendar, it will be removed so that it may be acted upon separately.

A. Approval of the Minutes of the Regular Board Meeting, January 2, 2019\*

(p. 3)

B. Approval of the Minutes of the Engineering Workshop, January 14, 2019\*

(p. 7)

**5. Reports:**

A. General Manager's Report

1. Operations Report

2. Water Supply Report

3. General Agency Updates

B. Directors' Reports

C. Committee Reports

**6. New Business:**

A. Appointment of Committees

B. Consideration of Sites Reservoir 2019 Participation Agreement\* (p. 9)

C. Consideration of Agreement with DWR and Valley District for Change of Delivery Point\* (p. 43)

**7. Topics for Future Agendas**

**8. Announcements:**

A. San Gorgonio Pass Regional Water Alliance, January 23, 2019  
at 5:00 p.m. – Banning City Hall

B. Finance and Budget Workshop, January 28, 2019 at 1:30 p.m.

C. Regular Board Meeting, February 4, 2019 at 1:30 p.m.

D. Engineering Workshop, February 11, 2019 at 1:30 p.m.

**9. Closed Session (2 Items)**

**A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code section 54956.8

Property: Potential water rights/supplies offers from the City of Ventura

Agency negotiator: Jeff Davis, General Manager

Negotiating parties: Lynn Takaichi

Under negotiation: price and terms of payment

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION.**

Pursuant to Government Code Section 54957.

Title: General Manager

**10. 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: [www.sgpwa.com](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.

**SAN GORGONIO PASS WATER AGENCY**  
**1210 Beaumont Avenue, Beaumont, California 92223**  
**Minutes of the Board of Directors Meeting**  
**January 7, 2019**

**Directors Present:** David Fenn, President  
Ron Duncan, Vice President  
Lenny Stephenson, Treasurer  
Blair Ball, Director  
David Castaldo, Director  
Steve Lehtonen, Director  
Michael Thompson, Director

**Staff Present:** Jeff Davis, General Manager  
Jeff Ferré, General Counsel  
Thomas Todd, Finance Manager  
Cheryle Rasmussen, Executive Assistant

1. **Call to Order, Flag Salute, Invocation, and Roll Call:** The meeting of the San Gorgonio Pass Water Agency Board of Directors was called to order by Board President Fenn at 1:30 p.m., January 7, 2019 in the Agency Boardroom at 1210 Beaumont Avenue, Beaumont, California. President Fenn led the Pledge of Allegiance to the flag. President Fenn gave the invocation. A quorum was present.
2. **Election of Board Officers:** President Fenn initiated the election process.
  - a. ***Nominations for Board President -***  
President Fenn nominated Director Duncan for Board President; this nomination was seconded by Director Castaldo. Hearing no other nominations, President Fenn requested a vote on the nomination of Director Duncan for Board President. Ronald Duncan was elected President by unanimous vote, 7-0. The meeting was turned over to President Duncan.
  - b. ***Nominations for Vice President -***  
President Duncan nominated Director Stephenson for Board Vice President; this nomination was seconded by Director Castaldo. Hearing no other nominations, President Duncan requested a vote on the nomination of Director Stephenson for Board Vice President. Leonard Stephenson was elected Board Vice President by unanimous vote, 7-0.
  - c. ***Nominations for Treasurer -***  
President Duncan called for nominations for Board Treasurer. Director Fenn nominated Steve Lehtonen for Board Treasurer; this nomination was seconded by Director Thompson. Director Lehtonen nominated Blair Ball for Board Treasurer. Director Ball declined the nomination. Hearing no other nominations, President Duncan requested a vote on the nomination of Stephen Lehtonen for Board Treasurer. Stephen Lehtonen was elected Treasurer by unanimous vote, 7-0.
  - d. ***Nominations for Secretary/Assistant Treasurer -***  
President Duncan nominated Jeff Davis for Board Secretary; this nomination was seconded by Director Castaldo. Hearing no other nominations, President Duncan requested a vote on the nomination of Jeff Davis for Board Secretary. Jeff Davis was elected Board Secretary/Assistant Treasurer by unanimous vote, 7-0.

3. **Adoption and Adjustment of the Agenda:** Director Ball requested adding a closed session item pertaining to General Manager Performance. General Counsel Ferre informed the Board that unless there was an emergency that said item could not be added to today's agenda, as it would go against the Brown Act. After discussion, the Board was in agreement to add a closed session item on the January 22, 2019 agenda pertaining to General Manager Performance.
4. **Public Comment:** *President Duncan asked if there were any members of the public that wished to make a public comment on items that are within the jurisdiction of the Agency that are not on today's agenda.* General Manager Dan Jagers (BCVWD) requested that there be more communications to water retailers pertaining to any EBX shutdowns. There were no other members of the public that wished to comment at this time.
5. **Consent Calendar:**
  - A. Approval of the Minutes of the Regular Board Meeting, December 17, 2018
  - B. Approval of the Minutes of the Finance and Budget Workshop, December 20, 2018
  - C. Approval of the Finance and Budget Workshop Report, December 20, 2018

Director Stephenson made a motion, seconded by Director Castaldo, to adopt the consent calendar as presented. Motion passed 7-0.

6. **Reports:**

A. **General Manager's Report:**

1. **Operations Report:** General Manager Davis reported on the following: **(a) SWP Water Deliveries:** The Agency delivered 1149 acre-feet to Beaumont Cherry Valley Water District ponds, for the month of December. **(b)** For the year, we delivered approximately 13,150 AF (YVWD deliveries for December not included). This includes 12,121 to BCVWD, 500 to Banning, and about 530 to YVWD. **(c)** Our 35% allocation of Table A water would have been just 6,055 AF. We delivered over twice this amount due to Board actions related to obtaining additional water supplies. **(d)** At our current 10% allocation for this year, we have about 8500 AF to deliver this year, including carryover, our 10%, and our Nickel water; less than the total requested from our retail customers. **(e)** We started dumping the Rhombo Hexoshield floating balls in Citrus Reservoir this morning. We have delivered 279 AF so far this month at 20 cfs.

2. **Construction Update:** General Manager Davis presented slides to the Board showing the progress of the Beaumont Avenue Recharge Facility and the Mountain View connection.

3. **Water Supply Report:** DWR's first manual snow survey was taken last week. Snowpack at Phillips Station was at 80% of normal for the date. Throughout the Sierras, snowpack was at 67%. Despite a number of early storms this year, precipitation and snowpack are both below normal for this time of year. General Manager Davis reviewed with the Board DWR's January 7, 2019 precipitation and

storage graphs for Lake Oroville, Northern Sierra, San Joaquin Valley, and Tulare Lake Basin.

**4. General Agency Updates:** General Manager Davis reported on the following:

- a). All permits for drilling monitoring wells have been received; however the government is shut down so USGS cannot start drilling until shutdown ends.
- b). Legislative Report - Water tax not high on Legislators' list for the first half of this legislative session but will likely be later. Key objective for the first six months will be wildfires. But there will almost certainly be an effort to put the SWP on budget, as there has been in the past. There has also been a bill submitted (SB 43) to replace the cap and trade system with a carbon tax on retail products. We are waiting to hear who the new Governor will nominate for key water-related posts.
- c). Pertaining to the Delta Stewardship Council action remanding five actions to DWR, and DWR withdrawing consistency certification. DWR believes courts will likely back an agency's interpretation of its own mission, even if it is overreaching. We are going to wait until new members of the DSC take office and try again.
- d). Water rate discussion will not take place at the next Engineering workshop as there are too many agenda items already. Therefore, we will discuss this at next Board meeting on January 22. This will be a follow up to the last workshop in December and will include numbers the Board asked for. Director Ball inquired about the surplus water contract between the Agency and San Bernardino Valley Water District. General Manager Davis stated that the agreement has been approved by all parties. Director Ball asked General Manager Davis to update the Board on what the contract entails directly to the Agency. General Manager Davis will provide the requested information at a future meeting.

**B. General Counsel Report:**

a). General Counsel Jeff Ferré deferred from reporting.

**C. Director Reports:**

(1) **Director Fenn** reported that he attended the YVWD December Board meeting. He reported on the BCVWD Finance and Audit Committee meeting. During that meeting he was questioned by a member of the public on the Nickel water. He also attended the Beaumont Basin Watermaster meeting. He reported that the analysis for the return flow methodology for the basin is expected to be available at the February or March meeting. (2) **Director Castaldo** thanked Director Fenn for his outstanding leadership as Board President during the past two years.

**C. Committee Reports: None.**

**7. New Business:**

**A. Update on Social Media Initiative:** General Manager Davis stated that the Conservation and Education Committee has been working towards establishing a social media footprint for the Agency. As stated at the last Board meeting Casmir Olaivar is our intern and has been working on three different social media platforms, Facebook, Twitter and Instagram. The Agency has been posting to all three platforms. General Manager Davis shared with the Board some of the posts that have been added to these social media accounts. Director Thompson stated that the main objective is to educate the public as to who we are, where we are, and what it is that the Agency does. Director Fenn suggested boosting certain posts <sup>5</sup>/<sub>7</sub> <sup>5</sup>/<sub>5</sub> as special events, public hearings, etc.

Director Thompson commended the Agency's intern Casmir, stating that she works well with staff and has been doing a good job on the social media platforms.

**8. Announcements**

- A. Engineering Workshop, January 14, 2019 at 1:30 p.m.
- B. Office closed **Monday**, January 21, 2019 in observance of Martin Luther King, Jr. Day
- C. Regular Board Meeting, **Tuesday**, January 22, 2019 at 1:30 p.m.
- D. Southern California Water Coalition Quarterly Luncheon  
**Friday**, January 25, 2019 at 12:00 p.m.  
Irvine Ranch Water District  
15600 Sand Canyon Avenue, Irvine

**9. Topics for Future Agendas:** Director Castaldo asked that General Manager Davis put together a policy on planned maintenance and shutdowns of EBX. Director Fenn asked that at the next Finance and Budget Committee meeting that there be discussion on the Agency's ability to pre-pay some of the EBX bonds. He also requested that President Duncan update the Board on any committee changes. Director Ball announced that YVWD has an upcoming Ethics Training class and also FPPC has a fee free Ethics course.

