

**AGREEMENT
FOR
DELIVERY OF WATER:
THE FREEPORT AUTHORITY INTAKE AND PIPELINE**

THIS AGREEMENT is made and entered into this 9th day of November, 2006 by and between the **FREEPORT REGIONAL WATER AUTHORITY**, hereinafter called "FRWA, the **EAST BAY MUNICIPAL UTILITY**, a municipal utility district organized under California's Municipal Utility District Act of 1921, hereinafter called "EBMUD," and the **SACRAMENTO COUNTY WATER AGENCY**, a statutorily created district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (West's, California Water Code-Appendix, Chapter 66, commencing at Section 66-1 et seq.), hereinafter called "SCWA," individually called "a Party" and collectively called "the Parties" with reference to the following facts:

RECITALS

A. FRWA is a joint powers agency created by virtue of a joint powers agreement between EBMUD and SCWA ("JPA") that became effective on February 14, 2002 and was amended on November 26, 2002 ("First Amended JPA"); and

B. The purpose of the JPA is to provide the legal mechanism under which FRWA would conduct environmental documentation for, and then, if approved, design, finance, construct, and operate the Freeport Regional Water Project ("FRWP") for the benefit of EBMUD and SCWA, its Members; and

C. EBMUD and SCWA made and entered into the Second Amended Joint Powers Agreement Concerning the Freeport Regional Water Authority (the "Second Amended JPA"), which superseded the JPA, on _____, 2006, whereby authority is extended to the Executives or their designees for oversight of certain FRWP operations and the responsibilities of FRWA to deliver water to EBMUD and SCWA are further defined; and

D. The FRWP consists of a 185 million gallon per day (MGD)-capacity

intake facility and pumping plant on the Sacramento River ("Intake"), a 185 MGD-capacity pipeline from the Intake to a bifurcation facility ("Bifurcation") in the vicinity of Vineyard and Gerber Roads in Sacramento County ("Joint Pipeline"), a new 100 MGD-capacity surface water treatment plant located in SCWA's Zone 40 (SCWA Water Treatment Plant), ~~an 85 MGD-capacity pipeline from the Bifurcation to the SCWA Water Treatment Plant ("SCWA Extension")~~, a 100 MGD-capacity pipeline from the Bifurcation to the United States Bureau of Reclamation's (USBR) Folsom South Canal ("EBMUD Extension"), and a 100 MGD-capacity pipeline including two pump stations from the terminus of the Folsom South Canal to EBMUD's Mokelumne Aqueducts ("Folsom South Canal Connection"); and

E. The "Joint Facilities," consisting of the Intake, Bifurcation and Joint Pipeline, as further described in Appendix A, will be FRWA-owned and operated facilities; and

F. The Second Amended JPA describes in terms of Dedicated Capacity the FRWP's purpose to provide Member Water to the Members; and

G. The Parties acknowledge that FRWA and SCWA intend to enter into that certain "Agreement For Provision Of Operation And Maintenance Services: The Freeport Authority Intake And Pipeline" (the "Operating Agreement") to operate and maintain the Joint Facilities so that FRWA is able to deliver each Member's Water, up to each Member's Dedicated Capacity, pursuant to Requested and Scheduled Deliveries, to each Member's Point of Delivery consistent with the Second Amended JPA, and as further set forth in this Agreement; and

H. FRWA, EBMUD and SCWA desire to enter into this Agreement on the terms and conditions set forth herein in order to further define FRWA's responsibilities to deliver water to EBMUD and SCWA consistent with the Second Amended JPA.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

Whenever terms listed below are used in this Agreement, the following definitions shall apply and terms defined in the Second Amended JPA which are also used herein are understood by the parties to have the same meaning as therein defined:

1.1 “Bifurcation” means the facility located at a site in the vicinity of the intersection of Vineyard and Gerber Roads that divides the Joint Pipeline into the SCWA Extension and the EBMUD Extension and includes features such as valves, meters, and a surge tank. The Bifurcation is more particularly described in **Appendix A.**

1.2 “Board” means the FRWA Board of Directors.

1.3 “Curtailement” “Curtaile” or, “Curtailed” means reduction by FRWA of a Member’s Requested Deliveries or Scheduled Deliveries.

1.4 “Day-Ahead Notice” means a Member’s request to FRWA, at least 24 hours prior to FRWA implementing a Scheduled Delivery, to alter its Scheduled Delivery.

1.5 “Dedicated Capacity” is defined in the Second Amended JPA and when used herein is understood to have the same meaning..

1.6 “Dispute Requiring Urgent Resolution” means a dispute of such significance, as determined by a Party that the dispute requires expedited resolution.

1.7 “EBMUD Extension” means EBMUD’s 72-inch pipeline from the Bifurcation to the Folsom South Canal.

1.8 “Emergency Operating Condition” means any sustained condition that, threatens the integrity of the Joint Facilities or renders normal operation of the Joint Facilities impossible, unsafe or inadvisable.

1.9 “Executives” or “FRWA Member Executives” means the General Manager of EBMUD and the County Executive of Sacramento County, or the Director of Water Resources for Sacramento County if delegated this responsibility by the County Executive, collectively. An “Executive” means one of the two Executives.

1.10 “Fiscal Year” means July 1 – June 30.

1.11 “Flow Control Station” means the flow control facility at the SCWA Water Treatment Plant. The Flow Control Station is more particularly described in **Appendix A**.

1.12 “Folsom South Canal” means the canal downstream of Folsom Dam on the American River, owned and operated by the United States Bureau of Reclamation (USBR).

1.13 “Folsom South Canal Connection” or “FSCC” means the facilities designed, constructed, owned and operated by EBMUD as part of the FRWP, consisting of the Clay Station Pumping Plant at the lower reach of the Folsom South Canal, the Camanche Pumping Plant, and the pipeline and associated facilities extending from the Folsom South Canal to the junction point with the Mokelumne Aqueduct.

1.14 “Folsom South Canal O&M Plan” means the Plan for Coordinated Operations of the Freeport Regional Water Project and the Folsom South Canal that was submitted to the USBR by EBMUD and approved by the USBR on August 23, 2006, as it may be modified from time to time.

1.15 “Force Majeure” means any circumstance under which the entity having responsibility for the operation and maintenance of the Joint Facilities is prevented from performing its obligations under this Agreement by strikes, riots, fire, severe weather other than droughts, war, acts of God, or any other cause similar to the foregoing which are beyond the reasonable control of the party from whom the affected performance was due.

1.16 “FRWA-City Coordinated Operations Agreement” means the Coordinated Operations Agreement for the Freeport Regional Water Authority Intake Facilities and City of Sacramento Sump 28 Storm Water Pump Station, dated _____, whereby FRWA and the City of Sacramento will coordinate operations to restrict drawing water at the Intake during Sacramento River reverse flow events.

1.17 “FRWA-SRCSD Coordinated Operations Agreement” means the Coordinated Operations Agreement for Freeport Regional Water Authority Intake Facilities and Sacramento Regional County Sanitation District, dated _____, whereby FRWA and the Sacramento Regional County Sanitation District will coordinate operations to restrict drawing water at the Intake during Sacramento River reverse flow events.

1.18 “Hour-Ahead Notice” means a Member’s request to FRWA, at least one hour prior to FRWA implementing a Scheduled Delivery, to alter its Scheduled Delivery.

1.19 “Intake” means the FRWA intake structure and all electrical and mechanical equipment and systems contained in and around it, high voltage switchyard, sedimentation basins, surge tanks, the FRWA site including landscaping, levee modifications, access road, structures and treatment to the riverbank, and the 84-inch diameter pipeline from the Intake structure to the I-5 Freeway junction. The Intake is more particularly described in **Appendix A**.

1.20 “Joint Facilities” means those FRWP elements identified in **Appendix A** under FRWA ownership. The Joint Facilities are also those same FRWP elements identified and defined as “FRWA Facility” or “FRWA Facilities” in the Second Amended JPA, at Attachment A, Section A-1 thereto.

1.21 “Joint Facilities Accounts” means the set of financial accounts developed and used by FRWA for recording costs incurred and payments received for services provided under this Agreement

1.22 “Joint Pipeline” means the 84-inch pipeline between the Intake and the Bifurcation. The Joint Pipeline is more particularly described in **Appendix A**.

1.23 “Key Performance Indicators (KPI)” means the set of predefined measurable outcomes related to operation or maintenance work that can be used to assess previous work results and define targets for future work results.

1.24 “Make-up Water” means a quantity of water delivered by FRWA or its Operating Agent to a Member equal to the quantity of water, including water for third-parties pursuant to Section 4.3 of the Second Amended JPA, not delivered to that Member due to Curtailment. The source(s) of Make-up Water may be (1) with that Member’s concurrence and to the extent available, the Member’s or, as applicable, its third parties’ own contractual source(s) or river diversions using the Member’s or, as applicable, its third parties’ water rights, or (2) other sources available to FRWA or its Operating Agent.

1.25 “Member” or “Members” mean EBMUD and SCWA, individually or collectively.

1.26 “Member’s Point of Delivery” has the same meaning as defined in the Second Amended JPA, to wit: the physical location in the FRWP at which each Member receives its deliveries of Member’s Water and/or water for third parties delivered via the Joint Facilities pursuant to the Second Amended JPA and this Agreement. Each Member’s Point of Delivery is more particularly described in the Second Amended JPA, at Attachment A thereto.

1.27 “Member’s Water” has the same meaning as defined in the Second Amended JPA, to wit: the quantities of water available for withdrawal from the Sacramento River at the Freeport Point of Delivery by that Member for its use

based on its supply contract(s) with third parties (who are not party to Second Amended JPA) or based on its water rights.

1.28 “Operating Agent” means SCWA, or such other company, organization or public agency appointed by FRWA to provide operations and maintenance services for the Joint Facilities.

1.29 “Operations and Maintenance Manual” means the set of electronic and/or hardcopy documents comprising the specifications, descriptions of equipment, practices and procedures to be followed by FRWA and/or its Operating Agent in operating and maintaining the Joint Facilities. Such written practices and procedures in many instances may be general in nature and vary from broad, summary level descriptions of practices to specific, detailed step-by-step procedures for various items of equipment.

1.30 “Requested Deliveries” means the quantities of a Member’s Water, and/or water for third parties pursuant to the Section 4.3 of the Second Amended JPA, requested by the Member for delivery by FRWA via the Joint Facilities.

1.31 “Scheduled Deliveries” means the quantities of a Member’s Requested Deliveries that FRWA schedules pursuant to the Scheduling Protocol.

1.32 “Scheduling Protocol” means the written procedures the Parties use to establish Requested Deliveries and Scheduled Deliveries.

1.33 “SCWA Extension” means SCWA’s 66-inch pipeline from the Bifurcation to the SCWA Water Treatment Plant

1.34 “SCWA Water Treatment Plant” means SCWA’s Zone 40 Central Surface Water Treatment Plant or the “Vineyard Surface Water Treatment Plant.”

1.35 “SMUD Settlement Agreement” means the financial settlement agreement, dated July 30, 2004, that FRWA, EBMUD and SCWA entered into with the Sacramento Municipal Utility District (“SMUD”).

1.36 “Start of Operations” means the date and time announced in writing by the Board or its designated FRWA officer, after final acceptance of all Joint Facilities, upon which water deliveries through Joint Facilities may begin if requested by a Member.

1.37 “Terminal Weir Structure” means the flow measurement weir on the EBMUD Extension at the discharge point into the Folsom South Canal. The Terminal Weir Structure is more particularly described in **Appendix A**.

ARTICLE 2 – APPOINTMENTS

2.1 Appointment of an Operating Agent. FRWA may enter into an agreement with an Operating Agent to provide operations and maintenance services for the Joint Facilities and to carry out the terms and conditions of this Agreement. Despite the presumption throughout this Agreement that FRWA will elect to appoint such an Operating Agent, nothing in this Agreement shall compel FRWA to appoint an Operating Agent and FRWA may elect instead to operate and maintain the Joint Facilities using FRWA personnel or other contract resources as yet unidentified.

2.2 Oversight of FRWA Operations and Maintenance Services. The Executives or their designees shall, in accordance with its various duties described in the Second Amended JPA, provide oversight of the operations and maintenance services provided by FRWA, including services provided by an Operating Agent appointed pursuant to Section 2.1 above. The Executives or their designees may establish an Operations and Maintenance Committee (OMC), consisting of two representatives from each Member and may delegate authority to the OMC to provide oversight of FRWA operations and maintenance activities. Each Member shall ensure that the duties of its staff supporting the Executives or their designees or the OMC and the duties of its OMC representatives are duties consistent with Section 3.13 of the Second Amended JPA, and that the labor costs and expenses incurred by such OMC representatives and support staff in providing analysis and reports for FRWA operations and maintenance oversight and governance functions shall not be billed to FRWA or to the other Member. The OMC, if so appointed, shall, consistent with the authority delegated to it by the Executives or their designees, reach its recommendations and decisions and undertake its actions by consensus. The OMC, if so appointed, shall report to the Executives or their designees and shall routinely inform the Program Manager of all matters arising out of operation and maintenance of the Joint Facilities that may be of relevance to the Program Manager's responsibilities.

