REGULAR MEETING
TUESDAY, AUGUST 27, 2019, 5:30 P.M.
COMMUNITY MEETING ROOM, 501 POLI STREET, VENTURA

Water Commission Purpose: Review and make advisory recommendations regarding water rates, water resources infrastructure projects in the five-year capital improvement program, the integrated water resources management plan, water supply options, the Urban Water Management Plan approval process, a water dedication and in-lieu fee requirement, and other water resource issues.

The public has the opportunity to address the Commission on any item appearing on the agenda. Persons wishing to address the Commission should fill out a "Speaker Form." If you wish to comment on an item and do not want to speak before the Commission, you may complete the "Comment" portion of the form. This form is located on the table at the entrance of the room. The Chairperson will acknowledge comments for the record.

The Water Commission has adopted Meeting Protocols and are available at www.venturawater.net. Evidence must be submitted to the Water Commission Secretary for agenda items provided they are compliant with the following specifications:

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<td>August 26, 2019 by noon</td>
<td>August 27, 2019</td>
<td>August 26, 2019 by noon</td>
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<td>Page Limitation (single side equivalent)</td>
<td>10 pages maximum, including exhibits</td>
<td>2 page maximum, including exhibits</td>
<td>None (Each slide must identify as &quot;Personal Comments of Private Citizen [first and last name]&quot;)</td>
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Pursuant to the Rules of Procedures, the Commission has adopted a 3 (three) minute speaking time per agenda item. The Commission may adjust the time limit if deemed appropriate.

ROLL CALL – WATER COMMISSION

PLEDGE OF ALLEGIANCE

1. INTRODUCTION OF NEW COMMISSION MEMBER (S)

Staff: Susan Rungren, General Manager
2. **BROWN ACT TRAINING AND WATER COMMISSION RULES OF PROCEDURE**

Staff recommends the Water Commission receive an oral presentation from the City Attorney’s Office regarding the Brown Act and Water Commission Rules of Procedure.

**SPEAKER**

Staff: Miles Hogan, Assistant City Attorney II

3. **ELECT COMMISSION CHAIR AND VICE CHAIR**

Staff: Susan Rungren, General Manager

4. **MINUTES**

**RECOMMENDATION**

Approve the minutes of the June 25, 2019 regular session.

**SPEAKER**

Staff: Susan Rungren, General Manager

5. **GROUNDWATER SUSTAINABILITY AGENCIES UPDATE**

Staff recommends the Water Commission receive an oral update on the status of local Groundwater Sustainability Agencies.

**SPEAKER**

Staff: Jennifer Tribo, Management Analyst II

6. **AMENDMENT NO. 14 (CONTRACT EXTENSION AMENDMENT) TO THE WATER SUPPLY CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT**

Staff recommends the Water Commission recommend that City Council adopt a resolution directing the Ventura County Watershed Protection District to approve a Resolution Authorizing Amendment No. 14 (Contract Extension Amendment) to the Water Supply Contract between the State of California Department of Water Resources and the Ventura County Watershed Protection District.
7. **2020-2026 CAPITOL IMPROVEMENT PLAN PROCESS**

Staff recommends the Water Commission receive an oral presentation on the 2020-2026 Capital Improvement Plan Process and Proposed Projects.

8. **FINANCIAL STATUS UPDATE**

Staff recommends the Water Commission receive this written report and an oral presentation on financial information for Ventura Water’s Operating Program and Capital Improvement Plan (CIP) for both the Water and Wastewater Enterprise Funds.
To: Ventura Water Commission

From: Miles P. Hogan, Assistant City Attorney II

Subject: Brown Act Training and Water Commission Rules of Procedure

RECOMMENDATIONS

Staff recommends the Water Commission receive an oral presentation from the City Attorney’s Office regarding the Brown Act and Water Commission Rules of Procedure.

DISCUSSION

The City Attorney’s Office will provide a presentation to the Water Commission regarding the Brown Act (Attachment A). The attached paper was prepared by the City Attorney’s Office as a guidance document to Councilmembers and Commissioners regarding the Brown Act (Attachment B). The City Attorney’s Office will also provide a brief overview of the Water Commission’s Rules of Procedure (Attachment C).

Prepared by: Miles P. Hogan

Assistant City Attorney II

Attachments

A. Presentation
B. Brown Act Paper, City Attorney’s Office
CITY OF SAN BUENAVENTURA
WATER COMMISSION

Prepared by:
Office of the City Attorney
August 27, 2019

OUTLINE

- Brown Act
- Rules of Procedure

THE RALPH M. BROWN ACT:
POLICY BEHIND THE BROWN ACT:

- "...The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist, on remaining informed so that they may retain control over the instruments they have created..."

(Government Code Section 54950)

OVERVIEW:

The Brown Act applies to "legislative bodies" which must conduct their business only at public "meetings" where they can consider only items of business listed on "agendas."

"All meetings... shall be open and public and all persons shall be permitted to attend any meeting..."

(Government Code Section 54954(a))

WHO IS GOVERNED BY THE BROWN ACT?

- Any "legislative body"
- Governing body of any local agency, i.e., city councils
- Commissions, committees, boards or other bodies of a local agency
- "Less-than-a-quorum" -- Exception
WHAT IS A MEETING?

- Any **congregation of a majority** . . . to hear, discuss, deliberate, or take action on any item within subject matter jurisdiction of the legislative body.

- Use of a **series of communications** of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Gov’t. Code §54952.2(b)(1))

NOT A MEETING

- Delegation by a County Board of Supervisors to various staff members to review and approve social service contracts for areas of expertise (County Counsel, Auditor-Controller, Clerk of the Board)
  - No deliberation on contract

SERIAL MEETINGS

Are a chain of communications, each of which involves less than a quorum of a legislative body, but which together involve a majority of the body’s members. It is also a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next and excluding the public.

(Sutter Bay Assoc. v. County of Sutter (1987) 58 Cal.App.4th 860)
WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- Old law: “technological devices”
- Originally telephone
- Now e-mail, “IM,” “texting,” blogs, etc.
- Technological devices may create a “virtual serial meeting”
- Case held letter circulated for signature was a violation

E-MAIL

- City Attorneys hate e-mail
- E-mail never goes away
- E-mail can create a “virtual serial meeting”
- Cal. Attorney General concluded the same—even if posted on the agency’s website deprived public of right to participate (84 Ops.Cal.Atty.Gen. 30 (2001).)
- There are at least three problem “e-mail buttons”:
E-MAIL

What starts out as “legal” under the Brown Act:

- I think we should do “x” at our next meeting

Becomes “illegal” when it is replied to by a majority or by “Reply to All”:

- “I agree” [Reply to All]
- “Good idea!!!” [Reply to All]
- “Concur . . .” [Reply to All]
INTERNET COMMUNICATIONS & SOCIAL MEDIA

Even when you’re blogging, posting, tweeting, liking, commenting… consider the Brown Act:

- Serial meeting rules that apply to traditional communications and e-mail likely apply to other digital and social online conduct

INTERNET COMMUNICATIONS & SOCIAL MEDIA (cont’d…)

No court has specifically ruled on these issues, so better to err on side of caution:

- Simply posting general city information without personal opinion or comment is probably okay
- However, officials should avoid commenting, liking, tweeting… regarding topics within the jurisdiction of the governing body on which they sit

EXCEPTIONS TO MEETING:

- **Individual contacts**: Individual contacts or conversations between a member of a legislative body and any other person.
- **Conferences**: Public or educational conferences on matters of general interest.
- **Community Meetings**: Publicized and public meetings to discuss a topic of local community concern organized by someone other than the city.
Exceptions (cont’d...):

- **Other Legislative Bodies**: Open and noticed meeting of another body of the public agency.
- **Standing Committees**: Open and noticed meeting of a standing committee within own agency, provided not a member of standing committee.
- **Social or Ceremonial Events**: Purely social or ceremonial events as long as no discussion of business within subject matter of jurisdiction of local agency.

NOTICE REQUIREMENTS:

- **Regular Meetings (Including Adjourned)**:
  - Agenda must be prepared and posted at least 72 hours before meeting and made available to public. (Gov’t Code Section 54954.2)
  - Agenda must contain a brief general description of all items to be discussed or acted upon.

- **Special Meetings**:
  - Notice and call must state all business to be transacted or discussed
  - Posted at least 24 hours prior to meeting.

Notice Requirements (cont’d...):

- **Emergency Meetings**:
  - 1 hour notice to media, unless “dire emergency” or no telephones
NON-AGENDA ITEM EXCEPTIONS:
- Legislative body member or staff person may "briefly respond" to questions or comments by the public.
- Member or staff person may ask a question for clarification, make a brief announcement, or a brief report on his or her own activities.
- May provide a reference to staff or elsewhere for factual information, request staff to report back at a later meeting on any matter, or direct a matter to be placed on a future agenda.

STATUTORY EXCEPTIONS:
- Emergency Situation: i.e., work stoppage, crippling disaster, terrorist act, etc.
- "Subsequent Need" Item: Requiring immediate action which came to attention of agency after agenda posted. Requires 2/3 vote of body present at meeting or unanimous vote if less than 2/3 are present.
- Hold Over Items: Item posted for a prior meeting not more than 5 calendar days prior to date action is taken; item continued from prior meeting.

AGENDA DESCRIPTION:
- Statement of date, time and place of meeting.
- Brief general description of nature of each agenda item.
- Include notation that staff reports and other documentation on file with City Clerk and available for public information.
- Questions concerning agenda items may be directed to City Manager, City Clerk, or other City officer—including the City Attorney.
**PUBLIC COMMENT:**

- Public has the right to address the legislative body.
  - Regular Meetings - Public can address the legislative body concerning items of "interest to the public . . . within the subject matter jurisdiction of the city."
  - Before action is taken.
  - Special Meetings - Public has the right only to address items listed in the notice.

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**PUBLIC CONDUCT:**

- **Registration**: May request person identify himself/ herself when speaking--cannot require.
  - City Council currently uses "Request to Speak" card system.

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**Public Conduct (Cont'd...):**

- **Right to Record, Photograph or Broadcast**: Allowed unless reasonable finding by body that such recording is disruptive to meeting.
- **Speaker Time Limit**: 3-5 minutes is reasonable.
  - Must provide at least twice the allotted time if person is a non-English speaker who utilizes a translator.
Public Conduct (Cont’d...):

Conduct of Public

- Disorderly Conduct:
  "Willful interruption" of meeting may cause body to clear room and continue meeting only on listed agenda items.

- Rules of Decorum:
  Yelling, clapping, or demonstrations may be prohibited.

Compromise???

NO SECRET BALLOTS:

- Votes of all members present must be recorded.

DOCUMENTS AT MEETING ARE PUBLIC:

- Documents Provided to Body are Public Records.
- Documents distributed ≥ 72 hours before meeting must be posted on website & reasonable # of copies provided at the meeting.
  - Government Code §54957.5
IF THERE IS EVER AN INADVERTENT ERROR:

- IT CAN BE CURED OR “FIXED”
  - Cure is not admissible as evidence in civil or criminal action—i.e., not an admission
  - But City can miss a critical deadline.

BUT FOR ONGOING OR FUTURE VIOLATIONS:

- A Court of Appeal has held that cease and desist procedure (i.e., “cure and correct” letter) is not applicable to alleged ongoing or future violations
  - Case: Challenge to lack of comment period on Mondays when City Council had Monday/Tuesday regular meeting

ENFORCEMENT ACTIONS:

Criminal Prosecution:

- A member of a legislative body who attends a meeting in violation of the Brown Act is guilty of a misdemeanor if both:
“Action is taken” by the legislative body, i.e., an actual vote is taken, or a collective decision, commitment or promise is made by a majority to make a positive or negative decision. The member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

ENFORCEMENT ACTIONS:

Civil Enforcement Actions:
- Enforcement actions can be brought by the district attorney or any interested person to get a court to order the stopping of any violations of the Brown Act, or to determine the validity of any legislative body's rule or action that discourages the expression of any of its members.

ENFORCEMENT ACTIONS (Cont’d...):
- Can seek court order requiring legislative body to tape record its closed sessions which may subsequently be reviewed and released by a court in a future enforcement case.
- Can seek court order voiding certain actions taken in violation of the Brown Act.
WATER COMMISSION
RULES OF PROCEDURE

RULES OF PROCEDURE

- Municipal Code Chapters 2.410 and 2.460
  - Establish Water Commission.
  - Administration of, qualifications for service, and duties of members.
- Rules of Procedure
  - Govern conduct of meetings on agendized matters.
  - Different than City Council and other commissions/committees.

MEETINGS

- Rule 1.1 – Regular Meetings
  - 4th Tuesday at 5:30 p.m.
- Rule 1.2 – Emergency or Special Meetings
  - May be called at any time by the Chairperson or by a majority
  - Notice
    - Special – 24 hours before
    - Emergency – As soon as is reasonably possible
RULE 1.1 Continued…

- The Commission will generally adjourn its meetings at 9:00 p.m., with any unfinished business being continued to the next regular meeting
- Will not hear any new item after 9:00 p.m. without unanimous agreement of the entire Commission present

RULE 3.1 – Recording of Meetings

- Audio recording(s) of meetings are posted on the City’s website, starting with June 2019 meeting

RULE 3.4 – Oral Presentation

- Speaker Card
  - Fill out speaker card and submit to staff prior to the meeting or prior to a matter being reached at the meeting
- Comment Cards
  - Members of public who do not wish to or cannot verbally address the Commission
  - Submit prior to or during the Commission’s consideration of an item
  - Chairperson will indicate card received from NAME in support or against issue
RULE 3.4 – Oral Presentation Continued...

- Public Comment
  - Recognized by the Chairperson
  - State full name, city of residence, and names of any persons in whose behalf they are appearing
  - Time limits – 3 minutes per agenda item, per meeting
    - Chairperson may extend in extraordinary circumstances
  - Spokesperson – up to 10 minutes

RULE 3.5 – Written Materials

- Timing
  - With Staff Reports – 10 days before meeting, 20 copies
  - Responding Submissions – 30 hours before meeting, no more than 10 pages, 20 copies
  - Day Of – No more than 2 pages, 20 copies
    - 5 p.m. deadline for short presentations
- Electronic Submissions
  - watercommission@venturawater.net
- Non-complying submissions

RULES 4 & 5 – Motions and Decision-Making
PROCEDURAL ISSUES

- If you question a procedural decision during the meeting, you have a right to ask the Chairperson to review before a vote is taken.
  - Example: Motion to appoint Smith & Jones; you only want to appoint Jones.
    - Do you vote yes or no?
      - Neither, Make a motion to "Divide the Question".

PROCEDURAL ISSUES

- Voting/Not Voting & Abstentions
  - Duty to vote
  - Only way not to cast a vote is to be absent.
  - Case law in California has held an abstention may be a "Yes" or "Aye" vote.
  - Theory is that if you wanted to vote "No" or "Nay," should have cast a "No" or "Nay" vote.

Questions
THE RALPH M. BROWN ACT

(Open & Public Meetings)

Prepared by the
The Office of the
City Attorney

November 2018
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THE RALPH M. BROWN ACT
GOVERNMENT CODE SECTION 54950 ET SEQ.

The Ralph M. Brown Act (the "Brown Act," Government Code Sections 54950-54963)\(^1\) was designed by the Legislature to ensure that the deliberations as well as the actions of local public agencies are performed at meetings open to the public and free from any veil of secrecy (§ 54950).

In furtherance of this goal, the Brown Act generally requires that meetings of local agencies be open to the public and properly noticed.

I. APPLICATION OF THE ACT

Section 54950 requires that all meetings of "legislative bodies" be open to the public. "Legislative body" is defined to include the City Council as well as any commission, committee, or board, whether permanent or temporary, decision-making or advisory, created by a formal act of the City Council. Advisory committees, however, composed solely of the members of the legislative body, which are less than a quorum of the legislative body, are not legislative bodies except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action of the legislative body are to be considered legislative bodies (§ 54952(b)).

"Legislative body" also means a board, commission, committee, or other multi-member body which governs a private corporation or entity which is created by the elected legislative body in order to exercise authority which may be lawfully delegated by the legislative body to a private corporation or entity or one which receives funds from a local agency and the membership of the governing body includes a member of the legislative body appointed to that governing body as a full voting member by the legislative body (§ 54952(b)).

Thus, for example, a planning commission, which is both an advisory body and a permanent commission of a City, is subject to the open meeting requirements. A committee, commission or board, permanent or temporary, even if advisory, created by the City Council is subject to the open meeting requirements. Advisory committees which consist of less than a quorum of the legislative body are not

\(^1\) Unless otherwise noted, all statutory citations are to the Government Code.
legislative bodies unless created to be a standing committee of the legislative body with continuing subject matter jurisdiction or a meeting schedule fixed by the legislative body (§ 54952(a), (b) & (c)). A legislative body does not include a variety of staff members to whom a County Board of Supervisors delegates authority to review social service contracts because each staff member only reviews the contracts for matters within their expertise and the staff members do not meet or deliberate on them.²

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of the Brown Act and will be treated for purposes of enforcement as if they had assumed office (§ 54952.1). Accordingly, the Brown Act applies to those who have been elected, but have not yet been sworn into office.

II. WHAT IS A MEETING?

A "meeting" includes any gathering of a majority of the members of a legislative body to hear, discuss, or deliberate upon any item which is within its subject matter jurisdiction. A meeting also includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence on any action to be taken on an item by members of the legislative body. A separate briefing of individual members of the legislative body by City staff does not become a “meeting” so long as the staff does not communicate the positions or questions of any member of the legislative body to another member of that body (§ 54952.2(b)(2)).³

There are six (6) exceptions to the definition of a meeting. The following occurrences and circumstances are not considered to be “meetings” under the Brown Act:

1. Individual Contacts: Individual contacts or conversations between a member of the legislative body and any other person are not considered a meeting (as long as the contacts do not constitute serial meetings).

2. Conferences: The attendance of a majority of members of a legislative body at a conference, seminar, or similar gathering open to the public which

involves a discussion of issues of general interest to the public is not subject to
the Brown Act provided that a majority of the members do not discuss among
themselves business of a specific nature that is within the subject matter
jurisdiction of the local agency.

3. **Community Meetings:** The attendance of a majority of the members of a
legislative body at an open and publicized meeting organized to address a topic
of local community concern other than the local agency is not subject to the
Brown Act provided a majority of members do not discuss among themselves,
other than as part of the scheduled program, business of a specific nature within
the subject matter jurisdiction of the local agency.

4. **Other Legislative Bodies:** Attendance of a majority of the members of a
legislative body at an open and noticed meeting of another body of the local
agency (e.g., Planning Commission), or at an open and noticed meeting of a
legislative body of another local agency (e.g., County Board of Supervisors), is
not subject to the Brown Act provided a majority of the members do not discuss
amongst themselves business of a specific nature that is within the subject matter
jurisdiction of the legislative body of the local agency.

5. **Standing Committees:** In addition, a majority may also observe an open
and noticed meeting of a standing committee within their own agency, provided
the members of the legislative body who are not members of the standing
committee attend only as observers.

6. **Social or Ceremonial Events:** A majority may attend a purely social or
ceremonial occasion, as long as they do not discuss business among themselves
of a specific nature that is within the subject matter jurisdiction of the local
agency (§ 54952.2).

Public officials should be particularly careful when using social media. No court
has specifically ruled on the Internet and social media posts in regard to Brown Act
requirements. However, the same serial meeting rules that apply to traditional
communications and e-mail may likely apply to other digital and social online
conduct. While posting general city information without personal comment or
opinion is most likely acceptable as it is likely posted publicly elsewhere, officials

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4 This amendment overturns a 1996 Attorney General Opinion that concluded that a majority
of a parent legislative body could not attend a meeting of one of its standing committees
without violating the notice and agenda requirements applicable to the parent legislative
should avoid commenting, liking, tweeting, retweeting, or posting regarding topics within the jurisdiction of the governing body on which they sit.

III. WHEN IS ACTION TAKEN?

For the purposes of the Brown Act, "action taken" (§ 54952.6) is defined as:

1. A collective decision by a majority of the members of a legislative body; or,

2. A collective commitment or promise by a majority of the members to make a positive or negative decision; or,

3. An actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

The Brown Act imposes criminal penalties for "action taken" with wrongful intent to deprive the public of information to which it is entitled under the Brown Act (§ 54959).

IV. MEETINGS TO BE OPEN AND PUBLIC

All meetings of the legislative body of a local agency shall be open and public (§ 54953(a)). The legislative body, or any other body of the local agency, may use teleconferencing, i.e., any electronic audio or video connection, for any meeting or proceeding authorized by law (§ 54953(b)). Teleconferencing is subject to certain restrictions including the posting of agendas at video teleconferencing locations which specify all teleconference locations, public access to teleconference locations, public opportunity to speak at each teleconference location, and votes taken by roll call (§ 54953(b)). At least a quorum of the members of the legislative body shall participate in the teleconference within the boundaries of the local agency (§54953(b)). No legislative body shall take action by secret ballot, whether preliminary or final (§ 54953(c)). All actions taken by the legislative body in open session and the vote of each member must be disclosed to the public at the time the action is taken (§ 54953(c)(2)).

5 A law passed in 2016 now requires local legislative bodies to publicly announce any recommended pay and benefit increases for executives before taking final action on the compensation (SB 1436, Chapter 175, Stats. 2016).
V. NOTICE REQUIREMENTS

The Brown Act contains requirements for noticing a meeting and for the content of the meeting agenda. These requirements differ depending on whether the meeting is a regular, special or emergency meeting.

1. REGULAR MEETINGS

Regular meetings of the legislative body, excluding advisory committees and standing committees, must be held at the time and place set by ordinance, resolution, or bylaws (§ 54954(a)). Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting, are considered regular meetings of the legislative body (§54954(a)). Regular and special meetings shall be held within the boundaries of the territory over which the local agency exercises jurisdiction except to do any of the following:

a. Comply with state or federal laws or a court order, or attend a judicial or administrative proceeding where the local agency is a party;

b. Inspect real or personal property which cannot be conveniently brought within the territory of the local agency, provided that the topic of the meeting is limited to items directly related to the property;

c. Participate in meetings of multi-agency significance outside the boundaries of a local agency's jurisdiction if such discussion takes place within one of the participating local agency's jurisdiction and is noticed by all participating agencies as provided in the Brown Act;

d. Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries;

e. Meet outside the immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical solely to discuss a legislative or regulatory issue affecting the local agency over which the federal or state officials have jurisdiction;

f. Meet outside the immediate jurisdiction if the meeting takes place in or nearby a facility owned by the local agency, provided the topic of the meeting is limited to items directly related to the facility;
g. Visit the offices of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9 when to do so would reduce legal fees.

Meeting of a joint powers authority shall occur within the territory of at least one of its member agencies except when a joint powers agency has members throughout the state (§ 54954(d), § 54961). In the case of fire, flood, earthquake, or other emergency and it is unsafe to meet in the designated place, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his/her designee in a notice to the local media who have requested notice by the most rapid means of communication available at the time (§54954(e)).

When a person requests mailing of a copy of the agenda or the agenda packet of any meeting of a legislative body, the legislative body or its designee shall mail such materials at the time the agenda is posted or upon distribution to a majority of the members of the legislative body, whichever occurs first. Such a request is valid for the calendar year in which it was filed and must be renewed following January 1 of each year. The legislative body may establish a fee which shall not exceed the cost of mailing the agenda or agenda packet (§ 54954.1).

2. SPECIAL MEETINGS

The Brown Act permits special meetings to be called at any time either by the presiding officer or a majority of the members of the legislative body. The meeting can be called by delivering written notice, personally or by any other means, to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. Notice must be received at least 24 hours before the time of the meeting set forth in the notice. The notice must also be posted 24 hours before the meeting in a location which is freely accessible to the public. The notice must include the date, time, and place of the meeting and identify the business to be transacted or discussed. Only the business set forth in the notice may be considered at the meeting. Notice is not required for those members of the legislative body who have waived it or who will attend the meeting despite the absence of formal notice (§ 54956).
3. ADJOURNED MEETINGS

Regular or special meetings may be adjourned to a specific date, time, and place. Less than a quorum can adjourn a meeting. No notice is required, unless a meeting is adjourned to a new time and date because all the members are absent, in which case the Clerk must give the same notice as is required for a special meeting (§ 54955).

The original 72-hour posting will be valid for taking action on agenda items at an adjourned meeting if that adjourned meeting is held within five days of the regular meeting. If not, re-posting is required (§ 54954.2(b)(3)). If a public hearing is continued to a time less than 24 hours after the hour of adjournment, the order of continuance must immediately be posted on or near the door of the chambers (§ 54955.1).

4. EMERGENCY MEETINGS

An exception to the 24-hour notice requirement for special meetings is allowed in the case of an emergency situation involving matters which require prompt action due to the disruption or threatened disruption of public facilities. Written notice is not required to call an emergency meeting. The Brown Act defines two types of "emergency situations."

   A. An Emergency

   An “emergency” is defined as a work stoppage, crippling activity, or other activity which, by a determination of a majority of the City Council, severely impairs or threatens to impair the public’s health or safety or both (§ 54956.5(a)(1)).

   B. A Dire Emergency

   A “dire emergency” is defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity, or threatened terrorist activity that poses peril so immediate and significant that requiring the City Council to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the City Council (§ 54956.5(a)(2)).

   In an emergency, the presiding officer, or his or her designee, must notify each newspaper of general circulation and radio or television station which has requested notice of special meetings by telephone one hour prior to the emergency meeting. In
the event of a dire emergency, the notice to the relevant media may be given at the same time that the City Council members are notified of the meeting. In the event that telephone services are not functioning, the notice requirements are waived.

A closed session is permitted during an emergency meeting, if approved by a two-thirds vote of the members of the City Council present for the meeting. In the event that less than two-thirds of the members of the City Council are present for the meeting, then a unanimous vote of the members is required in order to hold a closed session.

The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the meeting as possible (§ 54956.5(e)).

VI.
AGENDA AND OTHER WRITINGS

1. AGENDA REQUIREMENTS

Section 54954.2 of the Brown Act requires the preparation of a written agenda for each regular or adjourned regular meeting of each legislative body. The agenda must be posted at least 72 hours in advance of the meeting to which it relates, including on the agency’s website (§ 54954.2(a)(1)). Each item of business to be "transacted or discussed," including items to be discussed in closed session, must be the subject of a "brief general description" which generally need not exceed 20 words.

2. APPLICATION

The agenda requirements apply to regular and adjourned regular meetings (§ 54955) of legislative bodies (§§ 54952, 54952.2).

No action or discussion shall be taken on any item not appearing on the posted agenda except that members of the legislative body may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, members of the legislative body may ask a question for

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6 This requirement is not necessarily violated if the website experiences technical difficulties that cause the agenda to be inaccessible to the public for a portion of the 72 hours preceding the meeting (99 Ops.Cal.Atty.Gen. 11 (2016)).
clarification, make a brief announcement, make a brief report on his/her activities, provide a reference to staff or other sources for factual information, or request staff to report back to the legislative body in a subsequent meeting concerning any matter. Furthermore, a member of the legislative body, or the body itself, may take action to direct staff to place a matter of business on a future agenda (§ 54954.2).

3. **STATUTORY EXCEPTIONS**

A legislative body, however, may take action on items of business not appearing on the posted agenda under the conditions stated below:

a. **Emergency Situation**

Upon a determination by majority vote of the legislative body that an emergency situation exists as defined in Section 54956.5, i.e., work stoppage, crippling disaster, terrorist act, etc. (§ 54954.2(b)(1)).

b. **"Subsequent Need" Item**

Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds are present by the unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted (§ 54954.2(b)(2)).

c. **Hold Over Items**

If the item was posted for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken and at the prior meeting the item was continued to the meeting in which action was being taken (§ 54954.2(b)(3)).

Additionally, the California Attorney General has indicated that Section 54954.2 does not prohibit brief discussions of procedural or preliminary matters that are not substantive in nature, such as the time and place for future meetings, a decision to place a matter on a future agenda, or a direction to staff to gather information and return to a future meeting with a report.
4. AGENDA DESCRIPTION

Care must be taken to adequately and fully describe on each agenda the nature of each item of business to be transacted or discussed, including each distinct action to be taken. For example, for a land use matter, the agenda should include not only the entitlement being considered, but also action under the California Environmental Quality Act. However, the description generally need not exceed 20 words (§ 54954.2). In addition, as an introductory note on each agenda, it would appear prudent to include a statement that copies of the staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the office of the City Clerk or some other specific office and are available for public information. A notation should be added to each agenda that a person who has a question concerning any of the agenda items may call the City Clerk or some other designated City officer to make inquiry concerning the nature of the item described on the agenda. Each agenda must contain a clear statement of the time and place of that meeting.

