



Folsom City Council Staff Report

MEETING DATE:	6/14/2021
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 10863 – A Resolution Authorizing the City Manager to Execute a Regional Water Authority Biological Opinion Services and Support Program Agreement and Appropriation of Funds
FROM:	Environmental and Water Resources Department

RECOMMENDATION / CITY COUNCIL ACTION

The Environmental and Water Resources Department recommends the City Council pass and adopt Resolution No. 10863 - A Resolution Authorizing the City Manager to Execute a Regional Water Authority Biological Opinion Services and Support Program Agreement and Appropriation of Funds.

BACKGROUND / ISSUE

In September 2021, the Bureau of Reclamation (Reclamation) indicated its intent to engage in the reinitiation of consultation on the coordinated long-term operation (ROC on LTO) of the Central Valley Project (CVP) and the State Water Project, pursuant to the federal Endangered Species Act (ESA). Under the ESA, reinitiation requires the federal agencies to take an updated look at the current and best available science and develop a new Biological Opinion (BiOp) based on the best available data. This effort will result in the development of an Environmental Impact Statement (EIS) and Record of Decision (ROD) pursuant to the National Environmental Policy Act (NEPA), as well as a Biological Assessment (BA) that will support BiOps issued by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS).

Reclamation has indicated that it will complete a “proposed action,” the main project description for evaluation in a BiOp, by the end of 2022. In order for Reclamation to meet this deadline, a description of the proposed action will be needed by June 2022, which will then be

technically evaluated until September 2022. Reclamation will then submit an initial draft proposed action to NMFS and USFWS and will have some additional exchange of technical information and refinement until December 2022.

The American River Division of the Central Valley Project (CVP) had actions that were incorporated into the 2019 BiOps and included important measures such as the Modified Flow Management Standard and temperature management criteria. It is anticipated the federal agencies will need to reevaluate all elements of the prior BiOps, including those on the American River, as well as new or modified operations that were not included in the 2019 BiOps.

POLICY / RULE

In accordance with Chapter 2.36 of the Folsom Municipal Code, supplies, equipment, services, and construction with a value of \$66,141 or greater shall be awarded by City Council.

ANALYSIS

As part of the development of the BA and the BiOps, the Water Infrastructure Improvements for the Nation (WIIN) Act provides that water providers who contract for the delivery of water with Reclamation be included in the development of a new BiOp. This engagement also includes other enforceable arrangements, such as settlement agreements, with Reclamation for the delivery of water. This includes:

- Having the opportunity to submit to and discuss information with U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) for consideration in the development of a biological assessment
- Be informed of the schedule for preparing a biological assessment
- Be informed of the schedule for preparing a BiOp
- Receive a copy of any draft BiOp and have an opportunity to review and comment on the BiOp
- Having the opportunity to confer with USFWS or NOAA and the applicant about any reasonable and prudent alternatives (RPAs) prior to them being identified
- Be informed of how each component of the RPAs will contribute to conserving species and the scientific justification supporting the RPAs. Further, be informed as to why other proposed alternative actions that would have fewer adverse economic and water supply effects were not adequate as an RPA.

It is anticipated that, given current stress CVP-wide due to extended drought conditions and a changing climate, there will be enhanced pressure upon the American River Division, and specifically Folsom Reservoir, to be a key source of water to balance needs across an expansive water supply system. Thus, it will be critical for water providers in the American River Division to be alert to, and be ready to counter, any modifications that may occur in association with the development of new BiOps that could cause water supply or fisheries-related impacts to Folsom Reservoir or the American River. It will be critical for the region to have qualified

technical resources with the capability to provide hydrologic modeling and temperature modeling; analysis and synthesis of data; and qualified resources for timely and efficient program management.

The most effective way to coordinate regionally on the BiOps is to pool resources in the American River Division by having water providers who contract with Reclamation for the delivery of water engage in a subscription program to fund technical and program management support. The Biological Opinion Services and Support (BOSS) program would provide funding to legal support staff, who would contract with needed technical resources. Further, the agreement would fund the Regional Water Authority (RWA) Manager of Strategic Affairs for program management of the BiOps for the region. Estimating nine program participants, the total cost per entity would be \$95,750.

The RWA and the Participants desire to work collaboratively to ensure that information provided in support of the American River region's operations are carried out by qualified technical support staff and that all interests from Participants are reflected through a coordinated effort, called the Biological Opinion Services and Support (BOSS) Program ("Program"). The Program will provide the following:

- A coordinated effort to timely respond to information requests from Participants, Reclamation, or other interested parties.
- Consolidation and rectification of Participant comments on key documents used to support the BiOps.
- Attendance at meetings related to the development of regulatory documents to support the BiOps and forthcoming ROD.
- Preparation and facilitation of correspondence to appropriate parties.
- Conducting modeling for hydrologic, habitat, and temperature conditions.
- Analysis and synthesis of technical work.
- Establishment and implementation of a water provider technical team (WPTT) to review and discuss results from various analyses.
- Advocacy of American River water provider needs with Reclamation, California Department of Water Resources, USFWS, NMFS, California Department of Fish and Wildlife, or other entities to ensure local interests are being represented.
- Ensuring activities occurring outside of the watershed are considered and impacts to the American River watershed are disclosed appropriately.
- Legal support services as needed.