2.3 Appointment of an OMC Chairperson. If the Executives or their designees elect to appoint an OMC pursuant to Section 2.2, the Executives or their designees shall also appoint, every two years for a two-year term, on a rotation basis alternating between an OMC representative from EBMUD and an OMC representative from SCWA, one of the four representatives on the OMC as Chair, provided that the appointee shall be an

EBMUD representative when the rotating Program Manager, pursuant to Section 3.11 of the Second Amended JPA, is an SCWA employee, and vice versa.

ARTICLE 3 – DELIVERY OF MEMBER’S WATER

3.1 In General. FRWA shall use the Joint Facilities to deliver Member’s Water and/or water for third parties up to the Member’s Dedicated Capacity to each Member’s Point of Delivery pursuant to each Member’s Requested Deliveries and Scheduled Deliveries and in accordance with terms and conditions of the Second Amended JPA. FRWA shall not be responsible for ensuring that the quantities of water withdrawn from the Intake to meet Members’ Requested Deliveries or Scheduled Deliveries are in compliance with Member contracts for water supply or water delivery for third parties or are in compliance with Member or third-party water rights. FRWA shall not be required to make deliveries that would violate any operating agreements between FRWA and other public agencies or the requirements of the various regulatory agency permits issued to FRWA for the operation of the FRWP, including, but not limited to, the Biological Opinions issued in 2004 by the U.S. Fish and Wildlife Service and NOAA Fisheries with respect to the Freeport Project, as may be modified by those agencies from time to time, the FRWA-City Coordinated Operations Agreement, the FRWA-SRCSD Coordinated Operations Agreement, and the Folsom South Canal O&M Plan. FRWA’s non-deliveries of water pursuant to such operating agreements or requirements of various regulatory agency permits shall not be Curtailments as defined above and in Section 3.5 hereof.

3.2 Operational Practices. FRWA shall operate the Joint Facilities as specified in the Operations and Maintenance Manual. FRWA shall develop the Operations and Maintenance Manual and incorporate such manual by reference in its contract(s) with Operating Agent(s). To the extent that the Operations and Maintenance Manual does not clearly specify procedures or standards required to operate one or more elements of the Joint Facilities, FRWA shall implement operating procedures and standards consistent with applicable State of California statutes, State of California agency administrative regulations, and generally accepted industry standards.

3.3 Maintenance Practices. FRWA shall carry out maintenance practices according to standards defined in the Operations and Maintenance Manual for all elements of the Joint Facilities and shall implement practices and procedures to ensure a balance, based on Reliability Centered Maintenance (RCM) analysis, between preventative and

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corrective maintenance. RCM analyses shall be performed periodically and used to guide the balance between preventative and corrective maintenance for the Joint Facilities. To the extent that the Operations and Maintenance Manual does not provide specific standards or procedures for maintaining various equipment items, FRWA shall implement maintenance standards and procedures consistent with the maintenance recommendations of the equipment manufacturers.

MEMBER DELIVERY REQUIREMENTS

3.4 Scheduling of Water Deliveries to Members. FRWA shall decide upon Members' Scheduled Deliveries following a Scheduling Protocol intended to meet Members' Requested Deliveries. Prior to Start of Operations, FRWA shall propose and submit for Members' approval a Scheduling Protocol consistent with FRWA's delivery requirements contained in Section 3.1, to meet the water delivery requirements of the Members and the requirements contained in the Folsom South Canal O&M Plan related to the levels and flows in the Folsom South Canal. The Scheduling Protocol shall clearly distinguish between a Member's Requested Deliveries over year-ahead, multi-month, week-ahead, day-ahead or hour-ahead time frames and the Member's Scheduled Deliveries. It is anticipated that the Scheduling Protocol will include weekly telephone conferences between FRWA's operator(s) and each Member-designated scheduling official for scheduling deliveries in the following week. Members may request modification of their Scheduled Deliveries with Day-Ahead Notice or Hour-Ahead Notice and FRWA shall be required to implement such modifications to the extent practicable and consistent with the terms and conditions of the Second Amended JPA and this Agreement. In the event FRWA is notified at any time of a Member's water system malfunction or a problem with operation of the Folsom South Canal, or in the event of an Emergency Operating Condition, FRWA shall modify Member deliveries as requested or as it finds necessary. The Members shall schedule their water deliveries directly with FRWA, and shall be the sole interfaces with FRWA for deliveries to third parties using the Joint Facilities.

PROTOCOL NEEDS TO BE DEVELOPED

3.5 Curtailment of Water Deliveries. Curtailments resulting from a Force Majeure shall be performed in accordance with Section 6.4 of the Second Amended JPA. All other Curtailments shall be subject to the provisions of Section 3.6 ("Remedy for Curtailment") hereof. In the event that FRWA cannot meet, or notifies a Member that it cannot meet, the Member's Requested Deliveries or Scheduled Deliveries for any reason and if the Member's designated scheduling official protests such Curtailments by letter,

fax or email, FRWA shall implement an efficient and timely procedure to resolve such protests, except that under an Emergency Operating Condition FRWA shall, if it deems necessary for the purpose of addressing the issues posed by the Emergency Operating Condition, devote priority attention to the Emergency Operating Condition and resolve such protests only once Emergency Operating Condition is stabilized. Other than under Emergency Operating Conditions, FRWA shall initiate its procedure to resolve such protests within two hours of receiving such protest if Curtailments are planned for the following day and within 48 hours if Curtailments are planned for a week or more ahead. Protests that cannot be resolved in such fashion shall be resolved through the Dispute Resolution process described in Article 11.

3.6 Remedy for Curtailment. If Curtailment occurs due to any cause other than Force Majeure, FRWA shall make best efforts to supply and deliver to a Member who incurred such a Curtailment as soon as possible an equivalent quantity of Make-up Water and shall pay the costs for such supply and delivery in excess of costs the Member and/or, as applicable, third parties pursuant to Section 4.3 of the Second Amended JPA, would otherwise have incurred without the Curtailment. If FRWA is unable, despite its best efforts, to provide such Make-up Water in a time frame acceptable to the Member that incurred the Curtailment, FRWA shall be liable to the Member for any actual damages incurred by the Member and/or third parties that the Member and/or third parties are unable to reasonably mitigate.

3.7 Monitoring of River Low or Reverse Flows and Protecting Water Quality. FRWA shall restrict its withdrawals of water from the Sacramento River, as necessary, during reverse flow events to minimize the withdrawal of water containing admixture of local surface water drainage pumped from the City's surface drainage at Sump 28 and effluent from the Sacramento Regional Wastewater Treatment Plant. FRWA shall monitor Sacramento River flows related to low or reverse flow and shall implement the Intake pump shut-down and start-up procedures described in the FRWA-City Coordinated Operations Agreement related to discharges from the City's surface drainage at Sump 28.

3.8 Telecommunications and SCADA Operations. FRWA shall enable, within the limits of the SCADA hardware and software installed, real-time monitoring by a Member of the measured operating parameters selected by the Member and identified to FRWA. In addition, FRWA shall enable real-time monitoring by the USBR of the operating

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parameters the USBR requires pursuant to the Folsom South Canal O&M Plan and FRWA shall enable real-time input of USBR and Member Agency parameters into the FRWA SCADA system as necessary for operation of the system. To the extent that measurements fail or signals are not received by the monitoring party due to problems with the FRWA measuring equipment or telecommunications systems within FRWA's control, FRWA shall restore such measurements and signals within time frames specified in the Operations and Maintenance Manual based on priority of signals. FRWA shall meet all requirements of the Federal Communications Commission regarding licenses for wireless telecommunications for FRWA SCADA.

3.9 Monitoring of Water Quality and Sediment Load in the Joint Facilities. As defined in the Operations and Maintenance Manual, FRWA shall sample and analyze water quality and sediment load in the Joint Facilities and shall report the results of those analyses quarterly to the Members. To the extent that the California Department of Health Services (DHS), in its specific permitting requirements for FRWA or in its general regulations applicable to FRWA, requires water quality reporting, FRWA shall comply with those requirements and shall and shall provide copies of its DHS water quality submittals to the Members at the same time the reports are sent to DHS. Copies of all DHS reports shall be included in FRWA's quarterly reports to the Executives or their designees. FRWA shall prepare an annual summary report of water quality and sediment load in the Joint Facilities for presentation by the Executives or their designees to the Board.

3.10 Instrumentation and Monitoring of Flows, Levels, Sediment, and Water Quality in the Folsom South Canal. FRWA shall operate and maintain the FRWA SCADA and telecommunications equipment necessary for monitoring water levels and water quality at the Terminal Weir at Grant Line Road as described in the Folsom South Canal O&M Plan. Instrumentation, monitoring and reporting of operations and conditions in the Folsom South Canal by FRWA and EBMUD shall be consistent with the Folsom South Canal O&M Plan, as may be modified, and Section 8 of the SMUD Settlement Agreement ("SMUD Section 8 Water Quality Data"). The division of responsibilities between FRWA and EBMUD for such instrumentation and monitoring, including the cost thereof, shall be as defined in **Appendix J**. FRWA shall submit to the USBR timely reports incorporating quantities diverted for each Member Agency from the Sacramento River and delivered to each Member Agency's Point of Delivery.

3.11 Complying with Permit Conditions and Obtaining Future Permits. FRWA shall comply with regulatory agency permit conditions applicable to operation of the Joint Facilities. FRWA, EBMUD and SCWA shall coordinate their compliance with any permits applicable to both the Joint Facilities and the other components of the FRWP. ~~FRWA shall maintain a consolidated Joint Facilities permit database that includes permit requirements. FRWA shall coordinate with EBMUD as necessary on all permits EBMUD applies for and obtains related to the EBMUD Extension and the Folsom South Canal Connection. FRWA shall coordinate with SCWA as necessary on all permits SCWA applies for and obtains related to the SCWA Extension and the SCWA Water Treatment Plant.~~

3.12 Purchasing and Scheduling of Electric Power. If, instead of accepting SMUD's standard rate schedules applicable to power supply for the Intake, more favorable terms and conditions, especially lower cost, can be achieved by negotiating a power supply agreement with SMUD or another power supplier, FRWA shall seek to negotiate such a power supply contract. FRWA shall also seek to reach agreement with SMUD on an appropriate power supply rate for start-up testing. If FRWA finds while operating the Joint Facilities that revised or different power purchase arrangements with SMUD or another power supplier are necessary or preferred, FRWA shall, subject to Board approval, negotiate such revised or different power purchase arrangements.

3.13 Performance of Folsom South Canal O&M Plan and SMUD Settlement Agreement Obligations. FRWA and EBMUD shall carry out the duties and responsibilities assigned to each of them with respect to the Folsom South Canal O&M Plan and the SMUD Settlement Agreement as such are defined in **Appendix J** hereto.

3.14 Operations Planning. To facilitate FRWA's development of the annual Operations and Maintenance Plan, the Members shall provide to FRWA, by March 1 of each year, a schedule of monthly Requested Deliveries for the forthcoming Fiscal Year beginning July 1. Such Requested Deliveries shall be the Members' best estimates of water requirements and may be changed at any time based on actual requirements. FRWA shall prepare and submit to the Members, by April 1 of each year, an annual Operations and Maintenance Plan for the forthcoming Fiscal Year. The Operations and Maintenance Plan prepared by FRWA shall, at a minimum, include the following components:

- a. A schedule of diversions at the Intake and deliveries to the Members;
 - b. A schedule of planned maintenance outages that will restrict water deliveries;
 - c. A description of and schedule for planned non-routine significant maintenance tasks;
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- d. Descriptions of required permit applications and status of permit applications with agency approvals pending;
 - e. A description of and schedule for installation of capital upgrade items;
 - f. Proposed Key Performance Indicators (KPIs) or changes to the prior-year approved KPIs;
 - g. A description of specific initiatives to be undertaken to address the KPIs and achievement of the associated targets;
 - h. Plans for addressing the remaining items in the FRWA Mitigation, Monitoring and Reporting Plan (MMRPs), if applicable;
 - i. A description of activities planned with regard to local community relations;
 - j. A description of significant service contracts, or amendments to existing service contracts, required during the Fiscal Year; and
 - k. A description of any other specific issues to be addressed during the Fiscal Year.

