

*Bella Vista Water District
City of Folsom
City of Redding
City of Roseville
City of Tracy
Contra Costa Water District
San Juan Water District*

*East Bay Municipal Water District
El Dorado Irrigation District
Placer County Water Agency
Sacramento County Water Agency
Sacramento Municipal Utility District
Santa Clara Valley Water District*

November 22, 2010

Tim Rust
Tammy Laframboise
U.S. Department of the Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Re: Draft Central Valley Project Municipal and Industrial Water Shortage Policy

Dear Ms. Laframboise and Mr. Rust:

As federal contractors that rely on CVP municipal and industrial water supply deliveries, we greatly appreciate Reclamation's embarking on the finalization of the municipal and industrial water shortage policy ("Policy"), and our inclusion in clarifying the policy. The draft policy resolves many of the concerns we have raised, although, as discussed at the October workshop, it will benefit from clarification in some respects. The following comments (recommended revised provisions are indicated by underlining), and attached "red-line" of the draft policy, are offered to assist Reclamation in its efforts to develop a policy that clearly reflects Reclamation's intent, and ensure that future CVP contract administrators will understand the policy and its implementation as intended.

1. **Applicability**. As mentioned at the October workshop, the Policy is not intended to apply to either the Friant Division or the East Side Division CVP contractors. We suggest that a sentence be added to Section 2.1 clarifying the extent and limit of the Policy's applicability.
2. **Availability of CVP water**. As discussed at the October workshop, Reclamation does makes discretionary decisions with regards to its CVP operations, which may ultimately affect the availability of water for public health and safety in

certain divisions. The Policy should make it clear that Reclamation will exercise its operational discretion to deliver at least necessary water supplies for public health and safety.

3. **Definitions.**

a. “Adjusted for Non-CVP Water.” The italicized language raises a number of questions and should be changed for the reasons explained below:

i. *“paid for”* The Policy’s definition of “Adjusted for Non-CVP Water” provides that such water must be delivered “and *paid for.*” At the workshop, Reclamation explained that the use of the words “paid for” was intended to ensure that the water was actually *used* during the historical Unconstrained Year and therefore reduced the CVP water deliveries that otherwise would have been required. “Paid for,” in other words, was intended to ensure that the contractor delivered the water to its customers. However, payment is not necessary for several types of supply included as examples in the Policy’s definition of Non-CVP Water. For instance, supplies from a contractor’s own water rights do not require a payment. Further, even if Non-CVP Water were paid for, it is not the payment, but the use of the water that reduces CVP water deliveries and justifies the adjustment of the shortage allocation.

The Contractors suggest replacing the words “paid for” with “used” to more appropriately reflect Reclamation’s intent, as suggested in 3(a)(ii) below.

ii. *“prior to identifying the supply as non-CVP water”* Similarly, the words “prior to” were explained in the workshop as referring to the historical Unconstrained Year. However, that meaning is not readily apparent, and it is unclear who is charged with identifying the nature of the water supply.

The Contractors suggest clarifying the sentence to better reflect Reclamation’s intent by revising it to read: “To obtain an adjustment for a particular historical Unconstrained Year based on use of Non-CVP Water, the contractor must show that it used the Non-CVP Water in that particular historical Unconstrained Year.”

b. Extraordinary Water Conservation Measures. At the last workshop, Reclamation clarified that an “extraordinary” water conservation measure would include those that accelerate conservation yield ahead of the CUWCC’s schedule. To reflect this intent, the contractors request that the first sentence of the draft policy’s definition of “Extraordinary Water Conservation Measures” be revised

to read as follows: “Conservation measures that exceed the applicable BMPs adopted by the CUWCC, including those measures that accelerate levels of conservation expected by the CUWCC.”

c. M&I Water Contractor. In some cases, the CVP contract recognizes that there will be subcontractors. In those cases, Reclamation should treat the Historical Use of the subcontractor and the contractor separately. In addition, an M&I Water Contractor may be an end user itself. To address these issues, the contractors suggest that the first sentence of the draft policy’s definition of “M&I Water Contractor” be revised to read as follows:

A water contractor (or subcontractor identified in a CVP contract) that delivers water supplies to water users or retailers serving residential, non-agricultural commercial, industrial, or municipal water users or is such a user itself.

