

Kern Fan Groundwater Storage Project

FEASIBILITY REPORT

Attachment 4: Groundwater Banking Joint Powers Authority Agreement

October 21, 2019
Updated April 13, 2020



**JOINT POWERS AGREEMENT
BETWEEN
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
AND
IRVINE RANCH WATER DISTRICT
CREATING THE GROUNDWATER BANKING JOINT POWERS AUTHORITY
TO DEVELOP AND ADMINISTER
A KERN FAN GROUNDWATER STORAGE PROJECT**

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THIS JOINT POWERS AGREEMENT ("Agreement") is made and entered into as of the Effective Date by and between the ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT ("RRB") and the IRVINE RANCH WATER DISTRICT ("IRWD") to form the GROUNDWATER BANKING JOINT POWERS AUTHORITY ("Authority") pursuant to the Joint Exercise of Powers Act of 1980 (Division 7, commencing with § 6500 of the California Government Code). RRB and IRWD are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. RRB is a public agency organized in accordance with the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) for the purpose of acquiring, storing, distributing, and replenishing water supplies within its boundaries in Kern County, California.

B. IRWD is a public agency organized in accordance with the California Water District Law (Division 13, commencing with § 34000 of the California Water Code) to provide water services and certain other services. IRWD's powers and purposes include the acquisition within or outside the district in the State of all necessary property, water, and water rights for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes and to provide and sell such water at wholesale and retail to customers within its boundaries in Orange County, California.

C. In 1959, RRB was formed to develop a groundwater recharge program to offset overdraft. The construction of the initial phases of the recharge program was completed in early 1962, and the facilities placed in operation shortly thereafter. Additional improvements to program recharge facilities have since been made, and RRB has acquired fee title to the properties on which the program facilities are located. The physical features of the recharge program include facilities to divert waters from the Kern River and the Cross Valley Canal facilities ("CVC") and RRB properties into the Goose Lake Slough and adjacent recharge basins.

D. To improve its water supplies, generate increased recharge capability and to provide operational flexibility, RRB has developed a program for the banking, storage, exchange,

and direct delivery of water pursuant to the exercise of its powers ("RRB Conjunctive Use Program"). The RRB Conjunctive Use Program involves the banking of imported water by customers ("RRB Program Participants") in the Kern County Sub-Basin of the San Joaquin Valley Groundwater Basin ("Groundwater Basin") for later delivery to said customers. RRB has developed and approved the RRB Conjunctive Use Program through various agreements and documents including, without limitation, an environmental impact report ("EIR") certified by RRB on July 17, 2001, and subsequent addenda thereto, pursuant to the California Environmental Quality Act ("CEQA"), Public Resource Code section 21000 et seq.

E. In 2004, IRWD acquired 611 acres of real property in Kern County, California, sometimes referred to as the "Strand Ranch property," lying adjacent to the southerly boundary of RRB. On January 13, 2009, RRB and IRWD entered into an "Agreement For A Water Banking and Exchange Program," as amended by Amendment No. 1, entered into on or about February 27, 2015 (collectively, "Strand Ranch Agreement") providing for the development and operation of a groundwater banking program on IRWD's Strand Ranch property, and the operation and integration of such program within the RRB Conjunctive Use Program ("Strand Ranch Integrated Banking Project").

F. Since 2004, RRB acquired an additional 230 acres of real property lying adjacent to the easterly boundary of the Strand Ranch property ("Stockdale East property"), and IRWD acquired an additional 323 acres of real property lying adjacent to the westerly boundary of the Strand Ranch property ("Stockdale West property"). On or about February 4, 2016, RRB and IRWD entered into an "Agreement for A Water Banking, Recovery and Exchange Program," as amended by Amendment No. 1, entered into on or about January 16, 2018 (collectively, "Stockdale Integrated Banking Project").

G. CEQA compliance for the Stockdale Integrated Banking Project has been completed. On December 8, 2015, RRB certified an EIR for the Stockdale Integrated Banking Project ("Stockdale Integrated Banking Project EIR"), and on December 14, 2015, IRWD approved the Stockdale Integrated Banking Project EIR as a responsible agency. The Stockdale Integrated Banking Project EIR provides a project-level effects analysis for the Stockdale Integrated Banking Project and provides a program-level analysis for a third project site of up to 640 acres within a 12,300-acre site radius analyzed in the Stockdale Integrated Banking Project EIR.