The Operations and Maintenance Plan shall be accompanied by a budget request for the forthcoming Fiscal Year, as described in Section 3.18. The Executives or their designees shall review and approve the Operations and Maintenance Plan and develop a summary of it to submit for the Board's information prior to July 1.

3.15 Records of Operations. FRWA shall take measurements and maintain records of all quantities of water pumped from the Sacramento River at the Intake, deliveries of water to Member Points of Delivery, energy usage, quantities of sediment hauled offsite for disposal, water quality, and other operational measures defined in the Operations and Maintenance Manual. The measurements and records must meet all reporting requirements under applicable regulatory agency permits, including Member water rights permits, and shall meet the reporting requirements of Members for their flows pumped from the Sacramento River at the Intake as contained in their water supply agreements

with the USBR and other suppliers. FRWA shall also keep records of its measurements in accordance with the FRWA responsibilities identified in **Appendix J** related to the Folsom South Canal O&M Plan (as may be modified from time to time) as well as in the SMUD Settlement Agreement. Measurements of flows delivered to each Member's Point of Delivery shall be reconciled, as described in **Appendix C**. To the extent feasible, all FRWA records shall be archived for a minimum of 10 years in the FRWA SCADA system database, with backup as defined in the Operations and Maintenance Manual. Summary records of Member monthly diversions and water deliveries through the FRWA Facilities shall also be maintained, as may be further defined by the Executives or their designees, in both paper and electronic files. Records of correspondence and other significant communications with regulatory agencies, local agencies, and members of the public regarding operations of the facilities shall be retained for a minimum of 10 years.

3.16 Annual Reports. FRWA shall submit to the Executives an interim Annual Report, containing data through at least the second quarter of the Fiscal Year, along with its Operations and Maintenance Plan and budget request for the forthcoming Fiscal Year. FRWA shall submit to the Executives or their designees, within 60 days after the end of the Fiscal Year, a final Annual Report, containing full-year financial data. The Annual Report at a minimum shall address the following:

- a. Expenditures relative to approved budget, with breakout of key expenditure categories as defined in Article 5;
- b. Summary of water quantities diverted and delivered at key points in the Joint Facilities system;
- c. Aggregation of summary-level information from the quarterly maintenance reports;
- d. Performance as measured against KPI targets;
- e. Safety report including Cal-OSHA-reportable injuries incurred by any FRWA and/or contractor personnel providing operation and maintenance services for the Joint Facilities;
- f. Security report including implementation of security plans;
- g. Initiatives undertaken and/or completed to address FRWA audit findings, if any;

- h. List of permits received and permits applied for;
- i. Assets disposed of during the Fiscal Year;
- j. Status on addressing the MMRPs; and
- k. Other significant operations and maintenance issues addressed by FRWA in the prior fiscal year.

3.17 Quarterly Reports. FRWA shall submit quarterly operating and financial reports to the Executives or their designees. The quarterly reports shall, at a minimum, summarize water delivery quantities to each Member, identify the dollar-percentage of overall annual budgeted (scheduled preventative maintenance performed, provide a list of work orders of significant corrective maintenance performed, and provide a list of planned future maintenance work orders for the forthcoming quarter. The financial section of the quarterly reports shall summarize costs incurred, using invoice data from the three months comprising the quarter compared with the approved budget for the quarter. The financial reports shall include summaries of the Fixed Costs and Variable Costs incurred by each Member, with breakdowns by the major Joint Facilities components. The quarterly reports shall include a summary of results of water quality sampling analyses conducted by FRWA.

3.18 Budget Preparation and Submittal for Approval. FRWA's budget development shall be consistent with the cost elements described in Section 6.1. The budget shall be broken down by operations and maintenance tasks for each major facility as shown in the template for budget submission in **Appendix B.**

ARTICLE 4 – FACILITY UPGRADES OR EXPANSIONS

In the event of requirements for facility upgrades or expansions to the Joint Facilities, FRWA shall plan and coordinate such work so as to ensure that ongoing operations of the Joint Facilities can proceed in conjunction with the facility upgrades or expansions. In the event of requirements for facility upgrades or expansions to the EBMUD Extension or FSCC, EBMUD shall coordinate such work with FRWA such that ongoing operations of the Joint Facilities can proceed in conjunction with the EBMUD facility upgrades or expansions. In the event of requirements for facility upgrades or expansions to the SCWA Extension or SCWA Water Treatment Plant, SCWA shall coordinate such work with FRWA such that ongoing operations of the Joint Facilities can proceed to the extent

feasible in conjunction with the SCWA facility upgrades or expansions.

ARTICLE 5 – COST ACCOUNTING

5.1 Use of Accounts. FRWA shall establish and maintain Joint Facilities Accounts for operations and maintenance tasks pursuant to Sections 5.2, 5.3 and 5.4 and as further detailed in **Appendix B**. All costs incurred by FRWA in providing services under this Agreement shall be recorded in the Joint Facilities Accounts. Invoices issued to Members shall be prepared using only the Joint Facilities Accounts. All financial reports prepared for FRWA or Members as required under this Agreement shall draw data only from the Joint Facilities Accounts. The level of breakdown in the Joint Facilities Accounts shall be at least at the level of facility breakdown shown in **Appendix B**.

5.2 Fixed Costs and Variable Costs. All of the operations and maintenance tasks performed by FRWA shall be classified in the Joint Facilities Accounts as either Fixed Costs or Variable Costs. Fixed Costs shall be costs that are not highly dependent upon the volumes of water pumped through the facilities over time whereas Variable Costs shall be costs that increase in proportion to the volumes of water pumped over time. The Parties acknowledge that many operations and maintenance tasks may have both Fixed Cost and Variable Cost characteristics and agree to collaborate in classifying such tasks based on which characteristic is dominant. A provisional classification of significant operations and maintenance tasks into Fixed Cost and Variable Cost tasks is provided in **Appendix B**, and shall be expanded upon and modified as necessary, subject to approval by the Executives or their designees. The Parties agree that reclassifications, from time to time, of operations and maintenance tasks from Fixed Cost to Variable Cost, or vice versa, shall apply only prospectively in terms of cost sharing between EBMUD and SCWA and in terms of FRWA invoicing. Unless otherwise approved by the Executives or their designees based on case-by-case considerations, all Fixed Costs shall be allocated between the Members on the basis of the Members' percentage shares of Capital Costs as defined in Section 5.1(a) of the Second Amended JPA. Unless otherwise decided by the Executives or their designees based on case-by-case considerations, except for electric power, all Variable Costs shall be allocated between the Members based on the volumes of water they take through Joint Facilities. In FRWA invoicing, Variable Costs allocated to a Member in each month shall be based on that Member's proportion of the total volume of water delivered to both Members' Points of Delivery for that month. It is

anticipated that FRWA will use the Requested Deliveries submitted by the Members and incorporated in the annual Operations and Maintenance Plan pursuant to Section 3.13, as the basis for allocation of Variable Costs for invoicing purposes, pursuant to Section 6.4, for the full Fiscal Year, subject to reconciliation after the end of the Fiscal Year. Thus, for invoicing purposes, prior to annual reconciliation, except for electric power a fixed annual percentage split for Variable Costs may be used for the entire Fiscal Year. Electric power costs shall be allocated monthly on a variable basis as detailed in **Appendix B-1**.

5.3 Cost Allocations for FRWA Commitments to USBR and SMUD. FRWA's costs incurred in meeting its obligations pursuant to Section 3.13 hereof shall be invoiced as Variable Costs.

5.4 Trustee Accounts. The FRWA Treasurer shall establish and maintain a Major Maintenance Reserve Trustee Account, from which FRWA may withdraw funds to cover expenditures at the time such expenditures are incurred to perform services required under this Agreement. The Members shall contribute funds to the trustee account in advance of projected need, as calculated for each Member using the method described below.

This trustee account may be used by FRWA to meet costs incurred in significant maintenance work orders, in excess of \$50,000, for Joint Facilities equipment subject to wear through ongoing use, such as the eight primary pumps and motors and the variable frequency drives. This trustee account may also be used for significant infrequent maintenance work orders, in excess of \$50,000, for tasks such as sediment removal and disposal from the Intake sediment basins. **Appendix B** contains a provisional list of qualifying items for this trustee account, which the Executives or their designees may modify and/or supplement with other qualifying items from time to time. Recommendations by FRWA for use of funds from this trustee account for specific uses consistent with the purposes of the account shall be approved by the Executives or their designees. Within 60 days after the end of each Fiscal Year, the Members shall each contribute to this trustee account an amount equal to a Major Maintenance Reserve Trustee Account Contribution Rate multiplied by the volume of water received at their respective Points of Delivery in the past Fiscal Year. The Parties agree that the initial Maintenance Reserve Trustee Account Contribution Rate shall be \$3.50 per acre foot and that the Executives or their designees shall review and modify this rate from time to time based on their assessment of the need for future withdrawals from this trustee account.

While qualifying significant maintenance work orders shall be identified separately in the annual budget, the source of funds for such work may be identified as the Maintenance Reserve Trustee Account. As part of each forthcoming Fiscal Year budget request, FRWA shall develop a forecast of the use of funds from this trustee account over the next 10 years. Funds withdrawn from this trustee account shall be shown for informational purposes on the applicable monthly invoices but shall not be allocated to, or be subject to adjustment, in terms of cost sharing between, the Member Agencies.

ARTICLE 6 – COMPENSATION

6.1 Reimbursement of Actual Costs Incurred. For the operations and maintenance services described in this Agreement, EBMUD and SCWA shall pay FRWA's actual costs incurred in providing such services. To the extent such services are provided by FRWA employees or Member employees dedicated to FRWA, the reimbursed costs shall include employee salaries and benefits and other employee-related costs and overheads approved by the Board. To the extent such services are provided by an Operating Agent, the reimbursed costs shall include the Operating Agent's hourly labor charges priced using rates as defined in an agreement between FRWA and the Operating Agent. Other FRWA costs to be reimbursed by the Members shall include costs for operation and maintenance (or lease) of equipment and vehicles, charges by an Operating Agent for use of its vehicles and equipment, contract and consulting services, insurance and self-insurance costs pursuant to Article 9 hereto, laboratory services, materials, energy, regulatory agency fees, license fees, property taxes, and other specific line-item costs included and supported in the annual budget requests approved by the Board.

6.2 Allocation of Costs Between Members. FRWA costs shall be allocated between the Members consistent with the breakdown into Fixed Costs and Variable Costs described in Sections 5.2 and 5.3. To the extent that FRWA's or its Operating Agent's consultants and contractors provide services based on billing and payment methods other than actual hours worked, FRWA shall make best efforts to ensure that the costs billed are appropriate and allocated on an equitable basis among the Members consistent with Sections 5.2 and 5.3.

6.3 Prevailing Wage Rates. FRWA shall ensure that its and its Operating Agent's labor rates and contracting rates meet the legal and regulatory requirements for prevailing wage rates where applicable.

6.4 Billing and Payment. For the services provided under this Agreement, FRWA shall submit detailed monthly invoices to SCWA and EBMUD showing the breakdown by Joint Facilities Accounts, as described in Article 5. Supporting documentation for each invoice shall be organized to clearly identify the Joint Facilities Account charged and shall be supported by such copies of payroll records, contractor, vendor and consultant invoices. The invoices shall show the division of costs by Joint Facilities Account between SCWA and EBMUD. Invoices shall be approved by a designee of the Executives; however, if SCWA, as Operating Agent, provides operations and maintenance services to FRWA, the invoices shall be approved by the EBMUD Executive or his/her designee. The Members shall pay their identified share of FRWA costs within thirty (30) days of receipt of an invoice unless specific items on the invoice are disputed in writing by the approving authority within such thirty (30) day period. In the event that one or more items on an invoice are disputed, all undisputed invoice items shall be paid within the prescribed thirty (30) day period. Within 60 days after the end of each Fiscal Year, FRWA shall submit to the Members reconciled invoices that adjust the apportionment of validated costs between Members based on actual water quantities delivered by FRWA to them in the past Fiscal Year. Within 30 days, a Member that has paid less than its correct share, based on the reconciled invoice, shall pay to FRWA the reconciled amount required to meet its full correct share and, within thirty days of receiving that reconciled amount, FRWA shall pay to the Member that paid in excess of its correct share the amount required to offset its overpayment.

ARTICLE 7 – AUTHORIZED REPRESENTATIVES

7.1 FRWA. FRWA designates its Program Manager as its FRWA Authorized Representative for this Agreement. FRWA's Authorized Representative shall be responsible for administering this Agreement on behalf of FRWA. In the event FRWA wishes to make a change in its FRWA Authorized Representative, FRWA shall notify EBMUD and SCWA of the change in writing.

