



## MEMORANDUM

**TO:** SLDMWA Finance & Administration Committee Members/Alternates

**FROM:** Frances Mizuno, Assistant Executive Director

**DATE:** March 4, 2019

**RE:** Recommendation to Execute the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project

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### **BACKGROUND**

In December 2015, the JPP Condition Assessment Report stated that the JPP units are nearing the end of their service life and need refurbishment. In 2018-2019, the SLDMWA completed the JPP Unit No. 6 Motor Rewind Project, using funds provided pursuant to the Contract Between the United States of America and San Luis & Delta-Mendota Water Authority for the Repayment of Extraordinary Maintenance Costs for the C.W. "Bill" Jones Pumping Plant. The SLDMWA now is prepared to rewind the next-in-line unit of the JPP, and Reclamation has indicated that it will not provide financing for that project. In lieu of the SLDMWA funding the cost for the next-in-line JPP unit through the collection of funds in the Water Year 19, the Board of Directors expressed a desire to repay the cost for the JPP Unit No. 2 Motor Rewind Project over a longer period and tasked staff with pursuing potential short-term financing for the Project from willing Member Agencies and then obtaining long-term financing that would be used to repay the short-term financing obligation and the costs of the remaining four (4) unit rewind projects.

### **ISSUE FOR DECISION**

Whether to authorize the execution of the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project (Attachment A) for the total amount of \$5.2 million concurrently with Promissory Notes with each Lender.

### **RECOMMENDATION**

Staff recommend the Finance and Administration Committee recommend the Board of Directors authorize the Executive Director to execute the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project as provided in Attachment A. If the Finance and Administration Committee does not recommend the execution of such agreement, staff recommend that the Finance and Administration Committee recommend the Board of Directors

adopt the WY 2019 O&M rates that include the collection of the \$5.2M for the Unit No. 2 Rewind Project to allow the Project to proceed in WY 2019.

## **ANALYSIS**

The Authority does not currently have funding for the Jones Pumping Plant Unit No. 2 Motor Rewind Project. Authority member agencies Byron-Bethany Irrigation District, San Benito County Water District, and Westlands Water District are willing to provide short-term loans under the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project for the following principle amounts not to exceed \$5.2 Million:

Westlands:	Four Million Two Hundred Thousand Dollars (\$4,200,000)
BBID:	Five Hundred Thousand Dollars (\$500,000)
SBCWD:	Five Hundred Thousand Dollars (\$500,000)

The interest rates are as follows: (1) Westlands: at its sole discretion, the rates earned on the CalTRUST medium term fund or its cost of capital rate, not to exceed 4.1%; (2) BBID: the rates earned on its cost of capital rate, not to exceed 4.0%; and (3) SBCWD: the rates earned on the Local Agency Investment Fund (LAIF) or its cost of capital rate, not to exceed 4.0%. Interest or its cost of capital rate shall be compounded monthly and shall be payable annually no later than March 31 of each year and at the maturity of the Promissory Notes, or upon termination of the Agreement.

Utilizing short-term loans to fund the Jones Pumping Plant Unit No. 2 Motor Rewind Project rather than collecting funds through O&M rates will allow the Authority to repay the cost of the Project over a longer period.

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

**RESOLUTION NO. 2019-XXX**

**RESOLUTION AUTHORIZING EXECUTION OF THE MULTI-PARTY SHORT-TERM LOAN AGREEMENT FOR JONES PUMPING PLANT UNIT NO. 2 MOTOR REWIND PROJECT**

**WHEREAS**, the United States owns the C.W. “Bill” Jones Pumping Plant (“JPP”), which has a total of six (6) 22,500 horsepower motors that were commissioned in 1951 and refurbished by Reclamation in the 1980s.

**WHEREAS**, through its contract with the United States Department of the Interior, Bureau of Reclamation (“Reclamation”), Contract No. 8-07-20-X0354, as amended, the San Luis & Delta-Mendota Water Authority (“Authority”) operates and maintains the JPP, including the performance of capital maintenance projects.

