
CONSENT CALENDAR – Continued

Items 4-8

5. RATIFY/APPROVE BOARD OF DIRECTORS' ATTENDANCE AT MEETINGS AND EVENTS

Recommendation: That the Board ratify/approve the meetings and events for Steven LaMar, Mary Aileen Matheis, Peer Swan, Douglas Reinhart, and John Withers.

6. 2013 STATE LEGISLATIVE UPDATE

Recommendation: That the Board take a "SUPPORT" position on AB 1200 (Levine); a "SUPPORT" position on AB 792 (Mullin); and a "SUPPORT" position on SB 322 (Hueso).

7. 2013 FEDERAL LEGISLATIVE UPDATE

Recommendation: That the Board oppose the 28 percent cap on tax-exempt municipal bonds and urge Congress to maintain the current tax-exempt status of municipal bonds.

8. DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT INTEREST RATE SWAP COMPLIANCE

Recommendation: That the Board adopt a resolution modifying master policy with respect to use of interest rate swaps and other contracts described in Government Code Section 5920.

Reso. No. 2013-

ACTION CALENDAR

9. WELL 115 REPLACEMENT WELL DRILLING AND EQUIPPING CONSTRUCTION AWARD

Recommendation: That the Board authorize a budget increase in the amount of \$492,600 for project 11627 (3717); approve an Expenditure Authorization in the amount of \$3,626,900 for project 11627 (3717); and authorize the General Manager to execute a construction contract with SS Mechanical in the amount of \$3,091,494.90 for the Well 115 Replacement Well Drilling and Equipping project.

10. ORANGE COUNTY SANITATION DISTRICT DRY WEATHER URBAN RUNOFF DIVERSION PROGRAM POLICY POSITION

Recommendation: That the Board adopt the policy position on the Orange County Sanitation District Dry Weather Urban Runoff Diversion Program.

ACTION CALENDAR - Continued

11. FOURTEENTH AMENDMENT TO AGREEMENT FOR PARTICIPATION IN SPECIFIED MUNICIPAL WATER DISTRICT OF ORANGE COUNTY REBATE PROGRAMS

Recommendation: That the Board authorize the General Manager to execute the Fourteenth Amendment to the District's Agreement with the Municipal Water District of Orange County, subject to non-substantive changes, for Participation and Co-funding by Irvine Ranch Water District in Specified Municipal Water District of Orange County Rebate Programs, adding \$100,000 in funding for FY 2012-13, for cost-effective tactical incentive water use efficiency measures.

OTHER BUSINESS

Pursuant to Government Code Section 54954.2, members of the Board of Directors or staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to staff or other resources for factual information, request staff to report back at a subsequent meeting concerning any matter, or direct staff to place a matter of business on a future agenda. Such matters may be brought up under the General Manager's Report or Directors' Comments.

12. A. General Manager's Report

B. Directors' Comments

C. Adjourn.

* * * * *

Availability of agenda materials: Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Irvine Ranch Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection in the District's office, 15600 Sand Canyon Avenue, Irvine, California ("District Office"). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available from the District Secretary of the District Office at the same time as they are distributed to Board Members, except that if such writings are distributed one hour prior to, or during, the meeting, they will be available at the entrance to the Board of Directors Room of the District Office.

The Irvine Ranch Water District Board Room is wheelchair accessible. If you require any special disability-related accommodations (e.g., access to an amplified sound system, etc.), please contact the District Secretary at (949) 453-5300 during business hours at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in alternative format upon written request to the District Secretary at least seventy-two (72) hours prior to the scheduled meeting.

May 13, 2013

Prepared by: Rob Jacobson

Submitted by: Cheryl Clary

Approved by: Paul Cook



WORKSHOP

RETIREMENT BENEFIT FUNDING TRUST

SUMMARY:

Staff has been working with the District's consultants, legal counsel, and the Finance and Personnel Committee to develop a potential retirement trust structure that could be utilized to facilitate the investment of assets designated to, over time, fund all or part the District's CalPERS unfunded liability. Staff and representatives from the District's retirement consultant, Aon, will provide an overview of the trust concept and considerations including potential benefits and risks, District counsel's legal opinion of the structure, comparative investment performance for the expected fund manager class, and expected next steps that would be required to establish, fund, and administer a retirement benefit funding trust.

BACKGROUND:

Since 2009, the District has made additional payments to CalPERS, referred to as "contributions in excess of its annual required contribution (ARC), of \$15.1 million in an effort to reduce the District's unfunded liability amount. Currently, the District's only option for committing additional funds to reduce its unfunded liability is to sending the funds to CalPERS for its investment management. Establishing a separate trust to "pre-fund" the CalPERS unfunded liability would provide the District with an alternative that would allow for investment of assets by a separate professional fund manager selected and monitored by the District, with the trust's funds transferred to CalPERS at opportune times.

Based on the analysis of District's special legal counsel, Hanson Bridgett, the retirement benefit funding trust would be allowable using an IRS Section 115 Trust structure. To date, 115 Trusts have been used by public agencies to pre-fund, and invest for, their Other Post Employment Benefits (OPEB) obligations. Based on staff's research, there do not appear to be any public agencies that utilize the Trust structure for pre-funding pension obligations.

Legal counsel has stated that a 115 Trust is an irrevocable trust and the funds would be committed solely to District retirement obligations. Because the funds in the Trust are irrevocable and only for the purpose of funding the retirement benefit, the assets can be invested in alternatives such as equities, bonds and other investment types. Counsel also stated that the Trust would require the appointment of a "Retirement Board" to comply with California Constitutional requirements. Staff and legal counsel are also evaluating alternatives that could potentially allow for both CalPERS and OPEB funding within the same Trust.

Retirement Trust Considerations:

Staff and representatives from Aon will provide the Board with the primary considerations that require thorough review prior to establishing the proposed Trust. Those considerations include:

- An overview of the District's key goals in establishing the Trust (e.g. providing an alternative to CalPERS asset management, diversification of risk, retaining more control of District assets, etc.) and, based on those goals, a review of the potential benefits and risks to consider;
- An updated estimate of the District's unfunded liability amount including additional contributions to date and, based on that estimate, potential funding strategies;
- A comparative review of historic average investment performance for fund managers by portfolio size;
- An overview of estimated investment management fees based on general asset allocations strategies and fund size, as well as custody and trustee fees;
- A review of expected fiduciary requirements including establishing a fund manager and custodian selection process, determination of portfolio allocation strategies, evaluation of fund manager(s); and
- Creating fiduciary oversight for ongoing fund manager performance.

Next Steps:

Based on discussion and input from the Board, staff will pursue the next steps with the District's consultants, legal counsel, and return to the Finance and Personnel Committee at its next meeting.

Expected next steps for review at the June 4, 2013 Finance and Personnel Committee meeting and subsequent Board approval include:

- Completion of the draft 115 Trust retirement agreement;
- Identifying potential investment advisors and completion of expected scope of services;
- Identifying potential plan administrators/trustees for investment plan custody and reporting services and completion of expected scope of services; and
- Developing a preliminary review of fund management types based on initial and future funding expectations.

FISCAL IMPACTS:

Unable to determine at this time.

ENVIRONMENTAL COMPLIANCE:

This item is not a project as defined in the California Environmental Quality Act Code of Regulations, Title 14, Chapter 3, Section 15378.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on May 1, 2013.

RECOMMENDATION:

Based on discussion and input from the Board, staff will pursue the next steps with the District's consultants and legal counsel, and return to the Finance and Personnel Committee at its next meeting.

LIST OF EXHIBITS:

None.

May 13, 2013
Prepared and
Submitted by: L. Bonkowski
Approved by: P. Cook



CONSENT CALENDAR

MINUTES OF BOARD MEETINGS

SUMMARY:

Provided are the minutes of the April 22, 2013 Regular Board meeting for approval.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

Not applicable.

RECOMMENDATION:

THAT THE MINUTES OF THE APRIL 22, 2013 REGULAR BOARD MEETING BE APPROVED AS PRESENTED.

LIST OF EXHIBITS:

Exhibit "A" – Minutes – April 22, 2013

EXHIBIT "A"

MINUTES OF REGULAR MEETING – APRIL 22, 2013

The regular meeting of the Board of Directors of the Irvine Ranch Water District (IRWD) was called to order at 5:00 p.m. by President Reinhart on April 22, 2013 in the District office, 15600 Sand Canyon Avenue, Irvine, California.

Directors Present: Matheis, Reinhart, Swan, LaMar and Withers

Directors Absent: None

Also Present: General Manager Cook, Executive Director of Finance Clary, Director of Risk Management and Treasury Jacobson, Executive Director of Engineering Burton, Executive Director of Operations Sheilds, Director of Public Affairs Beeman, Executive Director of Water Policy Heiertz, Director of Water Resources Weghorst, Legal Counsel Arneson, Secretary Bonkowski, Ms. Shannon Reed, Mr. Mike Hoolihan, Ms. Tina Bertsch, Mr. Christopher Smithson, Ms. Christine Compton, Mr. Jim Reed, Mr. Roger Faubel, Mr. Jason Dadakis, Mr. Mike Markus, Mr. A. G. Kawamura, Mr. Bryan Starr, Mr. Steve Sheldon, Mr. Bruce Newell, Mr. Karl Seckel and other members of the public and staff.

WRITTEN COMMUNICATION: None.

ORAL COMMUNICATION

- 1) Mr. Scott Maloni of Poseidon Resources asked to speak on Item No. 19 on the Action Calendar relative to the Letter of Intent with Poseidon (see pages 7 and 8).
- 2) Mr. Bryan Starr of the Orange County Business Council asked to speak on Item No. 20 on the Action Calendar relative to Senate Bill 658 (Correa) (see pages 9 and 10).
- 3) Mrs. Joan Irvine Smith's assistant addressed the Board of Directors with respect to the Dyer Road wellfield. She said it was her understanding that currently wells C-8, C-9, 10, 11, 12, 15, 16 and 17 will operate in accordance with the District's annual pumping plan. Wells 1, 2, 3, 4, 5, 6, 7, 13 and 14 will be off. This was confirmed by Mr. Cook, General Manager of the District.

With respect to the OCWD annexation of certain IRWD lands, on June 5, 2009, IRWD received a letter from OCWD noting that OCWD has completed the formal responses to comments they previously received on the draft program Environmental Impact Report. The letter further noted that with this task completed, OCWD has exercised its right to terminate the 2004 Memorandum of Understanding (MOU) regarding annexation. OCWD also indicated that due to the lack of progress on the annexation issue, the draft program Environmental Impact Report will not be completed. On June 8, 2009, OCWD completed the Long-Term Facilities Plan which was received and filed by the OCWD Board in July 2009. Staff has been coordinating with the City of Anaheim (Anaheim) and Yorba Linda Water District (YLWD) on their most recent annexation requests and has reinitiated the annexation process with OCWD. IRWD, YLWD and Anaheim

have negotiated a joint MOU with OCWD to process and conduct environmental analysis of the annexation requests. The MOU was approved by the OCWD Board on July 21, 2010. This was confirmed by Mr. Cook.

With respect to the Groundwater Emergency Service Plan, IRWD has an agreement in place with various south Orange County water agencies, MWDOC and OCWD, to produce additional groundwater for use within IRWD and transfer imported water from IRWD to south Orange County in case of emergencies. IRWD has approved the operating agreement with certain south Orange County water agencies to fund the interconnection facilities needed to affect the emergency transfer of water. MWDOC and OCWD have also both approved the operating agreement. This was confirmed by Mr. Cook.

ITEMS TOO LATE TO BE AGENDIZED: None.

PRESENTATIONS

WATER REUSE CALIFORNIA AWARD TO A.G. KAWAMURA OF ORANGE COUNTY PRODUCE

Mr. Mark Tetterer, President of the Orange County Chapter of Water Reuse California, presented Mr. A.G. Kawamura from Orange County Produce with the Recycled Water Agriculture Customer of the Year award. Mr. Kawamura acknowledged the importance of using recycled and also thanked IRWD for being one of the finest water agencies in the nation.

ORANGE COUNTY WATER DISTRICT PRESENTATION ON MID-BASIN INJECTION

Mr. Mike Markus and Mr. Jason Dadakis of the Orange County Water District made a presentation and answered questions relative to Phase I of the Demonstration Mid-Basin Injection Project, which will improve the availability of groundwater in Orange County and be another innovative method of using recycled water.

WORKSHOP

Using a PowerPoint presentation, Executive Director of Finance Clary provided an overview of the proposed FY 2013-14 operating budget. Ms. Clary reviewed the schedule for budget and rate adoption. She noted that the first workshop held on April 8 where key budget drivers, significant assumptions, budget highlights, impact of the proposed budget on rates, and the schedule for the budget and rate adoption were discussed. She then reviewed the operating expense budget for a total of \$117.1 million, representing an increase of \$6.0 million or 5.954% over the fiscal year 2012-13 budget. She further highlighted the revenues for water and sewer versus expenses.

Using a chart, Mr. Christopher Smithson reviewed the proposed rate adjustments for water, sewer, and recycled water for the District's three rate areas including Irvine Ranch, Los Alisos, and Orange Park Acres, and also included comparison rates from fiscal year 2012-13 to fiscal year 2013-14. He then showed a comparison of Irvine Ranch's proposed rates as they compare to neighboring agencies with and without access to groundwater through OCWD. Mr. Smithson noted the next steps which includes mailing the Proposition 218 notices on or about May 6, 2013, and receiving and tabulating responses over a 45-day period, with the proposed rates and charges scheduled for the June 24 Board meeting for a Public Hearing. Director Withers left the Board room at 5:51 p.m. Following discussion with the Board and staff, on MOTION by LaMar, seconded by Swan, and carried (Swan, LaMar, Reinhart, Matheis voting aye and Withers absent), THE BOARD ADOPTED THE FOLLOWING RESOLUTION BY TITLE APPROVING THE OPERATING BUDGET FOR FISCAL YEAR 2013-14 (WITH RATES AND CHARGES FOR FISCAL YEAR 2013-14 TO BE ADOPTED ON JUNE 24, 2013); AND APPROVED THE PROPOSITION 218 NOTICES SUBJECT TO NON-SUBSTANTIVE MODIFICATIONS.

RESOLUTION NO. 2013-13

RESOLUTION OF THE BOARD OF DIRECTORS
OF IRVINE RANCH WATER DISTRICT,
ORANGE COUNTY, CALIFORNIA
APPROVING DISTRICT'S OPERATING BUDGET FOR
FISCAL YEAR 2013-14 AND DETERMINING COMPLIANCE WITH
ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION

CONSENT CALENDAR

On MOTION by Matheis, seconded by LaMar, and carried (Swan, LaMar, Reinhart, Matheis voting aye and Withers absent), CONSENT CALENDAR ITEMS 6 THROUGH 17 WERE APPROVED AS FOLLOWS:

6. MINUTES OF REGULAR BOARD MEETING

Recommendation: That the minutes of the April 8, 2013 Regular Board Meeting be approved as presented.

7. RATIFY/APPROVE BOARD OF DIRECTORS' ATTENDANCE AT MEETINGS AND EVENTS

Recommendation: That the Board ratify/approve the meetings and events for Steven LaMar, Mary Aileen Matheis, Doug Reinhart, John Withers and Peer Swan.

CONSENT CALENDAR (CONTINUED)

8. MARCH 2013 TREASURY REPORTS

Recommendation: That the Board receive and file the Treasurer's Investment Summary Report and the Monthly Interest Rate Swap Summary for March 2013; approve the March 2013 Summary of Payroll ACH payments in the total amount of \$1,387,083 and approve the March 2013 Accounts Payable Disbursement Summary of Warrants 337405 through 338135, Workers' Compensation distributions, wire transfers, payroll withholding distributions and voided checks in the total amount of \$11,144,831.

9. STRATEGIC MEASURES DASHBOARD

Recommendation: That the Board receive and file the Strategic Measures Dashboard and information items.

10. BAKER RANCH PHASE 1A CAPITAL IMPROVEMENTS

Recommendation: That the Board authorize the addition of projects 11661 (4000) and 31661 (4001) in the amounts of \$612,700 and \$304,700, respectively, and approve Expenditure Authorizations for projects 11661 (4000) and 31661 (4001) in the amounts of \$612,700 and \$304,700, respectively, for the Baker Ranch Phase 1A Capital Improvements.

11. REIMBURSEMENT AGREEMENT BETWEEN IRWD AND THE CITY OF IRVINE FOR INSTALLATION AND ADJUSTMENT OF IRWD FACILITIES TO GRADE

Recommendation: That the Board authorize the addition of projects 11674 (4270), 21674 (4271), and 31674 (4272) to the FY 2012-13 Capital Budget in the amount of \$365,200, \$199,100, and \$14,300, respectively; approve Expenditure Authorizations for projects 11674 (4270) and 21674 (4271) in the amount of \$365,200 and \$199,100 respectively; and authorize the General Manager to execute a Reimbursement Agreement with the City of Irvine for its Annual Slurry Seal and Pavement Rehabilitation project, Bid No. 13-2927.

12. PLANNING AREA 51 HERITAGE FIELDS TRABUCO ROAD CAPITAL IMPROVEMENTS

Recommendation: That the Board authorize the addition of projects 11660 (3977), 21660 (3980), and 31660 (3983) in the amounts of \$156,200, \$161,700, and \$480,700, respectively; approve Expenditure Authorizations for projects 11660 (3977), 21660 (3980), and 31660 (3983) in the amounts of \$156,200, \$161,700, and \$480,700, respectively; and authorize the General Manager to execute a Supplemental Reimbursement Agreement with Heritage Fields for Planning Area 51 Trabuco Road Capital Facilities.

CONSENT CALENDAR (CONTINUED)

13. QUITCLAIM OF REAL PROPERTY IRVINE COMMUNITY DEVELOPMENT COMPANY LLC QUITCLAIM OF PUMP STATION AND RECYCLED WATER PIPELINE EASEMENT BEE CANYON PUMP STATION

Recommendation: That the Board adopt the following resolution by title approving execution of the Quitclaim Deed to Irvine Community Development Company LLC.

RESOLUTION NO. 2013-14

RESOLUTION OF THE BOARD OF DIRECTORS OF
IRVINE RANCH WATER DISTRICT APPROVING
EXECUTION OF THE QUITCLAIM DEED TO
IRVINE COMMUNITY DEVELOPMENT COMPANY LLC

14. QUITCLAIM OF REAL PROPERTY ANTHONY M. FILIPPONE AND ISABELLE D. MARQUAIS WATER PIPELINE EASEMENT PER OFFICIAL RECORDS 715/85 ORANGE PARK ACRES

Recommendation: That the Board adopt the following resolution by title approving execution of the Quitclaim Deed to Anthony M. Filippone and Isabelle D. Marquais.

RESOLUTION NO. 2013-15

RESOLUTION OF THE BOARD OF DIRECTORS OF
IRVINE RANCH WATER DISTRICT APPROVING
EXECUTION OF THE QUITCLAIM DEED TO
ANTHONY M. FILIPPONE AND ISABELLE D. MARQUAIS

15. QUITCLAIM OF SEWER EASEMENT AND AGREEMENT TRANSFERRING SEWER FACILITIES SERVING JAMES A. MUSICK JAIL FACILITY PROPERTY TO COUNTY OF ORANGE

Recommendation: That the Board adopt the following resolution by title approving execution of the Quitclaim Deed to County of Orange.

RESOLUTION NO. 2013-16

RESOLUTION OF THE BOARD OF DIRECTORS OF
IRVINE RANCH WATER DISTRICT APPROVING
EXECUTION OF THE QUITCLAIM DEED TO
THE COUNTY OF ORANGE

CONSENT CALENDAR (CONTINUED)

16. SANTIAGO CANYON AREA BOOSTER PUMP STATION PERMANENT GENERATORS CONTRACT CHANGE ORDER AND FINAL ACCEPTANCE

Recommendation: That the Board authorize the General Manager to execute Contract Change Order No. 5 with Pacific Hydrotech Corporation in the credit amount of (\$201,978.26); accept construction of the Santiago Canyon Area Booster Pump Station Permanent Generators, project 11476 (1570); authorize the General Manager to file a Notice of Completion; and authorize the release of retention 35 days after filing of the Notice of Completion.

17. LAWRP BUILDING F ELECTRICAL FEEDER REPLACEMENT – CAPITAL BUDGET ADDITION, EXPENDITURE AUTHORIZATION, AND CONSTRUCTION AWARD

Recommendation: That the Board authorize the addition of project 21152 in the amount of \$132,000 to the FY 2012-13 Capital Budget, approve an Expenditure Authorization in the amount of \$132,000, and authorize the General Manager to execute a construction contract with Johnson-Peltier in the amount of \$119,577 for the LAWRP Building F Electrical Feeder Replacement project, project 21152.

ACTION CALENDAR

RECYCLED WATER SERVICE IN PORTOLA SPRINGS

General Manager Cook reported that the Irvine Company (TIC) owns and operates a 58-acre avocado orchard located along the 241 Toll Road in Portola Springs which is currently irrigated with water from the Santiago Aqueduct Commission (SAC) pipeline. Mr. Cook said that staff has been working with TIC on the possible conversion to recycled water which would require that TIC install a new electrical service and booster pump. He said that staff recommends that IRWD initially pay for the cost to install recycled water service at TIC's site, and they make payment in less than two years using the savings associated with converting to recycled water.

Executive Director of Water Resources Heiertz said that this concept has been used successfully in the past and that these customers pay the Santiago Aqueduct Commission rate. Director Withers returned to the Board room at 5:56 p.m. Director La Mar reported that this item was reviewed and approved by the Water Resources Policy and Communications Committee on April 4, 2013. On MOTION by LaMar, seconded and unanimously carried, **THE BOARD APPROVED IRWD PAYING FOR THE COST TO INSTALL RECYCLED WATER SERVICE AT THE IRVINE COMPANY'S 58-ACRE AVOCADO ORCHARD IN PORTOLA SPRINGS, THAT THE IRVINE COMPANY REPAY IRWD IN LESS THAN TWO YEARS USING THE SAVINGS ASSOCIATED WITH CONVERTING TO RECYCLED WATER, AND THAT THE GENERAL MANAGER IS AUTHORIZED TO EXECUTE AN AGREEMENT WITH THE IRVINE COMPANY FOR THE INSTALLATION OF**

RECYCLED WATER SERVICE AT ITS 58-ACRE AVOCADO ORCHARD IN PORTOLA SPRINGS.

POSEIDON RESOURCES LETTER OF INTENT

General Manager Cook said that this item had been deferred from the March 11, 2013 Board meeting where discussion was held relative to the potential water purchase agreement. Mr. Cook said that IRWD is very interested in water quality assurances in that the water will meet IRWD water quality requirements. He said that Poseidon is asking for a reinstatement of the Letter of Intent and staff's recommendation is to not purchase water at this time. He further said that staff is proposing a number of revisions to the District's policy position on ocean desalination, taking into account the changes in conditions that have occurred.

Director LaMar reported that this item was reviewed by the Water Resources Policy and Communications Committee on March 7, 2013 and has not been reconsidered since that meeting. He said that the Committee discussed that the District could potentially purchase a vastly lower amount than anticipated in the June 9, 2009 Letter of Intent; however, could not support paying the revised estimated cost of water delivered through the South Delivery System which will be approximately \$1,812 per acre-foot including conveyance costs. Director LaMar made a motion, which was seconded by Withers, that the District revoke the current non-binding Letter of Intent to purchase water from the project, continue to negotiate with Poseidon Resources on water quality and other issues related to the proposed ocean desalination project, and that the Board approve the revised policy position on desalination. Prior to taking a Board vote on this item, President Reinhart asked Mr. Scott Maloni representing Poseidon Resources to provide comments to the Board. Mr. Maloni said that he was present only for the purpose of answering any questions from the Board and staff this evening. Director Swan said that the original recommendation was to withdraw the Letter of Intent which he believed was the correct position for the District. He expressed concern that IRWD's continued indication of an intent to purchase any amount of water sends a misleading message. He said that even if water is not purchased from the project, staff will continue to be involved with this project, attending meetings relative to water quality and other issues since the water will be transported through IRWD's system. He said that due to the District's many sources of water from local wells, that it would be unlikely that there would be a need to purchase water from the project. He further said that the high cost of water projected would adversely impact the IRWD customers in the Lake Forest area and was therefore opposed to the proposed purchase of desalinated water from the project. Director Matheis said that she believed it was necessary to participate to some degree as the water will be transported through our system and that the emphasis on quality requirements should be maintained. Director Withers requested that the motion be separated into two votes: one relative to the Letter of Intent to Poseidon and the other on the revised policy position, which was acceptable to the other Board members and Director LaMar agreed to so amend his motion into two separate motions. Director Withers further said that he believes it wise for the District to be a partner in the purchase of water even though the cost had increased substantially. In response to Director Matheis' comment, General Manager Cook said that staff has been arduous in discussions with Poseidon to protect the District's water quality standards with this project, and Poseidon has reconfirmed its ability to meet these standards. In response to Director LaMar's comment that the District should purchase some

water per year, both President Reinhart and Director Withers concurred that a minimal amount of water should be purchased. Director Swan said a purchase of 100 acre-feet per year would accurately reflect the District's intentions, if it is stated to be with the understanding that the District will not deviate from its policy that the costs of water from the project including all conveyance and delivery capital and operating, must be provided by Poseidon at or below IRWD's equivalent cost for obtaining Tier 1 water from the Metropolitan Water District (MWD), and that the project water must meet current and future water quality standards and have no adverse effect on IRWD's potable or recycled water production or delivery systems. Mr. Maloni was asked to comment on the 100 acre-foot amount suggested by the Board. Mr. Maloni said that there was no downside to staying in the process; asked for a sincere interest from IRWD; and said he does not believe it would be valuable to IRWD if the purchase of acre-feet was limited to only 100 acre-feet per year. Following comments by President Reinhart that the \$1,814 acre cost seemed too high for the IRWD customers in the Lake Forest area, Director LaMar said he would like to offer a substitute motion to the pending motion to potentially purchase 100 acre-feet of water, that the water must be in compliance with IRWD's Policy Position on Desalination, that the District continues to negotiate with Poseidon Resources on water quality and other issues, and defer the motion on the policy paper. On MOTION by LaMar, seconded and unanimously carried, THE BOARD DIRECTED STAFF TO AMEND THE CURRENT NON-BINDING LETTER OF INTENT TO STATE THAT IT IS IRWD'S INTENTION TO PURCHASE UP TO 100 ACRE-FEET PER YEAR OF DESALINATED WATER FROM THE SEAWATER DESALINATION PLANT TO BE BUILT BY POSEIDON RESOURCES, THAT THE PURCHASE OF WATER MUST BE IN COMPLIANCE WITH THE IRWD POLICY POSITION ON DESALINATION, AND THAT THE DISTRICT WILL CONTINUE TO NEGOTIATE WITH POSEIDON RESOURCES ON WATER QUALITY AND OTHER ISSUES RELATED TO THE PROPOSED OCEAN DESALINATION PROJECT.

General Manager Cook reported that in June of 2005, the IRWD Board of Directors discussed and adopted a set of policy principles regarding the use of seawater desalination for potable water supply. Mr. Cook said that while many of these policy principles appear to have held up well over the years, staff is proposing a number of revisions to the District's policy position on ocean desalination, taking into account the changes in conditions that have occurred. Director of Water Resources Heiertz reported on the updated policy. Director LaMar left the Board room at 6:25 p.m. Following comments and recommendations from Director Swan to include language on the cost of water which must be below IRWD's equivalent cost for obtaining Tier 1 water from the MWD as well as including language that the Project water will have no adverse effect on IRWD's ability to pump groundwater or purchase MWD imported water in the future, on MOTION by Swan, seconded and carried (Swan, Withers, Reinhart, Matheis voting aye and LaMar absent), THE BOARD APPROVED THE REVISED POLICY POSITION PAPER ON DESALINATION AS AMENDED.

OTHER BUSINESS

GENERAL MANAGER'S REPORT

Mr. Cook asked to make a short report at this time as Director Roger Faubel was in the audience and wanted to relay that Mr. Faubel will be resigning his position as a Director on the Santa Margarita Water District Board. Mr. Faubel said that he was honored to have worked with District staff over the years as Director. Director LaMar returned to the Board room at 6:30 p.m.

ACTION CALENDAR (CONTINUED)

SENATE BILL 658 (CORREA)

General Manager Cook said that this item was deferred from the April 8, 2013 Board meeting in response to concerns raised by the business community. He said that this bill is a work in progress and that the District is taking a support in concept approach as the document has not been fully developed yet. He said that purpose of SB 658 is to explicitly allow for the recovery of development and investigative costs against the parties responsible for causing groundwater contamination. He explained that a recent court ruling stated that only the cost of actually designing and constructing the clean-up project is currently recoverable. The ruling further implied that these costs can only be recovered after the clean-up project is completed. As a result, OCWD has been working to amend its District Act to clarify that it has the right to recover all costs from polluters to clean up the contamination they cause in the Orange County groundwater basin including development and investigative costs that are incurred before the designing and constructing of a groundwater clean-up project. OCWD's believes the bill will bring parity to Orange County ratepayers by clarifying that the Orange County Water District has authority to recover all costs related to remediating contaminated groundwater from established polluters. Director LaMar made a motion, which was seconded by Matheis, to have the Board take a support in concept position on SB 658. Prior to taking a Board vote on this item, President Reinhart invited Mr. Bryan Starr of the Orange County Business Center to speak on this item. Mr. Starr said that the OCBC wholeheartedly supports the concept that polluters pay for their role. He said that they are interested in reviewing the final language because as of now, they oppose the language in its current form, and he does not understand IRWD's support in concept approach. He then reviewed OCBC's main issues including the retroactive clause in the second line as amended; and expressed concern why this is an urgency bill as well as the lack of standards relative to potential polluters. Director Swan provided his comments on his understanding of the bill. OCWD's Board of Director Steve Sheldon said that the Board met in Closed Session today; however, they had no action to report. Mr. Sheldon said that OCWD has been having ongoing discussions with OCBC along with other business owners and believes that Mr. Starr is incorrect in his comments. He said that there are many responsible parties who do not want to pay for polluting the groundwater. He then provided an overview of the investigation performed to validate the source of contamination. He said he needed to correct Mr. Starr's statement saying that this bill is not retroactive; it only involves those in current litigation. He said that the position taken in the bill is that the responsible party is to pay for remediation and that to date, OCWD is awaiting specific proposed language for the

amendment from the business community. Mr. Sheldon requested that the Board consider a stronger position than support in concept, and asked for the Board's affirmative support of the bills two main points: 1) that the responsible parties are to pay for the investigative costs; and 2) that the responsible parties pay for the clean-up cost of remediation. Following comments from Director Swan relative to the District's clean-up efforts with the Navy, he moved that Director LaMar's motion be amended to state that it is IRWD's understanding that that it is the intent of the legislation to characterize and remediate the plume by the responsible parties involved. Director Swan's motion was not carried. Following discussion, OCWD's Director Sheldon asked that the Board endorse two principles in its motion this evening: 1) that the responsible party pay for the cost of the investigation of contamination in the local water supply caused by the party; and 2) that the responsible party pay for the cost of remediation in a timely manner. Government Relations Manager Compton recommended that the Board support the two principles previously outlined by OCWD's Director Sheldon, and also direct staff to communicate with the author the guiding principles and recommend that the amendments be worked out. Following discussion, Director Swan asked that the recommended motion by Director LaMar be amended to also include these two principles outlined by Director Sheldon. Director Withers said that he was not comfortable with the idea of taking a position with the bill language unresolved on these issues. On MOTION by Swan, seconded, and carried (Swan, Matheis, Reinhart, LaMar voting aye and Withers abstaining), THE BOARD ENDORSED THE ORANGE COUNTY WATER DISTRICT'S TWO PRINCIPLES IN SB 658 AS FOLLOWS: 1) THAT THE RESPONSIBLE PARTIES ARE TO PAY FOR THE INVESTIGATION COSTS; AND 2) THAT THE RESPONSIBLE PARTIES PAY FOR THE COST OF REMEDIATION IN A TIMELY MANNER, AND TOOK A "SUPPORT IN CONCEPT" POSITION ON SB 658.

GENERAL MANAGER'S REPORT (CONTINUED)

Mr. Cook said that IRWD and Rosedale-Rio Bravo Water Storage District started up wells at the Strand Ranch today and will be returning water to the Carpinteria Valley Water District's central coast. He recognized Mr. Paul Weghorst and Mr. Karl Seckel (of MWDOC) for their efforts.

Mr. Cook said that he received a notice of the Orange County Coastkeepers grand opening of its gardens on May 3, 2013 and invited the Board to attend.

Mr. Cook further recognized Secretary Bonkowski for her 35 years of service to the District.

DIRECTORS' COMMENTS

Director Matheis reported on a tour of the San Joaquin Valley.

Director Withers reported that he and Director LaMar attended the Urban Land Institutes Best of the Best Award ceremony. He also said that he will be attending OCSD's Board meeting this Wednesday.

Director Swan said that he will be attending the CASA conference this week and invited the Board to attend the break-out session at the District's Duck Club on April 24th along with a reception.

Director LaMar reported that he will be attending a MWDOC Board meeting, the Urban Land Institute's Best of the Best Award ceremony, and a lunch meeting with Orange County Water District relative to SB 658.

Director Reinhart said that he attended SOCWA's Special Board meeting along with a meeting with OCWD relative to SB 658.

ADJOURNMENT

There being no further business, President Matheis adjourned the meeting at 7:45 p.m.


APPROVED and SIGNED this 13th day of May, 2013.

President, IRVINE RANCH WATER DISTRICT

Secretary IRVINE RANCH WATER DISTRICT

APPROVED AS TO FORM:

Legal Counsel - Bowie, Arneson, Wiles & Giannone

May 13, 2013
Prepared and
Submitted by: N. Savedra
Approved by: Paul Cook 

CONSENT CALENDAR

RATIFY/APPROVE BOARD OF DIRECTORS'
ATTENDANCE AT MEETINGS AND EVENTS

SUMMARY:

Pursuant to Resolution 2006-29 adopted on August 28, 2006, approval of attendance of the following events and meetings are required by the Board of Directors.