7.2 EBMUD. EBMUD designates David Bruzzone as its EBMUD Authorized Representative for this Agreement. EBMUD's Authorized Representative shall be responsible for administering this Agreement on behalf of EBMUD. In the event EBMUD wishes to make a change in its EBMUD Authorized Representative, EBMUD shall notify FRWA and SCWA of the change in writing.

7.3 **SCWA.** SCWA designates Forrest Williams as its SCWA Authorized Representative for this Agreement. SCWA's Authorized Representative shall be responsible for administering this Agreement on behalf of SCWA. In the event SCWA wishes to make a change in its SCWA Authorized Representative, SCWA shall notify FRWA and EBMUD of the change in writing.

ARTICLE 8 – INDEMNIFICATION AND JOINT DEFENSE

8.1 **SCWA Indemnification.** SCWA expressly agrees to indemnify, defend, and hold FRWA and EBMUD and their respective Directors, officers, employees, and agents free and harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages (including reasonable attorney fees), arising from SCWA's gross negligence, ordinary negligence (active or passive), willful misconduct or intentional failure to perform, or errors and/or omissions associated with the operation and/or maintenance of the SCWA Extension, the SCWA Water Treatment Plant, and the Joint Facilities operated and/or maintained by SCWA and/or SCWA contractors.

8.2 **EBMUD Indemnification.** EBMUD expressly agrees to indemnify, defend, and hold FRWA and SCWA and their respective Directors, officers, employees, and agents free and harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages (including reasonable attorney fees), arising from EBMUD's gross negligence, ordinary negligence (active or passive), willful misconduct or intentional failure to perform, or errors and/or omissions associated with the operation and/or maintenance of the EBMUD Extension and the EBMUD Folsom South Canal Connection.

8.3 **FRWA Indemnification.** FRWA expressly agrees to indemnify, defend, and hold EBMUD and SCWA and their respective Directors, officers, employees, and agents free and harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages (including reasonable attorney fees), arising from FRWA's gross negligence, ordinary negligence (active or passive), willful misconduct or intentional failure to perform, or errors and/or omissions associated with the operation and/or maintenance of the Joint Facilities by FRWA and/or FRWA contractors but excluding the operation and/or maintenance of Joint Facilities to the extent arising from gross negligence, ordinary negligence (active or passive), willful misconduct or intentional failure to

perform, or errors and/or omissions arising from the operation and/or maintenance of the Joint Facilities by SCWA and/or SCWA contractors.

8.4 Non-Parties. Each Party reserves: (1) any and all rights it may have to indemnify and contribution from any other person or entity that is not a signatory to this Agreement and (2) any and all claims and defenses against any such person or entity. Nothing in this Article 8 is intended to create a basis for liability for any of the Parties to this Agreement to third parties other than that which would otherwise exist by law absent this Agreement. Provisions of this Article are solely intended to allocate certain responsibilities as between the Parties to this Agreement.

8.5 Payment of Losses, Liabilities, Claims, Costs, Suits, or Damages. The Parties agree to work cooperatively in the evaluation, processing, and resolution of claims. Notwithstanding the provisions of Sections 8.1, and 8.2, and 8.3, before attempting to apportion liability or to determine indemnity responsibilities, FRWA shall first attempt to pay or cover any loss, liability, claim, cost, attorneys' fees, suit or damage associated with the operation, maintenance and replacement of FRWA Project facilities by exercising the provisions and taking the actions described in Article 9, Insurance. To the extent all remedies available through Insurance have been exhausted, the Parties shall take the steps and use the assets and funds in the order listed in Sections 8.6 through 8.8 below.

8.6 Joint Defense. Where more than one Party is named in a suit, or made subject to a claim or penalty, FRWA shall coordinate a joint defense of the Parties, utilizing a joint defense agreement to the extent possible, subject to the approval of the Parties. Each Party to this Agreement agrees that, to the greatest extent practicable, it shall cooperate in such defense and execute any waivers and/or tolling agreements that may be necessary to provide for a single joint defense of such a suit, claim or imposition of penalty. Any communications between and/or among the Parties and between and/or among FRWA and any of its consultants and attorneys shall be privileged as joint defense communications. Work performed during the joint defense by consultants or attorneys, to the extent allowed by law, shall be considered attorney work product. Nothing in this section or Article is intended to require a joint defense under circumstances where it would be legally impermissible or under circumstances where it is wholly impractical notwithstanding the remaining provisions of this Article.

8.7 Waivers. In the event of any loss, liability, claim, cost, or damage giving rise to a claim or suit brought by one or more persons not a party to this Agreement (third party claim or suit), each Party agrees that it shall execute any waivers and/or tolling agreements which may be required to defer any and all claims, rights to indemnity or contribution, or defenses it may be able to assert against any other Party to this Agreement until final settlement or other resolution of such claim or suit, or until such time as the Parties agree that the Joint Defense will not be compromised by assertion of such claims, rights, or defenses. All rights to such claims, rights or defense are fully reserved and shall not be lost or diminished by any waiver or tolling agreement. Nothing in this Article 8 shall be construed to preclude any Party's right pursuant to Sections 8.1, 8.2 and 8.3 to tender a request for defense. However, if there is a dispute between any of the Parties with respect to the duty to defend, the Parties agree that any claim for damages based upon a failure to defend will be deferred until final settlement or other resolution of the third party claim or suit giving rise to the dispute.

8.8 Resolution of Liability or Joint Defense Related Disputes. Any disputes between the Parties as to the application of this Article 8 shall be subject to the Dispute Resolution provisions of Article 11.

ARTICLE 9 – INSURANCE

9.1 Insurance Requirements. FRWA shall undertake the following action(s) to manage the risk of operations and maintenance of the Joint Facilities:

(1) FRWA shall make good faith efforts to purchase and maintain commercial general liability, property, directors and officers' liability, errors and omissions, auto, non-owned and hired auto, insurance for FRWA Joint Facilities with the coverage, scope, limits, and forms determined by the Board with a minimum policy limit of \$10 million. The Members (EBMUD and SCWA) and their respective Directors, officers, employees, agents, and volunteers shall be Named Insureds to include completed operations coverage in the FRWA policy. The FRWA policy shall be primary and non-contributory to any other insurance policies held by the Members. The insurance policy shall cover, but not be limited to, losses, claims, and attorneys' fees including losses, claims and attorneys' fees arising due to the gross negligence, ordinary negligence (active or passive), or errors and/or omissions by any or all of the Parties

in the design, construction, operation, maintenance and replacement of Project facilities. The coverage shall contain no special limitations on the scope of protection afforded to EBMUD and SCWA and their respective Directors, officers, employees, agents, and volunteers. A properly executed endorsement must be provided with all policies stating that coverage is primary and non-contributory to any other insurance with respect to EBMUD and SCWA and their respective Directors, officers, employees, agents, and volunteers.

(2) If the insurance described above in (1) cannot be obtained, FRWA shall obtain the broadest insurance available with terms and conditions similar to the terms and conditions described in (1) above. Such alternative policy shall be primary and non-contributory to any other policies held by the Members.

(3) If insurance described above in (1) or (2) above cannot be obtained, SCWA, as the Operating Agent providing operation and maintenance to FRWA under separate agreement, at its option and subject to FRWA's approval which shall not be unreasonably withheld, may purchase and maintain a separate insurance policy that provides coverage consistent with the terms and conditions described in (1) or (2) above that is unavailable through FRWA. The SCWA policy shall name EBMUD (as a Member) and FRWA as additional insureds. SCWA shall, upon submittal of appropriate invoices, be entitled to reimbursement from FRWA for the cost of the premiums for such a policy.

(4) If insurance described in (1), (2) or (3) above cannot be obtained, SCWA, in its role as the Operating Agent, at its option and subject to FRWA's approval which shall not be unreasonably withheld, may self-insure any liability exposure associated with its operation and maintenance of the Joint Facilities.

(5) Notwithstanding subsections (1), (2), (3) and (4) above, the Parties may agree to an alternative program of insurance or self-insurance, including a combination thereof, for FRWA exposures..

9.2 Contractor Insurance. The Board shall determine insurance coverage, scope, limits, and forms for FRWA contractors providing operations and/or maintenance services for the Joint Facilities. SCWA shall be responsible for determining insurance

requirements for its contractors providing operations and/or maintenance services for the Joint Facilities.

9.3 Costs. The Members agree to share the cost of FRWA insurance premiums according to their percentage shares of Dedicated Capacity as stated in Section 5.1(a) of the Second Amended JPA. Furthermore, the Members agree to share, according to the same percentages as stated in Section 5.1(a) of the Second Amended JPA, the deductibles and uninsured losses, claims, attorneys' fees, suits or damages associated with the operation, maintenance and replacement of the FRWA Joint Facilities except for deductibles, uninsured losses, claims, attorneys' fees, suits or damages arising from SCWA's gross negligence, ordinary negligence (active or passive), willful misconduct or intentional failure to perform, or errors and/or omissions associated with its operation and maintenance of the Joint Facilities.

ARTICLE 10 – NOTICES

Any notice which a party to this Agreement may desire or is required at any time to give or serve another party to this Agreement may be delivered personally, or be sent by United States mail, postage prepaid, addressed to the Authorized Representative of that party, with a copy delivered contemporaneously in similar manner to the Authorized Representative of the other party to this Agreement. Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases, and shall be effective as of the date so served.

ARTICLE 11 – DISPUTE RESOLUTION

11.1 Staff Resolution. In the event of a dispute arising between any of the Parties, the staff and senior staff representatives of the parties most directly involved in the issue(s) of dispute will resolve the dispute within 30 days of one party notifying another of the dispute and, if successful, will document their resolution.

11.2 Board Resolution. In the event that the dispute cannot be resolved at staff level, any Party may, within 10 days, submit it to the Executives. The Executives shall attempt to resolve the dispute within 30 days of receiving such notification, failing which the dispute shall be submitted to the Board at its next meeting. The Board may either resolve

the dispute at that meeting or designate one of its members as Hearing Officer to hear presentations from each party to the dispute and recommend a resolution for consideration by the Board at its following meeting.

11.3 Arbitration. If the Board is unable to resolve the dispute, the Board shall submit the dispute to arbitration, using an arbitrator identified by the American Arbitration Association. If the Board concludes that dispute cannot be satisfactorily resolved through arbitration, the Parties may resort to such other legal recourse as each individually deems appropriate.

11.4 Dispute Requiring Urgent Resolution. Notwithstanding the time steps defined above for a dispute to move from staff level through to the Board for consideration, if any Party deems the dispute to be a Dispute Requiring Urgent Resolution, it may, in writing, request the Executives to resolve it. The Executives shall meet within 10 days of receiving such request. If the Executives are unable to resolve the Dispute Requiring Urgent Resolution at that meeting, and if no regularly scheduled Board meeting will occur within 30 days, the Executives may call a special Board meeting and the Board shall meet within 30 days of such notice. The Board shall attempt to resolve the dispute, including arbitration, if necessary, within 60 days of its first consideration of the dispute.

11.5 Right to Terminate Operating Agent Agreement. Notwithstanding the term defined in a service agreement with an Operating Agent pursuant to Article 2, either Member may, for any reason, issue notice to FRWA to terminate said service agreement, upon receipt of which FRWA shall immediately notify the Operating Agent that its service agreement will terminate in one year or when a new service agreement becomes effective, whichever is later. Among the range of options to be considered by FRWA at the end of the term of said service agreement shall be (1) a service agreement with a private sector operations and maintenance services company, (2) a service agreement with the Member who did not serve as Operating Agent in the term currently ending, and (3) a new service agreement with the Member who served as Operating Agent in the term currently ending. Upon receiving such notice or copy of such notice of termination, the Parties shall immediately cooperate and expedite efforts to identify and hire a successor Operating Agent or negotiate a new service agreement with the existing Operating Agent.

ARTICLE 12 – AUDITS AND RECORDS

FRWA's Treasurer shall initiate and oversee audits required under the Second Amended JPA, which audits may extend without limits to the services provided to FRWA by an Operating Agent and other contactors and consultants in meeting FRWA's obligations under this Agreement.

ARTICLE 13 – MISCELLANEOUS

13.1 Entire Understanding. This Agreement represents the entire understanding between the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by all the parties hereto.

13.2 Assignments. This Agreement shall be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and the Parties shall not assign, transfer or otherwise substitute their interest in this Agreement.

13.3 Validity of All Parts of the Agreement. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the Parties.

13.4 Multiple Copies of the Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document.

13.5 Governing State Laws. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

13.6 Waivers in Part. A Party's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition,

obligation, representation, warranty or promise. A Party's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.