**WHEREAS**, in December 2015, the JPP Condition Assessment Report stated that the JPP units are nearing the end of their service life and need refurbishment (commonly referred to as “rewind”).

**WHEREAS**, in 2018-2019, the Authority completed the JPP Unit No. 6 Motor Rewind Project, using funds provided pursuant to the Contract Between the United States of America and San Luis & Delta-Mendota Water Authority for the Repayment of Extraordinary Maintenance Costs for the C.W. “Bill” Jones Pumping Plant, Contract No. 17-WC-20-5100.

**WHEREAS**, the Authority now is prepared to rewind the next-in-line unit of the JPP, and Reclamation has indicated that it will not provide financing for that project.

**WHEREAS**, in lieu of the Authority funding the cost for the next-in-line JPP unit through the collection of funds in the water year running March 1, 2019 through February 29, 2020 (“Water Year 2019”), it is the desire of the Authority Board of Directors to repay the cost for the – the JPP Unit No. 2 Motor Rewind Project (“Project”) over a longer period.

**WHEREAS**, the Authority has a desire to obtain short-term financing for the Project and to then obtain long-term financing that would be used to repay the short-term financing obligation and for the costs of the remaining four (4) unit rewind projects.

**WHEREAS**, Westlands Water District, Byron-Bethany Irrigation District, and San Benito County Water District (each a “Lender” and collectively as “Lenders”) are member agencies of the Authority, had an opportunity to review various documents regarding the need for the Project, and will benefit from the completion of the Project.

**WHEREAS**, the Authority desires to secure short-term financing for the Project from the Lenders and the Lenders desire to extend to the Authority short-term loans in the aggregate principal amount not to exceed \$5,200,000 (each a “short-term loan” and collectively the “Loan”), which is the price for completing the Project.

**WHEREAS**, the Loan will be used to fund the Project and the Parties expect the Authority will secure long-term financing that allows the Authority to repay its obligation to the Lenders and to finance the costs of the remaining four (4) unit rewind projects.

**WHEREAS**, the Board has considered that certain form of the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project (“Short-Term Loan Agreement”), a copy of which has been presented to the Board and is on file with the Secretary hereof.

**WHEREAS**, authorizing execution of the Short-Term Loan Agreement does not constitute a project under the California Environmental Quality Act because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the CEQA guidelines) and also represents administrative activities of the Authority that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the CEQA Guidelines); further, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the CEQA guidelines).

**NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby authorizes the Executive Director to execute the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project in substantially the form presented to the Board, subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution.

Section 3. The Executive Director, Assistant Executive Director, or such Water Authority employee or consultant as either of such officers may designate, is further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution and implementation of Authority responsibilities under the Multi-Party Short-Term Loan Agreement for Jones Pumping Plant Unit No. 2 Motor Rewind Project.

PASSED AND ADOPTED this 7<sup>th</sup> day of March, 2019.

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Cannon Michael, Chairman

Attest:

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Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at a regular meeting thereof held on the 7<sup>th</sup> day of March, 2019.

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Federico Barajas, Secretary

**MULTI-PARTY SHORT-TERM LOAN AGREEMENT FOR  
JONES PUMPING PLANT UNIT NO. 2 MOTOR REWIND PROJECT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and among the San Luis & Delta-Mendota Water Authority (“**SLDMWA**” or “**Lendee**”); Westlands Water District (“**Westlands**”), Byron-Bethany Irrigation District (“**BBID**”), and San Benito County Water District (“**SBCWD**”) (Westlands, BBID, and SBCWD each referred to herein as a “**Lender**” and collectively as “**Lenders**”).