d. “Non-CVP Water.” Not all Non-CVP Water supplies are interchangeable. Under the Policy, Reclamation considers a contractor’s Non-CVP Water in two distinct contexts. We note and support the inclusion of recycled water within the definition of Non-CVP Water. However, it cannot be considered available in determining Non-CVP Water available for domestic use in Equation 5 of the Implementation Guidelines, as discussed below.

e. “Unconstrained Year.” When Reclamation’s initial allocations reflect shortages, contractors often must commit themselves to using alternate water supplies, or initiating dry-year conservation measures, or both. For such contractors, it may be inappropriate to consider a year in which such conditions occur to be an “Unconstrained Year” for purposes of determining Historical Use, even if Reclamation later increases allocations to 100% in that year. The contractors therefore propose that the draft Policy’s definition for “Unconstrained Year” include an example of a unique circumstance in which a contractor declares a water shortage condition prior to Reclamation’s declaration of a 100% allocation. In such a case, contractors may designate an alternate year to be an “Unconstrained Year” for purposes of determining Historical Use. The proposed revision to the definition would read:

Unconstrained Year – A year in which the M&I water supply allocation is 100 percent. Reclamation will adjust the identification of Unconstrained Year on the basis of unique circumstances that may have affected water use in such a year, after consultation with the contractor. Examples of unique circumstances are: the year following a drought year, in which a contractor may still be using extraordinary water conservation measures; the converse, in which a contractor may be using more water than historically used in order to recharge groundwater; or a year in which a contractor, due to a preliminary shortage allocation by Reclamation or locally dry conditions, declares a water shortage in its service

area prior to a Reclamation's declaration of a 100% allocation.

The examples in the above revision were included in the definition of "Historical Use" in Reclamation's October draft of the Policy. However, they more accurately relate to the appropriate determination of Unconstrained Years, so the contractors recommend that they be relocated to that definition.

For the same reason, the contractors recommend deletion of the last paragraph of Section 3.2(5) under Implementation Procedures – Historical Use Adjustments, which merely repeats the examples.

4. **Terms and Conditions.**

a. "other years" At various places, the Policy references use of water in "other years." For example, it is used in the definition of Non-CVP Water, in Term and Condition No. 1, and in Implementation--Historical Use Adjustment, #5. At the October workshop, Reclamation explained that the term "other years" is meant to refer to years of unconstrained Historical Use.

To avoid uncertainty, the contractors recommend that the term "other years" be replaced with "historical Unconstrained Years."

b. Term and Condition 2.

i. "*need for additional water*" Reclamation made clear during the October 28, 2010 workshop that requirement (d) – that contractors "demonstrate a 'need' for additional water" – is applicable only to additional water needed to meet Public Health and Safety Levels above and beyond the M&I annual allocation, and is not intended to require such showing in order to obtain an adjustment of their Historical Use of CVP water. The Contractors recommend that (d) be deleted from Term and Condition 2 to better reflect Reclamation's intent.

ii. *Term and Condition 2.* In Term and Condition 2, the first sentence provides that the Policy will not be applied to existing contracts that fail to include references to the Policy, even if contractors desire to have its benefits. The contractors believe it should apply to all M&I contractors and the requirement should be deleted so that the Term and Condition 2 provides:

For an M&I contractor to be eligible for adjustments to its CVP water supply, the contractor must (a) have developed and be implementing a water conservation plan that meets CVPIA criteria, (b) be measuring such water consistent with section 3405(b) of the CVPIA, and (c)

have and be implementing a Drought Contingency Plan designed to protect public health and safety,

c. Term and Condition 5. Term and Condition 5 only repeats, in narrative form, the information stated in Table 1 in Term and Condition 4. Term and Condition 5 therefore is superfluous and could cause interpretive issues. The contractors request that Term and Condition 5 be deleted. This deletion would result in the renumbering of existing Terms and Conditions 6 and 7 as Renumbered Terms and Conditions 5 and 6, respectively.

