



DATE: January 5, 2017

TO: Delta Habitat Conservation & Conveyance Plan Steering Committee

Division 1

Rick Gilmore, Member
Vacant, Alternate

Division 2

Dan Pope, Member
Vacant, Alternate

Lon Martin, Member
Bill Diedrich, Alternate

Division 5

Steve Stadler, Member
Danny Wade, Alternate

Division 3

Chris White, Member
Chase Hurley, Alternate

Division 4

Gary Kremen, Member
Cindy Kao, Alternate

Jeff Cattaneo, Member
Vacant, Alternate

FROM: Jason Peltier (by Cheri Worthy)

Attached for your review in preparation for the **January 9, 9:00 a.m., Meeting** of the Delta Habitat Conservation & Conveyance Plan Steering Committee (DHCCP) & Joint Special DHCCP Steering Committee Meeting and Board Workshop meeting are:

- 1) Notice/Agenda
- 2) Draft December 5, 2016 Meeting Minutes
- 3) Draft Resolution and Draft Agreement Regarding Note Proceeds
- 4) Draft Resolution and Draft Affirmation and Amendment
- 5) Draft Resolution Regarding Escrow

Please call us should you have any questions. Thank you!



**San Luis & Delta-Mendota Water Authority
DHCCP Steering Committee Meeting and
Joint Meeting of the DHCCP Steering Committee and Special Board
Workshop**

Monday, January 9, 2017, 9:00 a.m.

842 6th Street, Los Banos

[See below for alternative, telephonic locations]

NOTE: When the Delta Habitat Conservation & Conveyance Steering Committee is considering items marked "DHCCP Only," Board Members or Alternates who are not Committee Members or Committee Alternates may be present as observers only.

Agenda

1. Opportunity for Public Comment – Any member of the public may address the Committee or Board concerning any matter not on the agenda, but within the Committee's or Board's jurisdiction. Public comment is limited to no more than three minutes per person. For good cause, the Chair of the Board or the Chair of the Committee may waive these limitations.

ACTION ITEMS

2. **Committee to Consider Approval of the December 5, 2016, Meeting Minutes [DHCCPSC MEETING ONLY]**
3. **Committee to Consider Recommendation that the Board of Directors Adopt a Resolution Making Findings Under California Environmental Quality Act, Authorizing Execution of the Agreement Concerning Use of Remaining Note Proceeds By and Among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies, and Authorizing Actions Related Thereto, Peltier [DHCCPSC MEETING ONLY]**
4. **Committee to Consider Recommendation that the Board of Directors Adopt a Resolution Making Findings Under California Environmental Quality Act, Authorizing Execution of the Affirmation and Amendment to the Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Cost of Environmental Analysis, Planning, and Design of Delta Conservation Measures, Including Delta Conveyance Options, and Authorizing Actions Related Thereto, Peltier [DHCCPSC MEETING ONLY]**
5. **Committee to Consider Recommendation that the Board of Directors Adopt a Resolution Making Findings Under California Environmental Quality Act, Authorizing Execution of the Escrow Agreement, and Authorizing Actions Related Thereto, Peltier [DHCCPSC MEETING ONLY]**
6. Closed Session

Conference with Legal Counsel -- Anticipated Litigation: Initiation of Litigation Pursuant to paragraph (4) of Subdivision (d) of Government Code Section 54956.9 – 1 potential cases

Conference with Legal Counsel – Anticipated Litigation: Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Government Code Section 54956.9 – 1 potential cases

Conference with Legal Counsel: Existing Litigation Pursuant to paragraph (1) of Subdivision (d) of Section 54956.9

A. In re State Water Resources Control Board Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for the California Waterfix Project (Waterfix Change Petition)

5. Return to Open Session
6. Report from Closed Session, if any, Required by Government Code Section 54957.1
7. Reports Pursuant to Government Code Sec 54954.2
8. ADJOURNMENT

Persons with a disability may request disability-related modification or accommodation by contacting Cheri Worthy or Felicia Luna at the San Luis & Delta-Mendota Water Authority Office, 842 6th Street, P O Box 2157, Los Banos, California, telephone: 209/826-9696 at least (3 for regular, 1 for special) day(s) before the meeting date.

Telephonic Participation Location:

San Benito County Water District
30 Mansfield Road
Hollister, CA 95023

745 La Para Avenue
Palo Alto, California, 94306

DRAFT

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
DELTA HABITAT CONSERVATION & CONVEYANCE PLAN STEERING COMMITTEE MEETING
AND
JOINT DELTA HABITAT CONSERVATION & CONVEYANCE PLAN STEERING
COMMITTEE MEETING and SPECIAL BOARD OF DIRECTORS WORKSHOP
MINUTES
December 5, 2016**

The Delta Habitat Conservation & Conveyance Plan (DHCCP) Steering Committee of the San Luis & Delta-Mendota Water Authority and joint Delta Habitat Conservation & Conveyance Plan Steering Committee meeting and Special Board of Directors workshop convened at 9:10 a.m. at 842 6th Street in Los Banos with member Rick Gilmore presiding.

