



This meeting will consist of a simultaneous teleconference call at the following location(s):

Camp & Sons  
31798 Merced Ave  
Bakersfield, CA 93308

## EXECUTIVE COMMITTEE MEETING | Agenda

JUNE 17, 2019

9:00 AM

KAWEAH DELTA WATER CONSERVATION DISTRICT- CONFERENCE ROOM  
2975 FARMERSVILLE BLVD, FARMERSVILLE, CA 63223

At the discretion of the Board of Directors, all items appearing on this agenda, whether or not expressly listed for action may be subject to action by the Board. The order of agenda items is subject to change.

1. **CALL TO ORDER/ROLL CALL – (TANTAU)**
2. **APPROVAL OF THE AGENDA – (TANTAU)**
3. **PUBLIC COMMENT / PUBLIC PRESENTATIONS – (TANTAU)**

Public comment is welcome at this time on any matter within the jurisdiction of the Board that is not on the agenda. Under the State's open meeting law - the Brown Act - no action may be taken on any item not on the agenda. Public comment on items on the agenda will be allowed at the time the Board considers the item.

4. **ACTION ITEMS (2 MINUTES)**
  - A. Approval of the Minutes –Executive Committee meeting of May 13, 2019.
5. **BOARD RECOMMENDATIONS (60 MINUTES)**
  - A. Modification of Stantec Consulting Services, Inc. Professional Services Agreement (PSA) – Review proposed modification to the approved budget for Stantec’s PSA for Board recommendation. (DeFlitch)
  - B. San Joaquin Valley Water Infrastructure Authority (SJVWIA) Joint Power Agreement (JPA) – Review proposed revised/restated JPA for Board recommendation. (Payne)
  - C. FWA Employee Personnel Rules – Review proposed updated FWA Employee Personnel Rules for Board recommendation. (DeFlitch/Garcia)
6. **DISCUSSION/DIRECTION (90 MINUTES)**
  - A. Update on Reconsultation. (Payne)
  - B. Title Transfer – Update. (DeFlitch/Bezdek)
  - C. San Joaquin Valley Blueprint Update. (Ewell/Amaral)
  - D. Update on Sponsored and Tracked Legislation. (Biering)
  - E. Update on FY 2020/2021 Budget Formulation. (DeFlitch/Willard)
  - F. Update on Sacramento and DC Trips. (Amaral/Phillips)

## **CLOSED SESSION ITEMS (30 MINUTES)**

### **7. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Government Code section 54956.9(d)(1))

NRDC v. Murillo, U.S. District Court, Eastern District of California (Sacramento Division), Case No. 88-cv- 01658-JAM-GGH.

### **8. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: Two potential matters.

### **9. CONFERENCE WITH LEGAL COUNSEL-INITIATION OF LITIGATION**

(Government Code section 54956.9(d)(4))

Initiation of Litigation: Two potential cases.

### **10. RECONVENE INTO OPEN SESSION**

Announce reportable action taken during closed session.

### **11. ADJOURNMENT**

## **Public Participation Information**

Agenda reports and other disclosable public records related to each Open Session agenda item are available on FWA's website under "Calendar" at [Friantwater.org](http://Friantwater.org) and at FWA's main office, 854 N. Harvard Ave., Lindsay, CA 93247, during regular business hours. Under the Americans with Disabilities Act, if you require a disability- related modification or accommodation to participate in this meeting, including auxiliary aides or services, please contact Toni Marie at 559-562-6305 at least 48 hours prior to the meeting.



## EXECUTIVE COMMITTEE MEETING | Minutes

MAY 13, 2019

9:00 AM

FRIANT WATER AUTHORITY- CONFERENCE ROOM  
854 N. HARVARD AVENUE, LINDSAY, CA 93247

1. **CALL TO ORDER/ROLL CALL** – Chair Chris Tantau called the meeting to order at 9:00 a.m. Committee members present: Tantau, Camp, Stephens, Loeffler, Kisling, Erickson, Borges; Staff present: DeFlicht, Marie, Biering, Willard, Phillips, Davis, Amaral, Ewell, Hickernell. Others: Bennett, Morrissey, Muhar, Collup, Wallace, Dalke, Geivet, Fukuda, Vanden Heuvel, Greci; Committee Members Absent: None
2. **APPROVAL OF THE AGENDA** – The agenda was approved. (Camp/Loeffler); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none
3. **PUBLIC COMMENT / PUBLIC PRESENTATIONS** – There was no public comment.
4. **ACTION ITEMS**
  - A. Approval of the Minutes –Executive Committee meeting of April 15, 2019. The minutes were approved. (Loeffler/ Erickson); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none
5. **BOARD RECOMMENDATIONS**
  - A. FKC Capacity Correction Project Cost Share Ad Hoc Committee – Update and Recommendation.

CEO Phillips and COO DeFlicht provided an overview on the discussions of the FKC Capacity Correction Project Cost Share Ad Hoc group as summarized in the agenda report. The Ad Hoc Committee held its first meeting on May 6<sup>th</sup>. Participants included Arvin-Edison WSD, Delano-Earlimart ID, Orange Cove ID and Fresno ID. Discussions on loss of water being delivered to those districts below the subsidence constriction not only results in loss of delivery to those districts but also results in increased costs to those above the point of constriction. Staff prepared an analysis based on both a 25-year period and a 50-year period using the recently established cost recovery methodology to determine a potential local cost share spreadsheet. Those losses/costs were in the \$34M range and \$89.8M range using the 25- and 50-year analysis respectively, staff was then able to recommend a \$50M cost component be applied to Friant contractors. This contribution would assist in the repair effort and ensure that downstream contractors could get their water deliveries while easing O&M costs for those above the subsidence constriction point. This contribution of estimated costs would also help in discussions for the purposes of seeking federal and state assistance with funding of the project. The EC then took action to request that staff put together a draft resolution for the Board of Directors’ consideration at

its May meeting. (Loeffler/ Kisling); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none

## **6. DISCUSSION/DIRECTION**

### **A. FKC Capacity Correction Project Self-Financing – Update on development of a financing plan.**

General Counsel Davis updated the group on the development of a financing plan as outlined in the agenda report. He said that Friant asked for statements of qualifications from financial advisory firms and selected Public Financial Management (PFM) to assist in the development of a financing plan for the self-financed portion of the FKC Capacity Correction Project. He then went through the PFM Statement of Qualifications and Scope of Services noting that the expected cost of the initial plan should be under \$50k.

### **B. Subsidence – Monitoring and Coordination with Groundwater Sustainability Agencies.**

General Counsel Davis and COO DeFlicht discussed coordination and monitoring of GSAs and their associated groundwater sustainability plans as described in the agenda report. Friant will primarily focus on reaching out to GSA managers such as Bryce McAteer with Eastern Tule GSA, to identify key meetings where policies that impact the plans being developed are discussed and to identify methods of shaping the plans in a manner that best protects against future subsidence impacts to the Friant-Kern Canal.

### **C. Update on Reconsultation.**

DWP Payne gave an update on Reconsultation and said that a draft Biological Opinion is expected to be released on May 20<sup>th</sup> and comments are expected to be submitted by May 23<sup>rd</sup>. He will be following this closely and Friant will provide comments if appropriate.

### **D. Update on Temperance Flat Reservoir Project.**

DWP Payne and Aaron Fukuda provided an update on current Temperance Flat Reservoir Project activities. A boat tour of the Temperance Flat site with California Water Commission staff along with folks from the Fish and Wildlife Service was scheduled for tomorrow at 2:00 p.m. Bill Swanson from Stantec would be the narrator for the tour.

### **E. San Joaquin Valley Blueprint (SJVB) Update.**

Austin Ewell and Johnny Amaral reported on the San Joaquin Valley Blueprint activities as outlined in the agenda report. The SJVB will conduct its 4<sup>th</sup> meeting on May 15<sup>th</sup>.

### **F. Update on Sponsored and Tracked Legislation.**

GAC Biering gave an update on current State and Federal Legislation as outlined in the agenda report.

## **CLOSED SESSION ITEMS**

## **7. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Government Code section 54956.9(d)(1))

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(Government Code section

54956.9(d)(4)) Initiation of Litigation:

Two potential cases.

**10. RECONVENE INTO OPEN SESSION**

There was no closed session.

**11. ADJOURNMENT**

The meeting adjourned at 11:10 a.m.

## Agenda Report

No. 5.A

**DATE:** June 17, 2019  
**TO:** Executive Committee  
**FROM:** Alan Stroppini, Project Manager, FKC Subsidence Correction Project  
**THROUGH:** Douglas DeFlicht, COO  
**SUBJECT:** Friant-Kern Canal Subsidence Correction Project

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### SUMMARY:

The FKC Subsidence Correction Project (Project) is to correct the conveyance capacity problems caused by subsidence and original Project design deficiency from MP 88 (Fifth Avenue Check) to MP121.5 (Lake Woollomes Check).

### STANTEC'S PROFESSIONAL SERVICES AGREEMENT BACKGROUND AND JUSTIFICATION FOR MODIFICATION

On June 28, 2018 the Board approved a Professional Services Agreement (PSA) with Stantec to provide consulting services for the Subsidence Correction Project. That work would be done on a Task Order basis with the overall contract for design and environmental documentation completion not to exceed the anticipated financial assistance available from the Reclamation. At that time, financial assistance from Reclamation was estimated to be \$6.5M and the Board authorized a PSA with Stantec up to that compensation amount.

The proposal cost offered by Stantec to perform the scope of services under Task Order 1 (TO 1) was approximately \$2.8M. TO 1 has been modified four times, expanding existing scope requirements, adding new scope elements, and increasing the total cost by \$1.2M, bringing the current total cost for TO 1 to \$4.0M.

Stantec has executed the scope of services required by TO 1 and its modification very well. These services have been timely and are producing products that are advancing the project in a satisfactory manner. Stantec has established a quality working relationship FWA staff and with staff from other agencies engaged on the project. These working relationships have been well received and are producing quality products in a timely manner. Although progress may appear to be slow, it is encumbered by process and policy definition issues. These are being overcome by the quality working relationship within the Project team.

As originally envisioned when FWA entered into the PSA with Stantec, the scope of services would be executed through 3 separate Task Orders;

- Task Order 1: Alternative analyses and selection, 30% design, and a portion of the Feasibility Study;
- Task Order 2 (TO 2): Final design, environmental compliance and permitting, and the remaining portion of the Feasibility Study; and
- Task Order 3 (TO 3): Bidding and construction oversight services.

We are rapidly approaching the end of TO 1. Stantec is completing the required 30% design package and is in need of authorization to initiate final design efforts. Stantec prepared a draft TO 2 scope of services in May and submitted it to FWA for review and comment. This task order advances the parallel canal alternative into final design status and proposes a design complete flag date of May 2020. This will allow award of a construction contract by the end of FY2020 (See attached Project Overview Schedule). The estimates cost to perform the TO 2 scope is \$6.6 million. This brought the estimated budget required to execute both TO 1 and 2 to \$10.6M. Table 1 provides a brief justification for the increase to the PSA compensation amount.

**Table 1 – Scope and Budget Justification for Stantec PSA Modification**

<i>Description of Differences in Various Work Elements</i>	<i>Estimated Budget Difference</i>
Project Management activities associated with modifying the schedule from a June 2019 design completion to a July 2020 design completion; and modifications to the FAA (TO2). Also includes preparation of a 2018 WIFIA Letter of Interest (TO1-Mod1)	\$250,000
Formulation and Evaluation of Alternatives that include the addition of hydrogeology services, preparation of a Feasibility Study for the Immediate Repairs, and preparation of Incremental Sequencing Options (TO1-Mods 1, 2, and3)	\$250,000
Environmental Compliance for the Project initial assumption (described above) revised to a CEQA EIR and NEPA EA (note: NEPA EA is still an assumption which is pending on Reclamation’s decision to be made at a later date). Addition of environmental compliance activities associated with a three-phase geotechnical field exploration program, as well as biological monitoring during construction of the Immediate Repairs. (TO1-Mod 4 and 5; and TO2)	\$950,000
Engineering and Design for the Project initial assumption (described above) revised to the Parallel Canal, includes substantive modification to project components that impacts the design. This includes modifications to the geotechnical field investigations and recommendations; and a Design, Estimating, Construction (DEC) review now being required by Reclamation. (TO1-Mod5 and TO 2)	\$2,550,000
Landowner Coordination and Right-of-Entry Services with adjacent land owner to facilitate environmental surveys and geotechnical investigations. (Note: These services are not associated with Right-of-Way Acquisition. Those services and the estimated cost to purchase Rights-of-Way are not presently included in this project budget. (TO1-Mod5)	\$100,000
<b>Total, Difference</b>	<b>\$4,100,000</b>

To assist with funding the project, FWA entered into a financial assistance agreement (FAA) with Reclamation in December 2018. The approximate value of the grant was \$9.5M. Funds were made available through the

SJRRP program (\$5.5M), the FY-2018 WIIN Act (\$2.0M), and Local Contributions (\$2.0M). It is anticipated that additional funding will be introduced to a Modified FAA that will include the FY 2019 WIIN Act (\$2.3M) and Local Contribution (\$2.3M).

Since the proposed cost for the TO 2 scope was in excess of the above described limiting amounts, adjustment to the scope were required. Tasks were extracted from TO 2 and entered into TO1, Mod No 5. The work included in Mod 5 had immediate carry-on requirements from other TO 1 task items and had a cost of \$2.4M. As such, costs are maintained within appropriate limitations. FWA staff has thoroughly reviewed the TO 1-Mod 5 scope of services and recommends that it be executed as soon as possible.

The remaining scope of services in TO 2 has been adjusted to accommodate the removal of tasks moved into TO 1-Mod 5. The revised TO 2 has not yet been submitted by Stantec. It is anticipated that TO 2 will have an approximate cost of \$4.2M. As such, TO 2 cannot be executed without modification of the cost ceiling in Stantec's PSA. As previously indicated the approximate total cost needed to perform the scope of services offered under TO 1 and TO 2 was \$10.6M. Additionally, FWA staff is recommending that a contingency amount be included in the new cost ceiling to accommodate potential modifications in the TO 2 scope and to assure that FWA has sufficient authorization to allow Stantec to continue working through the bidding phase of a future FKC construction contract (Through Sept 2020). The recommended amount of the new Stantec PSA cost ceiling is \$12.0M.

#### **RECOMMENDED ACTION:**

The Executive Committee directs staff to prepare a modification to Stantec's PSA to revise the compensation amount to \$12.0M to address the completion of the project designs, the environmental compliance and permitting services; project Feasibility Report, and include a contingency amount to accommodate potential scope changes and provide necessary funding to maintain Stantec services through the bidding phase of a construction contract.

#### **SUGGESTED MOTION:**

The Executive Committee recommends that the Board of Directors modify Stantec's PSA from the current approved compensation amount of \$6.5M to \$12.0M.

#### **BUDGET IMPACT:**

Discussions with Reclamation for a modification to the Federal Assistance Agreement (FAA) is already underway and it is anticipated that the FAA modification will address anticipated budget impact.

#### **ATTACHMENTS:**

Revised Project Overview Schedule



ID	Task Name	Start	Finish	2019		Qtr 2, 2019					Qtr 3, 2019			Qtr 4, 2019			Qtr 1, 2020			Qtr 2, 2020			Qtr 3, 2020			Qtr 4,	
				Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct			
1	<b>Milestones</b>	<b>Fri 3/1/19</b>	<b>Wed 9/2/20</b>																								
2	BOD Alternative Selection	Thu 4/25/19	Thu 4/25/19																								
3	Admin Final Feasibility Study	Thu 8/15/19	Thu 8/15/19																								
4	Basis of Design Report	Wed 9/4/19	Wed 9/4/19																								
5	75% Design Submittal	Wed 11/27/19	Wed 11/27/19																								
6	Final Feasibility Study	Thu 12/12/19	Thu 12/12/19																								
7	Decision on Phase 1 Project Construction	Mon 12/30/19	Mon 12/30/19																								
8	Approval to Release CEQA Draft EIR to Public	Fri 3/13/20	Fri 3/13/20																								
9	100% Design Submittal	Wed 4/8/20	Wed 4/8/20																								
10	Approval for Bid Issue Contract Documents	Fri 5/29/20	Fri 5/29/20																								
11	Approval of CEQA Notice of Determination	Mon 7/6/20	Mon 7/6/20																								
12	BOD Approval for Construction Contract Award	Fri 8/28/20	Fri 8/28/20																								
13	<b>NEPA/CEQA Subtasks</b>	Fri 3/1/19	Wed 9/2/20																								
14	Subtask 3.4: Early CEQA (w/ NEPA Precursors)	<b>Fri 3/1/19</b>	<b>Wed 2/12/20</b>																								
31	Subtask 3.5: CEQA EIR	<b>Fri 3/15/19</b>	<b>Tue 7/7/20</b>																								
55	Subtask 3.6: CEQA Biological Field Review and Reporting	<b>Mon 3/25/19</b>	<b>Mon 12/9/19</b>																								
62	Subtask 3.7: CEQA Cultural Resources Field Review and Reporting	<b>Fri 3/1/19</b>	<b>Mon 11/11/19</b>																								
83	Subtask 3.8: Air Quality/Traffic	<b>Mon 6/3/19</b>	<b>Mon 12/16/19</b>																								
85	Subtask 3.9: NEPA EA/FONSI	<b>Wed 1/1/20</b>	<b>Fri 6/26/20</b>																								
99	Subtask 3.10: FWCA, Federal ESA, and California ESA Compliance	<b>Fri 3/15/19</b>	<b>Mon 7/6/20</b>																								
119	Subtask 3.11: National Historic Preservation Act Section 106 Compliance	<b>Thu 12/19/19</b>	<b>Mon 3/16/20</b>																								
122	<b>Environmental Compliance for Geotech</b>	<b>Thu 6/13/19</b>	<b>Wed 8/14/19</b>																								
124	<b>NEPA/CEQA ( Milestones Only)</b>	<b>Fri 6/28/19</b>	<b>Mon 7/6/20</b>																								
129	<b>Federal Feasibility Study</b>	<b>Fri 3/15/19</b>	<b>Fri 6/26/20</b>																								
136	<b>DEC Review</b>	<b>Thu 12/26/19</b>	<b>Wed 4/22/20</b>																								
141	<b>Cost Estimating</b>	<b>Fri 3/15/19</b>	<b>Wed 4/22/20</b>																								
145	<b>Design</b>	<b>Thu 4/25/19</b>	<b>Fri 5/29/20</b>																								
156	<b>Geotech</b>	<b>Thu 6/13/19</b>	<b>Fri 1/10/20</b>																								
163	<b>Right-of-Entry for Geotech/Environmental</b>	<b>Thu 6/13/19</b>	<b>Wed 12/25/19</b>																								
165	<b>Bid/Award</b>	<b>Fri 5/29/20</b>	<b>Fri 8/28/20</b>																								

Friant-Kern Canal Subsidence Correction Project Schedule 6/11/19

## Agenda Report

No. 5.B

**DATE:** June 17, 2019

**TO:** Friant Water Authority, Executive Committee

**FROM:** Jeff Payne, Director of Water Policy

**SUBJECT:** San Joaquin Valley Water Infrastructure Authority (SJWVIA) Joint Power Agreement (JPA) – Review proposed revised/restated JPA for Board recommendation.

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### SUMMARY:

The San Joaquin Valley Water Infrastructure Authority (SJWVIA) has revised and approved its Joint Powers Authority (JPA). Friant Water Authority is being asked to adopt the revised and restated JPA and continue its membership on the Board of Directors. Currently Friant is represented on the Board by Jason Phillips, and Jeff Payne as an alternate.

### DISCUSSION:

The revisions to the JPA are consistent with expectations by Friant Water Authority, and facilitate the transition of the SJWVIA from oversight of the Temperance Flat Reservoir Project to other activities that benefit the San Joaquin Valley and its water supply. Notable areas of the JPA include the following:

- Article 3 spells out the revised purposes.
- Article 5 - places unusual limits on membership. For example, only 1 city (Fresno) and 2 Disadvantaged Communities can be members.
- Article 14 – Section 14.2 (mis numbered as 15.2) authorizes annual assessments on members. (Note the draft budget proposes \$15K for 3 water agencies and \$16.5K if only two water agencies continue.) If Friant Water Authority disagrees (gets outvoted) on the assessment, we would not have to pay, but we would also lose our vote during any period of nonpayment until the 6-month termination period ends.

### RECOMMENDED ACTION

The Executive Committee directs staff to confirm that the SJWVIA will move forward with limited budgetary requirements.

### SUGGESTED MOTION

The Executive Committee recommends that the Board of Directors approve the revised and restated JPA and continue in its role on the SJWVIA Board of Directors, subject to staff confirmation that the budget will be maintained at a minimum level.

**BUDGET IMPACT**

Membership in the SJVWIA will cost \$0.

**ATTACHMENTS:**

1. Revised and Restated SJVWIA JPA document.

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**AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT  
CREATING  
THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE  
AUTHORITY (SJVWIA)**

**EFFECTIVE DATE: \_\_\_\_\_, 2019**

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ARTICLE 1. DEFINITIONS  
ARTICLE 2. CREATION OF SJVWIA  
ARTICLE 3. PURPOSE  
ARTICLE 4. TERM  
ARTICLE 5. MEMBERSHIP IN THE AUTHORITY  
ARTICLE 6. POWERS OF THE AUTHORITY  
ARTICLE 7. BOARD OF DIRECTORS  
ARTICLE 8. POWERS OF THE BOARD OF DIRECTORS  
ARTICLE 9. MEETINGS OF THE BOARD OF DIRECTORS  
ARTICLE 10. OFFICERS  
ARTICLE 11. ADMINISTRATION  
ARTICLE 12. ACCOUNTS & RECORDS  
ARTICLE 13. RESPONSIBILITIES FOR FUNDS AND PROPERTY  
ARTICLE 14. RESPONSIBILITIES OF THE PARTIES  
ARTICLE 15. WITHDRAWAL AND TERMINATION  
ARTICLE 16. LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE  
MEMBERS & LEGAL ADVISORS  
ARTICLE 17. BYLAWS  
ARTICLE 18. NOTICES  
ARTICLE 19. AMENDMENT  
ARTICLE 20. PROHIBITION AGAINST ASSIGNMENT  
ARTICLE 21. GOVERNING LAW  
ARTICLE 22. SEVERABILITY  
ARTICLE 23. AGREEMENT COMPLETE  
ARTICLE 24. FILING WITH STATE AND COUNTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT**

**CREATING THE SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY (SJVWIA)**

This Amended and Restated Agreement (“Agreement”) is made and entered into effective \_\_\_\_ day of \_\_\_\_\_, 2019, by and among the counties of FRESNO, KINGS, MADERA, MERCED, and TULARE (“County Parties”); the CITY OF FRESNO (City Party); the FRIANT WATER AUTHORITY, the SAN LUIS & DELTA –MENDOTA WATER AUTHORITY, and the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY (“Water Agency Parties”), and the cities of AVENAL and ORANGE COVE (DAC Parties). Each entity listed above is a public agency as defined by California Government Code section 6500, is a “Party” to this Agreement, and all the entities listed above together are “the Parties” to this Agreement.

**RECITALS**

**WHEREAS**, as of the 17<sup>th</sup> day of November, 2015, the counties of FRESNO, KINGS, MADERA, MERCED, and TULARE, hereinafter referred to as the “Original County Parties,” executed an Agreement, hereinafter referred to as the “Original Agreement,” which established the San Joaquin Valley Water Infrastructure Authority, hereinafter referred to as the “Authority,” and set forth the powers and duties of the Authority; and

**WHEREAS**, the Original Agreement includes provisions for other public agencies to become members of the Authority;

**WHEREAS**, the CITY OF FRESNO, the FRIANT WATER AUTHORITY, the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, the CITY OF AVENAL, and the CITY OF ORANGE COVE have joined the Authority as members;

**WHEREAS**, the Parties named above desire to continue as members of the Authority;

**WHEREAS**, the Original Agreement provides in Article 20 that the Agreement may be amended “from time to time by the written consent of the governing body of all the Parties;”

**WHEREAS**, the Parties desire to amend and restate the Original Agreement in its entirety;

1           **WHEREAS**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500  
2 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the  
3 contracting parties;

4           **WHEREAS**, the Parties each are public agencies which have the common power, pursuant to  
5 California Government Code section 23004(c), to make contracts necessary to the exercise of their  
6 respective powers;

7           **WHEREAS**, the Parties now desire to modify and expand the purposes of said joint powers agency  
8 to more comprehensively support, assist, and benefit San Joaquin Valley people, businesses, agriculture,  
9 and other industries represented by the Parties within their respective jurisdictions with activities, programs,  
10 and projects directed at improving, maintaining, sustaining, and protecting water supplies and infrastructure  
11 upon which the region depends, thus mitigating imbalances and other negative impacts that have been  
12 experienced;

13           **WHEREAS**, said activities, endeavors and undertakings may include, but are not limited to,  
14 measures of advocacy, advice, support and involvement on qualified local and regional infrastructure  
15 projects and facilities such as surface water conveyance, groundwater recharge and banking, surface water  
16 storage, water conservation, water reclamation and water quality improvement; and enhanced wildland,  
17 forest management and related watershed practices;

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20           **WHEREAS**, the Parties can through cooperation present more comprehensive and effective grant  
21 proposals with greater efficiency than they could obtain by their individual efforts;

22           **WHEREAS**, collaboration and consolidation of governmental action benefits the public and the  
23 taxpayer, and if the Parties determine that it is to their mutual benefit, the Parties believe the SJVWIA should  
24 provide access to other public agencies in proximity to and with interests similar to those of the Parties by  
25 considering the execution of a Participation Agreement among the SJVWIA and such other public agencies  
26 that would permit such other public agencies to participate in the grant formation and solicitation process in  
27 the future, provided that such other public agencies make financial commitments similar to those made by  
28 the Parties in connection with this Agreement, as provided herein; and





1 with such powers as are hereinafter set forth. The debts, liabilities and obligations of the Authority shall be  
2 the debts, liabilities or obligations of the Authority alone and shall not constitute debts, liabilities, or  
3 obligations of any party to this Agreement, except with respect to the retirement liabilities of the agency if  
4 the agency contracts with a public retirement system, and notwithstanding the payment of respective  
5 costs and expenses as referenced in the Recitals, Article 15 and throughout the Agreement. The Authority,  
6 its Board, officers, membership and staff shall be governed by this Agreement, the Bylaws, and other  
7 documents duly adopted by the Authority.

8  
9 **ARTICLE 3**

10 **PURPOSE**

11 The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common  
12 to each of the Parties. The purpose of the Authority is to use the collective knowledge, resources, expertise,  
13 and influence of its members to advance the management of water and other natural resources in the San  
14 Joaquin Valley. It is the intent of the Parties that this Authority provide advocacy, advice, and/or other proper  
15 support to counties, cities, unincorporated communities, water agencies, and/or state or federal agencies to  
16 assist with development of San Joaquin Valley water infrastructure improvement and natural resource  
17 management projects, development of which would be in the public interest. Support for such project would  
18 include, but not be limited to, the solicitation of funding and the administration of the disbursement and  
19 expenditure of said funds on qualified projects.

20  
21 **ARTICLE 4**

22 **TERM**

23 This Agreement shall continue in full force and effect until terminated as provided herein.

24  
25 **ARTICLE 5**

26 **MEMBERSHIP IN THE AUTHORITY**

27 5.1 **PARTIES JOIN AUTHORITY BY FORMAL ADOPTION OF AGREEMENT.**

1 Additional public agencies may become Parties to the Authority according to the terms of this Article.  
2 Upon a four-fifths (4/5) vote of the Board, additional public agencies may join the Authority as Parties through  
3 formal adoption and execution of this Agreement by their respective governing board or body. No  
4 amendment of this Agreement is required, provided that, including the Parties named above, the following  
5 limitations to total membership shall apply:

6 COUNTY PARTIES: There may be up to seven (7) County Parties;

7 CITY PARTY: There shall be one (1) City Party which is not designated a Disadvantaged Community for the  
8 purposes of this Agreement, and that shall be the City of Fresno;

9 WATER AGENCY PARTIES: There may be up to six (6) Water Agency Parties;

10 TRIBAL PARTIES: Up to two (2) federally recognized Native American Tribes with Tribal Lands within the  
11 jurisdiction of any of the County Parties may join the Authority as Tribal Parties. The governing board or  
12 authority of the Tribe shall approve this Agreement and cause it to be signed by an authorized  
13 representative. The Tribal Party shall and hereby does, as part of its approval of this Agreement, waive its  
14 sovereign immunity for all purposes related to this Agreement or the Authority;

15 DISADVANTAGED COMMUNITY (DAC) PARTIES: There may be up to two (2) DAC Parties, and those shall  
16 be the cities of Avenal and Orange Cove, unless either has withdrawn from membership To qualify as a DAC  
17 Party, a city must be designated by CalEPA as a Disadvantaged Community and lie within the jurisdiction of  
18 any of the County Parties..

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**ARTICLE 6**

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**POWERS OF THE AUTHORITY**

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The Authority shall have all powers set forth in the Joint Powers Law, and is hereby authorized to do  
all acts necessary for the exercise of said powers in furtherance of its purposes. Such powers include, but  
are not limited to, the following:

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(a) To make and enter into contracts, including but not limited to contracts with the Parties  
and/or the Federal Government, the State of California, other local governments, public agencies, special  
districts, private parties, or companies.

1 (b) To incur debts, liabilities, and obligations.

2 (c) To acquire, hold, and/or dispose of property, contributions, and donations of property, funds,  
3 services, and other forms of assistance from persons, firms, corporations, and government entities.

4 (d) To sue and be sued in its own name, and to settle any claim against it.

5 (e) To receive and use contributions and advances from the Parties as provided in Government  
6 Code Section 6504, including contributions or advances of personnel, equipment, or property.

7 (f) To invest any money in its treasury that is not required for its immediate necessities,  
8 pursuant to Government Code Section 6509.5.

9 (g) To develop and submit solicitations or applications for funding from the Federal Government,  
10 the State of California, other local governments, public agencies, special districts, private parties, or  
11 companies for water infrastructure or natural resource management projects.

12 (g) To carry out all provisions of this Agreement. Said powers shall be exercised pursuant to  
13 the terms hereof and in the manner provided by law. The responsibility for financing, funding or providing  
14 matching funds for the actual construction of any project shall be the responsibility of the individual local  
15 governmental agency performing or authorizing such construction and shall not be an obligation of the  
16 Authority. However, the Authority, if it determines the project will have substantial general benefit throughout  
17 the jurisdictions of the County Parties, may take actions to secure financing, funding, or matching funds and  
18 to disburse such funds in furtherance of construction of the project.

19 (i) The Authority may not appropriate, expend, or encumber funds in excess of any amounts  
20 actually approved and contributed by the Parties or actually received from any other source.

21 Pursuant to Government Code section 6509, the aforementioned powers shall be subject to those  
22 restrictions as apply to any of the Parties.

