

DATE: September 27, 2018
TO: Board of Directors
FROM: Jeff Payne, Director of Water Policy
SUBJECT: UPDATE ON ACTIVITIES OF THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY

SUMMARY:

The San Joaquin Valley Water Infrastructure Authority (SJWVIA) held a regular meeting on September 14.

The group discussed matters related to (a) the SJWVIA budget, (b) progress toward the development of a JPA to receive applicant status for the Temperance Flat application to the California Water Commission, (c) Activities related to the Reclamation Feasibility Study, (d) future activities of the SJWVIA.

COMMITTEE ACTION:

Informational update, NO Action.

DISCUSSION:

BUDGET – Matters related to the budget and call for funds are being reconsidered by the SJWVIA, and a new financial plan will be prepared for consideration at the next board meeting in October.

JPA Formation – Jeff Payne (Friant Alt. Director) reported that the MOA group had drafted language for consideration by the MOA group and, if things move smoothly, the new JPA could be signed by at least two parties in early October. Mario stated that there would be some delay as the Secretary of State considered the completeness of the JPA, and that the expectable date for a transition would be early November.

Reclamation Feasibility Study – Several members of the SJWVIA have been reviewing a DRAFT Executive Summary of the Feasibility Study Report and are concerned with some of the characterizations in that document. The Board moved to send a letter to Reclamation, which ultimately was sent to Regional Director Murillo, requesting a more formal review. See attached letter request.

Future Activities of the SJWVIA – The board noted that a process was being started to draft the new mission statement. At this time, a representative from the water agencies has not stepped forward to participate.

BUDGET IMPACT:

No budget impact for this item.

ATTACHMENTS:

1. SJWIA letter to D. Murillo regarding the Temperance Flat Feasibility Study

GOVERNING BOARD



2800 Burrel Avenue, Visalia, California 93291
www.tularecounty.ca.gov

September 16, 2018

BY ELECTRONIC MAIL

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Mr. David Murillo
Director
United States Bureau of Reclamation, *Mid-Pacific Region*
Federal Office Building
2800 Cottage Way
Sacramento California 95825-1898

Dear Mr. Murillo:

The San Joaquin Valley Water Infrastructure Authority's Board of Directors was briefed during Friday's meeting on progress made for both the Feasibility Study report and the Supplemental EIS for the Temperance Flat Reservoir Project. While we are pleased with the progress and Reclamation's dedication to taking the deadlines for these projects seriously, concern among the CVP water users represented by our board has continued to increase because a review of these documents has not been offered prior to public release.

As you may recall, the previous Feasibility Report was sent to Reclamation Commissioner and the President's Office of Management and Budget in Washington, D.C. for review and finalization without any review by the water users that would be affected by the project. This resulted in a report that included several areas of concern throughout the water user community that were expressed to you (as acting Commissioner at the time), ultimately resulting in that version being rescinded for an alternative development process that involved the direct input by the interested CVP water users. Although the technical approach used in the current Feasibility Study was developed in close coordination with those water users, the description of the alternative and operations that may affect existing CVP supplies or other ancillary supplies governed by our water users was not.

Through our cost share agreement with Reclamation, your team shared a draft copy of the Executive Summary of the Feasibility Report for review by our water users. The preliminary review of this document has led us to believe that some clarifications are required in the current document that, if not addressed, will be problematic in a public release.



We strongly request access to review both the Temperance Flat Reservoir Project's Feasibility Report and EIS, in a manner that maintains the current schedule for both documents. Given those schedules, this review is needed in the coming weeks. We commit to coordinate reviews by interested CVP water users to facilitate the identification of questions and concerns, and to consolidate comments back to Reclamation on both documents.

If you have any concerns that would lead you to consider delaying our water users' review of these documents prior to publication, please contact our Executive Director Mario Santoyo to discuss them. We have enjoyed our successful partnership, and look forward to coordinating on the final steps of these documents to give this project the greatest chance of success.

Sincerely,

A handwritten signature in cursive script that reads "J. Steve Worthley".

Steve Worthley
President



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Agenda Report

7.b

DATE: September 27, 2018
TO: Board of Directors
FROM: Jeff Payne, Director of Water Policy
SUBJECT: UPDATE ON STATUS OF TEMPERANCE FLAT RESERVOIR MEMORANDUM OF AGREEMENT GROUP ACTIVITIES

SUMMARY:

The MOA group, convened by water districts and agencies from the San Joaquin Valley Water Infrastructure Authority (SJVWIA) to work on policy matters related to Temperance Flat, held a regularly scheduled meeting on Friday September 21, 2018.

The group discussed matters related to (a) formation of a JPA to receive responsibility for all future activities related to Temperance Flat from the SJVWIA, (b) Activities related to the California Water Commission, (c) Activities related to the Reclamation Feasibility Study, (c) updates related to the technical studies conducted by water user's (i.e., the MOU group).

COMMITTEE ACTION:

Informational update, NO Action.

DISCUSSION:

More detail is provided in the meeting notes, attached.

BUDGET IMPACT:

No budget impact for this item.

ATTACHMENTS:

1. Meeting Notes, MOA Group 9/21/18

MOA on Temperance Flat, 9/21/18 Meeting Notes

ATTENDEES:

- Daniel Errotabere - Westlands WD
- Aaron Fukuda - FWA/Tulare ID
- James O'Banion - CCID
- Steve Collup - FWA/AEWSD
- Mike Carbajal - City of Fresno
- Frances Mizumo - SLDMWA
- Kole Upton - FWA
- Jeff Payne - FWA
- Russ Freeman - Westlands WD

AGENDA:

1. Call to Order: The Meeting was called to order and the agenda was distributed at 8:30 AM at the Yosemite Falls Café, Fresno, CA
2. Temperance Flat Reservoir Joint Power Authority
 - a. Mr. Payne and Mr. Fukuda Opening Remarks: Discussions with the San Joaquin Valley Water Infrastructure Authority (SJWVIA) have taken place whereby they are looking to transition the representation of the Temperance Flat WSIP application with the CWC to another JPA. There is an urgency to establish the new Temperance Flat JPA to fill the role that the SJWVIA is currently filling with the CWC. The current draft JPA was based on the original concepts of the MOA and is intended to be the initial formation documents, subject to changes in the future as new members and the project progresses. The plan is for the FWA to seek Board approval at their September 27th Board Meeting and shortly after, the Exchange Contractors would approve the JPA in the first week of October, therefore making the JPA effective.
 - i. All parties recognize that the goal is to actually have 5 agencies signed on to the JPA immediately, however due to logistics such as the timing of board meeting, and some potential delays in gaining approval of the SLDMA group, a 5-way simultaneous adoption is not realistic. To keep the process moving and fill the representation gaps, getting the JPA active with two members is the logical process. Implicitly, the agencies that join first will not block the adoption of the five agencies in the MOA.
 - b. Mr. Davis provided a review of the Draft JPA with the following discussion:
 - i. Section 2.5 - We need to select an agency with the broadest powers. It was decided that Friant Water Authority was the best option given they hold the power of an irrigation district. The group agreed to put FWA in the document under Section 2.5.
 - ii. Section 4.3.2 - There was a discussion regarding the ability to have a manager represent an agency on the Board. The FWA intent was to have directors as the representatives, given the initial actions of the JPA will be of a policy nature. The City of Fresno does present a problem, given their structure and Director Obanion expressed the wish to have as much flexibility as possible and to allow for the reduction in the number of meetings that directors must attend. The group, including Director Upton felt that we should allow each agency to pick their representatives and allow for flexibility.
 - iii. The group discussed the initial contribution to the JPA and agreed that \$15,000 was appropriate. The City of Fresno indicated they must have a budget number to get approved by the city council and would hope to avoid multiple requests for funding over a short period of time.