13.7 No Discrimination. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this Agreement. A Party shall not establish or permit any such practice(s) of discrimination with reference to the Agreement or any part thereof. If a Party is determined to be in violation of this section, the Party shall be deemed to be in material breach of this Agreement.

13.8 Interpretation. This Agreement shall be deemed to have been prepared equally by the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that another Party or other Parties prepared it.

ARTICLE 14 – TERM AND TERMINATION

This Agreement shall terminate 30 (thirty) years from its effective date unless the term is extended by a majority vote of the full Board. If an extension of the term of this Agreement is not entered into by the Parties, the Parties shall negotiate in good faith to arrive at a successor delivery agreement. Notwithstanding such termination provisions, this Agreement shall automatically terminate upon dissolution of FRWA or termination of the Second Amended JPA pursuant to Article VIII of the Second Amended JPA.

IN WITNESS WHEREOF, the Parties hereto each herewith subscribe the same in duplicate.

FREEPORT REGIONAL WATER AUTHORITY

By: 
Eric F. Mische
Program Manager - FRWA

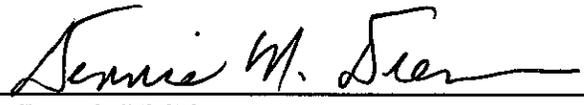
Date 12/11/06

Approved As To Form:

By: 
John F. Whisenhunt
FRWA Legal Counsel

Date 12/11/06

EAST BAY MUNICIPAL UTILITY DISTRICT

By: 
Dennis M. Diemer
General Manager - EBMUD

Date 12/20/06

Approved As To Form:

By: 
Jylana D. Collins
EBMUD General Counsel

Date 12/20/06

SACRAMENTO COUNTY WATER AGENCY

By: Keith C. DeVore

Date 2-1-07

Keith C. DeVore
Director - SCWA

Approved As To Form:

By: Ray C. Thompson

Date 2/1/2007

Ray C. Thompson
SCWA Legal Counsel

FRWA Delivery Agreement

Appendices

Appendix A	Definition of FRWA Facilities
Appendix B-1	Cost Sharing for FRWA Operating and Maintenance Expenses
Appendix B-2	Work Categories
Appendix B-3	Major Maintenance Reserve Trustee Account
Appendix B-4 *	Labor Rates
Appendix B-5	FRWA Operations and Maintenance Budget Template
Appendix B-6	Invoice Detail
Appendix C	Flow Metering Reconciliation
Appendix D	Reporting Guidelines
Appendix E*	Easements [Reserved for future use]
Appendix F-1*	Key Permits Required During Operation
Appendix F-2*	Mitigation Monitoring and Reporting Program Requirements during Operation
Appendix G*	Local Community Interfaces
Appendix H*	Key Performance Indicators
Appendix I*	Contents of the Operations and Maintenance Manual
Appendix J	Responsibilities and Cost Sharing for Use of the Folsom South Canal

* Intentionally excluded from this Agreement. These appendices are intended for inclusion in a FRWA-SCWA agreement for operations and maintenance services for the Joint Facilities.

Appendix A

Definition of FRWA and Member Facilities

The following definitions, although illustrated by referring to Figures A-1 to A-5, shall override the depictions in Figures A-1 to A-5. Depictions in Figures A-2 to A-5 may change in final design drawings or as-built drawings.

A-1. FRWA Facilities

All FRWA Facilities defined in this Section A-1 shall be owned by FRWA with capital cost-sharing responsibilities allocated between the Members according to the percentages stated in Section 5.1(a) of the Second Amended JPA.

FRWA Intake: All facilities and improvements within the boundary of the FRWA property immediately west of the South Sacramento Drainage Channel, and those projecting into the channel of the Sacramento River adjacent to the FRWA property. These facilities shall include the intake structure (fish screens, forebay, and pump building), the training walls and plaza surrounding the intake structure, the valve vault, the surge tanks, the meter vault, the substation, the equipment building, the sediment settling basins, and site work (roads, drainage and landscaping). Dedicated Capacity in the FRWA Intake shall be consistent with Section 6.3 of the Second Amended JPA.

Joint Pipeline: The 84-inch-diameter pipeline between the FRWA Intake and the Bifurcation, including the fiber-optic cable and conduit system along the pipeline alignment, cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the FRWA Intake and the Joint Pipeline shall be 10 feet downstream of the outer wall of the meter vault. The boundary between the Joint Pipeline and the Bifurcation shall be 10 feet upstream of the centerline of the tee where the SCWA Extension pipeline branches off the Joint Pipeline. Dedicated Capacity in the Joint Pipeline shall be consistent with Section 6.3 of the Second Amended JPA.

Bifurcation: The facilities connecting the Joint Pipeline with the SCWA Extension and the EBMUD Extension, including pipelines, isolation valves, surge control tank and compressor, flow meter, programmable logic controller, telemetry facilities, and associated structures and site improvements. The boundary between the Bifurcation and the SCWA Extension shall be 10 feet downstream of the outer wall of the vault for the SCWA isolation valve. This boundary shall be the SCWA Point of Delivery. The boundary between the Bifurcation and the EBMUD Extension shall be 10 feet downstream of the outer wall of the vault for the flow meter on the pipeline to the EBMUD Extension. This boundary shall be the EBMUD Point of Delivery. Dedicated Capacity in the Bifurcation shall be consistent with Section 6.3 of the Second Amended JPA.

Flow Control Station: The facility at the downstream end of the SCWA Extension, including the isolation valves, flow meters, sleeve valves, bridge crane, programmable logic controller, telemetry facilities, and associated building and valve vault. The boundary between the Flow

Control Station and the SCWA Water Treatment Plant shall be 10 feet downstream of the outer wall of the building.

Instrumentation, Control and Telecommunication Facilities: In addition to the instrumentation, control facilities contained within the FRWA Facilities described above:

- a) The fiber-optic cable and conduit system between the Bifurcation and the Flow Control Station shall be FRWA Facilities.
- b) The fiber-optic cable and conduit system between the Bifurcation and the Terminal Weir Structure shall be FRWA Facilities.
- c) The instrumentation to gauge water level in the Terminal Weir Structure and in the Folsom South Canal near the Terminal Weir Structure, instrumentation to monitor water quality in or near the Terminal Weir Structure, and the associated programmable logic controller(s), fiber-optic cable and conduit system, radio system, and/or other telemetry facilities shall be FRWA Facilities.
- d) The monitoring and telemetry equipment provided by FRWA and to be located at the U.S. Bureau of Reclamation's (USBR) Deer Creek gate structure, as required to convey electronic signals between USBR and FRWA, shall be FRWA facilities.

A-2. SCWA Facilities

All SCWA Facilities defined in this Section A-2 shall be owned by SCWA and SCWA shall be responsible for all of the capital costs for such facilities.

SCWA Extension: The 66-inch-diameter pipeline between the Bifurcation and the Flow Control Station, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the SCWA Extension and the Flow Control Station shall be the upstream outer wall of vault for the isolation valves for the Flow Control Station building.

SCWA Water Treatment Plant: The 85 MGD Zone 40 surface water treatment plant (or "Vineyard Surface Water Treatment Plant") to be located north of the Bifurcation.

A-3. EBMUD Facilities

All EBMUD Facilities defined in this Section A-3 shall be owned by EBMUD and EBMUD shall be responsible for all of the capital costs for such facilities.

EBMUD Extension: The 72-inch-diameter pipeline between the Bifurcation and the Terminal Weir Structure, including cathodic protection systems, air relief valves, blowoffs, and associated vaults. The boundary between the EBMUD Extension and the Terminal Weir Structure shall be 15 feet upstream of the outer wall of the Terminal Weir Structure.

Terminal Weir Structure: The facility at the downstream end of the EBMUD Extension, including the slide gate, weir, connection with the U.S. Bureau of Reclamation's Folsom South

Canal, and associated site improvements.

Folsom South Canal Connection: The facilities required to convey water from near the end of the Folsom South Canal to EBMUD's Mokelumne Aqueducts. These facilities include Clay Station Pumping Plant, Camanche Pumping Plant, a 72-inch-diameter pipeline connecting the two pumping plants, and a 72-inch-diameter pipeline connecting Camanche Pumping Plant to the Mokelumne Aqueducts.

Figure A-1: Freeport Regional Water Project

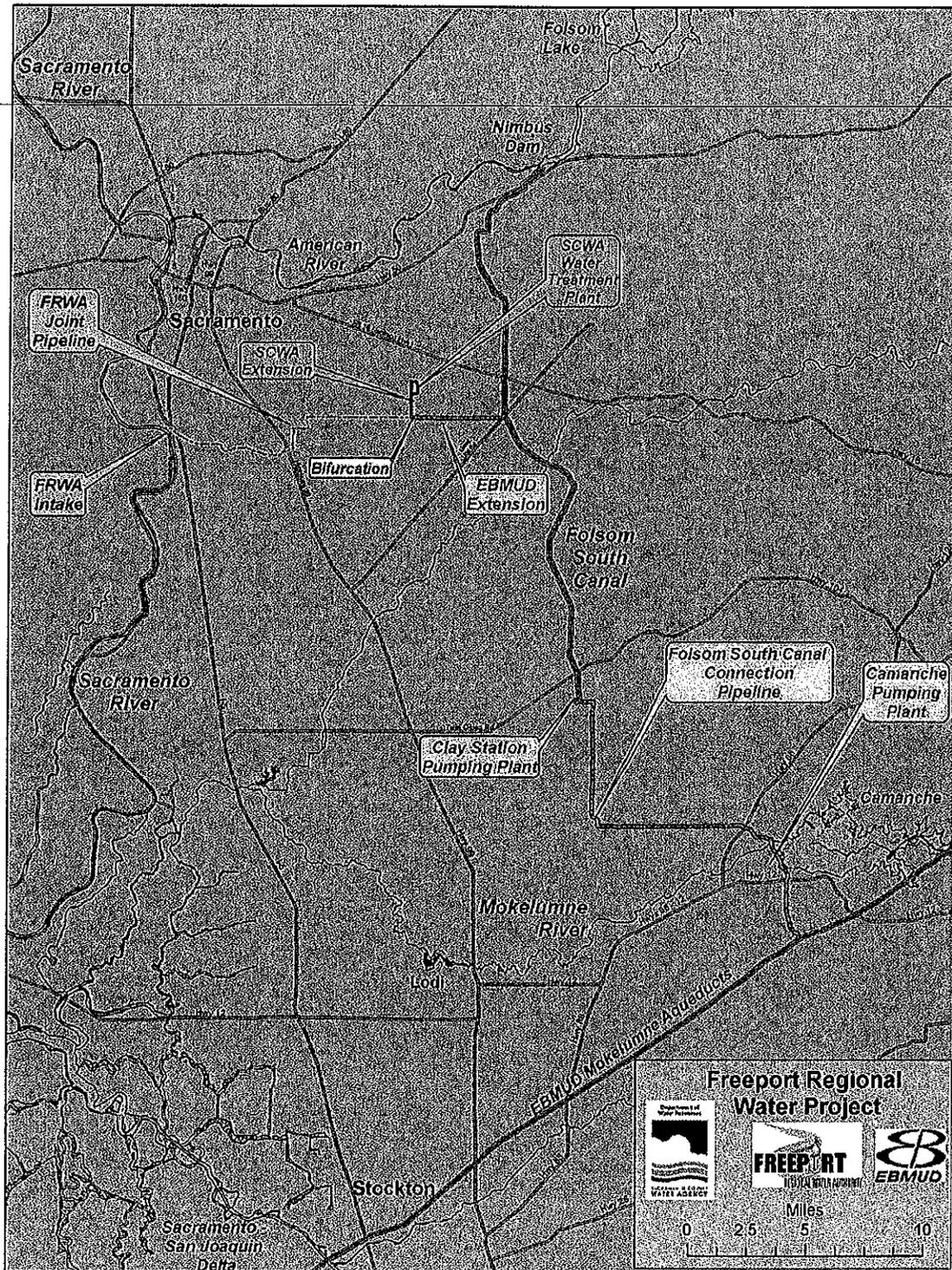
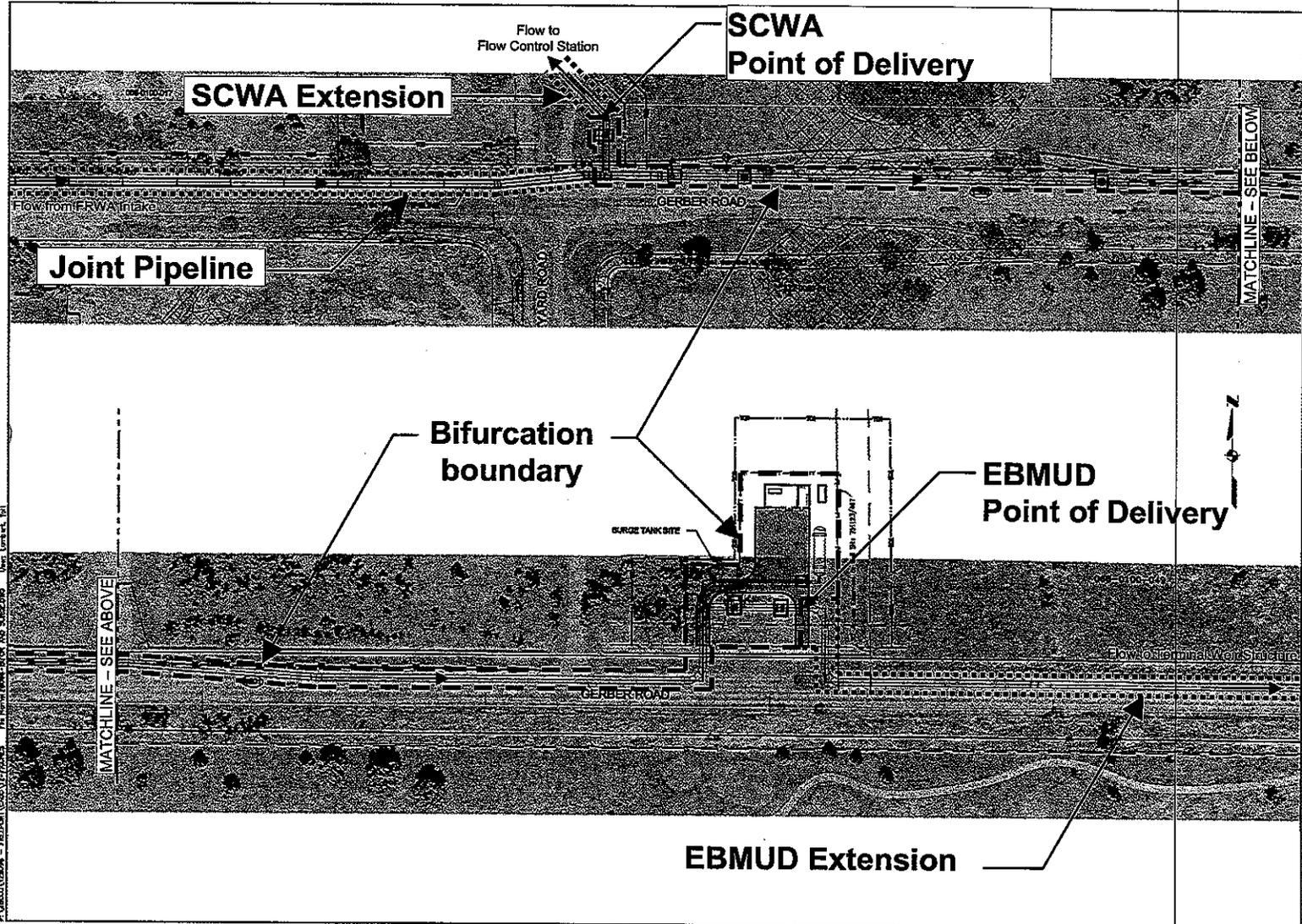