5. POSTING

Each agenda must be posted in at least one location which is "freely accessible" to the public (§ 54954.2). Care should be taken in selecting locations for posting to ensure that they are in fact freely accessible. For example, a bulletin board located inside the City Hall is not "freely accessible" since it is only available during business hours. Accordingly, consideration should be given to the placement of a bulletin board outside of the City Hall in an area where members of the public are permitted at all times. Such a bulletin board should be placed so that it is lighted in a reasonable manner. More than one location should be considered, such as fire stations, libraries, etc. For meetings on or after January 1, 2019, agendas must be posted on the agency’s website, and must be accessible through a prominent, direct link to the current agenda (§ 54954.2(a)(2)).

6. PROHIBITED ACTIONS

As a general rule, the legislative body cannot take action on any item which does not appear on the posted agenda. There are, however, statutory exceptions to this general rule as set forth under Heading VI, Section 3 above.

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8 AB 2257, Chapter 265, Stats. 2016. Other technical requirements concerning online posting of agendas apply, including that the posting is in an open format that is retrievable, downloadable, indexable, and electronically searchable by commonly used internet search applications.
7. PUBLIC PARTICIPATION

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item. It is possible that an action could be taken on an item not appearing on the regular meeting agenda if authorized as a subsequent needs item under Section 54954.2. The public does not have the right to address the City Council if the public had the right to address a committee composed entirely of Members of the City Council on that topic before or during the time in which the committee heard the item and the item being considered is not substantially changed since it was last considered by the legislative body. The policy determinations to be made in terms of compliance with this provision are:

a. At what point on the agenda will the public discussion be permitted?

b. How much time should be permitted for each speaker?

c. Should there be an overall time limit for all public participation on specific items.

It is our suggestion to comply with Section 54954.3(a)'s requirements that legislative bodies may either allow public comment on an agenda item at the time the item is called for discussion or at a predetermined time at the beginning of the meeting prior to the consideration of the matter by the City Council. Reasonable time limits may be imposed on both the total amount of time allowed for public participation on particular items and on the time permitted to each individual speaker. The State Attorney General's opinion is that a City Council rule imposing a five-minute limit on speakers is valid.9 A 2005 California Court of Appeal decision has allowed a three-minute rule.10 If an agency has a time limit for public comment, then it must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body (§ 54954.3(b)(2)).11

It is suggested that, whenever possible, members of the public be encouraged to

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11 AB 1787, Chapter 507, Stats. 2016. Note that this requirement shall not apply if the agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously (§ 54954.3(b)(3)).
submit their comments or objections in written form so the same can be placed on an agenda and thereafter action can be taken upon the matters consistent with the provisions of the Brown Act.

Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on that item.

The legislative body shall not prohibit public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body (§ 54954.3).

The Attorney General has opined that a City Council may prohibit members of the public, who speak during the time permitted on the agenda for public expression, from commenting on matters that are not within the subject matter jurisdiction of the City Council.12

8. **WRITINGS**

Writings which are public records or are distributed to a majority of members of a legislative body by any person in connection with a matter subject to discussion at a public meeting shall be made available for public inspection at the meeting if prepared by a local agency or a member of its legislative body, or after the meeting if prepared by some other person and posted on the agency’s website (§ 54957.5).

9. **IDENTITY OF VICTIMS OF TORTIOUS SEXUAL CONDUCT**

No notice, agenda, announcement, or report need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed (§ 54961).

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VII.
PUBLIC CONDUCT AT CITY COUNCIL MEETINGS

1. REGISTRATION

Subject only to exceptions in the Brown Act, all persons are permitted to attend any meeting of the legislative body (§ 54953). No member of the public wishing to attend may be required to register his or her name, provide other information, complete a questionnaire, or otherwise fulfill any other requirement as a condition of his or her attendance at the meeting (§ 54953.3). A person speaking to the agency, however, may be requested to identify himself or herself and provide his or her address or city of residence. Whether such information may be required as a prerequisite to speaking has of yet not been decided by the courts; however, it is good practice to have a mechanism to allow anonymous speech by a speaker.

2. RIGHT TO RECORD, PHOTOGRAPH, OR BROADCAST

Section 54953.5 of the Brown Act allows any person who attends a public meeting of a legislative body to record the proceedings with an audio or video tape recorder or a still or motion picture camera unless the legislative body makes a reasonable finding that such a recording cannot continue without noise, illumination or obstruction of view that constitutes, or would constitute, a disruption of the proceedings. Any tape or film record of an open public meeting by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5, commencing with § 6250, of Division 7 of Title 1), but notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or audio tape recording shall be provided without charge on a video or tape player made available by the local agency. No legislative body shall prohibit or otherwise restrict the broadcast of its public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

These provisions do not, however, permit secret recordings of "closed sessions."

3. RULES OF DECORUM

The legislative body may adopt rules for decorum at meetings. Any conduct (such as yelling, clapping, or demonstrations) which disrupts, disturbs, or otherwise impedes the orderly conduct of the meeting may be prohibited and the individuals
engaged in such conduct may be removed from a meeting. Expressions of support or opposition to matters before the legislative body, even if personal, profane, rude, or inconsiderate, are constitutionally protected under the First Amendment to the United States Constitution and under the California Constitution as well. The legislative body may not prohibit members of the public from criticizing staff policies, procedures, programs, services, or acts of the legislative body. It is only when the conduct of an individual substantially "disrupts, disturbs, or otherwise impedes" the conduct of a meeting that it can be prohibited and the person removed from the meeting.\(^{13}\)

4. **DISORDERLY CONDUCT**

Additionally, the legislative body may clear the room and continue the meeting only on listed agenda items if the meeting is "willfully interrupted" by a group so that the orderly conduct thereof is "unfeasible and order cannot be restored by the removal" of the disruptive individuals. The media may remain if it is not part of the disruptive group. The legislative body may adopt rules to readmit non-disruptive persons.

5. **SPEAKER TIME LIMIT**

The Attorney General opined in 1992 that a City Council rule imposing a five-minute time limit on speakers is valid.\(^{14}\) This was affirmed and even a three-minute rule validated in a 2005 California Court of Appeal decision.\(^{15}\) If an agency has a time limit for public comment, then it must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body (§ 54954.3(b)(2)).\(^{16}\)

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13 *White v. City of Norwalk* (9th Cir. 1990) 900 F. 2nd 1421.
16 AB 1787, Chapter 507, Stats. 2016. Note that this requirement shall not apply if the agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously (§ 54954.3(b)(3)).
VIII.
CLOSED SESSIONS

The Brown Act provides certain exceptions to the requirement that meetings be open. These exceptions are termed "closed sessions." Closed sessions specifically authorized by the Brown Act include the following:

1. EXCEPTIONS TO OPEN MEETINGS

   a. **Grand Jury**

      The members of a legislative body may give testimony in private before a grand jury, either as individuals or as a group (§ 54953.1).

   b. **License Applications**

      Closed sessions may be used to determine whether an applicant for a license who has a criminal record is sufficiently rehabilitated to obtain the license (§ 54956.7).

   c. **Security of Public Buildings**

      Closed sessions may be held with the Governor, Attorney General, the District Attorney, the Sheriff, the Chief of Police or any of their deputies, or a security consultant or a security operations manager, to discuss threats to the security of a public building, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or to the public's right of access to public services or public facilities (§ 54957(a)).

   d. **Personnel**

      A closed session may be held to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice
will be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. The legislative body also may exclude from that public or closed meeting during the examination of a witness any or all other witnesses in the matter being investigated by the legislative body (§ 54957(b)).

For the purposes of the personnel exception, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of the legislative body, or other independent contractors. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

A closed session may be held to consider the appointment of new employees, which includes interviewing of candidates, reviewing resumes, discussing qualifications, and arriving at a decision prior to the actual appointment. A duly-constituted committee formed to advise the City Council thereon may also meet in closed session to the extent the committee has been delegated the duties that would otherwise be covered by the terms of Section 54957, e.g., to interview candidates.17

A California Court of Appeal held that the personnel exception provided by Section 54957 does not permit the City Council to discuss and/or determine specific salary increases for City employees in closed session.18 According to the decision, the following procedures should occur when a City Council evaluates the performance of officials it appoints:

"Consistent with both the 'personnel exception' as to the evaluation of performance of a particular employee and the general mandate of the Brown Act, we envision the two step process of an . . . [closed] . . . executive session evaluating the performance of a public employee and a properly noticed, open session for setting that particular employee's salary as a facile matter not negatively affecting the review process. Common sense compels the conclusion that oblique references to discussions of salaries for specific individuals within

executive sessions, evaluating the performance of that public employee would not violate the Brown Act so long as the specific discussions as to the amount of salary increase are reserved for a properly noticed, public meeting.”19

e. **Labor Relations Matters**

Section 54957.6 provides for closed sessions to permit the legislative body to review its position and instruct its designated representative(s) regarding the salaries, salary schedule, or compensation paid in the form of fringe benefits, of its represented or unrepresented employees. For represented employees, any other matter within the scope of representation can be reviewed during this closed session. However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives. Closed sessions for this purpose may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

f. **Real Property Negotiations**

A legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment. Prior to the closed session, the legislative body must announce in open session the property involved and the owner thereof. (§ 54956.8)

g. **Pending Litigation**

Section 54956.9 provides for a closed session for purposes of discussing "pending litigation." Litigation includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Litigation is considered pending when any of the following exist:

i. Litigation to which the local agency is a party has been initiated formally.

19 *San Diego Union* at 955-956.
ii. In the opinion of the legislative body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

iii. Based on existing facts and circumstances, the legislative body is meeting only to decide whether a closed session is authorized.

iv. For purposes of paragraphs ii and iii, "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances which might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff which facts and circumstances need not be disclosed.

(2) Facts and circumstances include, but are not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the agency and that are known to a potential plaintiff, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection.

(4) A statement made by a person in an open public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open public meeting made on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous record or other record of the statement prior to the meeting which record shall be available for public inspection pursuant to Section 54957.5. The record so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or...
tortious conduct upon which the threat of litigation is based, unless the identity of the person has been publicly disclosed.

(6) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act.

v. The legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to going into closed session to discuss litigation, the legislative body shall state on the agenda or publicly announce the subdivision of this section which authorizes the closed session.

If the session is closed due to formal litigation initiated against the local agency, the legislative body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the legislative body states that to do so would jeopardize the local agency's ability to effectuate service of process or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has a significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether activities outside the course and scope of the office or employment.

A local official may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed.20

See litigation settlement reporting under Heading VIII, Section 3, Paragraph a, Subsection i of this paper.

Note: Under Section 54957.2, the legislative body may, but is not required to, designate someone to attend the closed sessions and keep minutes. Such a minute book, if made, is not subject to disclosure under the California Public Records Act.

The City Council may require that each legislative body whose members it appoints keep such a minute book (§ 54957.2).

h. **Joint Powers Agency**

Section 54956.96 allows the legislative body of a local agency to conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of a joint powers agency. The joint powers agency must adopt a policy or bylaw authorizing such disclosure.

i. **Multi-Jurisdictional Law Enforcement Agency**

Section 54957.8 allows a joint powers agency formed to provide law enforcement services to multiple jurisdictions to hold closed sessions in order to discuss case records of any ongoing criminal investigation of the joint powers agency or any part to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases. For purposes of this section, multi-jurisdictional law enforcement agencies are those formed for purposes of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer or identity theft; human trafficking; and vehicle theft.

This exception applies to the legislative body of the joint powers agency as well as any body advisory to it. Its purpose is to prevent impairment of investigations, to protect witnesses and informants and to permit discussion of effective courses of action and tactics.

2. **CLOSED SESSION AGENDA**

Section 54954.5 provides a series of “safe harbor” listings for how and what can be discussed in closed session. A complete copy of Section 54954.5 is found in Attachment “A” hereto. A minor deviation from the “safe harbor” listings does not violate the Brown Act. 21

3. **CLOSED SESSION PUBLIC REPORTS**

a. **General Information**

Section 54957.1 provides the legislative body of any local agency shall publicly

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report any action taken in closed session and the vote or abstention of every member present thereon as follows:

i. **Real Estate Negotiations**

   Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final as specified below.

   (1) If its own approval renders the agreement final, the legislative body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

   (2) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person as soon as the other party or its agent has informed the local agency of its approval.

ii. **Appealing an Action or Participating as Amicus Curiae**

   The legislative body must report the approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief. The legislative body must also report its decision to defend against an opposing party's request for an appellate review and its decision to join any litigation as an amicus curiae ("friend of the court"). The report must identify, if known, the adverse party or parties and the substance of the litigation.

   For approvals given to initiate litigation or to intervene in an action, the announcement does not need to identify the action, the defendants, or other information regarding the case. The announcement, however, must specify that the direction to initiate or intervene in an action has been given.

   The announcement also must indicate that once the action has been formally started, information regarding the action, the defendants, and other information regarding the case will be disclosed to any person upon inquiry. The one exception is if to do so would jeopardize the
local agency's ability to serve one or more of the unserved parties or would jeopardize the local agency's ability to conclude settlement negotiations to its advantage.

iii. **Settlement of Pending Litigation**

The legislative body must report approval given to settle pending litigation, after the settlement is final as specified below:

1. If the legislative body accepts a settlement offer signed by the opposing party, the legislative body must report its acceptance of the offer and identify the terms of the agreement in open session at the public meeting during which the closed session is held.

2. If decision whether to accept the settlement offer rests with another party, the local agency must disclose the fact of that approval and identify the terms of the agreement as soon as the settlement becomes final and upon inquiry by any person.

iv. **Settlement of Claims of a Joint Powers Authority (JPA) Formed for Insurance Pooling Purposes**

The legislative body must report settlement of claims relating to the JPA if the local agency is a member of the JPA. The disclosure of the claims must include the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any settlement approved for payment and agreed to by claimant (§ 54957.1).

v. **Action Regarding Employees**

Any action taken in closed session to appoint, employ, dismiss, accept the resignation of, or which otherwise affects the employment status of a public employee is to be reported in open session at the public meeting in which the closed session was held. Any report to the public shall identify the title of the position (§ 54957.1).

If a legislative body has decided to dismiss an employee or not to renew his or her contract, this information is not to be released until the public meeting following the exhaustion of administrative remedies, if any. The report of a dismissal or non-renewal of an employment
contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any (§ 54957).

If the legislative body makes disclosures regarding an employee or a former employee in an effort to comply with this section, the legislative body will be immune from a legal action for that disclosure (§ 54957.1).

vi. Approval of Labor Agreements

Once all parties to labor negotiations have reached an agreement regarding the contract and approved the contract, the legislative body is to report this information in a public meeting. The report is to identify the contract approved and the other party or parties to the negotiation.

4. MANNER OF REPORTING

Reports that are required to be made pursuant to this section (§ 54957.1) may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings if the requestor is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents which were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, providing that the presiding officer of the legislative body, or his or her designee, orally summarizes the substance of the amendments for the benefit of the document requestor or any person present and requesting the information. This documentation shall be available to any person on the next business day following the meeting in which the action referred to is taken, or in the case of substantial amendments, when any necessary typing is complete.

No action for injury to reputation, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section (§ 54957.1).
IX.
REMEDIES/PENALTIES

1. MISDEMEANOR

Any member of a legislative body who attends a meeting of that body where action is taken in violation of the Brown Act, and intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor (§ 54959).

2. ACTION TO PREVENT VIOLATIONS

The District Attorney or any interested person may bring an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of the Brown Act by members of the legislative body or to determine whether the actions or threatened actions come under purview of the Brown Act or to determine the validity of any rule or action by the legislative body to penalize or otherwise discourage an expression of one or more of its members, or to compel the legislative body to tape record its closed sessions (§ 54960).

3. TAPING CLOSED SESSIONS

The court may, upon a judgment of violation of certain sections pertaining to closed sessions,22 order the legislative body to tape record its closed sessions and to preserve the tape recordings as the court deems appropriate (§ 54960).

This section also sets for the procedure of obtaining discovery of any such tapes by the District Attorney or a plaintiff in certain types of civil actions alleging violations that have occurred in a closed session. Nothing in this particular procedure shall permit discovery of communications which are protected by the attorney-client privilege.

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22 Sections 54956.7, 54956.8, 54956.9, 54956.95, or 54957.6.
4. DISCLOSURE OF CONFIDENTIAL INFORMATION

A person may not disclose confidential information\(^{23}\) that has been acquired while being present in an authorized closed session unless the City Council authorizes disclosure of that confidential information. Only the legislative body acting as a body may agree to divulge confidential closed session information with regard to attorney client/privileged information—the entire body holds the privilege and only the entire body can waive it.\(^{24}\) Making such a disclosure subjects the individual to injunctive relief to prevent the disclosure of confidential information, disciplinary action against an employee who has willfully disclosed confidential information, and referral of a member of the City Council who has willfully disclosed confidential information to the grand jury.

5. OPPORTUNITY TO CURE VIOLATIONS

No litigation may be commenced, however, unless or until the District Attorney or any interested party has filed with the legislative body a written demand to cure or correct the action alleged to have been taken in violation of certain sections of the Brown Act. The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the demand shall be made within 30 days from the date the action was taken. Within 30 days of receipt of a written demand, the legislative body must cure or correct any defect in the action taken and inform the demanding party of the actions taken to cure or correct. The legislative body may, within this 30-day period, advise the demanding party that action was validly taken and decline to take any corrective action. If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct. Thereafter, the challenging party must, within 15 days upon receipt of written notice of the legislative body's decision to cure or correct, or if no action is taken, 15 days following the expiration of the 30-day period to cure or correct, whichever is earlier, commence the action or thereafter be barred from commencing the same (§ 54960.1).

It should be noted that a California Court of Appeal has held that the cease and desist procedure is not applicable to alleged ongoing/future violations.\(^{25}\)

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\(^{23}\) “Confidential Information” is defined as “a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter” (§ 54963(b).)


\(^{25}\) Center for Local Government Accountability v. City of San Diego (2016) 247 Cal.App.4th
The action taken by the legislative body in violation of Sections 54953, 54954.2, 54954.5, 54954.6, and 54956 cannot be found to be null and void if any of the following conditions exist:

a. The action was taken in substantial compliance with provisions of the Brown Act.

b. The action was in connection with the sale or issuance of notes, bonds, or other evidence of indebtedness or any contract, instrument, or agreement thereto.

c. The action taken gave rise to a contractual obligation including a contract by competitive bid other than compensation for services in the form of salary or fees for professional services upon which a party has in good faith and without notice of a challenge to the validity of the action detrimentally relied.

d. The action taken was in connection with the collection of any tax.

e. Any allegations of noncompliance with subdivision (a) of Section 54954.2, 54956, or 54956.5 because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting was held pursuant to Section 54956.5.

If the court in any such action determines that the legislative body took the action which cured or corrected the defect, then the action must be dismissed with prejudice. The fact that a legislative body took subsequent action to cure or correct an action taken pursuant to this section shall not be evidence of a violation.

When the court finds that such an action of the legislative body has violated the Brown Act, it may award costs and attorney's fees to the party bringing the action. The court may also award costs and attorney's fees to a public entity where it has found that the public entity has prevailed in the case and that the lawsuit was "clearly frivolous and totally lacking in merit" (§ 54960.5).
X.

**PROHIBITION OF USE OF CERTAIN FACILITIES**

No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person or persons on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase (§ 54961).

XI.

**NEW OR INCREASED TAXES OR ASSESSMENTS**

Section 54954.6 deals with any new or increased general tax or assessment requiring a public meeting and a public hearing (with 45 days public notice). "New or increased assessment" does not include, among others, fees not exceeding the recoverable cost of providing services or an ongoing annual assessment at the same or a lower rate as the previous year. Moreover, any new or increased assessment that is subject to the notice and hearing provisions of Proposition 218, is not subject to the notice and hearing requirements of Section 54954.6.

XII.

**CLOSING**

Should you have any questions or concerns regarding issues under the Brown Act, please feel free to contact the City Attorney’s Office, City Clerk’s Office, or the City Manager for clarification.
§ 54954.5. Description of closed session items

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:
   LICENSE/PERMIT DETERMINATION
   Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:
   CONFERENCE WITH REAL PROPERTY NEGOTIATORS
   Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)
   Agency negotiator: (Specify names of negotiators attending the closed session)
   (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
   Negotiating parties: (Specify name of party (not agent))
   Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:
   CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION
   (Subdivision (d)(1) of Section 54956.9)
   Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)
   or
Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (d)(2) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session to specify the existing facts or circumstances that justify the closed session pursuant to subparagraphs (2) to (5), inclusive, of paragraph (e) of subdivision (d)(2) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (d)(4) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)
(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)
(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE
RULES OF PROCEDURE
FOR THE CONDUCT OF BUSINESS ON WATER MATTERS BEFORE
THE WATER COMMISSION OF THE
CITY OF SAN BUENAVENTURA
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1. MEETINGS, STUDY SESSIONS, AGENDAS AND STAFF REPORTS

1.1 Regular Meetings

Regular meetings of the City Water Commission shall be held on the fourth Tuesday of each month. If the regular meeting date falls on a City holiday, then the meeting shall be rescheduled by the Secretary of the Commission. All regular meetings of the City Water Commission will be called to order at 5:30 p.m. in the Community Meeting Room at City Hall located at 501 Poli Street, Ventura, California, unless advertised otherwise, cancelled or rescheduled. The Commission will generally adjourn its meetings at 9:00 p.m., with any unfinished business being continued to the next regular meeting. The Commission will not hear any new item after 9:00 p.m. without unanimous agreement of the entire Commission present at that meeting.

1.2 Special Meetings

An emergency or special meeting may be called at any time by the Chairperson of the City Water Commission, or by a majority of its membership. Written notice shall be delivered personally or by email at least twenty-four (24) hours before the time of a special meeting, and as soon as is reasonably possible in the case of an emergency meeting to each member and to each local newspaper of general circulation, and to each radio or television station which has previously submitted a written request for notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at the meeting. Written notice may be dispensed with as to any member who at or before the time of the meeting files a written waiver of notice with the Secretary of the Commission. Written notice will also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

1.3 Adjourned Meetings

The City Water Commission may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place
specified in the order of adjournment pursuant to the procedures set forth in the Ralph M. Brown Act, Government Code Section 54950, et seq. (the "Brown Act").

1.4 Workshop Sessions

The City’s Water Commission may hold a workshop session as part of a regular, adjourned or special meeting. In general, the purpose of workshop sessions will be to gather information from staff, consultants, or members of the public regarding matters within the purview of the Water Commission and, at most, provide further direction to staff while not rendering a formal final decision or action on a particular matter. When a matter is set for a workshop session, the time allowed for individual public testimony time limits may be reasonably limited at the discretion of the Chairperson. Public notice for workshop sessions on specific matters for which future meetings are anticipated shall be given to all interested parties who have requested such notice, and a record of the workshop session shall be entered into the minutes of any future meetings as consideration of information in any pertinent future discussion.

1.5 Open Sessions

All meetings of the City Water Commission shall be open and public, and all persons shall be permitted to attend.

1.6 Agendas

At least 72 hours before a regular meeting, copies of the City Water Commission’s agenda shall be posted within the public display case at the rear entrance to City Hall and made available to any person at the public counter in the City Clerk’s Division. In accordance with the Brown Act, the Commission may not discuss or take action on any item that did not appear on the posted agenda unless an exception is made, as permitted under Government Code Section 54954.2.

The General Manager, in cooperation with the Chairperson, shall prepare the agenda for each regular and special meeting of the Commission. A Commissioner can request that an item be placed on a future agenda by bringing it up at a regular meeting under
Commissioner Communications, and the Commission shall make a determination if the item should be agendized and at what meeting. In addition, any Commissioner may contact the General Manager in writing with a copy to the Chairperson and request an item to be placed on the regular meeting agenda no later than 5 p.m. eleven (11) calendar days prior to the meeting date, but the General Manager shall be under no obligation to include the requested item on the next regular meeting agenda and shall explain at the meeting why the requested item was not included in the agenda.

1.7 Staff Reports

When staff reports exist, copies shall be made available electronically or in hardcopy format at least 72 hours prior to a regular public meeting. Copies shall also be made available at the regular public meeting. If more members of the public request more copies of the staff report than are available at the meeting, copies shall be provided to those members of the public as soon as reasonably possible after the meeting in a manner consistent with the Public Records Act. Staff reports shall be prepared with recommendations and the basis for recommendations, and included in the meeting record.

1.8 Staff Communications

Water Commissioners may contact staff for clarification of staff materials and to ask questions prior to and at public meetings. The General Manager or staff shall have discretion to respond directly to a Water Commissioner. If the General Manager or staff determines that the question would benefit all of the Water Commissioners and members of the public, staff is to A) Provide a written clarifying statement restating or summarizing the question and providing an answer to all Water Commissioners prior to a meeting and to verbally share the clarifying statement at the appropriate public meeting; or B) Provide a verbal clarifying statement restating or summarizing a Water Commissioner’s question and providing an answer during the staff presentation at the appropriate public meeting.

2. RESERVED
3. PRESENTATION OF AGENDA ITEMS

3.1 Recording of Meetings

Meetings will generally be recorded by electronic device (e.g., digitally, audio cassette or video tape or other media) and preserved for a period of two (2) years or as may be otherwise specified by the City Council in its adoption of City-wide records retention policies. When a request is made in writing to the Secretary of the Commission, a copy of any such recording may be purchased at its reproduction cost. Audio recording(s) of meetings will be posted on the City’s website, starting with the June 2019 meeting.

3.2 Action Minutes

Minutes of the Water Commission will be action minutes. Action minutes include all motions and final motions reflecting the vote of each member present and voting. Staff recommendations subject to a motion will be included in the minutes. The minutes will also reflect the names of public speakers. Water Commission and City staff discussion and comments will not be included in the minutes. Minutes of all meetings are required to be kept by the Department. Generally, minutes are submitted to the Water Commission at the next regular meeting; and they are made available to the City Council.

3.3 Order of Presentation

The procedure for the conduct of meetings is generally as follows:

(a) The Chairperson opens the meeting and announces the first and subsequent items.
(b) City staff presents its report, including any recommendation.
(c) Questions of staff by members of the Water Commission.
(d) Oral presentations by members of the public, per Section 3.4.
(e) Water Commission deliberates on the issue and can ask staff any questions for clarification.
(f) The Water Commission deliberates and takes action.
3.4 Oral Presentation - Time Limits, and Number of Speakers

(a) Prior to the meeting, or during the meeting prior to a matter being reached, persons wishing to address the Water Commission should fill out a speaker card and submit it to the City Water Staff. Those desiring not to provide their name should see Ventura Water staff for further instructions on how this can be accommodated.

(b) Any person desiring to address the Commission must first be recognized by the Chairperson. All comments should be made clearly and audibly and all speakers should first state their full names and City of residence and the names of any persons in whose behalf they are appearing.

(c) In order to conduct orderly and timely meetings, members of the public making oral presentations to the Commission in connection with one or more agenda items at a single meeting are limited to three (3) minutes per agenda item unless otherwise provided. If the Chairperson deems it appropriate, in extraordinary circumstances he or she may extend the time limit for any speaker. The Chairperson may also limit the time provided to speakers in order to ensure an orderly and timely meeting. Except when necessary for immediate clarification of a particular point, no person shall be allowed to speak a second time until all others wishing to be allowed to speak have had an opportunity to do so, and then only at the discretion of the Chairperson.

(d) In order to expedite matters and to avoid repetitious presentations, the designation of a spokesperson is encouraged.

Whenever any group of persons, all of whom are present, wishes to address the Commission on the same subject matter, the group is encouraged to designate a spokesperson to address the Commission. Each member of the group shall complete a speaker card in advance of
the matter being called and shall note on the card the person whom they wish to have speak on their behalf. By allowing another person to speak on their behalf, each group member shall relinquish their right to speak on the matter. With the consent of a majority of the Commissioners present, the Chairperson may then extend the time allocation for the designated spokesperson from three (3) minutes up to a maximum of ten (10) minutes depending upon how many cards have been submitted.

(e) Persons who anticipate oral presentations exceeding five (5) minutes are encouraged to submit comments in writing, in advance of the meeting, care of the General Manager, for prior distribution to the Commission.

(f) Comment cards may be used by members of the public who do not wish to or cannot verbally address the Commission during a meeting. A person may indicate their comments and their opposition or support for an agenda item on a comment card prior to or during the Commission's consideration of the item.

During the public testimony of the item, the Chairperson will indicate that the Commission has received comment cards from (name of person) in support of the project or issue and comment cards from the (name of person) in opposition of the project or issue. The minutes will reflect the Commission's receipt of comment cards in opposition and support of a proposed project or other subject.