Events/Meetings

Steven LaMar

4/22-23/13 Groundwater Resources Association – Managed Aquifer Recharge Symposium
5/01/13 MWD & MWDOC Directors' Board Workshop
5/17/13 2013 Orange County Water Summit
5/30/13 Association of California Cities 2013 City Infrastructure Summit

Mary Aileen Matheis

5/17/13 IRWD Long-Term Financing Planning Meeting
5/23/13 Discovery Science Center – DaVinci Innovators Preview Event

Douglas Reinhart

5/01/13 MWD & MWDOC Directors' Board Workshop
5/17/13 2013 Orange County Water Summit

Peer Swan

4/24-26/13 CASA Spring Conference, Newport Beach, CA
5/30-31/13 ACWA Board of Directors' Meeting, Sacramento, CA

John Withers

4/11/13 Association of California Cities-OC Board of Directors Installation Event
4/12/13 Meeting with Santa Ana City Councilman David Benavides re: Santa Ana/IRWD issues
5/17/13 2013 Orange County Water Summit
5/23/13 Discovery Science Center – DaVinci Innovators Preview Event
5/30/13 Association of California Cities 2013 City Infrastructure Summit

RECOMMENDATION:

THAT THE BOARD RATIFY/APPROVE THE MEETINGS AND EVENTS FOR STEVEN LaMAR, MARY AILEEN MATHEIS, DOUGLAS REINHART, PEER SWAN AND JOHN WITHERS AS DESCRIBED.

LIST OF EXHIBITS:

None.

Board Mtgs Events.doc

May 13, 2013

Prepared by: C. Compton

Submitted by: G. Heiertz

Approved by: Paul Cook



CONSENT CALENDAR

2013 STATE LEGISLATIVE UPDATE

SUMMARY:

This report provides an update on the 2013 State legislative session and IRWD state legislative priorities. A copy of the 2013 State Legislative Matrix is attached as Exhibit "A".

Staff recommends that the Board consider adopting the following positions:

- AB 1200 (Levine): Water Recycling: "SUPPORT";
- AB 792 (Mullin): Open Meetings: "SUPPORT"; and
- SB 322 (Hueso): Water Recycling: "SUPPORT".

BACKGROUND:

The 2013 legislative session is in full swing with policy committees having met in order to hear bills before the policy committee deadlines. This year, the last day for policy committees to hear fiscal bills was May 3, while May 10 was the policy committee deadline for non-fiscal bills.

IRWD 2013 Legislative Priorities:

AB 803 (Gomez) – Water Recycling Act of 2013:

On April 16, 2013, the Assembly Water, Parks and Wildlife Committee (WPW) heard AB 803. IRWD staff testified in support of the bill. Due to opposition raised by the International Association of Plumbing and Mechanical Officers about changing regulations through the legislative process, Assemblymember Gomez agreed to remove the changes to Title 17 and 22 of the California Code of Regulations from the bill. With these amendments, WPW approved the bill on a 15-to-0 vote.

The bill was heard on April 30, 2013, in Assembly Environmental Safety and Toxic Materials (ESTM). ESTM approved the bill, and referred it to Assembly Appropriations. IRWD staff attended the hearing to testify in support of the bill.

AB 1200 (Levine) - Recycled water: agricultural irrigation impoundments:

As reported last month, Assemblymember Marc Levine (D-San Rafael) introduced AB 1200. A copy is attached as Exhibit "B". The bill, as introduced, was a spot bill which proposes to require the use of recycled water in landscape irrigation. The author amended the bill on April 9, 2013. Now AB 1200 would create a voluntary pilot project for the purpose of investigating the potential water quality impacts associated with maximizing the use of recycled water in agricultural irrigation impoundments. The bill provides that the San Francisco Bay Regional Water Quality Board shall authorize up to four agricultural irrigation impoundments within Napa

and Sonoma Counties of not more than 200 acre feet in volume to be used in the pilot project. The pilot project must measure, analyze, and report water quality data collected upstream and downstream of the four agricultural irrigation impoundments before, during, and following at least five storm events that result in the release of recycled water from the pond being commingled with surface water runoff.

Staff is working to evaluate whether a similar pilot program would be beneficial for the District's region. At this time, staff recommends that the Board consider taking a "SUPPORT" position on AB 1200 (Levine, D-San Rafael). While the proposal does not address IRWD's concern with storm induced overflows, the bill does seek to evaluate and quantify the impacts and benefits of recycled water impoundments and the potential for storm induced overflows. This study could be helpful in the larger conversation about recycled water at the state level.

Other 2013 Legislation:

AB 792 (Mullin) – Open Meetings:

The Ralph M. Brown Act requires a local agency to post its agenda at least 72 hours in advance of a regular meeting and at least 24 hours prior to a special meeting. The Act also requires that the agenda be posted on the local agency's website if it has one. AB 792 has been introduced by Assemblymember Kevin Mullin (D-San Mateo) on behalf of the California Special Districts Association. A copy is attached as Exhibit "C". The bill clarifies that local agencies may conduct regular and special meetings and take official actions even if technical barriers have prevented pre-meeting posting of agendas and notices on the agency's website. AB 792 was passed by the Assembly Local Government Committee on an 8-to-1 vote. It is currently on the Assembly Floor.

Staff recommends that the Board consider taking a "SUPPORT" position on AB 792 (Mullin).

SB 322 (Hueso) – Water Recycling:

In 2010, SB 918 (Pavley, D-Calabasas) placed certain obligations on the California Department of Public Health (DPH) regarding the evaluation of direct potable reuse (DPR). DPH is required to evaluate the feasibility of developing uniform water recycling criteria DPR, and to provide a final report on that evaluation to the Legislature not later than December 31, 2016. Despite having funding, DPH has not moved forward with the expert panel. As a result, WaterReuse and the San Diego County Water Authority have sponsored SB 322 (Hueso, D-San Diego). A copy is attached as Exhibit "D".

SB 322 would allow the National Water Research Institute to convene and administer the expert panel required to evaluate DPR. The panel would also assess any additional areas of research that are needed to be able to establish uniform regulatory criteria for DPR and recommend an approach for accomplishing any of the additionally needed research in a timely manner. The bill would allow the panel to be funded through non-state donations. The bill was heard in Senate Environmental Quality on May 1, 2013. The Committee approved the bill on a 9-to-0 vote, and referred it Senate Appropriations.

Staff recommends that the Board consider taking a “SUPPORT” position on SB 322 (Hueso).

SB 735 (Wolk) – Sacramento-San Joaquin Delta Reform Act of 2009:

Under the Sacramento-San Joaquin Delta Reform Act of 2009, the Delta Stewardship Council is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta. The Reform Act required that all “covered actions” be consistent with the Delta Plan adopted by the Delta Stewardship Council. Covered actions were defined in the act. A state or local agency that proposes to undertake a covered action must prepare a written certification as to whether the covered action is consistent with the Delta Plan.

SB 735 (Wolk, D-Walnut Creek), as originally drafted, would have excluded from the definition of “covered action” the approval or implementation of a project which is a part of a larger conservation plan submitted pursuant to the Federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act (NCCPA), or certain permits related to the taking, importation, exportation, or sale of endangered or threatened species issued to a city, county, special district, or joint powers authority within Contra Costa, Sacramento, San Joaquin, Solano, or Yolo County.

The bill was amended on April 24, 2013. SB 735 would now required the Delta Stewardship Council, the California Department of Fish and Wildlife, the Counties of Contra Costa, Sacramento, and Solano, the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency, and the San Joaquin Council of Governments to enter into a memorandum of understanding regarding multispecies conservation plans that describes, among other things, how the parties would ensure that multispecies conservation plans that have been adopted or are under development are consistent with the Delta Plan.

Given the bill’s amendments, staff is not recommending action on SB 735 at this time. A copy of SB 735 is attached as Exhibit “E”.

Updates on Other 2013 Legislation of Interest to IRWD:

AB 145 (Perea/Rendon) – Relocation of Responsibility for the State’s Drinking Water Programs:

AB 145 (Perea, D-Fresno/Rendon, D-Lakewood) would move responsibility for the State’s drinking water programs from the Department of Public Health (DPH) to the State Water Resources Control Board (SWRCB). Discussions surrounding this bill continue to take place. The Brown Administration has been engaged in these discussions, and is expected to make a decision on where it would like the drinking water programs to reside within the next several weeks. Given this pending decision, ACWA, CUMA and CWA sent a joint letter to the administration outlining their preferred courses of action. The joint letter is attached as Exhibit “F”. AB 145 was heard and approved in Assembly ESTM on April 30, 2013. The bill has been referred to Assembly Appropriations. Staff will provide the Board an oral update on any new developments.

SB 658 (Correa) – Orange County Water District Act:

SB 658 (Correa) would amend the Orange County Water District Act to grant the Orange County Water District authority to recover investigative costs against the parties responsible for causing groundwater contamination. The bill was heard in Senate Environmental Quality on May 1, 2013. The Committee approved the bill on a 6-to-2 vote and referred it to Senate Floor.

CEQA Reform:

As many had suspected with Senator Rubio's resignation in February, it does not appear that broad CEQA reform will move forward this legislative year although a number of CEQA related proposals are before the Legislature. This was confirmed in late April in a statement by Governor Brown. In his statement, the Governor also affirmed his commitment to see CEQA reform take place before he leaves office.

Despite Governor Brown's statement and the low likelihood of substantial CEQA reform moving forward this year, SB 731, introduced by Senate President pro Tem Darrell Steinberg, was amended on April 23, 2013. SB 731 is likely the broadest CEQA reform measure before the Legislature this year. All of the amendments are still being reviewed by staff and our industry partners.

SB 731 was passed by the Senate Environmental Quality Committee on May 1, 2013, on an 8-to-0 vote, and referred to Senate Appropriations. Staff will provide the Board an oral update on any new developments.

Water Bond:

Discussions surrounding the water bond are beginning to take place. AB 142 (Perea), AB 294 (Salas), and AB 1331 (WPW Committee) were amended on April 23, 2013, and were noticed as a special order of business at the April 30, 2013, Assembly Water, Parks and Wildlife Committee hearing. The amendments for each bill focus on one or more aspect of the existing bond or call for additional studies about water infrastructure. The purpose of these amendments is to use the bills as a way to educate members of the Legislature about the existing water bond and to move vehicles through the legislative process so that they are available for the amended bond once a final deal is reached. Legislative leadership does not expect any negotiations on the new bond to happen until after the budget is resolved. Staff will provide an oral update on any new developments as these discussions develop.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

This item was reviewed at the Water Resources Policy and Communications Committee on May 2, 2013.

RECOMMENDATION:

THAT THE BOARD TAKE A "SUPPORT" POSITION ON AB 1200 (LEVINE); A "SUPPORT" POSITION ON AB 792 (MULLIN); AND A "SUPPORT" POSITION ON SB 322 (HUESO).

LIST OF EXHIBITS:

Exhibit "A" – 2013 IRWD Legislative Matrix

Exhibit "B" – AB 1200 (Levine)

Exhibit "C" – AB 792 (Mullin)

Exhibit "D" – SB 322 (Hueso)

Exhibit "E" – SB 753 (Wolk)

Exhibit "F" – ACWA, CUMA & CWA Letter on Relocation of the Drinking Water Programs

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
<u>AB 1</u> Alejo (D)	Water Quality: Integrated Plan: Salinas Valley		Appropriates funds for use by the Greater Monterey County Regional Water Management Group, referred to as the management group, to develop the integrated plan to address the drinking water and wastewater needs of disadvantaged communities in the Salinas Valley whose waters have been affected by waste discharges.	04/10/2013 - In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.	
<u>AB 11</u> Logue (R)	Reserve Peace Officers: Emergency Rescue Personnel		Requires specified employers to permit an employee who performs emergency duty as a volunteer firefighter, reserve peace officer, or as emergency rescue personnel to take a leave of absence for the purpose of engaging in fire, law enforcement, or emergency rescue training.	04/18/2013 - In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.	
<u>AB 21</u> Alejo (D)	Safe Drinking Water Small Community Grant Fund		Authorizes the assessment of a specified annual charge in lieu of interest on loans for water projects made pursuant to the Safe Drinking Water State Revolving Fund, and the deposit of that money into the Safe Drinking Water State Small Community Emergency Grant Fund. Authorizes the expending of the money in the fund for grants for specified water projects that serve disadvantaged and severely disadvantaged communities.	04/10/2013 - In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.	
<u>AB 25</u> Campos (D)	Employment: Social Media		Applies existing law that prohibits a private employer from requiring or requesting an employee or applicant for employment to disclose a username or password for the purpose of accessing personal social media, to access personal social media in the presence of the employer, or to divulge any personal social media to public employers. Provides that these provisions apply to public employers generally, including charter cities and counties.	04/24/2013 - From ASSEMBLY Committee on PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY: Do pass to Committee on APPROPRIATIONS.	
<u>AB 30</u> Perea (D)	Water Quality		Amends the Porter-Cologne Water Quality Control Act to authorize the Water Resources Control Board to assess an annual charge in connection with any financial assistance under the Water Pollution Control Revolving Fund without a change unless it is determined that the charge is not consistent with federal requirements regarding the fund, at which time	04/10/2013 - In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.	

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			the board would replace the charge with an identical interest rate. Relates to deposits to another specified water pollution control fund.		
AB 37 Perea (D)	Environmental Quality Act: Record of Proceedings		Requires, for specified projects or upon the request of a project applicant and the consent of the lead agency that the lead agency prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIR's, or other environmental documents for specified projects.	04/15/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on APPROPRIATIONS.	
AB 52 Gatto (D)	Native Americans: California Environmental Quality Act		Requires a lead agency to make best efforts to avoid, preserve, and protect specified Native American resources with a project that may have a significant effect on the environment. Requires the agency to take specified actions if the project may adversely affect tribal cultural resources, a reservation or rancheria. Requires the revision of guidelines to include criteria for determining whether a proposed project has a significant effect on the environmental to include effects on tribal cultural resources.	04/19/2013 - From ASSEMBLY Committee on APPROPRIATIONS with author's amendments.;04/19/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
AB 69 Perea (D)	Groundwater: Nitrate at Risk Area Fund		Establishes the Nitrate at Risk Area Fund. Provides that moneys in the fund would be available for the purposes of developing and implementing sustainable and affordable solutions for disadvantaged communities in specified areas designated by the State Department of Public Health, in conjunction with the State Water Resources Control Board.	04/25/2013 - To SENATE Committee on ENVIRONMENTAL QUALITY.	
AB 72 Holden (D)	Municipal Water District: Board of Directors		Requires the directors of a municipal water district, except directors elected at a district formation election, to take office on the first Friday in December succeeding their election.	04/25/2013 - To SENATE Committee on GOVERNANCE AND FINANCE.	
AB 115 Perea (D)	Safe Drinking Water State Revolving Fund		Relates to the state Safe Drinking Water Act. Authorizes the Department of Public Health to fund projects by grant or loan where multiple water systems apply for funding as a single applicant for the purpose of consolidating water systems or extending services to households relying on private wells. Authorizes funding of a project to benefit a disadvantaged	04/18/2013 - In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.	

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			community.		
AB 118 Env Safety & Toxic Material Cmt	Safe Drinking Water State Revolving Fund		Authorizes the State Department of Public Health to adopt interim regulations for purposes of implementing provisions relating to the Safe Drinking Water State Revolving Fund. Requires an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years.	04/10/2013 - In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.	
AB 122 Rendon (D)	Energy Assessment: Nonresidential Buildings: Financing		Enacts the Nonresidential Building Energy Retrofit Financing Act. Requires the Energy Resources Conservation and Development Commission to establish a program to develop a request for proposal for a third-party administrator and to develop and operate the program to provide financial assistance, through authorizing the issuance of, revenue bonds, to owners of eligible nonresidential buildings for implementing energy property improvement. Requires a public report on program efficacy.	04/29/2013 - From ASSEMBLY Committee on UTILITIES AND COMMERCE: Do pass to Committee on APPROPRIATIONS.	
AB 142 Perea (D)	Water Resources: Infrastructure		Requires the Department of Water Resources to initiate and complete a comprehensive study of state and local water supply infrastructure needs and to provide a report to the Legislature that summarizes those findings.	04/30/2013 - From ASSEMBLY Committee on WATER, PARKS AND WILDLIFE: Do pass as amended to Committee on APPROPRIATIONS.	
AB 145 Perea (D)	State Water Resources Control Board: Drinking Water		Transfers to the State Water Resources Control Board the various duties and responsibilities imposed on the State Department of Public Health by the State Safe Drinking Water Act and the Safe Drinking Water State Revolving Fund Law of 1997.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass to Committee on APPROPRIATIONS.	
AB 153 Bonilla (D)	Global Warming Solutions Act of 2006: Offsets		Amends the Global Warming Solutions Act of 2006. Requires the State Air Resources Board to adopt a specified process for the review and consideration of new offset protocols for reducing greenhouse gases and, commencing in 2014 and continuing thereafter, use that process to review and consider new offset protocols. Requires the board to adopt guidelines	04/29/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on APPROPRIATIONS.	

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			and incentives that prioritize the approval of specified offset protocols. Requires the board to submit a specified annual report to the Legislature.		
AB 183 Dickinson (D)	Delta Protection Commission: Executive Director		Amends the Johnson-Baker-Andal-Boatwright Delta Protection Act of 1992. Requires the Executive Director of the Delta Commission to determine a discretionary project located in the primary zone to be consistent with the resource management plan provided that the project satisfies specified criteria. Authorizes appeals to specified decisions.	02/15/2013 - To ASSEMBLY Committees on WATER, PARKS AND WILDLIFE and NATURAL RESOURCES.	
AB 194 Campos (D)	Open Meetings: Protections for Public Criticism		Makes it a misdemeanor for a member of a legislative body, while acting as a chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. Authorizes a district attorney to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void.	02/07/2013 - To ASSEMBLY Committee on LOCAL GOVERNMENT.	
AB 218 Dickinson (D)	Employment Applications: Criminal History		Prohibits a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position. Includes specified findings and declarations of the Legislature in support of this policy.	04/10/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
AB 229 Perez J (D)	Infrastructure and Revitalization Financing Districts		Authorizes the creation of an infrastructure and revitalization financing district and the issuance of debt with voter approval. Authorizes the creation of a district for up to 40 years and the issuance of debt with a final maturity date of up to 30 years. Authorizes a district to finance projects in redevelopment project areas and former redevelopment project areas and former military bases.	04/17/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT: Do pass to Committee on APPROPRIATIONS.	
AB 243 Dickinson (D)	Local Government: Infrastructure Financing Districts		Authorizes the creation of an infrastructure and revitalization financing district and the issuance of debt with voter approval. Authorizes a district to finance projects in	04/17/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT: Do pass to	

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			redevelopment project areas and former redevelopment project areas and former military bases if special conditions are met. Authorizes a district to fund various projects, including watershed land used for the collection and treatment of water for urban uses, flood management, open space, habitat restoration and development purposes.	Committee on APPROPRIATIONS.	
AB 294 Holden (D)	Local-State Joint Investment Partnership Program		Establishes a pilot program whereby certain local government entities, upon the approval and oversight of the Infrastructure and Economic Development Bank, are authorized to reallocate their annual payments of property tax revenue directed to the Educational Revenue Augmentation Fund to instead finance certain kinds of public works that further state policy. Requires each entity operating a project under the program and the bank to submit reports on program results.	04/23/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT with author's amendments.;04/23/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on LOCAL GOVERNMENT.	
AB 295 Salas (D)	Water: Water Supply: Infrastructure		Requires the State Water Resources Control Board and the Drinking Water and Environmental Management Division of the State Department of Public Health to initiate and complete a comprehensive study relating to the need for state funding for water projects and to provide a report to the Legislature summarizing those findings.	04/30/2013 - From ASSEMBLY Committee on WATER, PARKS AND WILDLIFE: Do pass as amended to Committee on APPROPRIATIONS.	
AB 378 Hueso (D)	Resources: Delta Research		Requires a person conducting Delta research whose research is funded, in whole or in part, by the state, to take specified actions with regard to the sharing of the primary data, samples, physical collections, and other supporting materials created or gathered in the course of that research. Authorizes the Delta Independent Science Board to adopt guidelines to provide adjustments to, and, where essential, exceptions from, these requirements.	03/07/2013 - To ASSEMBLY Committees on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW and WATER, PARKS AND WILDLIFE.	
AB 380 Dickinson (D)	California Environmental Quality Act: Notice		Amends the California Environmental Quality Act. Requires that notices regarding environmental impact reports filed by lead agencies need to be filed with the Office of Planning and Research and the county clerk and posted by that clerk for	04/01/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on LOCAL	

EXHIBIT "A"
IRWD 2013 LEGISLATIVE MATRIX
Updated May 1, 2013

Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			public review. Provides additional duties regarding that notice by the Office and the county clerk. Provides notice requirements for projects that are determined to be exempted from the Act.	GOVERNMENT.	
<u>AB 410</u> Jones-Sawyer (D)	Public Employee Health Benefits: Enrollment		Permits an annuitant who reinstates from retirement under PERS for employment by the state or a contracting agency and who subsequently retires again on or after a specified date to enroll in a health benefit plan as an annuitant of the employer from which he or she first retired, upon meeting specified conditions.	04/10/2013 - From ASSEMBLY Committee on PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY: Do pass to Committee on APPROPRIATIONS.	
<u>AB 416</u> Gordon (D)	Local Emission Reduction Program		Creates the Local Emission Reduction Program and requires money to be available from the general fund for providing grants and other financial assistance to develop and implement greenhouse gas emissions reduction projects in the state, giving consideration to the ability of a project to create local job training and job creation benefits and achieve greenhouse gas emissions reduction. Provides the public entities that will be required to administer the program.	04/10/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT: Do pass to Committee on APPROPRIATIONS.	
<u>AB 426</u> Salas (D)	Water Transfers: Water Rights Decrees		Amends existing law that provides that any water right determined under a court decree issued after a specified date, is transferable. Eliminates the requirement that a court decree be issued after a specified date.	04/30/2013 - From ASSEMBLY Committee on WATER, PARKS AND WILDLIFE: Do pass to Committee on APPROPRIATIONS.	
<u>AB 507</u> Garcia (D)	Public Employees Retirement: Retirement Death Benefit		Requires that the amount paid pursuant to the Public Employees Retirement Law Post Retirement Death Benefit be a specified amount for a death occurring during a specified period. Increases that amount each year as specified at which point the amount would be a specified amount and would be adjusted annually thereafter.	04/17/2013 - In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.	
<u>AB 515</u> Dickinson (D)	California Environmental Quality Act: Judicial Review		Establishes a CEQA Compliance Division of the Superior Court in a county in which the Attorney General maintains an office. Provides the division with original jurisdiction over actions of proceedings brought pursuant to the CEQA and	04/23/2013 - In ASSEMBLY Committee on JUDICIARY: Not heard.	

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			matters related to land use and environmental laws. Provides decisions of the division may be reviewed by way of a petition for an extraordinary writ. Provides the contents of a writ if a public agency is found to be in error and what action the agency must take to comply.		
AB 536 Wagner (R)	Contractors: Payments		Amends existing law that allows specified persons to withhold from a contractor or subcontractor no more than a specified percentage of any disputed amount if there is a good faith dispute over the amount due on a contract payment. Excludes specified amounts from being considered disputed amounts, provides that disputed amounts shall not include any action related liquidated damages assessed by the owner against the prime contractor, and any amount regarding a mechanic's lien to stop payment notice.	04/16/2013 - In ASSEMBLY Committee on BUSINESS, PROFESSIONS & CONSUMER PROTECTION: Not heard.	
AB 543 Campos (D)	California Environmental Quality Act: Translation	Oppose	Requires a lead agency to translate certain notices required by the California Environmental Quality Act and a summary of any negative declaration, mitigated negative declaration, or environmental impact report when the impacted community has a substantial number of non-English-speaking people.	04/29/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass as amended to Committee on APPROPRIATIONS.	
AB 551 Ting (D)	Local Government: Urban Agriculture Incentive Zones		Enacts the Urban Agriculture Incentive Zones Act. Authorizes, under specified conditions, a county and a landowner to enter into a contract to enforceably restrict the use of vacant, unimproved, or otherwise blighted lands for small-scale production of agricultural crops. Require the county assessor to consider, when valuing real property for property taxation purposes, property that is enforceably restricted by a contract entered into pursuant to the Urban Agriculture Incentive Zones Act.	04/29/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
AB 607 Perea (D)	Worker's Compensation: Dependent Children		Amends existing law that establishes a workers' compensation system. Eliminates the requirement that, in order to conclusively presume that children under 18, or certain adult children, are wholly dependent for support on the deceased employee-parent, there not be a surviving totally dependent	04/18/2013 - In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.	

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			parent.		
<u>AB 613</u> Hueso (D)	Water Reclamation		Makes technical, nonsubstantive changes to a provision of the Water Recycling Law that provides that a person recycling water or using recycled water in violation of specific provisions is guilty of a misdemeanor.	02/20/2013 - INTRODUCED.	
<u>AB 621</u> Wagner (R)	Local Government: Bonds		Relates to local government bonds and investment firms. Prohibits a local agency from entering into a financial advisory, legal advisory, underwriting, or similar relationship with an individual or firm, with respect to a bond issue that requires voter approval, if that individual or firm, or an employee, agent, or person related to an employee or agent of the individual or firm, provided or will provide bond campaign services to the bond campaign.	04/25/2013 - From ASSEMBLY Committee on ELECTIONS AND REDISTRICTING with author's amendments.;04/25/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on ELECTIONS AND REDISTRICTING.	
<u>AB 662</u> Atkins (D)	Local Government: Infrastructure Financing Districts		Amends existing law that authorizes the creation of infrastructure financing districts and prohibits such district from including any portion of a redevelopment project area. Deletes that prohibition on infrastructure financing districts including any portion of a redevelopment project area.	04/25/2013 - In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.	
<u>AB 687</u> Hernandez R (D)	Electricity		Requires the Public Utilities Commission provide the highest priority to acquire electric services from other providers to entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site when authorizing additional direct transactions for retail nonresidential end-use customers. Requires those entities to use moneys saved as a result of treatment and remediation of groundwater.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass to Committee on APPROPRIATIONS.	
<u>AB 690</u> Campos (D)	Jobs and Infrastructure Financing Districts		Revises and recasts the provisions governing infrastructure financing districts. Provides for the creation of jobs and infrastructure financing districts without voter approval. Makes various conforming changes. Authorizes a public financing authority to enter into joint powers agreements with affected taxing entities with regard to nontaxing authority or powers only. Authorizes a district to implement hazardous	04/09/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT with author's amendments.;04/09/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on LOCAL	

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			cleanup under the Polanco Redevelopment Act.	GOVERNMENT.	
AB 743 Logue (R)	Local Government Reorganization		Amends Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Provides that the authority to initiate, conduct and complete specified changes in organization or reorganizations does not apply to any territory that became surrounded or substantially surrounded by a city to which the annexation is proposed, except for islands that were created as a result of boundary adjustments between two counties.	04/25/2013 - In ASSEMBLY, Read third time. Passed ASSEMBLY. *****To SENATE.	
AB 756 Melendez (R)	Environmental Quality Act: Court Review: Public Works		Applies the provisions of the California Environmental Quality Act and the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 to a public works project, defined to mean an infrastructure project carried out by the city, county, special district, or state government or contracted out to a private entity by the special district or local or state government.	04/11/2013 - From ASSEMBLY Committee on JUDICIARY with author's amendments.;04/11/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on JUDICIARY.	
AB 766 Gaines B (R)	Attorney General: Investigations		Prohibits the Attorney General from offering a promise of use or transactional immunity during the course of an investigation into the misuse of public funds, unless specified findings are made. Requires the Attorney General to submit a written copy of the findings to a presiding judge.	04/16/2013 - In ASSEMBLY Committee on PUBLIC SAFETY: Not heard.	
AB 792 Mullin (D)	Local Government: Open Meetings		Requires a local agency, if the agency is unable to post an agenda or notice on its Internet Web site because of software, hardware or network services impairment beyond the agency's reasonable control, to post the agenda or notice immediately upon resolution of the technological problems.	04/08/2013 - In ASSEMBLY, Read second time. To third reading.	
AB 794 Gorell (R)	Environmental Quality: Use of Landfill & Organic Waste		Exempts from the requirements of the California Environmental Quality Act a project that takes landfill materials or organic waste and converts then into renewable green energy if the lead agency finds that the project will result in a net reduction in greenhouse gas emissions or support sustainable agriculture. Exempts from the requirements of the act a project that uses biological	03/04/2013 - To ASSEMBLY Committee on NATURAL RESOURCES.	

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			processes to convert organic waste streams into nonchemical soil fertility products.		
<u>AB 801</u> Brown (D)	Junk Dealers and Recyclers: Nonferrous Materials		Requires junk dealers and recyclers to obtain specified information before providing payment for nonferrous materials marked with an indicia of ownership. Requires that this information be retained as part of the written record of purchases.	03/04/2013 - To ASSEMBLY Committee on BUSINESS, PROFESSIONS & CONSUMER PROTECTION.	
<u>AB 803</u> Gomez (D)	Water Recycling Act of 2013	Support	Creates the Water Recycling Act of 2013. Relates to the notification requirements for the discharge of sewage, waste, or effluent of treated sewage or other waste to provide the notification requirement does not apply to an unauthorized discharge of effluent of treated sewage defines as recycled water. Authorizes compliance with effluent limitations and any other permit or waste discharge requirements for the release or discharge of advanced treated purified water that meets certain conditions.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass to Committee on APPROPRIATIONS.	
<u>AB 811</u> Lowenthal B (D)	Excavations: Regional Notification Center System		Amends existing law that requires any person planning to conduct an excavation to contact a regional notification center prior to excavation. requires such center to post on their Internet Web sites statewide information provided by operators and excavators regarding violations of requirements in existing law and damages resulting from the violations.	04/11/2013 - Re-referred to ASSEMBLY Committee on BUSINESS, PROFESSIONS & CONSUMER PROTECTION.	
<u>AB 823</u> Eggman (D)	Environment: State Farmland Protection Act	Oppose	Enacts the Farmland Protection Act. Requires that a lead agency reviewing a development project require that all feasible mitigation of the identified significant environmental impacts associated with the conversion of agricultural lands be completed by the project applicant and to consider the permanent protection or replacement of such land as feasible mitigation for identified significant effects on the land caused by the project.	04/29/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on AGRICULTURE.	
<u>AB 841</u> Torres (D)	Junk Dealers and Recyclers: Nonferrous Materials		Amends existing law that prohibits a junk dealer or a recycler from providing payment for nonferrous material unless the payment is made by cash or check, and the check is mailed or	04/18/2013 - In ASSEMBLY, Read third time. Passed ASSEMBLY. *****To	

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			the cash or check is provided no later than three days after the date of the sale, and other requirements are met. Allows the payment for nonferrous materials only by check mailed to the seller's address.	SENATE.	
<u>AB 850</u> Nazarian (D)	Public Capital Facilities: Water Quality		Authorizes a joint powers authority, upon application of a local agency that owns and operates a publicly owned utility to issue rate reduction bonds to finance a utility project. Provides the bonds are secured by utility project property. Authorizes the authority to impose on customers a separate nonbypassable charge, to finance the rate reduction bond, and to adjust utility project charge to correct for any overcollection or undercollection to ensure timely payment of bond financing costs.	04/29/2013 - From ASSEMBLY Committee on BANKING AND FINANCE: Do pass.	
<u>AB 892</u> Daly (D)	Parcel Taxes		Requires the State Board of Equalization to annually report specified information relating to the imposition of locally assessed parcel taxes including the type and rate of a parcel tax and the number of parcels subject to or exempt from the parcel tax.	04/29/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT with author's amendments.;04/29/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on LOCAL GOVERNMENT.	
<u>AB 953</u> Ammiano (D)	California Environmental Quality Act		Amends the California Environmental Quality Act, which defines environment and significant effect on the environment for certain purposes. Revises those definitions. Requires a lead agency to include in an environmental assessment report, a detailed statement on any effects that may result in the locating a proposed project near natural hazards or adverse environmental conditions.	04/15/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on APPROPRIATIONS.	
<u>AB 993</u> Linder (R)	Contractors: Arbitration		Amends the Contractors' State License Law. Applies conflict of interest provisions to an arbitrator in a proceeding regarding a dispute between a consumer and a contractor. Requires a prospective arbitrator to comply with certain disclosure requirements prior to accepting an appointment.	04/30/2013 - From ASSEMBLY Committee on BUSINESS, PROFESSIONS & CONSUMER PROTECTION: Do pass to Committee on	

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			Authorizes the release of a mechanic's lien and the return of tools. Provides for a waiver of rights to attorney's fees or to challenge the award of attorney's fees. Relates to the exclusion of persons from the proceeding.	APPROPRIATIONS.	
<u>AB 1035</u> Muratsuchi (D)	Local Agencies: Financial Reports		Raises the forfeiture amounts for a joint powers agency to which existing law does not apply. Doubles fines if the agency fails to submit the report to the Controller for 2 consecutive years. Triples the fines if the agency fails to submit the report to the Controller for 3 consecutive years, in which case the Controller would be required to conduct and independent audit report, the cost of which is reimbursed by the agency. Specifies the agency that has a forfeiture or payment still must file the report.	04/10/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1043</u> Chau (D)	Drinking Water, Quality, Flood, River Protection		Amends the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. Eliminates the requirement to develop and adopt regulations and requires a grantee of certain initiative bond act funds to take specific actions to recover the costs of cleanup and to utilize those funds for certain groundwater contamination cleanup projects.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1080</u> Alejo (D)	Community Revitalization & Investment Authorities		Authorizes certain public entities of a community revitalization and investment area to form a community revitalization plan within a community revitalization and investment authority to carry out the Community Redevelopment Law in a specified manner. Requires the authority to adopt a community revitalization plan for a community revitalization and investment area and authorizes the authority to include in that plan a provision for the receipt of tax increment funds.	04/24/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on LOCAL GOVERNMENT.	
<u>AB 1090</u> Fong (D)	Public Officers: Conflicts of Interest: Contracts		Provides that a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate or who aids and abets another person in violating the prohibition, is subject to administrative	04/23/2013 - From ASSEMBLY Committee on ELECTIONS AND REDISTRICTING: Do pass to Committee on	

