



**SPECIAL NOTICE REGARDING
CORONAVIRUS DISEASE 2019 (COVID-19)
AND PARTICIPATION IN PUBLIC MEETINGS**

On March 4, 2020, Governor Newsom declared a State of Emergency resulting from the threat of COVID-19. Governor Newsom issued Executive Order N-25-20 (3-12-20) and Executive Order N-29-20 (3-17-20) which temporarily suspend portions of the Brown Act relative to conducting public meetings. Subsequent thereto, Governor Newsom issued Executive Order N-33-20 (3-19-20) ordering all individuals to stay at home or at their place of residence. Accordingly, it has been determined that all Board and Workshop meetings of the San Bernardino Valley Municipal Water District will be held pursuant to the Brown Act and will be conducted via teleconference. There will be no public access to the meeting venue.

**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY, APRIL 7, 2020 – 2:00 P.M.**

PUBLIC PARTICIPATION

Public participation is welcome and encouraged. You may participate in the April 7, 2020, meeting of the San Bernardino Valley Municipal Water District online and by telephone as follows:

**Dial-in Info: 877 853 5247 US Toll-free
Meeting ID: 684 456 030**

<https://us04web.zoom.us/j/684456030>

If you are unable to participate online or by telephone, you may also submit your comments and questions in writing for the District's consideration by sending them to comments@sbumwd.com with the subject line "Public Comment Item #" (insert the agenda item number relevant to your comment) or "Public Comment Non-Agenda Item". Submit your written comments by 6:00 p.m. on Monday, April 6, 2020. All public comments will be provided to the President and may be read into the record or compiled as part of the record.

IMPORTANT PRIVACY NOTE: Participation in the meeting via the Zoom app is strongly encouraged. Please keep in mind: (1) This is a public meeting; as such, the virtual meeting information is published on the World Wide Web and available to everyone. (2) Should you participate remotely via telephone, your telephone number will be your "identifier" during the meeting and available to all meeting participants. Participation in the meeting via the Zoom app is strongly encouraged; there is no way to protect your privacy if you elect to call in to the meeting. The Zoom app is a free download.



SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
380 E. Vanderbilt Way, San Bernardino, CA 92408

REGULAR MEETING OF THE BOARD OF DIRECTORS

AGENDA

2:00 PM Tuesday, April 7, 2020

CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL

1. **PUBLIC COMMENT** - *Any person may address the Board on matters within its jurisdiction.*
2. **APPROVAL OF MINUTES**
 - 2.1. March 17, 2020, Meeting (Page 3)
[Minutes 031720](#)
3. **DISCUSSION AND POSSIBLE ACTION ITEMS**
 - 3.1. Consider WaterSMART Grant Contract with US Bureau of Reclamation for the Central Feeder and East Branch Extension Intertie Project (Page 11)
[Staff Memo - WaterSMART Grant Contract for Central Feeder and EBX Intertie Project](#)
[WaterSMART Agreement R19AP00107](#)
 - 3.2. Consider Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality (Page 63)
[Staff Memo - Exchange Agreement](#)
[Proposed Exchange Agreement](#)
[MOU with BVMWC and SBVWCD](#)
 - 3.3. Consider Retroactive Exchange of State Water Project Water for Santa Ana River Water in 2019 Under the Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality (Page 83)
[Staff Memo - 2019 Bear Valley Retroactive Exchange](#)
[Bear Valley Exchange Proposal for 2019](#)
 - 3.4. Discuss May 5th Board Meeting and May Resources Workshop

4. REPORTS (DISCUSSION AND POSSIBLE ACTION)

- 4.1. Board of Directors' Workshop - Resources, March 5, 2020 (Page 87)
[Summary Notes BOD Workshop - Resources 030520](#)
- 4.2. Board of Directors' Workshop - Engineering, March 10, 2020 (Page 90)
[Summary Notes BOD Workshop - Engineering 031020](#)
- 4.3. Board of Directors Workshop - Policy, March 12, 2020 (Page 94)
[Summary Notes BOD Workshop - Policy 031220](#)
- 4.4. SAWPA Meeting Report
- 4.5. Primary Representatives' Report/Directors' Activities

5. ANNOUNCEMENTS

- 5.1. List of Announcements (Page 98)
[List of Announcements](#)

6. CLOSED SESSION

7. ADJOURNMENT

PLEASE NOTE:

Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the District's office located at 380 E. Vanderbilt Way, San Bernardino, during normal business hours. Also, such documents are available on the District's website at www.sbvmd.com subject to staff's ability to post the documents before the meeting. The District recognizes its obligation to provide equal access to those individuals with disabilities. Please contact Lillian Hernandez at (909) 387-9214 two working days prior to the meeting with any special requests for reasonable accommodation.

**MINUTES
OF
THE
REGULAR BOARD MEETING
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

March 17, 2020

Directors Present: T. Milford Harrison, Paul Kielhold, Gil Navarro, Susan Longville, and June Hayes

Directors Absent: None

Staff Present: Heather Dyer, Bob Tincher, Wen Huang, Cindy Saks, Kristeen Farlow (by teleconference), Melissa Zoba, Lillian Hernandez, and Brendan Brandt

Registered Guests:

Ronald Coats, East Valley Water District

Mark Alvarez

Melody McDonald, San Bernardino Valley Water Conservation District

Benjamin G. Kelly, Western Heights Water Company

Joe Zoba, Yucaipa Valley Water District (by teleconference)

Bruce Granlund, Yucaipa Valley Water District (by teleconference)

Joyce McIntyre, Yucaipa Valley Water District (by teleconference)

The regular meeting of the Board of Directors was called to order by President Harrison at 2:00 p.m. at the District office, 380 E. Vanderbilt Way, San Bernardino and by teleconference. A quorum was noted present.

Agenda Item 1. Public Comment

President Harrison invited any members of the public to address the Board. Hearing none, the meeting proceeded with the following agenda items.

District Legal Counsel, Brendan Brandt, recommended to the Board based on an emergency situation to add an item to discuss certain issues. The Board may take action on items of business not appearing on the posted agenda upon the determination by a majority vote that an emergency situation exists. An emergency situation means an emergency which is defined as an activity that severely impairs public health, safety, or both, as determined by a majority of the members of the Board. Thus, three members will have to vote on the two items presented. The first item was to find that an emergency

situation exists. Mr. Brandt proposed the Board vote on the following: 1) that a unique and rapidly evolving public health and safety challenge has been presented by the COVID-19 Coronavirus and newly issued federal, state, and local health authority requirements and recommendations constitute an emergency situation within the meaning of Government Code Section 54954.2(b)(1) and he recommended that a vote be taken that an emergency situation does exist to add an agenda item.

Director Navarro moved approval that an emergency situation does exist. Director Longville seconded. The motion was unanimously adopted.

The second issue was to add a discussion item to the agenda to discuss certain items based on the emergency situation. Mr. Brandt proposed that in order to timely address the emergency situation, there shall be added to the agenda an item for consideration and possible action regarding appropriate responsive measures to be taken by the District in response to COVID-19 Coronavirus including, without limitation, teleconferencing for future public meetings, staff logistics, and the closure of Hanes Park. President Harrison stated the item would be added as item 3.4 on the agenda.

Director Longville moved approval of adding the agenda item to the agenda as item 3.4. Director Kielhold seconded. The motion was unanimously adopted.

Agenda Item 2. Approval of Minutes of the March 3, 2020, Board meeting.

Director Hayes moved to approve the minutes of the March 3, 2020, Board meeting. Director Kielhold seconded. The motion was unanimously adopted.

Agenda Item 3. Discussion and Possible Action Items.

3.1) Consider Equipment Procurements for Central Feeder – East Branch Extension Intertie Project. Heather Dyer stated that this item would be removed from Board action and will come back to the Board at a later date.

3.2) Consider Adoption of Resolution No. 1100 Establishing Rules and Procedures for Compensation of Directors and for Reimbursement of Directors and Staff. Heather Dyer stated that this item was discussed on January 2, 2020, and then also on March 5, 2020, in order to develop a more simplified version of the resolution Establishing Rules and Procedures for Compensation of Directors and Reimbursement of Directors and Staff. This was intended to make it easier for Board members to decide which meetings they would like to attend that bring value to their position and their judgment as a Director and member of the Board. Being removed was the previous list of approved and discretionary meetings that were included in the resolution and shifting toward a system of personal responsibility and public accountability through publishing the meetings that they attend and also are compensated for in the agenda packets the following month. The resolution has been revised which is Resolution No. 1100. Also

included was a new form for Director Compensation. The Board can select from a list of common meetings that they may have attended the previous month from a drop-down selection menu. There is also an “Other” option that can be selected if a meeting attended is not on the drop-down list. The Director can select the meetings for which they would like to be compensated, up to a maximum of 10 meetings per month, at \$299 per meeting. Since this new system is based on the Board members using their discretion and being accountable to the public, there is an explanation section on the reporting form for the Board to provide a brief description of each meeting attended and an explanation of the value that attendance provides to their role and their ability to serve as a member of the Board. The changes made to the resolution as a result of the March 5th workshop were that Directors may receive per diem for meetings with District staff if they are requested by the general manager, the Board President may receive per diem for meetings with the general manager regarding agenda matters up to two meetings per month, and that if Board members are appointed to serve on an outside committee or board, travel to those meetings is automatically approved. Brendan Brandt stated that Governor Newsom’s Executive Order allows attending meetings by teleconference. There was discussion about after the emergency, will teleconferences be compensable. Mr. Brandt stated that an amendment could be made to the resolution at hand.

Director Hayes moved adoption of Resolution No. 1100 with the amendment that after the emergency, attending meetings by teleconference will be compensable as long as the Director is recorded as attending. Director Navarro seconded. The motion was unanimously adopted.

RESOLUTION NO. 1100

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT ESTABLISHING RULES AND PROCEDURES FOR COMPENSATION OF DIRECTORS AND FOR REIMBURSEMENT OF DIRECTORS AND STAFF

(See Resolution Book)

3.3) Consider Board Member Travel Requests. After discussion, President Harrison stated the item would be removed from consideration on the agenda.

3.4) Emergency Items Added to Agenda. Brendan Brandt asked the Board how they wanted to move forward in this situation in terms of Board meetings and workshops. The governor’s order allowed certain Brown Act requirement waivers. Board members can attend public meetings at more than one location without the usual posting requirements from the locations. It waives the requirement to make space available for the public to attend those meetings. Meetings still require a published agenda with 72 hours’ notice. The public needs to be able to observe the meeting and can join by teleconference. The Board decided the Strategic Planning Workshops will be cancelled and rescheduled at a

later date after the COVID-19 emergency situation is over and Directors can participate in the discussion in person.

Ms. Dyer stated that the District has developed a Business Continuity Plan to allow most staff to work remotely and also allows operations to ensure work is done in a safe work environment. She feels the District has set an example of being proactive in the response to this emergency and that staff wants to continue being a leader in the watershed. Ms. Dyer stated that if it is not an essential meeting, then we should conduct the meeting via teleconference. In this way we can continue to go good work but in a way that promotes everyone staying home and flattening the COVID-19 Coronavirus curve.

Director Hayes moved approval of having meetings going forward during the emergency period consistent with the Governor's Executive Order and other local governments' orders. Director Longville seconded. The motion was unanimously adopted.

Mr. Brandt turned the staff logistics topic over to Ms. Dyer. Ms. Dyer informed the Board that all staff had been met with to ensure they have functional technology to effectively work from home. The operations staff has an operations plan in place that they are fully working but have implemented additional a safety protocol where they clean all the surfaces before and after shift changes. If the worst would happen, operations would need three people to fully run the operations system and deliver water. It is not anticipated that there will be any disruption in service. Ms. Dyer is promoting that staff stay home, stay safe, work remotely, and do not risk passing the virus even if they are asymptomatic.

Mr. Brandt turned the topic of Hanes Park over to Ms. Dyer. Ms. Dyer stated that President Harrison made an emergency call because Hanes Park was out of toilet paper and was experiencing some problems. There were 40 people at the park so staff felt it was important to close the park before there were health risks associated with the lack of toilet paper in addition to Coronavirus issues. Signs were posted that the park was closing due to the coronavirus public emergency. Ms. Dyer asked the Board if they wanted to keep it closed during the duration of the emergency. The Board affirmed that they wanted to keep the park closed for the duration of the emergency.