DHCCP Steering Committee Present

Division 1

Rick Gilmore, Member

Division 2

Dan Pope, Member

Bill Diedrich, Alternate for Member Lon Martin

Division 3

Chris White, Member (joined during 3)

Division 4

Gary Kremen, Member (via teleconference)

Jeff Cattaneo, Member

Division 5

Steve Stadler, Member

Board of Directors Present

Division 1

Rick Gilmore, Director

Division 2

William Diedrich, Director

Dan Pope, Alternate for Director Don Peracchi

William Bourdeau, Alternate for Director Sarah Woolf

Division 3

Absent

Division 4

Gary Kremen, Director (via teleconference)

Jeff Cattaneo, Alternate

Division 5

Steve Stadler, Director

Authority Representatives Present

Jason Peltier, Executive Director

Jon Rubin, General Counsel

Tona Mederios, Director of Finance

Frances Mizuno, Assistant Executive Director

Diane Rathmann, Legal Counsel

Doug Brown, Stradling Yocca Carlson & Rauth, P.C. (via teleconference)

1. Committee to Consider Corrections or Additions to the Agenda

There were no changes to the agenda.

2. Opportunity for Public Comment

There were no public comments.

ACTION ITEMS

3. Committee to Consider to Consider Approval of the November 3, 2016, Meeting Minutes

The November 3, 2016 meeting minutes of the Delta Habitat Conservation & Conveyance Plan Steering Committee (DHCCP) were reviewed. On a motion by Member Steve Stadler and seconded by Member Pope, the Committee unanimously approved the minutes. The Committee action is reported as follows:

AYES: Gilmore, Pope, Diedrich, Kremen, Cattaneo, Stadler

NOES: None

ABSTENTIONS: None

REPORT ITEMS

4. Update on California Water Fix and Potential Actions Re: Remaining San Luis & Delta-Mendota Water Authority DHCCP 2009A Note Proceeds

Executive Director Jason Peltier reported that there have not be any significate changes since the committee last met. Peltier reported that the Adaptive Management Program being led by Senator Babbitt has had incremental progress, and that NEMPS isn't being a constructive player. There is a great deal of uncertainty with the new administration coming in.

General Counsel Jon Rubin described the two principle agreements that are being developed for consideration by the Water Authority: 1) an agreement concerning use of remaining Note proceeds and 2) an affirmation and amendment to the agreement for funding between the Department of Water Resources and the Water Authority for the cost of environmental analysis, planning, and design of Delta conservation measures, including Delta Conveyance Options. With respect to the agreement, Rubin explained that the current draft agreement identifies the member agencies with interests in the Note proceeds and the options available to them under the agreement for use of their interest in the proceeds. Rubin explained further the process anticipated in the agreement to have decisions made on the use of the

DRAFT

Note proceeds. Next, Rubin described the current, draft terms of the affirmation and amendment. Finally, Rubin expressed staff's intent to distribute a draft agreement and a draft affirmation and amendment within the following two weeks, to allow member agencies to review the documents prior to anticipated January DHCCP Committee, Finance and Administration Committee, and Board of Director meetings.

5. Closed Session Report

Acting Chair and Member Rick Gilmore adjourned the open session to address the items listed on the Closed Session Agenda at approximately 9:50 a.m. Upon return to open session at approximately 9:59 a.m., General Counsel Jon Rubin reported that the Board met in closed session to receive advice from counsel on items listed on the Closed Session Agenda. Rubin reported that no reportable action was taken.

6. Adjournment

Acting Chair and Member Rick Gilmore adjourned the meeting at approximately 10:00 a.m.

RESOLUTION NO. 2017-_____

**RESOLUTION MAKING FINDINGS UNDER
CALIFORNIA ENVIRONMENTAL QUALITY ACT, AUTHORIZING
EXECUTION OF THE AGREEMENT CONCERNING USE OF
REMAINING NOTE PROCEEDS BY AND AMONG THE SAN LUIS
& DELTA-MENDOTA WATER AUTHORITY AND CERTAIN OF
ITS MEMBER AGENCIES, AND AUTHORIZING ACTIONS
RELATED THERETO**

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Water Authority” and the “Board,” respectively) has previously authorized the Water Authority to participate in, execute funding documents for, and issue financing to support the Delta Habitat Conservation and Conveyance Program, sometimes referred to as the DHCCP Planning Phase.