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			and civil fines. Authorizes the Fair Political Practices Commission to enforce these violations by bringing an administrative or civil action against a person who is subject to the prohibition, upon specified authorization. Relates to requests for advice.	APPROPRIATIONS.	
<u>AB 1131</u> Skinner (D)	Renewable Energy and Energy Efficiency Projects		Appropriates up to a specified amount of funds from Renewable Resource Trust Fund to finance specified alternative energy, alternative fuels, and water efficiency projects. Requires the Alternative Energy and Advanced Transportation Financing Authority to submit a report to the Legislature regarding those programs. Extends that appropriation and the reporting requirement date. Expands a specified program to provide financial assistance for residential projects with up to 4 units or smaller and mobilehomes.	04/29/2013 - From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1140</u> Daly (D)	Public Works: Prevailing Wages		States that if the Director of Industrial Relations determines, within a semiannual period, that there is a change in any prevailing rate of per diem wages in a locality, that determination applies to any public works. Authorizes any contractor, awarding body, or representative affected by a change in rates to file with the director a verified petition to review the determination of that rate. Requires the initiation of an investigation or hearing to make a final determination.	04/10/2013 - From ASSEMBLY Committee on LABOR AND EMPLOYMENT: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1149</u> Campos (D)	Identity Theft: Local Agencies		Relates to disclosure of any breach of an agency security to any resident whose unencrypted personal information was acquired by an unauthorized person. Provides disclosure requirements applying to a breach of computerized data that is owned or licensed by a local agency.	04/30/2013 - From ASSEMBLY Committee on JUDICIARY: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1181</u> Gray (D)	Public Employee Organizations: Members: Paid Leave		Requires the local public agency to give reasonable time off, without loss of compensation or other benefits, to employee representatives when they are testifying or representing the employee organization in proceedings before the Public Employment Relations Board concerning a charge filed by	04/03/2013 - From ASSEMBLY Committee on PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY with author's amendments.;04/03/2013	

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			the employee organization against the public agency, or when they are testifying or representing the employee organization in other employment relations matters.	- In ASSEMBLY. Read second time and amended. Re-referred to Committee on PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY.	
<u>AB 1200</u> Levine (D)	Recycled Water: Agricultural Irrigation Impoundments		Requires the San Francisco Bay Regional Water Quality Board to authorize a voluntary pilot project for the purposes of investigating potential water quality impacts associated with maximizing the supplementation of agricultural irrigation impoundments with disinfected tertiary treated recycled water, if the board finds the project satisfies specified criteria. Requires the project to include a stakeholder advisory group to review and provide input on the project design, implementation, and data analysis.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass as amended to Committee on APPROPRIATIONS.	
<u>AB 1212</u> Levine (D)	Public Contracts: Bids: Equal Materials or Service		Prohibits certain bid specifications from requiring a bidder to provide submission of data substantiating a request for a substitution of an equal item prior to the bid or proposal deadline.	03/07/2013 - To ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.	
<u>AB 1248</u> Cooley (D)	Local Agencies: Internal Control Guidelines		Requires the Controller to develop internal control guidelines applicable to a local agency to prevent and detect financial errors and fraud.	04/24/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1251</u> Gorell (R)	Water Quality: Stormwater		Requires the Secretary for Environmental Protection to convene a stormwater task force to review, plan, and coordinate stormwater-related activity to maximize regulatory effectiveness in reducing water pollution. Requires the task force to submit a statewide stormwater management plan to the Legislature. Requires the task force to consider specified issues in developing the plan.	04/30/2013 - From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1331</u> Water, Parks and Wildlife	Water Resources: Bay-Delta Sustainability		Requires the Delta Stewardship Council to initiate and complete a comprehensive study on the financial records for state funding for implementation of the Delta Plan.	04/30/2013 - From ASSEMBLY Committee on WATER, PARKS AND WILDLIFE: Do pass to	

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Cmt				Committee on APPROPRIATIONS.	
<u>AB 1349</u> Gatto (D)	CalConserve Water Use Efficiency Revolving Fund		Establishes the CalConserve Water Use Efficiency Revolving Fund for the purpose of water use efficiency projects. Requires moneys in the fund to be used for purposes that include, but are not limited to, at-or-below market interest rate loans.	04/16/2013 - From ASSEMBLY Committee on WATER, PARKS AND WILDLIFE: Do pass to Committee on APPROPRIATIONS.	
<u>AB 1365</u> Perez J (D)	State and Local Agency Reports: Legislative Counsel		Requires the Legislative Council to make a list of agency reports available to the public by posting it on an Internet Web site. Authorizes state and local agencies to file certain reports with the Counsel electronically, with a hyperlink for report access. Removes the requirement to remove obsolete reports from the list of reports and that the list be provided to each member of the Legislature. Requires providing a hyperlink to each member whereby the list or report could be accessed.	04/24/2013 - From ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW with author's amendments.;04/24/2013 - In ASSEMBLY. Read second time and amended. Re-referred to Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.	
<u>ACA 1</u> Donnelly (R)	Administrative Regulations: Legislative Approval		Requires an administrative agency to submit all regulations to the Legislature for approval. Authorizes the Legislature, by means of a concurrent resolution, to approve a regulation adopted by an administrative agency of the state.	04/04/2013 - To ASSEMBLY Committees on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW and APPROPRIATIONS.	
<u>ACA 8</u> Blumenfield (D)	Local Government Financing: Voter Approval		Proposes an amendment to the Constitution to create an additional exception to the 1% limit for an ad valorem tax rate imposed by a city, county, city and county, or special district, to service bonded indebtedness incurred to fund specified public improvements and facilities, or buildings used primarily to provide sheriff, police, or fire protection services, that is approved by 55% of the voters of the city, county, city and county, or special district.	04/04/2013 - To ASSEMBLY Committees on LOCAL GOVERNMENT and APPROPRIATIONS.;04/04/2013 - From ASSEMBLY Committee on LOCAL GOVERNMENT with author's amendments.;04/04/2013 - In ASSEMBLY. Read second time and amended. Re-referred to	

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SB 1 Steinberg (D)	Sustainable Communities Investment Authority		Authorizes certain public entities of a Sustainable Communities Investment Area to form a Sustainable Communities Investment Authority to carry out the Community Redevelopment Law. Provides for tax increment funding receipt under certain economic development and planning criteria. Establishes prequalification requirements for receipt of funding. Requires monitoring and enforcement of prevailing wage requirements within the area.	04/23/2013 - From SENATE Committee on TRANSPORTATION AND HOUSING: Do pass as amended to Committee on APPROPRIATIONS.	
SB 13 Beall (D)	Public Employees' Retirement Benefits		Corrects an erroneous cross-reference in the Public Employees' Pension Reform Act of 2013 regarding the Judges' Retirement System I and II defined benefit formula adoption. Amends the act regarding employers offering one of more defined benefit formulas to new safety members. Relates to contribution rates for defined pension plans. Repeals provisions regarding disability retirements. Relates to state miscellaneous or industrial members contributions or service credit. Requires related regulations.	04/11/2013 - In SENATE. Read third time, urgency clause adopted. Passed SENATE. *****To ASSEMBLY.	
SB 14 Gaines T (R)	Bear Lake Reservoir: Recreational Use		Relates to existing law which prohibits recreational use in which there is bodily contact with water in a reservoir in which water is stored for domestic use. Exempts from this prohibition any participant in the Bear Lake Reservoir, and establishes standards in this regard, including water treatment, monitoring, and reporting requirements. Subjects the Lake Alpine Water Company to suspension or revocation of any permit issued, and failure to comply would be deemed a violation subject to penalties.	04/18/2013 - In SENATE. Read third time, urgency clause adopted. Passed SENATE. *****To ASSEMBLY.	
SB 24 Walters (R)	Public Employees' Retirement: Benefit Plans		Authorizes a local agency public employer or public retirement system that offers a defined benefit pension plan to offer a benefit formula with a lower benefit factor at normal retirement age and that results in a lower normal cost than the benefit formulas that are currently required, for purposes of	01/10/2013 - To SENATE Committee on PUBLIC EMPLOYMENT AND RETIREMENT.	

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SB 33 Wolk (D)	Infrastructure Financing Districts: Voter Approval		addressing a fiscal necessity. Revises provisions governing infrastructure financing districts. Eliminates the requirement of voter approval for creation of the district and for bond issuance, and authorizes the legislative body to create the district subject to specified procedures. Authorizes the creation of such district subject to specified procedures. Authorizes a district to finance specified actions and project. Prohibits the district from providing financial assistance to a vehicle dealer or big box retailer.	04/11/2013 - In SENATE. Read third time. Passed SENATE. *****To ASSEMBLY.	
SB 40 Pavley (D)	Safe, Clean, and Reliable Drinking Water Supply Act		Changes the name of the Safe, Clean, and Reliable Drinking Water Supply Act of 2012 to the Safe, Clean, and Reliable Drinking Water Supply Act of 2014. Declares the intent of the Legislature to amend the act for the purpose of reducing and potentially refocusing the bond.	01/31/2013 - Re-referred to SENATE Committees on NATURAL RESOURCES AND WATER and RULES.	
SB 42 Wolk (D)	Clean, Secure Water Supply and Delta Recovery Act		Enacts the Clean, Secure Water Supply and Delta Recovery Act of 2014. Authorizes the issuance of general obligation bonds for the Sacramento-San Joaquin Delta Recovery.	01/10/2013 - To SENATE Committee on NATURAL RESOURCES AND WATER.	
SB 123 Corbett (D)	Environmental and Land-Use Court		Requires the Judicial Council to direct the creation of an environmental and land-use division within the Superior Courts selected by the Judicial Council to process civil proceedings brought pursuant to the California Environmental Quality Act or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality.	04/23/2013 - In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
SB 124 Corbett (D)	Public Contracts: Bid Preferences: Clean Energy		Requires state agencies and the Trustees of the California State University that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system, to provide a preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured in the state, to reduce toxic emissions and greenhouse gases. Authorizes energy service contracts.	04/29/2013 - In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
SB 176	Administrative Procedures		Requires, in order to increase public participation and	04/29/2013 - In SENATE	

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Galgiani (D)			improve the quality of regulations, state agencies, boards, and commissions to submit a notice to the state Regulatory Notice Register prior to any meeting date or report, provided the meeting or report is seeking public input.	Committee on APPROPRIATIONS: To Suspense File.	
SB 182 Governance and Finance Cmt	Validations		Enacts the Second State Validating Act of 2013, which would validate the organization, boundaries, acts, proceedings, and bonds of the state and counties, cities, and specified districts, agencies, and entities.	04/11/2013 - In SENATE. Read third time, urgency clause adopted. Passed SENATE. *****To ASSEMBLY.	
SB 183 Governance and Finance Cmt	Validations		Enacts the Third State Validating Act of 2013, which would validate the organization, boundaries, acts, proceedings, and bonds of the state and counties, cities, and specified districts, agencies, and entities.	03/21/2013 - In SENATE. Read third time. Passed SENATE. *****To ASSEMBLY.	
SB 184 Governance and Finance Cmt	Local Government: Omnibus Bill		Includes within the definition of family member under the Public Cemetery District Law a person's domestic partner. Defines the term domestic partner. Revises the definition of abuse of office to include bribery of a member of the Legislature in existing law that requires employment contracts between a local agency and an officer or employee to include a provision that would reimburse the agency for that officer's salary if that officer is convicted of an abuse of his or her office or position.	04/30/2013 - In SENATE. Read second time. To Consent Calendar.	
SB 193 Monning (D)	Hazard Evaluation System and Information Service		Relates to the repository of data on toxic materials and harmful physical agents in places of employment. Requires, upon request from the repository, chemical manufacturers, formulators, suppliers, distributors and importers to provide names and addresses of customers who have purchased specified chemicals or commercial products. Provides for current and past customers and confidentiality of records. Requires notification of the Secretary of Environmental Protection of relevant information.	04/23/2013 - From SENATE Committee on JUDICIARY: Do pass to Committee on APPROPRIATIONS.	
SB 322 Hueso (D)	Water Recycling		Relates to water recycling. Require the State Department of Public Health to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse.	04/22/2013 - From SENATE Committee on ENVIRONMENTAL QUALITY	

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Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			Requires the National Water Research Institute to convene and administer an expert panel to establish uniform regulatory criteria for direct potable water reuse. Provides for a task force and funding.	with author's amendments.;04/22/2013 - In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.	
SB 338 Hill (D)	Local Agency Meetings: Teleconferencing		Requires if the legislative body of a local agency elects to use teleconferencing and a teleconference location is located outside the boundaries of the local agency, that the agenda be posted at that location at least 24 hours in advance of the meeting rather than 72 hours.	02/28/2013 - To SENATE Committee on GOVERNANCE AND FINANCE.	
SB 390 Wright (D)	Employee Wage Withholdings: Failure to Remit		Makes it a crime for an employer to fail to remit withholdings from an employee's wages that were made pursuant to state, local, or federal law.	04/22/2013 - In SENATE Committee on APPROPRIATIONS: Not heard.	
SB 395 Jackson (D)	Hazardous Waste: Wells		Amends part of the Hazardous Waste Control Law that prohibits a person from discharging hazardous waste into an injection well unless certain conditions are met and imposes other requirements upon the operator of such well and defines injection for these purposes as excluding wells regulated by the Division of Oil and Gas. Deletes the exclusion of those regulated wells from the definition of injection well. Provides that oilfield wastewater does not include hazardous waste.	04/04/2013 - From SENATE Committee on ENVIRONMENTAL QUALITY with author's amendments.;04/04/2013 - In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.	
SB 407 Hill (D)	Local Government: Officers and Employees: Contracts		Relates to prohibitions against automatic renewal of contracts that provide compensation increases for local agency executives. Includes within the definition of local agency executive any person who is a deputy or assistant chief executive officer, and any person whose position is held by an employment contract between that person and the local agency.	04/15/2013 - In SENATE Committee on APPROPRIATIONS: To Suspense File.	
SB 424	Vehicles: Windshields:		Exempts from the prohibition against placing an object that	03/11/2013 - To SENATE	

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Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
Emmerson (R)	Obstructions		obstructs or reduces the driver's clear view in or upon a vehicle owned by a government agency if those objects or materials do not interfere with the driver's clear view of approaching traffic.	Committee on TRANSPORTATION AND HOUSING.	
SB 425 DeSaulnier (D)	Public Works: the Public Works Peer Review Act of 2013		Requires a public agency, principally tasked with administering the planning, development, and operation of a project to establish a specified peer review group, to provide it with expert advice on the scientific and technical aspects of the project if the public works is a megaproject, if it has been determined that the group is in the public interest or if a statute or resolution passed by the Legislature requires the agency to do so. Requires public disclosure by group members.	04/18/2013 - From SENATE Committee on GOVERNANCE AND FINANCE with author's amendments.;04/18/2013 - In SENATE. Read second time and amended. Re-referred to Committee on GOVERNANCE AND FINANCE.	
SB 436 Jackson (D)	California Environmental Quality Act: Notice		Relates to the California Environmental Quality Act. Requires a lead agency to conduct at least one public scoping meeting for the specified projects and to provide notice to the specified entities of at least one public scoping meeting. Revises the meeting notice requirements to requires the notice be given to a list of specified parties including the State Clearinghouse and project applicants.	04/03/2013 - From SENATE Committee on ENVIRONMENTAL QUALITY with author's amendments.;04/03/2013 - In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.	
SB 462 Monning (D)	Employment: Compensation		Amends existing law which requires a court in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, to award reasonable attorney's fees and costs to the prevailing party. Makes the award where the prevailing party is not an employee contingent on a finding that the employee brought the court action in bad faith.	04/23/2013 - From SENATE Committee on JUDICIARY: Do pass to Committee on APPROPRIATIONS.	
SB 536 Berryhill T (R)	Property-Related Services		Provides that a district shall not be obligated to provide subsidies to cure any deficiencies in funding of property-related services provided in the district's jurisdiction under	04/11/2013 - Re-referred to SENATE Committee on GOVERNANCE AND	

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			any of certain specified circumstances. Provides that this prohibition would not apply if the district's governing board had agreed to subsidize the services before the completion of a majority protest proceeding or election.	FINANCE.	
SB 617 Evans (D)	California Environmental Quality Act		Amends various provisions of the California Environmental Quality Act. Requires that notices regarding environmental impact reports filed by lead agencies need to be filed with the Office of Planning and Research and the county clerk and posted by that clerk for public review. Provides additional duties regarding notices by the Office and the clerk. Requires a statement in the report regarding the placement of the project near natural hazards or adverse environment conditions. Repeals specified exemptions.	04/01/2013 - From SENATE Committee on ENVIRONMENTAL QUALITY with author's amendments.;04/01/2013 - In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.	
SB 620 Wright (D)	Water Replenishment Districts		Amends the Water Replenishment District Act. Permits a district to establish an annual reserve fund. Requires the board of directors of a water replenishment district to declare whether funds are to be raised to purchase water for replenishment and whether the funds are to be raised either by a water charge, a general assessment, or a replenishment assessment. Provides that a producer is liable to the district for a penalty for unpaid assessment.	04/23/2013 - In SENATE. Read second time and amended. To third reading.	
SB 628 Beall (D)	Infrastructure Financing: Transit Priority Projects		Eliminates the requirement of voter approval for the adoption of an infrastructure financing plan, the creation of an infrastructure financing district, and the issuance of bonds with respect to a transit priority project. Requires a specified percentage of the revenue for increasing, improving, and preserving the supply of lower and moderate-income housing. Provides that income level for continued occupancy. Relates to the approval of such district and its ability to issue bonds.	04/17/2013 - From SENATE Committee on GOVERNANCE AND FINANCE: Do pass to Committee on TRANSPORTATION AND HOUSING.	
SB 633 Pavley (D)	CEQA		Amends the California Environmental Quality Act that requires the submission of a subsequent or supplemental environmental impact report when new information which	04/11/2013 - From SENATE Committee on ENVIRONMENTAL QUALITY	

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			was not known and could not have been known at the time of the original report was certified as complete, becomes available. Requires the new information that becomes available was not known and could not have been known by the lead agency or any responsible agency at the time the report was certified as complete. Relates to exemptions.	with author's amendments.;04/11/2013 - In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.	
SB 636 Hill (D)	Redevelopment Property Tax Trust		Modifies the provision of law relating to the allocation of remaining local property tax revenues in the Redevelopment Property Tax Trust Fund by deleting language requiring that the provision be construed in such a manner so as to not increase any allocations of excess, additional, or remaining Educational Revenue Augmentation Fund funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to existing law.	04/03/2013 - From SENATE Committee on GOVERNANCE AND FINANCE: Do pass to Committee on APPROPRIATIONS.	
SB 658 Correa (D)	Orange County Water District Act		Relates to the Orange County Water District Act that requires the person causing or threatening to cause the contamination or pollution to the surface or groundwaters of the district to be liable to the district for reasonable costs actually incurred in cleaning up or containing the contamination or pollution, abating the effects of the contamination or pollution, or taking other remedial action. Makes that person also liable for costs in investigating the contamination and pollution.	04/18/2013 - Re-referred to SENATE Committee on ENVIRONMENTAL QUALITY.	
SB 673 DeSaulnier (D)	Land Use: Development Project Review		Requires a city, county, or city and county, including a charter city or charter city and county, prior to approving or disapproving a proposed development project to cause a cost benefit analysis to be prepared, which would be paid for by the project applicant.	04/24/2013 - From SENATE Committee on GOVERNANCE AND FINANCE: Do pass to Committee on APPROPRIATIONS.	
SB 731 Steinberg (D)	Environment: California Environmental Quality Act		Relates to the state environmental quality act. Provides that aesthetic impacts of a residential, mixed-use residential, or employment center project within a transit priority area shall not be considered significant impacts on the environment. Requires guidelines for thresholds of significance and the	04/25/2013 - Re-referred to SENATE Committee on ENVIRONMENTAL QUALITY.	

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Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			transportation and parking impacts to be made available to the public. Requires preparation of environmental impact reports. Extends tolling agreements for judicial actions and mitigation measures.		
SB 735 Wolk (D)	Sacramento-San Joaquin Delta Reform Act		Amends the Sacramento-San Joaquin Delta Reform Act of 2009 to exclude from the definition of covered action the approval or implementation of a project as part of a larger conservation plan submitted pursuant to the Federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act, or certain permits related to the taking, importation, exportation, or sale of endangered species.	04/24/2013 - In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.	
SB 749 Wolk (D)	Habitat Protection: Endangered Species		Authorizes the Department of Fish and Wildlife to lease department-managed lands for agricultural activities. Provides the moneys collected from those leases may be used to support the maintenance and operations of department-managed lands from which the moneys were originally collected. Requires the identification of which lands will be used to restore and enhance upland nesting cover and associated waterfowl brood habitat. Relates to the endangered species determination requirements.	04/29/2013 - In SENATE Committee on APPROPRIATIONS: To Suspend File.	
SB 750 Wolk (D)	Building Standards		Requires a water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure that submits an application for a water connection to require the installation of either a water meter or a submeter to measure water supplied to each individual dwelling unit. Requires such meters comply with laws and regulations regarding the meter's usage. Imposes certain requirements regarding meters on landlords.	04/29/2013 - From SENATE Committee on JUDICIARY with author's amendments.;04/29/2013 - In SENATE. Read second time and amended. Re-referred to Committee on JUDICIARY.	
SB 754 Evans (D)	Environmental Quality Act		Amends the California Environmental Quality Act. Authorizes a person meeting specified requirements to bring	04/18/2013 - Re-referred to SENATE Committee on	

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Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			an action or proceeding to enforce the implementation of the mitigation measures specified in a reporting and monitoring program if a project applicant fails to implement those measures. Prohibits a project proponent to contract for, direct or prepare the initial study, environmental impact report or negative declaration. Prohibits the use of a prior EIR for specified purposes.	ENVIRONMENTAL QUALITY.	
<u>SB 757</u> Berryhill T (R)	Junk Dealers		Relates to junk dealers and recyclers. Permits a seller to use a passport from any country or a Matricula Consular issued by Mexico, along with another form of identification bearing an address, or an identification card issued by the United States, as identification. Specifies that the provisions governing secondhand dealers and coin dealers do not apply to junk dealers.	04/24/2013 - In SENATE. Read second time. To third reading.	
<u>SB 761</u> DeSaulnier (D)	Family Temporary Disability Insurance		Provides that it is unlawful for an employer or agent of an employer to discharge or in any other manner to discriminate against an individual because he or she has applied for, used, or indicated an intent to apply for or use, family temporary disability insurance benefits.	04/25/2013 - In SENATE. Read second time. To third reading.	
<u>SB 770</u> Jackson (D)	Unemployment Compensation: Disability Benefits		Relates to family temporary disability leave. Expands the scope of the family temporary disability program to include time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law.	04/24/2013 - From SENATE Committee on LABOR AND INDUSTRIAL RELATIONS: Do pass to Committee on APPROPRIATIONS.	
<u>SB 772</u> Emmerson (R)	Drinking Water		Requires the Department of Health, or a local health agency, annually to provide the address and telephone number for each public water system and state small water system to the Public Utilities Commission and to a local agency formation commission. Relates to requests of information from entities that provide drinking water and the review of retail water suppliers in a county.	03/11/2013 - To SENATE Committees on GOVERNANCE AND FINANCE and RULES.	
<u>SCA 10</u> Huff (R)	Legislative Procedure		Authorizes a committee to hear or act on a bill if the bill, in the form to be considered by the committee, has been in print	01/31/2013 - To SENATE Committee on RULES.	

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Bill No. Author	Title	IRWD Position	Summary/Effects	Status	Notes
			and published on the Internet for at least 15 days. Prohibits either house of the Legislature from passing a bill until the bill, in the form to be voted on, has been made available to the public, in print and published on the Internet, for at least 72 hours preceding the vote.		

EXHIBIT "B"

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1200

Introduced by Assembly Member Levine

February 22, 2013

An act to add ~~Section 13529.1 to~~ and repeal Chapter 7.7 (commencing with Section 13590) of Division 7 of the Water Code, relating to ~~water conservation: recycled water.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Levine. Recycled water: ~~landscaping; agricultural irrigation impoundments: pilot project.~~

Existing law establishes the State Water Resources Control Board and the California regional water quality control boards as the principal state agencies with authority over matters relating to water quality.

This bill would, before October 1, 2014, require the San Francisco Bay Regional Water Quality Board to authorize a voluntary pilot project for the purposes of investigating potential water quality impacts associated with maximizing the supplementation of agricultural irrigation impoundments with disinfected tertiary treated recycled water, if the regional board finds that the proposed pilot project satisfies specified criteria. This bill would require the pilot project to include a stakeholder advisory group, composed as prescribed, to review and provide input on pilot project design, implementation, and data analysis. This bill would require a prescribed final report to be issued to the San Francisco Bay Regional Water Quality Control Board and the state board, as specified. This bill would repeal these provisions on January 1, 2018.

Existing law declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or unreasonable use of water if recycled water is available for that use and certain requirements are met. Existing law authorizes any public agency to require the use of recycled water for irrigation of residential landscaping if recycled water is available and certain other requirements are met.

Existing law, the Water Conservation in Landscaping Act, to the extent funds are appropriated, requires, on or before January 1, 2010, a city, county, or city and county, to either adopt a model local water efficient landscape ordinance drafted and updated by the Department of Water Resources or to adopt a water efficient landscape ordinance that is at least as effective as the model local water efficient landscape ordinance in conserving water, as prescribed.

This bill would require the department to require 1,000,000 acre-feet of the water used for landscaping each year to be supplied by recycled water by 2020.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) California faces increasing demands on its freshwater*
- 4 *resources. These demands are compounded by a growing state*
- 5 *population, limited groundwater and surface water supplies,*
- 6 *increased ecosystem conflicts, and a changing climate.*
- 7 *(b) Water recycling represents a tremendous opportunity to*
- 8 *increase California's water supply and to overcome the growing*
- 9 *water resource challenges that threaten continued economic,*
- 10 *ecosystem, and community prosperity.*
- 11 *(c) Recognizing the opportunity presented by water recycling,*
- 12 *the State Water Resources Control Board adopted a recycled water*
- 13 *policy in 2009 that mandates an increase in annual recycled water*
- 14 *use by 200,000 acre feet by 2020. The board also adopted a goal*
- 15 *of increasing the use of recycled water over 2002 levels by one*
- 16 *million acre feet per year by 2020.*
- 17 *(d) Sonoma Valley County Sanitation District in the County of*
- 18 *Sonoma produces an average of 3.5 million gallons of tertiary*

1 recycled water daily, much of which is produced in the winter
2 months and discharged to a tributary to San Pablo Bay.

3 (e) The Napa Sanitation District in the County of Napa produces
4 612 million gallons annually of tertiary treated recycled water.

5 (f) In order to maximize the beneficial use of this resource in
6 the Counties of Napa and Sonoma and in order to help inform
7 future regulatory frameworks for the use of recycled water across
8 California, it is in the state's interest to promote pilot projects
9 intended to quantify the impacts and benefits of innovative recycled
10 water projects.

11 SEC. 2. Chapter 7.7 (commencing with Section 13590) is added
12 to Division 7 of the Water Code, to read:

13

14 CHAPTER 7.7. AGRICULTURAL IRRIGATION IMPOUNDMENTS
15 PILOT PROJECT
16

16

17 13590. Before October 1, 2014, the San Francisco Bay
18 Regional Water Quality Control Board shall authorize a voluntary
19 pilot project for the purposes of investigating potential water
20 quality impacts and water supply benefits associated with
21 maximizing the supplementation of agricultural irrigation
22 impoundments with disinfected tertiary treated recycled water, if
23 the San Francisco Bay Regional Water Quality Control Board
24 finds that the proposed pilot project satisfies all of the following
25 criteria:

26 (a) The pilot project is designed to measure, analyze, and report
27 water quality data collected upstream and downstream of
28 agricultural irrigation impoundments before, during, and following
29 at least five storm events that result in the release of commingled
30 disinfected tertiary recycled water and surface water runoff from
31 up to four agricultural irrigation impoundments into waters of the
32 state.

33 (b) The pilot project includes a process for selecting up to four
34 existing agricultural irrigation impoundments within the Counties
35 of Napa and Sonoma for the purposes of the pilot project. A
36 selected agricultural irrigation impoundment shall meet all of the
37 following requirements:

38 (1) Have existed prior to January 1, 2013.

39 (2) Be not more than 200 acre feet in volume.

- 1 (3) *Be within a primarily agricultural region that currently*
2 *receives disinfected tertiary treated recycled water, consistent with*
3 *any waste discharge requirements, for the purposes of discharge,*
4 *agricultural irrigation, and ecosystem restoration.*
- 5 (c) *The pilot project is designed to measure, analyze, and report*
6 *at least the following water quality and environmental parameters:*
- 7 (1) *Constituents addressed by total maximum daily loads*
8 *completed for the San Francisco Bay, Napa River watershed, and*
9 *the Sonoma Creek watershed, including, but not limited to,*
10 *mercury, Polychlorinated biphenyls, pathogens, nutrients, and*
11 *selenium.*
- 12 (2) *Constituents associated with municipal recycled water,*
13 *including, but not limited to, total suspended solids, total ammonia,*
14 *copper, pH, temperature, biochemical oxygen demand, total*
15 *chlorine residual, copper, nickel, and cyanide.*
- 16 (d) *The pilot project incorporates a stakeholder advisory group*
17 *to review and provide input on pilot project design,*
18 *implementation, and data analysis, and consists of the following*
19 *membership:*
- 20 (1) *One representative from each of three nongovernmental*
21 *organizations focused on San Francisco Bay region water quality*
22 *and habitat issues.*
- 23 (2) *One representative from a regional agricultural*
24 *organization.*
- 25 (3) *Two private landowners.*
- 26 (4) *A representative from the Sonoma Valley County Sanitation*
27 *District.*
- 28 (5) *A representative from the Napa Sanitation District.*
- 29 (6) *A representative from the Sonoma County Water Agency.*
- 30 (7) *A representative from the San Francisco Bay Regional Water*
31 *Quality Control Board.*
- 32 (e) *The pilot project will include an analysis of local water*
33 *management implications associated with increasing the use of*
34 *recycled water for agricultural irrigation impoundments, including,*
35 *but not limited to, reduced reliance on surface and groundwater*
36 *resources, reduced ecosystem conflicts, and increased local*
37 *resilience to climate change.*
- 38 (f) *The proposed pilot project identifies all costs associated with*
39 *the pilot project and project proponents will have secured funding,*

1 such as local funds and state bond funds, prior to pilot project
2 implementation.

3 13591. (a) Within 12 months of final data collection pursuant
4 to the pilot project authorized in Section 13590, data shall be
5 analyzed and compiled and a draft report shall be made available
6 for stakeholder advisory group review.

7 (b) A final report shall be issued to the San Francisco Bay
8 Regional Water Quality Control Board and the state board within
9 three months of the release of the draft report pursuant to
10 subdivision (a) and shall include consideration of comments made
11 by the stakeholder advisory group.

12 13592. This chapter shall remain in effect only until January
13 1, 2018, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2018, deletes or extends
15 that date.

16 SECTION 1. ~~Section 13529.1 is added to the Water Code, to~~
17 ~~read:~~

18 ~~13529.1. The department shall require 1,000,000 acre-feet of~~
19 ~~the water used for landscaping each year to be supplied by recycled~~
20 ~~water by 2020.~~

O

EXHIBIT "C"

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 792

Introduced by Assembly Member Mullin

February 21, 2013

An act to amend Sections 54954.2 and 54956 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 792, as amended, Mullin. Local government: open meetings.

The Ralph M. Brown Act enables the legislative body of a local agency to call both regular and special meetings. The act requires the legislative body of a local agency to post, at least 72 hours before the meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, in a location that is freely accessible to members of the public, and to provide a notice containing similar information with respect to a special meeting at least 24 hours prior to the special meeting. The act requires that the agenda or notice be freely accessible to members of the public, and be posted on the local agency's Internet Web site, if the local agency has one.

This bill, if the local agency is unable to post the agenda or notice on its Internet Web site because of ~~software or hardware~~ *software, hardware, or network services* impairment beyond the local agency's reasonable control, would require the local agency to post the agenda or notice immediately upon resolution of the technological problems. The bill would provide that the delay in posting, or the failure to post, the agenda or notice would not preclude a local agency from conducting

the meeting or taking action on items of business, provided that the agency has complied with all other relevant requirements.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.2 of the Government Code is
2 amended to read:

3 54954.2. (a) (1) At least 72 hours before a regular meeting,
4 the legislative body of the local agency, or its designee, shall post
5 an agenda containing a brief general description of each item of
6 business to be transacted or discussed at the meeting, including
7 items to be discussed in closed session. A brief general description
8 of an item generally need not exceed 20 words. The agenda shall
9 specify the time and location of the regular meeting and shall be
10 posted in a location that is freely accessible to members of the
11 public and on the local agency's Internet Web site, if the local
12 agency has one. If requested, the agenda shall be made available
13 in appropriate alternative formats to persons with a disability, as
14 required by Section 202 of the Americans with Disabilities Act of
15 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
16 adopted in implementation thereof. The agenda shall include
17 information regarding how, to whom, and when a request for
18 disability-related modification or accommodation, including
19 auxiliary aids or services, may be made by a person with a
20 disability who requires a modification or accommodation in order
21 to participate in the public meeting.

22 (2) No action or discussion shall be undertaken on any item not
23 appearing on the posted agenda, except that members of a
24 legislative body or its staff may briefly respond to statements made
25 or questions posed by persons exercising their public testimony
26 rights under Section 54954.3. In addition, on their own initiative
27 or in response to questions posed by the public, a member of a

1 legislative body or its staff may ask a question for clarification,
2 make a brief announcement, or make a brief report on his or her
3 own activities. Furthermore, a member of a legislative body, or
4 the body itself, subject to rules or procedures of the legislative
5 body, may provide a reference to staff or other resources for factual
6 information, request staff to report back to the body at a subsequent
7 meeting concerning any matter, or take action to direct staff to
8 place a matter of business on a future agenda.

9 (b) Notwithstanding subdivision (a), the legislative body may
10 take action on items of business not appearing on the posted agenda
11 under any of the conditions stated below. Prior to discussing any
12 item pursuant to this subdivision, the legislative body shall publicly
13 identify the item.