FINANCIAL IMPACT

The City's cost share for the Biological Opinion Services and Support Program is \$95,750. This program was not anticipated to be included in the FY 2021-22 Water Operating Fund Budget. Staff is requesting an appropriation of \$95,750 to be appropriated in the Water

Operating Fund (Fund 520) in Fiscal Year 2021-22 for participation in this program. Funds are available in the Water Operating Fund for this appropriation.

ENVIRONMENTAL REVIEW

Execution of this agreement is not considered a project and therefore not subject to CEQA.

ATTACHMENTS

1. Resolution No. 10863 - A Resolution Authorizing the City Manager to Execute a Regional Water Authority Biological Opinion Services and Support Program Agreement and Appropriation of Funds
2. Regional Water Authority Biological Opinion Services and Support Program Agreement
3. Common Interest and Cost-Share Agreement for Coordinated Participation: Reconsultation on the Biological Opinion for the Central Valley Project and Related Matters

Submitted,

Marcus Yasutake, Director
ENVIRONMENTAL AND WATER RESOURCES DEPARTMENT

ATTACHMENT 1

RESOLUTION NO. 10863

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A REGIONAL WATER AUTHORITY BIOLOGICAL OPINION SERVICES AND SUPPORT PROGRAM AGREEMENT AND APPROPRIATION OF FUNDS

WHEREAS, the City is part of the American River Division of the Central Valley Project (CVP) and holds a contract for the delivery of water from the CVP; and

WHEREAS, the American River CVP Contractors are public water agencies who desire to cooperate, coordinate efforts and share costs in order to collectively participate in the reconsultation of the Biological Opinion for the Coordinated Long-term Operation of the Central Valley Project and the State Water Project; and

WHEREAS, the Regional Water Authority has established the Biological Opinion Services and Support (BOSS) Program pursuant to which individual RWA members can agree to pay certain sums in return for RWA providing certain project services; and

WHEREAS, an additional appropriation of funds in the amount of \$95,750 is needed for this agreement and sufficient funds are available in the Water Operating Fund (Fund 520) in Fiscal Year 2021-22 for this appropriation; and

WHEREAS, the agreement will be in a form acceptable to the City Attorney:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom Authorizes the City Manager City Manager to Execute a Regional Water Authority Biological Opinion Services and Support Program Agreement for a not to exceed fee of \$95,750.

BE IT FURTHER RESOLVED that the Finance Director is authorized to appropriate \$95,750 for this agreement. The additional appropriation will be from the Water Operating Fund (Fund 520) in the amount of \$95,750.

PASSED AND ADOPTED this 14th day of June 2022, by the following roll-call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Kerri M. Howell, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2

**REGIONAL WATER AUTHORITY
PROGRAM AGREEMENT**

BIOLOGICAL OPIONION SERVICES AND SUPPORT

This Agreement is made and entered into as of the ___th day of _____, 20___, by and between the Regional Water Authority (“RWA”), a joint exercise of powers authority formed under California Government Code section 6500, and following, and the Members and Contracting Entities of RWA listed in Exhibit 1 to this Agreement, upon their execution of this Agreement (who are collectively referred to in this Agreement as “Participants”), to provide for carrying out a project or program that is within the authorized purposes of RWA, and sharing in the cost and benefits by the Participants.

RECITALS

A. RWA is a joint powers authority, formed to serve and represent regional water supply interests and to assist its members in protecting and enhancing the reliability, availability, affordability and quality of water resources.

B. The joint powers agreement (“RWA JPA”) pursuant to which RWA was formed and operates, and as was amended on October 8, 2013, authorizes RWA to enter into a “Project or Program Agreement,” which is defined in the RWA JPA as an agreement between RWA and two or more of its Members or Contracting Entities to provide for carrying out a project or program that is within the authorized purposes of RWA and sharing in the cost and benefits by the parties to the Project or Program Agreement.

C. Article 21 of the RWA JPA states: “The Regional Authority’s projects are intended to facilitate and coordinate the development, design, construction, rehabilitation, acquisition or financing of water-related facilities (including sharing in the cost of federal, State or local projects) on behalf of Members and/or Contracting Entities. The Regional Authority may undertake the development, design, construction, rehabilitation, acquisition or funding of all or any portion of such projects on behalf of Members and/or Contracting Entities in the manner and to the extent authorized by such Members and/or Contracting Entities as provided in this Agreement, but shall not accomplish these functions, nor acquire or own water-related facilities in its own name.”