5. Implementation Procedures – Historical Use Adjustments

- a. Figure 1. Four clarifications to Figure 1 are suggested:
 - i. *Calculation Factors.* In the legend explaining Calculation Factors, “B” should be described as “the lesser of contract amount or Historical Use following all adjustments.”
 - ii. *Non-CVP Water.* “N” should be described as “Non-CVP Water available to meet P.” This change is necessary to reflect the fact that non-potable Non-CVP Water, such as recycled water, cannot be used to meet the domestic demands and may not be useable for commercial/institutional and industrial demands in the public health and safety calculation. With the recommended change, the equation “ $Y=P-N$ ” in the rectangle for “Calculate Unmet Need” would yield a more accurate representation of the contractor’s unmet need for health and safety.
 - iii. *Unmet Need.* The last box in the flow chart, following the calculation of “Unmet Need,” should clarify that this step does not involve the same adjustments as are made for Non-CVP Water, Extraordinary Water Conservation Measures and Growth. The contractors therefore recommend that the language for that box be changed to “Contractor may receive additional water, if necessary, to meet Y.”
 - iv. *The diamond at the top of the flow chart.* The diamond at the top of the flow chart containing the logical expression “Is $A > 75\%$ ” should be replaced by “Is $A*B > P$ ” to better reflect Reclamation’s intent to provide CVP water at not less than public health and safety levels, provided CVP water is available (pursuant to Term and Condition 7, which is renumbered as Term and Condition 6 in the attached redlined version of the policy). In addition, to avoid confusion, the box containing the equation for P ($P = D + CI + I + L$) should be deleted, and the calculation factor “P” described in the list of calculation

factors should be defined as “Public health and safety need (AF), as defined in Equation 5.”

b. “Adjustment for Population Growth”. Based on discussions at the October 28, 2010 workshop, we understand that Reclamation intends for adjustments for population growth to be applied to Non-CVP Water supplies as well as to CVP deliveries in historical Unconstrained Years. A number of edits should be made to this portion of the draft Policy to reflect Reclamation’s intent.

- i. Opening paragraph. To more clearly express this intent, the contractors recommend that the first line of the procedure for adjustment for population growth be modified to read:

“If requested by an M&I contractor, an adjustment for population growth will be applied to an M&I contractor’s Historical Use after that Historical Use has been adjusted for use of Non-CVP Water, if applicable.”

- ii. Equation 1. The defined terms associated with the draft Policy’s Equation 1 do not reflect Reclamation’s intent to include Non-CVP Water use in the use that is subject to adjustment for population growth. The definitions of the terms “ AHU_{yearX} ” and “ HU_{yearX} ” therefore should be revised to read as follows:

“(i) AHU_{yearX} is the adjusted Historical Use (including use of Non-CVP Water) in year X (one of the three Unconstrained Years); and (ii) “ HU_{yearX} is the actual Historical Use (including use of Non-CVP Water) in year X (one of the three Unconstrained Years).”

- iii. Equation 2. Equation 2 appears to be the draft Policy’s equation that produces the post-adjustment Historical Use amount against which Reclamation intends to multiply shortage allocations in dry years. Both by its terms and its placement under the heading “Adjustment for Population Growth,” however, that equation appears to exclude use of Non-CVP Water from an adjustment for population growth and any adjustment for Extraordinary Water Conservation Measures. In order to reflect Reclamation’s intent for handling those two issues, the M&I contractors recommend that, as discussed below, Equation 2 be moved to the discussion of “Adjustments for Extraordinary Water Conservation Measures” and be revised.

c. Adjustment for Extraordinary Water Conservation Measures. To reflect Reclamation’s intent about how to adjust Historic Use of CVP water for the use of Non-CVP Water, population growth and Extraordinary Water Conservation

Measures, the M&I contractors recommend modifications to the Implementation Procedures' section 3.2.4.d and the insertion of a modified Equation 2 in a new Implementation Procedures section 3.2.4.e. The purpose of these modifications is to reflect Reclamation's intent that the use of Non-CVP Water will be adjusted for population growth. The yield of Extraordinary Water Conservation Measures will be added to the calculation, without an adjustment for population growth.

- i. *Section 3.2.4.d.* The M&I contractors recommend that the second sentence of section 3.2.4.d be revised to read as follows:

“Each of the three Unconstrained Years eligible for an adjustment for extraordinary water conservation will be adjusted individually prior to calculation of the Average Historical Use ($HU_{average}$) for the three Unconstrained Years.”