(g) Any person addressing the Commission may present a PowerPoint software or other visual media presentation to the Commission utilizing the City's audio/visual equipment.

i. All PowerPoint presentations must comply with the applicable time limits for oral presentations and cumulative time limits. Presentations should be
planned with flexibility to adjust to any changes in these time limits.

ii. Each slide of the PowerPoint presentation must identify that this is the "Personal Comments of Private Citizen [first and last name]."

iii. All PowerPoint presentations must be submitted on suitable media already formatted in PowerPoint format and be submitted to the General Manager no later than noon the day before of the Water Commission meeting to allow for virus checks and compatibility with City equipment.

iv. Any discs, flash drives, or other media submitted that are thought to contain viruses or unable to be scanned for viruses by City equipment will not be permitted to be used.

v. If compatibility or viruses are at issue, a member of the public may provide ten (10) printed hard copies of the PowerPoint presentation during their presentation.

(h) Any of the time limits in this section may be reduced at the discretion of the Chairperson, or a majority of the Commission present, if determined necessary or desirable for the efficient and orderly conduct of the meeting.

3.5 Written Materials

Members of the public who may not be able to attend a meeting may submit letters or written comments. The written information from members of the public not at the meeting shall be presented to the Water Commission before the meeting and if received prior to the day of the meeting will be sent to the Commissioners via email if possible.
Members of the public who wish to submit written information at the meeting should provide twenty (20) copies of the information in order to assure it is considered by the Commission.

Water Commission adopted the following policy regarding written submissions to ensure that it has reasonable and appropriate opportunity to review materials.

3.5.1 Copying and Distribution

The submitting party must provide twenty (20) copies to the Water Commission Secretary; the Commission Secretary will not make copies. The Commission Secretary will distribute all complying submissions, as defined below. Non-complying submissions will be stamped, filed, and not distributed.

3.5.2 Regular Submissions

All materials delivered in advance of the staff report becoming publicly available, must be submitted ten (10) days prior to the Water Commission meeting. Twenty (20) copies of the materials must be delivered or mailed to the Commission Secretary at City of Ventura Maintenance Yard, 336 Sanjon Road, Ventura, CA 93002. The Commission Secretary will send these submissions to the Water Commission together with the staff reports.

3.5.3 Responding Submissions

All materials delivered in response to either the staff report or responding submissions must be submitted no later than thirty (30) hours before the Commission meeting. Submissions, including exhibits, may not exceed ten (10) pages and twenty (20) copies must be sent to the Commission Secretary at City of Ventura Maintenance Yard, 336 Sanjon Road, Ventura, CA 93002. The Commission Secretary will deliver these submissions to the City Water Commission within 24 hours of receipt. Electronic submissions may be sent to venturawatercommission@venturawater.net.
The City will under no circumstances make copies of any document longer than ten (10) pages in length, but may do so in its sole discretion if it is feasible given the time and cost of doing so.

3.5.4 Day of Meeting Submissions

Day of meeting submissions may not be more than two (2) written pages, including exhibits. Twenty copies of the submission must be given to the Commission Secretary who will distribute them to the Water Commission when the agenda item is called. A reasonable number of photographs, posters, and short [(five (5) minutes maximum)] presentations will be accepted no later than 5:00 p.m. on the day of hearing. The City will under no circumstances make copies of any document longer than two (2) pages in length, but may do so in its sole discretion if it is feasible given the time and cost of doing so.

3.5.5 Non-complying Submissions

Submissions, which do not fall within the above prescriptions, will be entered into the record and not delivered to the Water Commission. These submissions will be stamped "File Copy. Non-Complying Submission", and placed into the official case file. The Water Commission will be under no obligation to consider the information contained in any non-complying submission.

3.5.6 Written Errata Memo

An Errata Memo is a change to the staff report that describes the change to the Commissioners. This errata memo will be provided to the Commissioners on the dais prior to the start of the meeting.

3.6 Questioning of Speakers

Any person other than a Commissioner desiring to direct a question to a speaker or staff member shall submit the question to the Chairperson, who shall determine whether the question is relevant to
the subject at hand and whether or not it should be answered by the
speaker or staff member. Direct questioning of speakers or staff
members may be allowed in extraordinary circumstances, only at the
discretion of the Chairperson.

3.7 Changes to Agenda Order

The Water Commission Chairperson shall, prior to consideration of
the meeting agenda, poll Commissioners on the movement of agenda
items for consideration. The movement or order of agenda items
may be changed upon the majority approval of the Commission.

4. MOTIONS

4.1 Motions - Second

Any member may propose action upon an agenda item – including an
order, resolution, ordinance, or any other action of the City Water
Commission by a motion. Before a motion can be considered or
debated it must be seconded, at which time it shall be on the floor
and must be considered. If not seconded, the motion is lost for lack
of a second and shall be so declared by the Chairperson.

4.2 Amendment of Motion or Substitute Motion

A motion on the floor may be amended at any time before adoption or
rejection. When an amendment is offered, the Water Commission
will debate and take action on the amendment before acting on the
original motion. If the amendment is not adopted, the original motion
will then be considered. If the amendment is adopted, the original
motion as amended will then be considered.

4.3 Withdrawal of Motion or Second

A motion may be withdrawn by the maker at any time before adoption
or rejection, with consent of the second. A second to a motion may
be withdrawn by the seconding member at any time before adoption
or rejection of the motion. The motion will then be lost for lack of a
second and so declared by the Chairperson unless seconded by
another Commissioner.
4.4 Reserved

4.5 Discussion, Closure, and Question

After a motion has been seconded, any member may discuss or comment on the subject of the motion. The Chairperson will recognize members of the Water Commission with the desire to speak, beginning with the motion's maker, and will protect each speaker from disturbance or interference. When no member wishes to discuss or comment further, the Chairperson shall call for a vote on the motion. Any member of the Water Commission may at any time move to close the debate.

4.6 Motions for Reconsideration

Any member who was present and voted with the prevailing majority on a matter to be reconsidered may make motions for reconsideration of a matter. Any member of the Water Commission may second a motion to reconsider. Motions to reconsider shall be made at the same meeting as the original motion or at the next succeeding meeting. A reconsideration motion at the next succeeding meeting shall be agendized for discussion and action at the next meeting, consistent with the Brown Act.

5. DECISION-MAKING

5.1 Voting

Approval of any motion brought before the City Water Commission shall require the affirmative vote of a majority of the members present and voting, unless otherwise specified by law.

5.1.1 Tie Votes

Any tie vote shall constitute a denial of the motion and may be reconsidered by a motion offered by any member who voted on the matter. If there is no action by an affirmative majority vote, the result is no action.
5.1.2 Abstentions

Abstentions shall not count as votes for the purpose of determining whether there has been an affirmative vote of a majority of the members present, but shall be counted for the purpose of determining whether a quorum is present, unless the member is abstaining because of a potential conflict of interest in the matter at hand.

5.1.3 Roll Call

Voting upon a motion may be by roll call or electronic means.

5.1.4 Motions Include Staff Recommendations

A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adopting of all related actions recommended in the staff report on file on the matter.

5.1.5 Absentees

A City Water Commission member who is absent from any portion of a public meeting may vote on the matter at the time it is acted upon, provided that he or she has listened to a recording of the entire portion of the meeting from which he or she was absent, if such a tape recording exists, and if he or she has examined all of the exhibits presented during the portion of the meeting from which he or she was absent and states for the record before voting that the member deems himself or herself to be familiar with the record and with the information presented at the meeting as he or she would have been had he or she personally attended the entire meeting.

5.1.6 Alternates

Alternates shall only vote when one or more members in their respective category (Professional or Demonstrated Special Interest) is absent. In addition, alternates shall only vote if they
believe they have acquired and understand the information that has been provided to the Water Commission for any relevant water matter. Alternates shall endeavor to attend all meetings, even if they are not planning to vote in the absence of a regular Commissioner. Alternates are not permitted to be included in the Commission discussion of agenda items at a meeting unless they will be voting at that meeting. Alternates are permitted to speak during public comment and submit questions for the Chairperson to consider.

Alternates are expected to follow the Brown Act requirements as if they were sitting commissioners. Alternates are not permitted to discuss agenda items with a majority of other members of the Water Commission outside of a noticed public meeting and shall base their vote when sitting as a voting member of the Commission on their own opinion or belief.

5.2 Continuances

Upon a showing of good cause and by request of staff, member of the public, or member of the City Water Commission, the Chairperson, at the time set for a meeting on a particular item, may, with the concurrence of a majority of the commissioners present, order the agenda item to be continued to a specified date and time. Upon the request of any member of the City Water Commission, continuance decisions shall be made by roll call vote of all members present.

6. CONSTRUCTION AND EFFECT

6.1 Construction

These procedural rules shall be construed and applied so as to ensure public input and to facilitate an orderly analysis of water matters by the City Water Commission.

6.2 Chairperson’s Rule of Order

When there is no provision of these rules of procedure applicable to the conduct of the meeting of the Water Commission, or to a
particular question of conduct or order that may arise in the course of such meeting, the Chairperson shall suggest appropriate rules for consideration by the entire Commission. The Commission will, in turn, based upon a majority vote of those members present, adopt an ad hoc rule for any questions of conduct or point of order that may arise. In the event of a tie vote on any such ad hoc rule, the Chairperson's decision on the proposed ad hoc rule shall be final.

6.3 Conflicts of Interest

Water Commissioners that have a conflict of interest with any particular agenda item shall be required to abstain from discussion and vote. Said Commissioner shall inform the Commission prior to discussion of any item on which the Commissioner has a conflict of interest and have the reason noted in the record.

7. SECRETARY OF THE COMMISSION

7.1 Ventura Water General Manager Shall Serve as Secretary

Pursuant to San Buenaventura Municipal Code Section 2.460.010, the Ventura Water General Manager shall serve as the Commission Secretary and custodian of its records. The Secretary shall have no vote.
REGULAR MEETING
TUESDAY, JUNE 25, 2019, 5:30 P.M.
COMMUNITY MEETING ROOM, 501 POLI STREET, VENTURA

Water Commission Purpose: Review and make advisory recommendations regarding water rates, water resources infrastructure projects in the five-year capital improvement program, the integrated water resources management plan, water supply options, the Urban Water Management Plan approval process, a water dedication and in-lieu fee requirement, and other water resource issues.

Commission Chair Hubner called the meeting to order at 5:30 p.m.

ROLL CALL – WATER COMMISSION

Present: Commissioners Feeney, Mills, McCombs, Burton, and Hubner.

Absent: Commissioners McCarty, McCord and Alternate Commissioner Mike Anderson.

PLEDGE OF ALLEGIANCE

WATER COMMISSION ITEMS

1. MINUTES

RECOMMENDATION

Approve the minutes of the May 28, 2019 regular session.

Members of the Public: None.

Commissioner Burton moved to approve the recommendation subject to a possible change by staff once they review the tape of the meeting. Commissioner Hubner seconded the motion. The vote was as follows:

AYES: Commissioners Feeney, McCombs, Mills, Burton, and Hubner.

NOES: None.

Commission Chair Hubner declared the motion carried.
2. **STATE WATER INTERCONNECTION PROJECT FINAL ENVIRONMENTAL IMPACT REPORT**

Staff recommends that the Water Commission make a recommendation to City Council to certify the Final Environmental Impact Report (EIR) for the State Water Interconnection Project.

Members of the Public: Dan Ellison.

Commissioner McCombs moved to approve the recommendation. Commissioner Burton seconded the motion. The vote was as follows:

**AYES:** Commissioners Feeney, McCombs, Mills, Burton, and Hubner.

**NOES:** None.

Commission Chair Hubner declared the motion carried.

3. **RECOMMENDATION FOR UTILIZATION OF THE CITY'S STATE WATER ALLOCATION FOR 2019**

Staff requests that the Water Commission make a recommendation to City Council regarding the Interim Utilization of the City's State Water Allocation for 2019.

Members of the Public: Bob Siemak, Daniel Naumann, and Burt Handy.

Commissioner Burton moved to approve the recommendation that Ventura Water Staff move forward with negotiations for the City’s State Water Allocation for 2019. Commissioner Feeney seconded the motion. The vote was as follows:

**AYES:** Commissioners Feeney, McCombs, Mills, Burton, and Hubner.

**NOES:** None.

Commission Chair Hubner declared the motion carried.

**PUBLIC COMMENT**

Bob Siemak and Daniel Naumann from United Water Conservation District as well as Michelle Serilla from Assemblymember Monique Limon’s Office.

**COMMISSIONER COMMUNICATIONS**

Commissioner Vice-Chair Burton reported there is an AdHoc meeting scheduled September 19, 2019 for the California WaterFix Project and a representative of the State Water Contractors Board will be giving a presentation.
GENERAL MANAGER REPORT

- Gina Dorrington has been promoted to the Assistant General Manager of Operations.
- There is currently an open recruitment for the Assistant General Manager for Water Resources and hopefully we will be able to announce an appointment at the next meeting.
- Akbar Alikhan has been appointed as the Assistant City Manager and will be overseeing Public Works, Ventura Water and Community Development.
- Council updates:
  - The Clean Power Alliance was presented at City Council and approved which includes Water and Wastewater accounts at a 36% renewable energy rate. The financial impacts are unknown at this time and staff will return with more budget information at a future meeting.
  - Ventura Water along with all other department budgets were approved.
- Upper Ventura River Groundwater Sustainability Agency adopted the Fiscal Year 2019-2020 budget and the extraction fee of $77.89/Acre Foot.
- Mound Basin Groundwater Sustainability Agency adopted the Fiscal Year 2019-2020 budget and scheduled a public hearing for July 18, 2019 to consider adoption of the extraction fee of approximately $35.00/Acre Foot.
- Fox Canyon Groundwater Management Agency meeting is scheduled for June 26, 2019 to provide a revised Ordinance. There are some concerns with the Ordinance, and it is anticipated that the M&I group as well as the City will provide comment letters indicating their concerns.
- CIP updates:
  - Digester Improvement Project was awarded to Cushman Contracting to replace aging infrastructure. Construction activities are scheduled to begin in October and occur in five phases over the next two years.
  - Seaward and Poli Booster Upgrade is out to bid.
  - Harbor Blvd Sewer Line is in construction.
  - Mariano tanks that replaced existing potable water tank are almost complete.
  - Northbank Lift Station Project has a punch list and close out should be soon. This project adds capacity to the East End Sewer System. The project had to be completed before the occupancy of some of the ongoing development projects. This project will assist the Parklands and Hansen projects.
- The Agenda Calendar update will be brought back in the August 27, 2019 meeting. The draft agenda for the August meeting will be: Introduction of new Commissioners, Election of Chair and Vice Chair and discussion of the future agenda items.

ADJOURNMENT: 6:52 P.M.
To: Ventura Water Commission
From: Susan Rungren, Ventura Water General Manager
Subject: Groundwater Sustainability Agencies Update

RECOMMENDATIONS

Staff recommends the Water Commission receive an oral update on the status of local Groundwater Sustainability Agencies.

PREVIOUS MEETINGS

February 27, 2018 – the Water Commission received an update on the Groundwater Sustainability Agencies and the Santa Paula Basin Technical Advisory Committee.

August 28, 2018 - the Water Commission received an update on the Groundwater Sustainability Agencies and the Santa Paula Basin Technical Advisory Committee.

October 30, 2018 - the Water Commission received an update on the Groundwater Sustainability Agencies and the Santa Paula Basin Technical Advisory Committee.


DISCUSSION

In 2014, the State legislature passed the Sustainable Groundwater Management Act (SGMA) to improve management of groundwater basins and give local agencies a chance to manage the basins as Groundwater Sustainability Agencies (GSAs). The legislation is critical in bridging land use and groundwater management through coordination of General Plans and Groundwater Sustainability Plans (GSPs).

The City participated in the formation of the Upper Ventura River Groundwater Basin GSA and the Mound Basin GSA and is a member of both GSAs. The City participates in the development of the GSP for the Oxnard Plain Basin, but Fox Canyon Groundwater Management Agency (FCGMA) is named in the legislation as the GSA. The City also extracts groundwater from the Santa Paula Basin, but it is considered adjudicated for the purposes of this legislation.
Upper Ventura River Basin
On December 12, 2016, Casitas Municipal Water District, Ventura River Water District, Meiners Oaks Water District, City of San Buenaventura (City), and the County of Ventura executed a Joint Powers Agreement (JPA) forming the Upper Ventura River Groundwater Agency (UVRGA). The Board of Directors is composed of five Member Directors and two Stakeholder Directors which includes an Agricultural Director and an Environmental Director. The Member Directors are chosen by the respective governing bodies of each local agency that is a member of the JPA. Each Member Director also has an alternate. The Ventura Water General Manager is the designated Director and the Assistant General Manager is the designated alternate for the City.

The UVRGA has until January 31, 2022 to submit its Groundwater Sustainability Plan (GSP) to DWR. The UVRGA submitted its initial notification to develop a GSP to DWR on December 20, 2017. At its April 11, 2019 meeting, the Board approved a Master Services Agreement with Interia, Inc. for as needed GSP development support services. Additional information on meeting agendas and progress towards GSP development can be found on the UVRGA website at https://uvrgroundwater.org/.

The UVRGA is currently funded by member contributions and has an approved budget of $425,000 for Fiscal Year 2018-2019. The City contributed $50,000 for Fiscal Year 2018-2019. UVRGA was awarded approximately $630,000 through DWR’s Sustainable Groundwater Planning Grant Program to complete a GSP by January 2022. At its February 4, 2019 meeting, the Board authorized the Board Chair to execute a grant agreement with DWR for the 2017 Prop 1 Sustainable Groundwater Planning Grant for an award of up to $630,061. The cost share requirement for UVRGA will be $221,373.

The UVRGA approved a multi-year budget for Fiscal Years 2019-20 through 2023-24 at its April 11, 2019 meeting. At the meeting the Board requested that the three largest pumbers (City of Ventura, Ventura River Water District, and Meiners Oak Water District) consider providing a total of $90,000 in loaned contributions for Fiscal Year 2019-20 in order to keep the estimated annual extraction fees reasonable. Contributions would be repaid in Fiscal Year 2022-23 with no interest. City of Ventura, Ventura River Water District, and Meiners Oak Water District subsequently approved providing the loans. The Board adopted the Fiscal Year 2019-2020 budget and an extraction fee of $77.89/Acre foot at its June 13, 2019 meeting. This fee is expected to decrease over the next five years as the GSP is developed. The City’s annual extraction fee payment will be based on its past five-year average pumping of 2,384 AFY.

Mound Groundwater Basin
On June 14, 2017, the City, the County of Ventura, and United Water Conservation District (UWCD) executed a Joint Powers Agreement (JPA) forming the Mound Basin Groundwater Sustainability Agency (MBGSA). The Board of Directors is composed of three Member Directors and two Stakeholder Directors which includes an Agricultural Director and an Environmental Director. The Member Directors are chosen by the respective governing bodies of each local agency that is a member of the JPA. The Ventura Water General Manager is the designated Director for the City of Ventura.
The Board adopted a budget of approximately $368,000 for Fiscal Year 2018-2019 at its June 21, 2018 meeting. This includes member contributions of $55,000 from the City of Ventura and $50,000 from the County of Ventura, in-kind services provided by United Water Conservation District (UWCD) valued at $50,000, revenue generated from a groundwater extraction fee, and grant reimbursement funds from DWR. The Board adopted a groundwater extraction fee of $40 per acre foot on August 23, 2018. The Mound Basin GSA shall repay the City and County by December 31, 2022, plus accrued interest at the annual rate published as the yield of the Local Agency Investment Fund administered by the California State Treasurer. On July 18, 2019, the Agency approved the Fiscal Year 2019-2020 budget and adopted an extraction fee of $35.00/Acre Foot.

MBGSA was awarded grant funding through DWR’s Sustainable Groundwater Planning Grant Program to complete a GSP by January 2022. At its October 18, 2018 meeting, the Board authorized the Board Chair to execute a grant agreement with DWR for the 2017 Prop 1 SGWP Grant for an award of up to $583,100. The cost share requirement will be $204,873.

The Basin Boundary modification for the Mound Basin was approved by DWR on February 11, 2019. DWR’s draft basin prioritization phase II designates the Mound Basin as a high priority basin.

The MBGSA has until January 31, 2022 to submit its Groundwater Sustainability Plan (GSP) to DWR. The MBGSA submitted its initial notification to develop a GSP to DWR on September 17, 2018. At its March 21, 2019 meeting, the Board authorized the Chair to execute a professional services agreement with Intera, Inc. for GSP as-needed support services.

Additional information on meeting agendas and progress towards GSP development can be found on the MBGSA website at https://www.moundbasingsa.org/.

**Oxnard Plain Groundwater Basin**

The Fox Canyon Groundwater Management Agency (FCGMA) was named in SGMA as the GSA for the Oxnard Plain and Pleasant Valley Groundwater Basins. The City participates in various FCGMA committees in the development of a GSP for the Oxnard Plain and Pleasant Valley Basins. Over the past two and a half years, the Ventura Water General Manager has participated on the Municipal and Industrial (M&I) stakeholder group. The stakeholder group is comprised of the City of San Buenaventura, City of Camarillo, City of Oxnard, City of Port Hueneme, Channel Islands Beach Community Services District, Port Hueneme Naval Base, and Camrosa Water District. The primary focus of GSP negotiations has been on the split of the total allocations between agricultural pumping compared to M&I.

The FCGMA Board released the Preliminary Draft GSPs for the Oxnard, Pleasant Valley, and Las Posas Valley Basins for a 90-day public comment period on January 3, 2018. The Preliminary Draft GSP for the Oxnard Plain Basin did not include several sections that would be required to have a complete draft GSP that meets SGMA requirements. The Agency received 28 comment letters on the Preliminary Draft GSPs by the close of the public comment period. The comment letters are posted on the Agency website.
www.fcgma.org. The consultant preparing the GSP summarized the comments and presented common themes and decision points to the FCGMA Board in May and June 2018. Revised draft GSPs were released for 60-day public comment period on July 24, 2019. The Public Comment Period will close on September 23, 2019. Staff is currently working to review the GSPs and develop comments. The Water Commission should forward any comments/concerns to City staff for consideration. Workshops to discuss the GSPs are scheduled for August 21, 2019 (Oxnard Plain) and August 28, 2019 (Las Posas Valley). The final GSPs are expected to be ready for Board adoption at the December 13, 2019 special meeting.

FCGMA staff has been working with stakeholders since October 2015 to develop a new pumping allocation system be developed for the Oxnard and Pleasant Valley (OPV) Basins consistent with SGMA. The intent was to implement a new allocation system by October 1, 2018. In June 2018, the Board directed that the Emergency Ordinance E allocation system continue through 2018 with the goal of transitioning to a new fixed allocation system on January 1, 2019. Following significant discussions and revisions of the proposed ordinance, FCGMA staff recommended an effective date of October 1, 2019. Staff presented a revised draft ordinance for adoption at the June 26, 2019, Board meeting. Several stakeholders noted issues with the Santa Clara River flex allocation language and the Board tasked the Executive Committee with working with FCGMA to staff and stakeholders to resolve the issue. At its meeting on July 15, the Executive Committee asked FCGMA staff to explore an alternate approach to the Santa Clara River allocation language. City staff is concerned that this will delay implementation of the revised ordinance (and replacement of Emergency Ordinance E) and made comments to that effect at the July 24, 2019 Board meeting. On August 15, 2019, City staff organized a meeting of the other M&I users and invited FCGMA staff to provide an update on the Santa Clara River allocation language and discuss a path forward for implementation of the allocation ordinance. City staff was pleased with the approach that FCGMA is taking and that the schedule is to take the allocation ordinance to the Board in September for adoption. However, FCGMA staff stated that he plans to recommend an implementation date of October 1, 2020. The City and the other M&I users find this timing to be unacceptable and are discussing options to recommend sooner implementation of the allocation ordinance or, alternatively, rescission of the allocation restrictions of Emergency Ordinance E if earlier implementation is not feasible. City staff is drafting a letter and plans to present its comments to the Board at its August 28, 2019 meeting.

Santa Paula Basin
In March 1996, the Superior Court of the State of California for the County of Ventura entered a stipulated judgment to establish pumping allocations and a management plan for the Santa Paula Groundwater Basin (United Water Conservation District vs. City of San Buenaventura, original March 7, 1996, amended August 24, 2010 [hereinafter “Judgment”]). The Judgment provides for the creation of a Santa Paula Basin Technical Advisory Committee (TAC) with equal representation from UWCD, the Santa Paula Basin Pumpers Association (SPBPA), and the City of San Buenaventura. The TAC is charged with establishing a program to “monitor conditions in the basin, including but not necessarily limited to verification of future pumping amounts, measurements of groundwater levels, estimates of inflow to and outflow from the basin, increases and decreases in groundwater
storage, and analyses of groundwater quality.” The Judgment also allows for the development of a management plan for the operation of the basin and empowers the TAC to determine the safe yield of the basin.

The Judgment requires annual reports to be prepared summarizing results of the monitoring program. The latest annual report (The 2017 Santa Paula Basin Annual Report) was completed and submitted to the Court on April 29, 2019.

In addition to the TAC, a Santa Paula Basin TAC Working Group was established in 2010 consisting of technical experts from United, the SPBPA, and the City. Since its formation, the Working Group has completed a series of specialty studies to better understand the factors that affect safe yield in the Basin. The Working Group is currently evaluating metrics (“triggers”) that will be used to evaluate whether and to what extent the basin might be negatively affected by future pumping and considering options to enhance safe yield of the basin. A draft study entitled, “Groundwater Elevation Triggers for the Santa Paula Basin” has been prepared. A Working Group meeting was held in July 2019 to discuss comments on this draft study. It is expected that another Working Group meeting will be held within the next two months before the next TAC meeting.

The primary groundwater management objective in the Santa Paula Basin is to ensure that production from the basin does not exceed the long-term sustainable yield of the suitable-quality groundwater for current and anticipated future uses. The TAC’s specialty studies and annual monitoring reports provide data and analysis intended to support this objective.

Prepared by Jennifer Tribo, Management Analyst II for:

[Signature]

Susan Rungren
Ventura Water General Manager
To: Ventura Water Commission

From: Susan Rungren, Ventura Water General Manager

Subject: Amendment No. 14 (Contract Extension Amendment) to the Water Supply Contract between the State of California Department of Water Resources and the Ventura County Watershed Protection District

RECOMMENDATIONS

Staff recommends the Water Commission recommend that City Council adopt a resolution directing the Ventura County Watershed Protection District to approve a Resolution Authorizing Amendment No. 14 (Contract Extension Amendment) to the Water Supply Contract between the State of California Department of Water Resources and the Ventura County Watershed Protection District.

PREVIOUS ACTIONS

August 28, 2018 – Water Commission received an update on the State Water Contract Extension and Amendments for Water Management and California WaterFix

SUMMARY

In 1963, the Ventura County Flood Control District (VCFCD) (now Ventura County Watershed Protection District) entered into an agreement with the State to purchase entitlement to 20,000 acre-feet of State Water. In June 1970, the VCFCD assigned its entitlement to Casitas Municipal Water District (Casitas). In 1971, the City of San Buenaventura (City) executed an agreement with Casitas and the Department of Water Resources (DWR) to allocate 10,000 acre-feet per year of State Water entitlement to the City. The City’s annual payment ranges from $1.2 million to $1.8 million.

The current contract expires in 2038, and the State Water Project (SWP) repayment period runs through 2035. Because costs are amortized through 2035 and because capital improvement project bonds are not issued beyond 2035, the compressed financing period results in higher than- normal annual costs. For this reason, the 29 SWP Contractors (Contractors) and DWR entered into negotiations to extend the term of the Water Supply Project Contracts. As a result of these negotiations, the Contractors and DWR have negotiated the Agreement in Principle (AIP) to extend the contract for 50 years to December 31, 2085 and to provide certain financial management enhancements. With the AIP as a foundation, DWR performed environmental review to
comply with the California Environmental Quality Act (CEQA), and negotiated final contract language. The substantive provisions for the State Water Project Contract Extension Amendment (Attachment B) were finalized in February 2018 and presented to the Legislature at two informational sessions in July and September 2018. DWR approved the amendment on December 11, 2018. Since the named SWP contract holder is the Ventura County Watershed Protection District, the City of Ventura needs to direct the County Board of Supervisors to authorize the contract extension amendment to the Water Supply Contract on behalf of the City. The current consolidated contract for Ventura County Watershed Protection District can be found here:  https://water.ca.gov/Programs/State-Water-Project/Management/SWP-Water-Contractors.