D. Article 22 of the RWA JPA states: “Prior to undertaking a project or program, the Members and/or Contracting Entities who elect to participate in a project or program shall enter into a Project or Program Agreement. Thereafter, all assets, benefits and obligations attributable to the project shall be assets, benefits and obligations of those Members and/or Contracting Entities that have entered into the Project or Program Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Regional Authority in regard to a particular project or program, including startup costs advanced by the Regional Authority, shall be obligations of the participating Members and/or Contracting Entities, and shall not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed the Project or Program Agreement.”

E. RWA and the Participants desire to carry out a program as more fully described below and share in the costs and benefits of the program, as a Project or Program Agreement as provided for in Articles 21 and 22 of the RWA JPA.

F. The Bureau of Reclamation, responsible for the operation of Central Valley Project (CVP) facilities, such as Folsom Reservoir on the American River, has started the reinitiation of consultation on the coordinate long-term operation (ROC on LTO) of the CVP and the State Water Project, pursuant to the federal Endangered Species Act. This effort will result in the development of an Environmental Impact Statement (EIS) and Record of Decision (ROD) pursuant to the National Environmental Policy Act (NEPA), as well as a Biological Assessment (BA) that will support Biological Opinions (BiOps) issued by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service.

G. As part of the development of the BA and the BiOps, the Water Infrastructure Improvements for the Nation (WIIN) Act provides that water providers who contract for the delivery of water with Reclamation be included in the development of a new BiOp. This engagement also includes other enforceable arrangements, such as settlement agreements, with Reclamation for the delivery of water. This includes:

- Having the opportunity to submit to and discuss information with U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) for consideration in the development of a biological assessment;
- Be informed of the schedule for preparing a biological assessment;
- Be informed of the schedule for preparing a BiOp;
- Receive a copy of any draft BiOp and have an opportunity to review and comment on the BiOp;
- Having the opportunity to confer with USFWS or NOAA and the applicant about any reasonable and prudent alternatives (RPAs) prior to them being identified; and,
- Be informed of how each component of the RPAs will contribute to conserving species and the scientific justification supporting the RPAs. Further, be informed as to why other proposed alternative actions that would have fewer adverse economic and water supply effects were not adequate as an RPA.

H. Participants to this Program all contract or have agreements for the delivery of water with Reclamation and have a vested need to ensure that their interests are protected throughout the BiOp development process.

In consideration of the promises, terms, conditions and covenants contained herein, the parties to this Agreement hereby agree as follows:

- 1. Recitals Incorporated.** The foregoing recitals are hereby incorporated by reference.
- 2. Defined Terms.** Terms defined in the RWA JPA will have the same meaning in this Agreement.

3. Description of the Program. The RWA and the Participants desire to work collaboratively to ensure that information provided in support of the American River region's operations are carried out by qualified technical support staff and that all interests from Participants are reflected through a coordinated effort, called the Biological Opinion Services and Support (BOSS) Program ("Program"). The Program will provide the following:

- A coordinated effort to timely respond to information requests from Participants, Reclamation, or other interested parties.
- Consolidation and rectification of Participant comments on key documents used to support the BiOps, including: white papers, technical documentation, development of alternatives, development of a Proposed Action (PA) for the BA, coordination of EIS scoping comments, Draft and Final EIS comments, the Draft BiOps, etc.
- Attendance at meetings related to the development of regulatory documents to support the BiOps and forthcoming ROD.
- Preparation and facilitation of correspondence to appropriate parties.
- Conducting modeling for hydrologic, habitat, and temperature conditions.
- Analysis and synthesis of technical work.
- Establishment and implementation of a water provider technical team (WPTT) to review and discuss results from various analyses.
- Coordination between the WPTT and the Water Forum to disseminate information, as needed, and ensure a common understanding of any necessary information.
- Advocacy of American River water provider needs with Reclamation, California Department of Water Resources, USFWS, NMFS, California Department of Fish and Wildlife, or other entities to ensure local interests are being represented.
- Ensuring activities occurring outside of the watershed, such as those in-Delta or in other CVP divisions, are considered and impacts to the American River watershed are disclosed appropriately.
- Legal support services as needed.

4. Program Committee. The Participants hereby form a Program Committee consisting of one representative (and alternates) designated by each Participant. The Program Committee will meet as necessary from time to time to administer and implement this Agreement on behalf of the Participants. The Program Committee will appoint a Chair and Vice-Chair from among its members. A majority of the total members of the Program Committee will constitute a quorum. Each member of the Program Committee will have one vote, either by its representative or an alternate. To proceed with a vote to take action, a quorum must be present at a meeting, with a majority of the number present required for an affirmative vote. In no event shall the composition of the Program Committee be such that the membership of the Program Committee constitutes a quorum of any RWA legislative body.