- iv. The initial withdrawal process was established at 180 days, and the group decided that a 60 day period was more appropriate.
 - c. Mr. Payne reiterated the plan moving forward: Intent is to receive a few more comments (especially City of Fresno and Westlands) and to incorporate them into the JPA with the understanding that they are not major changes to the JPA. Friant will present the JPA to the FWA Board next Thursday for CEO to sign by the time the second authority is ready to sign. EC will take to Board first week of October. Comments will be exchanged via email and if comments come in that significant, it will require a conference call.
 - d. Mr. Davis presented the draft Bylaws and presented comments and changes made by the agencies. There were no further questions or comments, and the Draft Bylaws will be presented to the JPA when the time is appropriate.
3. California Water Commission
- a. Mr. Fukuda reported on a recent meeting of the California Water Commission. He stated that the CWC will be looking at establishing some guidelines regarding how to distribute unused funds if the situation arises. He also reported that he introduced himself to the CWC Executive Director and the Project Manager for the WSIP program and they are awaiting our transition from the SJVWIA.
 - b. Mr. Fukuda reported that the CWC has supplied their initial requirements to transition from the SJVWIA, which included 1) a letter from the SJVWIA stating that they approve of the transfer to the Temperance Flat JPA, 2) the JPA documents and resolutions, and 3) a letter from the Temperance Flat JPA stating that they accept the role of the applicant in the WSIP process.
 - c. Mr. Fukuda reported that quarterly reporting will be required in the WSIP program and that the initial quarterly report due in October is meant to be a very detail look back and into the future for the project. Because of our transition, the intent is to request that the initial detailed quarterly report be postponed until the first quarter of 2019.
 - d. Mr. Fukuda updated the group on early funding, indicating that the CWC did not approve early funding to the Temperance Flat project
 - e. Mr. Fukuda and Mr. Collup reported that Mario Santoyo had initiated a process via the Governor's Office to make a request to the CWC to reconsider early funding. Upon the recommendation of Mr. Fukuda and Mr. Collup, Mr. Santoyo opted to not pursue this effort.
4. Bureau of Reclamation
- a. Mr. Payne provided an update on the Federal Feasibility report, indicating that a draft copy was being provided for review by agencies. The review is confidential but would allow agencies to determine if there are any fatal flaws before it is approved and moved forward to the Commissioner. He stated that there were concerns surrounding the Bureau providing language that would commit Fresno ID to an exchange of water on the Kings River and that others may emerge.
 - b. Mr. Fukuda and Mr. Payne reported that the SJVWIA is currently acting as the MOU Cost Sharing partner with the Bureau on the Federal Feasibility Report, however after the report is complete, the MOU partnership will conclude. The Bureau has been adamant that they are going to need to identify a JPA cost-sharing partner immediately after the Feasibility Report is complete to keep the project on track.
 - c. Mr. Fukuda and Mr. Payne reported that WIIN Act request of \$20 million was made by the Bureau for preconstruction activities. As an additional reason, it was reported that it is critical to establish the JPA because the \$20 million requires a cost-sharing partner.
5. Temperance Flat MOU Group
- a. Mr. Collup reported on the activities of the MOU Group, which included ongoing modeling efforts for Temperance Flat. Many of the eastside contractors had provided storage amounts, and modeling efforts. The westside modeling efforts are expected to be completed soon and they will have a better idea of the storage and operation of Temperance Flat.

DATE: September 27, 2018

TO: Board of Directors

FROM: Jeff Payne, Director of water Policy
Donald M. Davis, General Counsel

SUBJECT: CONSIDERATION OF DRAFT JOINT EXERCISE OF POWERS AGREEMENT AND BYLAWS FOR A NEW JOINT POWERS AUTHORITY TO BE KNOWN AS THE “TEMPERANCE FLAT RESERVOIR AUTHORITY

SUMMARY:

In order to expedite the transition of the lead agency with respect to the promotion and development of the Temperance Flat Reservoir Project, Friant Water Authority, the San Joaquin River Exchange Contractors Authority (SJRECA), the San Luis Delta Mendota Water Authority (SLDMWA), the City of Fresno (COF) and Westlands Water District (WWD) are proposing to form a separate joint powers authority (JPA) tentatively designated as the “Temperance Flat Reservoir Authority.” A draft of a joint exercise of powers agreement (Agreement) that would establish this separate legal entity and proposed Bylaws have been circulated among the proposed members and a generally consensus has been reached that the documents are acceptable. However, because we are still waiting on comments from COF and WWD, the recommendation is for the Board to approve membership in the JPA subject to approval as to final form and content of the Agreement and Bylaws by the CEO and General Counsel. In addition, in response to concerns voiced by some FWA members regarding the need for the Members of the JPA to agree on general operating principles for the Project that would protect existing water rights and supplies, a 12-month period is proposed in the Agreement for such a framework to be achieved; otherwise, the JPA will automatically terminate.

COMMITTEE ACTION:

The Executive Committee reviewed the Agreement and Bylaws at its meeting of September 17, 2018, provided comments, and subject to the acceptance of such comments (which the other proposed JPA members have done to date), recommended that the Board approve membership in the Temperance Flat Reservoir Authority.

RECOMMENDED ACTION:

That the Board: (1) authorize the Chair to execute the Agreement establishing the Temperance Flat Reservoir Authority subject to approval as to final form and content of the Agreement and draft Bylaws by the CEO and General Counsel; and (2) designate _____ as FWA’s representative on the Board of Directors and _____ as the Alternate Director.

SUGGESTED MOTION:

A motion that the Board: (1) authorize the Chair to execute the Agreement establishing the Temperance Flat Reservoir Authority subject to approval as to final form and content of the Agreement and draft Bylaws by the

CEO and General Counsel; and (2) designate _____ as FWA's representative on the Board of Directors and _____ as the Alternate Director.

DISCUSSION:

The five agencies that are proposed to be the initial members of the Temperance Flat Reservoir Authority are already coordinating on the Project under the auspices of a Memorandum of Agreement (MOA). Due to continued interest in receiving available Prop 1 funds as well as coordinating with Reclamation on matters such as the feasibility study for the Project, it is necessary to form a JPA since state and federal agencies generally require coordination to be done through a formal legal entity. The formation of such JPA will also help expedite the transition of responsibility for the Project away from the San Joaquin Valley Water Infrastructure Authority.

1. Overview of Formation Process:

The establishment of a JPA is governed by the Joint Exercise of Powers Act (Act) (Government Code sections 6500-6599.3). A JPA is formed by a contract (i.e., the Agreement) between two or more public agencies to jointly exercise any power common to the contracting agencies – here, water storage. The Agreement must contain certain specified provisions under the Act, but otherwise, much of the content is left to the discretion of the contracting agencies. Once the Agreement is executed, notice of the Agreement must be filed with the Secretary of State¹ and the full text of the Agreement filed with the State Controller within 30 days of the effective date of the Agreement.²

2. Required Agreement Provisions:

The following is a list of provisions required under the Act and their respective location in the proposed Agreement:

- A. Parties/Members: (Preamble; 2.2, Article III) There must be at least two public agency members, and each agency must have the statutory power to store water, which will be the primary purpose of the JPA. The initial Members will be FWA, SJRECA, SLDMWA, COF and WWD. In order to expedite formation of the JPA, Section 2.2 proposes to make the JPA effective upon execution by FWA and at least one other agency; however, all parties are working towards consensus on the contents of the JPA, and the execution date is more an issue of timing of board meetings for approval.
- B. Purposes: (2.3) The purposes are to effectively promote, develop, design, permit, finance, acquire, construct, manage, maintain, and operate the Temperance Flat Reservoir and its related facilities as well as facilities for recreation and hydro-electric power generation.³
- C. Common Power and Manner of Exercise: (2.5) The Agreement must designate a member agency whose powers will serve as the basis for determining how the JPA will exercise its

¹ Government Code section 6503.5. (All subsequent references are to the Government Code.)

² 6503.6.

³ 6503.

powers. In making this determination, it is best to identify an entity whose powers may provide the greatest amount of flexibility. It is proposed that FWA's powers govern, which mean the JPA would have the powers of an Irrigation District, since the Terra Bella Irrigation District is the agency identified in the FWA joint exercise of powers agreement.⁴ Among water agencies, Irrigation Districts do tend to have the most flexible powers, so the choice of FWA would be appropriate.

