



BOARD OF DIRECTORS MEETING

Thursday, September 17, 2020

6:30 P.M.

DUE TO COVID-19, THIS MEETING WILL BE CONDUCTED AS A TELECONFERENCE PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPEND CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT. MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON.

The following members of the BAWSCA Board are listed to permit them to appear telephonically at the Board Meeting on September 17, 2020: Jay Benton, Randy Breault, Tom Chambers, Alison Cormack, Debi Davis, Laura Davis, Sam Hindi, Steve Jordan, Kirsten Keith, Rob Kuta, Gustav Larsson, Sam Liccardo, Juslyn Manalo, Lisa Matichak, Al Mendall, Chris Mickelsen, Carmen Montano, Larry Moody, Rosalie O'Mahony, Tom Piccolotti, Barbara Pierce, Dan Quigg, Lou Vella, John Weed, Sepi Wood, and Tom Zigterman.

Members of the public wanting to participate in the meeting may do so by:

Participating via Video Conference:

Click on the link to Join the meeting, <https://us02web.zoom.us/j/85808429956>

- Meeting ID: 858 0842 9956.
- Password: **908532**.
- The web browser client will download automatically when you start or join your first Zoom meeting. It is also available for [manual download here](#).

OR,

Participating via Telephone:

- **Dial (888) 788-0099** US Toll-free, and entering **Meeting ID 858 0842 9956** and **Password 908532**, when prompted.
- To Mute or UnMute, Press *6.
- To Raise Hand, Press *9.
- The Presentation will be available prior to the meeting at www.bawasca.org.

In the event of technical malfunction on Zoom, the meeting will be conducted via the Call-In #.

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6:30 P.M.

AGENDA

<u>Agenda Item</u>	<u>Presenter</u>	<u>Page</u>
1. Call to Order/Roll Call/Salute to Flag	(Pierce)	
2. Comments by the Chair	(Pierce)	
3. Board Policy Committee Report	(Chambers)	Pg 5
4. Public Comments <i>Members of the public may address the Board on any issues not listed on the agenda that are within the purview of the Agency. Comments on matters that are listed on the agenda may be made at the time the Board is considering each item. Each speaker is allowed a maximum of three (3) minutes.</i>	(Pierce)	
5. SFPUC Report	(Ritchie)	
6. Consent Calendar (<i>Attachments</i>)	(Pierce)	
A. Approve Minutes of the July 16, 2020 Meeting		Pg 17
B. Receive and File Pre-Audit Budget Status Report – As of 6/30/20		Pg 21
C. Receive and File Investment Report – As of 6/30/20		Pg 23
D. Receive and File Directors' Reimbursement Report – As of 6/30/20		Pg 25
E. Receive and File Bond Surcharge Collection, Account Balance and Payment Report for Fiscal Year Ending June 30, 2020		Pg 27
7. Action Calendar	(Sandkulla)	
A. Establishing a Policy Relating to Water Supply Agreement Balancing Account <i>The Committee voted unanimously to recommend approval of the proposed Board action.</i>		Pg 31
B. Proposed Use of Balancing Account to Prepay the Remaining Unpaid Existing Asset Balance (WSA Section 5.03C) as of September 30, 2020 <i>The Committee voted unanimously to recommend approval of the proposed Board action.</i>		Pg 37
C. Los Vaqueros Reservoir Expansion Project – Multi-Party Agreement Amendment #2 <i>The Committee voted unanimously to recommend approval of the proposed Board action.</i>		Pg 43

- 8. Closed Session #1** (Schutte)
- A. Conference with Legal Counsel – Existing Litigation pursuant to**
Paragraph (1) of subdivision (d) of Government Code Section 54956.9
Federal Energy Regulatory Commission Final License Application
Proceedings for Don Pedro Hydroelectric Project, P-2299-082, and La
Grange Hydroelectric Project, P-14581-002.
 - B. Conference with Legal Counsel – Existing Litigation pursuant to**
Paragraph (1) of subdivision (d) of Government Code Section 54956.9 State
Water Board Cases (Sacramento County Superior Court Case No. 5013).
- 9. Report from Closed Session #1** (Schutte)
- 10. Reports** (Sandkulla)
- A. Water Supply Update
 - B. FERC/Bay Delta Plan Update
 - C. CEO/General Manager's Letter (*Attachment*) Pg 71
 - D. Board of Directors Policy Calendar (*Attachment*) Pg 77
 - E. Correspondence Packet ([Under Separate Cover](#))
- 11. Closed Session #2** (Pierce)
- A. Public Employee Performance Evaluation** (Pierce)
Title: CEO/General Manager
Closed Session Pursuant to Government Code Section 54957
(*Under Separate Cover*)
- 12. Report from Closed Session #2** (Pierce/Schutte)
- 13. Break for Conference with Labor Negotiator** (Pierce)
Agency designated representative: Barbara Pierce
Unrepresented Employee: CEO/General Manager
- 14. Reconvene Following Labor Negotiations** (Pierce)
- 15. Action Item Following Closed Session** (Pierce)
- A. Consider Compensation Adjustment for CEO/General Manager
for FY 2020-21 (*Under Separate Cover*)
- 16. Directors' Discussion: Comments, Questions and Agenda Requests** (Pierce)
- 17. Date, Time and Location of Future Meetings** (Pierce) Pg 79
(See attached schedule of meetings)
- 18. Adjourn to next meeting scheduled for November 19, 2020 at 6:30pm** (Pierce)

Accessibility for Individuals with Disabilities

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BAWSCA

Bay Area Water Supply & Conservation Agency

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MEMORANDUM

TO: BAWSCA Board Members

FROM: Nicole Sandkulla, Chief Executive Officer/General Manager

DATE: September 11, 2020

SUBJECT: Summary of Board Policy Committee meeting held June 10, 2020

1. **Call to Order:** Committee Chair, Tom Chambers, called the meeting to order at 1:30 pm. A list of Committee members who were present (9), absent (0) and other attendees is attached.

The Committee took the following action and discussed the following topics:

2. **Comments by Committee Chair:** Committee Chair Chambers welcomed members of the Committee and reviewed the general procedures for conducting the meeting virtually. He noted that all actions by the committee will be done by roll call vote.
3. **Public Comments:** Michelle Novotny introduced Alison Kastama who will be replacing her as the new BAWSCA Liaison. Ms. Novotny announced that she has accepted another position within the SFPUC.

4. **Consent Calendar:** Approval of Minutes from the April 8, 2020 meeting.

Director Wood made a motion, seconded by Director Cormack, that the minutes of the June 10, 2020 Board Policy Committee meeting be approved.

The motion carried unanimously by roll call vote.

5. **Action Calendar:**

- A. **Establishing a Policy Relating to Water Supply Agreement Balancing Account:** Ms. Tang stated that this item is in response to the Board's request to establish a policy that would guide any future action by the Board in justifying the allocation of the positive balance in the Balancing Account. A proposed resolution was presented to, and discussed by, the Committee at its June 10, 2020. As directed by the Committee, this item presents the revised proposed resolution that fixes a minor typo and includes language that refers to the use of the Water Management Charge for item (d) of the five considerations for the use of the Balancing Account.

Ms. Tang explained that in addition to the written findings the Board must make to reasonably demonstrate that applying all or a portion of the positive balance in the Balancing Account to the selected purpose(s) set forth in the Water Supply Agreement (WSA) is in the best interests of the Wholesale Customers, an analysis comparing the use of the Balancing Account funds to implementing a Water Management Charge per WSA Section 3.06.A must also be done.

Director Chambers called upon each Committee member to allow them to state their comments and ask their questions. The Committee was supportive of the revised proposed resolution.

Staff responded to questions asked as follows:

Ms. Sandkulla stated that the Water Management Charge can only be applied specifically to water conservation or water supply projects administered by or through BAWSCA.

Legal Counsel, Allison Schutte, consented to change the word “compels” in item (e) to “would benefit from”. Director Mendall stated that the word “compels” can be too restricting in the Board’s ability to utilize the funds for efforts that would benefit the member agencies.

In response to Director Wood, Ms. Tang explained that the SFPUC provides the wholesale customers a preliminary wholesale rate projection at its Annual Meeting with BAWSCA and the Wholesale Customers in February, as required by the WSA. At this meeting, the wholesale customers have the opportunity to discuss and express their concerns on the rate projections with the SFPUC. The final wholesale rates are released in May.

There being no further discussion, Chair Chambers asked for a motion.

Director Mendall made a motion, seconded by Director Larsson, that with the revision of the word “compels” to “would benefit from” for item 2-e of the revised proposed resolution, the Committee recommend Board approval of Resolution 2020-02 establishing a Balancing Account policy.

The motion carried unanimously be roll call vote.

- B. Proposed Use of Balancing Account to Prepay the Remaining Unpaid Existing Asset Balance (WSA Section 5.03C) as of September 30, 2020. Ms. Tang reported that this item is a follow up to the Committee’s direction to staff at the June 10, 2020 BPC meeting to begin the process for paying the remaining unpaid existing asset balance relating to WSA Section 5.03.C.

Ms. Tang reminded the Committee that the Balancing Account records the difference between the actual SFPUC costs attributable to the Wholesale Customers and the amount billed to the Wholesale Customers in each year. This actual cost attributable to the Wholesale Customers is known as the Wholesale Revenue Requirement (WRR).

The Balancing Account, has and continues to, serve a critical role of rate stabilization in the wholesale rate setting. The balance, positive or negative, shall be taken into consideration by SFPUC in establishing wholesale rates, and may be prorated over multiple years to avoid fluctuating increases and decreases in wholesale rates.

The WSA states that if a positive balance is maintained for three successive years and represents 10% or more of the (WRR) for the most recent fiscal year, BAWSCA Board may direct the SFPUC to apply the positive balance to one or more of the purposes set forth in Section 6.05.B.2.a of the WSA.

The projected balance in the Balancing account as of June 30, 2020 is \$77M. The SFPUC currently plans to use the entire positive balance over the next 4 years to moderate wholesale rate increases with a zero increase in the next 2 years, and a lower rate increase in the subsequent 2 years.

As previously presented to the Committee, the WSA specifies six purposes for which the Balancing Account may be used if the criteria are met. In accordance with Resolution 2020-02 which the Committee voted to recommend Board approval at the September 17, 2020 Board meeting, and based on the written findings reported in the committee staff report, the use of the Balancing Account for prepayment of the existing asset balance under Section 5.03 of the WSA, is determined appropriate and in the best interest of the Wholesale Customers and ultimately, the water customers.

Ms. Tang explained that as of September 30, 2020, the remaining unpaid principal balance of the projects paid from the SFPUC revenue-funded appropriations made prior to July 1, 2009, but completed after that date, will be \$4,030,664. This balance is scheduled to be paid off by June 30, 2024 with interest at 4%.

Ms. Tang presented a table showing the calculations for how the proposed prepayment of the remaining balance as of September 30, 2020 will result in a total estimated present value savings of approximately \$179,000 to the Wholesale Customers.

Director Chambers called upon each Committee member for their comments and questions. Members of the Committee were appreciative of the analysis and were supportive of the proposed staff recommendation.

In response to questions from members of the Committee, Ms. Tang stated that there are no other outstanding obligations that the Balancing Account can be used for before it is used for rate stabilization, and there are no prepayment penalties. Specifically, the sentence on page 33 of the staff report that states, "It does appear there are other outstanding issues for consideration at this time." refers to the next item for discussion, LVE project.

There being no further discussion or comments from the public, Chair Chambers asked for a motion.

Director Mendall made a motion, seconded by Director Larsson, that the Committee recommend Board approval of the proposed use of the Balancing Account to prepay the remaining unpaid existing asset balance under WSA Section 5.03.C as of September 30, 2020.

The motion passed unanimously by roll call vote.

- C. Los Vaqueros Reservoir Expansion Project – Multi-Party Agreement Amendment #2: Water Resources Manager, Tom Francis reported that this item is being presented to the Committee for discussion and consideration of whether BAWSCA should continue participation in the

next phase of the Los Vaqueros Expansion (LVE) project by entering into the Multi-Party Agreement (MPA) Amendment #2. This decision needs to be presented to the Board for its consideration at its September 17, 2020 meeting.

Mr. Francis reminded the Committee that the LVE Project is being evaluated by BAWSCA and six other agencies, with Contra Costa Water District (CCWD) as the lead agency. The project includes an expanded surface water reservoir storage and other facilities.

Participation in the LVE project was recommended in BAWSCA's Long Term Reliable Water Supply Strategy (LTRWSS) completed in 2015. BAWSCA has been involved in the LVE Project since 2017 through a Memorandum of Understanding (MOU) with other agencies. BAWSCA's primary interest in the project is to reduce drought rationing impacts during shortages in the San Francisco Regional Water System (SF RWS). BAWSCA is currently seeking to secure 10 thousand acre feet (TAF) of storage in LVE that would be accessed during drought years.

Mr. Francis presented the rationales behind the staff recommendation for Board consideration in September. The rationales are based on feedback received from Board members and appointed Water Management Representatives (WMR) to date, BAWSCA's evaluation of alternatives, and BAWSCA's and SFPUC's interests in LVE.

There is no new information on the costs or capacity and reliability of the South Bay Aqueduct (SBA) since the July Board meeting. Discussions with the Board and the WMRs indicate that while there are member agencies supportive of BAWSCA's continued participation in LVE, there are member agencies that are not. A vast majority of the member agencies, however, are undecided due to outstanding questions about the costs, and accessibility and reliability of LVE supplies compared to the drought water supply benefit provided.

BAWSCA's survey results of the WMR shows that the Board's and the WMR's sentiments are reflective of each other. Mr. Francis reported that BAWSCA's review of offering participation to individual member agencies as a subscription program is deemed not feasible because of the substantial difference between BAWSCA's current subscription programs, which are small in scope and focus on water conservation matters, and the magnitude of a possible LVE subscription program, which is envisioned to be time consuming and expensive to manage. In addition, it is unclear that there is a significant desire from member agencies to participate in a subscription program for LVE participation at this time. Significant staff and legal resources will be required for continued involvement in LVE as a Local Agency Partner (LAP), which can take away time from other efforts BAWSCA is engaged in. The amount of time coupled with the significant costs that would only be divided among a small number of participating agencies did not substantiate the option.

As an alternative, Mr. Francis reported that BAWSCA is looking at continuing its participation through the SFPUC. The current language in the MPA Amendment #2 states that BAWSCA may participate in whole or in part, in the development of LVE, as an LAP or through the SFPUC, assuming that SFPUC continues its involvement as an LAP and BAWSCA is no longer an LAP. BAWSCA is in conversation with the SFPUC to finalize language in SFPUC's portion of the MPA Amendment #2 that would allow BAWSCA's engagement in LVE under the SFPUC's primary role as an LAP.

BAWSCA's engagement in LVE was driven by the member agencies' interest in developing water supplies independent of the SFPUC to offset drought cutbacks in the SF RWS, potentially lowering the 20% rationing requirement. As previously stated, BAWSCA's participation in LVE was a key recommendation in BAWSCA's Long Term Reliable Water Supply Strategy.

SFPUC's interest in LVE is to meet existing contractual and legal obligations to its Wholesale Customers, which are to increase current reliability to meet its Level of Service (LOS) goal and maintain a rationing requirement of no more than 20% system-wide during dry years. Additionally, the SFPUC is looking at LVE as an opportunity to identify additional water supply that could make San Jose and Santa Clara permanent customers of the SFRWS.

BAWSCA continues to be strongly supportive of LVE and recommends that the SFPUC continue to pursue the water supply and storage benefits from LVE for several reasons. There is significant State and Federal grant funding that have been secured to assist in the overall project cost reduction. Environmental impacts are typically significant roadblocks for projects, and LVE's Environmental Impact Study (EIS) has been completed with its environmental impacts being well-understood and minimal, in comparison to other water supply projects. The project has tremendous momentum with the broad support among the LAPs, local stakeholders, and environmental organizations. Once completed, LVE will increase overall regional reliability for emergency and other purposes with its expanded storage and water conveyance facilities within the Bay Area region.

Mr. Francis reported that based on the member agencies' experience from the recent drought, their need for additional supply reliability beyond the existing 20% rationing imposed by the SFPUC during dry years has decreased. Agencies feel that LVE may not be the right fit for the extra supply reliability they are looking for.

Given the Board and agency feedback, the numerous unknowns that are critical to the project, and the significant project cost commitment of \$800-\$900 K, Mr. Francis stated that continuing to participate in LVE as an LAP would not be something BAWSCA staff would recommend to the Board in September.

However, part of the staff recommendation would be for the Board to strongly urge the SFPUC to remain engaged in LVE because it is part of the SFPUC's Alternative Water Supply Planning Initiative. LVE provides the opportunity for the SFPUC to maintain a rationing requirement of less than 20% during dry years, and the opportunity for San Jose and Santa Clara to become permanent customers.

BAWSCA will continue to work with SFPUC and other LAPs to ensure that BAWSCA may participate, in whole or in part, in the development of LVE. Mr. Francis noted that the language in the MPA Amendment #2 is still in draft form and will be re-circulated to the LAPs with the new language that BAWSCA and SFPUC developed and agreed to. BAWSCA and SFPUC do not anticipate concerns from other LAPs on the new language. The final MPA Amendment #2 is expected in late September.

Mr. Francis presented the following 3-part staff recommendation for Committee discussion:

1. not enter into Amendment #2 to the Multi-Party Cost Share Agreement for LVE Planning,

2. strongly urge the SFPUC to remain engaged in LVE as a means to increase water supply reliability and implement its Alternative Water Supply Initiative, which is an update to its 2016 WaterMAP effort, and
3. support BAWSCA's continued participation in the development of LVE, to the extent possible, despite no longer being a LAP.

Director Chambers called upon each Committee member to state their comments and questions.

Director Cormack agreed with the reasons behind BAWSCA's continuing support for LVE and for why BAWSCA participated from the beginning. The reasons highlight why it is important for the region to ensure the project moves forward. She believes the project has a great deal of merit within the Regional Water System, and she is supportive of the staff recommendation.