23 **ARTICLE 7**

24 **BOARD OF DIRECTORS**

25 7.1 Composition of the Board of Directors

26 The Authority shall be governed by the Board of Directors, which shall be composed as follows:  
27  
28

- 1 (a) **COUNTY DIRECTORS:** One director appointed by the Board of Supervisors of each  
2 County Party who shall be a member of the Board of Supervisors of the respective Party,  
3 for a total of up to seven (7) directors. Each Board of Supervisors of each Party shall  
4 also appoint an alternate director who shall be a member of the respective Party's Board  
5 of Supervisors who shall serve in the absence of the regular member appointed by that  
6 Party.
- 7 (b) **CITY DIRECTOR:** One (1) member appointed by the City Party for a total of one (1)  
8 director. The member may be an elected official or staff member of the City Party. The  
9 City Party shall appoint an alternate director who shall serve in the absence of the regular  
10 director appointed by that Party. Alternate members may also be elected officials or staff  
11 of the City Party.
- 12 (c) **WATER AGENCY DIRECTORS:** One (1) director appointed by each Water Agency  
13 Party for a total of up to six (6) directors. The director shall be a Director, officer, or  
14 employee of their respective Water Agency Party. Each Water Agency Party shall  
15 appoint an alternate member who shall serve in the absence of the regular member  
16 appointed by that Party.
- 17 (d) **TRIBAL DIRECTORS:** One (1) director appointed by each Tribal Party for a total of up  
18 to two (2) directors. The Tribal Party shall appoint an alternate director who shall serve in  
19 the absence of the regular director appointed by the Tribal Party.
- 20 (e) **DISADVANTAGED COMMUNITY DIRECTORS:** One (1) director appointed by each  
21 Disadvantaged Community (DAC) Party, for a total of up to two (2) directors. The DAC  
22 Parties shall appoint alternate directors who shall serve in the absence of the regular  
23 directors appointed by the DAC Parties.
- 24 (f) **GENERAL AT-LARGE DIRECTOR:** One (1) director who lives or works within the  
25 jurisdiction of the County Parties, appointed by a majority of the Board of Directors. The  
26 At-Large Director shall be appointed to serve a two (2) year term, beginning from the date  
27 of seating as a Board of Directors member following appointment.

28 7.2 Replacement by Alternate Directors

1 County Directors shall serve until removed or replaced by the Board of Supervisors of their  
2 respective County. If, for any reason, a County Director resigns, leaves office, or cannot fulfill the duties of  
3 that position, the Board of Supervisors of the relevant Party County shall appoint a new regular director to  
4 the Board.

5 If, for any reason, the General At-Large Director resigns or cannot fulfill the duties of that position,  
6 the remaining members of the Board of Directors shall appoint a new General At-Large Director to complete  
7 the remainder of the General At-Large Director's term.

8 If for any reason, the City Director, a Water Agency Director, a DAC Director, or a Tribal Director  
9 resigns or cannot fulfill the duties of that position, the alternate director appointed by the respective Party  
10 shall become the regular director for the remainder of the applicable term.

### 11 7.3 Voting Protocols

12 A majority of the membership of the Board of Directors shall constitute a quorum for the transaction  
13 of business. Approval of proposed actions requires a simple majority vote of the full Board of Directors  
14 except as provided herein.

## 15 **ARTICLE 8**

### 16 **POWERS OF THE BOARD OF DIRECTORS**

17 The Board of Directors shall have the following powers and functions:

18 (a) The Board of Directors shall exercise all powers and conduct all business of the Authority,  
19 either directly or by delegation to its officers and staff.

20 (b) The Board of Directors shall elect the officers of the Authority and shall appoint or hire  
21 necessary staff in accordance with Articles 10 and 11 hereof.

22 (c) The Board of Directors shall cause to be prepared, and shall review, modify as necessary,  
23 and adopt the annual operating budget of the Authority.

24 (d) The Board of Directors shall develop, or cause to be developed, and shall review, modify as  
25 necessary, any solicitation or grant application for a Qualified Water Project and administrative services  
26 necessary to carry out such solicitation or grant application or the receipt, administration and disbursement of  
27 any grant funds received.  
28

1 (e) The Board of Directors shall provide for necessary services to the Authority and the Parties,  
2 by contract or otherwise, which may include, but shall not be limited to, accounting, auditing, and legal  
3 services.

4 (f) The Board of Directors shall provide general supervision and policy direction to the staff of  
5 the Authority.

6 (g) The Board of Directors shall have such other powers and duties as are reasonably  
7 necessary to carry out the purposes of the Authority, including, but not limited to, establishing Ad Hoc or  
8 Standing Committees of participating entities.

9  
10 **ARTICLE 9**

11 **MEETINGS OF THE BOARD OF DIRECTORS**

12 (a) The Board of Directors shall hold at least one regular meeting each year and shall provide  
13 for such other regular meetings and for such special meetings as it deems necessary.

14 (b) The staff of the Authority shall provide for the keeping of minutes of regular and special  
15 meetings of the Board of Directors, and shall provide a copy of the minutes to each member of the Board of  
16 Directors at the next scheduled meeting.

17 (c) All meetings of the Board of Directors shall be called, noticed, held and conducted in  
18 accordance with the provisions of Government Code Section 54950 et seq.

19 (d) The Authority shall provide each of the Parties the agenda, including any supplements  
20 thereof, and any supporting agenda materials of all meetings of the Board of Directors not later than the time  
21 that the Authority publishes notice of such meetings pursuant to paragraph (c), immediately above.

22  
23 **ARTICLE 10**

24 **OFFICERS**

25 The Board of Directors shall elect from its membership a President and Vice President of the Board  
26 of Directors, to serve for two-year terms. The President, or in his or her absence, the Vice President, shall  
27 preside at and conduct all meetings of the Board of Directors. In the absence of the President and Vice  
28 President, those members of the Board of Directors present may elect a Temporary Presiding Officer.

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**ARTICLE 11**  
**ADMINISTRATION**

The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

- (a) **Auditor-Treasurer.** The duties of the Auditor-Treasurer are set forth in Article 12 of this Agreement. Pursuant to Government Code Section 6505.5, the Auditor-Treasurer may be a Certified Public Accountant or the county auditor-controller of one of the Parties, at the selection of the Authority and subject to the consent of the applicable county auditor controller to serve as the Authority’s Auditor-Treasurer. If a county auditor-controller is selected, pursuant to Government Code Section 6505, the charges to the Authority for the services of the Auditor-Treasurer shall be determined by the Board of Supervisors of the county from which the Auditor-Treasurer is appointed, subject to approval by the Authority.
- (b) **Other Staff.** The Board of Directors shall provide for the appointment or hire of such other staff as may be necessary for the administration of the Authority.
- (c) **Competitive Selection of Experts.** If the Authority determines to retain an expert or experts to prepare any solicitation or grant application, the selection of said expert(s) shall be made through a competitive process unless the expert falls within the category of professional expertise which may be properly selected through a Request for Proposal or other non-competitive process.

**ARTICLE 12**  
**ACCOUNTS AND RECORDS**

- (a) **Annual Budget.** The Board shall annually adopt an operating budget for the Authority.
- (b) **Funds and Accounts.** The Auditor-Treasurer of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board of Directors. Separate accounts shall be established and maintained for each project under development or adopted and implemented by the Authority. Books and records of the Authority in the hands of the Auditor-Treasurer shall be open to inspection at all reasonable times by authorized representatives of the Parties.





1 (2) Be responsible upon his or her official bond for the safekeeping and disbursements  
2 of all Authority funds so held by him or her.

3 (3) Pay any sums due from the Authority, as approved for payment by the Board of  
4 Directors or by any body or person to whom the Board of Directors has delegated approval authority, making  
5 such payments from Authority funds upon warrants drawn by the Auditor-Treasurer.

6 (4) Verify and report in writing to the Authority and to the Parties, as of the first day of  
7 each quarter of the fiscal year, the amount of money then held for the Authority, the amount of receipts since  
8 the last report, and the amount paid out since the last report.

9 (c) Pursuant to Government Code Section 6505.1, the President, the Vice-President, and such  
10 other persons as the Board of Directors may designate, shall have charge of, handle, and have access to the  
11 property of the Authority.

12 (d) The Authority shall secure and pay for a fidelity bond or bonds, in an amount or amounts and  
13 in the form specified by the Board of Directors, covering all officers and staff of the Authority, and all officers  
14 and staff who are authorized to have charge of, handle, and have access to property of the Authority.

## 16 ARTICLE 14

### 17 RESPONSIBILITIES OF PARTIES

18 The Parties shall have the following responsibilities under this Agreement:

#### 19 14.1 Appointments.

20 (a) The governing board or authority of each Party shall appoint representative(s) to the Board  
21 of Directors, pursuant to Article 7 hereof.

22 (b) Each Party shall appoint an officer or employee of the Party to be responsible and serve as  
23 a liaison between the Party and the Authority for all matters relating to the Authority.

#### 24 14.2 Annual Contributions.

25 If the approved Budget assesses an annual contribution from the Parties, each Party shall contribute  
26 that annual assessment amount prior to and/or during each fiscal year as determined by the Board of  
27 Directors. County Parties, the City Party, Water Agency Parties, and any Tribal Parties shall pay an equal  
28 assessment. At the Board's discretion, DAC Parties may be assessed a reduced contribution.

1 Each Party, through its appointed Director on the Board, shall make a commitment at the date of the  
2 Budget's passing that it will pay its assessment. If a Party's budgeted annual contribution payment is not  
3 made within sixty (60) days of the commencement of the fiscal year, the Director representing the Party in  
4 default may not vote until the contribution payment is made, and the defaulting Party will be deemed to have  
5 initiated a 180-day notice intent to terminate membership pursuant to Article 15.

6 All regular contributions toward the operating and/or administrative expenses of the Authority as  
7 determined by the Board of Directors shall be made in equal amounts from each of the Parties, except, at the  
8 Board's discretion, DAC Parties may be assessed a reduced share.

9 15.3 General Obligations

10 (a) Each Party shall cooperate with and assist the Authority and other contractors in all matters  
11 relating to this Agreement, and shall comply with all Bylaws, and other rules by the Board of Directors.

12 (b) Each Party shall have such other responsibilities as are provided elsewhere in this  
13 Agreement, and as are established by the Board of Directors in order to carry out the purposes of this  
14 Agreement.

15 15.4 Projects

16 The responsibility for financing, funding, or providing matching funds for the actual construction of  
17 any project shall be the responsibility of the individual public agency performing or authorizing such  
18 construction and shall not be an obligation of the Authority. However, the Authority, if it determines the  
19 project will have substantial general benefit throughout the jurisdictions of the County Parties, may take  
20 actions to secure financing, funding, or matching funds and to disburse such funds in furtherance of the  
21 project.

22  
23 **ARTICLE 15**

24 **WITHDRAWAL AND TERMINATION**

25 (a) Any Party may withdraw membership in the Authority and its obligations under this  
26 Agreement upon 180 days advance written notice to the other Parties and the Authority. The written intent to  
27 withdraw may be revoked no later than 120 days prior to the end of the 180 day termination period.

28

1 (b) Upon withdrawal of a Party from the Authority and this Agreement, no capital contributions of  
2 said Party shall be returned to the Party.

3 (c) Should the Board of Directors determine that need and cause exist to dissolve the Authority,  
4 any and all Board actions related to termination of this Agreement shall require unanimous consent of  
5 directors of all original Authority County Parties – namely FRESNO, TULARE, KINGS, MADERA and  
6 MERCED – that remain as members, and four-fifths (4/5) of directors of other member Parties.

7 (d) Upon termination of this Agreement, all assets of the Authority remaining after all existing  
8 obligations of the Authority have been disposed of, shall be distributed among the Parties in proportion to  
9 their cash and in-kind contributions and property contributed (at market value when contributed). The Board  
10 of Directors shall determine such distribution within six (6) months after disposal of the last obligation of the  
11 Authority.

12 (e) This Agreement and the Authority shall continue to exist until such time as the final  
13 disposition of all claims, distribution of all assets, and performance of all other functions necessary to  
14 conclude the affairs of the Authority.

15  
16 **ARTICLE 16**

17 **LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS AND LEGAL ADVISORS**

18 The members of the Board of Directors, officers, committee members and legal advisors to any  
19 board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their  
20 powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any  
21 mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action  
22 taken or omitted by any agent or employee selected with reasonable care, nor for loss incurred through  
23 investment of Authority funds, or failure to invest, performed in good faith.

24 No director, officer, committee member, or legal advisor to any board or committee shall be  
25 responsible for any action taken or omitted by any other director, officer, committee member, or legal advisor  
26 to any board or committee. No director, officer, committee member or legal advisor to any board or  
27 committee shall be required to give a bond or other security to guarantee the faithful performance of their  
28 duties pursuant to this Agreement.



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**ARTICLE 20**

**PROHIBITION AGAINST ASSIGNMENT**

No Party may assign any right, claim or interest, or delegate any obligation that it may have under this Agreement, and no creditor, assignee or third party beneficiary of either Party shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Authority.

**ARTICLE 21**

**GOVERNING LAW**

The Parties agree that for the purposes of venue, performance under this Agreement is to be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

**ARTICLE 22**

**SEVERABILITY**

In the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE 23**

**AGREEMENT COMPLETE**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. This Agreement may be executed in one or more original counterparts, all of which together will constitute one and the same agreement.

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**ARTICLE 24**

**FILING WITH STATE AND COUNTY**

The Chair of the Board of Directors of the Authority shall cause the following to be done upon signature of this document or any amendment hereto by all parties:

- (a) file the required form of notice of this Agreement, and any amendment hereto, with the Office of California Secretary of State, within thirty (30) days of its effective date, as required by Government Code Section 6503.5;
- (b) file a full copy of this Agreement, and any amendment hereto, with the State Controller and the Local Agency Formation Commissions (LAFCOs) of each applicable county within thirty (30) days of its effective date, as required by Government Code Section 6503.6;
- (c) file the required form of notice with the Secretary of State and with the Tulare County Clerk within seventy (70) days of its effective date, as required by Government Code Section 53051;
- (d) File notice of any changes to the information filed under (c) within ten (10) days of the change.

IN WITNESS WHEREOF, the COUNTY OF FRESNO, the COUNTY OF KINGS, the COUNTY OF MADERA, the COUNTY OF MERCED, the COUNTY OF TULARE, the CITY OF FRESNO, the FRIANT WATER AUTHORITY, the SAN LUIS & DELTA –MENDOTA WATER AUTHORITY, the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, the CITY OF AVENAL, and the CITY OF ORANGE COVE have executed this Amended and Restated Joint Exercise of Powers Agreement Creating the SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY as of the day and year first hereinabove written.

**COUNTY OF FRESNO**

**COUNTY OF KINGS**

\_\_\_\_\_  
Nathan Magsig  
Chairman, Board of Supervisors  
  
Bernice Seidel, Clerk of the Board

\_\_\_\_\_  
Joe Neves  
Chairman, Board of Supervisors  
  
Catherine Venturella, Clerk of the Board

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By \_\_\_\_\_

**COUNTY OF MADERA**

\_\_\_\_\_

Chairman, Board of Supervisors

Rhonda Cargill, Clerk of the Board

By \_\_\_\_\_

**COUNTY OF TULARE**

\_\_\_\_\_

Kuyler Crocker  
Chairman, Board of Supervisors

Jason T. Britt, Clerk of the Board/  
County Administrative Officer

By \_\_\_\_\_

**FRIANT WATER AUTHORITY**

\_\_\_\_\_

Chairman, Board of Directors

By \_\_\_\_\_

**SAN JOAQUIN RIVER EXCHANGE  
CONTRACTORS WATER AUTHORITY**

\_\_\_\_\_

Chairman, Board of Directors

By \_\_\_\_\_

**CITY OF ORANGE COVE**

By \_\_\_\_\_

**COUNTY OF MERCED**

\_\_\_\_\_

Chairman, Board of Supervisors

By \_\_\_\_\_

**CITY OF FRESNO**

\_\_\_\_\_

City Council President

City Clerk

By \_\_\_\_\_

**SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY**

\_\_\_\_\_

Cannon Michael  
Chairman, Board of Directors

By \_\_\_\_\_

**CITY OF AVENAL**

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Chairman, City Council

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Chairman, City Council



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APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Daniel C. Cederborg,  
County Counsel, County of Fresno

\_\_\_\_\_  
Regina A. Garza,  
County Counsel, County of Madera

\_\_\_\_\_  
David Prentice,  
Interim County Counsel, County of Kings

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Deanne Peterson,  
County Counsel, County of Tulare

\_\_\_\_\_  
James N. Fincher  
County Counsel, County of Merced

**DATE:** June 17, 2019  
**TO:** Executive Committee  
**FROM:** Vivian Garcia, Human Resources/Risk Analyst  
**THROUGH:** Douglas DeFlicht, COO  
**SUBJECT:** Updated Friant Water Authority Employee Personnel Rules

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**SUMMARY:**

The intent of this memo is to provide a brief summary of the most significant changes that were made from the existing rules; it does not document every change that was made. Except for the proposed “merit increase” provisions, no changes are proposed to employee benefits such as leave.

All the existing rules have been updated to ensure compliance with current legal requirements.

Note: Eventually FWA envisions two documents governing personnel matters for all employees:

- 1) Personnel Rules – which provides the core foundation for the personnel system and employee relations; and 2) Policy Handbook – which will be a collection of stand-alone policies that are subject to change more frequently (e.g. reimbursement policy, electronic communications policy, vehicle use policy, etc.). The Policy Handbook is intended to be released later this year.

The following is a summary of major changes to the Personnel Rules:

- Article 3 Employees Defined (Two Tiers- Classified and At Will)
- Article 3 Part time role clarified for under 29 hours
- Article 5 Classification
- Article 8 Background (Qualifying Roles)
- Article 9 DMV Pull Notices (applicable roles)
- Article 9 Oath
- Article 11 Employee Schedule and Lunch (time allocation)
- Article 12 Merit Increase
- Article 13 Benefits
- Article 15 Records and Reports
- Article 16 Nepotism Policy
- Article 18 Disciplinary Action Process and Appeal
- Article 19 Grievance
- Article 20 Layoff Process Outlined
- Article 24 Dress Code
- Article 27 Additional Policies

## **DESCRIPTION OF CHANGES:**

### **ARTICLE 3. DEFINITIONS**

Classified Service

All Employees are Classified except for those listed:

- A. Elective Officers;
- B. Chief Executive Officer;
- C. Chief Operating Officer;
- D. Chief Financial Officer;
- E. Chief of External Affairs
- F. Government Affairs and Communications Manager;
- G. Director of Water Policy;
- H. General Superintendent;
- I. Water Resources Manager;
- J. Senior Engineer;
- K. General Counsel;
- L. Accounting Operations Administrator;
- M. Director of Technology;
- N. Members of appointive boards, commissions, and committees;
- O. Temporary or emergency employees;
- P. Part-time employees; and
- Q. Any other position determined by the Board to be At-Will.

This change was implemented to define which current positions are considered “at will” and are outside the classified service. The at-will employees are still subject to many of the Personnel Rules but are excluded from some that would be inconsistent with their exempt and at-will status such as termination procedures, overtime, etc.

### **ARTICLE 3. DEFINITIONS**

#### **Part time role clarified for under 29 hours**

**PART-TIME POSITION.** A budgeted position in which an employee of the Authority regularly works less than 30 hours per work week. A part-time employee may be a regular part-time employee or a temporary part-time employee.

This change was implemented to clarify the distinction between full-time and part-time employees.

### **ARTICLE 5. CLASSIFICATION**

#### **Job Descriptions**

(Section 6) C. The Personnel Officer may make non-fundamental changes to existing job descriptions without the approval of the Board of Directors. A fundamental change is one that significantly changes the duties and responsibilities of the existing position such that it can be reasonably considered to be reclassified or reassigned. Examples of non-fundamental changes include: the general summary of duties; location, and qualifications.

This change was implemented to provide the Personnel Officer with more administrative flexibility and autonomy with respect to Friant’s personnel system. The ability to make non-fundamental changes without Board of Directors’ approval will streamline management operations in an efficient manner.

**ARTICLE 8. RECRUITMENTS**

**Background (Qualifying Roles)**

The policy is in place, however only those with fiduciary and executive roles will have a background/credit check conducted.

This change was implemented to identify that certain positions within the Authority will be required to undergo background/credit check in accordance with the law.

**ARTICLE 9. PRE-EMPLOYMENT REQUIREMENTS**

**Oath**

Employment Oath. All employees of the Authority must complete and sign the Oath or Affirmation of Allegiance for Public Officers and Employees on the first day of employment in accordance with Article XX, Section 3 of the Constitution of the State of California. A signed copy will be included in the employee’s personnel file.

This change was implemented to bring the Authority into compliance with the state requirement that public employees execute the constitutional oath. The constitutional oath is mandatory and is required to be taken as a precondition to employment for all public employees.

**ARTICLE 9. PRE-EMPLOYMENT REQUIREMENTS  
roles)**

**DMV Pull Notices (Identify applicable**

Driver License and Driving Record. Employees who are required to drive as a part of their job are required to possess a valid California driver license and maintain a satisfactory driving record acceptable to the Appointing Authority as a condition of employment. The Authority will, from time to time, obtain a copy of employee driving records from the DMV where permitted by law.

This change was implemented to memorialize existing policies and procedures with respect to positions that require valid drivers’ licenses as an essential duty.

**ARTICLE 11. WORKWEEK, OVERTIME AND PREMIUM PAY**

**Employee Schedule**

**Section 3.** Time worked by non-exempt employees in excess of 8 hours in a workday or 40 hours in a workweek will constitute overtime.

**Lunch time allocation removed**

B. Meal Periods. Non-exempt employees who work during their meal periods will be paid for time worked. These changes were implemented to clarify that meal periods are unpaid and do not constitute hours worked for purposes of calculating wages.

C. Rest Periods.

**Rest Period (Break)**

Non-exempt employees are entitled to two 15-minute paid rest periods during each continuous period of work over 3.5 hours. Meal breaks will be included in the calculation of “continuous period.” Such time will constitute hours worked. Employees must remain on premises or at their job site, as applicable, during any paid rest period.

D. Lactation Breaks.

The Authority will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child, in accordance with and to the extent required by applicable law.

**ARTICLE 12. COMPENSATION**

**Merit Increase**

Section 10. Merit Award Program Policy

Full policy, process, implementation and appeal policy.

This change was implemented to introduce a merit-based award program to incentivize and reward work performance. This policy is intended to increase efficiency and productivity among Authority employees.

**ARTICLE 13. BENEFITS**

The Authority provides various benefits and programs for eligible employees, including, but not limited to, health, dental, and vision insurance, life and supplemental insurance, retirement plans (deferred tax and pension plans), and education assistance incentives and programs. Eligible employees will be subject to the specific terms and conditions for the selected and enrolled benefits plans and programs, which may be subject to change.

This change was implemented to identify the various benefits and programs provided by the Authority for transparency and retention.

**ARTICLE 15. RECORDS AND REPORTS**

**Employee File Accessibility**

Section 6. Access to Personnel File. Clarifies request can be made once per year.

This change was implemented to comply with state requirements regarding employee access to personnel records and files and to provide specific instructions and procedures for current and former employees.

**ARTICLE 16. NEPOTISM & CONSENSUAL RELATIONSHIPS**

**Nepotism Policy**

Full policy, disclosure and reporting restriction policy.

This change was implemented to clarify existing policies and procedures with respect to nepotism and conflicts of interest among Authority employees.

**ARTICLE 18. DISCIPLINE**

**Disciplinary Action Process**

Full policy, process, implementation and appeal policy.

**Appeals Process for disciplinary action**

Appeals process and third-party designee for investigation.

These changes were implemented to clarify existing policies and procedures with respect to the disciplinary process and to provide an alternative option for the Authority to utilize the services of a third-party in an advisory role in certain disciplinary situations where such a need is necessary (i.e., where the decision-maker is alleged to hold bias and/or a conflict of interest exists, etc.)

**ARTICLE 19. GRIEVANCE PROCEDURE**

**CEO Grievance Process**

Section 4. Grievance Procedure. Complaints or grievances regarding the Chief Executive Officer may be provided to the General Counsel for presentation to the Board of Directors.

This change was implemented to provide an alternative grievance procedure to maintain impartiality and fairness in situations where a grievance is brought directly against the CEO. As the CEO is typically the final decision-maker with respect to the grievance process, an additional level of review outside the standard hierarchy is necessary.

**ARTICLE 20. LAYOFF PROCEDURES**

**Layoff Process Outlined**

Section 3. Order of Layoff. To the extent permitted by law, the Authority has the discretion to determine the order of layoff of all positions affected by a reduction in force. Relevant factors in the determination may include, but are not limited to positional needs, employee seniority, and financial burden or constraint.

This change was implemented to provide clear guidance on the specific factors that are examined during the layoff determination process.

**ARTICLE 24. DRESS CODE**

General Standard, office and Uniform dress code and grooming outlined.

This change was implemented to identify the Authority's expectations with respect to dress code and grooming as they relate to certain positions and job duties.

**ARTICLE 27. ADDITIONAL POLICES**

In addition to the provisions of these Personnel Rules, employees are also subject to the Authority's Personnel Policy Handbook, which includes various personnel policies and procedures adopted by the Board of Directors, which are subject to change and will be governed by the terms and conditions set forth in such additional policies.

This change was implemented to acknowledge that there are additional policies that apply to employees.

**SUGGESTED MOTION:**

The Executive Committee recommends that the Board of Directors accept the changes to the Personnel Rules.

**BUDGET IMPACT:**

No change in the current fiscal year. There will be a slight increase to the budget in future years for the merit program that could range from \$40-\$60K which is 0.007% of the 2019 Budget.



# PERSONNEL RULES

\_\_\_\_\_, 2019

## TABLE OF CONTENTS

	Page
ARTICLE 1. PURPOSE AND APPLICABILITY.....	1
ARTICLE 2. GENERAL PROVISIONS .....	1
ARTICLE 3. DEFINITIONS .....	2
ARTICLE 4. NONDISCRIMINATION .....	5
ARTICLE 5. CLASSIFICATION.....	7
ARTICLE 6. METHODS OF FILLING VACANCIES.....	9
ARTICLE 7. APPLICATIONS AND APPLICANTS.....	11
ARTICLE 8. RECRUITMENTS.....	13
ARTICLE 9. PRE-EMPLOYMENT REQUIREMENTS .....	14
ARTICLE 10. PROBATIONARY PERIOD.....	15
ARTICLE 11. WORKWEEK, OVERTIME AND PREMIUM PAY .....	16
ARTICLE 12. COMPENSATION.....	21
ARTICLE 13. BENEFITS.....	25
ARTICLE 14. PERFORMANCE EVALUATIONS.....	25
ARTICLE 15. RECORDS AND REPORTS .....	26
ARTICLE 16. NEPOTISM AND CONSENSUAL ROMANTIC RELATIONSHIPS BETWEEN EMPLOYEES .....	27
ARTICLE 17. CODE OF ETHICS AND CONFLICTS OF INTEREST .....	32
ARTICLE 18. DISCIPLINE .....	35
ARTICLE 19. GRIEVANCE PROCEDURE.....	41
ARTICLE 20. LAYOFF PROCEDURES.....	43
ARTICLE 21. SEPARATION FROM EMPLOYMENT .....	44
ARTICLE 22. LEAVES OF ABSENCE .....	45
ARTICLE 23. HOLIDAYS .....	52
ARTICLE 24. DRESS CODE .....	53
ARTICLE 25. WORKPLACE SAFETY .....	54
ARTICLE 26. AUTHORITY RENTAL PROPERTIES.....	56
ARTICLE 27. ADDITIONAL POLICIES.....	56



# FRIANT WATER AUTHORITY

## PERSONNEL RULES

### ARTICLE 1. PURPOSE AND APPLICABILITY

These Personnel Rules are adopted pursuant to the Joint Powers Agreement of the Friant Water Authority and the Authority's Bylaws. All provisions of these Personnel Rules apply to employees occupying positions in the Classified Service. Employees who are not in the Classified Service are also subject to the provisions of these Personnel Rules except the following provisions:

- A. Article 7 – Applications and Applicants
- B. Article 8 – Recruitments
- C. Article 10 – Probationary Period
- D. Article 11 – Workweek, Overtime and Premium Pay
- E. Article 18 – Discipline
- F. Article 20 – Layoff Procedures

### ARTICLE 2. GENERAL PROVISIONS

Section 1. Violation of Rules. Violation of these Personnel Rules will constitute grounds for disciplinary action. A violation will not make disciplinary action mandatory but will be given such weight as the Authority determines to be appropriate in view of all of the circumstances.

Section 2. Delegation of Authority. Except as otherwise provided, any duties, responsibilities, powers, and authority granted by these Personnel Rule may be delegated, in writing, to any subordinate employee at the discretion of the delegating individual.

Section 3. Not an Employment Contract. None of these Personnel Rules may be deemed to create a vested contractual right for any employee.

Section 4. Employee Responsibility. It is the responsibility of each employee to become aware and be knowledgeable of these Personnel Rules.

Section 5. Distribution of Personnel Rules. A copy of these Personnel Rules will be distributed to each Authority employee. Newly hired employees will receive a copy upon hire. An employee with questions about these Personnel Rules may direct them to the Personnel Officer.

Section 6. Amendment and Revision of Rules. Amendments and revisions may be suggested to the Human Resources Office by an interested party and, if appropriate for consideration, will be submitted to the Personnel Officer.

Section 7. Prior Policies Repealed. If the terms and provisions of these Personnel Rules are inconsistent or in conflict with the terms and provisions of any prior Authority Personnel Rules, resolutions, regulations, and/or policies governing the same subject, the terms of these Personnel Rules will prevail and such inconsistent or conflicting provisions or prior rules, resolutions, regulations, and policies are hereby repealed.

Section 8. Relationship with Department Policies. The Personnel Officer or individual Authority Department Heads may develop and administer supplemental written department policies and procedures as deemed necessary for the efficient, safe, and orderly administration of the Authority or department. However, no such policies or procedures may conflict with or supersede these Personnel Rules, other Board resolutions and ordinances, or existing laws, and must be submitted for approval by the Personnel Officer before their implementation. Copies of department policies and procedures must be distributed to each employee of the department and to the Personnel Officer. In the event of a conflict between an administrative or departmental policy or procedure, the provision of these Personnel Rules will control.

Section 9. Changes to the Law. When any local, state, or federal ordinance, regulation, or law is incorporated in the Personnel Rules or upon which the Personnel Rules rely is amended through legislative action or is deemed to have been amended by judicial decision, the Personnel Rules will be deemed amended in conformance with those amendments.

Section 10. Severability. If any article, section, subsection, sentence, clause, or phrase of the Personnel Rules is found to be unenforceable by a court of competent jurisdiction, such findings will not affect the validity of the remaining portions of the Personnel Rules.

### **ARTICLE 3. DEFINITIONS**

The following terms as used in these Personnel Rules will, unless the context clearly indicates otherwise, have the following meanings.

ACTING APPOINTMENT. A temporary appointment of an employee who possesses at least the minimum qualifications established for a particular class and who is appointed to a position in that class.

ADVANCEMENT. A salary increase within the limits of a pay range established for a class.

ALLOCATION. The assignment of a single position to its proper class in light of the duties performed, and the authority and responsibilities exercised.

ANNIVERSARY DATE. The date of an employee's most recent appointment.

APPOINTING AUTHORITY. The Chief Operating Officer is the Appointing Authority for all Authority employees, except for all positions for which appointing authority is reserved by the Chief Executive Officer or the Board of Directors.

AT-WILL EMPLOYEE. An employee of the Authority who is not in the Classified Service, as defined herein. All at-will employment may be terminated by the Authority or the employee at any time without notice and without cause. At-Will Employees include the following positions:

- A. Elective Officers;
- B. Chief Executive Officer;
- C. Chief Operating Officer;
- D. Chief Financial Officer;
- E. Chief of External Affairs
- F. Government Affairs and Communications Manager;
- G. Director of Water Policy;

- H. General Superintendent;
- I. Water Resources Manager;
- J. Senior Engineer;
- K. General Counsel;
- L. Accounting Operations Administrator;
- M. Director of Technology;
- N. Members of appointive boards, commissions, and committees;
- O. Temporary or emergency employees;
- P. Part-time employees; and
- Q. Any other position determined by the Board to be At-Will.

AUTHORITY. Friant Water Authority.