BACKGROUND

The State of California entered into long-term water supply contracts with water agencies in the 1960s. Under the contract terms, the Department of Water Resources (DWR) provides water service to these public agencies, known as State Water Project Contractors, from the State Water Project (SWP) in exchange for payments that will recoup all costs associated with providing this water service over the life of the SWP. SWP Contractors must make payments regardless of the amount of SWP water actually received. Additional payments are made by each SWP contractor based on the amount of SWP water delivered to their agency. The State Water Contracts require payments to DWR in return for participation in the SWP storage and conveyance system. All SWP Contractors must make payments according to their respective Table A contract amounts and for the portion of the SWP conveyance system needed to deliver their contracted water.

DISCUSSION

The proposed Amendment extends the contract for 50 years to December 31, 2085 and provides certain financial management enhancements. The key financial management enhancements are a revised billing methodology to remedy the compressed financing period issue, establishment of a State Water Resources Development System (SWRDS) Finance Committee to provide a forum to discuss financial policy, and a creation of a new reserve and funding structure to deal with financial emergencies and specific reporting requirements.

Revised Billing Methodology

Under the current contract, certain costs are amortized through the project repayment period (currently 2035). The Amendment provides for a revised billing methodology known as “Freeze-Go.” Under this methodology, costs incurred before the “Freeze-Go” date will continue to be collected under the current methodology, and costs incurred after that date will be recovered on a current basis (pay-as-you-go). The Amendment also expands the facilities authorized for bond financing, limits supplemental billing and defines costs for the enhancement of fish and wildlife or the development of public
recreation as non-reimbursable costs (i.e., not to be included in Contractor bills for water and power).

**SWRDS Finance Committee**
The Amendment includes establishing a SWRDS Finance Committee to provide a forum for Contractors and DWR to discuss high-level financial policy issues. The Committee will be comprised of five representatives from the Contractors and five from DWR. The Committee will make formal recommendations to the DWR Director. The Committee will meet at least two times per year. The Committee Charter provides for DWR to hire a SWRDS Chief Financial Manager to serve as a single point of authority over all SWRDS financial matters. Related to these efforts, the amendment also defines principles and guidelines for SWRDS financial reporting.

**Funding Structure**
Extending the contract and changing the billing methodology will change the current flow of funds. The Amendment provides a new funding and reporting structure to address this situation. In general, the General Operating Reserve Account is increased from $22.7 million to $150 million to deal with financial emergencies, a SWRDS Reinvestment Account is created to reinvest revenues in SWP facilities to generate a return on investment, and a SWRDS Support Account is created to provide funding for non-reimbursable expenditures. DWR will prepare regular reports on the status of these funds, and through the DWR Director, will share the reports with the SWRDS Finance Committee.

**California Environmental Quality Act (CEQA)**
The proposed Amendment is entirely financial in nature. It will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. DWR, acting as Lead Agency, prepared and circulated a Draft Environmental Impact Report (EIR) for the proposed Amendment in August 2016. On November 13, 2018, DWR certified the Final EIR for the Amendment. The Final EIR did not identify any significant impacts associated with the Amendment’s approval and implementation. Accordingly, CEQA did not require DWR to adopt Findings of Fact, Statement of Overriding Consideration, or Mitigation Monitoring and Reporting Program. The Final EIR can be found on the official DWR website at: [https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension](https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension). Before approving the proposed Amendment, Ventura County Watershed Protection District, as a Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information in the certified Final EIR.

Prepared by Jennifer Tribo, Management Analyst II, for:

Susan Rungren
Ventura Water General Manager
Attachment:

A. Draft Resolution Directing the Ventura County Watershed Protection District to approve a Resolution Authorizing Amendment No. 14 (Contract Extension Amendment) to the Water Supply Contract between the State of California Department of Water Resources and the Ventura County Watershed Protection District.

B. Execution Version of Amendment 14 State Water Project Extension
ATTACHMENT A

DRAFT RESOLUTION DIRECTING THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT TO APPROVE A RESOLUTION AUTHORIZING AMENDMENT NO. 14 (CONTRACT EXTENSION AMENDMENT) TO THE WATER SUPPLY CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT.
RESOLUTION NO. 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, DIRECTING THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT TO APPROVE AMENDMENT NO. 14 (CONTRACT EXTENSION AMENDMENT) TO THE WATER SUPPLY CONTRACT BETWEEN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT AND THE DEPARTMENT OF WATER RESOURCES ON BEHALF OF THE CITY OF SAN BUENAVENTURA

WHEREAS, the parties to the State Water Project Supply Contracts (Contracts), California Department of Water Resources (“DWR”) and the individual State Water Contractors, entered into public negotiations to extend the Contracts’ terms, and the negotiations resulted in the Agreement in Principle Concerning Extension of the State Water Project Supply Contracts (AIP); and,

WHEREAS, the Water Supply Contract Extension Project (Extension) is proposed by the DWR to extend the terms and modify certain financial provisions of the Contracts; and,

WHEREAS, DWR is the lead agency for the Extension pursuant to CEQA (Pub. Res. Code §§ 21000, et seq.) and the State CEQA Guidelines (14 CCR §§ 15000, et seq.). As the lead agency, DWR is responsible for assuring that an adequate analysis of the Extension’s environmental impacts - if any - is conducted; and,

WHEREAS, on September 12, 2014, DWR issued a Notice of Preparation stating that it would be preparing an Environmental Impact Report (EIR) to study the Extension’s potential impacts - if any - to the environment; and,

WHEREAS, in August 2016, DWR issued and publicly circulated for review a Draft Environmental Impact Report (DEIR) for the Extension. The DEIR included a copy of the AIP as Exhibit B and studied the environmental impacts of the AIP; and,
WHEREAS, DWR prepared a Final Environmental Impact Report for the Extension, which included the DEIR, appendices, comments on the DEIR, responses to comments on the DEIR, and revisions to the DEIR (collectively, FEIR), and on November 13, 2018, DWR certified the FEIR; and,

WHEREAS, the FEIR concluded that the Extension would not cause any potentially significant effects to the environment; and,

WHEREAS, the Ventura County Watershed Protection District is the currently named contract holder for the State Water Contract with the California Department of Water Resources; and,

WHEREAS, the City of San Buenaventura holds by contract with Casitas 10,000 acre-feet of the State Water Project entitlement; and,

WHEREAS, the City of San Buenaventura, Casitas Municipal Water District, and United Water Conservation District share the water entitlement and related costs connected to the State Water Project (SWP) contract with DWR; and,

WHEREAS, DWR proposes to extend the term of and make certain financial reporting and other financial changes to the Contracts by approving the Extension, the potential environmental effects of which were studied in the FEIR; and,

WHEREAS, DWR approved the Extension on December 11, 2018; and,

WHEREAS, the City Council has received information in regard to the tenets and details of the SWP Water Supply Contract Extension Amendment (Amendment No. 14), attached to this Resolution as Attachment 1.
NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby resolve, find, determine and order as follows:

Section 1: The FEIR for the Water Supply Extension Project certified by DWR on November 13, 2018 adequately analyzes the potential environmental effects of the SWP Water Supply Contract Extension Amendment (Amendment No. 14), in accordance with CEQA Guidelines Sections 15050 and 15096.

Section 2: The City of San Buenaventura directs the Ventura County Watershed Protection District to review and consider the FEIR pursuant to State CEQA Guidelines section 15096 in its limited role as a responsible agency under CEQA.

Section 3: The City of San Buenaventura directs the Ventura County Watershed Protection District to approve the SWP Water Supply Contract Extension Amendment (Amendment No. 14) with DWR, which is incorporated herein and attached hereto as Attachment 1.

Section 4: The City Manager is authorized to execute any documents necessary on behalf of the City of San Buenaventura to affect the extension of the SWP Agreement as reflected in Amendment No. 14 to the SWP Water Supply Contract between the Ventura County Watershed Protection District and DWR for the benefit of the City of San Buenaventura.

Section 5: This Resolution will take effect immediately upon adoption.
PASSED AND ADOPTED this ___ day of September, 2019.

__________________________
Matt LaVere, Mayor

ATTEST:

__________________________
Antoinette M. Mann, MMC, CRM
City Clerk

APPROVED AS TO FORM
GREGORY G. DIAZ, City Attorney

BY:

__________________________
Miles P. Hogan
Assistant City Attorney II
ATTACHMENT B

EXECUTION VERSION OF AMENDMENT 14 STATE WATER PROJECT EXTENSION
AMENDMENT NO. 14 (THE CONTRACT EXTENSION AMENDMENT) TO WATER SUPPLY CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND VENTURA COUNTY WATERSHED PROTECTION DISTRICT FOR CONTINUED SERVICE AND THE TERMS AND CONDITIONS THEREOF

THIS AMENDMENT to the Water Supply Contract is made this _________ day of __________________, 201__, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the “State,” and Ventura County Watershed Protection District, herein referred to as the “Agency.”
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RECITALS

A. The State and the Agency entered into and subsequently amended a water supply contract (the “contract”), dated December 02, 1963, providing that the State shall supply certain quantities of water to the Agency and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and

B. Article 2 of the contract provides that the contract shall remain in effect for the longest of the following: (1) the project repayment period, which, as defined in the contract, is to end on December 31, 2035; (2) 75 years from the original date of the contract; and (3) the period ending with the latest maturity date of any bond issue used to finance the construction costs of project facilities; and

C. The longest of the above referenced periods in Article 2 would have ended in this contract on December 02, 2038; and

D. Article 4 of the contract provides that the Agency, by written notice to the State at least six (6) months prior to the expiration of the term of the contract (as specified in Article 2), may elect to receive continued service under the contract under certain conditions specified therein and under other terms and conditions that are reasonable and mutually agreed upon by the State and the Agency; and

E. The State, the Agency and representatives of certain other State Water Project Contractors have negotiated and executed a document (Execution Version dated June 18, 2014), the subject of which is “Agreement in Principle Concerning Extension of the State Water Project Water Supply Contracts” (the “Agreement in Principle”); and

F. The Agreement in Principle describes the terms and conditions of the continued service upon which the State and the Agency mutually proposed to develop contractual amendments consistent with the Agreement In Principle; and

G. The State, the Agency and those Contractors intending to be subject to the contract amendments contemplated by the Agreement in Principle subsequently prepared an amendment to their respective contracts to implement the provisions of the Agreement in Principle, and such amendment was named the “Amendment for Continued Service and the Terms and Conditions Thereof”; and
H. The State and the Agency desire to implement continued service under the contract under the terms and conditions of this Amendment for Continued Service and the Terms and Conditions Thereof to the water supply contract; and

I. The Agency’s execution of this Amendment for Continued Service and the Terms and Conditions Thereof is the equivalent of the Agency’s election under Article 4 to receive continued service under the contract under the conditions provided in Article 4, and the mutually agreed terms and conditions herein are the other reasonable and equitable terms and conditions of continued service referred to in Article 4.
NOW, THEREFORE, IT IS MUTUALLY AGREED that the following changes and additions are hereby made to the Agency’s water supply contract with the State:

AMENDED CONTRACT TEXT

I. ARTICLES 1, 2, 22 THROUGH 29, 50 AND 51 ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING TEXT:

1. DEFINITIONS.

When used in this contract, the following terms shall have the meanings hereinafter set forth:

(a) “Additional Project Conservation Facilities” shall mean the following facilities and programs, which will serve the purpose of preventing any reduction in the Minimum Project Yield as hereinafter defined:

(1) Those Project Facilities specified in Section 12938 of the Water Code;

(2) Those facilities and programs described in (A), (B), (C), (D), and (E) below which, in the State’s determination, are engineeringly feasible and capable of producing Project Water which is economically competitive with alternative new water supply sources, provided that in the State’s determination, the construction and operation of such facilities and programs will not interfere with the requested deliveries of Annual Table A Amount to any Contractor other than the sponsoring Contractor, and will not result in any greater annual charges to any Contractor other than the sponsoring Contractor than would have occurred with the construction at the same time of alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct.

The following facilities and programs shall hereinafter be referred to as “Local Projects”:

(A) On-stream and off-stream surface storage reservoirs not provided for in Section 12938 of the Water Code, that will produce Project Water for the System for a period of time agreed to by the sponsoring Contractor;

(B) Groundwater storage facilities that will produce Project Water for the System for a period of time agreed to by the sponsoring Contractor;
(C) Waste water reclamation facilities that will produce Project Water for the System for a period of time agreed to by the sponsoring Contractor;

(D) Water and facilities for delivering water purchased by the State for the System for a period of time agreed to by the sponsoring Contractor; provided that the economic test specified herein shall be applied to the cost of these facilities together with the cost of the purchased water; and

(E) Future water conservation programs and facilities that will reduce demands by the sponsoring Contractor for Project Water from the System for a period of time agreed to by the sponsoring Contractor and will thereby have the effect of increasing Project Water available in the Delta for distribution.

(3) Whether a Local Project described in (2) above shall be considered economically competitive shall be determined by the State by comparing, in an engineering and economic analysis, such Local Project with alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The analysis for such alternative new water supply sources shall use the average cost per acre-foot of yield in the latest studies made for such sources by the State and shall compare those facilities with the proposed Local Project using commonly accepted engineering economics. In the case of a Local Project to be funded in part by the State as part of the System and in part from other sources, the economic analysis specified herein shall be applied only to the portion to be funded by the State as part of the System.

(4) The Local Projects in (2) above shall not be constructed or implemented unless or until:

(A) The sponsoring Contractor signs a written agreement with the State which:

   (i) Contains the sponsoring Contractor’s approval of such facility or program;

   (ii) Specifies the yield and the period of time during which the water from the Local Project shall constitute Project Water; and

   (iii) Specifies the disposition of such Local Project or of the yield from such Local Project upon the expiration of such period of time.
(B) All Contractors within whose boundaries any portion of such Local Project is located, and who are not sponsoring Contractors for such Local Project give their written approval of such Local Project.

(5) “Sponsoring Contractor” as used in this Article 1(a) shall mean the Contractor or Contractors who either will receive the yield from facilities described in 2(A), (B), (C), or (D) above, or agree to reduce demands for Project Water from the System pursuant to 2(E) above.

(6) In the event of a shortage in water supply within the meaning of Article 18(a), the determination of whether to count, in whole or in part, the yield from facilities described in 2(A), (B), (C), or (D) above, or the reduced demand from future conservation programs described in 2(E) above in the allocation of deficiencies among Contractors will be based on a project-by-project evaluation taking into consideration such factors as any limitation on the use of the water from such facilities and whether the sponsoring Contractor has access to Project Water from the Delta as an alternate to such facilities.

(b) “Agricultural Use” shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stock-watering purposes.

c) “Annual Table A Amount” shall mean the amount of Project Water set forth in Table A of this Contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the Agency at the delivery structures provided for the Agency. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of Project Water available to the Agency. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions only a lesser amount, allocated in accordance with this contract, may be made available to the Agency. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the Project Facilities, to perfect and protect water rights, and to allocate among Contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term “annual entitlement” appears elsewhere in this contract, it shall mean “Annual Table A Amount.” The State agrees that in future amendments to this and other Contractor’s contracts, in lieu of the term “annual entitlement,” the term “Annual Table A
Amount” will be used and will have the same meaning as “annual entitlement” wherever that term is used.

  (d) “Area of Origin Statutes” shall mean Sections 10505 and 11460 through 11463 of the Water Code as now existing or hereafter amended.

  (e) “Article 51(e) Amounts” shall mean the annual amounts determined pursuant to Article 51(e)(1).

  (f) “Billing Transition Date” shall mean January 1 of the first calendar year starting at least six (6) months after the Contract Extension Amendment Effective Date.

  (g) “Burns-Porter Bond Act” shall mean the California Water Resources Development Bond Act, comprising Chapter 8, commencing at Section 12930, of Part 6 of Division 6 of the Water Code, as enacted in Chapter 1762 of the Statutes of 1959.

  (h) “Capital Costs” shall mean all costs Incurred subsequent to authorization of a facility for construction by the Legislature or by administrative action pursuant to Section 11290 of the Water Code and to the Burns-Porter Bond Act, including those so Incurred prior to the beginning of the Project Repayment Period as herein defined and any accrued unpaid interest charges thereon at the rates specified herein, which are properly chargeable to the construction of and the furnishing of equipment for the facilities of the System, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights-of-way, and relocation work, all as shown upon the official records of the Department of Water Resources.

  (i) “Carry-over Table A Water” shall mean water from a Contractor’s Annual Table A Amount for a respective year, which is made available for delivery by the State in the next year pursuant to Article 12(e).

  (j) “Central Valley Project Act” shall mean the Central Valley Act comprising Part 3, commencing at Section 11100, of Division 6 of the Water Code.

  (k) “Contract Extension Amendment” shall mean the substantially similar amendments to the Contractors’ Water Supply Contracts that include, among other things, an extension of the term of the contract to December 31, 2085.

  (l) “Contract Extension Amendment Effective Date” shall mean the date on which the Contract Extension Amendment becomes effective with regard to this contract. The State shall provide a written notice to the Agency specifying the Contract Extension Amendment Effective Date once the applicable conditions set out in the Contract Extension Amendment have been met.

  (m) “Contractor” shall mean any entity that has executed, or is an assignee of, a contract of the type published in Department of Water Resources Bulletin No. 141,
dated November 1965, with the State for a dependable supply of water made available by the System, except such water as is made available by the facilities specified in Section 12934(d)(6) of the Water Code, as such contracts have been amended from time to time.

(n) “Delta” shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code on the date of approval of the Burns-Porter Bond Act by the voters of the State of California.

(o) “East Branch Aqueduct” shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Perris, Riverside County.

(p) “Economic Useful Life” shall mean the period during which the State expects to derive economic benefit from using an asset, as determined by the State.

(q) “Financial Information System” shall mean the system of record designated by the State as the authoritative source for the recording of all financial data values relating to the System.

(r) “Financing Costs” shall mean the following:

(1) principal of and interest on Revenue Bonds,

(2) debt service coverage required by the applicable bond resolution or indenture in relation to such principal and interest,

(3) deposits to reserves required by the bond resolution or indenture in relation to such Revenue Bonds, and

(4) premiums for insurance or other security obtained in relation to such Revenue Bonds.

(s) “Incurred” shall mean the following with respect to the timing of a cost:

(1) Capital Costs and operation, maintenance, and power costs allocated irrespective of the amount of Project Water delivered to the Contractors are “Incurred” when the expenditure for the good, service or other consideration is recorded in the State’s financial information system, regardless of the date the good, service or other consideration is provided; and

(2) operation, maintenance, and power costs allocated in an amount which is dependent upon and varies with the amount of Project Water delivered to the Contractors are “Incurred” when the good, service or other consideration is provided, regardless of when the expenditure for the good, service or other
consideration is recorded in the financial information system.

(t) “Initial Project Conservation Facilities” shall mean the following Project Facilities specified in Section 12934(d) of the Water Code:

(1) All those facilities specified in subparagraph (1) thereof.

(2) Those facilities specified in subparagraph (3) thereof to the extent that they serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.

(3) A reservoir near Los Banos in Merced County as specified in subparagraph (2) thereof.

(4) The reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to a reservoir near Los Banos in Merced County, to the extent required for water conservation through conveyance of water diverted from the Delta to offstream storage in such reservoir as determined by the State.

(5) Those facilities specified in subparagraph (5) thereof which are incidental to the facilities included under (1), (2), (3), and (4) above.

(6) Those facilities specified in subparagraph (7) thereof which are necessary and appurtenant to the facilities included under (1), (2), (3), (4), and (5) above.

(u) “Interruptible Water” shall mean Project Water available as determined by the State that is not needed for fulfilling Contractors’ Annual Table A Amount deliveries as set forth in their water delivery schedules furnished pursuant to Article 12 or for meeting project operational requirements, including storage goals for the current or following years.

(v) “Manufacturing Use” shall mean any use of water primarily in the production of finished goods for market.

(w) “Maximum Annual Table A Amount” shall mean the maximum annual amount set forth in Table A of this contract, and where the term “maximum annual entitlement” appears elsewhere in this contract it shall mean “Maximum Annual Table A Amount.”

(x) “Minimum Project Yield” shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project’s capability of providing the Minimum Project Yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors
including but not limited to:

(1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts for all Contractors and the characteristic distributions of demands for these two uses throughout the year; and

(2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

(y) “Monterey Amendment” shall mean the substantially similar amendments to Contractors’ Water Supply Contracts that included, among other provisions, the addition of Articles 51 through 56.

(z) “Municipal Use” shall mean all those uses of water common to the municipal water supply of a city, town, or other similar population group, including uses for domestic purposes, uses for the purposes of commerce, trade or industry, and any other use incidental thereto for any beneficial purpose.

(aa) “Nonproject Water” shall mean water made available for delivery to Contractors that is not Project Water as defined in Article 1(ah).

(ab) “Project Facilities” shall mean those facilities of the System which will, in whole or in part, serve the purposes of this contract by conserving water and making it available for use in and above the Delta and for export from the Delta and from such additional facilities as are defined in Article 1(a)(2), and by conveying water to the Agency. Such Project Facilities shall consist specifically of “Project Conservation Facilities” and “Project Transportation Facilities”, as hereinafter defined.

(ac) “Project Conservation Facilities” shall mean such Project Facilities as are presently included, or as may be added in the future, under 1(a) and 1(t).

(ad) “Project Interest Rate” shall mean the following:

(1) Prior to the Billing Transition Date, the weighted average interest rate on bonds, advances, or loans listed in this section to the extent the proceeds of any such bonds, advances, or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities (except off-aqueduct power facilities; water system facilities; advances for delivery structures, measuring devices and excess capacity; and East Branch Enlargement Facilities). The Project Interest Rate shall be calculated as a decimal fraction to five places by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total
of the products of the various principal amounts and the respective terms in years of all such amounts. The bonds, advances, or loans used in calculating the project interest rate shall be:

(A) General obligation bonds issued by the State under the Bond Act, except that any premium received on the sale of these bonds shall not be included in the calculation of the project interest rate,

(B) Revenue Bonds issued after May 1, 1969,

(C) Bonds issued by the State under any other authority granted by the Legislature or the voters,

(D) Bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,

(E) Funds advanced by any Contractor without the actual incurring of bonded debt therefore, for which the net interest cost and terms shall be those which would have resulted if the Contractor had sold bonds for the purpose of funding the advance, as determined by the State,

(F) Funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Surplus Money Investment Fund of such Treasury invested in securities, and

(G) Any other financing capability available in the Treasury of the State of California at whatever interest rate and other financing costs are provided in the law authorizing such borrowing. However, the use of other financing from the State Treasury is intended to involve only short term borrowing at interest rates and other financing costs no greater than those charged to other State agencies during the same period until such time as the Department can sell bonds and reimburse the source of the short term borrowing from the proceeds of the bond sale.

(2) On and after the Billing Transition Date, the Project Interest Rate shall be four and six hundred and ten thousandths percent (4.610%) per annum.

(ae) “Project Repayment Period” shall mean that period of years commencing on January 1, 1961, and extending until December 31, 2035.

#af) “Project Revenues” shall mean revenues derived from the service of Project Water to Contractors and others, and from the sale or other disposal of electrical energy generated in connection with operation of Project Facilities.
“Project Transportation Facilities” shall mean the following Project Facilities:

(1) All those facilities specified in subparagraph (2) of Section 12934(d) of the Water Code except: The reservoir near Los Banos in Merced County; the reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to the reservoir near Los Banos in Merced County, to the extent required for water conservation as determined by the State; the North Bay Aqueduct extending to a terminal reservoir in Marin County; the South Bay Aqueduct extending to terminal reservoirs in the Counties of Alameda and Santa Clara; the Pacheco Pass Tunnel Aqueduct extending from a reservoir near Los Banos in Merced County to a terminus in Pacheco Creek in Santa Clara County; and the Coastal Aqueduct beginning on the San Joaquin Valley-Southern California Aqueduct in the vicinity of Avenal, Kings County, and extending to a terminus at the Santa Maria River.

(2) Facilities for the generation and transmission of electrical energy of the following types:

(A) Hydroelectric generating and transmission facilities, whose operation is dependent on the transportation of Project Water, or on releases to channels downstream of Project Facilities defined under (1) above. Such facilities shall be called “project aqueduct power recovery plants”, and

(B) All other generating and associated transmission facilities, except those dependent on water from Project Conservation Facilities, for the generation of power. These facilities shall be called “off-aqueduct power facilities” and shall consist of the State’s interest in the Reid-Gardner and any other generating and associated transmission facilities, constructed or financed in whole or in part by the State, which are economically competitive with alternative power supply sources as determined by the State.

(3) Those facilities specified in subparagraph (7) of Section 12934(d) of the Water Code which are necessary and appurtenant to the facilities included under (1) and (2) above.

“Project Water” shall mean water made available for delivery to the Contractors by the Project Conservation Facilities and the Project Transportation Facilities included in the System.

“Revenue Bonds” shall mean the following types of instruments payable from the sources provided in the Central Valley Project Act: revenue bonds, notes, refunding bonds, refunding notes, bond anticipation notes, certificates of indebtedness,
and other evidences of indebtedness.

   (aj)  “Subject to Approval by the State” shall mean subject to the determination and judgment of the State as to acceptability.

   (ak)  “Supplemental Conservation Facilities” shall mean those facilities provided for in Section 12938 of the Water Code which will serve the purpose of supplying water in addition to the Minimum Project Yield and for meeting local needs.

   (al)  “Supplemental Water” shall mean water made available by Supplemental Conservation Facilities, in excess of the Minimum Project Yield.

   (am)  “System” shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code.

   (an)  “System Revenue Account” shall mean the special account created pursuant to Water Code Section 12937(b) into which are deposited all revenues derived from the sale, delivery or use of water or power and all other income or revenue, derived by the State, from the System, with the exception of revenue attributable to facilities financed with revenue bonds issued pursuant to the Central Valley Project Act (Water Code Section 11100 et seq.).

   (ao)  “Water Supply Contract” shall mean one of the contracts described in the definition of Contractor in Article 1(m).

   (ap)  “Water System Facilities” shall mean the following facilities to the extent that they are financed with Revenue Bonds or to the extent that other financing of such facilities is reimbursed with proceeds from Water System Facility Revenue Bonds:

         (1)  The North Bay Aqueduct,

         (2)  The Coastal Branch Aqueduct,

         (3)  Delta Facilities, including Suisun Marsh facilities, to serve the purposes of water conservation in the Delta, water supply in the Delta, transfer of water across the Delta, and mitigation of the environmental effects of Project Facilities, and to the extent presently authorized as project purposes, recreation and fish and wildlife enhancement,

         (4)  Local projects as defined in Article 1(a)(2) designed to develop no more than 25,000 acre-feet of project yield from each project,

         (5)  Land acquisition prior to December 31, 1995, for the Kern Fan Element of the Kern Water Bank,
(6) Additional pumps at the Banks Delta Pumping Plant,

(7) The transmission line from Midway to Wheeler Ridge Pumping Plant,

(8) Repairs, additions, and betterments to Project Facilities,

(9) A Project Facilities corporation yard,

(10) A Project Facilities operation center, and

(11) Capital projects which are approved in writing by the State and eighty (80) percent of the affected Contractors as “Water System Facilities”, provided that the approving Contractors’ Table A amounts exceed eighty (80) percent of the Table A amounts representing all affected Contractors and provided further that “affected Contractors” for purposes of this subdivision (11) shall mean those Contractors which would be obligated to pay a share of the debt service on Revenue Bonds issued to finance such project.


(ar) “West Branch Aqueduct” shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Newhall, Los Angeles County.

(as) “Year” shall mean the 12-month period from January 1 through December 31, both dates inclusive.

(at) “Year of Initial Water Delivery” shall mean the year when Project Water will first be available for delivery to a Contractor pursuant to its contract with the State.
2. **TERM OF CONTRACT.**

   This contract shall become effective on the date first above written and shall remain in effect for the longer of the following:

   1. December 31, 2085, or
   2. The period ending with the latest maturity date of any bond issue used to finance the construction costs of Project Facilities.
22. DELTA WATER CHARGE

The payments to be made by each Contractor shall include an annual charge designated as the Delta Water Charge, which shall be separately calculated and stated for costs Incurred prior to the Billing Transition Date and costs Incurred on or after the Billing Transition Date.

(a) Delta Water Charge for Costs Incurred Prior to the Billing Transition Date. The provisions of this subdivision (a) shall apply only to costs Incurred prior to the Billing Transition Date.

(1) Recovery of Costs of Project Conservation Facilities. The Delta Water Charge for costs Incurred prior to the Billing Transition Date, together with the total revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities, shall return to the State during the Project Repayment Period all costs of the Project Conservation Facilities Incurred prior to the Billing Transition Date, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivisions (c)(1) through (c)(3) of this article.