5. Program Staffing and Resources. RWA will utilize existing staff to implement the

program, primarily the Manager of Strategic Affairs.

6. Work Products. Participants shall have full access to the work products of the Program, which will be provided upon execution of each member agency of a nondisclosure agreement.

7. Sharing in Program Costs and Benefits. The assessments for each Participant are further described and attached hereto as Exhibit 2 (“Financing Plan”). Each of the Participants shall pay the assessments set forth on Exhibit 2 at the time of entering the Program and pay such other assessments as are adopted by the Program Committee. In accordance with the provisions of Articles 21 and 22 of the RWA JPA, any debts, liabilities, obligations or indebtedness incurred by RWA in regard to the Program will be the obligations of the Participants, and will not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed this Agreement. The total cost for the Program is estimated as \$861,750. The breakdown of these costs is to be as follows:

- Approximately 45% of RWA staff time over the next year with overhead and expenses, beginning at the time of execution of this Agreement: \$141,750.
- Costs for technical consultants, with contracts to be executed by Bartkiewicz, Kronick, and Shanahan and Placer County Water Agency General Counsel: \$700,000.
- Legal support services provided by Bartkiewicz, Kronick, and Shanahan for needed legal review and support: \$20,000.

Future costs and allocations will be determined through a Work Plan approved by the Program Committee.

8. Role of RWA. The RWA will (a) ensure that the interests of Members and Contracting Entities of RWA who do not participate in this Program are not adversely affected in performing this Agreement, (b) provide information to the Participants on the status of implementation of the Program, (c) assist the Program Committee in carrying out its activities under this Agreement, (d) secure consultant support services through a competitive selection process as identified in RWA Policy 300.2, where applicable; and (e) manage consultant support services in completion of the Program.

9. Authorization to Proceed with the Program. The Biological Opinion Support and Services Program is authorized to proceed upon the commitment of \$850,000 to fund staff and technical consulting work. Upon execution of this Agreement, the Participants agree to fund their portion of the Program costs in an amount and manner as described in Exhibit 3 (“Financing Plan”) to this Agreement.

10. Term. This Agreement will remain in effect for so long as any obligations under this Agreement and/or obligations from other sources of funding secured remain outstanding.

11. Withdrawal. A Participant may withdraw from this Agreement without requiring termination of this Agreement, effective upon ninety days’ notice to RWA and the other Participants,

provided that, the withdrawing Participant will remain responsible for any indebtedness incurred by the Program and allocated to the Participant under this Agreement prior to the effective date of withdrawal. If any surplus funds remain after the withdrawing Participant has met all of its financial obligations under this Agreement, then such funds will be returned to the withdrawing Participant in proportion to the total contribution made by each Participant.

12. Amendments. This Agreement may be amended from time to time with the approval of all current Participants and RWA.

13. Unspent Funds. In the event that RWA has remaining funds left at the conclusion of the work completed through agreements with BKS and Placer County Water Agency, then those funds shall be distributed back equally to BOSS Participants.

14. Privileges and Immunities. All of the privileges and immunities from liability; exemptions from laws, ordinances and rules; and all pension, relief, disability, worker's compensation and other benefits that apply to the activity of officers, agents or employees of RWA or the Participants when performing their respective functions for those agencies will, to the extent permitted by law, apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. It is further understood and agreed by RWA and the Participants that, notwithstanding anything contained herein, the employees of RWA and of each Participant shall continue to be entirely and exclusively under the direction, supervision and control of the employing party.

15. No Third-Party Beneficiary. RWA and the Participants understand and agree that this Agreement creates rights and obligations solely between RWA and the Participants and is not intended to benefit any other party. No provision of this Agreement shall in any way inure to the benefit of any third person so as to constitute any such third person as a third-party beneficiary of this Agreement or any of its items of conditions, or otherwise give rise to any cause of action in any person not a party hereto.

16. Liabilities. With respect to this Agreement, RWA and the Participants expressly agree that the debts, liabilities and obligations of RWA and of each Participant shall remain the debts, liabilities and obligations of that party alone and shall not be the debts, liabilities and obligations of any other party to this Agreement, except as may be otherwise set forth herein or in an amendment to this Agreement.

17. Audits and Accounting. All funds provided under this Agreement shall be separately accounted for and maintained, with books and records of such funding open to inspection by the Participants. Funding under this Agreement shall be subject to and consistent with the audit and accounting procedures set forth in Articles 27 and 28 of the RWA JPA.

