

JOINT EXERCISE OF POWERS AGREEMENT
Creating the
FREEPORT REGIONAL WATER AUTHORITY
(FRWA)

This Joint Exercise of Powers Agreement (Agreement) is made and entered into as of the 14th day of February, 2002, by and among Members East Bay Municipal Utility District (EBMUD), and the Sacramento County Water Agency (SCWA) (collectively, the "Members" and individually, a "Member").

RECITALS

- A. The Members have agreed to jointly pursue development and implementation of a project that would involve, if approved following completion of environmental documentation, construction of, among other features, a new surface water diversion on the Sacramento River with a capacity of 185 million gallons per day ("MGD") located approximately 6,500 feet upstream of the Freeport Bridge on the Sacramento River and those related facilities described in Attachment A hereto.
- B. The purpose of this Agreement is to provide the legal mechanism under which the a Joint Powers Authority would conduct environmental documentation for, and then, if approved, design, finance, construct and operate, the Freeport Regional Water Project for the benefit of the Members.
- C. The Members have agreed to share in the costs of environmental documentation, final design, permitting, financing, construction, and operating the Freeport Regional Water Project as set forth in this Agreement.
- D. The Members have an interest in the successful planning, design, construction and operation of the Freeport Regional Water Project.
- E. The Members have the power to design, finance, lease, purchase, condemn, acquire, construct, operate, maintain, sell, hypothecate or otherwise dispose of the Freeport Regional Water Project and related property for the purpose of the production, treatment and distribution of water as provided herein.
- F. These powers can be exercised best through the cooperative action of the Members through a joint exercise of powers authority.
- G. Each of the Members is authorized to contract with the other for the joint exercise of these common powers under Article I, Chapter 5, Division 7, Title I commencing with Section 6500 of the Government Code of the State of California.

COVENANTS

The Members agree as follows:

I. DEFINITIONS

1.1 For the purpose of this Agreement, the following words shall have the following meanings

- (a) "Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code.
- (b) "Agreement" means this joint exercise of powers agreement.
- (c) "Associate Member" means any public entity that enters into an Associate Member Agreement as provided for in Section 2.2 hereof.
- (d) "Associate Member Agreement" means the agreement entered into between the FRWA and any public entity that grants associate member status to such public entity consistent with the provisions of Section 2.2 hereof.
- (e) "Board" shall mean the Board of Directors established pursuant to Article II hereof.
- (f) "Capital Costs" mean the cost of constructing, financing, acquiring, planning, designing, permitting (including environmental review and any mitigation costs or filing fees related to the permitting process) FRWP Facilities, and the funding of a reasonable construction reserve.
- (g) "Construction" means the procurement of material, parts and equipment, conducting construction, construction management and related field services including project management activities and contractor management, design assistance during construction, as-built-drawings, and startup testing.
- (h) "Dedicated Capacity" means the capacity of the FRWA Facilities dedicated to each Member as set forth in Section 5.3 hereof.
- (i) "Director" means a member of the Board of Directors of the FRWA.
- (j) "EBMUD Facility" means a facility identified as a Project Element in Table A-2 of Attachment A hereto.

- (k) "Environmental Documentation" means all activities required to comply with the National Environmental Policy Act (NEPA), the Corps of Engineers 404 Permit process, the federal Endangered Species Act, the California Endangered Species Act and the California Environmental Quality Act (CEQA) or any other federal or state statute requiring a permit for construction or operation of the FRWP.
- (l) "Final Engineering" means activities conducted after the certification of Environmental Documentation and approval of the FRWP required to develop final design plans, specifications, and bidding documents.
- (m) "Fiscal Year" means July 1 through June 30 or such other period as the Board shall determine.
- (n) "Fixed Operating Costs" means those monthly operating and maintenance costs of the FRWA Facilities that are incurred irrespective of the amount of water conveyed through the FRWA Facilities, including but not limited to consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued to finance the Capital Costs of the FRWA Facilities, bond reserve funds, and the costs of bond or financing agreements described in Section 3.2(q).
- (o) "Force Majeure" means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation, including litigation challenging the validity of this Agreement or any element thereof, general strikes or other force or event beyond the responsible party's reasonable control.
- (p) "FRWA" means the joint exercise of powers authority created by this Agreement.
- (q) "FRWA Facility" or "FRWA Facilities" means each facility or all facilities (as the case may be) identified as a Project Element in Table A-1 of Attachment A hereto.
- (r) "Freeport Point of Delivery" means a location on the Sacramento River sited consistent with the State Water Resources Control Board Order of July 29, 1999, pertaining to permits 11315 and 11316 or other appropriate State Water Resources Control Board Permits.
- (s) "Freeport Regional Water Project" or "FRWP" means those FRWA, EBMUD and SCWA Facilities described in Attachment A.
- (t) "Permitting" means all activities required to complete the regulatory and public approval process for the FRWP. Permitting activities will include, but are not limited to, conducting required studies, endangered species act consultation,

environmental documentation and public notifications, preparation of local, state and federal permit applications, consultation and negotiations with involved parties including regulatory agencies.

- (u) "Project Element" means any of the facilities, or components thereof, described in Attachment A.
- (v) "SCWA Facility" means a facility identified as a Project Element in Table A-3 of Attachment A hereto.
- (w) "Variable Operating Costs" mean those daily operating and maintenance costs, (including, but not limited to power and other costs that are dependent on the volume of water actually conveyed through the FRWA Facilities.

1.2 Agreement and Attachment. This Agreement shall incorporate Attachment A, and shall be construed consistent with the terms set forth in said Attachment. In the event of conflict between the articles of this Agreement and Attachment A, this Agreement shall control.

II. ORGANIZATION

- 2.1 FRWA Created.** There hereby is created a public entity separate from its Members, to be known as the Freeport Regional Water Authority ("FRWA"). The FRWA is formed by this Agreement pursuant to the provisions of the Act.
- 2.2 Membership.** The Members of the FRWA shall be the EBMUD and the SCWA, and such other public entities that execute an amendment to this Agreement, and which have not withdrawn from the FRWA pursuant to the provisions of Article VII hereof. Other public entities may also join the FRWA as associate members upon the approval of an associate member agreement by the Board. Any associate member shall be entitled to participate in public Board meetings regarding the planning, design and operation of the FRWP consistent with the terms and conditions of a fully executed associate member agreement.
- 2.3 Board of Directors.** The FRWA shall be governed by a four (4) member Board of Directors ("Board") comprised of two representatives of the governing board of each Member of the FRWA. Each Director shall be entitled to one vote. Associate members may appoint a non-voting member to the Board who shall sit with the four voting Directors at public meetings, and have the right to participate in public Board discussions consistent with the terms and conditions of a fully executed associate member agreement.

- 2.4 **Selection of Directors.** Within thirty (30) days after the execution of this Agreement by all of the Members, each Member shall designate and appoint two (2) representatives from its governing board to serve as Directors on the Board. Each Member also shall appoint an alternate Director from its governing board for each of its regular Directors. Any such alternates shall be empowered to cast votes in the absence of the regular Directors or, in the event of a conflict of interest preventing the regular Director from voting, to vote in the place of a Director recused because of conflict. If an alternate Director of a Member is unavailable, the other alternate Director of such Member may serve in place of such unavailable alternate. Each Member shall give written notice to the FRWA Secretary of the names of its Directors and alternate Directors. Each of the Directors and alternate Directors shall hold office from the first meeting of the Board after the appointment of the Director or alternate Director until a successor is selected. Directors and alternate Directors shall serve at the pleasure of the governing body of their appointing Members and may be removed at any time, with or without cause, at the sole discretion of such governing body.
- 2.5 **Compensation.** No Director shall receive any compensation from the FRWA for serving as such, but shall be entitled to reimbursement for any expenditures actually incurred in connection with serving as a Director if the Board determines that such expenditure shall be reimbursed and there are unencumbered funds available for such purposes. Except as specifically provided in this Article, staff of the Members shall not be compensated for their time by the FRWA.
- 2.6 **Principal Office.** The initial principal office of the FRWA shall be a location of approximate equal travel times for both Members as designated by the Board. After award of the first construction contract for the Project, the principal office of the FRWA shall be relocated to Sacramento County. The location of the principal office of the FRWA specified in this section may be changed at the discretion of the Board.
- 2.7 **Meetings.** The regular Board meetings shall alternate between Boardrooms of each Member with the initial regular meeting of the Board being in the Boardroom of the SCWA. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Member. Regular meetings of the Board shall occur not less than once every quarter, and the first meeting of the fiscal year shall occur within thirty (30) days of the beginning of the fiscal year. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 (Sections 54950-54961) of Part 1 of Division 2 of Title 5 of the Government Code of the State or any successor legislation.
- 2.8 **Quorum.** For the purposes of transacting the business of the Board, a quorum shall consist of three (3) Board Directors. A majority vote of the entire Board shall be required for any Board action.

2.9 Organization of the Board. The Board shall elect a Chair and a Vice-Chair to serve for a term of one (1) year commencing every January 1st, unless sooner terminated at the pleasure of the Board; provided, however, the first Chair and Vice-Chair appointed shall hold office from the date of appointment to December 31 of the ensuing year. The position of chair and vice-chair shall alternate between representatives of each Member. The initial Chair shall be a representative of EBMUD and the initial Vice-Chair shall be a representative of the SCWA.

2.10 Officers.

- (a) **Treasurer/Controller.** The Director of Finance of EBMUD shall serve as the FRWA Treasurer unless a different Treasurer is appointed by the Board. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government Code Section 6505.6, and shall strictly comply with the provisions of statutes relating to the duties of such office found in the Act. The Treasurer shall be the depository and have custody of all money of the FRWA from whatever source, and shall draw all warrants and pay demands against the FRWA as approved by the Board. The Treasurer shall cause an independent annual audit of the finances of the FRWA to be made by a certified public accountant in compliance with Government Code Section 6505. The Treasurer shall serve at the pleasure of the Board. The FRWA shall reimburse EBMUD for the costs of the services provided by the EBMUD Director of Finance pursuant to this subsection.
- (b) **Secretary.** The Clerk of SCWA Board of Directors shall serve as the Secretary of the Board unless a different Secretary is appointed by the Board. The Secretary shall maintain the records of the FRWA. The Secretary shall serve at the pleasure of the Board. The FRWA shall reimburse the SCWA for the costs of the services provided by the SCWA Clerk pursuant to this subsection.
- (c) **Legal Counsel.** Unless a different legal counsel is required as a result of disqualification or conflict, Legal Counsel for the FRWA shall be either the EBMUD General Counsel or the Sacramento County Counsel, upon mutual recommendation of both regarding the staff member who shall perform services in that capacity; and shall serve at the pleasure of the Board. FRWA shall reimburse the member agency for the costs of the legal services provided. If the Board determines to retain special counsel, such retention shall be upon the mutual recommendation of the EBMUD General Counsel and the Sacramento County Counsel.
- (d) **Executive Committee.** The Executive Committee shall consist of the EBMUD General Manager and the County Executive of Sacramento County or their

respective designees. The Executive Committee shall be responsible for monitoring the activities of the FRWA on behalf of the Members and making such reports as the Board deems appropriate. The Executive Committee shall have the authority to make recommendations to the Board with respect to the appointment and termination of the FRWA Program Manager. The Executive Committee may only take action through the agreement of both members.

- (e) Additional Officers. The Board shall have the power to appoint such additional officers as it deems necessary.
- (f) Qualifications. Any officer, employee or agent of the Board also may be an officer, employee or agent of any of the Members. Except as specifically provided in this Article, no officer, employee or agent or attorney of any of the Members shall receive compensation from the FRWA for time spent on FRWA matters, but may be compensated for expenditures actually incurred on FRWA matters.
- (g) Privileges, Liability and Immunity. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Members when performing their respective functions shall apply to the same degree and extent while such individuals are engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or subject to any of the requirements of such Members.

2.11 Program Manager. The Board shall appoint a program manager upon the recommendation of the Executive Committee who shall be responsible to the Board for the proper and efficient administration of the FRWA as directed by the Board pursuant to the provisions of this Agreement or of any resolution or order of the Board not inconsistent with this Agreement. During the planning and construction phase of the FRWP, the program manager shall be retained under contract with the FRWA. After the Project becomes operational, the Board may at its discretion continue to retain the program manager under contract or it may appoint a program manager who is an employee of any of its Members. The program manager shall report directly to the Board and serve as staff for the Executive Committee. Any communications, correspondence or other material that is furnished to the Board by the program manager shall also be furnished to the Executive Committee unless the program manager is directed otherwise by the Executive Committee. The program manager shall serve at the pleasure of the Board. In addition to any other duties that may be assigned by the Board, the program manager shall have the following authority:

- (a) Under the policy direction of the Board, and in consultation with the Executive Committee, to plan, organize and direct all activities of the FRWA;
- (b) To authorize expenditures within the designations and limitations of the budget approved by the Board;
- (c) To make recommendations to and requests of the Board concerning any matter which is to be performed, done or carried out by the Board;
- (d) To have the authority to assign, supervise and otherwise control the activities of any Member employees assigned to the FRWA or contractors that may be retained by the FRWA; and
- (e) To have charge of, handle and have access to any property of the FRWA.

2.12 Staff. The Members may assign employees to perform services for the FRWA at their exclusive discretion in which case the services of such assigned employees shall be at the expense of the respective Member with any reimbursement for the value of the services provided by such assigned employee to be subject to an agreement between the contributing Member and the Board. The Board may also at its discretion enter into appropriate contracts for staff services or employ staff directly. Assignments of staff shall be pursuant to written agreement between the Member and the Program Manager.

2.13 Record of Meetings. The Secretary of the Board shall cause a record of all meetings of the Board to be kept, and shall cause a copy of such records to be forwarded to each Director, alternate Director, and to each member of the Executive Committee.

2.14 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as it may deem necessary.

III. PURPOSE AND POWERS

3.1 Purpose. Each Member has in common the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of those facilities, either alone or in cooperation with other public or private entities, as described in Attachment A. The purpose of this Agreement is to jointly exercise some or all of the foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner herein set forth, in order to prepare the environmental documentation for the FRWP and then, if construction of the FRWP is approved, provide for the most cost-efficient and timely design,

financing, construction and operation of the FRWP. FRWP facilities shall be designed consistent with applicable County and EBMUD design standards and operational criteria.

3.2 Powers. All of the power and authority of the FRWA shall be exercised by the Board. Subject to Section 3.1 and the conditions and restrictions contained in this Agreement, the FRWA, in its own name, shall have the power to design, acquire, condemn, finance and construct the FRWP, and, additionally, to operate and maintain the FRWA Facilities. The FRWA is authorized in its own name to do all acts necessary or convenient to the exercise of said powers for said purposes, including but not limited to any or all of the following:

- (a) To exercise jointly the common powers of its Members in studying, planning, designing and implementing water supply projects consistent with this Agreement.
- (b) To make and enter contracts, and to execute leases, installment sale contracts or installment purchase contracts for the purposes and in accordance with procedures and requirements as permitted by law.
- (c) To contract for the services of engineers, attorneys, planners, financial consultants or other agents.
- (d) To design, acquire, construct, manage, maintain and operate any buildings, works, or improvements.
- (e) To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, devise, or exercise of the power of eminent domain; to hold, lease and dispose of any such property.
- (f) To incur debts, liabilities, or obligations subject to limitations herein set forth.
- (g) To sue and be sued in its own name.
- (h) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.
- (i) To apply for an appropriate grant or grants and/or loan or loans under any federal, state or local programs for assistance in developing the FRWP, or any future authorized modifications to the Project.

- (j) To enter into arrangements for the transmission, purchase and sale of electrical power, or the trading of electrical power, related to operation of the FRWA Facilities.
- (k) To obtain, in its own name, all necessary permits and licenses, opinions and rulings.
- (l) To procure public liability and other insurance as it deems advisable to protect the FRWA and each of the Members.
- (m) Whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what the FRWA could do, or to perform any proper corporate function, and enter into agreements with such a corporation.
- (n) To issue revenue bonds in accordance with the following laws:
 - I. Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540.
 - II. Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300.
 - III. Article 4, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6584.
- (o) To use other financing acts, including, but not limited to, the Mello-Roos Community Facilities District Act of 1982, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915.
- (p) To exercise any of the powers set forth in the Marks-Roos Local Bond Pooling Act of 1985(Article 4 (commencing with Section 6584) of the Act).
- (q) To enter into agreements incident to the issuance of bonds for the purpose of enhancing the credit or liquidity of such bonds, or to place such bonds on a different payment schedule, such as an interest rate swap, cap or similar instrument, or in connection with the investment of the proceeds of such bonds.
- (r) To enter into agreements with the Members for the construction of those EBMUD or SCWA Facilities identified in Attachment A.

Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon any Member in the exercise of its powers. Notwithstanding the foregoing, the FRWA shall have any additional powers conferred under the Act, insofar as such additional powers may be necessary or desirable to accomplish the purposes of the FRWA as set forth herein.

3.3 **Operations.** Operations and management of the FRWA Facilities shall be provided in a manner determined by the Board.

3.4 **Use of FRWA Facilities to Serve Third Parties.** The FRWA shall operate the FRWA Facilities to ensure that the Dedicated Capacity set forth in Section 5.3 hereof is, at all times, fully available for each Member's use. No Member may make its Dedicated Capacity available to a third-party if the use of such capacity by a third-party would interfere with any water rights or contractual entitlement of another Member.

Any person desiring to use a portion of a Member's Dedicated Capacity shall contract directly with that Member. Each Member agrees to hold the FRWA and any other Member harmless from (1) any additional costs incurred by the FRWA or any Member from such use by third persons; and (2) any impact on the Dedicated Capacity rights of any other Member. Notwithstanding any provision in this section to the contrary, (a) EBMUD shall be prohibited from contracting for the use of its Dedicated Capacity for the delivery of water for use within the County of Sacramento without the prior approval of the SCWA; and (b) SCWA shall be prohibited from contracting for the use of its Dedicated Capacity for the delivery of water for use outside the County of Sacramento without the prior approval of EBMUD.