(2) Components of Charge. For each Contractor receiving Project Water in any year through December 31, 1969, the Delta Water Charge shall be the product of $3.50 and the Contractor’s Annual Table A Amount for the respective year. For each Contractor receiving Project Water in the year 1970, the Delta Water Charge shall be the product of $6.65 and the Contractor’s Annual Table A Amount for that year. The $6.65 rate for the year 1970 shall consist of a capital component of $5.04 and a minimum operation, maintenance, power and replacement component of $1.61. For each Contractor receiving Project Water in the year 1971, the Delta Water Charge shall be the product of $7.24 and the Contractor’s Annual Table A Amount for that year. The $7.24 rate for the year 1971 shall consist of a capital component of $5.44 and a minimum operation, maintenance, power and replacement component of $1.80.

After December 31, 1971, the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall consist and be the sum of the following components as these are computed in accordance with subdivisions (a)(3) and (a)(4) of this article: a capital component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(3) Charge Components Expressed as Rates. The Capital Cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water
Charge for costs Incurred prior to the Billing Transition Date, together with that portion of the revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the Project Repayment Period, respectively, the following categories of the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivisions (c)(1) through (c)(3) of this article:

(A) Capital Costs;

(B) operation, maintenance, power, and replacement costs Incurred irrespective of the amount of Project Water delivered to the Contractors; and

(C) operation, maintenance, power, and replacement costs Incurred in an amount which is dependent upon and varies with the amount of Project Water delivered to the Contractors;

provided that each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities. Each component of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall be computed on the basis of a rate which, when charged during the Project Repayment Period for each acre-foot of the sum of the yearly totals of Annual Table A Amounts of all Contractors, will be sufficient, together with that portion of the revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the Project Repayment Period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$
\frac{(c_1 - r_1)(1 + i)^{-1} + (c_2 - r_2)(1 + i)^{-2} + \cdots + (c_n - r_n)(1 + i)^{-n}}{e_1(1 + i)^{-1} + e_2(1 + i)^{-2} + \cdots + e_n(1 + i)^{-n}}
$$

Where:

\[ i = \text{The Project Interest Rate.} \]
$c = \text{The total costs included in the respective category of costs and Incurred during the respective year of the Project Repayment Period (prior to the Billing Transition Date).}$

$r = \text{That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category and Incurred during the respective year of the Project Repayment Period (prior to the Billing Transition Date).}$

$1, 2, \text{ and } n \text{ appearing below } c \text{ and } r = \text{The respective year of the Project Repayment Period during which the costs included in the respective category are Incurred, } n \text{ being the last year of the Project Repayment Period.}$

$e = \text{With respect to the Capital Cost and minimum operation, maintenance, power, and replacement components, the total of Annual Table A Amounts of all Contractors for the respective year of the Project Repayment Period.}$

$e = \text{With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of Project Water delivered to all Contractors for the respective year of the expired portion of the Project Repayment Period, together with the total of Annual Table A Amounts of all Contractors for the respective year of the unexpired portion of the Project Repayment Period.}$

$1, 2, \text{ and } n \text{ appearing below } e = \text{The respective year of the Project Repayment Period in which the Annual Table A Amounts or Project Water deliveries occur, } n \text{ being the last year of the Project Repayment Period.}$

$n \text{ used as an exponent} = \text{The number of years in the Project Repayment Period.}$

(4) **Determination of Charge Components.** The Capital Cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall be the product of the appropriate rate computed under subdivision (a)(3) of this article and the Contractor’s Annual Table A Amount for the respective year. The
variable operation, maintenance, and power component of the charge shall be the product of the appropriate rate computed under subdivision (a)(3) of this article and the number of acre-feet of Project Water delivered to the Contractor during the respective year; provided, that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, such variable component during such period shall be the product of such rate per acre-foot and the sum of the number of acre-feet of Project Water delivered to the Contractor and the number of acre-feet wasted.

(5) **Redetermination of Rates.** The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (a)(4) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (a)(3) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivisions (a)(3) and (4) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred to construct the Project Conservation Facilities described in subdivisions (c)(1) through (c)(3) of this article, Annual Table A Amounts, deliveries of Project Water, Project Interest Rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining such rates for all preceding years, and actual costs Incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(6) **Water System Facility Revenue Bond Charges.** Notwithstanding provisions of Article 22(a)(1) through (5), the capital and the minimum operation, maintenance, power and replacement component of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall include an annual charge to recover the Agency’s share of the portion of the Water System Facility Revenue Bond Financing Costs allocable to Project Conservation Facilities for Capital Costs Incurred prior to the Billing Transition Date. Charges to the Agency for these costs shall be calculated in accordance with Article 50(a).
(b) **Delta Water Charge for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) of this article shall apply only to costs Incurred on or after the Billing Transition Date.

(1) **Components of the Delta Water Charge for Costs Incurred On or After the Billing Transition Date.** The Delta Water Charge for costs Incurred on or after the Billing Transition Date shall consist of the following components as these are computed in accordance with subdivisions (b)(2) through (b)(4) of this article:

- (A) Capital component,
- (B) Minimum operation, maintenance, power, and replacement component, and
- (C) Variable operation, maintenance, and power component.

(2) **Determination of Charge Components.** These three components of the Delta Water Charge for each calendar year, together with that portion of the revenues derived during such calendar year from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during such calendar year the following categories, respectively, of the costs allocated pursuant to subdivisions (c)(1) through (c)(3) of this article to the purpose of water conservation in, above, and below the Delta.

- (A) the capital component consisting of Capital Costs of Project Conservation Facilities to be recovered during such calendar year as and to the extent provided in subdivision (b)(3) of this article,
- (B) the minimum operation, maintenance, power, and replacement component consisting of operation, maintenance, power, replacement costs of Project Conservation Facilities Incurred during such calendar year irrespective of the amount of Project Water delivered to the Contractors, and
- (C) the variable operation, maintenance, and power component consisting of operation, maintenance, and power costs of Project Conservation Facilities Incurred during such calendar year in an amount
which is dependent upon and varies with the amount of Project Water delivered to the Contractors;

provided that each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities; and provided further that revenues generated in connection with the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities shall not reduce or be credited against charges pursuant to subdivision (b)(3)(D)(i) of this article (charges for Water System Facility Revenue Bond Financing Costs).

(3) Categories of Capital Costs.

(A) The amount of the capital component of the Delta Water Charge shall be determined in three steps as follows:

(i) first, an allocation to the Agency of Capital Costs of Project Conservation Facilities as provided in subdivisions (c)(1) through (c)(3) of this article,

(ii) second, a determination of the type and source of payment of each Capital Cost in accordance with subdivision (b)(3)(B) of this article, and

(iii) third, a computation of the annual payment to be made by the Agency as provided in subdivision (b)(3)(C) and (b)(3)(D) of this article.

(B) Annual Capital Costs of Project Conservation Facilities shall be divided into five categories of type and source of payment:

(i) Project Conservation Facility Capital Costs paid with the proceeds of Water System Facility Revenue Bonds,

(ii) Project Conservation Facility Capital Costs to be paid with the proceeds of Bonds issued under the Burns-Porter Bond Act,

(iii) Project Conservation Facility Capital Costs to be paid with amounts in the SWRDS Reinvestment Account,

(iv) Project Conservation Facility Capital Costs to be paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and
(v) Project Conservation Facility Capital Costs prepaid by the Agency.

(C) The projected amounts of Project Conservation Facility Capital Costs in each such category to be allocated annually to the Agency shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (c)(1) through (c)(3) and (b)(6) of this article, which principles and procedures shall be controlling as to allocations of Capital Costs to the Agency; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such projected amounts will be set forth in Table B by the State.

### TABLE B
PROJECTED ALLOCATIONS TO VENTURA COUNTY WATERSHED PROTECTION DISTRICT OF PROJECT CONSERVATION FACILITY CAPITAL COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs to be Paid with Proceeds of Water System Facility Revenue Bonds</th>
<th>Costs to be Paid with Proceeds of Bonds issued under the Burns-Porter Bond Act</th>
<th>Costs to be Paid with Amounts in the SWRDS Reinvestment Account</th>
<th>Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial</th>
<th>Costs Prepaid by the Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
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<tr>
<td>2</td>
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</table>

* Year commencing with the Billing Transition Date.
(D) The annual amount to be paid by the Agency under the capital component of the Delta Water Charge for each calendar year for costs Incurred on or after the Billing Transition Date shall consist of the following categories:

(i) Water System Facility Revenue Bonds: a charge determined in accordance with Article 50(b) to recover Water System Facility Revenue Bond Financing Costs Incurred during such calendar year that relate to the financing of Project Conservation Facilities,

(ii) Burns-Porter Act Bonds: a charge to recover the amount to be paid by the State of California during such calendar year in accordance with the Burns-Porter Bond Act for the principal of and interest on bonds issued under the Burns-Porter Bond Act on or after the Billing Transition Date for Project Conservation Facility Capital Costs,

(iii) SWRDS Reinvestment Account: a charge determined in accordance with subdivision (b)(5) of Article 61 to amortize Project Conservation Facility Capital Costs Incurred during prior calendar years (but not prior to the Billing Transition Date) that have been paid with amounts from the SWRDS Reinvestment Account, and

(iv) Capital Assets with Short Economic Life or Costs of which are Not Substantial: a charge to recover the Capital Costs to be Incurred during such calendar year of Project Conservation Facility assets with a short Economic Useful Life or the costs of which are not substantial as determined by the State and any such Capital Costs Incurred but not charged in the prior two calendar years.

(E) The projected amounts of each category of charges to be paid annually by the Agency under this capital component shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision (b), which principles and procedures shall be controlling as to allocations of types of capital component charges to the Agency; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table C by the State.
TABLE C
PROJECTED CHARGES TO
VENTURA COUNTY WATERSHED PROTECTION DISTRICT
UNDER THE CAPITAL COMPONENT OF THE DELTA WATER CHARGE FOR COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs to be Paid with Proceeds of Water System Facility Revenue Bonds</th>
<th>Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act</th>
<th>Costs to be Paid with Amounts in the SWRDS Reinvestment Account</th>
<th>Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tbody>
</table>

* Year commencing with the Billing Transition Date.

(4) Minimum Operation, Maintenance, Power and Replacement Charge – Determination; Repayment Table.

The amount to be paid each year by the Agency under the minimum operation, maintenance, power, and replacement component of the Delta Water Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (b)(6)(A) of this article; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table D by the State.
### TABLE D
DELTA WATER CHARGE -- ESTIMATED MINIMUM OPERATION, MAINTENANCE, POWER AND REPLACEMENT COMPONENT FOR COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE
VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Annual Payment by Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
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<td>2</td>
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</tbody>
</table>

* Year commencing with the Billing Transition Date.

(5) **Variable Operation, Maintenance and Power Charge—Determination; Repayment Table.**

The amount to be paid each year by the Agency under the variable operation, maintenance and power component of the Delta Water Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (b)(6)(B) of this article; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table E by the State.
TABLE E
DELTA WATER CHARGE -- ESTIMATED VARIABLE OPERATION, MAINTENANCE AND POWER COMPONENT FOR COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE
VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Annual Payment by Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
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</tbody>
</table>

* Year commencing with the Billing Transition Date.

(6)  Allocation of Charges to the Agency.

(A)  The capital and minimum operation, maintenance, and power components of the Delta Water Charge for each calendar year for costs incurred on or after the Billing Transition Date shall be allocated to the Agency in proportion to the ratio of the Agency’s Annual Table A Amount for such calendar year to the total of the Annual Table A Amounts for all Contractors for such calendar year.

(B)  The variable operation, maintenance, and power component of the Delta Water Charge for each calendar year for costs incurred on or after the Billing Transition Date shall be allocated to the Agency in proportion to the ratio of the number of acre-feet of Project Water delivered to the Agency during such calendar year to the number of acre-feet of Project Water delivered to all Contractors during such calendar year; provided that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, such variable component during such period shall be calculated as if the number of acre-feet wasted had been delivered.

(7)  Delta Water Charge -- Repayment Schedule.

The amounts to be paid by the Agency for each year on or after the Billing Transition Date under the Capital Cost component, minimum operation, maintenance, power and replacement component and the variable operation, maintenance, and power component of the Delta Water Charge shall be set forth by the State in Table F, which Table F shall constitute a summation of Tables C, D, and E; provided that each of the amounts set forth in Table F shall be subject to redetermination by the State in accordance with Article 28; provided further
that the principles and procedures set forth in this Article 22 shall be controlling as to such amounts. Such amounts shall be paid by the Agency in accordance with the provisions of Article 29.

TABLE F
REPAYMENT SCHEDULE -- DELTA WATER CHARGE FOR COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE
VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Capital Cost Component</th>
<th>Minimum Component</th>
<th>Variable Component</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
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</tbody>
</table>

* Year commencing with the Billing Transition Date.

(c) Provisions Applicable to the Delta Water Charge for Costs Incurred Both Before and On or After the Billing Transition Date. The provisions of this subdivision (c) shall be applicable to costs Incurred both prior to and on or after the Billing Transition Date.

(1) Allocation of Costs to Project Purposes.

(A) Prior to the time that Additional Project Conservation Facilities or Supplemental Conservation Facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those Initial Project Conservation Facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following Project Facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Harvey O. Banks Delta Pumping Plant), the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: provided, that all of the actual and projected costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities shall be allocated to the purpose of water conservation in, above, and below the Delta; provided further, that allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.
(B) Wherever reference is made, in connection with the computation, determination, or payment of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities that are reimbursable by the Contractors as determined by the State.

(C) The State, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the State, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs. Such recreational purposes include, but are not limited to, those recreational pursuits generally associated with the out-of-doors, such as camping, picnicking, fishing, hunting, water contact sports, boating, and sightseeing, and the associated facilities of campgrounds, picnic areas, water and sanitary facilities, parking areas, viewpoints, boat launching ramps, and any others necessary to make project land and water areas available for use by the public. In administering this Contract “development of public recreation” shall include recreation capital and operation and maintenance.

(2) Additional Conservation Facilities. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of Additional Project Conservation Facilities, or first commences payments under a contract with a federal agency in the event a major feature of Additional Project Conservation Facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all projected costs of such feature of the Additional Project Conservation Facilities; provided, that if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State; provided, further, that all costs of Additional Project Conservation Facilities Incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are Incurred.

(3) Supplemental Conservation Facilities. Upon the construction of the Supplemental Conservation Facilities, the Delta Water Charge shall be paid by
all Contractors for Supplemental Water, as well as by Contractors for Project Water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities and Supplemental Conservation Facilities, shall return to the State, in addition to those costs of the Project Conservation Facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (c)(1) of this article, all costs of such Supplemental Conservation Facilities, including capital, operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any Supplemental Conservation Facilities, or first commences payments under a contract with a federal agency in the event a major feature of Supplemental Conservation Facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations made pursuant to subdivision (c)(1) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in such subdivision (c)(1), of all projected costs of such feature of the Supplemental Conservation Facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the Annual Table A Amounts under all contracts for Supplemental Water. If the repayment period of any bonds sold to construct Supplemental Conservation Facilities or the repayment period under any agreement with a federal agency for repayment of the costs of Supplemental Conservation Facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate; provided, that if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(4) Local Projects. The determination of the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (a) and (b) above, for all Additional Project Conservation Facilities as defined in Article 1(a). In the event a Local Project as defined in Article 1(a)(2) will, pursuant to written agreement between the State and the sponsoring Contractor, be considered and treated as an Additional Project Conservation Facility for less than the estimated life of the facility, the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an Additional Project Conservation Facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the
Delta Water Charge unless and until the written agreement required by Article 1(a) has been entered into.

(5) Water Purchased By the State. In calculating the Delta Water Charge under subdivisions (a) and (b) of this article, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State Incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as Project Water.

(6) Replacement Cost Treatment. Replacement costs of Project Conservation Facilities shall be treated as either Capital Costs or as minimum operation, maintenance, power, and replacement costs, as determined by the State considering the Economic Useful Life of the asset being replaced and other relevant factors.
23. **TRANSPORTATION CHARGE.**

The payments to be made by each Contractor shall include an annual charge designated as the Transportation Charge, which shall be separately stated and calculated for costs incurred prior to the Billing Transition Date and costs incurred on or after the Billing Transition Date.

(a) **Transportation Charge for Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) and Articles 24(a) and (c), 25 and 26 shall apply to costs incurred prior to the Billing Transition Date.

(1) **Recovery of Costs of Project Transportation Facilities.** The Transportation Charge for costs incurred prior to the Billing Transition Date shall return to the State during the Project Repayment Period such costs of all Project Transportation Facilities necessary to deliver Project Water to the Contractor and which are allocated to the Contractor in accordance with the cost allocation principles and procedures hereinafter set forth.

(2) **Components of Transportation Charge for Costs Incurred Prior to the Billing Transition Date.** The Transportation Charge for costs incurred prior to the Billing Transition Date shall consist of a capital component; a minimum operation, maintenance, power, and replacement component; and a variable operation, maintenance and power component, as these components are defined in and determined under Articles 24(a) and (c), 25, and 26, respectively.

(b) **Transportation Charge for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) and Articles 24(b) and (c), 25 and 26 shall apply to costs incurred on or after the Billing Transition Date.

(1) **Recovery of Costs of Project Transportation Facilities.** The Transportation Charge for costs incurred on or after the Billing Transition Date shall return to the State during each such calendar year all costs which are incurred on or after the Billing Transition Date of all Project Transportation Facilities necessary to deliver Project Water to the Agency and which are allocated to the Agency in accordance with the cost allocation principles and procedures hereinafter set forth.

(2) **Components of Transportation Charge.** The Transportation Charge for costs incurred on or after the Billing Transition Date shall consist of a capital component; a minimum operation, maintenance, and power component; and a variable operation, maintenance, and power component, as these components are defined in and determined under Articles 24(b) and (c), 25, and 26, respectively.

(c) **Segregation of Aqueduct Reaches for All Transportation Charge Purposes.** For the purpose of allocations of costs among Contractors pursuant to
subdivisions (a) and (b) of this article, and Articles 24, 25 and 26, the Project Transportation Facilities shall be segregated into such aqueduct reaches as are determined by the State to be necessary for such allocations of costs. Subject to such modifications as are determined by the State to be required by reason of any request furnished by the Agency to the State pursuant to Article 17(a) of this contract, or by reason of contracts entered into by the State with other Contractors, the aqueduct reaches of the Project Transportation Facilities, a portion of the costs of which may be allocated to the Agency, are established as provided in Table G; provided that those costs of the aqueduct reaches from the Delta through the outlet of San Luis Reservoir which are allocated to the purpose of water conservation in, above, and below the Delta for the purpose of determining the Delta Water Charge, as hereinbefore set forth, shall not be included in the Transportation Charge.
## TABLE G
PROJECT TRANSPORTATION FACILITIES NECESSARY TO DELIVER WATER TO VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Aqueduct Reach</th>
<th>Major Features of Reach</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CALIFORNIA AQUEDUCT</strong></td>
<td></td>
</tr>
</tbody>
</table>
| Delta to Discharge Delta Pumping Plant: | Intake Canal  
Fish Protective Facilities  
Delta Pumping Plant  
(Pumping Plant I) |
| Discharge Delta Pumping Plant to San Luis Forebay: | Aqueduct |
| San Luis Forebay: | San Luis Forebay and Forebay Dam |
| San Luis Forebay to Kettleman City: | Aqueduct  
Mile 18 Pumping Plant |
| Kettleman City to Avenal Gap: | Aqueduct |
| Avenal Gap to Buena Vista Pumping Plant: | Aqueduct |
| Buena Vista Pumping Plant Wheeler Ridge Pumping Plants I and II: | Buena Vista Pumping Plant  
Aqueduct |
| Wheeler Ridge Pumping Plants I and II to Tehachapi Pumping Plant: | Wheeler Ridge Pumping Plant I  
Wheeler Ridge Pumping Plant II  
Aqueduct |
| Tehachapi Pumping Plant to South Portal Tehachapi Tunnels: | Tehachapi Pumping Plant  
(Pumping Plant VI)  
Tehachapi Tunnels |
| South Portal Tehachapi Tunnels to Junction, East and West Branches: | Cottonwood Power Plant  
Aqueduct |
| **WEST BRANCH** | |
| Junction, East and West Branches to West Branch Terminal Reservoir | Aqueduct  
West Branch Pumping Plant  
Power Development Plants |
| West Branch Terminal Reservoir | Castaic Reservoir and Dam, Outlet Facilities |

(This table was labeled Table I in original contract provisions)
(d) **Provisions Applicable to the Transportation Charge for Costs Incurred Both Before and On or After the Billing Transition Date.**

(1) Wherever reference is made, in connection with the computation, determination, or payment of the Transportation Charge, to the allocation or payment of costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the Contractors as determined by the State.

(2) The State, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the State, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs. Such recreational purposes include, but are not limited to, those recreational pursuits generally associated with the out-of-doors, such as camping, picnicking, fishing, hunting, water contact sports, boating, and sightseeing, and the associated facilities of campgrounds, picnic areas, water and sanitary facilities, parking areas, viewpoints, boat launching ramps, and any others necessary to make project land and water areas available for use by the public. In administering this Contract “development of public recreation” shall include recreation capital and operation and maintenance.
24. TRANSPORTATION CHARGE -- CAPITAL COMPONENTS.

(a) Transportation Charge Capital Component for Costs Incurred Prior to the Billing Transition Date. The provisions of this subdivision (a) shall apply only to Capital Costs Incurred prior to the Billing Transition Date.

(1) Recovery of Capital Costs of Project Transportation Facilities Incurred Prior to the Billing Transition Date. The amount of the capital component of the Transportation Charge for Capital Costs Incurred prior to the Billing Transition Date shall be determined in two steps as follows:

   (A) first, an allocation of such costs to the Contractor in accordance with subdivision (a)(2) of this article, and

   (B) second, a computation of annual payments to be made by the Contractor of such allocated costs and interest thereon, computed at the Project Interest Rate in accordance with subdivision (a)(3) of this article.

(2) Allocation of Capital Costs of Project Transportation Facilities Incurred Prior to the Billing Transition Date. The total amount of Capital Costs Incurred prior to the Billing Transition Date of each aqueduct reach to be returned to the State shall be allocated among all Contractors entitled to delivery of Project Water from or through such reach by the proportionate use of facilities method of cost allocation and in accordance with Article 23(c) and subdivision (c)(1) of this article.

The projected amounts of Capital Costs to be allocated annually to the Agency under the capital component of the Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision (a) and subdivision (c)(1) of this article, which principles and procedures shall be controlling as to allocations of Capital Costs to the Agency. Such amounts will be set forth in Table H by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a), provided that these amounts shall be subject to redetermination by the State in accordance with Article 28.
TABLE H
PROJECTED ALLOCATIONS OF CAPITAL COSTS INCURRED PRIOR TO THE BILLING TRANSITION DATE OF PROJECT TRANSPORTATION FACILITIES TO VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Projected Allocation in Thousands of Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
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<td>2</td>
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<td>3</td>
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</tbody>
</table>

* Year in which State commences construction of Project Transportation Facilities.

(This table was labeled Table C in original contract provisions)

(3) **Determination of Capital Component of Transportation Charge for Costs Incurred Prior to the Billing Transition Date.** The Agency’s annual payment of its allocated Capital Costs Incurred prior to the Billing Transition Date and interest thereon, computed at the Project Interest Rate and compounded annually, shall be determined in accordance with a repayment schedule established by the State and determined in accordance with the principles set forth in (A), (B), and (C) below, which principles shall be controlling as to the Agency’s payment of its allocated Capital Costs. The Agency’s repayment schedule will be set forth in Table I by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); provided that the amounts set forth in Table I shall be subject to redetermination by the State, pursuant to Article 28.

(A) The Agency’s annual payment shall be the sum of the amounts due from the Agency on the Agency’s allocated Capital Costs for the then current year and for each previous year where each such amount will pay, in not more than fifty (50) equal annual installments of principal and interest, the Agency’s allocated Capital Costs for the respective year and interest thereon, computed at the Project Interest Rate and compounded annually.

(B) The Agency may make payments at a more rapid rate if approved by the State.
(C) Such annual Transportation Charge payments shall cease when all allocated Capital Costs and interest thereon, computed at the Project Interest Rate and compounded annually, are repaid.

TABLE I
TRANSPORTATION CHARGE FOR COSTS INCURRED PRIOR TO THE BILLING TRANSITION DATE -- CAPITAL COST COMPONENT
VENTURA COUNTY WATERSHED PROTECTION DISTRICT
(In Thousands of Dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Payment of Principal</th>
<th>Annual Interest Payment</th>
<th>Total Annual Payment by Agency</th>
</tr>
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<tbody>
<tr>
<td>1*</td>
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</tbody>
</table>

* Year in which State commences construction of Project Transportation Facilities.

** Year of first payment.

(This table was labeled Table D in original contract provisions)

(4) Notwithstanding provisions of subdivisions 24(a)(1) through (a)(3) of this article, the capital component of the Transportation Charge for costs Incurred prior to the Billing Transition Date shall include an annual charge to recover the Agency’s share of the portion of Water System Facility Revenue Bond Financing Costs allocable to Project Transportation Facilities. Charges to the Agency for these costs shall be calculated in accordance with Article 50(a).

(5) Costs Incurred Prior to Date of Contract. The Agency’s allocated capital costs for the year preceding the year of initial payment of the capital component of the Transportation Charge, pursuant to subdivision 24(a)(3) of this article, shall consist of the sum of the Agency’s allocated capital costs for each year through such year preceding the year of initial payment, and interest thereon, computed at the project interest rate and compounded annually.

(b) Transportation Charge Capital Component for Costs Incurred On or After the Billing Transition Date. The provisions of this subdivision (b) shall apply only to Capital Costs Incurred on or after the Billing Transition Date.

(1) The amount of the capital component of the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be determined in three steps as follows:
(A) first, an allocation of Capital Costs to the Contractor as provided in subdivision (b)(2) of this article,

(B) second, a determination of the type and source of payment of each Capital Cost as provided in subdivision (b)(3) of this article, and

(C) third, a computation of the annual payment to be made by the Contractor as provided in subdivision (b)(4) and (b)(5) of this article.

(2) The total amount of Capital Costs of each aqueduct reach to be returned to the State under the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be allocated among all Contractors entitled to delivery of Project Water from or through the reach by the proportionate use of facilities method of cost allocation and in accordance with Article 23(c) and subdivision (c)(1) of this article.

(3) Annual Capital Costs of Project Transportation Facilities shall be divided into five categories of type and source of payment:

(A) Project Transportation Facility Capital Costs paid with the proceeds of Water System Facility Revenue Bonds,

(B) Project Transportation Facility Capital Costs paid with the proceeds of bonds issued under the Burns-Porter Bond Act,

(C) Project Transportation Facility Capital Costs paid with amounts in the SWRDS Reinvestment Account,

(D) Project Transportation Facility Capital Costs paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and

(E) Project Transportation Facility Capital Costs prepaid by the Agency.

The projected amounts of Project Transportation Facility Capital Costs of each type to be allocated annually to the Agency shall be determined by the State in accordance with the cost allocation principles and procedures set forth in Article 23(c)(1) through (c)(3) and this subdivision (b)(3), which principles and procedures shall be controlling as to allocations of each type of Capital Costs to the Agency; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such projected amounts will be set forth in Table J by the State.
TABLE J
PROJECTED ALLOCATIONS TO
VENTURA COUNTY WATERSHED PROTECTION DISTRICT
OF PROJECT TRANSPORTATION FACILITY CAPITAL COSTS INCURRED ON OR
AFTER THE BILLING TRANSITION DATE

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs to be Paid with Proceeds of Water System Facility Revenue Bonds</th>
<th>Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act</th>
<th>Costs to be Paid with Amounts in the SWRDS Reinvestment Account</th>
<th>Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial</th>
<th>Costs Prepaid by the Agency</th>
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</thead>
<tbody>
<tr>
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</table>

* Year commencing with the Billing Transition Date

(4) The capital component of the Transportation Charge for a calendar year for costs incurred on or after the Billing Transition Date shall consist of the following to the extent the related Capital Costs are allocated to the Agency:

(A) Water System Facility Revenue Bond: a charge determined in accordance with Article 50(b) to recover Water System Facility Revenue Bond Financing Costs Incurred during such calendar year that relate to the financing of Water System Facilities that are Project Transportation Facilities,

(B) Burns-Porter Act Bonds: a charge to recover the amount to be paid by the State of California during such calendar year in accordance with the Burns-Porter Bond Act for the principal of and interest on bonds issued under the Burns-Porter Bond Act on or after the Billing Transition Date for Project Transportation Facility Capital Costs,

(C) SWRDS Reinvestment Account: a charge determined in accordance with subdivision (b)(5) of Article 61 to amortize Project Transportation Facility Capital Costs Incurred during prior calendar years.
(but not prior to the Billing Transition Date) that have been paid with amounts from the SWRDS Reinvestment Account, and

(D) Capital Assets with Short Economic Life or Costs of which are Not Substantial: a charge to recover the Capital Costs to be Incurred during such calendar year of Project Transportation Facility assets with a short Economic Useful Life or the costs of which are not substantial as determined by the State and any such Capital Costs Incurred but not charged in the prior two calendar years,

(5) **Projected Charges.** The projected amounts of the charges to be allocated annually to the Agency under the capital component of the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this Article, which principles and procedures shall be controlling as to allocations of capital component charges to the Agency; provided that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table K by the State.