18. General Provisions. Any notice to be given under this Agreement shall be made by: (a) depositing in any United States Post Office, postage prepaid, and shall be deemed received at the expiration of 72 hours after its deposit; (b) transmission by facsimile copy; (c) transmission by electronic mail; or (d) personal delivery. This Agreement shall be governed by the laws of the State of California. The contact information for each Participant with respect to this section of the

Agreement is set forth in Exhibit 3 (“Notice Information”). This Agreement may be executed by the parties in counterpart and by facsimile or PDF signatures, each of which when executed and delivered shall be an original and all of which together will constitute one and the same document.

19. Signatories’ Authority. The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the Participant on whose behalf they execute it.

The foregoing Biological Opinion Services and Support Agreement is hereby agreed to by RWA and the Participants.

Dated: , 2022

Jim Peifer
Executive Director
Regional Water Authority

Dan York
Board Chair
Regional Water Authority

Marcus Yasutake
City of Folsom

Andy Fecko
Placer County Water Agency

Sean Bigley
City of Roseville

Michael Peterson
Sacramento County Water Agency

Bill Busath
City of Sacramento

Ansel Lundberg
Sacramento Municipal Utility District

Jim Abercrombie
El Dorado Irrigation District

Dan York
Sacramento Suburban Water District

Ken Payne
El Dorado Water Agency

List of Agreement Exhibits

Exhibit 1 – Program Participants

Exhibit 2 – Financing Plan

Exhibit 3 – Notice Information

EXHIBIT 1

PROGRAM PARTICIPANTS

REGIONAL WATER AUTHORITY

BIOLOGICAL OPINION SERVICES AND SUPPORT PROGRAM

Agency (Proposed)

City of Folsom

City of Roseville

City of Sacramento

El Dorado Irrigation District

El Dorado Water Agency

Placer County Water Agency

Sacramento County Water Agency

Sacramento Municipal Utility District

Sacramento Suburban Water District

EXHIBIT 2

FINANCING PLAN

REGIONAL WATER AUTHORITY

BIOLOGICAL OPINION SERVICES AND SUPPORT PROGRAM

The fee for each Participant is shown in the table below. A Participant's fee will not be increased without the approval of that Participant.

Proposed Fee Table

Agency	Total Fee
City of Folsom	\$95,750
City of Roseville	\$95,750
City of Sacramento	\$95,750
El Dorado Irrigation District	\$95,750
El Dorado Water Agency	\$95,750
Placer County Water Agency	\$95,750
Sacramento County Water Agency	\$95,750
Sacramento Municipal Utility District	\$95,750
Sacramento Suburban Water District	\$95,750
Total	\$861,750

EXHIBIT 3

NOTICE INFORMATION

REGIONAL WATER AUTHORITY

BIOLOGICAL OPINION SERVICES AND SUPPORT PROGRAM

City of Folsom
Attn: Marcus Yasutake
50 Natoma Street
Folsom, CA 95630
Phone: (916) 461-6161
Email: myasutake@folsom.ca.us

City of Roseville
Attn: Sean Bigley
2005 Hilltop Circle
Roseville, CA 95747
Phone: (916) 774-5513
Email: sbigley@roseville.ca.us

City of Sacramento
Attn: Bill Busath
1395 35th Avenue
Sacramento, CA 95822
Phone: (916) 808-1434
Email: bbusath@cityofsacramento.org

El Dorado Irrigation District
Attn: Jim Abercrombie
280 Mosquito Road
Placerville, CA 95667
Phone: (530) 622-4513
Email: jimabercrombie@eid.org

El Dorado Water Agency
Attn: Ken Payne
4330 Golden Center Drive, Suite C
Placerville, CA 95667
Phone: (530) 672-6721
Email: ken.payne@edcgov.us

Placer County Water Agency
Attn: Andy Fecko
144 Ferguson Road
Auburn, CA 95603
Phone: (530) 823-4965
Email: afecko@pcwa.net

Sacramento County Water Agency
Attn: Kerry Schmitz
827 7th Street, Room 301
Sacramento, CA 95814
Phone: (916) 874-4681
Email: schmitzk@SacCounty.NET

Sacramento Suburban Water District
Attn: Dan York
3701 Marconi #100
Sacramento, CA 95821
Phone: (916) 679-3973
Email: dyork@sswd.org

Sacramento Municipal Utility District
Attn: Ansel Lundberg
6301 S Street
Mail Stop A-404
Sacramento, CA 95817-1899
Phone: (916) 732-6919
Email: ansel.lundberg@smud.org

Regional Water Authority
Attn: James Peifer
5620 Birdcage Street, Suite 180
Citrus Heights, CA 95610
Phone: (916) 967-7692
Email: jpeifer@rwah2o.org

ATTACHMENT 3

COMMON INTEREST and COST-SHARE AGREEMENT
for COORDINATED PARTICIPATION:
RECONSULTATION ON THE BIOLOGICAL OPINION FOR THE
CENTRAL VALLEY PROJECT AND RELATED MATTERS

This Common Interest and Cost-Share Agreement (Agreement) is entered into by and among the City of Folsom, City of Roseville, City of Sacramento, El Dorado Irrigation District, El Dorado Water Agency, Placer County Water Agency, Regional Water Authority, Sacramento County Water Agency, Sacramento Suburban Water District, and Sacramento Municipal Utilities District and made effective on the date the last of the aforementioned parties signs this Agreement.