BOARD OF DIRECTORS. The Board of Directors for Friant Water Authority.

CHIEF EXECUTIVE OFFICER. The Chief Executive Officer (“CEO”) for Friant Water Authority, or his/her designee.

CHIEF OPERATING OFFICER. The Chief Operating Officer (“COO”) for Friant Water Authority, or his/her designee.

CLASS. All positions sufficiently similar in duties, authority, responsibility, and working conditions to permit grouping under a common title and the application with equity of common standards of selection, transfer, promotion, and salary.

CLASSIFIED SERVICE. Pursuant to the Joint Powers Agreement the offices, positions and employments in the service of the Authority which are included or hereafter may be included under the personnel system by Board Resolution except those designated as At-Will Employees.

CONTINUOUS SERVICE. Employment with the Authority without break or interruption. No leave of absence, whether with or without pay, will be construed as a break or interruption in employment if the employee returns to work within 120 days (unless otherwise required by law).

DATE OF HIRE. The date that an employee was originally hired by the Authority. An employee’s date of hire does not change except through dismissal, resignation, or retirement.

DAY or DAYS. Calendar day(s) unless otherwise stated.

DEMOTION. The movement of an employee from one class to another class having a lower maximum rate of pay.

DEPARTMENT HEAD. The individual designated as the administrative head of an Authority department, or his/her designee.

DISCIPLINE. The punishment of an employee by written reprimand, demotion, suspension, reduction in

compensation, dismissal, transfer for punitive reasons, or other punitive measures.

DISMISSAL. The permanent separation of an employee from the Authority service.

## Section 2. RECRUITMENT

- A. Open-Competitive Recruitment. A recruitment for a particular class that is open to all persons meeting the qualifications for the class.
- B. Promotional Recruitment. A recruitment for a particular class, admission to the recruitment being limited to regular and probationary employees in the Authority Classified Service who meet the qualifications for the class.

EXEMPT EMPLOYEES. Employees whose duties and responsibilities allow them to be “exempt” from overtime pay provisions as provided by the Fair Labor Standards Act (FLSA) and any applicable state wage and hour laws.

FISCAL YEAR. The Authority’s fiscal year is October 1 to September 30.

FULL-TIME POSITION. A budgeted position in which an employee of the Authority regularly works 30 hours or more per workweek.

LAYOFF. The separation of employees from the active work force due to lack of work or funds or to abolishment of a position, by the Board of Directors, or due to organizational changes.

PART-TIME POSITION. A budgeted position in which an employee of the Authority regularly works less than 30 hours per workweek. A part-time employee may be a regular part-time employee or a temporary part-time employee.

PERSONNEL OFFICER. The Chief Executive Officer, the Chief Operating Officer, or his/her designee.

PROBATIONARY PERIOD. A working test period during which an employee is required to demonstrate his/her ability to perform the duties of his/her position and is subject to termination with or without cause. The probationary period of all employees will last for at least six months, and can be extended as provided in these Rules.

PROMOTION. The movement of an employee from one position to another position with a higher maximum rate of pay.

PROMOTIONAL PROBATIONARY PERIOD. A working test period during which a promoted employee is required to demonstrate his/her ability to perform the duties of his/her position. The probationary period of all employees will last for at least six months, and can be extended as provided in these Rules.

PROVISIONAL APPOINTMENT. An appointment of a non-employee who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class on a temporary basis.

REDUCTION IN COMPENSATION. A temporary or permanent lowering of an employee’s compensation.

REGULAR EMPLOYEE. An employee who has completed the probationary period and is occupying a budgeted position established on a continuing basis. A regular employee may be full-time or part-time.

REPRIMAND. A written notification to an employee regarding a censure made as a disciplinary action.

RESIGNATION. The voluntary termination of employment by an employee.

SUPERVISOR. An employee who has authority, direct or indirect, over another by virtue of their rank or job classification.

SUSPENSION. The temporary separation, without pay, from service of an employee for disciplinary purposes.

TEMPORARY EMPLOYEE. An employee employed in a position that is intended to be occupied on less than a year-round basis. Ordinarily, such positions will not be authorized for over six months. Temporary employees may be full-time or part-time. Temporary employees are excluded from the Classified Service, serve at the will of the Appointing Authority, and may be terminated without cause and without hearing or right of appeal. As employees outside the Classified Service, only the following provisions of the Personnel Rules apply:

- A. Article 4 – Nondiscrimination
- B. Article 9 – Pre-employment Requirements
- C. Article 11 – Workweek, Overtime and Premium Pay
- D. Article 15 – Records and Reports
- E. Article 16 – Nepotism and Consensual Relationships Among Employees
- F. Article 17 – Code of Ethics and Conflict of Interest
- G. Article 21 – Separation from Employment
- H. Article 24 – Dress Code
- I. Article 25 – Workplace Safety
- J. Article 27 – Additional Policies

TRANSFER. Change of an employee from one position to another position in the same class, or from one class to another class having the same maximum rate of pay and having similar duties and basic qualifications.

VACANCY. An unfilled budgeted position in the Friant Water Authority.

Y-RATE. A designated salary higher than the established maximum for the position. Employee is held at the designated salary until pay structure adjustment results in a maximum rate for the position that is equal to or greater than the designated salary.

#### **ARTICLE 4. NONDISCRIMINATION**

Section 1. Equal Employment Opportunity. The Authority's policy is to ensure equal employment opportunity for all persons seeking employment or promotion to assure equal employment opportunity based upon ability and fitness to all persons regardless of race, religious creed, color, national origin, ancestry, sex, age, physical or mental disability, medical condition, sexual orientation, marital status, gender identity, gender expression, genetic characteristics or information, military or veteran's status, and any other category protected by federal or state law.

Employees who believe they have experienced any form of employment discrimination are encouraged to report this immediately, using the complaint procedure provided in the Authority's policy prohibiting harassment, discrimination, and retaliation.

Section 2. Policy Against Harassment, Discrimination, and Retaliation. The Authority's policy prohibits unlawful harassment and discrimination based on an employee's race, religious creed, color, national origin, ancestry, sex, age, physical or mental disability, medical condition, sexual orientation, marital status, gender identity, gender expression, genetic characteristics or information, and any other category protected by federal or state law. In addition, Authority policy prohibits retaliation because of the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination or harassment or because of the employee's participation in an employment investigation, proceeding, or hearing. Employees who believe they have been harassed, discriminated against, or retaliated against, should report that conduct to the Authority, and the Authority will investigate those complaints. For more information regarding the policy and complaint procedures, employees should review the Authority's policy against harassment, discrimination, and retaliation for additional information.

Section 3. Disabled Applicants and Employees. The Authority has a commitment to ensure equal opportunities for disabled applicants and Authority employees. Every reasonable effort will be made to provide an accessible work environment for such employees and applicants. Employment practices (*e.g.*, hiring, training, testing, transfer, promotion, compensation, benefits, and discharge) will not discriminate unlawfully against disabled applicants or employees. The Authority provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act ("FEHA") and the Americans with Disabilities Act ("ADA").

- A. Request for Accommodation. An applicant or employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Personnel Officer. The request must identify: a) the job-related functions at issue; and b) the desired accommodation(s). Reasonable accommodation can include, but is not limited to job restructuring, reassignment to a vacant position for which the employee is qualified, and making facilities accessible.
- B. Reasonable Documentation of Disability. Following receipt of the request, the Personnel Officer may require additional information, such as reasonable documentation of the existence of a disability or additional explanation as to the effect of the disability on the employee's ability to perform his/her essential functions, but will not require disclosure of diagnosis or genetic history.
- C. Interactive Process. The Authority will engage in the interactive process, as defined by the FEHA and ADA, to determine whether an applicant or employee is able to perform the essential functions of his/her position. During this process, the Authority will examine potential reasonable accommodations that will make it possible for the employee or applicant to so perform. Such interactive process will include a meeting with the employee or applicant, the Authority, and, if necessary, the employee or applicant's health care provider.
- D. Case-by-Case Determination. The Authority determines, in its sole discretion, whether reasonable accommodations(s) can be made, and the type of reasonable accommodations(s) to provide. The Authority will not provide an accommodation that would pose an undue hardship upon the Authority or that is not required by law. The Authority will inform the employee of any decisions made under this section in writing.
- E. Fitness for Duty Leave. While the Authority is engaged in the interactive process with an employee, the Authority may require that the employee be placed on a fitness for duty leave in accordance with Article 22, Section 16.

## ARTICLE 5. CLASSIFICATION

Section 1. Preparation of Master Grade and Range Schedule. A Master Grade and Range Schedule will be established and maintained by the Board of Directors, applicable to all positions in the Classified Service. The Master Grade and Range Schedule will provide a description for each class of positions, that is, each group of jobs which are sufficiently similar that the same title may be used, the same qualifications required, and the same salary applied with equity. Each such description will define the class, summarize principal duties, and state minimum qualifications directly related to effective performance.

Section 2. Adoption, Amendment and Revision of Master Grade and Range Schedule. The Master Grade and Range Schedule will be adopted by and may be amended from time to time by resolution of the Board of Directors.

Section 3. Allocation of Positions. Following the adoption of the Master Grade and Range Schedule, the Chief Executive Officer will allocate every position in the Classified Service to one of the classes established by the Master Grade and Range Schedule.

Section 4. New Positions. Before filling a newly created position in the Classified Service, the Master Grade and Range Schedule will be amended to provide therefor and an appropriate employment list will be established for such position.

- A. The following procedures should be followed:
  - (1) Recommendations for the creation of a new position must be submitted, in writing, by the Department Head during the individual budget development process to the Chief Executive Officer. Alternatively, the Chief Executive Officer can recommend the creation of a new position.
  - (2) The written recommendation must provide detailed information on the work to be performed and his/her rationale for the creation of a position that is not currently in the Authority's classification system.
  - (3) The Chief Executive Officer will submit the written recommendation to the Human Resources Committee, which will review the recommendation and will issue its findings and recommendations relevant to the recommendation, within 90 days of the receipt of the recommendation for a new position.
- B. Upon completion of the review by the Human Resources Committee, the Chief Executive Officer will submit the recommendation for the new position to the Board of Directors for final approval.
- C. Creation of a new position will be effective with the start of the new fiscal year, unless the needs of the Authority require an alternative effective date.

Section 5. Reclassification. The Master Grade and Range Schedule may be amended from time to time. The assigned duties of positions that have been materially changed by the Authority so as to necessitate reclassification, whether new or already created, will be allocated by the Chief Executive Officer to a more appropriate class. A position is eligible to be audited for possible reclassification if it has not be audited within the previous 12 months and permanent and substantial changes have been made in the assigned duties and responsibilities or the majority (50% or more) of the assigned work that is being performed is not appropriate for the position's current classification. Requests for reclassification may be made as follows:

- A. Recommendations for reclassification of an existing position must be submitted, in writing, to the Chief Executive Officer by the Department Head. Alternatively, the Chief Executive



Officer can recommend the reclassification of an existing position. The recommendation must provide detailed information on the work being performed that justifies the need for a current reclassification to another job class.

- B. The Chief Executive Officer will ensure that a reclassification audit is completed within a reasonable time after receipt of the recommendation for a new classification by the Human Resources Committee.
- C. Based on the audit's analysis and findings, the recommendation may be to sustain the position in its current classification or to reclassify the position to a classification that more properly reflects the work being performed. The Chief Executive Officer will review all reclassification recommendations made by the Human Resources Committee and approve a final course of action, which will include final approval of any reclassification by the Board of Directors.
- D. Within ten days of receipt of a written audit decision, the affected employee(s) may, in writing, submit a request for a review of the decision to the Board of Directors. This request for review must show substantial error or omission on the part of the auditor. The Board of Directors may render a decision on the appeal on the basis of the written appeal material or may interview the involved parties to gain further insight into the specific error or omission.
  - (1) The Board of Directors will have final decision-making authority on all reclassifications.
  - (2) No further appeal or grievance of a decision regarding reclassification may be had.
- E. Reclassifications will be effective on the first of the month following final approval of the reclassification action. Any changes of pay, as a result of the reclassification, will be in accordance with these Rules.
- F. A change in classification of an occupied position will affect the status of the incumbent in the following manner:
  - (1) When a position is moved to a class with the same or higher salary range, the incumbent may retain the same status (i.e. probationary or regular) in the new class that was held in the prior class. The duties should have evolved over a period of time and be basically the same duties and responsibilities as were performed by the incumbent.
  - (2) When a position is reallocated to a class in a related series with a lower salary range, incumbents may choose to retain the position by accepting voluntary demotion or may request a transfer, if available, to another position in the class from which the position was moved. An employee will retain his/her regular or probationary status. If neither of the foregoing is chosen, the normal layoff procedures will be followed.

#### Section 6. Job Descriptions.

- A. The Department Heads will prepare written specifications for each class of positions to be submitted to the Chief Executive Officer for review. The specifications, when approved by the Personnel Officer, will be submitted to the Board of Directors for approval, and when approved will constitute the official job descriptions for the Classified Service, and will indicate the date of approval or last revision.



- B. Each job description will include the class title, a brief description of the scope, nature, and responsibility of the class, a description of the tasks or duties ordinarily performed in the positions allocated to the class; a statement of the minimum qualifications considered necessary for proficient performance of the work, including education, experience, training, knowledge, skills, physical characteristics, and any additional factors considered pertinent. Job descriptions are not restrictive. The job description, will not be construed as an all-inclusive list of tasks performed; or be interpreted as restricting the assignment of related tasks not specifically listed therein; or as limiting the authority of supervisory personnel to assign, direct and control the work of subordinate employees. A Department Head may temporarily assign other related duties and responsibilities or otherwise direct the work of employees.
- C. The Personnel Officer may make non-fundamental changes to existing job descriptions without the approval of the Board of Directors. A fundamental change is one that significantly changes the duties and responsibilities of the existing position such that it can be reasonably considered to be reclassified or reassigned. Examples of non-fundamental changes include: the general summary of duties; location, and qualifications.
- D. Job descriptions for all positions currently in the Classified Service will be made available to employees on request to the Personnel Officer.

## **ARTICLE 6. METHODS OF FILLING VACANCIES.**

Section 1. Notice to Department Head. Whenever a vacancy in the Classified Service is to be filled, the Department Head will suggest to the Personnel Officer how to fill the vacancy.

Section 2. Types of Appointments. All vacancies in the Classified Service will be filled by transfer, reclassification, demotion, reemployment, employment from open-competitive recruitment. In the absence of persons eligible for appointment in these ways, acting appointments may be made in accordance with these Personnel Rules.

### **A. Acting Appointment.**

- (1) Acting appointments may be used to fill positions that are vacant or that are temporarily vacant, such as when an employee is on an extended leave of absence.
- (2) An employee who is assigned to serve an acting appointment in a higher level vacant regular or limited-term position will be appointed on a temporary basis to that class. At any time such employee may request to be reassigned to his/her former class. In such a case, the employee will be reassigned within seven days.
- (3) An employee who is serving an acting appointment in excess of 30 days will receive a salary increase of 5% of his/her base salary during the duration of the acting appointment.
- (4) Upon return from an acting appointment, an employee will have the step status and merit increase eligibility date he/she would have achieved if the employee had remained in the lower class throughout the period of his/her service in the higher class.
- (5) At the end of the employee's assignment to the higher class, the employee will have the right to return to his/her former class and department. An acting appointment may not exceed a period of 12 months.

- B. Authority-Initiated Transfer. The Authority may initiate employee transfers when the transfer is in the best interest of the Authority. Employees who are transferred upon the initiative of the Authority will be required to serve a 6-month probationary period in accordance with Article 10. Upon approval of the Personnel Officer, an employee may be transferred by the Department Head at any time from one position to another position in a comparable class where the salary range is the same, involves the performance of similar duties and requires substantially the same basic qualifications. However, the employee must meet the minimum qualifications established for the position being transferred to. The employee will be notified prior to any transfer. Any employee who is transferred from one position to another position in the same or similar class will be compensated at the same step and salary range the employee received in the previous position. The employee's anniversary date will change to the effective date of the transfer.
- C. Employee-Initiated Transfer. Regular employees who have completed their probationary period may request a transfer to a different position. Employees requesting a transfer must submit a memorandum to the Personnel Officer detailing the request for transfer and reasons for the request. Upon receipt of the transfer request the Personnel Officer will notify the employee's Department Head. Job performance, qualifications, attendance, and other legitimate factors will be evaluated to ensure the most effective use of the employee's capabilities in evaluating the transfer request. Employees transferred to a vacant position at their request will serve a new 12 or 6-month probationary period.

If the transfer involved a change from one department to another, both Department Heads must consent to the transfer unless the Personnel Officer orders the transfer.

- D. Interactive Process Transfer. As part of the interactive process and in accordance with state and federal law, an employee who is unable to perform the essential functions of his/her present classification may be placed in a vacancy in another class that does not result in a promotion if the employee can perform the essential functions of the vacant position, with or without reasonable accommodation. The disabled employee does not have to be on an employment list for the class to which the appointment is being made. Employees who are transferred to a lower-grade position as a result of the interactive process may have their salary reduced accordingly and will receive the designated salary for the transferred position. At-Will Employees are subject to this provision.
- E. Promotion. It is the policy of the Authority to fill authorized vacant positions based on merit. The Authority has the discretion to fill vacancies in the Classified Service by promotion from within the Classified Service, after a promotional recruitment has been given and a promotional list established, or by an open recruitment.

Qualification standards used in promotion will be at least equal to those standards applied in the new-hire process and evaluation methods will be reasonable, applied with fairness and equity to all candidates, and developed with the intent of obtaining the highest degree of validity and reliability possible under the specific circumstances. Minimum qualifications may be ascertained from job analysis, application forms, tests, examinations, interviews, and/or performance evaluations.

All full-time, regular employees meeting the qualifications standard of a higher-grade position under the same or different job classification may be considered for promotion from within the Classified Service. Probationary employees meeting the qualifications standard of a higher-grade position under the same or different job classification may be considered for promotion by open examination.

Employees interested in promotion to a vacant position for which they are qualified must submit an employment application to the Personnel Officer. Procedures to apply for promotion are governed by Articles 6, 7, and 8.

- F. Demotion. In consultation with the Personnel Officer, the Chief Executive Officer or Department Head may voluntarily or involuntarily demote an employee. No employee will be demoted to a position for which he/she does not possess the minimum qualifications. Disciplinary demotion action will be in accordance with Article 18. Any demotion taken in lieu of layoff will be in accordance with Article 20.
- (1) Involuntary demotion. An employee may be involuntarily demoted for any of the following reasons:
    - (a) If an employee's job-related performance is not in accordance with the standards of his/her position.
    - (b) For disciplinary purposes (see Article 18).
  - (2) Voluntary demotion. An employee who possesses the minimum qualifications, may request a voluntary demotion to a lower position. An employee requesting a voluntary demotion will submit a memorandum to his/her Department Head requesting a voluntary demotion and detailing the reasons for the request. Upon receipt of the request for voluntary demotion, the Department Head will notify the Personnel Officer. If the request for voluntary demotion involves a change from one department to another, both Department Heads must consent to the demotion unless the Personnel Officer orders the demotion.
  - (3) Effect of demotion. Demoted employees are required to serve a 12 or 6-month probationary period in accordance with Article 10. The employee's Anniversary Date will change to the effective date of the demotion. Demoted employees may have their salary reduced accordingly to the appropriate salary range, or may be y-rated. Salary determinations for demoted employees are solely within the discretion of the Personnel Officer.
- G. Reemployment. An employee may be appointed from a reemployment list following layoff in accordance with Article 20 or when the employee has failed a promotional probationary period in accordance with Article 10.

Section 3. Offer of Employment. Only the Appointing Authority may extend offers of employment to selected candidates, with the advanced approval of the Chief Executive Officer. Employment offers for all positions will be made in writing and will include starting salary on an hourly, weekly or monthly basis. An employment offer made in terms of annual salary does not imply a yearly contract.

## **ARTICLE 7. APPLICATIONS AND APPLICANTS**

Section 1. Announcement. All examinations for classes in the Classified Service will be publicized by posting announcements on official bulletin boards, on the Authority's official website, and by such other methods as the Personnel Officer deems advisable. The announcements may specify the title and pay of the class for which the examination is announced; the nature of the work to be performed; the preparation desirable for the performance of the work of the class; the manner of making applications; and other information deemed pertinent by the Personnel Officer.

Section 2. Application Forms. Each person participating in a scheduled selection process for employment may be required to complete an official application form for that recruitment, in the sole discretion of the

Personnel Officer. If required to complete a written application, each applicant must sign the application form certifying that all statements are correct. Should an applicant be hired, and should it later be found that the applicant made false or misleading statements on the application, disciplinary action up to and including dismissal may be imposed. In addition, persons applying for positions must comply with the following conditions:

- A. Meet the general conditions pertaining to filing applications for positions according to these Personnel Rules;
- B. Meet the specific requirements as shown on the announcement for a particular position;
- C. Meet the requirements for the lawful right to work in the United States or United States citizenship when applying for Authority positions; and
- D. Be willing and able to accept the employment in the present vacant position or a future similar vacant position, if employment were offered.

Names of persons applying for Authority positions or the evaluation of their participation in any selection process will not be made public. Applications will be accepted when recruitment has begun for a position.

Section 3. Submitting Applications. If required by the Personnel Officer, applications must be submitted as prescribed on the job announcement. Application forms may require information covering training, experience, and other pertinent information, and may include certificates verifying such information. The person applying must sign the application. Applications unsigned by the applicant are considered incomplete, and will not be accepted. The Personnel Officer must receive completed applications no later than the date and time published as the final filing date.

Section 4. Incomplete Applications. Applications lacking information deemed material by the Personnel Officer may be returned to the applicant with notice to amend provided adequate time exists before the final filing date. Incomplete applications received at the end of the filing period will not be given consideration for Authority employment.

Section 5. Disqualification. The Personnel Officer may eliminate from the selection process, remove from the eligibility list, or refuse to certify for the position, the name of any person:

- A. Who does not meet the minimum qualifications established for the class or position to which they seek appointment;
- B. Who has made a false statement, misrepresentation, or omission of material fact, or actual or attempted deception, fraud or misconduct in connection with his/her application;
- C. Who has failed to submit a complete application within the prescribed time limit;
- D. Who has directly or indirectly obtained information regarding recruitments to which applicants are not entitled;
- E. Who has been convicted, including pleas of guilty and nolo contendere, of any felony or misdemeanor, which was of such a nature as to reflect adversely and substantially on the applicant's ability to perform the duties of the position, subject to the limitations provided in Article 9, Section 1. The Personnel Officer may disregard such convictions of felonies or misdemeanors if it is found and determined by the Personnel Officer that mitigating circumstances exist. In making such determination, the Personnel Officer may consider the classification, including sensitivity, to which the person is applying or being certified and whether the classification is unrelated to the conviction; the nature and seriousness of

the offense; the circumstances surrounding the offense; the length of time elapsed since the conviction; the age of the person at the time of conviction; the presence or absence of rehabilitation or efforts at rehabilitation; and contributing social or environmental conditions.

- F. Who has otherwise violated any provision of these Personnel Rules.

In addition, applicants with the least desirable background or qualifications among a large number of applicants may be denied further participation in the selection process through an evaluation of their qualifications, thus providing a reasonable number of the best qualified candidates for consideration.

Applicants disqualified from further participation in the selection process will be promptly notified to permit submission of additional information provided that the time limit for receiving applications has not expired. Notice will be mailed to the last known address; it will be the applicant's responsibility to keep his/her current address on file. Whenever an application is rejected, the Personnel Officer will mail notice of such rejection to the applicant.

Section 6. Application Disposition. Completed application forms become the property of the Authority. They will not be returned to the individual applicant. The Authority may destroy applications filed through the selection process in accordance with the Authority's document retention policy.

## **ARTICLE 8. RECRUITMENTS**

Section 1. Nature and Types of Examination. The selection techniques used in the examination process will be impartial, be of a practical nature, and relate to those subjects which, in the opinion of the Personnel Officer, fairly measure the relative capacities of the applicants to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations will consist of one or more selection techniques that will test fairly the qualifications of applicants such as, but not limited to, personal interviews, achievement and aptitude tests, other written tests, performance tests, physical agility tests, evaluation of daily work performance, work samples, post-conditional offer criminal background checks, medical tests, experience, or any combination of these or other tests. The Personnel Officer will ensure that reasonable accommodations are made in examinations for persons with disabilities under the ADA and/or FEHA, and other applicable laws, when needed. All criminal background checks and medical examinations (including drug tests) will only be administered after the conclusion of all other examinations, except the probationary period, and after a conditional offer of employment has been made by the Authority. Conditional offers of employment are made contingent upon passing these criminal background checks and medical examination, however, the Authority will make reasonable accommodations of any disabled individual as required by law.

- A. Promotional Recruitments. Promotional recruitments may be conducted whenever, in the opinion of the Personnel Officer, the needs of the service require such an examination. Promotional recruitments may include any of the selection techniques mentioned in Section 1, or any combination of them. Only regular employees who meet the requirements set forth in the promotional recruitment announcements may compete in promotional recruitments.
- B. Open-Competitive Recruitments. Open-competitive recruitments may be conducted whenever, in the opinion of the Personnel Officer, the needs of the service require such an examination. Open-competitive recruitments may include any of the selection techniques mentioned in Section 1, or any combination of them.

Section 2. Conduct of Recruitment. The Chief Executive Officer may contract with any competent agency or individual for the preparing and/or administering of recruitments. In the absence of such a contract, the Chief Executive Officer will see that such duties are performed. Selection material will be prepared under the direction of the Personnel Officer. The Personnel Officer may use examinations or recruitments

prepared by the contracted agencies or individuals when deemed appropriate. Qualified employees may assist in the development and administration of the selection process if requested by the Personnel Officer.

Section 3. Scoring Recruitments and Qualifying Scores. A candidate's score in a given examination/recruitment will be the average of his/her scores on each competitive part of the examination/recruitment, weighted as shown in the examination/recruitment announcement. Failure in one part of the examination/recruitment will be grounds for declaring such an applicant as having failed in the entire examination/recruitment or as being disqualified for subsequent parts of an examination/recruitment. As part of an examination/recruitment, the Personnel Officer may, at his/her discretion, include tests that are qualifying only.

Section 4. Notice of Recruitment Results. Applicants will be notified in writing concerning the results of their participation in the selection process, but applicants will not be advised of any score received, if applicable. The notification will indicate whether or not the applicant has been selected for employment.

Section 5. Record. The Authority will only retain an applicant's application and will not retain any other documentation regarding the recruitment process. The records will be maintained by the Authority for the period defined in the Authority's Record Retention Policy following the close of the selection process.

## **ARTICLE 9. PRE-EMPLOYMENT REQUIREMENTS**

Section 1. Criminal Conviction History. The Authority will not ask any applicant for employment to disclose, through any written form or verbally, at any time, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pre-trial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, and 1203.45 of the Penal Code.

- A. Unless otherwise required by law, the Authority will not ask an applicant for employment to disclose, verbally or in writing, information concerning the conviction history of the applicant, until the Authority has determined that the applicant has received a conditional offer of employment, The job announcement for the position in question will advise whether a lawful exception to this provision applies.
- B. Following a conditional offer of employment, prospective employees may be required to complete a criminal conviction history and background screening for review by the Authority, as part of the employment process.

Section 2. Fingerprints and Background Check. Following a conditional offer of employment, and as a condition of employment, the Personnel Officer may require a person seeking employment by the Authority to be fingerprinted and/or to undergo a background check prior to beginning employment. Refusal of an employee to be fingerprinted, failure to report for fingerprinting, or failure to provide such information as is necessary to conduct a background check will be sufficient cause for disqualification for employment or dismissal from employment. All employees may have their fingerprints submitted for clearance through the California Department of Justice and other agencies as deemed appropriate. A background investigation may include, but is not limited to reference checks, employment history, criminal history, and public records. When the Authority conducts such an investigation, it will comply with all requirements of applicable state and federal laws.

Section 3. Medical Examination. Following a conditional offer of employment, prospective employees may be required to complete a job related pre-employment medical examination. The Authority may require that employees take a psychological and/or a medical examination, as it deems necessary in order to determine employees to be mentally and physically capable of performing the essential functions of the job. Conditional offers of employment are made contingent upon passing this medical examination, however, the Authority will make reasonable accommodations to the special needs of any disabled individual as



required by law. A licensed health care provider chosen by the Authority will perform such examination without cost to the prospective employee. The prospective employee will be required to complete a medical history questionnaire and a medical records release as necessary to facilitate the examination. The health care provider will indicate the employee's fitness for employment on the examination form. In the event the examination is not completed prior to the employee's scheduled start date, only a temporary appointment may be made. Probationary appointment will be contingent on a satisfactory examination.

Depending on the essential functions of a position, a medical examination may be required for:

- A. Applicants who have received a conditional offer of employment; or
- B. Employees seeking a transfer from one position requiring general physical abilities to another position requiring physical abilities of a more different nature.

The results of all medical examinations will be kept confidential. Examination results for newly hired employees and employees transferring to another position will be kept in the employee's confidential medical file. No employee will hold any position in which the employee is not able to perform the essential functions of the job, with or without reasonable accommodation.

Section 4. Driver License and Driving Record. Employees who are required to drive as a part of their job are required to possess a valid California driver license and maintain a satisfactory driving record acceptable to the Appointing Authority as a condition of employment. The Authority will, from time to time, obtain a copy of employee driving records from the DMV where permitted by law. Employees must immediately report to the Personnel Officer any changes in driving privileges. Failure to do so may result in disciplinary action up to and including dismissal.

Section 5. Employment Oath. All employees of the Authority must complete and sign the Oath or Affirmation of Allegiance for Public Officers and Employees on the first day of employment in accordance with Article XX, Section 3 of the Constitution of the State of California. A signed copy will be included in the employee's personnel file.

Section 6. Identification Cards. Employee identification cards may be issued by the Human Resources Office to employees of the Authority. Employee identification cards are to be used by employees in conducting business on behalf of the Authority. Employee identification cards are the property of the Authority and must be surrendered to the Authority upon demand or separation from employment. Employees will be required to immediately report lost or stolen identification cards to the Personnel Officer.

Section 7. Keys and Other Authority Property. Keys to Authority facilities will be issued to employees so designated by the Chief Operating Officer. Keys are the property of the Authority and must be surrendered to the Authority upon demand or upon separation from employment. Employees are required to immediately report lost or stolen keys to the employee's supervisor and Department Head. Employees may not copy keys or lend keys to other persons without the approval of the Chief Operating Officer. Other property issued to the employee belonging to the Authority must be surrendered to the Authority upon demand or upon separation from employment.

## **ARTICLE 10. PROBATIONARY PERIOD**

Section 1. Objective of Probationary Period. The probationary period will be regarded as a part of the selection process and will be used for closely observing the employee's work, to determine if he/she can successfully perform the assigned duties of his/her position and adhere to Authority rules and policies, and to help ensure the employee effectively adjusts to his/her position.

Section 2. Length of Probationary Period.

- A. Initial Probationary Period. All initial appointments for non-supervisory positions will be subject to a probationary period of 6-months, unless the employee is notified in writing of an extension in accordance with these Personnel Rules. Supervisory positions will be subject to an initial probationary period of 12 or 6-months, at the discretion of the Authority.
- B. Promotional Probationary Period. All promotional appointments for non-supervisory positions will be subject to a promotional probationary period of 6-months, unless the employee is notified in writing of an extension in accordance with these Personnel Rules. Supervisory positions will be subject to a promotional probationary period of 12 or 6-months, at the discretion of the Authority.

Section 3. Extension of Probationary Period. With the approval of the Personnel Officer, the Department Head may extend an employee's probationary period up to a maximum of six months.