### TABLE K
**PROJECTED CHARGES UNDER THE CAPITAL COMPONENT OF THE TRANSPORTATION CHARGE FOR COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE TO VENTURA COUNTY WATERSHED PROTECTION DISTRICT**

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs to be Paid with Proceeds of Water System Facility Revenue Bonds</th>
<th>Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act</th>
<th>Costs to be Paid with Amounts in the SWRDS Reinvestment Account</th>
<th>Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial</th>
</tr>
</thead>
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<tr>
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* Year commencing with the Billing Transition Date.
(c) **Provisions Applicable to the Transportation Charge For Costs Incurred Both Prior To and On or After the Billing Transition Date.** The provisions of this subdivision (c) shall be applicable to Capital Costs Incurred both prior to and on or after the Billing Transition Date.

(1) **Proportionate Use Factors.** The measure of the proportionate use by each Contractor of each reach shall be the average of the following two ratios:

- **(A)** the ratio of the Contractor’s Maximum Annual Table A Amount to be delivered from or through the reach to the total of the Maximum Annual Table A Amounts of all Contractors to be delivered from or through the reach from the year in which charges are to be paid through the end of the Project Repayment Period, and
- **(B)** the ratio of the capacity provided in the reach for the transport and delivery of Project Water to the Contractor to the total capacity provided in the reach for the transport and delivery of Project Water to all Contractors served from or through the reach from the year in which charges are to be paid through the end of the Project Repayment Period.

Allocations of Capital Costs to the Agency pursuant hereto shall be on the basis of relevant values which will be set forth in Table L by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach of the Project Transportation Facilities for the transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that these values shall be subject to redetermination by the State in accordance with Article 28; *provided further* that the principles and procedures set forth in this subdivision shall be controlling as to allocations of Capital Costs to the Agency. Proportionate use of facilities factors for prior years shall not be adjusted by the State in response to changes or transfers of Table A Amounts among Contractors unless otherwise agreed by the State and the parties to the transfer and unless there is no impact on past charges or credits of other Contractors.
TABLE L
[TABLE L shall set forth the relevant values that shall serve as the basis for allocation of all Transportation Charge Costs]
(This table was labeled Table B in original contract provisions)

(2) **Determinations Using Proportionate Use Factors.** The total amount in each category of Capital Costs allocated to a Contractor shall be the sum of the products obtained when there is multiplied, for each aqueduct reach necessary to deliver water to the Contractor, the total amount of the Capital Costs of the reach in that category to be returned to the State under the Transportation Charge by the average of the two foregoing ratios for such reach as such average is set forth in the appropriate table included in its contract.

(3) **Excess Capacity.** In the event that excess capacity is provided in any aqueduct reach for the purpose of making Project Water available in the future to an agency or agencies with which the State has not executed contracts at the time of any allocation of costs pursuant to this subdivision, the prospective Maximum Annual Table A Amount or Amounts to be supplied by such excess capacity, as determined by the State, shall be deemed to be contracted for by such agency or agencies for the purpose of such allocation of costs, to the end that the Capital Costs of providing such excess capacity are not charged to any Contractor entitled by virtue of an executed contract to the delivery of Project Water from or through that aqueduct reach at the time of such allocation. Where additional capacity is provided in any aqueduct reach to compensate for loss of water due to evaporation, leakage, seepage, or other causes, or to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of the facilities of the Project Facilities, then, for the purpose of any allocation of costs pursuant to this subdivision:

(A) the Maximum Annual Table A Amount to be delivered from or through the reach of each Contractor entitled to delivery of Project Water from or through the reach shall be increased by an amount which bears the same proportion to the maximum annual delivery capability provided by such additional capacity that the Contractor’s Maximum Annual Table A Amount to be delivered from or through the reach bears to the total of the Maximum Annual Table A Amounts to be delivered from or through the reach under all contracts; and

(B) the capacity provided in the reach for each Contractor entitled to delivery of Project Water from or through the reach shall be increased in the same proportion that the Contractor’s Maximum Annual Table A Amount to be delivered from or through the reach is increased pursuant to (A) above.
(4) **Power Facilities.** The Capital Costs of project aqueduct power recovery plants shall be charged and allocated in accordance with this Article 24. The Capital Costs of off-aqueduct power facilities shall be charged and allocated in accordance with Article 25(d).

(5) **Capital Costs of Excess Capacity.** In the event that any Contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such Contractor in excess of the percentage amounts specified in such Article 12(b) for the uses designated therein, such Contractor shall furnish to the State, in advance of the construction of such aqueduct reach, funds sufficient to cover the costs of providing such excess capacity, which funds shall be in an amount which bears the same proportion to the total Capital Costs of such reach, including the costs of providing such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. For the purpose of any allocation of costs pursuant to subdivision (c)(1) of this article, the total Capital Costs of such aqueduct reach shall be allocated among all Contractors entitled to delivery of Project Water from or through the reach in the following manner:

(A) The costs which would have been Incurred for such reach had no such excess capacity been provided shall be estimated by the State and allocated among all such Contractors in the manner provided in such subdivision (c)(1); and

(B) the amount of the difference between such estimated costs and the projected actual costs of such reach shall be allocated to the Contractor or Contractors for which such excess capacity is provided.

Where such excess capacity is provided for more than one Contractor, the costs allocated to them under (B) above shall be further allocated between or among them in amounts which bear the same proportion to the total of such allocated costs as the amount of such excess capacity provided for the respective Contractor bears to the total of such excess capacity provided in such reach. In the event that the funds advanced by a Contractor pursuant to this subdivision are more or less than the costs so allocated to such Contractor under (B) above, the account of such Contractor shall be credited or debited accordingly.

(6) **Replacement Cost Treatment.** Replacement costs of Project Transportation Facilities shall be treated as either Capital Costs or as minimum operation, maintenance, power and replacement costs, as determined by the State considering the Economic Useful Life of the asset being replaced and other relevant factors.
25. TRANSPORTATION CHARGE -- MINIMUM OPERATION, MAINTENANCE, POWER, AND REPLACEMENT COMPONENT.

The provisions of this article shall apply to costs incurred both prior to and on or after the Billing Transition Date.

(a) Purpose. The minimum operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the Project Transportation Facilities necessary to deliver water to the Contractor which constitute operation, maintenance, power, and replacement costs incurred irrespective of the amount of Project Water delivered to the Contractor and which are allocated to the Contractor pursuant to subdivision (b) of this article; provided that to the extent permitted by law, the State may establish reserve funds to meet anticipated minimum replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the minimum replacement costs for the year in which such deposits are made.

(b) Allocation. The total projected minimum operation, maintenance, power, and replacement costs of each aqueduct reach of the Project Transportation Facilities for the respective year shall be allocated among all Contractors entitled to delivery of Project Water from such facilities by the proportionate use of facilities method of cost allocation, in the same manner and upon the same bases as are set forth for the allocation of Capital Costs in subdivisions (c)(1) through (c)(3) of Article 24; provided that such minimum operation, maintenance, power, and replacement costs as are incurred generally for the Project Transportation Facilities first shall be allocated to each aqueduct reach in an amount which bears the same proportion to the total amount of such general costs that the amount of the costs incurred directly for the reach bears to the total of all direct costs for all aqueduct reaches.

(c) Determination; Repayment Table. The amount to be paid each year by the Agency under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (b) of this article on the basis of the relevant values to be set forth for the respective aqueduct reaches in Table L, included in Article 24; provided that these values shall be subject to redetermination by the State in accordance with Article 28. Such amounts and any appropriate interest thereon for costs incurred prior to the Billing Transition Date shall be set forth by the State in Table M as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); provided that the amounts set forth in Table M shall be subject to redetermination by the State in accordance with Article 28.
TABLE M
TRANSPORTATION CHARGE -- MINIMUM OPERATION MAINTENANCE, POWER, AND REPLACEMENT COMPONENT
VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Annual Payment by Agency*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1**</td>
<td></td>
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* Payment shall start with respect to each aqueduct reach in the year following the year in which the State completes construction of the respective reach.

** Year in which the State commences construction of Project Transportation Facilities.
(This table was labeled Table E in original contract provisions)

(d) Off-Aqueduct Power Facilities. Notwithstanding the provisions of subdivisions (a) through (c) of this Article or of Article 1(h), the costs of off-aqueduct power facilities shall be determined and allocated as follows:

(1) The off-aqueduct power costs shall include all annual costs the State incurs for any off-aqueduct power facility, which shall include, but not be limited to, power purchases, annual Financing Costs, and associated operation and maintenance costs of such facility, less any credits, interest earnings, or other monies received by the State in connection with such facility or Revenue Bonds issued to finance the Capital Costs of such facility. In the event the State finances all or any part of an off-aqueduct power facility directly from funds other than bonds or borrowed funds, in lieu of such annual principal and interest payments, the repayment of Capital Costs as to that part financed by such other funds shall be determined on the basis of the schedule that would have been required under Article 24.

(2) The annual costs of off-aqueduct power facilities as computed in (1) above shall initially be allocated among Contractors in amounts which bear the same proportions to the total amount of such power costs that the total estimated electrical energy (kilowatt hours) required to pump through Project Transportation Facilities the desired delivery of Annual Table A Amounts for that year, as submitted pursuant to Article 12(a)(1) and as may be modified by the State pursuant to Article 12(a)(2), bears to the total estimated electrical energy.
(kilowatt hours) required to pump all such amounts for all Contractors through Project Transportation Facilities for that year, all as determined by the State.

(3) An interim adjustment in the allocation of the power costs calculated in accordance with (2) above, may be made in May of each year based on April revisions in approved schedules of deliveries of project and nonproject water for Contractors for such year. A further adjustment shall be made in the following year based on actual deliveries of project and nonproject water for Contractors; provided, however, that in the event no deliveries are made through a pumping plant, the adjustments shall not be made for that year at that plant.

(4) To the extent the monies received or to be received by the State from all Contractors for off-aqueduct power costs in any year are determined by the State to be less than the amount required to pay the off-aqueduct power costs in such year, the State may allocate and charge that amount of off-aqueduct power costs to the Agency and other Contractors in the same manner as costs under the capital component of the Transportation Charge are allocated and charged. After that amount has been so allocated, charged and collected, the State shall provide a reallocation of the amounts allocated pursuant to this paragraph (4), such reallocation to be based on the allocations made pursuant to (2) and (3) above for that year, or in the event no such allocation was made for that year, on the last previous allocation made pursuant to (2) and (3) above. Any such reallocation of costs incurred prior to the Billing Transition Date shall include appropriate interest thereon at the Project Interest Rate.

(e) The total minimum operation, maintenance, power and replacement component due that year from each Contractor shall be the sum of the allocations made under the proportionate use of facilities method provided in subdivision (b) of this article and the allocations made pursuant to subdivision (d) of this article for each Contractor.
26. TRANSPORTATION CHARGE -- VARIABLE OPERATION, MAINTENANCE AND POWER COMPONENT.

The provisions of this article shall apply to costs incurred both prior to and on or after the Billing Transition Date.

(a) **Purpose.** The variable operation, maintenance, and power component of the Transportation Charge shall return to the State those costs of the Project Transportation Facilities necessary to deliver water to the Contractor which constitute operation, maintenance, power and replacement costs incurred in an amount which is dependent upon and varies with the amount of Project Water delivered to the Contractor and which are allocated to the Contractor pursuant to (1) and (2) below; provided that to the extent permitted by law, the State may establish reserve funds to meet anticipated variable replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the variable replacement costs for the year in which such deposits are made.

(b) **Determination.** The amount of this variable operation, maintenance, and power component shall be determined as follows:

(1) **Determination of Charge Per Acre-Foot.** There shall be computed for each calendar year for each aqueduct reach of the Project Transportation Facilities a charge per acre-foot of water which will return to the State the total projected variable operation, maintenance and power costs of the reach for such calendar year. This computation shall be made by dividing such total by the number of acre-feet of Project Water estimated to be delivered from or through the reach to all Contractors during the year.

(2) **Determination of Charge Per Reach to the Contractor.** The amount of the variable component shall be the product of the sum of the charges per acre-foot of water, determined under (1) above, for each aqueduct reach necessary to deliver water to the Contractor, and the number of acre-feet of Project Water delivered to the Contractor during the year through such reach; provided that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, the amount of such variable component to be paid by such Contractor during such period shall be the product of the above sum and the sum of the number of acre-feet of Project Water delivered to the Contractor and the number of acre-feet wasted.

(c) **Credit Relating to Project Aqueduct Power Recovery Plants.** There shall be credited against the amount of the variable operation, maintenance, and power component to be paid by each Contractor, as determined pursuant to subdivision (a) of this article, a portion of the projected net value of any power recovered during the
respective year at project aqueduct power recovery plants located upstream on the particular aqueduct reach from the delivery structures for delivery of Project Water to the Contractor. Such portion shall be in an amount which bears the same proportion to such projected net value that the number of acre-feet of Project Water delivered to the Contractor through such plants during the year bears to the number of acre-feet of Project Water delivered to all Contractors through such plants during the year.

(d) **Determination of Total Variable Component Charge.** The amount to be paid each year by the Agency under the variable operation, maintenance, and power component of the Transportation Charge shall be determined in accordance with subdivision (a) of this article for the respective aqueduct reaches in Table L included in Article 24. Such amounts and any appropriate interest thereon for costs incurred prior to the Billing Transition Date shall be set forth by the State in Table N as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that the amounts set forth in Table N shall be subject to redetermination by the State in accordance with Article 28.

**TABLE N**
TRANSPORTATION CHARGE -- ESTIMATED VARIABLE OPERATION, MAINTENANCE, AND POWER COMPONENT
VENTURA COUNTY WATERSHED PROTECTION DISTRICT

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Annual Payment by Agency*</th>
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<tbody>
<tr>
<td>1**</td>
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* Payments start with year of initial water delivery.

** Year in which the State commences construction of the Project Conservation Facilities.

(This table was labeled Table F in original contract provisions)

27. **TRANSPORTATION CHARGE -- REPAYMENT SCHEDULE.**

The amounts to be paid by the Agency for each year under the Capital Cost and minimum operation, maintenance, power, and replacement components of the Transportation Charge, and under the variable operation, maintenance, and power component of such charge on the basis of then estimated deliveries, shall be set forth by the State in Table O as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a), which Table O shall constitute a summation of Tables I, K, M, and N; *provided* that each of the amounts set forth in Table O shall be subject to redetermination by the State in accordance with Article 28;
provided further that the principles and procedures set forth in Articles 24, 25, and 26 shall be controlling as to such amounts. Such amounts shall be paid by the Agency in accordance with the provisions of Article 29.

<table>
<thead>
<tr>
<th>Year</th>
<th>Capital Cost Component</th>
<th>Minimum Component</th>
<th>Variable Component</th>
<th>Total</th>
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<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Year in which State commences construction of Project Transportation Facilities.

** Year of first payment.

(This table was labeled Table G in original contract provisions)
28. DELTA WATER CHARGE AND TRANSPORTATION CHARGE --
REDETERMINATION.

(a) Redetermination of Transportation Charges for Costs Incurred Prior to the Billing Transition Date. The provisions of this subdivision (a) shall apply only to costs Incurred prior to the Billing Transition Date.

(1) Determinative Factors Subject to Retroactive Change. The State shall redetermine the values and amounts set forth in Tables H through O (referred to in the original contract provisions as Tables B through G) of this contract in the year following the year in which the State commences construction of the Project Transportation Facilities and each year thereafter during the Project Repayment Period in order that the Transportation Charge to the Agency and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred prior to the Billing Transition Date to construct the Project Transportation Facilities described in Table G of this contract, Annual Table A Amounts, estimated deliveries, Project Interest Rate, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the Agency for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the Agency or credited to the Agency's account in the manner described in (b) and (c) below.

(2) Adjustment: Transportation Charge -- Capital Component For Costs Incurred Prior to the Billing Transition Date. Adjustments for prior underpayments or overpayments of the capital component of the Transportation Charge to the Agency for costs Incurred prior to the Billing Transition Date, together with accrued interest charges or credits thereon computed at the then current Project Interest Rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination; provided that the Agency may elect to exercise the option whereby when the redetermined Transportation Charge for the following year, with adjustments, including adjustments of the operation, maintenance, power, and replacement components provided for in subdivision (a)(3) of this article, is more or less than the last estimate of the charge provided pursuant to Article 27 for the corresponding year, without adjustments, an amount equal to the total of such difference shall be deducted.
from or added to the adjusted capital component for that year and paid or credited in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Percent that Transportation Charge for costs Incurred prior to the Billing Transition Date differs from last estimate (+ or -)</th>
<th>Period, in years, for amortizing the difference in indicated charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>for 10% or less</td>
<td>no amortization</td>
</tr>
<tr>
<td>more than 10%, but not more than 20%</td>
<td>2</td>
</tr>
<tr>
<td>more than 20%, but not more than 30%</td>
<td>3</td>
</tr>
<tr>
<td>more than 30%, but not more than 40%</td>
<td>4</td>
</tr>
<tr>
<td>more than 40%</td>
<td>5</td>
</tr>
</tbody>
</table>

Such payments or credits shall be equal semi-annual amounts of principal and interest on or before the 1st day of January and the 1st day of July, with interest computed at the Project Interest Rate and compounded annually, during varying amortization periods as set forth in the preceding schedule; provided that for the purpose of determining the above differences in the Transportation Charge for costs Incurred prior to the Billing Transition Date, the variable operation, maintenance, and power component shall be computed on the basis of the same estimated Project Water deliveries as was assumed in computing pursuant to Article 26(c).

(3) **Adjustment: Transportation Charge -- Minimum and Variable Components for costs Incurred prior to the Billing Transition Date.** One-twelfth of the adjustments for prior underpayments or overpayments of the Agency’s minimum and variable operation, power, and replacement components for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current Project Interest Rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination.

(4) **Exercise of Option.** The option provided for in subdivision (a)(2) of this article shall be exercised in writing on or before the January 1 due date of the first payment of the capital component of the Transportation Charge for the year in which the option is to become effective. Such option, once having been exercised, shall be applicable for all of the remaining years of the Project Repayment Period.

(5) **Project Interest Rate Adjustments.** Notwithstanding the provisions of subdivision (a)(2) of this article, adjustments for prior overpayments and underpayments shall be repaid beginning in the year following the redetermination by application of a unit rate per acre-foot which, when paid for
the projected portion of the Agency’s Annual Table A Amount will return to the State, during the Project Repayment Period, together with interest thereon computed at the Project Interest Rate and compounded annually, the full amount of the adjustments resulting from financing after January 1, 1987, from all bonds, advances, or loans listed in Article 1(ad) except for Article 1(ad)(3) and except for bonds issued by the State under the Central Valley Project Act after January 1, 1987 for facilities not listed among the Water System Facilities in Article 1(ap). Notwithstanding the immediately preceding exception, such amortization shall also apply to any adjustments in this component charge resulting from a change in the Project Interest Rate due to any refunding after January 1, 1986 on bonds issued under the Central Valley Project Act. However, amortization of adjustments resulting from items listed in subdivisions (1)(ad)(4) through (7) of Article 1 shall be limited to a period which would allow the Department to repay the debt service on a current basis until such time as bonds are issued to reimburse the source of such funding. In no event shall this amortization period be greater than the Project Repayment Period.

(6) **No Adjustment of Water System Facility Revenue Bond Financing Costs.** The use of Water System Facility Revenue Bonds for financing facilities listed in Article 1(ap) shall not result in adjustments for prior underpayments or overpayments of the capital component of the Transportation Charge to the Agency under the provisions of this article. In place of making such adjustments, charges to the Agency for Water System Facility Revenue Bond Financing Costs will be governed by Article 50(a).

(b) **Redetermination of Delta Water Charges and Transportation Charges for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) shall apply only to costs Incurred on or after the Billing Transition Date.

(1) **Determinative Factors Subject to Retroactive Change.** The State shall redetermine the values and amounts set forth in Tables B through F and Tables J through O of this contract each calendar year commencing on or after the Billing Transition Date in order that the Delta Water Charge and the Transportation Charge to the Agency for costs Incurred on or after the Billing Transition Date and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred to construct Project Conservation Facilities and Project Transportation Facilities, Annual Table A Amounts, estimated deliveries, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Delta Water Charge and Transportation Charge to be paid by the Agency for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State, as applicable. Such adjustment shall be computed by the State and paid by the Agency or credited to the Agency’s account in the manner described in
subdivisions (b)(2) and (b)(3) of this article.

(2) Adjustment: Delta Water Charge and Transportation Charge -- Capital Components for Costs Incurred On or After the Billing Transition Date. Adjustments for prior underpayments or overpayments of the capital component of the Delta Water Charge and the Transportation Charge to the Agency for costs incurred on or after the Billing Transition Date shall be paid in the year following the redetermination.

(3) Adjustment: Delta Water Charge and Transportation Charge -- Minimum and Variable Components for Costs Incurred On or After the Billing Transition Date One-twelfth of the adjustments for prior underpayments or overpayments of the Agency’s minimum operation, maintenance, power, and replacement component and variable operation, maintenance and power component of the Delta Water Charge and Transportation Charge for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination.
29. **TIME AND METHOD OF PAYMENT OF DELTA WATER CHARGE AND TRANSPORTATION CHARGE.**

The provisions of this article shall apply to costs Incurred both prior to and on or after the Billing Transition Date. References to the Delta Water Charge shall include the Delta Water Charge for costs Incurred prior to the Billing Transition Date and the Delta Water Charge for costs Incurred on or after the Billing Transition Date, separately, as applicable, and references to the Transportation Charge shall include the Transportation Charge for costs Incurred prior to the Billing Transition Date and the Transportation Charge for costs Incurred on or after the Billing Transition Date, separately, as applicable.

(a) **Initial Payments.**

(1) *Delta Water Charge.* Payments by the Agency under the Delta Water Charge shall commence in the Year of Initial Water Delivery to the Agency.

(2) *Capital Component of the Transportation Charge.* Payments by the Agency under the capital component of the Transportation Charge shall commence in the year following the year in which the State commences construction of the Project Transportation Facilities.

(3) *Minimum Operation, Maintenance, Power, and Replacement Component.* Payments by the Agency under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall commence for each aqueduct reach in the year following the year in which construction of that reach is completed.

(4) *Variable Operation, Maintenance, Power, and Replacement Component.* Payments by the Agency under the variable operation, maintenance, power and replacement component of the Transportation Charge shall commence in the Year of Initial Water Delivery to the Agency.

(b) **Annual Statement of Charges.** The State shall, on or before July 1 of each year, commencing with the year preceding the year in which payment of the respective charge is to commence pursuant to this article, furnish the Agency with a written statement of the following items:

(1) the charges to the Agency for the next succeeding year under the capital components and minimum operation, maintenance, power, and replacement components of the Delta Water Charges and Transportation Charges; *provided* that charges for Financing Costs shall be stated as separate items in the Statement of Charges;
(2) the unit charges to the Agency for the next succeeding year under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge; and

(3) the total charges to the Agency for the preceding year under the variable operation, maintenance, power and replacement components of such Delta Water Charge and Transportation Charge; provided that through December 31, 1969, the Delta Water Charge shall be based upon a unit rate of $3.50 per acre-foot and shall be paid by the Contractors on the basis of their respective Annual Table A Amounts, as provided in Article 22(b).

All such statements shall be accompanied by the latest revised copies of the documents amendatory to Article 22 and of the tables included in Articles 24 through 27, together with such other data and computations used by the State in determining the amounts of the above charges as the State deems appropriate.

(c) Monthly Statements. The State shall, on or before the fifteenth day of each month of each year, commencing with the Year of Initial Water Delivery to the Agency, furnish the Agency with a statement of the charges to the Agency for the preceding month under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge. Such charges shall be determined by the State in accordance with the relevant provisions of Articles 22 and 26 of this contract, upon the basis of metered deliveries of Project Water to the Agency, except as otherwise provided in those articles.

(d) Semiannual Payments of Capital Components. The Agency shall pay to the State, on or before January 1 of each year, one-half (1/2) of the charge to the Agency for the year under the capital component of the Delta Water Charge and one-half (1/2) of the charge to the Agency for the year under the capital component of the Transportation Charge, as such charges are stated pursuant to subdivision (b) of this article; and shall pay the remaining one-half (1/2) of each of such charges on or before July 1 of that year.

(e) Monthly Payments of Minimum Operation, Maintenance, Power, and Replacement Component. The Agency shall pay to the State, on or before the first day of each month of each year, one-twelfth (1/12) of the sum of the charges to the Agency for the year under the minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, as such charges are stated pursuant to subdivision (b) of this article.

(f) Monthly Payments of Variable Operation, Maintenance, Power, and Replacement Component. The Agency shall pay to the State on or before the fifteenth day of each month of each year, the charges to the Agency under the variable operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, for which a statement was received by the Agency during the preceding month pursuant to subdivision (c) of this article, as
such charges are stated in such statement.

(g) **Contest of Charges.** In the event that the Agency in good faith contests the accuracy of any statement submitted to it pursuant to subdivision (b) or (c) of this article, it shall give the State notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that the State finds the Agency’s contentions regarding the statement to be correct, it shall revise the statement accordingly, and the Agency shall make payment of the revised amounts on or before the due date. To the extent that the State does not find the Agency’s contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the Agency shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from the State.
50. WATER SYSTEM FACILITY REVENUE BOND FINANCING COSTS.

(a) Water System Facility Revenue Bonds to Finance Capital Costs Incurred Prior to the Billing Transition Date. The provisions of this subdivision (a) shall apply to the Financing Costs of Revenue Bonds issued to finance Water System Facility Capital Costs Incurred prior to the Billing Transition Date. Charges to all Contractors for such Financing Costs shall return to the State each year an amount equal to the Financing Costs the State incurs in that year for such Water System Facility Revenue Bonds.

(1) Elements of Charge. Annual charges to recover such Water System Facility Revenue Bond Financing Costs shall consist of two elements.

(A) The first element shall be an annual charge to the Agency for repayment of Capital Costs of Water System Facilities as determined under Articles 22(a) and 24(a) of this contract with interest at the Project Interest Rate. For conservation facilities, the charge shall be a part of the capital component of the Delta Water Charge in accordance with the provisions of Article 22(a) applicable to Capital Costs Incurred prior to the Billing Transition Date. For transportation facilities, the charge shall be a part of the capital component of the Transportation Charge in accordance with the provisions of Article 24(a) applicable to Capital Costs Incurred prior to the Billing Transition Date.

(B) The second element shall be the Agency’s share of a Water System Facility Revenue Bond Surcharge to be paid in lieu of a Project Interest Rate adjustment. The total annual amount to be paid by all Contractors under this element shall be the difference between the total annual charges under the first element and the annual Financing Costs of the related Water System Facility Revenue Bonds. The amount to be paid by each Contractor shall be calculated annually as if the Project Interest Rate were increased to the extent necessary to produce revenues from all Contractors sufficient to pay such difference for that year. In making that calculation, adjustments in the Agency’s transportation capital component charges for prior overpayments and underpayments shall be determined as if amortized over the remaining years of the Project Repayment Period.

(2) Identification of Surcharge on Invoices. The Water System Facility Revenue Bond Surcharge will be identified in the Agency’s invoice.

(3) Timing of Surcharge Payments. Surcharge payments shall be made in accordance with Article 29(f) of this contract.

(4) Termination of Surcharge. The Water System Facility Revenue Bond Surcharge under Article 50(a)(1)(B) shall cease for each series of Water System Facility Revenue Bonds when that series is fully repaid. However, the
annual charge determined pursuant to Article 50(a)(1)(A) shall continue to be collected for the time periods otherwise required under Articles 22 and 24.

