

# ***San Geronio Pass Water Agency***

**DATE:** February 3, 2025

**TO:** Board of Directors

**FROM:** Lance Eckhart, General Manager

**BY:** Matthew Howard, Operations Manager

**SUBJECT: AGREEMENT TO PROVIDE GAP FUNDING TO THE BANNING HEIGHTS MUTUAL WATER COMPANY RELATED TO APPROVED SMALL COMMUNITY DROUGHT RELIEF PROGRAM GRANT FUNDS**

## **RECOMMENDATION**

Authorize the General Manager to enter into an Agreement with the Banning Heights Mutual Water Company (BHMWC) to provide Gap Funding support to utilize Small Community Drought Relief Program grant funds through the Department of Water Resources.

## **PREVIOUS CONSIDERATION**

- February 14, 2022: The Board reviewed a draft Gap Funding Agreement with the Cabazon Water District to assist in utilizing awarded grant funding.
- April 11, 2022: The Board approved an agreement with Cabazon Water District to provide gap funding so CWD could utilize funds from Proposition 68 and Proposition 1 grants.
- July 17, 2023: The Board expands the gap funding concept to a total of four small systems in the service area, including South Mesa Water Company.
- March 4, 2024: The Board approved an agreement to provide \$10.2 million in Gap Funding assistance to South Mesa Water Company for the County Line Pipeline Replacement Project.
- April 1, 2024: The Board approved an agreement to provide \$984,324 in Gap Funding Assistance to High Valleys Water District for the Twin Pines Water Supply Reliability and Fire Protection Upgrades Project.

## **BACKGROUND**

The Agency's Gap Funding Program (Program) was established in 2022 to address financial constraints faced by small disadvantaged water systems, beginning with the Cabazon Water District (CWD). Although CWD was awarded \$1.7 million in grants from the State Water Resources Control Board and the Department of Water Resources (DWR), cash flow challenges prevented them from covering project costs while awaiting

state reimbursements. In response, the Agency collaborated with CWD and state grant administrators to develop a solution. Both the State Board and DWR acknowledged the need for regional Gap Funding assistance to enable small systems like CWD to access and utilize grant funding effectively.

The Program has proven highly successful, initially supporting the CWD and now expanding to assist additional small disadvantaged community water systems within our service area. The Board of Directors has approved Gap Funding Agreements with South Mesa Water Company for their \$10.2 million County Line Road pipeline replacement project and with High Valleys Water District for their \$984,324 Twin Pines Water Supply Reliability and Fire Protection Upgrades project. Both projects are progressing smoothly, with the Gap Funding Program functioning as intended and without any issues.

The Program's success has provided critical support to multiple small, disadvantaged community water systems and has had a significant regional impact. It is transforming how small systems approach grants for infrastructure improvement, earning recognition at both the regional and state levels. The Program has received statewide recognition, recently winning the Jim Byerrum Small Water Systems Champion Award from the California Association of Mutual Water Companies (CalMutuals) for its contributions to Gap Funding assistance to small water systems. Additionally, the Program was honored as a finalist for the 2024 ACWA Excellence in Innovation Award, further highlighting its effectiveness and impact in the water industry.

## **ANALYSIS**

The Agency has received a request for Gap Funding from the Banning Heights Mutual Water Company (BHMWC). In 2023, BHMWC was awarded a \$3,756,000 grant from DWR through the Small Community Drought Relief Program. The Banning Heights Emergency Replacement Water Project includes the construction and installation of a new water storage reservoir and production well. The project covers project management, planning, permitting, and construction documentation. It also includes purchasing emergency water from the City of Banning, drilling and equipping a new production well, and building a one-million-gallon reservoir. This initiative aims to improve the water system's storage capacity and enhance the community's resilience during prolonged droughts and emergencies.

As part of the implementation and planning for this project, BHMWC has conducted a Feasibility Study to evaluate key components, including the siting of wells and potential locations for water storage reservoir(s). Additionally, BHMWC will manage and oversee tasks such as the preliminary design reports, obtaining local and state permits, developing plans and specifications, preparing bidding documents, ensuring CEQA compliance, managing the bidding and award of construction contracts, overseeing engineering services during construction, and managing grant administration.

Staff has collaborated with BHMWC to obtain project schedules to estimate the necessary Gap Funding payments between reimbursement cycles. Projected grant expenditures are

expected to average around \$530,000 per month, with quarterly expenses averaging approximately \$1,500,000 during well and reservoir construction. BHMWC aims to complete the project within 2025, with the bulk of the work scheduled during Q1 & Q2 of 2025. Considering the reimbursement cycles outlined in the other Gap Funding Agreements and the remaining schedule outlined in the grant agreement, BHMWC is expected to need access to a maximum of 40% of the total grant, or up to \$1.5 million between reimbursement cycles.

Typically, grant reimbursements from DWR occur within 90 days (one quarter) but can extend up to six months (two quarters). However, BHMWC has been submitting monthly invoices to DWR, which are being processed and reimbursed at a much faster rate (less than 30 days).

Additionally, BHMWC, DWR, and staff have been discussing the likely possibility of a grant extension to allow sufficient time to complete all necessary grant-related tasks, as there are approximately five months remaining on the grant. Staff has been working closely with BHMWC and DWR to confirm that an extension is possible and likely to be approved. Based on discussions with DWR, a formal request for an extension is anticipated to be submitted during March–April 2025.

A Gap Funding Agreement between the Agency and BHMWC has been drafted, which defines roles, responsibilities, and expectations between BHMWC and the Agency. The Gap Funding Agreement would also document the public purpose and interests that would be provided by the Agency for engaging in such a transaction. The Gap Funding Agreement includes revised terms concerning the repayment of advanced funds by the Agency. It stipulates that the repayment schedule may include an interest rate permitted by law, subject to the Agency's reasonable discretion in cases of non-payment or reimbursement by BHMWC or DWR.

During the Gap Funding period, Staff intends to work closely with BHMWC and DWR grant administrators to keep reimbursement cycles as efficient as possible. Regular updates will be given at the Agency's monthly Finance and Budget Committee meetings, which will include a Gap Funding Report detailing payments issued, reimbursements received, and the current outstanding Gap Funding balance.

### **FISCAL IMPACT**

The fiscal impact would be related to the advancement of funds and the use of Agency resources to process the Gap funding and obtain repayment. The Agency has available reserves to provide gap funding to assist with grant implementation. Some staff time will need to be allocated to this Program, but it is not considered material. Gap funding is expected to be reasonably short, and Staff is not recommending any compensation or interest income at this time for ease of Program administration. A maximum Gap funding amount is not expected to exceed \$1,500,000 between reimbursement cycles. The funding for this program is included in the Agency's approved Fiscal Year 2024-2025 budget, under the purple Gap Funding Program bucket, line item 197.

## **AGENCY'S STRATEGIC PLAN APPLICATION**

The Gap Funding Program is consistent with the Agency's Mission Statement to support the region's quality of life through sustainable water management and with the following strategies:

- Align with the current and future water landscape, supporting the region's long-term needs by diversifying the local supply portfolio and advancing water sustainability.
- Sustain long-term financial stability by engaging in prudent planning to guide informed decision-making.
- Maintain, foster and expand collaboration with local, regional, state and federal partners to develop strategic solutions to water supply challenges and opportunities.
- Serve the public with dedication, determination, transparency, collaboration, and a commitment to expanding knowledge.

## **ACTION**

Authorize the General Manager to enter into an Agreement with the Banning Heights Mutual Water Company (BHMWC) to provide Gap Funding support to utilize Small Community Drought Relief Program grant funds through the Department of Water Resources.

## **ATTACHMENTS**

- Agreement for Providing Gap Funding to Banning Heights Mutual Water Company Related to Approved Funding for the Banning Heights Emergency Replacement Water Project
- Funding Agreement Between the Department of Water Resources and Banning Heights Mutual Water Company for the Banning Heights Emergency Replacement Water Project
- San Geronio Pass Water Agency Gap Funding Program Summary Report January 2025

**AGREEMENT FOR PROVIDING GAP FUNDING**  
**TO**  
**BANNING HEIGHTS MUTUAL WATER COMPANY**  
**RELATED TO APPROVED FUNDING FOR THE BANNING HEIGHTS EMERGENCY**  
**REPLACEMENT WATER PROJECT**

This AGREEMENT FOR PROVIDING GAP FUNDING (“**Agreement**”) is made and entered into as of February \_\_, 2025, by and between the SAN GORGONIO PASS WATER AGENCY, a public agency formed under the San Gorgonio Pass Water Agency Law set forth in Act 1100 of the Water Code Uncodified Acts (“**SGPWA**”) and the BANNING HEIGHTS MUTUAL WATER COMPANY, a non-profit mutual benefit corporation duly formed and operating under the California Corporations Code (“**BHMWC**”). SGPWA and BHMWC are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. The San Gorgonio Pass Water Agency Law authorizes SGPWA to sell water to corporations and other private agencies within the territory of SGPWA. BHMWC is such a private corporation located within SGPWA’s service area and eligible to receive wholesale water from SGPWA.

B. BHMWC succeeded in securing funding pursuant to the Budget Act of 2021 to assist in financing the Banning Heights Emergency Replacement Water Project (“**Project**”). BHMWC has entered into that certain Funding Agreement with the State of California (Department of Water Resources) (“**State/DWR**”) for the Small Community Drought Relief Program (“**Funding Agreement**”). A copy of the Funding Agreement is attached hereto as **Exhibit “A”**.