- D. Treasurer: (4.7.2) A treasurer must be designated, who may be the treasurer or financial officer or an employee of one of the contracting parties or a CPA.⁵
- E. Financial Accountability: (5.7) All funds, receipts and disbursements must be accounted for. To this end, an audit must be performed by an independent auditor each year and a report filed within 12 months of the end of the fiscal year.⁶
- F. Administration: (Articles IV, V and VI) How the JPA will be administered in terms of governance (i.e., a board of directors) and staffing is addressed.⁷
- G. Distribution of Assets and Revenues: (7.4) The Agreement must provide for the disposition, division, or distribution of any property acquired by the JPA, and provide that after the completion of its purpose, any surplus money on hand will be returned in proportion to the contributions made.⁸

3. Other Desirable JPA Provisions: The Agreement should and does address the following subjects:

- A. Procedures for Adding New Members: (3.4) The terms and conditions for accepting new members are addressed in this section. The Executive Committee requested that additional members be approved by unanimous consent.
- B. Governance: (Article IV) This article establishes a board of directors, the designation of the number and composition of the board and alternates, how they are selected and removed, voting rights and quorum rules, and the designation of officers. Types of memberships other than a regular member will be delineated in the Bylaws at a later date.
- C. Authority and Functions: (2.3) The Agreement delineates the JPA's powers to facilitate achievement of the Project.⁹
- D. Liability of Member Agencies: (4.9, 5.10, 6.3) The Agreement addresses the extent to which the debts, liabilities and obligations of the JPA are those of the JPA or the parties to the JPA.

⁴ 6508, 6509.

⁵ 6505.5, 6505.6.

⁶ 6505.

⁷ 6506.

⁸ 6511, 6512, 6512.1.

⁹ 6508.

Where a Project Agreement is used for an aspect of the Project, such agreement will address specific liability arising from the matter.

- E. Funding: (5.3 – 5.6, Article VI) The extent to which members are required to contribute funds to the JPA and the basis and timing of such contributions are addressed in the Agreement and the Bylaws. FWA proposed and the Agreement includes an initial contributions for the first six months or so of \$15,000 per member for general administrative costs. (5.4). This amount was largely based on what the SJVWIA was requesting in funding for the coming months. Funding for specific matters will be addressed in Project Agreement under Article VI.
- F. Termination and Withdrawal of Member Agencies: (7.1 – 7.3) To address concerns voiced by some FWA members regarding the need for the Members of the JPA to agree on general operating principles for the Project that would protect existing water rights and supplies, a 12-month period is proposed in the Agreement for such a framework to be achieved; otherwise the Agreement will automatically terminate. Here is the full text of Section 7.1.1:

7.1.1 Automatic Termination. The Members agree that within twelve months of the effective date of this Agreement under Section 2.2, the Members will reach an agreement on operating principles of the Project just as some of the Members or their constituent agencies did with respect to the preliminary operating principles set forth as Exhibit C of the “First Amended and Restated Memorandum of Understanding Regarding Coordination, Cooperation, and Cost Sharing on Preconstruction Activities Related to the Temperance Flat Reservoir Project” effective as of December 6, 2017. In the event that an agreement on such operating principles is not reached by the Members or the time period to reach an agreement under this Section is not extended by an amendment to this Agreement, then this Agreement will automatically terminate at the expiration of such twelve-month period.

The other circumstances under which a Member agency may withdraw and the procedure for withdrawal are addressed in Sections 7.2 and 7.3.

- G. Amendment of Agreement: (8.1 and 8.2) During this start up period, the Agreement and Bylaws may only be amended by unanimous vote in keeping with the need for the initial members to act by full consensus.
4. **Bylaws**: The proposed Bylaws are essentially a scaled down version of the FWA Bylaws and address the key organizational and governance issues of the JPA. If the agencies that comprise the initial members of the JPA elect to begin making significant investments in the Project, then the Bylaws will need to be expanded to address issues such as Project Agreements and non-member participation.

BUDGET IMPACT:

The initial contribution cost of membership in the proposed JPA is \$15,000. The proposed 2018-19 General Member budget allocates \$25,000 towards Temperance Flat activities.

ATTACHMENTS:

1. Proposed Joint Exercise of Powers Agreement of the Temperance Flat Reservoir Authority
2. Proposed Bylaws

**TEMPERANCE FLAT RESERVOIR AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement (“**Agreement**”) is entered into by the parties on the attached Exhibit A, which are referred to in this Agreement individually as a “**Member**” and collectively as the “**Members.**”

RECITALS

A. Each of the Members is a public agency organized and operating under the laws of the State of California.

B. California Government Code sections 6500 – 6599.3 (the “**Joint Exercise of Powers Act**” or “**Act**”) provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties.

C. The Members desire by this Agreement to establish an independent special agency known as the Temperance Flat Reservoir Authority (“**Authority**”), that will have as its mission, to promote, develop, design, permit, finance, acquire, construct, manage, maintain, and operate a dam and reservoir at Temperance Flat and related facilities.

D. The Members each possess the powers to promote, develop, design, permit, finance, acquire, construct, manage, maintain and operate water storage and related infrastructure projects.

E. The Members each desire to exercise those powers as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth in this Agreement, the Members agree as follows:

I. DEFINITIONS

As used in this Agreement, the following words and phrase will have the meaning set forth in this article:

- 1.1 **Agreement:** This Joint Exercise of Powers Agreement as it currently exists or as it may be amended or revised from time to time.
- 1.2 **Authority:** The legal entity established by this Agreement to be known as the Temperance Flat Reservoir Authority.
- 1.3 **Board of Directors or Board:** The governing body of the Authority as established in Article IV of this Agreement.

- 1.4 **Bylaws:** Additional requirements to those contained in the Agreement related to the construction of the Temperance Flat Reservoir; emphasizing delegations of authority, decision-making; membership types; budgeting; and cost management.
- 1.5 **Central Valley Project or CVP:** The federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.
- 1.6 **Exchange Contract.** [To be provided by SJRECA]
- 1.7 **Member:** An eligible public agency that is a signatory to this Agreement.
- 1.8 **Non-Member Participating Party:** An agency or entity that is not an Authority Member, but is deemed eligible by the Authority to participate by contract in certain elements of the Project. The Bylaws may provide for additional requirements for such Non-Members.
- 1.9 **Project:** The promotion, development, design, permitting, financing, acquisition, construction, management, and operation of a dam and reservoir and related facilities at Temperance Flat to be carried out pursuant to this Agreement.
- 1.10 **Purchase Contract.** [To be provided by SJRECA]
- 1.11 **Reclamation:** The United States Department of Interior, Bureau of Reclamation.
- 1.12 **State Water Project or SWP:** The state water facilities defined in California Water Code section 12934(d).
- 1.13 **Upstream Power Agreements.** [To be provided by SJRECA]

II. GENERAL PROVISIONS REGARDING THE CREATION, TERM, PURPOSES, AND POWERS OF THE AUTHORITY

- 2.1 **Creation:** Pursuant to the Act a public entity is created to be known as the Temperance Flat Reservoir Authority, which will be a public agency that is separate from the Members.
- 2.2 **Term:** This Agreement will become effective on the first day of the month after the Friant Water Authority and at least one other of the initial public agencies listed on Exhibit A execute this Agreement. The Agreement will remain in effect until terminated pursuant to the provisions of Article VII [Termination].
- 2.3 **Purposes:** The purpose of this Agreement is to establish an independent joint powers authority (“**JPA**”) to exercise powers common to the Members to, among other things, effectively promote, develop, design, permit, finance, acquire, construct, manage, maintain, and operate the Temperance Flat Reservoir and its related facilities as well as facilities for recreation and hydro-electric power generation.
- 2.4 **Powers:** The Authority will have the power to pursue the purposes described above and to perform all acts necessary for the exercise of such powers, including, but not limited to, the ability to:
 - 2.4.1 make and enter into contracts necessary for the full exercise of its powers;

- 2.3.1. perform studies, environmental review, engineering and design, and if appropriate, permitting, construction of water storage facilities, and related conjunctive management;
 - 2.4.2 contract for the services of engineers, attorneys, scientists, planners, financial consultants, and other professionals or to employ such professionals as it deems necessary;
 - 2.4.3 acquire, hold, lease and dispose of any property;
 - 2.4.4 apply for, accept, and receive permits, licenses from any federal, state or local public agency;
 - 2.4.5 apply for, accept, and receive federal, state or local grants, loans, or other aid from any agency of the United States, the state or other public or private entities;
 - 2.4.6 receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity;
 - 2.4.7 issue revenue bonds and other forms of indebtedness to the extent, and on the terms, provided by the Act;
 - 2.4.8 incur debts, liabilities, and obligations;
 - 2.4.9 sue and be sued in its own name;
 - 2.4.10 adopt Bylaws, rules, regulations, and procedures, governing the operation of the Authority;
 - 2.4.11 perform all acts necessary or proper to carry out fully the purposes of this Agreement;
 - 2.4.12 exercise any independent or supplementary powers of a joint powers agency, as provided by the Act or other law.
- 2.5 Manner of Exercise of Powers: To the extent not specifically provided for in this Agreement or the Act, the Authority will exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to the Friant Water Authority, which in accordance with California Government Code section 6509 exercises its powers in the manner specified in the Irrigation District Law, Division 11 of the California Water Code, commencing at Section 20500.
- 2.6 No Implied Effect on Rights: Except as expressly provided in this Agreement, nothing in this Agreement may be construed as affecting the rights or obligations of the Members, including but not limited to any rights or obligations pursuant to contracts for delivery of water from the CVP or SWP, the Exchange Contract, the Purchase Contract, or Upstream Power Agreements.