Over the past year and half, she has watched the evolution of the various considerations presented and discussed by the Board, and there are strong opinions from both sides. She agrees with the rationales behind the staff recommendation, putting emphasis on the region's demonstrated ability, from the recent past, to conserve at the level needed for future dry years. Additionally, given the unusual economic situation, it is prudent not to make investments that involve critical unknowns, by which, are associated with the costs and issues with SBA, an essential component of the project.

She is pleased that BAWSCA has participated in LVE up until this point. She believes it is crucially important that the SFPUC continues to participate, and she hopes that BAWSCA will be able to continue its involvement through the SFPUC.

Director Jordan stated that Purissima Hills Water District (PHWD) is unable to conserve 58% in a 2nd or 3rd drought year, and will need drought supply. He recognizes the uncertainty of LVE being the best drought supply source with its high costs and unknowns, and the unfeasibility of a subscription program with only a few participating agencies. However, he hopes to find other sources of drought supply from the knowledge and experience gained and the mechanisms that have surface over the course of examining LVE. For example, water banking, Oakdale, and Del Valle. He is interested in BAWSCA's pursuit for other alternatives.

Director Jordan asked if there is a cost to BAWSCA's endorsement of SFPUC to remain as an LAP, and if so, has it been quantified? Additionally, he asked what is the life expectancy of this expansion before CCWD expands the reservoir for the 4th time.

Mr. Francis stated that the cost for participating in MPA Amendment #2 is approximately \$800-\$900 K. The LVE is being considered for the SFPUC's Alternative Water Supply Initiative, which is included in SFPUC's budget for its Capital Improvement Program. The funding for SFPUC's CIP and efforts associated with its Alternative Water Supply Initiative is already factored into the wholesale water customers' rate.

Ms. Sandkulla confirmed that there would be no increased cost to what is already planned and built into the existing wholesale rates.

She added that the reasoning for urging the SFPUC to remain engaged with LVE is because the Commission will also be considering its participation in September. It is important for the Commission to know that their wholesale customers would like them to remain engaged. Ms. Sandkulla stated that she would normally make a statement to the Commission from the podium, but she believed it was appropriate for the BAWSCA Board, given its involvement and interests in LVE, to express that directly to the Commission.

Mr. Francis stated that based on what is known now, this expansion of LVE has a life expectancy of up to 100 years, and is expected to be fully functional by 2030. He noted that as part of the annual repayment of debt, CCWD would be collecting monies when and if they would have to rehabilitate the facilities. Similar to the Hetch Hetchy system, CCWD will always need to have funding budgeted for repairs and rehabilitation.

Mr. Francis added that this particular enlargement of LVE has been studied from an environmental impact level. Theoretically, there could be another enlargement to LV, but given its life expectancy and anticipated completion in 2030, another enlargement is far into the future unless climate change and significant demand for additional supply is requested by other LAPs to meet their future needs.

Director Kuta acknowledged the difficulty in making an informed decision given the absence of critical data and the large number of member agencies that are undecided. He appreciated Director Jordan's questions and comments and shares the same concerns that opportunities LVE offers are few and far between. He asked if there was a possibility to delay the Board's decision until more information become available.

Mr. Francis explained that CCWD needs the funding requested to continue the work in this phase. The payment structure under MPA Amendment #2 involves multiple draws that would begin in September because most funds from Federal and State grants will not be received until construction begins. Additionally, there are requirements associated with the Federal and State grant funds that places a tight schedule on the project and necessitates CCWD to enter into the Joint Powers Agreement (JPA) and service agreements with the LAPs by the end of 2021. The tight schedule unfortunately requires the LAPs' commitment before the outstanding critical pieces of information become available.

Director Larsson stated that the Board's consideration of LVE emphasizes the board members' responsibility to represent the BAWSCA region instead of their individual appointing agencies. While it is natural to be most familiar with our own agency's situation, board members need to consider what is best for BAWSCA, as a whole.

He is pleased with the variety of goals between BAWSCA's and SFPUC's interests, and the options to achieve those goals. He believes that the financial commitment is substantial for an agency the size of BAWSCA given the number of unknowns. He is comfortable with BAWSCA's due diligence by participating this far, and believes that BAWSCA's participation generated visibility on the project's importance to the region. LVE is a worthy project that provides opportunities that are few and far between. BAWSCA's engagement and analysis to date allows the Board to make an informed decision based on what is available. He supports the staff recommendation and is pleased that it includes an alternative for BAWSCA to continue its engagement in a way that is most appropriate.

Director Mendall wanted to understand the intent behind the staff's recommendation for the Board to strongly urge San Francisco's continued engagement with LVE, and asked about the structure of usage SFPUC is exploring in LVE. He also asked how much staff time would be involved associated with the proposed recommendation.

In comparison to BAWSCA's interest in 10 TAF, Mr. Francis explained that the SFPUC is looking at a higher storage level of 20 TAF to 40 TAF. It is also looking at 2 options for using LVE, either during drought years or an all year type of use. An all-year type of use could make water available to San Jose and Santa Clara, and potentially other member agencies that are coming up to or passing their Individual Supply Guarantees (ISG).

In a drought and with the added uncertainties that the Bay Delta Plan provides, the SFPUC could potentially have to cut back during droughts to a level that is higher than 20% regionwide. Having an alternative water supply project in place, such as the LVE, is necessary to ensure that BAWSCA would not have to ration at a greater degree.

Mr. Francis stated that BAWSCA's participating through the SFPUC would reduce BAWSCA's overall level of engagement, but that staff would continue to be engaged in the LVE work effort so long as SFPUC remains a partner in LVE, representing the interests of BAWSCA member agencies. Efforts, particularly in some technical and legal aspects, such as in the modeling work and involvement in the formation of a JPA, will decrease. But BAWSCA will continue to stay heavily engaged with the SFPUC to fully understand the project and provide substantial recommendations as to what is best for the BAWSCA region. Even while participating through the SFPUC, BAWSCA will continue to be interested in how reliable SBA will be, how much SFPUC will have to pay for the available capacity on SBA, and how water supply would be conveyed.

Ms. Sandkulla added that BAWSCA's adopted work plan and budget for FY 2020-21 includes LVE and staff level expectations. She noted that regardless of what role BAWSCA has moving forward, she would expect the Board to want BAWSCA in a place to make sure that the wholesale customers are comfortable with SFPUC's involvement in LVE. As we would with any large CIP projects, Calaveras for example, staff would make sure the project moves along and provide feedback based upon BAWSCA's and SFPUC's mutual interests. This is the kind role she expects BAWSCA will have for LVE. It is not as extensive as it would be from the legal side if BAWSCA was an LAP, but from a technical review, analysis and engagement, I would expect the Board to want staff to be engaged at this level.

In response to Director Mendall's question about the use of the words "strongly urge" instead of "support", Ms. Sandkulla stated that the Commission has not yet acted on its ongoing participation in LVE at this time. Her intent is to give an indication to Commission on what direction the BAWSCA Board wants the SFPUC to go with regard to ongoing participation in LVE.

Director Pierce appreciates the level of discussion and the opportunity to watch the project evolution. She has always felt the importance of developing new supplies and agrees with strongly urging the SFPUC to continue its participation because of its obligation to the wholesale customers on water supply reliability and alternative supplies. SFPUC has done a lot of exploration on alternative supplies but has not delivered while member agencies have decreased water use when needed. It is critical for BAWSCA to continue to look forward in making sure there are alternative supplies outside the SFRWS.

She noted that the wholesale customers pay 2/3rds of the cost to operate the system that provides water supply and she expects to pay 2/3rds of the costs of the alternative supply SFPUC finds. She anticipates staff working closely with the SFPUC to provide them information on behalf of the member agencies. This has proven valuable during the WSIP implementation and the development of the CIP. SFPUC and BAWSCA have built a strong relationship and it is important for BAWSCA to endorse the project.

She believes that Nicole, as BAWSCA's CEO/General Manager, speaking on behalf of the project has been valuable for the region. While LVE does not seem to be the right project for BAWSCA to be an LAP, it is important to have the seat through SFPUC to assist in the development of the project.

She asked about the potential for additional partner agencies joining at a later date, to address Director Kuta's question about BAWSCA's decision until critical information is known. Mr. Francis stated that it may depend on how the JPA is structured and whether it will have measures to allow for new or additional partners.

Legal Counsel Allison Schutte added that it is not assumed that other agencies can join, but it certainly is not prohibited.

Director Pierce stated her support for the staff recommendation.

Director Wood agrees with the comments made by her fellow committee members, particularly on Board members' responsibility to represent the region and not their appointing agency, the importance of LVE for the region, and staying engaged in the project. She is supportive of the staff recommendation which is fiscally responsible and aligns with the agency's goal.

Director Zigterman appreciated the committee discussions and comments. He stated his support for exploring additional water supply storage but the costs for continued participation in LVE at this time are too high and uncertain, it does not justify the continued expenditure for staying involved directly. He agrees with the use of "strongly urge" because it is important to pursue the additional storage as a region and the SFPUC as the BAWSCA region's supplier. He supports the staff recommendation.

Director Chambers expressed his support for the staff recommendation. He believes that it is important for BAWSCA to stay engaged under SFPUC's involvement and represent 2/3rd of SFPUC's customers because he sees LVE as an extension of its CIP. It is important for SFPUC to maintain its LOS goals and for BAWSCA to urge them to seriously look at alternative sources. Environmental issues are not going to get easier, and global warming is not going to help.

In response to Director Jordan, Ms. Sandkulla explained that SFPUC's budget for its Capital Improvement Program includes an Alternative Water Supply Development line item. It is approximately \$20 M over two years. The projected wholesale customer rates includes what they expect to spend on a combination of expenditures. At the end of the year, wholesale customers are charged actual costs based on actual expenditures. If SFPUC chooses to move forward with LVE, the wholesale customers will pay 2/3rds of that costs.

Ms. Sandkulla is not familiar with the contractual requirements BAWSCA members agencies, who are customers of Valley Water, would have under their agreements with Valley Water should Valley Water choose to participate in LVE. That would be separate from those agencies' agreements with SFPUC and as a BAWSCA agency.

There being no further comments from members of the Committee or members of the public, Committee Chair Chambers asked for a motion.

Director Pierce made a motion, seconded by Director Larsson, that the Committee recommend Board approve to:

- 1. not enter into Amendment #2 to the Multi-Party Cost Share Agreement for LVE Planning,**
- 2. strongly urge the SFPUC to remain engaged in LVE as a means to increase water supply reliability and implement its Alternative Water Supply Initiative, which is an update to its 2016 WaterMAP effort, and**
- 3. support BAWSCA's continued participation in the development of LVE, to the extent possible, despite no longer being a LAP.**

The motion passed unanimously by roll call vote.

5. Reports:

- A. Water Supply Conditions: Ms. Sandkulla reported that the BAWSCA region's potable water use for the month of June is 16% less than the pre-drought levels in June of 2013. While there is a slight increase in comparison to last year's 2019 use, water use remains below 2013.
- B. Bay Delta Plan - Update: Ms. Sandkulla reported that Governor Newsom continues to provide his critical leadership on the Bay Delta Plan and Voluntary Agreements with his recent release of his water resilience portfolio, which prominently features the voluntary agreements as a critical piece in the Governor's plan for resolving the Bay Delta issues.

The California Secretaries for Natural Resources and Environmental Protection Agency remain engaged on behalf of the Governor's office. BAWSCA continues to coordinate with the SFPUC in their direct engagement in the negotiations.

BAWSCA and the member agencies continue to support the Bay Delta Plan objectives and are committed to working with other stakeholders to protect the quality in the Bay Delta for all users, including fish and other wildlife. BAWSCA and the member agencies continue to see the voluntary agreement as the best solution to resolve the critical issues of the Bay Delta Plan.

- C. FERC Update: As previously reported to the Board at its July Board meeting, FERC released the Final Environmental Impact Statement on July 7th. BAWSCA is currently reviewing and analyzing the document in coordination with SFPUC. The review is particularly focusing on the responses from FERC on the economic and environmental impacts to the BAWSCA service area and responses to the BAWSCA, SFPUC and NGO comments. BAWSCA's submittal of anything further to FERC is yet to be determined.

- D. Board Policy Calendar: Ms. Sandkulla alerted the Committee on a few re-shuffling of items in the Board Policy Committee Policy Calendar given the large agenda for the upcoming September board meeting.

10. Closed Session: The Committee adjourned to Closed Session at 2:59 pm.

11. Reconvene to Open Session: The Committee reconvened from Closed Session at 3:15 pm. Ms. Schutte reported that no action was taken during Closed Session.

12. Comments by Committee Members: There were no further comments from members of the Committee.

13. Adjournment: The meeting was adjourned at 3:16 pm. The next meeting is October 14, 2020.

Bay Area Water Supply and Conservation Agency

Board Policy Committee Meeting Attendance Roster

Agency	Director	Aug. 12, 2020	Jun. 10, 2020	Apr. 8, 2020	Feb. 12, 2020	Dec. 11, 2019	Oct. 9, 2019
Westborough	Chambers, Tom (Chair)	✓	✓	✓	✓	✓	✓
Palo Alto	Cormack, Alison (V Chair)	✓	✓	✓	✓	✓	✓
Purissima	Jordan, Steve	✓	✓	✓	✓	n/a	n/a
Cal Water	Kuta, Rob	✓	✓	✓	✓	✓	✓
Sunnyvale	Larsson, Gustav	✓	✓	✓	✓	✓	✓
Hayward	Mendall, Al	✓	✓	✓	✓	✓	✓
Redwood City	Pierce, Barbara	✓	✓	✓	✓	✓	✓
Brisbane	Wood, Sepi	✓	✓	✓	✓	✓	
Stanford	Zigterman, Tom	✓	✓	✓	✓	✓	✓

✓: present

☎: Teleconference

August 12, Meeting Attendance (*Via Zoom in compliance with Gov. Order #29-20 due to COVID-19*)

BAWSCA Staff:

Nicole Sandkulla	CEO/General Manager
Tom Francis	Water Resources Manager
Danielle McPherson	Sr., Water Resources Engineer
Kyle Ramey	Water Resources Specialist
Christina Tang	Finance Manager
Lourdes Enriquez	Assistant to the CEO/General Manager
Allison Schutte	Legal Counsel, Hanson Bridgett, LLP
Nathan Metcalf	Legal Counsel, Hanson Bridgett, LLP
Bud Wendell	Strategic Communications

Public Attendees:

Leonard Ash	ACWD
Paul Sethy	ACWD
John Weed	ACWD
Karla Daily	Palo Alto
Alison Kastama	SFPUC
Michelle Novotny	SFPUC
Peter Drekeimer	Tuolumne River Trust

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
BOARD OF DIRECTORS MEETING****July 16, 2020 – 6:30 p.m.**

DUE TO COVID-19, THIS MEETING WAS CONDUCTED AS A TELECONFERENCE PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPEND CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT. MEMBERS OF THE BOARD, BAWSCA STAFF, AND OF THE PUBLIC COULD NOT ATTEND THIS MEETING IN PERSON.

MINUTES

1. Call to Order/Pledge of Allegiance/Roll Call – 6:30 pm

BAWSCA Chair, Barbara Pierce, called the meeting to order and led the salute to the flag. Nicole Sandkulla called the roll. Twenty-five (25) members of the Board were present at roll call. A list of Directors present (25) and absent (1) is attached.

2. Comments by the Chair:

Chair Pierce welcomed members of the Board. She noted the two special reports on the agenda, which includes BAWSCA's audit of the SFPUC's asset management program for the Regional Water System, and the Los Vaqueros Reservoir Expansion (LVE) Project as it pertains to the decision the Board will have to consider at its September meeting.

Chair Pierce moved Item #9, Closed Session, up on the agenda to precede Item #8, Reports.

3. Board Policy Committee Report:

Committee Chair Chambers reported that the Committee had substantial discussions on the establishment of a policy on the use of the Balancing Account, and on BAWSCA's future efforts on the LVE project. The Board Policy Summary Report included in the agenda packet reflects the Committee's discussions.

4. Public Comment:

There were no public comments.

5. SFPUC Report:

Steve Ritchie, SFPUC Assistant General Manager for Water Enterprise, reported on SFPUC's Regional Water System project management during COVID-19, and on the Water Enterprise Capital Improvement Program priorities.

He stated that non-essential projects halted due to COVID-19 concerns, but all projects have re-started with new health and safety plans. The SFPUC submitted Budget modifications to the Mayor's Office with limited impact on Water Enterprise CIPs. He presented the 10-year and 2-year CIP for the Regional Water and Hetch Hetchy Water System.

6. Consent Calendar:

Director Wood made a motion, seconded by Director Cormack, to approve the Consent Calendar which includes the approval of Minutes of the May 21, 2020 meeting and the receipt and filing of the Budget Status Reports as of May 31, 2020.

The motion carried unanimously by roll call vote.

7. Special Reports:**A. SFPUC's Asset Management Program Audit – Final Report.**

BAWSCA Water Resources Manager, Tom Francis, presented the methodologies, findings and recommendations of BAWSCA's audit of SFPUC's Asset Management Program. The full report is accessible on the BAWSCA website. Phase 2 of BAWSCA's Asset Management Review is included in the FY 2020-21 work plan. Updates will be provided to the Board accordingly.

Board discussion ensued. There were no public comments.

B. Los Vaqueros Reservoir Expansion (LVE) – Upcoming Participation Decision Including Cost Considerations

Mr. Francis presented a side-by-side comparison of the known and unknown information on BAWSCA's water supply needs and the member agencies' interests in dry year water supplies, the LVE's water supply benefits and costs, and the South Bay Aqueduct's reliability and capacity. The presentation was to inform the Board of the issues for its consideration at the September Board meeting when it decides whether to continue further participation in the LVE.

Board discussion ensued. Comments were made by Peter Drekmeier.

Legal Counsel noted that the meeting has reached the two and one-quarter hour meeting time limit and will need to be extended by a motion and a roll call vote if the Board so chooses.

Chair Pierce opened the floor for a motion.

Director Wood made a motion, seconded by Director Larsson, to extend the meeting to 9:30 pm.

The motion passed unanimously by roll call vote.