14 (1) Upon a determination by a majority vote of the legislative
15 body that an emergency situation exists, as defined in Section
16 54956.5.

17 (2) Upon a determination by a two-thirds vote of the members
18 of the legislative body present at the meeting, or, if less than
19 two-thirds of the members are present, a unanimous vote of those
20 members present, that there is a need to take immediate action and
21 that the need for action came to the attention of the local agency
22 subsequent to the agenda being posted as specified in subdivision
23 (a).

24 (3) The item was posted pursuant to subdivision (a) for a prior
25 meeting of the legislative body occurring not more than five
26 calendar days prior to the date action is taken on the item, and at
27 the prior meeting the item was continued to the meeting at which
28 action is being taken.

29 (c) This section is necessary to implement and reasonably within
30 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
31 I of the California Constitution.

32 (d) For purposes of subdivision (a), the requirement that the
33 agenda be posted on the local agency's Internet Web site, if the
34 local agency has one, shall only apply to a legislative body that
35 meets either of the following standards:

36 (1) A legislative body as that term is defined by subdivision (a)
37 of Section 54952.

38 (2) A legislative body as that term is defined by subdivision (b)
39 of Section 54952, if the members of the legislative body are
40 compensated for their appearance, and if one or more of the

1 members of the legislative body are also members of a legislative
2 body as that term is defined by subdivision (a) of Section 54952.

3 (e) (1) For purposes of the Internet posting requirements in
4 subdivision (a), if the local agency is unable to post the agenda on
5 the local agency's Internet Web site because of software or
6 hardware impairment beyond the local agency's reasonable control,
7 the local agency shall post the agenda immediately upon resolution
8 of the technological problems. These circumstances shall not
9 preclude the legislative body of the local agency from conducting
10 the meeting or taking action on items of business, provided that
11 the local agency has complied with all other requirements of
12 subdivision (a). The legislative body, or its designee, shall
13 announce at the beginning of the meeting the reason for the failure
14 to post, or the delay in posting, the agenda *on the local agency's*
15 *Internet Web site*.

16 (2) For purposes of this subdivision, "software or hardware
17 impairment beyond the local agency's reasonable control" means
18 that the local agency is unable to utilize the computer software,
19 hardware, or network services to post the agenda or agendas to the
20 local agency's Internet Web site due to inoperability of the ~~software~~
21 ~~or hardware~~ *software, hardware, or network services* caused by a
22 malicious act, introduction of a malicious program, including, but
23 not limited to, a computer virus, an electrical outage affecting the
24 local agency's computer network, or unanticipated system or
25 equipment inoperability or failure.

26 SEC. 2. Section 54956 of the Government Code is amended
27 to read:

28 54956. (a) A special meeting may be called at any time by the
29 presiding officer of the legislative body of a local agency, or by a
30 majority of the members of the legislative body, by delivering
31 written notice to each member of the legislative body and to each
32 local newspaper of general circulation and radio or television
33 station requesting notice in writing and posting a notice on the
34 local agency's Internet Web site, if the local agency has one. The
35 notice shall be delivered personally or by any other means and
36 shall be received at least 24 hours before the time of the meeting
37 as specified in the notice. The call and notice shall specify the time
38 and place of the special meeting and the business to be transacted
39 or discussed. No other business shall be considered at these
40 meetings by the legislative body. The written notice may be

1 dispensed with as to any member who at or prior to the time the
2 meeting convenes files with the clerk or secretary of the legislative
3 body a written waiver of notice. The waiver may be given by
4 telegram. The written notice may also be dispensed with as to any
5 member who is actually present at the meeting at the time it
6 convenes.

7 The call and notice shall be posted at least 24 hours prior to the
8 special meeting in a location that is freely accessible to members
9 of the public.

10 (b) Notwithstanding any other law, a legislative body shall not
11 call a special meeting regarding the salaries, salary schedules, or
12 compensation paid in the form of fringe benefits, of a local agency
13 executive, as defined in subdivision (d) of Section 3511.1.
14 However, this subdivision does not apply to a local agency calling
15 a special meeting to discuss the local agency's budget.

16 (c) For purposes of subdivision (a), the requirement that the
17 notice be posted on the local agency's Internet Web site, if the
18 local agency has one, shall only apply to a legislative body that
19 meets either of the following standards:

20 (1) A legislative body as that term is defined by subdivision (a)
21 of Section 54952.

22 (2) A legislative body as that term is defined by subdivision (b)
23 of Section 54952, if the members of the legislative body are
24 compensated for their appearance, and if one or more of the
25 members of the legislative body are also members of a legislative
26 body as that term is defined by subdivision (a) of Section 54952.

27 (d) (1) For purposes of the Internet posting requirements in
28 subdivision (a), if the local agency is unable to post the notice on
29 the local agency's Internet Web site because of software or
30 hardware impairment beyond the local agency's reasonable control,
31 the local agency shall post the notice immediately upon resolution
32 of the technological problems. These circumstances shall not
33 preclude a legislative body of the local agency from conducting
34 the meeting or taking action on items of business, provided that
35 the local agency has complied with all other requirements of
36 subdivision (a). The legislative body, or its designee, shall
37 announce at the beginning of the meeting the reason for the failure
38 to post, or the delay in posting, the notice *on the local agency's*
39 *Internet Web site.*

1 (2) For purposes of this subdivision, “software or hardware
 2 impairment beyond the local agency’s reasonable control” means
 3 that the local agency is unable to utilize the computer software,
 4 hardware, or network services to post the notice or notices to the
 5 local agency’s Internet Web site due to inoperability of the ~~software~~
 6 ~~or hardware~~ *software, hardware, or network services* caused by a
 7 malicious act, introduction of a malicious program, including, but
 8 not limited to, a computer virus, an electrical outage affecting the
 9 local agency’s computer network, or unanticipated system or
 10 equipment inoperability or failure.

11 SEC. 3. The Legislature finds and declares that Sections 1 and
 12 2 of this act, which amend Sections 54954.2 and 54956 of the
 13 Government Code, impose a limitation on the public’s right of
 14 access to the meetings of public bodies or the writings of public
 15 officials and agencies within the meaning of Section 3 of Article
 16 I of the California Constitution. Pursuant to that constitutional
 17 provision, the Legislature makes the following findings to
 18 demonstrate the interest protected by this limitation and the need
 19 for protecting that interest:

20 If unavoidable technical malfunctions or malicious acts prevent
 21 local agencies from carrying out the people’s business, efficient
 22 governance is impeded. Therefore, the health and safety of the
 23 people of California are enhanced by giving governing bodies the
 24 authority to conduct meetings without complying with Internet
 25 posting requirements when that compliance is unavoidable due to
 26 circumstances beyond the local agency’s control.

O

EXHIBIT "D"

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 322

Introduced by Senator Hueso

February 19, 2013

An act to amend Sections ~~13560, 13561, 13562,~~ 13563, ~~13563.5,~~ 13564, and 13565 of, and to add Section 13570 to, the Water Code, relating to water recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 322, as amended, Hueso. Water recycling.

(1) Existing law establishes the State Water Resources Control Board, *referred to as the state board*, and the California regional water quality control boards, *referred to as regional boards*, as the principal state agencies with authority over matters relating to water quality. ~~Existing law requires the State Department of Public Health to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge, as defined, by December 31, 2013. Existing law requires the department to develop and adopt uniform water recycling criteria for surface water augmentation, as defined, by December 31, 2016, if a specified expert panel finds that the criteria would adequately protect public health. Existing law requires the department~~ *State Department of Public Health* to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse, as defined, and to provide a final report on that investigation to the Legislature not later than December 31, 2016. Existing law also requires the department to complete a public review draft of its report by June 30, 2016. ~~Existing law requires the department, in consultation with the State Water Resources Control Board, to report to the Legislature from 2011 to~~

~~2016, inclusive, as part of the annual budget process, on the progress toward developing and adopting the water recycling criteria for surface water augmentation and its investigation of the feasibility of developing water recycling criteria for direct potable reuse.~~

~~This bill would require the State Department of Public Health to develop and adopt uniform water recycling criteria for reservoir augmentation, as defined, by December 31, 2016, if a specified expert panel finds that the criteria would adequately protect public health. This bill would require the department, *in consultation with the state board*, to investigate the feasibility of developing uniform water recycling criteria for raw water augmentation, as defined, or direct potable reuse and to provide a final report on that investigation to the Legislature not later than December 31, 2016. This bill would also require the department to complete the public review draft of its report by September 1, 2016. This bill would require the department, *in consultation with the State Water Resources Control Board*, to report to the Legislature from 2011 to 2016, inclusive, as part of the annual budget process, on the progress toward developing and adopting the uniform water recycling criteria for reservoir augmentation and its investigation of the feasibility of developing uniform water recycling criteria for raw water augmentation or direct potable reuse.~~

~~(2) Existing law requires an expert panel, as described above, *panel* to be convened and administered by the department and requires the expert panel to be comprised of, at a minimum, an epidemiologist, a microbiologist, and a chemist, among others. Existing law authorizes the department to appoint an advisory group, task force, or other group, comprised of no fewer than 9 representatives of specified entities to advise the department regarding the development of uniform water recycling criteria for direct potable reuse.~~

This bill would instead require, no later than January 30, 2014, the National Water Research Institute to convene and administer the expert panel. The bill would require the expert panel, in addition to its existing responsibilities, to assess any additional areas of research that are needed to be able to establish uniform regulatory criteria for direct potable reuse and recommend an approach for accomplishing any of the additional needed research in a timely manner. The bill would also require the expert panel to include a limnologist. The bill would authorize the National Water Research Institute to appoint an advisory group, task force, or other group, and would expand the list of specified entities from which the representatives could be selected to include the

department, the ~~State Water Resources Control Board~~ *state board*, and the United States Environmental Protection Agency. The bill would also provide that, on or before June 30, 2016, the National Water Research Institute shall submit a draft report to the department summarizing the recommendations of the expert panel. The bill would authorize the expert panel, advisory panel, and report to be directly funded through nonstate donations, and would require the department to provide staff for specified activities and to use state funds for those activities to the extent state funds are available. The bill would also authorize the department to accept funds from any source and use those funds for certain purposes.

~~(3) The bill would make other technical, conforming changes to various provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13560 of the Water Code is amended to~~
 2 ~~read:~~
 3 ~~13560. The Legislature finds and declares the following:~~
 4 ~~(a) In February 2009, the state board unanimously adopted, as~~
 5 ~~Resolution No. 2009-0011, an updated water recycling policy,~~
 6 ~~which includes the goal of increasing the use of recycled water in~~
 7 ~~the state over 2002 levels by at least 1,000,000 acre-feet per year~~
 8 ~~by 2020 and by at least 2,000,000 acre-feet per year by 2030.~~
 9 ~~(b) Section 13521 requires the department to establish uniform~~
 10 ~~statewide recycling criteria for each varying type of use of recycled~~
 11 ~~water where the use involves the protection of public health.~~
 12 ~~(c) The use of recycled water for indirect potable reuse is critical~~
 13 ~~to achieving the state board's goals for increased use of recycled~~
 14 ~~water in the state. If direct potable reuse can be demonstrated to~~
 15 ~~be safe and feasible, implementing direct potable reuse would~~
 16 ~~further aid in achieving the state board's recycling goals.~~
 17 ~~(d) Although there has been much scientific research on public~~
 18 ~~health issues associated with indirect potable reuse through~~
 19 ~~groundwater recharge, there are a number of significant unanswered~~
 20 ~~questions regarding indirect potable reuse, reservoir water~~
 21 ~~augmentation, and direct potable reuse.~~

1 ~~(e) Achievement of the state's goals depends on the timely~~
2 ~~development of uniform statewide recycling criteria for indirect~~
3 ~~and direct potable water reuse.~~

4 ~~(f) This chapter is not intended to delay, invalidate, or reverse~~
5 ~~any study or project, or development of regulations by the~~
6 ~~department, the state board, or the regional boards regarding the~~
7 ~~use of recycled water for indirect potable reuse for groundwater~~
8 ~~recharge, surface water augmentation, or direct potable reuse.~~

9 ~~(g) This chapter shall not be construed to delay, invalidate, or~~
10 ~~reverse the department's ongoing review of projects consistent~~
11 ~~with Section 116551 of the Health and Safety Code.~~

12 ~~SEC. 2. Section 13561 of the Water Code is amended to read:~~

13 ~~13561. For purposes of this chapter, the following terms have~~
14 ~~the following meanings:~~

15 ~~(a) "Advanced treated purified water" means water of~~
16 ~~wastewater origin treated by reverse osmosis, advanced oxidation,~~
17 ~~and disinfection, or alternative treatment methods providing at~~
18 ~~least the same level of public health protection as the processes~~
19 ~~described above, as determined by the department.~~

20 ~~(b) "Department" means the State Department of Public Health.~~

21 ~~(c) "Direct potable reuse" means the planned introduction of~~
22 ~~advanced treated purified water for raw or treated water~~
23 ~~augmentation that includes engineered reliability features as~~
24 ~~approved by the department.~~

25 ~~(d) "Indirect potable reuse for groundwater recharge" means~~
26 ~~the planned use of recycled water for replenishment of a~~
27 ~~groundwater basin or an aquifer that has been designated as a~~
28 ~~source of water supply for a public water system, as defined in~~
29 ~~Section 116275 of the Health and Safety Code.~~

30 ~~(e) "Raw water" means surface water or groundwater that has~~
31 ~~not been treated for potable purposes.~~

32 ~~(f) "Raw water augmentation" means the planned introduction~~
33 ~~of advanced treated purified water into the raw water supply~~
34 ~~immediately upstream of a treatment plant for a public water~~
35 ~~system, as defined in Section 116275 of the Health and Safety~~
36 ~~Code.~~

37 ~~(g) "Reservoir augmentation" means the planned placement of~~
38 ~~advanced treated purified water into a surface water reservoir used~~
39 ~~as a source of domestic drinking water supply.~~

1 ~~(h) “Treated water augmentation” means the planned~~
2 ~~introduction of advanced treated purified water into the treated~~
3 ~~water supply for a public water system as defined in Section~~
4 ~~116275 of the Health and Safety Code.~~

5 ~~(i) “Uniform water recycling criteria” has the same meaning as~~
6 ~~in Section 13521.~~

7 ~~SEC. 3. Section 13562 of the Water Code is amended to read:~~

8 ~~13562. (a) (1) On or before December 31, 2013, the~~
9 ~~department shall adopt uniform water recycling criteria for indirect~~
10 ~~potable reuse for groundwater recharge.~~

11 ~~(2) (A) Except as provided in subparagraph (C), on or before~~
12 ~~December 31, 2016, the department shall develop and adopt~~
13 ~~uniform water recycling criteria for reservoir augmentation.~~

14 ~~(B) Prior to adopting uniform water recycling criteria for~~
15 ~~reservoir augmentation, the department shall submit the proposed~~
16 ~~criteria to the expert panel convened pursuant to subdivision (a)~~
17 ~~of Section 13565. The expert panel shall review the proposed~~
18 ~~criteria and shall adopt a finding as to whether, in its expert~~
19 ~~opinion, the proposed criteria would adequately protect public~~
20 ~~health.~~

21 ~~(C) The department shall not adopt uniform water recycling~~
22 ~~criteria for reservoir augmentation pursuant to subparagraph (A),~~
23 ~~unless and until the expert panel adopts a finding that the proposed~~
24 ~~criteria would adequately protect public health.~~

25 ~~(b) Adoption of uniform water recycling criteria by the~~
26 ~~department is subject to the requirements of Chapter 3.5~~
27 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
28 ~~2 of the Government Code.~~

29 ~~SEC. 4.~~

30 ~~SECTION 1. Section 13563 of the Water Code is amended to~~
31 ~~read:~~

32 ~~13563. (a) (1) Not later than December 31, 2016, the~~
33 ~~department, in consultation with the state board, shall investigate~~
34 ~~and report to the Legislature on the feasibility of developing~~
35 ~~uniform water recycling criteria for raw water augmentation or~~
36 ~~direct potable reuse.~~

37 ~~(2) The department shall complete a public review draft of its~~
38 ~~report by September 1, 2016. The department shall provide the~~
39 ~~public not less than 45 days to review and comment on the public~~
40 ~~review draft.~~

1 (3) The department shall provide a final report to the Legislature
2 by December 31, 2016. The department shall make the final report
3 available to the public.

4 (b) In conducting the investigation pursuant to subdivision (a),
5 the department shall examine all of the following:

6 (1) The availability and reliability of recycled water treatment
7 technologies necessary to ensure the protection of public health.

8 (2) Multiple barriers and sequential treatment processes that
9 may be appropriate at wastewater and water treatment facilities.

10 (3) Available information on health effects.

11 (4) Mechanisms that should be employed to protect public health
12 if problems are found in recycled water that is being served to the
13 public as a potable water supply, including, but not limited to, the
14 failure of treatment systems at the recycled water treatment facility.

15 (5) Monitoring needed to ensure protection of public health,
16 including, but not limited to, the identification of appropriate
17 indicator and surrogate constituents.

18 (6) Any other scientific or technical issues that may be
19 necessary, including, but not limited to, the need for additional
20 research.

21 (c) (1) Notwithstanding Section 10231.5 of the Government
22 Code, the requirement for submitting a report imposed under
23 paragraph (3) of subdivision (a) is inoperative on December 31,
24 2020.

25 (2) A report to be submitted pursuant to paragraph (3) of
26 subdivision (a) shall be submitted in compliance with Section 9795
27 of the Government Code.

28 ~~SEC. 5. Section 13563.5 of the Water Code is amended to read:~~

29 ~~13563.5. (a) The department, in consultation with the state~~
30 ~~board, shall report to the Legislature as part of the annual budget~~
31 ~~process, in each year from 2011 to 2016, inclusive, on the progress~~
32 ~~towards developing and adopting uniform water recycling criteria~~
33 ~~for reservoir augmentation and its investigation of the feasibility~~
34 ~~of developing uniform water recycling criteria for raw water~~
35 ~~augmentation or direct potable reuse.~~

36 ~~(b) (1) A written report submitted pursuant to subdivision (a)~~
37 ~~shall be submitted in compliance with Section 9795 of the~~
38 ~~Government Code.~~

39 ~~(2) Pursuant to Section 10231.5 of the Government Code, this~~
40 ~~section is repealed on January 1, 2017.~~

1 ~~SEC. 6.~~

2 *SEC. 2.* Section 13564 of the Water Code is amended to read:
3 13564. In developing uniform water recycling criteria for
4 ~~reservoir surface water~~ augmentation, the department shall consider
5 all of the following:

6 (a) The final report from the National Water Research Institute
7 Independent Advisory Panel for the City of San Diego Indirect
8 Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration
9 Project.

10 (b) Monitoring results of research and studies regarding ~~reservoir~~
11 ~~surface water~~ augmentation.

12 (c) Results of demonstration studies conducted for purposes of
13 approval of projects using ~~reservoir surface water~~ augmentation.

14 (d) Epidemiological studies and risk assessments associated
15 with projects using ~~reservoir surface water~~ augmentation.

16 (e) Applicability of the advanced treatment technologies required
17 for recycled water projects, including, but not limited to, indirect
18 potable reuse for groundwater recharge projects.

19 (f) Water quality, limnology, and health risk assessments
20 associated with existing potable water supplies subject to
21 discharges from municipal wastewater, stormwater, and agricultural
22 runoff.

23 (g) Recommendations of the State of California Constituents
24 of Emerging Concern Recycled Water Policy Science Advisory
25 Panel.

26 (h) State funded research pursuant to Section 79144 and
27 subdivision (b) of Section 79145.

28 (i) Research and recommendations from the United States
29 Environmental Protection Agency Guidelines for Water Reuse.

30 (j) The National Research Council of the National Academies'
31 report titled "Water Reuse: Potential for Expanding the Nation's
32 Water Supply Through Reuse of Municipal Wastewater."

33 (k) Other relevant research and studies regarding indirect potable
34 reuse of recycled water.

35 ~~SEC. 7.~~

36 *SEC. 3.* Section 13565 of the Water Code is amended to read:
37 13565. (a) (1) Not later than January 30, 2014, the National

38 Water Research Institute shall convene and administer an expert
39 panel for purposes of advising the department on public health
40 issues and scientific and technical matters regarding development

1 of uniform water recycling criteria for indirect potable reuse
2 through ~~reservoir surface water~~ augmentation and investigation
3 of the feasibility of developing uniform water recycling criteria
4 for direct potable reuse. The expert panel shall assess what, if any,
5 additional areas of research are needed to be able to establish
6 uniform regulatory criteria for direct potable reuse. The expert
7 panel shall then recommend an approach for accomplishing any
8 additional needed research in a timely manner.

9 (2) The expert panel shall be comprised, at a minimum, of a
10 toxicologist, an engineer licensed in the state with at least three
11 years' experience in wastewater treatment, an engineer licensed
12 in the state with at least three years' experience in treatment of
13 drinking water supplies and knowledge of drinking water standards,
14 an epidemiologist, a limnologist, a microbiologist, and a chemist.
15 The department, in consultation with the National Water Research
16 Institute and the state board, shall select the expert panel members.

17 (3) Members of the expert panel may be reimbursed for
18 reasonable and necessary travel expenses.

19 (b) (1) The National Water Research Institute may convene an
20 advisory group, task force, or other group, comprised of no fewer
21 than nine representatives of water and wastewater agencies, local
22 public health officers, environmental organizations, environmental
23 justice organizations, public health nongovernmental organizations,
24 the department, the state board, the United States Environmental
25 Protection Agency, and the business community, to advise the
26 National Water Research Institute expert panel regarding the
27 development of uniform water recycling criteria for direct potable
28 reuse. The department, in consultation with the National Water
29 Research Institute and the state board, shall select the advisory
30 group members.

31 (2) Environmental, environmental justice, and public health
32 nongovernmental organization representative members of the
33 advisory group, task force, or other group may be reimbursed for
34 reasonable and necessary travel expenses.

35 (c) On or before June 30, 2016, the National Water Research
36 Institute shall submit a draft report to the department summarizing
37 the recommendations of the expert panel.

38 ~~SEC. 8.~~

39 *SEC. 4.* Section 13570 is added to the Water Code, to read:

1 13570. The National Water Research Institute expert panel,
2 advisory group, and report may be directly funded through nonstate
3 donations. The department shall provide staff to select panel
4 members, participate in the advisory group, provide input to the
5 National Water Research Institute expert panel, and provide input
6 on ongoing research projects that will form the basis of
7 recommendations of the National Water Research Institute expert
8 panel. To the extent that state funds are available, the department
9 shall use state funds for staff time, the expert panel, and the report.
10 The department may accept funds from any source and may expend
11 these funds for purposes of completing its responsibilities under
12 this chapter.

O

EXHIBIT "E"

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 735

**Introduced by Senator Wolk
(Coauthor: Senator DeSaulnier)**

February 22, 2013

An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta Reform Act of 2009.

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Wolk. Sacramento-San Joaquin Delta Reform Act of 2009: covered actions.

The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta by January 1, 2012. The act requires a state or local public agency that proposes to undertake a covered action to prepare a written certification, as prescribed, as to whether the covered action is consistent with the Delta Plan. The act defines "covered action" to mean a plan, program, or project that meets specified conditions.

This bill would exclude from the definition of "covered action" the approval or implementation of ~~a project which is a part of a larger conservation plan and implementing agreements submitted, by specified entities, pursuant to the federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act, or certain permits provisions related to the taking, importation, exportation, or sale of endangered or threatened species issued to specified entities located within certain counties, or the implementation of conservation measures included in~~

a conservation plan approved, by specified entities, pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 85057.5 of the Water Code is amended
2 to read:
3 85057.5. (a) "Covered action" means a plan, program, or
4 project as defined pursuant to Section 21065 of the Public
5 Resources Code that meets all of the following conditions:
6 (1) Will occur, in whole or in part, within the boundaries of the
7 Delta or Suisun Marsh.
8 (2) Will be carried out, approved, or funded by the state or a
9 local public agency.
10 (3) Is covered by one or more provisions of the Delta Plan.
11 (4) Will have a significant impact on achievement of one or
12 both of the coequal goals or the implementation of
13 government-sponsored flood control programs to reduce risks to
14 people, property, and state interests in the Delta.
15 (b) "Covered action" does not include any of the following:
16 (1) A regulatory action of a state agency.
17 (2) Routine maintenance and operation of the State Water
18 Project or the federal Central Valley Project.
19 (3) Regional transportation plans prepared pursuant to Section
20 65080 of the Government Code.
21 (4) A plan, program, project, or activity within the secondary
22 zone of the Delta that the applicable metropolitan planning
23 organization pursuant to Section 65080 of the Government Code
24 has determined is consistent with either a sustainable communities
25 strategy or an alternative planning strategy that the State Air
26 Resources Board has determined would, if implemented, achieve
27 the greenhouse gas emission reduction targets established by that
28 board pursuant to subparagraph (A) of paragraph (2) of subdivision
29 (b) of Section 65080 of the Government Code. For purposes of
30 this paragraph, "consistent with" means consistent with the use
31 designation, density, building intensity, transportation plan, and
32 applicable policies specified for the area in the sustainable
33 communities strategy or the alternative planning strategy, as

1 applicable, and any infrastructure necessary to support the plan,
2 program, project, or activity.

3 (5) Routine maintenance and operation of a facility located, in
4 whole or in part, in the Delta, that is owned or operated by a local
5 public agency.

6 (6) A plan, program, project, or activity that occurs, in whole
7 or in part, in the Delta, if both of the following conditions are met:

8 (A) The plan, program, project, or activity is undertaken by a
9 local public agency that is located, in whole or in part, in the Delta.

10 (B) Either a notice of determination is filed, pursuant to Section
11 21152 of the Public Resources Code, for the plan, program, project,
12 or activity by, or the plan, program, project, or activity is fully
13 permitted by, September 30, 2009.

14 (7) (A) A project within the secondary zone, as defined pursuant
15 to Section 29731 of the Public Resources Code as of January 1,
16 2009, for which a notice of approval or determination pursuant to
17 Section 21152 of the Public Resources Code has been filed before
18 the date on which the Delta Plan becomes effective.

19 (B) A project for which a notice of approval or determination
20 is filed on or after the date on which the final Bay Delta
21 Conservation Plan becomes effective, and before the date on which
22 the Delta Plan becomes effective, is not a covered action but shall
23 be consistent with the Bay Delta Conservation Plan.

24 (C) Subparagraphs (A) and (B) do not apply to either of the
25 following:

26 (i) A project that is within a Restoration Opportunity Area as
27 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of
28 the Bay Delta Conservation Plan, August 3, 2009, or as shown in
29 a final Bay Delta Conservation Plan.

30 (ii) A project that is within the alignment of a conveyance
31 facility as shown in Figures 1 to 5, inclusive, of the Final Draft
32 Initial Assessment of Dual Delta Water Conveyance Report, April
33 23, 2008, and in future revisions of this document by the
34 department.

35 (8) Leases approved by a special district if all of the following
36 apply:

37 (A) The uses proposed by the lease are authorized by the
38 applicable general plan and zoning ordinances of the city where
39 the special district is located.

1 (B) The uses proposed by the lease are approved by the city
2 where the special district is located and the city complies with
3 Chapter 3 (commencing with Section 85225) of Part 3, if
4 applicable, prior to approval of the lease by the special district.

5 (C) The special district complies with the California
6 Environmental Quality Act (Division 13 (commencing with Section
7 21000) of the Public Resources Code) prior to approving the lease.

8 (9) (A) Routine dredging activities that are necessary for
9 maintenance of facilities operated by a special district.

10 (B) For purposes of this paragraph, "routine dredging activities"
11 are limited to the following:

12 (i) Dredging to maintain the Stockton Deep Water Ship Channel
13 at a depth of 40 feet in the sediment trap at the confluence of the
14 San Joaquin River, between river mile 39.3 to river mile 40.2, and
15 to maintain the remaining Stockton Deep Water Ship Channel at
16 a depth of 35 feet plus 2 feet overdredge from river mile 35 to river
17 mile 43.

18 (ii) Dredging designed to maintain the Sacramento Deep Water
19 Ship Channel at a depth of 30 feet plus 2 feet of overdredge from
20 river mile 0.0 to river mile 30, and at a depth of 35 feet from river
21 mile 35 to river mile 43.

22 (C) Except as provided by this subdivision, it is the intent of
23 the Legislature that this exemption shall not be interpreted or
24 treated as changing or modifying current substantive and procedural
25 regulations applicable to the decision to approve dredging
26 operations.

27 ~~(10) The approval or implementation of (a) a project that is a~~
28 ~~part of a larger conservation plan submitted pursuant to Section~~
29 ~~1539 of the federal Endangered Species Act (16 U.S.C. Sec. 1531~~
30 ~~et seq.), (b) a natural community conservation plan submitted~~
31 ~~pursuant to the Natural Community Conservation Planning Act~~
32 ~~(Chapter 10 (commencing with Section 2800) of Division 3 of the~~
33 ~~Fish and Game Code), or (c) a permit issued pursuant to Section~~
34 ~~2081 of the Fish and Game Code that is issued to a city, county,~~
35 ~~special district, or Joint Powers Authority consisting of cities or~~
36 ~~counties, or both, within the Counties of Contra Costa, Sacramento,~~
37 ~~San Joaquin, Solano, or Yolo.~~

38 *(10) The approval of a conservation plan and implementing*
39 *agreements submitted by a city, county, special district, or joint*
40 *powers authority consisting of cities or counties, or both, within*

The Honorable Diana Dooley and The Honorable Matt Rodriguez

April 19, 2013

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directly with other State Water Board programs for resources and management time. Some might be concerned that this would create a "new box" in the Cal/EPA organization chart. However, a move to the State Water Board also would do that, with a box for a new division at the State Water Board, without the benefit of elevating the Program the way a new office or department would do.

6. A "Holistic" Approach May Sound Good, But Specific Solutions are What is Needed.

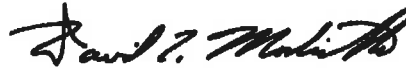
Some believe that combining the State's Drinking Water Program and Water Resources Control programs is the right way to go. We respectfully suggest that California has a drinking water program that for the most part works well, and our focus should be on addressing the specific drinking water problems with which some disadvantaged communities continue to grapple.

Our organizations appreciate your consideration of our views, and we look forward to working with you to address these issues.

Sincerely,



Timothy H. Quinn
Executive Director
Association of California Water Agencies



Dave Modisette
Executive Director
California Municipal Utilities Association



Jack Hawks
Executive Director
California Water Association

cc: The Honorable Edmund G. Brown Jr.
Ms. Nancy McFadden
Ms. Martha Guzman-Aceves
Mr. Cliff Rechtschaffen
Ms. Debbie Davis
The Honorable Ana Matosantos
The Honorable Karen Ross
Mr. Gordon Burns
Ms. Sandy Schubert
The Honorable Michael Wilkening
The Honorable Ronald Chapman
The Honorable Felicia Marcus

Mr. Tom Howard
Ms. Karen Finn
Mr. Mark Starr
Ms. Donna Campbell
Ms. Kristin Stauffacher
Ms. Monica Wagoner
Mr. Rob Egel

May 13, 2013

Prepared by: C. Compton

Submitted by: G. Heiertz

Approved by: Paul Cook

CONSENT CALENDAR

2013 FEDERAL LEGISLATIVE UPDATE

SUMMARY:

This report provides an update on the 2013 Congressional session and IRWD federal legislative priorities. Staff recommends that the Board consider taking a position opposing the proposed 28 percent cap on tax-exempt municipal bonds and urging Congress to maintain the current tax-exempt status of municipal bonds.

BACKGROUND:

Proposed Cap on the Tax-Exempt Status of Municipal Bonds:

President Obama released his proposed budget for Fiscal Year 2014 on April 10, 2013. The proposed budget again includes a proposal to limit the value of tax benefits for the top two percent of wage earners. Under the Administration's proposal, top earners would be limited to reducing their tax liability to 28 percent on tax-exempt income. The current cap is 35 percent. Included in the proposed 28 percent cap is a limitation on the value of tax-exempt interest earned on municipal bonds.

History of Tax-Exempt Municipal Bonds:

The Supreme Court first considered exemption of the interest earned on municipal bonds from taxation in 1895 in *Pollock v. Farmers' Loan & Trust Company*, 157 US 429 (1895). In that case, the Court held that the federal government had no power under the Constitution to tax the interest earned on municipal bonds. The basis of the Court's holding was the Tenth Amendment.

In reaction to other portions of the Court's holding in *Pollock*, the Sixteenth Amendment was ratified in 1913. It overruled *Pollock*, but Congress provided for the tax exemption of interest earned on municipal bonds in the Revenue Act of 1913. The Revenue Act of 1913 enacted Section 103(a) of the Internal Revenue Code which provides that "[e]xcept as provided in subsection (b), gross income does not include interest on any State or local bond."

For more than a century, the interest earned on municipal bonds has been exempt from federal taxation. This has allowed state and local governments to significantly reduce the cost of infrastructure financing.

Potential Impact of Capping the Tax-Exemption:

If approved, the proposed cap on tax-exempt municipal bond interest could reduce the demand for municipal bonds. Borrowers impacted by the cap would likely require a higher interest rate before they would purchase municipal bonds to ensure their required rate of return based on a change to tax law. These two factors would likely increase borrowing costs for state and local

governments issuing tax-exempt bonds, thereby increasing the cost of building infrastructure. IRWD would not escape these market forces and would have a higher cost of issuance if it were to continue to issue tax-exempt bonds after a change in tax law.

Organizations Opposed to the Proposed 28 Percent Cap:

A vast number of state and local governments and industry associations have expressed concern and opposition to the proposed cap. Attached as Exhibit "A" is a letter dated April 2, 2013, signed by 14 members of the United States Senate stating their opposition to altering the tax treatment of municipal bonds. Since this letter was issued, House Majority Leader Eric Cantor and other Member of the House of Representatives also expressed their opposition to changing the tax-exempt status of municipal bonds.