In addition, the use of any leave of absence in excess of 15 consecutive days will cause the employee's probationary period to be extended by the length of the leave(s) of absence.

Section 4. Rejection of Probationer. During the initial probationary period, an employee is employed at the will of the Authority. As such, a probationary employee may be terminated at any time by the Personnel Officer, with or without cause, and with or without advance notice. Notification of termination by the Personnel Officer will be served on the probationer. The employee will have no right of appeal of his/her failure to pass probation and of the decision to terminate employment. This Section does not apply to promotional appointments.

Section 5. Rejection Following Promotion. A promoted employee who does not successfully complete a promotional probationary period will be restored to the same or similar position in the same class from which promoted, unless the employee is dismissed for cause, as provided for in Article 18. If the employee's prior position is not vacant, the employee in the prior position will be terminated, unless the employee has successfully completed his/her probationary period. The terminated employee will be placed on a reemployment list.

Section 6. Probationary Period Following Demotion, Transfer, or Reemployment.

- A. Demotion. A new six month probationary period will be required following demotion, unless waived by the Personnel Officer. When an employee demotes from one department to another department, a new probationary period will be served in the new department.
- B. Transfer. A new six month probationary period will be required following transfer, unless waived by the Personnel Officer. When an employee transfers from one department to another department, a new probationary period will be served in the new department.
- C. Reemployment. Persons appointed to positions by reemployment must serve a new probationary period, unless the appointment is to the same class in the same department where a probationary period has been previously successfully completed.

**ARTICLE 11. WORKWEEK, OVERTIME AND PREMIUM PAY**

Section 1. Timekeeping.

- A. All time records, including time sheets, represent legal documents that are used to accurately record working time and to compensate employees properly. All employees must record accurately all time worked on the day that it actually occurs.
- B. Supervisors are responsible for monitoring the following:



- (1) Start time for each workday;
  - (2) Start time for each meal period;
  - (3) End time for each meal period;
  - (4) End time for each workday;
  - (5) Whether a meal period is taken (if no meal period is taken, this must be stated);
  - (6) All actual time taken as paid leave; and
  - (7) Any additional time during which work is performed, including work performed outside the regular shift, as set forth in Section 2.D below.
- C. To ensure the accuracy of all time records, each employee must sign a statement attesting that the time and hours recorded accurately and fully identify all time worked during the pay period, whether authorized or unauthorized, and that all meal periods to which the employee is entitled have been provided. Each employee must further acknowledge that he/she has not violated any provision of this Article during the pay period, including but not limited to working unauthorized overtime or working during a meal period without authorization.
- D. Employees responsible for completing time sheets must ensure that the time sheets are submitted to the applicable Supervisor on the day designated by the Authority. Supervisors will review and address potential issues in time sheets as established by Authority Policy or these Rules. Supervisors will sign each time sheet, attesting to the completion of such review and that the time recorded reflects all work performed by the employee of which the Supervisor was reasonably aware.
- E. Under no circumstances may a Supervisor or employee sign a time sheet on behalf of another employee.

Section 2. Hours Worked.

A. In General.

- (1) Only those hours that are actually worked by non-exempt employees will constitute "hours worked" for purposes of determining entitlement to overtime pay under applicable state and federal wage and hour laws and these rules.
- (2) Time worked for which employees receive additional compensation will constitute hours worked to the extent that it represents time actually worked and does not constitute overtime as defined in these Rules.
- (3) Non-exempt employees will be compensated for travel time, attendance at training or meetings, and other similar time where required under applicable state and federal wage and hour laws.

B. Meal Periods.

- (1) Non-exempt employees are entitled to unpaid meal periods during which they will be entirely relieved of responsibilities and restrictions. Such time will not constitute hours worked.

- (2) Supervisors will schedule meal periods to ensure appropriate coverage.
- (3) All employees must take reasonable measures wherever feasible to avoid the need for work to be performed during meal periods. Where required, time spent on such work must be kept to a minimum, and may only occur with the prior written authorization of a Supervisor. Non-exempt employees who work during their meal periods will be paid for time worked.

C. Rest Periods.

- (1) Non-exempt employees are entitled to two 15-minute paid rest periods during each continuous period of work over 3.5 hours. Meal breaks will be included in the calculation of "continuous period." Such time will constitute hours worked. Employees must remain on premises or at their job site, as applicable, during any paid rest period.
- (2) Supervisors will schedule rest periods to ensure appropriate coverage.

D. Lactation Breaks.

- (1) The Authority will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child, in accordance with and to the extent required by applicable law. The break time, if possible, must run concurrently with rest and meal periods already provided to the employee. If the break time cannot run concurrently with rest and meal periods already provided to the employee, the break time will be unpaid, subject to applicable law.
- (2) Employees should advise their Supervisor if they are in need of break time and/or an area for this purpose.

E. Work Performed Outside Regular Shift.

- (1) Employees may not perform work outside of their regularly scheduled shifts unless requested to do so by a Supervisor or with advance authorization from a Supervisor. This requirement applies to, but is not limited to:
  - (a) Work performed before the start of the shift;
  - (b) Work performed during meal periods;
  - (c) Work performed after the end of the shift; and
  - (d) Other work performed "off the clock" including work performed at home.
- (2) All employees must take reasonable measures wherever feasible to avoid the need for work to be performed outside of their regularly scheduled shifts. Where required, time spent on such work will be kept to a minimum, and may only occur with the prior written authorization of a Supervisor.
- (3) Employees will not perform work outside of their regularly scheduled shifts for any of the following purposes:
  - (a) To earn supplemental benefits; or

- (b) To serve out probationary periods.
- (4) Supervisors will adhere to the following guidelines in requesting or assigning work outside an employee's regularly scheduled shift:
  - (a) An employee who may be required to perform work outside the regular shift will be notified of the apparent need for such work as soon as practicable prior to when the work is expected to begin.
  - (b) When practicable, opportunities will be made available on an equal basis to all employees capable of performing the work.

Section 3. Overtime.

A. Work Schedules and Workweek. Department Heads have the discretion to assign employees to work any one of the following two schedules. Except in the case of an emergency, Department Heads must provide employees with at least 30 days' notice before changing an employee's work schedule. If the needs of the Authority require that a position be assigned to work a different work schedule or have a different workweek than the three options set forth in this Section, the Personnel Officer, in consultation with the Department Head, may designate the work schedule and workweek for employees in that position in writing.

(1) Alternative Work Schedule and Workweek.

- (a) Employees in the Operations Department may be assigned to work an alternate work schedule. The alternate work schedule consists of ten consecutive scheduled days of work follow by four consecutive scheduled days of rest. Each work day will consist of eight regularly scheduled hours of work. At the direction of the Personnel Officer, some employees may be required to work a different schedule due to the requirements of their job classifications or department responsibilities. Any such variation to the alternative work schedule must be memorialized in writing.
- (b) The workweek for employees on the ALTERNATIVE work schedule will be seven consecutive days, starting at 12:01 a.m. on Sunday and ending at midnight on the following Saturday. Time worked by non-exempt employees in excess of 8 hours in a workday or 40 hours in a workweek will constitute overtime.

(2) Standard Work Schedule and Workweek.

- (a) Employees who are assigned to work a standard work schedule will work Monday through Friday. Each work day will consist of eight regularly scheduled hours of work. At the direction of the Personnel Officer, some employees may be required to work a different schedule due to the requirements of their job classifications or department responsibilities. Any such variation to the standard work schedule must be memorialized in writing.
- (b) The workweek for employees on the standard work schedule will be seven consecutive days, starting at 12:01 a.m. on Sunday and ending at midnight on the following Saturday. Time worked by non-exempt employees in

excess of 8 hours in a workday or 40 hours in a workweek will constitute overtime.

B. Payment for Overtime.

(1) In General.

- (a) Exempt and non-exempt status is determined by the Personnel Officer in accordance with applicable state and federal law.
- (b) Overtime will not be authorized without prior approval by the responsible Department Head.
- (c) A non-exempt employee will be paid for overtime in accordance with applicable state and federal law and in accordance with this Article.

(2) Payment for Weekly Overtime. Overtime will be paid at 1.5 times the employee's regular rate of pay.

- (a) Full-time employees who are regularly scheduled to work 40 hours in a workweek, will accrue overtime for all time worked in excess of 40 hours in a workweek.
- (b) All part-time employees will accrue overtime for all time worked in excess of 40 hours in a workweek.

(3) Payment for Daily Overtime.

- (a) Full-time employees who are regularly scheduled to work eight hours in a work day, will accrue overtime for all work performed in excess of his/her regularly scheduled shift.
- (b) Full-time employees who are regularly scheduled to work ten consecutive days followed by four consecutive scheduled rest days will accrue overtime for all time worked in excess of 8 hours in a workday.

C. Call Backs and Off-Duty Work. When an employee is called in to work during unscheduled working hours or when emergency conditions require reporting to work during unscheduled working hours, the employee will be paid for actual time worked at the employee's regular rate of pay. Employees who work in excess of 8 hours in a workday or 40 hours in a workweek will accrue overtime as provided in this section.

(1) Call Back with Physical Response. When an employee is called-in to work after leaving the premises at the end of his/her scheduled workday, and before the beginning of his/her next scheduled workday, the employee will be paid for actual time worked at the regular rate of pay or a minimum of two hours pay, whichever is the greater, in addition to any accrued overtime.

(2) Call Back with Remote Response. Any employee who is not required to physically return to a work site should record all time spent on phone calls or performing other work from a remote location (i.e. home or other off-duty location, including, but not limited to responding to SCADA notifications/alarms, etc.) as hours worked on his/her timesheet. The employee will be paid for actual time worked at the regular rate of pay, in addition to any accrued overtime.

- (a) No Routine Work. Employees who are required to respond during unscheduled working hours will only be compensated for performing immediate and necessary work in response to the call back. Employees will not be compensated for performing routine tasks that are normally performed during regularly scheduled hours or are not immediately required as a direct result of the call back, including, but not limited to routine emails, phone calls, or recordkeeping,
- (3) No Standby Pay. Employees are not designated on standby status and will not be compensated for standby pay. Employees are only paid for work actually performed.
- D. Compensatory Time Off. Only regular, full time, nonexempt employees are eligible to earn compensatory time off. Compensatory time off, like overtime, is earned at time and one half for each hour worked in excess of 40 hours per workweek for those regular, full time employees regularly scheduled to work 40 hours per workweek, or at time and one half for each hour worked in excess of 8 hours per work day for those regular, full time employees who are regularly scheduled to work 8 hours in a work day. Employees must designate on their time sheets whether they elect to receive payment for overtime, as set forth in subsection (B) above, or accrue compensatory time off. Employees who request to use compensatory time off will be permitted to use the compensatory time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the Authority as determined by the Department Head. All compensatory time off earned, but not used, will be paid as compensation to the employee on September 30 of each year.

## **ARTICLE 12. COMPENSATION**

Section 1. Compensation for Employees. Employees will receive compensation at the semimonthly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

Section 2. Pay for New Employees.

- A. A new employee will be paid at the first step of the salary range in effect for the particular class in which the new employee is hired except as provided in Section 2.B. of this Article.
- B. The Personnel Officer may authorize the appointment of an employee at a step higher than the first step of the salary range. Such an appointment will be made only when the Personnel Officer makes a determination that there is a direct and measurable benefit to the Authority from such an appointment and makes a determination that the applicant's previous training and experience enables him/her to make a greater contribution than a less experienced employee. The Personnel Officer may not authorize a salary that exceeds the established salary range.

Section 3. Step Increase Adjustments. Advancement within a salary range will not be automatic, but will be based upon job performance, and will be granted based upon the recommendation of the employee's Department Head and approval of the Personnel Officer. Employees will be considered for step increases each year in conjunction with their performance evaluations, and in accordance with the following:

- A. Timing of Step Increase Adjustments. If awarded, step increase adjustments will be effective on the employee's anniversary date, unless otherwise provided in this Section.
  - (1) The granting of a leave of absence without pay of more than 15 consecutive days in a fiscal year will cause the employee's eligibility for a step increase for that fiscal

year to be extended the number of days he/she was on such leave, except as otherwise required by law.

- (2) Should an employee's probationary period be extended, the employee's eligibility for a step increase for that fiscal year will be extended the number of days he/she is on probation and performance evaluations may be delayed. .

Section 4. Salary on Promotion. An employee who is promoted will be placed in a position having potential for higher compensation by reason of a higher maximum rate than the employee's current position. A promotion does not automatically result in a higher salary. The Personnel Officer will determine at what step to place the promoted employee in the new position's salary range.

Section 5. Salary on Transfer. An employee who is transferred from one class to another class having the same salary range will be compensated at the same step in the salary range as he/she previously received.

Section 6. Salary on Demotion. An employee who is demoted will be placed in a position having potential for lower compensation by reason of a lower maximum rate than the employee's current position. A demotion does not automatically result in a lower salary. The Personnel Officer will determine at what step to place the demoted employee in the new position's salary range.

Section 7. Salary on Position Reclassification. When an employee's position is reclassified and the employee is appointed to the new position, his/her salary will be determined as follows:

- A. If the position is reclassified to a class with a higher maximum salary than the previous class, his/her salary will be set at least at the nearest higher step in the higher salary range.
- B. If the employee's current salary exceeds the maximum salary of the new class, the salary of the employee may be designated as a Y-Rate and will not change during continuous regular service until the maximum of the salary range to which the class is assigned exceeds the salary of the employee. The Chief Executive Officer will have the sole discretion to designate an employee's salary as a Y-Rate.

Section 8. Salary Upon Reemployment. An employee reemployed after layoff will be compensated according to the classification to which the employee is assigned. If the employee is reassigned to the classification held at the time of layoff, the employee may, at the request of the Department Head and approval of Personnel Officer, be appointed to the same step which was held at the time of the employee's termination.

Section 9. Improper Deductions from Salary.

- A. The Authority prohibits all Supervisors and Department Heads from making any improper deductions from the salaries of exempt employees. The Authority does not condone deductions that violate applicable state or federal wage and hour laws.
- B. An exempt employee who believes that an improper deduction has been made to his/her salary should immediately report this information to the Personnel Officer.
- C. The Authority will promptly investigate reports of improper deductions. If the Authority determines that an improper deduction has occurred, the employee will be promptly reimbursed for the improperly deducted amount.
- D. The Authority is committed to ensuring that Supervisors or Department Heads who are found to have made improper deductions do not continue doing so. To this end, Supervisors or Department Heads will be subject to discipline for an initial improper

deduction. In addition, failure by a Supervisor or Department Head to discontinue such improper deductions will be subject to further discipline, up to and including dismissal.

#### Section 10. Merit Award Program Policy

- A. Purpose. The purpose of the Authority's Merit Award Program Policy ("policy") is to recognize and reward individual and group achievements and to acknowledge contributions that lead to results and success. The policy's goal is to encourage employee excellence by providing monetary awards and incentives, including, but not limited to, one-time awards and salary or step increases or adjustments for special acts, good performance, or other recognized accomplishments.
- B. Applicability. Unless otherwise indicated, this policy covers and applies to all employees of the Authority. Volunteers are not eligible to participate in this policy. All determinations under this policy will be made by the Chief Executive Officer ("CEO") or his/her designee.
- C. Types of Merit Awards.
  - (1) Special Awards.
  - (2) Merit Increase Adjustments.
- D. Special Awards.
  - (1) Definition. Special Awards are used to recognize successful accomplishment or performance in a one-time occurrence, event, or project, for multiple achievements over a limited duration or period of time, or for exceptional performance throughout the calendar year. Recognized accomplishments may also include activities outside the scope of an employee's normal duties. Examples of accomplishments that may warrant a Special Award include, but are not limited to: producing high-quality work under deadlines; performing unanticipated or unexpected assignments in addition to normal duties; or displaying initiative or creativity in addressing or solving problems.
  - (2) Eligibility. All employees are eligible to receive Special Awards.
  - (3) Determination. The CEO will determine whether an eligible employee will receive a Special Award. There is no guarantee that an employee will receive a Special Award.
  - (4) Amount. Special Awards can range up to 5% percent of an employee's annual base salary (or equivalent based on employee's current hourly rate and work schedule). No Special Award will be provided in an amount that exceeds the maximum amount permitted. Eligible employees may only receive up to two Special Awards per year.
  - (5) Timing of Payment. If awarded, Special Awards will be provided and be effective on the employee's next pay period after the determination by the CEO, unless otherwise provided in this policy.
- E. Merit Increase Adjustments.
  - (1) Definition. Merit Increase Adjustments are based on an employee's outstanding work, exceptional performance, or recognized improvement over a prolonged



duration or period of time. Generally, marginal performance will not qualify an employee for a Merit Increase Adjustment.

- (2) Eligibility. All employees are eligible to receive Merit Increase Adjustments.
  - (3) Determination. The CEO will determine whether an eligible employee will receive a Merit Increase Adjustment. There is no guarantee that an employee will receive a Merit Increase Adjustment.
  - (4) Amount.
    - (a) Salary Steps Increase. Employees in positions that have established salary steps identified within an established rate range may have their current salary step increased, not to exceed the maximum step established for the position.
    - (b) Flat Rate Increase. Employees in positions that have a flat rate salary fixed at a point within an established rate range may have their current flat rate salary increased, not to exceed the maximum rate amount established for the position.
  - (5) Timing of Adjustments. If awarded, Merit Increase Adjustments will be effective on the employee's anniversary date, unless otherwise provided in this policy.
- F. Multiple Merit Awards. Eligible employees may receive more than one type of award per year as long as each award does not exceed the maximum amount for such award. For example, an employee may receive up to two Special Awards per year and also receive a Merit Increase Adjustment within their anniversary year. Additionally, an employee can be recognized for the same accomplishment by receiving two different types of merit awards, provided that the combined value of both awards is commensurate with the accomplishment.
- G. Merit Award Nominations. Supervisors may recommend an employee for a merit award by submitting a merit award nomination form or a written nomination to the employee's Department Head or to the CEO. The form or writing should include the nominated employee's information, the specific accomplishment(s), acknowledgement, or recognition, the recommended type of award, and the recommended award amount, whenever practicable.
- H. Approval of Merit Awards. The CEO must approve and document all merit awards in writing. The writing should include the receiving employee's information, the specific accomplishment, acknowledgement, or recognition, the type of award, the amount, and date of payment, whenever practicable.
- I. No Property Right. All merit awards are purely discretionary and are separate from an employee's normal compensation. Merit awards are not considered payment for work performed or conducted in the normal course of employment, but are monetary incentives or bonuses. No employee has a right to receive a merit award, and no such rights are created by this policy. An employee's participation in this policy is at the sole discretion of the CEO and can be revoked at any time.
- J. No Appeal or Grievance. All determinations regarding merit awards, including eligibility, amount, or timing of payment is at the sole discretion of the CEO. There will be no appeals or grievances and all decisions are final.



## ARTICLE 13. BENEFITS

The Authority provides various benefits and programs for eligible employees, including, but not limited to, health, dental, and vision insurance, life and supplemental insurance, retirement plans (deferred tax and pension plans), and education assistance incentives and programs. Eligible employees will be subject to the specific terms and conditions for the selected and enrolled benefits plans and programs, which may be subject to change.

## ARTICLE 14. PERFORMANCE EVALUATIONS

Section 1. In General. The Authority will maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings will be prepared and recorded in the employee's personnel file for all regular employees at least once each year. An employee can be evaluated more frequently if done in accordance with these Rules. The purpose of a performance evaluation is to set goals for the employee, to evaluate an employee's work performance, and to provide a mechanism for the supervisor to communicate expectations for the employee. The performance evaluation may be used to promote or identify training for an employee or as a basis for disciplinary action. However, a performance evaluation is not, itself, disciplinary in nature. Only job-related factors will be used to evaluate an employee's work performance. Department Heads are responsible for the timely evaluation of employees in their departments, and they may solicit the assistance of lower level supervisors in the preparation of the performance evaluation. The Chief Operating Officer will review all performance evaluations before they are provided to employees.

Section 2. Relation to Step Increases. An employee's performance evaluation provides the mechanism for communicating whether the employee will receive a step increase each year, and the reasons that the step increase is granted or denied. The performance evaluation of each employee is due on or before the employee's anniversary date, unless the evaluation has been postponed in accordance with this Article.

Section 3. Performance Evaluations for Probationary Employees.

- A. During the probationary period, the probationary employee (including employees serving a probationary period due to promotion, transfer, demotion, or reemployment) will receive feedback on their performance. Probationary employees subject to a 6-month probationary period will receive informal evaluations after two and four months, and a formal written evaluation after six months. Probationary employees subject to a 12-month probationary period will receive informal evaluations after two, four, eight and ten months, and formal written evaluations after six and twelve months.
- B. The use of any leave of absence in excess of 15 consecutive days will cause the employee's probationary period to be extended by the length of the leave(s) of absence, and the dates of the probationary period evaluations will be similarly extended.
- C. The Supervisor will make certain that the probationary employee or promotional appointee's 12 or 6-month evaluation is completed prior to the end of his/her probationary period, and the evaluating Department Head will make one of the following recommendations to the Personnel Officer.
  - (1) The employee has successfully completed probation and will be retained;
  - (2) The employee's probationary period will be extended, and the amount of time (up to six months) that the Department Head recommends the probationary period be extended by; or

(3) The employee has failed to successfully complete probation and will be released from probation and their employment with the Authority will end.

D. The Personnel Officer will make the final determination regarding each probationary employee.

Section 4. Regular Full-Time Employees. Every employee will be evaluated at least every 12 months by the employee's anniversary date, unless the evaluation period is extended under this Article.

Section 5. Additional Evaluations. An employee, whether regular or probationary, may be evaluated more frequently in the discretion of his/her Department Head. Additional evaluations may include, but are not limited to performance improvement plans.

Section 6. Employee Response. The Supervisor will discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file. The employee will have the right to file a written response, which will be attached to the evaluation and will be placed in the employee's personnel file. The employee is not permitted to file an appeal or a grievance because of a performance evaluation.

Section 7. Maintenance of Performance Evaluation. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment, will be given to the employee.

## **ARTICLE 15. RECORDS AND REPORTS**

Section 1. Maintenance of Personnel Files. The Personnel Officer will maintain a personnel record for each employee in the service of the Authority showing the name, title of position held, the department to which assigned, salary, changes in employment status, and such other information as may be considered pertinent by the Personnel Officer. Personnel records are confidential and, unless otherwise required by law, access to personnel records will be limited to current or former employees, authorized representatives of current or former employees, and authorized representatives of the Authority.

Section 2. Personnel Status. Every appointment, transfer, promotion, demotion, dismissal, or any other temporary or permanent change in status of employees will be reported to the Personnel Officer in such manner as prescribed by the Personnel Officer. Every change in personnel status will be in writing and will include the employee's name, title of position held, the department to which assigned, salary, changes in employment status, residence data, and such other information as may be considered pertinent. The Personnel Officer's signature will be included on the writing documenting the personnel change as a result of an appointment, promotion, demotion, transfer and dismissal. A copy of the writing documenting the personnel change will be included in the employee's personnel file.

Section 3. Current Address. Employees are required to notify the Personnel Officer of any change of name, address, or telephone number within five calendar days of change.

Section 4. References. Only the Personnel Officer, the Chief Executive Officer, and Department Heads authorized by the Chief Executive Officer are authorized to provide professional references for former or current employees on behalf of the Authority. No other employee is authorized to provide written or verbal professional references or recommendations for former or current employees. No other employee is authorized to respond to questions from persons outside the Authority about former or current employees regarding their work performance. As such, any employee who receives a request for a professional reference is required to forward that request to Personnel Officer.

Section 5. Disposition of Records. Upon approval of the General Counsel, records relating to personnel may be destroyed as prescribed by law.

Section 6. Access to Personnel Files. Personnel files are the property of the Authority and must be maintained by the Authority in strict confidence. Access to the information contained in personnel files is restricted, except as permitted by law. Only supervisors and management personnel of the authority who have express authorization from the Human Resources Office or the Personnel Officer and a legitimate reason to review information in a file are allowed to do so without being subject to the procedures set forth in this section.

- A. As provided by law, letters of reference, recruitment files, and reports regarding ongoing investigations concerning a current or former employee are excluded from the provisions of this policy. In addition, names of all non-supervisory employees must be redacted from records to be provided under this section.
- B. If a current or former employee files a lawsuit for which his/her personnel records are relevant, his/her right to inspect and receive copies of his/her personnel file, or to authorize another individual to do so, will cease during the pendency of the lawsuit and until a final judgment or other disposition of the lawsuit.
- C. A current or former employee wishing to either inspect and/or obtain his/her personnel file must submit a written request to the Human Resources Office, along with reasonable proof of identity. A current or former employee who seeks to authorize another person to inspect and/or obtain copies of his/her personnel file must provide a satisfactory written authorization in addition to the written request and proof of identity.
- D. The Human Resources Office will issue a written notice either setting a date for inspection of the personnel file or a date for when the requested copies may be picked up in person within 30 calendar days of receipt of the request, to take place during normal business hours. With the requesting person's written consent, the date for inspection or picking up copies may be extended on one occasion by up to five calendar days. The Authority has discretion to mail a copy of the personnel file at the person's expense instead of scheduling an in-person inspection.
- E. If the requesting person chooses delivery by mail instead of in-person pick up, the notice provided by the Human Resources Office will also identify the additional actual postage expenses for which the requesting person must reimburse the Authority prior to receipt of the copies.
- F. Current employees are entitled to exercise rights under this section to inspect and obtain copies of personnel records at reasonable intervals upon reasonable notice in accordance with this section.
- G. Former employees are entitled to exercise rights under this section to inspect or receive copies of their personnel records once per year.

**ARTICLE 16. NEPOTISM AND CONSENSUAL ROMANTIC RELATIONSHIPS BETWEEN EMPLOYEES**

Section 1. Nepotism.

A. Definitions.

- (1) Applicant. A person who applies for a position at the Authority and is not a Current Employee or a Current Employee who applies for a promotion to another position within the Authority.

- (2) Change of Status. A change in the legal status or personnel status of one or more Current Employees.
  - (a) Changes in legal status include but are not limited to marriage, divorce, separation, or any such change through which a Current Employee becomes a Family Member or ceases to be a Family Member of another Current Employee.
  - (b) Changes in personnel status include but are not limited to promotion, demotion, transfer, resignation, retirement or dismissal of a Current Employee who is a Family Member of another Current Employee.
- (3) Current Employee. A person who is presently an Authority employee, or an elected or appointed Authority official.
- (4) Direct Supervision. One or more of the following roles, undertaken on a regular, acting, overtime, or other basis will constitute Direct Supervision:
  - (a) Occupying a position in an employee's direct line of supervision; or
  - (b) Functional supervision, such as a lead worker, crew leader, or shift supervisor; or
  - (c) Participating in personnel actions including, but not limited to, appointment, transfer, promotion, demotion, layoff, suspension, dismissal, assignments, approval of merit increases, evaluations, and grievance adjustments.
- (5) Family Member. A spouse, registered domestic partner, parent, parent-in-law, step-parent, legal guardian, sister, step-sister, sister-in-law, brother, step-brother, brother-in-law, child, step-child, legal ward, daughter-in-law, son-in-law, grandchild, or grandparent.
- (6) Prohibited Conduct. Conduct by Family Members including, but not limited to, one or more of the following:
  - (a) Participation directly or indirectly in the recruitment or selection process for a position for which a Family Member is an Applicant.
  - (b) Direct Supervision of a Family Member that does not comply with limitations set forth in this Article;
  - (c) Conduct by one or more Family Members that has an adverse effect on supervision, safety, security or morale.

B. Applicants for Employment.

- (1) No qualified Applicant may be denied the right to file an application for employment and compete in the examination process. However, consistent with this Article, the Authority may reasonably regulate, condition, or prohibit the employment of an Applicant for a full-time position.
- (2) Disclosure of Relationship. Each Applicant is required to disclose the identity of any Family Member who is a Current Employee.

- (3) Review of Personnel Officer. For each Applicant who has a Family Member who is a Current Employee, the Personnel Officer will assess whether any of the following circumstances exist:
  - (a) Business reasons of supervision, safety, security or morale warrant the Authority's refusal to place the Applicant under Direct Supervision by the Family Member; or
  - (b) Business reasons of supervision, security, or morale that involve potential conflicts of interest or other hazards that are greater for Family Members than for other employees, which warrant the Authority's refusal to permit employment of Family Members in the same department, division, or facility.
- (4) Decision of the Personnel Officer. If the Personnel Officer determines that either of the above circumstances exist, the Personnel Officer will exercise his or her discretion to either reject the Applicant or consider the Applicant for employment in a position that does not present either of the above circumstances.
  - (a) Following recruitment, if the Applicant is successfully certified as eligible pursuant to Article 8, he or she may be employed in a position for which the Personnel Officer has determined that neither circumstance exists pursuant to Section 1.B.3 of this Article.
  - (b) When an eligible Applicant is refused appointment by virtue of this Article, his or her name will remain on the eligibility list for openings in the same classification. For each opening, the Personnel Officer will make a determination consistent with Section 1.B.3. of this Article.

C. Guidelines for Current Employees.

- (1) Employees must report existing relationships subject to this Article to the Personnel Officer. Employees must report a Change of Status to the Personnel Officer within a reasonable time after the effective date of the Change of Status. Wherever feasible, employees must report a Change of Status in advance of the effective date.
- (2) Within thirty days from receipt of notice, the Personnel Officer will undertake a case-by-case consideration and individualized assessment of the particular work situation to determine whether the Change of Status has the potential for creating an adverse impact on supervision, safety, security, or morale.
  - (a) The Personnel Officer will consult with an affected Department Head to make a good faith effort to regulate, transfer, condition or assign duties in such a way as to minimize potential problems of supervision, safety, security, or morale.
  - (b) Notwithstanding the above provisions, the Authority retains the right to exercise its discretion to determine that the potential for creating an adverse impact on supervision, safety, security, or morale cannot be sufficiently minimized and to take further action as set forth in Sections 1.D.2(a) or (b) of this Article.

D. Monitoring by Department Head.

- (1) Following a Change of Status or new hire of a Family Member, affected Department Heads will reasonably monitor and regulate both Family Members' conduct and performance for a period of one year from the date of the Personnel Officer's determination. The Department Head will document these actions. Successive Department Heads may re-visit such a determination at their discretion.
- (2) If the Department Head determines, subject to any applicable requirements of due process, that an employee has engaged in Prohibited Conduct, the Department Head will re-visit the Personnel Officer's determination. Depending on the severity of the Prohibited Conduct, the Department Head may recommend that the Personnel Officer take one or more of the following additional measures:
  - (a) Transfer one of the Family Members to a similar position that would not be in violation of this policy. The transfer will be granted provided the Family Member qualifies and there is an opening to be filled. There can be no guarantee that the new position will be within the same classification or at the same salary level.
  - (b) If the situation cannot be resolved by transfer, one of the Family Members must separate from Authority employment. If one of the employees does not voluntarily resign, the employee with primary responsibility for the Prohibited Conduct will be discharged.
- (3) Department Heads who receive complaints from other employees that one or more Family Members has engaged in Prohibited Conduct will respond in accordance with existing complaint and disciplinary procedures, where applicable.
- (4) Where situations exist prior to the effective date of this Article that may be in conflict with this Article, every effort will be made to reasonably address the situation so as to avoid any future conflict.

E. Appeal of Personnel Officer Determination. Current Employees and Applicants affected by the application of this Article, may appeal the action to the Personnel Officer within ten days of the action. The Personnel Officer will hear the individual's concerns and issue a written decision within 30 days of receipt of the individual's appeal. An individual who is dissatisfied with the Personnel Officer's decision may appeal to the Chief Executive Officer within five days of receipt of the Personnel Officer's decision. The Chief Executive Officer will hear the individual's concerns and issue a written decision within 30 days of the receipt of the individual's appeal. The decision of the Chief Executive Officer is final, and no other appeal may be had unless the employee is entitled to further administrative appeal under other provisions of these Personnel Rules.