- ii. *New Section 3.2.4.e.* The M&I recommend that a new section 3.2.4.e be added to include a modified Equation 2, as follows:

“Adjustments for Extraordinary Water Conservation Measures will be made after the adjustments for the use of Non-CVP Water and population growth and before the averaging of adjusted use in the three Unconstrained Years:

Equation 2:

$$\text{Average Historical Use } (HU_{average}) = [(AHU_{yearX} + C_{yearX}) + (AHU_{yearY} + C_{yearY}) + (AHU_{yearZ} + C_{yearZ})] \div 3.$$

Where:

- *HUaverage is the average of the three adjusted Historical Use amounts, following adjustment pursuant to Term and Condition 1, corresponding to the three Unconstrained Years X, Y, and Z.*
- *AHU_{yearX}, AHU_{yearY} and AHU_{yearZ} are adjusted Historical Use, adjusted for use of Non-CVP Water and population growth, in Unconstrained Years X, Y, and Z, respectively.*
- *C_{yearX}, C_{yearY} and C_{yearZ} are the yields of Extraordinary Water Conservation Measures in Unconstrained Years X, Y, and Z, respectively.”*

d. Adjustment for ‘Non-CVP Water’ Supplies. The sentence at the bottom of page 3-4 references the use of Non-CVP Water in “other years,” a reference that we discussed above.

- i. The reference should be changed to “historical Unconstrained Year.”
- ii. The second paragraph of the section implies that a contractor’s available Non-CVP Water supply will be the amount used in adjusting Historical Use in Unconstrained Years. This is not a valid method of adjustment; it is the actual use of Non-CVP Water in such years that should determine the adjustment. A contractor may have a valid reason for not using its Non-CVP Water supply in such a year, such as keeping it in reserve for a future year of shortage, particularly since Reclamation cannot assure the availability of CVP water in such a year.

The contractors suggest rewording the paragraph as follows:

“The amount of an M&I contractor’s Non-CVP Water supply used in a historical Unconstrained Year will differ from contractor to contractor and will therefore have to be determined on an individual basis. Reclamation will use information provided by the contractor, other available information and the following equation to calculate the M&I water contractor’s total adjustment for Non-CVP Water supply in each historical Unconstrained Year.”

- iii. The paragraph following Equation 3 currently implies that, contrary to Reclamation’s intent, an adjustment for the use of Non-CVP Water would follow, not precede, an adjustment for population growth. To reflect Reclamation’s intent, the M&I contractors recommend modifying the paragraph to read as follows:

“The calculated annual adjustment for a contractor’s use of Non-CVP Water in lieu of use of the contractor’s CVP water will be applied to the respective Unconstrained Year by adding the calculated adjustment amount (in AF) to the Historical Use before its adjustment for population growth, if applicable. Each of the three Unconstrained Years eligible for an adjustment for use of Non-CVP Water in lieu of use of the contractor’s CVP water will be adjusted individually prior to calculation of the average for the three Unconstrained Years (Average Historical Use ($HU_{average}$) in Equation 2.”

- iv. *Section 3.2.7.* This section uses the terms “historical use” and “adjusted historical use” somewhat interchangeably and without definition. To ensure that this section does not cause future interpretation issues, the M&I contractors recommend that it be reworded to read as follows:

“When allocation of Irrigation water has been reduced below 75 percent and still further water supply reductions are necessary, both the M&I and Irrigation allocations will be reduced by the same percentage (5%) increment. The allocation of M&I water will be based on Historical Use, as adjusted pursuant to Term and Condition 1 and the Implementation Procedures – Historical Use Adjustments. The M&I allocation will be reduced until it reaches 75 percent of Historical Use, as adjusted pursuant to Term and Condition 1 and the Implementation Procedures – Historical Use Adjustments, and the Irrigation allocation will be reduced until it reaches 50 percent of contract entitlement. The M&I allocation will not be further reduced until the Irrigation allocation is reduced to below 25 percent of contract entitlement, as shown in Table 3.”

- v. *Section 3.2.8, Equation 4.* The definition of the term “ $HU_{average}$ ” uses the undefined term “adjusted historical use,” which could lead to future interpretation issues. To address this possibility, the M&I contractors suggest rewording the definition to read as follows:

“ $HU_{average}$ results from Equation 2 and is the calculated average of Historical Use, as adjusted pursuant to Term and Condition 1 and the Implementation Procedures - Historical Use Adjustments, in the three Unconstrained Years.”