WHEREAS, under that certain Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Conveyance Options (the Department being referred to as “DWR” and the Agreement as the “DWR Direct Funding Agreement”), total funding for the DHCCP Planning Phase was expected to be \$240 Million, of which State Water Project contractors were to provide 50% of the funding and the Authority, along with Reclamation, were to provide the remaining 50% (the “Federal Share”).

WHEREAS, the Water Authority has executed that certain Delta Habitat Conservation & Conveyance Plan Activity Agreement (“DHCCP Activity Agreement”), which memorializes the relationship between the Water Authority and its participating Members for purposes of the DHCCP Planning Phase.

WHEREAS, the DHCCP Activity Agreement provides for the DHCCP Activity Agreement Members to authorize financial commitments for purposes of the DHCCP upon approval of the DHCCP Activity Agreement Steering Committee, participating Activity Agreement Members, and the Water Authority.

WHEREAS, the Water Authority, on behalf of the DHCCP Activity Agreement Members, issued \$50,000,000 in San Luis & Delta-Mendota Water Authority Revenue Notes (DHCCP Development Project) Series 2009A (the “2009A Notes”) for purposes of funding the DHCCP Planning Phase, of which \$44,742,858 was applied to the Water Authority obligations under the DWR Direct Funding Agreement.

WHEREAS, the Water Authority has fully satisfied its obligations under the DWR Direct Funding Agreement, and the DWR Direct Funding Agreement has since expired.

WHEREAS, the Water Authority has applied a substantial amount of the proceeds of the 2009A Notes pursuant to the DWR Funding Agreement; however, it has

not yet expended all of the proceeds and net investment earnings given the contributions from Reclamation applied toward the Federal Share.

WHEREAS, as of December 20, 2016, the amount of proceeds and net investment earnings the Water Authority had not expended was \$4,256,566; that amount is subject to future interest earnings, and gains or losses incurred before shares are drawn ("Remaining Note Proceeds").

WHEREAS, DWR has informed the Water Authority that, to complete the DHCCP Planning Phase, it will require more than \$240 Million and has asked the Water Authority to make an additional contribute of money toward the DHCCP Planning Phase.

WHEREAS, if the Water Authority makes the additional contribution, that additional contribution may result in the Water Authority, along with Reclamation, contributing in excess of the Federal Share.

WHEREAS, given the circumstances described herein, the Water Authority will obtain the direction and authorization from individual DHCCP Activity Agreement Members as to whether its interest in the Remaining Note proceeds should be used to help fund DHCCP Planning Phase costs or either refunded or used to defease San Luis & Delta-Mendota Water Authority Refunding Revenue Bonds (DHCCP Development Project) Series 2013A obligations.

WHEREAS, to provide that direction, the Water Authority prepared and the Board has considered that certain Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies.

WHEREAS, the DHCCP Activity Agreement Steering Committee has approved the Water Authority entering the Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies.

WHEREAS, the Finance and Administration Committee and the DHCCP Activity Agreement Steering Committee have recommended that the Board authorize execution of the Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies.

WHEREAS, authorizing execution of the Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies does not constitute a project under the California Environmental Quality Act because the proposed actions 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 Water 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 matters stated in the recitals above are true and correct, and the Board so finds, orders and determines.

Section 2. The Board hereby authorizes the Executive Director to execute the Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies in substantially the form presented to the Board, as amended by the Board, and 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.

PASSED AND ADOPTED, this ___th day of January, 2017, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Michael Stearns, Chairman
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Jason Peltier, Secretary

DRAFT

* * * * *

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a regular meeting of the Board of Directors thereof duly called and held at the office of the Authority on the ___th day of January, 2017.

Jason Peltier, Secretary

**AGREEMENT CONCERNING USE OF REMAINING NOTE PROCEEDS
BY AND AMONG
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
AND
CERTAIN OF ITS MEMBER AGENCIES**

This Agreement is made by and among the San Luis & Delta-Mendota Water Authority and those member agencies defined below as “Note Interest Agencies”.

