

AGREEMENT
REGARDING CALIFORNIA ENVIRONMENTAL QUALITY ACT REVIEW FOR
CROSS VALLEY CANAL CONTRACTORS' CONTRACTS FOR RENEWAL OF
CENTRAL VALLEY PROJECT WATER SUPPLY AND CONVEYANCE
THROUGH STATE FACILITIES

THIS AGREEMENT is made this _____ day of _____, 2010 by and among Lower Tule River Irrigation District, Pixley Irrigation District, Hills Valley Irrigation District, Tri-Valley Water District, Kern-Tulare Water District, the County of Fresno, and the County of Tulare (collectively referred to hereinafter as "CVC Contractors") and the California Department of Water Resources (hereinafter "DWR").

WHEREAS, the CVC Contractors are currently negotiating renewal of their long term Central Valley Project (hereinafter "CVP") water supply contracts with United States Bureau of Reclamation (hereinafter "Bureau"); and

WHEREAS, DWR's involvement with the CVC Contractors is limited to providing conveyance service for a water supply provided by the Bureau, and obtained and used by the CVC Contractors through their water supply contracts with the Bureau; and

WHEREAS, use of DWR's conveyance services is not the exclusive means by which the Bureau makes CVP water supply available for use by the CVC Contractors; and

WHEREAS, when the Bureau and the CVC Contractors utilize DWR's conveyance service for delivery of CVP supply to the CVC Contractors, the Bureau provides CVP power to DWR at Harvey O. Banks and Dos Amigos Pumping Plants for the pumping of CVP water to the delivery point on the California Aqueduct; and

WHEREAS, DWR is a party to the CVC Contractors' current water supply contracts with the Bureau, but DWR has requested that its rights and obligations pertaining to conveyance services for CVP water supply to the CVC Contractors through State facilities be memorialized in a separate contract with the CVC Contractors and the Bureau (hereinafter referred to as the "Conveyance Agreement"); and

WHEREAS, renewal and execution of long term CVP water supply contracts with the Bureau and execution of the Conveyance Agreement with the Bureau and DWR are a project which will require compliance with the California Environmental Quality Act, California Public Resources Code sections 21000 et seq. (hereinafter "CEQA"); and

WHEREAS, renewal of existing long term CVP water supply contracts and execution of a new Conveyance Agreement are logically parts of the whole of the same action of supplying CVP water for the CVC Contractors and should be the subject of one environmental document under CEQA; and

WHEREAS, execution of a new Conveyance Agreement is an important part of the larger action, but is secondary to the water supply agreements with the Bureau and the water management by the CVC contractors, and DWR is not the sponsor of this action but merely provides conveyance service for this Federal CVP water when capacity is available in the California Aqueduct in excess of the needs of the State Water Project, and this action is proposed by the CVC Contractors; and

WHEREAS, the CVC Contractors have an equal, if not greater, role in managing the long term CVP water supply contracts and equal, if not greater knowledge and expertise with regard to defining the scope of environmental review and of potential impacts, mitigation measures and project alternatives; and

WHEREAS, each CVC Contractor must separately approve and execute its CVP water supply contract with the Bureau and its Conveyance Agreement with the Bureau and DWR; and

WHEREAS, CEQA [Public Resources Code Section 21067] requires the designation of a lead agency, which is the public agency which has principal responsibility of carrying out or approving a project which might have a significant impact on the environment; and

WHEREAS, renewal of existing long term CVP water supply contracts and execution of a new Conveyance Agreement will memorialize the existing rights and obligations upon DWR to assist in the distribution of CVP water supplies to the CVC Contractors, and it will not change, alter or restructure DWR's existing obligations regarding operation of its water distribution facilities; and

WHEREAS, each of the CVC Contractors has the primary responsibility for making the arrangements necessary to take delivery of the CVP water supply provided to it by the Bureau in accordance with the CVP water supply contracts, whether that be through delivery through federal facilities, use of DWR's conveyance services in accord with the requirements of the Conveyance Agreement, or by exchanges contemplated in their respective CVP water supply contracts; and

WHEREAS, pursuant to the CEQA Guidelines (Title 14 of the California Code of Regulations) section 15051(d), where two or more public agencies have a substantial claim to be the lead agency, the public agencies may by agreement designate one public agency as the lead agency responsible for preparing required CEQA documents ; and

WHEREAS, section 15051(d) of the CEQA Guidelines further provides that, in addition to the designation of one lead agency, multiple public agencies involved with the project may by agreement provide for cooperative efforts to comply with CEQA; and

WHEREAS, the parties agree that the above noted facts establish that each of the CVC Contractors has a more substantial claim as lead agency regarding the project due to their exclusive authority with regard to the execution and adoption of their respective CVP water supply contracts, as well as their respective execution and adoption of a Conveyance Agreement, and therefore the parties desire that this Agreement provide for the designation of one public agency as lead agency responsible for preparing required CEQA documents, and provide the terms for the cooperative efforts of DWR and the CVC Contractors to comply with CEQA, including the development of shared technical data required for each agency's CEQA analysis, and any related administrative obligations consistent with section 15051(d) of the CEQA Guidelines; and

WHEREAS, DWR desires to serve as a responsible agency for purposes of CEQA review for renewal of a long term Conveyance Agreement; and

WHEREAS, DWR and CVC Contractors desire to enter into this Agreement to assist these public agencies in their compliance with CEQA.