**10. Closed Session (1 Item)**

**Time: 2:40**

- A. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9  
One potential case

**The meeting reconvened to open session at:**

**Time: 3:56 pm**

*General Counsel Ferre stated that there was no action taken during closed session that is reportable under the Brown Act.*

**11. Adjournment** The meeting adjourned at 3:57 p.m.

***Draft - Subject to Board Approval***

Jeffrey W. Davis, Secretary of the Board

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**SAN GORGONIO PASS WATER AGENCY**  
**1210 Beaumont Avenue, Beaumont, CA 92223**  
**Minutes of the**  
**Board of Directors Engineering Workshop**  
**January 14, 2019**

**Directors Present:** Ron Duncan, President  
Blair Ball, Director  
David Castaldo, Director  
David Fenn, Director  
Steve Lehtonen, Director  
Leonard Stephenson, Vice President  
Michael Thompson, Director

**Staff Present:** Jeff Davis, General Manager  
Jeff Ferré, General Counsel  
Cheryle Stiff, Executive Assistant  
Tom Todd, Finance Manager  
Casmir Olaivar, student intern

**1. Call to Order, Flag Salute and Roll Call:** The Engineering workshop of the San Gorgonio Pass Water Agency Board of Directors was called to order by Vice President Stephenson at 1:30 p.m., January 14, 2019 in the Agency Board room at 1210 Beaumont Avenue, Beaumont, California. Vice President Stephenson led the Pledge of Allegiance to the flag. A quorum was present.

**2. Public Comment:** There were no members of the public who wished to comment at this time.

**3. Discussion of Agreement with SBVMWD and DWR Regarding Deliveries to Yucaipa Valley Water District.** A copy of the agreement and a Valley District staff report to its board was included in the agenda package. General Manager Davis informed the Board that this was a "housekeeping" item needed so that DWR could directly bill the Agency for water sold in Calimesa by YVWD, but that is conveyed through a Valley District connection. He reviewed the agreement with the Board. He noted that there will be no financial difference with the agreement. It will simply memorialize actions that have been ongoing for over a decade. After discussion and a number of questions, it was the consensus of the Board to bring this back for action next week.

**4. Discussion of Continued Participation in Sites Reservoir for 2019.** A copy of the 2019 Sites Participation Agreement was included in the agenda package. General Manager Davis showed a Power Point summarizing the status of the Sites project and projecting what will occur in 2019. He then reviewed the agreement with the Board. The agreement stipulates that participation in 2019 will cost the Agency no more than \$60 per AF, or \$600,000 for 10,000 AF. He informed the Board that the permits currently being applied for will be key to whether water agencies will feel that participation will be worth it. If permits require too much water to be left in the river, thus increasing the cost per acre-foot, he noted that many participants may drop out at some point. General Manager Davis informed the Board that he had sent a letter to BCVWD informing them of the cost of 2019 participation and indicating that if BCVWD wishes to continue participation at 4,000 acre-feet, a check would be required by February 15. Dan Jagers, BCVWD General Manager,

informed the Board that he would prefer an agreement between the Agency and BCVWD that would guarantee that BCVWD could continue with its participation even if the Agency dropped out. General Counsel Ferre noted that such an agreement would be fraught with risks for the Agency and advised against any such agreement, while agreeing that a very simple agreement could probably be worked out before the February 15 deadline. After discussion, the Board asked that further discussion on this issue be put on the January 22 Board agenda. It was the consensus of the Board to bring the Sites 2019 Participation Agreement to the Board for consideration on January 22.

**5. Review of Draft 2017 Water Conditions Report.** A copy of the draft report was included in the agenda package. General Manager Davis informed the Board that the Agency produces this report each year to make public much of the data it keeps on local groundwater basins. He reviewed the draft report with the Board, pointing out some of the key facts and trends. It was the consensus of the Board to bring it back for approval on January 22 with one minor change in the report text.

**6. Sustainable Groundwater Management Act (SGMA) Update.** A copy of the Rules of Conduct for the San Geronio Pass Sub-Basin Working Group was included in the agenda package. General Manager Davis updated the Board on Agency efforts to implement SGMA in the San Geronio Pass Sub-basin. He reported on the progress of the development of an RFP for a consultant, the web site, and the stakeholder outreach effort. The next action items for the Agency Board will be a cost sharing agreement and award of contract to the consultant.

**7. Announcements:**

- A. Office closed Monday, January 21, 2019 for the Martin Luther King, Jr. Holiday
- B. Regular Board Meeting, Tuesday, January 22, 2019 at 1:30 p.m.
- C. Southern California Water Coalition Quarterly Luncheon Friday, January 25, 2019 at 12:00 pm at Irvine Ranch Water District, 15600 Sand Canyon Avenue, Irvine
- D. Finance and Budget Workshop, January 28, 2019 at 1:30 pm

**8. Adjournment:** Vice President Stephenson adjourned the meeting at 3:43 pm

**Draft - subject to Board approval**

Jeff Davis, Secretary to the Board

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## MEMORANDUM

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**TO:** Board of Directors

**FROM:** General Manager/General Counsel

**RE:** Consideration and Possible Action to Approve the 2019 Sites Project Authority Reservoir Project Agreement, Phase 2

**DATE:** January 22, 2019

### **Recommendation:**

It is recommended:

1. That the Agency Board approve entering into the Sites Project Authority 2019 Reservoir Project Agreement ("Phase 2 Project Agreement").
2. That the Agency Board authorize payment for 10,000 AF in Sites Reservoir through 2019.
3. That the Agency Board approve the Phase 2 Participation Agreement with Beaumont Cherry Valley Water District ("District") in the event the District decides to participate in Phase 2 through 2019.
4. That the Agency take action to approve payment of the amount due for the full 14,000 AF amount in the event the Beaumont Cherry Valley Water District ("District") decides not to participate for the 4,000 AF portion of the 14,000 AF amount.

### **Background:**

In 2017, the Agency Board committed to Phase I participation in Sites Reservoir, an off-stream reservoir located north of Sacramento near the town of Maxwell. That commitment did not extend any further than the milestone of the Sites Project Authority obtaining funding through Prop 1. In 2018, the Sites Project Authority was awarded approximately \$800 million in funding from Prop 1. In addition, the federal government, through the WIIN Act, has committed to some funding for the project (up to a maximum of 25%). Phase 1 is coming to an end on March 31, 2019.

The focus of Phase 2 will be planning, environmental permits, and preliminary and final design of the facility, which includes a number of dams, a lengthy pipeline, inlet and outlet works, and a power line. The permitting pursued during Phase 2 will dictate how the facility will be operated and thus how much yield will be available to participants and during what time of year it will be available.

The Agency Board previously took action to become a Non-Member Participating Party through the purchase of 14,000 AF of Class 1 and Class 2 water. All Class 2 water from Phase 1 has been converted by the Sites Project Authority to Class 1 water for Phase 2.

The Agency Board also took action to provide an opportunity to the District to purchase 4,000 AF of the Agency's 14,000 AF amount. The Agency Board also previously took action to enter into the Amended and Restated Phase 1 Reservoir Project Agreement. Based on the Agency's participation in Phase 1, the District agreed to purchase a portion of the Agency's participation in Phase 1 pursuant to a Participation in Phase 1 Reservoir Project Agreement ("Phase 1 Participation Agreement"),

The Sites Project Authority has chosen to move forward with Phase 2 by asking participants to commit for just 2019 at this time. At the end of 2019, more information will be available on permits and participants can at that time decide if they want to continue their participation.

Should the Agency Board wish to continue participation at the 10,000 AF level, this would mean a commitment of \$600,000 for 2019. Should the District's board of directors wish to continue its participation for its portion, the Agency would need to obtain the District's payment of \$240,000 on or before February 15, 2019. This is the deadline that was imposed on the Agency by the Sites Reservoir Committee for payment from participants.

Since the Agency and the District previously took action for the District to have the opportunity to purchase 4,000 AF, and since the Phase 2 Project Agreement will be in place for less than a year, Agency staff submitted a letter to the District outlining the District's

lump sum payment obligation, based on the amount charged by the Sites Project Authority and Reservoir Committee.

However, District staff has requested another agreement for Phase 2 to memorialize its payment obligation. As a result, the same agreement which was entered into by the District and Agency for Phase 1 participation can be entered into for Phase 2. A copy of that format for the Phase 2 Participation Agreement is attached. Aside from factual updates, the only changes from the Phase 1 Participation Agreement are in regard to the payment schedule which requires a one-time upfront payment.

If the District does not wish to move forward with Phase 2, then the Agency Board has indicated that it would like to move forward with the entire 14,000 AF that was granted to the Agency. In that case, the Agency would also have to pay the amount applicable to the 4,000 AF portion.

**Fiscal Impact:**

Aside from payments required for Phase 2, the Agency will also owe approximately \$70,000 in 2019 to convert its Class 2 water from Phase 1 to Class 1 water. This will be invoiced separately.

Therefore, it is recommended that the Agency Board authorize payment in the following amounts for participation in Phase 2 based on whether the District elects to move forward:

If the District does not participate

14,000 AF participation - \$840,000  
Conversion to Class 1 water - \$70,000  
Total - \$910,000

If the District does participate for 4,000 AF

10,000 AF participation - \$600,000  
Conversion to Class 1 water - \$70,000  
Total - \$670,000

When the Agency prepared its 2018-2019 budget, no funding was provided for Sites because at that time the Sites Project Authority was planning on borrowing money for Phase 2, with an interest only payment due in January 2020. With the shift to a 2019 participation

agreement that uses cash, the Agency will have to revise its budget to accommodate the required payment which could be funded from the General Fund. The Agency currently has over \$3 million in its new water reserve fund, which could also be used to fund this payment obligation for 2019.

**AGREEMENT  
SITES RESERVOIR PROJECT  
PARTICIPATION IN PHASE 2 RESERVOIR PROJECT AGREEMENT**

This AGREEMENT FOR PARTICIPATION IN THE PHASE 2 RESERVOIR PROJECT AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2019, by and between the San Geronio Pass Water Agency, a public agency ("Agency") and the Beaumont-Cherry Valley Water District, a public agency ("District"). Agency and District are hereinafter sometimes collectively referred to as the "Parties" or individually as a "Party."