WHEREAS, the California Department of Water Resources (“DWR”) and the United States Bureau of Reclamation continue with the DHCCP Planning Phase and DWR’s preferred alternative now referred to as the “California WaterFix”;

WHEREAS, as a result of unexpected planning expenses and delays, the costs for the DHCCP Planning Phase have exceeded \$240 Million;

WHEREAS, the Water Authority issued \$50,000,000 in San Luis & Delta-Mendota Water Authority Revenue Notes (DHCCP Development Project) Series 2009A (“2009A Notes”) for purposes of funding environmental documents, planning, engineering designs, and other necessary information for possible conservation measures, including Delta conveyance options (referred to herein as “DHCCP Planning Phase” or “Program's Planning Phase”), approximately \$44,742,858 of which have been applied to satisfying Water Authority obligations under the Agreement for Funding Between The Department of Water Resources and The San Luis and Delta-Mendota Water Authority For the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options, as amended, (“DWR Direct Funding Agreement”);

1.5.17 Review Draft

WHEREAS, the Water Authority has applied a substantial amount of the proceeds of the 2009A Notes pursuant to the DWR Funding Agreement; however, it has not yet expended all of the proceeds and net investment earnings given the contributions from Reclamation applied toward the Federal Share;

WHEREAS, as of December 20, 2016, the amount of proceeds and net investment earnings the Water Authority had not expended was \$4,256,566; that amount is subject to future interest earnings, and gains or losses incurred before shares are drawn (“Remaining Note Proceeds”);

WHEREAS, the member agencies with interests in the Remaining Note Proceeds are: Byron Bethany Irrigation District; Panoche Water District; San Luis Water District; Westlands Water District; San Benito County Water District; Santa Clara Valley Water District; Broadview Water District; Eagle Field Water District; James Irrigation District; Laguna Water District; Mercy Springs Water District; Pacheco Water District; and Reclamation District 1606 (referred to herein individually as “Note Interest Agency” and collectively as “Note Interest Agencies”);

WHEREAS, said 2009A Notes have been in part refinanced through the San Luis & Delta-Mendota Water Authority Refunding Revenue Bonds (DHCCP Development Project) Series 2013A (“2013A Revenue Bonds”);

WHEREAS, certain Note Interest Agencies paid off their obligations under the 2009 Notes and did not participate in the 2013A Revenue Bonds; those agencies are San Benito County Water District, Santa Clara Valley Water District, James Irrigation District and Reclamation District 1606 (individually, “a Non-Refinanced Agency,” and collectively, the “Non-Refinanced Agencies”);

WHEREAS, the remaining Note Interest Agencies refinanced their allocated shares of obligations under the 2009A Notes and therefore assumed obligations as a result of the 2013A Revenue Bonds; those agencies are: Byron Bethany Irrigation District; Panoche Water District;

San Luis Water District; Westlands Water District; Broadview Water District; Eagle Field Water District; Laguna Water District; Mercy Springs Water District; and Pacheco Water District (referred to herein individually as a “Bond Obligation Agency” and collectively as “Bond Obligation Agencies”);

WHEREAS, the Authority has received advice from bond counsel that it may expend some or all of the Remaining Note Proceeds under a reaffirmed and amended DWR Direct Funding Agreement to continue the purpose of the DHCCP consistent with its obligations under the 2009A Notes and the 2013A Revenue Bonds, the DHCCP Activity Agreement, and State and Federal law, even though the DHCCP Planning Phase costs exceed \$240,000,000 and such funding could exceed the Federal Share, as defined under prior versions of the DWR Direct Funding Agreement;

WHEREAS, the Authority has also received advice from bond counsel that if not spent on DHCCP Planning Phase costs, such Remaining Note Proceeds must, for Non-Refinanced Agencies be distributed to such Non-Refinanced Agencies; and for Bond Obligation Agencies, be placed in escrow and held to apply towards future obligations under the 2013A Revenue Bonds;

WHEREAS, to provide the mechanism to allow a Note Interest Agency to contribute its interest in the Remaining Note Proceeds to DWR for application to ongoing DHCCP Planning Program costs, the Authority intends to enter into the 2016 Affirmation and Amendment of DWR Direct Funding Agreement in form substantially similar to the draft attached hereto (“2016 Affirmation and Amendment”); and

WHEREAS, to also allow for a decision by a Bond Obligation Agency to have its interest in the Remaining Note Proceeds used to defease a portion of the 2013A Bonds, the Authority has prepared and would enter into the Escrow Agreement in form substantially similar to the draft attached hereto (“Escrow Agreement), if such a decision were made.

NOW, THEREFORE, it is agreed as follows:

Section 1. Unless otherwise noted, the terms herein have the same meaning as defined in (1) the DWR Direct Funding Agreement, which has been affirmed and amended by the 2016 Affirmation and Amendment; and (2) the San Luis & Delta-Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreement.

Section 2. On or about January 16, 2017, the Authority will provide at a minimum each of the Note Interest Agencies with a table showing (1) the amount of Remaining Note Proceeds, (2) the percent of the Remaining Note Proceeds to which each Note Interest Agency has an interest, (3) the total amount of 2013A Revenue Bond debt owed by the Authority as of March 1, 2017 (“Total Bond Debt”), and (4) the percent of the Total Bond Debt for which each Note Obligation Agency has an obligation.