C. The implementation of the Project will help BHMWC respond to a drought scenario and is intended to: (1) address immediate impacts on human health and safety; (2)

address immediate impacts on fish and wildlife resources; or (3) provide water to persons or communities that lose or are threatened with the loss or contamination of water supplies.

D. Pursuant to the Funding Agreement, the State/DWR will have no obligation to disburse money for the Project until BHMWC has satisfied certain conditions including, but not limited to, submitting specific deliverables during the planning, environmental, design and construction phases of the Project. BHMWC has represented that disbursements under the Funding Agreement can involve lengthy procedures for submission of deliverables and ultimate payment (“**Payment Cycle**”). This time period may necessitate that BHMWC advance its own funds to pay its consultants and contractors while awaiting payment. As a small water system, BHMWC would likely have difficulty advancing the necessary sums and may risk losing the Program funding under the Funding Agreement as consultants and contractors require a much shorter invoice payment turnaround time in order to undertake the Project.

E. BHMWC estimates the need for an advance of funds during one or more Payment Cycles to cover Project costs. BHMWC desires to enter into a gap funding agreement with SGPWA to avoid the loss of the Program funding under the Funding Agreement and potential abandonment of the Project.

F. SGPWA agrees to enter into a gap funding agreement with BHMWC because the Project provides a benefit to the public by improving water supply reliability of BHMWC’s own water sources, which will thereby reduce the amount of water BHMWC may otherwise request from SGPWA.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into the Agreement and made a part thereof by this reference.

2. **Purpose.** The purpose of this Agreement is to establish: (i) the manner, terms and conditions pursuant to which SGPWA will advance certain funds to BHMWC; and (ii) the purposes for which BHMWC may use the funds so advanced.

3. **Effective Date.** The Effective Date of this Agreement shall be \_\_\_\_\_, 2025.

4. **Term of Agreement.** Unless otherwise extended or earlier terminated, the term of this Agreement shall commence on the Effective Date and shall end on the date that BHMWC repays the Advanced Funds, as defined below and as required under this Agreement (“**Term**”).

5. **Maximum Advanced Funds.** The maximum amount that may be requested by BHMWC and advanced by SGPWA (“**Advanced Funds**”) shall not exceed the total of one million five hundred thousand (**\$1,500,000**) during any and all Payment Cycles and during the term of this Agreement. Once the maximum amount of Advanced Funds is reached, SGPWA shall have no obligation to consider any further advance requests from BHMWC.

6. **Payment Procedures to BHMWC.** BHMWC will submit to SGPWA a copy of the invoice or invoices, and accompanying backup documentation, that BHMWC has submitted or intends to submit to State/DWR and for which BHMWC is requesting Advanced Funds from SGPWA (“**Invoices**”). Subject to availability of funds as determined in SGPWA’s reasonable discretion, and the limitations set forth in Section 5 above, and provided BHMWC is not otherwise in breach of any term of this Agreement, SGPWA will issue payment to BHMWC in the amounts so requested within seven days of receiving the Invoices. Notwithstanding anything to the contrary as may be set forth herein, all such requests shall be made no later than June 30, 2025.

(a) **Outstanding Gap Funding Agreements** It is hereby acknowledged that as of the Effective Date of this Agreement, SGPWA may be a party to one or more similar gap funding agreements with other entities. The reasonable discretion of SGPWA in determining whether, and in what amounts, to provide Advanced Funds to BHMWC may be based on a number of factors including, but not limited to, the amount of advanced funds outstanding from all such gap funding agreements and the amount SGPWA has budgeted for all such gap funding agreements in the applicable fiscal year.

7. **Use of Advanced Funds.** BHMWC may use the Advanced Funds solely to pay Project costs that are eligible for payment under the terms of the Funding Agreement, and for no other purpose.

8. **Repayment of Advanced Funds to SGPWA.** The Parties agree as follows:

a. BHMWC shall repay SGPWA the Advanced Funds in monthly or quarterly increments, on whichever of the following occurs first: (i) within 15 days of BHMWC's receipt of funds from a Payment Cycle; or (ii) as other general funds become available as determined in BHMWC's reasonable discretion. Said repayment obligation shall continue until the Advanced Funds are repaid to SGPWA in full; provided, however, that Advanced Funds not spent by BHMWC at the time the Project is complete shall become immediately due and payable to SGPWA.

b. Upon expiration or earlier termination of this Agreement, whichever occurs first, all Advanced Funds that have not been spent by BHMWC shall become immediately due and payable to SGPWA. BHMWC's obligation to repay the Advanced Funds in full to Agency is not limited or extinguished by reason of the failure of State/DWR to distribute funding to BHMWC. If necessary, the Parties shall negotiate in good faith a reasonable repayment schedule pursuant to which BHMWC will repay to SGPWA the Advanced Funds for which BHMWC expected but did not receive disbursements from State/DWR. Said repayment schedule may include, in SGPWA's reasonable discretion, an interest rate at a rate as permitted by law.

c. BHMWC's obligation to repay the Advanced Funds under this Section 8 shall survive the expiration or earlier termination of this Agreement.

d. Notwithstanding anything to the contrary as may be set forth herein, the repayment of any and all outstanding Advanced Funds shall be due and owing as of October 1, 2025.

9. **Indemnification.** BHMWC shall indemnify and hold and save SGPWA, its officers, agents and employees free and harmless from any and all liabilities for any liens, claims and damages that may arise out of or in any way related to this Agreement and the Project,



including without limitation any liens, claims and damages (including attorneys' fees) arising from or in any way related to planning, design, construction, maintenance and operation of the Projects and any breach of this Agreement. The indemnification obligation under this Section 9 shall survive the expiration or earlier termination of this Agreement.

**10. No Partnership, Joint Venture or Agency Relation.** Nothing in this Agreement shall be construed to render SGPWA in any way or for any purpose a partner, joint venture with BHMWC, nor shall this Agreement be construed to authorize either Party to act as agent for the other.

**11. Insurance.** BHMWC shall name SGPWA, SGPWA's officers, employees and agents as additional insureds on all insurance policies procured for the Projects.

**12. Entire Agreement; Amendment.** This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be amended except in a writing signed by both Parties.

**13. No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

**14. Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at the address noted on the signature page, or such other address as a Party notifies the other in writing.

**15. Headings; Section References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be

deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

**16. Severability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

**17. Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. BHMWC shall not have the right to assign its rights under this Agreement except with the prior written consent of SGPWA, which consent may be withheld at SGPWA's sole discretion.

**18. Attorneys' Fees.** In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

**19. Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the county of Riverside, California, and consent to the jurisdiction thereof.

**20. Counterparts.** Counterpart execution of this Agreement is hereby authorized, including electronic transmission of pdf or similar format, and each counterpart of this Agreement so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

**21. Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof.

**22. No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights or benefit upon, nor obligate any Party to any person or entity other than the Parties.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

**BHMWC:**

**SGPWA:**

BANNING HEIGHTS MUTUAL  
WATER COMPANY

SAN GORGONIO PASS WATER  
AGENCY

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT “A”**  
**FUNDING AGREEMENT**

**STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT NUMBER: 4600015117**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES  
AND  
BANNING HEIGHTS MUTUAL WATER COMPANY**

**FOR THE  
BANNING HEIGHTS EMERGENCY REPLACEMENT WATER PROJECT**

**A PART OF THE SMALL COMMUNITY DROUGHT RELIEF PROGRAM**

**FUNDED BY**

**THE BUDGET ACT OF 2021 AS AMENDED  
(STATS. 2022, ch. 44, § 25)**

**FUNDING AGREEMENT BETWEEN**  
**THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES) AND**  
**BANNING HEIGHTS MUTUAL WATER COMPANY**  
**4600015117**  
**SMALL COMMUNITY DROUGHT RELIEF PROGRAM**

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the Banning Heights Mutual Water Company, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee," which parties do hereby agree as follows:

1. PURPOSE. State shall provide funding pursuant to the Budget Act of 2021, as amended (Stats. 2022, ch. 44, § 25), to the Grantee to assist in financing the Banning Heights Emergency Replacement Water Project (Project). By executing this Agreement, the Grantee certifies that the purpose of the Project is in response to a drought scenario, as defined by Water Code section 13198(a) and is intended to: (1) address immediate impacts on human health and safety; (2) address immediate impacts on fish and wildlife resources; or, (3) provide water to persons or communities that lose or are threatened with the loss or contamination of water supplies.
2. TERM OF FUNDING AGREEMENT. The term of this Funding Agreement begins on the date this Funding Agreement is initially executed by State, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by June 30, 2025, and no funds may be requested after September 30, 2025.
3. PROJECT COST. The reasonable cost of the Project is estimated to be \$3,756,000.
4. FUNDING AMOUNT. The maximum amount payable by the State under this Agreement shall not exceed \$3,756,000.
5. GRANTEE REQUIRED COST SHARE. Grantee agrees to fund the difference between the actual Project Cost in Paragraph 3 and the amount specified in Paragraph 4, if any.
6. BASIC CONDITIONS. State shall have no obligation to disburse money for the Project under this Funding Agreement until Grantee has satisfied the following conditions:
  - A. For the term of this Funding Agreement, Grantee submits timely Quarterly Progress Reports as required by Paragraph 13, "Submission of Reports."
  - B. Grantee submits all deliverables as specified in Paragraph 13 of this Funding Agreement and in Exhibit A.
  - C. Prior to the commencement of construction or implementation activities, Grantee shall submit the following to the State:
    - i. Final plans and specifications certified by a California Registered Civil Engineer as to compliance for the Project as listed in Exhibit A of this Funding Agreement.
    - ii. Work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Funding Agreement until the following actions are performed:
      - a. Grantee submits to the State all applicable environmental permits as indicated on the Environmental Information Form to the State, and

- b. Documents that satisfy the CEQA process are received by the State, and
- c. Grantee receives written concurrence from the State of the Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal.