8. Closed Session: The meeting adjourned to Closed Session at 9:10 pm**9. Report After Closed Session:** Closed Session ended at 9:25 pm. Legal Counsel, Allison Schutte, reported that no action was taken during Closed Session.**10. Reports:** Ms. Sandkulla provided an update on current potable water use, Bay Delta Plan, and FERC relicensing process.

Chair Pierce reported that she will send an email to the Board initiating the CEO Evaluation process for FY 2019-20. Results of the evaluation will be discussed in Closed Session at the September Board meeting.

Lastly, Ms. Sandkulla presented the Policy Calendar through January 2021, noting the new Annual Report of the WSA Balancing Account Status requested by the Board in January 2020 and discussed by the BPC at its June meeting.

11. Directors' Discussion: Comments, Questions and Agenda Requests: Director Moody referenced his interest he previously stated about developing an internship program with the goal of providing opportunities and creating diversity. He reported on his recent conversations with California representatives from the Historical Black Colleges and the Valley Water District. He noted that involvement by some BAWSCA Board members in the conversation would be constructive in identifying how to develop an internship program that moves toward diversity in the organization. He requested the Board Chair's consideration of this item for the next Board meeting and looks forward to his scheduled meeting with Nicole on this matter.

12. Date, Time and Location of Next Meeting: The next meeting is scheduled on September 17, 2020 at 6:30 pm. Meeting format will be announced in accordance to State and local health guidelines.

13. Adjournment: The meeting adjourned at 9:33 pm.

Respectfully submitted,

Nicole M. Sandkulla
Chief Executive Officer/General Manager

NMS/le
Attachments: 1) Attendance Roster

Bay Area Water Supply and Conservation Agency

Board of Directors Meeting Attendance Roster

Director	Agency	July 16, 2020	May 21, 2020	Mar. 19, 2020	Jan. 16, 2020	Nov. 21, 2019	Sept. 19, 2019
Benton, Jay	Hillsborough	✓	✓	Meeting Cancelled due to COVID-19 Shelter-in-Place Order	✓	✓	✓
Breault, Randy	Guadalupe	✓	✓			✓	✓
Chambers, Tom	Westborough	✓	✓		✓	✓	✓
Cormack, Alison	Palo Alto	✓	✓		✓	✓	✓
Davis, Debi	Santa Clara	✓	✓		✓		✓
Davis, Laura	San Bruno	✓	✓		vacant	✓*	✓*
Hindi, Sam	Foster City	✓	✓		✓	✓	✓
Jordan, Steve	Purissima	✓	✓		✓	✓	✓
Keith, Kirsten	Menlo Park	✓	✓		✓	✓	✓
Kuta, Rob	Cal Water	✓	✓		✓	✓	✓
Larsson, Gustav	Sunnyvale	✓	✓		✓	✓	✓
Liccardo, Sam	San Jose						
Manalo, Juslyn	Daly City	✓	✓			✓	✓
Matichak, Lisa	Mountain View	✓	✓		✓	✓	✓
Mendall, Al	Hayward	✓	✓		✓		✓
Mickelsen, Chris	Coastside	✓	✓		✓	✓	
Montano, Carmen	Milpitas	✓	✓			✓	✓
Moody, Larry	East Palo Alto	✓			✓	✓	✓
O'Mahony, Rosalie	Burlingame	✓	✓		✓	✓	✓
Piccolotti, Tom	North Coast	✓				✓	
Pierce, Barbara	Redwood City	✓	✓		✓	✓	✓
Quigg, Dan	Millbrae	✓	✓		✓	✓	✓
Vella, Lou	Mid-Peninsula	✓	✓		✓	✓	✓
Weed, John	ACWD	✓	✓		✓	✓	✓
Wood, Sepi	Brisbane	✓	✓		✓	✓	✓
Zigterman, Tom	Stanford	✓	✓			✓	✓

✓ : Present

* : Predecessor


Bay Area Water Supply & Conservation Agency

155 Bovet Road, Suite 650
 San Mateo, California 94402
 (650) 349-3000 tel. (650) 349-8395 fax

TO: Nicole Sandkulla, CEO/General Manager

FROM: Deborah Grimes, Office Manager

DATE: September 4, 2020

SUBJECT: Pre-Audit Budget Status Report as of June 30, 2020

This memorandum shows fiscal year budget status for FY 2019-20. It includes major areas of spending, provides an assessment of the overall budget, and summarizes reserve fund balances. This report covers the budget and expenses for BAWSCA. The BAWSCA budget includes necessary resources for the RFA and BAWUA.

Operating Budget Summary:

For the twelve-month period ending June 30, 2020, total expenditures were \$4,116,485 or 90 percent of the total budget of \$4,569,750.

Table 1. Operating Budget Summary as of June 30, 2020

Cost Category	Year-To-Date		
	Budget	Expenses	Percent
Consultants /Direct Expenditures			
Reliability	1,797,550	1,515,857	84%
Fair Pricing	233,000	221,399	95%
Administration	110,000	190,575	173%
Subtotal	2,140,550	1,927,831	90%
Administration and General			
Salary & Benefits	2,001,051	1,818,818	91%
Other Expenses			
BAWSCA	390,500	366,948	94%
BAWUA	1,050	0	0%
Subtotal	4,533,151	4,113,597	91%
Capital Expenses	3,000	0	0%
Budgeted Contingency	31,949	0	0%
Regional Financing Authority	1,650	2,888	175%
Grand Total	4,569,750	4,116,485	90%

Overview:

Overall expenditures for FY 2019-20 tracked within budget.

Consultants

The \$115,000 budget for technical review and tracking of the SFPUC's Water System Improvement Program was 63 percent expended. The Operating Budget allocation of \$150,000 for strategic counsel was 100 percent expended. The Administration related Consultant expenses were overbudget mainly due to the legal activities for staffing and COVID-19 issues. The total Operating Budget allocation of \$819,000 for legal counsel was nearly 100 percent expended. The \$193,800 budget for water management and conservation-related activities was 59 percent expended. As noted in the January 7, 2020 budget status report, RFA legal expenses were overbudget due to unforeseen expenses related to director appointment activities in 2019.

Administration and Other Expenses

Budgets for salaries and other expenses were 91 percent and 94 percent expended respectively.

Use of CEO's Discretionary Spending Authority:

No use of CEO discretionary spending authority since the last monthly budget report.

Use of Reserve and Reserve Fund Balance:

In accordance with the adoption of the FY 2019-20 annual budget in May 2019, the Board approved transferring \$77,971 from the General Reserve to fund the FY 2019-20 budget. The BAWSCA General Reserve balance shown below reflects this transfer.

Table 2. General Reserve Fund Balance

Fund	Account Balance (As of 05/31/20)	Account Balance (As of 06/30/20)
General Reserve	\$1,037,877	\$1,037,877



Bay Area Water Supply & Conservation Agency

155 Bovet Road, Suite 650
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MEMORANDUM

TO: Nicole Sandkulla, CEO/General Manager

FROM: Deborah Grimes, Office Manager

DATE: September 8, 2020

SUBJECT: Investment Report – As of June 30, 2020

In February 2004, the Board originally adopted an investment policy consistent with the Government Code that requires a report on the Agency's investments be provided to the Board. This report presents fund management in compliance with the current investment policy. The Board most recently reviewed and re-affirmed the investment policy at the January 16, 2020 board meeting. No changes were recommended or adopted as part of that review.

Funds in excess of \$250,000 are deposited in the BAWSCA Local Agency Investment Fund (LAIF) account throughout the year to ensure compliance with BAWSCA's investment policy.

BAWSCA's prior and current period LAIF account balances are shown below:

<u>03/31/20</u>	<u>06/30/20</u>
\$2,753,536	\$2,517,393

Of the total in the BAWSCA LAIF account as of June 30, 2020, \$1,037,877 represents BAWSCA's General Reserve Fund, equivalent to approximately 23 percent of FY 2019-20 Operating Budget. The remaining amount consists of Subscription Conservation Program funds and unrestricted funds. On June 25, 2020, \$250,000 was transferred from unrestricted funds to BAWSCA's checking account at Boston Bank for operational expenses.

Recent historical quarterly interest rates for LAIF deposits are shown below:

<u>03/31/20</u>	<u>06/30/20</u>
2.03%	1.47%

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Bay Area Water Supply & Conservation Agency

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San Mateo, California 94402
(650) 349-3000 tel. (650) 349-8395 fax

MEMORANDUM

TO: Nicole Sandkulla, CEO/General Manager

FROM: Deborah Grimes, Office Manager

DATE: September 4, 2020

SUBJECT: Directors' Reimbursement Quarterly Report for the Period Ending June 30, 2020

In March 2006, the board adopted a directors' expense reimbursement policy consistent with the Government Code that requires a quarterly report on the Agency's reimbursement of directors' expenses. This report shall show the amount of expenses reimbursed to each director during the preceding three months.

There were no director expenses reimbursed for the quarter ending June 30, 2020.

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Bay Area Water Supply & Conservation Agency

155 Bovet Road, Suite 650
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(650) 349-3000 tel. (650) 349-8395 fax

MEMORANDUM

TO: Nicole Sandkulla, CEO/General Manager

FROM: Christina Tang, Finance Manager

DATE: September 9, 2020

**SUBJECT: Bond Surcharge Collection, Account Balance and Payment Report
for Fiscal Year Ending June 30, 2020**

BAWSCA's Revenue Bond Series 2013A and Series 2013B (Taxable) were issued to prepay the remaining capital cost recovery payments that the BAWSCA agencies owed San Francisco as of June 30, 2013, when the payments were paid off. The bond transaction and the prepayment program were anticipated to generate approximately \$62.3 million in net present value savings over the term of the bonds, or about 17% of the \$356.1 million in principal prepaid from bond proceeds to San Francisco at the end of February 2013.

Bond Surcharge Collections

BAWSCA collects the bond surcharge from member agencies through the SFPUC as a separate item on SFPUC's monthly water bills to agencies. The bond surcharge payments are used to make debt service payments on BAWSCA's revenue bonds.

As of today, BAWSCA has received surcharge payments of \$24,623,145, which is \$74,751 less than the total surcharges billed for FY 2019-20. The shortfall was caused by the City of Menlo Park's payment of its June bill of \$50,437 that was made in August and East Palo Alto's June bill of \$24,314 that is currently in the process of being paid. BAWSCA expects the outstanding balance of \$74,751 to be remitted to the Trustee account by October 2020. Table 1 below presents a payment collection summary for FY 2019-20.

Table 1: Summary of Surcharges Remitted to Trustee for Fiscal Year Ending 6/30/2020

<u>Month</u>	<u>Amount Billed</u>	<u>Amount Remitted to Trustee</u>	<u>Difference</u>
July 2019	\$2,058,158	\$2,058,158	\$0
August 2019	\$2,058,158	\$2,058,158	\$0
September 2019	\$2,058,158	\$2,058,158	\$0
October 2019	\$2,058,158	\$2,058,158	\$0
November 2019	\$2,058,158	\$2,058,158	\$0
December 2019	\$2,058,158	\$2,058,158	\$0
January 2020	\$2,058,158	\$2,058,158	\$0
February 2020	\$2,058,158	\$2,058,158	\$0
March 2020	\$2,058,158	\$2,058,158	\$0
April 2020	\$2,058,158	\$2,058,158	\$0

May 2020	\$2,058,158	\$2,058,158	\$0
June 2020	<u>\$2,058,158</u>	<u>\$1,983,407</u>	<u>\$74,751</u>
Total	\$24,697,896	\$24,623,145	\$74,751

Bond Surcharge Account Balances

All surcharge payments are deposited with the Bank of New York, the Trustee, which manages BAWSCA's accounts and administers debt service payments. BAWSCA's account balances at the Trustee and the account activities in FY 2019-20 are shown in Table 2 below.

Table 2: Bank of New York Bond Trustee Account Activity for Fiscal Year Ending 6/30/2020

	29,224,365	Account Market Value as of 6/30/2019
<i>plus:</i>	24,726,655	<i>Surcharge Collected in July 2019 through June 2020</i>
<i>plus:</i>	430,085	<i>Money Market Fund Interest, Security Coupons/Accrued Interest Received</i>
<i>plus:</i>	259,968	<i>Change in Market Value of Held Treasury Bonds</i>
<i>plus:</i>	13,445	<i>Change in Market Value of Matured Treasury Bonds</i>
<i>minus:</i>	24,460,787	<i>Debt service payment to bondholders</i>
<i>minus:</i>	3,714,415	<i>Principal for Treasury bonds purchased</i>
<i>minus:</i>	1,398	<i>Accrued interest for Treasury bonds purchased</i>
<i>plus:</i>	3,794,311	<i>Market Value of Purchased Bonds</i>
<i>minus:</i>	<u>13,566</u>	<u><i>Reimbursement to BAWSCA for bond administration expenses</i></u>
	30,258,664	Account Market Value as of 6/30/2020

There are two ways interest is earned by BAWSCA on the collected surcharge payments and balances held in the stabilization funds. First, interest is automatically earned on the account balance in the Bank of New York Bond Trustee money market account. Second, BAWSCA has the ability to invest the collected surcharge payments by purchasing U.S. Treasury securities, possibly earning a higher rate of return than the money market account.

Based upon an evaluation of the available yields, it was determined that BAWSCA would realize a moderate earnings benefit by purchasing U.S. Treasury securities instead of staying invested in the money market account. Following further evaluation, BAWSCA determined that a strategy that involved both a rolling and a laddered security structure provided the Agency with the most appropriate balance of safety, liquidity, and yield. Consequently, this investment strategy was implemented in October 2015. With the Investment Advisor's assistance, BAWSCA re-evaluated the investment strategy in April 2018 and determined that a modest extension of portfolio maturity was appropriate to pursue higher yields while still satisfying the primary objectives of safety and liquidity. Following the April 2018 debt service payment, BAWSCA began the transition to a 0-5 year laddered portfolio strategy. In November 2019 and April 2020, BAWSCA reviewed the investment strategy again in light of recent market developments and changes to interest rate policy made by the Federal Reserve. BAWSCA and its investment advisor believe that the current 0-5 year laddered portfolio strategy remains appropriate as such longer-maturity strategies have historically provided greater investment returns and income while protecting against the reinvestment rate risk associated with potential declines in short term interest rates and earnings.

As of June 30th, the book yield and market yield on BAWSCA's revised portfolio strategy was 1.85% and 0.20%, respectively, as compared to 0.05% for the money market fund. The Federal Reserve left short term interest rates unchanged over the quarter. However, longer term interest rates (e.g., two through five years) declined, reflecting continued concern over the outlook for the domestic and global economy as the pandemic continues. Against this backdrop, the yield curve remains roughly flat from zero to two years and maintains an upward slope from two years onward. Accordingly, BAWSCA believes that maintaining the current 0-5 year laddered portfolio strategy remains appropriate as such longer-maturity strategies take advantage of an upward sloping yield curve and have historically provided greater investment returns and income while protecting against the reinvestment rate risk associated with potential declines in short term interest rates and earnings.

All investment interest earnings are deposited directly in the Trustee account, and will be used to pay for future expenses and debt service of the bonds. Ultimately, all interest earnings are returned to the member agencies through annual savings and through distribution of the Stabilization Fund, including interest, once the bonds are fully paid.

Revenue Bond Series 2013A and Series 2013B Debt Service Payment Status

During FY 2019-20, BAWSCA made debt service payments twice, using the bond surcharges collected from the agencies, consistent with the initial bond structure. The first payment of \$18,598,900 was made on October 1, 2019. The second payment of \$5,861,887 was made on April 1, 2020. The next debt service payment of \$18,811,887 will be made on October 1, 2020. There are sufficient funds in the Trustee account to make the payment. Debt service payments are made on April 1st and October 1st of each year until 2034.

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BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD OF DIRECTORS MEETING

Agenda Title: **Establishing a Policy Relating to Water Supply Agreement Balancing Account**

Summary:

This memorandum presents the proposed Resolution No. 2020-02 to establish a policy relating to Water Supply Agreement Balancing Account.

Pursuant to Section 6.05.B.1 of the Amended and Restated Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (WSA), at the close of each fiscal year, the difference between the amount billed to the Wholesale Customers for that fiscal year and the actual Wholesale Revenue Requirement (WRR) for that fiscal year is charged to, or credited to, the Balancing Account, as appropriate. The WSA provides that if the Balancing Account maintains a positive balance for three successive years and represents 10 percent or more of the WRR for the most recent fiscal year, the Board may direct the San Francisco Public Utilities Commission (SFPUC) to apply the positive balance to one or more of the purposes set forth in Section 6.05.B.2.a of the WSA.

The Balancing Account serves a critical rate stabilization role for the wholesale water rates charged by SFPUC to the Wholesale Customers. In the absence of a direction from BAWSCA, the SFPUC will continue to retain the balance for rate stabilization. In the event that BAWSCA chooses to direct application of a positive balance in the Balancing Account, it is a prudent governance measure to require the Board to make written findings justifying the allocation of the positive balance.

The attached Resolution No. 2020-02 has been prepared by legal counsel for consideration by the Board setting forth a policy that would guide any future action by the Board in justifying the allocation of the positive balance in the Balancing Account.

Fiscal Impact:

This item has no impact on BAWSCA's annual operating budget.

Board Policy Committee Action:

The Committee voted unanimously to recommend Board approval of the proposed action. Note that the Committee did recommend a slightly different wording for finding (e), which upon further review, Legal Counsel has modified to the language shown below.

Recommendation:

That the Board approve the Resolution No. 2020-02 establishing a Balancing Account policy.

Discussion:

Legal counsel has prepared the attached Resolution No. 2020-02 which requires the Board to make written findings justifying the allocation of the positive balance consistent with the considerations set forth in the WSA.

Background:

At the end of each Fiscal Year, SFPUC computes the actual costs attributable to the Wholesale Customers as the amount of the WRR, based on actual costs to operate the Regional Water System and actual amounts of water used by the Wholesale and Retail Customers. If there is a difference between the WRR and the actual amounts billed to the Wholesale Customers, the difference, positive or negative, is posted to the Balancing Account. The Balancing Account represents excess (or deficient) Wholesale Customer rate revenue received by SFPUC and is not segregated by Wholesale Customer. Although the Balancing Account is currently positive, it was negative seven out of nine years from 2002 through 2011.