III. AUTHORITY MEMBERSHIP

- 3.1 Generally: Authority membership is comprised of public agencies (as defined in Section 6500 of the Act) that are authorized to be Members, including under California Water Code section 79759(a) and (b) if funds are allocated to the Project under Chapter 8 of Division 26.7 of the Water Code beginning at section 79700, and are signatories to this Agreement.
- 3.2 Bureau of Reclamation: The Authority may enter into a contract or other arrangement with Reclamation to carry out the purposes of this Agreement.
- 3.3 Department of Water Resources: If the Authority receives funding for the Project under Chapter 8 of Division 26.7 of the California Water Code beginning at section 79700, the California Department of Water Resources (“**DWR**”) will be an ex officio Member of the Authority as provided in Water Code section 79759(b), but in accordance with that provision will have no control with respect to the governance, management, or operation of the Project.
- 3.4 Addition of Members: Entities authorized by law to participate in a JPA may subsequently become Members upon the unanimous vote of all Members and the new Member’s execution of this Agreement, as it may be amended. An entity requesting to become a Member must provide certification of compliance with the membership requirements of this Agreement and the Bylaws. The entity requesting to become a Member may represent a group of other entities. Terms and conditions for a new Member’s participation in the Authority, if any, will be set forth in an amendment to this Agreement or in the Bylaws. Such terms and conditions must be consistent with this Agreement and any contracts, resolutions, or indentures of the Authority then in effect.
- 3.5 Non-Membership Participation Types: The Board may approve the creation of different types of non-membership participation that may include governmental agencies, public agencies, or private entities, with respect to the funding and financing of the different elements of the Project. The creation of any additional non-membership participation types will be defined in the Bylaws. Participation by such Non-Member Participating Parties will be upon the affirmative vote of at least seventy-five percent (75%) of the total number of Members.

IV. GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1 Board of Directors: The governing body of the Authority is a Board of Directors (“**Board**”) that will conduct all business on behalf of the Authority consistent with this Agreement and applicable law. The Board consists of one representative of each Member. To remain in an active status, each Member having representation on the Board must be in “Good Standing” as defined in the Bylaws.
- 4.2 Exercise of Authority: All the power and authority of the Authority will be exercised by the Board subject to the rights reserved by the Members as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to the Chair or Chief Executive Officer as the Board may determine by motion, resolution or ordinance. The Board may also appoint and delegate such powers and authority to such committees as the Board may determine by motion, resolution or ordinance.

4.3 Directors and Alternates:

- 4.3.1 Each Member must appoint a Director to the Board. Each Member must also appoint at least one Alternate Director to the Board. The role of the Alternate Director will be to assume the duties of a Member's Director in case of the absence or unavailability of such Director.
 - 4.3.2 The Directors and Alternate Directors must be directors or members of the governing body of the Member agency, or employees of the Member he or she represents.
 - 4.3.3 Directors and Alternates both serve at the pleasure of the governing body of their respective Member agency. Authority Member agencies must communicate their initial Director and Alternate selections, and any subsequent changes in representatives, to the Authority in writing and include a certified copy of the resolution of the governing body, minutes of the relevant meeting, or other formal documentation evidencing the appointment.
 - 4.3.4 Should a Director who is also an officer of the Board not be in attendance at a meeting, the Member's Alternate Director may not assume the duties of such officer. Should the Chair be absent, the Vice Chair will assume the Chair's responsibilities until the Chair is present, and if both are absent the Board may appoint a temporary Chair.
 - 4.3.5 A Director and Alternate Director office will be declared vacant if the person serving dies, resigns, the Member for which the Director or Alternate Director serves withdraws from this Agreement, the membership of the Member for which the Director or Alternate Director serves is terminated, or whenever, at the discretion of the particular Member, the Director or Alternative Director is incapable of serving. Upon the Director office becoming vacant, the Alternate Director, if the office is not vacant, will serve as Director, until the Member appoints a new Director or Alternate, as applicable.
- 4.4 Meetings: The Board must hold at least one regular meeting per year, and may hold regular or special meetings at more frequent intervals. All meetings of the Board will be called, held, noticed, and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code sections 54950 and following).
- 4.5 Quorum: A majority of the total number of Directors will constitute a quorum.
- 4.6 Voting:
- 4.6.1 Each Member agency is only entitled to have one vote, either by its Director or the Alternate, at a meeting of the Board.
- 4.7 Officers: The officers of the Authority will be a Chair, Vice Chair, Treasurer, and Secretary.
- 4.7.1 Chair; Vice Chair. The Board will select, from among the Directors, a Chair, who will be the presiding officer for all Board meetings, and a Vice Chair, who will preside in the absence of the Chair.

- 4.7.2 Treasurer. The Board, or its designated representative, will contract either with an independent certified public accountant or the treasurer, chief financial officer, or other employee of any Member, to serve as Treasurer of the Authority. The Treasurer will be the depository of and have custody of funds, subject to the requirements of California Government Code sections 6505-6505.6. The Treasurer will have custody of all money of the Authority from whatever source and will perform the duties specified in Government Code section 6505.5. The Treasurer will be bound in accordance with Government Code section 6505.1 and will pay demands against the Authority that have been approved by the Board.
- 4.7.3 Secretary. The Board will also select a Secretary, who will be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority. The Board may combine the positions of Secretary and Treasurer.
- 4.7.4 The Bylaws may further address the duties, responsibilities and administrative requirements for the respective officers.
- 4.7.5 Chief Executive Officer. The Board may appoint a Chief Executive Officer or assign staff of one or more Members to conduct the business of the Authority in accordance with the policies of the Board; provided that no Member's staff will be so assigned without the consent of that Member. The Chief Executive Officer will serve at the pleasure of the Board and may be an employee or a contractor of the Authority.
- 4.7.6 General Counsel. The Board may retain general counsel, who reports to the Board and serves at the pleasure of the Board.
- 4.7.7 Staff. The Authority may employ such full-time and part-time employees and independent contractors as may be necessary from time to time to accomplish the purposes of the Authority.
- 4.8 Bylaws: At, or as soon as practical after, the first meeting of the Board of Directors, the Board will approve the Bylaws of the Authority to govern the day-to-day operations of the Authority. The Board may adopt such other policies, rules and regulations for the conduct of its affairs as may be necessary for the purposes of this Agreement in a manner consistent with this Agreement and the Bylaws.
- 4.9 Liability of Authority, Officers, and Employees: The Directors, officers, and any employees of the Authority must use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Director, officer, employee or agent will be responsible for any act or omission by another Director, officer, employee, or agent. As further set forth in Section 5.10, the Authority will indemnify, defend, and hold harmless the individual Directors, officers, employees, and agents of the Authority for any action taken within the course and scope of their duties while acting on behalf of the Authority pursuant to this Agreement. The Authority may purchase such insurance as the Board may deem appropriate for this purpose. Nothing in this section may be construed to limit the defenses available under the law, to the Members, the Authority, or its Directors, officers, employees, or agents.