Director Navarro moved approval of keeping Hanes Park closed for the duration of the emergency. Director Kielhold seconded. The motion was unanimously adopted.

Ms. Dyer went through the list of meetings and requested that the Board give her direction on whether to cancel, re-schedule, or have teleconference meetings. The Resources Workshop will be rescheduled to April 16th. The remaining workshops will be by teleconference. The Board meetings will take place on their regular schedule by teleconference. Ms. Dyer will contact the chair of the Basin Technical Advisory Committee and the Advisory Commission on Water Policy regarding cancelling the meetings. The Board decided the Strategic Planning Workshops will be rescheduled at a later date.

Agenda Item 4. Reports (Discussion and Possible Action Items).

4.1) Board of Directors' Workshop – Resources, March 5, 2020. No oral report was given as a written report was included in the Board packet.

4.2) SAWPA Meeting Report, March 17, 2020 and the Project 24 Agreement Report, March 17, 2020. President Harrison reported on the following items:

1. Received a presentation on salt management strategies from Phil Rosentrater, Salton Sea Authority General Manager/Executive Director.
2. Received an overview presentation of the Santa Ana River Trail.
3. Authorized the General Manager to execute the revised Memorandum of Understanding between the Santa Ana Watershed Project Authority (SAWPA) and Western Municipal Water District (WMWD) establishing the terms for the cost allocation of the SAWPA parking lot restoration.
4. Approved the use of \$120,000 from the Building Reserve Fund to continue Phase 2 of the SAWPA Building Renovation effort.
5. Adopted Resolution No. 2020-05 declaring emergency conditions exist and authorizing the General Manager to take all actions necessary in response to the COVID-19 pandemic.

4.3) Primary Representatives' Reports/Directors' Activities.

Director Kielhold reported that he attended the March 11th East Valley Water District (EVWD) Board meeting. There was discussion of refinancing of bonds on the Sterling Natural Resource Center and they directed their consultant to investigate the re-issue of the bonds. There is a potential \$5 million savings by taking that action.

Director Longville reported that she attended the March 10th League of Women Voters Water Committee that she has been involved in for the past five years. She will attend the San Bernardino City Council meeting as an individual and speak in opposition of the removal of Rikki Van Johnson from the San Bernardino Municipal Water Department's Board of Water Commissioners. She stated she provided comments on the Water Use Efficiency Assessment.

Director Navarro suggested sending the District's press release to local government agencies and school districts. He requested a workshop to review internal emergency procedures and using modern technology in an emergency.

Director Hayes reported that she attended the March 5th West Valley Water District (WVWD) Board meeting. On March 10th and 11th she was in Sacramento with Ms. Dyer

an Ms. Farlow. On March 11th she attended an interview with two California Special Districts Association Board members. Their recommendation will go in on the 27th of March as to who they will recommend for their state board. Shortly thereafter, the appointment will be made. They attended the Association of California Water Agencies Legislative Days Conference and then met with several state senators and agencies. She stated that Ms. Dyer was very impressive and the meetings were very productive. She and Ms. Dyer will attend a meeting with WVWD regarding the Groundwater Council and have an additional meeting with the WVWD Board President.

Ms. Dyer stated they met with Bill Craven and presented the desire to help the San Bernardino National Forest to become more climate resilient for both water supply and habitat purposes. She presented the Habitat Conservation Plan (HCP), and all the water supply projects that are planned and will be permitted through the HCP. Mr. Craven requested staff to put together a \$1 billion "super project" proposal that would include water recharge projects and infrastructure. Potentially, a future bond would help pay for the water supply infrastructure which would include the active recharge projects. The local money would go to manage the forest fuels management activities above the projects for better climate resilience, water supply security, and habitat resiliency. He would like staff to expand it out to some of the neighboring areas to bring in more benefits. Perhaps consider the addition of the San Gabriel watershed where there are common species problems, common water supply problems, and common forest fuels management problems. Staff will research developing a \$1 billion package to take to one of the bonds. Director Longville requested that after Ms. Dyer responded to Bill Craven, she meet with Senator Allen's office. Director Longville offered to facilitate the meeting.

President Harrison stated that at the meetings he attended in Washington, D.C. with Ms. Dyer in February, she was very articulate and convincing and as a direct result of her conversation with Gary Frazier, Assistant Environmental Director, U.S. Fish and Wildlife Service, the District was awarded a \$875,000 grant for the HCP. President Harrison reported that he attended the San Bernardino Valley Water Conservation District meeting on March 11th.

4.4) Operations Report. No oral report was given as a written report was included in the Board packet.

4.5) Treasurer's Report. Director Longville moved the following expenses for the month of February 2020. The State Water Contract Fund \$2,068,265.67, Devil Canyon/Castaic Fund \$104,371.00, and General Fund \$1,442,828.66. Director Hayes seconded. The motion was unanimously adopted.

Brendan Brandt announced that the District concluded negotiations with Greenspot Corridor, LLC for the acquisition of approximately 15.59 acres of undeveloped real property on Greenspot Road in the City of Highland on March 6, 2020. The Purchase and Sale agreement is available to the public.

Mr. Brandt announced that the closed session would be held in the Board room based on the concerns regarding the Coronavirus and the emergency declaration of keeping six feet separation from each other instead of moving the meeting into the smaller conference room.

Agenda Item 5. Announcements.

5.1) List of Announcements. Changes were discussed earlier in the agenda.

Agenda Item 6. Closed Session.

President Harrison adjourned the meeting to Closed Session at 3:10 p.m.

6.1) Conference with Legal Counsel – Existing Litigation – Pursuant to Government Code Section 54956.9(a)(d)(1) – Endangered Habitats League v. U.S. Army Corps of Engineers - Case No.2:16-CV-09178 (U.S. District Court, Central District of California)

6.2) Conference with Legal Counsel – Existing Litigation - Pursuant to Government Code Section 54956.9(d)(1)) - County of Butte v. California Department of Water Resources (California Supreme Court No. S258574)

6.3) Conference with Legal Counsel — Anticipated Litigation — Possible Initiation of Litigation — Pursuant to Government Code Section 54956.9(d)(4) (1 case)

6.4) Conference with Legal Counsel - Existing Litigation - Pursuant to Government Code Section 54956.9(1)(d) -Inland Valley Development Agency v. San Bernardino Valley Municipal Water District, et al. - Sacramento Superior Court Case No. 34-2017-80002637-CU-WM-GDS – Third Appellate District Court of Appeal Case No. C089388

6.5) Conference with Legal Counsel - Existing Litigation - Pursuant to Government Code Section 54956.9 - 1. Pacific Coast Federation of Fishermen’s Association et al. v. Ross, N.D. Cal. Case No. 3:19-cv-07897; and 2. California Natural Resources Agency et al. v. Ross, N.D. Cal. Case No. 4:20-cv-01299

Pursuant to Government Code Section 54957.1 President Harrison returned the meeting to Open Session at 5:29 p.m. Brendan Brandt reported that the Board discussed items 6.1 through 6.5. The staff and legal counsel updated the Board on the items but no reportable action was taken.

Agenda Item 7. Adjournment.

There being no further business, President Harrison adjourned the meeting at 5:31p.m.

<p>APPROVAL CERTIFICATION I hereby certify to approval of the foregoing Minutes of San Bernardino Valley Municipal Water District.</p> <p>_____</p> <p>Secretary Date _____</p>

Respectfully submitted,

Lillian Hernandez
Board Secretary



DATE: April 7, 2020
TO: Board of Directors
FROM: Wen Huang, Chief Engineer
SUBJECT: Consider Grant Contract under the WaterSMART: Drought Resiliency Projects for FY 2019 for the Central Feeder – East Branch Extension Intertie Project

At the meeting on March 19, 2019, the Board of Directors adopted Resolution 1803 authorizing an application for a grant to the United States Department of the Interior, Bureau of Reclamation (Bureau) under the WaterSMART: Drought Resiliency Projects for Fiscal Year 2019 for the Central Feeder and East Branch Extension (EBX) Intertie Project (Project). In August 2019, the District was notified by the Bureau that the Project has been selected for grant funding of \$750,000. Staff recommends that the Board of Directors authorize the General Manager to execute the attached grant contract subject to non-substantive edits approved by District House Counsel.

BACKGROUND

One of the key water management strategies in the Upper Santa Ana Watershed Integrated Regional Water Management Plan (IRWMP) is conjunctive use which has been generally described as using groundwater basins to store water when it is available in wet years so that it can be used during dry years (dry year yield). Valley District, in cooperation with agencies in its service area and San Gorgonio Pass Water Agency (SGPWA), has been developing a comprehensive conjunctive use program in the San Bernardino Basin Area (SBBA), the Bunker Hill Conjunctive Use Program (BHCUP). The program will benefit the retail water agencies within Valley District's service area but outside the SBBA and other participating water agencies by recharging and storing wet year water for later extraction in dry years. Since many of the BHCUP facilities are located within the Santa Ana River Wash Area, final design and construction is pending on completion of the Wash Plan Habitat Conservation Plan.

Based on the discussions with the potential participating agencies, it is estimated that the first phase of the program will collectively store up to 64,500 acre-feet in the SBBA which will provide up to 21,500 acre-feet per year of dry year yield for up to 3 consecutive years. The centerpiece of BHCUP is the existing Central Feeder System (CF) that includes a 78-inch pipeline and the Redlands Pump Station. In addition, an agreement between Valley District and the City of Redlands enhances the CF by providing Valley District with 2.3 million gallons of storage capacity and up to 20,000 acre-feet per year of the City's unused production capacity.

As for the proposed facilities, it is envisioned that the initial phase will include construction of 4 production wells along the Orange Street corridor near the Santa Ana River in the City of Redlands, a centralized chlorination station in the Redlands Pump Station, and the Intertie between the CF and the EBX, which will facilitate delivery of BHCUP water east into the Yucaipa Valley and SGPWA's areas. It is estimated that the cost for construction of the Intertie is approximately \$2.151M, which will be paid for by the District as it is considered an integral part of the regional facilities. The awarded grant funding in the amount of \$750,000 will help offset the cost.

The draft grant contract has been developed by the Bureau of Reclamation for consideration by the Board of Directors and is being reviewed by District House Counsel. Staff recommends that the Board of Directors authorize the General Manager to execute the grant contract subject to non-substantive edits approved by District House Counsel.

Fiscal Impact

The estimated cost of approximately \$2,151,000 for the construction of the intertie is included in the approved FY 2019-20 General Fund budget. The awarded grant funding in the amount of \$750,000 will help offset the cost. It is anticipated that the construction will begin in early 2021.

Staff Recommendation

Authorize the General Manager to execute the grant contract subject to non-substantive edits approved by District House Counsel.

Attachment

Grant Contract under the WaterSMART: Drought Resiliency Projects for Fiscal Year 2019.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
ASSISTANCE AGREEMENT

1A. AGREEMENT NUMBER R19AP00107	1B. MOD NUMBER	2. TYPE OF AGREEMENT <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT	3. CLASS OF RECIPIENT Special District Government		
4. ISSUING OFFICE Bureau of Reclamation Acquisitions and Assistance Management Division Acquisitions and Assistance Operations Branch P.O. Box 25007, MS 84-27810 Denver, CO 80225-5007		5. RECIPIENT San Bernardino Valley Municipal Water District 380 E Vanderbilt Way San Bernardino, CA 92408-0000			
		EIN #:	95-6005196	County:	San Bernardino
		DUNS #:	054797683	Congress. Dist.:	CA-8
6. RECIPIENT PROJECT MANAGER Wen Huang, Chief Engineer San Bernardino Valley Municipal Water District 380 E Vanderbilt Way San Bernardino, CA 92408-0000 909-387-9223 wenh@sbymwd.com		7A. INITIAL AGREEMENT EFFECTIVE DATE: See Block 13.a below	7B. MODIFICATION EFFECTIVE DATE:		
		8. COMPLETION DATE December 31, 2021			
9A. PROGRAM STATUTORY AUTHORITY Section 9504(a) of the Secure Water Act, Public Law 111-11 (42 United States Code 10364), as amended			9B. CFDA Number 15.514		
10. FUNDING INFORMATION	<u>NON-FEDERAL</u>	<u>RECLAMATION</u>	<u>TOTAL PROJECT COSTS</u>		
Total Estimated Amount of Agreement	\$1,401,000.00	\$750,000.00	\$2,151,000.00		
This Obligation	\$1,401,000.00	\$740,000.00	\$2,141,000.00		
Previous Obligation	\$0.00	\$0.00	\$0.00		
Total Obligation	\$1,401,000.00	\$740,000.00	\$2,141,000.00		
11. PROJECT TITLE Central Feeder - EBX Intertie Project					
12a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient BY: _____ DATE: _____		13a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation BY: _____ DATE: _____			
12b. NAME AND TITLE OF SIGNER		13b. NAME OF GRANTS OFFICER			

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Financial Assistance Agreement
Between
Bureau of Reclamation
And
San Bernardino Valley Municipal Water District
For
Central Feeder - EBX Intertie Project

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and *San Bernardino Valley Municipal Water District* (Recipient), pursuant to Section 9504(a) of the SECURE WATER ACT, Subtitle F of Title IX of the OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009, Public Law 111-11 (42 United States Code 10364), as amended (the “Act”). The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

(a) AUTHORIZATION OF GRANTS AND COOPERATIVE AGREEMENTS.—

(1) AUTHORITY OF SECRETARY.—The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement—

- (A) to conserve water;***
- (B) to increase water use efficiency;***
- (C) to facilitate water markets;***
- (D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;***
- (E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;***
- (F) to prevent the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);***
- (G) to accelerate the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan***

or conservation plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under which the Commissioner of Reclamation has implementation responsibilities; or

(H) to carry out any other activity—

- (i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change; or*
- (ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area.*

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The proposed *Central Feeder - EBX Intertie Project* (Project) will increase the reliability of water supplies.