Figure A-3: Bifurcation



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SCWA-33

<p>VERIFY SCALE</p> <p>1/2" = 1'</p> <p>1/4" = 1'</p> <p>AS SHOWN</p> <p>AS NOTED</p>	<p>SCALE</p> <p>1" = 40'</p>
<p>FREEMPORT REGIONAL WATER AUTHORITY</p> <p>BIFURCATION AND SURGE CONTROL STRUCTURES</p> <p>FIELDING ENGINEERING AND SURVEYING, INC. 2118 PM</p>	
<p>Kennedy/Leadbetter Consultants</p> <p>1000 S. COLLEGE AVENUE, SUITE 200</p> <p>SACRAMENTO, CALIFORNIA 95817</p>	
<p>DATE: 12/15/2010</p> <p>BY: J. CALDERWOOD</p> <p>CHECKED: T. LUMBERT</p> <p>CONTRACT NO.: 07L 822</p> <p>PROJECT: E. COLLEGE AVENUE</p>	
<p>FIGURE NO. F-1</p> <p>SHEET 1 OF 1</p>	

Figure A-4: Flow Control Station

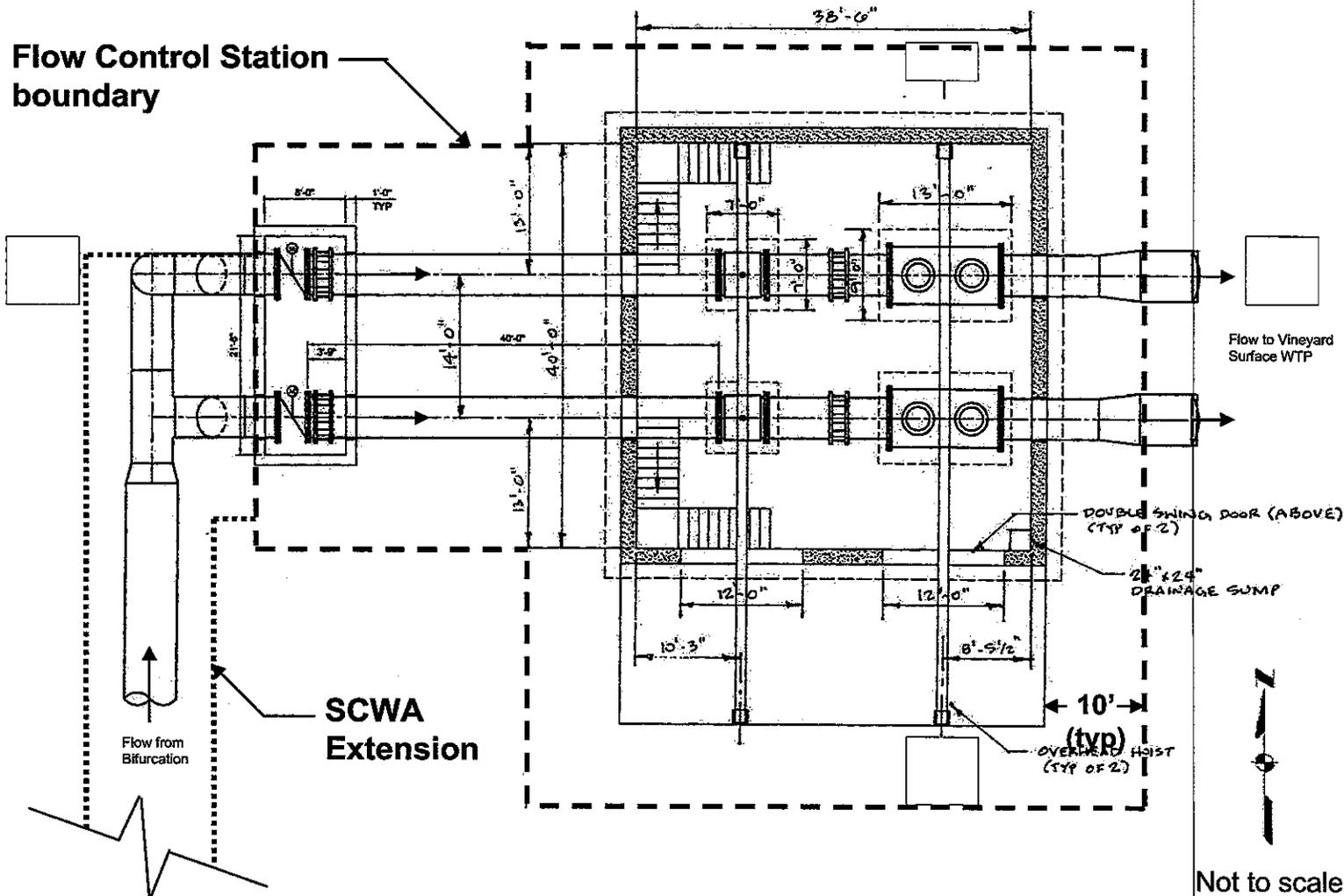
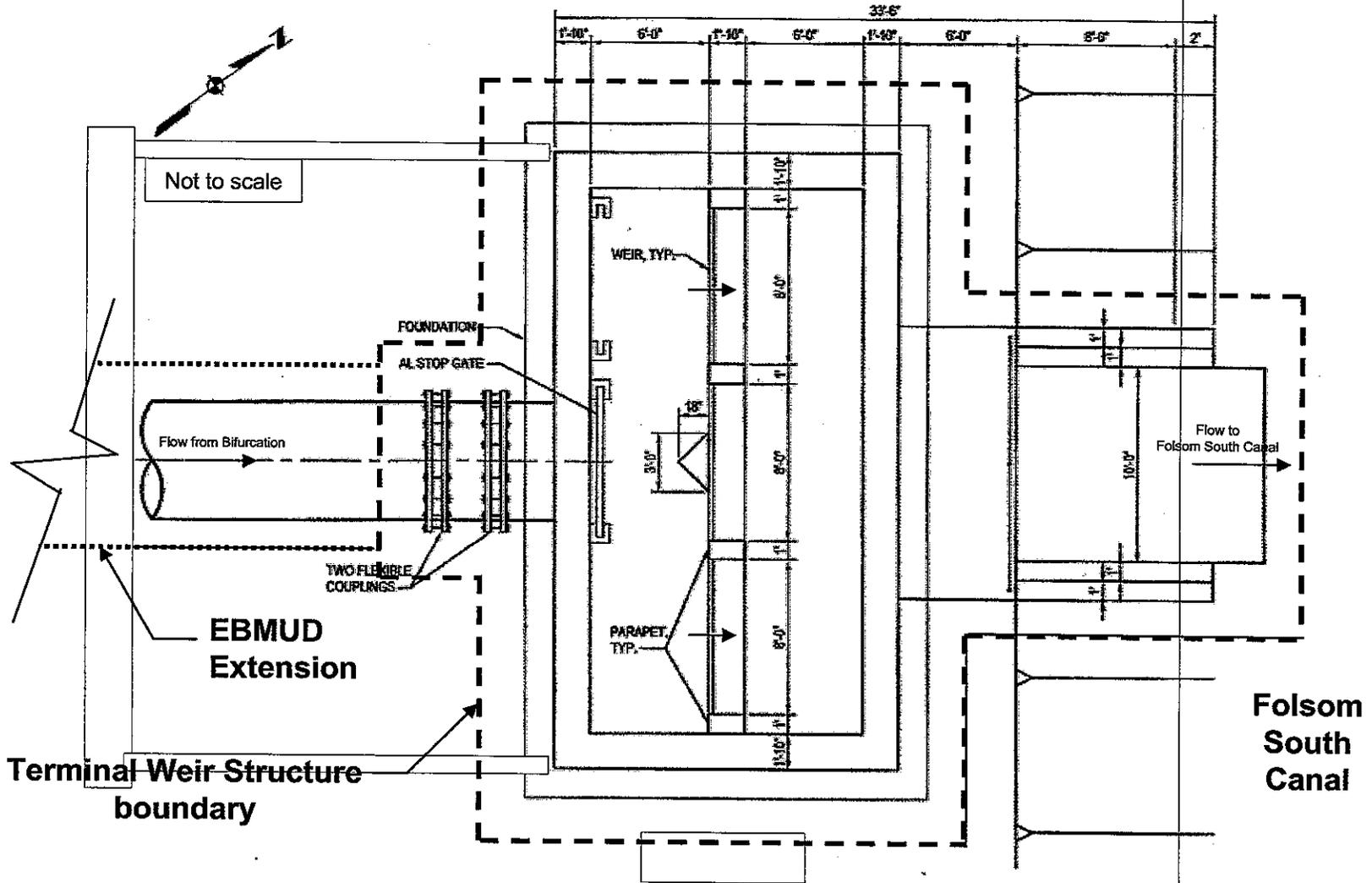


Figure A-5: Terminal Weir Structure



Appendix B-1

Cost Sharing for FRWA Operating and Maintenance Expenses

Work Category (See Appendix B-2)		Operation				Maintenance				
		Control Room	Administrative Tasks	Energy	All Other Operation	Structure	Production Systems	Utility Systems	Site & Right-of-way	Security
Facility (See Appendix A)	Code									
FRWA Intake										
Site	10	F	F	V	V	F	V	F	F	F
Intake structure	12	F	F	V	V	F	V	F	F	F
Surge control & metering	14	F	F	V	V	F	V	F	F	F
Settling basins	16	F	F	V	V	F	V	F	F	F
Equipment building	18	F	F	V	V	F	V	F	F	F
Substation	19	F	F	V	V	F	V	F	F	F
Pipelines:										
Joint Pipeline		F	F	F	V	F	V	F	F	F
EBMUD Extension										
Pipeline		F	F	E	E	E	E	E	E	E
Fiber-optic cable and conduit		F	F	V	V	F	V	F	F	F
SCWA Extension										
Pipeline		F	F	S	S	S	S	S	S	S
Fiber-optic cable and conduit		F	F	V	V	F	V	F	F	F
Bifurcation		F	F	V	V	F	V	F	F	F
Flow Control Station		F	F	V	V	F	V	F	F	F
Terminal Weir Structure										
Structure	50	F	F	E	E	E	E	E	E	E
Instrumentation/SCADA		F	F	V	V	F	V	F	F	F

APPLIES TO FRWA FACILITIES
 MAINTENANCE COSTS PER FACILITIES

FSC O&M, SMUD SETTLEMENT ✓

- Key:
- F** Fixed split (based on allocated capacity)
 - V** Variable split (based on actual delivery)
 - E** EBMUD
 - S** SCWA

Basis for variable split:
 Electric energy charge - Flow split during hour of use
 Electric facilities charge - Flow split during 15 minute period in which demand was set.
 Per current SMUD rate schedule, this charge carries forward for 12 months or until a higher demand is set.
 All other electric charges - Flow split for the month
 All other expenses - Estimated annual deliveries, with adjustment in next year

Variable split shall be applied to FRWA's costs related to the Folsom South Canal, as defined in Appendix J.