IV ALLOCATION OF COSTS BETWEEN MEMBERS

4.1 **Recovery of Costs.** The costs incurred by the FRWA in carrying out its functions shall be allocated between its Members as follows:

- (a) Capital Costs and other Fixed Operating Costs for FRWA Facilities, together with the cost of Environmental Documentation for the FRWP, shall be allocated between the Members based on the following percentage shares of Dedicated Capacity in the FRWA Facilities: EBMUD-54.054% and SCWA-45.946%.
- (b) Variable Operating Costs for FRWA Facilities shall be allocated between the Members based on the cost of their proportionate share of the volume of use of the FRWA Facilities or such other method as may be established by the Board.

4.2 **Payment Obligations.**

- (a) Each of the Members agrees to be responsible for paying its respective share of all annual costs of the FRWA in accordance with the payment schedule adopted by the Board pursuant to subsection (b) below, and consistent with the cost allocation

methodology set forth in Section 4.1 hereof and any bonds or financing agreements entered into by FRWA.

- (b) All costs of the FRWA shall be annually assessed on the Members by the Board in amounts sufficient to meet the obligations of the FRWA for that fiscal year as set forth in the FRWA's annual budget. The Board shall also establish a payment schedule for each annual assessment consistent with the projected cash flow needs of the FRWA and any bonds or financing agreements entered into by FRWA. Each Member will be responsible for the payment of this annual assessment whether or not the FRWA Facilities are constructed, operating, damaged or destroyed, whether or not the Dedicated Capacity of each Member established pursuant to Section 5.3 hereof is actually utilized by the Member or a third party, and regardless of the occurrence of any force majeure event.
- (c) Notwithstanding anything to the contrary herein, each of the Members shall be individually liable to the other Member for its failure to pay its respective share of the FRWA's annual costs (including but not limited to debt service on any bonds or related obligations). In the event that a Member fails to make any payment of such costs (a "Defaulting Member"), the non-defaulting Member may make such payment on behalf of the Defaulting Member, but the Defaulting Member shall remain obligated to reimburse the non-defaulting Member for such advance with interest calculated at one and one-half the rate of return earned by the treasury of the non-defaulting Member during the time period of the default. If the Defaulting Member has not repaid the non-defaulting Member for such advance by the end of the fiscal year in which the default first occurs, the non-defaulting Member may take such legal action as it deems appropriate to enforce payment of such obligation.

4.3 **Revenue Deficit.** If insufficient revenue is collected by the FRWA to satisfy all of its annual costs (other than by reason of a failure of any Member to pay its share of costs), then such deficiency will be assessed by the FRWA against all Members in the same manner as costs were allocated to each Member for the preceding fiscal year in which such deficit was incurred.

4.4 **Budget Reserves and Excess Revenues.** The Board shall determine on an annual basis, prior to the beginning of each fiscal year, a level of reasonable cash reserves to be accumulated by the FRWA. This reserve shall be accumulated from revenues collected in excess of all actual costs of the FRWA. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the FRWA shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next fiscal year and serve to reduce each Member's respective assessment for such subsequent fiscal year.

V.
FACILITIES AND CAPACITY

5.1 **Authorized Facilities.** Subject to the preparation and certification of any environmental documentation, as required by law, the FRWA is authorized to construct and operate the FRWA Facilities described in Attachment A, and to construct those EBMUD and SCWA Facilities described in Attachment A where the affected Member has entered into an agreement with the FRWA authorizing such construction by the FRWA. Any changes to the FRWP facilities described in Attachment A shall require the approval of each Member.

5.2 **Expenditure Controls.** The FRWA shall secure the approval of each Member before incurring any obligations, or expending any FRWA funds, for either of the following (1) Final Engineering as defined in Section 1.1(l); or (2) Construction as defined in Section 1.1(g).

5.3 **Dedicated Capacity.** Each Member shall be entitled to exclusive use of the following Dedicated Capacity in the FRWA Facilities without regard to whether the Member actually uses such facilities for the delivery of water:

(1)	EBMUD	100 MGD
(2)	SCWA	85 MGD
	Total:	185 MGD

5.4 **Reduction in Capacity of FRWA Facilities.** If the delivery capacity of the FRWA Facilities are less than 185 MGD at any time, and such reduction is not due to the act or omission of any Member, then the available capacity shall be allocated between the Members based on their percentage share of Dedicated Capacity as set forth in Section 4.1 hereof, unless a different allocation is agreed to by both Members. If the reduction is due to the act or omission of any Member, such Member shall be responsible for adsorbing the amount of the reduction attributable to its act or omission from its share of Dedicated Capacity as set forth in Section 5.3 hereof.

5.5 **Ownership of Facilities.** All FRWA Facilities shall be held in the name of the FRWA for the benefit of its Members in accordance with the terms of this Agreement and Attachment A. Any EBMUD, or SCWA Facilities constructed by FRWA may be held in the name of the FRWA during construction, but ownership of said facilities shall be transferred to each Member consistent with Attachment A and any agreement authorizing the construction of such facility entered into between the FRWA and the Member pursuant to Section 5.1 hereof. Unless otherwise agreed to by the Members in writing, all

costs relating to the construction, acquisition or operation of an EBMUD Facility or a SCWA Facility shall be the sole responsibility of EBMUD or SCWA, as the case may be.

VI. FINANCE AND ACCOUNTING

- 6.1 **Annual Budget.** Within ninety (90) days after the first meeting of the Board, and thereafter prior to the commencement of each fiscal year, the Board shall adopt a budget, including a projection of fixed and variable operating costs, for the FRWA for the ensuing fiscal year.
- 6.2 **Reconciliation of Fixed and Variable Costs.** As soon as practicable following the commencement of a fiscal year, the Board shall, upon recommendation of the Treasurer, reconcile fixed and variable operating costs for the prior fiscal year. The amount so reconciled shall then be factored into the calculation of projected fixed and variable operating costs for the next fiscal year.
- 6.3 **Accounting Procedures.** Full books and accounts shall be maintained for the FRWA in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall comply strictly with requirements of the Act.
- 6.4 **Audit.** On an annual fiscal year basis, the Board shall contract with an independent certified public accountant to perform a financial audit of the accounts and records of the FRWA. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the audited fiscal year.

VII. WITHDRAWAL AND DISSOLUTION

- 7.1 **Term.** The FRWA shall continue in existence until dissolved in accordance with the terms of this Article VII.
- 7.2 **Withdrawal.** Prior to Board approval of the issuance of any bonded indebtedness, either Member may terminate this Agreement upon giving the other Member and the Board ninety (90) days prior written notice of termination; provided, however, the Member shall be obligated for its share of all liabilities and expenses of the FRWA incurred prior to the effective date of such termination. If the Board has received such notice of termination, it shall be prohibited from issuing any bonded indebtedness or awarding any contracts for Construction.

- 7.3 **Dissolution.** The FRWA shall not be dissolved until all debts and liabilities of the FRWA have been discharged.
- 7.4 **Dissolution Agreement.** Subject to Section 7.3 above the FRWA may be dissolved pursuant to an agreement approved by both Members.
- 7.5 **Disposition of Property Upon Dissolution.** Upon dissolution of the FRWA, any surplus funds on hand shall be disposed of consistent with the dissolution agreement provided for in Section 7.4 above. Upon approval of a dissolution agreement in accordance with Section 7.4 above, the Board shall offer any FRWA Facilities, rights and interests of the FRWA for sale to the Members on such terms and conditions established by the Board. If no such sale is consummated within a reasonable period of time, the Board shall then offer such FRWA Facilities, rights and interests for sale on the open market for good and adequate consideration. The net proceeds from any sale shall be distributed among the then Members consistent with the dissolution agreement. The Members shall arrange for the salvage of any remaining FRWA Facilities

VIII. MISCELLANEOUS

- 8.1 **Amendments.** This Agreement may be amended upon written approval of any amendment by all Members. The approval by a Member of an amendment to this Agreement shall not be effective until a certified copy of the resolution of the governing body of such Member is filed with the Secretary of the FRWA, together with a fully executed original of such amendment.
- 8.2 **Notices** Any notice required to be given or delivered hereunder shall be delivered via the United States Postal Service.
- 8.3 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.
- 8.4 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby.
- 8.5 **Initial Notice.** Within thirty (30) days of the effective date of this Agreement, the FRWA shall cause a notice of the Agreement to be prepared in the manner set forth in Section 6503.5 of the Government Code and filed with the Office of the Secretary of State.
- 8.6 **Additional Notices.** Within thirty (30) days of the effective date of any amendment to this Agreement the FRWA shall prepare and file with the Office of the Secretary of State the notice required by Section 6503.5 of the Government Code.

- 8.7 **Liabilities.** The debts, liabilities and obligations of the FRWA shall be the debts, liabilities or obligations of the FRWA alone and not of the Members. However, a Member separately may contract for, or otherwise assume responsibility for specific debts, liabilities, or obligations of the FRWA, and no other Member then shall be liable therefore.

EAST BAY MUNICIPAL UTILITY DISTRICT

DATED: Feb. 14, 2002

By: Kelly Fowler President

DATED: Feb. 14, 2002

Attested: Symelle M. Lewis Secretary

Approved as to Form:

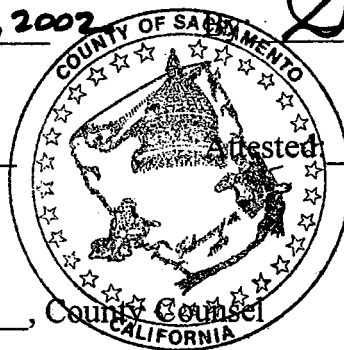
A.C. Hill, General Counsel

SACRAMENTO COUNTY WATER AGENCY

DATED: February 14, 2002

Don Nottoli Chairman

DATED: FEB 14 2002



Attested:

Cathy H. Turner Secretary

Approved as to Form:

_____, County Counsel

Attachments:

Attachment A: Freeport Regional Water Project Facilities

ATTACHMENT A: FREEPORT REGIONAL WATER PROJECT FACILITIES

Table A-1: FRWA Project Elements.

Project Element	Allocated Capacity					Ownership
	EBMUD		County		Total	
	(mgd)	(%)	(mgd)	(%)	(mgd)	
Sacramento River Intake	100	54.054%	85	45.946%	185	FRWA
Pipelines from Intake to Grit Basin	100	54.054%	85	45.946%	185	FRWA
Grit Basin	100	54.054%	85	45.946%	185	FRWA
Freeport Pumping Plant (FPP)	100	54.054%	85	45.946%	185	FRWA
Pipeline from FPP to SCWA Turnout	100	54.054%	85	45.946%	185	FRWA

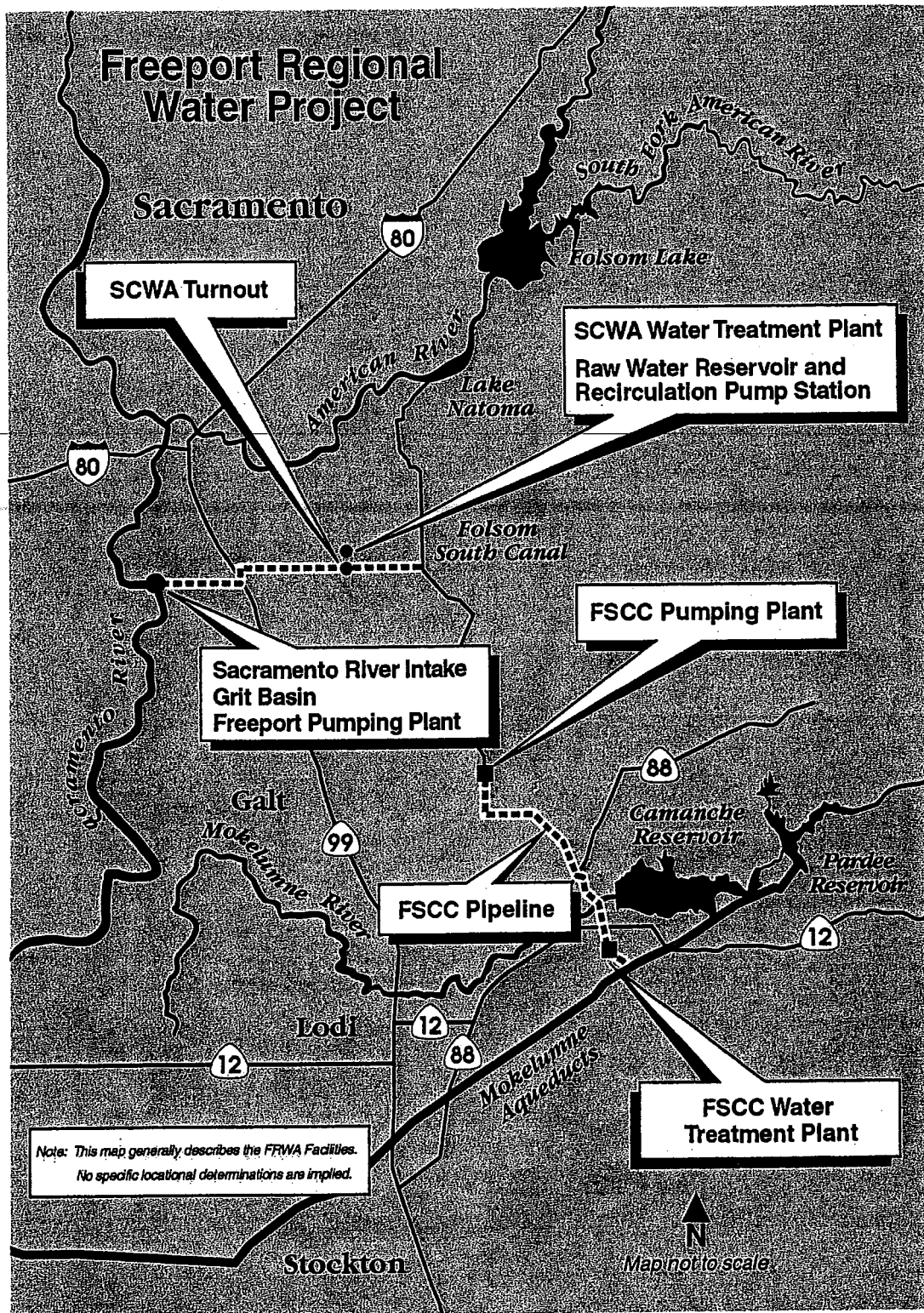
Table A-2: EBMUD Project Elements.

Project Element	Allocated Capacity	Ownership
	(mgd)	
Pipeline from SCWA Turnout to Folsom South Canal	100	EBMUD
FSCC Pumping Plants	100	EBMUD
FSCC Pipeline	100	EBMUD
FSCC Water Pretreatment Plant	100	EBMUD

Table A-3: SCWA Project Elements.

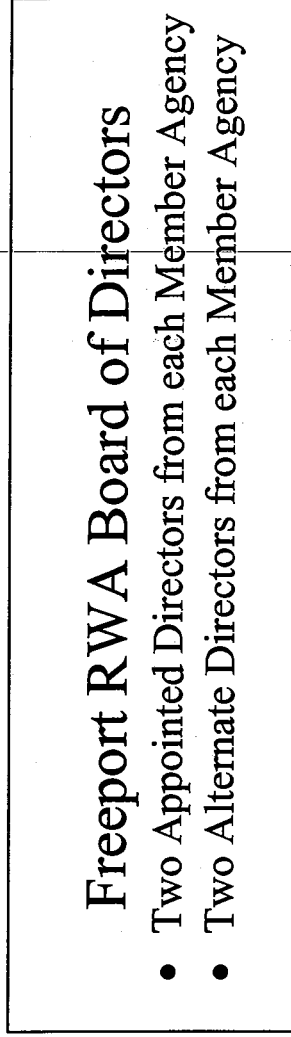
Project Element	Allocated Capacity	Ownership
	(mgd)	
Pipeline from SCWA Turnout to WTP	85	SCWA
SCWA Water Treatment Plant	85	SCWA
Raw Water Reservoir and Recirculation Pump Station	20 (*)	SCWA

(*) reservoir storage volume in million of gallons



Map 301C

FRWA Organizational Chart



- EBMUD GM and Sacramento County Executive
- Recommends recruitment and termination of Program Manager
- Receives all Program Manager Communications to FRWA Board
- Responsible for Project Development (overall cost, schedule and quality control)
- Hired Directly by FRWA Board

Freeport Regional Water Project

Preliminary Project Cost Allocation

Project Element	Capital Cost, million \$		
	EBMUD	SCWA	Total
Shared Facilities			
Intake Structure	29	24	53
Intake/Freeport Pipeline	2	1	3
Grit Removal Facilities	6	6	12
Freeport Pumping Plant	16	14	30
Freeport/Bradshaw Pipeline	54	45	99
Subtotal:	106	91	197
	54%	46%	100%
Individually-Owned Facilities			
SCWA Water Treatment Plant	0	160	160
Bradshaw/Canal Pipeline	50	0	50
FSCC Pipeline, Pumping Plants, Treatment	283	0	283
Total:	439	251	690
	64%	36%	100%

Note: The SCWA Water Treatment Plant cost estimate was \$135 million in previous presentations, based on a 70 million gallons per day (mgd) capacity. The capacity was increased to 85 mgd when it was determined that the plant should be moved to the central Zone 40 area.

**FIRST AMENDED JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE FREEPORT REGIONAL WATER AUTHORITY**

This First Amended Joint Exercise of Powers Agreement is made and entered into this 26th day of November, 2002, by and between Members East Bay Municipal Utility District ("EBMUD") and the Sacramento County Water Agency ("SCWA") (collectively, the "Members" and individually, a "Member").

RECITALS:

WHEREAS, the Members entered into a Joint Exercise of Powers Agreement Creating the Freeport Regional Water Authority ("JPA") that was effective February 14, 2002; and

WHEREAS, Section 2.7 of the JPA requires regular meetings of the FRWA Board of Directors to alternate between the Boardrooms of each Member with the initial regular meeting of the Board being in the Boardroom of the SCWA ; and

WHEREAS, the Members desire to revise Section 2.7 to provide the Board of Directors with the discretion to designate the location of regular meetings of the Board.