(5) Reduction of Charges. After the Department has repaid the California Water Fund in full and after each series of Water System Facility Revenue Bonds is repaid, the Department will reduce the charges to all Contractors in an equitable manner in a total amount that equals the amount of the charges under Article 50(a)(1)(A) that the Department determines is not needed for future financing of facilities of the System which, in whole or in part, will serve the purposes of the water supply contract with the Agency.

(b) Water System Facility Revenue Bonds to Finance Capital Costs Incurred On or After the Billing Transition Date. The provisions of this subdivision (b) shall apply to the Financing Costs of Revenue Bonds issued to finance Water System Facility Capital Costs Incurred on or after the Billing Transition Date. Charges to all Contractors for such Financing Costs shall return to the State each year an amount equal to the Financing Costs the State incurs in that year for such Water System Facility Revenue Bonds. The amount of this charge shall be calculated in two steps as follows:

(1) Allocation of Water System Facility Capital Costs. Capital Costs Incurred on or after the Billing Transition Date of Water System Facilities that are conservation facilities shall be allocated among all Contractors in proportion to each Contractor’s Maximum Annual Table A Amount. Capital Costs Incurred on or after the Billing Transition Date of Water System Facilities that are transportation facilities shall be allocated among all Contractors in accordance with Article 24(c).

(2) Determination of Annual Financing Cost Amounts. The State shall determine and charge the Agency each year the amount of the Financing Costs the State incurs in that year for the Water System Facility Revenue Bonds issued to finance such Water System Facility Capital Costs allocated to the Agency.

(c) Provisions Applicable to All Water System Facility Revenue Bonds. The provisions of this article shall apply to all Water System Facility Revenue Bonds.

(1) Credits for Excess Amounts. The State shall provide credits to the Contractors for excess reserve funds, excess debt service coverage, interest, and other earnings of the State in connection with payment of the Financing Costs of such Water System Facility Revenue Bonds, when and as permitted by the applicable bond resolution or indenture. When such credits are determined by the State to be available, such credits shall be promptly provided to the Contractors and shall be in proportion to the payments of Water System Facility Revenue Bond Financing Costs from each Contractor. Reserves, bond debt service coverage, interest, and other earnings may be used to retire bonds.
(2) **Allocation of Maturities Permitted.** When calculating charges for Water System Facility Revenue Bond Financing Costs, the State may allocate portions of particular maturities of Water System Facility Revenue Bonds and the Financing Costs associated with such maturities to particular Water System Facilities, in order to establish a reasonable relationship between the Economic Useful Life of such facilities and the term of bonds issued to finance such facilities, and may determine the Financing Costs allocated to the Agency on the basis of such maturity allocation.

(3) **Supplemental Bills for Unanticipated Financing Costs.** The State may submit a supplemental bill to the Agency for the year if necessary to meet unanticipated costs for Water System Facility Revenue Bond Financing Costs for which the State can issue a statement of charges under this article and any other article of this contract providing for payments that are pledged to the payment of Revenue Bonds issued to finance Project Facility Capital Costs allocated to the Agency. The relative amounts of any supplemental billing made to the Agency and to other Contractors for Revenue Bond purposes shall be governed by the otherwise applicable article. Payment of any supplemental billing shall be due thirty days after the date of the invoice.

(4) **Insurance on Contractor Obligations.** To the extent economically feasible and justifiable, as determined by the State after consultation with Contractors, the State shall maintain insurance or other forms of security protecting bondholders and non-defaulting Contractors against costs resulting from the failure of any Contractor to make the payments required by this article.

(5) **Consultation on Financing Plan.** Before issuing each series of Water System Facility Revenue Bonds, the State shall consult with the Contractors, prepare a plan for the State’s future financing of Water System Facilities, and give the Agency an opportunity to comment on the plan. The plan shall include but not be limited to the size of any Water System Facility Revenue Bond issuances and the form of any necessary resolutions, indentures or supplements.

(6) **Defaults.**

(A) If a Contractor defaults partially or entirely on its payment obligations with respect to Water System Facility Revenue Bond Financing Costs and sufficient insurance or other security protecting the non-defaulting Contractors is not provided under subdivision (c)(4) of this article, the State shall allocate a portion of the default to each non-defaulting Contractor. The Agency’s share of the default shall be equal to an amount determined by multiplying the total default amount to be charged to all non-defaulting Contractors by the ratio that the Agency’s Maximum Annual Table A Amount bears to the total of the Maximum Annual Table A Amounts of all non-defaulting Contractors. However, such amount shall not exceed in any year 25 percent of the Water System
Facility Revenue Bond Financing Costs that are otherwise payable by the Agency in that year. The amount of default to be charged to non-defaulting Contractors shall be reduced by any receipts from insurance protecting non-defaulting Contractors and bond debt service coverage from a prior year and available for such purpose.

(B) If a Contractor defaults partially or entirely on its payment obligations under this article, the State shall also pursuant to Article 20, upon six months' notice to the defaulting Contractor, suspend water deliveries under Article 20 to the defaulting Contractor so long as the default continues. The suspension of water deliveries shall be proportional to the ratio of the default to the total Water System Facility Revenue Bond Financing Cost payments due from the defaulting Contractor. However, the State may reduce, eliminate, or not commence suspension of deliveries pursuant to this subparagraph if it determines suspension in the amounts otherwise required is likely to impair the defaulting Contractor's ability to avoid further defaults or that there would be insufficient water for human consumption, sanitation, and fire protection. The State may distribute the suspended water to the non-defaulting Contractors on terms it determines to be equitable.

(C) During the period of default, credits otherwise due the defaulting Contractor shall be applied to payments due from the defaulting Contractor.

(D) Except as otherwise provided in subparagraph (c) of this article, the defaulting Contractor shall repay the entire amount of the default to the State with interest compounded annually at the Surplus Money Investment Fund rate before water deliveries that had been suspended shall be fully resumed to that Contractor. If the defaulting Contractor makes a partial repayment of its default, the Department may provide a proportional restoration of suspended deliveries. The amount of the default to be repaid shall include any amounts previously received by the State from insurance proceeds, bond debt service coverage, or other reserves, and payments from other Contractors pursuant to this subparagraph (c)(6). The defaulting Contractor shall not be entitled to any
make-up water deliveries as compensation for any water deliveries suspended during the period when the Contractor was in default.

(E) At such time as the default amount is repaid by the defaulting Contractor, the non-defaulting Contractors shall receive credits in proportion to their contributions towards the amount of the default with interest collected by the State on the defaulted amount.

(F) In the event there is an increase in the amount a non-defaulting Contractor contributes to reserves and/or bond debt service coverage, such increase shall be handled in the same manner as provided in subparagraph (a) of this article.

(G) Action taken pursuant to this subdivision shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

(7) *No Article 51 Reduction.* Amounts of Water System Facility Revenue Bond Financing Costs payable under this contract shall not be affected by any reductions in payments pursuant to Article 51.

(8) *Contract Extension.* In the event the Contract Extension Amendment takes effect, but not all Contractors sign the amendment, the following shall apply: If and to the extent that the charges under Article 50(b)(1) and 50(b)(2) of the water supply contracts of Contractors that have not executed the Contract Extension Amendment (“non-signing Contractors”) are not sufficient to recover the annual Financing Costs that relate to Revenue Bonds issued to finance capital costs that are Incurred after the Billing Transition Date and are allocable to such non-signing Contractors, the amount of the shortfall shall be determined. Such shortfall shall be charged to the Contractors that have executed the Contract Extension Amendment (“signing Contractors”) in proportion to each such signing Contractor’s total Water System Facility Revenue Bond Financing Cost charges under Article 50(b) of this contract.
51. **FINANCIAL ADJUSTMENTS.**

(a) **Article Expiration.**

This Article 51 shall be effective through December 31, 2035 and shall be of no further effect on and after January 1, 2036; provided, however, that the provisions of this Article 51 may, to the extent applicable, continue to be used and applied on and after January 1, 2036 for the purpose of truing up amounts owed by the Agency to the State or by the State to the Agency for the calendar years up to and ending with calendar year 2035.

(b) **State Water Facilities Capital Account.**

(1) The State shall establish a State Water Facilities Capital Account to be funded from revenues available under Water Code section 12937(b)(4). Through procedures described in this article and as limited by this article, the State may consider as a revenue need under subdivision (c)(2)(v) of this article and may deposit in the State Water Facilities Capital Account the amounts necessary to pay capital costs of the State Water Facilities for which neither general obligation bond nor revenue bond proceeds are available, including but not limited to planning, reconnaissance and feasibility studies, the San Joaquin Valley Drainage Program and, through the year 2000, the CALFED Bay-Delta Program.

(2) The Director of the Department of Water Resources shall fully consult with the Contractors and consider any advice given prior to depositing funds into this account for any purposes. Deposits into this account shall not exceed the amounts specified in subdivision (c)(2)(v) of this article.

(3) The State shall use revenue bonds or other sources of moneys rather than this account to finance the costs of construction of any major capital projects.

(4) Five years following the Contract Extension Amendment Effective Date, the SWRDS Finance Committee shall review the State Water Facilities Capital Account to determine whether to recommend to the Director that this account be closed. If the Director determines to close the account, the State shall transfer any balance in the account to the SWRDS Support Account.

(5) Unless closed sooner, the State Water Facilities Capital Account shall terminate on December 31, 2035 and the State shall transfer any balance in such account to the SWRDS Support Account.
(c) Calculation of Financial Needs.

(1) Each year the State shall calculate in accordance with the timing provisions of Articles 29 and 31 the amounts that would have been charged (but for this article) to each Contractor as provided in other provisions of this contract.

(2) Each year the State shall also establish its revenue needs for the following year for the following purposes, subject to the following limitations:

   (i) The amount required to be collected under the provisions of this contract, other than this article, with respect to all revenue bonds issued by the State for Project Facilities.

   (ii) The amount required for payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof as described in Water Code section 12937(b)(1). These costs shall not include operation and maintenance costs of any Federal Central Valley Project facilities constructed by the United States and acquired by the State of California after 1994, other than the State's share of the joint use facilities which include San Luis Reservoir, the San Luis Canal and related facilities.

   (iii) The amount required for payment of the principal of and interest on the bonds issued pursuant to the Burns-Porter Act as described in Water Code section 12937(b)(2).

   (iv) Any amount required for transfer to the California Water Fund in reimbursement as described in Water Code section 12937(b)(3) for funds utilized from said fund for construction of the State Water Resources Development System.

   (v) For the years 1998 and thereafter, the amount needed for deposits into the State Water Facilities Capital Account as provided in subdivision (b) of this article, but (A) not more than $6 million per year for the years 1998, 1999 and 2000, and (B) not more than $4.5 million per year for the years 2001 and thereafter.

(3) The State shall reduce the annual charges in the aggregate for all Contractors by the amounts by which the hypothetical charges calculated pursuant to subdivision (c)(1) above exceed the revenue needs determined pursuant to subdivision (c)(2) above; provided that the reduction in annual charges in the aggregate for all Contractors shall not exceed $48 million in any year beginning with the first calendar year following the Contract Extension Amendment Effective Date. The provisions regarding the reduction in annual charges that were in effect prior to the Contract Extension Amendment Effective Date shall continue to apply to the entire calendar year in which the Contract Extension Amendment Effective Date
occurs. The reductions under this article shall be apportioned among the Contractors as provided in subdivisions (d), (e), (f) and (g) of this article. Reductions to Contractors shall be used to reduce the payments due from the Contractors on each January 1 and July 1; provided, however, that to the extent required pursuant to subdivision (h) of this article, each Agricultural Contractor shall pay to the Agricultural Rate Management Trust Fund an amount equal to the reduction allocated to such Agricultural Contractor. Any default in payment to the trust fund shall be subject to the same remedies as any default in payment to the State under this contract. To determine whether the reduction in annual charges in the aggregate for all Contractors equals the $48 million limit specified in this subdivision (c)(3), it shall be assumed that all Contractors have executed the Contract Extension Amendment and will share in the available rate reductions consistent with the proportions as provided in this contract, regardless of whether one or more Contractors do not receive a reduction under their respective Water Supply Contracts.

(4) The supplemental billing provisions authorized under this Article 51(c)(4) shall remain in effect through December 31, 2035, unless the Director determines in his or her discretion to eliminate the use of supplemental billing prior to that date or the Director in his or her discretion accepts a recommendation from the SWRDS Finance Committee to eliminate the use of supplemental billing prior to that date.

(i) The State shall inform the SWRDS Finance Committee if the available System cash balances are projected by the State to fall during the succeeding one hundred twenty (120) days to an amount below an amount equal to ninety (90) days operating expenditures. The SWRDS Finance Committee shall make a recommendation in light of such circumstances to the Director.

(ii) The State may submit a supplemental billing to the Agency for the year in an amount not to exceed the amount of the prior reductions for such year under this Article if necessary to meet unanticipated costs for purposes identified in Water Code Section 12937(b)(1) and (2) for which the State can issue billings under other provisions of this contract, subject to the following procedures and limitations:

(a) The State may only issue supplemental bills pursuant to the provisions of this Article 51(c)(4) when available System cash
balances are projected to be less than the amount equal to 90 days operating expenditures.

(b) The term “available System cash balances,” for purposes of subdivision (a) of this Article 51(c)(4)(ii) shall mean available amounts in the following California Water Resources Development Bond Fund accounts: System Revenue Account (to the extent the funds in the System Revenue Account are not projected to be needed for payment of Burns-Porter General Obligation Bond debt service within the next two years), General Operating Account, SWRDS Reinvestment Account, and SWRDS Support Account (to the extent the funds in the SWRDS Support Account are not projected to be needed for non-reimbursable expenditures within the next two years).

(c) The term “operating expenditures” for purposes of subdivision (a) of this Article 51(c)(4)(ii) shall mean the costs described in California Water Code Section 12937(b) chargeable to the State Water Project as water supply.

(d) Any supplemental billing made to the Agency for these purposes shall be in the same proportion to the total supplemental billings to all Contractors for these purposes as the prior reduction in charges to the Agency in that year bears to the total reduction in charges to all Contractors in that year and shall be treated as reducing the amount of the reduction made available for that year to the Contractor by the amount of the supplemental bill to the Contractor.

(5) The State may also submit a supplemental billing to the Agency for the year if necessary to meet unanticipated costs for revenue bond debt service and coverage for which the State can issue a statement of charges under provisions of this contract other than this article. The relative amounts of any supplemental billing made to the Agency and to other Contractors for revenue bond purposes shall be governed by such other applicable provisions of this contract.

(6) Payment of any supplemental billing shall be due thirty days after the date of the invoice. Delinquency and interest on delinquent amounts due shall be governed by Article 32.
(d) **Apportionment of Reductions between Agricultural and Urban Contractors.**

(1) Commencing with the first calendar year following the Contract Extension Amendment Effective Date, the State shall apportion available reductions for each year in accordance with this Article.

(2) Annual reductions in the aggregate amount of $48 million are projected to be available in the first calendar year following the Contract Extension Amendment Effective Date and each succeeding year through calendar year 2035 and shall be applied as follows:

   (i) If reductions are available in an aggregate amount that equals $48 million, $11,856,000 of reductions shall be apportioned among the Agricultural Contractors, and $36,144,000 of reductions shall be apportioned among the Urban Contractors.

   (ii) If reductions are available in an aggregate amount less than $48 million in any of these years, the reductions shall be divided on a 24.7%-75.3% basis between the Agricultural Contractors and the Urban Contractors respectively.

(3) No Contractor shall be entitled to receive in any year any additional reductions, including any additional reductions to make up for deficiencies in past projected reductions and any additional reductions above an aggregate annual amount of $48 million.

(4) Reductions in annual charges to a Contractor pursuant to this Article 51 (d) shall only be made prospectively beginning with the later of the first calendar year following the Contract Extension Amendment Effective Date or the first calendar year following the date the Contractor executes the Contract Extension Amendment. Apportionments of reductions shall be calculated on the assumption that all Contractors have executed such amendment.

(e) **Revenues and Reports.**

(1) Each year, beginning with the first calendar year commencing after the Contract Extension Amendment Effective Date, the Director shall determine the amount of available Article 51(e) Amounts. The Director shall determine the aggregate amount that would have been charged to all Contractors in any year but for this Article 51 and from that amount shall deduct the sum of

   (i) the amount of revenues needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii), (iv) and (v) plus

   (ii) $48 million.
The remaining amount, if any, shall be referred to herein as "Article 51(e) Amounts".

(2) The State shall allocate available Article 51(e) Amounts as follows: The Director in his or her discretion shall allocate and transfer or deposit up to 80% of available Article 51(e) Amounts, as determined on a projected basis, and up to 100% of available Article 51(e) Amounts, as determined on an actual basis, into the General Operating Account, the SWRDS Support Account and/or the SWRDS Reinvestment Account. Any Article 51(e) Amounts determined on an actual basis to be remaining in the Systems Revenue Account after the Director allocates and transfers such amounts to the General Operating Account, the SWRDS Support Account and/or the SWRDS Reinvestment Account shall remain in the Systems Revenue Account and shall be tracked separately in the State’s Financial Information System. The Director shall have full discretion regarding the use of the amounts remaining in the Systems Revenue Account.

(3) The State shall prepare and distribute an Annual Rate Reduction Determination Report setting out the factors used to determine reductions in rates pursuant to Article 51(c). The report shall include a display of the distribution of gross annual revenues before, among other items, recreation and fish and wildlife expenditures, contributions to the State Water Facilities Capital Account and reduction in rates pursuant to Article 51(c). The report shall also include a display of the distribution and/or allocation of net annual revenues after reduction in rates pursuant to Article 51(c), to the General Operating Account, SWRDS Support Account, SWRDS Reinvestment Account, 51(e) Sub-Account of the Systems Revenue Account, Davis-Dolwig Fund, State Water Facilities Capital Account, and Suspended Costs, as applicable.

(4) The System Financial Activity Report, which is required to be prepared quarterly pursuant to Article 61(d), shall include annual and accumulated Article 51(e) Amounts and expenditure activity, including the beginning balance, the annual activity and the ending balance for the year for each fund or account into which Article 51(e) Amounts have been transferred or deposited. The System Financial Activity Report should also have sufficient detail to provide comprehensive accounting of annual Article 51(e) Amounts and the uses of the annual Article 51(e) Amounts to enable the SWRDS Finance Committee to assess the use of these amounts.
(f) **Apportionment of Reductions Among Urban Contractors.**

Reductions in annual charges apportioned to Urban Contractors under subdivision (d) of this article shall be further allocated among Urban Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Urban Contractor shall be based on each Urban Contractor's proportionate share of total allocated capital costs as calculated below, for both project conservation and project transportation facilities, repaid by all Urban Contractors over the project repayment period.

1. The conservation capital cost component of the reduction allocation shall be apportioned on the basis of maximum annual Table A amount. Each Urban Contractor's proportionate share shall be the same as the percentage of that Contractor's maximum annual Table A amount to the total of all Urban Contractors' maximum annual Table A.

2. The transportation capital cost component of the reduction allocation shall be apportioned on the basis of transportation capital cost component repayment obligations, including interest over the project repayment period. Each Urban Contractor's proportionate share shall be the same as the percentage that the Contractor's total transportation capital cost component repayment obligation is of the total of all Urban Contractors' transportation capital cost component repayment obligations.

   i. Recalculations shall be made annually through the year 1999. Beginning in the year 2000 recalculations shall be made every five years unless an Urban Contractor requests a recalculation for an interim year and does so by a request in writing delivered to the Department by January 1 of the year in which the recalculation is to take place.

   ii. The transportation capital cost component repayment obligations, for purposes of this Article 51(f), shall be based in the year of recalculation on the then most recent Department of Water Resources Bulletin 132, Table B-15, "Capital Cost Component of Transportation Charge for Each Contractor," or its equivalent, excluding any costs or Table A amount associated with transfers of Table A amounts from Agricultural Contractors pursuant to Article 53.

3. To reflect the relative proportion of the conservation capital cost component and the transportation capital cost component to the total of all capital cost repayment obligations, the two cost components shall be weighted as follows:

   i. The conservation capital cost component shall be weighted with a thirty percent (30%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of maximum annual Table A Amounts as calculated in subdivision (f)(1) of this article by thirty percent (30%).
(ii) The transportation capital cost component shall be weighted with a seventy percent (70%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of transportation capital cost component repayment obligations as calculated in subdivision (f)(2) of this article by seventy percent (70%).

(iii) A total, weighted capital cost percentage shall be calculated for each Urban Contractor by adding the weighted conservation capital cost component percentage to their weighted transportation capital cost component percentage.

(4) The total amount of the annual charges to be reduced to Urban Contractors in each year shall be allocated among them by multiplying the total amount of annual charges to be reduced to the Urban Contractors by the total, weighted capital cost percentages for each such Contractor. If the amount of the reduction to an Urban Contractor is in excess of that Contractor's payment obligation to the Department for that year, such excess shall be reallocated among the other Urban Contractors.

(5) In the case of a permanent transfer of urban Table A amounts, the proportionate share of annual charge reductions associated with that Table A amount shall be transferred with the Table A amount to the buying Contractor. In the case of a Table A amount transfer by either Santa Barbara County Flood Control and Water Conservation District or San Luis Obispo County Flood Control and Water Conservation District, the reductions in annual charges to that agency shall be allocated (a) on the basis of that Table A amount being retained by that agency which bears Coastal Branch Phase II transportation costs, (b) on the basis of that Table A amount being retained by that agency which does not bear Coastal Branch Phase II transportation costs, and (c) on the basis of the balance of that agency's Table A amount which also does not bear Coastal Branch Phase II transportation costs.

(g) Apportionment of Reductions Among Agricultural Contractors.

(1) Reductions in annual charges apportioned to Agricultural Contractors under subdivision (d) of this article shall be allocated among the Agricultural Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Agricultural Contractor for the years 1997 through 2001 shall be based on each Agricultural Contractor's estimated proportionate share of the total project costs, excluding the variable operation, maintenance, power and replacement components of the Delta Water Charge and the Transportation Charge and also excluding off-aqueduct power charges, to be paid by all Agricultural Contractors for the years 1997 through 2035, calculated without taking into account this article. For purposes of these calculations, Kern County Water Agency's and Dudley Ridge Water District's estimated project costs shall not
include any costs associated with the 45,000 acre-feet of Annual Table A Amounts being permanently relinquished by those Contractors pursuant to subdivision (j) of Article 53. Also, for purposes of these calculations, an Agricultural Contractor's estimated project costs shall not be reduced by the transfer of any of the 130,000 acre-feet of Annual Table A Amounts provided for in subdivisions (a) through (i) of Article 53. The proportionate shares for 1997 through 2001 shall be calculated as follows:

(i) Each Agricultural Contractor's statement of charges received on July 1, 1994, shall be the initial basis for calculating the proportionate shares for the five years 1997 through 2001.

(ii) Each Agricultural Contractor's estimated capital and minimum components of the Delta Water Charge and the Transportation Charge (excluding off-aqueduct power charges) and Water Revenue Bond Surcharge shall be totaled for the years 1997 through 2035.

(iii) Kern County Water Agency and Dudley Ridge Water District totaled costs shall be reduced for the 45,000 acre-feet of annual Table A amount being permanently relinquished by them.

(iv) Any reductions in an Agricultural Contractor's totaled costs resulting from the transfer of any of the 130,000 acre-feet of annual Table A amount shall be re-added to that Contractor's costs.

(v) Each Agricultural Contractor's proportionate share shall be computed by dividing that Contractor's total costs by the total costs for all Agricultural Contractors determined pursuant to subparagraphs (ii), (iii) and (iv) above.

(2) The reductions in annual charges, for 1997 through 2001, shall be calculated using the method described in subdivision (g)(1) of this article.

(3) The allocation shall be recalculated using the same method described in subdivision (g)(1) of this article every five years beginning in 2002, if any Agricultural Contractor requests such a recalculation. Any recalculation shall be based on project cost data beginning with the year that the recalculation is to become effective through 2035.
(h) **Agricultural Rate Management Trust Fund.**

(1) **Establishment.** Through a trust agreement executed contemporaneously with this amendment, the State and the Agricultural Contractors that sign the Monterey Amendments shall establish the Agricultural Rate Management Trust Fund with a mutually agreed independent trustee.

(2) **Separate Accounts.** The trustee shall maintain within the trust fund a separate account for each Agricultural Contractor that signs the trust agreement to hold deposits made pursuant to this article.

(3) **Deposits.** Each Agricultural Contractor that signs the trust agreement shall deposit into such Contractor's account within the trust fund, at the same time as payments would otherwise be required by this contract to be made to the State, an amount equal to the amount by which such Contractor's charges under this contract have been reduced by reason of this article, until the balance in such Contractor's account within the trust fund is the same percentage of $150,000,000 as such Contractor's percentage share of reductions made available to all Agricultural Contractors as specified in subdivision (g) of this article. In 2002 and every fifth year thereafter, the Agricultural Contractors will review the maximum accumulation in the trust fund (the "Cap") and determine whether the cap should be adjusted. However, the Cap shall not be reduced below an aggregate of $150,000,000 for all Agricultural Contractor accounts.

(4) **Trust Fund Disbursements.**

(i) In any year in which the State's allocation of water to an Agricultural Contractor by April 15th of that year is less than one-hundred percent (100%) of the Contractor's requested annual Table A amount for that year, the trustee shall, to the extent there are funds in that Contractor's account, distribute to the State from such account for the benefit of that Contractor an amount equal to the percentage of the total of that Contractor's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of that Contractor's annual Table A amount for that year that was not allocated to it by the State by April 15th of that year.

(ii) In addition to the provisions of subdivision (h)(4)(i) of this article, if on April 15 of any year any of the irrigable land within the Tulare Lake Basin Water Storage District (Tulare) is flooded, and Tulare in writing requests the trustee to do so, the trustee shall, to the extent there are funds in Tulare's account, distribute to the State from such account for the benefit
of Tulare an amount equal to the percentage of the total of Tulare's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of the irrigable land within Tulare that is flooded on April 15.

(iii) Each Agricultural Contractor shall remain obligated to make payments to the State as required by other articles in this contract. Any amount to be disbursed pursuant to subdivisions (h)(4)(i) and (h)(4)(ii) shall be paid by the trustee to the State on July 1 of the year involved and shall be credited by the State toward any amounts owed by such respective Agricultural Contractor to the State as of that date. However, an Agricultural Contractor may direct the trustee to make the disbursement to that Agricultural Contractor which shall in turn make the payment to the State as required by other provisions of this contract. If the amount to be disbursed exceeds the amount owed to the State by such Contractor as of July 1, the excess shall be disbursed by the Trustee to the State at the time of and in payment of future obligations owed to the State by such Contractor. Alternatively, upon the request of such Contractor, all or part of the excess shall be paid by the trustee to that Contractor in reimbursement of prior payments by the Contractor to the State for that year.

(5) Payment of Supplemental Bills. In any year in which a supplemental bill has been submitted to an Agricultural Contractor pursuant to subdivision (c)(4) of this article, such supplemental bill shall be treated as reducing by an equal amount the obligation of such Contractor for that year to make payments into the Agricultural Rate Management Trust Fund. To the extent that such Contractor has already made payments to the trust fund in an amount in excess of such Contractor’s reduced trust fund payment obligation, such Contractor may request the trustee to use the excess from the trust fund to pay the supplemental bill.

(6) Discharge of Payment Obligation. Each payment to the State by the trust fund shall discharge and satisfy the Agricultural Contractor’s obligation to pay the amount of such payment to the State. No reimbursement of the trust fund by the Agricultural Contractor for such payments shall be required. However, each Agricultural Contractor shall continue to make deposits to the trust fund matching the amount of each year’s reductions as provided in subdivision (d) of this article so long as the amount in that Contractor’s account is less than its share of the Cap.

(7) Distribution of Funds in Excess of the Cap. Whenever accumulated funds (including interest) in an Agricultural Contractor’s account in the trust fund exceed that Contractor’s share of the Cap, or the estimated remaining payments the Contractor is required to make to the State prior to the end of the project
repayment period, that Contractor may direct the trustee to pay such excess to the Contractor.

(8) Termination of Trust Fund. At the end of the project repayment period, the Agricultural Rate Management Trust Fund shall be terminated and any balances remaining in the accounts for each of the Agricultural Contractors shall be disbursed to the respective Agricultural Contractors.

(i) Definitions. For the purposes of this article, the following definitions will apply:

(1) "Agricultural Contractor" shall mean the following agencies as they now exist or in any reorganized form:

(i) County of Kings,

(ii) Dudley Ridge Water District,

(iii) Empire West Side Irrigation District,

(iv) Kern County Water Agency for 848,130 acre-feet of its Table A amount,

(v) Oak Flat Water District,

(vi) Tulare Lake Basin Water Storage District.