2 IS THIS BASED ON EBMUD FLOW ONLY?
 EBMUD & SCWA FLOWS IN FCC, OR EBMUD & SCWA FLOWS IN JOINT FACILITIES?

Appendix B-2
Work Categories

Work Category	Typical Systems* or components
Operations	
Control Room	Control room staff allocated to FRWA facilities. At Intake control room or Operating Agent's control room.
Administrative Tasks	Administrative tasks not included in the overhead for the Operating Agent. Examples include: O&M planning, legal affairs, reporting, public relations, audits, regulatory agency relations, and permitting management.
Energy	All electrical costs, including energy charge, facilities charge, and other charges
All other Operations	Operation activities outside of the control room, other than administrative tasks, including: operator checks of pumps and other equipment; routine walk-arounds of settling basins, bifurcation area, flow control station and terminal weir structure; and inspection of pipeline right-of-way
Maintenance	
Structure	Systems 9 (Buildings) and 11 (Pipeline), and surge tanks
Utilities	Systems 6 (Electrical Substation), 7 (Electrical Distribution) except medium-voltage switchgear, and 10 (Auxiliary Systems)
Production Systems	Systems 1 (Fish Screens), 2 (Sediment Control), 3 (Raw Water Pumping), 4 (Surge Control) except surge tanks, 5 (Flow Control), 8 (SCADA/Control), and medium-voltage switchgear
Site & Right-of-Way	Systems 12 (Right-of-Way) and 13 (Landscaping and Irrigation), and yard piping and utilities
Security	System 14 (Security)

*System numbers per following Project Systems list

FREEPORT REGIONAL WATER PROJECT
PROJECT SYSTEMS

1. Fish Screens
 - Screen cleaning equipment
 - Panels

2. Sediment Control
 - Log boom
 - Collection System
 - i. Chain and flight collectors
 - ii. Sediment removal pumps
 - iii. Associated control system and instrumentation
 - Jetting System
 - i. Valves and actuators
 - ii. Associated control system and instrumentation
 - Settling Basins
 - i. Basins
 - ii. Inlets/Outlets
 - iii. Return flow system
 - iv. Associated control system and instrumentation
3. Raw Water Pumping
 - Pumps
 - Adjustable frequency drives
 - Pump control system
 - Associated valves and piping out to and including the check valves in the valve vault.
4. Surge Control
 - Surge tanks and appurtenances
 - Air compressors
 - Associated control system and instrumentation
5. Flow Control
 - Throttling and isolation valves
 - Raw water flow metering
 - Associated control system and instrumentation
6. Electrical Substation (69kV/4160V)
 - Transformers
 - Metering
7. Electrical Distribution
 - Medium-voltage switchgear
 - Low-voltage MCCs
 - Local low-voltage distribution panels
8. SCADA/Control
 - HMI/computers
 - PLCs w/UPS
 - Instrumentation

- Fiber-optic communications
 - Radio communications
9. Buildings
- Roofing
 - Doors and windows
 - Painting
 - Lighting
-

10. Auxiliary Systems

- Cranes
- HVAC
- Utility water
- Potable water
- Sanitary system
- Chemical injection
- Outdoor lighting
- Photovoltaic power system
- Telephone/VoIP
- Corrosion control

11. Pipeline

- Main pipeline
- Line valves
- Appurtenances

12. Right-of-way

- Roads
- Encroachment control

13. Landscaping and Irrigation

- Plants
- Sprinkler system
- Weed abatement

14. Security

- Fencing and gates
- Intrusion alarms
- Cameras
- Security computer

Appendix B-3

Major Maintenance Reserve Trustee Account

The purpose of the Major Maintenance Reserve Trustee Account is to allow for the payment over time of major maintenance costs that are primarily a result of wear and tear due to process flow. By use of this account, cost of flow-based major maintenance will be allocated to the members based on actual water deliveries. The Maintenance Reserve Trustee Account is used to meet costs incurred in significant maintenance work orders, in excess of \$50,000, for Joint Facilities equipment subject to wear through ongoing use. A starting list of equipment is included below. Funding for the MMRTA will be allocated to the Members based on Contribution Rate per acre foot established by the FRWA Treasure from time to time. The initial Contribution Rate is set at \$3.50 per Acre Foot. The basis for the initial rate is shown in the table on the next page.

Initial list of Major Maintenance Reserve Trustee Account Items

- Raw Water Pumps
- Adjustable Frequency Drives
- Sediment Collectors
- Clean & Drain Settling Basins

Major Maintenance Reserve Trustee Account Contribution Rate Basis
 (Flow based equipment requiring major rebuilds or susceptible to major break down)

Assume average annual flow at 80 TAF based on [4]

Equipment Name	Description	Manufacturer	Cost & Life Cycle Estimates	Cost per TAF
Raw water pumps	2000 HP Vertical Turbine Pump and 4160 kW motor	Fairbanks-Morse pump & Electric Machinery motor, catalog cuts available in 30% package	\$100k per Pump & Motor at 5 years for 8 pumps per [1] (((\$100k*8)/5)/80)	\$2,000
36" check valves			EBMUD RCM: Not significant	\$0
AFDs	Adjustable Frequency Drive	Robicon, catalog cuts available	10% of \$2.5 M cost at 5 years [4] for 8 AFDs (\$250k/5)/80	\$625
Switchgear	5Kv 3000 amp	Eaton or equal	Not considered flow based	\$0
Transformers			Not considered flow based	\$0
Sediment collectors (longitudinal and cross)	Chain & Flight	US Filter/ Envirex, catalog cuts	\$310k cost at 20 yr life [2] (\$310/20)/80	\$200
Screen cleaner		Transco	Probably under \$50k, yearly event, not included	\$0
Sleeve valves	Similar to those at Briones Center		EBMUD RCM: We have a lot of trouble with ours could be \$20k every 5 years, but it is raw water from a reservoir. Only used when deliveries made to the FSC.	\$0
Clean & drain sediment settling basins			Probably not an annual event in early years based on [3] Assume \$50k/100 TAF	\$500
			Total	Say \$3,500

[1] email Lisa Toth to Joseph Young 3/27/06

[2] email Mark Salmon to Joseph Young 3/22/06

[3] email Mark Salmon to Joseph Young 3/20/06

[4] email Mark Salmon to Joseph Young 3/10/06

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Appendix B-4 intentionally excluded

**Appendix B-5
FRWA Operations and Maintenance Budget Template**

Acct No.	Account Title	Appropriation
	Operating Agent Labor	
	Control Room and Operations	
	Maintenance	
	Administration	
	Subtotal, Operating Agent Labor	
	Materials	
	Chemicals	
	Fuels & lubricants	
	Cement, sand, stone for repairs	
	Replacement small parts	
	Other Construction and Supplies	
	Subtotal, Materials	
	Equipment	
	Forklifts, cranes, front-end loaders, trucks	
	Rent/Lease Equipment	
	Other	
	Subtotal, Equipment	
	Energy	
	Electric power	
	Subtotal, Energy	
	Utilities	
	Water & sewer	
	Telephone	
	Subtotal, Utilities	
	Contract Services	
	Sediment hauling & disposal	
	Environmental & permitting assistance	
	Security equipment maintenance	
	SCADA/telecom equipment maintenance*	
	Pump/motor vendor maintenance*	
	Laboratory services & supplies	
	Legal services	
	Other	
	Subtotal, Contract Services	
	Fees & Licenses	
	Regulatory	
	Special licenses for Project software	
	Subtotal, Fees & Licenses	
	TOTAL	

*Paints
& COATINGS,
DISINFECTANT*

* Non-warranty maintenance costs

Appendix B-6

Invoice Detail

Invoices for payment shall include, as a minimum, the following information.

1. Invoice period
2. FRWA/Operating agent contact for Member invoice questions
3. Summary of key operation and maintenance activities during the invoice period
4. Tables showing costs for each facility and work category during the invoice period. Templates for three required tables are provided in this appendix.
5. Breakdown of each cost shown in the FRWA Aggregate table based on the categories used in the FRWA Operations and Maintenance Budget. (See Appendix B-5) Labor hours and charges shall be provided for each cost shown in the FRWA Aggregate table.
6. Comparison of year-to-date expenditures with annual budget for each budget category
7. Back-up for charges, as requested by a Member
8. If required, any explanations

Appendix B-6

**Invoice Template - Operating and Maintenance Expenses
FRWA Aggregate**

Flow Basis (TAF)	FRWA: 45.25	SCWA: 35.25	EBMUD: 10.00
------------------	-------------	-------------	--------------

Work Category (See Appendix B-2)		Operation					Maintenance				
		Control Room	Administrative Tasks	Energy	All Other Operation	Total Operation	Structure	Production Systems	Utility Systems	Site & Right-of-way	Security
Facility (See Appendix A)	Name	Code									
	FRWA Intake										
	Site	10									
	Intake structure	12		12,963	200	26,963		5,400			7,240
	Surge control & metering	14									
	Settling basins	16									
	Equipment building	18									
	Substation	19									
	Pipelines										
	Joint Pipeline	11, 31, 32, 33									
	EBMUD Extension	41									
	Pipeline										
	Fiber-optic cable and conduit										
	SCWA Extension	51									
	Pipeline										
	Fiber-optic cable and conduit										
	Bifurcation Area	52									
	Flow Control Station	53									
	Terminal Weir Structure	42									
	Structure										
	Instrumentation/SCADA										
	TOTAL					26,963					7,240

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Appendix B-6

**Invoice Template - Operating and Maintenance Expenses
SCWA Allocation**

Fixed-Cost Allocation Factor = 0.45946
Variable-Cost Allocation Factor = 0.77901

Work Category (See Appendix B-2)		Operation					Maintenance				
		Control Room	Administrative Tasks	Energy	All Other Operation	Total Operation	Structure	Production Systems	Utility Systems	Site & Right-of-way	Security
Facility (See Appendix A)	Name	Code									
	FRWA Intake										
	Site	10									
	Intake structure	12		10,098	156	16,595		4,207			5,052
	Surge control & metering	14									
	Settling basins	16									
	Equipment building	18									
	Substation	19									
	Pipelines										
	Joint Pipeline	11, 31, 32, 33									
	EBMUD Extension	41									
	Pipeline										
	Fiber-optic cable and conduit										
	SCWA Extension	51									
	Pipeline										
	Fiber-optic cable and conduit										
	Bifurcation Area	52									
	Flow Control Station	53									
	Terminal Weir Structure	42									
	Structure										
	Instrumentation/SCADA										
	TOTAL					16,595					5,052

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Appendix B-6

Invoice Template - Operating and Maintenance Expenses EBMUD Allocation

Fixed-Cost Allocation Factor = 0.54054
Variable-Cost Allocation Factor = 0.22099

Facility (See Appendix A)		Work Category (See Appendix B-2)		Operation					Maintenance				
				Control Room	Administrative Tasks	Energy	All Other Operation	Total Operation	Structure	Production Systems	Utility Systems	Site & Right-of-way	Security
Name	Code												
FRWA Intake													
Site	10												
Intake structure	12			2,865	44	10,368		1,193				2,188	
Surge control & metering	14												
Settling basins	16												
Equipment building	18												
Substation	19												
Pipelines													
Joint Pipeline	11, 31, 32, 33												
EBMUD Extension	41												
Pipeline													
Fiber-optic cable and conduit													
SCWA Extension	51												
Pipeline													
Fiber-optic cable and conduit													
Bifurcation Area	52												
Flow Control Station	53												
Terminal Weir Structure	42												
Structure													
Instrumentation/SCADA													
TOTAL						10,368						2,188	

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Appendix C

Flow Metering Reconciliation

The flow measured at the Intake may not always be equal to the sum of the flows measured at the Flow Control Station and the Bifurcation. The means of reconciling the potential differences for the purposes of allocating costs is presented below:

Flow measured at Intake = Q_I

Flow measured at Flow Control Station = Measured SCWA Flow = Q_S

Flow measured at Bifurcation = Measured EBMUD Flow = Q_B

Corrected SCWA Flow = $Q_S + [Q_S / (Q_S + Q_B) \times (Q_I - (Q_S + Q_B))]$

Corrected EBMUD Flow = $Q_B + [Q_B / (Q_S + Q_B) \times (Q_I - (Q_S + Q_B))]$

Examples:

Q_I	Q_S	Q_B	Corrected SCWA flow	Corrected EBMUD flow
100	45	48	48.387	51.613
100	52	53	49.524	50.476
100	80	20	80.000	20.000
100	45	48	48.387	51.613



Appendix D Reporting Guidelines

1. Annual Report as Described in Section 3.16

1a. Expenditures Relative to Fiscal Year Budget

The following tables may be used.