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

1. Section 2.7 of the JPA is hereby amended to read as follows:

"The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Member. Regular meetings of the Board shall occur not less than once every quarter, and the first meeting of the fiscal year shall occur within thirty (30) days of the beginning of the fiscal year. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 (Sections 54950-54961) of Part 1 of Division 2 of Title 5 of the Government Code of the State or any successor legislation."

2. The Agreement shall in all other respects remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amended JPA the day of the year first written above.

EAST BAY MUNICIPAL UTILITY DISTRICT

Dated: Nov. 26, 2002

By Katy Loucks
President, Board of Directors

(SEAL)

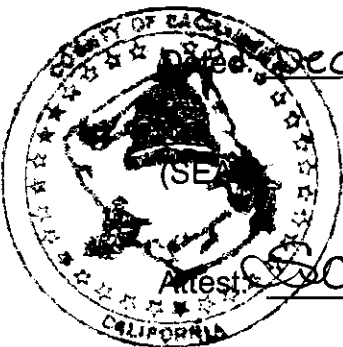
Attest: Agnes M. Lewis
Secretary of the District

APPROVED AS TO FORM:

Atc. Hill
General Counsel

SACRAMENTO COUNTY WATER AGENCY

By Don Nottoli
Chairperson, Board of Supervisors



Dated: Dec. 24, 2002

Attest: Sandra Burnett
Clerk of the Board of Directors

APPROVED AS TO FORM:

John F. Whit
Assistant County Counsel

**SECOND AMENDED
JOINT EXERCISE OF POWERS AGREEMENT
CONCERNING THE
FREEPORT REGIONAL WATER AUTHORITY
(FRWA)**

This Second Amended Joint Exercise of Powers Agreement ("Second Amended Agreement"), which replaces the Joint Exercise of Powers Agreement entered into on February 14, 2002 and the First Amended Joint Exercise of Powers Agreement (as amended, the "Agreement") entered into on November 26, 2002, is made and entered into as of the 20th day of November, 2006, by and between the East Bay Municipal Utility District and the Sacramento County Water Agency.

RECITALS

- A. The Members have agreed to jointly pursue development and implementation of a project that would involve construction of, among other features, a new surface water diversion on the Sacramento River with a capacity of 185 million gallons per day located approximately 6,500 feet upstream of the Freeport Bridge on the Sacramento River and those related facilities described in Attachment A, Section A-1 hereto.
- B. The purpose of this Second Amended Agreement is to provide the legal mechanism under which a joint powers authority may design, finance, construct and operate, the Freeport Regional Water Project ("FRWP") for the benefit of the Members.
- C. The Members have agreed to share in the costs of environmental documentation, design, permitting, financing, construction, and operating the FRWP as set forth in this Second Amended Agreement.
- D. The Members have an interest in the successful planning, design, construction and operation of the FRWP.
- E. The Members have the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of the FRWP and related property for the purpose of the production, treatment and distribution of water as provided herein.
- F. These powers can be exercised best through the cooperative action of the Members through a joint exercise of powers authority.
- G. Each of the Members is authorized to contract with the other for the joint exercise of these common powers under Article 1, Chapter 5, Division 7, Title 1 commencing with Section 6500 of the Government Code of the State of California.

- H. The Members previously entered into the Joint Exercise of Powers Agreement that created FRWA effective February 14, 2002.
- I. The Members, on November 26, 2002, entered into the First Amended Joint Exercise of Powers Agreement, which ~~amended the Joint Exercise of Powers Agreement.~~
- J. The Agreement did not address a variety of issues relating to the operation and financing of the FRWP should it be constructed by FRWA.
- K. The Members desire to amend the Agreement by this Second Amended Agreement to address certain operational and financing issues so that they are in a position to proceed with the construction phase of the FRWP.

COVENANTS

The Members agree as follows:

I.

AGREEMENT SUPERCEDED

This Second Amended Agreement supersedes the Agreement in its entirety.

II.

DEFINITIONS

2.1 For the purpose of this Second Amended Agreement, the following words shall have the following meanings

- (a) "Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code.
- (b) "Agreement" means the Joint Powers Agreement Creating the Freeport Regional Water Authority that became effective February 14, 2002, as amended on November 26, 2002.
- (c) "Associate Member" means any public entity that enters into an Associate Member Agreement as provided for in Section 3.2 hereof.

- (d) "Associate Member Agreement" means the agreement entered into between FRWA and any Associate Member.
- (e) "Board" means the Board of Directors established pursuant to Article III hereof.
-
- (f) "Capital Costs" mean the cost of constructing, financing, acquiring, planning, designing, permitting (including environmental review and any mitigation costs or filing fees related to the permitting process) FRWP Facilities, and the funding of a reasonable construction reserve.
- (g) "Construction" means the procurement of material, parts and equipment, conducting construction, construction management and related field services including project management activities and contractor management, design assistance during construction, as-built-drawings, and startup testing.
- (h) "Dedicated Capacity" means the capacity of the FRWA Facilities dedicated to each Member as set forth in Section 6.3 hereof.
- (i) "Defaulting Member" means a Member who fails to make any payment as required by Section 5.2(c) hereof.
- (j) "Director" means a member of the Board.
- (k) "EBMUD" means the East Bay Municipal Utility District.
- (l) "EBMUD Facility" or "EBMUD Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-3 hereto.
- (m) "Environmental Documentation" means all activities required to comply with the National Environmental Policy Act (NEPA), the Corps of Engineers 404 Permit process, the federal Endangered Species Act, the California Endangered Species Act and the California Environmental Quality Act (CEQA) or any other federal or state statute requiring a permit for construction or operation of the FRWP.
- (n) "Executives" means the General Manager of EBMUD and the County Executive of Sacramento County, or the Director of Water Resources for Sacramento County if delegated this responsibility by the County Executive, collectively. An "Executive" means one of the two Executives.
- (o) "Final Engineering" means activities conducted after the certification of Environmental Documentation and approval of the FRWP required to develop final design plans, specifications, and bidding documents.

- (p) "Fiscal Year" means July 1 through June 30 or such other period as the Board shall determine.
- (q) "Fixed Operating Costs" means those monthly operating and maintenance costs of the FRWA Facilities that are incurred irrespective of the amount of water conveyed through the FRWA Facilities, including, but not limited to, consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued by FRWA, as provided in Section 6.6(a) hereof, to finance the Capital Costs of the FRWA Facilities, bond reserve funds, and the costs of bond or financing agreements described in Section 4.2(q) hereof.
- (r) "Force Majeure" means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation, including litigation challenging the validity of the Agreement or this Second Amended Agreement, or any element thereof, general strikes or other force or event beyond the responsible party's reasonable control.
- (s) "FRWA" means the joint exercise of powers authority created by the Agreement and continued in effect through this Second Amended Agreement.
- (t) "FRWA Facility" or "FRWA Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-1 hereto.
- (u) "Freeport Point of Delivery" means a location on the Sacramento River sited consistent with the State Water Resources Control Board ("SWRCB") Order of July 29, 1999 or any subsequent order of the SWRCB regarding the Freeport point of delivery pertaining to permits 11315 and 11316 or other appropriate SWRCB Permits.
- (v) "Freeport Regional Water Project" or "FRWP" means those FRWA, EBMUD and SCWA Facilities described in Attachment A, Section A-2 hereto.
- (w) "Member" means either EBMUD or SCWA.
- (x) "Members" means EBMUD and SCWA collectively.
- (y) "Member's Point of Delivery" means the physical location in the FRWA Facilities at which each Member receives its deliveries of Member's Water and/or water for third parties delivered via the FRWA Facilities pursuant to provisions of this Second Amended Agreement. The Members' Points of Delivery are identified in Attachment A.

- (z) "Member's Water" means the quantities of water available for withdrawal from the Sacramento River at the Freeport Point of Delivery by that Member for its use based on its supply contracts with third parties or its own water rights.
 - (aa) "MGD" means millions of gallons per day.
-
- (bb) "Permitting" means all activities required to complete the regulatory and public approval process for the FRWP. Permitting activities will include, but are not limited to, conducting required studies, endangered species act consultation, environmental documentation and public notifications, preparation of local, state and federal permit applications, consultation and negotiations with involved parties including regulatory agencies.
 - (cc) "Program Manager" means the FRWA Program Manager appointed pursuant to Section 3.11 hereof.
 - (dd) "SCWA Facility" or "SCWA Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-2 hereto.
 - (ee) "Second Amended Agreement" means this Second Amended Joint Exercise of Powers Agreement.
 - (ff) "Variable Operating Costs" mean those daily operating and maintenance costs, including, but not limited to, power and other costs that are dependent on the volume of water actually conveyed through the FRWA Facilities.

- 2.2 **Agreement and Attachment.** This Second Amended Agreement shall incorporate Attachment A, and shall be construed consistent with the terms set forth in said Attachment. In the event of conflict between the articles of this Second Amended Agreement and Attachment A, this Second Amended Agreement shall control.

III.

ORGANIZATION

- 3.1 **FRWA Created.** The public entity, separate from its Members, known as the Freeport Regional Water Authority, was formed by the Agreement pursuant to the provisions of the Act and continues in effect under the authority of this Second Amended Agreement.
- 3.2 **Membership.** The Members of FRWA shall be EBMUD and SCWA, and such other public entities that execute an amendment to this Second Amended Agreement, and which have not withdrawn from FRWA pursuant to the provisions of Article VIII hereof. Other public entities may also join FRWA as Associate Members upon the execution of

an Associate Member Agreement in a form approved by the Board. Any Associate Member shall be entitled to participate in public Board meetings regarding the planning, design and operation of the FRWP consistent with the terms and conditions of a fully executed Associate Member Agreement.

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- 3.3 **Board of Directors.** FRWA shall be governed by a four (4) member Board of Directors comprised of two representatives of the governing board of each Member of FRWA. Each Director shall be entitled to one vote. Associate Members may appoint a non-voting member to the Board who shall sit with the four voting Directors at public meetings, and have the right to participate in public Board discussions consistent with the terms and conditions of a fully executed Associate Member Agreement.
- 3.4 **Selection of Directors.** Each Member shall designate and appoint two (2) representatives from its governing board to serve as Directors on the Board. Each Member also shall appoint an alternate Director from its governing board for each of its regular Directors. Any such alternates shall be empowered to cast votes in the absence of the regular Directors or, in the event of a conflict of interest preventing the regular Director from voting, to vote in the place of a Director recused because of conflict. If an alternate Director of a Member is unavailable, the other alternate Director of such Member may serve in place of such unavailable alternate. Each Member shall give written notice to the FRWA Secretary of the names of its Directors and alternate Directors. Each of the Directors and alternate Directors shall hold office from the first meeting of the Board after the appointment of the Director or alternate Director until a successor is selected in the same manner as the initial representatives were chosen. Directors and alternate Directors shall serve at the pleasure of the governing body of their appointing Members and may be removed at any time, with or without cause, at the sole discretion of such governing body.
- 3.5 **Compensation.** No Director shall receive any compensation from FRWA for serving as such, but shall be entitled to reimbursement for any expenditures actually incurred in connection with serving as a Director if the Board determines that such expenditure shall be reimbursed and there are unencumbered funds available for such purposes. Except as specifically provided in this Article, staff of the Members shall not be compensated for their time by FRWA.
- 3.6 **Principal Office.** The initial principal office of FRWA shall be a location of approximate equal travel times for both Members as designated by the Board. After award of the first construction contract for the FRWP, the principal office of FRWA shall be relocated to Sacramento County. The location of the principal office of FRWA specified in this section may be changed at the discretion of the Board.
- 3.7 **Meetings.** The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Member. Regular meetings of the Board shall occur not less than annually. All meetings
-

of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 (Sections 54950-54961) of Part 1 of Division 2 of Title 5 of the California Government Code) or any successor legislation.

3.8 Quorum. For the purposes of transacting the business of the Board, a quorum shall consist of three (3) Board Directors. A majority vote of the entire Board shall be required for any Board action.

3.9 Organization of the Board. The Board shall elect a Chair and a Vice-Chair to serve for a term of one (1) year commencing every January 1st, unless sooner terminated at the pleasure of the Board or until a successor Chair and/or Vice-Chair is appointed to complete a current one-year term; provided, however, the first Chair and Vice-Chair appointed shall hold office from the date of appointment to December 31 of the ensuing year. The position of Chair and Vice-Chair shall alternate between representatives of each Member. The initial Chair shall be a representative of EBMUD and the initial Vice-Chair shall be a representative of SCWA.

3.10 Officers.

(a) **Treasurer/Controller.** The Director of Finance of EBMUD shall serve as the FRWA Treasurer unless a different Treasurer is appointed by the Board. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government Code Section 6505.6, and shall strictly comply with the provisions of statutes relating to the duties of such office found in the Act. Subject to the applicable provisions of any resolution, indenture or other instrument authorizing or securing bonds or other evidences of indebtedness providing for a trustee or other fiscal agent, the Treasurer shall be the depository and have custody of all money of FRWA from whatever source, and shall draw all warrants and pay demands against FRWA as approved by the Board. The Treasurer shall file an official bond in the amount of \$25,000 as required by Government Code Section 6505.1; provided that such bond shall not be required if FRWA does not possess or own property or funds with an aggregate value greater than \$500. The Treasurer shall cause an independent annual audit of the finances of FRWA to be made by a certified public accountant in compliance with Government Code Section 6505. The Treasurer shall serve at the pleasure of the Board. FRWA shall reimburse EBMUD for the costs of the services provided by the EBMUD Director of Finance pursuant to this subsection.

(b) **Secretary.** The Clerk of the SCWA Board of Directors shall serve as the Secretary of the Board unless a different Secretary is appointed by the Board. The Secretary shall maintain the records of FRWA. The Secretary shall serve at the pleasure of the Board. FRWA shall reimburse SCWA for the costs of the services provided by the SCWA Clerk pursuant to this subsection.

- (c) Legal Counsel. Unless a different legal counsel is required as a result of disqualification or conflict, Legal Counsel for FRWA shall be either the EBMUD General Counsel or the Sacramento County Counsel, upon mutual recommendation of both regarding the staff member who shall perform services in that capacity; and shall serve at the pleasure of the Board. FRWA shall reimburse the Member for the costs of the legal services provided. If the Board determines to retain special counsel, such retention shall be upon the mutual recommendation of the EBMUD General Counsel and the Sacramento County Counsel.
- (d) Additional Officers. The Board shall have the power to appoint such additional officers as it deems necessary.
- (e) Qualifications. Any officer, employee or agent of the Board also may be an officer, employee or agent of any of the Members. Except as specifically provided in this Article, no officer, employee or agent or attorney of any of the Members shall receive compensation from FRWA for time spent on FRWA matters, but may be compensated for expenditures actually incurred on FRWA matters.
- (f) Privileges, Liability and Immunity. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Members when performing their respective functions shall apply to the same degree and extent while such individuals are engaged in the performance of any of the functions and other duties under this Second Amended Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or subject to any of the requirements of such Members.

3.11 Program Manager. The Board shall appoint a Program Manager upon the recommendation of the Executives who shall be responsible to the Board for the proper and efficient administration of FRWA as directed by the Board pursuant to the provisions of this Second Amended Agreement or of any resolution or order of the Board not inconsistent with this Second Amended Agreement. During the planning and construction phase of the FRWP, the Program Manager shall be retained under contract with FRWA. After the FRWP becomes operational, the Board may at its discretion continue to retain the Program Manager under contract or it may appoint a Program Manager who is an employee of any of its Members. The Program Manager shall report directly to the Board and, upon request by the Executives, provide administrative support for the activities of the Executives in exercising their responsibilities as assigned by the Board pursuant to Section 3.12 hereof. Any communications, correspondence or other material that is furnished to the Board by the Program Manager shall also be furnished to the Executives unless the Program Manager is directed otherwise by the Executives. The

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Program Manager shall serve at the pleasure of the Board. In addition to any other duties that may be assigned by the Board, the Program Manager shall have the following authority:

- (a) Under the policy direction of the Board, and in consultation with the Executives, to plan, organize and direct all activities of FRWA with the exception of operations and maintenance activities unless expressly so authorized by the Board;
- (b) To authorize expenditures, except for operations and maintenance activities unless expressly so authorized by the Board, within the designations and limitations of the budget approved by the Board;
- (c) To make recommendations to and requests of the Board concerning any matter which is to be performed, done or carried out by the Board;
- (d) To have the authority to assign, supervise and otherwise control the activities, except for operations and maintenance activities unless expressly so authorized by the Board, of any Member employees assigned to FRWA or contractors that may be retained by FRWA; and
- (e) To have charge of and handle any property of FRWA and have access to any property of FRWA.

3.12 Executives. The Executives shall have responsibility for operation and maintenance of the FRWA Facilities, and may be assigned other responsibilities by the Board. The Executives shall collaborate as necessary in exercising such responsibilities and shall establish checks and balances to ensure that the interests of all Members are equally well served. Unless specifically limited by the Board, such responsibilities may be delegated by the Executives to Member staff and/or committees comprising staff from all Members provided that such delegation conveys the obligation of assigned staff and/or committees to collaborate as necessary and to act in the interests of all Members. Responsibilities assigned to the Executives shall include the following:

- (a) Monitor the activities of FRWA on behalf of the Members and make such reports to the Board as the Board deems appropriate;
- (b) Make recommendations to the Board with respect to the appointment and termination of the Program Manager and the responsibilities of the Program Manager;
- (c) Provide oversight of the operation and maintenance of FRWA Facilities by FRWA and/or its operating agent appointed pursuant to Section 4.2(t) hereof and, after the FRWP becomes operational, report at least annually

to the Board on costs incurred in and the status of FRWA operations and maintenance activities;

- (d) Assign, supervise and otherwise control the operation and maintenance activities for FRWA Facilities of any Member employees assigned to FRWA or contractors that may be retained by FRWA;
- (e) Make recommendations to the Board with respect to budgets and policy issues regarding operation and maintenance of the FRWA Facilities;
- (f) Authorize expenditures for operations and maintenance activities for the FRWA Facilities within the designations and limitations of the budget approved by the Board; and
- (g) Execute contracts with consultants, contractors, Members, and other agencies for operations and maintenance services and/or agreements related to operation and maintenance of FRWA Facilities, subject to Board approvals and delegation of authority by the Board for execution of such contracts and agreements; provided that any contract between FRWA and a Member shall be executed on behalf of FRWA, pursuant to approvals and delegated authority by the Board, by the Executive of the other Member.