F. Employee Complaints. Employees who believe that they have been adversely affected by Prohibited Conduct by one or more Family Member should submit complaints to a Department Head or to the Personnel Officer.

G. Savings Clause. Should any provision of this Article, or any application thereof, be unlawful by virtue of any federal, state, or local laws and regulations, or by court decision, such provision will be effective and implemented only to the extent permitted by such law, regulation or court decision, but in all other aspects, the provisions of this Article will continue in full force and effect.

## Section 2. Consensual Romantic Relationships Between Employees.

- A. General. Consensual romantic or sexual relationships between Authority employees can lead to misunderstandings, complaints of favoritism, adverse effects on employee morale, and possible claims of sexual harassment during or after termination of the relationship. As a result, such relationships present existing or potential conflicts that adversely affect efficient operation of the Authority. Relationships that present an actual conflict under this Section are therefore prohibited.
- B. Application. This section will apply to all Authority employees, regardless of gender or sexual orientation, who have a romantic or sexual relationship with another Authority employee. The provisions of Section 1 regarding nepotism will govern employees who marry or become domestic partners with another Authority employee.
- C. Definition of Conflict. For purposes of this section, a conflict exists if business issues of supervision, safety, security, and/or morale would be impacted by a romantic or sexual relationship between two employees.
- D. Supervisor's Duty to Report. If a romantic or sexual relationship exists between a Supervisor and another employee (including another Supervisor), the Supervisor will promptly disclose the relationship to the Personnel Officer and request a determination as to whether the relationship presents a conflict. The disclosure must identify the names and positions of both employees. A Supervisor's failure to comply with this section will be grounds for discipline up to and including dismissal.
- E. Determination by Personnel Officer. Within five working days, the Personnel Officer will issue a written determination as to whether the relationship presents a conflict, and is thereby prohibited. The Personnel Officer, in consultation with the Chief Executive Officer, will have exclusive discretion in making the determination.
- F. Resolution of Conflicts. Subject to limitations imposed by applicable provisions of these Rules, the Personnel Officer will attempt in good faith to work with the Supervisor and the other employee to consider options to eliminate the conflict, including removing the Supervisory authority that created the conflict, reassignment, transfer or voluntary demotion of a Supervisory employee, or where the Personnel Officer determines that modification of a Supervisor's assignment is not feasible, reassignment, transfer or voluntary demotion of a non-Supervisory employee. The Personnel Officer retains discretion to determine that the conflict may be resolved via voluntary resignation or dismissal only.
- G. Prohibited On-Duty Conduct. All Authority employees are prohibited from engaging in intimate, physical, or other conduct in furtherance of a romantic or sexual relationship with another Authority employee at work locations during work hours. Moreover, upon termination of a sexual or romantic relationship with another Authority employee, employees are prohibited from engaging in behavior that adversely affects the working conditions of any Authority employee. In general, all employees are expected to observe appropriate standards of workplace conduct in their interactions with other Authority employees.
- H. Complaints. Employees who believe that they have been adversely affected by romantic or sexual relationships between Authority employees should follow the complaint procedures provided under the Authority's Policy Against Harassment, Discrimination, and Retaliation. The complaint procedures are available to all employees regardless of their



past or present participation in a romantic or sexual relationship with another Authority employee.

## **ARTICLE 17. CODE OF ETHICS AND CONFLICTS OF INTEREST**

Section 1. Code of Ethics. Members of the public are entitled to have complete confidence in the integrity of the Authority. All employees must help earn that confidence by their individual and collective conduct. The purpose of this Code of Ethics is to set a standard of conduct for all employees of the Authority. This Code of Ethics is not intended to supersede or invalidate any statute, regulation, ordinance, or regulation.

- A. Applicability. This Code of Ethics applies to all employees.
- B. Code of Ethics.
  - (1) All employees must uphold the Constitution of the United States and the Constitution of the State of California.
  - (2) All employees must comply with all applicable provisions of California law governing public employees and officials, particularly the California Political Reform Act and its provisions on gifts and conflicts of interest.
  - (3) All employees may not engage in any activity which results in any of the following:
    - (a) Use of time, facilities, equipment, supplies, or other resources of the Authority for the private advantage or gain for oneself or another;
    - (b) Use of official information that is not available to the general public for private advantage or gain for oneself or another; or
    - (c) Use of their position with the Authority to discourage, restrain, or interfere with any person who chooses to report potential violations of any law.
  - (4) No employee may directly or indirectly accept:
    - (a) Private advantage, remuneration, or reward for oneself or another as a result of the prestige or influence of the Authority office, employment, or appointment;
    - (b) Financial consideration from any source other than the Authority for the performance of his/her official duties, except for stipends received as representatives on boards, commissions or committees at a local, regional, or state level; or
    - (c) Employment from private interests, when such employment is incompatible with the proper discharge of their official duties or may result in a conflict of interest.
  - (5) No employee may give special treatment or consideration to any individual or group beyond that available to any other individual or group.
  - (6) No employee may discriminate against or harass a citizen or co-worker on the basis of race, religious creed, color, national origin, ancestry, sex, age, physical or mental disability, medical condition, sexual orientation, marital status, gender



identity, gender expression, genetic characteristics or information, and/or any other category protected by federal and/or state law.

(7) All employees will conduct themselves in a courteous and respectful manner at all times during the performance of their duties.

C. Enforcement. Any employee found to be in violation of this Code of Ethics will be subjected to appropriate disciplinary action, up to and including dismissal.

Section 2. Outside Employment, Enterprise, or Activity. In accordance with California *Government Code* Title 1, Division 4, Chapter 1, Article 4.7 (beginning at Section 1125), no employee may engage in any outside employment, enterprise, or activity that is inconsistent, incompatible, in conflict with, or adverse to his/her employment or his/her ability to perform his/her duties and responsibilities, including performance of overtime work and emergency duties, or any other aspect of Authority operations. Employees are required to notify their Department Head in writing of all outside employment in which they are engaged or in which they intend to engage, so that the Authority may assess whether such outside employment conflicts with the employee's Authority employment.

A. An employee's outside employment, enterprise, or activity will be prohibited when any of the following are present:

(1) It involves the receipt or acceptance by the employee of any money or other consideration from anyone other than the Authority for the performance of an act which the employee would be required or expected to render in the regular course or hours of his/her Authority employment or as part of his/her duties as an Authority employee;

(2) It involves the use for private gain or advantage of his/her Authority time, facilities, equipment and/or supplies; or the badge, uniform, prestige, or influence of his/her Authority employment;

(3) It involves the performance of an act, in other than his/her capacity as a Authority employee, which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee of the Authority; or

(4) It involves time or scheduling demands as would render performance of his/her duties as an Authority employee less efficient.

B. Department Head Determination. When outside employment is reported to a Department Head, the Department Head will determine whether the employee's outside employment conflicts with the performance of his/her duties, and will advise the employee of his/her determination in writing.

C. Appeal of Department Head's Decision. An employee may appeal the Department Head's decision to the Personnel Officer within 14 days from the employee's receipt of the Department Head's determination by filing a written appeal with the Personnel Officer. The employee must specify the grounds on which he/she challenges the Department Head's decision, and must attach all relevant documentary evidence to the appeal. The Personnel Officer will schedule a meeting with the employee and the Department Head to discuss the Department Head's decision. The Personnel Officer will issue a written decision to the employee and the Department Head within 14 days from the date of the meeting. The decision of the Personnel Officer will be final.

Section 3. Contracts and Conflicts of Interest. In accordance with California *Government Code* Title 1, Division 4, Chapter 1, Article 4 (beginning at Section 1090), no Authority employee can be financially interested in any contract made by him/her in his/her official capacity, or by anybody or board of which he/she is a member.

Section 4. Conduct During the Workday. During the workday, employees are expected to devote their full time in the performance of their assigned duties. Any approved outside work, part-time job, hobbies, or personal business must be performed during off duty hours. Off duty hours include unpaid lunch break periods, but do not include other rest or break periods during which the employee continues to receive pay.

Section 5. Political Activity. Consistent with the provisions of California *Government Code* Title 1, Division 4, Chapter 9.5 (beginning at Section 3201), employees may not engage in political activity during working hours, while on Authority property on which members of the public would not be entitled to engage in political activities, or while in uniform.

Section 6. Communication with Federal and State Officials. The Authority's official positions and interests on policy matters will be determined by the Board of Directors after input from the Executive Committee, as appropriate. The Chief Executive Officer will serve as the Authority's primary spokesperson for communicating the Authority's official positions and interests on policy matters. It is expected that, as part of their work for the Authority, certain staff members, as directed by the Chief Executive Officer, may be required to communicate the Authority's positions on policy matters to federal and state officials. Communications with federal and state officials on behalf of the Authority should be consistent with the Authority's official positions and interests, as identified by the Board of Directors, and when made by Authority employees other than the Chief Executive Officer, the content of those communications should be shared with the Chief Executive Officer as soon as is reasonably practicable.

Section 7. Solicitation of Political Contributions. No Authority employee may knowingly, directly or indirectly, solicit a political contribution from an Authority employee, Authority officer, or person on an employment list. However, this does not prohibit Authority employees from requesting political contributions if the solicitation is part of a solicitation made to a significant segment of the public, which may include Authority employees. This also does not prohibit an Authority employee from soliciting or receiving political funds or contributions to promote the passage of or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of Authority employees, provided that such solicitation cannot occur during working hours or while on Authority property.

- A. For purposes of this Section, "contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

Section 8. Disaster Service Worker. The protection of the health and safety, and the preservation of lives and property from the effects of natural, man-made, or war-caused emergencies which result in conditions of disaster or extreme peril to life, proper, and resources, is paramount to the Authority. When a disaster strikes, the assistance of Authority employees is vital to ensuring that Authority operations recover from a disaster as quickly as possible. It is important that all Authority employees be available to assist in responding to disasters, regardless of the position they hold. As such, in accordance with the provisions of Government Code sections 3100 and following, all Authority employees are declared to be disaster service workers. Upon the declaration of a disaster or an emergency, Authority employees are required to follow direction given in accordance with the Authority's emergency procedures, or any other additional duties as assigned.

## ARTICLE 18. DISCIPLINE

Section 1. General. This Article applies only to employees within the Authority's Classified Service. It does not apply to any At-Will Employee of the Authority. The types of disciplinary action included under this Article are written reprimand, demotion, suspension, reduction in compensation, dismissal, transfer for punitive reasons, or other punitive measures. The Authority is not required to take disciplinary actions in sequential or progressive order. The level of the disciplinary action taken will be commensurate with the offense, provided that the prior employment and disciplinary history of the employee may also be considered pertinent.

Section 2. Authority to Discipline. As explained in Section 4, the Personnel Officer and the Department Heads will have the authority to reprimand, demote, reduce the pay of, suspend, or dismiss regular employees for reasonable cause. Supervisors will also have the authority to reprimand employees. Exempt employees will not be subject to any disciplinary action that would eliminate their exempt status under the Fair Labor Standards Act.

Section 3. Standards for Discipline. Disciplinary action may be taken for reasonable cause. Reasonable cause for discipline may include but will not be limited to the following:

- A. Violation of the Authority Personnel Rules, ordinances, regulations, rules, or administrative policies and procedures;
- B. Conviction of a felony, or conviction of a misdemeanor relating to the employee's fitness to perform assigned duties;
- C. Insubordination;
- D. Dishonesty;
- E. Failure to maintain job performance standards or to properly or satisfactorily perform assigned duties;
- F. Failure to maintain any employment qualification;
- G. Falsification of records, including information provided on an application for employment and time records;
- H. Carelessness, incompetence, inefficiency, or negligence;
- I. Failure to comply with safety standards;
- J. Unauthorized absence from employment or excessive absenteeism;
- K. Tardiness;
- L. Abuse of sick leave;
- M. Discourteous or disrespectful treatment of other employees, Authority residents and other members of the community, customers, suppliers, or visitors, or treatment that does not foster cooperation;
- N. Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; or willfully restricting work output or encouraging others to do the same;

- O. Harassment, discrimination, or retaliation, as prohibited by law or by Authority rule or policy;
- P. Reporting for work, being subject to work, or being at work, under the influence of or in possession of alcohol, legal or illegal drugs as described in the Authority's Drug-Free Workplace Policy;
- Q. Unauthorized possession of firearms, weapons or explosives on Authority property, in an Authority vehicle, while in Authority uniform, or while on duty; or displaying or brandishing any firearm or weapon, whether in jest or otherwise, in any manner which can be construed as a careless, threatening or dangerous manner, except in the performance of official duties
- R. Assault, battery, horseplay, or fighting while on duty or under the guise of office;
- S. Gambling on Authority property or during working hours;
- T. Sleeping on the job or leaving the job without authorization;
- U. Improper use of Authority funds;
- V. Acceptance or solicitation of bribes or extortion;
- W. Receiving or accepting, directly or indirectly, any money, gift, reward, service, gratuity favor, hospitality, loan or other consideration for any service or official action rendered by the employee in violation of federal, state, or local law, or in violation of Authority policy;
- X. Use of influence or position with the Authority for private gain or advantage, or the use of time, facilities, equipment or supplies for private gain or advantage;
- Y. Unauthorized use of Authority property, including unauthorized use of Authority property for personal reasons or using Authority property for profit;
- Z. Theft of or harm to Authority property or the personal property of another;
- AA. Failure to properly care for Authority property;
- BB. Disclosure of confidential or proprietary Authority information to unauthorized persons, employees, or organizations; and/or
- CC. Other failure of good behavior either during or outside of employment such that the employee's conduct causes or should reasonably be expected to cause discredit to the Authority.

#### Section 4. Types of Discipline.

- A. Verbal Reprimand. A verbal reprimand is a notice to an employee that further disciplinary action will be taken unless the employee's behavior or performance improves. A verbal reprimand will be documented in writing. Verbal Reprimands may be issued by a Supervisor, Department Head, or the Personnel Officer.
- B. Written Reprimand. A written reprimand is a formal notice to an employee that further disciplinary action will be taken unless the employee's behavior or performance improves. Written reprimands may be issued by a Supervisor, Department Head, or the Personnel Officer.

The content of the written reprimand will define what occurred, the date and time of the event that is the cause of the reprimand, the nature of the violation, what the employee is directed to do to correct the situation, and the employee's rebuttal process. The written reprimand will be signed by the employee's Supervisor or Department Head, countersigned by the employee, and filed with the Personnel Officer. If the employee refuses to sign, it will be noted as such on the memorandum. When the written reprimand is issued, the employee will receive one copy with both signatures affixed and a copy will be placed in the employee's permanent personnel file.

The employee will be granted five working days after the date of the written reprimand to file a written response to the written reprimand. The employee's written response should be filed with the Personnel Officer and will also be placed in the employee's permanent personnel file with the written reprimand. No other form of appeal or grievance of a written reprimand may be had by the employee.

- C. Suspension Without Pay. An employee may be suspended from his/her position without pay for disciplinary reasons. Employees suspended from employment without pay will forfeit all rights, privileges, and benefits earned during the suspension period with the exception of insurance benefits. Any suspension will be taken in accordance with the provisions set forth in Sections 6 and 7 of this Article. A non-exempt employee is not eligible to work overtime during any workweek in which a suspension is imposed. Exceptions to this may be granted in an emergency situation by the Department Head, with the concurrence of the Chief Executive Officer.
- D. Involuntary Demotion. An employee may be demoted from his/her position for disciplinary reasons. Any demotion for disciplinary reasons will be taken in accordance with the provisions set forth in Sections 6 and 7 of this Article.
- E. Reduction in Pay. An employee's pay may be reduced for disciplinary reasons. Any reduction in pay will be taken in accordance with the provisions set forth in Sections 6 and 7 of this Article.
- F. Dismissal. An employee may be dismissed from his/her position for disciplinary reasons. Any dismissal will be taken in accordance with the provisions set forth in Sections 6 and 7 of this Article. The Department Head will notify the Personnel Officer before making a recommendation of dismissal. Employees dismissed in accordance with these Personnel Rules will forfeit all employee benefits except benefits to which the employee is statutorily entitled or otherwise entitled under these Personnel Rules.

Section 5. Relief of Duty. The Department Head may, verbally or in writing, cause the temporary assignment of an employee to status of personnel action leave with pay pending conduct or completion of such investigations or opportunity to respond as may be required to determine if disciplinary action is to be taken. In the event of a verbal notice, the Personnel Officer or Department Head will confirm the action by giving the employee written notice. The employee will be advised of all restrictions to which he/she is subject to during the period of personnel action leave. If and when the employee is to be returned to duty, the Authority will provide the employee with written notice of when he/she should return to duty, a copy of which will be retained in the employee's permanent personnel file.

#### Section 6. The Disciplinary Process.

- A. Notice of Intent. Suspensions, demotions, reductions in pay, and dismissals will be initiated by the Department Head with a written Notice of Intent delivered to the affected employee personally or sent to the employee by either overnight mail and/or certified or registered mail, return receipt requested, at the employee's last known address. A copy of the Notice

of Intent will be filed with the Personnel Officer. All regular employees will have the right to the pre-disciplinary due process procedures set forth in Sections 6.B and 6.C.

The Notice of Intent will include the following:

- (1) A statement which clearly defines the intent to take action, the proposed action to be taken, and the proposed effective beginning and ending time of intended action.
- (2) A statement of the specific grounds and particular facts upon which the proposed disciplinary action will be taken.
- (3) A copy of all written materials, reports, or documents upon which the intended action is based.
- (4) A statement that the employee will be afforded the right to respond to the Notice of Intent, either verbally in writing, or both within five working days upon receipt of the intended disciplinary action, to the Chief Operating Officer.
- (5) If personally delivered, the employee's signature on the Notice of Intent will acknowledge receipt of such notice by the employee. If the employee refuses to sign, it will be noted as such on the Notice of Intent. The signature documentation on the Notice of Intent will acknowledge that the employee received the Notice of Intent.

- B. Employee Response to Notice of Intent. Within five working days after the employee has been served with the Notice of Intent, the employee will have the right to respond, verbally or in writing, at the employee's option, to the Chief Operating Officer, by requesting a meeting or conference. If, within the five working days response period, the employee does not provide a written or verbal response and/or request a meeting or conference, the proposed action of the Authority will be considered conclusive and will take effect as set forth in the Notice of Intent.

If the employee requests a meeting or conference within the five working days response period, one will be scheduled within a reasonable time. The Chief Operating Officer will conduct the meeting or conference. The employee may choose to be accompanied or represented by any person of the employee's choosing who is not involved in the discipline during the meeting or conference. The employee will have the opportunity to present any information, facts, or evidence regarding the proposed disciplinary action. The meeting or conference may or may not be recorded. At the conclusion of the meeting or conference the Chief Operating Officer will consider the presented information, facts, or evidence and either modify the disciplinary action, revoke the disciplinary action, impose the disciplinary action, or conduct further investigation.

Should the Chief Operating Officer determine that the employee's response warrants further investigation, the Chief Operating Officer may delay the implementation or modification of the proposed disciplinary action until such time as the further investigation is completed. In the event the investigation produces facts that warrant more severe disciplinary action than originally proposed, the Chief Operating Officer will re-implement the notification procedures in Section 6.A. of this Article.

- C. Final Decision and Notice of Imposition. The Chief Operating Officer has the authority, after considering the employee's response and additional investigation, if any, to modify, revoke, or impose the proposed disciplinary action.

- (1) If the Chief Operating Officer decides to modify the proposed action, the Chief Operating Officer will notify the employee by either issuing a revised Notice of Intent (for more severe disciplinary action than originally proposed) or a Notice of Imposition (for less severe disciplinary action than originally proposed). The Notice of Imposition will also include the effective date of any disciplinary action issued. The decision of the Chief Operating Officer is final and will be imposed.
- (2) If the Chief Operating Officer decides to revoke the disciplinary action, the Chief Operating Officer will advise the employee in writing, and the original intent to impose disciplinary action will be discarded and no record made in the employee's personnel file. The decision of the Chief Operating Officer is final and will be imposed.
- (3) If the Chief Operating Officer decides to implement the discipline as originally proposed in the Notice of Intent, the Chief Operating Officer will notify the employee in writing by providing him/her with a Notice of Imposition. The Notice of Imposition will also include the effective date of any disciplinary action issued. The decision of the Chief Operating Officer is final and will be imposed.

The Notice of Imposition or other final decision of the Chief Operating Officer will be delivered to the affected employee personally or sent to the employee by either overnight mail and/or certified or registered mail, return receipt requested, at the employee's last known address.

- D. Right of Appeal: As set forth in Section 7 of this Article, the employee will have the opportunity within ten working days from receipt of the Notice of Imposition to submit a written request to the Personnel Officer for an appeal hearing before the Appeal Hearing Officer.

#### Section 7. Appeal of Disciplinary Action.

- A. Disciplinary Actions Subject to Appeal. An employee may appeal a final decision of discipline if the discipline imposed was a dismissal, demotion, suspension without pay for five or more days, or a reduction in pay that is equal to the financial loss caused by a suspension without pay for five or more days.
- B. Failure to Request Disciplinary Appeal Hearing. If the employee fails to request a disciplinary appeal hearing within the prescribed time and manner, the employee will have waived the right to a hearing and all rights to further appeal of the disciplinary action.
- C. Scheduling of Disciplinary Appeal Hearing. The Personnel Officer will schedule any disciplinary appeal hearing before the Appeal Hearing Officer within a reasonable time after the filing of the employee's request.
- D. Appeal Hearing Officer. The Chief Executive Officer will serve as the Appeal Hearing Officer and will hear and decide disciplinary appeals. The Appeal Hearing Officer will prepare in writing the findings and fact and decision. The decision of the Appeal Hearing Officer will be final. The hearing before the Appeal Hearing Officer will be conducted in accordance with the procedural rules adopted by the Authority. The Chief Executive Officer may, in his/her sole discretion, designate an individual to serve as the Appeal Hearing Officer, as needed, whose decision will be advisory to the Chief Executive Officer.
- E. Representation at Disciplinary Appeal Hearing. At the disciplinary appeal hearing, the employee must appear personally and may be represented by counsel or other



representative. The employee may not be represented by a person who will be called as a witness.

- F. Employee Appearance at Disciplinary Appeal Hearing. An employee who requests a disciplinary appeal hearing must be present during his/her disciplinary appeal hearing. Failure of the employee to be present will constitute a waiver of the employee's right to an appeal. Waiver will not occur if the employee can demonstrate good cause for his/her failure to be present within three working days from the date the employee fails to appear.
- G. Appeal Hearing Procedures. The appeal hearing will be conducted as follows:
- (1) The Authority and employee may each:
    - (a) Call and examine witnesses;
    - (b) Introduce evidence and exhibits;
    - (c) Cross-examine opposing witnesses on any matter relevant to the issues, even if the matter is not covered in direct examination;
    - (d) Impeach any witness regardless of which party first called him/her to testify;
    - (e) Rebut the evidence presented by the other party; and
    - (f) Present oral and written arguments.
  - (2) All oral evidence and testimony will be taken under oath or affirmation.
  - (3) The hearing does not need to be conducted according to the technical rules relating to evidence and witnesses, but will be conducted in a manner most conducive to the determination of the truth. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objections in a court of law. Decisions by the Appeal Hearing Officer will not be invalidated by any informality in the appeal hearing proceedings or procedures.
  - (4) The Appeal Hearing Officer may issue subpoenas to compel the attendance of witnesses or require the production of documents in the manner established by the Authority.
  - (5) Hearsay evidence may be used for the purpose of supplementing or explaining any evidence. However, such evidence is not sufficient to support a finding, unless such evidence would be admissible over objections in a court of law.
  - (6) The rules of privilege will apply to the extent that they are applicable or otherwise required by statute to be recognized at the hearing.
  - (7) The Appeal Hearing Officer will determine the relevancy, weight, and credibility of any testimony or evidence and will rule on any raised objections or claims of privilege.



- (8) The Appeal Hearing Officer will have the discretion and power to exclude any evidence that is irrelevant, unduly repetitious, or will necessitate undue consumption of time. The Appeal Hearing Officer will also have the discretion and power to exclude any witnesses.
- (9) Notwithstanding the above, the Appeal Hearing Officer will not have binding authority to add, modify, or subtract from the applicable Personnel Rules or any resolutions, ordinances, or policies adopted by the Authority. Further, the Appeal Hearing Officer will not have the authority or power to render a binding decision that requires the Authority to expend additional funds, to hire additional personnel, to buy additional equipment or supplies, or to pay wages or benefits not specifically provided for in applicable Personnel Rules, or any resolutions, ordinances, or policies adopted by the Authority. The Appeal Hearing Officer will not have the authority to require the Authority to perform any other action that would violate state or federal law.
- (10) The Authority reserves the right to modify or change the appeal hearing procedures at any time, without prior notice.

## **ARTICLE 19. GRIEVANCE PROCEDURE**

Section 1. Purpose of Grievance Procedure. The grievance procedure will be used to resolve employee complaints regarding an alleged violation or interpretation of the Authority's written personnel policies, or these Personnel Rules. However, specifically excluded from the grievance procedures are the following:

- A. Performance evaluations or performance improvement plans;
- B. Deferred or denied merit salary increases;
- C. Verbal or written counseling;
- D. Any disciplinary action or the process of imposing discipline;
- E. Policy decisions of the Board of Directors;
- F. Any change to an existing benefit not encompassed in state law, or Authority resolution or ordinance;
- G. Transfer to another position without a loss of pay; and
- H. Matters for which there is a separate appeal, including, but not limited to, disciplinary action.

Section 2. Definitions. The following definitions will be applicable for purposes of this Article only:

- A. Grievance. An expressed claim by an employee that the Authority has violated, misinterpreted, or misapplied an obligation to the employee as such obligation is expressed and written in the Authority's written personnel policies, or these Personnel Rules, except as specifically excluded in Section 1 above.
- B. Grievance Procedure. The process by which the validity of a grievance is determined.
- C. Representative. A person who at the request of the employee or management is invited to participate in a grievance conference.

### Section 3. General Provisions.

- A. Filing of a Grievance. A grievance may be filed by any employee on his/her own behalf, jointly by a group of employees.
- B. Representation. An employee may have a representative present during grievance meetings.
- C. Retaliation. The Authority will not retaliate against any employee for the good faith use of the grievance procedure.
- D. Time Periods.
  - (1) Failure at any step of this grievance procedure to fully comply with the requirements of this Article will be deemed a waiver of the employee's rights to proceed under this Article.
  - (2) Failure by the Authority at any step of this grievance procedure to communicate the decision on the grievance within the specified time limits will permit the aggrieved employee to proceed to the next step.
  - (3) Failure of the aggrieved employee, at any step of this grievance procedure, to submit the decision on a grievance to the next step within the specified time limit will be deemed acceptance of the decision rendered.
  - (4) The time limits specified at any step in this grievance procedure may be extended by mutual, written agreement.
- E. Time Off. Reasonable time off without loss of pay will be given to an employee who has a grievance and to his/her representative in order to participate in the grievance hearings. However, employees will not be entitled to time off to prepare for his/her grievance hearings.
- F. Conferences. Grievance conferences between management and the employee will normally be conducted during the employee's regularly scheduled working hours at a mutually convenient time.
- G. Referral to Alternate Manager. If a grievance regards conduct by the Supervisor or Department Head who would be responsible for hearing the grievance at any step in the procedure set forth in Section 4, below, the aggrieved employee may instead submit the grievance to an alternate Supervisor, or if the grievance regards conduct by the alternate Supervisor(s), to the Chief Operating Officer.

### Section 4. Grievance Procedure.

- A. Step One (Informal Conference). The employee will inform his/her immediate Department Head of the grievance within five working days after the employee knows, or in the exercise of reasonable diligence should have known of the events giving rise to the complaint or grievance. Failure to timely initiate this procedure will bar further consideration of the grievance and will be deemed a waiver of the grievance procedure. The employee and the Department Head will discuss the grievance.
  - (1) Complaints or grievances regarding the Department Head may be provided to the Human Resources Office.

- (2) Complaints or grievances regarding the Human Resources Office may be provided to the Personnel Officer.
  - (3) Complaints or grievances regarding the Personnel Officer may be provided to the Chief Executive Officer.
  - (4) Complaints or grievances regarding the Chief Executive Officer may be provided to the General Counsel for presentation to the Board of Directors.
- B. Step Two. Within ten working days from receipt of the verbal decision from the Department Head, the employee, if he/she wishes to appeal the decision, must submit his/her formal grievance to the Human Resources Office. The grievance must be presented in writing on a form provided by the Authority, and must include the following: a statement of the event(s) causing the grievance; the rule, law, policy, or other standard alleged to have been violated; the relief sought by the employee; and any potential witnesses. Failure to fully provide all required information may result in a delay in processing the grievance. Failure to timely initiate this procedure will bar further consideration of the grievance and will be deemed a waiver of the grievance procedure. In the event that the Human Resources Office cannot resolve the grievance, the Personnel Officer will have a discussion with the Department Head concerning the grievance and take all appropriate steps to investigate the matter. The Personnel Officer or his/her designated representative will, within ten working days of the discussion, issue a written decision to the employee. The Personnel Officer's decision will be final.

## **ARTICLE 20. LAYOFF PROCEDURES**

Section 1. General. Whenever, in the judgment of the Chief Executive Officer or the Board of Directors, it becomes necessary in the interest of economy or reorganization, to abolish any position or employment, the employee holding such position or employment may be laid off or demoted without disciplinary action and without the right of appeal through either disciplinary appeal or grievance procedures. An employee who believes his/her layoff was pre-textual will be afforded with all due process required by law.

Section 2. Written Notice of Layoff. Any employee to be laid off will be given written notice of layoff not less than two weeks prior to the effective date of such layoff.

Section 3. Order of Layoff. To the extent permitted by law, the Authority has the discretion to determine the order of layoff of all positions affected by a reduction in force. Relevant factors in the determination may include, but are not limited to positional needs, employee seniority, and financial burden or constraint.

Section 4. No Displacement. The Authority does not provide for displacement rights ("bumping"), or the right of a senior employee to replace a less senior employee in the event of a layoff. However, if two or more qualified employees wish to fill a vacant and funded position, the Authority has the discretion to consider relevant factors in making its decision, including, but not limited to positional needs, an employee's seniority, and financial burden or constraint.

Section 5. Specially Funded Positions. When a position is created and is funded by a grant of funds from the State or the Federal Government, the position will be automatically abolished when the funding is terminated. The incumbent of the position will be terminated on the date upon which the position is abolished and the layoff procedures prescribed in these Personnel Rules are not applicable.

Section 6. Reemployment.

- A. Reemployment List. The names of all regular and probationary employees who were laid off, reduced in class, displaced or who have received layoff notice and voluntarily resigned

will be placed on a reemployment list for their original class. Whenever a vacancy occurs in the class for which a reemployment list exists, the qualifying employees on the lists will be notified of the vacancy prior to announcing an open or promotional recruitment and the qualifying employees will be offered the opportunity to apply for the position.

- B. Duration of Reemployment List. The reemployment list will be effective for a period of 12 months from the date of change in employee's status due to Authority layoff, except that persons appointed to permanent positions of the same level as that which laid off, will, upon such appointment, be dropped from the list. It will be the duty of the employee to provide an address and any forwarding information for contact. The Authority will send a certified and/or overnight letter advising the person of the opportunity for reemployment. Persons who refuse reemployment to a full time position or fail to respond twice to a request will be dropped from the list. Persons re-employed in a lower class, or on a temporary basis, will be continued on the list for the higher position for the remainder of that initial 12-month period. Persons who refuse part time or temporary employment will be continued on the reemployment list.
- C. Anniversary Date and Date of Hire. Upon reemployment, an employee's anniversary date and date of hire will remain the same as if the employee had remained employed the entire period of layoff.