6. **Section 3.3: Implementation Procedures – Public Health & Safety.**

a. Deliveries to meet Public Health and Safety Levels. The M&I Contractors understand that it is Reclamation’s intent to deliver CVP water to M&I contractors at not less than Public Health and Safety Levels, providing water is available, as expressed in Term and Condition 7. This intent is also expressed in Sections 2.1 and 2.1.1 of the draft Policy. However, Figure 1 in chapter 3 and section 3.3.1 of the implementation procedures for public health and safety do not reflect this intent. To avoid confusion, the M&I Contractors recommend that the following changes be made:

- i. *Section 3.3.1.* The parenthetical phrase “(to a maximum of 75% of historic use)” should be deleted.
- ii. *Figure 1* should be adjusted as described in this letter under comment 5.a.iv.

b. Section 3.3.1. This section does not reflect Reclamation’s intent that, in calculating an M&I contractor’s Historical Use for purposes of shortage allocations, there will be adjustments for the use of Non-CVP Water, population

growth and Extraordinary Water Conservation Measures. To reflect that intent, the M&I contractors recommend that this section be reworded to read as follows:

“When M&I allocations are reduced below 75 percent, the M&I allocation will be equal to the greater of the percentage of Historical Use, as adjusted pursuant to Term and Condition 1 and the Implementation Procedures – Historical Use Adjustments, or Public Health & Safety Level, as shown in Table 4.”

c. Trigger for Term and Condition 7 (Renumbered as “Term 6” in the attached red-line in Reclamation’s October draft Policy). Paragraph 2 of section 3.3 sets forth the conditions that must be met to trigger Reclamation’s deliveries of health and safety water. There are three conditions, but it is not clear whether all must be met or whether any one of them will satisfy the trigger. The procedures should clarify how Reclamation will implement this Term and Condition. To require that the Governor declare a state of emergency may not be realistic, particularly if the shortage is limited to a single contractor or a small portion of a service area. Reclamation should have the ability to make the determination of water shortage without the need for a gubernatorial declaration.

The draft Policy’s Term and Condition 7, which is Renumbered Term and Condition 6 in the attached red-line of the draft Policy, appropriately describes the issues to be considered, so the Implementation Procedures should not repeat this language. It should instead simply describe the steps contractors should take to request deliveries at Public Health and Safety Levels. The contractors propose that the relevant language be edited to read as follows:

“Consistent with [Renumbered] Term and Condition 6, if an M&I contractor determines that its allocation of CVP water is insufficient to meet its Public Health and Safety Level, the contractor shall submit a request to Reclamation for an increase in allocation together with supporting documentation.”

d. System Losses. Equation 5 in Paragraph 3 of section 3.3 provides that system losses will be deemed to be 10% of water deliveries for public health and safety. In fact, losses may be a greater proportion of deliveries where the amount of delivery is less than usual.

The contractors appreciate Reclamation’s stated intention to work with contractors to establish a valid estimate of system losses when deliveries are constrained. It is not clear if that effort will result in a new formulation, or whether it will be individually determined at the time of constrained delivery. This should be made clear in the final Policy.

e. State law conservation standards. Paragraph 3 of section 3.3, footnote 1, incorrectly describes state law. The second and fourth sentences of the footnote

should be eliminated so that the text explains only that the per capita demand rate is intended to be consistent with state law which may be amended from time to time.

f. Incorrect internal reference. Paragraph 5 of section 3.3 should be corrected to refer to “Equation 5” rather than “Item 18” as it currently does.

g. Non-CVP Water availability for Public Health and Safety Levels. New language should be added to address the process for determining the Non-CVP Water that will be used by Reclamation to determine the supplies provided to meet Public Health and Safety Levels. The contractors recommend adding a new section to the Implementation Guidelines as follows:

9. In calculating an M&I contractor’s CVP Shortage Allocation in circumstances when the allocation must be increased to meet the contractor’s PH&S level, as depicted in Figure 1, to the extent that the contractor’s Non-CVP Water is applicable for use in that calculation, Reclamation shall use the following principles in making any adjustments:

- a. Subject to subparagraph (b) below, the quantities of Non-CVP Water identified as available in a critically dry year in the contractor’s Drought Contingency Plan shall be used.
- b. The contractor may provide updated projections of available Non-CVP Water for Reclamation’s consideration.
- c. The contractor’s operational plans to carry over portions of its Non-CVP Water as contingency for a follow-on dry year (or series of dry years) shall be used in making any calculations.
- d. The contractor’s non-potable Non-CVP Water shall not be included as available Non-CVP Water satisfying public health and safety needs except to the extent that it is used to meet non-domestic uses of Commercial and Institutional (CI) and Industrial (I) demands.