The WSA addresses the Balancing Account in the following ways: 1) establishes the process for operating the Balancing Account and applying positive and negative amounts as part of the wholesale rate setting process, 2) provides for inclusion of the Balancing Account in SFPUC's annual report on the Wholesale Revenue Requirement, 3) specifies what will be included in the Balancing Account calculation and what interest the Wholesale Customers are entitled to, and 4) authorizes audit and review of the Balancing Account.

Under Section 6.05.B.2.a of the WSA, a positive balance in the Balancing Account, which represents 10% or more of the WRR for the most recent fiscal year and is maintained for three successive years, may be used for the Wholesale Customer's preferred application of the balance, exercised through BAWSCA, for six purposes: "(a) transfer to the Wholesale Revenue Coverage Reserve, (b) amortization of any remaining negative balance from the ending Balancing Account under the 1984 Agreement, (c) prepayment of the existing asset balance under Section 5.03, (d) water conservation or water supply projects administered by or through BAWSCA, (e) immediate reduction of wholesale rates, or (f) continued retention for future rate stabilization purposes." As a note, item (b) above is no longer applicable since the 1984 Balancing Account has been zeroed out and item (c) above is only partially applicable since the unpaid principal relating to the net book value of regional assets completed and included in Construction-Work-In-Progress (CWIP) as of June 30, 2009 was paid through the 2013 BAWSCA bond issue.¹

BAWSCA staff currently provides an annual report to the Board on the status of the Balancing Account in March of each year.

Prior to making a determination about the use of Balancing Account funds, the Board must adopt written findings, included in the attached Resolution, that reasonably demonstrate that applying all or a portion of the positive balance to the selected purpose(s) is in the best interests of the Wholesale Customers and ultimately, the water customers. These findings include:

- a) Projected annual Wholesale Rates for the next five fiscal years;
- b) Wholesale Revenue Coverage Reserve;
- c) Existing unpaid asset balance(s) under Section 5.03 of the WSA;

¹ There remains unpaid principal relating to the assets described in WSA Section 5.03C (projects paid from the SFPUC revenue-funded appropriations made prior to July 1, 2009 but completed after July 1, 2009). As of September 30, 2020, the remaining unpaid principal balance will be \$4,030,664. The annual payments of \$1,159,259, with Water and HHWP combined, will be made as part of the WRR from FY 2020-21 through 2023-24 to pay the remaining balance with interest at 4%. The balances and scheduled payments are shown on Schedule K-5 of the amended WSA. All or a portion of the unpaid balance may be prepaid by the Wholesale Customers per Section 5.03C.

- d) Funding requirements and sources for water conservation or water supply projects administered by the Agency and an analysis comparing the use of the Balancing Account funds compared to implementing a Water Management Charge per WSA Section 3.06.A; and
- e) Any other factor(s) the Board of Directors determines ~~would benefit from application of~~ **are relevant to deciding whether to apply** all or part of the positive balance to a purpose specified in 6.05.B.2.a of the WSA. [Language edits shown herein reflect changes made from the Committee recommendation upon advice from Legal Counsel]

In response to the directions provided by the Committee during the last BPC meeting, BAWSCA's legal counsel has added a reference language about comparing the use of the Balancing Account funds to finance water conservation or water supply projects to using the Water Management Charge option for item (d) above in the proposed Resolution No. 2020-02.

WSA Section 3.06.A states that "In order to support the continuation and expansion of water conservation programs, water recycling, and development of alternative supplies within the Wholesale Customers' service areas, the SFPUC will, if requested by BAWSCA, include the Water Management Charge in water bills sent to Wholesale Customers." This Charge is added to the RWS bills that the SFPUC sends to Wholesale Customers, collected by the SFPUC and then shared with BAWSCA according to procedures in the WSA.

The Water Management Charge option was last used in 2012 to collect revenues to fund the development of the Long Term Reliable Water Supply Strategy. In addition, the positive balance in the Balancing Account has also been used in recent years to fund a water supply project. On July 1, 2019, BAWSCA requested the SFPUC to transfer \$805,000 from the Balancing Account to BAWSCA as the funding source for the Los Vaqueros Expansion Project Study and the completion of the Regional Water Demand and Conservation Projections Study included in the BAWSCA FY 2019-20 Operating Budget approved by the Board on May 16, 2019. That action represented the first time BAWSCA directed the transfer of a positive balance in the Balancing Account per the WSA. At that time, the Board requested that a policy be brought forth in the future for Board consideration related to the Balancing Account.

Attachment:

1. Resolution No. 2020-02

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BAY AREA WATER SUPPLY & CONSERVATION AGENCY

RESOLUTION NO. 2020-02

ESTABLISHING A BALANCING ACCOUNT POLICY

WHEREAS, pursuant to Section 6.05.B.1 of the Amended and Restated Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (WSA), at the close of each fiscal year, the difference between the amount billed to the Wholesale Customers for that fiscal year and the actual Wholesale Revenue Requirement for that fiscal year is charged to, or credited to, the Balancing Account, as appropriate; and

WHEREAS, if the Balancing Account maintains a positive balance for three successive years and represents 10 percent or more of the Wholesale Revenue Requirement for the most recent fiscal year, the Board of Directors of the Bay Area Water Supply and Conservation Agency (Agency) may direct the San Francisco Public Utilities Commission (SFPUC) to apply the positive balance to one or more of the purposes set forth in Section 6.05.B.2.a of the WSA; and

WHEREAS, Section 6.05.B.2.a provides the following purposes to which a positive balance may be applied: "(a) transfer to the Wholesale Revenue Coverage Reserve, (b) amortization of any remaining negative balance from the ending balancing account under the 1984 Agreement, (c) prepayment of the existing asset balance under Section 5.03, (d) water conservation or water supply projects administered by or through BAWSCA, (e) immediate reduction of wholesale rates, or (f) continued retention for future rate stabilization purposes"; and

WHEREAS, in the absence of a direction from the Agency, the SFPUC will continue to retain the balance for rate stabilization; and

WHEREAS, in the event the Agency chooses to direct application of a positive balance in the Balancing Account, it is a prudent governance measure to require the Board of Directors to make written findings justifying the allocation of the positive balance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Bay Area Water Supply and Conservation Agency as follows:

1. In advance of taking action to apply all or a portion of the positive balance of the Balancing Account in accordance with Section 6.05.B.2.a of the WSA, the Board of Directors must adopt findings to support such action.
2. The Board must make written findings that reasonably demonstrate that applying all or a portion of the positive balance to the selected purpose(s) is in the best interests of the Wholesale Customers and the ultimate water customers taking into consideration the following considerations set forth in the WSA:
 - a) Projected annual Wholesale Rates for the next five fiscal years;
 - b) Wholesale Revenue Coverage Reserve;

- c) Existing unpaid asset balance(s) under Section 5.03 of the WSA;
- d) Funding requirements and sources for water conservation or water supply projects administered by the Agency and an analysis comparing the use of the Balancing Account funds compared to implementing a Water Management Charge per WSA Section 3.06.A; and
- e) Any other factor(s) the Board of Directors determines are relevant to deciding whether to apply all or part of the positive balance to a purpose specified in 6.05.B.2.a of the WSA.

The findings must be in writing, address consideration of the factors stated above, and be adopted by the Board of Directors at a regular meeting.

PASSED AND ADOPTED, this ____ day of _____ 2020 by the following vote:

AYES:

NOES:

ABSENT:

Chair, Board of Directors

ATTEST:

Secretary

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD OF DIRECTORS MEETING

Agenda Title: **Proposed Use of Balancing Account to Prepay the Remaining Unpaid Existing Asset Balance (WSA Section 5.03.C) as of September 30, 2020**

Summary:

This memorandum presents the written findings required by BAWSCA's Balancing Account Policy, which will be considered for adoption by the Board on September 17, 2020, to support the proposed use of Water Supply Agreement (WSA) Balancing Account to prepay the remaining unpaid existing asset balance relating to the WSA Section 5.03.C. As of September 30, 2020, the remaining unpaid principal balance of the projects paid from the SFPUC revenue-funded appropriations made prior to July 1, 2009, but completed after that date, will be \$4,030,664, which is scheduled to be paid off by June 30, 2024 with interest at 4%. These remaining unpaid existing asset balances and scheduled payments are shown on Schedule K-5 of the WSA. The scheduled payments are referred as K-5 payments in this report.

In May 2020, the projected Balancing Account balance as of June 30, 2020 was \$77.2 million as a credit to the Wholesale Customers. The actual June 30, 2020 closing balance of the Balancing Account will not be known until after the FY 2019-20 WRR compliance audit and BAWSCA's WRR review process is completed. Based on the SFPUC's five-year wholesale rate projections provided as part of its annual wholesale rate notice in May 2020, the entirety of this positive balance was projected to be used for rate stabilization over the next four years, which would, all else being equal, result in no wholesale rate increases in the next 2 years and lower rate increases in the subsequent two years than would otherwise be the case if the Balancing Account credit is not applied to wholesale rates.

Based on the findings presented below, the proposed use of Balancing Account on the Section 5.03.C prepayment is determined appropriate and in the best interests of the Wholesale Customers and ultimately, the water customers. The proposed prepayment as of September 30, 2020 would result in a total estimated present value savings of approximately \$179,000 to the Wholesale Customers.

Fiscal Impact:

This item has no impact on BAWSCA's annual operating budget. If the proposed prepayment is approved by the Board, the balance in the Balancing Account will be reduced by \$4,030,664 and the K-5 payments for the FY 2020-21 Wholesale Revenue Requirement (WRR) would be reduced from \$1,159,259 to \$289,815. Thereafter, the annual K-5 payments would be zero. The net savings to the Wholesale Customers is estimated to be approximately \$179,000 on a present value basis.

Board Policy Committee Action:

The Committee voted unanimously to recommend Board approval of the proposed action.

Recommendation:

That the Board approve the proposed use of Balancing Account to prepay the remaining unpaid existing asset balance under WSA Section 5.03.C as of September 30, 2020.

Discussion:

Under Section 6.05.B.2.a of the WSA, a positive balance in the Balancing Account that is maintained for three successive years and represents 10% or more of the WRR for the most recent fiscal year may be used for the Wholesale Customers' preferred application of the balance, exercised through BAWSCA, for six purposes: "(a) transfer to the Wholesale Revenue Coverage Reserve, (b) amortization of any remaining negative balance from the ending Balancing Account under the 1984 Agreement, (c) prepayment of the existing asset balance under Section 5.03, (d) water conservation or water supply projects administered by or through BAWSCA, (e) immediate reduction of wholesale rates, or (f) continued retention for future rate stabilization purposes."

The criteria allowing the Wholesale Customers to direct the use of a positive balance was previously met a few years ago. Due to the uncertainties related to the drought conditions from FY 2014-15 through FY 2016-17 and the BAWSCA agencies' historical desire for rate stabilization where possible, the continued retention of a positive balance in the Balancing Account for future rate stabilization purposes as indicated in option (f) above was determined appropriate at that time. During this time, all investment interest earnings at an average interest rate of approximately 2% remained in the Balancing Account. On July 1, 2019, BAWSCA requested a transfer of \$805,000 from the Balancing Account to fund the Los Vaqueros Expansion Project Study and the completion of the Regional Water Demand and Conservation Projections Study per BAWSCA's FY 2019-20 Operating Budget approved by the Board. This transfer is contemplated in option (d) above.

The proposed Balancing Account Policy (Res. 2020-02) requires analysis of the following factors for use of the Balancing Account:

1. Projected annual Wholesale Rates for the next five fiscal years;
2. Wholesale Revenue Coverage Reserve;
3. Existing unpaid asset balance(s) under Section 5.03 of the WSA ;
4. Funding requirements and sources for water conservation or water supply projects administered by the Agency and an analysis comparing the use of the Balancing Account funds compared to implementing a Water Management Charge per WSA Section 3.06.A; and
5. Any other factor(s) the Board of Directors determines would benefit from application of all or part of the positive balance to a purpose specified in 6.05.B.2.a of the WSA.

These factors are analyzed below.

Consideration of Use of Balancing Account Fund to Pre-Pay Existing Asset Balance Owed to SF
First, we analyzed the third factor in the Policy listed above. As the Balancing Account balance owed to the Wholesale Customers continues to grow, BAWSCA believes it is appropriate at this time to consider using the positive balance in the Balancing Account to prepay the remaining unpaid existing asset balance under Section 5.03.C, which is a permitted use of the funds per Section 6.05.B.2.a. In 2013, BAWSCA issued revenue bonds to prepay the unpaid principal relating to the net book value of regional assets completed and included in Construction-Work-In-Progress (CWIP) as of June 30, 2009. The principal balance prepaid by the bonds did not include the unpaid principal for CWIP expenses related to assets paid for by SFPUC revenue funded appropriations made prior to June 30, 2009 but completed after that date. As of September 30,

2020, the remaining unpaid existing asset balance under WSA Section 5.03.C will be \$4,030,664 and it is scheduled to be paid off by June 30, 2024 with interest at 4%.

If the proposed prepayment is approved by the Board and implemented as BAWSCA currently contemplates, the balance in the Balancing Account will be reduced by \$4,030,664 and the K-5 payments for the FY 2020-21 WRR would be reduced from \$1,159,259 to \$289,815. Thereafter, the annual K-5 payments would be zero. The FY 2020-21 reduction in K-5 payments would be reflected in the final WRR and the difference between the scheduled and final payments for FY 2020-21 would become part of a Balancing Account adjustment once the FY 2020-21 WRR is finalized. The net savings to the Wholesale Customers is estimated to be approximately \$300,000 through FY 2023-24, which is roughly \$179,000 on a present value basis, assuming a present value discount rate of 1.5%. Table 1 shows the existing unpaid asset balances under WSA Section 5.03.C and the estimated savings resulting from the proposed prepayment.

Next, we analyzed the use of this prepayment on the projected annual Wholesale Rates for the next five fiscal years, the first factor in the Policy. This prepayment would not have a discernible impact on wholesale rates given the small amounts of savings relative to the total WRR in a given year. Since the SFPUC currently plans to keep wholesale rates flat through FY 2022-23, the impact of the reduced Balancing Account credit and the reduced/eliminated K-5 payments will be realized in FY 2023-24, all else equal. Though there is a net future value savings of roughly \$300,000, that amount does not have a significant wholesale rate impact as it will result in a per unit savings of less than \$0.01 per hundred cubic feet of water (ccf).

And then, we analyzed the historical and projected Wholesale Coverage Reserve that are included in Table 2 below, the second factor in the Policy. We believe that this proposed prepayment would result in no changes to the current or projected Wholesale Coverage Reserve. In addition, Table 2 also presents the historical balance and the next five years' projections of the Balancing Account, the annual WRR amounts, and the annual wholesale rates.

Finally, the fourth factor in the Policy, related to funding water supply projects or water conservation with either the Balancing Account or a Water Management Charge, does not present a challenge to using the positive balance in the Balancing Account for this proposed prepayment. Compared to the total balance of the Balancing Account, this is a small reduction in the total balance that will remain available for rate stabilization or for funding other water supply or conservation projects as the Board desires.

The Balancing Account Policy, which is scheduled to be considered for approval by BAWSCA Board on September 17, 2020, requires the Board to take into consideration the information included in Table 1 and Table 2 below before approving any proposed use of the positive balance in the Balancing Account.

Conclusion

Based on the analysis of all factors in the Policy and a review of the information provided in Tables 1 and 2, BAWSCA believes that the proposed use of Balancing Account for the Section 5.03.C prepayment is determined appropriate and in the best interests of the Wholesale Customers and ultimately, the water customers. The proposed prepayment on September 30, 2020 would result in a total estimated present value savings of about \$179,000 to the Wholesale Customers.