3.13 Staff. The Members may assign employees to perform services for FRWA at their exclusive discretion in which case the services of such assigned employees shall be at the expense of the respective Member with any reimbursement for the value of the services provided by such assigned employee to be subject to an agreement between the contributing Member and FRWA. FRWA may also at the discretion of its Board enter into appropriate contracts for staff services or employ staff directly. Assignments of staff shall be pursuant to written agreement between the Member and the Program Manager or the Member and the Executives.

3.14 Record of Meetings. The Secretary of the Board shall cause a record of all meetings of the Board to be kept, and shall cause a copy of such records to be forwarded to each Director, alternate Director, and the Executives.

3.15 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as it may deem necessary.

IV.

PURPOSE AND POWERS

4.1 Purpose. Each Member has in common the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of the FRWP and related property, either alone or in cooperation with other public or private entities, as described in Attachment A. The purpose of this Second Amended Agreement is to jointly exercise some or all of the foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner herein set forth, in order to prepare the environmental documentation for the FRWP and then, if construction of the FRWP is approved pursuant to Section 6.2 hereof, provide for the most cost-efficient and timely design, financing, construction, operation and maintenance of the FRWP. The FRWP shall be designed consistent with applicable SCWA and EBMUD design standards and operational criteria.

4.2 Powers. All of the power and authority of FRWA shall be exercised by the Board. Subject to Section 4.1 hereof and the conditions and restrictions contained in this Second Amended Agreement, FRWA, in its own name, shall have the power to study, plan, develop, finance, acquire, condemn, design, and construct the FRWP and related property, and, additionally, to lease, repair, manage, operate, maintain, control and dispose of the FRWA Facilities. FRWA is authorized in its own name to do all acts necessary or convenient to the exercise of said powers for said purposes, including but not limited to any or all of the following:

- (a) To exercise jointly the common powers of its Members in studying, planning, designing and implementing water supply projects consistent with this Second Amended Agreement.
- (b) To make and enter contracts, and to execute leases, installment sale contracts or installment purchase contracts for the purposes and in accordance with procedures and requirements as permitted by law.
- (c) To contract for the services of engineers, attorneys, planners, financial consultants or other agents.
- (d) To design, acquire, construct, manage, maintain and operate any buildings, works, or improvements and to enter into contracts relating to such activities.
- (e) To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, devise, or exercise of the power of eminent domain; to hold, lease and dispose of any such property.
- (f) To incur debts, liabilities, or obligations subject to limitations herein set forth.

- (g) To sue and be sued in its own name.
 - (h) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.
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- (i) To apply for an appropriate grant or grants and/or loan or loans under any federal, state or local programs for assistance in developing the FRWP, or any future authorized modifications to the FRWP.

- (j) To enter into arrangements for the transmission, purchase and sale of electrical power, or the trading of electrical power, related to operation of the FRWA Facilities.

- (k) To obtain, in its own name, all necessary permits and licenses, opinions and rulings.

- (l) To procure public liability and other insurance as it deems advisable to protect FRWA and each of its Members.

- (m) Whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what FRWA could do, or to perform any proper corporate function, and enter into agreements with such a corporation.

- (n) To issue revenue bonds in accordance with the following laws:

- I. Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540.
- II. Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300.
- III. Article 4, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6584.
- IV. Any other applicable law.

- (o) To use other financing acts, including, but not limited to, the Mello-Roos Community Facilities District Act of 1982, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915.

- (p) To exercise any of the powers set forth in the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of the Act), or as otherwise permitted by law.

- (q) To enter into agreements incident to the issuance of bonds for the purpose of enhancing the credit or liquidity of such bonds, or to place such bonds on a different interest rate, currency, cash-flow, or other basis, by entering into an interest rate swap, cap or similar instrument, or in connection with the investment of the proceeds of such bonds.
-
- (r) To enter into agreements with the Members for the construction of those EBMUD or SCWA Facilities identified in Attachment A, Sections A-2 and A-3 hereto.
 - (s) To sell Dedicated Capacity in the FRWA Facilities to a Member or to a joint exercise of powers agency or nonprofit corporation for resale to a Member.
 - (t) To operate the FRWA Facilities either directly or through agreement with an operating agent who may be one of the Members or a qualified third party operator.
 - (u) To design, finance, lease, purchase, condemn, acquire, construct, operate, maintain, sell, hypothecate or otherwise dispose of the FRWA Facilities and related property for the purpose of the production, treatment and distribution of water as provided herein.

Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon EBMUD in the exercise of its powers. Notwithstanding the foregoing, FRWA shall have any additional powers conferred under the Act, or as otherwise permitted by law, insofar as such additional powers may be necessary or desirable to accomplish the purposes of FRWA as set forth herein.

- 4.3 Use of FRWA Facilities to Serve Third Parties.** FRWA shall operate, or cause to be operated, the FRWA Facilities to ensure that the Dedicated Capacity set forth in Section 6.3 hereof is, at all times, fully available for each Member's use. No Member may make its Dedicated Capacity available to a third-party if the use of such capacity by a third-party would interfere with any water rights or contractual entitlement of another Member or would otherwise violate the terms of any resolution, indenture, or other instrument authorizing or securing bonds or other evidences of indebtedness incurred for financing the FRWA Facilities.

Any person desiring to use a portion of a Member's Dedicated Capacity shall contract directly with that Member. Each Member agrees to hold the FRWA and any other Member harmless from (1) any additional costs incurred by the FRWA or any Member from such use by third persons; and (2) any impact on the Dedicated Capacity rights of any other Member. Notwithstanding any provision in this section to the contrary, (a) EBMUD shall be prohibited from contracting for the use of its Dedicated Capacity for the delivery of water for use within the County of Sacramento without the prior approval of the SCWA; and (b) SCWA shall be prohibited from contracting for the use of its

Dedicated Capacity for the delivery of water for use outside the County of Sacramento without the prior approval of EBMUD.

- 4.4 **Use of a Member's Dedicated Capacity by Another Member.** Upon written agreement, one Member may make a portion of its Dedicated Capacity in the FRWA Facilities available for use by the other Member. Conditions for use of that capacity and compensation for such use shall be defined by written agreement.

*FIRST RIGHT OF REFUSAL
(BEFORE ANY THIRD PARTY)*

- 4.5 **Delivery of Members' Water.** FRWA shall use the FRWA Facilities to deliver to each Member's Point of Delivery that Member's Water up to the limits of the Member's Dedicated Capacity and, to the extent a Member's Dedicated Capacity is not fully utilized for delivery of its Member Water, its deliveries of water to another Member or to third parties pursuant to Section 4.3 hereof. FRWA and each of the Members may enter into an agreement specifying the roles and responsibilities of FRWA and each of the Members for delivery of water and the associated cost-share responsibilities for operation and maintenance of the FRWA Facilities.

V.

ALLOCATION OF COSTS BETWEEN MEMBERS

- 5.1 **Recovery of Costs.** The costs incurred by FRWA in carrying out its functions shall be allocated between its Members as follows:

- (a) Capital Costs and other Fixed Operating Costs for the FRWA Facilities, together with the cost of Environmental Documentation for the FRWP, shall be allocated between the Members based on the following percentage shares of Dedicated Capacity in the FRWA Facilities: EBMUD-54.054% and SCWA-45.946%.
- (b) Variable Operating Costs for FRWA Facilities shall be allocated between the Members based on the cost of their proportionate share of the volume of use of the FRWA Facilities or such other method as may be established by the Board or by mutual agreement of FRWA and its Members.

- 5.2 **Payment Obligations.**

- (a) Each of the Members agrees to be responsible for paying its respective share of all annual costs, including, but not limited to, Capital Costs, Fixed Operating Costs and Variable Operating Costs, of FRWA in accordance with the payment schedule adopted by the Board pursuant to subsection (b) below, and consistent with the cost allocation methodology set forth in Section 5.1 hereof and any bonds or financing agreements entered into by FRWA.

- (b) All costs of FRWA shall be annually assessed on the Members by the Board in amounts sufficient to meet the obligations of FRWA for that Fiscal Year as set forth in FRWA's annual budget. The Board shall also establish a payment schedule for each annual assessment consistent with the projected cash flow needs of FRWA and any bonds or financing agreements entered into by FRWA. Each Member will be responsible for the payment of this annual assessment whether or not the FRWA Facilities are constructed, operating, damaged or destroyed, whether or not the Dedicated Capacity of each Member established pursuant to Section 6.3 hereof is actually utilized by the Member or a third party, and regardless of the occurrence of any Force Majeure event.
- (c) Notwithstanding anything to the contrary herein, each of the Members shall be individually liable to the other Member for its failure to pay its respective share of FRWA's annual costs (including but not limited to debt service on any bonds or related obligations). In the event that a Member fails to make any payment of such costs, the non-defaulting Member may make such payment on behalf of the Defaulting Member, but the Defaulting Member shall remain obligated to reimburse the non-defaulting Member for such advance with interest calculated at one and one-half the rate of return earned by the treasury of the non-defaulting Member during the time period of the default. If the Defaulting Member has not repaid the non-defaulting Member for such advance by the end of the Fiscal Year in which the default first occurs, the non-defaulting Member may take such legal action as it deems appropriate to enforce payment of such obligation.

5.3 **Revenue Deficit.** If insufficient revenue is collected by FRWA to satisfy all of its annual costs (other than by reason of a failure of any Member to pay its share of costs), then such deficiency will be assessed by FRWA against all Members in the same manner as costs were allocated to each Member for the preceding Fiscal Year in which such deficit was incurred.

5.4 **Budget Reserves and Excess Revenues.** The Board shall determine on an annual basis, prior to the beginning of each Fiscal Year, a level of reasonable cash reserves to be accumulated by FRWA. This reserve shall be accumulated from revenues collected in excess of all actual costs of FRWA. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of FRWA shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next Fiscal Year and serve to reduce each Member's respective assessment for such subsequent Fiscal Year.

5.5 **Additional Capital Costs and Excess Capital Cost Funds.**

- (a) If the Board determines that additional funds are necessary for Capital Costs, FRWA may (1) issue bonds or other indebtedness to finance such additional

Capital Costs as provided in Section 6.6(a) hereof or (2) require the Members to pay for such costs as an additional payment for the acquisition of Dedicated Capacity in the manner set forth in Section 6.6(b) hereof.

- (b) If the Board determines that funds held for the payment of Capital Costs are in excess of the amount needed for Capital Costs, (1) if FRWA has issued bonds or other indebtedness to finance Capital Costs as provided in Section 6.6(a) hereof, excess amounts shall be applied to the payment of such bonds or other indebtedness, and (2) if Members have purchased Dedicated Capacity as provided in Section 6.6(b) hereof, excess amounts shall be returned to Members in proportion to their Dedicated Capacity (EBMUD – 54.054%; SCWA – 45.946%).

VI.

FACILITIES AND CAPACITY

- 6.1 **Authorized Facilities.** Subject to the preparation and certification of any environmental documentation, as required by law, FRWA is authorized to construct, operate and maintain the FRWA Facilities described in Attachment A, Section A-1 hereto, and to construct those EBMUD and SCWA Facilities described in Attachment A, Sections A-2 and A-3 hereto where the affected Member has entered into an agreement with the FRWA authorizing such construction by FRWA. Any changes to the FRWA Facilities described in Attachment A, Section A-1 hereto shall require the written approval of each Member.
- 6.2 **Expenditure Controls.** FRWA shall secure the approval of each Member before incurring any obligations, or expending any FRWA funds, for either of the following (1) Final Engineering as defined in Section 2.1(o) hereof; or (2) Construction as defined in Section 2.1(g) hereof.
- 6.3 **Dedicated Capacity.** Each Member shall acquire the following Dedicated Capacity from FRWA in the manner set forth in Section 6.6 hereof and shall thereupon be entitled to exclusive use of the following Dedicated Capacity in the FRWA Facilities without regard to whether the Member actually uses such facilities for the delivery of water:

(1)	EBMUD	100 MGD
(2)	SCWA	85 MGD
	Total:	185 MGD

- 6.4 **Reduction in Capacity of FRWA Facilities.** If the delivery capacity of FRWA Facilities is less than 185 MGD at any time, and such reduction is not due to the act or omission of any Member, then the available capacity shall be allocated between the Members based on their percentage share of Dedicated Capacity as set forth in Section 5.1 hereof, unless a different allocation is agreed to pursuant to a written agreement between both Members. If the reduction is due to the act or omission of any Member, such Member shall be responsible for absorbing the amount of the reduction attributable to its act or omission from its share of Dedicated Capacity as set forth in Section 6.3 hereof.
- 6.5 **Ownership of Facilities.** All of the FRWA Facilities shall be owned by and held in the name of FRWA for the benefit of its Members in accordance with the terms of this Second Amended Agreement. Any EBMUD or SCWA Facilities constructed by FRWA shall be owned and held in the name of the Member on whose behalf FRWA is undertaking the construction as set forth in the construction agreement between FRWA and the Member. Unless otherwise agreed to by the Members in writing, all costs relating to the construction, acquisition, operation or maintenance of an EBMUD Facility or a SCWA Facility shall be the sole responsibility, respectively, of EBMUD or SCWA.
- 6.6 **Financing of Capital Costs.** Capital Costs of the FRWA Facilities may be financed in only one of the following manners:
- (a) FRWA may issue bonds or other evidences of indebtedness to finance such Capital Costs. In such event, each Member shall be entitled to its Dedicated Capacity and shall be responsible for its related percentage share of debt service on such bonds or other indebtedness and the cost of related bond reserve funds and bond or financing agreements described in Section 4.2(q) hereof, all of which costs shall constitute Fixed Operating Costs.
 - (b) FRWA may sell the Dedicated Capacity in the FRWA Facilities to the Members (either to a Member directly or to a joint exercise of powers agency or a nonprofit corporation for resale to a Member). In such event, the amount paid by or for each Member shall be in proportion to such Member's Dedicated Capacity (EBMUD – 54.054%; SCWA – 45.946%) and each Member shall be entitled to the Dedicated Capacity so purchased. Such payment shall not, however, preclude FRWA from requiring additional payment for such Dedicated Capacity as provided in Section 5.5 hereof.

VII.

FINANCE AND ACCOUNTING

- 7.1 **Annual Budget.** Within ninety (90) days after the first meeting of the Board, and thereafter prior to the commencement of each Fiscal Year, the Board shall adopt a budget, including a projection of Fixed Operating Costs and Variable Operating Costs, for FRWA for the ensuing Fiscal Year.
- 7.2 **Reconciliation of Fixed and Variable Costs.** As soon as practicable following the commencement of a Fiscal Year, the Board shall, upon recommendation of the Treasurer, reconcile Fixed Operating Costs and Variable Operating Costs for the prior Fiscal Year. The amount so reconciled shall then be factored into the calculation of projected Fixed Operating Costs and Variable Operating Costs for the next Fiscal Year.
- 7.3 **Accounting Procedures.** Full books and accounts shall be maintained for FRWA in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall comply strictly with requirements of the Act.
- 7.4 **Audit.** On an annual Fiscal Year basis, FRWA shall contract with an independent certified public accountant to perform a financial audit of the accounts and records of FRWA. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the audited Fiscal Year.

VIII.

WITHDRAWAL AND DISSOLUTION

- 8.1 **Term.** FRWA shall continue in existence until dissolved in accordance with the terms of this Article VIII.
- 8.2 **Withdrawal.** Prior to the issuance of any bonds or other indebtedness by FRWA, as provided in Section 6.6 hereof, or independently by one or both of the Members, either Member may terminate this Second Amended Agreement upon giving the other Member and the Board ninety (90) days prior written notice of termination; provided, however, the Member shall be obligated for its share of all liabilities and expenses of FRWA incurred prior to the effective date of such termination. If the Board has received such notice of termination, it shall be prohibited from issuing any bonds or other indebtedness or awarding any contracts for Construction.

- 8.3 **Dissolution.** FRWA shall not be dissolved until all debts and liabilities of the FRWA have been discharged.
- 8.4 **Dissolution Agreement.** Subject to Section 8.3 above, FRWA may be dissolved pursuant to an agreement in writing approved by both Members.
-
- 8.5 **Disposition of Property Upon Dissolution.** Upon dissolution of FRWA, any surplus funds on hand shall be disposed of consistent with the dissolution agreement provided for in Section 8.4 above. Upon approval of a dissolution agreement in accordance with Section 8.4 above, the Board shall offer any FRWA Facilities, rights and interests of FRWA for sale to the Members on such terms and conditions established by the Board. If no such sale is consummated within a reasonable period of time, the Board shall then offer such FRWA Facilities, rights and interests for sale on the open market for good and adequate consideration. The net proceeds from any sale shall be distributed among the then Members consistent with the dissolution agreement. The Members shall arrange for the salvage of any remaining FRWA Facilities.

IX.

MISCELLANEOUS

- 9.1 **Amendments.** This Second Amended Agreement may be amended upon written approval of any amendment by all Members. The approval by a Member of an amendment to this Second Amended Agreement shall not be effective until a certified copy of the resolution of the governing body of such Member approving such amendment is filed with the Secretary of the FRWA, together with a fully executed original of such amendment.
- 9.2 **Notices** Any notice required to be given or delivered hereunder shall be delivered via the United States Postal Service.
- 9.3 **Choice of Law.** This Second Amended Agreement shall be governed by the laws of the State of California.
- 9.4 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Second Amended Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Second Amended Agreement shall not be affected thereby.

9.5 **Initial Notice.** Within thirty (30) days of the effective date of the Second Amended Agreement, FRWA shall cause a notice of the Second Amended Agreement to be prepared in the manner set forth in Section 6503.5 of the Government Code and filed with the Office of the Secretary of State.