3. BACKGROUND AND OBJECTIVES

Through WaterSMART (Sustain and Manage America’s Resources for Tomorrow), Reclamation leverages Federal and non-Federal funding to work cooperatively with states, tribes, and local entities as they plan for and implement actions to increase water supply reliability through investments and attention to local water conflicts. Working together with our stakeholders, WaterSMART provides support for the Department of the Interior’s priorities, including creating a legacy of conservation stewardship, sustainably developing our energy and natural resources, modernizing our infrastructure through public-private partnerships, and restoring trust with local communities by improving relationships and communication with states, tribes, local governments, communities, landowners and water users.

Reclamation’s WaterSMART Drought Response Program supports a proactive approach to drought by providing financial assistance to water managers to develop and update comprehensive drought plans (Drought Contingency Planning) and implement projects that will build long-term resiliency to drought (Drought Resiliency Projects). The Drought Response Program specifically contributes to the Department of the Interior’s priorities to create a legacy of conservation stewardship, modernize our infrastructure, and restore trust with local communities by providing funding to states, tribes, and local governments to prepare for and address drought in advance of a crisis.

Through the Drought Response Program, Reclamation invites states, tribes, irrigation districts, water districts, and other organizations with water or power delivery authority to leverage their money and resources by cost sharing with Reclamation on Drought Resiliency Projects that will increase the reliability of water supply; improve water management; and provide benefits for fish, wildlife, and the environment to mitigate impacts caused by drought.

San Bernardino Valley Municipal Water District, located in San Bernardino, California, will construct the Central Feeder - East Branch Extension (EBX) Intertie Project, a component of the larger Bunker Hill Conjunctive Use Program. The project consists of approximately 500 linear feet of 24-inch to 60-inch diameter pipeline that will connect the Central Feeder water transmission pipeline to the EBX of the California Aqueduct. The purpose of this intertie is to facilitate delivery of dry-year supplies stored in the Bunker Hill Basin in the amount of 3,750 acre-feet per year. Over the last five years, starting in 2014, San Bernardino County experienced severe and extreme drought conditions; this project will ensure access to additional supplies during future drought conditions. The project is referenced in the District's 2015 Regional Urban Water Management Plan.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in Block 13a of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Agreement shall remain in effect until the date shown in Block 8 of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The period of performance for this Agreement may only be modified through written modification of the Agreement by a Reclamation Grants Officer.

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer. The total estimated amount of federal funding for this agreement is **\$750,000.00**, of which the initial amount of federal funds available is limited to **\$740,000.00** as indicated by "this obligation" within Block 10 of Page 1 of this agreement, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement.

5. SCOPE OF WORK AND MILESTONES

Under this Agreement, the Recipient shall design and install an intertie pipeline to connect 3.2 miles of the Central Feeder water transmission pipeline to the EBX of the California Aqueduct. The intertie will facilitate the delivery of an additional 3,750 acre-feet per year of water stored in the Bunker Hill Basin. Project components are anticipated to include:

- Approximately 500 linear feet of pipe for the intertie, ranging in size from 24-inches to 60-inches
- Associated valves and meters
- A flow control vault structure, a guard valve vault, and a manhole structure
- Supervisory Control and Data Acquisition controls, process instrumentation controls and new electrical work

The intertie will be constructed within San Bernardino Valley Municipal Water District's service area at 9308 Opal Avenue, Mentone, CA 92359, as shown in the map included below. The project latitude is 34.077800'N and longitude is 117.134001'W.

The milestones for the completion of the Project are as follows:

Milestone / Task / Activity	Planned Start Date	Planned Completion Date
Complete environmental and cultural compliance	November 2019	June 2020
Engineering and design	October 2019	June 2020
Permitting	March 2020	September 2020
Procurement for materials and supplies	April 2020	December 2020
Mobilization	November 2020	December 2020
Install piping	December 2020	June 2021
Install concrete structures	December 2020	June 2021
Implement controls and electrical work	January 2021	June 2021
Testing and Implementation	June 2020	June 2021

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.1.2 Interim Performance Reports. The Recipient shall prepare and submit to Reclamation interim Project performance reports (Interim Performance Reports) as required by Section I.9 of this Agreement. Each Interim Performance Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- A comparison of actual accomplishments to the milestones established by the financial assistance agreement for the reporting period
- The reasons why established milestones were not met, if applicable
- The status of milestones from the previous reporting period that were not met, if applicable
- Whether the Project is on schedule and within the original cost estimate
- Any additional pertinent information or issues related to the status of the Project

6.1.3 Final Project Report. The Recipient shall prepare and submit to Reclamation a final Project performance report (Final Project Report) as required by Section I.10 of this Agreement.

The Final Project Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- Whether the Project objectives and goals were met
- Discussion of the benefits achieved by the Project, including information and/or calculations supporting the benefits
- How the Project improves long-term resiliency to drought
- How the Project demonstrates collaboration, if applicable

Photographs documenting the project are also appreciated. Recipient understands that Reclamation may print photos with appropriate credit to Recipient. Recipient also understands that the Final Project Report is a public document and may be made available on Reclamation’s website, www.usbr.gov/drought.

6.1.4 Post-award cost documentation. During pre-award clarifications, there was insufficient documentation to support the construction contract cost estimate. Therefore, prior to any request for drawdown of Reclamation funding, Recipient shall provide sufficient support for the allowability, allocability, and reasonableness of costs for the estimated construction contract cost line-item in the budget. Sufficient support can be in the form of source documentation that supports the full estimated contract cost (such as quotes, market research, etc.) or actual, final competitive bid documents to include proposal/quote requests, bid tabulations, and selection documentation. Grants Officer approval of the construction contract costs will be documented by formal modification to the Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question.

BUDGET ITEM DESCRIPTION	TOTAL ESTIMATED COST
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BUDGET ITEM DESCRIPTION	TOTAL ESTIMATED COST
CONTRACTUAL/ CONSTRUCTION	
Construction Contract	\$2,141,000.00
OTHER	
Reclamation environmental and cultural compliance costs	\$10,000.00
TOTAL DIRECT COSTS	\$2,151,000.00
INDIRECT COSTS	
N/A	\$0.00
TOTAL ESTIMATED PROJECT COST	\$2,151,000.00

7.2 Cost Sharing Requirement

At least 50% non-Federal cost-share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is 35% and the Recipient's estimated non-Federal cost share is 65%. The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the estimated cost share percentages shall occur concurrently. At the end of the period of performance, if the final costs are lower than the original estimate and the 50% non-Federal cost share is met, the final payment and financial report can reflect a lower Recipient cost share than the original budget estimate.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the Grants Officer prior to the expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

7.4 Allowable Costs

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the Grants Officer responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 90 days following the project performance period are those strictly associated with closeout activities for preparation of the final reports.

7.5 Revision of Budget and Program Plans

In accordance with 2 CFR 200.308(g) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.
- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E “Cost Principles”.

7.6 Modifications

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this agreement. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.338.

All other changes shall be made by means of a bilateral modification to the Agreement. No oral statement made by any person, or written statement by any person other than the Grants Officer, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the Grants Officer. Any request for project extension shall be made at least 45 days prior to the expiration date of the Agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

8.1 Recipient’s Key Personnel.

The Recipient's Project Manager for this Agreement shall be:

Wen Huang, Chief Engineer
 San Bernardino Valley Municipal Water District
 380 E Vanderbilt Way
 San Bernardino, CA 92408-0000
 909-387-9223
wenh@sbumwd.com

9. LIMITATION OF AUTHORITIES

9.1 Grants Officer.

The Grants Officer is the only official with legal delegated authority to represent Reclamation. The Grants Officer's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal modification changes in the scope of work and/or budget;
- (c) Approve through formal modification any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal modification changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

9.2 Grants Management Specialist.

The Grants Management Specialist is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to modifications and prior approval, may only be granted, in writing, by a Reclamation Grants Officer. Please note that for some agreements, the Grants Officer and the Grants Management Specialist may be the same individual.

10. REPORTING REQUIREMENTS AND DISTRIBUTION

10.1 Noncompliance. Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the

activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.338.

10.2 Financial Reports. Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

10.3 Monitoring and Reporting Program Performance (2 CFR 200.328).

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 200.331 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
 - (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
 - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of

accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

- (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in 2 CFR 200.328(b)(2) above.

10.4 Report Frequency and Distribution. The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 9.3 (2 CFR 200.328) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 9.3 (2 CFR 200.328) above.

Required Reports	Interim Reports	Final Report
Reporting Frequency	Semi-Annual	Final Report due within 90 days after the end of the period of performance.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 days after the end of the Reporting Period.	Final Report due within 90 days after the end of the period of performance or completion of the project.
First Report Due Date	The first performance report is due for reporting period ending 09/30/2020 .	N/A
Submit to:	sha-dro-faoperations@usbr.gov	sha-dro-faoperations@usbr.gov
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due within 90 days after the end of the period of performance.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 days after the end of the Reporting Period.	Final Report due within 90 days after the end of the period of performance or completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending 09/30/2020 .	N/A
Submit to:	sha-dro-faoperations@usbr.gov	sha-dro-faoperations@usbr.gov

11. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from the Grants Officer that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.338 up to and including unilateral termination of this agreement.

12. AGRICULTURAL OPERATIONS [Public Law 111-11, Section 9504(a)(3)(B)]

The Recipient shall not use any associated water savings to increase the total irrigated acreage of the Recipient or otherwise increase the consumptive use of water in the operation of the Recipient, as determined pursuant to the law of the State in which the operation of Recipient is located.

13. TITLE TO IMPROVEMENTS [Public Law 111-11, Section 9504(a)(3)(D)]

If the activities funded under this Agreement result in an infrastructure improvement to a federally owned facility, the Federal Government shall continue to hold title to the facility and improvements to the facility.

14. OPERATION AND MAINTENANCE COSTS [Public Law 111-11, Section 9504(a)(3)(E)(iv.)]

The non-Federal share of the cost of operating and maintaining any infrastructure improvement funded through this Agreement shall be 100 percent.

15. LIABILITY [Public Law 111-11, Section 9504(a)(3)(F)]

(a) **IN GENERAL.**—Except as provided under chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this Agreement, the title of which is not held by the United States.

(b) **TORT CLAIMS ACT.**—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

16. POLICIES, PROCEDURES, AND INTERNAL CONTROLS

Prior to the initial draw down of Federal funding, the Recipient shall develop and implement written procedures for payments and determining the allowability of expenditures in accordance with 2 CFR 200, Subpart E—Cost Principles and the terms and conditions of Federal awards.

In addition, the Recipient shall develop and implement policies, procedures, and internal controls to ensure its contractors are compliant with the terms and conditions of their contract, including compliance with the guidelines on government-wide suspension and debarment in 2 CFR part 180 which restrict contracts with certain parties that are debarred, suspended or otherwise excluded or ineligible to participate in Federal activities. All policies, procedures and internal controls shall be adopted through official board resolution.