**RECITALS**

A. Public agencies in the Sacramento River Watershed entered into the Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated November 21, 2016, which provides that said agencies ("Members") have formed the Sites Project Authority ("Authority") to develop the Sites Reservoir Project ("Project") and which provides for "Project Agreements" to undertake specific work activities for development of the Project; and

B. On April 16, 2016, certain Members entered into a Phase 1 Reservoir Project Agreement and invited additional Members and Non-Member Participating Parties to become part of the Phase 1 Reservoir Project Agreement. The Agency Board took action to submit a proposal to the Authority to become a Non-Member Participating Party through the purchase of 14,000 acre-feet ("AF") of Class 1 water. The Agency Board also took action to provide an opportunity to the District to purchase 4,000 AF of the Agency's 14,000 AF requested amount; and

C. On July 27, 2016, the District Board took action to participate with the Agency in the amount of 4,000 AF. On January 17, 2017, the Agency Board took action to enter into the Sites Project Authority's Amended And Restated Phase 1 Reservoir Project Agreement and to make the financial commitment required for Agency's participation in Phase 1. Based on the Agency's participation in Phase 1, the District agreed to purchase a portion of the Agency's participation in Phase 1 pursuant to that certain Participation In Phase 1 Reservoir Project Agreement ("Phase 1 Participation Agreement"), dated August 22, 2017, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

D. On January 22, 2019, the Agency Board took action to enter into the Sites Project Authority 2019 Reservoir Project Agreement ("Phase 2 Project Agreement") and to make the financial commitments required for the Agency's participation in Phase 2. The Phase 2 Project Agreement sets forth the 2019 budget and the work plan for 2019. The pro rata share of the budget required to be paid by Members (including the Agency) is set forth in the Phase 2 Project Agreement. The Phase 2 Project Agreement will expire on December 31, 2019, unless extended in writing by the parties/Members. A copy of the Phase 2 Project Agreement, including the exhibits which explain the payment obligations, is attached hereto as Exhibit "B" and incorporated herein by reference and

E. Pursuant to the Agency's previous offer to District to participate in Agency's purchase, and based on the Agency Participation, the Parties desire to enter into this Agreement in order to set forth the terms and conditions upon which the District will purchase a portion of the Agency Participation in Phase 2.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth in this Agreement, and for other good, valuable, and adequate consideration, the Parties hereto agree as follows:

1. District Participation

District hereby agrees to make the following financial commitment and otherwise participate in the Agency Participation in Phase 2 ("District Participation"). Consequently, the District's participation in the Agency's budget obligation is calculated as follows:

(a) Percentages

Agency – 71.429%

District – 28.571%

(b) Current Authority proposal and Agency's participation

14,000 AF – 6%

(c) Agency's participation after deducting the District's participation

71.429% of water;

(d) District's participation after deducting the Agency's participation

28.571% of water;

(e) Agency's payment obligation \_\_\_\_\_ (6% of \_\_\_\_\_)

(f) District's payment obligation \_\_\_\_\_

(28.571% of Agency payment obligation)

(Obligation contingent upon Agency entering into Phase 2 Agreement.)

2. Rights And Obligations

(a) Compliance With Project Agreement - Performance of this Agreement, and the activities of the Parties, shall be subject to the rights and obligations set forth in the Phase 2 Project Agreement and any other Authority rules and regulations as the same may be adopted or revised from time to time.

(b) Agency's Obligations To District - The rights and obligations of Agency to District shall be limited to the terms and conditions of this Agreement. District shall not be deemed to be

a party to the Phase 2 Project Agreement nor otherwise have any right or entitlement under said agreement. For example and not by way of limitation, District shall not have any right to participate in, or become a member of, the Reservoir Project Committee as set forth in the Phase 2 Project Agreement.

(c) No Representations Or Warranties – Nothing in this Agreement shall constitute a representation or warranty by Agency to District of any water rights, water supplies, allocation or any other obligation regarding the amount of water which may or may not be provided by the Authority under the Phase 2 Project Agreement. Agency's obligations are limited to performance of the Phase 2 Project Agreement as a Non-Member Participating Party and performance of this Agreement. Agency shall not be deemed to have made any commitment of a water right or water supply to District, District's customers or District's applicants for service.

### 3. Payment

(a) On or before February 15, 2019, the District shall submit payment to the Agency for the District's payment obligation as set forth in Section 1. Said deadline has been imposed by the Authority.

(b) The Parties hereby acknowledge that the Agency will be the Non-Member Participating Party contractually bound to the Phase 2 Project Agreement and the Agency will be ultimately responsible for all Phase 2 costs in relation to the Agency Participation in Phase 2 which includes the portion designated as the District Participation in Phase 2.

(c) Therefore, in the event that the District fails or refuses to make the payment on or before the above-mentioned deadline for payment, the Agency reserves the right to make the entire payment as applicable. As a result of making any such payment, Agency shall have the right to terminate this Agreement under the termination provisions set forth below and/or seek any legal or equitable remedies for collection. Upon said termination, District shall be deemed to have released any and all rights and obligations under this Agreement, the Phase 1 Project Agreement and the Phase 2 Project Agreement in regard to the District Participation in Phases 1 and 2.

### 4. Compliance With Legal And Regulatory Requirements

In carrying out its respective activities, each Party shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and regulations in any manner affecting the performance of the respective activities. Each Party shall be liable to the other Party for all violations of such laws and regulations in connection with the respective activities. Each Party shall be responsible for securing, at its own expense, and paying for all permits and licenses necessary to perform their respective activities as set forth in this Agreement.

## 5. Effective Date

This Agreement shall be effective on the date of full execution of this Agreement by both Parties (“Effective Date”).

## 6. Term and Termination

(a) Term The term of this Agreement shall be from the Effective Date to the date of completion of performance of the activities under this Agreement. This Agreement shall remain in effect during the term unless earlier terminated under the following procedures:

(b) Notice and Opportunity to Cure If either Party to this Agreement believes that the other Party has failed to perform any obligation of that Party in accordance with the terms of this Agreement (“Default”), the Party alleging the Default shall provide written notice (“Default Notice”) to the other Party, setting forth the nature of the alleged Default. Unless otherwise provided by a specific term of this Agreement, the Party claimed to be in Default shall have thirty (30) days from the receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to commence the cure of such Default within the thirty (30) day period and diligently prosecute the cure to completion thereafter. If the Party claimed to be in Default does not cure such Default within the time period and procedures as set forth herein, the Party alleging Default may then terminate this Agreement and/or seek any applicable legal or equitable remedies.

## 7. General Provisions

(a) Entire Agreement This Agreement is intended by the Parties as a complete and exclusive statement of the terms of their agreement and it supersedes all prior agreements, written or oral, as to this subject matter. This Agreement may be modified only upon the mutual written agreement of the Parties hereto.

(b) Notices Written notices to be given to either Party must be given by personal delivery or by registered or certified mail addressed and delivered as set forth below.

Beaumont-Cherry Valley Water District  
560 Magnolia Avenue  
Beaumont, CA 92223  
(951) 845-9581  
Attn: General Manager

San Geronio Pass Water Agency  
1210 Beaumont Avenue  
Beaumont, CA 92223  
(951) 845-2577  
Attn: General Manager



(c) Representation of Authority Each Party represents to the other that it has the authority to enter into this Agreement and that the individual signing this Agreement on behalf of their respective Parties has the authority to execute this Agreement and to bind their respective Parties to the terms and conditions of this Agreement.

(d) Incorporation of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Agreement.

(e) Invalidity and Severability If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by its respective duly authorized officers.

SAN GORGONIO PASS WATER AGENCY

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

Title: \_\_\_\_\_

BEAUMONT-CHERRY VALLEY WATER DISTRICT

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

Title: \_\_\_\_\_

Exhibit “A”

Phase 1 Participation Agreement.

**AGREEMENT  
SITES RESERVOIR PROJECT  
PARTICIPATION IN PHASE 1 RESERVOIR PROJECT AGREEMENT**

This AGREEMENT FOR PARTICIPATION IN THE PHASE 1 RESERVOIR PROJECT AGREEMENT ("Agreement") is made as of 8-22, 2017, by and between the San Geronio Pass Water Agency, a public agency ("Agency") and the Beaumont-Cherry Valley Water District, a public agency ("District"). Agency and District are hereinafter sometimes collectively referred to as the "Parties" or individually as a "Party."

**RECITALS**

A. On December 21, 2015, public agencies in the Sacramento River Watershed entered in that certain Modified Third Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement pursuant to which said agencies ("Members") formed the Sites Project Authority ("Authority") to develop the Sites Reservoir Project ("Project").

B. On April 16, 2016, certain Members entered into a Phase 1 Reservoir Project Agreement and invited additional Members and Non-Member Participating Parties to become part of the Phase 1 Reservoir Project Agreement. Phase 1 includes the following primary activities: (i) planning level studies related to operation of the reservoir to provide both direct and indirect water supply and water supply reliability for water users and Proposition 1, Chapter 8-defined public benefits; (ii) planning level studies related to the design and construction of the reservoir; and (iii) the potential inclusion of pumped-storage to provide renewable energy; and

C. On June 20, 2016, the Agency Board took action to submit a proposal to the Authority to become a Non-Member Participating Party through the purchase of 14,000 acre-feet ("AF") of Class 1 water. The Agency Board also took action to provide an opportunity to District to purchase 4,000 AF of the Agency's 14,000 AF requested amount; and

D. On July 27, 2016, the District Board took action to participate with the Agency in the amount of 4,000 AF as offered by the Agency but specified that it was interested in only a Class 1 level of participation; and

E. Class 1 water is defined by the Authority as 50% of the expected annualized yield that would be allocated to the Project Agreement Members. Class 1 water represents the amount of water that would not be made available for Proposition 1, Chapter 8-eligible public benefits assuming the California Water Commission elects to participate up to the maximum amount allowed by Proposition 1, Chapter 8, which is 50% of the total development costs of the Project. Class 2 water is defined by the Authority as some of the remaining 50% which could become available for non-Proposition 1, Chapter 8 uses. For Phase 1, the maximum amount of this Class 2 additional water is approximately 35% of the total. The remaining 15% is currently not available for potential non-Proposition 1, Chapter 8 uses and represents the differential amount of long-term annualized water produced should the Project be downsized from 1.8 million AF to

1.3 million AF; and

F. The Authority responded to Agency's request by way of a letter dated October 11, 2016. The Authority stated that the amount requested by all interested entities totaled 377,411 AF, of which only 250,000 AF is available until the State of California makes its decision to participate in the development of the Project, which in accordance with Chapter 8 of Proposition 1, is limited to 50% of capital costs. Therefore, the difference, which equals 127,411 AF, is deemed to be Class 2 water. As a result, the Authority was originally able to provide to Agency 7,966 AF as Class 1 water, which has a Phase 1 not-to-exceed cost of \$60/AF plus an additional 6,034 AF as Class 2 water, which has a Phase 1 not-to-exceed cost of \$30/AF. This counterproposal from the Agency is referred to as the "Agency Participation"; and

G. The Parties acknowledge that the Authority may change the volume of Class 1 water and Class 2 water to be made available ; and

H. On January 17, 2017, the Agency Board took action to enter into the Sites Project Authority's Amended And Restated Phase 1 Reservoir Project Agreement ("Project Agreement") and to make the financial commitment required for the Agency Participation under said Project Agreement. A copy of the Project Agreement is set forth in Exhibit "A" attached hereto and incorporated herein by reference; and

I. Pursuant to the Agency's previous offer to District to participate in Agency's purchase, and based on the Agency Participation, the Parties desire to enter into this Agreement in order to set forth the terms and conditions upon which the District will purchase a portion of the Agency Participation.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth in this Agreement, and for other good, valuable, and adequate consideration, the Parties hereto agree as follows:

#### 1. District Participation

District hereby agrees to make the following financial commitment and otherwise participate in the Agency Participation ("District Participation"). The following percentage shares shall remain in effect regardless of whether the Authority later changes the volume of Class 1 water and Class 2 water to be made available. Based on the volumes available from the Authority as of the effective date of this Agreement, the District Participation shall be deducted from the Agency Participation as follows:

- (a) Percentages By And Between The Parties  
Agency – 71.429%

District – 28.571%

- (b) Current Authority Proposal and Agency Participation  
14,000 AF divided between Class 1 and Class 2  
7,966 AF of Class 1 water; Phase 1 not-to-exceed cost of \$60/AF  
6,034 AF of Class 2 water; Phase 1 not-to-exceed cost of \$30/AF
- (c) Agency Participation After Deducting District Participation  
71.429% of Class 1 water ; Phase 1 not-to-exceed cost of \$60/AF  
71.429% of Class 2 water; Phase 1 not-to-exceed cost of \$30/AF
- (d) District Participation After Deducting Agency Participation  
28.571% of Class 1 water; Phase 1 not-to-exceed cost of \$60/AF  
28.571% of Class 2 water; Phase 1 not-to-exceed cost of \$30/AF

## 2. Rights And Obligations

(a) Compliance With Project Agreement - Performance of this Agreement, and the activities of the Parties, shall be subject to the rights and obligations set forth in the Project Agreement and any other Authority rules and regulations as the same may be adopted or revised from time to time.