State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the Project or to require changes, alterations, or other mitigation. Grantee must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act (NEPA) by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.

- 7. DISBURSEMENT OF FUNDS. State will disburse to Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations pursuant to any federal statute or regulation. Any and all money disbursed to Grantee under this Funding Agreement shall be deposited in a separate account and shall be used solely to pay Eligible Project Costs.
- 8. ELIGIBLE PROJECT COST. Grantee shall apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law and Exhibit B. Eligible Project Costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Reimbursable administrative expenses are the necessary costs incidental but directly related to the Project included in this Agreement. Work performed on the Project after August 22, 2022, shall be eligible for reimbursement.

Costs that are not eligible for reimbursement include, but are not limited to the following items:

- A. Costs incurred prior to August 22, 2022.
- B. Operation and maintenance costs, including post-construction performance and monitoring costs.
- C. Purchase of equipment not an integral part of the Project.
- D. Establishing a reserve fund.
- E. Monitoring and assessment costs for efforts required after Project construction is complete.
- F. Replacement of existing funding sources for ongoing programs.
- G. Payment of federal or state taxes.
- H. Costs incurred as part of any necessary response and cleanup activities required under the Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Hazardous Substances Account Act; or other applicable law.
- I. Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
- J. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to August 22, 2022.



K. Overhead and indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include but are not limited to: central service costs; general administration of the Grantee; non-project-specific accounting and personnel services performed within the Grantee's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition; conference fees; and, generic overhead or markup. This prohibition applies to the Grantee and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.

9. METHOD OF PAYMENT. After the disbursement requirements in Paragraph 6 "Basic Conditions" are met, State will disburse the whole or portions of State funding to Grantee, following receipt from Grantee via US mail or Express mail delivery of a "wet signature" invoice, or an electronic invoice certified and transmitted via DocuSign for costs incurred, including Cost Share, and timely Quarterly Progress Reports as required by Paragraph 13, "Submission of Reports." Payment will be made no more frequently than monthly, in arrears, upon receipt of an invoice bearing the Funding Agreement number. State will notify Grantee, in a timely manner, whenever, upon review of an Invoice, State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to State. Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Grantee fails to submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by Grantee shall include the following information:

- A. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
- B. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for the Project during the period identified in the particular invoice for the implementation of the Project.
- C. Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
  - i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
  - ii. Invoices must be itemized based on the categories (i.e., tasks) specified in Exhibit B. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
  - iii. One set of sufficient evidence (i.e., receipts, copies of checks, timesheets) must be provided for all costs included in the invoice.
  - iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as depicted in Paragraph 4, "Funding Amount" and those costs that represent Grantee's costs, as applicable, in Paragraph 5, "Grantee Required Cost Share."
  - v. Invoices can be submitted by one of the following methods.
    - a. Via email at [Pakiza.Chatha@water.ca.gov](mailto:Pakiza.Chatha@water.ca.gov)

- b. Mail the invoice with the original "wet signature" to the following address: Pakiza Chatha, Department of Water Resources, Southern Region Office, 770 Fairmont Avenue, Suite 200, Glendale, CA 91203

All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs/cost share). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D.5 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 115, 470, 487-489.)

10. WITHHOLDING OF DISBURSEMENTS BY STATE. If State determines that the Project is not being implemented in accordance with the provisions of this Funding Agreement, or that Grantee has failed in any other respect to comply with the provisions of this Funding Agreement, and if Grantee does not remedy any such failure to State's satisfaction, State may withhold from Grantee all or any portion of the State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Grantee and State notifies Grantee of its decision not to release funds that have been withheld pursuant to Paragraph 11, the portion that has been disbursed shall thereafter be repaid immediately as directed by State. State may consider Grantee's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Paragraph 11, "Default Provisions." If State notifies Grantee of its decision to withhold the entire funding amount from Grantee pursuant to this Paragraph, this Funding Agreement shall terminate upon receipt of such notice by Grantee and the State shall no longer be required to provide funds under this Funding Agreement and the Funding Agreement shall no longer be binding on either party.
11. DEFAULT PROVISIONS. Grantee will be in default under this Funding Agreement if any of the following occur:
- A. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Grantee and State evidencing or securing Grantee's obligations.
  - B. Making any false warranty, representation, or statement with respect to this Funding Agreement, the application, or any documents filed to obtain grant funding.
  - C. Failure to operate or maintain the Project in accordance with this Funding Agreement.
  - D. Failure to make any remittance required by this Funding Agreement, including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.
  - E. Failure to submit timely progress reports.
  - F. Failure to routinely invoice State.
  - G. Failure to meet any of the requirements set forth in Paragraph 12, "Continuing Eligibility."

Should an event of default occur, State shall provide a notice of default to the Grantee and shall give Grantee at least ten (10) calendar days to cure the default from the date the notice is sent via

first-class mail to the Grantee. If the Grantee fails to cure the default within the time prescribed by the State, State may do any of the following:

- A. Declare the funding disbursed be immediately repaid.
- B. Terminate any obligation to make future payments to Grantee.
- C. Terminate the Funding Agreement.
- D. Take any other action that it deems necessary to protect its interests.

In the event State finds it necessary to enforce this provision of this Funding Agreement in the manner provided by law, Grantee agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

12. CONTINUING ELIGIBILITY. Grantee must meet the following ongoing requirement(s) to remain eligible to receive State funds:
- A. Grantee must adhere to the protocols developed pursuant to The Open and Transparent Water Data Act (Wat. Code, § 12406) for data sharing, transparency, documentation, and quality control.
  - B. If the Grantee diverting surface water, the Grantee must maintain compliance with diversion reporting requirements as outlined in Water Code section 5100 et seq.
  - C. If applicable, maintain compliance with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.).
  - D. If applicable, maintain compliance with Sustainable Water Use and Demand Reduction requirements outlined in Water Code Section 10608, et seq.
  - E. On March 4, 2022, the Governor issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. The EO may be found at: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. The EO directs DWR to terminate funding agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine that the Grantee is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State shall provide the Grantee advance written notice of such termination, allowing the Grantee at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.
13. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager and shall be submitted via email or DWR's "Grant Review and Tracking System" (GRanTS). If requested, Grantee shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report is a requirement for the release of any funds retained for such project.

- A. Quarterly Progress Reports: Grantee shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be sent directly to the Project Manager via email or uploaded via GRanTS, and the State's Project Manager notified of upload. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Grantee's activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than three months after the execution of the agreement with future reports then due on successive three-month increments based on the invoicing schedule and this date.
- B. Project Completion Report: Grantee shall prepare and submit to State a Project Completion Report for the Project. Grantee shall submit the Project Completion Report within ninety (90) calendar days of project completion. The Project Completion Report shall include, in part, a description of actual work done, any changes or amendments to the Project, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project. The Project Completion Report shall also include, if applicable, certification of final project by a registered civil engineer, consistent with Standard Condition D.17, "Final Inspections and Certification of Registered Civil Engineer". A DWR "Certification of Project Completion" form will be provided by the State.
14. OPERATION AND MAINTENANCE OF PROJECT. For the useful life of construction and implementation projects and in consideration of the funding made by State, Grantee agrees to ensure or cause to be performed the commencement and continued operation of the Project, and shall ensure or cause the Project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. Grantee or their successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Funding Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of Grantee to ensure operation and maintenance of the Project in accordance with this provision may, at the option of State, be considered a breach of this Funding Agreement and may be treated as default under Paragraph 11, "Default Provisions."
15. NOTIFICATION OF STATE. Grantee shall promptly notify State, in writing, of the following items:
- A. Events or proposed changes that could affect the scope, budget, or work performed under this Funding Agreement. Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.
- B. Any public or media event publicizing the accomplishments and/or results of this Funding Agreement and provide the opportunity for attendance and participation by State's representatives. Grantee shall make such notification at least 14 calendar days prior to the event.

- C. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Grantee agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the State.
- D. The initiation of any litigation or the threat of litigation against the Grantee regarding the Project or that may affect the Project in any way.
- E. Final inspection of the completed work on a project by a Registered Civil Engineer, in accordance with Standard Condition D.17, "Final Inspections and Certification of Registered Civil Engineer." Grantee shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.
16. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing. Notices may be transmitted by any of the following means:
- A. By delivery in person.
- B. By certified U.S. mail, return receipt requested, postage prepaid.
- C. By "overnight" delivery service, provided that next-business-day delivery is requested by the sender.
- D. By electronic means.
- E. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.
17. PERFORMANCE EVALUATION. Upon completion of this Funding Agreement, Grantee's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Grantee.
18. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Funding Agreement are as follows:

Department of Water Resources  
Arthur Hinojosa  
Manager, Division of Regional Assistance  
P.O. Box 942836  
Sacramento, CA 94236  
Phone: (916) 902-6713  
Email: [Arthur.Hinojosa@water.ca.gov](mailto:Arthur.Hinojosa@water.ca.gov)

Banning Heights Mutual Water Company  
Julie Hutchinson  
Board President  
7091 Bluff Street  
Banning, CA 92220  
Phone: (951) 849-2540  
Email: [bhmwc@aol.com](mailto:bhmwc@aol.com)

Direct all inquiries to the Project Manager:

Department of Water Resources

Pakiza Chatha

Engineer, Water Resources

770 Fairmont Avenue, Suite 200

Glendale, CA 91203

Phone: (818) 549-2318

Email: [Pakiza.chatha@water.ca.gov](mailto:Pakiza.chatha@water.ca.gov)

Banning Heights Mutual Water Company

Lori J. Askew

Board Treasure

7091 Bluff Street

Banning, CA 92220

Phone: (951) 256-0280

Email: [Lori.askew@att.net](mailto:Lori.askew@att.net)

Either party may change its Project Representative or Project Manager upon written notice to the other party.