17. AGENCY REVIEW OF PAYMENTS WITHIN AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

Payment requests by the recipient through the ASAP system will require review and approval of the payment request by a Reclamation Grants Officer prior to disbursement. The Recipient must provide documentation of actual costs incurred (including any applicable cost-share) to the Grants Specialist prior to requesting drawdown of funds within the ASAP system to support the payment request.

This specific condition is imposed due to a lack of implemented policies, procedures and internal controls. In order for this specific condition to be removed from this agreement, the Recipient must provide a request for removal of this term, in writing, to the Grants Officer. The request must include a description of the action(s) taken by the Recipient (and corresponding supporting documentation) to address the reason(s) identified above that led to the imposition of this specific condition. If the Grants Officer finds that the Recipient has fully addressed the reason(s) for the imposition of this specific condition, the Grants Officer will remove the term through formal bi-lateral modification of the agreement.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at 2 CFR Subtitle A, Chapter II, Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

- (a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also 200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.
 - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
 - (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

- (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).
- (3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per 200.207 Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of 200.207 Specific conditions, Subpart D—Post Federal Award

- Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:
- (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.
 - (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with 200.342 Effects of suspension and termination.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.
- (i) The non-Federal entity receives less than \$120,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

- (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:
- (i) For ACH Returns:
 - Routing Number: 051036706
 - Account number: 303000
 - Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
 - (ii) For Fedwire Returns*:
 - Routing Number: 021030004
 - Account number: 75010501
 - Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY
 - (* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)
 - (iii) For International ACH Returns:
 - Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
 - Bank: Citibank N.A. (New York)
 - Swift Code: CITIUS33
 - Account Number: 36838868
 - Bank Address: 388 Greenwich Street, New York, NY 10013 USA
 - Payment Details (Line 70): Agency
 - Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492-5065

- (iv) For recipients that do not have electronic remittance capability, please make check** payable to: “The Department of Health and Human Services.”
Mail Check to Treasury approved lockbox:
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231
(* ** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)
- (v) Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.gov/>.

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall “Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency”. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.326)

200.317 Procurements by States.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow 200.318 General procurement standards through 200.326 Contract provisions.

200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- (c)
- (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
 - (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
 - (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
 - (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

200.319 Competition.

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough

qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (2) If sealed bids are used, the following requirements apply:
 - (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (2) Proposals must be solicited from an adequate number of qualified sources;
 - (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- (e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

200.323 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

200.324 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a

solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the

bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

4. EQUIPMENT (2 CFR 200.313)

See also 200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
 - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

- (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) Use.
- (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
 - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
 - (3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
 - (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
 - (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
 - (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be

entitled to compensation for its attributable percentage of the current fair market value of the property.

- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-

profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.338)

200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.339)

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity for cause;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans

with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.*

- (1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
 - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procure a commercial sex act during the period of time that the award is in effect; or
 - (iii) Use forced labor in the performance of the award or subawards under the award.
- (2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - (A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 *CFR part 1400*.

(b) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

(i) Associated with performance under this award; or

(ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 *CFR part 1400*.

(c) *Provisions applicable to any recipient.*

(1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

(2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(d) *Definitions.* For purposes of this award term:

(1) “Employee” means either:

- (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) “Private entity”:
- (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
- (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
- (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
- (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property

- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior's Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT and Universal Identifier Requirements (2 CFR 25, Appendix A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward:
- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. Subrecipient means an entity that:
- a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

I. Reporting Subawards and Executive Compensation.

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
 - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting Total Compensation of Recipient Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 - 2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <http://www.ccr.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. *Reporting of Total Compensation of Subrecipient Executives.*
 - 1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 - 2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions*. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. *Executive* means officers, managing partners, or any other employees in management positions.
3. *Subaward*:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210

of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).

- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APPENDIX XII to 2 CFR Part 200)

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in

connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

22. CONFLICTS OF INTEREST

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to

that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

23. DATA AVAILABILITY

- (a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third-party evaluation and reproduction of the following:
 - (i) The scientific data relied upon;
 - (ii) The analysis relied upon; and
 - (iii) The methodology, including models, used to gather and analyze data.



DATE: April 7, 2020

TO: Board of Directors

FROM: Bob Tincher, Deputy General Manager - Resources

SUBJECT: Consider Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality

This item was discussed at the February 11, 2020 Engineering Workshop. Those Board members in attendance asked that an agreement be prepared based upon the term sheet presented at the workshop and that the agreement and proposed 2019 exchange be brought to an upcoming Board of Directors meeting for consideration.

On December 17, 2019, the Board approved a memorandum of understanding (MOU) with Bear Valley Mutual Water Company (Bear Valley) and San Bernardino Valley Water Conservation District (Conservation District) that generally states the desire to work cooperatively to overcome the periodic water quality issues caused by the operation of Seven Oaks Dam.

The attached agreement, developed with Bear Valley and Conservation District staff, accomplishes two of the specified goals of the MOU: (1) it provides for an equitable exchange of State Water Project (SWP) for Santa Ana River water (SAR) due to water quality problems at Seven Oaks Dam and (2) ensures that any unusable SAR water will benefit the San Bernardino Basin Area (SBBA). Staff is recommending approval.

Background

In 2005, a large pool of water was intentionally built behind the Seven Oaks Dam (Dam) in order to test the Dam's outlet works. The large pool behind the Dam was extremely turbid. Water agencies with rights to SAR water were unable to treat the turbid water discharged from the

Dam. One of the water agencies affected, East Valley Water District, obtained federal funding to study the water quality problem caused by operation of the Dam.

The resulting water quality study developed by the United States Army Corps of Engineers (Corps) generally concluded that the “first flush” of turbid water and debris that occurs on the front-end of a storm and the resuspension of silty material in the creek bed were the major contributors to the turbidity problem. The water quality study recommended a new operation plan for the Dam (i.e. revision to their Water Control Manual) whereby the “first flush” would be allowed to flow through the dam. Once the turbid, first-flush water was past the dam, the gates would be closed to build the pool behind the dam with the cleaner water. The revised Water Control Manual to protect water quality was never implemented by the Corps.

In 2019, fourteen years later, another large pool of extremely turbid water was built behind the Dam and SAR water users were, again, unable to treat the water. One SAR water user, Bear Valley, was able to deliver approximately 3,000 acre-feet of the turbid water to their customers for water treatment, irrigation and frost protection during the period of February 14 through August 1 but was unable to utilize any more of the water during this 5 ½ month period due to its poor quality. The water that was not delivered by Bear Valley was able to be recharged into the SBBA and will either be credited toward the Conservation District water diversion license or the Valley District and Western Municipal Water District diversion permits, depending upon the amount and the time of year. The amount of SAR water recharged by Valley District and the Water Conservation District during this time period was about 30,000 acre feet.

Southern California Edison (Edison) owns and operates two powerplants on the SAR. The water diverted for power generation flows through the Edison system, bypassing the Dam, and onto SAR water users including Bear Valley and Conservation District. SAR water that flows through the Edison system can also be used to meet higher elevation deliveries for Bear Valley. In 2019, the Edison system was damaged by a large storm and the access road was inundated by the stored water behind the Dam so that Bear Valley was unable to deliver SAR water through the Edison System, and around the Dam, from February 14th to August 1st. During this time, Bear Valley ordered about 3,000 acre-feet of SWP water. In addition, the SWP water that Bear Valley ordered did not qualify as in-lieu water under Valley District’s agreement with Big Bear Municipal Water District because, due to the circumstances, Bear Valley could not have taken delivery of water released from Big Bear Lake.

On December 17, 2019, the Board approved a memorandum of understanding (MOU) with Bear Valley Mutual Water Company (Bear Valley) and San Bernardino Valley Water Conservation District (Conservation District) that generally states the desire to work cooperatively to:

1. Evaluate additional options for a long-term solution to the periodic water quality issue at Seven Oaks Dam through the facilitated evaluation of the Exchange Plan that is currently in process.
2. Ensure that all local surface water which cannot be used directly, due to water quality, is measured and recharged by the parties in an efficient manner to benefit the San Bernardino Basin Area (SBBA).
3. Develop an equitable exchange of State Water Project (SWP) water, under the Exchange Plan, to help mitigate for the poor quality conditions caused by the unusual storms and the operation of Seven Oaks Dam during calendar year 2019.

Staff, in cooperation with staff from Bear Valley and Conservation District, developed an agreement that would achieve objectives 2 and 3 from the MOU. The agreement generally includes the following:

1. An exchange of SWP water for SAR water would only be available when all of the following are occurring simultaneously:
 - a. The turbidity of the SAR water behind Seven Oaks Dam is unsuitable for direct deliveries by BVMWC, as determined by Valley District.
 - b. The SCE System is unavailable to transport SAR water around Seven Oaks Dam
 - c. Bear Valley is unable to receive in-lieu water through the Big Bear Agreement
2. Bear Valley first works with the San Bernardino Basin Groundwater Council (GC) to determine if SWP water, purchased by the GC, can be delivered to meet Bear Valley's SAR deliveries.
3. If the GC is unable to provide SWP water to meet Bear Valley's SAR deliveries, Bear Valley prepares a written proposal for an unbalanced exchange of its SAR water for Valley District SWP water and submits the proposal to the Conservation District, Project Manager of the Exchange Plan, for consideration by Valley District. The general terms of an exchange with Valley District are summarized below:
 - a. SWP water is only provided to meet Bear Valley's reasonable, historical beneficial use of SAR water.
 - b. The "unbalanced exchange" of the agreement would recognize the higher cost of SWP water and the additional maintenance cost associated with recharging the poorer quality SAR water. Therefore, Bear Valley provides Valley District 2 acre-

feet of its unusable SAR water for every 1 acre-foot of SWP water provided by Valley District.

- c. The amount of SWP water provided under this agreement is limited to 3,200 acre-feet, unless increased by the Valley District Board of Directors.
4. The parties agree to work cooperatively with the GC to ensure that the exchange water delivered under this agreement is properly accounted for in the GC Equitable Allocation Model.
5. Conservation District and Valley District agree to work cooperatively on the water diversion reporting of the SAR water recharged for Valley District, by BVMWC, to the State Water Resources Control Board.

While the parties cannot control the water quality behind Seven Oaks Dam, the parties do believe there is a way(s) to overcome the Edison system being unavailable. If the parties develop a strategy to keep the Edison system online, it would eliminate the need for this exchange. For this reason, the parties view this exchange agreement as a short-term solution while they work together on the long-term solution.

Fiscal Impact

There is no fiscal impact associated with approval of this agreement. Any exchange proposal, under the agreement would return to the Board for approval.

Staff Recommendation

Authorize the General Manager to execute the Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality.

Attachment

1. Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality
2. Memorandum of Understanding with Bear Valley Mutual Water Company, San Bernardino Valley Municipal Water District and San Bernardino Valley Water Conservation District

1 **AGREEMENT TO EXCHANGE STATE WATER PROJECT WATER FOR SANTA ANA RIVER WATER**
2 **DURING PERIODS OF POOR WATER QUALITY**
3

4 This Agreement to Exchange State Water Project Water for Santa Ana River Water
5 During Periods of Poor Water Quality (“**Agreement**”) is entered into and effective this __ day of
6 April, 2020 by and among Bear Valley Mutual Water Company (“**Bear Valley**”) the San
7 Bernardino Valley Water Conservation District (“**Conservation District**”), and the San
8 Bernardino Valley Municipal Water District (“**Valley District**”). Each of the foregoing parties is
9 sometimes referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties.**”
10

11 Recitals

12
13 *Valley District*

14
15 A. Valley District is a State Water Contractor that imports water from the State
16 Water Project (SWP).
17

18 B. The Valley District service area is approximately 350 square miles and includes
19 the cities and communities of San Bernardino, Colton, Loma Linda, Redlands, Rialto,
20 Bloomington, Highland, East Highland, Mentone, Grand Terrace, and Yucaipa.
21

22 C. In 1972, Valley District completed the construction of facilities which enabled the
23 delivery of SWP Water as far as the Rialto area in the west and the Redlands area in the east.
24

25 *The Exchange Plan*

26
27 D. To postpone the cost for a pump station(s) and related infrastructure to deliver
28 SWP water further east into the Yucaipa area, Valley District developed an exchange concept
29 that would essentially deliver SWP water to Yucaipa, by exchange.
30

31 E. The exchange concept was incorporated into the *Santa Ana River – Mill Creek*
32 *Cooperative Water Project Agreement* (“**Exchange Plan**”) which was signed in 1976.
33

34 F. The following agencies signed the Exchange Plan: Bear Valley, the City of
35 Redlands, Crafton Water Company, East San Bernardino County Water District (now East
36 Valley Water District), Lugonia Water Company, North Fork Water Company, Redlands Water
37 Company, the Conservation District, Yucaipa Valley County Water District (now Yucaipa
38 Valley Water District) and Valley District (collectively “**Exchange Plan Parties**”).
39

40 G. Each of the Exchange Plan Parties pledged the use of their water rights and
41 facilities “...in order to provide the most economical, efficient, and dependable supply possible
42 at a minimum of expense to water users and the taxpayers and to conserve energy.”
43

44 H. Under the terms of the Exchange Plan, Valley District pledged its SWP water
45 supply and also pledged to pay the cost of the new facilities to facilitate exchanges and to pay the
46 cost to manage the Exchange Plan.