(2) "Urban Contractor" shall mean every other agency having a long term water supply contract with the State as they exist as of the date of this amendment or in any reorganized form as well as Kern County Water Agency for 134,600 acre-feet of its Table A amount.

(j) Except as provided in subdivisions (c)(4) and (c)(5), this article shall not be interpreted to result in any greater State authority to charge the Contractors than exists under provisions of this contract other than this article.
NEW CONTRACT ARTICLE

II. ARTICLE 61 IS ADDED TO THE CONTRACT AS A NEW ARTICLE AS FOLLOWS:

61. FINANCIAL ACCOUNTS AND ACTIVITIES

(a) General Operating Account

(1) The State shall maintain a General Operating Account to provide the moneys needed for the following purposes:

   (i) To pay or provide for the payment of System costs which are reimbursable by one or more Contractors under their respective Water Supply Contracts in the event System revenues available for such payment are insufficient for such purpose; or

   (ii) To pay or provide for the payment of System costs for any System purpose in the event of a System emergency as defined in Article 61(a)(1)(iii).

   (iii) A System Emergency, as used in this Article 61(a)(1)(ii) shall mean an immediate, urgent, critical, unexpected, or impending situation that, in the judgment of the Director may cause or pose a risk of causing injury, loss of life, damage to the property, impairment of the financial condition, and/or interference with the normal activities of the System which requires immediate attention and remedial action.

(2) The maximum amount in the General Operating Account shall be set, adjusted and funded as follows:

   (i) Upon the Contract Extension Amendment Effective Date, the maximum amount shall be $150 million.

   (ii) On or before the first September 1 occurring five (5) years after the Contract Extension Amendment Effective Date and every five (5) years thereafter, the State shall present a business case analysis of the maximum amount reasonably necessary or appropriate to be maintained in the General Operating Account, including an evaluation of the maximum amount and its relationship to the business risks associated with the System cash flow, to the SWRDS Finance Committee for recommendation to the Director regarding a General Operating Account maximum amount
adjustment, provided that the maximum amount shall not be less than $150 million.

(iii) To fund the General Operating Account to its maximum amount, the Director may, in his or her discretion, transfer to the General Operating Account (1) amounts determined to be available pursuant to Article 51(e); (2) earnings from the investment of amounts in the General Operating Account; (3) amounts in the SWRDS Reinvestment Account; and (4) amounts in the SWRDS Support Account.

(iv) If the Director determines to decrease the maximum amount pursuant to Article 61(a)(2)(ii), or the maximum amount is otherwise exceeded, the excess amount in the General Operating Account shall be transferred to the SWRDS Reinvestment Account.

(v) The State shall replenish the amounts used from the General Operating Account (1) through charges to the Contractors to the extent the Contractors are obligated to reimburse the State for the costs paid with such amounts and (2) from the SWRDS Support Account or other available revenues (including the sources described in subparagraph (iii) of this Article 61(a)(2)) for costs not reimbursable by the Contractors under their respective Water Supply Contracts.

(vi) General Operating Account investment earnings shall be used to fund the General Operating Account to its maximum amount or, in the Director’s discretion, transferred to the SWRDS Support Account and/or the SWRDS Reinvestment Account.

(3) The State shall prepare monthly reports on the balance in and use of the General Operating Account for the Director, and shall provide those reports to the SWRDS Finance Committee. The SWRDS Finance Committee may periodically review reporting frequency and make recommendations to the Director regarding reporting frequency.

(b) **SWRDS Reinvestment Account**

(1) Commencing with the Contract Extension Amendment Effective Date, the State shall establish and maintain a SWRDS Reinvestment Account to provide a continuing source of investment revenue to provide amounts to be transferred to or deposited in the General Operating Account, the SWRDS Reinvestment Account, and the SWRDS Support Account.

(2) To fund the SWRDS Reinvestment Account, the Director may, in his or her discretion, transfer to the SWRDS Reinvestment Account (i) amounts determined to be available pursuant to Article 51(e), (ii) earnings from the investment of amounts in the SWRDS Reinvestment Account, (iii) payments by
the Contractors for capital costs funded from the SWRDS Reinvestment Account, (iv) amounts from the SWRDS Support Account, and (v) amounts from the General Operating Account.

(3) Amounts in the SWRDS Reinvestment Account may be used and/or invested as follows:

   (i) To pay capital costs of Project Facilities to the extent those costs are reimbursable by one or more Contractors under their respective Water Supply Contracts. Such capital costs shall be reimbursed to the State in accordance with item 5 of this subparagraph (b) below.

   (ii) To pay capital costs of Project Facilities pending reimbursement of the State with the proceeds of revenue bonds issued by the State; and

   (iii) To make temporary investments in accordance with the statutory limitations on such investments.

(4) The State shall prepare regular reports on the SWRDS Reinvestment Account for the Director and shall provide those reports to the SWRDS Finance Committee. The State shall consult with the SWRDS Finance Committee about the investments and activities to be funded from the SWRDS Reinvestment Account.

(5) **Amortization of Costs Financed with Amounts in the SWRDS Reinvestment Account.** Charges to amortize Project Facility Capital Costs paid with amounts from the SWRDS Reinvestment Account shall return to the State, in equal annual amounts over an amortization period determined by the State, the amount of each such cost together with an interest charge on the unamortized balance thereof.

   (i) The length of such amortization periods may be from ten (10) to fifty (50) years, provided that if the capital asset has an Economic Useful Life of less than ten (10) years, the amortization period may be a comparable period of less than ten (10) years.
(ii) The interest charge shall be at a rate equal to the market interest rate at the time the cost is Incurred on municipal Revenue Bonds with the following characteristics:

(a) the same rating as the rating on Revenue Bonds issued by the State to finance Project Facilities, and

(b) the same term as the length of the amortization period, all as determined by the State.

(iii) For the purposes of this subdivision (b)(5), the State may aggregate the Capital Costs of each Project Facility Incurred during each calendar year and determine a composite interest rate and a composite amortization period applicable to the amortization of such costs.

(iv) The amortization charges relating to the costs Incurred during each calendar year shall commence the calendar year starting one year after the end of the calendar year in which such costs were Incurred, and the amount to be amortized shall include capitalized interest for the period from the date or dates the costs are Incurred to the date of commencement of amortization.

(c) **SWRDS Support Account**

(1) Commencing with the Contract Extension Amendment Effective Date, the State shall establish and maintain a SWRDS Support Account to provide a source of funds to pay System costs that are not chargeable to the Contractors under their respective Water Supply Contracts and for the payment of which there are no other monies available.

(2) To fund the SWRDS Support Account, the Director may, in his or her discretion, transfer to the SWRDS Support Account (i) amounts determined to be available pursuant to Article 51(e); (ii) amounts in the SWRDS Reinvestment Account, (iii) investment earnings in the General Operating Account; (iv) earnings from the investment of amounts in the SWRDS Support Account; and (v) other available revenues. The State shall not charge the Agency to replenish the SWRDS Support Account for costs not otherwise chargeable to the Agency under this contract.

(3) If the State is reimbursed or other amounts are appropriated and received for a cost paid from the SWRDS Support Account, the State shall deposit the amount reimbursed or received in the SWRDS Support Account.

(4) The State shall prepare regular reports on the SWRDS Support Account for the Director and shall provide those reports to the SWRDS Finance
Committee. The State shall consult with the SWRDS Finance Committee about the investments and activities to be funded from the SWRDS Support Account.

(d) **System Financial Activity Report and Reporting Principles**

(1) The State shall prepare and distribute quarterly a System Financial Activity Report that contains the following information:

   (i) By fund or account, the activity in the following funds and accounts: the General Operating Account, the SWRDS Support Account, the SWRDS Reinvestment Account, the 51(e) Sub-Account of the Systems Revenue Account, the Davis-Dolwig Fund, and the State Water Facilities Capital Account, and the activity with respect to suspended costs.

   (ii) The data in the System Financial Activity Report shall be auditable, which includes an audit trail from the costing ledger (currently the Utility Cost Accounting Billing System, as of the Contract Extension Amendment Effective Date) to the general ledger (currently SAP, as of the Contract Extension Amendment Effective Date) or the Bulletin 132 estimates to the System Financial Activity Report.

(2) Appendix B, entitled System Reporting Principles, contains principles and guidelines which shall be followed, to the extent applicable, in the preparation of System financial reports and financial management reports.

(e) **State Water Resources Development System Finance Committee**

(1) The State shall establish a joint State and Contractors finance committee, which shall be referred to as the State Water Resources Development System Finance Committee or SWRDS Finance Committee. The membership of the SWRDS Finance Committee shall include both representatives from the State and the Contractors.

(2) The primary purpose of the SWRDS Finance Committee shall be to make recommendations to the Director concerning the financial policies of the System. The State and the Contractors shall describe the scope of the SWRDS Finance Committee in a charter mutually agreeable to the State and the Contractors.

(f) **Cost Recovery**

In general, the State should seek reimbursement for all System costs from the appropriate customers and users of System facilities. With respect to those System costs that are reimbursable by the Contractors, the State should allocate
financial responsibility for such costs in a manner that is both lawful and equitable, and which endeavors to recover such costs from the appropriate Contractors. If the State proposes to not charge any Contractor the full amount that the State is entitled to charge the Contractor under the contract, the State shall present a written proposal to the SWRDS Finance Committee for purposes of developing a recommendation to the Director regarding the proposal. The State shall submit such proposal in writing to the SWRDS Finance Committee 90 days in advance of the Director issuing any decision and within such 90 day period the SWRDS Finance Committee shall provide the Director with a recommendation regarding such proposal. Such proposals shall comply with the structure set out in the SWRDS Finance Committee charter referenced in Article 61(e)(2).
NEW CONTRACT APPENDIX

III. APPENDIX B IS ADDED TO THE CONTRACT AS A NEW APPENDIX AND SHALL READ AS FOLLOWS:

APPENDIX B

SYSTEM REPORTING PRINCIPLES

A. During the term of the water supply contracts, it is likely that financial reports and financial management reports will change in scope, nature, and frequency. Regardless of the exact reports used, such reports shall follow the below principles and guidelines to the extent applicable.

1. **Principle 1**: Financial reporting will be generated from the general ledger or data warehouse of the financial information system (system of record), such as SAP. The financial system of record is the authoritative source for financial reporting data values in a system. To ensure data integrity, there must be one, and only one, system of record for financial reporting values.

2. **Principle 2**: Financial reporting is not limited to annual financial statements but will be developed for regular reporting periods.

3. **Principle 3**: Financial management reporting generated from other financial systems, such as Utility Cost Accounting Billing System (UCABS), will identify and analyze significant variances from prior years or budgets.

4. **Principle 4**: Financial reporting and financial management reporting will identify unusual items and exceptions, and these items will be documented, reviewed, and resolved by management.

5. **Principle 5**: DWR will use standardized System-wide business rules and utilize a centralized financial system, such as SAP, UCABS, or other system, to provide controls/validations to ensure data integrity and reliable reporting.

6. **Principle 6**: DWR will use standardized data integrity rules in the development and publication of reports, including but not limited to the following:

   (1) Data integrity refers to the accuracy and consistency of data stored in a database, data warehouse, data mart or other construct.

   (2) Data integrity processes verify that data has remained unaltered in transit from creation to reception or remains unaltered in transit from one system to the next. Data used outside of the Enterprise Resource Planning (ERP) systems to meet the reporting needs of Program will undergo any number of operations in support of decision-making, such as capture, storage,
retrieval, update and transfer. It is important to have confidence that
during these operations, the data will be kept free from corruption,
modification and remain unaltered.

(3) Data with “integrity” has a complete or whole structure. Data values are
standardized according to a data model and/or data type. All
characteristics of the data must be correct – including business rules,
relations, dates, definitions and lineage – for data to be complete.

(4) Data integrity is imposed within an ERP database when it is created and is
authenticated through the ongoing use of error checking and validation
routines.

(5) Data integrity state or condition is to be measured by the validity and
reliability of the data values.

(6) Data integrity service and security maintains information exactly as it was
input, and is auditable to affirm its reliability.

The SWRDS Finance Committee is charged with providing financial policy
recommendations to the Director, and the Director has final discretion on whether
or not to accept the recommendations. While the SWRDS Finance Committee is
not charged with reviewing the content of financial reports, timely and accurate
financial reporting and financial management reporting provides technical
committees access to useful information that can be used to formulate proposals
on financial policy matters that may be brought to the SWRDS Finance
Committee.
IT IS FURTHER MUTUALLY AGREED that the following provisions, which shall not be part of the Water Supply Contract text, shall be a part of this Amendment and be binding on the Parties.

AMENDMENT IMPLEMENTING AND ADMINISTRATIVE PROVISIONS

1. EFFECTIVE DATE OF CONTRACT EXTENSION AMENDMENT.

(a) The Contract Extension Amendment shall take provisional effect ("provisional effective date pursuant to subparagraph (a)") on the last day of the calendar month in which both of the following occur: (i) the State and 15 or more Contractors, with an aggregate maximum annual Table A amount exceeding 3,200,000 acre feet, have executed (or committed in a form satisfactory to the State to execute) the Contract Extension Amendment and (ii) no legal action addressing the validity or enforceability of the Contract Extension Amendment or any aspect thereof has been filed within sixty days of such execution or, if filed, a final judgment of a court of competent jurisdiction has been entered sustaining or validating the Contract Extension Amendments. Subject to subparagraph (b), the provisional effective date pursuant to paragraph (a) shall be the Contract Extension Amendment Effective Date if the conditions set out in subparagraph (e) are met.

(b) If any part of the Contract Extension Amendment of any Contractor is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, the Contract Extension Amendments of all Contractors shall be of no force and effect except as provided in subparagraph (c).

(c) The unenforceability and lack of effectiveness of all Contractors’ Contract Extension Amendments as provided for in subparagraph (b) may be avoided only if the part of the Contract Extension Amendment determined to be invalid or unenforceable is explicitly waived in writing by the State and 15 or more Contractors, with an aggregate maximum annual Table A amount exceeding 3,200,000 acre feet, in which case the Contract Extension Amendment shall take provisional effect ("provisional effective date pursuant to subparagraph (c)") on the last day of the calendar month in which the requisite waivers are received, but only as to those Contractors submitting such a waiver in writing, subject to subparagraph (e). The provisional effective date pursuant subparagraph (c) shall become the Contract Extension Amendment Effective Date if the conditions set out in subparagraph (e) are met.

(d) If any Contractor has not executed a Contract Extension Amendment or has not submitted a waiver pursuant to subparagraph (c), whichever is applicable, within sixty (60) days of the provisional effective date pursuant to subparagraph (a) or the provisional effective date pursuant to subparagraph (c), as applicable, the amendment shall not take effect as to such Contractor, unless the Contractor and the State, in its discretion, thereafter execute such Contractor’s contract extension amendment or the Contractor thereafter submits, and the State in its discretion accepts,
the waiver, whichever applies, in which case the Contract Extension Amendment Effective Date for purposes of that Contractor's contract and any associated terms shall be as agreed upon by the State and Contractor.

(e) (1) If at the end of the applicable 60-day period specified in subparagraph (d), 24 or more Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet have executed the amendment (or committed to execute the amendment in a form satisfactory to the State) or submitted a waiver pursuant to subparagraph (c), as applicable, the provisional effective date pursuant subparagraph (a) or the provisional effective date pursuant to subparagraph (c), as applicable, shall become the Contract Extension Amendment Effective Date.

(2) If at the end of the applicable 60 day period specified in subparagraph (d), 24 or more Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet have not executed (or committed to execute) the amendment or submitted a waiver pursuant to subparagraph (c), as applicable, then the State, after consultation with the Contractors that have executed (or committed to execute) the amendment or submitted a waiver, as applicable, shall within 30 days following such 60 day period determine in its discretion whether to make the provisional effective date pursuant to subparagraph (a) or the provisional effective date pursuant to subparagraph (c), as applicable, the Contract Extension Amendment Effective Date. The State shall promptly notify all Contractors of the State's determination. If the State determines, pursuant to this subparagraph 1(e)(2) to allow the contract amendment to take effect, it shall take effect only as to those Contractors consenting to the amendment taking effect pursuant to this subparagraph 1(e)(2)

(f) (1) During the pendency of a legal action addressing the validity or enforceability of the Contract Extension Amendment, the State and a minimum of 24 Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet which have executed (or committed to execute) the Contract Extension Amendment may agree in writing to waive any limitation barring the Contract Extension Amendment from taking effect until a final judgment of a court of competent jurisdiction has been entered (including to waive the "no force and effect " provision in subsection (b)) and instead allow the Contract Extension Amendment to take effect as to such Contractors, subject to such conditions, if any, agreed upon, by the State and such contractors. In such case, the State shall promptly notify all Contractors of the effective date of the Contract Extension Amendment.

(2) If, during the pendency of a legal action addressing the validity or enforceability of the Contract Extension Amendment, less than 24 Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet have agreed in writing to waive any limitation barring the Contract Extension Amendment from taking effect until a final judgment of a court of competent jurisdiction has been entered as provided in subsection (1)(f)(1) above, then a Contractor which has so agreed in writing may request the State to consider allowing the contract extension amendment to take effect with the agreement of less than 24 Contractors. Upon
receiving such a request, the State, after consultation with the Contractors that have agreed in writing to waive any limitation as provided in subsection (1)(f)(1) above, may determine in its discretion whether to allow the Contract Extension Amendment to take effect with less than 24 Contractors agreeing in writing to waive the limitation. The State shall promptly notify all Contractors if the State’s determines to allow the Contract Extension Amendment to take effect, and include in such notice the effective date of the Contract Extension Amendment and any conditions that would apply. If the State determines, pursuant to this subparagraph 1(f)(2) to allow the contract amendment to take effect, it shall take effect only as to those Contractors consenting to the amendment taking effect pursuant to subparagraph 1(f)(1).

2. **POST BILLING TRANSITION DATE ESTIMATES.**

If the State determines it to be necessary, the State may rely on estimates and later true-up for billing and reporting purposes in the initial years after the Billing Transition Date.

3. **WAIVER AND RELEASE.**

Subject to the Contract Extension Amendment taking effect, the Agency does hereby forever waive, release and discharge the State, and its current and former officers, agents and employees, from any and all past and present protests, claims, damages, actions and causes of action of every kind and description, now existing or hereafter arising, known or unknown, that were or could be or could have been asserted relating to the State’s adjustment made prior to the execution date of this Contract Extension Amendment in connection with the proportional responsibility, for System facilities south of and including the Dos Amigos Pumping Plant, between (i) water supply and (ii) recreation and fish and wildlife enhancement.

4. **OTHER CONTRACT PROVISIONS.**

Except as amended by this amendment, all provisions of the contract shall be and remain the same and in full force and effect, provided, however, that any reference to the definition of a term in Article 1, shall be deemed to be a reference to the definition of that term, notwithstanding that the definition has been re-lettered within Article 1. In preparing a consolidated contract, the parties agree to update all such references to reflect the definitions’ lettering within Article 1.

5. **COUNTERPART.**

This Contract Extension Amendment may be signed in counterpart.
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date first above written.
To: Ventura Water Commission

From: Susan Rungren, Ventura Water General Manager

Subject: 2020-2026 Capital Improvement Plan Process

RECOMMENDATION

Staff recommends the Water Commission receive an oral presentation on the 2020-2026 Capital Improvement Plan Process and Proposed Projects.

DISCUSSION

The City’s Charter requires that a five-year Capital Improvement Plan (CIP) be adopted by City Council prior to April 1st of each year. The CIP is a six-year plan designed to coincide with the upcoming biennial budget and goes through an extensive citywide process every two years that identifies and prioritizes Ventura’s infrastructure needs over the next six years.

Ventura Water is currently working with Public Works on water and wastewater projects to be included in the upcoming Fiscal Year 2020-2026 Capital Improvement Plan.

The CIP is not a funding document, but rather a strategic planning framework that prioritizes the City’s infrastructure needs. Every year in June, the capital budget is presented to City Council with identified planned funding sources to complete or make progress on projects for the upcoming fiscal year.

This presentation will describe the CIP Process, the water and wastewater CIP accomplishments from this past year, and projects proposed to be included in the 2020-2026 CIP.

Prepared by Betsy Cooper, Assistant General Manager, Water Resources, for:

Susan Rungren
Ventura Water General Manager
To: Ventura Water Commission
From: Susan Rungren, Ventura Water General Manager
Subject: Financial Status Update

RECOMMENDATIONS

Staff recommends the Water Commission receive this written report and an oral presentation on financial information for Ventura Water's Operating Program and Capital Improvement Plan (CIP) for both the Water and Wastewater Enterprise Funds.

PREVIOUS MEETINGS


DISCUSSION

Ventura Water implemented a new rate structure in Fiscal Year 2012-2013 and again in September of Fiscal Year 2015-2016 in response to the Stage 3 Water Shortage Event. These rates were established in order to achieve full revenue recovery during drought and non-drought years. Currently, the water enterprise fund reflects drought rates and the wastewater enterprise fund reflects non-drought rates.

The attached PowerPoint material provides an update on the financial program status for both Water and Wastewater operating and capital improvement funds that are generated from these rates.

The following highlights information from the PowerPoint presentation and are identified by corresponding item number:

1) Water ~ Fund 52 – FY 2019-2020 Adopted Operating Budget
   b. Debt Service payments continue to be budgeted towards the 2010 Safe Drinking Water Loan and the Water Bonds issued in 2012 and 2014.
c. Operating Reserves, Contingencies and Transfers are budgeted to support operation emergencies, contingencies to support unanticipated changes to budgeted and non-budgeted expenses and year end transfers to water capital improvement projects.

d. Revenue identified from rate payers for water service and water volume charges and other miscellaneous items.

2) Water ~ Fund 52 – Actual Program Operating Expense –vs- Revenue

   This chart looks at five years of Operations & Maintenance Expense, Debt Service, Reserves, Revenue and Revenue Variance.

   a. Actual Operations & Maintenance Expense – On the average, O&M expense reflects about $22.3 million over the past five years or $5.6 million every three months.

   b. Actual Debt Service – Actual payment towards the 2010 Safe Drinking Water Loan, 2012 and 2014 Bonds to support Water’s Capital Improvement Projects (CIP). The bond payments extend into 2042 and 2044 respectively.

   c. Actual O&M Reserve – Prior to the 2012 Rate Study a minimal operating reserve of $94,044.00 was set aside for unanticipated changes to budgeted and non-budgeted expenses and disasters or other emergencies. To date a total operating reserve of $7,567,464.00 has been set aside to provide adequate cash flow for water operations.

   d. Actual Revenue – Revenue received from rate payers for water service and volume charges and other miscellaneous items.

   e. Variance – The variance reflects revenue available to fund the water CIP reserve and projects.

3) Water ~ Operation and CIP Reserves

   a. Operation Reserve – Operating reserves may be used to meet ongoing cash flow requirements as well as disaster or other emergency requirements. Ventura Water’s policy is to maintain a minimum 90-day operating reserve. As of June 30, 2019, a total of $7,567,464.00 has been set aside for operating reserve.

   b. CIP Reserve – Capital reserve is used for replacement and refurbishment related expenses. Ventura Water’s policy is to maintain a target of 100 percent of the ten-year average replacement CIP to provide cash flow for capital needs and to cover unexpected increases in capital expenditures. Currently, based on the 2018-2024 Adopted Capital Improvement Plan, $5,190,924 has been set aside for CIP reserve.

4) Water ~ Fund 72 - CIP Cash Funds Available

   Cash balance available for Fund 72-Water CIP reflects information as of June 2019. As a note, most of the $43,589,211.00 funds reflected in CIP Cash and the Bond cash of $13,247,261.00 are already earmarked for existing and planned capital projects. The Net Zero cash of $2,463,378.00 is held in a separate account code and has not been assigned to any specific project.
5) Water ~ Fund 72 – 2012 & 2014 Bond Projects
   The CIP bond projects reflect actuals with encumbrances. These charts reflect the total estimated project cost which may be funded by Bonds and Fund 72 Pay-go.

6) Water ~ Fund 72 - CIP Work Plan Projects
   Fund 72 is the Water CIP Enterprise Fund. This reflects “Work Plan” projects not funded by bonds. The variance between the total estimated project cost and appropriated Fund 72 Pay-Go funds reflects additional funds needed for the work plan projects.

7) Wastewater ~ Fund 51 – FY 2019-2020 Adopted Operating Budget
   a. Operations & Maintenance Expense supports six programs within Ventura Wastewater.
   b. Debt Service payments continue to be budgeted towards the 2014 Wastewater Bonds.
   c. Operating Reserves, Contingencies and Transfers are budgeted to support operation emergencies, contingencies to support unanticipated changes to budgeted and non-budgeted expenses and year end transfers to wastewater capital improvement projects.
   d. Revenue identified from rate payers for fixed and flow charges and other miscellaneous items for Wastewater service.

8) Wastewater ~ Fund 51 – Actual Program Operating Expense –vs- Revenue
   This chart looks at five years of Operations & Maintenance Expense, Debt Service, Reserves, Revenue and Revenue Variance.
   a. Actual Operations & Maintenance Expense – On the average, O&M expense reflects about $15.8 million over the past five years or $4.0 million every three months.
   b. Actual Debt Service – Actual payment towards 2014 Bonds to support Wastewater’s Capital Improvement Projects (CIP). This payment extends to 2044.
   c. Actual O&M Reserve – Prior to the 2012 Rate Study a minimal operating reserve of $100,000.00 was set aside for unanticipated changes to budgeted and non-budgeted expenses and disasters or other emergencies. To date a total operating reserve of $5,473,142.00 has been set aside to provide adequate cash flow for Wastewater operations.
   d. Actual Revenue – Revenue received from rate payers for fixed and flow charges and other miscellaneous items for Wastewater service.
   e. Variance – The variance reflects revenue available to fund the Wastewater CIP reserve and projects.

9) Wastewater ~ Operation and CIP Reserves
   a. Operation Reserve – Operating reserves may be used to meet ongoing cash flow requirements as well as emergency requirements. Ventura Water’s policy is to maintain a minimum 90-day operating reserve. As of June 30,
2019, a total of $5,473,142.00 has been set aside for the wastewater operating reserve.

b. CIP Reserve – Capital reserve is used for replacement and refurbishment related expenses. Ventura Water’s policy is to maintain a target of 100 percent of the ten-year average replacement CIP to provide cash flow for capital needs and to cover unexpected increases in capital expenditures. Currently, based on the 2018-2024 Adopted Capital Improvement Plan, $5,476,273.00 has been set aside for CIP reserve.

10) Wastewater ~ Fund 71 & Fund 75 CIP Cash Funds Available
Cash balance available for Fund 71-Wastewater CIP reflects information as of June 2019. As a note, most of the funds are already earmarked for existing and planned capital projects. CIP cash reflects $24,425,760.00 and Bond cash is $9,355,820.00. The Estuary Protection-Fund 75 provides an additional $9,494,054, which will help offset the costs associated with the Santa Clara River Estuary settlement with Heal the Bay and Wishtoyo Foundation’s Ventura Coastkeeper Program. Fund 75 revenue stream is kept in a separate fund, which will help fund the debt service payments on the diversion facilities in the future.

11) Wastewater ~ Fund 71 - 2014 Bond Projects
The CIP bond projects reflect actuals with encumbrances. The chart reflects the total estimated project cost which may be funded by Bonds and Fund 71 Pay-go.

12) Wastewater ~ Fund 71 – CIP Work Plan Projects
Fund 71 is the Wastewater CIP Enterprise Fund. This reflects “Work Plan” projects not funded by bonds. The variance between the total estimated project cost and appropriated Fund 71 Pay-Go funding reflects additional funds needed for these projects.

 Ventura Water will be preparing to move forward with another cost of service study in fiscal year 2019-2020 to ensure fair and equitable water and wastewater rates for all City users during drought and non-drought years. Revenues generated from these rates shall continue to provide self-sustaining operations, maintenance, reserves and capital improvement programs for both water and wastewater.

Prepared by Lisa Kern, Management Analyst for:

Susan Rungren
Ventura Water General Manager

Attachment: Power Point Presentation – Financial Status Update
Ventura Water
Financial Status Update
August 2019

Ventura Water – Fund 52
FY 2019-2020 Adopted Operating Budget

- Adopted O&M: $30,436,402
- Adopted Debt Service: $4,761,528
- Adopted Reserve Transfers: $3,610,588
- Adopted Revenue: $38,790,628
Item 4

Ventura Water ~ Fund 72
CIP Cash Funds as of: 6/30/2019

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<td>NET ZERO CASH</td>
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<td>TOTAL CASH</td>
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Item 5

2012 Water Bond Projects
(Includes Both Pay-Go and Bond Values)

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<th>Project</th>
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Questions?