Table 1. Estimated Present Value Savings of Prepaying Remaining
Unpaid Asset Balances (WSA Section 5.03.C)

Remaining WSA 5.03C Balance as of 9/30/2020:		\$ 4,030,664		
		Original	Revised	Prepayment
FYE 6/30		K-5 Payments	K-5 Payments	Savings
2021		\$ 1,159,259	\$ 289,615	\$ 869,644
2022		\$ 1,159,259	\$ -	\$ 1,159,259
2023		\$ 1,159,259	\$ -	\$ 1,159,259
2024		<u>\$ 1,159,259</u>	<u>\$ -</u>	<u>\$ 1,159,259</u>
Total K-5 Payments		\$ 4,637,035	\$ 289,615	\$ 4,347,420
Plus: Principal Paid 9/30/2020:		<u>\$ -</u>	<u>\$ 4,030,664</u>	<u>\$ (4,030,664)</u>
Total Payments		\$ 4,637,035	\$ 4,320,279	\$ 316,756
Present Value of Total Payments ⁽¹⁾ :		\$ 4,497,429	\$ 4,317,864	\$ 179,565
% of PV Savings ⁽²⁾ :				4.5%
(1) Assumes present value discount rate of 1.5%				
(2) As a percent of the unpaid balance				

Table 2. Balancing Account Year End Balance vs. Annual Wholesale Revenue Requirement

Fiscal Year	Ending Balance of Balancing Account (BA)	\$ Change from Prior Year	Annual Wholesale Revenue Requirement (WRR)	\$ Change from Prior Year	BA as % of WRR	Ending Balance of WR Coverage Reserve	\$ Change from Prior Year	Wholesale Water Rate (\$/Ccf)	% Change from Prior Year
2001-02	\$9,354,685		\$75,812,199		12.3%	N/A		\$0.88	
2002-03	\$2,880,837	(\$6,473,848)	\$82,301,597	\$6,489,398	3.5%	N/A	N/A	\$0.88	0.0%
2003-04	\$11,895,158	\$9,014,321	\$92,804,851	\$10,503,254	12.8%	N/A	N/A	\$1.10	25.0%
2004-05	\$7,272,068	(\$4,623,090)	\$99,930,037	\$7,125,186	7.3%	N/A	N/A	\$1.13	2.7%
2005-06	(\$8,964,718)	(\$16,236,786)	\$101,822,169	\$1,892,132	-8.8%	N/A	N/A	\$1.02	-9.7%
2006-07	(\$12,881,853)	(\$3,917,135)	\$110,902,794	\$9,080,625	-11.6%	N/A	N/A	\$1.22	19.6%
2007-08	(\$20,625,889)	(\$7,744,036)	\$118,672,955	\$7,770,161	-17.4%	N/A	N/A	\$1.30	6.6%
2008-09	(\$21,860,867)	(\$1,234,978)	\$123,388,788	\$4,715,833	-17.7%	N/A	N/A	\$1.43	10.0%
2009-10	(\$15,194,740)	\$6,666,127	\$131,367,056	\$7,978,268	-11.6%	\$4,488,233	\$4,488,233	\$1.65	15.4%
2010-11	(\$26,313,110)	(\$11,118,370)	\$137,655,168	\$6,288,112	-19.1%	\$7,916,419	\$3,428,186	\$1.90	15.2%
2011-12	(\$7,823,759)	\$18,489,351	\$160,529,498	\$22,874,330	-4.9%	\$11,339,776	\$3,423,357	\$2.63	38.4%
2012-13	\$27,349,579	\$35,173,338	\$172,405,401	\$11,875,903	15.9%	\$13,763,579	\$2,423,803	\$2.93	11.4%
2013-14	\$27,033,814	(\$315,765)	\$179,693,746	\$7,288,345	15.0%	\$19,083,979	\$5,320,400	\$2.45	-16.4%
2014-15	\$27,253,857	\$220,043	\$195,098,156	\$15,404,410	14.0%	\$27,842,873	\$8,758,894	\$2.93	19.6%
2015-16	\$15,712,070	(\$11,541,787)	\$214,208,639	\$19,110,483	7.3%	\$28,899,345	\$1,056,472	\$3.75	28.0%
2016-17	\$40,417,740	\$24,705,670	\$209,059,370	(\$5,149,269)	19.3%	\$28,974,681	\$75,336	\$4.10	9.3%
2017-18	\$59,781,812	\$19,364,072	\$241,372,995	\$32,313,625	24.8%	\$33,730,188	\$4,755,507	\$4.10	0.0%
2018-19*	\$63,919,350	\$4,137,538	\$251,162,196	\$9,789,201	25.4%	\$39,490,528	\$5,760,340	\$4.10	0.0%
2019-20*	\$77,171,771	\$13,252,421	\$259,307,111	\$8,144,915	29.8%	\$35,131,555	(\$4,358,973)	\$4.10	0.0%
2020-21*	\$65,914,698	(\$11,257,073)	\$272,224,181	\$12,917,070	24.2%	\$37,562,766	\$2,431,211	\$4.10	0.0%
2021-22*	\$49,382,320	(\$16,532,378)	\$280,564,001	\$8,339,820	17.6%	\$39,155,753	\$1,592,987	\$4.10	0.0%
2022-23*	\$13,063,797	(\$36,318,523)	\$297,546,890	\$16,982,889	4.4%	\$41,899,275	\$2,743,522	\$4.10	0.0%
2023-24*	(\$176,448)	(\$13,240,245)	\$311,941,137	\$14,394,247	-0.1%	\$44,605,367	\$2,706,092	\$4.72	15.1%
2024-25*	(\$1,600,000)	(\$1,423,552)	\$328,141,216	\$16,200,079	-0.5%	\$47,709,894	\$3,104,527	\$5.24	11.0%

Data Source: Audited Statement of Changes in the Balancing Account for the fiscal years through 2017-18. *Data for the fiscal years 2018-19 through 2024-25 are the SFPUC projections provided in the SFPUC's wholesale rate notice for 2020-21.

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BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD OF DIRECTORS MEETING

Agenda Title: **Los Vaqueros Reservoir Expansion Project – Multi-Party Agreement Amendment #2**

Summary:

The BAWSCA Board is being asked to consider whether to enter into the Los Vaqueros Reservoir Expansion Project (LVE) – Multi-Party Agreement (MPA) Amendment #2, which would secure BAWSCA's participation in LVE as a Local Agency Partner (LAP) through the formation of the Joint Powers Authority (JPA) and drafting of water supply service agreements. A comprehensive update on LVE was provided at the July 16, 2020 Board meeting in anticipation of this upcoming decision. The Board Policy Committee (BPC) considered Amendment #2 at the August 12, 2020 meeting and recommends that the Board not continue participation as an LAP but remain involved via the San Francisco Public Utilities Commission (SFPUC). Amendment #2 is provided as Attachment 1 to this memo.

To date, BAWSCA's participation in LVE has been to evaluate the project as a means to provide up to 10 thousand acre-feet (TAF) per year of water supply in dry years that would be in addition to what is provided via the San Francisco Regional Water System (RWS) and thus would reduce overall drought cutbacks to the member agencies. Through discussions at Board and BPC meetings, BAWSCA has concluded that the identified benefits from BAWSCA's continued participation in LVE do not support continued agency participation given the outstanding questions about costs, access and reliability of LVE water to meet BAWSCA's overall objectives. This sentiment mirrors that of the Water Management Representatives (WMRs). A subscription program was considered to allow BAWSCA to remain involved on behalf of interested agencies. However, because so few agencies would participate, this option was determined to not be feasible.

The SFPUC is exploring LVE to meet several water supply needs and BAWSCA believes that the SFPUC intends to enter into Amendment #2. Amendment #2 of the MPA states that BAWSCA may participate, in whole or in part, in the development of the Project, either as an LAP or via the SFPUC in the event that BAWSCA is no longer an LAP and that no other party will object to such participation. This continued involvement in LVE is important given the SFPUC's anticipated continuation of investigation of LVE to meet its existing contractual and legal obligations to the Wholesale Customers.

BAWSCA strongly supports LVE as an important regional water supply project for several reasons, including, but not limited to, the significant level of State and Federal grant funding received, broad support among partner agencies and environmental groups, the role this project may play in future reliability of the RWS, and that once completed, LVE will provide new storage and water conveyance facilities within the greater Bay Area region, increasing overall regional reliability for emergency and other purposes. For these reasons, it is recommended that BAWSCA withdraw from LVE as an LAP but remain engaged in LVE given the SFPUC's anticipated participation, and urge the SFPUC to remain engaged to meet identified goals in the SFPUC's long term water supply planning.

Fiscal Impact:

If the Board moves forward with the recommended action and does not enter into Amendment #2, this item will have no impact on BAWSCA's adopted budget. If the Board enters into Amendment #2, BAWSCA's fiscal obligation is summarized below.

Three cost share options have been provided in Amendment #2 given uncertainty about how many agencies will enter into the Amendment. At this time, all seven other agencies are expected to enter into Amendment #2.

Table 1. Multi-Party Agreement Amendment #2 Invoice Schedule and Budget

	8 Agencies	7 Agencies	6 Agencies
Total Cost Per Agency	\$760,246	\$868,852	\$1,013,661

Board Policy Committee Action:

The Committee voted unanimously to recommend approval of the proposed Board action.

Recommendation:

That the Board of Directors:

- not enter into Amendment #2 to the Multi-Party Cost Share Agreement for LVE Planning,
- strongly urge the SFPUC to remain engaged in LVE as a means to increase water supply reliability and implement its Alternative Water Supply Initiative, which is an update to its 2016 WaterMAP effort, and
- support BAWSCA's continued participation in the development of LVE, to the extent possible, despite no longer being a LAP.

Discussion:

At the July 16, 2020 Board meeting, staff provided a comprehensive update on the status and upcoming actions for LVE because the current schedule requires BAWSCA to consider MPA Amendment #2 by the end of September 2020. Amendment #2 will determine whether BAWSCA remains in LVE as an LAP with fiscal obligations or withdraws from the project. Board discussion and sentiment at the July meeting on the subject of LVE indicated that the identified benefits from BAWSCA's continued participation in LVE do not support continued full agency participation given the outstanding questions about costs, access through the South Bay Aqueduct (SBA) and reliability of LVE water to meet BAWSCA's overall objectives. This sentiment is mirrored by the WMRs, which the Board has sought feedback from to help inform its decision.

While there is not an overwhelming support among the member agencies specifically for BAWSCA's continued participation in LVE as an LAP, there is broad support for LVE as a regional supply project and recognition that the potential benefits are of interest to certain member agencies. For this reason, two options for BAWSCA's continued participation have been considered. First, the Board expressed interest at the July 16, 2020 Board meeting for a subscription program that would allow BAWSCA to remain engaged in LVE as an LAP on behalf of a small subset of interested member agencies – the premise being that only interested member agencies would pay for BAWSCA's participation. Second, BAWSCA could withdraw from the project as an LAP but support and work with the SFPUC as it continues participation in the development of LVE as part of

its long-term water supply planning. BAWSCA's coordination with the SFPUC is consistent with past practice on other projects, and is consistent with the Water Supply Agreement (WSA).

Subscription Program: BAWSCA has extensive experience developing and managing subscription programs for various water conservation programs and, in theory, a similar model could be used for LVE. However, LVE is dissimilar to other subscription programs BAWSCA administers in several ways. Conservation subscription programs are developed with the understanding that there will be broad participation and that resources used to implement the suite of programs are relatively evenly spread among member agencies. Conversely, BAWSCA's participation in LVE as an LAP will require significant staff and legal support to the benefit of a few participating agencies. A subscription program for LVE would take several months to design as there are many outstanding questions, such as how decisions would be made and whether the entire Board would have voting authority, how costs would be allocated, whether other member agencies could join later after outstanding questions are resolved, to name a few. In addition, it is not clear that the interests of member agencies in LVE are consistent with the drought year supply benefits from LVE that BAWSCA has requested to date. With a decision on Amendment #2 needed by the end of September 2020, there is not enough time to resolve these issues. For these reasons, a subscription program is not feasible and not recommended.

Coordinate BAWSCA Participation with the SFPUC: The SFPUC is considering LVE as part of its necessary planning to meet its existing contractual and legal obligations to its Wholesale Customers, which include these two water supply needs: (1) increase reliability to meet Level of Service (LOS) goals and limit rationing to no more than 20% systemwide in dry years; and (2) provide supply that enables making San Jose and Santa Clara permanent customers. The SFPUC will likely remain engaged in LVE and has funding allocated to explore new water supplies in its 10-year Capital Improvement Plan. The SFPUC provides updates to the Commission and BAWSCA through Quarterly Alternative Water Supply Planning Reports.

Amendment #2 states that BAWSCA may participate, in whole or in part, in the development of LVE, either as an LAP or via the SFPUC in the event that BAWSCA is no longer an LAP. Regardless of whether the Board chooses to enter into Amendment #2, the recommended action anticipates BAWSCA remaining engaged in LVE to meet the agency's core mission of ensuring the region's reliable supply of high-quality water at a fair price.

The SFPUC's Participation in LVE

BAWSCA strongly supports LVE and recommends that the SFPUC continue to pursue the water supply and storage benefits for several reasons. LVE has secured significant State and Federal grant funding to assist in overall project cost reduction. To date, the project partners have secured \$453M in State grants and continues work to secure additional funding through Federal appropriations bills. The Final Environmental Impact Statement has been completed and the effects of the project are well understood. LVE has broad support among LAPs, local stakeholders, and environmental organizations. Once completed, LVE will provide new storage and water conveyance facilities within the greater Bay Area region, increasing overall regional reliability for emergency and other purposes. The combination of these factors has contributed to the tremendous amount of momentum behind the project. The current construction schedule will have all facilities built and online by 2030. This is considerably sooner than any other new water supply project currently being considered by the SFPUC.

The SFPUC's participation in LVE is an important project in the Commission's efforts to meet its LOS goals and improve the RWS reliability. To that end, BAWSCA proposes to remain closely engaged in the LVE effort.

Amendment #2 Scope of Work

Amendment #2 extends the terms of the agreement through December 31, 2021, and provides funding to form the JPA that will govern the project, develop draft service agreements, make substantial progress on permits and agreements necessary to receive full funding from the California Water Commission, and complete preliminary design on early implementation facilities. Attachment 2 provides the Amendment #2 Scope of Work.

Amendment #2 Costs

Attachment 3 details cost allocation depending on the number of agencies that enter into the Amendment. Invoices will be divided evenly and have been scheduled to ensure cash flow for critical path items. Should BAWSCA enter into Amendment #2, the Contra Costa Water District (CCWD) will submit an invoice for payment within 30 days. If agencies withdraw or join the MPA before the second, third or fourth invoice, costs will be redistributed and resolved in the future invoices.

South Bay Aqueduct Capacity and Reliability

The SBA is required for BAWSCA and the SFPUC to take deliveries of LVE water. However, the SBA has deteriorated over time and significant repair work is needed. Valley Water has completed the SBA Capacity Study and shared the Study with SFPUC and BAWSCA following approval by DWR. According to Valley Water, the study improves upon past modeling efforts by: (1) fine tuning how the SBA will be operated, (2) updating projected wheeling and delivery needs for the SBA Contractors (ACWD, CCWD, and Valley Water), and (3) providing more options to adjust assumptions and evaluate more and less conservative scenarios to show a range of benefits that can be expected. BAWSCA's initial review of the Study indicates that more capacity is available in the SBA than previously believed and BAWSCA continues to engage with the SBA Contractors and the SFPUC to evaluate modeling scenarios. Ultimately, DWR owns and operates the SBA and retains final authority to determine whether there is available capacity to meet the SFPUC and BAWSCA needs.

DWR is conducting a separate SBA Condition Assessment to determine what repair work is necessary to improve the overall condition of the SBA. This study is expected to conclude in September 2021.

LVE Costs for BAWSCA for Potential Participation

BAWSCA provided the Board with cost estimates for various components necessary to access LVE water, including storage, wheeling and treating. These estimates were also shared with each of the relevant agencies with request to provide feedback on whether the estimates are within a reasonable ballpark. BAWSCA has not received additional feedback from those agencies since the July 16, 2020 Board meeting. CCWD did provide a clarification that the cost information for their components of the project that BAWSCA shared with the Board in July was correct.

Alternatives to Recommended Action:

BAWSCA has examined three alternatives to the recommended action, all of which are discussed in detail above and summarized here:

1. Approve signing Amendment #2 and continue as an LAP in LVE: This is not recommended given the uncertainty of costs, reliability, and overall benefits of LVE to meet BAWSCA's goals for this project.
2. Offer participation in LVE to interested member agencies on a subscription basis: This is not recommended given the significant staff, technical, and legal support necessary to offer this program to a small number of member agencies. In addition, it is uncertain that member agencies would be interested in participating in this manner given the overall costs.
3. Coordinate BAWSCA participation in LVE with the SFPUC: This alternative is included in the recommended action to enable ongoing participation by BAWSCA in LVE.

Background:

Los Vaqueros Reservoir is an existing off-stream reservoir in Contra Costa County that provides water quality, drought emergency supply, and non-drought emergency water supply benefits to CCWD customers. The original reservoir was completed in 1998. The first expansion of Los Vaqueros was completed in 2012, increasing storage capacity from 100 TAF to 160 TAF of water.

In 2016, CCWD reached out to other local water agencies, including the SFPUC and BAWSCA, to determine if there was interest in a portion of the new storage that would be created as part of LVE. Interested agencies were asked to enter into agreements formalizing their respective participation in studies and environmental documentation and to provide a financial contribution toward the cost of the associated work effort. For FY 2018-19 thru FY 2019-20, BAWSCA's cost share in LVE work was \$354,129. Prior to 2018, BAWSCA was a participant with its cost share funded through the SF RWS costs paid by the Wholesale Customers to San Francisco pursuant to the WSA.

The potential partners in LVE initially included 14 "primary" water agency partners. The list has shortened over time as agencies have dropped out for various reasons. The current list of partners includes CCWD, the Reservoir's owner and operator, and seven other current partner agencies, including East Bay Municipal Utility District, Grasslands Water District, SFPUC, San Luis Delta Mendota Water Authority, Santa Clara Valley Water Agency (Valley Water), and Zone 7 Water Agency.

BAWSCA's initial interest in LVE included both dry year supplies and increased normal year supplies for the member agencies that might want or need them, including San Jose and Santa Clara, who are not permanent SFPUC customers. Since then, BAWSCA's LVE Project interest shifted to dry year supplies as it became clear that additional normal year supplies were needed for only a limited number of agencies. Additional normal year supplies for those agencies would be pursued by those agencies with separate support from BAWSCA. Most recently, BAWSCA was evaluating LVE as a means to provide up to 10 thousand acre-feet (TAF) per year of water supply in dry years that would be in addition to what is provided via the SF RWS and thus would reduce drought cutbacks to the member agencies. Participation in LVE studies was a key recommended action identified in BAWSCA's Long-Term Reliable Water Supply Strategy.

Member agencies have historically expressed interest in identifying new water supplies to offset water shortfalls from the SF RWS during dry years. However, in the worst year of the most recent drought (2015), BAWSCA's member agencies reduced overall water use by 27% below 2013 demand levels. Due to that experience, coupled with their increased emphasis on water conservation overall, member agencies have expressed less concern about their individual communities and water customers' ability to achieve necessary cutbacks.

Critical information regarding the cost and reliability of the project remains unknown and some information will not be available in advance of the critical decision points. Five main categories with critical information pieces that remain unknown were detailed in the July 16, 2020 Board meeting. These included: (1) BAWSCA's water supply needs; (2) potential water supply benefits to BAWSCA from LVE project; (3) member agency interest in additional dry year supply; (4) SBA reliability considerations; and (5) costs to access stored water in LVE.

Attachments:

1. Amendment No. 2 Multi-Party Agreement
2. Amendment No. 2 - Exhibit A2 - Scope of Work Multiparty Amendment
3. Amendment No. 2 - Exhibit B2 - Budget Cost Share for Multiparty Amendment

**Amendment No. 2 to the
Cost Share Agreement for
Los Vaqueros Reservoir Expansion Project Planning**

The Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning between Contra Costa Water District (CCWD) and Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7); Alameda County Water District (ACWD); Bay Area Water Supply & Conservation Agency (BAWSCA); East Bay Municipal Utility District (EBMUD); Grassland Water District (GWD); San Francisco Public Utilities Commission (SFPUC); San Luis & Delta-Mendota Water Authority (SLDMWA); and Santa Clara Valley Water District (Valley Water) (collectively, “Local Agency Partners”), dated April 30, 2019 and amended on June 22, 2020 (referred to hereafter as the “Agreement”), shall hereby be amended by this Amendment No. 2. The Agreement, together with Amendment No. 1 and this Amendment No. 2, may be referenced hereafter as the “Agreement as amended”.