47
48 I. The Exchange Plan is operated by a Management Committee that is comprised of
49 one member from each of the Exchange Plan Parties.

50
51 J. The Management Committee and Valley District appointed the Conservation
52 District to be the Project Manager of the Exchange Plan ("**Project Manager**").

53
54 K. The Project Manager is given the responsibility for implementing the Exchange
55 Plan, under the supervision of the Management Committee.

56
57 *In Lieu Water*

58
59 L. In 1996, Big Bear Municipal Water District ("**Big Bear MWD**") and Valley
60 District entered into an agreement (the "**Big Bear Agreement**") where Big Bear MWD
61 purchases SWP water from Valley District to deliver to Bear Valley instead of releasing water
62 from Big Bear Lake ("**in-lieu water**").

63
64 M. Pursuant to the 1977 Settlement Agreement in *Big Bear Municipal Water District*
65 *v. North Fork Water Company et al.*, Case Number SCV 165493, Bear Valley may receive up to
66 65,000 acre-feet of in-lieu water over any ten-year period.

67
68 *Seven Oaks Dam and Water Turbidity*

69
70 N. In 1998, the Seven Oaks Dam ("**Dam**") was constructed to provide flood
71 protection along the Santa Ana River.

72
73 O. Southern California Edison ("**Edison**") owns and operates two powerplants on the
74 Santa Ana River. The water diverted for power generation flows through the Edison system,
75 bypassing the Dam, and onto water users. Water that flows through the Edison system can also
76 be used to meet higher elevation deliveries for Bear Valley.

77
78 P. In 2005, a large pool of water was intentionally built behind the Dam in order to
79 test the Dam's outlet works. The large pool behind the Dam was extremely turbid and so East
80 Valley Water District, among others, was unable to treat the turbid water discharged from the
81 Dam.

82
83 Q. East Valley Water District secured federal funding to study the water quality
84 problem caused by the Dam.

86 R. The water quality study was performed by the United States Army Corps of
87 Engineers and generally concluded that the “first flush” of debris that occurs on the front-end of
88 a storm and the resuspension of silty material in the creek bed were the major contributors to the
89 turbidity problem.

90
91 S. The water quality study recommended a new operation plan whereby the “first
92 flush” would be allowed to flow through the dam. Once the turbid, first-flush water was past the
93 dam, the gates would be closed to build the pool behind the dam.

94
95 T. The Corps of Engineers, however, has never implemented the revised water
96 quality operations plan.

97
98 *Turbidity Problems in 2019*

99
100 U. In 2019, a large pool of extremely turbid water was built behind the Dam and
101 water users were, again, unable to treat the water.

102
103 V. Bear Valley was able to deliver approximately 3,000 acre-feet of turbid native
104 water to their customers for water treatment, irrigation and frost protection during the period of
105 February 14 through August 1 through the Redlands Sandbox. Bear Valley did not divert
106 significant quantities of water during this 5 ½ month period because it could not be used by its
107 customers.

108
109 W. The water that was not delivered by Bear Valley was recharged into the San
110 Bernardino Basin and will either be credited toward the Conservation District water diversion
111 license or the Valley District and Western Municipal Water District diversion permits, depending
112 upon the amount and the time of year.

113
114 X. The Edison system was also damaged by a large storm in 2019 and inundated by
115 the stored flood waters and was unavailable to deliver water to meet Bear Valley’s high elevation
116 and low elevation deliveries from February 14th to August 1st.

117
118 Y. As a result of these outages, Bear Valley ordered about 3,000 acre-feet of SWP
119 water to deliver to its customers because the Santa Ana River water was unusable and/or
120 unavailable.

121
122 Z. The amount of native Santa Ana River water spread by Valley District and the
123 Water Conservation district during this time period was about 30,000 acre feet.

124
125 AA. The SWP water that Bear Valley ordered does not qualify as in-lieu water under
126 the Big Bear Agreement because, given the circumstances, Bear Valley could not have taken
127 delivery of water released from Big Bear Lake.

128

129 *The Groundwater Council*

130

131 BB. In 2018, Valley District and numerous agencies within Valley District created the
132 San Bernardino Basin Groundwater Council (“**Council**”).

133

134 CC. The participants in the Council contribute funds to purchase SWP water for use
135 within the San Bernardino Basin.

136

137 DD. The Council has adopted priorities for use of water which specify that direct use
138 of the purchased water is the highest priority of use.

139

140 EE. Bear Valley could choose to sue the Corps of Engineers and the three counties
141 that operate the Dam under the provisions of the federal Clean Water Act for the degradation of
142 Santa Ana River water quality that has been caused by the operation of the Dam. Such a lawsuit
143 would be expensive and time consuming.

144

145 FF. Rather than file a lawsuit, though, Bear Valley wishes to work with the
146 Conservation District and Valley District to develop an exchange of its Santa Ana River water
147 for SWP water that would meet the needs of its customers, when Santa Ana River water is of
148 unusable quality.

149

150 GG. The Parties wish to memorialize their mutual understandings and agreements by
151 means of this Agreement.

152

153

Agreements

154

155 1. *No Impact on Water Rights.* Nothing in this Agreement shall be deemed to modify any
156 previous agreement, including but not limited to the Exchange Plan Agreement, and
157 nothing in this Agreement shall be deemed to modify any of the water rights of the
158 Parties as those rights exist as of the effective date of this Agreement.

159

160 2. *Term of Agreement; Termination.* This Agreement shall become effective on the date
161 first written above and shall continue in full force and effect for a period of five years.
162 The Parties may extend the term of this Agreement for additional five-year terms
163 *provided that* the agreement constituting the Council is in force at the time of such
164 proposed extension and that such agreement will continue beyond the expiration of the
165 proposed additional five-year term of this Agreement. Any Party may terminate this
166 Agreement at any time, with or without good cause, upon sixty days’ written notice. If
167 an exchange of the type described in this Agreement is in progress at the time that any
168 party provides notice of termination, that exchange shall be completed, regardless of
169 whether or not it can be completed before this Agreement terminates.

170

- 171 3. *Exchange of SWP Water for Santa Ana River Water.*
 172
 173 a. *Conditions Precedent to Exchange.* Prior to any exchange, all of the following
 174 conditions must occur:
 175
 176 i. Valley District must determine, in its sole discretion, that the turbidity of
 177 Santa Ana River water behind the Dam is unsuitable for direct deliveries
 178 by Bear Valley.
 179
 180 ii. The Edison system is unable to transport Santa Ana River water around
 181 the Dam (thereby avoiding the turbid water behind the Dam), and
 182
 183 iii. Bear Valley is unable to receive in-lieu water pursuant to the Big Bear
 184 Agreement.
 185
 186 iv. Valley District must determine, in its sole discretion, that it has sufficient
 187 State Water Project water to use for an exchange as contemplated by this
 188 Agreement.
 189
 190 b. *Request for Exchange Water.* When the conditions precedent in subparagraph (a)
 191 above are met, then Bear Valley may request that State Water Project water be
 192 delivered to meet its customers' demands for reasonable, historical and beneficial
 193 uses in a manner that offsets those customers' inability to use Santa Ana River
 194 water. Such deliveries shall in all cases be limited to 3,200 acre-feet/year unless
 195 determined otherwise by the Valley District Board of Directors, in its sole discretion.
 196
 197 i. The initial request from Bear Valley shall be directed to the Council. Bear
 198 Valley shall request the Council to deliver State Water Project water
 199 purchased by the Council to meet demands by Bear Valley and/or its
 200 customers. Bear Valley shall pay the incremental cost between the Valley
 201 District recharge rate and the Valley District direct delivery rate for this
 202 water, when applicable.
 203
 204 ii. If the Council is unable to meet Bear Valley's demands for State Water
 205 Project water, then Bear Valley shall provide a written exchange proposal
 206 to the Project Manager and Valley District for an exchange of Valley
 207 District's State Water Project water for Bear Valley's unusable Santa Ana
 208 River water.
 209
 210 1. The proposal shall include the proposed flow rate estimates at each
 211 turnout where Bear Valley wishes the State Water Project water to
 212 be delivered. The only turnouts where State Water Project water

213 may be delivered are: (i) Boullioun Box to Highline, (ii) Northfork
214 – Bear Valley, (iii) SARC to Redlands Aqueduct, (iv) Unger Lane
215 to Zanja – Crafton.

216
217 2. In the event that Bear Valley is making approved deliveries using
218 the Valley District Greenspot Pipeline to the Valley District
219 Newport Avenue and/or Tres Lagos turnouts, then the deliveries to
220 those turnouts will be allowed under the terms of this Agreement,
221 up to a delivery rate of 9 cubic feet/second.

222
223 3. The proposal shall include a requirement that Bear Valley make its
224 best effort to deliver and recharge at least two acre-feet of water
225 for each acre-foot of State Water Project water received by Bear
226 Valley. Such recharge water shall be delivered to the Conservation
227 District recharge facilities via the Tailrace Pipeline. Bear Valley
228 shall be responsible for designating the specific recharge
229 location(s), measuring the quantity of recharged water, and
230 reporting that quantity of recharged water in a manner that meets
231 the standards established by the State Water Resources Control
232 Board for the metering and monitoring of water diversions.

233
234 4. Valley District shall respond to such a proposal within fourteen
235 days of receipt.

236
237 c. *Accounting.* The Parties agree to work cooperatively with the Council to ensure that
238 the exchange water delivered under this Agreement is properly accounted for in the
239 Council’s Equitable Allocation Model.

240
241 d. *Reporting of Diversions.* The Parties shall work cooperatively to ensure accurate
242 reporting of water diversions to the State Water Resources Control Board.

243
244 4. *Administration of Agreement*

245
246 a. *Books and Records.* Each Party shall have access to and the right to examine any of
247 the other Party’s pertinent books, documents, papers or other records (including,
248 without limitation, records contained on electronic media) relating to the
249 performance of that Party’s obligations pursuant to this Agreement. Each Party shall
250 retain all such books, documents, papers or other records to facilitate such review in
251 accordance with that Party’s record retention policy. Access to each Party’s books
252 and records shall be during normal business hours only. Nothing in this paragraph
253 shall be construed to operate as a waiver of any applicable privileges.