Section 3. On or about January 16, 2017, the Authority will also provide each of the Note Interest Agencies with a form that requires each of the Note Interest Agencies to elect by no later than February 17, 2017, whether it directs the Authority to: (1) contribute to DWR under the 2016 Reaffirmation and Amendment all or a portion of the Note Interest Agency’s interest in the Remaining Note Proceeds (“Contribution Option”) or (2) have the Note Interest Agency’s interest in the Remaining Note Proceeds, in whole or in part, (a) if it is also a Bond Obligation Agency, placed into an escrow account with direction that such Bond Obligation Agency’s interest in the Remaining Note Obligations be applied to defease a portion of the outstanding 2013A Bonds, as provided in the Escrow Agreement attached hereto, or (b) if it is a Non-Refinanced Agency, have its interest in the Remaining Note Proceeds refunded.

Section 4. If at least one Bond Obligation Agency decides and directs the Water Authority to have in whole or in part the Bond Obligation Agency’s interest in the Remaining Note Proceeds

placed into an escrow account with direction that it defease a portion of the outstanding 2013A Bonds, the Water Authority shall prepare and issue to each Bond Obligation Agency a payment schedule for the 2013A Bonds, which applies towards each Bond Obligation Agency's obligation the amount of money it had the Water Authority place into the escrow account.

Section 5. The Note Interest Agencies acknowledge that the Authority's Board of Directors expects to authorize execution by the Executive Director of the 2016 Affirmation and Amendment and, if needed, the Escrow Agreement, and the Note Interest Agencies agree that the Authority shall be bound by said authorizations.

Section 6. This Agreement concerns the disposition of the Remaining Note Proceeds. Nothing in this Agreement alters the DHCCP Activity Agreement and the provisions of the DHCCP Activity Agreement continue to control, including but not limited to those concerning obligations following withdrawal, indemnification, and contribution.

Section 7. The status of each of the Note Interest Agency as a party to the DHCCP Activity Agreement is not affected by this Agreement.

Section 8. This Agreement will take effect when executed by the Authority and each Note Interest Agency.

Section 9. This Agreement may be executed by the Water Authority and each Note Interest Agency in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

1.5.17 Review Draft

San Luis & Delta-Mendota Water Authority

Byron Bethany Irrigation District

By: _____

By: _____

Dated: _____

Dated: _____

Panoche Water District

San Luis Water District

By: _____

By: _____

Dated: _____

Dated: _____

Westlands Water District

San Benito County Water District

By: _____

By: _____

Dated: _____

Dated: _____

Santa Clara Valley Water District

Broadview Water District

By: _____

By: _____

Dated: _____

Dated: _____

1.5.17 Review Draft

Eagle Field Water District

James Irrigation District

By: _____

Dated: _____

By: _____

Dated: _____

Laguna Water District

Mercy Springs Water District

By: _____

Dated: _____

By: _____

Dated: _____

Pacheco Water District

Reclamation District 1606

By: _____

Dated: _____

By: _____

Dated: _____

RESOLUTION NO. 2017-_____

RESOLUTION MAKING FINDINGS UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT, AUTHORIZING EXECUTION OF THE AFFIRMATION AND AMENDMENT TO THE AGREEMENT FOR FUNDING BETWEEN THE DEPARTMENT OF WATER RESOURCES AND THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY FOR THE COSTS OF ENVIRONMENTAL ANALYSIS, PLANNING AND DESIGN OF DELTA CONSERVATION MEASURES, INCLUDING DELTA CONVEYANCE OPTIONS, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Water Authority” and the “Board,” respectively) has previously authorized the Water Authority to participate in, execute funding documents for, and issue financing to support the Delta Habitat Conservation and Conveyance Program, sometimes referred to as the DHCCP Planning Phase.

WHEREAS, under that certain Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Conveyance Options (the Department being referred to as “DWR” and the Agreement as the “DWR Direct Funding Agreement”), total funding for the DHCCP Planning Phase was expected to be \$240 Million, of which State Water Project contractors were to provide 50% of the funding and the Authority, along with Reclamation, were to provide the remaining 50% (the “Federal Share”).

WHEREAS, the Water Authority has executed that certain Delta Habitat Conservation & Conveyance Plan Activity Agreement (“DHCCP Activity Agreement”), which memorializes the relationship between the Water Authority and its participating Members for purposes of the DHCCP Planning Phase.

WHEREAS, the DHCCP Activity Agreement provides for the DHCCP Activity Agreement Members to authorize financial commitments for purposes of the DHCCP upon approval of the DHCCP Activity Agreement Steering Committee, participating Activity Agreement Members, and the Water Authority.