V. FINANCIAL PROVISIONS

- 5.1 Fiscal year: The fiscal year will be July 1 through June 31, unless the Directors decide otherwise, and will also apply to any Project Agreements unless the parties to such Project Agreement decide otherwise.
- 5.2 Depository: All funds of the Authority will be held in separate accounts in the name of the Authority and not commingled with the funds of any Member or any other person or entity. Regular reports will be made as directed by the Board, but at least quarterly, to the Board of all receipts and disbursements. The books and records will be open to inspection by the Board and individual Directors upon reasonable notice.
- 5.3 Budgets: A draft budget will be prepared for the Member agencies to review at least 45 days before the beginning of the Authority's next fiscal year. The Board will approve the budget no later than 15 days before the beginning of the fiscal year. The budget must include:
- 5.3.1 General and administrative costs for the general operation and administration of the Authority. These costs do not include any costs incurred by the Authority directly as a result of a specific Project Agreement as described in Article VI.
- 5.3.2 Project specific costs will be fully described and specified in a Project Agreement. The Board will ensure that all costs incurred by the Authority directly relating to any specific project will be paid only by the parties to the Project Agreement and will not be paid for by the Authority as general and administrative costs. The Bylaws may include additional requirements and criteria for such costs.
- 5.4 Initial Contributions: Upon formation of the Authority, each initial Member will make an admission contribution of \$15,000 for the purpose of funding anticipated operation and administrative expenses for the initial six months or more of operation of the Authority until a budget for the first full fiscal year is approved.
- 5.5 Recovery of General and Administrative Costs:
- 5.5.1 The Board may assess each Member for the general and administrative costs to operate the Authority. Payments of public funds may be made to defray the costs incurred in carrying out such purposes, and advances of funds may be made for use in doing so, to be repaid as provided in this Agreement. Personnel, equipment or property of one or more of the Members may be used in lieu of other contributions or advances, upon Board approval, and will be treated as a contribution from that Member.
- 5.5.2 General and administrative costs incurred by the Authority in carrying out its purposes, as described in Section 5.3.1, will be shared by the Members as determined by the Board.
- 5.5.3 The Authority will periodically, as necessary, issue an invoice to each Member reflecting the expenses attributable to that Member in accordance with this Agreement or the applicable Project Agreement, respectively. The Authority must receive payment within 60 days of the date listed on the invoice. Delinquent sums

will bear interest at a rate established in the Bylaws, which may include additional requirements.

- 5.5.4 Upon request of any Member, the Authority will produce and allow the inspection of all documents relating to the computation of expenses attributable to the Members under this Agreement. If a Member does not agree with the amount listed on the invoice, it must make full payment and provide a cover letter accompanying payment to the Authority specifying the amount in dispute and providing a detailed explanation of the basis for the dispute. The Authority will advise the disputing Member of the Authority's determination within 30 business days.
- 5.6 Recovery of Project Agreement Costs: Each Project Agreement will specify the requirements for recovery of costs.
- 5.7 Auditor; Audit: An auditor will be chosen annually by, and serve at the pleasure of, the Board. The auditor will make an annual audit of the accounts and records of the Authority. A report will be filed as a public record with the auditor of the county where the Authority is domiciled, consistent with Section 6505 of the Act, and with each agency or entity that is a Member, and to any public agency or person in California that submits a written request to the Authority.
- 5.8 Bonds: The Board may, from time to time, designate the officers or other persons who have charge of, handle, or have access to any property of the Authority and will require such officers or persons to file an official bond, at the Authority's expense, in an amount to be fixed by the Board.
- 5.9 No Authority Member Liability: As provided by California Government Code section 6508.1, the debts, liabilities, and obligations of the Authority will be the debts, liabilities, and obligations of the Authority only, and not of the individual Members.
- 5.10 Indemnity: Funds of the Authority may be used to defend, indemnify and hold harmless the Authority, each Member, each Director, and any officers, agents and employees of the Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority, including pursuant to a Project Agreement . Other than for gross negligence or intentional acts, the Authority will indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted in performance of this Agreement and will defend each of them against any claim, cause of action, liability, or damage resulting therefrom. The Directors, officers, employees, agents and volunteers of the Authority will be entitled to defense and indemnification by the Authority as provided under California Government Code Title 1, Division 3.6, Part 2, Chapter 1, Article 4 (commencing with Section 825) and Title 1, Division 3.6, part 7 (commencing with section 995). The indemnification and hold harmless provisions of this section apply in lieu of the right of contribution provisions at Government Code Sections 895-895.8. The provisions of California Civil Code section 2778 regarding the interpretation of indemnity provisions are made a part of this Agreement.

VI. PROJECT AGREEMENTS

- 6.1 General: The Authority intends to carry out many of the purposes of this Agreement through projects that are consistent with the purposes of the Authority as described in this

Agreement. Funding and participation in certain projects undertaken by the Authority will be governed by a “**Project Agreement**”. The Authority may undertake all or any portion of each project on its own or it may enter into agreements with the State of California, the United States, or any other public or private entity.

- 6.2 Parties to Agreement: Prior to undertaking a project, the Members and any Non-Member Participating Parties electing to participate in the project must enter into a Project Agreement. No Member will be required to be involved in a Project Agreement.
- 6.3 Project Agreement: All assets, rights, benefits, and obligations attributable to the project will be assets, rights, benefits, and obligations of those Members and Non-Member Participating Parties that have entered into the Project Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Authority in regard to a particular project will be the debts, liabilities, obligations, and indebtedness of the Members and Non-Member Participating Parties who have executed the respective Project Agreement and will not be the debts, liabilities, obligations or indebtedness of the Members and Non-Member Participating Parties that have not executed the Project Agreement, nor of the Authority. The Bylaws may provide additional requirements regarding the implementation of each Project Agreement.

VII. TERMINATION, WITHDRAWAL, AND SUSPENSION

7.1 Termination:

- 7.1.1 Automatic Termination. The Members agree that within twelve months of the effective date of this Agreement under Section 2.2, the Members will reach an agreement on operating principles of the Project just as some of the Members or their constituent agencies did with respect to the preliminary operating principles set forth as Exhibit C of the “First Amended and Restated Memorandum of Understanding Regarding Coordination, Cooperation, and Cost Sharing on Preconstruction Activities Related to the Temperance Flat Reservoir Project” effective as of December 6, 2017. In the event that an agreement on such operating principles is not reached by the Members or the time period to reach an agreement under this Section is not extended by an amendment to this Agreement, then this Agreement will automatically terminate at the expiration of such twelve-month period.
- 7.1.2 Mutual Termination. This Agreement may be terminated by the mutual agreement of at least seventy-five percent (75%) of the total number of the boards or governing bodies of the Member agencies in writing.
- 7.1.3 Termination of a Member by the Authority. This Agreement may be terminated with respect to any Member upon the affirmative vote of all Directors less one. Prior to any vote to terminate this Agreement with respect to a Member, written notice of the proposed termination and the reason(s) for such termination will be presented at a regular Board meeting with opportunity for discussion. The Member subject to possible termination will have the opportunity at the next following regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote. If a Member is terminated, that Member will be responsible for its proportionate share of any costs incurred by the Authority up to the date of termination.

7.2 Member Voluntary Withdrawal from Authority:

7.2.1 Any Member may unilaterally withdraw from the Authority by giving at least 60 days' written notice of its election to do so, which notice will be given to the Authority and each Member; provided that such withdrawal does not in any way impair any contracts or obligations of the Authority then in effect. Prior to withdrawal or as soon as an accounting can be completed, the withdrawing Member must pay its proportionate share of (1) general and administrative costs, described in Section 5.5, budgeted and approved prior to the effective date of withdrawal and (2) any multi-year contract entered into by the Authority while it was a member unless the remaining Members agree to assume the withdrawing Member's obligations. The withdrawing Member will also be responsible for its share of any claims, demands, damages, or liability arising from this Agreement through the date of withdrawal.

7.2.2 With respect to a particular project, and subject to the terms of the applicable Project Agreement, the withdrawing Member will be responsible for its share of all costs, expenses, advances, contractual obligations, and other obligations, including bonds, notes or other indebtedness issued by the Authority while such withdrawing entity was a party to a Project Agreement. The remaining parties to a Project Agreement will have the option of discontinuing a project and/or acquiring the interests of the withdrawing party, as may be more particularly described in the Project Agreement. If the remaining Members to a Project Agreement under Article VI decide to terminate the Project Agreement, any remaining funds will be allocated pursuant to the terms of the Project Agreement and the costs will be allocated to all parties as described in the Project Agreement, including the withdrawing party.