(b) Agency's Obligations To District - The rights and obligations of Agency to District shall be limited to the terms and conditions of this Agreement. District shall not be deemed to be a party to the Project Agreement nor otherwise have any right or entitlement under the Project Agreement. For example and not by way of limitation, District shall not have any right to participate in, or become a member of, the Reservoir Project Committee as set forth in the Project Agreement.

(c) No Representations Or Warranties – Nothing in this Agreement shall constitute a representation or warranty by Agency to District of any water rights, water supplies, allocation or any other obligation regarding the amount of water which may or may not be provided by the Authority under the Project Agreement. Agency's obligations are limited to performance of the Project Agreement as a Non-Member Participating Party and performance of this Agreement. Agency shall not be deemed to have made any commitment of a water right or water supply to District, District's customers or District's applicants for service.

## 3. Payment Obligations

(a) Payment Requests From Authority - Upon receipt of Phase 1 cost payment requests from the Authority, Agency shall provide a copy of said requests to District along with a cover letter setting forth the calculation of the percentage amount due and owing by District. Within thirty (30) days of the date of said cover letter, District shall submit payment to Agency for District's percentage share as set forth in this Agreement. Agency shall be responsible for

71.429% of Phase 1 costs and District shall be responsible for 28.571% of Phase 1 costs.

(b) District's Review Of Payment Requests - If District objects to any portion of said statement or calculation, it shall provide written notice to Agency of said objections within ten (10) days from the date of the Agency cover letter and the Parties shall then engage in good faith efforts to resolve such issues through informal discussions. In the event District does not submit such an objection to Agency within said 10-day period, District will be deemed to have approved said statement.

(c) Failure Or Refusal To Make Payment

(i) The Parties hereby acknowledge that Agency will be the Non-Member Participating Party contractually bound to the Project Agreement and Agency will be ultimately responsible for all Phase 1 costs in relation to the Agency Participation which includes the portion designated as the District Participation.

(ii) Therefore, in the event that District objects to a payment request or otherwise fails or refuses to make a payment, and said issues are not resolved through good faith informal discussions prior to a deadline for payment imposed by the Authority, Agency reserves the right to make the entire payment as applicable. As a result of making any such payment, Agency shall have the right to terminate this Agreement under the termination provisions set forth below. Upon said termination, District shall be deemed to have released any and all rights and obligations under this Agreement in regard to the District Participation.

4. Compliance With Legal And Regulatory Requirements

In carrying out its respective activities, each Party shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and regulations in any manner affecting the performance of the respective activities. Each Party shall be liable to the other Party for all violations of such laws and regulations in connection with the respective activities. Each Party shall be responsible for securing, at its own expense, and paying for all permits and licenses necessary to perform their respective activities as set forth in this Agreement.

5. Effective Date

This Agreement shall be effective on the date of full execution of this Agreement by both Parties ("Effective Date").

6. Term and Termination

(a) Term The term of this Agreement shall be from the Effective Date to the date of

completion of performance of the activities under this Agreement. This Agreement shall remain in effect during the term unless earlier terminated under the following procedures:

(b) Notice and Opportunity to Cure If either Party to this Agreement believes that the other Party has failed to perform any obligation of that Party in accordance with the terms of this Agreement ("Default"), the Party alleging the Default shall provide written notice ("Default Notice") to the other Party, setting forth the nature of the alleged Default. Unless otherwise provided by a specific term of this Agreement, the Party claimed to be in Default shall have thirty (30) days from the receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to commence the cure of such Default within the thirty (30) day period and diligently prosecute the cure to completion thereafter. If the Party claimed to be in Default does not cure such Default within the time period and procedures as set forth herein, the Party alleging Default may then terminate this Agreement.

## 7. General Provisions

(a) Entire Agreement This Agreement is intended by the Parties as a complete and exclusive statement of the terms of their agreement and it supersedes all prior agreements, written or oral, as to this subject matter. For example, and not by way of limitation, any previous actions or correspondence from the District regarding a preference for only purchasing Class 1 water is hereby superseded by this Agreement and shall be of no further force or effect. This Agreement may be modified only upon the mutual written agreement of the Parties hereto.

(b) Notices Written notices to be given to either Party must be given by personal delivery or by registered or certified mail addressed and delivered as set forth below.

Beaumont-Cherry Valley Water District  
560 Magnolia Avenue  
Beaumont, CA 92223  
(951) 845-9581  
Attn: General Manager

San Geronio Pass Water Agency  
1210 Beaumont Avenue  
Beaumont, CA 92223  
(951) 845-2577  
Attn: General Manager

(c) Representation of Authority Each Party represents to the other that it has the authority to enter into this Agreement and that the individual signing this Agreement on behalf of their respective Parties has the authority to execute this Agreement and to bind their respective Parties to the terms and conditions of this Agreement.

(d) Incorporation of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Agreement.

(e) Invalidity and Severability If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by its respective duly authorized officers.

SAN GORGONIO PASS WATER AGENCY

By: Jeffrey W. Davis  
Title: SM

BEAUMONT-CHERRY VALLEY WATER DISTRICT

By: [Signature]  
Title: \_\_\_\_\_



Exhibit “B”

Phase 2 Project Agreement

**SITES PROJECT AUTHORITY**

**2019 RESERVOIR PROJECT AGREEMENT**

**DATED AS OF APRIL 1, 2019**

**BY AND AMONG**

**SITES PROJECT AUTHORITY**

**AND**

**THE PROJECT AGREEMENT MEMBERS LISTED HEREIN**

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THIS 2019 RESERVOIR PROJECT AGREEMENT is made effective as of April 1, 2019, by and among (a) the Sites Project Authority (the “Authority”) and (b) certain Members and/or Non-Member Participating Parties, listed on the attached **Exhibit A** and is made with reference to the following facts:

## RECITALS

A. Various public agencies in the Sacramento River Watershed created the Authority in 2010. Various public agencies in the Sacramento River Watershed, including certain Project Agreement Members, previously entered into the Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated November 21, 2016, pursuant to which they are developing the Sites Reservoir Project, which is contained in the CalFed Bay-Delta program Programmatic Record of Decision, August 28, 2000. The Joint Powers Agreement provides a mechanism for “Project Agreements” (as defined in the Joint Powers Agreement) to undertake specific work activities for the development of the Sites Reservoir Project. On September 17, 2018, the Authority’s Board of Directors also adopted Bylaws for Phase 2 of the Sites Reservoir Project, which also address Project Agreements and their management through Reservoir Project Committees.

B. On April 11, 2016, certain Authority Members of the Authority entered into the PHASE 1 RESERVOIR PROJECT AGREEMENT which was amended and restated as of November 21, 2016.

C. The Authority and certain Project Agreement Members have undertaken a process to negotiate a 2019 Reservoir Project Agreement to undertake specific work activities.

D. The Project Agreement Members wish to continue development of the Project pursuant to a Work Plan approved by the Authority on November 19, 2018 and the Reservoir Project Committee on November 16, 2018 and a summary of which is described in **Exhibit B** attached hereto. The Project will be undertaken in the name of the Authority and in accordance with the Authority’s stated Mission as set forth in the fourth Recital of the Joint Powers Agreement. The Project Agreement Members are entering into this Project Agreement to satisfy the requirements of Article VI of the Joint Powers Agreement.

E. All members of the Authority have also been given the opportunity to enter into this Project Agreement. The form of this Project Agreement was determined to be consistent with the Joint Powers Agreement and the Bylaws and approved by the Authority’s Board of Directors on September 17, 2018.

F. The Authority and the Project Agreement Members acknowledge that one of the Authority’s goals, in addition to providing environmental benefits, is to develop and make both a water supply and storage capacity available to water purveyors and landowners within the Sacramento River watershed, and in other areas of California, who are willing to purchase either or both a water supply and storage capacity from the Sites Reservoir Project, and that the Project Agreement Members should have a preference to the water supply or storage capacity.

G. The Authority and the Project Agreement Members acknowledge that the approval and execution of this Project Agreement does not commit the Authority, the Project Agreement Members or any other party to any definite course of action regarding the Sites Reservoir Project. As

set forth in Section 6(a) of this Project Agreement, there are no assurances that the Sites Reservoir Project will be constructed. One of the prerequisites that would need to be fulfilled before the Sites Reservoir Project could be constructed is the completion of environmental review under the California Environmental Quality Act ("CEQA"). As part of this environmental review, the Authority, as the lead agency that is conducting the review, reserves all of its rights, responsibilities, obligations, powers, and discretion under the provisions of CEQA to: (i) evaluate the environmental impacts of the Sites Reservoir Project; (ii) deny and disapprove the Sites Reservoir Project if the environmental review reveals significant environmental impacts that cannot feasibly be mitigated; (iii) adopt feasible mitigation measures and/or an alternative to the Sites Reservoir Project to avoid or lessen significant environmental impacts; or (iv) determine that any significant environmental impacts that cannot feasibly be mitigated are outweighed by the economic, social or other benefits of the Sites Reservoir Project.

## **AGREEMENT**

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

### **Section 1      Definitions**

"Authority" means the Sites Project Authority, a joint exercise of powers agency created pursuant to the Joint Powers Agreement.

"Authority Members" means the members of the Authority executing the Joint Powers Agreement, as such members may change from time-to-time in accordance with Section 3.3, Section 7.12 and Section 7.2 of the Joint Power Agreement.

"Board" means the Board of Directors of the Authority.

"Bylaws" means the Bylaws for Phase 2 of the Sites Reservoir Project adopted by the Authority on September 17, 2018, as such Bylaws may be amended or supplemented from time-to-time in accordance therewith.

"Committee" means the Reservoir Project Committee described in Section 3 of this Project Agreement.

"Fiscal Year" means the fiscal year of the Authority, which currently begins on January 1 of each calendar year and ends on December 31 of each calendar year, or such other twelve month period which may be designated by the Authority as its Fiscal Year.