WHEREAS, the Water Authority, on behalf of the DHCCP Activity Agreement Members, issued \$50,000,000 in notes (the “2009A Notes”) for purposes of funding the DHCCP Planning Phase, of which \$44,742,858 was applied to the Water Authority obligations under the DWR Direct Funding Agreement.

WHEREAS, the Water Authority has fully satisfied its obligations under the DWR Direct Funding Agreement, and the DWR Direct Funding Agreement has since expired.

DRAFT

WHEREAS, DWR has informed the Water Authority that, to complete the DHCCP Planning Phase, it will require more than \$240 Million and has asked the Water Authority to make an additional contribute of money toward the DHCCP Planning Phase.

WHEREAS, if the Water Authority makes the additional contribution, that additional contribution may result in the Water Authority, along with Reclamation, contributing in excess of the Federal Share.

WHEREAS, the Water Authority has applied a substantial amount of the proceeds of the 2009A Notes pursuant to the DWR Funding Agreement; however, it has not yet expended all of the proceeds and net investment earnings given the contributions from Reclamation applied toward the Federal Share.

WHEREAS, as of December 20, 2016, the amount of proceeds and net investment earnings the Water Authority had not expended was \$4,256,566; that amount is subject to future interest earnings, and gains or losses incurred before shares are drawn ("Remaining Note Proceeds").

WHEREAS, given the circumstances described herein, the Water Authority will obtain the direction and authorization from individual DHCCP Activity Agreement Members as to whether its interest in the Remaining Note proceeds should be used to help fund DHCCP Planning Phase costs.

WHEREAS, in the event some or all Activity Agreement Members desire to apply their respective interests in the Remaining Note Proceeds to be applied to ongoing DHCCP Planning Costs, the Water Authority will need to define the terms by which it would provide such funding to DWR.

WHEREAS, the Board has considered that certain Affirmation and Amendment to Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, including Conveyance Options (the "Affirmation and Amendment"), a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, the DHCCP Activity Agreement Steering Committee has approved the Water Authority entering into the Affirmation and Amendment.

WHEREAS, the Finance and Administration Committee and the DHCCP Activity Agreement Steering Committee have recommended that the Board authorize execution of the Affirmation and Amendment.

WHEREAS, authorizing execution of the Affirmation and Amendment 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 Water 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 matters stated in the recitals above are true and correct, and the Board so finds, orders and determines.

Section 2. The Board hereby authorizes the Executive Director to execute the Affirmation and Amendment in substantially the form presented to the Board, as amended by the Board, and 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.

PASSED AND ADOPTED, this ___th day of January, 2017, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Michael Stearns, Chairman
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Jason Peltier, Secretary

DRAFT

* * * * *

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a regular meeting of the Board of Directors thereof duly called and held at the office of the Authority on the ___th day of January, 2017.

Jason Peltier, Secretary

**State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES**

**AFFIRMATION AND AMENDMENT TO THE AGREEMENT FOR FUNDING
BETWEEN THE DEPARTMENT OF WATER RESOURCES
AND
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**FOR THE COSTS OF ENVIRONMENTAL ANALYSIS, PLANNING AND DESIGN OF
DELTA CONVEYANCE OPTIONS**

(SWPAO # _____)

THIS AFFIRMATION and AMENDMENT is made pursuant to the provisions of all applicable laws of the State of California, by and between the State of California, acting by and through its Department of Water Resources (“Department” or “DWR”), and the San Luis & Delta-Mendota Water Authority (“Authority” or “Water Authority”). DWR and the Water Authority may also be referred to individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, the Planning Phase of the Delta Habitat Conservation and Conveyance Program (“Program”) has been funded by CVP Water Contractors, SWP Water Contractors, DWR and the United States Bureau of Reclamation (“Reclamation”); and

WHEREAS, the Authority provided such funding pursuant to the “Agreement for Funding Between The Department of Water Resources and The San Luis and Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options” entered on March 12, 2009 by the Department and the Authority, as amended by the First, Second, Third and Fourth Amendments thereto (collectively referred to herein as the “Agreement”), a copy of which is attached hereto as Exhibit 1; and

WHEREAS, the Department acknowledges that the Authority fully satisfied its obligations under the Agreement; and

WHEREAS, the Department informed the Authority that the Department has and will continue to incur costs for the Program’s Planning Phase above those contemplated in the Agreement; and

WHEREAS, the Department has asked the Authority to contribute additional funds towards the Program's Planning Phase; and

WHEREAS, if the Program proceeds to implementation, the Parties are committed to establishing a mechanism for reapportionment of all Program costs based on calculated benefits conferred from the implementation of the Program, with credits to the non-federal Parties for amounts paid toward the Program's Planning Phase costs and with funds or in-kind services provided by Reclamation during the Program's Planning Phase being considered sunk costs that are not available for reapportionment as described above, but shall continue to be credited toward the obligation of the San Luis & Delta-Mendota Water Authority, Westlands Water District, and Santa Clara Valley Water District; and

WHEREAS, to provide a mechanism that would allow the Authority to provide additional funding, the Department and the Authority desire to affirm and amend the Agreement.