9.6 **Additional Notices.** Within thirty (30) days of the effective date of any amendment to the Second Amended Agreement, FRWA shall prepare and file with the Office of the Secretary of State the notice required by Section 6503.5 of the Government Code.

9.7 **Liabilities.** The debts, liabilities and obligations of FRWA shall be the debts, liabilities or obligations of FRWA alone and not of the Members. However, a Member separately may contract for, or otherwise assume responsibility for specific debts, liabilities, or obligations of FRWA, and no other Member then shall be liable therefore.

EAST BAY MUNICIPAL UTILITY DISTRICT

DATED: Dec. 14, 2006

By: William B. Peterson
President

DATED: Dec. 14, 2006

Attested: Suzelle M. Lewis
Secretary

Approved as to Form:

Thomas J. Gunther, General Counsel

SACRAMENTO COUNTY WATER AGENCY

DATED: November 13, 2006

By: Don Notch
Chairman

DATED: 11/15/06

Attested: Gudy H. Turner
Secretary

Approved as to Form:

Roy C. Loper, County Counsel

Attachments: Attachment A: Definition of FRWA and Member Facilities

Attachment A

Definition of FRWA and Member Facilities

The following definitions, although illustrated by referring to Figures A-1 to A-5, shall override the depictions in Figures A-1 to A-5. Depictions in Figures A-2 to A-5 may change in final design drawings or as-built drawings.

A-1. FRWA Facilities

All FRWA Facilities defined in this Section A-1 shall be owned by FRWA with capital cost-sharing responsibilities allocated between the Members according to the percentages stated in Section 5.1(a) of the Second Amended JPA.

FRWA Intake: All facilities and improvements within the boundary of the FRWA property immediately west of the South Sacramento Drainage Channel, and those projecting into the channel of the Sacramento River adjacent to the FRWA property. These facilities shall include the intake structure (fish screens, forebay, and pump building), the training walls and plaza surrounding the intake structure, the valve vault, the surge tanks, the meter vault, the substation, the equipment building, the sediment settling basins, and site work (roads, drainage and landscaping). Dedicated Capacity in the FRWA Intake shall be consistent with Section 6.3 of the Second Amended JPA.

Joint Pipeline: The 84-inch-diameter pipeline between the FRWA Intake and the Bifurcation, including the fiber-optic cable and conduit system along the pipeline alignment, cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the FRWA Intake and the Joint Pipeline shall be 10 feet downstream of the outer wall of the meter vault. The boundary between the Joint Pipeline and the Bifurcation shall be 10 feet upstream of the centerline of the tee where the SCWA Extension pipeline branches off the Joint Pipeline. Dedicated Capacity in the Joint Pipeline shall be consistent with Section 6.3 of the Second Amended JPA.

Bifurcation: The facilities connecting the Joint Pipeline with the SCWA Extension and the EBMUD Extension, including pipelines, isolation valves, surge control tank and compressor, flow meter, programmable logic controller, telemetry facilities, and associated structures and site improvements. The boundary between the Bifurcation and the SCWA Extension shall be 10 feet downstream of the outer wall of the vault for the SCWA isolation valve. This boundary shall be the SCWA Point of Delivery. The boundary between the Bifurcation and the EBMUD Extension shall be 10 feet downstream of the outer wall of the vault for the flow meter on the pipeline to the EBMUD Extension. This boundary shall be the EBMUD Point of Delivery. Dedicated Capacity in the Bifurcation shall be consistent with Section 6.3 of the Second Amended JPA.

Flow Control Station: The facility at the downstream end of the SCWA Extension, including the isolation valves, flow meters, sleeve valves, bridge crane, programmable logic controller,

telemetry facilities, and associated building and valve vault. The boundary between the Flow Control Station and the SCWA Water Treatment Plant shall be 10 feet downstream of the outer wall of the building.

Instrumentation, Control and Telecommunication Facilities: In addition to the instrumentation, control facilities contained within the FRWA Facilities described above:

- a) The fiber-optic cable and conduit system between the Bifurcation and the Flow Control Station shall be FRWA Facilities.
- b) The fiber-optic cable and conduit system between the Bifurcation and the Terminal Weir Structure shall be FRWA Facilities.
- c) The instrumentation to gauge water level in the Terminal Weir Structure and in the Folsom South Canal near the Terminal Weir Structure, instrumentation to monitor water quality in or near the Terminal Weir Structure, and the associated programmable logic controller(s), fiber-optic cable and conduit system, radio system, and/or other telemetry facilities shall be FRWA Facilities.
- d) The monitoring and telemetry equipment provided by FRWA and to be located at the U.S. Bureau of Reclamation's (USBR) Deer Creek gate structure, as required to convey electronic signals between USBR and FRWA, shall be FRWA facilities.

A-2. SCWA Facilities

All SCWA Facilities defined in this Section A-2 shall be owned by SCWA and SCWA shall be responsible for all of the capital costs for such facilities.

SCWA Extension: The 66-inch-diameter pipeline between the Bifurcation and the Flow Control Station, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the SCWA Extension and the Flow Control Station shall be the upstream outer wall of vault for the isolation valves for the Flow Control Station building.

SCWA Water Treatment Plant: The 85 MGD Zone 40 surface water treatment plant (or "Vineyard Surface Water Treatment Plant") to be located north of the Bifurcation.

A-3. EBMUD Facilities

All EBMUD Facilities defined in this Section A-3 shall be owned by EBMUD and EBMUD shall be responsible for all of the capital costs for such facilities.

EBMUD Extension: The 72-inch-diameter pipeline between the Bifurcation and the Terminal Weir Structure, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the EBMUD Extension and the Terminal Weir Structure shall be 15 feet upstream of the outer wall of the Terminal Weir Structure.

Attachment to the Second Amended JPA

Terminal Weir Structure: The facility at the downstream end of the EBMUD Extension, including the slide gate, weir, connection with the U.S. Bureau of Reclamation's Folsom South Canal, and associated site improvements.

Folsom South Canal Connection: The facilities required to convey water from near the end of the Folsom South Canal to EBMUD's Mokelumne Aqueducts. These facilities include Clay Station Pumping Plant, Camanche Pumping Plant, a 72-inch-diameter pipeline connecting the two pumping plants, and a 72-inch-diameter pipeline connecting Camanche Pumping Plant to the Mokelumne Aqueducts.

Figure A-1: Freeport Regional Water Project

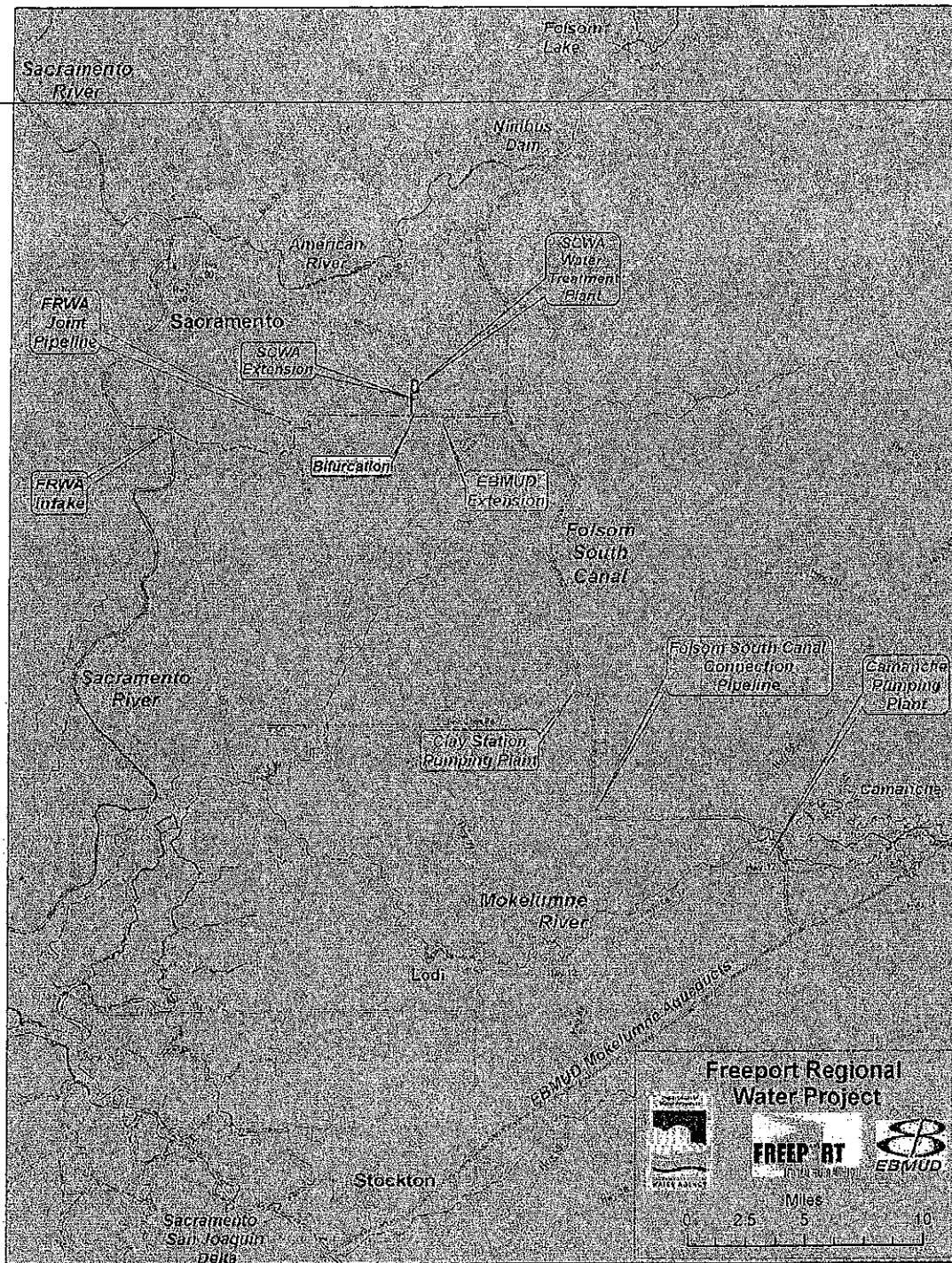


Figure A-3: Bifurcation

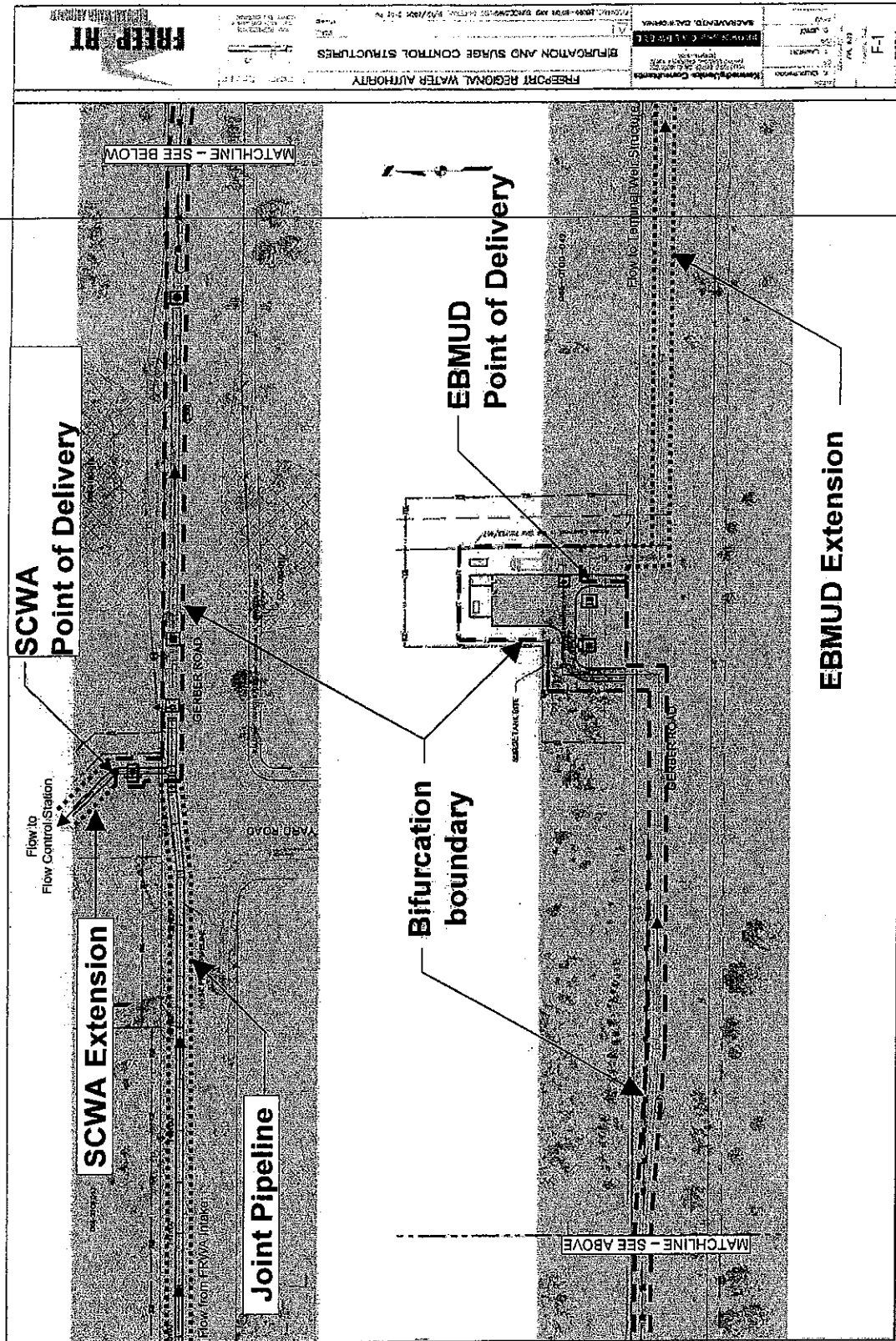
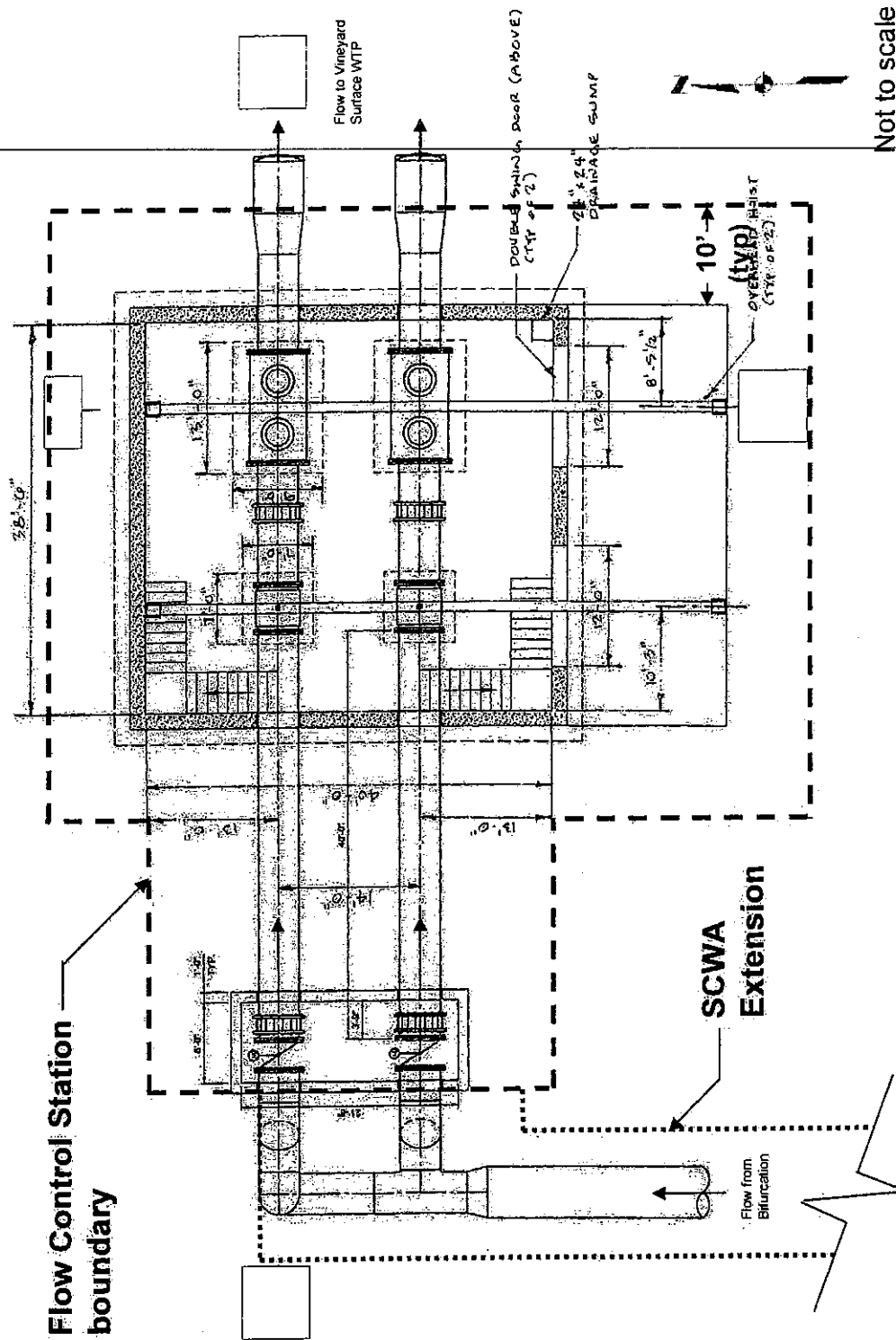


Figure A-4: Flow Control Station



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**THIRD AMENDED
JOINT EXERCISE OF POWERS AGREEMENT
CONCERNING THE
FREEPORT REGIONAL WATER AUTHORITY
(FRWA)**

This Third Amended Joint Exercise of Powers Agreement ("Third Amended Agreement"), which replaces the Joint Exercise of Powers Agreement entered into on February 14, 2002 and the First Amended Joint Exercise of Powers Agreement (as amended, the "Agreement") entered into on November 26, 2002 and the Second Amended Joint Exercise Powers Agreement entered into on November 6, 2006 (as amended, the "Agreement"), is made and entered into as of the 2nd day of February, 2010, by and between the East Bay Municipal Utility District and the Sacramento County Water Agency.