RECITALS

WHEREAS, Contra Costa Water District and the Local Agency Partners (collectively, “Parties”) entered into the Agreement dated April 30, 2019, to provide for the cost-sharing of the funding requirements for the planning of the Los Vaqueros Reservoir Expansion Project (“Project”); and

WHEREAS, pursuant to Sections 5 and 17 of the Agreement, the Agreement was amended on June 22, 2020 to extend the term of the Agreement to the earlier of the completion of the work contemplated therein or December 31, 2020, unless the term is modified consistent with Section 17 of the Agreement; and

WHEREAS, on April 30, 2020 CCWD and the City of Brentwood entered into a Memorandum of Understanding (Brentwood/CCWD MOU) regarding the City’s potential service from Los Vaqueros and CCWD is participating in coordination with and on behalf of the City of Brentwood through the Brentwood/CCWD MOU; and

WHEREAS, on April 29, 2019 CCWD and ACWD entered into a letter agreement to procure services to complete the independent review of the proposed usage fees developed by CCWD and EBMUD; and

WHEREAS, ACWD entered into a contract with Bartle Wells Associates to complete the independent review of the proposed usage fees and continues to support the usage fees workgroup as updated proposals are reviewed; and

WHEREAS, on December 30, 2019 Bartle Wells Associates provided the Parties with the final report of the evaluation of the proposed usage fees; and

WHEREAS, on May 13, 2020 CCWD’s Board of Directors approved the Project and certified the Final Supplement to the Final Environmental Impact Statement/ Environmental Impact Report; and

WHEREAS, on May 22, 2020 the Notice of Determination for the Los Vaqueros Reservoir Expansion Project was filed with the State Clearinghouse; and

WHEREAS, the Final Federal Feasibility Report has been completed by the U.S. Department of the Interior Bureau of Reclamation (“Reclamation”) and was submitted to Congress; and

WHEREAS, the 2020 federal budget included \$2.155 million to fund Reclamation’s work to advance pre-construction activities for the Project; and

WHEREAS, a legal workgroup was formed consisting of counsel from each of the Parties; the legal workgroup unanimously selected Joint Powers Authority (JPA) Formation Counsel to draft a Joint Exercise of Powers Agreement for the Project; and

WHEREAS, on May 18, 2020 the first draft of the Joint Exercise of Powers Agreement was provided to the legal workgroup; and

WHEREAS, draft biological assessments were provided to Reclamation to support re-initiation of consultation with U.S. Fish and Wildlife Service and National Marine Fisheries Service under Section 7 of the Endangered Species Act; and

WHEREAS, on May 21, 2020 the Technical Review Board and representatives from the Division of Safety of Dams reviewed the 50% design of the Los Vaqueros dam raise; and

WHEREAS, on May 26, 2016 CCWD entered into a funding agreement with the California Department of Water Resources (DWR) for the Canal Replacement Project and amended that agreement to fund preliminary design evaluations of Pumping Plant No. 1 Replacement; and

WHEREAS, CCWD competitively selected an engineering consultant and entered into a professional services agreement to prepare preliminary design evaluations of Pumping Plant No. 1 Replacement in support of permitting efforts; and

WHEREAS, CCWD and the South Bay Aqueduct Contractors, who currently hold contracts with DWR for supply from the State Water Project and conveyance of these supplies through the South Bay Aqueduct, have initiated discussions with DWR to address potential changes to water rights, Delta operations, and other agreements necessary to implement the Project; and

WHEREAS, the South Bay Aqueduct is currently a critical conveyance facility for the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct would be the primary conveyance facility for providing water supply benefits from the Project to the SFPUC’s Service Areas and to BAWSCA; and

WHEREAS, DWR is conducting a condition assessment of the South Bay Aqueduct in coordination with the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct Contractors have procured a consultant to evaluate potential capacity in the South Bay Aqueduct available for use by BAWSCA and the SFPUC; and

WHEREAS, DWR, as the owner and operator of the South Bay Aqueduct, has the authority to approve the conveyance of non-State Water Project water supplies through the South Bay Aqueduct for use by BAWSCA and the SFPUC; and

WHEREAS, time is of the essence in terms of the completion of both the South Bay Aqueduct condition assessment and capacity study and the development of additional agreements with DWR as necessary in order for the South Bay Aqueduct Contractors, BAWSCA, and the SFPUC to be provided with the necessary information and assurances to further evaluate the benefits and costs of BAWSCA and the SFPUC's participation in the Project; and

WHEREAS, the California Water Commission (CWC) and CCWD have amended the Early Funding Agreement to increase the cap on State reimbursements from \$13.65 million to \$22.95 million; and

WHEREAS, Parties have collectively paid a total of \$2,833,036 to date in addition to in-kind services to support work in the Agreement; and

WHEREAS, the Parties wish to again amend the Agreement to include additional purposes in the Agreement with a detailed supplemental scope of work and budget for activities funded by this Amendment No. 2; to further extend the term of the Agreement to the earlier of (i) the completion of the work contemplated therein, (ii) until this Agreement is superseded by an interim funding agreement expected to be negotiated among the Parties, or (iii) December 31, 2021; to include additional roles and responsibilities for certain Parties to the Agreement; and to amend the cost and payment terms of the Agreement in order to fund additional planning activities necessary to proceed to a final award hearing and secure a final funding award from the CWC ; and

NOW, THEREFORE, the Parties agree that the above recitals are incorporated in and made part of the Agreement, and, pursuant to Section 17 of the Agreement, do hereby amend the Agreement as follows:

1. Section 1 (Purpose)

In addition to purposes a through h, as provided for in the Agreement, the following purposes and additional paragraphs shall be included in the Agreement as amended.

- i) permits, approvals, certifications, and agreements as required by the CWC to proceed to a final award hearing and secure a final funding award;
- j) design of the Los Vaqueros dam to the 90% level and advancement of design work on other Project facilities;
- k) drafting of service agreements; and
- l) drafting of an interim funding agreement.

As of the effective date of Amendment No. 2 to the Agreement, purposes a, b, and f, as provided for in the Agreement, have been achieved and do not require additional funding.

Work to achieve Purposes c, d, e, g, h, i, j, k, and l will be advanced under the Agreement as amended. Work completed by the Consultant Team and CCWD staff to achieve these purposes will be partially funded by this Amendment No. 2 to the Agreement.

A detailed supplemental scope of work and budget for activities funded by this Amendment No.2 are included in Exhibit A-2 and Exhibit B-2, respectively, which are attached hereto and incorporated herein as if fully set forth in this Amendment No. 2 to the Agreement.

2. Section 2 (Roles & Responsibilities)

In addition to the existing roles and responsibilities of the Parties described in the Agreement, the following additional roles and responsibilities for certain Parties shall be included in the Agreement as amended.

2.1 Contra Costa Water District Responsibilities

- a-l) as described in the Agreement; and
- m) will submit permit applications for construction and operations of Project facilities including but not limited to: Transfer-Bethany Pipeline, Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Neroly Highlift Pump Station, Transfer Facility, Delta-Transfer Pipeline; and
- n) will advance the design of Project facilities including but not limited to Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Transfer-Bethany Pipeline, and Neroly Highlift Pump Station; and
- o) will enter into coordinated operations agreements with Reclamation and DWR; and
- p) will file change petitions as appropriate on water rights held by CCWD, if deemed necessary and appropriate; and
- q) will work cooperatively with DWR and Reclamation to file change petitions as appropriate to modify or amend their water rights if deemed necessary and appropriate in DWR's and Reclamation's sole discretion; and
- r) will execute contracts for administration of public benefits with the California Department of Fish and Wildlife (CDFW) and DWR; and
- s) will enter into a cost share agreement with Reclamation; and
- t) will work cooperatively with the South Bay Aqueduct Contractors to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- u) will work cooperatively with EBMUD to develop and execute a Memorandum of Understanding for the potential provision of water during Project construction; and
- v) will complete an operational risk and reliability assessment; and
- w) will enter into an agreement with the City of Brentwood to continue its participation in the development of the Project; coordinate with Brentwood and seek their timely input, review and feedback as described in this Agreement; and provide for Brentwood's participation in negotiations, meetings, conference calls, webinars, and committees. No other party will object to such participation.

2.2 East Bay Municipal Utility District Responsibilities

- a-k) as described in the Agreement; and
- l) will obtain permits for EBMUD facilities that will be funded in part by the CWC, if, and to the extent, such permits are required by the State as a precondition of disbursement of state construction funding; and
- m) will work cooperatively with CCWD to develop and execute a Memorandum of Understanding setting forth mutually acceptable principles to guide the

anticipated negotiation of a potential subsequent agreement for the potential provision of water to CCWD during Project construction.

2.6 South Bay Aqueduct Contractors Responsibilities

- a-d) as described in the Agreement; and
- e) will work cooperatively with CCWD to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- f) will provide to the SFPUC and BAWSCA (1) the results of the South Bay Aqueduct capacity study and (2) the results of the condition assessment of the South Bay Aqueduct once available and approved to share by DWR.

2.8 Joint Responsibilities

- a-b) as described in the Agreement; and
- c) CCWD and all Local Agency Partners will work cooperatively to secure federal funding.

The following Section 2.9 shall be added in its entirety to Section 2 of the Agreement as amended:

2.9. BAWSCA Participation

BAWSCA may participate, in whole or in part, in the development of the Project, either as a Local Agency Partner or via the SFPUC in the event that BAWSCA is no longer a Local Agency Partner. BAWSCA's participation in the development of the Project via the SFPUC may include but is not limited to participation in meetings, conference calls, webinars, and committees. No other Party will object to such participation.

3. Section 3 (Cost & Payment)

Section 3 shall be amended such that the following terms shall, as applicable, supplement and/or supersede the corresponding terms in the Agreement in their entirety.

Funds previously provided under the Agreement have been nearly expended. The payments are intended to provide sufficient funding for advancing the completion of the additional Scope of Work as provided for in Exhibit A-2 and the Budget provided for in Exhibit B-2.

- a) Total costs to fund work hereunder are identified in Exhibit B-2. The CCWD and Local Agency Partners' collective total share of the cost shall not exceed \$6,081,967 ("Total Cost Share").
- b) Notwithstanding anything to the contrary in the Agreement as amended, CCWD and the Local Agency Partners, excluding GWD, shall be responsible for providing the Total Cost Share in accordance with Exhibit B-2. In no event shall any Party's individual share of the Total Cost Share exceed \$1,013,661 if six (6) Parties, excluding GWD, execute Amendment No. 2. Absent a further written amendment to this Agreement pursuant to Section 17, each Party's individual share of the Total Cost Share shall be less than \$1,013,661 if seven (7) or eight (8) Parties, excluding GWD, execute Amendment No. 2, in accordance with Exhibit B-2. Timing and quantity of payment for each Local Agency Partner shall not vary from what is put

forth in Exhibit B-2 unless CCWD and the Local Agency Partners voluntarily agree to modifications pursuant to Sections 3(d)(iii) and 17 of the Agreement. The Total Cost Share described herein is exclusive of any joint defense or litigation cost share amounts which may be determined in a subsequent written agreement entered into pursuant to Section 9 of the Agreement.

- c) The SFPUC's payments as a Local Agency Partner under the Agreement as amended, are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter and the budget decisions of its Mayor and Board of Supervisors. No SFPUC funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The SFPUC's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The SFPUC, its employees and officers are not authorized to request services that are beyond the scope of those expressly described herein, unless a written amendment is approved as required by law. As to the SFPUC only, this Section 3(c) controls against any conflicting provision of the Agreement as amended.
- d) CCWD and the Local Agency Partners will split the Total Cost Share equally over four payments. CCWD will invoice each of the Local Agency Partners, and itself, for their individual shares of the Total Cost Share detailed in Exhibit B-2.
 - (i) Four invoices are anticipated according to the schedule below:
 - 1. Upon execution
 - 2. November 1, 2020
 - 3. March 1, 2021
 - 4. July 1, 2021
 - (ii) Payment from the Local Agency Partners shall be remitted within thirty (30) days after invoice submittal.
 - (iii) Funds contributed by the Local Agency Partners shall be committed by CCWD and expended only for work required to further the purposes of this Agreement.
 - (iv) If a sufficient number of Parties withdraw from the Agreement or fail to execute Amendment No. 2 before the second, third, or fourth invoice such that the Local Agency Partners' individual cost shares change substantially, or the individual cost shares approach or exceed the maximum financial responsibility for each Party (determined herein as \$1,013,661), each remaining Local Agency Partner, at its sole discretion consistent with Section 3(b) of this Agreement, shall determine whether to withdraw from

the Agreement. CCWD and the Local Agency Partners who do not choose to withdraw will work together to develop an amendment that substantially conforms to this Agreement. If no mutually agreeable amendment can be developed, the remaining Parties will terminate this Agreement.

- (v) If a new Local Agency Partner is added, consistent with Section 12 of this Agreement, each subsequent invoice for each Local Agency Partner will be adjusted to reflect the cost share of the new partner and the total number of Local Agency Partners. The adjustments contemplated herein shall reflect any “catch-up” contribution required of the newly added Local Agency Partner in addition to the contributions to be made on a prospective basis. “Catch-up” contributions shall be calculated based on the then total value of the of the Local Agency Partners’ individual monetary shares paid pursuant to the Agreement as amended prior to the date of the new member’s signing of the Agreement.
- (vi) If funds remain after work under this Agreement is completed, each Local Agency Partner will determine whether its pro-rata share of the remaining funds shall be returned or contributed to future work consistent with Section 7 of this Agreement. Each Local Agency Partner shall advise CCWD of its determination within sixty (60) days of receiving notice from CCWD of the completion of the work, or the remaining funds shall automatically be contributed towards future work.
- (vii) In-kind services may include labor costs and overhead costs for staff who are providing in-kind services for Project activities under this Agreement, including but not limited to data collection, document review, communications, stakeholder outreach, management of third-party consultant contracts, and attending Project meetings. In-kind services will contribute toward the non-State funding match required by the Early Funding Agreement, as it may be amended from time to time. In-kind services, pursuant to Section 2.7(d) of this Agreement, are contributed at the discretion of each Local Agency Partner with no minimum or maximum in-kind contribution limits.

5. Section 5 (Term)

Shall be amended such that the following term shall modify the corresponding term in the Agreement in its entirety:

The Agreement as amended shall terminate on the earliest occurring of the following events: (i) completion of the work contemplated herein; (ii) the effective date of an interim funding agreement which is negotiated between the Parties and intended as a successor to the Agreement as amended; or, (iii) on December 31, 2021, unless the Term is further modified consistent with Section 17 of this Agreement.

8. Section 10 (Early Funding Agreement)

Section 10 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Early funding, in the amount of \$13.65 million, which is equal to fifty percent of the estimated total planning and permitting costs, was approved by the California Water Commission on July 24, 2018. The Early Funding Agreement was amended on July 24, 2020 to increase the total funding available from the California Water Commission from \$13.65 million to \$22.95 million. The Amendment to the Early Funding Agreement, which is attached hereto in Exhibit E-2, requires a fifty percent (50%) funding match from non-State entities ("Non-Program Cost Share"). The Local Agency Partners hereby agree to cooperate in good faith with CCWD to reasonably assist CCWD in its compliance with the Early Funding Agreement. Without limiting the generality of the foregoing, each Local Agency Partner agrees to provide information and access to records in all forms as may be necessary to facilitate CCWD's compliance with all reporting and audit requirements of the Early Funding Agreement, including but not limited to information necessary to adequately document the Non-Program Cost Share.

9. Section 11 (Federal Funding)

Section 11 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Federal appropriations in Federal Fiscal Year 2020 allocated \$2.155 million to Reclamation to complete pre-construction activities for the Project. Reclamation recommended \$7.845 million for the Project in Federal Fiscal Year 2021. With support from the Local Agency Partners, CCWD is seeking a total of \$223 million in federal funding for design, pre-construction, and construction activities through the Water Infrastructure Improvements for the Nation (WIIN) Act or other federal legislation. If federal funding for the Project is appropriated by Congress, Reclamation would receive the requested funding and the funds would support Reclamation's staff and consultant team and the federal permitting process. Reclamation and the CCWD may enter into a funding agreement that would provide funding to CCWD for staff and consultants to complete design and pre-construction activities. Some portion of the federal funds may be directly applied to the scope of work contained in Exhibit A-2. The federal funds could be credited towards any Non-Program Cost Share as required in the Early Funding Agreement as described in Section 10 of this Agreement.

Effective date of Amendment No. 2.

Amendment No. 2, including the financial contribution provisions herein, shall be effective as to CCWD and each Local Agency Partner as of the date of signature by CCWD and each subsequent Local Agency Partner signatory.

Except as amended by this Amendment No. 2, the Agreement as previously amended shall continue in full force and effect. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute Amendment No. 2.

Robert Shaver, General Manager
Alameda County Water District

Date

Nicole Sandkulla, CEO / General Manager
Bay Area Water Supply and Conservation Agency

Date

Stephen J. Welch, General Manager
Contra Costa Water District

Date

Clifford C. Chan, General Manager
East Bay Municipal Utility District

Date

Ric Ortega, General Manager
Grassland Water District

Date

Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Date

Approved as to Form
Deputy City Attorney San Francisco

Date

Federico Barajas, Executive Director
San Luis & Delta-Mendota Water Authority

Date

Rick Callender, Chief Executive Officer
Santa Clara Valley Water District

Date

Valerie Pryor, General Manager
Zone 7 Water Agency

Date

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Exhibit A-2

Amendment No. 2 Scope of Work

The following tasks describe the work efforts by Contra Costa Water District (CCWD), consultants for the Los Vaqueros Reservoir Expansion (LVE) Project, and the Local Agency Partners (as indicated) under this Amendment No. 2 to the Agreement. References to joint work efforts by Reclamation are described as appropriate but are not intended to imply that Reclamation is a party to this Amendment. CCWD will be supported by the consultant and legal services team that are under contract to CCWD and managed by CCWD.