AFFIRMATION AND AMENDMENT

NOW THEREFORE, in consideration of the Recitals above, it is mutually agreed by the Department and the Authority that the Parties affirm the Agreement and that the following amendments are made to it pursuant to and in accordance with Section 12 of the Agreement:

A. **Definitions**

Unless otherwise noted, the terms herein have the same meaning as defined in the Agreement.

B. **Effective Date of Amendment**

The terms of this Affirmation and Amendment will become effective when this Amendment is fully executed by the Parties.

C. **Affirmation**

The Parties hereby affirm the terms of the Agreement; subject to the amendment provided below and therefore, except as amended by this Affirmation and Amendment, the terms of the Agreement are in full force and bind the Parties.

D. **Recitals**

Recital 12 of the Agreement is replaced with and supplemented by the following provision:

“12. **WHEREAS**, notwithstanding prior recitals, DWR has informed the Authority that its current estimate for the Program's Planning Phase costs exceeds prior estimates including those provided in the Agreement; and

13. **WHEREAS**, DWR has asked the Authority that it fund additional Program Planning Phase costs; and
15. **WHEREAS**, as a result of additional payment by the Authority, the Federal Share under the Agreement may exceed fifty percent of the Program's Planning Phase costs; and
14. **WHEREAS**, the Authority is willing to enter into this Affirmation and Amendment providing for the payment of additional sums, and, in partial consideration, DWR is willing to continue to consult with the Authority on decisions related to the budget, scope, schedule and activities of the Program's Planning Phase to ensure its timely completion in a cost-efficient manner.

E. **Effective Date/Term of Agreement**

Section 3(b) of the Agreement is hereby replaced with the following provision:

“Unless extended by written agreement, this Agreement will terminate when the DHCCP Planning Phase is completed or on May 1, 2017, whichever occurs first.”

F. **Additional Charges to the Authority**

Section 5 of the Agreement is hereby supplemented with the following provision:

“j) Notwithstanding prior subsections, for the FFY starting on October 1, 2016, the Authority may contribute an additional amount of money towards the Planning Phase. The Authority shall have the right to determine in its sole discretion the additional amount, if any, it will contribute. If the Authority decides to contribute additional funds, the Authority will contribute the additional funds on or before March 15, 2017 and DWR will expend the additional amount by no later than April 30, 2017.”

G. **Execution in Counterparts**

This Affirmation and Amendment may be executed in counterpart, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Affirmation and Amendment on the last date set forth below.

Approved as to Legal Form
and Sufficiency

State of California
Department of Water Resources

Spencer Kenner
Chief Counsel

Mark W. Cowin
Director

Approved as to Legal Form
and Sufficiency

San Luis & Delta-Mendota Water Authority

Jon Rubin
General Counsel

Jason Peltier
Executive Director

[Exhibits]

DRAFT

RESOLUTION NO. 2017-_____

**RESOLUTION MAKING FINDINGS UNDER
CALIFORNIA ENVIRONMENTAL QUALITY ACT, AUTHORIZING
EXECUTION OF AN ESCROW AGREEMENT AND
AUTHORIZING ACTIONS RELATED THERETO**

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Water Authority” and the “Board,” respectively) has previously authorized the Water Authority to participate in, execute funding documents for, and issue financing to support the Delta Habitat Conservation and Conveyance Program, sometimes referred to as the DHCCP Planning Phase.

WHEREAS, under that certain Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Conveyance Options (the Department being referred to as “DWR” and the Agreement as the “DWR Direct Funding Agreement”), total funding for the DHCCP Planning Phase was expected to be \$240 Million, of which State Water Project contractors were to provide 50% of the funding and the Authority, along with Reclamation, were to provide the remaining 50% (the “Federal Share”).

WHEREAS, the Water Authority has executed that certain Delta Habitat Conservation & Conveyance Plan Activity Agreement (“DHCCP Activity Agreement”), which memorializes the relationship between the Water Authority and its participating Members for purposes of the DHCCP Planning Phase.

WHEREAS, the DHCCP Activity Agreement provides for the DHCCP Activity Agreement Members to authorize financial commitments for purposes of the DHCCP upon approval of the DHCCP Activity Agreement Steering Committee, participating Activity Agreement Members, and the Water Authority.