## **ARTICLE 21. SEPARATION FROM EMPLOYMENT**

Section 1. Abandonment of Position. An employee may be separated from employment if the employee is on an unauthorized leave of absence as set forth in Article 22, Section 5.

Section 2. Disciplinary Dismissal. An employee may be separated from employment for disciplinary reasons as provided for in Article 18.

Section 3. Layoff. As provided in Article 20, an employee may be separated from employment by layoff.

Section 4. Resignation. An employee wishing to leave employment in good standing will file with the Chief Operating Officer a written resignation stating the effective date and reasons for leaving, at least two weeks before leaving the service, unless approval for a shorter notice is obtained. Resignation will be deemed accepted upon submission. A resignation made without the notice required may be regarded as cause for denying the resigning employee future employment with the Authority, and is a resignation not in good standing.

Retirement. Retirement from employment will be subject to the terms and conditions of the Authority's retirement plan and the applicable provisions of these Personnel Rules. Whenever employees meet the conditions set forth in the Authority's retirement plan regulations they may elect to retire and receive benefits earned under the retirement plan.

### Section 5.

- A. Disability Retirement.

Section 6. Disability. An employee may be separated when the employee cannot perform the essential functions of the job, with or without a legally required reasonable accommodation. A regular employee who is separated under this Section will be afforded the procedures set forth in Article 18.

Section 7. Death of the Employee. In the event of a death of an employee, payment of all earned wages due will be in accordance with the laws of the State of California. Unless otherwise provided by law,

payment of any other funds due the deceased employee will be paid to the beneficiary so designated in writing by the employee.

## **ARTICLE 22. LEAVES OF ABSENCE**

Section 1. Attendance. Employees will be in attendance on time at their work station or location in accordance with the rules regarding attendance, holidays, and leaves. Employees will make every effort to schedule personal appointments outside their working hours. Employee attendance and adherence to the rules governing attendance, leaves of absence and tardiness will be reviewed and evaluated during the employee's annual performance evaluation. All departments will keep daily attendance records of employees, which will be reported to the Human Resources Office in the form and on the dates specified. Employees will be required to complete appropriate attendance records. The appropriate forms will be signed by the employee and immediate supervisor and then forwarded to the payroll department immediately but no later than two days prior to the end of the pay period.

Section 2. Full-Time Employees. Regular full-time employees will be entitled to all of the paid leaves provided for in this Article based on the full-time schedule assigned to the employee's classification. Temporary full-time employees and part-time employees are not eligible for any paid leave in this Article.

Section 3. Effect of Leave of Absence on Employee Benefits.

- A. Fully Paid Leave of Absence. Unless otherwise required by law, an employee on a leave of absence who continues to receive full compensation through the use of his/her accrued leave banks will continue to receive full employment benefits. Such employment benefits, may include, but are not limited to, the accrual of paid leaves, and health insurance contributions, which remain at the rate the employee would receive if he/she was working his/her normal work schedule.
  
- B. Partially Paid Leave of Absence. Unless otherwise required by law, an employee on a leave of absence who is in an unpaid status for more than 50% of the pay period will not accrue any employment benefits except as otherwise specified in this section. An employee who is in a paid status for 50% or more of the pay period will receive full employment benefits. Such employment benefits, may include, but are not limited to, the accrual of paid leaves, and health insurance contributions, which remain at the rate the employee would receive if he/she was working his/her normal work schedule.
  - (1) Disability Leave. When an employee is on an authorized protected leave of absence, health, life and related plan benefits, including, but not limited to health insurance contributions, will remain in force up to three months from the start of any authorized protected leave of absence. At the conclusion of three months, the Authority will terminate any health, life, and related plan benefits. However, when an employee has insufficient earnings from which to deduct the employee's share of premiums, arrangements must be made in advance for payment of the employee's share. Failure to pay such costs by the due date agreed upon between the Authority and the employee will result in termination of coverage. If an employee fails to return to work following any authorized protected leave of absence, the employee will be liable for all sums for health care coverage which have been expended by the Authority during the leave. However, if the employee does not return to work due to a continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or other circumstances beyond the employee's control, the Authority will not seek to recover sums expended for health care coverage during the leave.

- C. Unpaid Leave of Absence. Unless otherwise required by law, an employee on an unpaid leave of absence will not accrue any employment benefits, including, but not limited to, the accrual of paid leaves, and health insurance contributions.

Section 4. Unauthorized Absence.

- A. When an employee has been absent without authorization from work for more than three workdays, and in the opinion of the Department Head the employee has abandoned his/her position, the Department Head will notify the Personnel Officer or a designee. The Personnel Officer, or a designee, will notify the employee that the Authority has determined he/she has abandoned his/her position and that the employee has three working days upon receipt of the notice to contact the Authority regarding his/her intent to return to work. The notice will also advise the employee that failure to contact the Authority within the three-day period will be deemed an automatic resignation effective on the fourth day. Such notice will be in writing and sent by certified mail or personal service to the last address listed in the employee's personnel records.
- B. Abandonment of position may include, but is not limited to:
  - (1) Where an employee fails to return to his/her employment upon conclusion of any authorized leave of absence;
  - (2) Where an employee fails to properly notify by telephone or in writing his/her immediate Supervisor of absence due to sickness or injury, except as provided in Section 8 of this Article 22 regarding family care or medical leave;
  - (3) Where an employee fails to appear for work without notification or express agreement between the Supervisor and the employee as to the use of any leave time set forth under the Authority's personnel policies;
  - (4) Where an employee fails to keep his/her immediate Supervisor reasonably apprised of disability status.
- C. Where an employee fails to respond within three working days to the notice of abandonment of position, the employee may be considered to have abandoned his/her position of employment with the Authority. Abandonment of position will constitute an automatic resignation from the Authority service.

Section 5. Vacation.

- A. Vacation Accrual. Part-time and temporary employees are not eligible for vacation. Each full-time employee will begin accruing vacation leave monthly immediately upon employment and will accrue vacation leave according to the following rates:

<b>Accrual Rates for Employees</b>			
<b>Completed Years</b>	<b>Days Earned</b>	<b>Hours Earned</b>	<b>Accrual Per Pay Period</b>
Year 1 thru Year 4	10	80	3.333
Year 5 thru 19	15	120	5.00
Year 20 and over	20	160	6.666

- B. Annual Cash Out of Accrual of Vacation. On each final pay period of the fiscal year ending on September 30th, any employees who have accrued in excess of 240 vacation hours will be paid at the employee's then current rate of pay for all unused accrued vacation hours in excess of the 240 hours.
- C. Optional Vacation Cash Out. An employee may at his/her option once per calendar year, request to be paid at the employee's then current rate of pay, for any vacation hours accrued over 120 hours. However, an employee must maintain a balance of 120 hours at all times. The Chief Operating Officer may, in his or her sole discretion, grant an employee's request for vacation cash out.
- D. Use of Vacation. The use and scheduling of employee vacation is subject to prior approval of the Supervisor and is to be determined in each base by the Supervisor with due regard to the needs of the Authority and the wishes of the employee.
- E. Unused Vacation. All unused accrued vacation hours will be compensated at the employee's then-current rate of pay upon the employee's resignation, retirement, termination, dismissal, lay-off or death.

Section 6. Sick Leave for Full Time Employees.

- A. Sick Leave Accrual. Each full-time employees will earn 8 hours of sick leave for each month worked or major fraction thereof. Full-time employees who are in a less than full pay status will earn sick leave on a prorated basis, which will not be less than one hour per every 30 hours worked. Full-time employees will be compensated for using sick leave at their hourly wage, on the payday for the next regular payroll period after the sick leave was taken.
- B. Cap on Accrual of Sick Leave. Sick leave will accrue without limitation.
- C. Permitted Uses of Sick Leave. Sick leave may be applied to the following:
  - (1) An absence necessitated by an employee's non-industrial personal illness or injury.
  - (2) Medical and dental office appointments.



- (3) Absence due to non-industrial exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician that the presence of the employee on duty would endanger the health of others.
- (4) Absence from duty because the employee's presence is needed to attend to the illness of a member of his/her immediate family. For purposes of this Section, immediate family includes any of the following: a biological, adopted, or foster child, stepchild, legal ward, a child to whom the employee stands in loco parentis, or a child of a registered domestic partner, regardless of the child's age or dependency status; a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; a spouse; a State of California registered domestic partner; a grandparent; a grandchild; a sibling. For purposes of sick leave use, a domestic partner will mean a person as defined by California state law or a person who shares a committed relationship with an employee.

D. Prohibited Uses of Sick Leave. Sick leave may not be used for the following:

- (1) Sick leave may not be advanced for any reason.
- (2) Sick leave may not be donated to or received from other employees.

E. Request for Sick Leave.

- (1) An employee must contact his/her immediate Supervisor prior to or within one hour of the commencement of their work shift to report illness and absence from work. Consideration will be given to emergency situations that restrict the employee from contacting his/her immediate supervisor within the first hour of work including, but not limited to: accident, injury or hospitalization.
- (2) An employee must notify his/her immediate Supervisor before the employee leaves the work site due to illness prior to completion of the work shift.
- (3) When an employee has advance notice of the need for sick leave, such as when scheduling non-emergency medical, vision, and dental appointments, the employee is required to notify his/her Supervisor at least one working day in advance of his/her need for sick leave. Employees are encouraged to schedule medical and dental appointments outside normal working hours if possible.

F. Illness While on Paid Vacation. Illness while on paid vacation will be charged to sick leave rather than vacation only if the employee's illness or injury was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his/her normal duties. The Authority will be under no obligation to extend the vacation beyond the original scheduled vacation ending date.

G. Minimum Increments of Sick Leave. The minimum charge to an employee's sick leave account will be one-quarter hour, and will be rounded up to the next quarter hour. For example, an employee who is gone from work for two hours and ten minutes will be charged two and one-quarter hours of sick leave.

H. Medical Certification. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury,



medical condition or medical or dental office calls when the employee has been under the care of a physician.

- (1) An employee may be required to furnish evidence of attendance at scheduled medical or dental appointments.
- (2) Such evidence is required when an employee is absent for three or more consecutive workdays.
- (3) Such evidence may also be required if there is reason to believe an employee is or will be abusing sick leave. In such a case, an employee will be given advance written notice stating the reason for the requirement.

I. Unused Sick Leave. In certain instances, employees will be compensated for unused sick time at the time of their separation from employment with the Authority as follows:

- (1) Employees who are separated due to disability pursuant to Article 21, Section 6, will be compensated at their then current rate of pay for one hundred percent of their unused sick leave on termination.
- (2) Employees who retire employment with the Authority will be compensated at their then current rate of pay for fifty percent of the employee's unused sick leave, up to a maximum of 500 hours.

Except for as set forth in this Section, no employee will be compensated for, or allowed to exhaust, any accrued sick leave upon separation from employment with the Authority.

J. Abuse of Sick Leave. Abuse of sick leave may be grounds for discipline. Abuse will be determined on a case-by-case basis. Sick leave abuse may include, but is not limited to, failure to abide by the provisions of this rule, and use of sick leave for non-specified reasons.

Section 7. Family Care and Medical Leaves of Absence. The Authority provides family care and medical leaves of absence in accordance with the Family Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), and the Pregnancy Disability Leave Law ("PDL"). The policy regarding these leaves of absence are set forth in a separate Authority policy.

Section 8. Bereavement Leave. In the event of the death of an employee's "immediate family," the employee will be granted up to three days of paid bereavement leave and an additional two days for travel outside the state. Upon request of the Authority, the employee must furnish certification or other documentation of the family member's death. Additional time off may be granted upon approval by the Chief Operating Officer. For purposes of this section, "immediate family" means spouse, child, stepchild, mother, father, sister, brother, grandparents, mother-in-law, father-in-law, grandchildren, aunts and uncles

Section 9. Military Leave. Military Leave will be provided as set forth in the applicable California and federal law. An employee entitled to military leave must give his/her Department Head an opportunity within the limits of military regulations to determine when such leave will be taken. Prior to taking military leave, an employee, when possible, must present a copy of his/her military orders to his/her Department Head. The Department Head will advise the Personnel Officer of such military orders immediately.

Section 10. Voting Leave. The Authority encourages eligible employees to register and vote in all federal, state and local elections. Employees of the Authority are expected to vote prior to or following their assigned working hours. In accordance with *Election Code* sections 14000 and 14001, if a registered voter employee does not have sufficient time outside regular working hours within which to vote at statewide elections,

he/she may take off such working time as will enable him/her to vote. A maximum of two hours may be taken with pay. To receive time off for voting, the employee must notify his/her Department Head in advance. Employees who need Voting Leave, must take such leave at the beginning or end of the employee's work shift, based on the needs of the Department and the employee's schedule. The exact amount of time off work and the scheduling of time off will be decided between the employee and his/her Department Head. Employees who use Voting Leave are required to present a voter's receipt to their Department Head.

Section 11. Jury Duty Leave.

- A. Every regular employee of the Authority who is called or required to serve as a trial juror upon notification and appropriate verification submitted to the Department Head, is permitted to be absent from his/her duties with the Authority during the period of such service or while necessary to be present in court as a result of such call.
- B. Regular and probationary employees required to serve as a trial juror during their normal scheduled work hours will receive their base pay for the duration of their jury duty service. In the discretion of the Chief Executive Officer or Chief Operating Officer, paid jury duty leave may be authorized when it would not harm the Authority's interests. Alternatively, an employee who is required to serve jury duty may use any accrued leave, except sick leave, during that time, or the employee may elect to take an unpaid leave of absence. Employees are required to deposit with the Authority any pay, other than mileage, received from service as a trial juror during any period when the employee receives paid jury duty leave from the Authority. Such employees are required to deliver a "jury duty time card" form verifying each of the hours of jury duty service.
- C. Employees must immediately upon receipt of jury duty summons, provide his/her supervisor a copy of such notice. Employees required to serve on a jury are expected to return to work on days where jury duty is not required for the full day and must report to work before and after jury duty provided there is an opportunity for at least one hour of actual work-time.

Section 12. Witness Leave. An employee who is called to answer a subpoena as a witness in a personal capacity, during the employee's work hours will be permitted to take an unpaid leave of absence from work due to answering the subpoena, provided the employee shows proof of such subpoena with the Authority. Employees may elect to use any accrued vacation leave while out on unpaid witness leave. An employee who is called to answer a subpoena as a witness in their capacity as an Authority employee, during the employee's work hours will be permitted to take a paid leave of absence from work due to answering the subpoena, provided the employee shows proof of such subpoena with the Authority.

Section 13. Fitness for Duty Leave and Examination. Employees are expected to report to work fit for duty, which means able to perform their job duties in a safe, appropriate, and effective manner, free from adverse effects of physical, mental, emotional, and/or personal problems. This Section is intended to provide a safe environment and protect the health and welfare of employees and the public. If an employee feels that he/she is not fit to perform his/her duties, he/she must notify his/her supervisor immediately.

- A. Reasons for Fitness for Duty Leave. A paid Fitness for Duty Leave may be ordered in any of the following situations:
  - (1) An employee returns from a medical leave of absence of more than five working days.
  - (2) An employee is involved in the interactive process with the Authority under Article 4.

- (3) A Supervisor observes or receives a reliable report of an employee's possible lack of fitness for duty. Observations and reports may be based on, but are not limited to, employee's own self-report of potential unfitness, dexterity, coordination, alertness, speech, vision acuity, concentration, disproportionate response to criticism, and inappropriate or uncharacteristic interactions with the public, co-workers, and supervisors.
  - (4) Fitness for duty examinations based on a reasonable suspicion that an employee is under the influence of illegal drugs or alcohol will be conducted in accordance with the Authority's Alcohol and Drug Policy.
- B. Procedures for Ordering a Fitness for Duty Examination. When a Supervisor becomes aware of or observes behavior that makes him/her reasonably suspect that the employee may not be fit for duty, the Supervisor will refer the employee to the Personnel Officer who will schedule the employee for a fitness for duty examination. If the circumstances warrant it, the Personnel Officer, after conferring with the employee's Department Head, may place the employee on paid leave pending the results of the employee's fitness for duty examination. The examination will be paid for by the Authority.
- C. Procedure Following Receipt of Examination Results. The doctor examining the employee will be limited to finding the employee "fit for duty" or "fit for duty with restrictions" or "unfit for duty". In the case of finding an employee fit for duty, the doctor may issue work restrictions. In no case will the doctor reveal the underlying cause of the fitness or unfitness for duty without the employee's permission.
- (1) Fit for Duty. If the doctor finds the employee is fit for duty, the employee will return to work immediately and perform all duties of his/her position.
  - (2) Fit for Duty with Restrictions. If the doctor finds the employee is fit for duty with restrictions, the doctor will specifically enumerate what restrictions are necessary and for how long those restrictions are necessary. The Authority will then evaluate those restrictions, and determine if the Authority can reasonably accommodate those restrictions. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the Authority will engage in the interactive process as set forth in Article 4.
  - (3) Unfit for Duty. If the employee is found to be unfit for duty, he/she will not be permitted to work. He/She may request a leave of absence in accordance with the applicable provisions of these Personnel Rules. If the employee can provide certification of fitness for duty prior to the exhaustion of all paid and unpaid leave that he/she is entitled to under these Personnel Rules, the employee will be returned to work. However, if such certification is from the employee's own health care provider, the Authority may request a second opinion from a doctor of its choosing and at its cost to evaluate the employee under the requirements of this Section. If the two certifications conflict, a third opinion will be sought from a doctor chosen by the Authority and the employee, at the expense of the Authority. The opinion of fit or unfit rendered by the third doctor will be binding. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the Authority will engage in the interactive process as set forth in Article 4.

Section 14. Personnel Action Leave. The Authority has the right to place an employee on leave at any time with full pay. An employee may be placed on personnel action leave pending investigation of misconduct, potential disciplinary action, or other reasons that the Chief Executive Officer or Chief Operating Officer, in his/her discretion, believes warrant such leave. A personnel action leave will not have

any negative effect on the employee's benefits. Personnel action leave may also be referred to as "Relief of Duty." An employee assigned to personnel action leave will be required to be available by phone during his/her regular working hours. In addition, employees on a personnel action leave are prohibited from entering Authority facilities or property or communicating with Authority employees, except to the extent that non-employees may access Authority facilities, property, or employees. The Chief Executive Officer or Chief Operating Officer may place other reasonable restrictions on an employee during the period of personnel action leave.

**Section 15. Leave of Absence Without Pay.**

- A. Request for a Leave of Absence Without Pay. When an employee has exhausted all of his/her paid leaves, he/she may request a leave of absence without pay in accordance with this Section. The employee must submit a written request to the Personnel Officer for a leave of absence without pay, along with any supporting documentation. The Personnel Officer may request reasonable documentation in support of the employee's request for a leave of absence without pay.
- B. Authority to Grant a Leave of Absence Without Pay. The Personnel Officer may grant a regular or probationary employee leave of absence without pay for a period not to exceed 30 days. After 30 days, the leave of absence may be extended if so authorized by the Chief Executive Officer or Chief Operating Officer. The approval or rejection of the Chief Executive Officer or Chief Operating Officer will be in writing.
- C. Return from Leave of Absence Without Pay. Upon expiration of a regularly approved leave, the employee will be reinstated in the position held at the time leave was granted, provided such position continues to exist. An employee on leave who fails to report to duty promptly at its expiration will be subject to disciplinary action for being on an unauthorized absence.
- D. Mandatory Exhaustion of Paid Leaves. If an employee is requesting a leave of absence for medical reasons, the employee is required to first fully exhaust all of his/her paid leaves in order to be eligible to receive a leave of absence without pay. If an employee is requesting a leave of absence for non-medical personal reasons, the employee is required to fully exhaust all of his/her paid leaves, except sick leave, in order to be eligible to receive a leave of absence without pay.

**ARTICLE 23. HOLIDAYS**

**Section 1. Holidays Observed.**

- A. The Authority observes the following holidays:

<u>HOLIDAY</u>	<u>DAY OBSERVED</u>
New Year's Day	January 1 <sup>st</sup>
Presidents' Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup>
Labor Day	1 <sup>st</sup> Monday in September
Veterans' Day	November 11 <sup>th</sup>
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Day After Thanksgiving	4 <sup>th</sup> Friday in November
Christmas Day	December 25 <sup>th</sup>

- B. If one of the holidays listed above falls on a Sunday, then it will be observed on the following Monday. If one of the holidays listed falls on a Saturday, then it will be observed on the previous Friday.

Section 2. Eligibility for Holiday Pay.

- A. An employee must be paid for all or a portion of both the regularly scheduled working assignments immediately before and immediately after that holiday in order to receive holiday pay.
- B. A new employee whose first working day is the day after a holiday will not be paid for the holiday.
- C. An employee who is terminating employment for reasons other than paid retirement and whose last day as a paid employee is the day before a holiday will not be paid for that holiday.

Section 3. Holiday Pay. For full-time employees, employees will receive 8 hours of pay at the employee's then current rate of pay. For employees who work on a holiday, the employee will receive the employee's pay for all hours worked during the holiday plus the 8 hours of holiday compensation.

**ARTICLE 24. DRESS CODE**

Section 1. General Standards. The appearance that employees project to the public and others they come in contact with while at work, directly reflects on the Authority. In the interest of presenting a professional image to the public, the Authority requires all employees to observe good habits of dress, grooming, and personal hygiene. Employees must always maintain a professional image.

Section 2.

Office Attire. Employees who work primarily in an office setting are required to dress each day in business casual dress. Business casual wear is a style of dress which projects a professional, business-like image while still permitting employees to wear more casual and relaxed clothing. Examples of appropriate business casual wear include, but are not limited to, khaki or "Docker type" chinos, slacks, tailored capri pants, jeans; polo, collared, or short-sleeved dress shirts; cardigans; sweaters or sweater sets; blouses; casual dresses and skirts; and loafers, flats, or dress sandals. Examples of inappropriate clothing or footwear are t-shirts, leggings, sweat pants, sweatshirts, overalls, cargo pants, or yoga pants; pants that are unhemmed or drag on the ground; pants that are distressed or have holes; halter tops or tops that are backless, midriff-baring, or have a low-cut neckline or spaghetti straps; shirts displaying offensive or obscene language or artwork; shorts; mini-skirts; flip-flop sandals, or above-the-knee boots; non-Authority baseball hats or visors. Clothing and footwear should be clean and in good repair. It may not be faded, torn, frayed, or revealing.

Upon the approval of an employee's Department Head, an employee may wear casual attire on a day other than a designated casual dress day, if the employee has been assigned a task that would be unsuited to business casual or formal business attire.

Section 3. Uniforms. Employees who work primarily outside of an office are required to wear a uniform when performing normal work activities, regardless of the time of day or day of the week. All uniforms are expected to be clean and in good repair. Uniforms may not be worn when off duty except for brief stops to and from work and during breaks. When uniformed employees are participating in non-uniformed related

activities, such as off-site or on-site trainings, meetings, or other non-uniformed related activities, uniformed employees may elect to either wear their uniform or wear business casual attire as set forth in Section 2.

Section 4. Grooming. As part of the professional image presented to the public by the Authority, employees should appear for work in a clean, well-groomed manner.

Section 5. Safety. The Authority may impose additional restrictions on an employee's attire or grooming when there are safety concerns. Any such restrictions will be issued in writing.

Section 6. Exceptions. The Chief Executive Officer or Chief Operating Officer may grant exceptions to this Article when the application of the Article would infringe on an employee's protected characteristics as set forth in Article 4.

## **ARTICLE 25. WORKPLACE SAFETY**

Section 1. Commitment to Workplace Safety. The Authority is committed to providing a safe workplace for all employees. Every employee should understand the importance of safety in the workplace. By remaining safety conscious, employees can protect their own interests as well as those of their co-workers. Accordingly, the Authority expects all employees to take steps to promote workplace safety.

Section 2. Injury and Illness Prevention Program. In keeping with its commitment to workplace safety, the Authority has adopted an Injury and Illness Prevention Program as part of its safety program. Compliance with this Program is a condition of employment, and all employees will be evaluated on their compliance with the Program. Each employee will be given a copy of the Injury and Illness Prevention Program, and a copy is maintained by the Human Resources Office.

Section 3. Reporting Injuries and Unsafe Conditions. If an employee identifies a potentially unsafe condition or risk, the employee should immediately report the matter to his/her supervisor. An employee who suffers an injury while at work, no matter how minor, should immediately inform his/her Supervisor. Employees injured on the job may be entitled to benefits under the state workers' compensation law.

Section 4. Drug-Free and Alcohol-Free Workplace. The Authority is committed to providing a work environment that is safe, healthy, and free of any effects caused by alcohol or drugs. Violation of the Authority's drug-free workplace policy can lead to disciplinary action being taken against an employee, up to and including dismissal. For more information regarding the policy, employees should review the Authority's Alcohol and Drug Policy.

Section 5. Workplace Violence Prevention.

- A. Objective. The Authority is strongly committed to ensuring the safety of all Authority employees. Consistent with this policy, acts or threats of violence, including intimidation, harassment, and/or coercion which involve or affect Authority employees will not be tolerated and will be subject to appropriate disciplinary action up to and including dismissal. The following are the objectives of the Authority:
- (1) To ensure all workplace threats and violent behavior are addressed promptly.
  - (2) To ensure the level of physical and facility security in Authority workplaces is sufficient to protect the health and safety of Authority employees.
  - (3) To ensure that all disciplinary action taken for behavior prohibited under this Section is reviewed, evaluated, and administered consistently and equitably throughout the Authority and done so in a timely manner.

- B. Threats or Acts of Violence Defined. A credible threat of violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his/her safety, or the safety of his/her immediate family, and that serves no legitimate purpose. General examples of prohibited workplace violence include, but are not limited to the following:
- (1) Threatening to harm or harming an individual and/or his/her family, friends, associates, and/or their property.
  - (2) Fighting or challenging another individual to a fight.
  - (3) Intimidation through direct or veiled verbal threats, or through physical threats, such as obscene gestures, grabbing, and pushing.
  - (4) Making harassing or threatening telephone calls; sending harassing or threatening letters, emails, or other correspondence.
  - (5) Intimidating or attempting to coerce an employee to do wrongful acts that would affect the business interests of the Authority.
  - (6) Harassing surveillance or stalking, which is engaging in a pattern of conduct with the intent to follow, alarm, or harass another individual, which presents a credible threat to the individual and causes the individual to fear for his/her safety, or the safety of his/her immediate family, as defined in California *Civil Code* section 1708.7.
  - (7) Making a suggestion or otherwise intimating that an act to injure persons or property is appropriate behavior.
  - (8) Possession of firearms (loaded or unloaded), weapons, or any other dangerous devices on Authority property. This includes look-alike weapons, such as toy guns. Weapons and dangerous devices may include, but are not limited to the following, when their possession or use is not expressly authorized by an Authority supervisor or manager: blackjacks, slingshots, metal knuckles, explosive substances, dirks, daggers, gas- or spring-operated guns, knives, folding knives having a blade that locks into place, razor blades, and clubs.
  - (9) Use of a personal or Authority-issued tool or other equipment in a threatening manner toward another.
- C. Reporting Workplace Violence. Any employee who is the victim of a threat or act of violence, or any employee who witnesses such conduct, should immediately report the incident to his/her Supervisor or other appropriate person in the chain of command. Should the employee perceive that he/she is in immediate danger of a violent act, or has just been victimized by a violent act, or is a witness of a violent act, he/she must as soon as possible:
- (1) Place themselves in a safe location.
  - (2) If appropriate, call 911 and request immediate response of a police officer and be prepared to inform the police dispatcher of the circumstances and the exact location of where an officer is needed.
  - (3) Inform a Supervisor, Department Head, or the Personnel Officer of the circumstances.



- (4) Complete a written report as soon as possible and submit the original copy to the Personnel Officer.
  - (5) Cooperate fully in any administrative or criminal investigation, which will be conducted within existing policy and laws.
- D. Reporting Future Workplace Violence. Employees who have reason to believe they or any Authority employee may be the subject of a violent act in the workplace or as a result of their Authority employment, should immediately notify their Supervisor, Department Head, or the Personnel Officer.
- E. Violation of Article. The Authority prohibition against threats and acts of violence applies to all persons involving Authority operation, including but not limited to Authority personnel, contract and temporary workers, vendors, and anyone else on Authority property. Violations of this Article by any individual may be followed by legal action as appropriate, which may include, seeking a temporary restraining order and/or injunction on behalf of Authority employees if the situation warrants such action. In addition to appropriate legal action, violations of this Article by employees, including making a false report under this Article, may lead to appropriate disciplinary action, up to and including dismissal.

Section 6. Prohibition on Employee Smoking. All employees are prohibited from smoking or using e-cigarettes within all Authority facilities and vehicles, and within 20 feet of all entrances, exits, and operable windows of such facilities. Employees are permitted to smoke in any area designated as a smoking area.

## **ARTICLE 26. AUTHORITY RENTAL PROPERTIES.**

Section 1. Rental Properties. The Authority owns and maintains certain residential properties (“Rental Property”).

Section 2. Employee Rental of Rental Properties. The Authority offers its employees the opportunity to rent a Rental Property, subject to a separate Residential Rental Agreement between the Authority as Landlord and the employee as Tenant. Any separate Residential Rental Agreement is not intended to be and is not a form of compensation or work benefit to the employee. A Residential Rental Agreement does not create an employment contract with the employee, nor does it impose any obligations or requirements on the employee to perform work for the Authority while at the Rental Property. Time an employee spends at the Rental Property for everyday living or recreational purposes is not considered “hours worked” for purposes of employee compensation, as set forth in Article 12.

## **ARTICLE 27. ADDITIONAL POLICIES**

In addition to the provisions of these Personnel Rules, employees are also subject to the Authority’s Personnel Policy Handbook, which includes various personnel policies and procedures adopted by the Board of Directors, which are subject to change and will be governed by the terms and conditions set forth in such additional policies.



# Agenda Report

No. 6.B

**DATE:** June 17, 2019  
**TO:** Executive Committee  
**FROM** Douglas DeFlitch (COO) & Special Counsel John Bezdek  
**SUBJECT:** Friant Division Facilities Title Transfer

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## PROJECT SCOPE & PROCESS UPDATE:

The first phase of the Title Transfer Project was to define the scope of facilities FWA is requesting to be transferred and the identification of the representatives on the Reclamation side and amongst stakeholders seeking title. Reclamation, pursuant to our request, has developed an initial estimate of transaction costs, as well as an initial valuation of the facilities being considered for transfer. At staff recommendation, the Board directed staff to enter into a Memorandum of Agreement (MOA) that will include a more detailed project timeline, procedural requirements, estimated costs, and cost sharing responsibilities. Concurrent with the MOU process, staff is developing an analysis of the potential benefits and risks associated with title transfer. The Title Transfer Project consists of multiple stages of due diligence and analysis. A final recommendation will not be presented for Board review and action until the diligence and analysis is complete.

## CURRENT STATUS:

Staff and special counsel are in ongoing discussions with Reclamation's South-Central California Area Office (SCCAO) and are focusing on potential post-title transfer governance issues, including whether Reclamation will seek a potential change in the point of diversion for contractors on the Friant-Kern and Madera Canals once title is transferred. Staff and Counsel had a meeting with Reclamation on April 24, 2019 to discuss and approach to potential transfer. As a result of this meeting Friant has sent another letter to Reclamation outlining how the post-governance concerns would be approached to not add additional liability to either party, we are waiting Reclamations response.