254

- 255 b. *Disputes.* The Parties recognize that there may be disputes regarding the obligations
 256 of the Parties or the interpretation of this Agreement. The Parties agree that they
 257 may attempt to resolve disputes as follows:
- 258 i. *Statement Describing Alleged Violation of Agreement.* A Party or Parties
 259 alleging a violation of this Agreement (the “**Initiating Party(ies)**”) shall
 260 provide a written statement describing all facts that it believes constitute a
 261 violation of this Agreement to the Party(ies) alleged to have violated the
 262 terms of this Agreement (the “**Responding Party(ies)**”).
- 263 ii. *Response to Statement of Alleged Violation.* The Responding Party(ies)
 264 shall have sixty days from the date of the written statement to prepare a
 265 written response to the allegation of a violation of this Agreement and
 266 serve that response on the Initiating Party(ies) or to cure the alleged
 267 violation to the reasonable satisfaction of the Initiating Party(ies). The
 268 Initiating Party(ies) and the Responding Party(ies) shall then meet within
 269 thirty days of the date of the response to attempt to resolve the dispute
 270 amicably.
- 271 iii. *Mediation of Dispute.* If the Initiating Party(ies) and the Responding
 272 Party(ies) cannot resolve the dispute within ninety days of the date of the
 273 written response, they shall engage a mediator, experienced in water-
 274 related disputes, to attempt to resolve the dispute. Each Party shall ensure
 275 that it is represented at the mediation by a Director. These representatives
 276 of the Initiating Party(ies) and the Responding Party(ies) may consult with
 277 staff and/or technical consultants during the mediation and such staff
 278 and/or technical consultants may be present during the mediation. The
 279 costs of the mediator shall be divided evenly between the Initiating
 280 Party(ies) and the Responding Party(ies).
- 281 iv. *Prior to Claims Under California Tort Claims Act.* The Parties agree that
 282 the procedure described in this paragraph 4(b) represents an effort to
 283 resolve disputes without the need for a formal claim under the California
 284 Tort Claims Act or other applicable law. The period of time for the
 285 presentation of a claim by one Party against another shall be tolled for the
 286 period from the date on which the Initiating Party(ies) file a written
 287 statement until the date upon which the mediator renders a decision.
- 288 v. *Reservation of Rights.* Nothing in this paragraph 4(b) shall require a Party
 289 to comply with a decision of the mediator and, after the completion of the
 290 mediation process described above, each Party shall retain and may
 291 exercise at any time all legal and equitable rights and remedies it may
 292 have to enforce the terms of this Agreement; provided, that prior to
 293 commencing litigation, a Party shall provide at least five calendar days’
 294 written notice of its intent to sue to the other Party.

295 5. *General Provisions*

- 296 a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to
 297 execute this Agreement on behalf of the Party for which s/he signs. Each Party
 298 represents that it has legal authority to enter into this Agreement and to perform all
 299 obligations under this Agreement.
 300
- 301 b. *Amendment.* This Agreement may be amended or modified only by a written
 302 instrument executed by each of the Parties to this Agreement.
 303
- 304 c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in
 305 accordance with the laws of the State of California, except for its conflicts of law
 306 rules. Any suit, action, or proceeding brought under the scope of this Agreement
 307 shall be brought and maintained to the extent allowed by law in the County of San
 308 Bernardino, California.
 309
- 310 d. *Headings.* The paragraph headings used in this Agreement are intended for
 311 convenience only and shall not be used in interpreting this Agreement or in
 312 determining any of the rights or obligations of the Parties to this Agreement.
 313
- 314 e. *Construction and Interpretation.* This Agreement has been arrived at through
 315 negotiations and each Party has had a full and fair opportunity to revise the terms of
 316 this Agreement. As a result, the normal rule of construction that any ambiguities are
 317 to be resolved against the drafting Party shall not apply in the construction or
 318 interpretation of this Agreement.
 319
- 320 f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties
 321 with respect to the subject matter of this Agreement and, save as expressly provided
 322 in this Agreement, supersedes any prior oral or written agreement, understanding, or
 323 representation relating to the subject matter of this Agreement.
 324
- 325 g. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of
 326 this Agreement is held to be illegal, invalid, or unenforceable under present or future
 327 laws effective during the term of this Agreement, such provision shall be fully
 328 severable. However, in lieu thereof, there shall be added a provision as similar in
 329 terms to such illegal, invalid or unenforceable provision as may be possible and be
 330 legal, valid and enforceable.
 331
- 332 h. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit
 333 of the successors and assigns of the respective Parties to this Agreement. No Party
 334 may assign its interests in or obligations under this Agreement without the written

- 335 consent of the other Parties, which consent shall not be unreasonably withheld or
336 delayed.
337
- 338 i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing
339 waiver or a waiver of any subsequent breach either of the same or of another
340 provision of this Agreement and forbearance to enforce one or more of the rights or
341 remedies provided in this Agreement shall not be deemed to be a waiver of that right
342 or remedy.
343
- 344 j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to
345 enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees,
346 expert witnesses' fees, costs of suit, and other and necessary disbursements in
347 addition to any other relief deemed appropriate by a court of competent jurisdiction.
348
- 349 k. *Necessary Actions.* Each Party agrees to execute and deliver additional documents
350 and instruments and to take any additional actions as may be reasonably required to
351 carry out the purposes of this Agreement.
352
- 353 l. *Compliance with Law.* In performing their respective obligations under this
354 Agreement, the Parties shall comply with and conform to all applicable laws, rules,
355 regulations and ordinances.
356
- 357 m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in
358 any non-Party or in any member of the public as a third-party beneficiary.
359
- 360 n. *Counterparts.* This Agreement may be executed in one or more counterparts, each
361 of which shall be deemed to be an original, but all of which together shall constitute
362 but one and the same instrument.
363
- 364 o. *Notices.* All notices, requests, demands or other communications required or
365 permitted under this Agreement shall be in writing unless provided otherwise in this
366 Agreement and shall be deemed to have been duly given and received on: (i) the date
367 of service if served personally or served by electronic mail or facsimile transmission
368 on the Party to whom notice is to be given at the address(es) provided below, (ii) on
369 the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other
370 similar overnight courier service, postage prepaid, and addressed as provided below,
371 or (iii) on the third day after mailing if mailed to the Party to whom notice is to be
372 given by first class mail, registered or certified, postage prepaid, addressed as
373 follows:

374 To Bear Valley Mutual Water Company:
375
376 General Manager
377 Bear Valley Mutual Water Company
378 101 E Olive Ave
379 Redlands, CA 92373

380
381 To San Bernardino Valley Municipal Water District:
382
383 General Manager
384 San Bernardino Valley Municipal Water District
385 380 East Vanderbilt Way
386 San Bernardino, CA 92408

387
388 To San Bernardino Valley Water Conservation District:
389
390 General Manager
391 San Bernardino Valley Water Conservation District
392 1630 West Redlands Blvd., Suite A
393 Redlands, California 92373

394
395
396 BEAR VALLEY MUTUAL WATER COMPANY

397
398
399
400 By:
401 Title:

402
403 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

404
405
406
407 By:
408 Title:

409
410 SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

411
412
413
414 By:
415 Title:

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of _____, 2019 (“*Effective Date*”), by and among Bear Valley Mutual Water Company (“*Bear Valley*”), San Bernardino Valley Municipal Water District (“*Valley District*”), and San Bernardino Valley Water Conservation District (“*Conservation District*”). Bear Valley, Valley District, and Conservation District are sometimes referred to herein individually as “*Party*” and collectively as “*Parties*”.

RECITALS

A. Valley District is a State Water Contractor that imports water from the State Water Project (“*SWP*”).

B. The Valley District service area is approximately 350 square miles and includes all or portions of the cities and communities of San Bernardino, Colton, Loma Linda, Redlands, Rialto, Bloomington, Highland, East Highland, Mentone, Grand Terrace, and Yucaipa.

C. In 1972, Valley District completed the construction of facilities which enabled the delivery of SWP water as far as the Rialto area to the west and the Redlands area to the east.

D. To postpone the cost for a pump station(s) and related infrastructure to deliver SWP water further east into the Yucaipa area, Valley District developed an exchange concept that would allow for SWP water delivery to Yucaipa through exchange.

E. On or about May 3, 1976, the exchange concept was incorporated into the Santa Ana River – Mill Creek Cooperative Water Project Agreement (“*Exchange Plan*”), which was executed by Bear Valley Mutual Water Company, City of Redlands (“*Redlands*”), Crafton Water Company (“*Crafton*”), East San Bernardino County Water District (now East Valley Water District), Lugonia Water Company, North Fork Water Company, Redlands Water Company, San Bernardino Valley Municipal Water District, San Bernardino Valley Water Conservation District, and Yucaipa Valley County Water District (now Yucaipa Valley Water District) (collectively “*Exchange Parties*”).

F. Each of the Exchange Parties pledged the use of their water rights and facilities “...in order to provide the most economical, efficient, and dependable supply possible at a minimum of expense to water users and the taxpayers and to conserve energy.”

G. Under the Exchange Plan, and subject to certain limitations, Valley District pledged its SWP water supply and also pledged to pay the cost of the new facilities to facilitate exchanges and to pay the cost to manage the Exchange Plan.

H. The Exchange Plan is operated by a Management Committee that is comprised of one member from each of the Parties.

I. The Management Committee and Valley District appointed the Conservation District to be the Project Manager of the Exchange Plan.

J. The Project Manager is given the responsibility for implementing the Exchange Plan, under the supervision of the Management Committee.

K. In 1996, Big Bear Municipal Water District ("**Big Bear MWD**") and Valley District entered into an agreement ("**Big Bear Agreement**") under which Big Bear MWD purchases SWP water from Valley District to deliver to Bear Valley instead of releasing water from Big Bear Lake ("**in-lieu water**").

L. Pursuant to the 1977 settlement of the case denominated *Big Bear Municipal Water District v. North Fork Water Company, et al.*, San Bernardino Superior Court Case No. SCV 165493, Bear Valley may receive up to 65,000 acre-feet of in-lieu water over any ten-year period.

M. In 1998, the Seven Oaks Dam ("**Dam**") was constructed to provide flood protection along the Santa Ana River.

N. Southern California Edison Company ("**Edison**") owns and operates two powerplants on the Santa Ana River. The water diverted for power generation flows through the Edison system, bypassing the Dam, and on to water users. Water that flows through the Edison system can also be used to meet higher elevation deliveries for Bear Valley.

O. In 2005, a large pool of water was intentionally built behind the Dam in order to test the Dam's outlet works. The large pool behind the Dam was extremely turbid and when discharged from the Dam, East Valley Water District and others were unable to treat the turbid water.

P. East Valley Water District secured federal funding to study the water quality problem caused by the Dam. A water quality study was performed by the United States Army Corps of Engineers and generally concluded that the "first flush" of debris that occurs on the front-end of a storm and the resuspension of silty material in the creek bed were the major contributors to the turbidity problem. The water quality study recommended a new operation plan whereby the "first flush" would be allowed to flow through the Dam. Once the turbid, first-flush water was past the Dam, the gates would be closed to build the pool behind the Dam. The revised water quality operations plan was never implemented.

Q. In 2019, a large pool of extremely turbid water was built behind the Dam and water users were, again, unable to treat the water. Bear Valley was able to deliver approximately 2,953 acre-feet of turbid native water to its customers for water treatment, irrigation, and frost protection during the period of February 14 through August 1. Bear Valley did not divert significant quantities of water during this 5½ month period because it could not be used by its customers. The water that was not delivered by Bear Valley was recharged into the San Bernardino Basin Area and will either be credited toward the Conservation District water diversion license or the Valley District and Western Municipal Water District diversion permits, depending upon the amount and the time of year.

R. In 2019, the Edison system was also concurrently damaged by a large storm and inundated by the stored flood waters and was unavailable to deliver water to meet Bear Valley's high elevation and low elevation deliveries from February 14 to August 1.

S. In response to these events in 2019, Bear Valley ordered 2,869.1 acre-feet of SWP water to deliver to its customers because the Santa Ana River water was unusable and/or unavailable.

T. During this 5½ month period in 2019, Valley District and Water Conservation spread 29,658 acre-feet of native Santa Ana River water.

U. The SWP water that Bear Valley ordered does not qualify as in-lieu water under the Big Bear Agreement because, under the present circumstances, Bear Valley could not have taken delivery of water released from Big Bear Lake.

V. Redlands and Crafton, as Mill Creek water users, were also deprived of useable water from Mill Creek as a result of the 2019 storms. Redlands and Crafton operated wells to meet their water supply demands until Edison was able to repair the Mill Creek Diversion at Forest Falls and at the Highway 38 diversion points. Crafton pumped 110 acre-feet of groundwater during this period. Crafton restricted deliveries of water during the period of the outage, however, many shareholder requests for water were not satisfied. During this period, Conservation District was able to divert flows of unusable Mill Creek water into the Mill Creek Spreading Basins for recharge of the San Bernardino Basin Area.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

1. Incorporation of Recitals. Each and every one of the Recitals set forth above is a material part of this Agreement and is hereby incorporated by reference into and made part of this Agreement by this reference.