**RECITALS**

- A. The United States owns the C.W. “Bill” Jones Pumping Plant (“**JPP**”), which has a total of six (6) 22,500 horsepower motors that were commissioned in 1951 and refurbished by Reclamation in the 1980s;
- B. Through its contract with the United States Department of the Interior, Bureau of Reclamation (“**Reclamation**”), Contract No. 8-07-20-X0354, as amended, the SLDMWA operates and maintains the JPP, including the performance of capital maintenance projects;
- C. In December 2015, the JPP Condition Assessment Report stated that the JPP units are nearing the end of their service life and need refurbishment (commonly referred to as “**rewind**”);
- D. In 2018-2019, the SLDMWA completed the JPP Unit No. 6 Motor Rewind Project, using funds provided pursuant to the Contract Between the United States of America and San Luis & Delta-Mendota Water Authority for the Repayment of Extraordinary Maintenance Costs for the C.W. “Bill” Jones Pumping Plant, Contract No. 17-WC-20-5100, (attached as “**Exhibit 1**” to this Agreement);
- E. The SLDMWA now is prepared to rewind the next-in-line unit of the JPP, and Reclamation has indicated that it will not provide financing for that project;
- F. In lieu of the SLDMWA funding the cost for the next-in-line JPP unit through the collection of funds in the water year running March 1, 2019 through February 29, 2020 (“**Water Year 2019**”), it is the desire of the SLDMWA Board of Directors to repay the cost for the – the JPP Unit No. 2 Motor Rewind Project (“**Project**”) over a longer period;
- G. The SLDMWA has a desire to obtain short-term financing for the Project and to then obtain long-term financing that would be used to repay the short-term financing obligation and for the costs of the remaining four (4) unit rewind projects;
- H. Each Lender is a member agency of the SLDMWA, had an opportunity to review various documents regarding the need for the Project, and will benefit from the completion of the Project;

- I. The SLDMWA desires to secure short-term financing for the Project from the Lenders and the Lenders desire to extend to the SLDMWA short-term loans in the aggregate principal amount not to exceed \$5,200,000 (each a “short-term loan” and collectively the “Loan”), which is the price for completing the Project; and
- J. The Loan will be used to fund the Project and the Parties expect the SLDMWA will secure long-term financing that allows the SLDMWA to repay its obligation to the Lenders and to finance the costs of the remaining four (4) unit rewind projects.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the SLDMWA, Westlands, BBID, and SBCWD hereby agree as follows:

## AGREEMENT

### **1. TERMS OF LOAN**

1.1. **Loan.** Lenders agree to provide short-term financing to the SLDMWA under the terms and conditions of this Agreement.

1.2. **Financing of the Project; Interest.**

1.2.1. Subject to the terms and conditions of this Agreement, Lenders agree to make and the SLDMWA agrees to accept short-term loans from the Lenders in the aggregate principal amount not to exceed Five Million, Two Hundred Thousand Dollars (\$5,200,000), with each Lender having the following obligation:

**Westlands:** Four Million Two Hundred Thousand Dollars (\$4,200,000);

**BBID:** Five Hundred Thousand Dollars (\$500,000); and

**SBCWD:** Five Hundred Thousand Dollars (\$500,000).

The short-term loans are evidenced by Promissory Notes executed concurrently by the Authority and each Lender herewith.

1.2.2. Each short-term loan shall bear interest at the following rates, but not in excess of any legal maximum: (1) Westlands: at its sole discretion, the rates earned on the CalTRUST medium term fund or its cost of capital rate, not to exceed 4.1%; (2) BBID: the rates earned on the LAIF or its cost of capital rate, not to exceed 4.0%; and (3) SBCWD: the rates earned on the LAIF or its cost of capital rate, not to exceed 4.0%. Interest or its cost of capital rate shall be compounded monthly and shall be payable annually no later than March 31 of each year and at the maturity of the Promissory Notes, or upon termination of this Agreement, whichever occurs first.

**1.3. Term; Extension.**

1.3.1. The respective obligation of each Lender shall be due and payable within thirty (30) days of execution of this Agreement and a Promissory Note. The maturity of each Promissory Note is anticipated to be twenty-four (24) months, or until the SLDMWA receives funds pursuant to long-term financing, whichever is sooner. The SLDMWA will have no penalty for early repayment of the Promissory Notes.