RECITALS

-
- A. The Members have agreed to jointly pursue development and implementation of a project that would involve construction of, among other features, a new surface water diversion on the Sacramento River with a capacity of 185 million gallons per day located approximately 6,500 feet upstream of the Freeport Bridge on the Sacramento River and those related facilities described in Attachment A, Section A-1 hereto.
- B. The purpose of this Third Amended Agreement is to provide the legal mechanism under which a joint powers authority may design, finance, construct and operate, the Freeport Regional Water Project ("FRWP") for the benefit of the Members.
- C. The Members have agreed to share in the costs of environmental documentation, design, permitting, financing, construction, and operating the FRWP as set forth in this Third Amended Agreement.
- D. The Members have an interest in the successful planning, design, construction and operation of the FRWP.
- E. The Members have the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of the FRWP and related property for the purpose of the production, treatment and distribution of water as provided herein.
- F. These powers can be exercised best through the cooperative action of the Members through a joint exercise of powers authority.
-

- G. Each of the Members is authorized to contract with the other for the joint exercise of these common powers under Article 1, Chapter 5, Division 7, Title 1 commencing with Section 6500 of the Government Code of the State of California.
- H. The Members previously entered into the Joint Exercise of Powers Agreement that created FRWA effective February 14, 2002.
- I. The Members, on November 26, 2002, entered into the First Amended Joint Exercise of Powers Agreement, which amended the Joint Exercise of Powers Agreement.
- J. The Agreement did not address a variety of issues relating to the operation and financing of the FRWP should it be constructed by FRWA.
- K. The Members desire to amend the Agreement by this Third Amended Agreement to address certain operational and financing issues so that they are in a position to proceed with the construction phase of the FRWP.

COVENANTS

The Members agree as follows:

I.

AGREEMENT SUPERCEDED

This Third Amended Agreement supersedes the Agreement in its entirety.

II.

DEFINITIONS

2.1 For the purpose of this Third Amended Agreement, the following words shall have the following meanings

- (a) "Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code.
- (b) "Agreement" means the Joint Powers Agreement Creating the Freeport Regional Water Authority that became effective February 14, 2002, as amended on November 26, 2002.

- (c) "Associate Member" means any public entity that enters into an Associate Member Agreement as provided for in Section 3.2 hereof.
 - (d) "Associate Member Agreement" means the agreement entered into between FRWA and any Associate Member.
 - (e) "Board" means the Board of Directors established pursuant to Article III hereof.
 - (f) "Capital Costs" mean the cost of constructing, financing, acquiring, planning, designing, permitting (including environmental review and any mitigation costs or filing fees related to the permitting process) FRWP Facilities, and the funding of a reasonable construction reserve.
 - (g) "Construction" means the procurement of material, parts and equipment, conducting construction, construction management and related field services including project management activities and contractor management, design assistance during construction, as-built-drawings, and startup testing.
 - (h) "Dedicated Capacity" means the capacity of the FRWA Facilities dedicated to each Member as set forth in Section 6.3 hereof.
-
- (i) "Defaulting Member" means a Member who fails to make any payment as required by Section 5.2(c) hereof.
 - (j) "Director" means a member of the Board.
 - (k) "EBMUD" means the East Bay Municipal Utility District.
 - (l) "EBMUD Facility" or "EBMUD Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-3 hereto.
 - (m) "Environmental Documentation" means all activities required to comply with the National Environmental Policy Act (NEPA), the Corps of Engineers 404 Permit process, the federal Endangered Species Act, the California Endangered Species Act and the California Environmental Quality Act (CEQA) or any other federal or state statute requiring a permit for construction or operation of the FRWP.
 - (n) "Executives" means the General Manager of EBMUD and the County Executive of Sacramento County, or the Director of Water Resources for Sacramento County if delegated this responsibility by the County Executive, collectively. An "Executive" means one of the two Executives.

- (o) "Final Engineering" means activities conducted after the certification of Environmental Documentation and approval of the FRWP required to develop final design plans, specifications, and bidding documents.
 - (p) "Fiscal Year" means July 1 through June 30 or such other period as the Board shall determine.
 - (q) "Fixed Operating Costs" means those monthly operating and maintenance costs of the FRWA Facilities that are incurred irrespective of the amount of water conveyed through the FRWA Facilities, including, but not limited to, consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued by FRWA, as provided in Section 6.6(a) hereof, to finance the Capital Costs of the FRWA Facilities, bond reserve funds, and the costs of bond or financing agreements described in Section 4.2(q) hereof.
 - (r) "Force Majeure" means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation, including litigation challenging the validity of the Agreement or this Third Amended Agreement, or any element thereof, general strikes or other force or event beyond the responsible party's reasonable control.
-
- (s) "FRWA" means the joint exercise of powers authority created by the Agreement and continued in effect through this Third Amended Agreement.
 - (t) "FRWA Facility" or "FRWA Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-1 hereto.
 - (u) "Freeport Point of Delivery" means a location on the Sacramento River sited consistent with the State Water Resources Control Board ("SWRCB") Order of July 29, 1999 or any subsequent order of the SWRCB regarding the Freeport point of delivery pertaining to permits 11315 and 11316 or other appropriate SWRCB Permits.
 - (v) "Freeport Regional Water Project" or "FRWP" means those FRWA, EBMUD and SCWA Facilities described in Attachment A, Section A-2 hereto.
 - (w) "Member" means either EBMUD or SCWA.
 - (x) "Members" means EBMUD and SCWA collectively.
 - (y) "Member's Point of Delivery" means the physical location in the FRWA Facilities at which each Member receives its deliveries of Member's Water and/or water for third parties delivered via the FRWA Facilities pursuant to provisions of

this Third Amended Agreement. The Members' Points of Delivery are identified in Attachment A.

- (z) "Member's Water" means the quantities of water available for withdrawal from the Sacramento River at the Freeport Point of Delivery by that Member for its use based on its supply contracts with third parties or its own water rights.
- (aa) "MGD" means millions of gallons per day.
- (bb) "Permitting" means all activities required to complete the regulatory and public approval process for the FRWP. Permitting activities will include, but are not limited to, conducting required studies, endangered species act consultation, environmental documentation and public notifications, preparation of local, state and federal permit applications, consultation and negotiations with involved parties including regulatory agencies.
- (cc) "Program Manager" means the FRWA Program Manager appointed pursuant to Section 3.11 hereof.
- (dd) "SCWA Facility" or "SCWA Facilities" means each facility or all facilities (as the case may be) identified in Attachment A, Section A-2 hereto.
- (ee) "Third Amended Agreement" means this Third Amended Joint Exercise of Powers Agreement.
- (ff) "Variable Operating Costs" mean those daily operating and maintenance costs, including, but not limited to, power and other costs that are dependent on the volume of water actually conveyed through the FRWA Facilities.

- 2.2 **Agreement and Attachment.** This Third Amended Agreement shall incorporate Attachment A, and shall be construed consistent with the terms set forth in said Attachment. In the event of conflict between the articles of this Third Amended Agreement and Attachment A, this Third Amended Agreement shall control.

III.

ORGANIZATION

- 3.1 **FRWA Created.** The public entity, separate from its Members, known as the Freeport Regional Water Authority, was formed by the Agreement pursuant to the provisions of the Act and continues in effect under the authority of this Third Amended Agreement.

- 3.2 **Membership.** The Members of FRWA shall be EBMUD and SCWA, and such other public entities that execute an amendment to this Third Amended Agreement, and which have not withdrawn from FRWA pursuant to the provisions of Article VIII hereof. Other public entities may also join FRWA as Associate Members upon the execution of an Associate Member Agreement in a form approved by the Board. Any Associate Member shall be entitled to participate in public Board meetings regarding the planning, design and operation of the FRWP consistent with the terms and conditions of a fully executed Associate Member Agreement.
- 3.3 **Board of Directors.** FRWA shall be governed by a four (4) member Board of Directors comprised of two representatives of the governing board of each Member of FRWA. Each Director shall be entitled to one vote. Associate Members may appoint a non-voting member to the Board who shall sit with the four voting Directors at public meetings, and have the right to participate in public Board discussions consistent with the terms and conditions of a fully executed Associate Member Agreement.
- 3.4 **Selection of Directors.** Each Member shall designate and appoint two (2) representatives from its governing board to serve as Directors on the Board. Each Member also shall appoint an alternate Director from its governing board for each of its regular Directors. Any such alternates shall be empowered to cast votes in the absence of the regular Directors or, in the event of a conflict of interest preventing the regular Director from voting, to vote in the place of a Director recused because of conflict. If an alternate Director of a Member is unavailable, the other alternate Director of such Member may serve in place of such unavailable alternate. Each Member shall give written notice to the FRWA Secretary of the names of its Directors and alternate Directors. Each of the Directors and alternate Directors shall hold office from the first meeting of the Board after the appointment of the Director or alternate Director until a successor is selected in the same manner as the initial representatives were chosen. Directors and alternate Directors shall serve at the pleasure of the governing body of their appointing Members and may be removed at any time, with or without cause, at the sole discretion of such governing body.
- 3.5 **Compensation.** No Director shall receive any compensation from FRWA for serving as such, but shall be entitled to reimbursement for any expenditures actually incurred in connection with serving as a Director if the Board determines that such expenditure shall be reimbursed and there are unencumbered funds available for such purposes. Except as specifically provided in this Article, staff of the Members shall not be compensated for their time by FRWA.
- 3.6 **Principal Office.** The initial principal office of FRWA shall be a location of approximate equal travel times for both Members as designated by the Board. After award of the first construction contract for the FRWP, the principal office of FRWA shall be relocated to Sacramento County. The location of the principal office of FRWA specified in this section may be changed at the discretion of the Board.

- 3.7 **Meetings.** The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Member. Regular meetings of the Board shall occur not less than annually. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 (Sections 54950-54961) of Part 1 of Division 2 of Title 5 of the California Government Code) or any successor legislation.
- 3.8 **Quorum.** For the purposes of transacting the business of the Board, a quorum shall consist of three (3) Board Directors. A majority vote of the entire Board shall be required for any Board action.
- 3.9 **Organization of the Board.** The Board shall elect a Chair and a Vice-Chair to serve for a term of one (1) year commencing every January 1st, unless sooner terminated at the pleasure of the Board or until a successor Chair and/or Vice-Chair is appointed to complete a current one-year term; provided, however, the first Chair and Vice-Chair appointed shall hold office from the date of appointment to December 31 of the ensuing year. The position of Chair and Vice-Chair shall alternate between representatives of each Member. The initial Chair shall be a representative of EBMUD and the initial Vice-Chair shall be a representative of SCWA.
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3.10 **Officers.**

- (a) **Treasurer/Controller.** The Director of Finance of EBMUD shall serve as the FRWA Treasurer unless a different Treasurer is appointed by the Board. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government Code Section 6505.6, and shall strictly comply with the provisions of statutes relating to the duties of such office found in the Act. Subject to the applicable provisions of any resolution, indenture or other instrument authorizing or securing bonds or other evidences of indebtedness providing for a trustee or other fiscal agent, the Treasurer shall be the depository and have custody of all money of FRWA from whatever source, and shall draw all warrants and pay demands against FRWA as approved by the Board. The Treasurer shall file an official bond in the amount of \$25,000 as required by Government Code Section 6505.1; provided that such bond shall not be required if FRWA does not possess or own property or funds with an aggregate value greater than \$500. The Treasurer shall cause an independent annual audit of the finances of FRWA to be made by a certified public accountant in compliance with Government Code Section 6505. The Treasurer shall serve at the pleasure of the Board. FRWA shall reimburse EBMUD for the costs of the services provided by the EBMUD Director of Finance pursuant to this subsection.
- (b) **Secretary.** The Clerk of the SCWA Board of Directors shall serve as the Secretary of the Board unless a different Secretary is appointed by the Board. The

Secretary shall maintain the records of FRWA. The Secretary shall serve at the pleasure of the Board. FRWA shall reimburse SCWA for the costs of the services provided by the SCWA Clerk pursuant to this subsection.

- (c) Legal Counsel. Unless a different legal counsel is required as a result of disqualification or conflict, Legal Counsel for FRWA shall be either the EBMUD General Counsel or the Sacramento County Counsel, upon mutual recommendation of both regarding the staff member who shall perform services in that capacity; and shall serve at the pleasure of the Board. FRWA shall reimburse the Member for the costs of the legal services provided. If the Board determines to retain special counsel, such retention shall be upon the mutual recommendation of the EBMUD General Counsel and the Sacramento County Counsel.
- (d) Additional Officers. The Board shall have the power to appoint such additional officers as it deems necessary.
- (e) Qualifications. Any officer, employee or agent of the Board also may be an officer, employee or agent of any of the Members. Except as specifically provided in this Article, no officer, employee or agent or attorney of any of the Members shall receive compensation from FRWA for time spent on FRWA matters, but may be compensated for expenditures actually incurred on FRWA matters.
- (f) Privileges, Liability and Immunity. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Members when performing their respective functions shall apply to the same degree and extent while such individuals are engaged in the performance of any of the functions and other duties under this Third Amended Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or subject to any of the requirements of such Members.

3.11 Program Manager. The Board shall appoint a Program Manager upon the recommendation of the Executives who shall be responsible to the Board for the proper and efficient administration of FRWA as directed by the Board pursuant to the provisions of this Third Amended Agreement or of any resolution or order of the Board not inconsistent with this Third Amended Agreement. The Program Manager shall report directly to the Board and, upon request by the Executives, provide administrative support for the activities of the Executives in exercising their responsibilities as assigned by the Board pursuant to Section 3.12 hereof. Any communications, correspondence or other material that is furnished to the Board by the Program Manager shall also be furnished to the Executives unless the Program Manager is directed otherwise by the Executives. The

Program Manager shall serve at the pleasure of the Board. In addition to any other duties that may be assigned by the Board, the Program Manager shall have the following authority:

- (a) Under the policy direction of the Board, and in consultation with the Executives, to plan, organize and direct all activities of FRWA with the exception of operations and maintenance activities unless expressly so authorized by the Board;
 - (b) To authorize expenditures, except for operations and maintenance activities unless expressly so authorized by the Board, within the designations and limitations of the budget approved by the Board;
 - (c) To make recommendations to and requests of the Board concerning any matter which is to be performed, done or carried out by the Board;
 - (d) To have the authority to assign, supervise and otherwise control the activities, except for operations and maintenance activities unless expressly so authorized by the Board, of any Member employees assigned to FRWA or contractors that may be retained by FRWA; and
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- (e) To have charge of and handle any property of FRWA and have access to any property of FRWA.

3.12 Executives. The Executives shall have responsibility for operation and maintenance of the FRWA Facilities, and may be assigned other responsibilities by the Board. The Executives shall collaborate as necessary in exercising such responsibilities and shall establish checks and balances to ensure that the interests of all Members are equally well served. Unless specifically limited by the Board, such responsibilities may be delegated by the Executives to Member staff and/or committees comprising staff from all Members provided that such delegation conveys the obligation of assigned staff and/or committees to collaborate as necessary and to act in the interests of all Members. Responsibilities assigned to the Executives shall include the following:

- (a) Monitor the activities of FRWA on behalf of the Members and make such reports to the Board as the Board deems appropriate;
- (b) Make recommendations to the Board with respect to the appointment and termination of the Program Manager and the responsibilities of the Program Manager;
- (c) Provide oversight of the operation and maintenance of FRWA Facilities by FRWA and/or its operating agent appointed pursuant to Section 4.2(t) hereof and, after the FRWP becomes operational, report at least annually

to the Board on costs incurred in and the status of FRWA operations and maintenance activities;

- (d) Assign, supervise and otherwise control the operation and maintenance activities for FRWA Facilities of any Member employees assigned to FRWA or contractors that may be retained by FRWA;
 - (e) Make recommendations to the Board with respect to budgets and policy issues regarding operation and maintenance of the FRWA Facilities;
 - (f) Authorize expenditures for operations and maintenance activities for the FRWA Facilities within the designations and limitations of the budget approved by the Board; and
 - (g) Execute contracts with consultants, contractors, Members, and other agencies for operations and maintenance services and/or agreements related to operation and maintenance of FRWA Facilities, subject to Board approvals and delegation of authority by the Board for execution of such contracts and agreements; provided that any contract between FRWA and a Member shall be executed on behalf of FRWA, pursuant to approvals and delegated authority by the Board, by the Executive of the other Member.
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3.13 **Staff.** The Members may assign employees to perform services for FRWA at their exclusive discretion in which case the services of such assigned employees shall be at the expense of the respective Member with any reimbursement for the value of the services provided by such assigned employee to be subject to an agreement between the contributing Member and FRWA. FRWA may also at the discretion of its Board enter into appropriate contracts for staff services or employ staff directly. Assignments of staff shall be pursuant to written agreement between the Member and the Program Manager or the Member and the Executives.

3.14 **Record of Meetings.** The Secretary of the Board shall cause a record of all meetings of the Board to be kept, and shall cause a copy of such records to be forwarded to each Director, alternate Director, and the Executives.

3.15 **Rules.** The Board may adopt from time to time such rules and regulations for the conduct of its affairs as it may deem necessary.

IV.