H. The up to 640-acre third project site analyzed in the Stockdale Integrated Banking Project EIR would constitute Phase 1 of a proposed Kern Fan Groundwater Storage Project ("Kern Fan Project") for which RRB and IRWD have jointly applied for grant funding through the California Water Commission's ("Commission") Water Storage Investment Program ("WSIP") authorized by California voters' approval of Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. A second up to 640-acre project site would constitute Phase 2 of the Kern Fan Project.

I. Through the Kern Fan Project, the Parties seek to develop a regional water bank in the Kern County Groundwater Sub-basin of the San Joaquin Valley Groundwater Basin in Kern County. The Kern Fan Project would recharge and store up to 100,000 acre-feet of water during periods when surface water is abundant. Water stored by the Kern Fan Project pursuant to

participation in the WSIP would be recovered when needed to provide ecosystem public benefits, water supply public benefits during extended droughts or a Delta levee failure, and other non-public water supply benefits for RRB and IRWD water service customers. The Kern Fan Project proposes to use 25 percent (25%), up to 25,000 acre-feet, of the unallocated State Water Project ("SWP") Article 21 water stored pursuant to participation in the WSIP to provide public ecosystem benefits, with the remainder for use by IRWD and RRB. IRWD and RRB would have access to Kern Fan Project facilities and capacities to store water pursuant to other programs to generate additional water supply benefits as described in article 3(C) of this agreement. Unallocated SWP Article 21 water is an interruptible water supply that the California Department of Water Resources ("DWR") periodically makes available to its long-term water service contractors under Article 21 of their contracts.

J. In July 2018, the Commission conditionally approved \$67,537,315 in conditional WSIP grant funding for the Kern Fan Project, which may be increased by the Commission in the future. The Parties may seek additional state or federal grant funding in the future.

K. The Parties are forming the Authority to achieve the above-described objectives of the Kern Fan Project, and this Agreement helps to define a stable and finite project description that will facilitate completion of CEQA review pursuant to Cal. Pub. Res. Code section 21000 et seq.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Effective Date, Term and CEQA Compliance

- A. ***Effective Date and Term.*** Upon execution by the Parties, this Agreement shall be effective July 1, 2020 ("Effective Date"), but shall be subject to article 1(B). This Agreement shall remain effective for thirty (30) years from the Effective Date or until expiration of any requirements to operate the Kern Fan Project as part of the WSIP or other grant funding requirements, whichever is longer, or until it is terminated early by either Party providing eighteen (18) months' advance written notice of intent to terminate. Prior to the expiration of the term of the JPA Agreement, the Parties shall work together to mutually extend this Agreement. If this Agreement is not extended, or if it is terminated early, the Parties shall agree to negotiate in good faith to integrate the Kern Fan Project facilities into one or more other existing water storage and recovery programs or projects; provided further that if the Parties fail to reach agreement on such integration, then RRB shall have a first right to acquire IRWD's interest in all Kern Fan Project facilities, capacities and real or personal property held by the Authority. If this Agreement is terminated early, the Parties agree that the legal effectiveness of such termination shall be conditioned upon all then-existing grant obligations being met for the duration of such obligations.
- B. ***Disposition of Kern Fan Project Property, Facilities and Other Assets Upon Termination.*** If this Agreement is terminated for any reason, then RRB's first right to acquire IRWD's interest in the Kern Fan Project facilities, land and easements shall be based upon the then-existing fair market value of the land and easements

and upon the then-existing undepreciated fair market value of all such facilities. For this purpose, IRWD's interest in Kern Fan Project facilities, land and easements shall be 50%, unless a Special Activities Agreement provides otherwise, and depreciation shall be calculated on a straight line basis and, (i) pumps and electrical improvements shall be deemed to have a useful life of twenty (20) years and all other improvements shall be deemed to have a useful life of fifty (50) years, (ii) each improvement's useful life shall be measured from its initial installation or most recent replacement or refurbishment, whichever is later, and (iii) cost shall be based on the amount of the documented cost of installation of the improvement being valued, prorated as necessary if the improvement was constructed with other improvements that are not part of the Kern Fan Project. Land and easements shall be valued at the fair market value at the time of termination. Land and easement valuation shall be "like for like" and shall be based upon comparable properties with consideration given to location, zoning, and land use. If RRB elects not to exercise its first right to acquire IRWD's interest in Kern Fan Project facilities, land and easements, IRWD may hold its interest or sell its interest to a mutually acceptable third party. Upon termination, and consistent with articles 3(C) and 3(F), RRB and IRWD each respectively shall retain their ownership of water stored in their respective shares of the Kern Fan Project's storage capacity, and each shall retain discretion to hold, recover or otherwise dispose of their water, including transferring stored water into another existing water banking project.