The Government Finance Officers Association (GFOA) and the Securities Industry and Financial Markets Association (SIFMA) have opposed the proposed cap and have actively communicated their concerns to decision makers in Washington, DC. The California Special Districts Association (CSDA) has opposed the cap and has joined Municipal Bonds for America to advocate for federal policies that keep the municipal bond market tax-exempt. Municipal Bonds for America is a non-partisan coalition of municipal bond issuers, state and local governments, brokers and dealers who seek to explain the many benefits of municipal bonds. The California Municipal Treasurers Association (CMTA) and the California Society of Municipal Finance Officers (CSMFO) have also been active in opposing the proposed cap.

Staff Recommendation:

Given the financial impact the proposed cap on tax-exempt municipal bond interest could have on IRWD, staff recommends that the Board "OPPOSE" the proposed 28 percent cap on tax-exempt municipal bond interest and urge Congress to maintain the current tax-exempt status of municipal bonds.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

This item was reviewed at the Water Resources Policy and Communications Committee on May 2, 2013.

RECOMMENDATION:

THAT THE BOARD OPPOSE THE 28 PERCENT CAP ON TAX-EXEMPT MUNICIPAL BONDS AND URGE CONGRESS TO MAINTAIN THE CURRENT TAX-EXEMPT STATUS OF MUNICIPAL BONDS.

LIST OF EXHIBITS:

Exhibit "A" – Letter to the President from Members of the U. S. Senate opposing changes to the tax treatment of municipal bonds, dated April 2, 2013

EXHIBIT "A"

United States Senate
WASHINGTON, DC 20510

April 2, 2013

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500-0005

Dear President Obama:

It is clear that our country faces significant fiscal challenges at the federal level. It would be inappropriate and shortsighted, however, to radically shift the burden of our national fiscal challenges to states and cities by capping or eliminating the tax-exempt status of municipal bonds.

We are very concerned about the impact that altering the tax treatment of municipal bonds would have on the ability of cities, counties, and states to manage their finances and invest in the future. At risk are important services provided by local governments, including utilities like power and water and public safety like police and fire protection. Also at risk are key infrastructure projects such as road, airport, port, housing and hospital construction and maintenance.

While we recognize the challenges our nation faces as we work to bring order to our fiscal house, we believe strongly that balancing the federal deficit by shifting the burden to local governments would have, ironically, a substantial negative impact on our federal budget outlook through decreased federal tax receipts as a result of diminished economic activity. We respectfully encourage you to consider other options as you work with Congress to find the savings that we all acknowledge we must find.

Sincerely,



Mark Begich
United States Senator



Maria Cantwell
United States Senator

Kirsten E. Gillibrand

Kirsten E. Gillibrand
United States Senator

Bert Sanders

Bernard Sanders
United States Senator

Tom Harkin

Tom Harkin
United States Senator

Tim Johnson

Tim Johnson
United States Senator

Mary L. Landrieu

Mary L. Landrieu
United States Senator

Al Franken

Al Franken
United States Senator

William M. Cowan

William M. Cowan
United States Senator

Tom Udall

Tom Udall
United States Senator

Elizabeth Warren

Elizabeth Warren
United States Senator

Barbara Boxer

Barbara Boxer
United States Senator

Heidi Heitkamp

Heidi Heitkamp
United States Senator

Tammy Baldwin

Tammy Baldwin
United States Senator

May 13, 2013

Prepared by: Rob Jacobson/Tanja Fournier

Submitted by: Cheryl Clary

Approved by: Paul Cook

CONSENT CALENDAR

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT INTEREST RATE SWAP COMPLIANCE

SUMMARY:

The District currently has five interest rate swaps outstanding with a total notional amount of \$130 million. As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) signed into law July 21, 2010, it is necessary for the District to adopt a revised Interest Rate Swap Policy (Swap Policy) and complete the International Swaps and Derivatives Association (ISDA) documentation confirming adherence to the Dodd-Frank Protocol related to interest rate swap transactions. Legal counsel has provided revised language to the District's Swap Policy to comply with Dodd-Frank, and provided a Resolution recommended for adoption by the Board. The revised Swap Policy and Resolution related to ISDA documentation are attached as Exhibits "A" and "B", respectively.

BACKGROUND:

In July 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). In addition to a number of consumer protection reforms related to the 2007-2010 financial crisis, Dodd-Frank also includes a number of changes and requirements affecting interest rate swap transactions. Effective May 1, 2013, Dodd-Frank imposes numerous "external business conduct" requirements on swap dealers (typically bank counterparties). A process known as the "Dodd-Frank Protocol" (Protocol) is being used as a mechanism for market participants to efficiently amend existing swap documents to include the Protocol requirements. ISDA has developed a DF Protocol Supplement, and related Agreement to supplement existing swap agreements between counterparties. The District is not required to adhere to the Protocol, however to enter into any new swaps transactions, amendments, novations or mutual unwinds of existing swaps, swap dealers will require the District to adhere to the Protocol before any discussion or transaction can take place.

In order to comply with the rules contained in Dodd-Frank, and adhere to the ISDA Protocol, it is necessary for the District to take the following actions:

- Register with the U.S. Commodity Futures Trading Commission's (CFTC) Interim Compliance database;
- Complete and submit required Dodd-Frank Protocol documentation;
- Adopt a revised Interest Rate Swap Policy to include the Dodd-Frank Protocol; and
- Receive a Qualified Investment Representative (QIR) Certificate from the District's swap financial advisor(s) in compliance with Dodd-Frank requirements.

Registering for the CFTC Interim Compliant Identifier:

In response to difficulties regulators experienced in obtaining timely and robust information regarding swaps from dealers and other market participants during the financial crisis, one component of Dodd-Frank is to require the prompt reporting of swap data to a "swap data repository" where the information, including the identities of the swap counterparties, will be available to regulators. In connection with this requirement, each counterparty will be identified with a unique "legal entity identifier" (LEI). The Financial Stability Board is coordinating an international process with the CFTC to establish a global LEI system; however, this global system is not yet operational. In the interim, the CFTC is requiring that counterparties to a swap in existence on or after April 25, 2011 obtain a CFTC Interim Compliant Identifier (CICI). Obtaining a CICI by the date established by the CFTC is a requirement for all market participants who had an existing swap as of April 25, 2011. The deadline to register for a CICI was April 10, 2013, and staff completed CICI registration prior to the deadline.

Dodd-Frank Protocol Required Documentation:

As part of the Dodd-Frank Protocol, ISDA has developed the DF Supplement, DF Protocol Agreement, DF Protocol Questionnaire and Adherence Letter. A summary of the document content and purpose of each document is outlined below:

Dodd-Frank Required Documents	Purpose
ISDA DF Supplement and Protocol Agreement	The DF Supplement is intended to supplement the terms of current ISDA Agreements and sets forth certain standardized representations, acknowledgments, notifications, representations and covenants. The Protocol Agreement provides requirements contained in the Dodd-Frank Protocol, such as business conduct standards for all swap parties, reporting and recordkeeping requirements, safe harbors for swap dealers, and representations of counterparties.
ISDA DF Protocol Questionnaire	The Questionnaire is required for "adherence" with the Dodd-Frank Protocol, and is used to exchange information between counterparties. Among other things, it provides swap dealers with representations from counterparties (for example, that they have written swap policies and procedures) that enable the swap dealers to rely on certain safe harbors under the Dodd-Frank Act.

Dodd-Frank Required Documents	Purpose
ISDA Adherence Letter	The Adherence Letter confirms the participant's adherence to the Protocol as referenced in the Protocol Agreement. The letter also provides information for parties wishing to request information through the DF Protocol Questionnaire. Adherence to the Protocol Agreement is evidenced by the execution and online delivery of the Adherence Letter.

A copy of the ISDA DF Supplement is attached as Exhibit "C" and the DF Protocol Agreement (including a form Adherence Letter and Questionnaire) is attached as Exhibit "D".

Revised Interest Rate Swap Policy:

Based on language provided by the District's interest rate swap counsel, the proposed Interest Rate Swap Policy has been revised to include a section to conform with the requirements of Dodd-Frank related to the engagement of swap advisors and includes the following requirements:

1. Swap advisors engaged by the District will function as the Designated Qualified Investment Representative of the District, as defined under Dodd-Frank.
2. Swap advisors will provide the District with written certification that they meet the requirements under Dodd-Frank.
3. The District will monitor the performance of each swap advisor consistent with the requirements specified in the CFTC Representative Regulation.
4. The District will exercise independent judgment in consultation with its swap advisors in evaluating all recommendations presented by any swap dealer and that the District will rely on the advice of its swap advisor with respect to transactions, and not rely on recommendations presented by a swap dealer.

Swap Financial Group, the District's current financial advisor for interest rate swaps, has provided a QIR Certificate and Agreement. Orrick Herrington, the District's interest rate swap counsel has reviewed the certificate and advised staff that it complies with all terms of Dodd-Frank and the proposed Swap Policy. The Certificate and Agreement is attached as Exhibit "E".

FISCAL IMPACTS:

The fiscal impacts include approximately \$600.00 for CFTC Interim Compliant Identifier registration and submission of the Adherence Letter, and approximately \$5,000 for legal expenses.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on May 1, 2013.

ENVIRONMENTAL COMPLIANCE:

This item is not a project as defined in the California Environmental Quality Act Code of Regulations, Title 14, Chapter 3 Section 15378.

RECOMMENDATION:

THAT THE BOARD ADOPT THE FOLLOWING RESOLUTION BY TITLE:

RESOLUTION NO. 2013-

RESOLUTION OF THE BOARD OF DIRECTORS OF
IRVINE RANCH WATER DISTRICT MODIFYING MASTER
POLICY WITH RESPECT TO USE OF INTEREST RATE SWAPS
AND OTHER CONTRACTS DESCRIBED IN GOVERNMENT CODE SECTION 5920

LIST OF EXHIBITS:

- Exhibit "A" – Proposed Revised Interest Rate Swap Policy
- Exhibit "B" – Resolution Approving the Revised Swap Policy and Other Contracts
- Exhibit "C" – Dodd-Frank ISDA Supplement
- Exhibit "D" – Dodd-Frank Protocol Agreement, Adherence Letter & Questionnaire
- Exhibit "E" – Swap Financial Group QIR Certificate and Agreement

Exhibit "A"

IRVINE RANCH WATER DISTRICT

INTEREST RATE SWAP POLICY

Adopted , 2013

(superseding and replacing the Interest Rate Swap Policy adopted September 8, 2003)

Introduction:

This interest rate swap policy is intended to establish the District's authorized interest rate swap activities, and to provide a clear understanding of such authorized activities to members of the public, the Board of Directors of the Irvine Ranch Water District (the "District"), District management, outside professionals involved in interest rate swaps, and other interested parties.

Purpose:

It is the purpose of the District to enter into interest rate swap transactions in a prudent and professional manner that will take into account the District's objectives in managing its assets and liabilities, relevant risk factors, and market conditions. All interest rate swap transactions shall comply with State statutes and District policies governing such transactions.

It is intended that any interest rate swap or a program of interest rate swaps be designed to enhance the relationship between risk and return with respect to an investment or a program of investments entered into by the District; and/or to reduce the amount or duration of payment, rate, spread, or similar risk; and/or result in a lower cost of borrowing when used in combination with bonds or other indebtedness of the District.

Approval of Transactions:

The Board of Directors desires to establish an approval structure that provides adequate Board oversight of interest rate swap transactions while maintaining flexibility to timely execute such transactions. To meet this goal, the following structure and transaction approval procedures are established.

1. The Board of Directors, from time to time when deemed appropriate, shall authorize general parameters for interest rate swap transactions or a program of interest rate swap transactions. These parameters shall include:
 - Type of interest rate swap transaction(s), i.e., fixed receiver, fixed payer, or basis trade, including any optionality associated with these types of interest rate swaps;
 - Maximum notional amount(s);
 - Maximum duration(s); and
 - Any other parameter(s) deemed appropriate by the Board

Each Board authorization of a set of general parameters shall be documented in a term sheet, generally in the form of Exhibit I to this policy.

2. The Finance & Personnel Committee shall structure specific parameters for interest rate swap transactions within the authorized general parameters set forth in the term sheet

approved by the Board of Directors. Unless specifically addressed in such authorized general parameters, the specific parameters shall include:

- Number and notional amount of transaction(s);
- Term of each transaction(s);
- Index to be used (e.g., LIBOR, BMA, etc.);
- Timing of the transaction(s);
- Specific form of ISDA agreement with counterparty(s)
- Counterparty(s) or method of selection of counterparty(s); and
- Any other term(s) consistent with the general parameters established by the Board.

The Finance & Personnel Committee shall also structure specific parameters for the termination of any existing interest rate swap(s) in its entirety at any time the Committee deems such action to be in the best interests of the District. Any partial terminations or offsetting (reverse) interest rate swap transactions must be authorized in advance in a term sheet approved by the Board of Directors.

3. The Treasurer, with the concurrence of the Chairman of the Finance & Personnel Committee, is authorized and directed to enter into on behalf of the District interest rate swap transactions that are within an authorized set of general parameters established by the Board and the corresponding specific parameters approved by the Finance & Personnel Committee.

Authorized Counterparties and Master Agreements:

The International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement, including the schedule and credit support annex, with such additions and modifications as shall be approved by the Finance & Personnel Committee pursuant to paragraph 2 of the "Approval of Transactions" section of this Policy, shall be used as the form of contract with interest rate swap counterparties.

The Treasurer, with the concurrence of the Finance & Personnel Committee, is authorized to execute these master agreements with qualifying counterparties.

In approving the ISDA Master Agreement with counterparties, the Finance & Personnel Committee shall take into account such terms, conditions, provisions and safeguards it deems necessary or desirable to protect the interests of the District. This shall include, but not be limited to, such items as counterparty credit and credit enhancement, security, collateral, default, remedies, termination, and other relevant provisions; provided however, the long-term unenhanced debt, claims paying ability or other obligations of each such counterparty or its guarantor or credit enhancer shall be rated at least "A" or its equivalent (without regard to qualifiers) by a nationally recognized rating agency at the time of entering into the transaction(s).

Monitoring and Reporting:

All interest rate swap transactions, including terminations, shall be reported to the Board of Directors at the next regularly scheduled Board meeting following execution of such transactions.

The Treasurer shall file a monthly report with the Board of Directors at a public meeting that shows the status of the District's interest rate swap positions, and all interest rate swap transactions that occurred since the preceding monthly report. The monthly report shall include at least the following information for each interest rate swap transaction:

- Type of interest rate swap
- Counterparty
- Notional amount
- Cumulative cash flow
- Payer/receiver rate
- Effective and maturity dates
- Applicable index
- Market value

The Treasurer's monthly report shall also include any new ISDA Master Agreements entered into with counterparties.

Other Related Products:

In addition to interest rate swaps, the District may utilize other financial instruments as authorized in Government Code Section 5920, *et seq.* These instruments are commonly referred to as floors, caps, collars, options, puts and calls, and they shall be used to offset, hedge, reduce or improve various financial risks in a similar manner as interest rate swaps. The authorization and use of these financial instruments shall comply with the same approval procedure, counterparties, form of agreement, monitoring and reporting, and other provisions contained in this Policy in reference to interest rate swap transactions.

Conformance To Dodd-Frank:

It is the intent of the District to conform this policy to the requirements relating to legislation and regulations for over-the-counter derivatives transactions under Title VII of the Wall Street Transparency and Accountability Act of 2010, as supplemented and amended from time to time (herein collectively referred to as "Dodd-Frank"). Pursuant to such intent, it is the policy of the District that: (i) each swap advisor engaged or to be engaged by the District will function as the designated qualified independent representative of the District, sometimes referred to as the "Designated QIR"; (ii) each swap advisor agrees to meet and meets the requirements specified in Commodity Futures Trading Commission Regulation 23.450(b)(1) or any successor regulation thereto (herein referred to as the "Representative Regulation"); (iii) each swap advisor provide a written certification to the District to the effect that such swap advisor agrees to meet and meets the requirements specified in the Representative Regulation; (iv) the District monitor the performance of each swap advisor consistent with the requirements specified in the Representative Regulation; (v) the District exercise independent judgment in consultation with its swap advisor in evaluating all recommendations, if any, presented by any swap dealer with respect to transactions authorized pursuant to this Policy; and (vi) the District rely on the advice of its swap advisor with respect to transactions authorized pursuant to this Policy and not rely on recommendations, if any, presented by any swap dealer with respect to transactions authorized pursuant to this Policy.

EXHIBIT I

(General Form of Interest Rate Swap Authorization)

IRVINE RANCH WATER DISTRICT
INTEREST RATE SWAP AUTHORIZATION
TERM SHEET

Board Approval Date: _____

Previously Authorized Notional Amounts: \$ _____

Requested Notional Amount: \$ _____

New Authorized Notional Amounts: \$ _____

Type of Interest Rate Swap: _____

Maximum Duration: _____

Other Terms and Conditions: _____

Document comparison by Workshare Compare on Monday, April 22, 2013
6:31:11 PM

Input:	
Document 1 ID	interwovenSite://NCUSADMS01/USA/753559408/1
Description	#753559408v1<USA> - Swap Policy & Resolution Adopted - 2003 (Original)
Document 2 ID	interwovenSite://NCUSADMS01/USA/753526706/1
Description	#753526706v1<USA> - IRWD Revised Swap Policy (2013)
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	7
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	10

Exhibit “B”

RESOLUTION NO. 2013-[_____]

RESOLUTION OF THE BOARD OF DIRECTORS OF IRVINE RANCH WATER DISTRICT MODIFYING MASTER POLICY WITH RESPECT TO USE OF INTEREST RATE SWAPS AND OTHER CONTRACTS DESCRIBED IN GOVERNMENT CODE SECTION 5920

WHEREAS, the Irvine Ranch Water District (the “District”), pursuant to Resolution No. 2003-36, adopted an Interest Rate Swap Policy (the “Policy”) on September 8, 2003, which provides guidelines for the District to enter into interest rate swap transactions in a prudent and professional manner that will take into account the District’s objectives in managing its assets and liabilities, relevant risks factors, and market conditions; and

WHEREAS, in response to the financial markets crisis of 2008, various legislation has been adopted and various regulations have been enacted, commonly referred to as “Dodd-Frank”; and

WHEREAS, certain provisions of Dodd-Frank apply to interest rate swap transactions; and

WHEREAS, Dodd-Frank includes certain provisions applicable to certain providers of interest rate swaps and other “swap” transactions, as defined in Dodd-Frank and related regulations (each, a “counterparty,” and herein sometimes referred to as the “counterparties”), including, without limitation, certain business conduct standards, which require, among other things, that a counterparty have a reasonable basis to believe that the District is capable of independently evaluating risks with regard to the contemplated swap and have a reasonable basis to believe that the contemplated swap is suitable for the District; and

WHEREAS, in order for a counterparty to enter into a swap with the District after a specified compliance date, it will be necessary for such counterparty to comply with such business conduct standards; and

WHEREAS, pursuant to the provisions of Dodd-Frank, a counterparty may satisfy the requirements described in the immediately preceding clause based upon the written representations of the District; and

WHEREAS, to provide an orderly process for such written representations to be provided by the District to multiple counterparties or prospective counterparties, the International Swaps and Derivatives Association, Inc. (“ISDA”) developed a multilateral contractual amendment mechanism herein referred to as the “Dodd-Frank Protocol;” and

WHEREAS, the documentation relating to the Dodd-Frank Protocol includes (i) an adherence letter (the “Adherence Letter”), which is to be completed and filed electronically, (ii) the ISDA August 2012 DF Protocol Agreement (the “DF Protocol Agreement”), (iii) the ISDA August 2012 DF Supplement (the “DF Supplement”), (iv)

the ISDA August 2012 DF Protocol Questionnaire (the “DF Protocol Questionnaire”), and (v) the DF Protocol Questionnaire Answer Sheet (the “DF Protocol Questionnaire Answer Sheet”); and

WHEREAS, copies of the DF Protocol Agreement, the DF Supplement, the DF Protocol Questionnaire and the DF Protocol Questionnaire Answer Sheet (hereinafter collectively referred to as the “DF Documents”) have been made available to the District; and

WHEREAS, in connection with the provisions of Dodd-Frank applicable or relating to interest rate swap transactions, it is necessary to further revise the Policy; and

WHEREAS, there has been prepared and made available to the District, a proposed form of Policy (hereinafter referred to as the “Revised Policy”); and

WHEREAS, to enable counterparties to comply with the applicable provisions of Dodd-Frank, it is now necessary for the governing body of the District to approve the Revised Policy to supersede and replace the Policy, to authorize adherence to the Dodd-Frank Protocol with such changes as may be agreed to by a counterparty, to authorize the execution and delivery of the Adherence Letter, to authorize the execution and delivery of the DF Documents, and to authorize the taking of such other actions as shall be necessary or advisable for the District relating to Dodd-Frank, as Dodd-Frank is supplemented and modified from time to time.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF IRVINE RANCH WATER DISTRICT HEREBY RESOLVES AND DETERMINES AS FOLLOWS:

Section 1. The Revised Policy in such form as has been made available to the governing body of the District and attached hereto is hereby approved and adopted and hereby supersedes and replaces the Policy.

Section 2. Adherence to the Dodd-Frank Protocol, with such changes as may be agreed to with a counterparty, is hereby approved. The Treasurer of the District, each acting alone (each, an “Authorized Officer”), is hereby authorized and directed, for and in the name and on behalf of the District, to execute the Adherence Letter.

Section 3. The form of DF Protocol Agreement, DF Supplement, DF Protocol Questionnaire and DF Protocol Questionnaire Answer Sheet presented to this meeting are hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the District, to execute each of the DF Documents which requires execution and to deliver or cause to be delivered each of the DF Documents which requires delivery, each such DF Document to be in substantially the form presented to this meeting, with such changes therein as the Authorized Officer executing the same, with the advice of Swap Financial Group (the “Advisor”), may require or approve, such approval to be conclusively evidenced by the execution and/or delivery thereof.

Section 4. Any additional revision of the Revised Policy solely related to the provisions of Dodd-Frank may be made by or at the direction of either Authorized Officer, with the advice of the Advisor and counsel to the District, without further authorization or direction by the governing body of the District.

Section 5. All actions, including without limitation, all filings or registrations required in connection with the provisions of Dodd-Frank, including filing for a Commodity Futures Trading Commission Interim Compliant Identifier and, if subsequently required, a legal entity identifier, and approval of any changes to the Dodd-Frank Protocol as may be agreed to with a counterparty, may be taken by either Authorized Officer without further authorization or direction by the governing body of the District and each Authorized Officer is hereby authorized and directed to take any such action which such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution which shall continue in full force and effect.

Section 7. This Resolution shall take effect immediately upon its passage.

ADOPTED, SIGNED and APPROVED this [] of [month], 2013.

President, IRVINE RANCH WATER
DISTRICT and of the Board of Directors
thereof

Secretary, IRVINE RANCH WATER
DISTRICT and of the Board of Directors
thereof

APPROVED AS TO FORM:

[]

IRWD Legal Counsel

Exhibit “C”



ISDA AUGUST 2012 DF SUPPLEMENT¹

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.

¹ This DF Supplement is intended to address requirements of the following final rules:

- (1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);
- (2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);
- (3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);
- (4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);
- (5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);
- (6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and
- (7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).

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ISDA August 2012 DF Supplement
(published on August 13, 2012)

Any of the following schedules of this ISDA August 2012 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (this “**DF Supplement**”) may be incorporated into an agreement (such agreement, a “**Covered Agreement**”) by written agreement of the relevant parties indicating which schedules of this DF Supplement (each such schedule, a “**DF Schedule**”) shall be incorporated into such Covered Agreement. All DF Schedules so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement, and any term defined in this DF Supplement and used in any DF Schedule that is incorporated by reference in a Covered Agreement will have the meaning set forth in this DF Supplement unless otherwise provided in such Covered Agreement. Any term used in a Covered Agreement will, when combined with the name of a party, have meaning with respect to the named party only. The headings and footnotes used in this DF Supplement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this DF Supplement.

Schedule 1 Defined Terms

The following terms shall have the following meanings when used in this DF Supplement:

“Agreement,” as used in a provision of this DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.

“Agricultural Commodity” means any “agricultural commodity,” as defined in CFTC Regulation 1.3(zz).

“Associated Person” means, with respect to a Swap Dealer, any person acting for or on behalf of such Swap Dealer, including an associated person as defined in Section 1a(4) of the Commodity Exchange Act.

“Applicable U.S. Law” means all applicable laws of the United States and rules, regulations, orders and written interpretations of U.S. federal authorities, self-regulatory organizations, markets, exchanges, and clearing facilities.

“Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“CFTC” means the U.S. Commodity Futures Trading Commission.

“CFTC Regulations” means the rules, regulations, orders and interpretations published or issued by the CFTC.

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

“Commodity Trade Option” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“Counterparty” or **“CP”** means a party that is the counterparty to a Swap Dealer in respect of the Agreement. For the avoidance of doubt, if two Swap Dealers are parties to the Agreement, each Swap Dealer is a Counterparty or CP for purposes of this DF Supplement.

“DCM” means a “designated contract market,” as such term is used in the CFTC Regulations.

“DCO” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the Commodity Exchange Act and the CFTC Regulations.

“Designated Evaluation Agent” means, with respect to a party to the Agreement, a person (if any), other than an employee of such party, that such party has represented in writing to its counterparty is its “Designated Evaluation Agent.”

“Designated Fiduciary” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated Fiduciary.”

“**Designated QIR**” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated QIR.”

“**DF Schedule**” shall have the meaning given to such term in the introductory paragraph of this DF Supplement.

“**DF Supplement Rules**” means the “CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) solely for purposes of Sections 2.4, 2.5, 2.12 and 2.19 of this DF Supplement, any comparable non-U.S. regulation with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

“**DF Supplement Information**” means (i) any information or representation agreed in writing by the parties to be DF Supplement Information; and (ii) any information provided pursuant to Section 2.4 of this DF Supplement, in each case, as amended or supplemented from time to time in accordance with Section 2.3 of this DF Supplement or in another manner agreed by the parties.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Special Entity**” means a party to the Agreement that has represented in writing to its counterparty that it is an employee benefit plan subject to Title I of ERISA.

“**Exempt Commodity**” means any “exempt commodity” under Section 1a(20) of the Commodity Exchange Act.

“**FCM**” means a futures commission merchant subject to regulation under the Commodity Exchange Act.

“**Hedging Entity ECP**” means a party to the Agreement that (i) has represented in writing to its counterparty that it is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the party’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party’s business, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“Hedging Individual ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the party, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“Local Business Day” shall have the meaning specified in the Agreement; *provided, however*, in the event the Agreement does not specify the meaning of “Local Business Day,” the term shall mean, with respect to a party, a day on which commercial banks are open for business (including for dealings in foreign exchange and foreign currency deposits) in the city that is specified in the Agreement for receipt of notices by such party.

“Major Security-Based Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered (fully or provisionally) with the CFTC as a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

“Material Confidential Information” means “material confidential information” as such term is used in CFTC Regulation 23.410(c).

“Non-Reporting Counterparty” means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is not the Reporting Counterparty.

“Notice Effective Date” means the Local Business Day following the date on which a notice would be effective pursuant to the Notice Procedures or such other date as the parties may specify in writing.

“Notice Procedures” means (1) the procedure specified in the Agreement regarding delivery of notices or information to a party and (2) such other means as may be agreed in writing between the parties from time to time.

“Notifications” means the notifications set forth in Part VII of DF Schedule 2.

“Regulated Swap Entity” means a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“Reporting Counterparty” means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is determined to be the “reporting counterparty” in accordance with CFTC Regulation 45.8; *provided that*, in the event that CFTC Regulation 45.8 requires the parties to agree which party shall be the reporting counterparty, the Reporting Counterparty in respect of a Swap shall be the party agreed by the parties.

“**SDR**” means a “swap data repository” as defined in Section 1a(48) of the Commodity Exchange Act and the CFTC Regulations.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Security-Based Swap Dealer**” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

“**SEF**” means a “swap execution facility” as defined in Section 1a(50) of the Commodity Exchange Act and the CFTC Regulations.

“**Special Entity**” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

“**Swap**” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx) that is governed by or proposed to be governed by the Agreement. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

“**Swap Communication Event**” means each (1) Swap Transaction Event, (2) offer to enter into a Swap under the Agreement or a Swap Transaction Event and (3) Swap Recommendation.

“**Swap Dealer**” or “**SD**” means a party to the Agreement that has represented in writing to a counterparty that it is registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder, *provided that* the term “Swap Dealer” also includes, as appropriate, any Associated Person of such Swap Dealer.

“**Swap Recommendation**” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or trading strategy involving a Swap that is governed by or proposed to be governed by the Agreement.

“**Swap Transaction Event**” means, with respect to any two parties, the execution of a new Swap between such parties under the Agreement or any material amendment, mutual unwind or novation of an existing Swap between such parties under the Agreement.¹

¹ See 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012).

Schedule 2
Agreements Between a Swap Dealer and Any Other Party

This DF Schedule 2 may be incorporated into an agreement between a Swap Dealer and any other party, including another Swap Dealer. For the avoidance of doubt, if this DF Schedule 2 is incorporated into an agreement between two Swap Dealers, each such Swap Dealer will be both "SD" and "CP" for purposes of this DF Schedule 2.

If the parties to an agreement have specified that this DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 2 were restated therein in its entirety.

Part I. Representations and Agreements.

- 2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each Swap Transaction Event) that, as of the date of each Swap Transaction Event, (i) all DF Supplement Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the DF Supplement Information or in this DF Supplement is incorrect or misleading in any material respect, and (iii) all DF Supplement Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.²
- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more DF Schedules into the Agreement, and if the parties enter into any Swaps on or after the date of such incorporation the other party will do so, in reliance upon the DF Supplement Information and the representations provided by such party or its agent in the DF Supplement Information and this DF Supplement. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in DF Supplement Information or in this DF Supplement being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this DF Supplement; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a party at law or under the Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in DF Supplement Information or in this DF Supplement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

² CFTC Regulation 23.402(d).

- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to DF Supplement Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in DF Supplement Information or this DF Supplement by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³
- 2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the DF Supplement Rules in connection with any Swap outstanding between the parties under the Agreement.⁴
- 2.5. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information to the extent required by the DF Supplement Rules which mandate reporting of transaction and similar information.⁵ Each party acknowledges that disclosures made pursuant to this Section 2.5 may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to an SDR and relevant regulators and that such disclosures could result in certain anonymous Swap transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the DF Supplement Rules but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such other applicable law.

³ CFTC Regulation 23.402(d).

⁴ See, e.g., CFTC Regulations 20.5(a); 43.3-43.4; 45.2-45.4; 46.3.

⁵ CFTC Regulations 20.4, 20.5, 23.204, 23.205, 43.3, 43.4, 45.3, 45.4, and 46.3. Please note that the consents and acknowledgements in this Section 2.5 may not be sufficient to meet all disclosure requirements for the disclosure of information as required under the laws of certain jurisdictions.

- 2.6. To the fullest extent permitted by applicable law, each party consents to the recording of conversations of its trading, marketing, operations and other relevant personnel by the other party and its affiliates, with or without the use of a warning tone or similar warning, in connection with any Swap or proposed Swap. Each party further agrees to obtain the individual consents of its personnel should such consent be required by applicable law.⁶
- 2.7. As of each Swap Transaction Event with respect to a Commodity Trade Option to which CP is the offeree, CP represents to its counterparty that it is: (i) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or byproducts thereof, and (ii) entering into the Commodity Trade Option solely for purposes related to its business as such.⁷
- 2.8. As of each Swap Transaction Event with respect to a Commodity Trade Option, each party represents to the other party that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an Exempt Commodity or an Agricultural Commodity for immediate or deferred shipment or delivery.⁸

Part II. Agreements of a Non-Reporting Counterparty.

- 2.9. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement that is an “international swap” (as that term is defined in CFTC Regulation 45.1), it shall notify the Reporting Counterparty to such international swap, as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the swap.⁹
- 2.10. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in CFTC Regulation 45.1) relating to a corporate event in respect of such Non-Reporting Counterparty and such Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second “business day” (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify the Reporting Counterparty to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle

⁶ CFTC Regulation 23.202.

⁷ CFTC Regulation 32.3(a)(2).

⁸ CFTC Regulation 32.3(a)(3).

⁹ CFTC Regulation 45.3(h).

event to allow such other party to comply with any reporting requirements imposed by the DF Supplement Rules.¹⁰

Part III. Representations and Agreements of a Counterparty that is not a Swap Dealer.

If CP is not a Swap Dealer, it represents and agrees as follows:

- 2.11. CP has received, reviewed, and understood the Notifications in Part VII of DF Schedule 2 that are applicable to CP.¹¹
- 2.12. CP agrees that SD may effect delivery to CP of any notifications and informational disclosures required by the DF Supplement Rules, including standardized notifications and disclosures applicable to multiple Swaps, through any of the following means, each of which CP agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures or (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures and notifying CP of such posting in a written notice given pursuant to the Notice Procedures, *provided that* SD need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to CFTC Regulation 23.431(d). CP further agrees that, if it has so specified in writing to SD, SD may provide oral disclosures of any (i) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by SD in a written notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.
- 2.13. Subject to any conditions on the disclosure of Material Confidential Information to governmental authorities, regulatory authorities or self-regulatory organizations previously agreed by the parties, CP agrees that SD is authorized to disclose Material Confidential Information provided to SD by (or on behalf of) CP to comply with a request of any regulatory authority or self-regulatory organization with jurisdiction over SD or of which SD is a member or as otherwise required by applicable law (whether by statute, law, rule, regulation, court order, subpoena, deposition, civil investigative demand or otherwise).¹²
- 2.14. If, on or prior to the date on which this DF Schedule 2 is incorporated into the Agreement, CP and SD have entered into a written agreement relating to the non-disclosure of information regarding CP or its activities, CP and SD agree that all information that is subject to that agreement that constitutes Material Confidential

¹⁰ CFTC Regulation 45.4(c).

¹¹ CFTC Regulations 23.402(f) and 23.431(d)(3)(ii).

¹² CFTC Regulation 23.410(c)(2).

Information and is provided by (or on behalf of) CP to SD may be used or disclosed by SD in any manner that is not prohibited by the terms of such agreement, irrespective of any limitations set forth in CFTC Regulation 23.410(c)(1).