Task 1 Project Management

Task 1.1 CWC Early Funding Agreement Administration

Administer the Early Funding Agreement executed by CCWD and the California Water Commission (CWC), including meeting reporting and invoicing requirements of the Agreement, coordinating with CWC staff as needed to respond to questions and data requests, and managing cost commitments. Provide financial statements and other supporting documentation as requested by the CWC staff pertaining to the Early Funding Agreement.

Pursuant to the Early Funding Agreement, prepare quarterly progress reports detailing work completed in prior quarter in accordance with Water Storage Investment Program (WSIP) requirements and Cost Share MOU with Reclamation. Progress reports will explain the status of the Project and will include the following information: summary of the work completed for the project during the reporting period; activities and milestones achieved; and accomplishments and any problems encountered in the performance of work.

Prepare monthly invoices meeting the invoice content terms of the Early Funding Agreement, including relevant supporting documentation for submittal to the CWC and Reclamation. Coordinate with consultants and Local Agency Partners to prepare and submit sufficient backup documentation to support claimed costs.

Deliverables:

- ☐ Invoices and associated backup documentation
- ☐ Quarterly Progress Reports (for CWC and Reclamation)

Task 1.2 Project Management Activities

This task includes project management activities performed by CCWD, Local Agency Partners, consultants, and other agencies related to, but not limited to, managing staff, invoicing, budgeting, scheduling, reviewing submittals, holding meetings and conference calls, and coordinating project activities that are within the objectives of the Project and of this Agreement.

Deliverables:

- ☐ Summary updates on project management activities in Quarterly Progress Reports

Task 1.3 Joint Powers Authority Formation

Selection of legal counsel to assist the Local Agency Partners and CCWD in forming a Joint Powers Authority (JPA) was completed previously. Legal counsel will assist in implementing JPA formation through development of a joint powers agreement.

Develop Project term sheet to identify roles of the JPA and Local Agency Partners, as well as outline major terms of existing agreements amongst CCWD and the Local Agency Partners. Based on the Project term sheet, engage special counsel to develop a joint powers agreement. Conduct meetings and workshops as necessary with Local Agency Partners to negotiate terms.

Legal counsel will work with the legal workgroup to develop draft service agreements.

Deliverables:

- ☐ Joint selection of special counsel (completed)
- ☐ JPA Agreement (in progress)
- ☐ Term sheet (in progress)
- ☐ Draft services agreements

Task 2 Environmental Planning

Task 2.1 Modeling

Modeling tasks to support preparation of the Final Supplement to the Final EIS/EIR were completed previously. Develop new or modify existing modeling tools so that operations or limitations of various operational priorities can be evaluated in terms of benefits to partners. Refine the model to track terms and requirements of various water rights. Re-build or refine the Los Vaqueros daily operations model to accommodate partner operations, which may serve as a tracking tool in the future for permit reporting, billing, scheduling deliveries, etc.

Deliverables:

- ☐ Re-built and/or revised CalSim Model
- ☐ Summaries of modeling results

Task 2.2 Public Outreach

Perform outreach activities to educate and inform the media, elected officials, CCWD ratepayers, communities in the Los Vaqueros area, environmental organizations, and regional and statewide interests about the purpose, objectives, and results of the technical studies.

Respond to routine stakeholder comments. Post responses as appropriate to the CCWD hosted project website at ccwater.com or share with stakeholders in informal meetings.

A public meeting was previously held in Concord to support the CCWD Board of Directors' certification of the Final Supplement, approval of a project, and adoption of CEQA Findings and MMRP.

Deliverables:

- ☐ Stakeholder and public involvement program
- ☐ Documentation of outreach activities
- ☐ Public meeting(s) for Final Supplement to the Final EIS/EIR (completed)
- ☐ Public meetings to support Record of Decision if necessary

Task 2.3 Environmental Document and Technical Studies

The U.S. Department of the Interior, Bureau of Reclamation, Region 10 – California-Great Basin (Reclamation) is the lead agency under the National Environmental Policy Act (NEPA) for preparation of the EIS and, in conjunction with CCWD, the lead agency under CEQA. Reclamation and CCWD previously prepared a joint Final EIS/EIR in March 2010 and CCWD completed construction of the first phase of reservoir expansion from 100,000 acre-feet (100 TAF) to 160 TAF in 2012. Reclamation and CCWD previously prepared a joint Supplement to the Final EIS/EIR document to support the second phase of reservoir expansion up to 275 TAF.

The development of the Supplement to the Final EIS/EIR, including the completion of the necessary technical studies in support of this effort culminating with issuance of the Supplement, were previously completed. The studies and data produced adhered to the federal planning and NEPA guidelines, CEQA guidelines, and WSIP guidance. Technical studies were conducted in accordance with the alternatives identified in the Draft Supplement.

All agency meetings and technical workgroup meetings required to support the environmental document and studies are described in Task 1.2 and Task 2.2.

(2.3.1) Post-Draft Supplement Technical Studies and Surveys

This task has been completed.

(2.3.2) Transfer-Bethany Pipeline Alternative Location Evaluation

This task has been completed.

(2.3.3) Final Supplement to the Final EIS/EIR

This task has been completed.

(2.3.4) CEQA Findings and Mitigation Monitoring and Reporting Plan

This task has been completed.

(2.3.5) Record of Decision

It is anticipated that Reclamation will issue a Record of Decision on the Project during the term of this Amendment. CCWD will provide support to Reclamation with any necessary reporting, public meetings, briefings, white papers, and/or presentations.

Deliverables:

- ☐ Record of Decision

Task 2.4 Regulatory Permitting

Prepare documentation of environmental regulatory compliance including the Clean Water Act (CWA) Section 404(b)(1), CWA Section 401, the Federal Endangered Species Act (Section 7), the California Endangered Species Act, Section 1602 of the California Fish and Game Code, the National Historic Preservation Act (NHPA Section 106), and the Fish and Wildlife Coordination Act (FWCA). When possible or beneficial, obtain amendments to existing permits and excess compensation land acquired/managed during the Phase 1 expansion. If not possible to amend existing permits, seek new permits. Coordinate with regulatory agencies to confirm when amendments will be appropriate. In support of this task, several key work efforts (described below) will be completed.

Conduct reconnaissance-level biological field surveys of any new project areas (if any) to identify the potential for the presence of sensitive biological resources. Conduct a desktop analysis including a database search of the California Natural Diversity Data Base (CNDDB), California Native Plants Society's Inventory of Rare and Endangered Plants, USFWS species lists, and NMFS species lists in order to determine the potential occurrence of special-status plants, animals, and vegetation communities. Conduct site-specific biotic assessments to identify biological resources that are present or have a high likelihood to occur in the study area, and to assess the likely impacts associated with construction and/or long-term operations of the proposed project on biological resources. The results of the reconnaissance survey and analysis will be used to inform the regulatory permitting documents, and resource agency review.

Prepare the regulatory permit applications for the proposed project. Attend meetings with regulatory agencies. Develop supporting technical reports, as needed, to support preparation of proposed permit applications. Permit applications and supporting documents to be prepared in support of the project may include: Biological Assessment for Federal Endangered Species Act compliance and Magnuson Stevens Fisheries Conservation and Management Act compliance; Clean Water Act Section 404/Section 10 Individual Permit Application; Clean Water Act Section 401 Clean Water Act Water Quality Certification Application; California Fish and Game Code Section 1602 Streambed Alteration Agreement Application; Section 2081 California Endangered Species Act Incidental Take Permit Application; Fish and Wildlife Coordination Act Report; National Historic Preservation Act Section 106 compliance; and Aquatic Resources Delineation.

Deliverables:

- ☐ Rare plant surveys and report of results (completed)
- ☐ Wetland delineation and mapping, report of results (completed)
- ☐ Administrative Draft Supplement to the Final EIS/EIR (completed)
- ☐ Final Supplement to the Final EIS/EIR (completed)
- ☐ Draft CEQA Findings and MMRP (completed)
- ☐ Final CEQA Findings and MMRP (completed)
- ☐ Permit applications and supporting technical reports, as applicable

Task 2.5 Water Rights Permitting

Coordinate with Reclamation, the Department of Water Resources (DWR), Local Agency Partners, and the State Water Resources Control Board (State Board) regarding changes to existing water rights. Prepare petitions for change for CCWD's water right permit and assist Reclamation, DWR, and Local Agency Partners with preparation of change petitions as required. File petitions with the State Board, assist State Board staff with drafting orders and permit amendments as required, respond to any protests that may be filed and seek resolution of those protests, prepare for and participate in hearings as required.

Deliverables:

- ☐ Change petition on CCWD water right
- ☐ Change petition on CVP water rights
- ☐ Change petition on DWR water rights
- ☐ Change petition on Local Agency Partners' water rights as required

Task 2.6 Land Transactions

Identify and contact the landowners of parcels that will be surveyed for Task 2.3.1, Task 2.3.2. Acquire the appropriate land rights to gain access to the properties. Identify potential mitigation lands as needed for Task 2.4. Determine preliminary appraisal value of potential mitigation lands. Initiate discussions to obtain right-of-way for Transfer-Bethany Pipeline. Acquire options to acquire mitigation lands with the concurrence of the Local Agency Partners.

Deliverables:

- ☐ Entry permits and temporary easements on properties needed for technical surveys
- ☐ Identification and preliminary appraisal of potential mitigation sites
- ☐ Discussions regarding right-of-way for Transfer-Bethany Pipeline

Task 2.7 Final Award Hearing Requirements

A series of agreements will be needed to meet the final award hearing requirements of the California Water Commission. Progress on a number of agreements will commence during the term of this amendment. The agreements necessary to get to the final award hearing may include but are not limited to: operations coordination agreements with Reclamation and the Department of Water Resources; conveyance agreements with DWR to convey water from the Project through the California Aqueduct and the South Bay Aqueduct; contracts for administration of public benefits; a cost share agreement with Reclamation for pre-construction activities; an agreement with DWR for the design and construction of the Transfer-Bethany Pipeline connecting to SWP facilities; an agreement with the JPA for design and construction of Project conveyance facilities and the expanded Los Vaqueros Reservoir dam.

Additionally, Task 2.7 will also include the development and execution of a Memorandum of Understanding between CCWD and EBMUD setting forth mutually acceptable principles to guide the anticipated negotiation of a potential subsequent agreement for provision of water during construction.

Deliverables:

- ☐ Operations coordination agreement(s) with Reclamation and DWR
- ☐ Conveyance agreement(s) with DWR
- ☐ Contracts for administration of public benefits
- ☐ Cost-share agreement with Reclamation
- ☐ Design and construction agreement with DWR
- ☐ Design and construction agreement with the JPA
- ☐ MOU between CCWD and EBMUD

Task 3 Engineering Feasibility

Task 3.1 Financial Evaluation

Perform a financial evaluation that will assess the costs and merits of the Project.

Clean Energy Capital will further develop an excel-based Proforma Financial Model for the Project that incorporates water pricing options and integration with CalSim model. Hold stakeholder meetings and workshops; collect and review stakeholder and local partner comments and inputs to the model. Refine model as additional information arises that may affect the local agency partners, operations, water pricing, or other financial components of the Project. Clean Energy Capital will work directly with Local Agency Partners, as needed, to support each agency's understanding and familiarity with the financial evaluation.

ACWD will continue to retain Bartle Wells Associates, an independent financial consultant, to further support evaluation of the usage fees CCWD and EBMUD have developed for use of their assets and infrastructure. ACWD's costs to retain Bartle Wells will be reimbursed up to a cumulative amount of \$85,000. Clean Energy Capital will also be available to support the independent financial review of the usage fees.

Create a Plan of Finance describing the proposed financing structure and assumptions for financing the Project. The Plan of Finance will take into consideration appropriate debt structures, timing, impact on rates, budgeting, credit ratings, tax laws, availability of grants and other State and Federal funding, Local Agency Partners that pay upfront in-lieu of participating in JPA financing, and assessment of capital market conditions. Evaluate the funding capabilities of a JPA and associated contractual requirements for partners receiving and paying for services.

Deliverables:

- ☐ Updated Proforma Financial Model
- ☐ Further support for evaluation of Refined Usage Fees (as required)
- ☐ Plan of Finance

Task 3.2 Federal Feasibility Report

The Final Federal Feasibility Report was completed in 2020 and was submitted to Congress on August 11, 2020. The Secretary of the Interior and/or Congress may continue to evaluate federal participation in the Project throughout the term of this Amendment.

Additional work may be necessary to secure Congressional budget appropriations for pre-construction activities. CCWD and Local Agency Partners will also provide support to Reclamation on any post-feasibility report requirements as needed.

Deliverables:

- ☐ Final Federal Feasibility Study (completed)
- ☐ Updated fact sheets for meetings with elected officials
- ☐ Updated federal funding and budget requests
- ☐ Post-feasibility report support

Task 3.3 Preliminary Design

(3.3.1) Pumping Plant No. 1

Preliminary design technical evaluations are being completed by CCWD as part of CCWD's Canal Replacement Project. Following completion of preliminary design, additional design development and evaluations must be completed in support of permitting and developing inter-agency agreements, including field work, site facility layouts, and development of electrical design sufficient for coordination with the Western Area Power Administration (WAPA) and other design development in order to maintain progress to allow construction consistent with the Project schedule.

Deliverables:

- ☐ Pumping Plant No. 1 Preliminary Design Report
- ☐ Facility layout drawings
- ☐ Electrical System Improvements Plans
- ☐ Principles of Agreement with WAPA

(3.3.2) Los Vaqueros Dam

This task includes work efforts related to design of the Los Vaqueros Dam expansion to gain Division of Safety of Dams (DSOD) authorization to construct. Design-related tasks may include, but are not limited to, reporting, investigations, testing, analysis, and surveys; geotechnical investigations and reporting; stability and deformation analysis; design of earthquake ground motions and parameters, spillway, outlet works, new emergency release outlet, tunnel/portal, transfer pipeline connection, and dam instrumentation; constructability review, value engineering, risk analysis, and feasibility studies; DSOD meetings and correspondence; and design of site restoration for the core borrow area. This task includes formation of a Technical Review Board for independent review of the dam consultant's work in accordance with DSOD guidelines.

Deliverables:

- ☐ LV Dam Drawings and Specifications 50% (completed)
- ☐ LV Dam Drawings and Specifications 90%
- ☐ LV Cost Estimate/Schedule

(3.3.3) Transfer-Bethany Pipeline

CCWD will competitively procure an engineering consultant to continue pipeline alignment evaluations resulting from continued coordination with local resource and transportation agencies. CCWD will work with Contra Costa County Public Works and the Contra Costa Transportation Authority and their ongoing regional transportation planning for the Vasco Road widening and the State Route 239 Connector and will evaluate alignment adjustments as needed. CCWD will work with resource agencies to evaluate implications of alignment modifications and construction methods and associated mitigation and land needs along the alignment south of Vasco road in support of coordination with the East Contra Costa Habitat Conservation Plan and the County. CCWD will coordinate with the Department of Water Resources to review and define design criteria and to develop designs of the turn-in to the California Aqueduct, and will review available geotechnical information and define pipeline corridor within State owned lands. Topographic survey will be completed with up-to-date aerial photography. Preliminary design of the pipeline and turn-in will be developed. CCWD will prepare a geotechnical work plan and initial assessment of land acquisition needs.

Deliverables:

- ☐ Alignment Adjustment Evaluations TM
- ☐ Transfer-Bethany Pipeline Preliminary Design Report
- ☐ Topographic Survey
- ☐ Geotechnical Work Plan
- ☐ Assessment of Pipeline Land Acquisition Need

(3.3.4) Operation and Reliability Assessment

Complete a risk assessment of CCWD's existing and planned facilities and their operation as a system to confirm appropriate criteria are developed for reliability, redundancy and viability of long-term operations to meet the Project objectives. The assessment will consider the range of operations and future scenarios that consider planned and unplanned shutdowns and other events that might affect performance of the system and the economic implications.

Deliverables:

- ☐ CCWD facilities and system operation risk assessment

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Exhibit B-2

Budget and Cost Share

The budget for Amendment No. 2 to the Agreement covers three major tasks: project management, environmental planning, and engineering feasibility. The total budget includes projected costs for legal and consulting services, CCWD staff in-kind services, Local Agency Partner in-kind services, and Reclamation expenses. The total cost for the scope of work listed in Exhibit A-2 is \$17,832,667 (original Agreement total \$11,623,400) and is shown in Table 1.

Table 1. Amendment No. 2 to the Multiparty Agreement Budget

Task No.	Description	Original	Amendment No. 2	Total
1	Project Management	\$1,090,600	\$2,302,400	\$3,393,000
2	Environmental Planning	\$3,777,400	\$5,368,967	\$9,146,367
3	Engineering Feasibility	\$6,755,400	\$10,161,300	\$16,916,700
	Total	\$11,623,400	\$17,832,667	\$29,456,067

The total cost to complete the scope of work, \$17,832,667 will be paid through a combination of in-kind services, contributions from Reclamation (pursuant to 2015 Cost Share Memorandum of Understanding between Reclamation and CCWD), reimbursement from the California Water Commission (CWC), and contributions from CCWD and the Local Agency Partners.

To calculate the amount owed by CCWD and the Local Agency Partners, the total cost is reduced by contribution from the CWC, Reclamation, CCWD in-kind services funded by CCWD, the Local Agency Partner's in-kind services, and the projected carryover of unspent funds from the original Agreement. The CWC contribution includes fifty percent (50%) of the total cost, less 10% retention; the total CWC contribution therefore is estimated to be \$8,024,700.

The costs remaining after accounting for contributions from CWC, Reclamation, CCWD in-kind services, and Local Agency Partner in-kind services is \$6,081,967 as shown in Table 2. This is equal to the Total Cost share defined in Section 3(a) of the Agreement as amended and will be split equally among CCWD and the Local Agency Partners, excluding Grassland Water District which will provide in-kind services only. The ultimate cost per agency depends on the total number of Local Agency Partners that proceed and execute this Amendment. Four equal invoices are proposed over the amended term of the Agreement for CCWD and each Local Agency Partner. Table 3 shows the invoice schedule and the total costs per agency varying by the total number of agencies participating. For purposes of calculating the amount to be invoiced, the "total number of agencies participating" is equal to the total number of parties signatory to this Amendment No. 2 (including CCWD), but excluding Grassland Water District and further excluding any signatory party which has completed its withdrawal from the Agreement prior to the time for payment.