- (1) The Authority shall continue to exercise the powers described herein until the Parties terminate this Agreement.
- (2) Upon termination, the Authority shall continue to exercise only such powers as to enable it to pay and discharge all costs, expenses, and charges legally incurred hereunder, and to dispose of, divide, and distribute any property acquired as a result of the Authority's operations.
- (3) Upon termination, the Authority shall continue to be responsible for the payment of any expenses, liabilities, or obligations between the Parties to this Agreement incurred prior to withdrawal. (Solely by way of example, this provision would require payment for rights and obligations incurred pursuant to Government Code section 6504.) This requirement shall survive any withdrawal or termination of this Agreement.
- (4) Upon termination of this Agreement, all costs, expenses, and charges legally incurred by the Authority shall be paid and discharged by the Authority. After the disposition of Kern Fan Project facilities, capacities and real or personal property under this article 1, the Authority shall sell any remaining property as may be necessary and shall distribute to the federal or state government such property and funds as are lawfully required; the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the

affected Parties except to the extent otherwise agreed upon by the affected Parties.

- (5) In the event this Agreement is terminated prior to termination of the requirements of the WSIP grant or any other grant used to pay for the Kern Fan Project, the Parties shall be responsible for meeting all of the obligations of the WSIP and any other grants in proportion to their respective ownership of facilities post termination.

- C. **CEQA Compliance.** Formation of this Agreement helps to define a stable and finite project description, which will facilitate completion of CEQA review for the proposed Kern Fan Project. The Authority shall each complete CEQA review for the proposed Kern Fan Project prior to approving, constructing or operating the proposed project. Any real property acquired for the proposed project prior to completion of CEQA review shall be conditioned on completing CEQA review before changing the existing use of the real property. If the performance of CEQA review identifies any significant adverse environmental effects, the Parties each retain their full discretion to terminate this Agreement or to jointly revise this Agreement as necessary to implement any feasible mitigation measures or alternatives that would avoid or reduce such significant effects as provided by CEQA; provided that each Party's discretion to terminate or to jointly revise this Agreement under this article 1(B) shall be limited to responding to any significant adverse environmental effects.

2. **Authority for Joint Powers Agreement**

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with section 6500) relating to the joint exercise of power common to the counties and public agencies. The Parties are each empowered by the laws of the State of California to exercise, in their respective jurisdictions, the powers which will be jointly exercised as set forth herein.

3. **Purposes**

- A. **Creation of Separate Entity.** The purpose of this Agreement is to create a joint powers authority called the "Groundwater Banking Authority" to plan, design, construct, operate and otherwise implement the Kern Fan Project. The Authority shall be a separate legal entity from its member agencies. The purpose of the Authority is to implement the Kern Fan Project, as described in the Recitals, above, which are incorporated herein by this reference.
- B. **Project Benefits.** The benefits of the Kern Fan Project include, but are not limited to, benefits to the water levels in the Kern County Groundwater Subbasin, enhanced water supply reliability for RRB's and IRWD's service areas, reduced dependence of RRB's and IRWD's service areas on existing imported water supplies from northern California, endangered species preservation through reduced demands on

such imported water, and the establishment of temporary wetlands through recharge activity.

- C. ***Allocation of Capacities Provided by Kern Fan Project.*** The primary objective of the Kern Fan Project is to provide 100,000 acre-feet per year ("AFY") of groundwater recharge capacity, 100,000 acre-feet ("AF") of storage capacity for the Parties to capture and recover unallocated SWP Article 21 water, with up to 50,000 AF per year of recovery capacity and up to 500 cubic feet per second of additional conveyance capacity.