19. STANDARD PROVISIONS AND INTEGRATION. This Funding Agreement is complete and is the final Agreement between the parties. The following Exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit A – WORK PLAN

Exhibit B – BUDGET

Exhibit C – SCHEDULE

Exhibit D – STANDARD CONDITIONS

Exhibit E – GRANTEE'S AUTHORIZING RESOLUTION

Exhibit F – REPORT FORMATS AND REQUIREMENTS

Exhibit G – STATE AUDIT DOCUMENT REQUIREMENTS

Exhibit H – INFORMATION NEEDED FOR ESCROW PROCESSING AND CLOSURE


Exhibit I – APPRAISAL SPECIFICATIONS


Exhibit J – ADVANCE PAYMENT

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

BANNING HEIGHTS MUTUAL WATER  
COMPANY


  
\_\_\_\_\_  
Arthur Hinojosa, Manager  
Division of Regional Assistance

  
\_\_\_\_\_  
Julie Hutchinson, Board President

Date 4/20/2023

Date 4/19/2023

Approved as to Legal Form and Sufficiency

  
\_\_\_\_\_  
For  
Robin Brewer, Assistant General Counsel  
Office of the General Counsel

Date 4/19/2023

## **Exhibit A**

### **WORK PLAN**

**Project Title:** Banning Heights Emergency Replacement Water Project

**Grantee:** Banning Heights Mutual Water Company

**Project Description:** The Project includes providing funding to purchase water as an immediate water supply relief to the Banning Heights community which has been severely impacted due to wildfires and prolonged drought conditions.

The Project also includes the construction of a new well and a water storage tank to reduce the reliance on surface water. This will also create a reliable water supply, improve system storage capacity and increase drought resiliency for the residents of Banning Heights.

#### **Task 1 – Project Administration**

This task includes project administration, invoicing, and reporting by the Grantee for the Project.

Project administration includes working with DWR to develop and execute the Grant Agreement, administration of the Project including overseeing the budget and schedule, making payments to engineers and contractors after inspections and/or approval of work, and other activities related to the completion of the Project. Includes attending weekly/monthly meetings (as needed) with DWR Project Manager.

Invoicing includes preparing and submitting invoices and appropriate backup documentation to the DWR Project Manager describing the work completed and listing the costs incurred during the billing cycle.

Reporting includes preparing and submitting progress reports. Prepare quarterly reports and submit them to DWR, draft Grant Completion Report and submit for DWR comment and prepare the final Grant Completion Report incorporating DWR comments. All reports should be prepared as specified in Exhibit F of this Agreement.

#### **Deliverables:**

- Meeting agendas
- Meeting minutes/action items
- Records retention, available upon request
- Invoices and supporting documents
- Quarterly progress reports
- Draft Grant completion report
- Final Grant completion report



**Task 2 – Emergency Water Purchase**

This task includes providing emergency replacement water purchased for approximately 200 households through an intertie with the City of Banning's water system.

**Deliverables:**

- Water consumption & purchase summary documentation
- Permit(s), if applicable

**Task 3 – Planning, Permitting, and Construction Documents**

This task includes filling out the Environmental Information Form (EIF), preparing and evaluating all the necessary environmental documentation to comply with the California Environmental Quality Act (CEQA) for the Project, and submitting them to the DWR's project manager for review and concurrence prior to beginning construction. Planning activities include performing a topographic survey with a licensed surveyor, a geotechnical investigation, and a site feasibility study, including an assessment of hydrology and system compatibility. This task also includes the preparation of final design plans, technical specifications, and cost estimates, developing bid documents, advertising and awarding the construction contract, and obtaining any required permits to complete the Project. The design plans and specifications shall be detailed enough for construction such that requests for information from contractors are minimized during the construction.

**Deliverables:**

- Geotechnical investigation findings
- Environmental Information Form (EIF)
- Final CEQA documentation
- Final copies of all applicable service agreements
- Copies of any required permits
- 50%, 90%, and Final (100%) Construction Plans
- Technical specifications and cost estimates
- Bid documents
- Proof of advertisement
- Copy of awarded contract
- Copy of notice to proceed

**Task 4 – Construction**

This task includes all activities necessary to construct the Project. Construction of the following subtasks includes construction staking, construction, construction administration, construction inspection, engineering support during construction, and project closeout.

**Task 4.1 – New Groundwater Well**

This task includes the drilling and equipping of a new 12-inch diameter well to total a depth of approximately 380 feet below ground surface (BGS) and completing all necessary drilling testing, installing a well casing, as designed, and conducting water quality testing.

**Deliverables:**

- Well completion report
- Construction schedule
- Construction reports
- Construction site pictures
- Inspection reports and permit reports as necessary
- Construction Notice of Completion
- As-Built drawings

**Task 4.2 – New Storage Tank**

This task includes the design and construction of a new one (1) million-gallon (MG) water storage reservoir to improve overall water system storage and increase the community's resiliency during prolonged drought and emergency conditions. Construction activities include the following:

- a) Access Road
- b) Site preparation & site security
- c) Site piping and power facilities
- d) Reservoir pad and one-MG tank installation, per final designs
- e) Disinfection, filling, and testing
- f) Inspections and quality control

**Deliverables:**

- Construction schedule
- Construction reports
- Construction site pictures
- Inspection reports and permit reports as necessary
- Construction Notice of Completion
- As-Built drawings

**Exhibit B**  
**BUDGET**

All work associated with the Project must be completed prior to payment of retention. Backup documentation for cost share will not be reviewed for the purposes of invoicing. The Grantee is required to maintain all financial documents related to the Project in accordance with Exhibit G (State Audit Document Requirements for Grantees).

<b>Task</b>	<b>Funding Amount</b>
Task 1 – Project Administration	\$40,500
Task 2 – Emergency Water Purchase	\$215,500
Task 3 – Planning, Permitting, and Construction Documents	\$650,000
Task 4 – Construction	\$2,850,000
<b>Grand Total</b>	<b>\$3,756,000</b>

**Exhibit C**  
**SCHEDULE**

<b>Task</b>	<b>Start Date</b>	<b>End Date</b>
Task 1 – Project Administration	08/22/2022	6/30/2025
Task 2 – Emergency Water Purchase	08/22/2022	12/31/2024
Task 3 – Planning, Permitting, and Construction Documents	08/22/2022	12/31/2024
Task 4 – Construction	08/22/2022	6/30/2025

**Exhibit D**  
**STANDARD CONDITIONS**

**D.1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**

- A. **Separate Accounting of Funding Disbursements:** Grantee shall account for the money disbursed pursuant to this Funding Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- B. **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited in a separate account, administered, and accounted for pursuant to the provisions of applicable law.
- C. **Remittance of Unexpended Funds:** Grantee shall remit to State any unexpended funds that were disbursed to Grantee under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Grantee of funds or, within thirty (30) calendar days of the expiration of the Funding Agreement, whichever comes first.

**D.2. ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE:** Grantee shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Grantee's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the State Department of Water Resources." The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

**D.3. AMENDMENT:** This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.

**D.4. AMERICANS WITH DISABILITIES ACT:** By signing this Funding Agreement, Grantee assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**D.5. AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Grantee to conduct a final audit to State's specifications, at Grantee's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and State

may elect to pursue any remedies provided in Paragraph 11 or take any other action it deems necessary to protect its interests. The Grantee agrees it shall return any audit disallowances to the State.

Pursuant to Government Code section 8546.7, the Grantee shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Grantee or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement.

- D.6. BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Funding Agreement and Grantee shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Grantee with a right of priority for payment over any other Grantee. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Funding Agreement with no liability occurring to State or offer a Funding Agreement amendment to Grantee to reflect the reduced amount.
- D.7. CEQA: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Grantee is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 11.
- D.8. CHILD SUPPORT COMPLIANCE ACT: The Grantee acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
  - B. The Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.9. CLAIMS DISPUTE: Any claim that the Grantee may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a

resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.

- D.10. COMPETITIVE BIDDING AND PROCUREMENTS: Grantee's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Grantee does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- D.11. COMPUTER SOFTWARE: Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.12. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- A. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - B. Former State Employees: For the two-year period from the date, he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date, he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - C. Employees of the Grantee: Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
  - D. Employees and Consultants to the Grantee: Individuals working on behalf of the Grantee may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

- D.13. DELIVERY OF INFORMATION, REPORTS, AND DATA: Grantee agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.14. DISPOSITION OF EQUIPMENT: Grantee shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory, State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.15. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this Funding Agreement, Grantee, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:
- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by the Government Code section 8355.
  - B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
    - i. The dangers of drug abuse in the workplace,
    - ii. Grantee's policy of maintaining a drug-free workplace,
    - iii. Any available counseling, rehabilitation, and employee assistance programs, and
    - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
  - C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
    - i. Will receive a copy of Grantee's drug-free policy statement, and
    - ii. Will agree to abide by terms of Grantee's condition of employment, contract, or subcontract.
- D.16. EASEMENTS: Where the Grantee acquires property in fee title or funds improvements to real property already owned in fee by the Grantee using State funds provided through this Funding Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in the first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

Where the Grantee acquires an easement under this Agreement, the Grantee agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State



permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner.