7.3 Withdrawal by Operation of Law: Should the participation of any Member be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, such Member must withdraw no later than the date such determination becomes final and must pay its proportionate share of the matters set forth in Section 7.2.1.

7.4 Disposition of Assets Upon Termination: Upon termination of this Agreement, any surplus money or assets in the possession of the Authority for use under this Agreement, after payment of liabilities, costs, expenses and charges incurred under this Agreement, will be returned to the then-existing Members in proportion to the total contributions made by each Member. The Board of Directors will first offer the properties, works, rights and interests of the Authority for sale to Members. If such sale is not consummated or only partially consummated, the Board of Directors will offer to sell the properties, works, rights and interests of the Authority to any public utility, governmental agency, or other entity or entities for good and adequate consideration. The Authority will have the power to consummate such sales and the net proceeds from the sales will be distributed among the Members in proportion to their total contributions.

VIII. MISCELLANEOUS PROVISIONS

8.1 Amendment of Agreement: This Agreement may be amended only by the unanimous vote of all of the Member agencies. The Authority will provide notice to all Members of amendments to this Agreement, including the effective date of such amendments. .

8.2 Adoption and Amendment of Bylaws: The Bylaws may be adopted or amended only by the unanimous vote of the total number of Directors. The Authority will provide notice to all

Members of amendments to the Bylaws, which includes the effective date of such amendments.

- 8.3 Assignment: Except as otherwise expressed in this Agreement, the rights and duties of the Members may not be assigned or delegated without the advance written consent of all the other Members, and any attempt to assign or delegate such rights or duties in contravention of this section will be null and void. This Agreement inures to the benefit of, and is binding upon, the successors and assigns of the Members. This section does not prohibit a Member from entering into an independent agreement with another agency, person or entity regarding the funding or financing of that Member's contributions to the Authority, or the disposition of the proceeds which that Member receives under this Agreement, so long as the independent agreement does not affect or purport to affect, the rights and duties of the Authority or the Members under this Agreement.
- 8.4 Severability: If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, the remainder of the Agreement will not be affected. Such clauses, sentences, paragraphs or provisions will be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.
- 8.5 Complete Agreement; Counterparts: This Agreement constitutes the entire agreement between the Members with respect to the subject matter of the Agreement. This Agreement may be executed in any number of counterparts and upon execution by all Members, each executed counterpart will have the same force and effect as an original instrument and as if all Members had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form but have attached to it one or more signature pages. Facsimile and electronic signatures will be deemed valid and binding.
- 8.6 Authority Members to be Served Notice: Any notice authorized to be given pursuant to this Agreement will be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service will be conclusively deemed received at the time of delivery and receipt; (ii) by mail will be conclusively deemed given 48 hours after the deposit thereof if the sender returns the receipt; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices will be sent to the addresses listed in Exhibit A to this Agreement.
- 8.7 Dispute Resolution: Any dispute between or among the Members arising out of this Agreement that cannot be resolved following written notice to the Member or Members of the basis of the dispute and the proposed resolution and a reasonable opportunity for such Member or Members to cure or remedy the dispute, will be submitted to mediation. The mediator will be selected by mutual agreement. If the matter cannot be resolved through mediation, or the Members cannot agree upon a mediator, then the matter will be submitted to arbitration in accordance with the provisions of the California Arbitration Act (California Code of Civil Procedure section 1280 and following).

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES of the Members have executed this Agreement as of the date shown below:

DRAFT

DATE: SEPTEMBER 27, 2018
TO: BOARD OF DIRECTORS
FROM: ALEX BIERING
SUBJECT: GOVERNMENT AFFAIRS AND COMMUNICATION REPORT

SUMMARY:

Update on Proposition 3; status of state and federal legislation; other updates related to communications.

RECOMMENDED ACTION:

None; informational only.

SUGGESTED MOTION:

None; informational only.

DISCUSSION:

1. Proposition 3 Update:

- Fact sheets being developed with key benefits, information on \$750 M for San Joaquin Valley conveyance improvements
- Campaign kickoff last week at the Friant-Kern Canal
- Key valley endorsement
- Utility bill mailers

2. Legislative Update – The 2017/18 California legislative session is complete. The Governor has until 9/30 to pass or veto bills. A few notes on specific bills:

- AB 2649 (Arambula, groundwater recharge) – Gutted and amended in late August to be a bill related to State Water Project contract renewals (Bloom). Did not pass. Friant had a “Watch” position.
- AB 2975 (Friedman, wild & scenic rivers) – Passed by the Senate and signed by Gov. Brown on 8/27. The final bill analysis states that it does not apply to the San Joaquin River. Friant had a “Watch” position.
- SB 623/its successors (Monning, safe drinking water) – Original bill was dead, and the proposal came back in two other forms before end of session. Legislature did not pass it but will reintroduce it next year. Friant had a “Support” position.

On the federal side, Congress has acted on several big water-related bills in the past week:

- HR 5895 (water & energy “minibus” appropriations bill) – Passed by Senate on 9/12 and House on 9/13. Appropriations bill includes Energy-Water, Military Construction-Veterans Affairs and Legislative Branch appropriations bills. Energy-Water bill funds Reclamation and the U.S. Army Corps of Engineers. Presidential veto would force a government shutdown.
 - S 3021 (America’s Water Infrastructure Act of 2018/WRDA) – Passed Senate by voice vote on 9/13. Bill includes authorizations for U.S. Army Corps of Engineers projects and activities, funding for clean drinking water projects, energy/hydropower provisions, and reauthorizes WIFIA. Does not include Reclamation amendments related to title transfer, groundwater, etc., but provides direction to Reclamation.
3. Communications Activities – September and October will be stacked with several activities intended to support awareness of Friant activities, growth of the Friant brand, and education on Proposition 3.
- Logo/branding rollout
 - eNewsletter
 - Media outreach
 - Public attitudes survey
 - Opinion piece
 - News-style videos
4. Upcoming Events – Friant staff are actively working to plan the “Eggs & Issues” breakfasts for October 2018 and also the 2019 Annual Meeting.

BUDGET IMPACT:

None.

DATE: September 27, 2018
TO: Board of Directors
FROM: Donald M. Davis, General Counsel
SUBJECT: Consideration of Proposed Scope of Work from M.H. Wolfe and Associates Environmental Consulting, Inc. for the Preparation of a Biota Report Survey to be Used for Projects Along the Length of the Friant-Kern Canal

SUMMARY:

FWA has submitted an application to the California Department of Fish and Wildlife (CDFW) for a new long-term agreement/permit (Section 1600 Permit) governing FWA's operation and maintenance activities along the Friant-Kern Canal (FKC) to ensure that such activities will not substantially and adversely affect a special status fish or wildlife resource. After reviewing the application, CDFW determined that FWA needed to provide an updated biological survey with respect to special status species that may be found along the entire length of the FKC. FWA has confirmed with CDFW the scope of work for such report and FWA's biology consultant, MH Wolfe and Associates (MHWA) has provided a cost proposal for the work. While a fairly significant cost, in addition to the need for the biota report to obtain the Section 1600 Permit, the information collected in the report will be useful in coming years for numerous project related to the FKC, including the Subsidence and Capacity Correction Programs.

RECOMMENDED ACTION:

That the Board approve the proposed scope of work for a survey and biota report with MH Wolfe and Associates with a 15% contingency for a total of \$61,782, and further authorize the Chief Operating Officer to enter into a Professional Services Agreement for the work.

SUGGESTED MOTION:

A motion to approve the proposed scope of work for a survey and biota report with MH Wolfe and Associates with a 15% contingency for a total of \$61,782, and further authorize the Chief Operating Officer to enter into a Professional Services Agreement for the work.