The water storage capacity developed under the Kern Fan Project when fully implemented is planned to be 100,000 AF and shall be allocated as follows:

- 25% of storage capacity up to 25,000 AF to the WSIP Public Ecosystem Account
- 50% of remaining storage capacity to RRB
- 50% of remaining storage capacity to IRWD

The water recharge, recovery, and additional conveyance capacity developed under the Kern Fan Project shall be allocated equally between RRB and IRWD, subject to any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project.

RRB and IRWD shall each have first priority access to their own respective shares of capacities in the Kern Fan Project to recharge, store and recover other water supplies, including SWP water, for the independent benefit of each Party. The Parties shall have second-priority access to use each other's unused recharge and recovery capacities. RRB and IRWD may use their respective capacities to implement other independent operating programs or projects with third parties, so long as such use does not impair the ability to provide the WSIP public ecosystem benefits.

Each Party shall submit to the other Party, prior to use of any unused second priority capacity, a preliminary schedule showing rates and quantities of water for recharge and/or recovery to be delivered in the second priority capacity. The Parties shall coordinate schedules and cooperate to avoid impacts to their respective first priority capacities. To the extent that the use of second priority capacity is deemed by the Parties to have resulted in a reduction of recharge or recovery capacity necessary to fully implement a water management program, the Parties shall meet and confer on the appropriate mitigation, which may include use of other recharge and/or recovery facilities not part of the Kern Fan Project.

Each Party may enter into a Special Activities Agreement with the Authority pursuant to article 3(D) describing and approving an independent operating program or project.

- D. ***Special Activities Agreements.*** A Party may enter into one or more written Special Activities Agreements with the Authority providing for its independent choice

whether to participate in or to add a component of the Kern Fan Project or to allow use of its capacity in the Kern Fan Project to implement an independent operating program or project with a third party. For example, IRWD may enter into a Special Activities Agreement providing for installation of additional Kern Fan Project wells to increase recovery capacity for the benefit of IRWD, or RRB may enter into a Special Activities Agreement providing for RRB to reduce its recovery capacity by foregoing the installation of Kern Fan Project wells. The Authority's Board of Directors shall adopt bylaws providing for Special Activities Agreements.

- E. ***WSIP Water.*** For purposes of participating in the WSIP to provide ecosystem public benefits and water supply public benefits during extended droughts or a Delta levee failure, the Kern Fan Project will be operated by recharging and storing unallocated SWP Article 21 water obtained by the Parties ("WSIP Water"). Unallocated SWP Article 21 water deliveries would be made on behalf of IRWD as a landowner in Dudley Ridge Water District ("DRWD") and on behalf of RRB as a sub-unit of the Kern County Water Agency ("KCWA") or any other SWP contractor acting on behalf of either or both Parties. Consistent with article 3(N) of this Agreement, WSIP Water delivered to the Kern Fan Project by each Party will be proportionately applied to each Party's respective storage account consistent with this Agreement's defined "Allocation of Capacities Provided by Kern Fan Project."
- F. ***Ownership.*** The Authority plans to acquire, own, and use up to approximately 1,280 acres of land within the Kern Fan Project designated project area. The Authority will own all property, facilities and capacities of the Kern Fan Project, subject to each Party's rights to use such capacities according to this Agreement, unless otherwise provided for through a Special Activities Agreement. The Authority may acquire or use property outside of the Kern Fan Project area and designated existing and/or new project areas/recharge to meet the Kern Fan Project objectives. The Authority shall own the water stored in the Kern Fan Project's ecosystem public benefit account for the benefit of the State's WSIP, while RRB and IRWD each shall own the water stored in their respective shares of the Kern Fan Project's remaining storage capacity.
- G. ***Hydrogeologic Evaluations.*** RRB and IRWD will equally fund or reimburse through the Authority hydrogeologic studies needed to determine the recharge, storage and recovery capacities and limitations of the Kern Fan Project designated properties.
- H. ***CEQA Compliance Cost and Roles.*** RRB and IRWD will equally fund or reimburse through the Authority the preparation of an Environmental Impact Report ("EIR") for the construction and operation of the Kern Fan Project, including all technical studies necessary to support the EIR. The Authority shall play the role of lead agency, while RRB and IRWD will each play the role of a

responsible agency with respect to any discretionary decisions each Party makes in connection with implementing the Kern Fan Project.