- 2.15. If any Material Confidential Information provided by (or on behalf of) CP to SD is not subject to an agreement of the type described in Section 2.14 above, CP agrees that SD is authorized to use or disclose such Material Confidential Information to (i) any of its affiliates, third-party service providers (*provided* such affiliates and third-party service providers are subject to limitations on use or disclosure that are no less restrictive than the limitations applicable to SD under the DF Supplement Rules, as agreed by the parties in this DF Supplement) and (ii) Associated Persons, solely for purposes of complying with the internal legal risk, compliance, accounting, operational risk, market risk, liquidity risk or credit risk policies of SD or its affiliates (in each case, consistently applied) or as otherwise permitted by the DF Supplement Rules. Notwithstanding the foregoing, no such Material Confidential Information will be disclosed to any person acting in a structuring, sales or trading capacity for SD or any affiliate of SD except as permitted by CFTC Regulation 23.410(c)(2); *provided that* for purposes of the foregoing, CP and SD agree that:
- a. “the effective execution of any swap for or with counterparty,” as such language is used in CFTC Regulation 23.410(c)(2)(i), may require, without limitation, the delivery of Material Confidential Information to persons acting in a structuring, sales or trading capacity for SD or any affiliate of SD for the purpose of structuring a Swap or for the purpose of, but solely to the extent necessary for, establishing the price of a Swap or proposed Swap or adjusting the terms of an existing Swap; and
 - b. the disclosure or use of Material Confidential Information to “hedge or mitigate any exposure,” as such language is used in CFTC Rule 23.410(c)(2)(ii), includes, without limitation, its disclosure or use, for the purpose of, but solely to the extent necessary for, establishing or adjusting one or more anticipatory hedges or other positions intended to hedge against the market risk, liquidity risk or counterparty credit exposure to CP that is generated by a Swap or proposed Swap.
- 2.16. CP agrees that the following information is not Material Confidential Information: information that, at or prior to the time of its use or disclosure by SD, is generally available publicly other than as a result of (i) a breach by SD of its obligations to CP under Applicable U.S. Law or a written agreement relating to the non-disclosure of information regarding CP or its activities or (ii) a breach by (a) any of SD’s affiliates or third-party service providers that receive such information from SD or (b) any of SD’s affiliates that receive such information in connection

with the trading relationship between SD and CP, in either case, of corresponding restrictions on the use or disclosure of such information that are applicable to it.¹³

Part IV. Agreements and Acknowledgements of a Counterparty that is not a Regulated Swap Entity.

If CP is not a Regulated Swap Entity, it agrees and acknowledges as follows:

- 2.17. CP agrees that, with respect to each cleared Swap originally executed between CP and SD, CP will obtain any daily marks it wishes to receive for such cleared Swap from the FCM through which CP clears such cleared Swap or the relevant DCO or another third party.¹⁴
- 2.18. CP agrees that, unless otherwise agreed with SD in writing, with respect to each uncleared Swap between CP and SD, any daily marks required to be provided by SD to CP pursuant to CFTC Regulation 23.431(d) will be calculated by SD as of the close of business on the prior Business Day in the locality specified by SD in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of Swaps.¹⁵
- 2.19. CP acknowledges that, with respect to each Swap between CP and SD that is not “available for trading” (as that phrase is used in the CFTC Regulations), unless CP makes a request of SD prior to a Swap Transaction Event for a specific scenario analysis to which it is entitled pursuant to DF Supplement Rules or other Applicable U.S. Law (which request, if made orally, will be confirmed in writing), CP shall not be entitled to any scenario analysis unless SD otherwise agrees.¹⁶

Part V. Representation of a Hedging Entity ECP.

- 2.20. If CP is a Hedging Entity ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Entity ECP, each Swap entered into by it under the Agreement will be entered into in connection with the conduct of CP’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by CP in the conduct of CP’s business.¹⁷

¹³ CFTC Regulation 23.410(c).

¹⁴ CFTC Regulation 23.431(d).

¹⁵ CFTC Regulation 23.431(d).

¹⁶ CFTC Regulation 23.431(b).

¹⁷ See Commodity Exchange Act Section 1a(18)(A)(v)(III) and related CFTC Regulations.

Part VI. Representation of a Hedging Individual ECP.

- 2.21. If CP is a Hedging Individual ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Individual ECP, each Swap entered into by it under the Agreement, will be entered into in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by CP.¹⁸

Part VII. Notifications by a Swap Dealer.

If applicable, SD hereby notifies CP that:

2.22. Scenario Analysis¹⁹

- a. If CP is not a Regulated Swap Entity, prior to any Swap Transaction Event with respect to any Swap that is not “available for trading” (as such term is defined in the CFTC Regulations) on a DCM or SEF, CP can request, and consult on the design of, a scenario analysis to allow CP to assess its potential exposure in connection with such Swap.

2.23. Daily Mark

- a. If CP is not a Regulated Swap Entity, CP has the right to receive the daily mark for cleared Swaps originally executed by CP with SD from the relevant DCO.²⁰
- b. If CP is not a Regulated Swap Entity, SD hereby discloses to CP, in respect of a daily mark for any uncleared Swap provided to CP by SD pursuant to CFTC Regulation 23.431(d)(3)(ii), that:
1. the daily mark may not necessarily be a price at which either CP or SD would agree to replace or terminate the Swap;
 2. unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and²¹
 3. the daily mark may not necessarily be the value of the Swap that is marked on the books of SD.²²

¹⁸ See Commodity Exchange Act Section 1a(18)(A)(vi)(II) and related CFTC Regulations.

¹⁹ CFTC Regulation 23.431(b).

²⁰ CFTC Regulation 23.431(d)(1).

²¹ CFTC Regulation 23.431(d)(3).

²² CFTC Regulation 23.431(d)(3).

2.24. Clearing

- a. If CP is a not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP has the sole right to select the DCO at which the Swap will be cleared.²³
- b. If CP is not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is not subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP may elect to clear such Swap and has the sole right to select the DCO at which the Swap will be cleared.²⁴

2.25. Special Entities

- a. If CP is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, SD hereby notifies CP of its right to elect to be treated as a special entity pursuant to CFTC Regulation 23.430(c).²⁵

²³ CFTC Regulation 23.432(a).

²⁴ CFTC Regulation 23.432(b).

²⁵ CFTC Regulation 23.430(c).

Schedule 3
Institutional Suitability Safe Harbors for Non-Special Entities

This DF Schedule 3 may be incorporated into an agreement between a Swap Dealer and any other party that is not a Regulated Swap Entity or a Special Entity.

If the parties to an agreement have specified that this DF Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 3 were restated therein in its entirety. If the party that is not a Regulated Swap Entity or Special Entity has one or more Designated Evaluation Agents, this DF Schedule 3 will only be incorporated into an agreement if such party and each such Designated Evaluation Agent have agreed to make the representations and agreements in this DF Schedule 3 that are applicable to it.

Part I. Representations and Agreements Applicable if Counterparty Has One or More Designated Evaluation Agents.

- 3.1. If (i) CP has designated one or more agents as Designated Evaluation Agents and (ii) each such Designated Evaluation Agent has agreed in writing to make the representations and agreements in Sections 3.1(b) and 3.1(c):
- a. CP represents to SD (which representation is deemed repeated by CP as of the occurrence of each Swap Communication Event) that CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that each of its Designated Evaluation Agents is capable of evaluating Swap Recommendations (if any) of SD and making trading decisions on behalf of CP;²⁶
 - b. Each Designated Evaluation Agent represents to SD (which representation is deemed repeated by such Designated Evaluation Agent as of the occurrence of each Swap Communication Event involving such Designated Evaluation Agent) that such Designated Evaluation Agent is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;²⁷ and
 - c. Each Designated Evaluation Agent agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Evaluation Agent in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Evaluation Agent shall timely amend such representation by giving notice of such amendment to

²⁶ CFTC Regulation 23.434(c)(1).

²⁷ CFTC Regulation 23.434(b)(2).

SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 3.1(c) shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.²⁸

- d. CP represents (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that it will exercise independent judgment in consultation with a Designated Evaluation Agent, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Representations Applicable if Counterparty Does Not Have a Designated Evaluation Agent.

- 3.2. If CP has not designated a Designated Evaluation Agent, CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
 - a. CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating all Swap Recommendations (if any) regarding a Swap and making trading decisions on behalf of CP are capable of doing so; and²⁹
 - b. CP is exercising independent judgment in evaluating all Swap Recommendations (if any).³⁰

Part III. Disclosures of a Swap Dealer.

- 3.3. SD hereby discloses to CP (which disclosure is deemed repeated by SD as of the occurrence of each Swap Communication Event) that SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.³¹

²⁸ CFTC Regulation 23.402(d).

²⁹ CFTC Regulation 23.434(c)(1).

³⁰ CFTC Regulation 23.434(b)(2).

³¹ CFTC Regulation 23.434(b)(3).

Schedule 4
Safe Harbors for Non-ERISA Special Entities

This DF Schedule 4 may be incorporated into an agreement between a Swap Dealer and any Special Entity that is not an ERISA Special Entity; provided that the Special Entity has one or more Designated QIRs, each of whom agrees to the provisions of Part III of this DF Schedule 4 that are applicable to it.

If the parties to an agreement have specified that this DF Schedule 4 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 4 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 4 were restated therein in its entirety. This DF Schedule 4 will only be incorporated into an agreement if the Special Entity and each Designated QIR have agreed to make the representations and agreements in this DF Schedule 4 that are applicable to it.

Part I. Representations of a Counterparty.

- 4.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. CP will not rely on Swap Recommendations (if any) provided by SD;³²
 - b. CP will rely on advice from a Designated QIR;³³
 - c. CP has complied in good faith with written policies and procedures reasonably designed to ensure that each Designated QIR selected by CP satisfies the applicable requirements of CFTC Regulation 23.450(b)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of CFTC Regulation 23.450(b)(1);³⁴ and
 - d. CP will exercise independent judgment in consultation with a Designated QIR, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

³² CFTC Regulation 23.440(b)(2)(ii)(A).

³³ CFTC Regulation 23.440(b)(2)(ii)(B).

³⁴ CFTC Regulation 23.450(d)(1)(i); 23.434(c)(ii).

Part II. Disclosures of a Swap Dealer.

- 4.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;³⁵ and
 - b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.³⁶

Part III. Representations and Agreements of a Designated QIR.

- 4.3. Each Designated QIR represents to SD and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each Swap Communication Event involving such Designated QIR) that:
- a. Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements of CFTC Regulation 23.450(b)(1);³⁷
 - b. Such Designated QIR is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;³⁸
 - c. Unless such Designated QIR otherwise notifies SD in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:
 1. Such Designated QIR is not and, within one year of representing CP in connection with the Swap has not been, an “associated person,” as such term is defined in Section 1a(4) of the Commodity Exchange Act, of SD;³⁹
 2. There is no “principal relationship” (as that term is defined in CFTC Regulation 23.450(a)(1)) between the Designated QIR and SD;⁴⁰

³⁵ CFTC Regulation 23.440(b)(2)(iii).

³⁶ CFTC Regulation 23.434(b)(3).

³⁷ CFTC Regulation 23.450(d)(1)(ii)(A).

³⁸ CFTC Regulation 23.434(b)(2).

³⁹ CFTC Regulation 23.450(c)(1).

⁴⁰ CFTC Regulation 23.450(c)(2).

3. Such Designated QIR (i) provides timely and effective disclosures to CP of all material conflicts of interest that could reasonably affect the judgment or decision making of such Designated QIR with respect to its obligations to CP and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;⁴¹
 4. Such Designated QIR is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with SD;⁴² and
 5. To the best of such Designated QIR's knowledge, SD did not refer, recommend, or introduce such Designated QIR to CP within one year of such Designated QIR's representation of CP in connection with the Swap; and⁴³
- d. Such Designated QIR is legally obligated to comply with the applicable requirements of CFTC Regulation 23.450(b)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.⁴⁴
- 4.4. Each Designated QIR agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated QIR shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 4.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁴⁵

⁴¹ CFTC Regulation 23.450(c)(3).

⁴² CFTC Regulation 23.450(c)(4).

⁴³ CFTC Regulation 23.450(c)(5).

⁴⁴ CFTC Regulation 23.450(d)(1)(ii)(C).

⁴⁵ CFTC Regulation 23.402(d).

Schedule 5
Safe Harbors for ERISA Special Entities (Option 1)

This DF Schedule 5 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 5 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 5 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 5 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 5 were restated therein in its entirety. This DF Schedule 5 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 5 that are applicable to it.

Part I. Representations of a Counterparty.

- 5.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each Swap or trading strategy involving a Swap;⁴⁶
 - b. Either:
 - 1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from SD materially affecting a Swap transaction is evaluated by a Designated Fiduciary before the transaction occurs; or⁴⁷
 - 2. Any recommendation CP receives from SD materially affecting a Swap transaction will be evaluated by a Designated Fiduciary before the transaction occurs;⁴⁸ and
 - c. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

⁴⁶ CFTC Regulations 23.440(b)(1)(i) and 23.450(d)(2).

⁴⁷ CFTC Regulation 23.440(b)(1)(iii)(A).

⁴⁸ CFTC Regulation 23.440(b)(1)(iii)(B).

Part II. Disclosures of a Swap Dealer.

- 5.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;⁴⁹ and
 - b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.⁵⁰

Part III. Representations and Agreements of a Designated Fiduciary.

- 5.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that:
- a. Such Designated Fiduciary is not relying on Swap Recommendations (if any) provided by SD; and⁵¹
 - b. Such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it.⁵²
- 5.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 5.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁵³

⁴⁹ CFTC Regulation 23.440(b)(2)(iii).

⁵⁰ CFTC Regulation 23.434(b)(3).

⁵¹ CFTC Regulation 23.440(b)(1)(ii).

⁵² CFTC Regulation 23.434(b)(2).

⁵³ CFTC Regulation 23.402(d).

Schedule 6
Safe Harbors for ERISA Special Entities (Option 2)

This DF Schedule 6 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 6 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 6 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 6 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 6 were restated therein in its entirety. This DF Schedule 6 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 6 that are applicable to it.

Part I. Representations of a Counterparty.

- 6.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁵⁴
 - b. CP will not rely on recommendations (if any) provided by SD;⁵⁵
 - c. CP will rely on advice from a Designated Fiduciary;⁵⁶ and
 - d. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Disclosures of a Swap Dealer.

- 6.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;⁵⁷ and

⁵⁴ CFTC Regulation 23.450(d)(2).

⁵⁵ CFTC Regulation 23.440(b)(2)(ii)(A).

⁵⁶ CFTC Regulation 23.440(b)(2)(ii)(B).

⁵⁷ CFTC Regulation 23.440(b)(2)(iii).

- b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.⁵⁸

Part III. Representations and Agreements of a Designated Fiduciary.

- 6.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD presented to it.⁵⁹
- 6.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 6.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁶⁰

⁵⁸ CFTC Regulation 23.434(b)(3).

⁵⁹ CFTC Regulation 23.434(b)(2).

⁶⁰ CFTC Regulation 23.402(d).

Exhibit “D”



ISDA AUGUST 2012 DF PROTOCOL AGREEMENT

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (“ISDA”) has published this ISDA August 2012 DF Protocol Agreement (this “**Protocol Agreement**”) to enable parties to enter into a DF Terms Agreement (as defined below) or supplement the terms of existing Protocol Covered Agreements (as defined below) by incorporating therein selected portions of the ISDA August 2012 DF Supplement published on August 13, 2012 by ISDA (the “**DF Supplement**”).

1. Use of Protocol

- (a) A person who adheres to this Protocol Agreement (a “**Protocol Participant**”) in the manner set forth in paragraph 2 may use the terms of this Protocol Agreement to supplement one or more existing Protocol Covered Agreements by exchanging questionnaires substantially in the form of Exhibit 2 to this Protocol Agreement or in the form provided on ISDA Amend (in either form, a “**Questionnaire**”), in respect of such Protocol Covered Agreements in the manner set forth in paragraph 3. This Protocol Agreement may also be used by a Protocol Participant to enter into new Protocol Covered Agreements in the form of a DF Terms Agreement by exchanging Questionnaires with another Protocol Participant in the manner set forth in paragraph 3. As described below, the Protocol Participant may be either a principal or an agent in respect of a Protocol Covered Agreement.
- (b) “**Protocol Covered Agreement**” means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps (as defined in the DF Supplement) that each such party has or may enter into as principal. “**DF Terms Agreement**” means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012. “**PCA Principal**” means a party who is or may become a principal to one or more Swaps under a Protocol Covered Agreement. “**PCA Agent**” means a party who has executed a Protocol Covered Agreement as agent on behalf of one or more PCA Principals.
- (c) An existing Protocol Covered Agreement may have been executed directly by a PCA Principal or by a PCA Agent. In the case of an existing Protocol Covered Agreement executed by a PCA Principal, only such PCA Principal may supplement such Protocol Covered Agreement pursuant to this Protocol Agreement. In the case of an existing Protocol Covered Agreement executed by a PCA Agent on behalf of a PCA Principal, only such PCA Agent may supplement such Protocol Covered Agreement on behalf of a PCA Principal pursuant to this Protocol Agreement (even if such PCA Principal is also a Protocol Participant in respect of one or more other Protocol Covered Agreements).
- (d) A DF Terms Agreement may be entered into pursuant to this Protocol Agreement by a PCA Principal or a PCA Agent. The capacity in which a Protocol Participant enters into a DF Terms Agreement pursuant to this Protocol Agreement is the same as the capacity in which it completes a Matched Questionnaire (as defined below). Each of such Protocol Participants is an “**Executing Party**” under the DF Terms Agreement and their Matched Questionnaires shall constitute the “**Annex**” to their DF Terms Agreement. Each of the relevant PCA Principals in a Matched Questionnaire is a “**DF Terms Principal**” under the DF Terms Agreement.

2. Adherence Letters

- (a) Adherence to this Protocol Agreement will be evidenced by the execution and online delivery, in accordance with this paragraph 2, by a Protocol Participant to ISDA, as agent, of a letter substantially in the

form of Exhibit I (an “**Adherence Letter**”). A person wishing to participate in this Protocol Agreement, whether as PCA Principal or PCA Agent, or both, shall submit, using an online form, a single Adherence Letter to ISDA pursuant to this paragraph 2. ISDA will have the right, in its sole and absolute discretion, upon thirty calendar days’ notice on the “ISDA August 2012 DF Protocol” section of its website at www.isda.org (or by other suitable means) to designate a closing date of the adherence period for this Protocol (such closing date, the “**Adherence Cut-off Date**”). After the Adherence Cut-off Date, ISDA will not accept any further Adherence Letters with respect to this Protocol Agreement.

- (b) Each Protocol Participant executing an Adherence Letter will access the “Protocol Management” section of the ISDA website at www.isda.org to enter information online that is required to generate its form of Adherence Letter and will submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, each Protocol Participant will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Protocol Participant will receive an e-mail confirmation of the Protocol Participant’s adherence to the Protocol.
- (c) ISDA will publish, so that it may be viewed by all Protocol Participants, a conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory.
- (d) Each Protocol Participant executing and submitting an Adherence Letter agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.
- (e) Each Protocol Participant agrees that the determination of the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.

3. Questionnaires

- (a) A Questionnaire in respect of Protocol Covered Agreements may only be executed and submitted by a Protocol Participant who has previously, or simultaneously, executed and submitted an Adherence Letter. A Protocol Participant who wishes to enter into or supplement Protocol Covered Agreements with multiple counterparties may (but is not required to) execute multiple Questionnaires in order to deliver different Questionnaires to different counterparties pursuant to this paragraph 3; provided that a Protocol Participant who is a PCA Principal may not deliver more than one Questionnaire to the same Protocol Participant and a Protocol Participant who is a PCA Agent may not deliver more than one Questionnaire to the same Protocol Participant on behalf a single PCA Principal.
- (b) A Protocol Participant may extend an offer to enter into or supplement Protocol Covered Agreements by executing a completed Questionnaire and delivering such Questionnaire to another Protocol Participant in the manner set forth in this paragraph 3. If and when a Protocol Participant receiving a Questionnaire also delivers a Questionnaire to the offering Protocol Participant, the receiving Protocol Participant will be deemed to have accepted the offer to supplement their existing Protocol Covered Agreements and enter into DF Terms Agreements, in each case if and to the extent set forth in paragraph 4. For purposes of this Protocol Agreement, each such Protocol Covered Agreement is referred to as a “**Matched PCA,**” both PCA Principals thereto are referred to together as “**Matched PCA Parties,**” and the Questionnaires delivered by or on behalf of the Matched PCA Parties in respect of the Matched PCA are referred to together as “**Matched Questionnaires.**” For the avoidance of doubt, if a PCA Agent has not delivered a Questionnaire on behalf of a particular PCA Principal, such PCA Agent will not have entered into or supplemented any Protocol Covered Agreement on behalf of such PCA Principal pursuant to this Protocol Agreement even if the PCA Agent has delivered a Questionnaire in respect of other PCA Principals.
- (c) For purposes of this Protocol Agreement, when a Protocol Participant delivers a Questionnaire to another Protocol Participant, each PCA Principal on whose behalf such Questionnaire is delivered is referred to as a “**Delivering PCA Principal.**” Delivery of a Questionnaire by a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by each Delivering PCA Principal identified by the PCA Agent in such Questionnaire. Delivery of a Questionnaire to a PCA Agent in the manner set forth in this

paragraph 3 will be deemed to be delivery by a relevant Delivering PCA Principal (i) to each PCA Principal on whose behalf the PCA Agent has entered into an existing Protocol Covered Agreement with such Delivering PCA Principal or (ii) if there is no existing Protocol Covered Agreement with respect to a Delivering PCA Principal, to each PCA Principal identified in the reciprocal Questionnaire delivered by the PCA Agent to such Delivering PCA Principal.

- (d) Delivery of a Questionnaire must be made in the manner described in this paragraph 3(d) not later than the 30th calendar day following the Adherence Cut-off Date (the “**Matching Cut-off Date**”). Delivery of a Questionnaire to a Protocol Participant shall be effective if delivered in a manner specified by such Protocol Participant in its Adherence Letter. In addition, without regard to the election that a Protocol Participant has made in its Adherence Letter, if such Protocol Participant has taken all steps necessary to establish the ability to receive a Questionnaire via ISDA Amend, delivery of a Questionnaire to such Protocol Participant via ISDA Amend shall be effective.
- (e) In using this Protocol Agreement to enter into or supplement Matched PCAs, a Protocol Participant may not specify additional provisions, conditions or limitations in its Questionnaire, except as expressly provided therein.

4. DF Terms Agreements and Matched PCA Supplements

- (a) Every pair of Matched PCA Parties will be deemed to have entered into a DF Terms Agreement if both of such Matched PCA Parties have agreed in the Matched Questionnaires to enter into a DF Terms Agreement, in which case such DF Terms Agreement is a “Matched PCA” for purposes of this Protocol.
- (b) Every pair of Matched PCA Parties will be deemed to have supplemented each Matched PCA by incorporating therein DF Schedules 1 and 2 and, in the case of any other DF Schedule, as follows:
 - (i) with respect to DF Schedule 3, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who has represented that it has a Designated Evaluation Agent, each Designated Evaluation Agent has countersigned such Questionnaire to make the representations and agreements applicable to it; and
 - (ii) with respect to any of DF Schedules 4, 5, and 6, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who is a Special Entity, each Designated QIR (in the case of DF Schedule 4) or Designated Fiduciary (in the case of DF Schedules 5 and 6) of such Special Entity has countersigned such Questionnaire to make the representations and agreements applicable to it.

5. Effectiveness

- (a) The agreement to enter into or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, the Matched Questionnaires and the DF Supplement, will, as between any Matched PCA Parties, be effective on the date on which the later of two Matched PCA Parties delivers its completed Questionnaire in accordance with paragraph 3 (such date, the “**Implementation Date**”).
- (b) This Protocol Agreement is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Protocol Covered Agreement that the parties may otherwise effect in accordance with the terms of that Protocol Covered Agreement or as otherwise provided by applicable law.
 - (i) In adhering to this Protocol Agreement, a party may not specify additional provisions, conditions or limitations in its Adherence Letter; and
 - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol Agreement will be void and ISDA will inform the relevant parties of such fact as

soon as reasonably possible after making such determination and will remove the party's Adherence Letter from the ISDA website.

6. Representations and Agreements

(a) Representations by a PCA Principal. In the case of a Protocol Participant who is a PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Principal represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

- (i) **Status.** It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;
- (ii) **Powers.** It has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has taken all necessary action to authorize such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Credit Support.** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;
- (v) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (vi) **Obligations Binding.** Its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) Representations by a PCA Agent. In the case of a Protocol Participant who is a PCA Agent acting on behalf of a Delivering PCA Principal in respect of a Matched Questionnaire and Matched PCA, the Agent represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

- (i) **Status.** Each of the Delivering PCA Principal and the PCA Agent is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;
- (ii) **Powers.** The Delivering PCA Principal has the power to execute and deliver each Matched PCA (as supplemented by this Protocol Agreement) and to perform its obligations thereunder, and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has

taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has all necessary authority to enter into the Adherence Letter, this Protocol Agreement and the Matched Questionnaire on behalf of the Delivering PCA Principal and has in its files a written agreement or power of attorney authorizing it to act on the Delivering PCA Principal's behalf in respect thereof;

- (iii) **No Violation or Conflict.** Such execution, delivery and performance by the Delivering PCA Principal and the PCA Agent, respectively, do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iv) **Credit Support.** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by the Delivering PCA Principal or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;
 - (v) **Consents.** All governmental and other consents that are required to have been obtained by the Delivering PCA Principal or the PCA Agent with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
 - (vi) **Obligations Binding.** The respective obligations of the Delivering PCA Principal and the PCA Agent under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (c) Agreements by Matched PCA Parties. Each Matched PCA Party agrees with the other Matched PCA Party that:
- (i) any Credit Support Document between Matched PCA Parties that relates to a Matched PCA will be deemed to be supplemented to the extent necessary such that the operation thereof is not affected by the adherence by such Matched PCA Parties or any supplements contemplated by this Protocol Agreement and the relevant Matched Questionnaires;
 - (ii) the following information shall be "**DF Supplement Information**" for purposes of the DF Supplement: (A) all information and representations provided by it or by its PCA Agent on its behalf in the Matched Questionnaire and (B) all Substitute Part II Information with respect to it;
 - (iii) solely for purposes of delivering notices of the type specified in Section 2.3 of the DF Supplement in respect of information or representations set forth in the Matched Questionnaire of the other Matched PCA Party, the other Matched PCA Party may provide such notices pursuant to Section 2.3 of the DF Supplement to any address to which delivery of a Questionnaire to such Matched PCA Party would be effective under paragraph 3(d) hereof or to any substitute address provided by such Matched PCA Party under Section 2.3 of the DF Supplement; and
 - (iv) solely for purposes of delivering notices and disclosures of the types specified in Section 2.12 of the DF Supplement, the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in Part II, Section 10 of such Matched PCA Party's Questionnaire or to any substitute e-mail address provided under Section 2.3 of the DF Supplement. Such written notice shall be deemed delivered when sent to the specified address.

7. **Miscellaneous**

(a) **Entire Agreement; Survival.**

(i) This Protocol Agreement constitutes the entire agreement and understanding of the Protocol Participants with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Protocol Participant acknowledges that, in adhering to this Protocol Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol Agreement or in a Questionnaire) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol Agreement will limit or exclude any liability of a Protocol Participant for fraud.

(ii) Except for any supplement deemed to be made pursuant to this Protocol Agreement in respect of any Protocol Covered Agreement, all terms and conditions of each Protocol Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol Agreement, nothing herein will constitute a waiver or release of any rights of any party under any Protocol Covered Agreement.

(b) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol Agreement will only be effective in respect of a Matched PCA if made in accordance with the terms of such Matched PCA.

(c) **Headings and Footnotes.** The headings and footnotes used in this Protocol Agreement, any Questionnaire and any Adherence Letter are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this Protocol Agreement, any Questionnaire or any Adherence Letter.

(d) **Governing Law.** This Protocol Agreement and each Adherence Letter will, as between Matched PCA Parties, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, provided that supplements to each Matched PCA effected by this Protocol Agreement shall be governed by and construed in accordance with the law governing such Matched PCA.

8. **Definitions**

As used in this Protocol Agreement, the terms “**Designated Evaluation Agent**,” “**Designated Fiduciary**,” “**Designated QIR**,” “**LEI/CICI**,” and “**Special Entity**” shall be given the meanings provided in the form of questionnaire attached hereto as Exhibit 2, and the following terms will have the following meanings:

“**Credit Support Document**” means, with respect to a Matched PCA Party, a document, which by its terms secures, guarantees or otherwise supports the obligations of one or both of the Matched PCA Parties under a Matched PCA, whether or not such document is specified as a “Credit Support Document” in such Matched PCA.

“**ISDA Amend**” means the web-based platform that has been developed by ISDA and Markit Group Limited and is available at <http://www.markit.com/en/products/distribution/document-exchange/registration.page>.

“**Substitute Part II Information**” means the information requested to be provided by a party in Part II, Sections 2 through 5 of the Questionnaire, as applicable, that (a) such party represents it has previously provided in writing to the Matched PCA Party receiving such Questionnaire in lieu of providing such information in the Questionnaire or (b) appears in the publicly available portion of the LEI/CICI database with respect to such Matched PCA Party.

EXHIBIT 1
to ISDA August 2012 DF Protocol Agreement

Form of Adherence Letter

[Letterhead of Protocol Participant]

[Date]

Dear Sirs:

Re: ISDA August 2012 DF Protocol – Adherence

The purpose of this letter is to confirm our adherence as a “**Protocol Participant**” to the ISDA August 2012 DF Protocol Agreement as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012 (the “**Protocol Agreement**”). This letter constitutes an Adherence Letter as referred to in the Protocol Agreement. The definitions and provisions contained in the Protocol Agreement are incorporated into this Adherence Letter.

We agree to pay a one-time fee of \$500 to ISDA at or before the submission of this Adherence Letter.

1. Specific Terms

We hereby represent that this is the only Adherence Letter submitted by us to ISDA in respect of the Protocol Agreement.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol Agreement and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol Agreement or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact information, solely for purposes of this Adherence Letter (and unrelated to the Questionnaire delivery options in the subsequent section) is:

Name:
Address:
Telephone:
Fax:
E-mail:

4. Delivery of Questionnaire

Delivery of a Questionnaire by another Protocol Participant may be made to us pursuant to Section 3 of the Protocol Agreement as follows, where the relevant box has been checked:

- if submitted via ISDA Amend in accordance with the terms thereof.
- if in writing and delivered in person or by courier, or by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested) to:

[Address]
[Address]
[Address]
[Attention]

- if sent by facsimile transmission, to:

[Fax Number]
[Attention]

- if sent by e-mail or other electronic messaging system, to:

[Address]

- 5. We understand that the Protocol is designed to allow "matching" of Questionnaires between a swap dealer and other counterparties (including other swap dealers). Accordingly, to assist in the administration of the Protocol, we have checked this box to indicate that for purposes of receiving Questionnaires (a) we are, or expect to be, a swap dealer or (b) we are submitting this letter to act under the Protocol Agreement on behalf of a PCA Principal that is, or expects to be, a swap dealer and whose legal name is: _____.

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[PROTOCOL PARTICIPANT]

Signature: _____
Name: _____
Title: _____

EXHIBIT 2
to August 2012 ISDA DF Protocol Agreement

Form of Questionnaire



International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE¹

**published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.**

¹ This Questionnaire is intended to address requirements of the following final rules:

- (1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);
- (2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);
- (3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);
- (4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);
- (5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);
- (6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and
- (7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).



International Swaps and Derivatives Association, Inc.

ISDA August 2012 DF Protocol Questionnaire dated as of August 13, 2012

Instructions: A PCA Principal or PCA Agent that has adhered to the Protocol Agreement in the manner specified therein may complete and execute this Questionnaire and deliver it by a means specified in the Protocol Agreement in order to supplement existing Protocol Covered Agreements and/or enter into new Protocol Covered Agreements in the form of the DF Terms Agreement.

This Questionnaire may be executed and delivered by a PCA Principal on its own behalf or by a PCA Agent on behalf of one or more PCA Principals. By delivering this Questionnaire to another PCA Principal or PCA Agent in a manner specified in the Protocol Agreement, the deliverer may agree to enter into and/or supplement Protocol Covered Agreements with such other PCA Principal or PCA Agent. Where an existing Protocol Covered Agreement was originally executed by a PCA Agent on behalf of one or more PCA Principals, only the relevant PCA Agent (and not a PCA Principal) may use this Questionnaire and the Protocol Agreement to supplement such Protocol Covered Agreement.

In the case of a PCA Principal executing and delivering this Questionnaire on its own behalf, (i) such party must identify itself as the PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement existing Protocol Covered Agreements executed by such party on its own behalf and/or to enter into DF Terms Agreements on its own behalf. In the case of a PCA Agent executing and delivering this Questionnaire on behalf of one or more PCA Principals, (i) the PCA Agent must list the names of each such PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to enter into DF Terms Agreements on behalf of listed PCA Principals and/or supplement Protocol Covered Agreements executed by the PCA Agent on behalf of the listed PCA Principals. For the avoidance of doubt, if this Questionnaire is being completed by a PCA Agent on behalf of multiple PCA Principals, this Questionnaire shall be treated as if it were a separate Questionnaire with respect to each separate PCA Principal listed in column 1 of the PCA Principal Answer Sheet.

In addition, if one or more Designated Evaluation Agents, Designated QIRs or Designated Fiduciaries is identified in this Questionnaire, each such Designated Evaluation Agent, Designated QIR or Designated Fiduciary, as the case may be, must countersign this Questionnaire where indicated.

The responses to Part II (except as otherwise indicated below) and Part III, Sections 2(b)(xxii) and 10(b) of this Questionnaire may be set forth directly on this Questionnaire, or if there is insufficient space, on a separate schedule. The responses to the other sections of Part II and Part III of this Questionnaire must be set forth on the PCA Principal Answer Sheet.

Part I: Definitions

References in this Questionnaire to the following terms shall have the following meanings:

“**Commodity Exchange Act**” means the Commodity Exchange Act, as amended.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**DF Schedule**” means a schedule to the DF Supplement.