## DISCUSSION:

One of the many benefits of title transfer is to be able to operate and maintain the Friant-Kern Canal and other federal facilities according to Friant standards. Oftentimes Reclamation guidelines and policy regarding O&M standards are overly burdensome with little technical or policy basis. This past month one such draft policy (CMP-10-05) was rolled out for comment. (see attached). Friant Water Authority, along with our sister agency San Luis Delta Mendota Water Authority and a host of other districts and agencies responsible for federal transferred works had a chance to voice our discontent with the draft Directive and Standard. (see meeting notes send out by Dan Keppen @ family farm alliance). This is just one instance where if title to the system was transferred, the additional time to review, layers of bureaucracy to change, and cost to contractors would not have to be defended.

## ENVIRONMENTAL UPDATE:

There was some good news from Reclamation this month as on May 24, 2019, they rolled out a Categorical Exclusion (CE) category that would apply to simple/non complicated transfers of title.

The CE is limited to the transfer of projects and/or project facilities from Federal ownership to a qualifying entity, which means an agency of State or local government or Indian tribe, a municipal corporation, quasi-municipal corporation, or other entity such as a water district that, as determined by the Secretary, has the capacity to continue to manage the conveyed property for the same purposes for which the property has been managed under Reclamation law. Accordingly, projects involving the following considerations (CE Qualification Factors) of a qualifying non-Federal entity would generally be eligible to be considered for the title transfer CE:

1. The potential transferee must demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets.
2. The potential transferee must affirm that it has no plans to change the maintenance, operations, or use of the lands and water associated with the transferred facilities.
3. The potential transferee must ensure that there are no competing demands for use of the transferred facilities, with the exception of those demands accommodated by existing contractual arrangements.
4. The potential transferee must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities, thereby impacting other contractors, stakeholders or activities, with the exception of those impacts accommodated by existing contractual arrangements.
5. The transfer would not include lands or facilities involving Indian trust responsibilities.
6. The potential transferee must ensure that issues involving existing contracts and agreements, and interstate compacts and agreements, are resolved, and treaty and international agreement obligations are fulfilled prior to transfer.
7. The potential transferee must assume responsibility for all commitments and agreements into the future.
8. Potentially affected state, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussion to transfer title and will have: (a) the opportunity to comment and suggest options for remedying any problems; and (b) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner. If a project or facility is not eligible for transfer under Public Law 116-9, Title VIII, the transfer proponent may seek legislation to authorize the negotiated terms of the transfer of each project or facility

It is our belief that transfer of the Friant-Kern Canal would qualify under this Categorical Exemption, as well as the new authority granted to the Secretary of the Interior under S. 47, the *John D. Dingell, Jr. Conservation, Management, and Recreation Act*.

While it is still too soon for Reclamation to have developed a policy for implementation of this authority, we have been informed by senior staff that an MOU outlining a due diligence process, along with the sharing of costs, will still be required for administrative transfers. But as a recipient entity we are one step closer to the reality of Title Transfer.

**RECOMMENDED ACTION:**

Friant Board continues to support expeditiously pursuing transfer of title to the Friant-Kern Canal and other facilities by requesting staff complete a draft Memorandum of Agreement with Reclamation.

Staff will continue to refine the benefits of transfer and continue to respond to the list of concerns outlined at the BOD offsite and expeditiously work towards an Agreement (MOA) with Reclamation.

**SUGGESTED MOTION:**

None

**BUDGET IMPACT:**

None currently

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**ATTACHMENTS:** Draft Policy CMP-10-05, Email from Dan Keppen on CMP 10-05 Call with Reclamation,

Reference: <https://www.usbr.gov/title/>

## **DRAFT RECLAMATION MANUAL RELEASE**

**Comments on this draft release must be submitted to [kdahm@usbr.gov](mailto:kdahm@usbr.gov)**

**Background and Purpose of the Following Draft Directive and Standard (D&S)** The operation, maintenance, and replacement (OM&R) responsibility of about two-thirds of Reclamation assets have been transferred to an operating entity pursuant to contracts with Reclamation. In these instances, the operating entity is responsible for providing or obtaining the necessary technical services required in performing work activities needed to operate, maintain, and/or replace the transferred work(s). Reclamation remains responsible to ensure that OM&R of transferred works facilities fulfill all applicable legal and technical requirements. To ensure Reclamation is aware of proposed changes, to ensure the changes are consistent with the original purposes and intent of the authorized Project, and to ensure the changes meet Reclamation's current design and safety requirements, and fulfill other legal requirements, Reclamation must review and determine if the proposed changes are acceptable.

The purpose of this Directive and Standard (D&S) is to establish Reclamation-wide requirements regarding roles, responsibilities, and procedures for acceptance of planning, design, and construction, of substantial changes by operating entities (and other external entities) on Reclamation-owned facilities. The benefits of this D&S are to ensure Reclamation, in collaboration with its operating entities (and other external entities), fulfills existing contract requirements; is aware of potential facility modifications; can verify that the substantial change work performed does not create unacceptable risks to the facility, property, environment, historic properties, and public safety; and can confirm the substantial change is performed in full compliance with other mandates.

The Reclamation Manual is used to clarify program responsibility and authority and to document Reclamation-wide methods of doing business. All requirements in the Reclamation Manual are mandatory.

See the following pages for the draft D&S.

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Substantial Changes on Transferred Works, Bureau of Reclamation Facilities
<b>Purpose:</b>	The purpose of this Directive and Standard (D&S) is to establish Reclamation-wide requirements regarding roles, responsibilities, and procedures for acceptance of planning, design, and construction, of substantial changes by operating entities (and other external entities) on Reclamation-owned facilities. The benefits of this D&S are to ensure Reclamation, in collaboration with its operating entities (and other external entities), fulfills existing contract requirements; is aware of potential facility modifications; can verify that the substantial change work performed does not create unacceptable risks to the facility, property, environment, historic properties, and public safety; and can confirm the substantial change is performed in full compliance with other mandates.
<b>Authority:</b>	Reclamation Act, June 17, 1902 (ch. 1093; 32 Stat. 388; 43 U.S.C. 391 et seq.), as amended and supplemented; Reclamation Project Act of 1939 (Act of August 4, 1939, ch.418, 53 Stat. 887); Reclamation Safety of Dams Act of 1978 as amended; and acts relating to individual dams or projects.
<b>Approving Official:</b>	Director, Policy and Administration (Policy)
<b>Contact:</b>	Asset Management Division (84-57000)

### 1. Introduction.

- A. The operation, maintenance, and replacement (OM&R) responsibility of about two-thirds of Reclamation assets have been transferred to an operating entity pursuant to contracts with Reclamation. In these instances, the operating entity is responsible for providing or obtaining the necessary technical services required in performing work activities needed to operate, maintain, and/or replace the transferred work(s).
- B. The purpose of this D&S is to provide clear expectations of Reclamation's process and internal requirements to support the completion of substantial changes. Reclamation Manual (RM) D&S, *Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction)* (PEC 10-05), standard article language identifies the contractor will not make any substantial changes in the transferred works without first coordinating with Reclamation.
- C. Reclamation remains responsible to ensure that OM&R of transferred works facilities fulfill all applicable legal and technical requirements. To ensure Reclamation is aware of proposed changes, to ensure the changes are consistent with the original purposes and intent of the authorized Project, and to ensure the changes meet Reclamation's

# Reclamation Manual

## Directives and Standards

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current design and safety requirements, and fulfill other legal requirements, Reclamation must review and determine if the proposed changes are acceptable.

- D. This D&S defines the scope of Reclamation's oversight and monitoring activities through all phases – planning, design, construction, and close-out – of the substantial change activity irrespective of how the operating entity (or other external entities) elects to perform the substantial change through the use of:

- (1) technical services of Reclamation; or
- (2) technical services outside of Reclamation.

## 2. Applicability.

- A. This D&S is applicable to Reclamation staff involved with the oversight of transferred facilities regarding the technical services required for substantial changes to Reclamation-owned facilities.

- (1) This D&S applies to such work regardless of the funding source for the work.
- (2) Any arrangements for collaboration with operating entities on Reclamation's decisions regarding the technical services required for construction work that exist as of the effective date of this D&S shall remain in place and not be affected.

- B. This D&S does not apply to Safety of Dams Modifications. Collaboration with operating entities regarding Safety of Dams Modifications is covered by RM D&S, *Bureau of Reclamation Dam Safety Program* (FAC 06-01). If the substantial change involves work on a high- or significant-hazard dam, reference additional Dam Safety Analyses in RM D&S, *Construction Activities* (FAC 03-02).

- C. Nothing in this D&S changes existing contracts or formal agreements between Reclamation and the respective operating entity.

- D. The processes provided for in this D&S do not alter the environmental and other regulatory requirements applicable to substantial change work as defined in this D&S<sup>1,2</sup> nor the responsibilities of various parties associated with such compliance.

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<sup>1</sup> National Historic Preservation Act (54 U.S.C. 306108; 36 CFR 800) (NHPA), National Environmental Policy Act (NEPA) (Pub. L. 91-190; 83 Stat. 852; 42 U.S.C. Sec. 4321 et. seq.), Endangered Species Act (ESA) (Pub. L. 93-205; 87 Stat. 884; 16 U.S.C. 35 Sec. 1531 et. seq.), and Office of Management and Budget Memorandum M-12-12 Section 3, among others.

<sup>2</sup> Please see the following RM Policy and D&S for potential applicability to substantial OM&R of transferred works facilities: ENV P08, *Sustainable Buildings*; LND 02-01, *Cultural Resources Management*, LND 02-03, *Operation and Maintenance of Project Works that are Historic Properties*.

# Reclamation Manual

## Directives and Standards

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### 3. Definitions.

- A. **Authorized Reclamation Official.** The Reclamation official to whom a regional or other director has delegated authority and responsibility for the accomplishment of construction work at a given Reclamation-owned facility, or such other Reclamation official to whom authority and responsibility has been re-delegated.
- B. **Construction Activity.** Any non-recurring activity to develop new features or assets, or rehabilitate, renovate, or replace existing assets. A construction activity meets the definition of a project.
- C. **Facilities.** A term used to encompass buildings, other structures, installed equipment, and other real property improvements, associated land, including utility systems and collateral equipment. The term does not include operating materials, supplies, special tooling, special test equipment, and noncapitalized equipment. The term “facility” is used in connection with buildings (facilities having the basic function to enclose usable space), structures (facilities having the basic function of an operational activity), associated land and real property improvements.
- D. **Information Technology.** The equipment, interconnected systems or subsystems, services, personnel, and other resources used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or communication of information by an organization. The term includes computers, networks, ancillary equipment, software, firmware, services (including support services), and related resources.
- E. **Non-Reimbursable Costs.** The portions of project costs paid by the Federal Government that are not required to be repaid to the Federal Government. The costs for Reclamation to review the design drawings and written specifications of the substantial change and to monitor the construction progress are considered non-reimbursable costs. Unless specifically stated, nothing in this D&S changes the reimburseability or non-reimburseability of costs per an existing contract or formal agreement between Reclamation and the respective operating entity.
- F. **Non-Routine Maintenance.** Major, non-recurring repairs, replacement and renovations to Reclamation-owned or operated facilities, or facility components, that are intended to ensure the continued safe, dependable, and reliable delivery of authorized project benefits.
- G. **Operating Entity.** A non-Federal entity that has the responsibility, via a contract or formal agreement with Reclamation, for the OM&R of a Reclamation project or features thereof.
- H. **Operations, Maintenance, and Replacement or OM&R.** Actions undertaken on a facility which keeps a facility or system operational, as originally designed and/or intended. This includes the replacement or installation of component(s) to maintain the reliable function of the facility or to meet current safety standards.



# Reclamation Manual

## Directives and Standards

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- I. **Project.** For the purposes of this D&S, a temporary endeavor undertaken to create a unique product, service, or result.<sup>3</sup> A project has a discrete and definable commencement and conclusion. A project has a unique deliverable and there may not be a need to repeat the project once it has been completed. For the purposes of this D&S, a project meets the definition of a construction activity.
- J. **Reclamation Authorized Official.** Regional director or Reclamation official to whom authority has been delegated pursuant to Paragraph 5.C. of the RM *Delegations of Authority*, for the accomplishment of substantial changes at a Reclamation owned facility.
- K. **Reimbursable Costs.** The portion of the project costs that are required to be repaid to the Federal Government. Unless specifically stated, nothing in this D&S changes the reimburseability or non-reimburseability of costs per an existing contract or formal agreement between Reclamation and the respective operating entity.
- L. **Responsible Design Engineer.** An engineer, acting in the scope of their competence, exercising supervisory direction, control, or authority over engineering decisions that affect the life, health, property, and welfare of the public by personally making or reviewing, and approving, the decision.
- M. **Routine Maintenance.** Routine O&M for purposes of this D&S includes the recurring activities, typically annual in nature, required for the continuing safe operation of Reclamation facilities in the manner necessary to provide authorized Project benefits. The definition includes tasks, activities, practices, management, and programs that are recurring based on a finite time period, condition analysis, or other metric.
- N. **Substantial Change.** A modification in, or addition to, a project facility which involves changes in the original design intent, function, and/or operational parameters of the facility, or changes in project benefits, including non-routine maintenance activities that involve construction or reconstruction of a portion of the facility. These modifications may be capitalized or non-capitalized. A substantial change is not a characterization of the proposed action in terms of being a major or minor action as defined in NEPA. Definition in accordance with RM D&S, *Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction)* (PEC 10-05).
- O. **Transferred Works.** Those facilities owned by Reclamation where Reclamation has assigned the responsibility for OM&R activities to a non-Federal operating entity pursuant to a contract or formal agreement with such entity.
- P. **Written Specifications.** For the purposes of this D&S, the term “written specifications” means the written portion of Section C – Description/specifications of a

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<sup>3</sup> Project Management Institute. A Guide to the Project Management Body of Knowledge: PMBOK® Guide, 6th Edition, Newtown Square, PA: Project Management Institute, 2017, p. 3.



# Reclamation Manual

## Directives and Standards

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solicitation. The written specifications do not include the design drawings or the clauses and provisions of the solicitation.

4. **Responsibilities.** Responsibilities for establishing roles, responsibilities, and procedures for acceptance of planning, design, and construction, of substantial changes by operating entities (and other external entities) on Reclamation-owned facilities, as outlined in this D&S, will be shared by different levels of the organization. Primary responsibilities are as follows:
  - A. **Regional Directors.** Regional directors are responsible for:
    - (1) implementing this D&S;
    - (2) overseeing and coordinating the regional programs related to this D&S; and
    - (3) ensuring that area offices conduct and participate in appropriate activities related to this D&S under their jurisdiction.
  - B. **Area Managers.** Area managers are responsible for:
    - (1) identifying a Reclamation Authorized Official to manage the activities associated with administering the D&S requirements; and
    - (2) collaborating with operating entities of transferred works on all aspects of program coordination, scheduling, and accomplishment of D&S activities.
  - C. **Reclamation Authorized Official.** Reclamation authorized officials are responsible for:
    - (1) ensuring operating entities of transferred works are aware of the requirements to submit a written request for acceptance of substantial changes prior to construction;
    - (2) working in coordination with the operating entity (or other external entity) to determine modifications to a project facility which meet the definition of a substantial change;
    - (3) ensuring the necessary engineering designs, design drawings, and written specifications are completed in accordance with Reclamation's design criteria and/or standards (see RM D&S, *Design Activities* (FAC 03-03) and *Collaboration with Customers Regarding Technical Services Required for Work on Existing Bureau of Reclamation Facilities* (CMP 10-04));
    - (4) reviewing requests for substantial changes for consistency with the authorized project purposes, intent of the construction activity, and the changes meet

# Reclamation Manual

## Directives and Standards

Reclamation's design, safety, cybersecurity and other environmental and historical properties requirements;

- (5) monitoring approved changes during the planning, design, construction, and closeout phases to ensure compliance with applicable conditions associated with the acceptance;
- (6) requiring operating entities to provide notice of undertakings sufficiently prior to the undertaking so that Reclamation may complete NEPA, ESA and/or NHPA section 106 and compliance process;
- (7) notifying the regional finance officer when the work is completed in accordance with RM D&S, *Assets Under Construction (AUC)* (FIN 07-24); and
- (8) collaborating with the regional finance officer and real property office to appropriately capture and record the costs in FBMS for those substantial changes that meet the criteria for capitalization in accordance with RM D&S, *General Property, Plant and Equipment (G-PP&E)* (FIN 07-20).

**D. Director, Policy.** The Director, Policy is responsible for:

- (1) establishing and maintaining related Policy and D&S for substantial changes to Reclamation assets; and
- (2) ensuring, after the asset is transferred to O&M status, the substantial change is examined during the applicable *Operation and Maintenance (RO&M) Program Examination of Associated Facilities (Facilities Other than High- and Significant-Hazard Dams)* (FAC 01-04), *Review/Examination Program for High- and Significant-Hazard Dams* (FAC 01-07), *Bureau of Reclamation's Review of Operations and Maintenance of Urbanized Canals (RO&MUC) Program* (FAC 01-12), and Temporary Reclamation Manual Release, *Bridge Inventory and Inspection Program* (FAC TRMR-98).

## 5. Process.

**A. Collaboration and Coordination for Work on Existing Reclamation Facilities.**

Reclamation will work together with operating entities (and other external entities) during periodic or routine meetings to discuss:

- (1) common modifications or additions to project facilities as examples of actions which generally meet the definition of a substantial change;
- (2) examples of modifications at a specific project facility which meet the definition of a substantial change to provide clarity in the scope of the definition; and
- (3) currently proposed changes at project facilities planned and/or designed.

# Reclamation Manual

## Directives and Standards

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- B. Collaborative Plan.** The Reclamation Authorized Official will work with operating entities (and other external entities) to:
- (1) determine whether proposed actions meet the definition of a substantial change (as defined in Paragraph 3.O.); and
  - (2) collaborate with the operating entities (and other external entities) to develop a clear plan for the timely completion of a substantial change. Appendix A provides an example substantial change plan outline.
- C. Substantial Change Review Initiation.** Substantial change review initiation shall, at a minimum, adhere to this process:
- (1) Reclamation will receive a substantial change plan, at the applicable Reclamation area office, for review and acceptance.
  - (2) Per requirements to be identified between Reclamation, an operating entity, and other external entities in a substantial change plan, the substantial change review initial shall initiate with the transmission of design drawings and written specification packages for substantial changes proposed at a transferred work describing the changes to be made, including at a minimum, the following requirements:
    - (a) name and address of the operating entity (or other external entity);
    - (b) name of facility;
    - (c) complete description of proposed work;
    - (d) location of work in reference to the facility;
    - (e) applicable maps;
    - (f) identification of a point of contact;
    - (g) written specifications that establish precise measurements, tolerances, materials, processes, equipment criteria, performance and finished product requirements, construction acceptance criteria, and other specific details of the deliverable. Compliance with material handling, storage, packaging, preservation, delivery requirements, and material identification and traceability;
    - (h) potential impacts to environmental and/or historical properties associated with the proposed activity;
    - (i) design drawings, which at a minimum, must show details about the entire construction activity, including specific information regarding modifications

# Reclamation Manual

## Directives and Standards

to existing Reclamation facilities and new features to be constructed, such as: dimensions, measurements, locations, elevations, type of material, material size, cross-sections, profiles, limits of disturbance, other details of the construction activity, and provide explicit information about the requirements for the construction activity and associated system changes, and how the construction activity is to be constructed or assembled;

- (j) schedule;
  - (k) construction management plan including identification of onsite inspection and material testing entities and frequency of inspection and testing;
  - (l) current and valid registration in the appropriate engineering discipline of the responsible design engineers;
  - (m) current and valid licenses in the state where the work is to occur of any contractors;
  - (n) design data;
  - (o) design criteria; and
  - (p) other pertinent information as deemed necessary for appropriate review of the design.
- (3) The Reclamation Authorized Official will acknowledge, in writing, receipt of design drawings and specifications packages within 10 business days. This acknowledgement may also identify additional information needed for Reclamation to complete its review, which could include:
- (a) data concerning subsoil and foundation conditions and the materials used in the construction activity;
  - (b) analyses and design calculations; and
  - (c) other information deemed necessary.

### D. Reclamation Review and Acceptance.

- (1) Review of design drawings and written specifications will be performed in accordance with RM D&S, *Design Activities* (FAC 03-03) with the exception of documenting the review by signing “Accepted” on the design drawings.
- (2) Timelines for Reclamation review of design drawings, written specifications, environmental compliance documentation, and related required permits will be identified with the operating entities (and other external entities) in a substantial

# Reclamation Manual

## Directives and Standards

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change plan to ensure timely completion of a substantial change. Appendix A provides an example substantial change plan outline.

- (3) Reclamation's review and acceptance of the design drawings and written specifications for compliance with policies, standards, procedures and good engineering practice does not limit the responsibility or liability of the responsible design engineer.
- (4) Upon receipt of a design package, the Reclamation Authorized Official may seek support and assistance from the regional office and/or Reclamation's Technical Service Center, when deemed necessary, and in consultation with the appropriate regional office division(s), may determine which offices are to be included in the review process to ensure a thorough evaluation of the design drawings and written specifications.
- (5) Inclusion of specific offices in the review process will be dependent on factors such as the type of asset(s) undergoing substantial change(s), potential hazards, engineering disciplines involved, potential risk to public safety and Reclamation operations, complexity of the construction activity, and ensuring compliance with other applicable laws. Reviewing offices may include, but are not limited to:
  - (a) engineering;
  - (b) construction;
  - (c) safety;
  - (d) environmental compliance;
  - (e) land resources;
  - (f) historical properties;
  - (g) energy and sustainability;
  - (h) information technology; and
  - (i) other disciplines determined to be required with respect to a particular design drawings and written specifications package.
- (6) The Reclamation Authorized Official will ensure coordination and review by participating reviewing offices, as deemed appropriate. Each reviewing office, as deemed appropriate to the Reclamation Authorized Official, will give its consideration and provide comments to the area office.

# Reclamation Manual

## Directives and Standards

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- (7) The Reclamation area office, in conjunction with the participating reviewing offices, will determine if the design drawings and written specifications are acceptable, subject to comments, or deficient.
- (8) The operating entity will be notified of any deficiencies in the submitted design drawings and written specification package. The notice will provide the specific deficiencies, and if needed, request supplemental information, supporting data and/or clarification.
- (9) When the Reclamation Authorized Official determines that the design drawings and written specifications for the applicable design phase are acceptable, the area office will provide written notification to the entity requesting review and acceptance of its determination.
- (10) The Reclamation Authorized Official will request copies of the final design drawings and written specifications and retain them with the construction activity records, including entry into Reclamation's current design drawings and records system. Design drawings and written specifications shall be signed and stamped by the responsible design engineer.
- (11) Written, formal Reclamation acceptance to proceed with the substantial change will be provided by the Reclamation Authorized Official only after all Reclamation requirements have been met.

### E. Documentation.

- (1) Appendix A provides an example outline for a collaborative plan to be developed between Reclamation, an operating entity, and other external entities outlining the project, expectations, communication, notifications, monitoring, Quality Assurance/Quality Control (QA/QC), closeout, and timelines for proposed substantial changes.
- (2) Records documentation will be kept in conformance with applicable National Archives and Records Administration Records Management Guidance and Regulations, Policy, and D&S including RM D&S, *Information Management* (RDC 05-01).

### F. Emergencies.

- (1) In case of unusual conditions or emergencies threatening the interruption of water delivery or posing a significant safety hazard to the facility, property or the public, the operating entity may initiate and implement measures to mitigate the hazard.
- (2) Reclamation will work together with operating entities (and other external entities) during periodic, routine, or emergency-related meetings to discuss

# Reclamation Manual

## Directives and Standards

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notification procedures and timeframes of emergency repairs in accordance with the water-related contract.

- (3) Within 60 calendar days of implementing an emergency repair, or as mutually agreed upon, Reclamation will review the operating entity submission of design drawings and written specifications for acceptance.
6. **Technical Services Work Performed by Reclamation.** Reclamation can perform, at the request of the operating entity, the technical services required for the construction of a substantial change with the costs of such services being borne by the operating entity to the extent such costs are allocable to reimbursable project purposes. Additional contractual or regulatory constraints may also apply. RM D&S, *Collaboration with Customers Regarding Technical Services Required for Work on Existing Bureau of Reclamation Facilities* (CMP 10-04), Paragraph 7 identifies the minimum conditions for Technical Services Work Performed by Customers.

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# Reclamation Manual

## Directives and Standards

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The following is an example outline of a collaborative plan between the Bureau of Reclamation, an operating entity, and other external entities, if applicable, outlining the project, expectations, communication, and timelines for proposed substantial changes:

1. **Project Background.** Describe the background including installation name and project, date of original completion and modifications to date, proposed change, and progress on planning, design, and environmental compliance.
2. **Project Overview.** Describe the work to be completed under the proposed project, location of work in reference to the facility, applicable maps, identification of a point of contact, method of project delivery (e.g., contractor, district, etc.), identify the major work components to be performed by each entity, written specifications, design drawings, data, and criteria, subsoil and foundation conditions, materials used in the construction activity, and potential impacts to environmental and/or historic properties.
3. **Authorities.** List of the applicable authorities for conducting the work including the operations, maintenance, and replacement contract, repayment contract, master services agreements, non-Federal contracts, etc.
4. **Costs.** Clearly identify the distribution of costs for the proposed substantial change. Reclamation is responsible for labor costs of the technical review, acceptance of submitted design, written specifications of the proposed substantial change, as well as monitoring and oversight associated with the construction of the substantial change.
5. **Expectations.** Describe the expectations for the roles, responsibilities, and procedures for completing the substantial change including project management, construction management, contract, design, and specification review. Reference the use of a construction management plan industry standards, and risk management best practices.
6. **Roles and Responsibilities.** Define distinct roles and responsibilities for Reclamation, operating entity, and other external entities, if applicable. The plan will document those performing engineering work will meet Reclamation's requirements for professional registration, as set forth in Reclamation Manual (RM) Policy, *Performing Design and Construction Activities* (FAC P03). For example, if modifications, amendments, or changes are needed to the accepted design drawings or written specifications to ensure structural, electrical, mechanical or operational safety of the facility, then any changes to accepted designs or specifications shall be approved by the responsible design engineer for that portion of the work.
7. **Design and Specification Review.** Define responsible reviewers, phased approach, and timeframes for design and specification review. To facilitate and expedite review and acceptance, the design and written specifications submitted to the Reclamation authorized official will proceed for phase review. A phase review is a formal review by various disciplines at various stages of the design development process and typically occur at the 30 percent, 60 percent, 90 percent, and 100 percent design phases, but will be defined on a



# Reclamation Manual

## Directives and Standards

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project by project basis. All submittals should include a disposition of Reclamation's previous comments on the design drawings and written specifications. The duration, frequency, and detail of the phase review will be commensurate with the complexity of the proposed substantial change. If the review is expected to exceed 30 days, Reclamation will clearly define the expected timeframe as an initial step of initiating the proposed substantial change plan.

8. **Additional Reviews.** Identify additional potential review required prior to proceeding with the performance of work, such as environmental affairs, land resources, historical properties, and other offices responsible for regulatory compliance activities. The operating entity is responsible for ensuring all required permits and approvals have been obtained prior to proceeding with the proposed construction activity.
9. **Resolution of Conflicts.** Establish clear procedures for the timely resolution of conflicts including responsibilities of project leads, meetings with participants to discuss resolution, and procedures for raising conflicts to management.
10. **Communication.** Provide a detailed communication plan to minimize schedule delays and cost-increases. Include documentation of proposed written and verbal communication methods, primary contacts, and communication log.
11. **Construction Management Plan.** Construction management plan including identification of onsite inspection and material testing entities and frequency of inspection and testing, current and valid registration in the appropriate engineering discipline of the responsible design engineers, current and valid licenses in the state where the work is to occur of any contractors.
12. **Notifications.** List key notices in the process to improve coordination and streamline project completion including:
  - A. notification of changes to the construction activity schedule, design drawings, and/or written specifications;
  - B. notice of final construction schedule, including key milestone dates, and copies of permits and approvals prior to the commencement of the construction activity;
  - C. notice before foundations, abutments or any other critical stages of construction are available for inspection;
  - D. notice prior to concrete placement; and
  - E. notification of failure of quality assurance testing.
13. **Monitoring.** Document a plan for monitoring the progress and completion of the construction activity including the frequency and responsibility of monitoring

## Reclamation Manual

### Directives and Standards

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commensurate with the size and complexity of the construction activity, environmental or historic resource protection concerns, and other identified risks associated with the project. Include the following in the monitoring plan:

- A. oversight to ensure conformity with the design drawings and written specifications and review of changes to the design drawings and/or written specifications found necessary, if needed;
  - B. continued monitoring to promote safe working conditions. If, at any time, conditions are revealed which will not permit the construction of a structurally safe structure or work to continue safely, monitoring will trigger an action of suspension for the construction activity until the identified conditions have been resolved or mitigated;
  - C. compliance with environmental or historic preservation requirements or commitments;
  - D. testing based on sound engineering judgement and industry practice; and
  - E. documentation of applicable test results, daily inspection reports, quality assurance and quality control documentation, photos, soil data, product data sheets, equipment specifications, contractor submittals, and other documents as necessary.
14. **Quality Assurance/Quality Control (QA/QC).** The area office will coordinate a plan for Reclamation's monitoring of the construction activity to ensure all work is constructed in accordance with design drawings and written specifications that have been accepted by Reclamation and with environmental, historic preservation, or other commitments defined by Reclamation in the NEPA or other documents. Additional considerations for QA/QC should include:
- A. monitoring by Reclamation in addition to inspections performed by the operating entity;
  - B. review of the operating entity QC plan or the full set of construction Contract Documents, to ensure the substantial change is completed in accordance with the design drawings and specifications that have been accepted by Reclamation (RM Directive and Standard (D&S), *Construction Activities* (FAC 03-02));
  - C. receipt of inspection documents throughout the performance activity for inspections performed by the operating entity personnel or their representative (independent of the construction contractor);
  - D. review of work or tests performed by the operating entity. Testing includes, but is not limited to: gradation testing, soils testing, density testing, concrete testing, pressure testing, electrical testing, and grade setting; and

## Reclamation Manual

### Directives and Standards

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- E. responsibility for review and acceptance of all contractor submittals as required in the specifications.
15. **Closeout.** Document the agreed upon requirements for the project closeout including inspection requirements, documentation, timeframes, standing operating procedures, closeout package requirements, and substantial completion documentation requirements. Include the following closeout actions in the plan:
- A. inspection of the completed work while the contractor is still onsite, including relevant Reclamation staff, to identify and correct any deficiencies identified from the work performed;
  - B. within 24 hours, or as soon as practicable, after completion of the construction activity, the operating entity (or other external entities) will provide a notice of substantial completion; and
  - C. within 48 hours, or as soon as practicable, after receiving a notice of completion, the area office will schedule a final site visit of the completed work to ensure conformity with the accepted design drawings and written specifications and that environmental and historic property resource protection efforts were implemented per requirements. Documentation of the findings will be included in a final report;
  - D. as soon as practicable after the completion of the construction activity, final site visit by Reclamation, and post-construction activities, a closeout package will be completed which includes the following, as applicable:
    - (1) record drawings;
    - (2) design summary;
    - (3) daily inspection reports;
    - (4) work or testing documentation;
    - (5) O&M manuals;
    - (6) emergency management or action plans;
    - (7) designers' operating criteria;
    - (8) technical reports; and
    - (9) final construction report.
  - E. update the applicable standing operating procedures affected by the substantial change to incorporate the revised or new items; and

## Reclamation Manual

### Directives and Standards

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- F. once all documentation is received, Reclamation will begin the process of transferring the constructed asset from Asset Under Construction to Operation and Maintenance status per RM D&S, *Completion of a Construction Activity* (FAC 01-05).
16. **Timeline.** Document project timelines for final design and construction. Details in the agreed upon plan will be adjusted and revised as the project moves forward.
17. **Other.** Depending on the status of the proposed activity, additional details of the project or attachments include plan and profile, task orders, proposal and preliminary fee estimated, etc.