- I. **Other Regulatory Permitting Costs.** RRB and IRWD will equally fund or reimburse through the Authority all regulatory and permitting fees and costs associated with construction of the Kern Fan Project.
- J. **Project Costs.** Any and all WSIP or other grant funds awarded for the Kern Fan Project shall be applied to all eligible capital costs, including, but not limited to, the planning, design and construction costs of the Kern Fan Project, and the Authority will fund all remaining associated costs. RRB and IRWD shall each pay through the Authority half of Kern Fan Project planning, design and construction costs that are not paid by awarded WSIP or other grant funds except as otherwise provided by any Special Activities Agreements governing the Parties' mutually agreeable independent choices whether to participate in or to add a component of the Kern Fan Project.
- K. **Project Construction.** Board of Directors shall adopt bylaws describing the procedures, team and requirements for any planning, design, construction and construction management associated with the Kern Fan Project.
- L. **Project Operation.** RRB shall operate, maintain and repair the Kern Fan Project facilities, subject to approval by the Board of Directors. RRB shall maintain WSIP records accounting for each Party's water recharge, storage and recovery activities pursuant to all applicable WSIP regulations and as further described in bylaws adopted by Board of Directors. The Authority shall be responsible for any and all regulatory and permitting fees applicable to Kern Fan Project operations, including compliance with an anticipated Memorandum of Understanding regarding operation and monitoring of the Kern Fan Project and related Project Recovery Operations Plan, which governs groundwater banking within RRB.
- M. **Operation Costs.** RRB and IRWD shall pay operations, maintenance, energy and replacement ("OME&R") costs consistent with their respective proportional use of the Kern Fan Project and any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project as described in bylaws adopted by the Board of Directors.
- N. **Mutual Obligation to Recharge Ecosystem Public Benefit Account.** At such times when unallocated SWP Article 21 water is available, the Parties shall equally fund the acquisition and recharge of such water for ecosystem public benefits until up to 25% of Kern Fan Project storage capacity, up to 25,000 acre-feet, is full (when the WSIP ecosystem public benefit account is full). Until the WSIP ecosystem public benefit account is full, all recharge of unallocated SWP Article 21 water shall be apportioned 25% to the WSIP ecosystem public benefit account, 37.5% to RRB's share of the Kern Fan Project's remaining storage capacity, and 37.5% to IRWD's share of the Kern Fan Project's remaining storage capacity. After the WSIP ecosystem public benefit account is full, RRB and IRWD may use their respective

capacities to recharge and store other available water, including Kern River Flood Water, to fill their respective water supply public benefits accounts, so long as such water may be used to provide water supply public benefits within the Parties' respective service areas.

- O. ***Kern River Flood Water.*** During times that Kern River Flood Water is available (i.e., when the Kern River Watermaster offers water to all takers willing to sign a "Notice/Order", or the Kern River Watermaster offers water to the California Aqueduct/Kern River Intertie, such water is expected to flood farmed acreage in Buena Vista Lake or is expected to be delivered into the Kern River Flood Channel for delivery out-of-county), this water would follow delivery of WSIP Water, if simultaneously available. Following any such delivery of WSIP Water, RRB shall have first priority to use all Kern Fan Project facilities for recharge of Kern River Flood Water. The first 25% of Kern River Flood Water recharged into the Kern Fan Project shall be deemed owned by IRWD at no cost and the remainder of such stored water shall be deemed owned by RRB; provided that RRB may exercise its discretion to allow IRWD to acquire an additional 25% of such recharged Kern River Flood Water by paying RRB the average price for Kern River water over the preceding two (2) months or \$25 per AF, whichever is greater.. Beginning on January 1, 2020 and on January 1 of each year thereafter, the \$25 shall be increased in an amount equal to the percentage change, if any (but not less than zero) in the Consumer Price Index (All Urban Consumers, All Items) for Western Cities, Populations Less than 1.5 Million, published by the United States Department of Labor, Bureau of Labor Statistics. water into storage.
- P. ***Water Quality.*** The quality of water to be recharged, stored and recovered at the Kern Fan Project shall be consistent, including through blending with other water, with applicable pump-in requirements specified by DWR for the California Aqueduct, as such requirements may be amended from time to time.