In closing, the M&I contractors are pleased with Reclamation’s decision to prepare a new environmental review document analyzing the draft Policy. We invite you to contact Cindy Kao, Santa Clara Valley Water District (tel.: (408) 265-2607 ext. 2346), as liaison for the M&I contractors, if you have any questions about the comments and recommendations put forward above. The M&I contractors encourage Reclamation to work with individual contractors, in advance of any analysis, regarding the modeling assumptions, particularly the

Tim Rust
Tammy Laframboise
November 22, 2010
Page 12

modeling assumptions for public health and safety demands. We are eager for the completion of the M&I Water Shortage Policy and want to work with Reclamation in developing its NEPA document.

Sincerely,

BELLA VISTA WATER DISTRICT



By: David Coxey

CITY OF FOLSOM



By: Kenneth V. Payne, Chief
Environmental & Water Resources Development

CITY OF REDDING



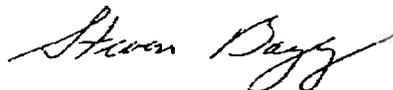
By: Ray Duryee
Municipal Utilities Manager

CITY OF ROSEVILLE



By: Derrick Whitehead
Environmental Utilities Director

CITY OF TRACY



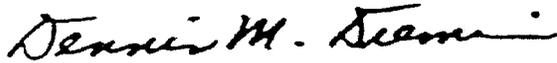
By: Steven Bayley
Deputy Director of Public Works

CONTRA COSTA WATER DISTRICT



By: Greg Gartrell

EAST BAY MUNICIPAL UTILITY DISTRICT



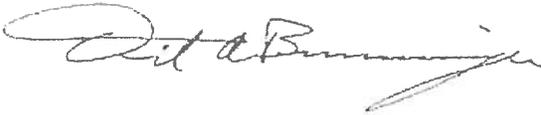
By: Dennis M. Diemer
General Manager

EL DORADO IRRIGATION DISTRICT



By: Jim Abercrombie
General Manager

PLACER COUNTY WATER AGENCY



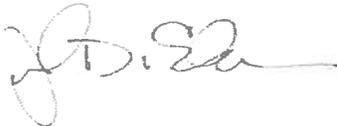
By: David A. Breninger
General Manager

SACRAMENTO COUNTY WATER AGENCY



By: Keith DeVore
Director of Water Resources

SACRAMENTO MUNICIPAL UTILITY DISTRICT



By: John DiStasio
General Manager and CEO

Tim Rust
Tammy Laframboise
November 22, 2010
Page 12

modeling assumptions for public health and safety demands. We are eager for the completion of the M&I Water Shortage Policy and want to work with Reclamation in developing its NEPA document.

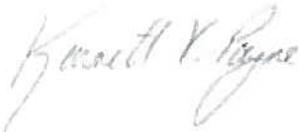
Sincerely,

BELLA VISTA WATER DISTRICT



By: David Coxey

CITY OF FOLSOM



By: Kenneth V. Payne, Chief
Environmental & Water Resources Development

CITY OF REDDING



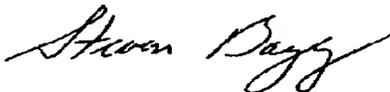
By: Ray Duryee
Municipal Utilities Manager

CITY OF ROSEVILLE



By: Derrick Whitehead
Environmental Utilities Director

CITY OF TRACY



By: Steven Bayley
Deputy Director of Public Works

Tim Rust
Tammy Laframboise
November 22, 2010
Page 13

CONTRA COSTA WATER DISTRICT



By: Greg Gartrell

EAST BAY MUNICIPAL UTILITY DISTRICT



By: Dennis M. Diemer
General Manager

EL DORADO IRRIGATION DISTRICT



By: Jim Abercrombie
General Manager

PLACER COUNTY WATER AGENCY



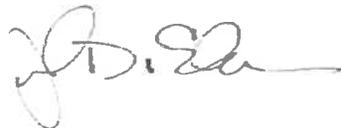
By: David A. Breninger
General Manager

SACRAMENTO COUNTY WATER AGENCY



By: Keith DeVore
Director of Water Resources

SACRAMENTO MUNICIPAL UTILITY DISTRICT



By: John DiStasio
General Manager and CEO

Tim Rust
Tammy Laframboise
November 22, 2010
Page 14

SAN JUAN WATER DISTRICT



By: Shauna Lorance
General Manager

SANTA CLARA VALLEY WATER DISTRICT



By: Beau Goldie
Chief Executive Officer