“**DF Supplement**” means the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

“**DF Supplement Rules**” means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) any comparable non-U.S. regulations with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

“**DF Terms Agreement**” means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Special Entity**” means an employee benefit plan subject to Title I of ERISA.

“**LEI/CICI**” means a “legal entity identifier” satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as shall be provided by the CFTC pending the availability of such legal entity identifiers.

“Major Security-Based Swap Participant” means a person registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a person registered (fully or provisionally) with the CFTC as a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

“PCA Agent” means a party who has executed a Protocol Covered Agreement on behalf of one or more PCA Principals.

“PCA Principal” means a person who is or may become a principal to one or more Swaps under a Protocol Covered Agreement and who is identified as such in column 1 of the PCA Principal Answer Sheet.

“PCA Principal Answer Sheet” means a spreadsheet substantially in the form of Annex A to this Questionnaire.

“Protocol Agreement” means the ISDA August 2012 DF Protocol Agreement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

“Protocol Covered Agreement” means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal.

“Regulated Swap Entity” means a person that is a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Security-Based Swap Dealer” means a person registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

“Special Entity” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

“Swap” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx). The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

“Swap Dealer” means a person registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).

“*Swap Recommendation*” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or a trading strategy involving a Swap that is governed by or proposed to be governed by a Matched PCA.

Capitalized terms used but not otherwise defined in this Questionnaire shall have the meanings assigned to such terms in the Protocol Agreement.

Part II: PCA Principal Information

Part II of this Questionnaire specifies information regarding a PCA Principal that may be provided by or on behalf of such PCA Principal. Provision of the information requested in Sections 2 through 5 of this Part II is not required if the specified information has already been provided to each counterparty receiving this Questionnaire. With respect to the information requested in any question in Sections 2 through 5 of this Part II, this Questionnaire provides that unless such information appears in the publicly available portion of an LEI/CICI database or is provided herein, the relevant PCA Principal represents to each counterparty receiving this Questionnaire that the specified information has already been provided to such counterparty in writing, and that it is true, correct and complete as of the date of delivery of this Questionnaire to such counterparty.

If you require additional space to answer any of the questions below (e.g., to provide information for multiple PCA Principals), you may attach a separate schedule to provide the PCA Principal information specified in this Part II.

1. LEI/CICI²

To answer this question, complete column 2 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal’s LEI/CICI; provided that, if LEI/CICIs are not generally available or if PCA Principal is not eligible to receive an LEI/CICI from available providers, PCA Principal may answer this question by completing column 2 of the relevant row of the PCA Principal Answer Sheet by inserting “None.”

What is PCA Principal’s LEI/CICI?

² CFTC Regulation 45.6.

2. True Name and Address³

The true name and address of PCA Principal is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

3. Principal Occupation or Business⁴

The principal occupation or business of PCA Principal is as follows:

4. Guarantor Information⁵

(a) *To answer this question, complete column 3 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person guarantying the performance of PCA Principal?

³ CFTC Regulation 23.402(c).

⁴ CFTC Regulation 23.402(c).

⁵ CFTC Regulation 23.402(c).

- (b) If any person is guarantying the performance of PCA Principal, the true name and address of each person providing such guaranty is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

5. Third Party Control Person Information

- (a) *To answer this question, complete column 4 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person (other than an employee of PCA Principal) exercising any control with respect to the Swap positions under Protocol Covered Agreements in respect of which this Questionnaire is being executed and delivered (such person, a "**Third Party Control Person**")?

- (b) If PCA Principal has one or more Third Party Control Person(s), the true name(s) and address(es) of such person(s) is/are as follows (*PCA Agents filling out this Questionnaire for PCA Principals should enter their own name and address if they will act as a Third Party Control Person for their PCA Principals with respect to trades under the Protocol Covered Agreements*):⁶

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁶ CFTC Regulation 23.402(c).

6. **Designated Evaluation Agent Information**

The following information must be provided for PCA Principals that are not Regulated Swap Entities or Special Entities and that wish to incorporate DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities) into Matched PCAs.

- (a) *To answer this question, complete column 5 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

For purposes of DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities), does PCA Principal have one or more agents (other than an employee of PCA Principal) that it wishes to designate as "**Designated Evaluation Agents**" and that are responsible for (i) evaluating investment risks with regard to Swaps and trading strategies involving Swaps as well as any Swap Recommendations provided to PCA Principal and (ii) making trading decisions with respect to Swaps on behalf of PCA Principal? *(Please note that it is permissible for a PCA Principal to enter into DF Schedule 3 without designating an agent as its Designated Evaluation Agent provided that the PCA Principal can make the representations provided in Part II of DF Schedule 3.)*

- (b) Please provide the true name and address of each agent that PCA Principal wishes to designate as a "Designated Evaluation Agent" for purposes of DF Schedule 3 *(if the PCA Principal has only a single Designated Evaluation Agent that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person")*:⁷

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁷ CFTC Regulation 23.434(b)(1).

7. **Designated QIR Information**

The following information must be provided for PCA Principals that are Special Entities other than ERISA Special Entities, and that wish to incorporate DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's representatives selected as a "**Designated QIR**" for purposes of the DF Supplement (if the PCA Principal has only a single Designated QIR that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person"):⁸

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

8. Designated Fiduciary Information

The following information must be provided for PCA Principals that are ERISA Special Entities, and that wish to incorporate DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1)) and/or DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2)) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's "fiduciaries," as that term is defined in Section 3 of ERISA, selected as a "**Designated Fiduciary**" for purposes of the DF Supplement (*if the PCA Principal has only a single Designated Fiduciary that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person"*):⁹

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

9. Address for Complaints

If PCA Principal is a Swap Dealer or Major Swap Participant, it may, but is not required to, set forth here the physical address, email or other widely available electronic address, and telephone number of the department to which any complaints may be directed:¹⁰

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁹ CFTC Regulation 23.450(d)(2).

¹⁰ CFTC Regulation 23.201(b)(3)(ii).

10. **E-mail Address for Delivery of Required Notifications and Disclosures**

The following information may be provided by, or on behalf of, PCA Principals that are not Swap Dealers.

PCA Principal may provide an e-mail address that may be used for the delivery of notifications and any informational disclosures given pursuant to the DF Supplement Rules:

E-mail: _____

11. **Election to Receive Oral Disclosure of Pre-Trade Mid-Market Marks and Basic Material Economic Terms**

To answer this question, complete column 6 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then it may receive oral disclosures of any pre-trade mid-market marks and basic material economic terms pursuant to CFTC Regulation 23.431(a)(2) and (3)(i).

Does PCA Principal agree to receive oral disclosure (with written confirmation to follow post-trade) of any (i) pre-trade mid-market marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2)?

Part III: PCA Principal Status Representations and Elections

Part III of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal except as otherwise indicated. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.

1. Commodity Pool

The purpose of this question is to permit a PCA Principal who is able to specify whether it is a “commodity pool” (as further defined below) to inform its counterparty of such status. The answer to this question will assist in identifying PCA Principals who may need to make additional representations regarding their status as an “eligible contract participant” when additional CFTC regulations regarding this status go into effect on December 31, 2012.

If PCA Principal does not wish to make any representation at this time as to whether it is a “commodity pool” it may insert “No Answer.” If a PCA Principal inserts “No Answer,” a Swap Dealer receiving this Questionnaire may be required to inquire further and obtain additional representations prior to December 31, 2012.

To answer this question, complete column 7 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes,” “No,” or “No Answer,” as appropriate:

Is PCA Principal a “commodity pool,” as that term is defined in Section 1(a)(10) of the Commodity Exchange Act and applicable regulations thereunder (a “**Commodity Pool**”)?

2. Eligible Contract Participant¹¹

- (a) *To answer this question, complete column 8 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Other than for purposes of any agreement, contract or transaction described in Sections 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act, is PCA Principal an “eligible contract participant,” as that term is defined in Section 1a(18) of the Commodity Exchange Act and applicable regulations thereunder (an “**Eligible Contract Participant**”)?

- (b) *To respond to this instruction, complete column 9 of the relevant row of the PCA Principal Answer Sheet by inserting at least one of the subsection numbers below in column 9:*

¹¹ CFTC Regulation 23.430(a).

If PCA Principal has identified itself as an Eligible Contract Participant, please indicate at least one of the following subsections that is applicable to PCA Principal (respondents may, but are not required to, indicate more than one subsection if applicable):¹²

- (i) PCA Principal is a “swap dealer,” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).¹³
- (ii) PCA Principal is a “security-based swap dealer,” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.¹⁴
- (iii) PCA Principal is a “major swap participant,” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh).¹⁵
- (iv) PCA Principal is a “major security-based swap participant,” as defined in Section 3(a)(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.¹⁶
- (v) PCA Principal is a “financial institution” as defined in Section 1a(21) of the Commodity Exchange Act (a “**Financial Institution**”).¹⁷
- (vi) PCA Principal is an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the CFTC, including a regulated subsidiary or affiliate of such an insurance company (an “**Eligible Insurance Company**”).¹⁸
- (vii) PCA Principal is an investment company subject to regulation under the Investment Company Act of 1940, as amended, or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an Eligible Contract Participant) (an “**Eligible Investment Company**”).¹⁹

¹² CFTC Regulation 23.430(a). See 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

¹³ CFTC Regulation 1.3(m)(2).

¹⁴ CFTC Regulation 1.3(m)(4).

¹⁵ CFTC Regulation 1.3(m)(1).

¹⁶ CFTC Regulation 1.3(m)(3).

¹⁷ Commodity Exchange Act § 1a(18)(A)(i).

¹⁸ Commodity Exchange Act § 1a(18)(A)(ii).

¹⁹ Commodity Exchange Act § 1a(18)(A)(iii).

- (viii) PCA Principal is a Commodity Pool that (1) has total assets exceeding \$5,000,000 and (2) was formed and is operated by a person subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation (an “**Eligible Commodity Pool**”).²⁰
- (ix) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding \$10,000,000 or (2) the obligations of which under each Protocol Covered Agreement to which it is a party are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding \$10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, an Eligible Government Entity, or an Other Eligible Person (as defined in paragraph (xxii) below) (a “**Large Entity**”).²¹
- (x) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business (a “**Hedging Entity ECP**”).²²
- (xi) PCA Principal is an employee benefit plan subject to ERISA, a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation (1) that has total assets exceeding \$5,000,000; or (2) the investment decisions of which are made by (A) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940, as amended, or the Commodity Exchange Act; (B) a foreign person performing a similar role or function subject as such to foreign regulation; (C) a Financial Institution; or (D) an Eligible Insurance Company, or a regulated subsidiary or affiliate of such Eligible Insurance Company.²³

²⁰ Commodity Exchange Act § 1a(18)(A)(iv). The CFTC has interpreted the language “subject to regulation under the Commodity Exchange Act,” for purposes of CFTC Regulation 1.3(m)(6) (effective Dec. 31, 2012) and Commodity Exchange Act § 1a(18)(A)(iv) as requiring lawful operation of the Commodity Pool by a person excluded from the definition of “commodity pool operator,” a registered commodity pool operator or a person properly exempt from registration as a commodity pool operator. *See* 77 Fed. Reg. 30596, 30654-55 (May 23, 2012).

²¹ Commodity Exchange Act § 1a(18)(A)(v)(I)-(II).

²² Commodity Exchange Act § 1a(18)(A)(v)(III).

²³ Commodity Exchange Act § 1a(18)(A)(vi).

- (xii) PCA Principal is (1) a governmental entity (including the United States, a State, or a foreign government), or political subdivision of a governmental entity, (2) a multinational or supranational government entity, or (3) an instrumentality, agency, or department of an entity described in clause (1) or (2), and if PCA Principal is an entity described in clause (1) or (3), PCA Principal owns and invests on a discretionary basis \$50,000,000 or more in investments, or otherwise satisfies the requirements of Section 1a(18)(A)(vii)(III)(aa) or (cc) of the Commodity Exchange Act (an “**Eligible Government Entity**”).²⁴
- (xiii) PCA Principal is a broker or dealer (other than a natural person or proprietorship) subject to regulation under the Securities Exchange Act, or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.²⁵
- (xiv) PCA Principal is (1) a broker or dealer (and is a natural person or proprietorship) subject to regulation under the Securities Exchange Act or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.²⁶
- (xv) PCA Principal is an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered broker or dealer makes and keeps records under Section 15C(b) or 17(h) of the Securities Exchange Act.²⁷
- (xvi) PCA Principal is an investment bank holding company (as defined in Section 17(i) of the Securities Exchange Act).²⁸
- (xvii) PCA Principal is a futures commission merchant subject to regulation under the Commodity Exchange Act (other than a natural person or proprietorship) or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.²⁹
- (xviii) PCA Principal (1) is a futures commission merchant subject to regulation under the Commodity Exchange Act (and is a natural

²⁴ Commodity Exchange Act § 1a(18)(A)(vii).

²⁵ Commodity Exchange Act § 1a(18)(A)(viii).

²⁶ *Id.*

²⁷ Commodity Exchange Act § 1a(18)(A)(viii)(II).

²⁸ Commodity Exchange Act § 1a(18)(A)(viii)(III).

²⁹ Commodity Exchange Act § 1a(18)(A)(ix).

person or proprietorship) or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.³⁰

- (xix) PCA Principal is a floor broker or floor trader subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.³¹
- (xx) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000 (an “**Eligible Individual**”).³²
- (xxi) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual (a “**Hedging Individual ECP**”).³³
- (xxii) PCA Principal is a person that the CFTC has determined to be eligible in light of the financial or other qualifications of the person (an “**Other Eligible Person**”).³⁴ *If PCA Principal inserts subsection (xxii) in column 9 of the PCA Principal Answer Sheet, PCA Principal must provide an explanation in the space below and include additional pages as necessary:*

³⁰ *Id.*

³¹ Commodity Exchange Act § 1a(18)(A)(x).

³² Commodity Exchange Act § 1a(18)(A)(xi)(I).

³³ Commodity Exchange Act § 1a(18)(A)(xi)(II).

³⁴ Commodity Exchange Act § 1a(18)(C).

3. Swap Dealers³⁵

- (a) *To answer this question, complete column 10 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Is PCA Principal a Swap Dealer?

- (b) If PCA Principal is a Swap Dealer:

- (i) *To answer this question, complete column 11 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is a party other than a Regulated Swap Entity or a Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?

- (ii) *To answer this question, complete column 12 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is a Special Entity that is not an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?

- (iii) *To answer this question, complete column 13 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?

³⁵ CFTC Regulation 23.401(d).

- (iv) *To answer this question, complete column 14 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?

- (c) *To answer this question, complete column 15 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Is PCA Principal a Security-Based Swap Dealer?

4. Major Swap Participants³⁶

This Part III, Section 4 must be completed by, or on behalf of, all PCA Principals other than (i) for Section 4(a), Swap Dealers and (ii) for Section 4(b), Security-Based Swap Dealers.

- (a) *To answer this question, complete column 16 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Is PCA Principal a Major Swap Participant?

- (b) *To answer this question, complete column 17 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Is PCA Principal a Major Security-Based Swap Participant?

5. Financial Entity³⁷

This Part III, Section 5 must be completed by, or on behalf of, any PCA Principal that is not a Regulated Swap Entity. The purpose of this question is to permit a PCA Principal who is able to specify whether or not it is a “financial entity,” as such term is defined by statute, to inform its counterparty of such status.

If PCA Principal does not wish to make any representation at this time as to whether it is a “financial entity,” it may insert “No Answer.” If PCA Principal responds with “No Answer,” a Swap Dealer receiving this Questionnaire may be required to (i) inquire further prior to entering into Swaps with PCA Principal in order to satisfy trade reporting requirements and/or (ii) assume, for the purposes of relevant statutory and

³⁶ CFTC Regulation 23.401(d).

³⁷ Commodity Exchange Act § 2(h)(7)(C).

regulatory exclusions and safe harbors, that PCA Principal may be a “financial entity,” until PCA Principal provides sufficient evidence demonstrating that it is not a “financial entity.”

To answer this question, complete column 18 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes,” “No” or “No Answer,” as appropriate. Is PCA Principal a “financial entity,” as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations?

6. Special Entity

This Part III, Section 6 must be completed by, or on behalf of, all PCA Principals other than Swap Dealers and Security-Based Swap Dealers.

- (a) *To answer this question, complete column 19 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal fails to answer this question, it will be deemed to represent that it is not a Special Entity for the purposes of relevant statutory and regulatory requirements, until PCA Principal affirmatively represents to the contrary in writing.*

Is PCA Principal a Special Entity?

- (b) *To answer this question, complete column 20 of the relevant row of the PCA Principal Answer Sheet by inserting the applicable subsection number below:*

If PCA Principal has identified itself as a Special Entity, which one of the following subsections is applicable to PCA Principal?³⁸

- (i) PCA Principal is a Federal agency.³⁹
- (ii) PCA Principal is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State.⁴⁰
- (iii) PCA Principal is an ERISA Special Entity.⁴¹

³⁸ CFTC Regulation 23.430(a); *see* 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

³⁹ CFTC Regulation 23.401(c)(1).

⁴⁰ CFTC Regulation 23.401(c)(2).

⁴¹ CFTC Regulation 23.401(c)(3).

- (iv) PCA Principal is a governmental plan, as defined in Section 3 of ERISA.⁴²
- (v) PCA Principal is an endowment. (For purposes of this question, an “endowment” includes an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 501(c)(3).)⁴³
- (vi) PCA Principal is an employee benefit plan defined in Section 3 of ERISA, not otherwise defined as a Special Entity (an “**Exempt Plan**”) that elects to be a Special Entity pursuant to CFTC Regulation 23.401(c)(6).⁴⁴

7. Non-ERISA Special Entity Elections

This Part III, Section 7 must be completed by, or on behalf of, all Special Entities other than ERISA Special Entities.

To answer this question, complete column 21 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated QIRs must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 4.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?⁴⁵

8. ERISA Special Entity Elections

This Part III, Section 8 must be completed by, or on behalf of, all ERISA Special Entities.

- (a) *To answer this question, complete column 22 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Fiduciaries must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 5.*

⁴² CFTC Regulation 23.401(c)(4).

⁴³ CFTC Regulation 23.401(c)(5).

⁴⁴ CFTC Regulation 23.401(c)(6).

⁴⁵ CFTC Regulation 23.430(d).

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?⁴⁶

- (b) *To answer this question, complete column 23 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Fiduciaries must countersign this Questionnaire on the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 6.*

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?⁴⁷

9. **Institutional Suitability Elections**

This Part III, Section 9 must be completed by, or on behalf of, all PCA Principals other than Regulated Swap Entities and Special Entities.

To answer this question, complete column 24 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Evaluation Agents (if any) must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 3.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?

10. **DF Terms Agreement Elections and Information**

- (a) *To answer this question, complete column 25 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate.*

Does PCA Principal agree to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered?

- (b) If PCA Principal has agreed to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered, the notice

⁴⁶ CFTC Regulation 23.430(d).

⁴⁷ CFTC Regulation 23.430(d).

information of such PCA Principal for the purposes of each such DF Terms Agreement is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

By executing this Questionnaire, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that (a) all information provided by it in this Questionnaire is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (b) any information that is requested and not provided in Part II, Sections 2 through 5 of this Questionnaire, and that does not appear in the publicly available portion of an LEI/CICI database, has previously been provided in writing by the relevant PCA Principals, and all such previously provided information is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (c) if Part III, Section 6(a) has not been filled out with respect to a specified PCA Principal, such PCA Principal is not a Special Entity, and (d) it has agreed to enter into the DF Schedules indicated in the Questionnaire. For purposes of the foregoing, information appearing in the publicly available portion of the LEI/CICI database with respect to a specified PCA Principal is deemed provided to the counterparty.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]⁴⁸

By: _____
Name:
Title:
Date:

By executing this Questionnaire on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant DF Schedule of the DF Supplement.

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],⁴⁹ solely as PCA Principal's Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in DF Schedule 3.

⁴⁸ If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: “, acting on behalf of the clients, investors, funds, accounts and/or other principals listed in the column 1 of the PCA Principal Answer Sheet.”

⁴⁹ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Evaluation Agents.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],⁵⁰
solely as PCA Principal's Designated QIR and solely to make the representations and agreements applicable to
it as Designated QIR in DF Schedule 4.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED FIDUCIARY/FIDUCIARIES],⁵¹ solely as
PCA Principal's Designated Fiduciary and solely to make the representations and agreements applicable to it in
DF Schedule 5 and/or 6, as applicable.

By: _____
Name:
Title:
Date:

⁵⁰ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated QIRs.

⁵¹ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Fiduciaries.

Exhibit “E”

CERTIFICATE AND AGREEMENT OF SWAP FINANCIAL GROUP

Swap Financial Group (“Advisor”) serves as a financial advisor in connection with interest rate swaps (“swaps”) authorized and implemented by the Irvine Ranch Water District (the “District”).

In connection with serving as a financial advisor, the undersigned hereby certifies as follows:

1. It is the intent of the Advisor to comply with the applicable provisions of the various legislation and regulations, commonly referred to as Dodd-Frank, as supplemented and amended from time to time (herein referred to as “Dodd-Frank”), enacted in response to the financial markets crisis of 2008.

2. The Advisor has written policies and procedures reasonably designed to ensure that the Advisor satisfies the applicable requirements for a representative specified in Commodity Futures Trading Commission (“CFTC”) Regulation 23.450(b)(1) and will take such steps as are necessary to satisfy the applicable requirements specified in any successor regulation thereto or substitute regulation therefor.

3. The Advisor satisfies and agrees to satisfy the applicable requirements specified in CFTC Regulation 23.450(b)(1) and any successor regulation thereto or substitute regulation therefor (hereinafter referred to as the “CFTC Representative Regulation”), including, without limitation, the requirement relating to independence specified in CFTC Regulation 23.450(b)(1)(iii) and more fully described in CFTC Regulation 23.450(c).

4. The Advisor will exercise independent judgment in evaluating all Swap Recommendations,* if any, of any counterparty (each, a “counterparty”) that is presented to the Advisor in connection with the swap.

5. Unless the Advisor otherwise notifies the District and the applicable counterparties in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:

(a) The Advisor is not and, within one (1) year of representing the District in connection with any swap has not been, an “associated person” (as such term is defined in Section 1a(4) of the Commodity Exchange Act or any successor to or substitute for such Section of the Commodity Exchange Act) of the applicable counterparty;

* All capitalized terms used and not otherwise defined in this Certificate and Agreement shall have the meanings assigned to such terms in the ISDA August 2012 DF Supplement, as supplemented and amended from time to time pursuant to its terms.

(b) There is no “principal relationship” (as such term is defined in CFTC Regulation 23.450(a)(1) or any successor to or substitute for such CFTC Regulation) between the Advisor and the applicable counterparty;

(c) The Advisor: (i) will provide timely and effective disclosures to District of all material conflicts of interest that could reasonably affect the judgment or decision making of the Advisor with respect to its obligations to District; and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;

(d) The Advisor is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with the applicable counterparty; and

(e) To the best of the Advisor’s knowledge, the counterparty to a swap did not refer, recommend, or introduce the Advisor to the District within one (1) year of the Advisor’s representation of the District in connection with the applicable swap.


6. By execution of this Certificate and Agreement, the Advisor acknowledges that the Advisor is legally obligated to comply with the applicable requirements of CFTC Representative Regulation.

7. The Advisor agrees to promptly notify the District and each counterparty in writing in accordance with the Notice Procedures if any representations made by the Advisor in accordance with the ISDA August 2012 DF Supplement, as supplemented and amended from time to time (the “DF Supplement”), become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Advisor shall timely amend such representation by giving notice of such amendment to the District and the applicable counterparty in accordance with the Notice Procedures. Notwithstanding anything in any agreement between the District and any counterparty to the contrary, a notification delivered pursuant to Section 4.4 of the DF Supplement or any successor to or substitute for such Section of the DF Supplement shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.

The Advisor acknowledges that the certifications and the information set forth herein are provided for the benefit of the District and each counterparty who enter into a swap with the District. The Advisor understands and agrees that the representations set forth herein will be relied upon by the District in making certain representations in connection with swaps required pursuant to Dodd-Frank, including, without limitation, such representations as are set forth in the DF Supplement.

Dated: 4/24/13

SWAP FINANCIAL GROUP

By: 
Name: James E. Murphy
Title: Managing Director

Acknowledged and Agreed to:

IRVINE RANCH WATER DISTRICT

By: _____

May 13, 2013

Prepared by: J. Moeder/R. Mori

Submitted by: K. Burton

Approved by: Paul Cook

ACTION CALENDAR

WELL 115 REPLACEMENT WELL DRILLING AND EQUIPPING CONSTRUCTION AWARD

SUMMARY:

Well 115 was constructed by The Irvine Company (TIC) in 1998 and has reached the end of its useful life. Bids were received from two contractors for the replacement of Well 115. Staff recommends that the Board:

- Authorize a budget increase in the amount of \$492,600 for Project 11627;
- Approve an Expenditure Authorization in the amount of \$3,626,900 for Project 11627; and
- Authorize the General Manager to execute a construction contract with SS Mechanical in the amount of \$3,091,494.90 for the replacement of Well 115.

BACKGROUND:

Well 115 is a contributor of feed water to the Irvine Desalter Project Potable Treatment Plant (IDP-PTP). In April 2011, staff conducted a downhole video survey of the well that showed severely plugged louvers and holes in the casing at various depths. The mild steel well casing is deteriorating and is contributing to elevated dissolved oxygen levels and precipitation of manganese. Staff shut down the well in June 2012 as the manganese precipitation was causing operational challenges at the IDP-PTP.

The replacement well will be located on an undeveloped parcel next to a TIC-owned building at 250 Commerce and is anticipated to deliver between 500 to 1,000 gallons per minute of untreated water to IDP-PTP. This project includes the construction of both the well drilling and the well equipping.

Construction Award:

The project was advertised April 2, 2013 to a select list of eleven contractors including ARB, Caliagua, Clarke Contracting, Gateway Pacific, Hillcrest Contracting, Olsson Construction, Pacific Hydrotech, Pro Mechanical, Schuler Engineering, SS Mechanical, and W.M. Lyles. The bid opening was held on May 1, 2013 with bids received from Schuler Engineering and SS Mechanical. SS Mechanical is the apparent low bidder with a bid amount of \$3,091,494.90. Staff has reviewed SS Mechanical's bid and has determined that the bid is responsive. SS Mechanical's bid had minor mathematical errors that were reconciled in accordance with the Instructions To Bidders, Paragraph 1.3.1. SS Mechanical and the well drilling subcontractor, Best Drilling & Pump, have performed well on other District projects. The engineer's estimate, prepared by Tetra Tech, was \$3,104,000. The Bid Summary is attached as Exhibit "A".

FISCAL IMPACTS:

Project 11627 (3717) is included in the FY 2012-13 Capital Budget. Staff requests a budget increase and an Expenditure Authorization to fund the construction and construction phase services as shown in the table below and in Exhibit "B". Tetra Tech is already under contract to perform construction phase services and Richard C. Slade & Associates is sub-contracted to Tetra Tech for hydrogeologist services.

Project No.	Current Budget	Addition <Reduction>	Total Budget	Existing EA	This EA Request	Total EA Request
11627 (3717)	\$3,685,600	\$492,600	\$4,178,200	\$551,300	\$3,626,900	\$4,178,200

In November 2012, the California Department of Public Health determined the Well 115 Replacement project was eligible for funding in the amount of \$1,916,300 with matching funds of 50 percent. In March 2013, the Board adopted a resolution authorizing the General Manager to sign the funding agreement and related documents for Proposition 50 funding with the State of California for this project.

ENVIRONMENTAL COMPLIANCE:

This project is subject to the California Environmental Quality Act (CEQA). In conformance with the California Code of Regulations Title 14, Chapter 3, Section 15004, a Notice of Exemption was filed at the County Recorder's Office on August 29, 2012.

COMMITTEE STATUS:

This item was not reviewed by a Committee.

RECOMMENDATION:

THAT THE BOARD AUTHORIZE A BUDGET INCREASE IN THE AMOUNT OF \$492,600 FOR PROJECT 11627 (3717); APPROVE AN EXPENDITURE AUTHORIZATION IN THE AMOUNT OF \$3,626,900 FOR PROJECT 11627 (3717); AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH SS MECHANICAL IN THE AMOUNT OF \$3,091,494.90 FOR THE WELL 115 REPLACEMENT WELL DRILLING AND EQUIPPING PROJECT.

LIST OF EXHIBITS:

- Exhibit "A" – Bid Summary
- Exhibit "B" – Expenditure Authorization

Item No.	Description	Qty	Unit	Engineer's Estimate		1		2	
				Unit Price	Total Amount	SS Mechanical		Schuler Engineering	
						Huntington Beach, CA		Corona, CA	
						Unit Price	Total Amount	Unit Price	Total Amount
1	Mobilization/Demobilization of Drill Rig	1	LS	\$200,000.00	\$200,000.00	\$ 290,000.00	\$290,000.00	\$300,000.00	\$300,000.00
2	Install and maintain sound barriers (walls) and conduct other sound mitigation measures, as necessary.	440	LF	\$130.00	\$57,200.00	\$ 67.50	\$29,700.00	\$71.00	\$31,240.00
3	Furnish, install, and cement 36-inch outside diameter (OD) by 5/16-inch thick (minimum) low carbon steel conductor casing in 42-inch diameter hole from ground surface to a depth of approximately 50 ft bgs.	50	LF	\$730.00	\$36,500.00	\$ 787.50	\$39,375.00	\$827.00	\$41,350.00
4	Drill by reverse circulation method a pilot hole from 50 to 1100 ft bgs, including an Eastman Drift Survey every 100 ft in the pilot hole.	1050	LF	\$90.00	\$94,500.00	\$ 96.63	\$101,461.50	\$100.00	\$105,000.00
5	Conduct downhole geophysical surveys in the pilot hole consisting of a spontaneous potential survey, long-normal and short-normal resistivity surveys, a focused resistivity (guard) survey, a natural gamma ray survey and a sonic variable density survey.	1	LS	\$8,500.00	\$8,500.00	\$ 7,300.00	\$7,300.00	\$7,800.00	\$7,800.00
6	Conduct isolated aquifer zone testing from 200 to 1100 ft, including installation of temporary casings, gravel pack and seals, airlifting, and submersible pump to obtain and collect groundwater samples	6	Per Zone	\$19,000.00	\$114,000.00	\$ 16,312.50	\$97,875.00	\$17,150.00	\$102,900.00
7	Retain a laboratory and collect, store, and transport the collected samples to the laboratory for analysis by the laboratory.	6	Per Zone Sample	\$3,900.00	\$23,400.00	\$ 2,812.50	\$16,875.00	\$3,000.00	\$18,000.00
8	Ream by reverse circulation method, a 32-inch diameter borehole from 50 ft to 275 ft bgs, including performing Eastman Drift Survey every 100 feet.	225	LF	\$105.00	\$23,625.00	\$ 120.00	\$27,000.00	\$124.00	\$27,900.00
9	Ream by reverse circulation method, a 30-inch diameter borehole from 275 ft to 1040 ft bgs, including performing Eastman Drift Survey every 100 feet.	765	LF	\$105.00	\$80,325.00	\$ 96.00	\$73,440.00	\$100.00	\$76,500.00
10	Conduct caliper survey of entire borehole to a depth of 1040 ft bgs.	1	LS	\$2,800.00	\$2,800.00	\$ 2,800.00	\$2,800.00	\$3,000.00	\$3,000.00
11	Furnish and install 18-inch ID by 5/16-inch thick Type 316L stainless steel blank well casing, interspersed with louvered well casing, to a depth of 1020 ft, including 3 ft of stickup above ground surface.	403	LF	\$700.00	\$282,100.00	\$ 675.00	\$272,025.00	\$709.00	\$285,727.00
12	Furnish and install 18-inch ID by 5/16-inch thick Type 316L stainless steel louvered well casing, interspersed with blank well casing, between a depth of 275 ft and 1000 ft	600	LF	\$830.00	\$498,000.00	\$ 787.50	\$472,500.00	\$827.00	\$496,200.00

Item No.	Description	Qty	Unit	Engineer's Estimate		1 SS Mechanical Huntington Beach, CA		2 Schuler Engineering Corona, CA	
				Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
13	Furnish and install 18-inch ID by 5/16-inch thick blank Type 316L stainless steel casing cellar pipe with welded end cap between 1000 ft and 1020 ft bgs.	20	LF	\$690.00	\$13,800.00	\$ 675.00	\$13,500.00	\$709.00	\$14,180.00
14	Furnish and install 3-inch ID Sch. 40 Type 316L stainless steel gravel feed tube with welded cover plate to a depth of 200 ft bgs including 3 ft of stickup above ground surface.	203	LF	\$65.00	\$13,195.00	\$ 67.00	\$13,601.00	\$71.00	\$14,413.00
15	Furnish and install 4-inch ID Sch. 40 Type 316L stainless steel sounding/camera tube with 7-foot long port and threaded cap with 1" compression fitting for pressure transducer to a depth of 270 ft bgs including 3 ft of stickup above ground surface.	273	LF	\$110.00	\$30,030.00	\$ 130.00	\$35,490.00	\$136.00	\$37,128.00
16	Furnish and install 8 x 16 gradation gravel pack in annulus between 180 ft and 1040 ft bgs.	860	LF	\$125.00	\$107,500.00	\$ 73.00	\$62,780.00	\$77.00	\$66,220.00
17	Furnish and install cement grout seal in the annular space of the well from 5 ft bgs to 180 ft bgs.	175	LF	\$95.00	\$16,625.00	\$ 68.00	\$11,900.00	\$71.00	\$12,425.00
18	Conduct alignment testing (straightness and plumbness), via dummy and gyroscopic methods, of the completed well to the total depth of the well.	1	LS	\$5,000.00	\$5,000.00	\$ 4,000.00	\$4,000.00	\$4,200.00	\$4,200.00
19	Conduct well development by mechanical procedures using airlifting and swabbing methods (with drill rig).	120	Hours	\$500.00	\$60,000.00	\$ 422.00	\$50,640.00	\$443.00	\$53,160.00
20	Conduct well development by mechanical procedures via line swabbing methods (with a "walking" beam cable tool drill rig).	50	Hours	\$500.00	\$25,000.00	\$ 338.00	\$16,900.00	\$355.00	\$17,750.00
21	Provide chemicals for chemical development of the well during initial stages of mechanical development using a 12½% solution of chlorine.	300	Gals	\$15.00	\$4,500.00	\$ 5.00	\$1,500.00	\$5.50	\$1,650.00
22	Provide chemicals for chemical development the well during initial stages of mechanical development using a polymer dispersant agent (NW-220, Aqua Clear PFD or	30	Gals	\$85.00	\$2,550.00	\$ 84.00	\$2,520.00	\$90.00	\$2,700.00
23	Furnish, install, and demobilize pump equipment for additional well development and test pumping; set pump to a depth of 265 ft bgs.	1	LS	\$20,000.00	\$20,000.00	\$ 22,000.00	\$22,000.00	\$23,000.00	\$23,000.00
24	Reset the pump at a deeper depth (to a maximum depth of 365 ft bgs), as directed by IRWD, or the Geologist.	8	Per 10 ft additional depth	\$80.00	\$640.00	\$ 225.00	\$1,800.00	\$239.00	\$1,912.00
25	Conduct well development by pumping procedures.	80	Hours	\$380.00	\$30,400.00	\$ 422.00	\$33,760.00	\$443.00	\$35,440.00
26	Conduct step drawdown test	12	Hours	\$380.00	\$4,560.00	\$ 422.00	\$5,064.00	\$443.00	\$5,316.00
27	Conduct constant rate pumping test (aquifer test).	48	Hours	\$380.00	\$18,240.00	\$ 422.00	\$20,256.00	\$443.00	\$21,264.00