PURPOSE AND POWERS

- 4.1 **Purpose.** Each Member has in common the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of the FRWP and related property, either alone or in cooperation with other public or private entities, as described in Attachment A. The purpose of this Third Amended Agreement is to jointly exercise some or all of the foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner herein set forth, in order to prepare the environmental documentation for the FRWP and then, if construction of the FRWP is approved pursuant to Section 6.2 hereof, provide for the most cost-efficient and timely design, financing, construction, operation and maintenance of the FRWP. The FRWP shall be designed consistent with applicable SCWA and EBMUD design standards and operational criteria.
- 4.2 **Powers.** All of the power and authority of FRWA shall be exercised by the Board. Subject to Section 4.1 hereof and the conditions and restrictions contained in this Third Amended Agreement, FRWA, in its own name, shall have the power to study, plan, develop, finance, acquire, condemn, design, and construct the FRWP and related property, and, additionally, to lease, repair, manage, operate, maintain, control and dispose of the FRWA Facilities. FRWA is authorized in its own name to do all acts necessary or convenient to the exercise of said powers for said purposes, including but not limited to any or all of the following:
- (a) To exercise jointly the common powers of its Members in studying, planning, designing and implementing water supply projects consistent with this Third Amended Agreement.
 - (b) To make and enter contracts, and to execute leases, installment sale contracts or installment purchase contracts for the purposes and in accordance with procedures and requirements as permitted by law.
 - (c) To contract for the services of engineers, attorneys, planners, financial consultants or other agents.
 - (d) To design, acquire, construct, manage, maintain and operate any buildings, works, or improvements and to enter into contracts relating to such activities.
 - (e) To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, devise, or exercise of the power of eminent domain; to hold, lease and dispose of any such property.
 - (f) To incur debts, liabilities, or obligations subject to limitations herein set forth.

- (g) To sue and be sued in its own name.
 - (h) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.
 - (i) To apply for an appropriate grant or grants and/or loan or loans under any federal, state or local programs for assistance in developing the FRWP, or any future authorized modifications to the FRWP.
 - (j) To enter into arrangements for the transmission, purchase and sale of electrical power, or the trading of electrical power, related to operation of the FRWA Facilities.
 - (k) To obtain, in its own name, all necessary permits and licenses, opinions and rulings.
 - (l) To procure public liability and other insurance as it deems advisable to protect FRWA and each of its Members.
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- (m) Whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what FRWA could do, or to perform any proper corporate function, and enter into agreements with such a corporation.
 - (n) To issue revenue bonds in accordance with the following laws:
 - I. Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540.
 - II. Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300.
 - III. Article 4, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6584.
 - IV. Any other applicable law.
 - (o) To use other financing acts, including, but not limited to, the Mello-Roos Community Facilities District Act of 1982, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915.
 - (p) To exercise any of the powers set forth in the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of the Act), or as otherwise permitted by law.
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- (q) To enter into agreements incident to the issuance of bonds for the purpose of enhancing the credit or liquidity of such bonds, or to place such bonds on a different interest rate, currency, cash-flow, or other basis, by entering into an interest rate swap, cap or similar instrument, or in connection with the investment of the proceeds of such bonds.
 - (r) To enter into agreements with the Members for the construction of those EBMUD or SCWA Facilities identified in Attachment A, Sections A-2 and A-3 hereto.
 - (s) To sell Dedicated Capacity in the FRWA Facilities to a Member or to a joint exercise of powers agency or nonprofit corporation for resale to a Member.
 - (t) To operate the FRWA Facilities either directly or through agreement with an operating agent who may be one of the Members or a qualified third party operator.
 - (u) To design, finance, lease, purchase, condemn, acquire, construct, operate, maintain, sell, hypothecate or otherwise dispose of the FRWA Facilities and related property for the purpose of the production, treatment and distribution of water as provided herein.
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Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon EBMUD in the exercise of its powers. Notwithstanding the foregoing, FRWA shall have any additional powers conferred under the Act, or as otherwise permitted by law, insofar as such additional powers may be necessary or desirable to accomplish the purposes of FRWA as set forth herein.

- 4.3 **Use of FRWA Facilities to Serve Third Parties.** FRWA shall operate, or cause to be operated, the FRWA Facilities to ensure that the Dedicated Capacity set forth in Section 6.3 hereof is, at all times, fully available for each Member's use. No Member may make its Dedicated Capacity available to a third-party if the use of such capacity by a third-party would interfere with any water rights or contractual entitlement of another Member or would otherwise violate the terms of any resolution, indenture, or other instrument authorizing or securing bonds or other evidences of indebtedness incurred for financing the FRWA Facilities.

Any person desiring to use a portion of a Member's Dedicated Capacity shall contract directly with that Member. Each Member agrees to hold the FRWA and any other Member harmless from (1) any additional costs incurred by the FRWA or any Member from such use by third persons; and (2) any impact on the Dedicated Capacity rights of any other Member. Notwithstanding any provision in this section to the contrary, (a) EBMUD shall be prohibited from contracting for the use of its Dedicated Capacity for the delivery of water for use within the County of Sacramento without the prior approval of the SCWA; and (b) SCWA shall be prohibited from contracting for the use of its

Dedicated Capacity for the delivery of water for use outside the County of Sacramento without the prior approval of EBMUD.

- 4.4 **Use of a Member's Dedicated Capacity by Another Member.** Upon written agreement, one Member may make a portion of its Dedicated Capacity in the FRWA Facilities available for use by the other Member. Conditions for use of that capacity and compensation for such use shall be defined by written agreement.
- 4.5 **Delivery of Members' Water.** FRWA shall use the FRWA Facilities to deliver to each Member's Point of Delivery that Member's Water up to the limits of the Member's Dedicated Capacity and, to the extent a Member's Dedicated Capacity is not fully utilized for delivery of its Member Water, its deliveries of water to another Member or to third parties pursuant to Section 4.3 hereof. FRWA and each of the Members may enter into an agreement specifying the roles and responsibilities of FRWA and each of the Members for delivery of water and the associated cost-share responsibilities for operation and maintenance of the FRWA Facilities.

V.

ALLOCATION OF COSTS BETWEEN MEMBERS

- 5.1 **Recovery of Costs.** The costs incurred by FRWA in carrying out its functions shall be allocated between its Members as follows:
- (a) Capital Costs and other Fixed Operating Costs for the FRWA Facilities, together with the cost of Environmental Documentation for the FRWP, shall be allocated between the Members based on the following percentage shares of Dedicated Capacity in the FRWA Facilities: EBMUD-54.054% and SCWA-45.946%.
 - (b) Variable Operating Costs for FRWA Facilities shall be allocated between the Members based on the cost of their proportionate share of the volume of use of the FRWA Facilities or such other method as may be established by the Board or by mutual agreement of FRWA and its Members.
- 5.2 **Payment Obligations.**
- (a) Each of the Members agrees to be responsible for paying its respective share of all annual costs, including, but not limited to, Capital Costs, Fixed Operating Costs and Variable Operating Costs, of FRWA in accordance with the payment schedule adopted by the Board pursuant to subsection (b) below, and consistent with the cost allocation methodology set forth in Section 5.1 hereof and any bonds or financing agreements entered into by FRWA.

- (b) All costs of FRWA shall be annually assessed on the Members by the Board in amounts sufficient to meet the obligations of FRWA for that Fiscal Year as set forth in FRWA's annual budget. The Board shall also establish a payment schedule for each annual assessment consistent with the projected cash flow needs of FRWA and any bonds or financing agreements entered into by FRWA. Each Member will be responsible for the payment of this annual assessment whether or not the FRWA Facilities are constructed, operating, damaged or destroyed, whether or not the Dedicated Capacity of each Member established pursuant to Section 6.3 hereof is actually utilized by the Member or a third party, and regardless of the occurrence of any Force Majeure event.
 - (c) Notwithstanding anything to the contrary herein, each of the Members shall be individually liable to the other Member for its failure to pay its respective share of FRWA's annual costs (including but not limited to debt service on any bonds or related obligations). In the event that a Member fails to make any payment of such costs, the non-defaulting Member may make such payment on behalf of the Defaulting Member, but the Defaulting Member shall remain obligated to reimburse the non-defaulting Member for such advance with interest calculated at one and one-half the rate of return earned by the treasury of the non-defaulting Member during the time period of the default. If the Defaulting Member has not repaid the non-defaulting Member for such advance by the end of the Fiscal Year in which the default first occurs, the non-defaulting Member may take such legal action as it deems appropriate to enforce payment of such obligation.
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5.3 **Revenue Deficit.** If insufficient revenue is collected by FRWA to satisfy all of its annual costs (other than by reason of a failure of any Member to pay its share of costs), then such deficiency will be assessed by FRWA against all Members in the same manner as costs were allocated to each Member for the preceding Fiscal Year in which such deficit was incurred.

5.4 **Budget Reserves and Excess Revenues.** The Board shall determine on an annual basis, prior to the beginning of each Fiscal Year, a level of reasonable cash reserves to be accumulated by FRWA. This reserve shall be accumulated from revenues collected in excess of all actual costs of FRWA. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of FRWA shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next Fiscal Year and serve to reduce each Member's respective assessment for such subsequent Fiscal Year.

5.5 **Additional Capital Costs and Excess Capital Cost Funds.**

- (a) If the Board determines that additional funds are necessary for Capital Costs, FRWA may (1) issue bonds or other indebtedness to finance such additional

Capital Costs as provided in Section 6.6(a) hereof or (2) require the Members to pay for such costs as an additional payment for the acquisition of Dedicated Capacity in the manner set forth in Section 6.6(b) hereof.

- (b) If the Board determines that funds held for the payment of Capital Costs are in excess of the amount needed for Capital Costs, (1) if FRWA has issued bonds or other indebtedness to finance Capital Costs as provided in Section 6.6(a) hereof, excess amounts shall be applied to the payment of such bonds or other indebtedness, and (2) if Members have purchased Dedicated Capacity as provided in Section 6.6(b) hereof, excess amounts shall be returned to Members in proportion to their Dedicated Capacity (EBMUD – 54.054%; SCWA – 45.946%).

VI.

FACILITIES AND CAPACITY

- 6.1 **Authorized Facilities.** Subject to the preparation and certification of any environmental documentation, as required by law, FRWA is authorized to construct, operate and maintain the FRWA Facilities described in Attachment A, Section A-1 hereto, and to construct those EBMUD and SCWA Facilities described in Attachment A, Sections A-2 and A-3 hereto where the affected Member has entered into an agreement with the FRWA authorizing such construction by FRWA. Any changes to the FRWA Facilities described in Attachment A, Section A-1 hereto shall require the written approval of each Member.
- 6.2 **Expenditure Controls.** FRWA shall secure the approval of each Member before incurring any obligations, or expending any FRWA funds, for either of the following (1) Final Engineering as defined in Section 2.1(o) hereof; or (2) Construction as defined in Section 2.1(g) hereof.
- 6.3 **Dedicated Capacity.** Each Member shall acquire the following Dedicated Capacity from FRWA in the manner set forth in Section 6.6 hereof and shall thereupon be entitled to exclusive use of the following Dedicated Capacity in the FRWA Facilities without regard to whether the Member actually uses such facilities for the delivery of water:

(1)	EBMUD	100 MGD
(2)	SCWA	85 MGD
	Total:	185 MGD

- 6.4 **Reduction in Capacity of FRWA Facilities.** If the delivery capacity of FRWA Facilities is less than 185 MGD at any time, and such reduction is not due to the act or omission of any Member, then the available capacity shall be allocated between the Members based on their percentage share of Dedicated Capacity as set forth in Section 5.1 hereof, unless a different allocation is agreed to pursuant to a written agreement between both Members. If the reduction is due to the act or omission of any Member, such Member shall be responsible for absorbing the amount of the reduction attributable to its act or omission from its share of Dedicated Capacity as set forth in Section 6.3 hereof.
- 6.5 **Ownership of Facilities.** All of the FRWA Facilities shall be owned by and held in the name of FRWA for the benefit of its Members in accordance with the terms of this Third Amended Agreement. Any EBMUD or SCWA Facilities constructed by FRWA shall be owned and held in the name of the Member on whose behalf FRWA is undertaking the construction as set forth in the construction agreement between FRWA and the Member. Unless otherwise agreed to by the Members in writing, all costs relating to the construction, acquisition, operation or maintenance of an EBMUD Facility or a SCWA Facility shall be the sole responsibility, respectively, of EBMUD or SCWA.
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- 6.6 **Financing of Capital Costs.** Capital Costs of the FRWA Facilities may be financed in only one of the following manners:
- (a) FRWA may issue bonds or other evidences of indebtedness to finance such Capital Costs. In such event, each Member shall be entitled to its Dedicated Capacity and shall be responsible for its related percentage share of debt service on such bonds or other indebtedness and the cost of related bond reserve funds and bond or financing agreements described in Section 4.2(q) hereof, all of which costs shall constitute Fixed Operating Costs.
 - (b) FRWA may sell the Dedicated Capacity in the FRWA Facilities to the Members (either to a Member directly or to a joint exercise of powers agency or a nonprofit corporation for resale to a Member). In such event, the amount paid by or for each Member shall be in proportion to such Member's Dedicated Capacity (EBMUD – 54.054%; SCWA – 45.946%) and each Member shall be entitled to the Dedicated Capacity so purchased. Such payment shall not, however, preclude FRWA from requiring additional payment for such Dedicated Capacity as provided in Section 5.5 hereof.

VII.

FINANCE AND ACCOUNTING

- 7.1 **Annual Budget.** Within ninety (90) days after the first meeting of the Board, and thereafter prior to the commencement of each Fiscal Year, the Board shall adopt a budget, including a projection of Fixed Operating Costs and Variable Operating Costs for FRWA for the ensuing Fiscal Year.
- 7.2 **Reconciliation of Fixed and Variable Costs.** As soon as practicable following the commencement of a Fiscal Year, the Board shall, upon recommendation of the Treasurer, reconcile Fixed Operating Costs and Variable Operating Costs for the prior Fiscal Year. The amount so reconciled shall then be factored into the calculation of projected Fixed Operating Costs and Variable Operating Costs for the next Fiscal Year.
- 7.3 **Accounting Procedures.** Full books and accounts shall be maintained for FRWA in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall comply strictly with requirements of the Act.
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- 7.4 **Audit.** On an annual Fiscal Year basis, FRWA shall contract with an independent certified public accountant to perform a financial audit of the accounts and records of FRWA. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the audited Fiscal Year.

VIII.

WITHDRAWAL AND DISSOLUTION

- 8.1 **Term.** FRWA shall continue in existence until dissolved in accordance with the terms of this Article VIII.
- 8.2 **Withdrawal.** Prior to the issuance of any bonds or other indebtedness by FRWA, as provided in Section 6.6 hereof, or independently by one or both of the Members, either Member may terminate this Third Amended Agreement upon giving the other Member and the Board ninety (90) days prior written notice of termination; provided, however, the Member shall be obligated for its share of all liabilities and expenses of FRWA incurred prior to the effective date of such termination. If the Board has received such notice of termination, it shall be prohibited from issuing any bonds or other indebtedness or awarding any contracts for Construction.

- 8.3 **Dissolution.** FRWA shall not be dissolved until all debts and liabilities of the FRWA have been discharged.
- 8.4 **Dissolution Agreement.** Subject to Section 8.3 above, FRWA may be dissolved pursuant to an agreement in writing approved by both Members.
- 8.5 **Disposition of Property Upon Dissolution.** Upon dissolution of FRWA, any surplus funds on hand shall be disposed of consistent with the dissolution agreement provided for in Section 8.4 above. Upon approval of a dissolution agreement in accordance with Section 8.4 above, the Board shall offer any FRWA Facilities, rights and interests of FRWA for sale to the Members on such terms and conditions established by the Board. If no such sale is consummated within a reasonable period of time, the Board shall then offer such FRWA Facilities, rights and interests for sale on the open market for good and adequate consideration. The net proceeds from any sale shall be distributed among the then Members consistent with the dissolution agreement. The Members shall arrange for the salvage of any remaining FRWA Facilities.

IX.

MISCELLANEOUS

- 9.1 **Amendments.** This Third Amended Agreement may be amended upon written approval of any amendment by all Members. The approval by a Member of an amendment to this Third Amended Agreement shall not be effective until a certified copy of the resolution of the governing body of such Member approving such amendment is filed with the Secretary of the FRWA, together with a fully executed original of such amendment.
- 9.2 **Notices** Any notice required to be given or delivered hereunder shall be delivered via the United States Postal Service.
- 9.3 **Choice of Law.** This Third Amended Agreement shall be governed by the laws of the State of California.
- 9.4 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Third Amended Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Third Amended Agreement shall not be affected thereby.
- 9.5 **Initial Notice.** Within thirty (30) days of the effective date of the Third Amended Agreement, FRWA shall cause a notice of the Third Amended Agreement to be prepared

in the manner set forth in Section 6503.5 of the Government Code and filed with the Office of the Secretary of State.

- 9.6 **Additional Notices.** Within thirty (30) days of the effective date of any amendment to the Third Amended Agreement, FRWA shall prepare and file with the Office of the Secretary of State the notice required by Section 6503.5 of the Government Code.
- 9.7 **Liabilities.** The debts, liabilities and obligations of FRWA shall be the debts, liabilities or obligations of FRWA alone and not of the Members. However, a Member separately may contract for, or otherwise assume responsibility for specific debts, liabilities, or obligations of FRWA, and no other Member then shall be liable therefore.
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EAST BAY MUNICIPAL UTILITY DISTRICT

DATED: 2/18/10

By: [Signature] President

DATED: 2/18/10

Attested: [Signature] Secretary

Approved as to Form:

[Signature] General Counsel

SACRAMENTO COUNTY WATER AGENCY

DATED: 2/7/11

By: [Signature] Chairman

DATED: 2/7/11

Attested: [Signature] Secretary

Approved as to Form:

[Signature] County Counsel

Attachments:

Attachment A: Definition of FRWA and Member Facilities

FREEPORT REGIONAL WATER AUTHORITY

FILE 001 Y

DATE: January 14, 2010

TO: BOARD OF DIRECTORS
Freeport Regional Water Authority

FROM: EXECUTIVE COMMITTEE
Freeport Regional Water Authority

SUBJECT: RESOLUTION CONDITIONALLY APPOINTING FORREST
WILLIAMS JR. AS MEMBER AGENCY PROGRAM MANAGER
EFFECTIVE APRIL 1, 2010.

APPROVED
BOARD OF DIRECTORS

FWA-0162

JAN 14 2010

By Sandra Burnett
Clerk of the Board

RECOMMENDATION

Approve the attached resolution conditionally appointing Forrest Williams Jr. of the Sacramento County Water Agency as the Freeport Regional Water Authority (FRWA) Member Agency Program Manager effective April 1, 2010.