2. Cooperative Efforts. Bear Valley, Valley District, and Conservation District agree to work cooperatively and in good faith to:

a. Develop an equitable exchange of SWP water for Santa Ana River water and Mill Creek water recharged by Bear Valley, Valley District, or Conservation District for the benefit of the San Bernardino Basin Area under the Exchange Plan in order to help mitigate for the poor water quality conditions caused by the unusual storms and the operation of the Dam during calendar year 2019.

b. Evaluate additional options for a long-term solution to the water turbidity issue through a facilitated evaluation of the Exchange Plan.

c. Ensure all surface waters which cannot be used directly are measured and recharged by the Parties in an efficient manner to benefit the San Bernardino Basin Area.

3. Financial Responsibilities. Each Party shall be responsible for its own costs and expenses incurred under this MOU.

4. Term. This MOU may be terminated without cause immediately upon written notice by any Party.

5. Entire Agreement. This MOU contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this MOU that are not fully expressed herein.

6. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically or by facsimile and shall be binding upon the Parties as if they were originals.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this MOU as of the Effective Date.

Dated: December 19, 2019.

**BEAR VALLEY MUTUAL WATER
COMPANY**

By: David B. Knight

Name: David B. Knight

Its: President

Dated: _____, 2019.

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

By: _____
Douglas D. Headrick
General Manager

Dated: _____, 2019.

**SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT**

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the Parties hereby execute this MOU as of the Effective Date.

Dated: _____, 2019.

**BEAR VALLEY MUTUAL WATER
COMPANY**

By: _____

Name: _____

Its: _____

Dated: 12/17, 2019.

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

By: Douglas D. Headrick
Douglas D. Headrick
General Manager

Dated: 1/8/2020, 2019.

**SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT**

By: [Signature]
Name: Daniel Cozad
Its: General Manager



DATE: April 7, 2020

TO: Board of Directors

FROM: Bob Tincher, Deputy General Manager - Resources

SUBJECT: Consider Retroactive Exchange of State Water Project Water for Santa Ana River Water in 2019 Under the Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality

This item was discussed at the February 11, 2020 Engineering Workshop. Those Board members in attendance asked that an exchange agreement be prepared based upon the terms presented at the workshop and that an exchange proposal with Bear Valley Mutual Water Company (Bear Valley) during calendar year 2019 be brought to an upcoming Board of Directors meeting for consideration. This exchange proposal is dependent upon the approval of the Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality (Agreement) which is being considered immediately before this item.

On December 17, 2019, the Board approved a memorandum of understanding (MOU) with Bear Valley and San Bernardino Valley Water Conservation District (Conservation District) that generally states the desire to work cooperatively to overcome the periodic water quality issues caused by the operation of Seven Oaks Dam. The aforementioned Agreement, which is also being considered today, was developed out of these cooperative negotiations.

Bear Valley is asking the Board to consider a retroactive exchange for calendar year 2019, under the terms of the Agreement, of approximately 5,760 acre-feet of their Santa Ana River, delivered for recharge into the San Bernardino Basin (SBB), for about 2,880 acre-feet of State Water Project (SWP) water delivered to Bear Valley customers by Valley District due to the poor

SAR water quality behind Seven Oaks Dam and Bear Valley's lack of a replacement supply (see attached proposal). Should the Board approve this exchange, a portion of the 34,000 acre-feet of SWP water that the Board purchased in 2019 could be designated for this exchange at no additional expense. Staff has confirmed that this retroactive exchange is consistent with the terms of the Agreement and is recommending approval.

Fiscal Impact

There is no additional fiscal impact associated with the approval of this exchange proposal since the Board authorized the purchase of 34,000 acre-feet of SWP water in 2019 and 2,880 acre-feet of that water could be designated for this exchange.

Staff Recommendation

Authorize the retroactive exchange of 2,880 acre-feet of SWP water for 5,760 acre-feet of Santa Ana River water delivered for recharge into the San Bernardino Basin per their proposal dated April 7, 2020.

Attachment

Bear Valley Proposal For Exchange Water in 2019

Bear Valley Proposal For Exchange Water in 2019

April 7, 2020

Introduction:

Bear Valley Mutual Water Company (Bear Valley) requests a retroactive exchange with San Bernardino Valley Municipal Water District (Valley District) under the terms of the *Agreement to Exchange State Water Project Water for Santa Ana River Water During Periods of Poor Water Quality*.

Check of conditions in the agreement (all must be satisfied):

X	The turbidity of the SAR water behind Seven Oaks Dam is unsuitable for direct deliveries by BVMWC, as determined by Valley District.
X	The SCE System is unavailable to transport SAR water around Seven Oaks Dam
X	Bear Valley is unable to receive in-lieu water through the Big Bear Agreement

Date When Conditions Started : 2/14/19

Checked with San Bernardino Basin Groundwater Council: N/A (this agreement was not in place in 2019)

Is Bear Valley using the Greenspot Pipeline to deliver SAR Water to Newport and Tres Lagos turnouts? No

Requested SWP Exchange Amount, by Authorized Valley District Turnout:

Valley District Turnout	Flow Rate (cfs)	Start Date (mm/dd/yy)	End Date (mm/dd/yy)	Total (acre-feet)
Boullioun Box to Highline	n/a	2/14/19	8/1/19	986.4
Northfork - BVMWC	n/a	2/14/19	8/1/19	0.0
SARC to Redlands Aqueduct	n/a	2/14/19	8/1/19	1,554.4
Unger Lane to Zanja – Crafton	n/a	2/14/19	8/1/19	339.0
<u>If Bear Valley is using Greenspot Pipeline:</u>				
Newport Avenue				

Tres Lagos				
Total (3,200 AF max unless authorized)				2,879.8

Minimum SAR Exchange Water (2:1) Delivered for Recharge in the San Bernardino Basin by Bear Valley through Tailrace Pipeline¹ (Bear Valley to provide documentation): 5,759.6 acre-feet

1 Since the agreement did not exist in 2019, Bear Valley was not aware of the requirement to use the Tailrace Pipeline but a sufficient amount of SAR water was delivered to the SBBA.



DATE: April 7, 2020

TO: Board of Directors' Workshop - Resources

FROM: Lillian Hernandez, Executive Assistant/Board Secretary

SUBJECT: Summary of March 5th Board of Directors Workshop - Resources

The Resources Workshop convened on March 5, 2020. Director Hayes chaired the meeting. Directors Harrison, Kielhold, Longville, and Navarro participated in the Workshop. Heather Dyer, Bob Tincher, Cindy Saks, and Kristeen Farlow of staff, participated in the workshop.

3. Summary of Previous Meeting

The meeting notes from the February 13, 2020, Board of Directors Workshop – Resources were reviewed with no additional comments. Gil Navarro thanked Kristeen Farlow for extending the comment period to March 13th for the Water Use Efficiency Assessment to Evaluate Saturation Levels.

4.1 Presentation by the Gualco Group, Inc.

Jack Gualco and Kendra Daijogo gave a Government Relations Report highlighting what has taken place at the state level and what is expected to take place in 2020. The Gualco Group has been the District's lobbyist since 1996 advising the District on a number of items and actions that impact the District such as water supply, water quality, groundwater and water conservation as well as issues relating to the District's property tax pass-through revenue. The report was informational only and required no action.

4.2 Discuss Resolution 1100 Relating to the Establishment of Rules and Procedures for Compensation of Directors.

Heather Dyer stated that on January 2nd the Board discussed simplifying the District's process for Directors to decide which meetings they would like to attend. There has been a set list of pre-authorized meetings and then at the Board meetings, Board members would request which meetings they wanted to attend in the coming month. In an effort to simplify the process and leave it up to each Director's best judgment as to what meetings provide value to their role as a Director on the Board, staff is trying to make it more about Directors using their own discretion, personal

responsibility, and public accountability through reporting out what meetings Directors attend and their compensation in the Board packet. Draft Resolution No. 1100 was put forth for consideration. In the resolution Directors can attend any of the meetings that they believe will add value to the District and there will be a reporting form that will be published in the Board packet where the Director will write a brief discussion of that particular meeting and how that adds value to their role as a San Bernardino Valley Municipal Water District Board member. They reviewed the fillable form and the tracked changes version of Resolution No. 1092. The main changes are that the Board members do not have to request permission from either staff or fellow Board members because they are all elected officials and are responsible to their constituents, to the function of the District, and the general public.

Action Item (s): Remove language from Resolution No. 1100 regarding Board members meeting with District attorneys and consultant. Add language to the resolution stating that if a meeting is called by the general manager to meet with a Board member(s) that the Board member(s) can be compensated for the meeting. Add language to the resolution regarding Board members who have been appointed to a committee and if travel is over 100 miles, that the Board member does not need approval for travel. Remove attorneys and consultants from the new Board compensation form dropdown menu. Bring Resolution No. 1100 to the full Board for consideration.

4.3 Discuss Board of Directors Handbook. Ms. Dyer stated that this item was a refresher for the Board and for her since she was not involved in the development of the Board of Director's Handbook. Bill Kelly stated that this has been an evolutionary document. It was adopted in August 2017 and then revised in January 2018. The handbook was to re-establish what the District does, things they can do and not do, and the requirements for AB 1234 among other things. The preamble states the handbook was adopted along with a Code of Conduct, to build public confidence, integrity, and transparency into the culture of the District to foster effective operations. The role and authority of the Board is to provide policy direction, work with the general manager on policies and procedures, to execute its authority as a Board collectively not individually, provide feedback to local, regional, and other agencies. The Board exists for service, for leadership, openness, and balance. The service delivery is who the Board's constituents are. Leadership is being responsible for advanced planning, being creative and proactive. Openness is really important, approaching every situation with good intentions, encourage new and diverse ideas, listen, cooperate, and share across the organization, and value and recognize individual contributions. A good policy Board has an ability to debate and discuss, disagree and not be disagreeable. In a public setting the Board creates a public image. A public image in the Board room that is not polite or nice to each other or the public, is very divisive. It would be considered, in essence, an ineffective organization because of how the Board profiles themselves to the public. If individual Board members have issues, they should not show that behavior at a meeting. They need to find time to discuss it calmly without conjuncture. It is called politeness, ethics, and civility. This value is very important and how the Board members treat each other and talk to each other. Debate and discuss but do not be disagreeable. The handbook includes that the Board will follow Robert's Rules of Order, create a culture, work through the Board President and general manager. When the Board makes a decision that is the decision of the District. Board members may not agree with the decision but if asked they say this is the Board's decision and this is where this District stands. The relationship with the Board and general manager is a professional one and it is not personal but a policy or professional issue. The Board should not admonish staff at a Board meeting. They should debate, discuss, disagree and then move on. Board members cannot talk to staff directly without going through the general manager. The general manager may authorize a Board member to talk to a staff member but it must go through the general manager first and be delegated accordingly. Director Kielhold stated that he believes the expenditure of District resources is a Board responsibility and is a collective decision of the five members then the Board directs the general manager to follow through. The general manager then decides who

on staff she wants to complete the task. Mr. Kelly suggested not using District resources that require a lot of time and effort. The booklet includes governance which says how a meeting is to run, Board meeting protocol, Robert's Rules of Order, closed sessions, public interaction, official District position, and conflict of interest. There was discussion of who is responsible for maintaining the proper certifications and training. Director Longville stated that if an agency does not inform an elected official that their training is overdue, the Board member cannot blame it on the agency because it is the elected official's responsibility. Ms. Dyer stated that she would like to promote personal responsibility to comply with legal requirements. Mr. Kelly touched on if a Board member feels they may have some personal involvement relative to the ultimate decision be it financial or anything related to a Board agenda item, they must recuse themselves and it must be announced publicly. Some legal counsel may say that not only do they have to recuse themselves but they have to leave the room. Otherwise, if they fail to make that announcement, they would automatically have their vote challenged and they could be civilly sued for violating state law for not announcing they have a conflict of interest and what that conflict is.

Ms. Dyer informed the Board that she has requested that the staff participate in ethics training and sexual harassment prevention training which will be taken online and free of charge.

Ms. Dyer wrapped up by going back to the handbook preamble which states "we conduct our public deliberations openly in an atmosphere of mutual respect, civility and transparency." She feels this is good practice to become one cohesive Board. Director Kielhold stated that the Board should look at their fiduciary duty and let staff make the most efficient use of their time. He stated that if a Board member wants a field trip maybe that could take place on the morning or afternoon of another meeting. He stated the Board should keep an eye on costs such as having one field trip if all Board members want to attend and not several individual field trips. The Board directed staff to bring individual Board member requests to the Board so the Board can authorize the expenditure of District resources.