WHEREAS, the Water Authority, on behalf of the DHCCP Activity Agreement Members, issued \$50,000,000 in notes (the “2009A Notes”) for purposes of funding the DHCCP Planning Phase, of which \$44,742,858 was applied to the Water Authority obligations under the DWR Direct Funding Agreement.

WHEREAS, the Water Authority has fully satisfied its obligations under the DWR Direct Funding Agreement, and the DWR Direct Funding Agreement has since expired.

WHEREAS, the Water Authority has applied a substantial amount of the proceeds of the 2009A Notes pursuant to the DWR Funding Agreement; however, it has not yet expended all of the proceeds and net investment earnings given the contributions from Reclamation applied toward the Federal Share.

WHEREAS, as of December 20, 2016, the amount of proceeds and net investment earnings the Water Authority had not expended was \$4,256,566; that amount is subject to future interest earnings, and gains or losses incurred before shares are drawn (“Remaining Note Proceeds”).

WHEREAS, DWR has informed the Water Authority that, to complete the DHCCP Planning Phase, it will require more than \$240 Million and has asked the Water Authority to make an additional contribute of money toward the DHCCP Planning Phase.

WHEREAS, the Board issued Refunding Revenue Bonds, Series 2013A (the “2013A Bonds”) in the aggregate principal amount of \$37,550,000 which, together with certain other moneys, refinanced in part the 2009A Notes.

WHEREAS, Byron Bethany Irrigation District; Panoche Water District; San Luis Water District; Westlands Water District; Broadview Water District; Eagle Field Water District; Laguna Water District; Mercy Springs Water District; and Pacheco Water District (referred to herein individually as a “Bond Obligation Agency” and collectively as “Bond Obligation Agencies”) assumed the obligations under the 2013A Bonds

WHEREAS, if the event one or more of the Bond Obligation Agency opts against a contribution of its interest in the 2009A Notes to the DHCCP Planning Phase, it would be in the best interest of the Water Authority to defease a portion of the outstanding 2013A Bonds from Remaining Note Proceeds, which would require entering into an escrow agreement.

WHEREAS, the Board has considered that certain Escrow Agreement (2013A Bonds), a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, the DHCCP Activity Agreement Steering Committee has approved the Water Authority entering the Escrow Agreement (2013A Bonds) conditioned upon the Water Authority receiving direction and authorization from at least one Activity Agreement Member to opts against contributing its interest in the 2009A Notes to the DHCCP Planning Phase and to defease a portion of the outstanding 2013A Bonds from its interest in Remaining Note Proceeds.

WHEREAS, the Finance and Administration Committee and the DHCCP Activity Agreement Steering Committee have recommended that the Board authorize execution of the Escrow Agreement (2013A Bonds) conditioned upon the Water Authority receiving direction and authorization from at least one Activity Agreement Member to opts against contributing its interest in the 2009A Notes to the DHCCP Planning Phase and to defease a portion of the outstanding 2013A Bonds from its interest in Remaining Note Proceeds.

WHEREAS, authorizing execution of the Agreement Concerning Use of Remaining Note Proceeds by and among the San Luis & Delta-Mendota Water Authority and Certain of its Member Agencies does not constitute a project under the California

Environmental Quality Act because the proposed actions 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 Water 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 matters stated in the recitals are true and correct, and the Board so finds, orders and determines.

Section 2. The Escrow Agreement (2013A Bonds), in substantially the form attached hereto as Exhibit A and, upon execution as authorized below, made a part hereof as though set forth in full herein, is hereby approved. The Chairman of the Board and Secretary of the Board or the Executive Director of the Water Authority are hereby authorized and directed to execute and deliver the Escrow Agreement (2013A Bonds) with such changes, insertions and omissions as may be recommended by Stradling Yocca Carlson & Rauth, a Professional Corporation and approved by the officer executing the same, said execution being conclusive evidence of such approval.

Section 3. The authorization to execute the Escrow Agreement (2013A Bonds) is expressly conditioned upon the Water Authority receiving direction and authorization from at least one Activity Agreement Member to defease a portion of the outstanding 2013A Bonds from its interest in Remaining Note Proceeds.

Section 4. The Executive Director, the Assistant Executive Director, the Chairman, the Secretary and any other proper officer of the Water Authority, acting singly, is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Escrow Agreement (2013A Bonds) and this resolution.

SECTION 3. This resolution shall take effect immediately.

PASSED AND ADOPTED, this ___th day of January, 2017, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Michael Stearns, Chairman
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Jason Peltier, Secretary

* * * * *

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a regular meeting of the Board of Directors thereof duly called and held at the office of the Authority on the ___th day of January, 2017.

Jason Peltier, Secretary