DISCUSSION:

In 2016, CDFW notified FWA that it needed to submit an updated application for a Section 1600 Permit. In early 2017, the Board approved a mitigated negative declaration under CEQA and authorized the submittal of such application. CDFW did not begin reviewing the application until May 2018, at which time it notified MHWA that an updated biology report would be needed. FWA and MHWA went back and forth with CDFW regarding the scope and contents of the report and an understanding was reached in July 2018. (See Attachment 1.) MHWA then prepared the scope of work for the report and provided a cost estimate, which with a 15% contingency would result in a cost of \$61,782. (See Attachment 2.) While this work was not anticipated at the time that FWA submitted the Section 1600 application, in light of the potential number of projects along the FKC related to subsidence and capacity correction, this biota report will be necessary with respect environmental compliance (NEPA and CEQA) for such projects, and as such, the costs could be covered

under the bond proceeds if Prop 3 is approved. Accordingly, MHWA will not proceed with the work until after the results on the November election regarding Prop 3 are known.

BUDGET IMPACT:

The Section 1600 Permit is an O & M expense. However, the proposed biota survey will be necessary for environmental compliance as part of the Subsidence and Capacity Correction Programs, and as such, should be subject to reimbursement under Prop 3 if that measure is approved by the voters.

ATTACHMENTS:

1. **FWA Memo re Scope of Section 1600 Biological Survey**
2. **Scope of Work prepared by M.H. Wolfe and Associates Environmental Consulting, Inc.**

MEMORANDUM

DATE: July 5, 2018
FROM: Donald M. Davis, General Counsel
TO: Charles Walbridge, Environmental Scientist
California Department of Fish and Wildlife (charles.walbridge@wildlife.ca.gov)
SUBJECT: **Operation & Maintenance Agreement for Friant-Kern Canal (FGC § 1600 et seq.)**

Introduction

We understand that you have advised FWA's consultant, MH Wolfe and Associates (MHW), who is assisting us with the referenced agreement application, that a "complete biology report [in the form that typically accompanies a notification of streambed alteration] with a revised list of special status species that may be present anywhere along the entire length of the canal where routine maintenance activities will occur" will be needed as part of the application, and that "updated avoidance and minimization measures also need to be included in the biology report."

Discussion

As the Friant-Kern Canal extends over 150 miles and the time and cost to prepare such a report will be significant, we want to make sure that we understand precisely what CDFW is requesting in terms of format and content so that the processing of FWA's application can proceed in a timely manner. To that end, we have asked MHW to prepare a general scope of work for your review and approval:

Scope of Work for Biology Report for Friant-Kern Canal Maintenance Agreement

Prepare a complete biology report in the general format of a report to be submitted with a notification of streambed alteration. The report would:

1. Be based on reconnaissance surveys of approximately 120 milepost locations for each channel crossing to ensure no significant changes in location, habitat or site conditions.
2. Use standard biological report structure for project location, project description, climate, soils and vegetation types and wildlife.
3. Address the current species of concern list from the California Natural Diversity Database for the 120 locations by identifying the species for each location. This would be prepared in a table format as the canal encompasses 21 USGS quadrangle maps.

4. The potential impacts from O&M work to species of concern will be addressed within the text for each species. The reader would then interpret potential impacts for a particular location (milepost) from the species table.
5. Mitigation, minimization, and take avoidance measures will be discussed for each species of concern within the text for O&M impacts. Where applicable, these measures will be consistent with the O&M Biological Assessment (BA). If there are new species or measures recommended since the BA, these would be added.

If there is additional information or formatting that would assist CDFW in its review of the application and the preparation of the operation and maintenance agreement (LSA), please let us know so that we can add it to the above scope of work and get started on the report.



P.O. Box 10254 | Bakersfield, CA 93389 | 661-837-1169

PROPOSAL

M.H. Wolfe and Associates Environmental Consulting, Inc., is providing the following scope of work and estimate of costs at the request of Friant Water Authority.

Scope of Work:

- Conduct 16 California Natural Diversity Database (CNDDDB) 9 quad searches, United States Fish and Wildlife Service (USFWS) species of concern searches, and California Native Plant searches for each of the quadrangles that encompass the Friant-Kern Canal.
- Conduct a reconnaissance survey of 117 channel crossings on both sides of the canal to identify species of concern pertaining to the project locations, along approximately 130 miles of the Friant-Kern Canal, Kern, Fresno and Tulare County, CA.
- Prepare and submit a biota report to California Department of Fish and Wildlife documenting the survey results and findings along with impact assessments, mitigation and take avoidance measures for each species in the project areas.

Compensation:

Estimate

\$53,724.75

Additional information pertaining to this proposal.

- * Cost estimate is based upon having a clear and detailed project description suitable for ascertaining impacts and mitigation required by USFWS.
- * This cost estimate is valid for 30 days from date shown below.
- * Costs ten percent or less in excess are herein approved. Costs in excess of ten percent of the estimate require additional written client authorization.
- * Costs are billed monthly and invoices are due upon receipt.
- * This cost estimate is limited to the above listed tasks. Any additional tasks, mileage, coordination and administration will be considered out of scope and will be billed as time and materials.
- * The cost estimate does not include charges for spotlighting, scent stations, trapping, tracking, or phase II protocol burrowing owl survey, if needed, or tracking, passive harassment or burrow closure.
- * Survey findings could require agency consult and approval. Agency consultation and any further actions will be based on time and materials.
- * Estimate assumes boundaries/parcels/routes are surveyed or staked or otherwise identifiable in the field.
- * This cost estimate is based on continuous work. Should work be postponed due to circumstances not caused by M.H. Wolfe and Associates, the delay may result in additional start-up costs.
- * Using project description from federal 2005 biological opinion

Please advise us when this proposal is accepted.



P.O. Box 10254 | Bakersfield, CA 93389 | 661-837-1169

We will then prepare and send our standard consulting agreement for your review, acceptance and signature.

Consultant's signature signifies acceptance of the Work Order and to perform the Services in accordance with the terms of the Agreement.

By: _____
Client Signature

By: _____
Marcia H. Wolfe, President

Client Name Printed

Date: _____

Date: _____

Friant Water Authority
854 N. Harvard Ave.
Lindsay, CA 93247

M.H. Wolfe *and Associates*
ENVIRONMENTAL CONSULTING, INC.
P.O. Box 10254
Bakersfield, CA 93389

Phone: 559-562-6904

Phone: 661-837-1169

DATE: September 27, 2018
TO: Board of Directors
FROM: Donald M. Davis, General Counsel
SUBJECT: Consideration of a Reimbursement Agreement with Arvin-Edison Water Storage District for Special Counsel Services on behalf of the Authority

SUMMARY:

FWA has, on occasion, requested assistance from Arvin-Edison Water Storage District's counsel, Scott Kuney, on complex matters where Kuney has expertise in the relevant areas of water law and water rights due to his long association with Friant Division entities. Previously, the arrangement has been done informally. Going forward, FWA, Arvin-Edison Water Storage District (AEWSD) and Kuney would like to formalize the manner in which services are requested and reimbursed and a proposed Reimbursement Agreement has been prepared to effectuate such arrangement.

RECOMMENDED ACTION:

That the Board approve the Reimbursement Agreement.

SUGGESTED MOTION:

A motion to approve the Reimbursement Agreement.

DISCUSSION:

Under the proposed Reimbursement Agreement, requests for Kuney's services will be arranged in a manner similar to consultants through the use of "Task Orders" that will outline the proposed scope of services and establish a timeline and a budget for the work. Kuney will utilize a separate matter number for such projects and will continue to directly bill AEWSD for his work with a courtesy copy to FWA. AEWSD will pay Kuney's firm and submit a request for reimbursement to FWA. The Reimbursement Agreement also affirms the confidential nature of the services provided and protects the flow of information between FWA and its attorneys and staff and Kuney and his firm.

In recognition that Kuney and his law firm (Young Wooldridge) represent numerous water districts and public agencies, which from time-to-time may be adverse to FWA, the Reimbursement Agreement contains a covenant that FWA agrees that the services provided by Kuney under the Agreement will not automatically disqualify Kuney or his law firm from representing such other water districts and public agencies under the California Rules of Professional Conduct and that FWA will not seek any such disqualification.