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**From:** Daniel G Keppen <[dan@familyfarmalliance.org](mailto:dan@familyfarmalliance.org)>

**Sent:** Friday, June 7, 2019 8:43 AM

**To:** Cannon Michael <[cannon@bfarm.com](mailto:cannon@bfarm.com)>; [dysch@frontier.net](mailto:dysch@frontier.net); [h2otoole@gmail.com](mailto:h2otoole@gmail.com); [manager@tsidweb.org](mailto:manager@tsidweb.org); Steve Benson <[sbenson@benson-farms.com](mailto:sbenson@benson-farms.com)>; [tlschwarz@charter.net](mailto:tlschwarz@charter.net); [wdkennedy1955@icloud.com](mailto:wdkennedy1955@icloud.com); Chris Hurd <[cthurd1@yahoo.com](mailto:cthurd1@yahoo.com)>; Clinton Pline <[ccpline77@aol.com](mailto:ccpline77@aol.com)>; Dan Thelander <[danthelander@cox.net](mailto:danthelander@cox.net)>; Daniel Errotabere <[daniele@errotabereranches.com](mailto:daniele@errotabereranches.com)>; Ron Rayner <[frrfarm@gmail.com](mailto:frrfarm@gmail.com)>; Sandy Denn <[swdenn77@outlook.com](mailto:swdenn77@outlook.com)>; Sandy Denn II <[swdenn77@gmail.com](mailto:swdenn77@gmail.com)>; [aortega@iid.com](mailto:aortega@iid.com); [aprils@owrc.org](mailto:aprils@owrc.org); [brucewhiteheadh2o@gmail.com](mailto:brucewhiteheadh2o@gmail.com); [bwind@northernwater.org](mailto:bwind@northernwater.org); [ckeaten@sidwater.org](mailto:ckeaten@sidwater.org); [cntsearle@pmt.org](mailto:cntsearle@pmt.org); [dcoon@nmid.org](mailto:dcoon@nmid.org); [dsolem@scbid.org](mailto:dsolem@scbid.org); [edgarinc007@gmail.com](mailto:edgarinc007@gmail.com); Fergus Morrissey <[fmorrissey@orangecoveid.org](mailto:fmorrissey@orangecoveid.org)>; [geringftlaramie@gmail.com](mailto:geringftlaramie@gmail.com); [jeremy@strawberrywater.com](mailto:jeremy@strawberrywater.com); [joe.rutledge@tvid.org](mailto:joe.rutledge@tvid.org); [jsutton@tccanal.com](mailto:jsutton@tccanal.com); [kcurtis@frontier.net](mailto:kcurtis@frontier.net); [lbauman@cvpwater.org](mailto:lbauman@cvpwater.org); [matlas@jmatlaslaw.com](mailto:matlas@jmatlaslaw.com); [mharris@potatoes.com](mailto:mharris@potatoes.com); [mluk@qwestoffice.net](mailto:mluk@qwestoffice.net); Mia Swenson <[mswenson@friantwater.org](mailto:mswenson@friantwater.org)>; [paul@iwua.org](mailto:paul@iwua.org); [paulorme@gmail.com](mailto:paulorme@gmail.com); [plummernw@aol.com](mailto:plummernw@aol.com); [rlpreston@yahoo.com](mailto:rlpreston@yahoo.com); [rusty@tcid.org](mailto:rusty@tcid.org); [shivelyhardware@yahoo.com](mailto:shivelyhardware@yahoo.com); [tlshields@iid.com](mailto:tlshields@iid.com); [tmyrum@wswra.org](mailto:tmyrum@wswra.org); [urbaneberhart@gmail.com](mailto:urbaneberhart@gmail.com); Alexandra Biering <[abiering@friantwater.org](mailto:abiering@friantwater.org)>; Ara Azhderian <[aazhderian@panochewd.org](mailto:aazhderian@panochewd.org)>; Bill Luce <[Luce-consulting@comcast.net](mailto:Luce-consulting@comcast.net)>; Chanee Grant <[cgrant@nmid.org](mailto:cgrant@nmid.org)>; Chris Udall <[chris@agribusinessarizona.org](mailto:chris@agribusinessarizona.org)>; Chris Voigt <[cvoigt@potatoes.com](mailto:cvoigt@potatoes.com)>; Chuck Podolak <[Chuck.Podolak@srpnet.com](mailto:Chuck.Podolak@srpnet.com)>; Dale Swensen <[fmid@fretel.com](mailto:fmid@fretel.com)>; Dave Anderson <[dgarugby@hotmail.com](mailto:dgarugby@hotmail.com)>; David Mansfield <[davidmmansfield@gmail.com](mailto:davidmmansfield@gmail.com)>; Devin Brundage <[dbrundage@cnppid.com](mailto:dbrundage@cnppid.com)>; Donald Barksdale <[dp1nmid@hotmail.com](mailto:dp1nmid@hotmail.com)>; Gary Esslinger <[gesslinger@ebid-nm.org](mailto:gesslinger@ebid-nm.org)>; James Broderick <[jwb@secwcd.com](mailto:jwb@secwcd.com)>; James Brower <[jbrower@midrivers.com](mailto:jbrower@midrivers.com)>; Jason Peltier <[jpeltier@sustainabledelta.com](mailto:jpeltier@sustainabledelta.com)>; Jason R. Phillips <[jphillips@friantwater.org](mailto:jphillips@friantwater.org)>; Larry Hicks <[lsrcd@yahoo.com](mailto:lsrcd@yahoo.com)>; Mike Britton <[mbrampton@northunitid.com](mailto:mbrampton@northunitid.com)>; Mike LaPlant <[mlaplant@ymail.com](mailto:mlaplant@ymail.com)>; Natasha Montgomery <[nmontgomery@sidwater.org](mailto:nmontgomery@sidwater.org)>; Pat Riley <[priley75@yahoo.com](mailto:priley75@yahoo.com)>; Pete Gile <[ksbostwick@gmail.com](mailto:ksbostwick@gmail.com)>; Scott Peterson <[scott.petersen@sldmwa.org](mailto:scott.petersen@sldmwa.org)>; Sheldon Jones <[sjones@soilhealthinstitute.org](mailto:sjones@soilhealthinstitute.org)>; Tom Davis <[cid@plateautel.net](mailto:cid@plateautel.net)>; Tom Knudson <[tom.knutson819@gmail.com](mailto:tom.knutson819@gmail.com)>; Wade Noble <[wade@nobelaw.com](mailto:wade@nobelaw.com)>

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**Subject:** Teleconference Call on Proposed Transferred Works D&S

Dear Alliance Directors and Advisory Committee Members:

Yesterday, several of us participated in a teleconference call with Bureau of Reclamation (Reclamation) leadership on a proposed Directive and Standard (D&S) intended to shape a consistent approach with how transferred works projects are handled across Reclamation. Apparently, the e-mail announcement that Reclamation had decided to switch from a WebEX format to a standard teleconference call was treated as "spam" by many intended recipients, so several stakeholders were not able to get the correct call-in information until after the call started. With that said, participation on the call was strong.

The call lasted nearly two hours, so I will spare you all the details. In a nutshell, Reclamation leadership (Deputy Commissioner David Palumbo, Chris Vick with Reclamation Infrastructure Asset Management, Karl Stock, head of the Reclamation Law Administration section, and others) explained the reasoning and rationale used to develop the draft D&S. Transferred works operators and others expressed concerns and in some cases, provided alternative language and conceptual ideas. Overall, there appears to be strong reservations among our membership regarding the proposed D&S.

## **Intent of D&S**

The draft D&S is intended to provide a Reclamation-wide process for approving substantial changes in Reclamation-owned transferred works. The intent is not to review every O&M task or project, and Reclamation would like the decision-making to remain at the local level to avoid delays. It appears there are instances where changes have taken place on transferred works with Reclamation knowledge. Failures have impacted other aspects, including project operations, historical sites, and project power.

Chris Vick walked through the content, process and themes of public comments received so far. According to Mr. Vick, the proposed D&S does not supercede contract language, and would assign a designated local official from Reclamation, which could be the Area Manager or a lower position. That person would have full discretion to determine whether a "substantial change" - the real term of contention in the D&S - is being made. The degree of review would be based on the level of risk to Reclamation from the change and a scope of review agreed upon between the transferred works operation and Reclamation. Reclamation would pay for the inspections (non-reimbursable). Emergency repairs would be completed first, and then reviewed later.

## **Concerns of Stakeholders**

Reclamation in recent weeks has been responsive to stakeholder comments and have incorporated comments into the current draft. A revised draft will not be send out for general public comment until Reclamation and its customers have a better sense of where this is all going. Reclamation wants ideas from stakeholders and hopes to work through a few more iterations via phone calls like the one conducted yesterday. Key concerns expressed by stakeholders to Reclamation include:

- Concern over the time required to get work done with another layer of Reclamation involvement;
- Definition of "substantial change";
- Existing contracts already require clearance for certain types of work; the D&S adds additional process;
- Emergency repairs.

The Q&A session on yesterday's call lasted nearly 90 minutes. Key concerns expressed by participants - which included Alliance, NWRA and Colorado River Energy Distributors Associations representative and members - revolved around the following:

- Outreach by Reclamation could have been better. Many on the call did not even know of this D&S until the last 3 or 4 weeks, since it originally was only posted on the Reclamation stakeholder website, which many stakeholders do not regularly visit;
- Funding and time constraints due to this new layer of bureaucracy, particularly given the current backlog of Reclamation reviews;
- Definition of "substantial change" and the subjective nature of the related risk-based analysis;
- Conflicts of D&S with existing contracts;
- Unintended consequences - such as damaging existing positive relationships between operators and area offices - in areas where this D&S really isn't needed;
- Differing interpretations of whether or not Reclamation's involvement would be non-reimbursable;

Several participants on the call questioned exactly what it is Reclamation is trying to fix with this D&S and observed that this was really a communication issue. Is the potentially cumbersome approach outlined in the D&S really necessary? Both the Commissioner's office and Reclamation leaders out of Denver agreed that Reclamation does not want to fix what is not broken or add more bureaucracy; the intent is to not

affect good working relationships. The primary intent of the D&S is to require and ensure a defined communication process. Reclamation is responsible for building these processes at the Area Office level.

One of our Washington state members observed, "this is a solution looking for a problem". In many areas within the Reclamation West, solutions aren't needed because there isn't a problem. In other words, as one of our Arizona members told me after the call, "a mistake on their part does not constitute an emergency on my part".

### **Next Steps**

After the call, Mark Limbaugh and I discussed this matter further with Reclamation leadership, who appear to be responsive to our suggestion to find a more surgical, precise solution in areas where there are communication problems between area offices and operators of transferred facilities. I believe we really are fortunate to have such practical, solution-oriented, and collaborative leaders in the upper echelons of Reclamation right now.

In the meantime, the public comment period has been suspended so the D&S can either be improved, or some other acceptable, clean approach can be developed in the coming months, such as targeted only areas with problems which can probably be tied to either contract deficiencies or failures to implement correctly existing contracts. We'll keep you apprised and continue to coordinate with NWRA, CREDA and our interested members on this matter.

Please do not hesitate to contact me if you have any questions or concerns regarding this matter.

Best regards -

Dan Keppen  
Executive Director



## Agenda Report

No. 6.C

**DATE:** June 17, 2019  
**TO:** Executive Committee  
Jason Phillips, CEO  
**FROM:** Austin Ewell  
**SUBJECT:** Water Blueprint for the SJV

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### SUMMARY:

The Water Blueprint for the San Joaquin Valley (Group) will hold its fifth meeting on June 19<sup>th</sup>. The Group has consisted of representatives from the San Joaquin Valley and Sacramento. There have been directors of Farm Bureaus, Water Authorities, Districts, Growers, Trade Associations, Refuges, Fresno State, GSAs and PPIC in attendance. The Group is continuing to develop a supportable plan that the SJV (broad coalition) can advocate for and that focuses on solutions in coordination with key stakeholders and eventual support from the Governor and his Administration. The Group has prepared a draft Brochure for use and circulation to stakeholders, elected and the Governor's Administration. It is an ongoing effort to succinctly summarize and provide common goals and messaging for the Water Blueprint.

The Group has established 4 committees and those committees continue to meet and pursue its goals. The 4 committees are working on the following matters:

- 1) Regional Representation & Technical Support: A Project list with cost estimates and water benefits has been prepared at the request of the Administration for their use and other stakeholders. The Blueprint brochure illustrates plans, impacts, and effects and is continuing to be edited to address partner's goals. The committee is pursuing a water smart grant through the Bureau of reclamation. It continues to pursue outside engineering assistance for support.
- 2) Engagement and Outreach (i.e. Disadvantaged Communities, Environmental Organizations & Urbans). The committee continues to meet with organizations and entities to educate them and pursue their engagement in the Blueprint. Tours are scheduled with several environmental organizations as well as meetings with disadvantage community representatives.
- 3) Funding, Finance & Governance: Partners are meeting with their organizations and requesting monetary contributions of up to \$15,000 to cover efforts and estimated budget. A 501c3 & 501c4 are being established and will be used for Advocacy and Education.
- 4) Advocacy & Public Relations: The Committee will continue to work with key stakeholders and the administration to fold the Water Blueprint into the governor's Water Resiliency Plan (WRP). The timing to do so it is by the end of this calendar year. The committee continues to meet with key leaders and advocate for use and pursuit of the Blueprint by the Governor.



### **RECOMMENDED ACTION:**

There is no recommended action at this time. The Board gave initial direction to pursue this collective effort and report back on its status.

### **SUGGESTED MOTION:**

There is no motion at this time.

### **BACKGROUND:**

The Blueprint concept was first discussed by the Board of Directors during their 2018 Board Retreat in late November and at the December 2018 meeting the Board directed FWA staff and consultants to scope out the potential collaborative effort and develop a plan to include the SJV. Since that time the following activities have occurred:

- Outreach to stakeholders and others to be potential partners.
- Meetings in January, March, April and May with DACs, eNGOs, water districts, commodities groups, growers, ACWA, Governor's Administration and other regional stakeholders to develop Blueprint, obtain initial support, and identify additional potential partners.
- Group meeting was held on May 15<sup>th</sup> with the addition of key partners where a general budget was agreed to and partners committed to seek funding. Committee meetings will continue. Blueprint will be finalizing formation documents and begin receiving funding. Continue strategy to address and succeed on the goals identified.

### **DISCUSSION:**

The Board will be presented with the approach and strategy that the Group identifies, which includes an approach for funding and contribution.

### **BUDGET IMPACT:**

None

### **ATTACHMENTS:**

None

# Agenda Report

No. 6.D

**DATE:** June 17, 2019

**TO:** Executive Committee

**FROM:** Johnny Amaral, Chief of External Affairs  
Alex Biering, Government Affairs and Communications Manager

**SUBJECT:** External Affairs Update

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**1. SUMMARY:**

Update on State and Federal legislation and communications activities.

**2. RECOMMENDED ACTION:**

None; informational only.

**3. SUGGESTED MOTION:**

None; informational only.

**4. DISCUSSION:**

- Review of recent engagement in Sacramento and Washington.
- Overview of the Governor's Water Resilience Portfolio.
- Update on the FY 19-20 California Budget.
- Status of FWA-sponsored bills (SB 487 and SB 559), including progress with coalition support, media outreach, and hearings.
- Review of tracked legislation.

**5. BUDGET IMPACT:**

None.

**6. ATTACHMENTS:**

Bill Tracker (updated 6/13/19); Executive Order N-10-19.

# Legislative Tracker

## FRIANT WATER AUTHORITY

June 13, 2019<sup>1</sup>

### State Bills

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
AB 134	Safe, clean, affordable, and accessible drinking water (Bloom) – <b>5/20/19</b>	Would, by July 1 of each year, would require the State Water Resources Control Board to adopt an assessment of need for state financial assistance to provide safe drinking water that identifies failed water systems throughout the state. The bill would require the assessment of need to prioritize the systems with the most urgent need for state financial assistance in light of specified factors. The bill would require each regional engineer to arrange for a prescribed comprehensive assessment of each failed water system in the region of the drinking water regional office to be completed within 2 years of the board identifying the failed water system in the assessment of need.		NYC	Watch	<b>Passed Assembly Floor; in Senate Environmental Quality and Natural Resources and Water committees.</b>
AB 217	Safe Drinking Water for All Act (Garcia) – <b>5/21/19</b>	Would enact the Safe Drinking Water for All Act and would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the board to provide a source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure. This bill contains the Newsom-supported proposal that the Governor released with his budget in January and is essentially the same as SB 623 (2017).	PRO: Conservation groups, moderate enviro NGOs, EJ groups, healthcare advocates, labor, RCAC  OPP: Fertilizer and household product manufacturers	NYC, though supported previous bill	Oppose Unless Amended	<b>Third reading on Assembly Floor.</b>

<sup>1</sup> Updates since the last version are included in **bold text**.

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
AB 382	Integrated regional water management plans: grant funding: upper watershed health (Mathis) – 2/5/19 version	Current law provides that an integrated regional water management plan is eligible for funding allocated specifically for implementation of integrated regional water management. Current law requires certain state agencies to include in any set of criteria used to select projects and programs for funding, a criterion that provides a preference for regional projects or programs. This bill would require the department to include in any criteria used to select a project or program for grant funding authorized on or after January 1, 2020 a criterion that provides a preference for a regional water management group undertaking a project improving upper watershed health upstream and outside of the defined geographical area covered by the group's plan.		NYC	NYC	<b>Two-year bill; can be acted on again in January 2020.</b>
AB 417	Agriculture and Rural Prosperity Act – (Arambula) – 5/17/19 version	The bill would authorize the Secretary of Food and Agriculture to carry out various activities to support rural communities and further the development of rural agricultural economies in California, including, among other things, consulting with government agencies and members of the public and private sectors to identify opportunities and partnerships to further the development of rural agricultural economies, and disseminating information on the department's internet website. <b>Most recent amendment removed requirement to produce an economic study on the effects of SGMA.</b>	PRO: Commodities groups, Ag Council, NCWA, RCDs, RCRC.	NYC	Favor	<b>Passed Assembly Floor; in Senate Agriculture Committee.</b>
AB 441	Water: underground storage (Eggman) – 3/27/19 version	This bill would revise the beneficial use doctrine for water rights to additionally provide that certain uses of groundwater storage constitute beneficial use. These include protection of water quality and recovery of groundwater levels. It also removes the forfeiture period of a water right (5 years) for water being beneficially used, or being held in storage, for a later use.	PRO: CFBF OPP: None (but SWP users are opposing)	NYC	Watch	<b>Two-year bill; can be acted on again in January 2020.</b>
AB 637	State Water Resources Control Board: regional water quality control boards: severely disadvantaged communities: drinking water supplies (Gray) – 4/11/2019 version	Would require the State Water Resources Control Board, before taking an action that significantly impacts drinking water, to use existing information to identify impacted disadvantaged communities and to seek to reduce impacts to those communities to the greatest extent practicable. The bill would also require the board to ensure that disadvantaged communities are provided an opportunity to participate in the public process for a decision that significantly impacts drinking water by holding a public hearing in or near an impacted community. Bill is part of a larger water package introduced by Mr. Gray that also includes AB 636 and AB 638.	PRO: Stanislaus County	NYC	Watch	<b>Two-year bill; can be acted on again in January 2020.</b>

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
AB 638	Department of Water Resources: water storage capacity (Gray) – 6/11/19 version	Current law requires the Department of Water Resources to update every 5 years the plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state, which is known as The California Water Plan. This bill would require the department, on or before January 1, 2021, with updates every 5 years thereafter, to identify storage facilities vulnerable to climate change and the mitigation strategies for anticipated impacts. <b>Recent amendments extend the horizon for reporting out (from 2 to 5 years), defined “below-ground storage” to be consistent with the definition under SGMA, and authorized DWR to provide grants to mitigate for the impacts of climate change on surface storage.</b>		NYC	Watch	<b>Passed Assembly Floor; awaiting Senate Committee assignment.</b>
AB 658	Water rights: water management (Arambula) – 4/2/19 version	Would authorize a groundwater sustainability agency or local agency to apply for, and the State Water Resources Control Board to issue, a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin, as specified. Recent amendments strike any originally proposed changes to section 1242 of the water code, which defines beneficial use.		NYC	Support if Amended	<b>Passed Assembly Floor; in Senate Natural Resources and Water Committee, hearing scheduled for July 9.</b>
ACA 3	Clean Water for All Act (Mathis) – 3/20/19 version	<p>Would require, commencing with the 2021–22 fiscal year, not less than 2% of specified state revenues to be set apart for the payment of principal and interest on bonds authorized pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014; and for water supply, delivery, and quality projects administered by DWR, and water quality projects administered by the SWRCB, as provided.</p> <p>Funds would be continuously appropriated and distributed as follows: 5% to pay down Prop. 1; 57% to be disbursed by DWR for water supply, delivery, and quality projects, including for conveyance, recharge, subsidence abatement, and storage; 38% to the SWRCB for water quality projects. DWR would be required to give priority to projects that address deferred maintenance; the SWRCB couldn’t use the funding to address water quality enforcement actions.</p>	PRO: San Gabriel Valley Water Authority, Howard Jarvis Taxpayers Association, Friant Water Authority	Support	Watch	Failed passage in Water, Parks & Wildlife on 4/30; reconsideration granted.

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
SB 1	California Environmental, Public Health, and Workers Defense Act of 2019 (Atkins) – 5/21/19 version	Establishes specified minimum federal environmental, public health, and labor standards as state baselines in the event the Congress or President repeals or weakens corresponding federal standards, and prohibits the corresponding California standards from falling below those baselines. In the event that new federal standards fall below the baseline, this bill allows private citizens to enforce state standards under specific circumstances (not including endangered or threatened species). It sunsets in 2025, corresponding with the end of a theoretical second term for President Trump.	PRO: Enviro NGOs  OPP: Commodities groups, ACWA, growers' groups, Cal Chamber, local chambers of commerce, Cal BIA, realtors	NYC	Oppose Unless Amended	<b>Passed Senate Floor; awaiting Assembly Committee assignment. Referred to Assembly Env. Safety and Toxic Materials, Natural Resources, and Judiciary committees.</b>
SB 19	Water resources: stream gages (Dodd) – 6/11/19 version	Would require the Department of Water Resources and the State Water Resources Control Board, upon an appropriation of funds by the Legislature, to develop a plan to deploy a network of stream gages that includes a determination of funding needs and opportunities for modernizing and reactivating existing gages and deploying new gages, as specified. The bill would require the department and the board, in consultation with the Department of Fish and Wildlife, the Department of Conservation, the Central Valley Flood Protection Board, interested stakeholders, and, to the extent they wish to consult, local agencies, to develop the plan to address significant gaps in information necessary for water management and the conservation of freshwater species.	PRO: Environmental and conservation NGOs, NCWA, ACWA, MWD, SCVWD, CMUA, RCRC, groundwater groups	NYC	Support	<b>Passed Senate Floor; referred to Assembly Water, Parks, and Wildlife Committee.</b>
SB 45	Wildfire, Drought, and Flood Protection Bond Act of 2020 (Allen) – 4/4/19 version	Would enact the Wildfire, Drought, and Flood Protection Bond Act of 2020, which, if approved by the voters, would authorize the issuance of bonds in an unspecified amount pursuant to the State General Obligation Bond Law to finance projects to restore fire damaged areas, reduce wildfire risk, create healthy forest and watersheds, reduce climate impacts on urban areas and vulnerable populations, protect water supply and water quality, protect rivers, lakes, and streams, reduce flood risk, protect fish and wildlife from climate impacts, improve climate resilience of agricultural lands, and protect coastal lands and resources. Bond total is \$4.3 B and funding categories focus heavily on watersheds, forests, and climate resiliency.	PRO: Enviro NGOs, conservation groups, EJ groups	NYC	Favor	<b>In Senate Appropriations.</b>
SB 62	Endangered species: accidental take associated with routine and ongoing agricultural activities: state safe harbor agreements (Dodd) – 4/3/19 version	Would extend for five years an exemption under the California Endangered Species Act for “accidental take” of listed species that occurs on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities. The current exemption expires January 1, 2020. Any take would need to be reported to DFW within 10 days.	PRO: Cal Chamber of Commerce, CFBF, CCM, Defenders of Wildlife, Western Growers, Ag Council, other commodities groups  OPP: None.	Support	Favor	<b>Passed Senate Floor; in Assembly Water, Parks, and Wildlife Committee, hearing scheduled for 6/18.</b>

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
SB 200	Safe and Affordable Drinking Water Fund (Monning) – 5/17/19 version	Would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are available, upon appropriation by the Legislature, to the State Water Resources Control Board to provide a stable source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.	<p>PRO: Conservation groups, moderate enviro NGOs, EJ groups, healthcare advocates, labor</p> <p>OPP: San Diego County Water Authority</p>	NYC	Not Favor	<b>Passed Senate Floor; in Assembly Env. Safety and Toxic Materials Committee.</b>
SB 487	Department of Water Resources: aerial snow survey (Caballero) – 6/11/19 version	Would require the Department of Water Resources’ California snow survey program to conduct aerial surveys of the snowpack in the Trinity Alps and Sierra Nevada Mountains, including hydrologic areas that drain or supply water to certain major reservoirs and lakes. The bill would require the department to collect the aerial survey data up to 10 times per year in each hydrologic area and to summarize and make publicly available the data obtained and digital products used to produce runoff forecasts, as specified. <b>Amended to remove continuous appropriation, leaving policy in place but requiring funding in the budget. Also amended for technical clarifications.</b>	<p>PRO: Association of California Water Agencies, Friant Water Authority, Modesto Irrigation District, Northern California Water Association, California Municipal Utilities Association, Mammoth Community Water District, Kings River Water Association, Turlock Irrigation District. San Francisco Public Utilities Commission, Tulare Irrigation District, South Valley Water Association, Kaweah-Delta Water Conservation District, Kern-Tulare Water District, Lindsay-Strathmore Irrigation District, San Diego County Water Authority</p> <p>OPP: None.</p>	Sponsor	Favor	<b>Passed Senate Floor; in Assembly Water, Parks and Wildlife Committee, hearing set for 7/2.</b>

Bill	Title (Author) & Date	Description	Positions	FWA	ACWA	Status
SB 559	Department of Water Resources: Friant-Kern Canal conveyance restoration (Hurtado) – <b>5/17/19 version</b>	Would appropriate \$400 million from the General Fund for actions to restore conveyance capacity on the Friant-Kern Canal. <b>Amended to remove appropriation, leaving policy in place but requiring funding in the budget.</b>	PRO: Association of California Water Agencies, Western Growers Association Friant Water Authority Tulare County Tulare County Farm Bureau Kern County Kern County Hispanic Chamber of Commerce Pixley Irrigation District Tea Pot Dome Water District South Valley Water Association Fresno County Kern-Tulare Water District Arvin-Edison Water Storage District Fresno Farm Bureau Lower Tule River Shafter-Wasco Irrigation District  OPP: Sierra Club California	Sponsor	Favor	<b>Passed Senate Floor; in Assembly Water, Parks, and Wildlife Committee, hearing set for 7/2.</b>



### Federal Bills

Bill	Title (Author)	Description	Positions	FWA	ACWA	Status
S. 47	Natural Resources Management Act (Murkowski and Cantwell) – 1/8/19 version	Addresses multiple Title VIII, “Water and Power,” includes the Reclamation title transfer provisions negotiated with the House during last Congress.		Favor	NYC	Signed by the President on 3/12.
H.R. 2473	Securing Access for the Central Valley and Enhancing (SAVE) Water Resources Act (Harder) – 5/1/19 version	Expedites feasibility studies for some federal storage projects, creates an “X-Prize” program for water innovation, increases WaterSMART funding, establishes a RIFIA program, and reauthorizes the Rural Water Supply Act. Cosponsored by Congressmen John Garamendi, Ami Bera, TJ Cox, and Jim Costa.		NYC	NYC	

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

Executive Order N-10-19

**WHEREAS**, water is a human right, and is central to California's strength and vitality; and

**WHEREAS**, we face a range of existing water challenges, including unsafe drinking water across the state, major flood risks that threaten public safety, severely depleted groundwater aquifers, agricultural communities coping with uncertain water supplies, and native fish populations threatened with extinction; and

**WHEREAS**, climate change is having a profound impact on water and other resources, making the climate warmer and more variable, which reduces mountain snowpack, intensifies drought and wildfires, and drives shorter, more intense wet seasons that worsen flooding; and

**WHEREAS**, California continues to grow, with our population projected to grow to 50 million over the next several decades and our economic activities expanding as the world's fifth largest economy; and

**WHEREAS**, the future prosperity of our communities and the health of our environment depend on tackling pressing current water challenges while positioning California to meet broad water needs through the 21st century; and

**WHEREAS**, many state programs, policies and investments are being implemented, such as the Sustainable Groundwater Management Act and new urban water efficiency standards, that can be built upon to meet these evolving challenges; and

**WHEREAS**, providing clean, dependable water supplies to communities, agriculture, and industry while restoring and maintaining the health of our watersheds is both necessary and possible; and

**WHEREAS**, achieving this goal requires a broad portfolio of collaborative strategies between government, sovereign tribes, local communities, water agencies, irrigation districts, environmental conservationists, academia, business and labor leaders, and other stakeholders.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and the statutes of the State of California, do hereby issue this Order to become effectively immediately.

**IT IS HEREBY ORDERED THAT:**

1. The California Natural Resources Agency, the California Environmental Protection Agency, the California Department of Food and Agriculture, in consultation with the Department of Finance, shall together prepare a water resilience portfolio that meets the needs of California's communities, economy, and environment through the 21st century.

These agencies will reassess priorities contained within the 2016 California Water Action Plan, update projected climate change impacts to our water systems, identify key priorities for the administration's water portfolio moving forward, and identify how to improve integration across state agencies to implement these priorities.

2. These agencies shall first inventory and assess:
  - a. Existing demand for water on a statewide and regional basis and available water supply to address this demand.
  - b. Existing water quality of our aquifers, rivers, lakes and beaches.
  - c. Projected water needs in coming decades for communities, economy and environment.
  - d. Anticipated impacts of climate change to our water systems, including growing drought and flood risks, and other challenges to water supply reliability.
  - e. Work underway to complete voluntary agreements for the Sacramento and San Joaquin river systems regarding flows and habitat.
  - f. Current planning to modernize conveyance through the Bay Delta with a new single tunnel project.
  - g. Expansion of the state's drinking water program to ensure all communities have access to clean, safe and affordable drinking water.
  - h. Existing water policies, programs, and investments within state government.
  
3. This water resilience portfolio established by these agencies shall embody the following principles:
  - a. Prioritize multi-benefit approaches that meet multiple needs at once.
  - b. Utilize natural infrastructure such as forests and floodplains.
  - c. Embrace innovation and new technologies.
  - d. Encourage regional approaches among water users sharing watersheds.
  - e. Incorporate successful approaches from other parts of the world.
  - f. Integrate investments, policies and programs across state government.
  - g. Strengthen partnerships with local, federal and tribal governments, water agencies and irrigation districts, and other stakeholders.

4. These agencies shall conduct extensive outreach to inform this process, including to other state agencies, sovereign tribes, federal and local government, local water agencies, agricultural groups, environmental justice and environmental conservation organizations, local and statewide business leaders, academic experts and other stakeholders.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its departments, agencies, or other entities, its officers or employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 29th day of April 2019.



  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

  
ALEX PADILLA  
Secretary of State