

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

TEMPERANCE FLAT RESERVOIR PROJECT ACTIVITY AGREEMENT

This **TEMPERANCE FLAT RESERVOIR PROJECT ACTIVITY AGREEMENT** (“Activity Agreement”) is made effective as of [DATE] (the “Effective Date”), by and among the San Luis & Delta-Mendota Water Authority, a joint powers agency of the State of California (“Authority”), and its members who execute this Activity Agreement (“Members”). Capitalized terms used in this Activity Agreement shall have the meanings set forth in Section 2 below.

1. RECITALS

A. The Members, together with certain other local agencies, have entered into an amended and restated Joint Exercise of Powers Agreement-San Luis & Delta-Mendota Water Authority dated as of January 1, 1992 (the “**JPA**” or “**JPA Agreement**”), by and among the parties indicated therein, establishing the Authority for the purpose of exercising the common powers of the Members, including those powers described in this Activity Agreement.

B. The Members are each empowered, among other powers, to provide water service to lands within their boundaries; to operate and maintain works and facilities for the development, distribution and use of water for irrigation and for any drainage or reclamation works connected therewith or incidental thereto and/or to operate and maintain works and facilities for the development, distribution and use of water for municipal and industrial use; to contract with the United States, the State and other public agencies and, effective January 1, 1995, with mutual water companies, for such purposes; to control the quality of water accepted into their respective systems; to exercise powers related to the construction, operation, or maintenance of water storage and delivery facilities; and to adopt rules and regulations necessary to the exercise of such powers.

C. The members of the Authority all have entered into contracts with the United States for water from the Central Valley Project (“**CVP**”) for irrigation and/or M&I purposes within their respective jurisdictional areas and receive water conveyed through the Delta-Mendota Canal, the San Luis Canal, and/or the Pacheco Pumping Plant and Tunnel.

D. For several years to come, because of hydrologic conditions and/or regulatory constraints, the operation of the CVP by the United States Bureau of Reclamation (“**Reclamation**”)

will likely result in a shortage of storage opportunities south of the Sacramento-San Joaquin Delta (“Delta”), which may result in less water being made available to the members of the Authority than required to meet the demands of their customers.

E. The Authority and some of the Members, together with Reclamation and other public agencies have considered the feasibility of a second dam on the San Joaquin River behind Friant Dam to, among other things, increase water storage capacity on the San Joaquin River.

F. The location of the proposed second dam and reservoir is in an area commonly known as Temperance Flat. As such, the proposed project pertaining to the feasibility studies, design, permitting, construction, management, and ultimately operation of a dam and reservoir and related facilities at Temperance Flat is referred to in this Activity Agreement as the “**Temperance Flat Reservoir Project**” or “**Project.**”

G. To provide a short-term mechanism for financing and managing the preparation of additional analyses and studies regarding the potential benefits and feasibility of the Project, as well as other preconstruction activities, the Authority intend to enter into a memorandum of understanding that would address how entities interested in the Temperance Flat Reservoir Project will coordinate, cooperate, and cost share on preconstruction activities (“**Temperance Flat MOU**”).

H. Each of the parties to this Activity Agreement desires to participate in the benefits and is willing to incur the obligations of the Temperance Flat MOU, through the joint exercise of the powers common to each of the parties.

AGREEMENT

NOW, THEREFORE, in consideration of the true and correct facts recited above, and of the covenants, terms, and conditions set forth herein, the Activity Agreement Members and the Authority agree as follows:

2. DEFINITIONS

2.1. “**Activity Agreement**” or “**Agreement**” shall mean this Temperance Flat Reservoir Project Activity Agreement.

2.2. “**Activity Agreement Expenses**” shall mean all expenses directly incurred by the Authority pursuant to this Activity Agreement, together with a share of Authority Operating Costs allocable to Members of this Activity Agreement.

2.3. “**Activity Agreement Member**” shall mean a member of the Authority who is signatory to this Activity Agreement. The Activity Agreement Members are listed on Exhibit “A” attached hereto.

2.4. “**Administration Agreement(s)**” shall mean those certain agreements between the Authority and Activity Agreement Members for the undertaking of activities and sharing of costs and benefits pursuant to Sections 22 and 23 of the JPA.

2.5. “**Authority**” shall mean the San Luis & Delta-Mendota Water Authority.

2.6. “**Authority Operating Costs**” shall mean the Authority’s rent and other occupancy charges, acquisition costs of office furniture and equipment, including telephone, telecopy, photocopy, cost of cars and other vehicles, insurance premiums, salaries and wages of employees including payments in connection with retirement programs and other benefit programs, fees of creditors, lawyers, engineers and other consultants, travel, telephone, telecopy, and photocopy expenses, and any other general administrative expenses.

2.7. “**Board of Directors**” shall mean the Board of Directors of the San Luis & Delta-Mendota Water Authority.

2.8. “**Fiscal Year**” shall mean the Authority’s March 1 – February 28/29 fiscal year.