Item No.	Description	Qty	Unit	Engineer's Estimate		1 SS Mechanical Huntington Beach, CA		2 Schuler Engineering Corona, CA	
				Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
28	Conduct flow meter (spinner) survey during constant rate pumping test.	1	LS	\$5,100.00	\$5,100.00	\$ 2,800.00	\$2,800.00	\$3,000.00	\$3,000.00
29	Perform a static (ambient) spinner survey under non-pumping conditions.	1	LS	\$5,100.00	\$5,100.00	\$ 2,800.00	\$2,800.00	\$3,000.00	\$3,000.00
30	Perform depth-specific sampling using the conventional wire-line, vacuum tool method (2 downtrips per sample).	10	EA	\$500.00	\$5,000.00	\$ 450.00	\$4,500.00	\$475.00	\$4,750.00
31	Air lift sediment fill from the bottom of the well and conduct video log survey of all well casing.	1	LS	\$5,000.00	\$5,000.00	\$ 8,500.00	\$8,500.00	\$9,000.00	\$9,000.00
32	Disinfect well using chlorine powder and cap top of well with welded plate.	1	LS	\$11,000.00	\$11,000.00	\$ 5,000.00	\$5,000.00	\$5,500.00	\$5,500.00
33	Standby time with <i>active</i> rig and crew as directed by IRWD in special circumstances.	40	Hours	\$165.00	\$6,600.00	\$ 225.00	\$9,000.00	\$236.00	\$9,440.00
34	Standby time with <i>inactive</i> rig and crew ("water watch") as directed by IRWD in special circumstances.	40	Hours	\$110.00	\$4,400.00	\$ 112.00	\$4,480.00	\$119.00	\$4,760.00
35	Destroy existing Well 115.	1	LS	\$45,000.00	\$45,000.00	\$ 54,000.00	\$54,000.00	\$57,000.00	\$57,000.00
	Well Equipping								
36	Furnish and install vertical turbine pump, motor and well pump base.	1	LS	\$260,000.00	\$260,000.00	\$ 267,000.00	\$267,000.00	\$295,000.00	\$295,000.00
37	Dynamic video survey down well casing	1	LS	\$1,700.00	\$1,700.00	\$ 2,800.00	\$2,800.00	\$3,000.00	\$3,000.00
38	Furnish and install above-ground mechanical piping, valves, and appurtenances.	1	LS	\$110,000.00	\$110,000.00	\$ 102,000.00	\$102,000.00	\$72,000.00	\$72,000.00
39	Furnish and install buried well discharge piping, valves and appurtenances.	1	LS	\$60,000.00	\$60,000.00	\$ 108,000.00	\$108,000.00	\$85,000.00	\$85,000.00
40	Furnish and install well drain line piping, appurtenances and manhole.	1	LS	\$35,000.00	\$35,000.00	\$ 47,000.00	\$47,000.00	\$13,000.00	\$13,000.00
41	Remove and install Fire Service Post Indicator Valve.	1	LS	\$20,000.00	\$20,000.00	\$ 23,000.00	\$23,000.00	\$10,000.00	\$10,000.00
42	Furnish and install electrical and instrumentation equipment and facilities.	1	LS	\$180,000.00	\$180,000.00	\$ 200,000.00	\$200,000.00	\$250,000.00	\$250,000.00
43	Temporary construction fencing to enclose work area.	1	LS	\$7,000.00	\$7,000.00	\$ 5,000.00	\$5,000.00	\$3,400.00	\$3,400.00
	General Items of Work								
44	Mobilization, demobilization and clean-up.	1	LS	\$106,030.00	\$106,030.00	\$ 80,000.00	\$80,000.00	\$198,500.00	\$198,500.00
45	Construct site improvements.	1	LS	\$235,000.00	\$235,000.00	\$ 245,000.00	\$245,000.00	\$233,000.00	\$233,000.00
46	Perform demolition of existing Well 115 site.	1	LS	\$55,000.00	\$55,000.00	\$ 35,000.00	\$35,000.00	\$17,500.00	\$17,500.00
47	Furnish and install landscaping and irrigation.	1	LS	\$75,000.00	\$75,000.00	\$ 50,000.00	\$50,000.00	\$80,000.00	\$80,000.00
48	The Irvine Company fee allowance.	1	LS	\$30,000.00	\$30,000.00	\$ 15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
49	Furnish and Install Grind and Cap parking lot between the existing and proposed site.	13400	SF	\$2.00	\$26,800.00	\$ 1.866	\$25,004.40	\$2.00	\$26,800.00
50	Furnish and Install Slurry Seal access drive path.	57000	SF	\$0.25	\$14,250.00	\$ 0.264	\$15,048.00	\$0.45	\$25,650.00
51	Start-up testing and training.	1	LS	\$20,000.00	\$20,000.00	\$ 20,000.00	\$20,000.00	\$20,000.00	\$20,000.00

				Engineer's Estimate		1 SS Mechanical Huntington Beach, CA		2 Schuler Engineering Corona, CA	
Item No.	Description	Qty	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
52	Prepare Operation & Maintenance manuals.	1	LS	\$5,000.00	\$5,000.00	\$ 2,000.00	\$2,000.00	\$7,600.00	\$7,600.00
53	Prepare Record Drawings.	1	LS	\$10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
54	Furnish and install erosion control measures.	1	LS	\$9,000.00	\$9,000.00	\$ 5,000.00	\$5,000.00	\$6,000.00	\$6,000.00
55	Procure and conform to NPDES permit from CRWQCB, Santa Ana Region.	1	LS	\$10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	\$2,400.00	\$2,400.00
56	Sheeting, shoring and bracing.	1	LS	\$10,000.00	\$10,000.00	\$ 5,000.00	\$5,000.00	\$3,400.00	\$3,400.00
	Subtotal				\$3,139,970.00		\$3,088,994.90		\$3,280,075.00
A-1	(Optional) Furnish and install a 30-foot to 50-foot bottom bentonite seal, as needed.	50	LF	\$80.00	\$4,000.00	\$ 50.00	\$2,500.00	\$ 60.00	\$3,000.00
	Sub-Total, Bid Items 1 thru 56 + A1				\$3,143,970.00		\$3,091,494.90		\$3,283,075.00
	Adjustment (+ or -)				\$0.00		\$0.00		\$0.00
	Total Amount of Bid				\$3,143,970.00		\$3,091,494.90		\$3,283,075.00
						Item Delivery Dates:		Item Delivery Dates:	
	SS Mechanical:					Stainless Steel Blank Casing: 7 days		Stainless Steel Blank Casing: 7 days	
	Bid Item #4 - Extended Amount shown on bid is \$100,411. Calculated Amount is correctly shown on Bid Summary as \$101,461.50.					Stainless Steel Louvered Casing: 7 days Gravel Pack: 7 days		Stainless Steel Louvered Casing: 7 days Gravel Pack: 7 days	
	Bid Item #49 - Extended Amount shown on bid is \$25,000. Calculated Amount is correctly shown on Bid Summary as \$25,004.40.					Noise Attenuation Barrier: 7 days		Noise Attenuation Barrier: 7 days	
						Vertical Turbine Pump and Motor: 200 days		Vertical Turbine Pump and Motor: 200 days	
	Bid Item #50 - Extended Amount shown on bid is \$15,000. Calculated Amount is correctly shown on Bid Summary as \$15,048.00.					Steel Column Pipe: 14 days		Steel Column Pipe: 14 days	
						Silent Check Valve: 110 days		Silent Check Valve: 84 days	
						Magnetic Flow Meter: 100 days		Magnetic Flow Meter: 49 days	
						Pressure Relief and Pressure Reducing/Sustaining: 110 days		Pressure Relief and Pressure Reducing/Sustaining: 56 days	
						Butterfly Valve (EPDM): 135 days		Butterfly Valve (EPDM): 126 days	
						Turbidity Meter: 120 days		Turbidity Meter: 42 days	
						Electric Actuator 150 days		Electric Actuator 126 days	
						CML Steel Pipe and Fittings: 60 days		CML Steel Pipe and Fittings: 42 days	
						PLC Cabinet: 154 days		PLC Cabinet: 56 days	
						Solid State Motor Controller: 160 days		Solid State Motor Controller: 112 days	
						PLC Integration: 154 days		PLC Integration: 32 days	
						Metal Gates: 120 days		Metal Gates: 56 days	

				Engineer's Estimate		1		2	
						SS Mechanical		Schuler Engineering	
						Huntington Beach, CA		Corona, CA	
Item No.	Description	Qty	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
						<u>Manufacturers:</u>		<u>Manufacturers:</u>	
						Stainless Steel Blank Casing: Roscoe Moss		Stainless Steel Blank Casing: Roscoe Moss	
						Stainless Steel Louvered Casing: Roscoe Moss		Stainless Steel Louvered Casing: Roscoe Moss	
						Gravel Pack: Mid-Cal		Gravel Pack: Mid-Cal	
						Noise Attenuation Barrier: Best Drilling		Noise Attenuation Barrier: Best Drilling	
						Vertical Turbine Pump and Motor: Ruhr Pumpen		Vertical Turbine Pump and Motor: Ruhr Pumpen	
						Steel Column Pipe: Fleetwood		Steel Column Pipe: Fleetwood	
						Silent Check Valve: Crispin		Silent Check Valve: Pratt	
						Magnetic Flow Meter: ABB		Magnetic Flow Meter: ABB	
						Pressure Relief and Pressure Reducing/Sustaining: Cla Val		Pressure Relief and Pressure Reducing/Sustaining: Cla Val	
						Butterfly Valve (EPDM): K-Flo		Butterfly Valve (EPDM): Pratt	
						Turbidity Meter: Hach		Turbidity Meter: Hach	
						Electric Actuator: Auma		Electric Actuator Auma	
						CML Steel Pipe and Fittings: Southland Pipe		CML Steel Pipe and Fittings: Levco Pipe and Fab	
						PLC Cabinet: Modicon		PLC Cabinet: Modicon	
						Solid State Motor Controller: Allen Bradley		Solid State Motor Controller: Allen Bradley	
						PLC Integration: Soffa		PLC Integration: Soffa Electric	
						<u>Subcontractors:</u>		<u>Subcontractors:</u>	
						Well Drilling: Best Drilling & Pump		Well Drilling: Best Drilling & Pump	
						Rebar: Rodbuster & Wheeler		Electrical: Leed Electric	
						Electrical: Leed Electric		Asphalt: Hardy & Harper	
						Coater: National Coating & Lining		Masonry: Frank Smith	
						Asphalt: Hardy & Harper		Landscape: Bemus	
						Masonry: Patterson			
						Landscape: Bemus			
						Plaster: WW Plastering			

IRVINE RANCH WATER DISTRICT EXHIBIT "B"

Expenditure Authorization

Project Name: WELL 115 REPLACEMENT WELL/WELLHEAD & SITE ACQUIS.
EPMS Project No: 11627 **EA No:** 2
Oracle Project No: 3717
Project Manager: MORI, RICHARD
Project Engineer: MOEDER, JACOB
Request Date: May 2, 2013

ID Split: Regional Potable Water Splits (11/08)
Improvement District (ID) Allocations

ID No.	Allocation %	Source of Funds
112	4.3	BONDS YET TO BE SOLD**
113	5.2	BONDS YET TO BE SOLD**
115	7.3	CAPITAL FUND
121	15.3	BONDS YET TO BE SOLD**
130	11.8	BONDS YET TO BE SOLD**
140	4.2	BONDS YET TO BE SOLD**
150	31.2	BONDS YET TO BE SOLD**
153	3.4	BONDS YET TO BE SOLD**
154	1.5	BONDS YET TO BE SOLD**
161	8.0	BONDS YET TO BE SOLD**
182	3.0	BONDS YET TO BE SOLD**
184	2.8	BONDS YET TO BE SOLD**
186	1.0	BONDS YET TO BE SOLD**
188	1.0	BONDS YET TO BE SOLD**
Total	100.0%	

Summary of Direct Cost Authorizations

Previously Approved EA Requests:	\$551,300
This Request:	\$3,626,900
Total EA Requests:	\$4,178,200
Previously Approved Budget:	\$3,685,600
Budget Adjustment Requested this EA:	\$492,600
Updated Budget:	\$4,178,200
Budget Remaining After This EA	\$0

Comments:

Phase	This EA Request	Previous EA Requests	EA Requests to Date	This Budget Request	Previous Budget	Updated Budget	Start	Finish
ENGINEERING - PLANNING IRWD	25,000	0	25,000	25,000	0	25,000	1/12	6/13
ENGINEERING - PLANNING OUTSIDE	4,000	0	4,000	4,000	0	4,000	1/12	6/13
ENGINEERING DESIGN - IRWD	15,000	30,000	45,000	15,000	30,000	45,000	1/12	6/13
ENGINEERING DESIGN - OUTSIDE	(25,000)	300,000	275,000	(25,000)	300,000	275,000	1/12	6/13
DESIGN STAFF FIELD SUPPORT	0	10,000	10,000	0	10,000	10,000	1/12	6/13
ENGINEERING - CA&I IRWD	90,000	0	90,000	70,000	20,000	90,000	7/13	10/14
ENGINEERING - CA&I OUTSIDE	125,000	0	125,000	(35,000)	160,000	125,000	7/13	10/14
CONSTRUCTION FIELD SUPPORT	15,000	0	15,000	10,000	5,000	15,000	7/13	10/14
CONSTRUCTION	3,200,000	0	3,200,000	400,000	2,800,000	3,200,000	7/13	10/14
LEGAL	5,000	5,000	10,000	5,000	5,000	10,000	1/12	10/14
LAND	0	150,000	150,000	0	150,000	150,000	1/12	10/14
WATER QUALITY	0	10,000	10,000	0	10,000	10,000	1/12	10/14
ENGINEERING ENVIRONMENTAL-OUTS	0	20,000	20,000	0	20,000	20,000	1/12	10/14
Contingency - 5.00% Subtotal	\$172,900	\$26,300	\$199,200	\$23,600	\$175,600	\$199,200		
Subtotal (Direct Costs)	\$3,626,900	\$551,300	\$4,178,200	\$492,600	\$3,685,600	\$4,178,200		
Estimated G/A - 180.00% of direct labor*	\$261,000	\$90,000	\$351,000	\$216,000	\$135,000	\$351,000		
Total	\$3,887,900	\$641,300	\$4,529,200	\$708,600	\$3,820,600	\$4,529,200		
Direct Labor	\$145,000	\$50,000	\$195,000	\$120,000	\$75,000	\$195,000		

*EA includes estimated G&A. Actual G&A will be applied based on the current ratio of direct labor to general and administrative costs.

EA Originator:

[Signature]
RFM

5/2/13

Department Director:

[Signature]
Kevin J. Burton

5/3/13

Finance:

Board/General Manager:

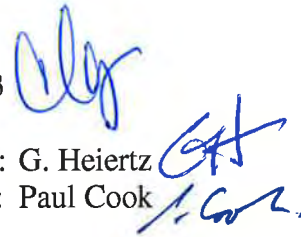
** IRWD hereby declares that it reasonably expects those expenditures marked with two asterisks to be reimbursed with proceeds of future debt to be incurred by IRWD in a maximum principal amount of \$4,620,000. The above-captioned project is further described in the attached staff report and additional documents, if any, which are hereby incorporated by reference. This declaration of official intent to reimburse costs of the above-captioned project is made under Treasury Regulation Section 1.150-2.

May 13, 2013

Prepared and

Submitted by: G. Heiertz

Approved by: Paul Cook



ACTION CALENDAR

ORANGE COUNTY SANITATION DISTRICT DRY WEATHER URBAN RUNOFF DIVERSION PROGRAM POLICY POSITION

SUMMARY:

A key strategic objective of the Irvine Ranch Water District is to enhance the quality of urban runoff. IRWD has developed the San Joaquin Marsh (SJM) and the Natural Treatment System (NTS) to further this objective by providing treatment of urban runoff flows. In some cases, the SJM and NTS cannot provide adequate treatment of urban runoff to meet the receiving water standards. In these cases, IRWD has partnered with the Orange County Sanitation District (OCSD) to construct dry weather urban runoff diversion facilities to direct these flows to wastewater treatment facilities for treatment and reuse or disposal. IRWD operates two such diversions on the Newport Coast. These diversions play a fundamental role in improving the water quality in local streams and the ocean, which benefits all of the residents of Orange County. The diversions have been used by municipalities as an option of last resort when other treatment strategies do not exist or are financially infeasible. Current OCSD policy provides for treatment at no charge for municipal discharges of dry weather urban runoff up to a cumulative volume of 4 MGD. Planned increases in urban runoff diversions by various municipalities in the Newport Bay watershed to address selenium contamination will cause the cumulative volume to exceed this threshold. OCSD is currently considering charging for full cost recovery for treatment of some or all urban runoff diversions, including flows under the 4 MGD cumulative cap. Staff believes that OCSD should continue to treat these discharges over 4 MGD at no charge to insure that the water quality in streams tributary to Newport Bay is enhanced and protected. The policy position on OCSD Dry Weather Urban Runoff Diversion Program that reflects this recommendation is attached as Exhibit "A".

BACKGROUND:

Dry weather urban runoff is potentially contaminated water that finds its way into storm drains from urban areas. It is composed primarily of runoff from landscape irrigation, washing of vehicles, hosing down of paved areas, storm drain infiltration, natural groundwater from sub-drain systems and a variety of other sources from urban activity. This nuisance flow may be high in bacteriological contamination, oil and grease, and may have high organic and inorganic content, especially selenium. Dry weather urban runoff does not include stormwater. Urban runoff may also include shallow groundwater that has risen to the surface and combined with these other incidental flows.

A key strategic objective of both IRWD and OCSD is to enhance the quality of urban runoff. IRWD developed the SJM and the NTS to further attainment of this objective by providing treatment of urban runoff. In some cases, the SJM and NTS cannot provide adequate treatment of urban runoff to meet receiving water quality standards. In these cases, IRWD and several municipalities in Orange County have partnered with the OCSD under their Dry Weather Urban Runoff Diversion Program to construct urban runoff diversion facilities to direct these flows to

wastewater treatment facilities for treatment and beneficial reuse or discharge to the ocean. The municipalities expend extensive efforts to identify alternatives to diversion. The diversions are used as an option of last resort when other treatment options do not exist or are financially infeasible. IRWD operates two such diversions on the Newport Coast. These diversions play a fundamental role in improving the water quality in local streams and the ocean, which benefits all of the residents of Orange County.

The OCSD Dry Weather Urban Runoff Diversion Program began in December 1999 when OCSD agreed to temporarily accept dry weather urban runoff into its wastewater treatment facilities. This action was prompted by a 1999 Huntington Beach closure investigation that indicated that the dry weather urban runoff flowing into the Pacific Ocean may have caused or contributed to shoreline contamination and high bacteria levels. In April 2000, OCSD adopted a resolution accepting urban runoff on a long-term basis during dry weather. This was possible because OCSD treatment facilities have surplus capacity during dry weather owing to the absence of inflow and infiltration during rain events. The resolution was designed to minimize adverse impacts of urban runoff on coastal beaches and public health, while maintaining the high quality of OCSD's primary function: the collection, treatment and disposal of wastewater. On September 27, 2000, OCSD adopted a second resolution that established the requirements for municipal dischargers requesting to divert urban runoff into the OCSD facilities. The resolution set aside up to 10 MGD of surplus dry weather capacity for this purpose. OCSD also waived all charges for municipal dischargers of urban runoff within the OCSD service area. The fee waiver was to continue until the cumulative volume of dry weather urban runoff discharges exceeded 4 MGD or OCSD modified its policies. Cumulative flows in the dry weather urban runoff diversion program are currently approximately 2 MGD.

New diversions of dry weather nuisance flows are currently being planned by several municipal dischargers in the Newport Bay watershed to address elevated selenium concentrations originating from rising shallow groundwater in the area. These diversions will reduce the selenium concentration in tributary streams thus avoiding environmental harm to fish and birds from the higher selenium concentrations. These additional discharges will cause the cumulative total of urban runoff discharges to exceed 4 MGD, potentially triggering the levying of fees and charges by OCSD on all municipal dischargers of urban runoff.

FISCAL IMPACTS:

Full cost recovery for the Dry Weather Urban Runoff Diversion Program by OCSD would increase IRWD's cost to operate the Newport Coast diversion facilities and discourage any future efforts to improve water quality in local water bodies using these diversions.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

This item was reviewed at the Water Resources Policy and Communications meeting on May 2, 2013.

RECOMMENDATION:

THAT THE BOARD ADOPT THE POLICY POSITION ON THE ORANGE COUNTY
SANITATION DISTRICT DRY WEATHER URBAN RUNOFF DIVERSION PROGRAM.

LIST OF EXHIBITS:

Exhibit "A" – IRWD Policy Position on OCSD Dry Weather Urban Runoff Diversion Program

EXHIBIT "A"

IRVINE RANCH WATER DISTRICT POLICY POSITION OCSD DRY WEATHER URBAN RUNOFF DIVERSION PROGRAM

As adopted on _____

Issue Summary:

A key strategic objective of the Irvine Ranch Water District is to minimize and improve the quality of dry weather urban runoff. IRWD has developed the San Joaquin Marsh (SJM) system and the Natural Treatment System (NTS) to further this objective by providing treatment of urban runoff flows. In some cases, the SJM and NTS cannot provide adequate treatment of urban runoff to meet the receiving water standards. In these cases, IRWD has partnered with the Orange County Sanitation District (OCSD) to construct dry weather urban runoff diversion facilities to direct these flows to wastewater treatment facilities for treatment and reuse or disposal. IRWD operates two such diversions on the Newport Coast. These diversions play a fundamental role in improving the water quality in local streams, beaches, and the ocean, which benefits all of the residents of Orange County. The diversions have been used by municipalities as an option of last resort when other treatment strategies do not exist or are financially infeasible.

Current OCSD policy provides for treatment at no charge for municipal discharges of dry weather urban runoff up to a cumulative volume of 4 million gallons per day (MGD). Planned increases in urban runoff diversions by various municipalities in the Newport Bay watershed to address selenium contamination in urban runoff will cause the cumulative volume to exceed this threshold. OCSD should continue to treat these discharges over 4 MGD at no charge to ensure that the water quality in streams tributary to Newport Bay is enhanced and protected.

Background:

Dry weather urban runoff is typically contaminated water which finds its way into storm drains from urban areas. It is composed primarily of runoff from excess landscape irrigation, washing of vehicles, hosing down of paved areas, storm drain infiltration, natural groundwater from sub-drain systems and a variety of other sources from urban activity. These nuisance flows may be high in bacteriological contamination, nutrients, oil and grease, and they may have high organic and inorganic content, especially selenium. Dry weather urban runoff does not include stormwater. Urban runoff may also include shallow groundwater that has risen to the surface and combined with these other incidental flows.

A key strategic objective of both IRWD and OCSD is to minimize and improve the quality of dry weather urban runoff to reduce the impacts of these flows on the environment. IRWD developed the SJM and the NTS to further attainment of this objective by providing treatment of urban runoff. In some cases, the SJM and NTS cannot provide adequate treatment of urban runoff to meet receiving water quality standards. In these cases, IRWD and several municipalities in Orange County have partnered with the OCSD under their Dry Weather Urban Runoff Diversion Program to construct urban runoff diversion facilities to direct these flows to wastewater treatment facilities for treatment and beneficial reuse or discharge to the ocean. The municipalities expend extensive efforts to identify alternatives to diversion. The diversions are used as an option of last resort when other treatment options do not exist or are financially

infeasible. IRWD operates two such diversions on the Newport Coast. These diversions play a fundamental role in improving the water quality in local streams and the ocean, which benefits all of the residents of Orange County.

The OCSD Dry Weather Urban Runoff Diversion Program began in December 1999 when OCSD agreed to temporarily accept dry weather urban runoff into its wastewater treatment facilities. This action was prompted by a 1999 Huntington Beach closure investigation that indicated that the dry weather urban runoff flowing into the Pacific Ocean may have caused or contributed to shoreline contamination and high bacteria levels. In April 2000, OCSD adopted a resolution accepting urban runoff on a long-term basis during dry weather. This was possible because OCSD treatment facilities have surplus capacity during dry weather owing to the absence of inflow and infiltration during rain events. The resolution was designed to minimize adverse impacts of urban runoff on coastal beaches and public health, while maintaining the high quality of OCSD's primary function: the collection, treatment and disposal of wastewater. On September 27, 2000 OCSD adopted a second resolution that established the requirements for municipal dischargers requesting to divert urban runoff into the OCSD facilities. The resolution set aside up to 10 MGD of surplus dry weather capacity for this purpose. OCSD also waived all charges for municipal dischargers of urban runoff within the OCSD service area. The fee waiver was to continue until the cumulative volume of dry weather urban runoff discharges exceeded 4 MGD or OCSD modified its policies. Cumulative flows in the dry weather urban runoff diversion program are currently approximately 2 MGD.

New diversions of dry weather nuisance flows are currently being planned by several municipal dischargers in the Newport Bay watershed to address elevated selenium concentrations originating from rising shallow groundwater in the area. These diversions will reduce the selenium concentration in tributary streams thus avoiding environmental harm to fish and birds from the higher selenium concentrations. These additional discharges will cause the cumulative total of urban runoff discharges to exceed 4 MGD, potentially triggering the levying of fees and charges by OCSD on all municipal dischargers of urban runoff.

Policy Principles:

Staff has developed the following principles that define IRWD's policy with respect to the OCSD Dry Weather Urban Runoff Diversion Program:

- It is a key strategic objective of both IRWD and OCSD to reduce the negative water quality impacts from urban runoff and other nuisance flows.
- In certain cases, the only feasible means of treating urban runoff and other nuisance flows is by diversion to a waste water treatment facility for treatment and subsequent disposal or reuse.
- The OCSD Dry Weather Urban Runoff Diversion Program has contributed significantly to the improvement of water quality in Orange County streams and at the beaches.

- The OCSD policy of allocating surplus dry weather treatment capacity to the treatment of urban runoff at no charge to municipal dischargers makes treatment of these flows economically feasible.
- The direct beneficiaries of improved water quality in Orange County's streams and ocean are all of the home owners and businesses within OCSD, so it is appropriate that the cost of providing treatment services for urban runoff is defrayed by all customers of the OCSD.
- OCSD should continue its policy of providing treatment of dry weather urban runoff at no charge to the municipal dischargers up to the 10 MGD surplus capacity cited in the 2000 OCSD resolution.
- The amount of surplus dry weather capacity in OCSD wastewater facilities allocated to the treatment of urban runoff should be increased as needed up to 10 MGD to accommodate all reasonable diversion projects that enhance the quality of local receiving waters.

May 13, 2013

Prepared By: F. Sanchez

Submitted by: G. Heiertz

Approved by: Paul Cook

ACTION CALENDAR

FOURTEENTH AMENDMENT TO AGREEMENT FOR PARTICIPATION IN SPECIFIED MUNICIPAL WATER DISTRICT OF ORANGE COUNTY REBATE PROGRAMS

SUMMARY:

The Water Conservation Business Plan (Plan), included a “Tactical Incentives” element to encourage customers to install water conservation devices. Incentive payments are based on the water and wastewater systems avoided costs for each device and are therefore cost-effective for IRWD. Staff anticipates there may be a shortfall of IRWD matching funds for residential incentives in FY 2012-13. Therefore, staff proposes adding \$100,000 in funding for this fiscal year to minimize disruptions to IRWD customers. Staff recommends that the Board authorize the General Manager to execute an Amendment to the existing Agreement with the Municipal Water District of Orange County (MWDOC) to add \$100,000 in funding for FY 2012-13.

BACKGROUND:

Tactical Incentives are one of the key elements of IRWD’s Water Use Efficiency Program. The Tactical Incentives are cost-effective financial incentives provided by IRWD to supplement existing regional rebate programs administered by either Metropolitan Water District of Southern California (MWD) and/or the Municipal Water District of Orange County (MWDOC). The incentives are based on IRWD’s calculated avoided costs resulting from the installation of the various conservation devices.

The current program is operating under a Thirteenth Amendment to the Agreement for Participation and Co-funding by Irvine Ranch Water District in Specified Municipal Water District of Orange County Rebate Programs. Staff proposes executing a Fourteenth Amendment, Exhibit “A”, to the existing Agreement to add \$100,000 in funding to the program for FY 2012-13 in response to strong customer demand for residential devices. This amendment will ensure continued operation of the program and minimize disruptions for IRWD customers for the remainder of this fiscal year. Staff is in the process of reviewing Tactical Incentive levels for FY 2013-14, and will be developing a recommendation, including potential adjustments to the current levels, for review by the Committee and Board in June.

FISCAL IMPACTS:

The FY 2012-13 Operating Budget would be increased by \$100,000, funded from over-allocation revenues.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

This item was reviewed at the Water Resources Policy and Communications Committee on May 2, 2013.

RECOMMENDATION:

THAT THE BOARD AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE FOURTEENTH AMENDMENT TO THE DISTRICT'S AGREEMENT WITH THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY, SUBJECT TO NON-SUBSTANTIVE CHANGES, FOR PARTICIPATION AND CO-FUNDING BY IRVINE RANCH WATER DISTRICT IN SPECIFIED MUNICIPAL WATER DISTRICT OF ORANGE COUNTY REBATE PROGRAMS, ADDING \$100,000 IN FUNDING FOR FY 2012-13, FOR COST-EFFECTIVE TACTICAL INCENTIVE WATER USE EFFICIENCY MEASURES.

LIST OF EXHIBITS:

Exhibit "A" – Fourteenth Amendment to the Agreement for Participation and Co-funding By Irvine Ranch Water District in Specified Municipal Water District of Orange County Rebate Programs

EXHIBIT "A"

Fourteenth Amendment to Agreement for Participation and Co-Funding By Irvine Ranch Water District in Specified Municipal Water District of Orange County Rebate Programs

This Fourteenth Amendment ("Amendment") to the existing "Agreement for Participation and Co-Funding by Irvine Ranch Water District in Specified Municipal Water District of Orange County Rebate Programs" ("Agreement") is entered into by and between the Municipal Water District of Orange County ("MWDOC") and Irvine Ranch Water District ("IRWD"). The Agreement provides for participation and co-funding by IRWD of residential and commercial water use efficiency devices through Metropolitan Water District of Southern California's ("Metropolitan") SoCal Water\$mart ("SoCal Water\$mart") residential and commercial rebate programs in IRWD's service area.

This Amendment modifies the Agreement, which includes without limitation all previous amendments and attachments. Except as stated below, this Amendment is effective May 1, 2013, and the Agreement, as amended hereby, remains in full force and effect.

1. "Exhibit A" to the Agreement, entitled "Proposed Rebate Funding Levels FY 2012-2013," is deleted in its entirety and replaced with the following table. The amounts shown below for "Maximum Funding" are cumulative amounts for fiscal year 2012-2013 to date, and reflect a transfer of \$60,000 from the SoCal Water\$mart commercial rebate program into the SoCal Water\$mart residential rebate program, as requested in the written notice to MWDOC dated March 14, 2014, and an additional increase in funding of \$100,000 for the SoCal Water\$mart residential rebate program.

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Exhibit A: Proposed Rebate Funding Levels FY 2012-2013

Program	Maximum Funding*	Devices	IRWD Rebate Funding Level Per Device
SoCal Water\$mart Residential Program	\$520,000	High Efficiency Clothes Washers	\$200
Program	Maximum Funding*	Devices	IRWD Rebate Funding Level Per Device
SoCal Water\$mart Commercial Program	\$140,000	Commercial High Efficiency Toilet	\$100
		Zero Water/Ultra Low Water Urinals	\$100
		Connectionless Food Steamer	\$485 Per Compartment
		Commercial Ice Making Machine (Tier III)	\$250
		Hotel Connectionless Food Steamer	\$485 Per Compartment
		Hotel Commercial Ice Making Machine (Tier III)	\$250.00
Total Funding for All Programs	\$660,000		

* Where indicated, "Maximum Funding" amounts for certain programs are subject to the provisions of Paragraph 3 of the Agreement and will be adjusted upon notification by IRWD to transfer funding between programs.

Dated: _____

MUNICIPAL WATER DISTRICT OF
ORANGE COUNTY

By: _____
Karl W. Seckel, P.E.
Interim General Manager

Dated: _____


IRVINE RANCH WATER DISTRICT

By: _____
Paul Cook
General Manager

Dated: 4-23-13

Approved as to Form:

Bowie, Arneson, Wiles & Giannone



Joan C. Arneson
Legal Counsel

Internal Use Only:	
Program No.	_____
Line Item:	_____
Funding Year:	_____
Contract Amt.:	_____
Purchase Order #:	_____