RECITALS

A. The City of Folsom, City of Roseville, City of Sacramento, El Dorado Irrigation District, El Dorado Water Agency, Placer County Water Agency, Sacramento County Water Agency, Sacramento Suburban Water District, and the Sacramento Municipal Utilities District (collectively the “American River CVP Contractors”) are public agencies who hold contracts for the delivery of water from the Central Valley Project (CVP) and who desire to cooperate, coordinate efforts and share costs in order to collectively participate in the reconsultation of the Biological Opinion for the Coordinated Long-term Operation of the Central Valley Project and the State Water Project under Section 7 of the Endangered Species Act (BiOp). The Parties desire to provide the technical basis to enable their counsel to provide informed legal advice to the respective Parties and to enable the Parties to identify and pursue appropriate approaches to protect American River water supplies and interests of the American River CVP Contractors, by jointly pursuing technical work to, among other things, provide comments as part of the BiOp reconsultation and otherwise participate in the BiOp reconsultation process. The Parties share a common interest in achieving all of the above.

B. The Regional Water Authority (“RWA”) is a joint powers authority formed for the purposes, among others, of serving and representing American River regional water supply interests in protecting and enhancing the reliability, availability, affordability, and quality of water resources in the American River region.

C. Through this Agreement, the American River CVP Contractors and RWA desire to: (i) acknowledge and affirm their common interest to cooperate and coordinate efforts

to protect American River water supplies and other common interests as part of the BiOp reconsultation process; (ii) establish cost-sharing arrangements for related consultant work and expenses; and (iii) provide for the management of the cooperative and coordinated effort contemplated by this Agreement.

D. The American River CVP Contractors and RWA desire, based on their common interests, to cooperate, coordinate, and share information related to the BiOp reconsultation process, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the American River CVP Contractors and RWA agree as follows:

1. Management of Coordinated Effort. The American River CVP Contractors desire to have RWA serve as the project manager for this coordinated effort. RWA agrees to act as the project manager for this coordinated effort, provided that RWA is reimbursed for its cost in acting as project manager. All costs for RWA's role as project manager will be funded through RWA's Biological Opinion Services and Support (BOSS) Program. As provided in Paragraph 2(a), all American River CVP Contractors participating in this coordinated effort must also be a party to Biological Opinion Services and Support (BOSS) Program Agreement.

2. Cost-Sharing.

(a) Cost Sharing for RWA's Project Management Services. RWA has established the Biological Opinion Services and Support (BOSS) Program pursuant to which individual RWA members can agree to pay certain sums in return for RWA providing certain project services. At all times that an American River CVP Contractor is participating in the coordinated efforts contemplated by this Agreement, that American River CVP Contractor shall also be a party to the Biological Opinion Services and Support (BOSS) Program Agreement. In the event an American River CVP Contractor fails or ceases to be a party to the Biological Opinion Services and Support (BOSS) Program Agreement, that American River

CVP Contractor will be deemed to have withdrawn from this Agreement pursuant to Paragraph 5.

(b) Cost Sharing for Consultant Work. The American River CVP Contractors desire to share in the costs of consultant work that will be required as part of the Parties' activities related to the BiOp reconsultation process. The total obligation of the American River CVP Contractors to fund the consultants' work on matters contemplated by this Agreement shall not exceed \$[AMOUNT] without written amendment to this Agreement. The American River CVP Contractors' respective percentage shares of the costs and fees for consultant work under this Agreement are set forth in Exhibit A to this Agreement. RWA shall not be responsible for any consultant costs under this Agreement.

3. Steering Committee: Retention and Direction of Consultants.

(a) Steering Committee. The American River CVP Contractors will each appoint a representative to a Steering Committee, which will make decisions for the American River CVP Contractors concerning work by consultants under this Agreement and provide direction to RWA in managing the coordinated effort. The Steering Committee will also make decisions on matters related to executing strategy and policy matters. The Steering Committee generally will meet at least once a month during this Agreement's term. Unless specifically provided otherwise herein, an affirmative vote by 2/3 of all members of the Steering Committee shall be required for all decisions contemplated by this Agreement. The Steering Committee may vote by e-mail provided that all Steering Committee members are included in the circulation list for those e-mails.