"Joint Power Agreement" means the Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated November 21, 2016, as such agreement may be amended or supplemented from time-to-time in accordance therewith.

"Law" means Articles 1 through 4 (commencing with Section 6500), Chapter 5, Division 7, Title 1 of the California Government Code, as amended or supplemented from time-to-time.

"Material Change Item" shall have the meaning ascribed thereto in the Bylaws.

“Participation Percentage” means the Participation Percentages as set forth in **Exhibit A** hereto, as such Participation Percentages may be modified in accordance herewith.

“2019 Budget” means the 2019 Budget approved by the Committee on November 16, 2018 and the Authority on November 19, 2018, as such 2019 Budget may be amended or supplemented from time-to-time in accordance with the Joint Powers Agreement, this Project Agreement and the Bylaws.

“Project” or “Sites Reservoir Project” means the Sites Reservoir Project as described in **Exhibit B** hereto, as modified from time-to-time in accordance therewith.

“Project Agreement” means this Project Agreement, dated as of April 1, 2019, by and among the Authority and the Project Agreement Members listed on **Exhibit A** from time-to-time, as such Project Agreement may be amended or supplemented from time-to-time in accordance herewith.

“Project Agreement Members” means (a) the Authority Members listed in the attached **Exhibit A**, (b) the Non-Member Participating Parties listed in the attached **Exhibit A** and (c) additional Authority Members or Non-Member Participating Parties who execute this Project Agreement from time-to-time pursuant to Section 10 hereof.

“Work Plan” means the activities described in **Exhibit B** hereto as such description may be amended or supplemented from time-to-time.

## **Section 2      Purpose**

The purpose of this Project Agreement is to permit the Authority and the Project Agreement Members to continue development of the Project in the name of the Authority consistent with the Joint Powers Agreement. The activities undertaken to carry out the purposes of this Project Agreement shall be those, and only those, authorized by the Authority and the Committee in accordance with this Project Agreement, the Joint Powers Agreement and the Bylaws. Without limiting in any way the scope of the activities that may be undertaken under this Project Agreement, such activities shall include funding the Authority’s costs undertaken to carry out the directions of the Committee. Notwithstanding any other provision of this Project Agreement, no activity undertaken pursuant to this Project Agreement shall conflict with the terms of the Joint Powers Agreement or the Bylaws, nor shall this Project Agreement be construed in any way as creating an entity or combination of entities that is separate and apart from the Authority.

## **Section 3      Reservoir Project Committee**

(a) Committee Membership. The business of the Project Agreement Members under this Project Agreement shall be conducted by a Committee consisting of one member appointed by each Project Agreement Member. Appointment of each member of the Committee shall be by action of the governing body of the Project Agreement Member appointing such member, and shall be effective upon the appointment date as communicated in writing to the Authority. Project Agreement Members may also appoint one or more alternate Committee members, which alternate(s) shall assume the duties of the Committee member in case of absence or unavailability of such member. Project Agreement Members may also appoint an alternate Committee member from a different Project Agreement Member for convenience in attending Committee meetings, who may

cast votes for such Project Committee Members, provided that no person shall represent more than five other Project Committee Members and more than 20% of the weighted vote as provided in Subsection 3(g) at any given meeting; provided however, that if the appointing Project Committee Member is an officer of the Committee, the appointed alternate Committee member shall not assume the capacity of such officer position. In order to serve as an alternate Committee member, a written evidence of such designation shall be filed with the Committee Secretary. Each member and alternate member shall serve on the Committee from the date of appointment by the governing body of the Project Agreement Member he/she represents and at the pleasure of such governing body.

(b) Officers. The Committee shall select from among its members a Chairperson, who shall annually act as presiding officer, and a Vice Chairperson, to serve in the absence of the Chairperson. There also shall be selected a Secretary, who may, but need not be, a member of the Committee and a Treasurer. All elected officers shall be elected and remain in office at the pleasure of the Committee, upon the affirmative vote of at least a majority of the total weighted vote as provided at Subsection 3(g);

(c) Treasurer. The Authority Treasurer shall serve as the Committee's Treasurer and shall act as the Committee's liaison to the Authority's General Manager and Authority Board on financial matters affecting the Committee. The Treasurer shall prepare and provide regular financial reports to the Committee as determined by the Committee. The Treasurer shall not be required to be a member of the Board of Directors of the Authority.

(d) General Manager. The Authority's General Manager shall (1) serve as the Project Director responsible for advancing the Sites Reservoir Project, (2) be a non-voting member of the Committee, (3) ensure coordination of activities between the Authority and Committee, (4) convene, on an as needed basis, legal representatives from the Project Agreement Members and Authority Members to advise the General Manager on legal matters that will be reported to the Committee and Authority on a timely basis, and (5) coordinate the activities between the Committee and both the United States Bureau of Reclamation and Department of Water Resources.

(e) Meetings. The Chairperson of the Committee or a majority of a quorum of the members of the Committee are authorized to call meetings of the Committee as necessary and appropriate to conduct its business under this Project Agreement. All such meetings shall be open to the public and subject to the requirements set forth in the Ralph M. Brown Act (Government Code Sections 54950 et seq.).

(f) Quorum. A majority of the Committee members based on the weighted vote provided in Subsection 3(g) shall constitute a quorum of the Committee.

(g) Voting. Notwithstanding any provisions of the Bylaws that might be construed otherwise, for purposes of this Project Agreement, the voting rights of each Project Agreement Member shall be determined as follows:

(i) an equal number of voting shares for each Project Agreement Member as defined in **Exhibit A**, that being for each Project Agreement Member, 1 divided by the total number of Project Agreement Members, multiplied by 50; plus

- (ii) an additional number of voting shares for each Project Agreement Member equal to its respective Participation Percentage described in **Exhibit A**, multiplied by 50, using the version of **Exhibit A** in effect at the time the Committee votes.

The resulting weighted total of all voting shares shall equal 100. An Example of this weighted voting incorporating the formulas for determining participating percentages is attached at **Exhibit A**.

(h) Decision-making Thresholds. In accordance with Section 5.8 of the Bylaws, for purposes of this Project Agreement, approval by the Committee for material and non-material changes shall be as follows: for actions other than Material Change Items, action of the Committee shall be taken upon the affirmative vote of at least a majority of the total weighted vote as provided in Subsection 3(g); for Material Change Items, action shall be taken upon the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 3(g).

(i) Delegation of Authority/Powers and Limitations Thereon. Subject to the direction of the governing bodies of the Project Agreement Members, the Committee shall undertake all actions necessary for carrying out this Project Agreement, including but not limited to setting policy for the Project Agreement Members acting under this Project Agreement with respect to the Project; recommending actions to be undertaken in the name of the Authority under this Project Agreement; determining the basis for calculation of the Participation Percentages for each fiscal year, and the timing required for payments of obligations hereunder; authorizing expenditure of funds collected under this Project Agreement within the parameters of the Work Plan and budget; and such other actions as shall be reasonably necessary or convenient to carry out the purposes of this Project Agreement. This Section 3(i) is subject to any and all limitations set forth in the Joint Powers Agreement and Bylaws, including but not limited to, any action that constitutes a material change as defined at Section 12.3 of the Bylaws requiring the approval of both the Committee and the Authority Board, and actions specified in Section 10 of the Bylaws which remain exclusively with the Authority Board.

#### **Section 4      Funding**

(a) Budget. The Committee shall, in cooperation with the Authority's Board, provide and approve both a Fiscal Year operating budget and reestablish a Phase 2 budget target, annually or more frequently as needed. On November 19, 2018, the Board approved the Fiscal Year 2019 operating budget. The Work Plan, including annual budget, dated November 19, 2018, is attached at Exhibit B, along with the budget approval process and requirements. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums in accordance with Section 5 of this Project Agreement; provided, however, that in no event shall the amount paid by a Project Agreement Member exceed \$60 per acre-foot without the approval of such Project Agreement Member.

(b) Fiscal Responsibilities. Exhibit B specifies the Authority's requirements regarding the fiscal responsibilities of the Committee.

(c) Allocation of Project Agreement Expenses. The Project Agreement Members agree that all expenses incurred by them and/or by the Authority under this Project Agreement are the costs of the Project Agreement Members and not of the Authority or the Project Agreement Members of the Authority that do not execute this Project Agreement, and shall be paid by the Project Agreement Members; provided, however, that this Section shall not preclude the Project



Agreement Members from accepting voluntary contributions and/or Authority Board's pre-approval of in-kind services from other Authority Members, or Project Agreement Members, and applying such contributions to the purposes hereof. The Project Agreement Members further agree to pay that share of any Authority costs reasonably determined by the Authority's Board to have been incurred by the Authority to administer this Project Agreement. Before the Authority's costs of administering this Project Agreement become payable, the Authority will provide its calculation of such costs to the Committee, which will have the right to audit those costs and provide comments on the calculation to the Authority Board. The Authority Board shall consider the Committee's comments, if any, including the results of any such audit, in a public meeting before the Authority Board approves a final invoice for such costs.

## **Section 5      Participation Percentages**

Subject to Section 4(a), each Project Agreement Member shall pay that share of costs for activities undertaken pursuant to this Project Agreement, whether undertaken in the name of the Authority or otherwise, equal to such Project Agreement Member Participation Percentage as established in this Section 5. The initial Participation Percentages of the Project Agreement Member are set forth in the attached **Exhibit A**. These initial Participation Percentages are for the purpose of establishing the Reservoir Project Agreement Members respective responsibilities for costs under this Project Agreement and other amounts contained in the approved Fiscal Year budget and Phase 2 budget target, which is defined as the "Reservoir Total" on **Exhibit B**. The Participation Percentages of each Project Agreement Member will be modified by the Committee from time to time as the result of the admission of a new Project Agreement Member to this Project Agreement or the withdrawal of a Project Agreement Member, and **Exhibit A** shall be amended to reflect all such changes. Such amended **Exhibit A** shall, upon approval by the Committee, be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A** without the requirement of further amendment of this Project Agreement.

## **Section 6      Future Development of the Sites Reservoir Project**

(a) The Project Agreement Members acknowledge that the Sites Reservoir Project is still in the conceptual stage and there are no assurances that the Sites Reservoir Project will be constructed or that any water supplies will be developed as a result of this Project Agreement. **Exhibit B** includes a partial list of some of the risks and uncertainties that underlie the lack of assurances. The Project Agreement Members therefore recognize that they are not acquiring any interest in the Sites Reservoir Project other than their interest in the specific permitting, design, engineering and other materials that will be in the Work Plan Project as described in **Exhibit B**, and that the Project Agreement Members are not acquiring under this Project Agreement any interest in any future water supply or access to any other services from the Sites Reservoir Project except as provided hereunder.