2.9. “**JPA**” or “**JPA Agreement**” shall mean that certain Amended and Restated Joint Exercise of Powers Agreement effective January 1, 1992, establishing the Authority, as it may be amended or restated over time.

2.10. “**Participation Percentage**” shall mean each Activity Participant’s allocated share of Activity Agreement Expenses determined as described in Section 7 of this Agreement and set forth on Exhibit “B” as updated from time to time.

2.11. “**Temperance Flat MOU**” shall mean the Memorandum of Understanding Regarding Coordination, Cooperation, and Cost Sharing on Preconstruction Activities Related to the Temperance Flat Reservoir Project that is anticipated to be entered into by the Activity Agreement Members as well as local agencies that are not members of the Authority.

2.12. “**Temperance Flat Reservoir Project**” or “**Project**” shall mean the proposed project pertaining to the feasibility studies, design, permitting, construction, management, and ultimately operation of a dam and reservoir and related facilities at Temperance Flat.

2.13. All other capitalized terms used herein shall have the meanings ascribed to them in the Temperance Flat MOU.

3. PURPOSE OF AGREEMENT

3.1. The purpose of this Activity Agreement is to allow, through the joint exercise of some or all of the common powers of the Activity Agreement Members described in the Recitals above, as appropriate, the Activity Agreement Members to participate through the Authority in the benefits and to share the obligations of cooperatively funding and managing preconstruction activities in furtherance of the Temperance Flat Project in order to, among other things, assist the Activity Agreement Members in making an informed determination with respect to the extent to which they may participate as long-term investors in the Project.

3.1. The parties acknowledge and agree that the Authority’s role in this Activity Agreement is to: (1) provide the umbrella joint powers agreement pursuant to which the parties may exercise their common powers and to provide services at the expense of the Activity Agreement Members; and (2) negotiate, implement, and administer the Temperance Flat MOU for and on behalf of the Activity Agreement Members, including, but not limited to, managing the preparation of additional analyses and studies regarding the potential benefits and feasibility of the Temperance Flat Project; and (3) provide billing and accounting services to the Activity Agreement Members during the term hereof.

4. ORGANIZATION

4.1. The business of this Activity Agreement shall be conducted by the Authority at large and therefore governed by the Board of Directors of the Authority.

4.2. The Executive Director of the Authority, or his/her designee shall act as the representative of the Authority and Activity Agreement Members for membership on the Management Committee established under the Temperance Flat MOU.

5. BUDGETARY RESPONSIBILITIES

To the extent that the Authority prepares budgets for this Activity Agreement, the Activity Agreement members agree to cooperate with the Authority in the development of any such budgets

for the activities authorized by this Activity Agreement, annually or more frequently as needed, for presentation to the Board of Directors of the Authority in accordance with Section 22 of the JPA Agreement. Budgeted amounts for this Activity Agreement will be collected through the invoicing process described in Section 7 of this Activity Agreement, and formal amendment of such budgets through Board of Directors of the Authority approval is not required for adjustments that are fully collected as described in Section 7 of this Activity Agreement.

6. ACTIVITY AGREEMENT EXPENSES AND ALLOCATION OF OPERATING COSTS

6.1. Each member of the Authority has entered into an Administration Agreement which authorizes an agreement by and among the Authority and any of its members or other entities to provide for undertaking and sharing costs and benefits of any authorized activity of the Authority. The Authority and the Activity Agreement Members agree that all Activity Agreement Expenses incurred by the Authority under this Activity Agreement are the costs of the Activity Agreement Members, and not of the Authority, and shall be paid by the Activity Agreement Members.

6.2. The Activity Agreement Members further agree that the Board of Directors is authorized to allocate a share of Authority Operating Costs as part of the Activity Agreement Expenses to cover the cost to the Authority of administering this Activity Agreement.

7. PARTICIPATION PERCENTAGES

7.1. Initial Participation Percentages. Beginning with costs incurred by the Authority on or after the Effective Date, each Activity Agreement Member agrees to reimburse the Authority for an equal share of the actual costs of financing and managing the preparation of additional analyses and studies regarding the potential benefits and feasibility of the Project, as well as other preconstruction activities, pursuant to the Temperance Flat MOU. For example, if there are ten (10) Activity Agreement Members, each Activity Agreement Member would agree to reimburse the Authority one-tenth (1/10th) of actual costs.

7.2. Changing Participation Percentages. The Participation Percentages may be evaluated by the parties from time to time, in order to consider new information concerning the relative contribution or responsibility of each Activity Agreement Member. The Participation Percentages may be changed upon (1) prior written agreement of all Activity Agreement Members and the Authority, or (2) immediately upon withdrawal by an Activity Agreement Member pursuant to Section 11.

7.3. Ongoing Documentation of Participation Percentages. The Participation Percentages of each Activity Agreement Member shall be dated and attached as Exhibit “B” to this Agreement, effective upon the date approved by all Parties, without any further amendment of this Agreement being required. Any further amendments to Exhibit “B” may be made using the procedure included in this Section 7 without any further separate amendment of this Agreement being required.