Action Item (s): Separate meals and lodging on the monthly Recap of Directors Fees and Expense Reimbursement form. Send information to all Board members if requested by one Board member. Staff will bring individual Board members requests to the full Board for authorization.

5. Adjournment



DATE: April 7, 2020
TO: Board of Directors
FROM: Staff
SUBJECT: Summary of March 10, 2020 Board of Directors' Workshop - Engineering

The Board of Directors held a Workshop on March 10, 2020. Director Kielhold chaired the meeting and Directors Harrison, Navarro, Longville, and Hayes participated in the Workshop supported by Heather Dyer, Bob Tincher, Wen Huang, Brent Adair, Kristeen Farlow, Chris Jones, Kai Palenscar, and Kirsten Adair of staff. The following agenda items were discussed:

3.1 Summary of Previous Meeting on January 14, 2020. The summary notes of the February 11, 2020, meeting were accepted.

4.1 Santa Ana Watershed Association Update on the 2019 Least Bell's Vireo Population Surveys. Anthony Locatelli of the Santa Ana Watershed Association (SAWA) gave a presentation on the results of surveys for Least Bell's Vireo and other bird species covered in the Upper Santa Ana River Habitat Conservation Plan. Anthony provided a concise description of results from 2019 monitoring, how 2019 results compared to previous years' results, and preliminary results of a vireo site selection and productivity study he is conducting for Valley District. Anthony was supported by Melody Aimar, Brian Brady, and Allyson Beckman of SAWA.

Action Item: No action item as this was an update only.

5.1 Consider Equipment Procurements for Central Feeder – East Branch Extension Intertie Project. Staff discussed the need for procurement of two magnetic flow meters (one 24" and

one 42”), two flow control valves (one 24” and one 42”), five guard valves (two 24”, two 42”, and one 60”) and six bypass valves (two 8” and two 4” butterfly valves, and two 4” ball valves) for the Central Feeder – East Branch Extension (CF-EBX) Intertie Project (Project). The total estimated cost for the procurements is \$296,643. Advanced procurement of long lead-time equipment for the Project will allow the District to shorten the construction schedule time, reduce overall Project costs and have greater control of the equipment being purchased. Through the Project, the Central Feeder will connect to the recently completed (2017) EBX-II pipeline to facilitate delivery to entities on the eastern end of our service area. This Project was awarded by the United States Bureau of Reclamation (USBR) for a grant of up to \$750,000 in 2019. The estimated construction cost, including procurements, of the Project is approximately \$2.2M. At the conclusion of the discussion, the Board of Directors present asked that this item be placed on a future Board of Directors’ meeting for consideration.

Action Item: Forward the item (estimated cost of \$296,643) to the full Board for consideration.

5.2 Review of 2017 Recycled Water Settlement Agreement between Valley District, San Bernardino Municipal Water Department and East Valley Water District. Staff presented the Board of Directors with a recap of the 2017 Recycled Water Settlement Agreement (Settlement). This included discussion about the three agencies and the needs of each one, as well as the challenges that led to the Settlement. Additionally, Staff provided details of the water use efficiency component within the Settlement, the projects that the San Bernardino Municipal Water Department has completed, and the projects that expected to be completed.

Action Item: No action item as this was an update only.

5.3 Update on the Water Use Efficiency and Education Program. Staff provided the Board of Directors with an update on the Water Use Efficiency Program. The District has budgeted \$750,000 for the Water Conservation Rebate, Turf Replacement Rebate, and Weather Based Irrigation Controller Programs. The total reimbursement requests to date for these programs are \$603,232, including the San Bernardino Municipal Water Department Recycled Water Settlement water use efficiency projects. This leaves a balance of \$146,768 for the Rebate Programs for this fiscal year.

The Inland Empire Resources Conservation District (IERCD) has made 82 classroom presentations throughout the District service area, leaving 38 programs to be presented

through the end of this school year. There are two residential workshops being hosted at Valley District on March 7 and March 20, 2020, 9 a.m. – 12 p.m. on the topics of Landscape Design: The First Step in Your Efficient Landscape and Managing an Efficient Irrigation System.

Action Item(s): No action item as this was an update only.

5.3 Overview of February 2020 Washington D.C. Advocacy Trip. Heather Dyer gave an overview on recent participation in the 2020 Association of California Water Agencies (ACWA) Washington D.C. Conference and federal legislative visits that took place. Vice President Kielhold and Director Hayes, along with Ms. Dyer and Ms. Farlow met with federal legislators and staff of key committees to discuss topics of relevance to the District, including the Sites Reservoir Project, Delta Conveyance, the Upper Santa Ana River Habitat Conservation Plan, operations of Seven Oaks Dam, upcoming federal appropriations process, and the 2020 Water Resources Development Act. Ms. Dyer discussed meetings that took place with the legislative staff of Senators Harris and Feinstein and Representatives Napolitano, Aguilar, Cook, and Torres. Staff and Directors also attended ACWA conference presentations given by California Congressman Jared Huffman and Bureau of Reclamation Deputy Commissioner, Shelby Hagenauer highlighting initiatives currently being worked on by both legislators and agency leadership.

Action Item: No action item as this was an update only.

6. Future Business:

a) Director Hayes brought up two items for future discussion, both related to West Valley Water District. The first item was consideration of the District participating in West Valley's upcoming Earth Day event on April 18, 2020; the second item was a request from West Valley to use our logo on the Inland Empire Landscape Guide (the "yellow books") when West Valley distributes them to customers.

Action Item: Staff will add these items to a future workshop agenda for discussion by the Board of Directors.

b) Director Navarro requested a future agenda item be added to discuss ongoing meetings between the District's lobbyists and the legislators throughout the year which could take place

at the District offices. Director Hayes followed up by requesting further discussion of the role, responsibility, and activity of the State and Federal lobbyists and how we can maximize the expertise of our advocacy team(s).

Action Item: Staff will add discussion of this subject to a future workshop agenda for discussion by the Board of Directors.

Staff Recommendation

Receive and File



DATE: April 7, 2020

TO: Board of Directors

FROM: Staff

SUBJECT: Summary of March 12, 2020 Board of Directors Workshop - Policy

The Policy Workshop convened on March 12, 2020. Director Longville chaired the meeting; Directors Harrison and Navarro participated in the Workshop. Cindy Saks, Wen Huang, Bob Tincher, Brent Adair and Matt Howard, of staff, participated in the workshop.

3. Summary of Previous Meeting

The meeting notes from the February 6, 2020, Board of Directors' Workshop – Policy were reviewed. With no additional comments.

4.1 Quarterly Investment Portfolio Update from PFM Asset Management

Staff introduced the District's financial advisor Richard Babbe from PFM Asset Management who reviewed the quarterly investment portfolio activity. Richard reported on current interest rates, earnings and trends, current diversity of the District's portfolio and trades made during the quarter. The report was informational only.

Action Item(s): As the situation around the coronavirus (COVID-19) continues to evolve, staff was directed to keep in close contact with the District's financial advisor regarding the market fluctuation and the District's investments. Director Navarro requested Richard Babbe provide a market update at next month's workshop or earlier if warranted.

4.2 Consider Contract Amendment to Create a Data Management System for the Yucaipa Groundwater Sustainability Agency

Staff presented the Board of Directors with a contract amendment proposal to create a Data Management System for the Yucaipa Sustainable Groundwater Management Agency (Yucaipa SGMA). The Yucaipa SGMA is tasked with the submission of the Groundwater Sustainability Plan (GSP). One of the requirements under SGMA is to develop and implement a Data Management System (DMS) specially designed for data storage, utilization and reporting for the Yucaipa SGMA. The Yucaipa SGMA requested and received a proposal from Dudek to create the DMS as only the design portion of the DMS was included in original Dudek Yucaipa SGMA scope of work. The sub-total cost of the Dudek DMS proposal is \$68,820 with the remainder of the DMS design budget of \$23,760 applied to the proposal cost resulting in the total cost of \$45,060. The Yucaipa SGMA Memorandum of Agreement outlines the allocation of costs between water retailers of 75% and regional water agencies of 25%. The fiscal impact to Valley District is \$2,816, however approval would require a contract amendment with Dudek for the entire cost of \$45,060. Staff provided a recommendation to move this item to a future Regular Board of Directors meeting for consideration.

Action Item (s): Place this item on a future Board of Directors Regular Meeting for consideration.

4.3 Update on Citrus Reservoir and Pump Station Floating Cover System Project

Staff provided an update on the Citrus Reservoir and Pump Station Project (Project). On November 6, 2018, the Board of Directors authorized procurement of the Rhombo Hexoshield floating cover system to comply with mitigation requirements for the Citrus Reservoir provided in the Wildlife Hazard Management Plan (WHMP). Since then, over 3.7 million balls out of a total of 7.5 million balls have been deployed in the reservoir. Based on the recent biological monitoring events, the floating cover, even at less than half completed, has been very effective deterring migratory birds from using the reservoir. In November 2019, there was evidence that some of the rhomboidal shaped balls have developed holes, sunk and subsequently been pulled into the reservoir pumps. Since then, the Citrus Pump Station has been shut down for investigations. Through the collaboration with DWR staff, corrective measures have since been identified. On December 17, 2019, the Board approved a budget of \$280,000 related to the Project.

In cooperation with DWR, Valley District staff began to drain the reservoir using the Citrus Pump Station, followed by rental dewatering equipment. DWR staff has also begun

deployment of a floating debris boom and net system designed to keep the rhomboidal balls from entering the Citrus Pump Station intake gallery. District staff has also worked with DWR staff to complete the design of pump screens at each pump intake column to protect against any future intake of debris or balls that may plug up the pumps. The fabrication of the pump screens is expected to be completed in April 2020. Upon receipt of the pump screens District and DWR staff will begin installation. The total estimated Project cost is approximately \$175,968 including rental dewatering equipment, pump screen fabrication and installation, pump inspection and repair, and miscellaneous materials and rentals, which will be shared with SGPWA (22.6%), and is expected to be completed in the 2nd quarter 2020.

Action Item (s): Staff will provide an update and final Project costs upon completion of the Project at a future workshop or regular Board meeting.

4.4 Update on Groundwater Sustainability Councils

Staff provided a status update report and PowerPoint presentation on the Yucaipa Sustainable Groundwater Management Agency (Yucaipa SGMA), San Bernardino Basin (SBB) Groundwater Council, and the Rialto Basin Groundwater Council. The Yucaipa SGMA is currently developing the Groundwater Sustainable Plan (GSP) which is a groundwater management plan that is an evaluation of supplies and demands into the future and a sustainable plan for meeting future demands. Staff also presented on the recent activity and progress of the USGS Yucaipa Groundwater Model, proposed DWR stream gage, and the preliminary water budget for the Yucaipa Basin.

Staff presented a brief overview of the SBB Groundwater Council and the recent activity including the draft 2020 budget that includes \$2,797,116 to purchase 23,624 acre-feet of State Project Water and also includes 5,277 acre-feet of local water to meet the annual Basin Sustainability objective of 28,823 acre-feet. The SBB Groundwater Council also received and reviewed a draft of its first Annual Report which summarizes the goals, status and accomplishments from 2019 and outlines the goals for 2020.

Staff also presented on the Rialto Basin Groundwater Council which is currently developing a framework agreement to create the Groundwater Council that consists of City of Rialto, City of Colton, Fontana Union Water Company and West Valley Water District. The draft framework generally outlines the governance structure and groundwater sustainability management activities that would be undertaken by the groundwater council.

Action Item(s): No action item as this was an update only.

5. Adjournment

Staff Recommendation

Receive and file.



DATE: April 7, 2020

TO: Board of Directors

SUBJECT: List of Announcements

- A. April 9, 2020 – Board of Directors’ Workshop – Policy, 2:00 p.m. by teleconference
- B. April 14, 2020 – Board of Directors’ Workshop – Engineering, 2:00 p.m. by teleconference
- C. April 16, 2020 – Board of Directors’ Workshop – Resources, 2:00 p.m. by teleconference
- D. April 21, 2020 – SAWPA Commission Meeting, 9:30 a.m. by teleconference
- E. April 21, 2020 – Regular Board Meeting, 2:00 p.m. by teleconference