(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, equal to that Project Agreement Member's Participation Percentage, to contract for a share of any water supply that is developed, and for storage capacity that may be available from, the Sites Reservoir Project. In any successor phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before February 15, 2019, shall be granted rights to contract for a share of any water supply that is developed, and for storage capacity

that may be available from the Sites Reservoir Project prior to the rights of those becoming parties to this Project Agreement after that date. The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the such Project Agreement Member.

#### **Section 7      Indemnity and Contribution**

(a) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority, Authority Members and other Project Agreement Members and their directors, trustees, officers, employees, and agents harmless from and against any liability, cause of action or damage (including, without limitation, reasonable attorneys' fees) arising out of the performance of this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. Notwithstanding the foregoing, to the extent any such liability is caused by the negligent or intentional act or omission of an Authority Member or a Project Agreement Member, such Authority Member or Project Agreement Member shall bear such liability.

(b) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members, shall indemnify, defend and hold the Authority and the members of the Authority that do not execute this Project Agreement and their directors, trustees, officers, employees and agents harmless from and against any liabilities, costs or expenses of any kind (including, without limitation, reasonable attorney's fees) arising as a result of the activities described in or undertaken pursuant to this Project Agreement multiplied by each Project Agreement Member's Participation Percentage. All assets, rights, benefits, debts, liabilities and obligations attributable to activities undertaken under this Project Agreement shall be assets, rights, benefits, debts, liabilities and obligations solely of the Project Agreement Members in accordance with the terms hereof, and shall not be the assets, rights, benefits, debts, liabilities and obligations of the Authority or of those members of the Authority that have not executed this Project Agreement. Members of the Authority not electing to participate in the Project Agreement shall have no rights, benefits, debts, liabilities or obligations attributable to the Project Agreement.

#### **Section 8      Term**

(a) No provision of this Project Agreement shall take effect until this Project Agreement has been duly executed and delivered by the Authority and by one Project Agreement Member.

(b) The term of this Project Agreement shall continue until December 31, 2019, unless extended in writing by the parties hereto.

#### **Section 9      Withdrawal From Further Participation**

To withdraw from this Project Agreement, a Project Agreement Member shall give the Authority and other Project Agreement Members written notice of such withdrawal not less than 30 days prior to the withdrawal date. As of the withdrawal date, all rights of participation in this Project Agreement shall cease for the withdrawing Project Agreement Member. The financial obligation as prescribed in the Bylaws' Section 5.11 in effect on the withdrawal date, shall consist of the

withdrawing Member's share of the following costs: (a) payment of its share of all non-contract costs incurred prior to the date of the written notice of withdrawal, and (b) those contract costs associated with funds approved in either contract amendments or task orders that were approved prior to the date of the written notice of withdrawal for which the contractor's work extends beyond the withdrawal date. However, a withdrawing member shall have no liability for any change order or extensions of any contractor's work that the remaining Project Agreement Members agree to after the withdrawing Member provides written notice of withdrawal. Withdrawal from this Project Agreement shall not be considered a Material Change Item and shall not be subject to the Dispute Resolution process provided for in Section 13.3 of the Bylaws.

#### **Section 10     Admission of New Project Agreement Members**

Additional Members of the Authority and Non-Member Participating Parties may become Project Agreement Members upon (a) confirmation of compliance with the membership requirements established in the Bylaws, (b) the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 3(g) of the then-current Project Agreement Members, (c) the affirmative vote of at least 75% of the total number of Directors of the Authority, and (d) upon such conditions as are fixed by such Project Agreement Members.

#### **Section 11     Amendments**

This Project Agreement may be amended only by a writing executed by the Authority and at least 75% of the total weighted vote as provided in Subsection 3(g) of the then-current Committee members.

#### **Section 12     Assignment; Binding on Successors**

Except as otherwise provided in this Project Agreement, the rights and duties of the Project Agreement Members may not be assigned or delegated without the written consent of the other Project Agreement Members and the Authority, which consent shall not be unreasonably withheld. Any attempt to assign or delegate such rights or duties in contravention of this Project Agreement shall be null and void. Project Agreement Members may assign and delegate their rights and duties under this Project Agreement to other Project Agreement Members, and they may assign, sell, trade, or exchange all or a fraction of the potential benefits (e.g. acre-feet of water supply, megawatt-hours of power) they expect to receive through their participation in this Project Agreement. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Project Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority and the Project Agreement Members.

**Section 13     Counterparts**

This Project Agreement may be executed by the Authority and each Project Agreement Member in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.

**Section 14     Merger of Prior Agreements**

This Project Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understanding between the parties relating to the subject matter hereof. This Project Agreement is intended to implement, and should be interpreted consistent with, the Joint Powers Agreement.

**Section 15     Severability**

If one or more clauses, sentences, paragraphs or provisions of this Project Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of the Project Agreement shall not be affected thereby.

**Section 16     Choice of Law**

This Project Agreement shall be governed by the laws of the State of California.

**Section 17     Notices**

Notices authorized or required to be given under this Project Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the addresses set forth **Exhibit E** (“**Notifications**”), or to such other address as a Project Agreement Member may provide to the Authority and other Project Agreement Members from time to time.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: \_\_\_\_\_,

SITES PROJECT AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

[PROJECT AGREEMENT MEMBER]

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Authority & Project Agreement Member)

By: \_\_\_\_\_  
Name:  
Title:

# EXHIBIT A

## PROJECT AGREEMENT MEMBERS

<b>Participant</b>	<b>Participation (Annualized Acre-Foot)</b>	
	<b>Preliminary</b>	<b>Percent</b>
American Canyon, City of	~4,000	1.7%
Antelope Valley-East Kern Water Agency	~500	0.2%
Carter Mutual Water Company ‡	~500	0.2%
Coachella Valley Water District	~10,000	4.3%
Colusa County	~10,000	4.3%
Colusa County Water District	~13,100	5.6%
Desert Water Agency	~6,500	2.8%
Glenn-Colusa Irrigation District	~5,000	2.1%
Metropolitan Water District of S. CA	~50,000	21.4%
Pacific Resources Mutual Water Company ‡	~20,000	8.5%
Reclamation District 108	~5,000	2.1%
San Bernardino Valley Municipal Water District	~21,400	9.1%
San Geronio Pass Water Agency	~14,000	6.0%
Santa Clara Valley Water District	24,000	10.3%
Santa Clarita Valley Water Agency	~5,000	2.1%
TC-4: Cortina Water District	~300	0.1%
TC-4: Davis Water District	~2,000	0.9%
TC-4: Dunnigan Water District	~2,774	1.2%
TC-4: LaGrande Water District	~1,000	0.4%
Westside Water District	~15,000	6.4%
Wheeler Ridge-Maricopa Water Storage District	14,000	6.0%
Zone 7 Water Agency	~10,000	4.3%
Potential new participants	TBD	%
<b>Total:</b>	<b>234,074</b>	<b>100.0%</b>

Participation Percentages exclude State of California and United States Bureau of Reclamation share of the Project.

NOTE: Any annualized amounts listed for Phase 2 are preliminary and are based on best estimates received after participants' respective review of the draft financing plan and draft Phase 2 Reservoir Project Agreement. These amounts do not represent the results of any action having been taken by the participants' respective governing body to formally execute the Phase 2 Reservoir Project Agreements. Final participation amounts will be established after interim financing terms and conditions have been provided and incorporated into the final Phase 2 Reservoir Project Agreement.

‡ Denotes a non-public agency. Refer to California Corporations Code Section 14300 et. seq. with additional requirements provided in both the Public Utilities Code and Water Code.

# EXHIBIT B 2019 WORK PLAN

2018 November 16 Reservoir Committee Meeting - Attachment A - Agenda Item 3-3

Category	(Multiple Items)
Action	(Multiple Items)
Funding Source	(Multiple Items)
Work Manager	(All)
Priority	(All)

Report: Reservoir Committee 2019 Work Plan & Budget  
Report Date: 2018 Nov 12

Expense (-) or Revenue (+)	Cost Center	Task	Resource	Reprioritize	Proposed Budget
				Currently Approved Budget	Authority= 12 mon Res. Comm= 9 mon
				Sum of Total End of Phase 1	Sum of Total 2019
Expense	C.R. Policy			\$ -	\$ (2,067,094)
	Engagement			\$ -	\$ (135,000)
	Operations	Contingency		\$ -	\$ -
		Env Interests		\$ (44,936)	\$ (120,552)
		Exchange		\$ -	\$ (75,550)
		Modeling		\$ (325,000)	\$ (998,480)
		Op POA		\$ (59,488)	\$ (61,040)
		Staff+		\$ (69,705)	\$ (417,555)
		Storage		\$ (17,824)	\$ (136,300)
		Water Rights		\$ (29,712)	\$ (204,264)
		Water Rights+		\$ (29,712)	\$ (119,892)
	Operations Total			\$ (576,377)	\$ (2,133,633)
	Power	Grid Interconn+		\$ -	\$ (1,097,880)
		H2oPower+		\$ -	\$ (668,453)
		Staff Aug+		\$ -	\$ (632,880)
		Staff+		\$ -	\$ -
	Power Total			\$ -	\$ (2,399,213)
	Res. Comm. O	Advisory		\$ (43,200)	\$ (82,565)
		Office		\$ -	\$ (133,100)
		Participation		\$ (109,800)	\$ (210,600)
		PROCURE		\$ -	\$ (80,240)
		PROCURE-2		\$ -	\$ -
		Rebalance		\$ (8,400)	\$ (134,070)
		Staff		\$ (6,000)	\$ (1,739,573)
		Staff Aug		\$ -	\$ (4,237,495)
		Staff Aug+		\$ -	\$ (225,990)
		Staff+		\$ -	\$ -
		Support		\$ (26,925)	\$ (107,678)
		Technology		\$ (3,330)	\$ (13,280)
		USDA-1		\$ (10,000)	\$ (10,800)
		WSIP-1		\$ (51,440)	\$ (81,960)
	Res. Comm. OH Total			\$ (259,095)	\$ (7,057,351)
	Water	Dam Design		\$ -	\$ (8,776,500)
		Economics+		\$ -	\$ (329,880)
		EIR-EIS		\$ (165,000)	\$ (2,371,767)
		Field Studies		\$ (200,000)	\$ (887,876)
		Field Surveys		\$ -	\$ (91,980)
		Permit Coord		\$ (590,000)	\$ (8,095,900)
		Rights of Entry		\$ (306,000)	\$ (600,119)
	Water Total			\$ (1,261,000)	\$ (21,154,022)
Expense Total				\$ (2,096,472)	\$ (34,946,312)

Summary - Page 1 of 2

NOTE: 2019 proposed budget, which is applicable to this Agreement, was approved by the Reservoir Committee at their November 16, 2018 meeting with the Reservoir Committee's share of expenses listed on page B-2.