Failure to provide an easement acceptable to the State may result in termination of this Agreement.

- D.17. FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of the Project, Grantee shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement.
- D.18. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.19. GRANTEE'S RESPONSIBILITIES: Grantee and its representatives shall:
- A. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).
  - B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in support of its request for funding.
  - C. Comply with all applicable California, federal, and local laws and regulations.
  - D. Implement the Project in accordance with applicable provisions of the law.
  - E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
  - F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Grantee shall provide copies of permits and approvals to State.
  - G. Be solely responsible for design, construction, and operation, and maintenance of the Project. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee under this Agreement.
  - H. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
- D.20. INDEMNIFICATION: Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including any breach of this Agreement. Grantee shall require its contractors or subcontractors

to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.

- D.21. INDEPENDENT CAPACITY: Grantee, and the agents and employees of the Grantee, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.22. INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.
- D.23. INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grantee. This right shall extend to any subcontracts, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.
- D.24. LABOR CODE COMPLIANCE: The Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Grantee affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- D.25. MODIFICATION OF OVERALL WORK PLAN: At the request of the Grantee, the State may at its sole discretion approve non-material changes to the portions of Exhibits A, B, and C that concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Grantee to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.
- D.26. NONDISCRIMINATION: During the performance of this Funding Agreement, Grantee and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital/domestic partner status, gender identity, and denial of medical and family care leave or pregnancy disability leave. Grantee and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and

harassment. Grantee and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Agreement by reference. Grantee and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

- D.27. OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D.28. PERFORMANCE BOND: Where contractors are used, the Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D.29. PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.
- D.30. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Grantee's service of water, without prior permission of State. Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- D.31. PROJECT ACCESS: The Grantee shall ensure that the State, the Governor of the State, or any authorized representatives of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D.32. REMAINING BALANCE: In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Funding Agreement, any remaining funds revert to the State. The State will notify the Grantee stating that the Project file is closed, and any remaining balance will be disencumbered and unavailable for further use under this Funding Agreement.
- D.33. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- D.34. RETENTION: The State shall withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of Eligible Project Costs until the Project is completed and Final

Report is approved. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.

- D.35. RIGHTS IN DATA: Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this Paragraph for any public purpose.
- D.36. SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.
- D.37. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both if the State determines that:
- A. Grantee, its contractors, or subcontractors have made a false certification, or
  - B. Grantee, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.
- D.38. SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.39. TERMINATION BY GRANTEE: Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date.
- D.40. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 11, the State may terminate this Funding Agreement and be relieved of any payments should Grantee fail to perform the requirements of this Funding Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 11.
- D.41. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 days' advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.42. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.43. TIMELINESS: Time is of the essence in this Funding Agreement.
- D.44. TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources for excluded employees. These rates may

be found at: <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.

Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

- D.45. UNION ORGANIZING: Grantee, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Grantee, by signing this Funding Agreement, hereby certifies that:
- A. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
  - B. Grantee shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
  - C. Grantee shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
  - D. If Grantee makes expenditures to assist, promote, or deter union organizing, Grantee will maintain records sufficient to show that no State funds were used for those expenditures and that Grantee shall provide those records to the Attorney General upon request.
- D.46. VENUE: The State and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D.47. WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

**Exhibit E**

**GRANTEE'S AUTHORIZING RESOLUTION**

BANNING HEIGHTS MUTUAL WATER COMPANY [RESOLUTION NO. 2021-03]

**BANNING HIEGHTS MUTUAL WATER COMPANY  
RESOLUTION NO. 2021-03**

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
BANNING HEIGHTS MUTUAL WATER COMPANY AUTHORIZING THE  
BOARD OF DIRECTORS TO PURSUE THE DEPARTMENT OF WATER  
RESOURCES SMALL SYSTEM DROUGHT GRANT OPPORTUNITIES  
INCLUDING THE APPLICATION, ACCEPTANCE, AND EXECUTION  
FOR ANY OF THE PROPOSED DROUGHT-RELATED WATER PROJECTS**

WHEREAS, Banning Heights Mutual Water Company has been deeply impacted by the years of prolonged drought in California affecting its water supply from the Whitewater River; and

WHEREAS, on July 31, 2020, the Apple Fire, exacerbated by the prolonged drought, burned through the area serving as the water supply for the Banning Heights Mutual Water Company and severely damaged its Whitewater Flume that delivers the Banning Heights community's adjudicated surface and only water supply; and

WHEREAS, as a result of the drought and fire interrupting the water supply to the community of Banning Heights, the Banning Heights Mutual Water Company has had to purchase costly emergency water supplies and impose significantly curtailed water usage to meet the basic health and safety needs of community for more than 16 months; and

WHEREAS, Banning Heights Mutual Water Company is working on interim solutions to immediately restore water flow to the Banning Heights community and is also working on long-term repairs to its Whitewater Flume; and

WHEREAS, Banning Heights Mutual Water Company proposes to implement a series of approved drought-related water projects; and

WHEREAS, the proposed drought-related water projects are being implemented in response to a drought scenario, as defined by Water Code section 13198(a) and are intended to: (1) address immediate impacts on human health and safety; and (2) provide water to the Banning Heights community which has lost its water supply; and

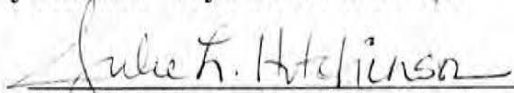
WHEREAS, Banning Heights Mutual Water Company has the legal authority and is authorized to enter into a funding agreement with the State of California; and

WHEREAS, Banning Heights Mutual Water Company intends to apply for grant funding from the California Department of Water Resources for drought-related water projects;

**THEREFORE, BE IT RESOLVED** by the Board of Directors of the Banning Heights Mutual Water Company as follows:

1. That pursuant and subject to all of the terms and provisions of the Budget Act of 2021 (Stats. 2021, ch. 69, § 112), the Banning Heights Mutual Water Company's President, or designee, is hereby authorized and directed to prepare and file an application for funding with the Department of Water Resources, and take such other actions as necessary or appropriate to obtain grant funding.
2. The Banning Heights Mutual Water Company's President, or designee, is hereby authorized and directed to execute the funding agreement with the Department of Water Resources and any amendments thereto.
3. The Banning Heights Mutual Water Company's President, or designee, is hereby authorized and directed to submit any required documents, invoices, and reports required to obtain grant funding.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Banning Heights Mutual Water Company held on 8<sup>th</sup> day of November 2021.

  
Julie Hutchinson, Board President  
Banning Heights Mutual Water Company

**ATTEST**

  
Jay Callin, Board Secretary  
Banning Heights Mutual Water Company

**CERTIFICATION**


**I, Jay Callin Secretary of the Banning Heights Mutual Water Company, do hereby certify that the foregoing Resolution Number 2021-03 as duly adopted by the Board of Directors of the Banning Heights Mutual Water Company at the general business meeting thereof held on the 8<sup>th</sup> day of November, 2021, motion by Steve Romberg and seconded by Don Walker, and motion passed by the following vote, to wit:**

**AYES: ( 4 )**

**NOES: ( )**

**ABSTAIN: ( )**

**ABSENT: ( 1 )**

  
\_\_\_\_\_  
Jay Callin, Secretary  
Banning Heights Mutual Water Company



**Exhibit F****REPORT FORMATS AND REQUIREMENTS**

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

**1. PROGRESS REPORTS**

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information.

**PROJECT STATUS**

Describe the work performed during the time period covered by the report including but not limited to:

**PROJECT INFORMATION**

- Legal matters
- Engineering Evaluations
- Environmental matters
- Status of permits, easements, rights-of-way, rights of entry, and approvals as may be required by other State, federal, and/or local agencies
- Major accomplishments during the quarter (i.e., tasks completed, milestones met, meetings held or attended, press releases, etc.)
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter
- Describe differences between the work performed and the work outlined in the Overall Work Plan, including change orders
- Demonstrate financial ability to pay local cost share of Eligible Project Costs required to complete the Project
- Estimate the percentage completion of the overall project
- Identify key issues that need to be resolved
- Photos documenting progress

**COST INFORMATION**

- Provide a list showing all project costs incurred during the time period covered by the report by the Grantee and each contractor working on the Project and which of these costs are Eligible Project Costs
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Overall Work Plan
- A list of any changes approved to the budget in accordance with Funding Agreement and a revised budget, by task, if changed from latest budget in the Overall Work Plan
- A discussion of whether there have been any changes to the Grantee's finance plan for payment of the Grantee's share of Eligible Project Costs

**SCHEDULE INFORMATION**

- A schedule showing actual progress versus planned progress
- A discussion on how the actual schedule is progressing in comparison to the original or last reported schedule
- A list of any changes approved to the Schedule in accordance with Funding Agreement and a revised schedule, by task, if changed from latest reported schedule

**2. PROJECT COMPLETION REPORT**

Project Completion Reports shall generally use the following format.