1.3.2. The SLDMWA shall use commercially reasonable efforts to effectuate the sale and delivery of bonds, notes, or other obligations on or before the ninetieth (90th) day prior to the maturity date of the Promissory Notes to pay the principal of and any unpaid interest on the Promissory Notes.

1.3.3. If the SLDMWA has received funds pursuant to long-term financing within the twenty-four (24) month term, the SLDMWA will repay the principal of and any unpaid interest on the Promissory Note to each Lender within sixty (60) days of receiving those funds.

1.3.4. If the SLDMWA does not receive funds pursuant to long-term financing within the twenty-four (24) month term, then the SLDMWA shall include and collect in the Operation & Maintenance rates ("**O&M rates**") pursuant to the Agreement to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis & Delta-Mendota Canals, Tracy Pumping and O'Neill Pumping/Generating Plant, San Luis Drain and Associate Works, as amended, in Water Year 2021 sufficient funds for full payment of the principal of and any unpaid interest on the Promissory Note by February 28, 2022.

1.4. **Security.** The Loan will be unsecured. The Promissory Notes and the provisions of this Agreement constitute special, not general, obligations of the SLDMWA payable from funds collected by the SLDMWA pursuant to long-term financing or under O&M rates.

1.5. **Use of Loan.** The Loan may be used only for expenditures related to the Project, or to repay (principal and interest) the Lenders, which will be in proportion to the obligations in Section 1.2.1, above.

1.6. **Conditions Precedent to Disbursement of Loan.** Lenders shall not be obligated to make any disbursements of Loan proceeds or take any other action under this Agreement, unless the following conditions precedent are satisfied:

1.6.1. The SLDMWA and each Lender has executed this Agreement;

1.6.2. The SLDMWA and each Lender has executed the Promissory Notes;

1.6.3. There exists no act, failure, omission, or condition that would constitute an Event of Default (defined in Section 3.1 below); and



1.6.4. The SLDMWA has taken all actions and received all approvals necessary to begin the Project.

1.7. **Disbursement of Loan.** Lenders shall disburse funds directly into escrow upon receipt of evidence, satisfactory to Lenders, that the conditions set forth in Section 1.6 have been satisfied.

## **2. INDEMNITY**

2.1. **Indemnity.** The SLDMWA undertakes and agrees to defend, indemnify, and hold Lenders harmless from and against all suits and causes of action, claims, losses, demands, costs, and expenses, including, but not limited to, attorneys' fees and costs of litigation, damage (including any personal injury or death related to any work performed on the Project) or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the SLDMWA or any contractor or subcontractor of the SLDMWA, whether or not contributed to by an act or omission of Lenders.

2.2. **Non-Liability of Official, Employees, and Agents.** No official, agent, or employee of any Lender shall be personally liable to the SLDMWA for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by that Lender.

## **3. DEFAULT**

3.1. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement:

3.1.1. The SLDMWA's failure to pay when due any sums payable under the terms of the Agreement and/or Promissory Notes within ten (10) days of the due date; and

3.1.2. The SLDMWA's failure to perform any obligations pursuant to this Agreement, and such breach continues for a period of thirty (30) days after written notice from Lender(s) or, if such breach cannot be cured reasonably within such thirty (30) day period, if the SLDMWA fails to diligently commence to cure such breach within the thirty (30) days after written notice from Lender(s) and fails to complete such cure within a reasonable time thereafter.

3.2. **Lenders' Remedies.** Upon an Event of Default by the SLDMWA, the Lenders' obligations to disburse the Loan funds shall terminate, and the Lenders may proceed by pursuing any remedy allowed at law or in equity that the majority in principal amount of loans outstanding and a majority of the Lenders agree to pursue. No demand on or notice to the SLDMWA is required.

## **4. GENERAL PROVISIONS**

4.1. **Records.** The SLDMWA shall be accountable to Lenders for all funds loaned to and disbursed by the SLDMWA pursuant to this Agreement.