Finally, the Reimbursement Agreement addresses payment for prior work that Kuney has performed at the request of FWA such as his assistance in the review and comments FWA provided on HR 23, presentations to FWA staff, counsel, and officials on the Exchange Contract, the SJRRP Funding Constrained Framework, the dispute with Reclamation over points of diversion under its State permits and licenses, and the Prop 1 application for Temperance Flat. The total reimbursement for this work is approximately \$62,000.

BUDGET IMPACT:

The \$62,000 in reimbursement costs is included in the 2018-19 budget. Additional special services that may be provided by Mr. Kuney are also included in the budget

ATTACHMENTS: Reimbursement Agreement

FRIANT WATER AUTHORITY

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (“**Agreement**”) is between Friant Water Authority (“**Friant**”) and the Arvin Edison Water Storage District (“**Arvin**”) (individually as a “**Party**” and collectively the “**Parties**”), and is effective as of _____, 2018.

Recitals

A. Arvin is a member of Friant, which is a joint powers authority that was formed by its members to, among other things, acquire, protect, preserve and enhance water supplies and water rights, including the rights and benefits of Friant Division contractors of the Central Valley Project.

B. In order to effectively carry out its purposes, Friant may from time to time require the assistance from the attorneys of The Law Offices of Young Wooldridge LLP (“**Law Firm**”) that represents the District, in particular, attorney Scott Kuney (“**Kuney**”).

C. The Parties desire by this Agreement to set forth the terms and conditions under which Kuney and the Law Firm may provide special counsel services on behalf of Arvin and Friant, and may be reimbursed by Friant for such legal services.

THE PARTIES AGREE AS FOLLOWS:

1. Task Orders.

A. The legal services performed under this Agreement will consist of the individual projects defined by “**Task Orders**” entered into by the Parties during the term of this Agreement. Each Task Order will be numbered sequentially and will be similar in format to the attached Exhibit A, entitled “Special Counsel Task Order Format.”

B. Each Task Order will specifically define the scope of work for each specific project on which Friant desires to utilize the services of Kuney and the Law Firm. Each Task Order will also specify (1) the date on which the services covered by the Task Order is to begin; (2) the estimated date on which the services covered by the Task Order are to be completed; (3) the estimated cost that Friant can expect to reimburse Arvin for the services pursuant to such Task Order; and (4) the names of the persons who will be Friant’s and Arvin’s and the Law Firm’s respective principal representatives for the management and performance of the specific services covered by the Task Order.

C. The specific services covered by each separate Task Order will be undertaken by Kuney/Law Firm only upon receipt of a Task Order signed by an authorized representative of Friant and accepted by an authorized representative of Arvin.

2. Billing; Reimbursement.

A. Law Firm/Kuney will establish a special billing number or numbers for services performed under a Task Order.

FRIANT WATER AUTHORITY

B. Law Firm/Kuney will bill Arvin for all services performed under a Task Order in accordance with its then current legal services agreement, and will concurrently send a courtesy copy to Friant of the invoice for any services performed under a Task Order during the applicable billing period.

C. Arvin will timely pay Law Firm's invoice for any legal services provided under a Task Order, and will then submit a request to Friant for reimbursement of such services, including any applicable reimbursements for Law Firm/Kuney's reasonable costs and expenses in performing such services.

D. Friant will review each reimbursement request submitted by Arvin to determine whether the services performed and expenses incurred are in compliance with this Agreement, including the applicable Task Order. In the event that no services or expenses are disputed, the invoice will be approved and paid. In the event any services or expenses are disputed by Friant, the invoice will be returned by Friant to Arvin for correction and resubmission, with a copy to Kuney. Except as to any charges for services performed or expenses incurred by Law Firm/Kuney that are disputed by Friant, Friant will cause Arvin to be reimbursed within 30 days of receipt of Arvin's invoice for reimbursement.

3. **Confidentiality.**

A. The Parties share common interests in matters affecting the Friant Division and the Central Valley Project and wish to pursue these common interests in a manner that allows their respective legal counsel to exchange information, including confidential information and work product, in a manner that precludes the waiver of any applicable privilege or similar protection. Such materials and information, whether previously or subsequently disclosed, are referred to as "**Joint Legal Information.**"

B. The Parties agree to keep all Joint Legal Information confidential; provided, however, Joint Legal Information may be shared with officers, employees, consultants and agents of each Party. Nothing in this Agreement obligates any Party to disclose any privileged and/or confidential information to any other person or entity.

C. All Joint Legal Information will remain privileged and protected, notwithstanding disclosure to a Party or the Parties. Additionally, discussions between or among the Parties or their counsel will be protected by the attorney work product rule and/or attorney-client privileges and/or any other privileges that may apply.

D. The Parties understand and agree that this Agreement and any Joint Legal Information that has been or will be produced to legal counsel by any Party, and any Joint Legal Information obtained from any expert or consultant to any of the Parties which has been or will be produced to any Party or its counsel will remain confidential and may not be disclosed to any third party, unless the Parties first provide written consent.

E. The Parties agree that if Joint Legal Information is sought by a non-Party to this Agreement by discovery request, subpoena, Public Records Act request (California Government Code section 6250 and following), or otherwise, such Joint Legal Information will not be disclosed except as required by applicable law or court order. The Party receiving a Public Records Act request will be the Party that determines whether the disclosure of Joint Legal Information in its possession is required by law or court order. The Party receiving a request or demand for Joint Legal Information through a discovery request, subpoena, Public Records Act request, by other legal process, or in a way other than through discovery or other process, must immediately provide written notice to all other Party that it received the request or demand,

including the disclosure deadline, in order to give the other Party an opportunity to seek to prevent such disclosure. Each Party will have five days from the date it receives such notice to in turn notify the Party receiving the request or demand in writing that it objects to the disclosure of any specific Joint Legal Information. Any legal action to enjoin or limit disclosure will be the objecting Party's sole obligation and will be done at the objecting Party's sole cost and expense.

4. Payment for Prior Services.

The Parties acknowledge and agree that prior to the effective date of this Agreement, Law Firm and Kuney have provided legal services for the benefit of Arvin and Friant that were requested by Friant and for which services Friant agreed to reimburse Arvin. The Parties agree that the total cost of such services between March 1, 2017 and July 31, 2018 is \$_____. Friant agrees to reimburse Arvin in such amount within 30 days of the execution of this Agreement. All Joint Legal Information arising from such services will be subject to the confidentiality provisions of Section 3 of this this Agreement.

5. No Disqualification.

Friant acknowledges that Law Firm represents numerous water districts and public agencies, which from time-to-time may be adverse to Friant. Friant agrees that the services provided by Law Firm and Kuney under this Agreement will not disqualify Law Firm and Kuney from representing such other water districts and public agencies under the California Rules of Professional Conduct, as promulgated by the California State Bar, and Friant will not seek any such disqualification.

6. General Provisions.

A. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the Parties when at least one copy has been signed by both Parties.

B. Entire Agreement. This Agreement, including the attached Exhibit A, is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Arvin and Friant prior to the execution of this Agreement.

C. Modification of Agreement. No amendment to or modification of this Agreement will be valid unless made in writing and approved by Arvin and by Friant Board of Directors or Friant CEO or COO, as applicable. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.

D. Electronic Signatures. This Agreement and any amendment or Task Order will be considered executed when the signature page of a party is delivered by electronic transmission. Such electronic signatures will have the same effect as an original signature.

E. Interpretation. This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each Party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either Party.

FRIANT WATER AUTHORITY

F. Severability. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties execute this Agreement as follows:

FRIANT WATER AUTHORITY

Jason Phillips
Chief Executive Officer
Friant Water Authority

ARVIN EDISION WATER STORAGE DISTRICT

Jeevan Muhar
General Manager
Arvin Edison Water Storage District

EXHIBIT A

SPECIAL COUNSEL TASK ORDER FORMAT

Reimbursement Agreement dated _____
Task Order No.: _____
Date: _____

Friant Water Authority
854 N. Harvard Ave.
Lindsay, CA 93247
Attn:

DESCRIPTION OF SERVICES:

ESTIMATED TOTAL COST:

ESTIMATE OF TIME SCHEDULE:

FRIANT REPRESENTATIVE:

ARVIN/LAW FIRM REPRESENTATIVES:

ACCEPTED:

ACCEPTED:

ARVIN EDISON WATER STORAGE DISTRICT

FRIANT WATER AUTHORITY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____