Table 2. Amendment No. 2 to the Multiparty Agreement Cost Allocation

Total Projected Costs	\$17,832,667
less Reclamation Cost	-\$2,155,000
less CCWD in-kind services (portion funded by CCWD)	-\$441,000
less partner in-kind services	-\$980,000
less projected carryover of unspent funds from original Agreement	-\$150,000
less projected CWC Invoice payments	-\$8,024,700
Remaining Cost Required from Local Agency Partners & CCWD	\$6,081,967

Table 3. Invoice schedule where each invoice equals 25 percent of total costs per agency

		Invoice #1	Invoice #2	Invoice #3	Invoice #4
	Total Cost Per Agency	Upon Execution	November 2020	March 2021	July 2021
8 Agencies	\$760,246	\$190,061	\$190,061	\$190,061	\$190,061
7 Agencies	\$868,852	\$217,213	\$217,213	\$217,213	\$217,213
6 Agencies	\$1,013,661	\$253,415	\$253,415	\$253,415	\$253,415

BAWSCA

Bay Area Water Supply & Conservation Agency

155 Bovet Road, Suite 650
San Mateo, California 94402
(650) 349-3000 tel. (650) 349-8395 fax

MEMORANDUM

TO: BAWSCA Board of Directors
FROM: Nicole Sandkulla, CEO/General Manager
DATE: September 11, 2020
SUBJECT: Chief Executive Officer/General Manager's Letter

BAWSCA Statement to the SFPUC Commission Regarding the Draft Regional Water System Supply and Demand Worksheet:

The SFPUC is in the process of developing a Water System Supply and Demand Worksheet (Worksheet). The Commission has asked SFPUC to develop the Worksheet to be a tool to assist the Commission and other stakeholders in technical and policy-level discussions related to water supply planning efforts for the Regional Water System.

The Worksheet is divided into two distinct parts. The first part presents total water demands and projected use of available water supply sources, including purchases from the Regional Water System (RWS) for both the SF Retail customers and the BAWSCA agencies. The second part of the worksheet includes other critical factors that impact overall water supply planning and system reliability.

Once the Worksheet is complete, the SFPUC intends to make it available to the public. SFPUC staff has had two presentations to the Commission on the Worksheet in which details were shared - one on August 25, 2020 and a second on September 8, 2020. A copy of the statement provided by Acting CEO Tom Francis to the Commission on August 25th is attached. Mr. Francis highlighted that while BAWSCA appreciates that the Worksheet may serve as a tool for constructive policy discussions, BAWSCA wants to avoid it unintentionally becoming a tool for conflict. It is BAWSCA's understanding that the SFPUC staff recognizes and shares that same concern.

Pacific Institute Report on Water Demand Forecasts in California:

In August, the Pacific Institute, a California based non-profit focused on water issues, released a report titled: [An Assessment of Urban Water Demand Forecasts in California](#). The report found that Urban Water Management Plans prepared between 2000 and 2015 by the 10 largest urban water suppliers in California overestimated future water demands. The Institute postulates that the overcalculation is due, in part, by a failure to account for declining per capita water demand. While the report does not discuss other factors that significantly impacted water demands during the timeframe that was reviewed – namely the Great Recession and several prolonged and severe droughts – the Institute does make several recommendations for improving and standardizing demand forecasting across California.

BAWSCA agrees with many of the recommendations and is pleased to report to the Board that several of them have already been implemented by BAWSCA and its Member Agencies. For

example, BAWSCA's recently completed [Demand Study](#) utilizes a sophisticated modeling tool that includes a detailed review of current actual and historical water trends, and incorporates key factors identified in the Institute's report, such as population, economic activity, demographics, weather, the implementation of conservation and efficiency measures, and the impacts of climate change. Additionally, BAWSCA's prior and most recent regional demand studies take into consideration decreasing per capita use over time. Finally, the Institute recommends that the State convene stakeholders to develop standards for improving the accuracy of urban water demand forecasts. BAWSCA supports this recommendation and is closely tracking the state's progress in updating the 2020 Urban Water Management Plan Guidebook – a process that has solicited feedback from a wide range of stakeholders, including state and local agencies, non-profit organizations, private companies, etc. – and looks forward to reviewing the guidance provided to assist urban water suppliers in preparing “enhanced planning documents.”

SFPUC's Alternative Water Supply Planning Quarterly Report

In early 2020, the SFPUC initiated its new program to develop alternative water supplies as part of its long-term water supply planning efforts for the Regional Water System. BAWSCA is closely engaged in this effort with the SFPUC, including regular meetings with the SFPUC to discuss specific projects and review overall progress. The SFPUC produces an “Alternative Water Supply Planning Quarterly Report” that provides an update to the Commission, BAWSCA and the public on overall progress. The most recent quarterly report was shared with the Commission on September 8, 2020 and can be accessed by [clicking here](#).

Collectively, the projects described in the quarterly reports represent SFPUC's early planning to meet future water supply challenges and vulnerabilities such as environmental flow needs and other regulatory changes; earthquakes, disasters, and emergencies; increases in population and employment; and climate change. Anticipating future water supply challenges, both known and unknown, SFPUC is considering a suite of diverse non-traditional supplies and leveraging regional partnerships to meet water supply needs through 2045. Ten projects have been identified that could be implemented in the future to address regional needs. Those projects include LVE, potable reuse, desalination, and recycled water project expansion. Additional projects included in the program would be implemented to address retail water supply needs in San Francisco.

The current planning effort and the focus of the SFPUC is on meeting the following water supply needs: 1) Up to 98 mgd in drought years (to meet current needs for existing customers and offsetting commitments to the environment); and 2) Between 9 and 15.5 mgd in all years (at a minimum, to make San Jose and Santa Clara permanent customers of the SFPUC).

BAWSCA strongly advocated for the development of this program and inclusion in the SFPUC's 10-Year Capital Improvement Program. BAWSCA will be heavily involved in the program in the coming years. BAWSCA has asked the SFPUC to present on this topic at the September 17, 2020 Board Meeting.

FY 2019-20 Water System Improvement Program Annual Report Sent to State

In accordance with Assembly Bill 1823 (AB 1823, Papan), the Wholesale Regional Water System Security and Reliability Act, the SFPUC prepares an Annual Report on the status of the Water System Improvement Program (WSIP) implementation that documents work performed during the prior fiscal year. The Annual Report is provided to the California Joint Legislative Audit Committee (JLAC), the California Seismic Safety Commission, and the California State Water Board Division of Drinking Water, each of which is charged with monitoring WSIP

progress. The Annual Report was shared with the Board and the Water Management Representative via a separate email in early September.

As the WSIP continues its progress toward completion, there are two key projects that present challenges for the SFPUC, namely the Alameda Creek Recapture Project and the Regional Groundwater Storage and Recovery Project. BAWSCA is reviewing the Annual Report and will provide a comment letter to both the SFPUC and the State documenting the results of this review. As part of BAWSCA's review, care will be taken to make sure the SFPUC adequately details the risks present in completion of these two key projects and the overall Program.

BAWSCA Fall 2020 Landscape Education Program Schedule Finalized:

The BAWSCA Residential Landscape Education Program schedule and format has been finalized for Fall 2020. All workshops will be offered via Zoom as virtual webinars and will be recorded and available following each workshop. The workshops are available for sign-up on BAWSCA's conservation website (www.BayAreaConservation.org). The first workshop is scheduled for September 16, with the remaining workshops occurring through November 17. Some topics include Rainwater Harvesting, Rain Gardens, Lawn Conversion, Drip Irrigation, and Integrated Pest Management. Marketing material has been created and distributed to the participating member agencies. Additionally, BAWSCA has placed an advertisement with the San Mateo Daily Journal to help promote the landscape classes and workshops. BAWSCA is hopeful that the program will reach a wide audience throughout the service area due to the virtual format.

Attachment:

1. August 25, 2020 Statement by Acting CEO Tom Francis to the San Francisco Public Utilities Commission

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Statement from Tom Francis, BAWSCA's Water Resources Manager, Regarding San Francisco Public Utilities Commission's Draft Water System Yield Worksheet

August 25, 2020

Good afternoon President Caen, Vice President Vietor and Members of the Commission.

BAWSCA has been consulting with SFPUC staff about development of their Water System Yield Worksheet (Worksheet). BAWSCA appreciates this opportunity to be involved, raise questions and get details about how it will be used, and share ideas about how it might affect the water users BAWSCA represents in Alameda, San Mateo, and Santa Clara counties.

The details match the presentation just given by SFPUC's Assistant GM, Steve Ritchie. BAWSCA asks that we remain engaged during the continued effort to finalize the Worksheet and to develop a final version of it, which will be shared with stakeholders.

BAWSCA will be focused on understanding how the Worksheet operates and that it speaks to BAWSCA's interests relating to supply reliability, Level of Service (LOS) Goals, as well as rationing issues that are paramount in the discussions. BAWSCA's involvement is consistent with Section 6.09 of the 2018 Amended and Restated Water Supply Agreement as adopted by the Commission in November of 2018, which references the established LOS Goals and Objectives.

While BAWSCA appreciates that the Worksheet may serve as a tool for constructive policy discussions, we want to avoid it unintentionally becoming a tool for conflict. It is BAWSCA's understanding that the SFPUC staff recognizes and shares that concern.

Thank you for the opportunity to comment on the Yield Worksheet.

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Board of Directors

Policy Calendar Through October 2020

Meeting Date	Purpose	Issue or Topic
September 2020	D&A D&A D&A D&A	Establishing a Policy Relating to the WSA Balancing Account Consideration of Proposed Use of WSA Balancing Account Los Vaqueros Expansion Project and Potential BAWSCA Participation CEO/General Manager Performance Evaluation
November 2020	D&A D&A D&A R&D R&D	Consideration of Action to Extend Current Tier 2 Drought Plan Annual Review and Consideration of BAWSCA's Statement of Investment Policy Review of Agency Personnel Handbook Annual OPEB/CERBT Fund Update BAWSCA CalPERS Pension Plan Funded Status
January 2021	D&A D&A R R S	FY 2020-21 Mid-Year Work Plan, Budget, & General Reserve Balance Review Consideration of BAWSCA Bond Surcharges for FY 2020-21 Annual Review of WSA Balancing Account Status Review of Water Supply Forecast FY 2021-22 Work Plan and Budget Study Session
March 2021	R&D R	Presentation of Preliminary FY 2021-22 Work Plan and Budget Review of Water Supply Forecast

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**Bay Area Water Supply and Conservation Agency
and Regional Financing Authority**

Meeting Schedule through July 2021

DUE TO COVID-19, MEETINGS WILL BE CONDUCTED AS A TELECONFERENCE PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPEND CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT. MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON.

Schedule for BAWSCA Board Meetings (Meetings are held from approx. 6:30 – 8:45 p.m.)	
<u>Date</u>	<u>Location</u>
Thursday – September 17, 2020	Virtual Meeting
Thursday – November 19, 2020	Virtual Meeting, unless noted otherwise.
Thursday – January 21, 2021	Oak Room, San Mateo Main Library
Thursday – March 18, 2021	Oak Room, San Mateo Main Library
Thursday – May 20, 2021	Oak Room, San Mateo Main Library
Thursday – July 15, 2021	Oak Room, San Mateo Main Library

Schedule for RFA Board Meetings (Meeting time will be announced)	
<u>Date</u>	<u>Location</u>
Thursday – January 21, 2021	Oak Room, San Mateo Main Library

Schedule for BAWSCA Board Policy Committee Meetings (Meetings held from 1:30-4:00 p.m.)	
<u>Date</u>	<u>Location</u>
Wednesday – October 14, 2020	Virtual Meeting, unless noted otherwise.
Wednesday – December 9, 2020	Virtual Meeting, unless noted otherwise.
Wednesday – February 10, 2021	155 Bovet Rd., San Mateo – 1 st Floor Conf. Rm.
Wednesday – April 14, 2021	155 Bovet Rd., San Mateo – 1 st Floor Conf. Rm.
Wednesday – June 9, 2021	155 Bovet Rd., San Mateo – 1 st Floor Conf. Rm.

**OPEN SESSION MATERIALS
SEPTEMBER 17, 2020 BAWSCA AGENDA ITEM 15**

**CONSIDER COMPENSATION ADJUSTMENT FOR
CEO/GENERAL MANAGER
FY 2020-21**

FOR ADDRESSEE ONLY

**PLEASE DO NOT SHARE OR DISCUSS
CONTENTS WITH NON-ADDRESSEES**

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD OF DIRECTORS MEETING

Agenda Title: **Consider Compensation Adjustment for CEO/General Manager for FY 2020-2021**

Summary:

The Board of Directors (Board) of the Bay Area Water Supply and Conservation Agency (BAWSCA) evaluated the CEO/General Manager's performance during FY 2019-20 and found Ms. Sandkulla had an outstanding year. The Chair recommends the Board approve a 5% salary increase.

Fiscal Impact:

The CEO/General Manager's current salary is \$270,000. The 5% adjustment in salary would be \$13,500. This adjustment would bring the total compensation adjustment for fiscal year 2020-2021 to \$283,500. Funds are available for the compensation adjustment without an increase to the total operating budget.

Recommendation:

That the Board approve the contract amendment to the CEO/General Manager's Employment Agreement.

Background:

The Board considers compensation for the CEO/General Manager at the time of her yearly evaluation. The Chair proposes the below changes to the CEO/General Manager's Employment Agreement.

The CEO/General Manager's Employment Agreement (signed in 2013) provides that she may be awarded a salary increase, merit pay (bonus), or both. Section 3.A of the Employment Agreement states that salary adjustments may be considered annually.

In recognition of Ms. Sandkulla's outstanding executive leadership through the demonstration of her ability to manage known, anticipated, and unanticipated events this year and through her hiring, and utilization of, a highly competent and professional staff, the BAWSCA Board of Directors desires to modify the CEO/General Manager's Employment Agreement to provide a 5% increase to Ms. Sandkulla's base salary so that her new annual base salary is \$283,500.

In light of the current COVID-19 pandemic and the need to exercise particular caution and care with regard to BAWSCA's financial condition at this time, the Board has determined, and Ms. Sandkulla agrees, to forgo a performance bonus for this past year's performance even though a bonus would be certainly merited given Ms. Sandkulla's performance.

Attachment:

1. Amendment to CEO/General Manager's Employment Agreement

SEVENTH AMENDMENT TO EMPLOYMENT AGREEMENT

THIS SEVENTH AMENDMENT TO EMPLOYMENT AGREEMENT is made as of September 17, 2020, by and between the BAY AREA WATER SUPPLY & CONSERVATION AGENCY ("Agency") and NICOLE SANDKULLA ("Ms. Sandkulla").

WHEREAS, the Agency and Ms. Sandkulla entered into an Employment Agreement ("Agreement") as of July 19, 2013, and Ms. Sandkulla began serving as CEO and General Manager beginning on September 30, 2013;

WHEREAS, Section 3.A. of the Employment Agreement provides that the Board of Directors will review the performance of the CEO and General Manager on an annual basis and authorizes the Board of Directors, in its sole discretion, to approve contract adjustments, including increases in Ms. Sandkulla's salary;

WHEREAS, in recognition of Ms. Sandkulla's outstanding performance during her second through sixth years, the Board of Directors of the Agency previously amended the Employment Agreement six times as follows:

1. On September 19, 2014 ("First Amendment"), to provide a 3.00% increase to Ms. Sandkulla's base salary and a one-time \$10,000 merit bonus;
2. On September 17, 2015 ("Second Amendment"), to provide a 3.00% increase to Ms. Sandkulla's base salary and a one-time \$10,000 merit bonus;
3. On September 15, 2016 ("Third Amendment"), to provide a 3.00% increase to Ms. Sandkulla's base salary and a one-time \$10,000 merit bonus;
4. On September 21, 2017 ("Fourth Amendment"), to provide a 3.00% increase to Ms. Sandkulla's base salary and a one-time \$15,000 merit bonus;
5. On September 20, 2018 ("Fifth Amendment"), to provide a 5% increase to Ms. Sandkulla's base salary; and
6. On November 21, 2019 ("Sixth Amendment"), to provide a 21% increase to Ms. Sandkulla's base salary.

WHEREAS, the Board of Directors evaluated the performance of the CEO and General Manager in 2019-20 and found that Ms. Sandkulla continues to exhibit superior performance in meeting BAWSCA's goal of "a reliable supply of high-quality water at a fair price";

WHEREAS, in recognition of Ms. Sandkulla's sustained excellent performance and her continuing to deliver extraordinary results in all areas of her work, according to the Board's own review process, the Board of Directors of the Agency now desires to modify the Employment Agreement to provide a 5% increase to Ms. Sandkulla's base salary pursuant to Section 3.A. of the Agreement effective on her anniversary date of September 30, 2020; and

WHEREAS, the Agency and Ms. Sandkulla wish to memorialize these actions.

NOW, THEREFORE, the parties agree as follows:

1. Compensation. Section 3.A. of the Agreement, is amended by deleting and replacing the first sentence of that section in its entirety as follows:

A. Salary and Evaluation. Agency agrees to pay Ms. Sandkulla an annual base salary of Two Hundred and Eighty Three Thousand and Five Hundred Dollars (\$283,500), payable in installments at the same time and in the same manner as other management employees of the Agency are paid, effective as of September 30, 2020, for the faithful and diligent performance of the duties and obligations of the CEO and General Manager.

2. Except as expressly modified by the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Amendments, all terms and conditions of the Employment Agreement remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Seventh Amendment to Employment Agreement as of the day and year first above written.

BAY AREA WATER SUPPLY AND
CONSERVATION AGENCY

By: _____
NICOLE SANDKULLA
CEO and General Manager

By: _____
BARBARA PIERCE
President, Board of Directors

Approved as to form:

By: _____
ALLISON C. SCHUTTE
Legal Counsel