				Reprioritize Currently Approved Budget	Proposed Budget Authority= 12 mon Res. Comm= 9 mon
Expense (-) or Revenue (+)	Cost Center	Task	Resource	Sum of Total End of Phase 1	Sum of Total 2019
Revenue	Conversion			\$ -	\$ 2,067,094
	WIIN			\$ -	\$ 8,776,500
	WSIP			\$ 821,603	\$ 10,077,760
	Res. Comm.			\$ -	\$ 14,044,440
Revenue Total				\$ 821,603	\$ 34,965,795
Grand Total				\$ (1,274,870)	\$ 19,482



## EXHIBIT C

### NOTIFICATIONS

Attention: Mr. Steve Hartwig  
City of American Canyon  
4381 Broadway, Suite 201  
American Canyon, CA 94503

Attention: Mr. Dwayne Chisam  
Antelope Valley-East Kern WA  
6500 West Avenue N  
Palmdale, CA 93551

Attention: Mr. Ben Carter  
Carter MWC  
4245 River Road  
Colusa, CA 95932

Attention: Mr. Jim Barrett  
Coachella Valley Water District  
P.O. Box 1058  
Coachella, CA 92236

Attention: Ms. Wendy Tyler  
Colusa County  
547 Market St., Suite 102  
Colusa, CA 95932

Attention: Ms. Shelley Murphy  
Colusa County Water District  
P.O. Box 337  
Arbuckle, CA 95912

Attention: Mr. Jim Peterson  
Cortina Water District  
P.O. Box 489,  
Williams, CA 95987

Attention: Mr. Tom Charter  
c/o Ms Jamie Traynham  
Davis Water District  
P.O. Box 83  
Arbuckle, CA 95912

Attention: Mr. Mark Krause  
Desert Water Agency  
1200 South Gene Autry Trail  
Palm Springs, CA 92264

Attention: Mr. Bill Vanderwaal  
Dunnigan Water District  
P.O. Box 84  
Dunnigan, CA 95937

Attention: Mr. Thad Bettner  
Glenn-Colusa Irrigation District  
P.O. Box 150  
Willows, CA 95988

Attention: Mr. Matt LaGrande  
LaGrande Water District  
P.O. Box 370  
Williams, CA 9598

Attention: Mr. Steve Arakawa  
Metropolitan Water District of Southern  
California  
1121 L Street, Suite 900  
Sacramento, CA 95814

Attention: Mr. Preston Brittain  
Pacific Resources MWC  
4831 Calloway Drive, Ste. 102  
Bakersfield, CA 93312  
Bakersfield, CA 93312

Attention: Mr. Bill Vanderwaal  
Reclamation District 108  
P.O. Box 50  
Grimes, CA 95950

Attention: Mr. Dirk Marks  
Santa Clarita Valley Water Agency  
27234 Bouquet Canyon Road  
Santa Clarita, CA 91350

Attention: Mr. Doug Headrick  
San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, CA 92408-3593

Attention: Dan Ruiz  
Westside Water District  
5005 State Hwy 20  
Williams, CA 95987

Attention: Mr. Jeff Davis  
San Geronio Pass Water Agency  
1210 Beaumont Ave,  
Beaumont, CA 92223

Attention: Robert Kunde  
Wheeler Ridge-Maricopa Water Storage District  
12109 Highway 166  
Bakersfield, CA 93313

Attention: Ms. Cindy Kao  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3686  
Attention: Mr. Dirk Marks

Attention: Ms. Valerie Pryor  
Zone 7 Water Agency  
100 North Canyons Parkway  
Livermore, CA 945

## MEMORANDUM

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**TO:** Board of Directors

**FROM:** General Manager

**RE:** Change in Point of Delivery Agreement

**DATE:** January 22, 2019

### **Summary:**

At the Engineering workshop on January 14, the Board discussed a change in point of delivery agreement with the Department of Water Resources and Valley District in order to “clean up” a delivery issue related to the fact that the Yucaipa Valley Water District is in the service area of two State Water Contractors. The purpose of this proposed Board action is to determine if the Board wishes to approve the Agreement and authorize the General Manager to sign it.

### **Background:**

The Yucaipa Valley Water District serves water, through its filtration plant, to residents in both San Bernardino and Riverside Counties. A portion of this water is served in the Agency’s service area and therefore must be purchased from the Agency. However, the connection through which the water passes is owned by Valley District. Hence DWR has in the past invoiced Valley District for this water. Valley District in turn has invoiced the Agency, and YVWD has sent a check to the Agency for the water, so that all parties are whole financially.

However, DWR has in the past charged this water against Valley District’s Table A, not against the Agency’s. In order to remedy this, a change in point of delivery agreement between the Agency, DWR, and Valley District is necessary. This agreement, as discussed at the Engineering workshop, will enable the Agency to be billed directly for this water from DWR, and it will count against the Agency’s Table A amount for the year.

### **Detailed Report:**

The Agreement will enable DWR to deliver a portion of the Agency's water supply to the Valley District connection in Yucaipa. This water will be sold to YVWD directly and billed by DWR to the Agency. In turn, the Agency will have to schedule this water on a regular basis with DWR. This is common practice among Contractors.

This item is more housekeeping than anything else. It will not change how water is delivered. It will not impact anyone's costs. It will merely enable the water to be billed directly to the Agency and correctly classified as the Agency's water. The agreement was drafted by all three parties and has been reviewed by the General Counsel.

**Fiscal Impact:**

There is no fiscal impact to this action. Agency costs and revenues will be the same after approval by all parties.

**Recommendation:**

Staff recommends that the Board approve the Change in Delivery Point Agreement between the Agency, Valley District, and DWR, and authorize the General Manager to sign and implement the agreement.

State of California  
The Resources Agency  
DEPARTMENT OF WATER RESOURCES

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AGREEMENT AMONG  
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT AND  
SAN GORGONIO PASS WATER AGENCY  
FOR  
A CHANGE IN POINT OF DELIVERY OF A PORTION OF  
SAN GORGONIO PASS WATER AGENCY'S  
STATE WATER PROJECT TABLE A WATER

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SWPAO #16030

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
under the provisions of the California Water Resources Development Bond Act, and other  
applicable laws of the State of California, among the Department of Water Resources of  
the State of California (DWR), San Bernardino Valley Municipal Water District (SBVMWD),  
and San Gorgonio Pass Water Agency (SGPWA). DWR, SBVMWD and SGPWA may be  
referred to individually by name, as "Party" or collectively as "Parties."

## RECITALS

- A. DWR and SBVMWD have entered into a water supply contract, dated December 30, 1960, and subsequently amended, providing that DWR shall supply certain quantities of water to SBVMWD, providing that SBVMWD shall make certain payments to DWR, and setting forth the terms and conditions of such water deliveries and payments, hereinafter "SBVMWD's Water Supply Contract."
- B. DWR and SGPWA have entered into a water supply contract, dated November 16, 1962, and subsequently amended, providing that DWR shall supply certain quantities of water to SGPWA, providing that SGPWA shall make certain payments to DWR, and setting forth the terms and conditions of such water deliveries and payment, hereinafter "SGPWA's Water Supply Contract."
- C. Yucaipa Valley Water District (YVWD) serves customers located in both SBVMWD's and SGPWA's service areas. However, YVWD's only physical connection to the SWP system is located at SBVMWD's turnout at 3A of the California Aqueduct's East Branch Extension (Reach EBX-3A) from which SWP water is conveyed to YVWD's service area. Therefore, a change in point of delivery agreement is necessary for YVWD to receive SGPWA's SWP water for use in the SGPWA portion of YVWD's service area. SGPWA has estimated that up to 2,400 acre-feet per year of its SWP Table A water will be delivered and used by YVWD in SGPWA's service area.
- D. SGPWA requests DWR's approval for a change in point of delivery of up to 2,400 acre-feet annually of SGPWA's approved SWP Table A water to SBVMWD's turnout at Reach EBX-3A for use in the SGPWA portion of YVWD's service area.
- E. In compliance with the California Environmental Quality Act (CEQA), SGPWA, as lead agency, has determined that the change in point of delivery is categorically exempt from the requirements under CEQA Guidelines Section 15301 (exemption for the operation of existing facilities) and has filed a Notice of Exemption (NOE) with the State Clearinghouse (SCH) on January 4, 2017 (SCH # 2017018021). DWR, as the responsible agency, will file a NOE upon execution of this Agreement.

## **AGREEMENT**

DWR approves a change in point of delivery of up to 2,400 acre-feet annually of SGPWA's approved SWP Table A water to SBVMWD's turnout at Reach EBX-3A of the California Aqueduct during the term of the Agreement, subject to the following terms and conditions:

### **TERM**

1. This Agreement shall be effective upon execution by all Parties, and shall terminate on December 31, 2035, or upon final payment to DWR of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless and indemnification obligations in this Agreement shall remain in effect until December 31, 2039, or until any claim or litigation concerning this Agreement asserted to DWR, SBVMWD, or SGPWA as of December 31, 2039 is finally resolved, whichever occurs later. Extending the obligations in this paragraph of this Agreement beyond the termination dates in the long term SWP water supply contracts between DWR and SBVMWD and between DWR and SGPWA, and the use of the December 31, 2039 date in this Agreement, are not intended to have any legal effect on the termination dates of those or any other long term SWP water supply contracts.

### **UNIQUENESS OF AGREEMENT**

2. DWR's approval under this Agreement is unique and shall not be considered a precedent for future agreements or DWR activities.

### **USE OF CALIFORNIA AQUEDUCT CAPACITY**

3. Delivery of a portion of SGPWA's SWP Table A water to SBVMWD's turnout located on the California Aqueduct under this Agreement shall be in accordance with a schedule that has been reviewed and approved by DWR under applicable provisions of SGPWA's Water Supply Contract. Article 12(f) of SGPWA's Water Supply Contract shall govern the priority for delivery of such water.

### **APPROVALS**

4. The delivery of water under this Agreement shall be contingent upon, and subject to, any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. SGPWA and SBVMWD shall be responsible for complying with all applicable laws and legal requirements and for securing any required consent, approvals, permits, or orders. SGPWA and SBVMWD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.

#### DELIVERY OF SGPWA'S TABLE A WATER

5. Under Article 15(a) of SGPWA's Water Supply Contract, DWR hereby consents to the delivery of a portion of SGPWA's SWP Table A water through SBVMWD's turnout under the terms and conditions of this Agreement and finds that such delivery will not materially impair SGPWA's capacity to make payments to DWR.

#### PRIOR WATER DELIVERIES

6. From 2005-2017, SBVMWD's SWP supplies were delivered to YVWD at Reach EBX-3A. However, a portion of that water was used in SGPWA's service area. SBVMWD and SGPWA internally coordinated the billing and tracking of the amount of water delivered to SGPWA's service area. However, DWR's water files did not reflect the correct amount of SWP water received by SBVMWD and SGPWA. In order to correctly reflect the activities between the two agencies in these years, DWR will reclassify water deliveries made to SBVMWD and SGPWA as shown in Attachment A.