**EXECUTIVE SUMMARY** – Should include a brief summary of project information and include the following items:

- Brief description of work proposed to be done in the original application
- Description of actual work completed and any deviations from the work plan identified in the Funding Agreement

**REPORTS AND/OR PRODUCTS** – The following items should be provided

- Final Evaluation report
- Electronic copies of any data collected, not previously submitted
- As-built drawings
- Final geodetic survey information
- Self-Certification that the Project meets the stated goal of the funding agreement (e.g. 100-year level of flood protection, HMP standard, PL-84-99, etc.)
- Project photos
- Discussion of problems that occurred during the work and how those problems were resolved
- A final project schedule showing actual progress versus planned progress

**COSTS AND DISPOSITION OF FUNDS** – A list showing:

- The date each invoice was submitted to State
- The amount of the invoice
- The date the check was received
- The amount of the check (If a check has not been received for the final invoice, then state this in this section.)
- A summary of the payments made by the Grantee for meeting its cost sharing obligations under this Funding Agreement.
- A summary of final funds disbursement including:
  - Labor cost of personnel of agency/ major consultant /sub-consultants. Indicate personnel, hours, rates, type of profession, and reason for consultant, i.e., design, CEQA work, etc.

- Evaluation cost information, shown by material, equipment, labor costs, and any change orders
- Any other incurred cost detail
- A statement verifying separate accounting of funding disbursements
- Summary of project cost including the following items:
  - Accounting of the cost of project expenditure;
  - Include all internal and external costs not previously disclosed; and
  - A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION – Any relevant additional Information should be included.

**Exhibit G****STATE AUDIT DOCUMENT REQUIREMENTS**

The following provides a list of documents typically required by State Auditors and general guidelines for Grantees. List of documents pertains to both State funding and Grantee's Cost Share, if any, and details the documents/records that State Auditors would need to review in the event of this Funding Agreement is audited. Grantees should ensure that such records are maintained for three (3) years after final disbursement pursuant to this Agreement.

**State Audit Document Requirements**Internal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
  - a) Receipts and deposits
  - b) Disbursements
  - c) State reimbursement requests
  - d) Expenditure tracking of State funds
  - e) Guidelines, policy, and procedures on State-funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

State Funding:

1. Original Funding Agreement, any amendment(s), and budget modification documents.
2. A listing of all grants, loans, or subventions received from the State.
3. A listing of all other funding sources for the Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners' documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State-funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests, and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposits of the payments received from the State.

3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

Project Files:

1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.

**Exhibit H****INFORMATION NEEDED FOR ESCROW PROCESSING AND CLOSURE**

The Grantee must provide the following documents to the State Project Representative during the escrow process. Property acquisition escrow documents must be submitted within the term of this Funding Agreement and after a qualified appraisal has been approved.

- Name and Address of Title Company Handling the Escrow
- Escrow Number
- Name of Escrow Officer
- Escrow Officer's Phone Number
- Dollar Amount Needed to Close Escrow
- Legal Description of Property Being Acquired
- Assessor's Parcel Number(s) of Property Being Acquired
- Copy of Title Insurance Report
- Entity Taking Title as Named Insured on Title Insurance Policy
- Copy of Escrow Instructions in Draft Form Prior to Recording for Review Purposes
- Copy of Final Escrow Instructions
- Verification that all Encumbrances (Liens, Back Taxes, and Similar Obligations) have been Cleared Prior to Recording the Deed to Transfer Title
- Copy of Deed for Review Purposes Prior to Recording
- Copy of Deed as Recorded in County Recorder's Office
- Copy of Escrow Closure Notice

## Exhibit I

### APPRAISAL SPECIFICATIONS

For property acquisitions funded this Funding Agreement, the Grantee must submit an appraisal for review and approval by the Department of General Services or DWR's Real Estate Branch prior to reimbursement or depositing State funds into an escrow account. All appraisal reports, regardless of report format, must include all applicable Appraisal Specifications below. Appraisals for a total compensation of \$150,000 or more shall be reported as a Self-Contained Appraisal Report. Appraisals for a total compensation of less than \$150,000 may be reported as a Summary Appraisal Report, which includes all information necessary to arrive at the appraiser's conclusion. Appraisal Specifications 14, 16, 21, 23-25, and 28 shall be narrative analysis regardless of the reporting format.

1. Title page with sufficient identification of appraisal assignment.
2. Letter of transmittal summarizing important assumptions and conclusions, value estimate, date of value and date of report.
3. Table of contents.
4. Assumptions and Limiting Conditions, Extraordinary Assumptions, and Hypothetical Conditions as needed.
5. Description of the scope of work, including the extent of data collection and limitations, if any, in obtaining relevant data.
6. Definition of Fair Market Value, as defined by Code of Civil Procedure, section 1263.320.
7. Photographs of subject property and comparable data, including significant physical features and the interior of structural improvements, if applicable.
8. Copies of Tax Assessor's plat map with the subject marked along with all contiguous assessor's parcels that depict the ownership.
9. A legal description of the subject property, if available.
10. For large, remote or inaccessible parcels, provide aerial photographs or topographical maps depicting the subject boundaries.
11. Three-year subject property history, including sales, listings, leases, options, zoning, applications for permits, or other documents or facts that might indicate or affect use or value.
12. Discussion of any current Agreement of Sale, option, or listing of subject property. This issue required increased diligence since state agencies often utilize non-profit organizations to quickly acquire sensitive-habitat parcels using Option Agreements. However, due to confidentiality clauses, the terms of the Option are often not disclosed to the state. If the appraiser discovers evidence of an Option or the possible existence of an Option, and the terms cannot be disclosed due to a confidentiality clause, then the appraiser is to cease work and contact the client.
13. Regional, area, and neighborhood analyses. This information may be presented in a summary format.
14. Market conditions and trends including identification of the relevant market area, a discussion of supply and demand within the relevant market area, and a discussion of the relevant market factors impacting demand for site acquisition and leasing within the relevant market area. This information may be presented in a summary format.
15. Discussion of subject land/site characteristics (size, topography, current use, elevations, zoning and land use issues, development entitlements, General Plan designation, utilities, offsite

improvements, access, land features such as levees and creeks, offsite improvements, easements and encumbrances, covenants, conditions and restrictions, flood and earthquake information, toxic hazards, water rights, mineral rights, toxic hazards, taxes and assessments, etc.).

16. Description of subject improvements including all structures, square footage, physical age, type of construction, quality of construction, condition of improvements and/or identification of any permanent plantings. Discussion of construction cost methodology, costs included and excluded, accrued depreciation from all causes, remaining economic life, items of deferred maintenance and cost to cure, and incurable items. Construction cost data must include cost data source, date of estimate or date of publication of cost manual, section and page reference of cost manual, copies of cost estimate if provided from another source, replacement or reproduction cost method used, and supporting calculations including worksheets or spreadsheets.
17. Subject property leasing and operating cost history, including all items of income and expense.
18. Analysis and conclusion of the larger parcel for partial taking appraisals. For partial taking appraisals, Appraisal Specifications generally apply to the larger parcel rather than an ownership where the larger parcel is not the entire ownership.
19. Include a copy of a recent preliminary title report (within the past year) as an appraisal exhibit. Discuss the title exceptions and analyze the effect of title exceptions on fair market value.
20. For appraisals of partial takings or easements, a detailed description of the taking or easement area including surface features and topography, easements, encumbrances or improvements including levees within the subject partial take or easement, and whether the take area is characteristic of the larger parcel. Any characteristics of the taking area, including existing pre-project levees that render the take area different from the larger parcel must be addressed in the valuation.
21. Opinion of highest and best use for the subject property, based on an in depth analysis supporting the concluded use which includes the detail required by the complexity of the analysis. Such support typically requires a discussion of the four criteria of tests utilized to determine the highest and best use of a property. If alternative feasible uses exist, explain and support market, development, cash flow, and risk factors leading to an ultimate highest and best use decision.
22. All approaches to market value applicable to the property type and in the subject market. Explain and support the exclusion of any usual approaches to value.
23. Map(s) showing all comparable properties in relation to the subject property.
24. Photographs and plat maps of comparable properties.
25. In depth discussion of comparable properties, similarities and differences compared to the subject, adjustments to the comparable data, and discussion of the reliability and credibility of the data as it relates to the indicated subject property value. Improved comparable sales which are used to compare to vacant land subject properties must include an allocation between land and improvements, using methodology similar to methodology used in item 16 above to estimate improvement value when possible, with an explanation of the methodology used.
26. Comparable data sheets.
  - a) For sales, include information on grantor/grantee, sale/recordation dates, listed or asking price as of the date of sale, highest and best use, financing, conditions of sale, buyer motivation, sufficient location information (street address, post mile, and/or distance from local landmarks



such as bridges, road intersections, structures, etc.), land/site characteristics, improvements, source of any allocation of sale price between land and improvements, and confirming source.

- b) For listings, also include marketing time from list date to effective date of the appraisal, original list price, changes in list price, broker feedback, if available.
  - c) For leases, include significant information such as lessor/lessee, lease date and term, type of lease, rent and escalation, expenses, size of space leased, tenant improvement allowance, concessions, use restrictions, options, and confirming source. When comparing improved sales to a vacant land subject, the contributory value of the improvements must be segregated from the land value.
27. For appraisals of easements, a before and after analysis of the burden of the easement on the fee, with attention to how the easement affects highest and best use in the after condition. An Easement Valuation Matrix or generalized easement valuation references may be used ONLY as a reference for a secondary basis of value.
28. For partial taking and easement appraisals, valuation of the remainder in the after condition and analysis and identification of any change in highest and best use or other characteristics in the after condition, to establish severance damages to the remainder in the after condition, and a discussion of special and general benefits, and cost to cure damages or construction contract work.
29. There are occasions where properties involve water rights, minerals, or salable timber that require separate valuations. If an appraisal assignment includes water rights, minerals, or merchantable timber that requires separate valuation, the valuation of the water rights, minerals, or merchantable timber must be completed by a credentialed subject matter specialist.
30. For partial taking and easement appraisals, presentation of the valuation in California partial taking acquisition required format.
31. Implied dedication statement.
32. Reconciliation and final value estimate. Include analysis and comparison of the comparable sales to the subject, and explain and support conclusions reached.
33. Discussion of any departures taken in the development of the appraisal.
34. Signed Certification consistent with the language found in Uniform Standards of Professional Appraisal Practice.
35. If applicable, in addition to the above, appraisals of telecommunication sites must also provide:
- a) A discussion of market conditions and trends including identification of the relevant market, a discussion of supply and demand within the relevant market area and a discussion of the relevant market factors impacting demand for site acquisition and leasing within the relevant market area.
  - b) An analysis of other (ground and vault) leases comparable to subject property. Factors to be discussed in the analysis include the latitude, longitude, type of tower, tower height, number of rack spaces, number of racks occupied, placement of racks, power source and adequacy, back-up power, vault and site improvements description and location on site, other utilities; access, and road maintenance costs.