4.2. **Governing Law.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

4.3. **Enforcement Costs.** In the event of any action or proceeding that involves the protection, preservation, or enforcement of a Lender's rights or the SLDMWA's obligations under this Agreement, the prevailing party shall be entitled to payment, upon demand, from the non-prevailing party of all costs and expenses associated therewith, including reasonable attorneys' fees and litigation expenses.

4.4. **Time.** Time is of the essence in this Agreement.

4.5. **Consents and Approvals.** Any consent or approval of a Lender or the SLDMWA required under this Agreement shall not be unreasonably withheld. Any approval required under this Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

4.6. **Notices, Demands and Communications.** Formal notices, demands and communications between or among the SLDMWA and a Lender(s) shall be provided by (1) registered or certified mail, postage prepaid, return receipt requested, (2) electronic mail, or (3) delivered personally, to the addresses provided below:

SLDMWA: Federico Barajas, Executive Director  
San Luis & Delta-Mendota Water Authority  
P.O. Box 2157  
Los Banos, CA 93635  
Email: [federico.barajas@sldmwa.org](mailto:federico.barajas@sldmwa.org)

Westlands: Westlands Water District  
Jose Gutierrez, Chief Operating Officer  
3130 N. Fresno Street  
Fresno, CA 93703  
Email: [jgutierrez@westlandswater.org](mailto:jgutierrez@westlandswater.org)

BBID: Byron-Bethany Irrigation District  
7995 Bruns Road  
Byron, CA 94514  
Email: [r.gilmore@bbid.org](mailto:r.gilmore@bbid.org)

SBCWD: San Benito County Water District  
P.O. Box 899  
Hollister, CA 95024  
Email: [jcattaneo@sbcwd.com](mailto:jcattaneo@sbcwd.com)

4.7. **Assignment and Assumption.** The SLDMWA shall not assign any of its interests under this Agreement to any other person or entity without the prior written consent of each Lender; any unauthorized assignment shall be void.

4.8. **Binding Upon Successors.** All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties to this Agreement.

4.9. **Relationship of Parties.** The relationship of the SLDMWA and Lenders under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, or partnership.

4.10. **Waiver.** Any waiver by a Lender or the SLDMWA of any obligation in this Agreement must be in writing. A waiver by one Lender shall not constitute a waiver by the other Lenders. No waiver will be implied from any delay or failure by a Lender to take action on any breach or default of the SLDMWA or to pursue any remedy allowed under this Agreement, other Loan documents, or under applicable law. A Lender's granting of any extension of time to the SLDMWA to perform any obligation under this Agreement or other Loan documents shall not operate as either (1) an extension of time granted by the other Lenders or (2) as a waiver or release from any of the SLDMWA's obligations under this Agreement. Consent by a Lender to any act or omission by the SLDMWA shall not be construed to be a consent either (1) to any other or subsequent act or omission or to waive the requirement for a Lender's written consent to future waivers, or (2) by the other Lenders.

4.11. **Integration.** This Agreement, including exhibits, and documents incorporated into this Agreement by reference contain the entire agreement of the parties and supersedes any and all prior negotiations.

4.12. **Amendments and Modifications.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by all of the parties to this Agreement.

4.13. **Severability.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

4.14. **Counterpart Signatures.** This Agreement may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.

WHEREFORE, the parties have executed this Agreement as of the date first above-written.

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

By: \_\_\_\_\_  
Federico Barajas  
Executive Director

Date: \_\_\_\_\_

**WESTLANDS WATER DISTRICT**

By: \_\_\_\_\_  
Thomas Birmingham  
General Manager

Date: \_\_\_\_\_

**BYRON-BETHANY IRRIGATION DISTRICT**

By: \_\_\_\_\_  
Rick Gilmore  
General Manager

Date: \_\_\_\_\_

**SAN BENITO COUNTY WATER DISTRICT**

By: \_\_\_\_\_  
Jeff Cattaneo  
General Manager

Date: \_\_\_\_\_

DRAFT