NOW THEREFORE, be it resolved that the CVC Contractors and DWR do agree to undertake the following:

1. Lead Agency. The CVC Contractors and DWR agree that as provided in the Agreement, that Lower Tule River Irrigation District ("LTRID") is designated lead agency responsible for preparing required CEQA documents with regard to the execution, adoption and renewal of the CVC Contractors respective long term CVP water supply contracts and the execution and adoption of a Conveyance Agreement with DWR and the Bureau (the "Project").
2. Responsible Agency. The CVC Contractors and DWR agree that DWR and all CVC Contractors, excepting LTRID, will serve as a responsible agencies pursuant to CEQA and each will be required to separately review, comment on, and will consider the CEQA documents prepared by LTRID.
3. Designation of Environmental Review Administrator. The CVC Contractors authorize LTRID, as designated lead agency, to serve as the environmental review administrator for purposes of coordinating CEQA compliance efforts on behalf of all CVC Contractors and DWR.
4. Rights and Obligations of Environmental Review Administrator. LTRID shall have the following rights and obligations associated with CEQA compliance efforts:
 - a. LTRID is authorized to hire consultants, which are mutually agreeable to all CVC Contractors, to assist with CEQA compliance efforts. The CVC Contractors acknowledge that LTRID's responsibilities under this subsection are limited to

preparing of required CEQA documents, contracting with consultants, paying for costs, accounting for such costs, and obtaining reimbursement as called for herein. Each CVC Contractor, as Responsible Agency, shall retain the right and responsibility for purposes of completing all acts and approvals required by CEQA.

- b. LTRID shall, from time to time, be asked by the CVC Contractors to coordinate certain CEQA procedural requirements, such as the production of notices and the noticing and holding of joint public hearings, on behalf of the CVC Contractors, where doing so will allow the CVC Contractors to conserve expenses and facilitate compliance with the requirements of CEQA.
 - c. Each of the CVC Contractors agrees to pay LTRID for its apportioned share of the consultant-related expenses, and other costs incurred while serving as the environmental review administrator on behalf of the CVC Contractors.
 - d. The CVC Contractors agree the costs will be apportioned based on their pro-rata share of the total contractual water amounts to which the parties are entitled under the respective long term CVP water supply contracts with the Bureau.
 - e. LTRID will report all expenses monthly to all of the CVC Contractors and each CVC Contractor agrees to pay its share within thirty (30) days of the expenses being reported.
5. CEQA Consultant. LTRID has entered into an agreement with a defined Scope of Work from Entrix, for completing the first phase of CEQA compliance efforts. The CVC Contractors have previously reviewed the Scope of Work, and have agreed to allow LTRID to contract with Entrix for the work and price identified in the Scope of Work, pursuant to the requirements set forth in Section 4 above. LTRID shall only contract with Entrix for additional CEQA compliance efforts upon approval from all CVC Contractors.
6. Indemnity.
- a. The CVC Contractors shall jointly and severally indemnify, defend and hold LTRID harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses, including without limitation, sums paid in settlement of claims, actual reasonable attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees, that arise from the Lead Agency designation undertaken herein by LTRID, other than for actions resulting from the sole negligence of LTRID. The obligation of each of the CVC Contractors under this indemnity provision shall be

limited to that percentage of the CVC Contractors' damages, penalties, costs, liabilities and losses that is equal to each CVC Contractors' pro-rata share of the total contractual water amounts to which the parties are entitled under their respective long term CVP water supply contracts with the Bureau.

- b. The CVC Contractors shall jointly and severally indemnify, defend and hold DWR harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses, including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees, that arise from or are related in any way to the Lead Agency designation undertaken in this Agreement, other than for actions resulting from the sole negligence of DWR.

7. Consultation

- a. In the event that litigation challenges this agreement or the CEQA compliance for the renewals of the Cross Valley Canal water supply contracts and/or the Cross Valley Conveyance Agreements, the Parties agree to consult with each other regarding legal defense, legal strategy, and any other matters related to the litigation.
- b. The parties may also consult about any dispute regarding interpretation or implementation of this agreement.
- c. Any Party to this agreement may call for a meeting for consultation regarding the subject matters identified in subdivision (a) and (b) of Section 7 above.

8. Amendment. This Agreement may be amended only by a written agreement approved and executed by all of the Parties.

9. Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the CVC Contractors and DWR that the remainder of this Agreement shall not be affected thereby. Similarly, should the participation of any party to this Agreement be decided by the courts or legislature to be illegal or in excess of that party's authority, the validity of the participation of the remaining parties to the Agreement shall continue upon the same terms as provided herein as if that party had not been a party.

10. Assignment. Except as otherwise provided in this Agreement, the rights and duties of the parties to this Agreement may not be assigned or delegated without the written consent of all other

parties. Any attempt to assign or delegate such rights or duties in contravention of this 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 parties then in effect. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the parties hereto. The CVC Contractors specifically acknowledge that some or all of them may from time to time assign their rights under their existing CVP water supply contracts to third parties, either as a temporary assignment or transfer, or as a permanent assignment. In such event the assigning party shall remain bound by the terms of this Agreement unless and until the assigning party has obtained a consent to the assignment of this Agreement to the assignee of the underlying contract, in which case the assignee shall be deemed to be a party to this agreement in the place of the assigning party

11. Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall constitute an original. All such counterparts shall together form one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

LOWER TULE RIVER IRRIGATION DISTRICT

By: _____

PIXLEY IRRIGATION DISTRICT

By: _____

HILLS VALLEY IRRIGATION DISTRICT

By: _____

TRI-VALLEY WATER DISTRICT

By: _____

KERN-TULARE WATER DISTRICT

By: _____

COUNTY OF FRESNO

By: _____

COUNTY OF TULARE

Approved as to form
County Counsel Matter ID 20101844

By: _____

Chairman

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By Alex P. Silva
Deputy 3/10/2010

By: _____