(i) Operations

Work Category	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Administrative Tasks			
Control Room			
Production Systems			
Energy			
All Other Operations			
TOTAL			

(ii) Maintenance

Work Category	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Structure			
Utilities			
Production Systems			
Site & Right-of-Way			
Security			
TOTAL			

VES
 PROTECT SYSTEM
 NDS
 2/2

(iii) Maintenance and Replacement Reserve Trustee Account

Work Description	Actual Expenditures \$1000s
Item 1	
Item 2	
TOTAL	

(iv) Summary

	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Operations			
Maintenance			
Maintenance and Replacement Reserve Trustee Account			
TOTAL			

Comments on significant budget variances should be provided.

Calibrated

1b. Summary of Water Quantities Delivered

The following table may be used (FY 2011 is shown as an example)

Month/Year	Thousands of Acre Feet						
	Withdrawn at the Intake				Delivered to Member Agency		
					Points of Delivery		
	SCWA	EBMUD	Losses*	Total	SCWA	EBMUD	Total
July 2010							
August 2010							
September 2010							
October 2010							
November 2010							
December 2010							
January 2011							
February 2011							
March 2011							
April 2011							
May 2011							
June 2011							
Total							

* Includes Joint Facility drainage for maintenance purposes

1c. Key Operational Events

Brief description of any significant operational events or issues that occurred during the Fiscal Year, including description of the consequence or potential consequence, and action taken. The following table may be used:

Date	Description of Event/Issue and Consequence	Action Taken

1d. Summary of Maintenance Work

(i) Significant scheduled maintenance items

The following table may be used.

Description of Significant Scheduled Maintenance Items in Annual O&M Plan	Date Scheduled Maintenance Item was Completed	Notes

(ii) Process initiatives

Description of process initiatives undertaken during the Fiscal Year, including such items as RCM analysis, implementation of CMMS systems. Discussion of the results achieved from such initiatives.

(iii) Statistics on Unscheduled Maintenance

1. Estimate, within $\pm 15\%$ accuracy, based on CMMS and accounting records, the percentage of the overall maintenance expenditures for the Fiscal Year that were devoted to scheduled vs. unscheduled maintenance work.
2. State the number of hours in which a Member Agency's Requested Deliveries could not be met due to a problem that could have been avoided due to timely maintenance. Describe the problem(s) that caused the Curtailment(s).

(iv) Significant Maintenance Issues

Brief description of any significant maintenance issues that occurred during the Fiscal Year including significant operational problems that could have been avoided due to timely and appropriate maintenance. The following table may be used:

Date	Description of Maintenance Issue and Resulting Operational Problems	Action Taken

(v) Overall Assessment

Overall statement (one page) on the status of maintenance as of the end of the Fiscal Year. Based on a self assessment, include the following chart and circle the category (1-5) in which the status of maintenance falls as of the end of the Fiscal Year:

1	Maintenance needs additional resources and attention in the next Fiscal Year to meet standards contained in the Operations and Maintenance Manual. Many potentially serious problems have not been addressed.
2	Maintenance practices are somewhat behind those required in the Operations and Maintenance Manual. All but a few potentially serious problems have been addressed
3	Maintenance practices are generally in line with what is required in the Operations and Maintenance Manual. No potentially serious problems have been left unaddressed
4	Maintenance is in line with what is required in the Operations and Maintenance Manual and practices are close to optimum based on recent RCM analysis
5	Maintenance is in line with what is required in the Operations and Maintenance Manual and Freeport could stand today as an industry benchmark as to optimal maintenance practices.

1e. KPI's (consistent with Appendix H)

Description of Measure	Target for the F.Y.	Actual Measure at end of F.Y.

1f. Safety Report

(i) Safety Initiatives

Description of safety initiatives in this F.Y. and qualitative assessment of their effectiveness.

(ii) Safety Incidents

Description of incidents where lessons were learned or observations made about the need for enhanced safety practices:

Date	Location	Description of Incident

(iii) Cal/OSHA Reportable Incidents

Include statistics and data as reported to Cal/OSHA and/or OSHA for the F.Y. for work on the Joint Facilities. Include statistics and data for contractors for the F.Y. for their work on the Joint Facilities.

1g. Security Report

(i) Security Initiatives

Description of security initiatives in this F.Y. The following table may be used:

Date/Item in Vulnerability Assessment	Description of Finding in Vulnerability Assessment	Response to Finding and Status of Implementation

(ii) Security Incidents

Description of incidents where lessons were learned or observations made about the need for enhanced security systems and/or practices:

Date	Location	Description of Incident

1h. Audit Report

(i) Responses to Findings

Response in this F.Y. to prior FRWA audit findings. The following table may be used:

Date/Item in Audit Report	Description of Finding in Audit Report	Response to Finding and Status of Implementation

1i. Permit Report

(i) Current Year Activity

~~Permits received in this F.Y., new permit applications or applications for renewal in this F.Y.~~

The following table may be used:

Date of Submittal	Permitting Agency & Name of Permit	Purpose of Permit	Date Received	Status of Application

(ii) Current Permit Database

Attach print-out of current FRWA permit database.

1j. MMRP Report

Provide status on all MMRPs applicable to FRWA Joint Facilities in the operations phase, whether open or closed. The following table may be used:

Item Number	Description of MMRP	Activities in this F.Y.	Status of MMRP*	Notes**

* Date of closure of item any time in the past, or state "Open."

** State whether deadlines are being met and, if not, what is the reason for not meeting.

1k. Asset Disposal

List of Minor and Major Assets disposed of in the F. Y. The following table may be used:

Date of Disposal	Serial/ID Tag Number	Description	Minor Asset (check the box)	Major Asset (State Date of Exec. Comm. Approval)

2. Quarterly Report as Described in Section 3.17

2a. Expenditures Relative to Quarter Budget

The following tables may be used.

(i) Operations

Work Category	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Administrative Tasks			
Control Room			
Production Systems			
Energy			
All Other Operations			
TOTAL			

(ii) Maintenance

Work Category	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Structure			
Utilities			
Production Systems			
Site & Right-of-Way			
Security			
TOTAL			

(iii) Maintenance and Replacement Reserve Trustee Account

Work Description	Actual Expenditures \$1000s
Item 1	
Item 2	
TOTAL	

(iv) Summary

	Budget \$1000s	Actual Expenditures \$1000s	Variance \$1000s
Operations			
Maintenance			
Maintenance and Replacement Reserve Trustee Account			
TOTAL			

Comments on significant budget variances should be provided.

2b. Summary of Water Quantities Delivered

The following table may be used (1st Qtr in FY 2011 is shown as an example)

Month/Year	Thousands of Acre Feet						
	Withdrawn at the Intake				Delivered to Member Agency		
					Points of Delivery		
	SCWA	EBMUD	Losses*	Total	SCWA	EBMUD	Total
July 2010							
August 2010							
September 2010							
Total							

* Includes Joint Facility drainage for maintenance purposes

2c. Key Operational Events

Brief description of any significant operational events or issues that occurred during the Quarter, including description of the consequence or potential consequence, and action taken. The following table may be used:

Date	Description of Event/Issue and Consequence	Action Taken

2d. Summary of Maintenance Work

(i) Significant scheduled maintenance items

The following table may be used.

Description of Significant Scheduled Maintenance Items in Annual O&M Plan	Date Scheduled Maintenance Item was Completed	Notes

(ii) Significant Maintenance Issues

Brief description of any significant maintenance issues that occurred during the Quarter, including significant operational problems that could have been avoided due to timely and appropriate maintenance. The following table may be used:

Date	Description of Maintenance Issue and Resulting Operational Problems	Action Taken

2e. KPI's.

Report on KPI status per Appendix H.

2f. Safety Report

(i) Safety Incidents

Description of incidents where lessons were learned or observations made about the need for enhanced safety practices:

Date	Location	Description of Incident

(ii) Cal/OSHA Reportable Incidents

Include statistics and data as reportable to Cal/OSHA and/or OSHA for the Quarter for work on the Joint Facilities. Include statistics and data for contractors for the Quarter for their work on the Joint Facilities.

2g. Security Report

(i) Security Incidents

Description of incidents where lessons were learned or observations made about the need for enhanced security systems and/or practices:

Date	Location	Description of Incident

2h. Audit Report.

No Quarterly Report Needed Unless Required by the OMC.

2i. Permit Report

(i) Current Quarter Activity

Permits received in this Quarter, new permit applications or applications for renewal in this Quarter. The following table may be used:

Date of Submittal	Permitting Agency & Name of Permit	Purpose of Permit	Date Received	Status of Application

2j. MMRP Report

Provide status on all MMRPs applicable to FRWA Joint Facilities in the operations phase, whether open or closed. The following table may be used:

Item Number	Description of MMRP	Activities in this F.Y.	Status of MMRP*	Notes**

* Date of closure of item any time in the past, or state "Open."

** State whether deadlines are being met and, if not, what is the reason for not meeting.

2k. Asset Disposal

No Quarterly Report needed unless required by the OMC.

Appendix J

Responsibilities and Cost Sharing for Use of the Folsom South Canal

Description	Responsible	Cost Allocation
Water quality monitoring	1) FRWA/Op Agent - for Freeport Intake 2) FRWA/Op Agent for WQ instrumentation @ Terminal Weir 3) EBMUD for periodic sampling in the canal & lab analysis related to SMUD Agreement requirements 4) FRWA for consolidating and transmitting to SMUD water quality data collected by FRWA and EBMUD related to SMUD Agreement requirements 5) FRWA for obtaining from SMUD water quality data collected by SMUD related to SMUD Agreement requirements	1) FRWA ¹ 2) FRWA ¹ 3) FRWA ¹ 4) FRWA ¹ 5) FRWA ¹
Flow measurement	1) FRWA/Op Agent for Freeport Intake and flow control at SCWA WTP 2) FRWA/Op Agent for flow meter downstream of Bifurcation 3) EBMUD for flows withdrawn at Clay	1) FRWA ¹ 2) FRWA ¹

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	Station Pumping Plant 4) FRWA for consolidating and transmitting to USBR flow data collected by FRWA and EBMUD as required in the Folsom South Canal O&M Plan	3) EBMUD 4) FRWA ¹	
Canal water levels (other than telecom & SCADA – see below)	1) FRWA/Op Agent at Grant Line Road 2) EBMUD at Clay Station PP 3) FRWA for consolidating and transmitting to USBR canal water level data collected by FRWA and EBMUD as required in the Folsom South Canal O&M Plan	1) FRWA ¹ 2) EBMUD 3) FRWA ¹	
Sediment monitoring in the canal	EBMUD	EBMUD	
Sediment removal from the canal	EBMUD	EBMUD	
Water treatment incremental O&M cost charges by SMUD (and incremental capital costs)	SMUD	FRWA ¹	
Telecommunications and SCADA O&M for canal flow and level monitoring, other than at Clay Station Pumping Plant	FRWA/Op Agent	FRWA ¹	
Canal maintenance by USBR	USBR	EBMUD & other users of FSC ²	

Notes:

1. FRWA costs noted shall be variable costs as described in Section 5 of the Delivery Agreement and Appendix B-1
2. Canal maintenance charges made through USBR rates