## Exhibit J

### ADVANCE PAYMENT

Water Code section 13198.4(c) authorizes advanced payment by the State for grantees that demonstrate cash flow issues. A project may receive an advanced payment of twenty-five (25) percent of its grant award; the remaining seventy-five (75) percent of the grant award will be reimbursed in arrears after the advanced funds have been fully expended. Within ninety (90) calendar days of execution of the Grant Agreement, the Grantee may provide the State an Advanced Payment Request. Advanced Payment Requests received ninety-one (91) calendar days after the execution of this Agreement will not be eligible to receive an advanced payment. The Advanced Payment Request shall contain the following:

- A. If the Grantee is requesting the advanced payment, the request(s) shall include:
  1. Descriptive information of each project with an update on project status
  2. Description and documentation of the cash flow issues the Grantee has that requires funds to be advanced
  3. The names of the entities that will receive the funding for each project
  4. A detailed Funding Plan which includes how the advanced payment will be expended (in terms of workplan, budget, and schedule) within the timeframe agreed upon by DWR and the Grantee. The Funding Plan must clearly identify the total budget (at Budget Category Level) for each project clearly showing the portion of advanced payment and reimbursement funds.
  5. Any other information that DWR may deem necessary
- B. Upon review and approval of the Advanced Payment Request, DWR may authorize payment of the requested amount or a lesser amount for those entities that have requested advanced funds. Based on the project's Funding Plan and other considerations, DWR may develop a "Disbursement Schedule," to disburse funds in installments. This Disbursement Schedule may change based on the project's ongoing compliance with the Advanced Payment requirements and the project's cash flow needs.
- C. Once DWR authorizes the Advanced Payment Request, the Grantee shall submit Advanced Payment Invoice(s) for the initial amount based on the "Disbursement Schedule" containing the request for each project requesting advanced funds, to the State with signature and date of the Grantee's Project Representative, as indicated in Paragraph 18, "Project Representative." The Grantee shall be responsible for the timely distribution of the advanced funds. The Advanced Payment Invoice(s) shall be submitted on forms provided by the State and shall meet the following format requirements:
  1. Invoice shall contain the date of the invoice, the time period covered by the invoice, and the total amount due.
  2. Invoice shall be itemized based on the budget categories specified in Exhibit B, "Budget."
  3. The State Project Manager will notify the Grantee, in a timely manner, when, upon review of an Advance Payment Invoice, the State determines that any portion or portions of the costs claimed are not eligible costs. The Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to cure such deficiency(ies). The Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to cure such deficiency(ies). If costs are not consistent with the

tasks in Exhibit A, the State will reject the claim and remove them from the Accountability Report.

4. On a quarterly basis, the Grantee will submit an Accountability Report to the State that demonstrates how actual expenditures compare with the scheduled budget. The Accountability Report shall include the following information:
  - i. An itemization of how advanced funds have been spent to-date (Expenditure Report), including documentation that supports the disbursements (e.g., contractor invoices, receipts, personnel hours, etc.). Accountability Reports shall be itemized based on the budget categories (i.e., tasks) specified in Exhibit B.
  - ii. An updated Accountability Report including an updated Funding Plan that depicts how the remaining advanced funds will be expended and the activities and deliverables associated with the advanced funds within the timeframe agreed upon by DWR and the Grantee when the advanced payment request was approved.
  - iii. Documentation that the funds were placed in a non-interest bearing account, including the dates of deposits and withdrawals from that account.
  - iv. Proof of distribution of advanced funds, if applicable.
- D. Once the Grantee has spent all advanced funds in a budget category, then the method of payment will revert to the reimbursement process for that budget category specified in Paragraph 9, "Method of Payment."

San Geronio Pass Water Agency  
Gap Funding Program  
Summary Report  
Report Date: January 19, 2025

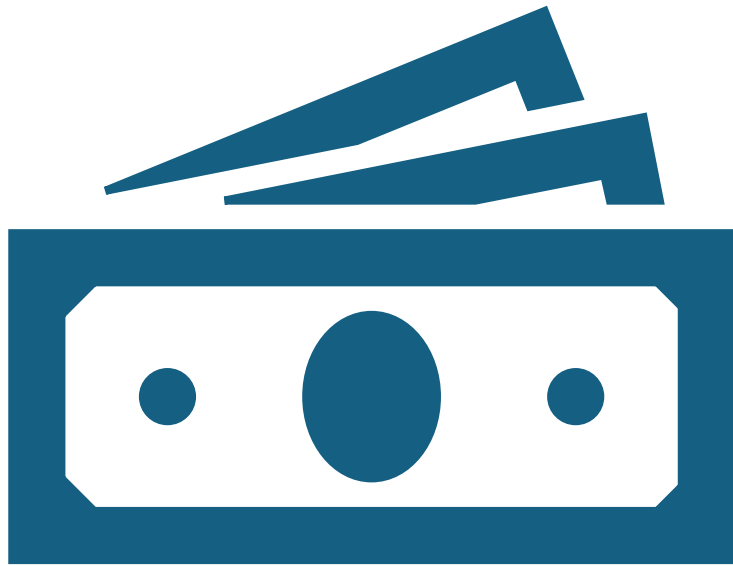
**OVERALL Current Balance: 6,235,940.59**

(Owed to Agency)

Cabazon Water District #1	(CWD owes us) - Current Balance: 388,409.88
Gap Funding Maximum: 1,300,000	
Approximate Project Cost: 1,700,000.00	Approximate Gap Funding Available: 911,590.12
Payments Made to CWD: 1,576,885.54	Payments Received from CWD: 1,188,475.66
12/2/24	292,664.18

South Mesa Water Company	(SMWC owes us) - Current Balance: 5,847,530.71
Gap Funding Maximum: 7,000,000	
Approximate Project Cost: 10,300,000.00	Approximate Gap Funding Available: 1,152,469.29
Payments Made to SMWC: 6,325,017.73	Payments Received from SMWC: 477,487.02
8/27/24	722,239.02
10/22/24	3,027,547.72
10/14/25	2,097,743.37
9/25/24	477,487.02

High Valleys Water District	(HVWD owes us) - Current Balance: 0.00
Gap Funding Maximum: 1,000,000	
Approximate Project Cost: 1,000,000.00	Approximate Gap Funding Available: 1,000,000.00
Payments Made to HVWD: 0.00	Payments Received from HVWD: 0.00



# Banning Heights Mutual Water Company Gap Funding Assistance

Board of Directors Meeting

February 3, 2025

# Overview of the Banning Heights Project

- Banning Heights Emergency Replacement Water Project
- Submitted grant in response to 2020 Apple Fire and effect on Whitewater Flume Supply
- Immediate long-term solution required for BHMWC residents (~1,200)