(b) Retention, Direction and Compensation of Consultants. The American River CVP Contractors will jointly authorize one or more of the American River CVP Contractors' legal counsel to retain consultants to perform scopes of work as approved by the Steering Committee, subject to applicable law for the confidentiality and protection of the work performed and work products produced by consultants. Retention of a consultant under this Agreement by an American River CVP Contractor or its counsel will not prevent that consultant from performing work for another American River CVP Contractor or RWA on matters not included in scopes of work authorized under this Agreement. The American River CVP Contractors, and not their legal counsel, collectively will be responsible for compensating

consultants retained under this Agreement according to their respective shares as set forth in Exhibit A.

(c) Management of Consultants' Work. RWA will manage all work by consultants under the direction of the Steering Committee. RWA will ensure that its communications with consultants comply with this Agreement's confidentiality arrangements. Provided that RWA's manager of the Biological Opinion Services and Support (BOSS) Program and all American River CVP Contractors' legal counsel are included on the relevant communications, Steering Committee members may have direct contact with consultants and consultants may circulate information and drafts directly to Steering Committee members.

4. Cost-Sharing Upon Addition of Parties. A new American River CVP Contractor may be added to this Agreement with: (i) approval by all members of the Steering Committee, and (ii) a written commitment by the new American River CVP Contractor to pay its proportionate share of all of the consultants' costs and fees incurred for the applicable scope or scopes of work by consultants, including work already performed under the applicable scope or scopes of work. Upon the addition of a new American River CVP Contractor to the Agreement, that new American River CVP Contractor's share, and the shares of the pre-existing American River CVP Contractors, of any costs and fees incurred in relation to the applicable scope or scopes of work will be as determined by the Steering Committee prior to the new American River CVP Contractor's admission into this Agreement.

5. Withdrawal, Removal, and Cost-Sharing.

(a) Withdrawal. Any American River CVP Contractor may withdraw from this Agreement at any time; provided, however, in the event that an American River CVP Contractor withdraws after the Steering Committee has authorized consultants to proceed with certain scopes of work and related task orders, the withdrawing American River CVP Contractor shall remain obligated for payment of its proportionate share of the costs for such authorized work completed as of the date of the American River CVP Contractor's withdrawal. Written notice of withdrawal shall be sent to all members of the Steering Committee. A withdrawing American River CVP Contractor shall not receive any Joint Defense Materials (as defined in Section 8) produced after the date of its written notice of withdrawal, whether or not those Joint Defense Materials reflect consultant work performed before the date of that written notice of withdrawal.

(b) Removal. An American River CVP Contractor may be removed from this Agreement at any time by a three-fourths (3/4) vote of the remaining American River CVP Contractors; provided, however, in the event that an American River CVP Contractor is removed from this Agreement after the Steering Committee has authorized consultants to proceed with certain scopes of work and related task orders, the removed American River CVP Contractor shall remain obligated for payment of its proportionate share of the costs for such authorized work completed as of the date of the American River CVP Contractor's removal. A removed American River CVP Contractor shall not receive any Joint Defense Materials (as defined in Section 8) produced after the date of its removal, whether or not those Joint Defense Materials reflect consultant work performed before the date of that removal.

6. Term. This Agreement shall remain in effect until either of the following events occurs: (a) a majority of the Parties withdraw from the Agreement; or (b) the Steering Committee votes, by a two-thirds majority, to terminate this Agreement.

7. Billing Procedures. For all approved scopes of work by consultants under this Agreement, RWA will have the responsibility for collecting and managing each American River CVP Contractor's contribution of funds to pay for that work; processing invoices submitted by the consultants pursuant to the approved scopes of work and budgets; preparing invoices to the American River CVP Contractors based on the shares specified in Exhibit A or any future cost-sharing allocation approved by the American River CVP Contractors; and for maintaining an accurate accounting of this administration of funds. The American River CVP Contractors will make payments on invoices presented by RWA within 30 days of the date of the specific invoice.

8. Privileged and Confidential Communications.

(a) For purposes of this Agreement, "Joint Defense Materials" includes, but is not limited to, all communications (including communications related to the above-referenced proceedings made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine joint prosecution/defense doctrine, privileges regarding

mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the American River CVP Contractors, RWA, and/or their respective counsel in connection with their cooperative efforts related to the matters described in this Agreement's recitals.

(b) The American River CVP Contractors and RWA will maintain as confidential all Joint Defense Materials. Disclosure of Joint Defense Materials shall be limited to the American River CVP Contractors and their employees and contractors as well as any counsel and consultants retained by the American River CVP Contractors, or on behalf of the American River CVP Contractors, for the purpose of maintaining a joint defense with respect to the matters described in this Agreement's recitals. RWA, as a public entity separate from its members, shall maintain as confidential all Joint Defense Materials within RWA as a separate public entity. Joint Defense Materials shall not be made available to RWA members that are not party to this Agreement.