#### SGPWA'S WATER DELIVERY TO SBVMWD'S TURNOUT

7. DWR will deliver up to 2,400 acre-feet annually of SGPWA's SWP Table A water to SBVMWD's turnout at Reach EBX-3A of the California Aqueduct.
8. The delivery of a portion of SGPWA's SWP Table A water under this Agreement shall be in accordance with a schedule approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations or facilities, or other SWP contractors.
9. The sum of deliveries scheduled under this Agreement, plus scheduled SGPWA SWP deliveries, plus deliveries to SGPWA under any other agreements, shall not exceed the quantities on which the proportionate Use-of-Facilities factors are based under SGPWA's Water Supply Contract, unless DWR determines that the deliveries will not adversely impact SWP operations or facilities, or other SWP contractors' Table A deliveries.

#### SOURCE OF WATER

10. SGPWA attests that the delivery of a portion of SGPWA's SWP Table A water to SBVMWD's turnout under this Agreement does not constitute a sale of its Table A water. Rather, SGPWA's SWP Table A water is delivered to SBVMWD's turnout on behalf of YVWD's customers that are within SGPWA's service area.



## WATER DELIVERY SCHEDULES

11. All water delivery schedules and revisions under this Agreement shall be in accordance with Article 12 of SBVMWD's and SGPWA's respective Water Supply Contract.
12. SGPWA, in coordination with SBVMWD, shall submit monthly water delivery schedules for approval to the State Water Project Analysis Office (SWPAO), Water Deliveries Section, indicating timing and point of delivery requested under this Agreement with reference to SWPAO #16030. Delivery schedules shall be sent by electronic mail to SWPDeliveries@water.ca.gov or by FAX to (916) 653-9628, Attention: Chief, Water Deliveries Section.
13. SGPWA, in coordination with SBVMWD, shall submit weekly schedules for the delivery of water under this Agreement to the Southern Field Division, Water Operations Section, indicating timing and point of delivery requested with reference to SWPAO #16030. Schedules shall be sent by electronic mail to SFDwaterschedule@water.ca.gov or by FAX to (661) 294-3651, Attention: Chief, Water Operations Section.
14. All weekly water schedules described above shall be submitted by 10:00 a.m. Wednesday, for the following week, Monday through Sunday, to the Southern Field Division's Water Operations Section.
15. Weekly water schedules shall also be concurrently sent by electronic mail or faxed to the State Water Project Operations Control Office:
  - a. Water Management Branch  
Water\_deliv\_sched@water.ca.gov  
FAX to (916) 574-2785  
Attention: Chief, Water Management Branch
  - b. Power Management and Optimization Branch  
POCOptimization@water.ca.gov  
FAX to (916) 574-2785  
Attention: Chief, Power Management and Optimization Branch
  - c. Pre-Scheduling Section  
Presched@water.ca.gov  
FAX to (916) 574-2782  
Attention: Chief, Pre-Scheduling Section

## WATER DELIVERY RECORDS

16. DWR will maintain monthly records accounting for the delivery of water under this Agreement. SGPWA shall certify to SWPAO the quantity of water delivered to SBVMWD's turnout under this Agreement, by the 30<sup>th</sup> day after the delivery, with reference to SWPAO #16030.

## CHARGES

17. SGPWA shall pay to DWR the charges associated with the delivery of water under this Agreement from the Delta to Reach EBX-3A. SGPWA shall pay to DWR the Variable Operation, Maintenance, Power, and Replacement Component of the Transportation Charge and the Off-Aqueduct Power Facilities cost for each acre-foot of water delivered from the Delta to the Reach EBX-3A. Charges shall be determined for the month the water is delivered.
18. In addition to the charges identified above, SGPWA agrees to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by DWR or by the SWP contractors not signatory to this Agreement as a result of DWR providing service under this Agreement.
19. Payment terms under this Agreement shall be in accordance with SGPWA's Water Supply Contract.

## NO IMPACT

20. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to SWP approved Table A water or to any other SWP approved water allocations, water deliveries, or SWP operations or facilities. SGPWA and SBVMWD shall be responsible, jointly and severally, as determined by DWR, for any adverse impacts that may result from water deliveries under this Agreement.

## LIABILITY

21. DWR is not responsible for the use, effects or disposal of water under this Agreement once the water is delivered to the designated turnout(s). Responsibility shall be governed by Article 13 of SBVMWD's and/or SGPWA's respective Water Supply Contract, as applicable, with responsibilities under the terms of that article shifting from DWR to SGPWA and/or SBVMWD when the water is delivered to the designated turnout(s).

22. SGPWA and SBVMWD agree to defend and hold DWR, its officers, employees and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, its officers, employees and agents from all lawsuits, costs, damages, judgments, attorneys' fees, and liabilities that DWR, its officers, employees and agents incur as a result of DWR providing services under this Agreement, except to the extent resulting from the sole negligence or willful misconduct of DWR, its officers, employees and agents.
23. If uncontrollable forces preclude DWR from delivery of water under this Agreement, either partially or completely, then DWR is relieved from the obligation to deliver the water to the extent that DWR is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, tornadoes, floods, and other natural or human caused disasters. SGPWA and SBVMWD shall not be entitled to recover any administrative costs or other costs associated with delivery of water under this Agreement if uncontrollable forces preclude DWR from delivering the water.

#### DISPUTE RESOLUTION

24. In the event of a dispute regarding interpretation or implementation of this Agreement, the Director of DWR and authorized representatives of SGPWA and SBVMWD shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute remains unresolved, the Parties shall use the service of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

#### NO ASSIGNMENT OF AGREEMENT

25. Without the prior written consent of DWR, SGPWA and SBVMWD, this Agreement is not assignable by SGPWA and SBVMWD in whole or in part.

#### PARAGRAPH HEADINGS

26. The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

#### OPINIONS AND DETERMINATION

27. Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any Party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

#### NO MODIFICATION OF AGREEMENT

28. No modification of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties to this Agreement.

#### NO MODIFICATION OF WATER SUPPLY CONTRACT

29. This Agreement shall not be interpreted to modify the terms or conditions of SGPWA's and SBVMWD's respective Water Supply Contract. Unless expressly provided herein, the terms and conditions of SGPWA's and SBVMWD's respective Water Supply Contract and any future amendments apply to this Agreement.

#### SIGNATURE CLAUSE

30. The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign. A copy of any resolution or other documentation authorizing SGPWA and SBVMWD to enter into this Agreement, if such resolution or authorization is required, shall be provided to DWR before the execution of this Agreement.

#### EXECUTION IN COUNTERPART

31. This Agreement may be executed in counterpart. The Parties agree to accept facsimile or electronically scanned signatures as original signatures. This Agreement shall take effect as soon as all Parties have signed. Immediately after execution, SGPWA and SBVMWD shall transmit a copy of the executed Agreement by facsimile or electronic file to Pedro Villalobos, SWPAO Chief, at (916) 653-9628 or swpao-chief@water.ca.gov and to each other at:

- a. San Gorgonio Pass Water Agency  
Mr. Jeff Davis, General Manager  
Fax: (951) 845-0281  
Email: jdavis@sgpwa.com
- b. San Bernardino Valley Municipal Water District  
Mr. Douglas Headrick, General Manager  
Fax: (909) 387-9247  
Email: dough@sbvmwd.com

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form  
and Sufficiency

State of California  
Department of Water Resources

\_\_\_\_\_  
Chief Counsel  
Department of Water Resources

\_\_\_\_\_  
Pedro Villalobos, Chief  
State Water Project Analysis Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

San Geronio Pass Water Agency

San Bernardino Valley Municipal Water District

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### Attachment A

YEAR	Amount to Reclassify (AF)
2005	57
2006	159
2007	119
2008	287
2009	274
2010	123
2011	109
2012	164
2013	180
2014	102
2015	454
2016	647
2017	898

The above table shows the amount of water to be reclassified. SGPWA's and SBVMWD's deliveries for these years will be modified by increasing and decreasing amounts respectively. The charges will be adjusted accordingly. SGPWA will be billed and SBVMWD will be credited by an equal amount.

# Supplemental Water Calculations for SBVMWD & SGPWA

Monday, November 05, 2018

\$309.00  
Effective 7/1/09

## Potable Water Calculation:

	Calculations
Quantity of Imported Water Delivered to YVWD (AF)	[A]
Quantity of Filtered Water Delivered to Customers (AF)	[B]
Potable Water Consumption By County (kgal)	[C]
Percentage of Domestic Use per County	[D] = % of [C]
Preliminary Allocation of Filtered Water (AF)	[E]=[B]*[D]
Well No. 35 Production (AF)	[F]
Well No. 40 Production (AF)	[G]
Well No. 48 Production (AF)	[H]
Well No. 61 Production (AF)	[I]
Calculation of Filtered Water Use in Riv. Co. (AF)	[J]=[E]-[F]-[G]-[H]-[I]
<b>Revised Allocation of Filtered Water (AF)</b>	<b>[K]</b>
Imported Water Allocated to YVWD (AF)	[L]
Imported Water Allocated to WHMWC (AF)	[M]

October 2018		
SBVMWD	SGPWA	Total
--	--	770.60
--	--	656.41
293,453	32,843	326,296
89.9%	10.1%	100.0%
590.34	66.07	656.41
--	0.00	--
--	0.00	--
--	7.74	--
--	4.01	--
--	54.32	--
<b>602.09</b>	<b>54.32</b>	<b>656.41</b>
573.69	--	573.69
28.40	--	28.40

## Recycled Water Calculation:

Quantity of Recycled Water from Direct Imports (AF)	[N]=[A]-[B]
Amount of Recycled Water from B-8 at Wochholz RWRF (AF)	[O]
Actual Recycled Use in Riv. Co. (AF)	[P]
<b>Revised Allocation of Recycled Water Use from YVRWFF (AF)</b>	<b>[Q]</b>

October 2018		
SBVMWD	SGPWA	Total
--	--	114.19
--	--	52.61
--	6.91	--
<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

## Summary of Monthly Water Purchase from SGPWA

October 2018		
SBVMWD	SGPWA	Total
602.09	54.32	656.41

		<b>Potable</b>	<b>54.32 AF</b>
Checks paid to SGPWA	Check Number		
	Check Date		
	Check Amount	<b>\$309 AF</b>	<b>\$16,784.88</b>
		<b>Recycled</b>	<b>0.00 AF</b>
Checks paid to SGPWA	Check Number		N/A
	Check Date		N/A
	Check Amount	<b>\$309 AF</b>	<b>\$0.00</b>

## 10/31/2018 CHECK REQUEST

02-5-01-51316	Potable (54.32 AF)	\$16,784.88
02-5-01-51316	Recycled (0.00 AF)	\$0.00
<b>SGPWA CHECK TOTAL</b>		<b>\$16,784.88</b>

July 2011 Forward charge all SGPWA water to GL #02-01-51316  
per discussion between JZ and VE