BACKGROUND

On November 9, 2006, the FRWA Board of Directors approved the FRWA Operations and Maintenance Agreement and the FRWA Delivery Agreement. Both of these Agreements contemplated how the Freeport Regional Water Project (FRWP) will be governed during project operation. Based on the management concepts in these Agreements and the original project schedule, a Member Agency Program Manager was to be appointed in January 2010 and fully transition into the role of Program Manager by April 2010. This is consistent with Article 3.11 of the Second Amended Joint Powers Agreement (JPA) and coincides with the end date of FRWA's Consulting Agreement with the current Program Manager Eric Mische.

While the final FRWP system test has been delayed due to projects outside of FRWA's control, all major construction will be completed prior to April 1, 2010. After the consideration of alternatives given the delay in final testing, the Member Agencies determined that for the continued transition from construction to operations and the implementation of the FRWA Agreements, it is recommended that a Member Agency Program Manager be appointed at this time and fully transition into the role by April 1, 2010. Forrest Williams Jr. of the Sacramento County Water Agency is our recommended candidate for the position. The transition period will allow sufficient time for coordination between the outgoing and incoming Program Manager to maintain continuity with the Board of Directors and the Executive Committee.

The foregoing is a correct copy of a resolution adopted by the Board of Directors, Sacramento County, California

On 1/14/10Dated 3/9/10

Clerk of Said Board
of Directors

By V. Bode
Deputy Clerk

FRWP operations technically do not begin until after final testing is complete. However, EBMUD and SCWA are scheduled to modify Article 3.11 of the JPA on February 9, 2010 to be in line with the original transition period.

COMPENSATION AND FISCAL IMPACT

Costs for FRWA related Program Manager activities consistent with those defined in the FRWA Delivery Agreement and the FRWA Operations and Maintenance Agreement will be included in the 2010 FRWA Budget.

Respectfully submitted,

Steven C. Szalay,
Member, Executive Committee

Dennis Diemer,
Member, Executive Committee

Attachments:

1. Board Resolution conditionally appointing Forrest Williams Jr. as Member Agency Program Manager effective April 1, 2010.

**RESOLUTION CONDITIONALLY APPOINTING FORREST WILLIAMS JR. AS
FRWA PROGRAM MANAGER**

WHEREAS, Section 3.11 of the Joint Powers Agreement ("JPA") establishing the Freeport Regional Water Authority ("FRWA") currently requires that the Program Manager be a third-party contractor until such time as the Freeport Regional Water Project ("FRWP") is operational; and

WHEREAS, the construction of the FRWP is largely complete and the only significant remaining construction-related task involves testing of the entire FRWP which has been delayed until approximately July of 2010 for reasons beyond the control of FRWA ; and

WHEREAS, the tasks for the FRWA Program Manager are now becoming more operational in nature and it is appropriate for a staff member of the FRWA member agencies to be appointed as Program Manager upon the expiration of the contract for the current Program Manager which will occur on March 31, 2010; and

WHEREAS, it is anticipated that the East Bay Municipal Utility District and the Sacramento County Water Agency Boards of Directors will approve an amendment to Section 3.11 of the JPA removing the requirement that the FRWA Program Manager be a third-party contractor until the FRWP is operational; and

WHEREAS, the next regular FRWA Board meeting will not take place until April 8, 2010; and

WHEREAS, it is appropriate for the FRWA Board to appoint a new Program Manager at this time with the effectiveness of such appointment being conditioned upon the approval of an amendment to Section 3.11 of the JPA that eliminates the requirement that the FRWA Program Manager be a third-party contractor until the FRWP is operational; and

WHEREAS, the FRWA Executives have recommended that Forrest Williams Jr. be appointed FRWA Program manager effective April 1, 2010.

NOW, THEREFORE, IT IS HEREBY RESOLVED that Forrest Williams Jr. is conditionally appointed as FRWA Program Manager effective April 1, 2010.

BE IT FURTHER RESOLVED that the effectiveness of such appointment is conditioned upon action by the East Bay Municipal Utility District and the Sacramento County Water Agency Boards of Directors to approve by March 31, 2010, an amendment to Section 3.11 of the JPA removing the requirement that the FRWA Program Manager be a third-party contractor until the FRWP is operational

ON A MOTION by Director Foulkes, seconded by
Director Yee, the foregoing Resolution was passed and
adopted by the Board of Directors of the Freeport Regional Water Authority on this 4th day of
January, 2010, by the following vote, to wit:

On 4/14/10
Dated 3/9/10
Clerk of Said Board
of Directors
By [Signature]
Deputy Clerk

AYES: Directors, Coleman, Foulkes, Yee, Nottoli
NOES: Directors, none
ABSENT: Directors, none
ABSTAIN: Directors, none



Sandra Burnett
Secretary, Board of Directors

Don Nottoli
Chair, Board of Directors

In accordance with Section 25103 of the Government Code
of the State of California a copy of the document has been
delivered to the Chairman on 01-14-10

By Gueryne Deskins
Deputy Clerk, Board of Directors

FILED
BOARD OF DIRECTORS

JAN 11 2010

By Sandra Burnett
Clerk of the Board

Attachment A

Definition of FRWA and Member Facilities

The following definitions, although illustrated by referring to Figures A-1 to A-5, shall override the depictions in Figures A-1 to A-5. Depictions in Figures A-2 to A-5 may change in final design drawings or as-built drawings.

A-1. FRWA Facilities

All FRWA Facilities defined in this Section A-1 shall be owned by FRWA with capital cost-sharing responsibilities allocated between the Members according to the percentages stated in Section 5.1(a) of the Third Amended JPA.

FRWA Intake: All facilities and improvements within the boundary of the FRWA property immediately west of the South Sacramento Drainage Channel, and those projecting into the channel of the Sacramento River adjacent to the FRWA property. These facilities shall include the intake structure (fish screens, forebay, and pump building), the training walls and plaza surrounding the intake structure, the valve vault, the surge tanks, the meter vault, the substation, the equipment building, the sediment settling basins, and site work (roads, drainage and landscaping). Dedicated Capacity in the FRWA Intake shall be consistent with Section 6.3 of the Third Amended JPA.

Joint Pipeline: The 84-inch-diameter pipeline between the FRWA Intake and the Bifurcation, including the fiber-optic cable and conduit system along the pipeline alignment, cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the FRWA Intake and the Joint Pipeline shall be 10 feet downstream of the outer wall of the meter vault. The boundary between the Joint Pipeline and the Bifurcation shall be 10 feet upstream of the centerline of the tee where the SCWA Extension pipeline branches off the Joint Pipeline. Dedicated Capacity in the Joint Pipeline shall be consistent with Section 6.3 of the Third Amended JPA.

Bifurcation: The facilities connecting the Joint Pipeline with the SCWA Extension and the EBMUD Extension, including pipelines, isolation valves, surge control tank and compressor, flow meter, programmable logic controller, telemetry facilities, and associated structures and site improvements. The boundary between the Bifurcation and the SCWA Extension shall be 10 feet downstream of the outer wall of the vault for the SCWA isolation valve. This boundary shall be the SCWA Point of Delivery. The boundary between the Bifurcation and the EBMUD Extension shall be 10 feet downstream of the outer wall of the vault for the flow meter on the pipeline to the EBMUD Extension. This boundary shall be the EBMUD Point of Delivery. Dedicated Capacity in the Bifurcation shall be consistent with Section 6.3 of the Third Amended JPA.

Flow Control Station: The facility at the downstream end of the SCWA Extension, including the isolation valves, flow meters, sleeve valves, bridge crane, programmable logic controller,

telemetry facilities, and associated building and valve vault. The boundary between the Flow Control Station and the SCWA Water Treatment Plant shall be 10 feet downstream of the outer wall of the building.

Instrumentation, Control and Telecommunication Facilities: In addition to the instrumentation, control facilities contained within the FRWA Facilities described above:

- a) The fiber-optic cable and conduit system between the Bifurcation and the Flow Control Station shall be FRWA Facilities.
 - b) The fiber-optic cable and conduit system between the Bifurcation and the Terminal Weir Structure shall be FRWA Facilities.
 - c) The instrumentation to gauge water level in the Terminal Weir Structure and in the Folsom South Canal near the Terminal Weir Structure, instrumentation to monitor water quality in or near the Terminal Weir Structure, and the associated programmable logic controller(s), fiber-optic cable and conduit system, radio system, and/or other telemetry facilities shall be FRWA Facilities.
 - d) The monitoring and telemetry equipment provided by FRWA and to be located at the U.S. Bureau of Reclamation's (USBR) Deer Creek gate structure, as required to convey electronic signals between USBR and FRWA, shall be FRWA facilities.
-

A-2. SCWA Facilities

All SCWA Facilities defined in this Section A-2 shall be owned by SCWA and SCWA shall be responsible for all of the capital costs for such facilities.

SCWA Extension: The 66-inch-diameter pipeline between the Bifurcation and the Flow Control Station, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the SCWA Extension and the Flow Control Station shall be the upstream outer wall of vault for the isolation valves for the Flow Control Station building.

SCWA Water Treatment Plant: The 85 MGD Zone 40 surface water treatment plant (or "Vineyard Surface Water Treatment Plant") to be located north of the Bifurcation.

A-3. EBMUD Facilities

All EBMUD Facilities defined in this Section A-3 shall be owned by EBMUD and EBMUD shall be responsible for all of the capital costs for such facilities.

EBMUD Extension: The 72-inch-diameter pipeline between the Bifurcation and the Terminal Weir Structure, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the EBMUD Extension and the Terminal Weir Structure shall be 15 feet upstream of the outer wall of the Terminal Weir Structure.

Attachment to the Third Amended JPA

Terminal Weir Structure: The facility at the downstream end of the EBMUD Extension, including the slide gate, weir, connection with the U.S. Bureau of Reclamation's Folsom South Canal, and associated site improvements.

Folsom South Canal Connection: The facilities required to convey water from near the end of the Folsom South Canal to EBMUD's Mokelumne Aqueducts. These facilities include Clay Station Pumping Plant, Camanche Pumping Plant, a 72-inch-diameter pipeline connecting the two pumping plants, and a 72-inch-diameter pipeline connecting Camanche Pumping Plant to the Mokelumne Aqueducts.

Figure A-1: Map of FRWP Facilities

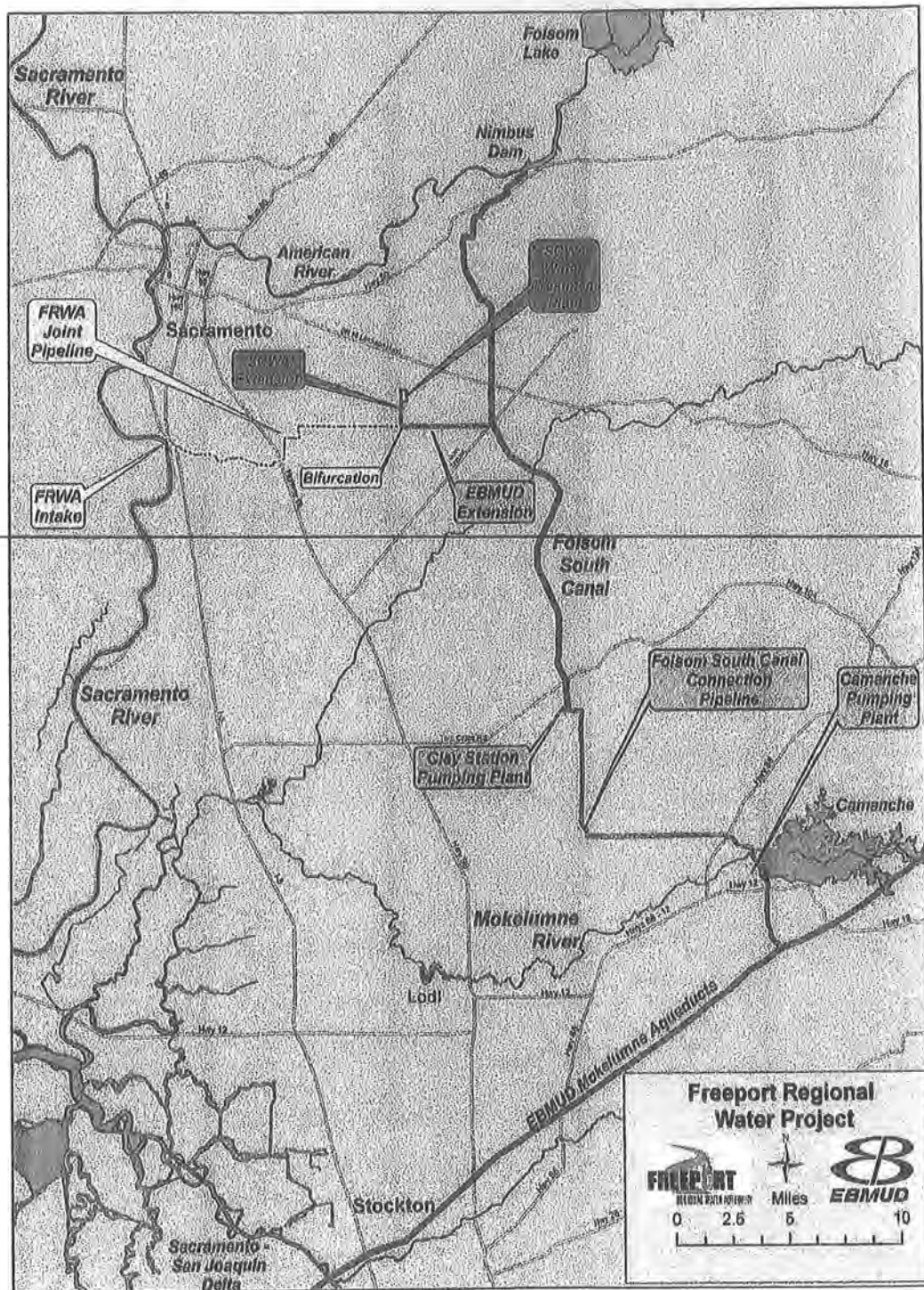


Figure A-3: Bifurcation

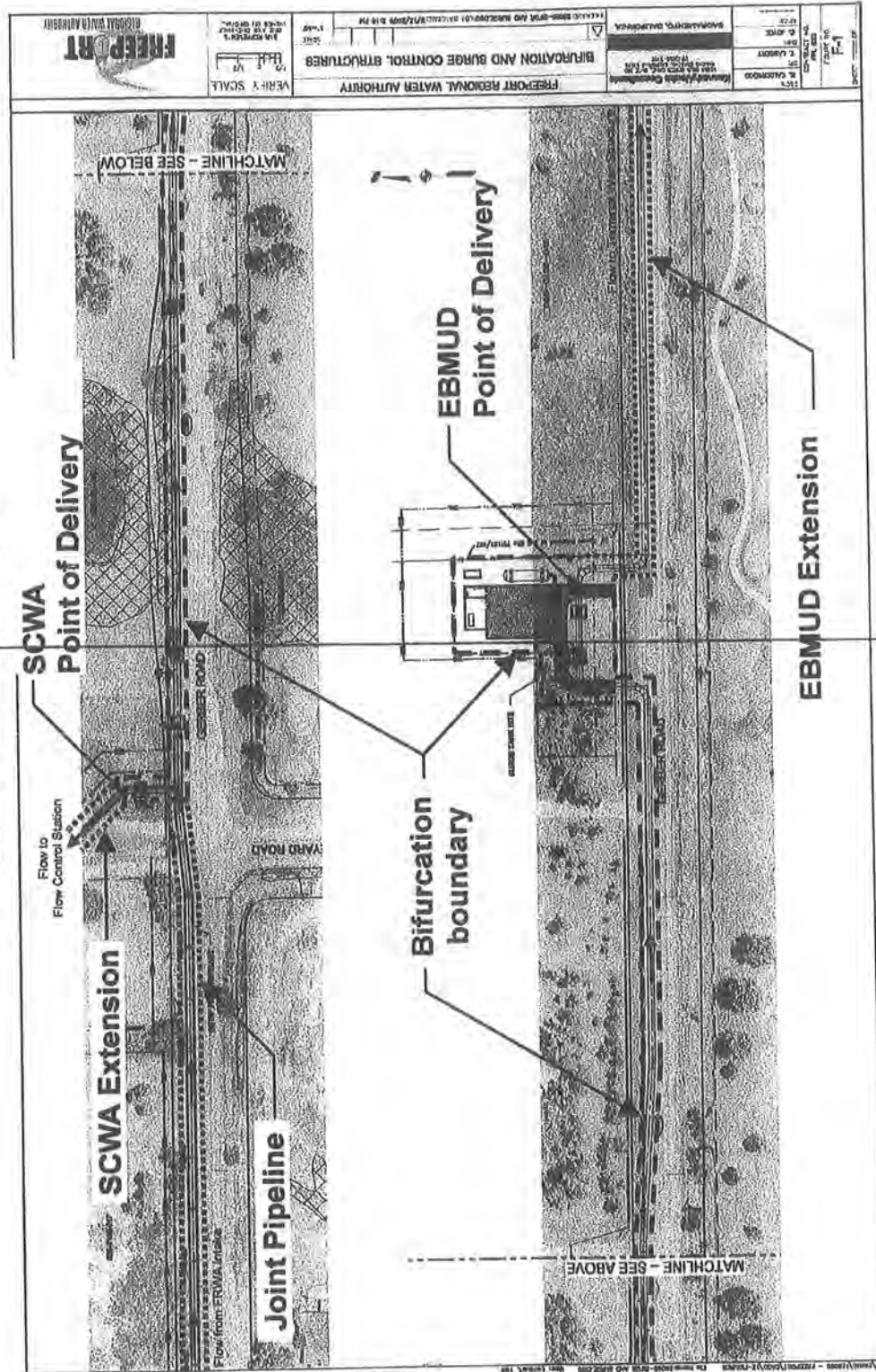


Figure A-5: Terminal Weir Structure