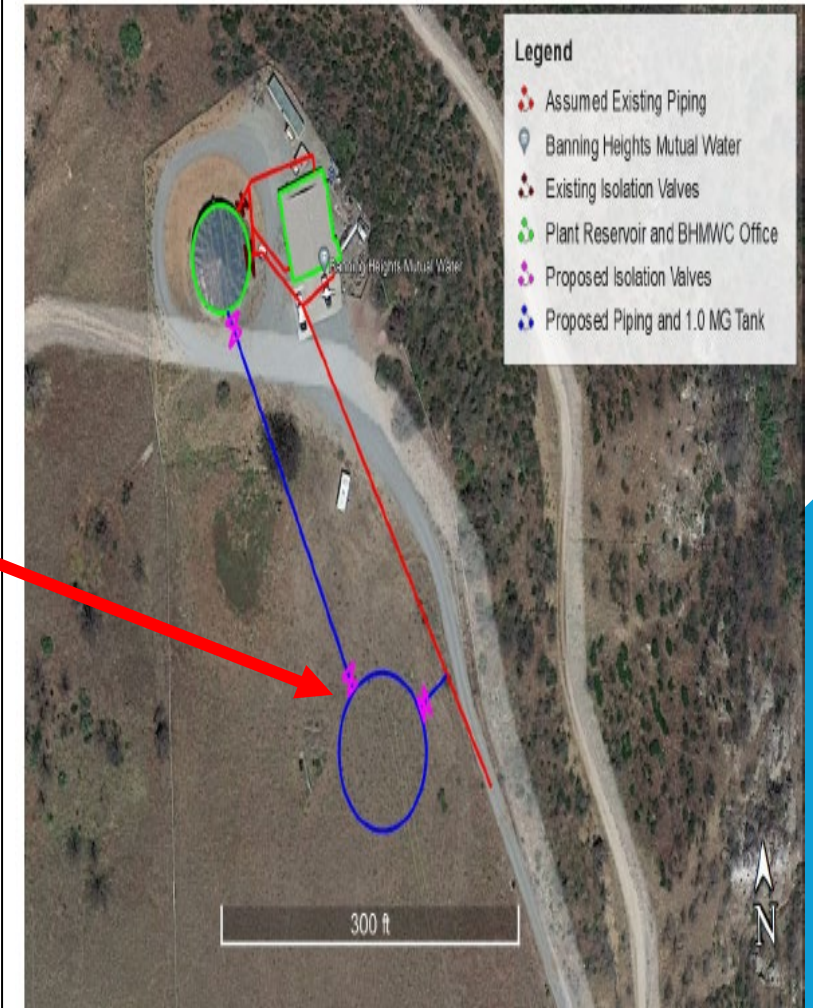
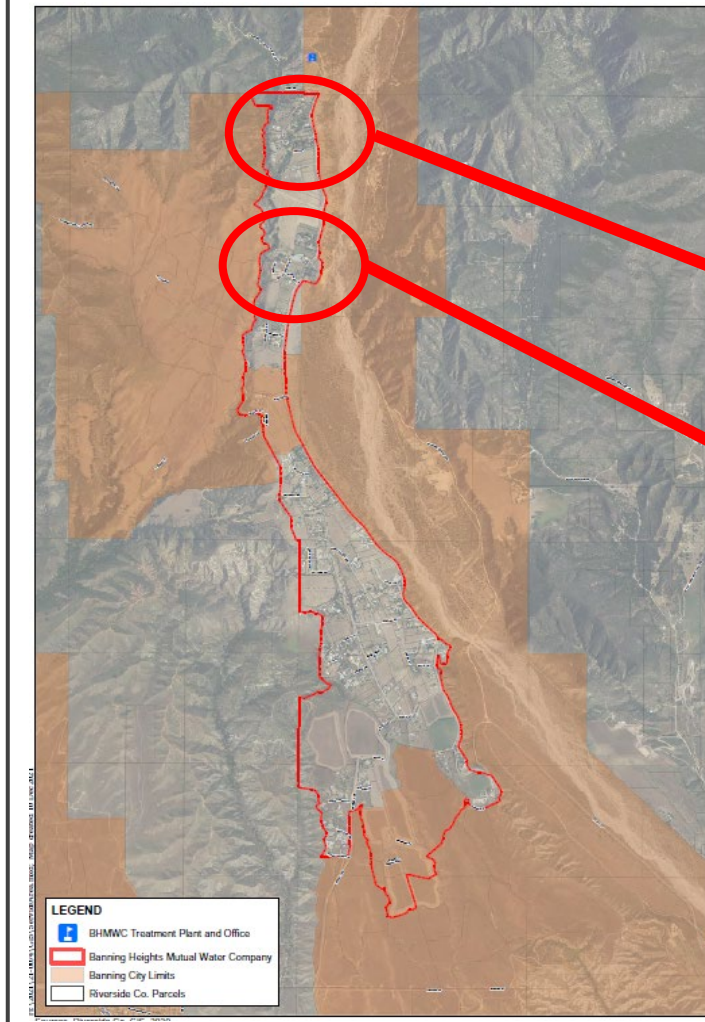
# Banning Heights Emergency Replacement Water Project

- DWR Small Community Drought Relief Program Grant
- \$3,756,000 Grant
- Grant includes:
  - Construction of a new production well
  - Construction of a new storage reservoir
  - Covers emergency water purchase from the City of Banning
  - Enhances BHMWC resilience during prolonged droughts and emergencies

Date	Milestone
February 2025	Emergency Water Purchases (City of Banning)
February 2025	Final Reservoir Design
May 2025	Final CEQA Documentation
May 2025	Reservoir Construction
May 2025	Well Drilling Construction
June 2025	Final Grant Reporting
June 2025	Tentative Grant/Project Closeout

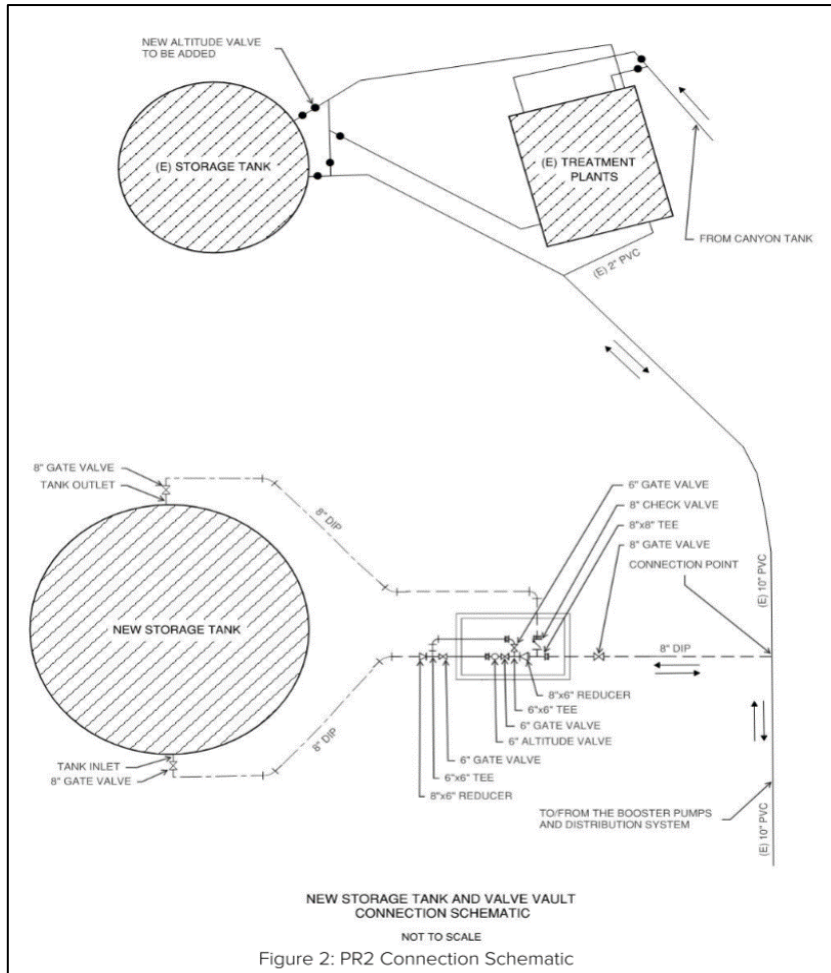


# Banning Heights Emergency Replacement Water Project





# Banning Heights Emergency Replacement Water Project



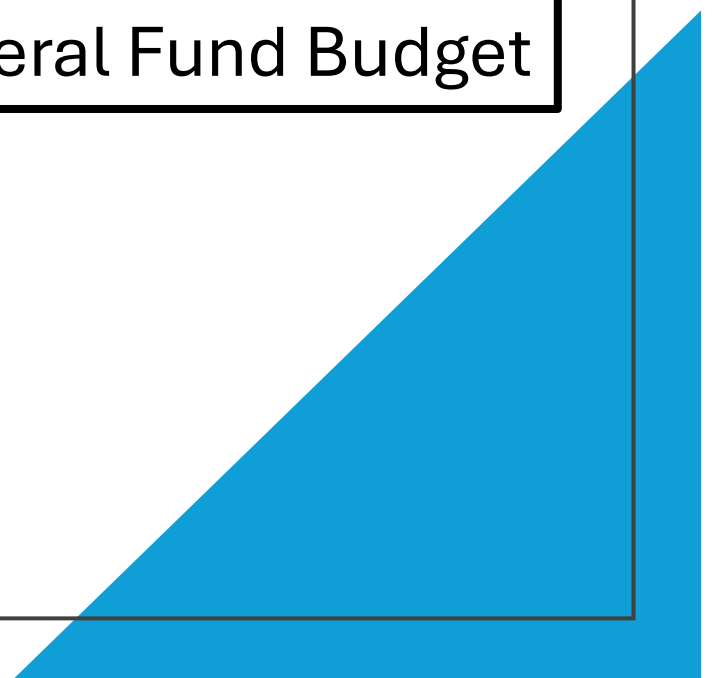
Date	Projected Expenditures
January 2025	~\$660,000
February 2025	~\$644,000
March 2025	~\$700,000
April 2025	~\$460,000
May 2025	~\$550,000
June 2025	~\$170,000

# Gap Funding Program through SGPWA

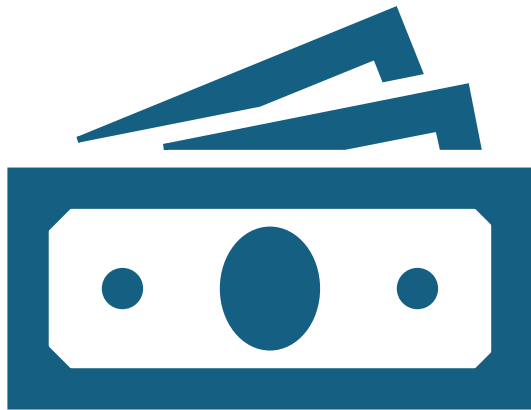
## List of Gap-Funded Projects

- Cabazon Water District
  - \$1.7 Million
- South Mesa Water Company
  - \$10.2 Million
- High Valleys Water District
  - \$984,324
- Banning Heights Mutual Water Company
  - \$3,765,000

This Gap Funding Program Amount was included in the FY24/25 General Fund Budget



# Recommendation



Authorize the General Manager to enter into an Agreement with the Banning Heights Mutual Water Company (BHMWC) to provide Gap Funding support to utilize Small Community Drought Relief Program grant funds through the Department of Water Resources

# Questions