(c) Any Joint Defense Materials shared or transmitted by or between American River CVP Contractors and/or RWA should be clearly designated with the label "CONFIDENTIAL: JOINT DEFENSE MATERIALS" or a substantially similar label referencing "joint defense." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement, and shall not be construed to constitute a waiver of any privilege or other protection.

(d) Each American River CVP Contractor and RWA shall take all appropriate measures to ensure that any person who is granted access to Joint Defense Materials is familiar with the terms of this Agreement and complies with those terms.

(e) Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining American River CVP Contractors, neither an American River CVP Contractor nor RWA will disclose to non-Parties any Joint Defense Materials that it has received from another American River CVP Contractor or RWA.

(f) Each American River CVP Contractor and/or RWA shall notify the party that generated any Joint Defense Materials and all remaining American River CVP Contractors of any request to disclose the Joint Defense Materials to any non-Party (whether pursuant to the California Public Records Act or other authority), or of any proceeding before any court,

administrative agency, or tribunal to compel the disclosure of such Joint Defense Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If an American River CVP Contractor or RWA becomes subject to any judicial or administrative order to compel release of Joint Defense Materials, that American River CVP Contractor or RWA shall promptly notify the party that generated the materials and all remaining American River CVP Contractors. The purpose of these notifications is to provide the party that generated the Joint Defense Materials or any remaining American River CVP Contractor an opportunity to take such steps as they may deem appropriate to protect the Joint Defense Materials.

(g) The sharing of Joint Defense Materials among the American River CVP Contractors and/or RWA is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

(h) Execution of this Agreement constitutes the mutual agreement of the American River CVP Contractors and RWA that any sharing of Joint Defense Materials among themselves is, pursuant to Evidence Code section 912, subdivision (d), and other applicable authorities, reasonably necessary for the accomplishment of the American River CVP Contractors' and RWA's common purposes as described in this Agreement. Any sharing of Joint Defense Materials among the American River CVP Contractors and/or RWA is in reliance on this Agreement and the protections that arise from the parties' common interests related to the matters described in Recital B to this Agreement.

(i) If an American River CVP Contractor or RWA withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Defense Materials that the party received or sent during the time period when that party was a party to this Agreement, including without limitation the duty to maintain those materials' confidentiality under Section 8(b).

(j) If this Agreement is terminated for any reason, the Joint Defense Materials shared pursuant to this Agreement shall remain subject to all privileges cited herein and any other applicable confidentiality protections.

9. Attorney-Client Relationships. The American River CVP Contractors and RWA are represented by their respective legal counsel in connection with the above-referenced proceedings. A party's legal counsel will not have an attorney-client relationship with any other party to this Agreement as a result of that legal counsel's participation in discussions and actions related to the parties' cooperative efforts on the above-described proceedings. Similarly, no legal counsel will have a duty of loyalty or confidentiality to any other American River CVP Contractor or RWA other than that legal counsel's specific client(s), and consequently, no American River CVP Contractor may seek to disqualify the legal counsel for another American River CVP Contractor as a result of the legal counsel's participation in discussions and actions related to the parties' cooperative efforts under this Agreement.

10. Representations. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

11. Entire Agreement. This Agreement and any later-approved amendments or exhibits constitute the entire agreement of the parties with respect to the subject matter of this Agreement and supersede any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original irrespective of the date of the execution, and said executed counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement. To ensure that each party has a full copy of this Agreement, upon a party's initial execution of this Agreement, that party shall transmit a copy of its signature to its legal counsel, who shall transmit copies of that copy to all other legal counsel under this Agreement.

13. Notices. All notices and other communications required to be given to a party under the terms of this Agreement (a) shall be in writing; (b) shall be personally delivered, sent via first class mail, or transmitted by facsimile or email with confirmation of receipt; and (c) shall be directed to such party at the address, facsimile number or email address specified

below, or at such other address, facsimile number or email address as such party may hereafter designate by notice in accordance with this Section.

IN WITNESS WHEREOF, the Parties hereto have executed this Common Interest and Cost-Share Agreement for Coordinated Participation: Reconsultation on Biological Opinion for the Central Valley Project and Related Matters.

EXHIBIT A
Cost Allocation

American River CVP Contractor	Percent
City of Folsom	11.11%
City of Roseville	11.11%
City of Sacramento	11.11%
El Dorado Irrigation District	11.11%
El Dorado Water Agency	11.11%
Placer County Water Agency	11.11%
Sacramento County Water Agency	11.11%
Sacramento Suburban Water District	11.11%
Sacramento Municipal Utilities District	11.11%

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