7.4. Invoicing and Payment. The Authority shall bill the Activity Agreement Members (1) in March 2018 for their respective share of \$100,000, and (2) for all other Activity Agreement Expenses in their respective Participation Percentages on the same schedule as it utilizes for collecting membership dues to implement the Authority budget for each March 1 through February 28/29 fiscal year, generally twice yearly in mid-March and August of such year. Payments are due 30 days following the receipt of the Authority’s invoice.

8. SOURCE OF PAYMENTS

Each Activity Agreement Member agrees that it will, at all times, have authority and sufficient money to meet its obligations hereunder and under the JPA Agreement. Each Activity Agreement Member hereby confirms that the Authority and other Activity Agreement Members are third party beneficiaries of such Activity Agreement Member’s obligations under this Activity Agreement and may take such actions in law or in equity as may be desirable to enforce payments hereunder.

9. INDEMNIFICATION OF AUTHORITY MEMBERS WHO DO NOT PARTICIPATE IN THIS ACTIVITY AGREEMENT

The Activity Agreement Members shall hold the Authority and each of its members who are not Activity Agreement Members, free and harmless from and indemnify each of them against any and all costs, losses, damages, claims, and liabilities arising from this Activity Agreement. This indemnification obligation includes the obligation of the Activity Agreement Members to defend the Authority, and all members of the Authority that are not participants in this Activity Agreement, at the sole expense of the Activity Agreement Members, in any action or proceeding brought against the Authority or any of its members not participating in this Activity Agreement to recover any such costs, losses, damages, claims, or liabilities arising from this Activity Agreement.

10. TERM

This Activity Agreement shall take effect on the date it is executed by the Authority and at least four Members and shall remain in full force and effect until: (1) this Activity Agreement is amended, rescinded, or terminated by the Authority and the Activity Agreement Members, (2) the **Temperance Flat MOU** is rescinded or terminated, or (3) the Authority withdraws from or is no longer a party to the **Temperance Flat MOU**.

11. WITHDRAWAL FROM FURTHER PARTICIPATION

No Activity Agreement Member shall be entitled to withdraw from participation in this Activity Agreement unless it enters into an agreement with one or more of the remaining Activity Agreement Members to accept assignment of the withdrawing Activity Agreement Member's share of Activity Agreement Expenses. The date the Authority receives a copy of such fully executed written agreement shall be the withdrawal date. As of the withdrawal date, all rights of participation in this Activity Agreement shall cease for the withdrawing Activity Agreement Member, and withdrawing Activity Agreement Member shall, within thirty (30) days, pay all such Activity Agreements Member's financial obligations incurred prior to such withdrawal date pursuant to the terms of this Activity Agreement. Unless assumed by the express agreement of the party or parties accepting assignment of the withdrawing Activity Agreement Member obligations, such withdrawal shall not relieve the withdrawing Activity Agreement Member from: (1) its payment obligations incurred pursuant to this Activity Agreement prior to the date of withdrawal; or, (2) its obligations to indemnify and hold harmless pursuant to Sections 9 and 11 of this Activity Agreement that were incurred prior to the date of withdrawal. Such obligations shall survive the withdrawal of such Activity Agreement Member.

12. ADMISSION OF NEW MEMBERS

No additional members of the Authority may become members of this Activity Agreement without the consent of all of the other Activity Agreement Members and of the Authority.

13. AMENDMENTS

This Agreement may be amended in writing by the parties hereto.

14. ASSIGNMENT; BINDING ON SUCCESSORS

Except as otherwise provided in this Activity Agreement, the rights and duties of the Activity Agreement Members may not be assigned or delegated without the written consent of the Authority. Any attempt to assign or delegate such rights or duties in contravention of this Activity Agreement shall be null and void. Any approved assignment or delegation shall be consistent with

the terms of any contracts, resolutions, indemnities, and other obligations of the Authority then in effect. This Activity Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority and the Activity Agreement Members.

15. COUNTERPARTS

This Activity Agreement may be executed by the Authority and the Activity Agreement Members 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.

16. CHOICE OF LAW

This Activity Agreement shall be governed by the laws of the State of California.

17. SEVERABILITY

If one or more clauses, sentences, paragraphs or provisions of this Activity Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Activity Agreement Members and the Authority that the remainder of the Activity Agreement shall not be affected thereby.

18. HEADINGS

The titles of sections of this Activity Agreement are for convenience only and no presumption or implication of the intent of the parties as to the construction of this Activity Agreement shall be drawn therefrom.

19. REASONABLE COOPERATION

Activity Agreement Members will reasonably cooperate with each other and the Authority to perform the obligations under this Activity Agreement, assist the Authority when necessary in carrying out its obligations under the Temperance Flat MOU, and to carry out the purpose and intent of this Activity Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written:

[SIGNATORIES]

EXHIBIT A
TEMPERANCE FLAT RESERVOIR PROJECT ACTIVITY AGREEMENT
PARTICIPANTS

[LIST]

**EXHIBIT B
ALLOCATION OF EXPENSES AMONG ACTIVITY AGREEMENT MEMBERS**

Activity Agreement Members	Allocation (%)