4. **Powers**

The Authority is hereby authorized to perform all powers and functions set out in this Agreement, including all powers granted to California water storage districts pursuant to the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) and California water districts pursuant to the California Water District Law (Division 13, commencing with § 34000 of the California Water Code), as amended, and any applicable regulations.

The Authority shall administer this Agreement. Pursuant to Government Code section 6509 and shall undertake all further actions necessary to carry out the purposes of the Authority, the Authority shall exercise its powers in administering this Agreement subject to the restrictions applicable to IRWD. The Authority is hereby further authorized to:

- A. Negotiate with, apply for, contract for, and receive monies from federal, state, county, city, and special district governments, and other public and private entities and agencies to carry out the purposes of this Agreement, and shall disburse and account for funds so received.

- B. Allocate all funds, including discretionary and special purpose funds, received by the Authority as equitably as practicable, based upon the applicable terms of the funding application, fund source requirements, Agency policy, or vote of the Board of Directors, as described in article 6 of this Agreement.
- C. Monitor, evaluate, and take corrective action concerning performance specified in any agreement, and contracts or agreements the Authority has entered into.
- D. Establish performance objectives for subcontractors.
- E. Evaluate the effectiveness of programs undertaken by the Authority.
- F. Maintain financial and statistical records to satisfy federal, state, and other laws and regulations, and provide necessary information for effective program management.
- G. Adopt, promulgate, and enforce such bylaws, rules, and regulations as the Board of Directors deems necessary for operation and management of the Authority and implementation of the purposes of this Agreement.
- H. Negotiate and enter into agreements and contracts.
- I. Employ agents and employees.
- J. Acquire, lease, rent, construct, manage, maintain, hold, and dispose of real and personal property with title to such property being held by the Authority.
- K. Acquire property by eminent domain.
- L. Commission the design, permitting, construction, operation, and maintenance of any facilities required for the Kern Fan Project.
- M. Incur debts, liabilities, and other obligations.
- N. Bring suit and be sued in its own name.

Undertake all further actions necessary to carry out the purposes of the Authority.

5. **Governance**

- A. ***Board of Directors.*** The Board of Directors of the Authority shall consist of four (4) members constituting two (2) members appointed by each Party. Of the two members appointed by each Party, one must be a member of that Party's legislative body and neither appointee may serve as an officer of the Authority (*e.g.*, as general manager or treasurer) while also serving on the Authority's Board of Directors. Each Party's legislative body shall designate an alternate to serve on the Authority's Board of Directors to provide continuity in the event one of a Party's representatives cannot participate in one or more meetings of the Authority's Board of Directors. Such alternates shall be members of either RRB's or IRWD's legislative body or

designees and shall not serve as an officer of the Authority while also serving as an alternate on the Authority's Board of Directors.

- B. **Meetings.** All meetings of the Board of Directors shall be subject to the provisions of the Ralph M. Brown Act (Chapter 3.5 of Division 7, commencing with § 6250 of the California Government Code) and shall be held at a regularly scheduled time. At its first meeting, the Board of Directors shall, by resolution, determine the schedule for its regular meetings.
- C. **Quorum.** A quorum of any meeting of the Board of Directors shall require the attendance of at least one member of the Board of Directors from each of the Parties. In the absence of a quorum, any meeting of the Board of Directors shall be adjourned by the member of the Board of Directors present. In the absence of any members of the Board of Directors, the Clerk of the Board shall adjourn any meeting of the Board of Directors. Vacant positions on the Board of Directors shall not be considered for purposes of determining quorum.
- D. **Voting and Affirmative Decisions.** Voting by the Board of Directors shall be conducted on a one-vote-per-Party basis, meaning that the two RRB directors together may cast one vote and the two IRWD directors may together cast one vote. The vote representing each Party may be cast by either of that Party's two members of the Authority's Board of Directors or their alternates. All decisions of the Board of Directors shall require an affirmative and unanimous vote, meaning that the Board of Directors may not make a decision unless both the RRB directors' vote and IRWD directors' vote are in favor of making a decision; provided that voting on actions related to administration of a previously approved Special Activities Agreement shall be weighted as determined by each Special Activities Agreement. In the event the Authority Board of Directors is deadlocked on a proposed action, then RRB and IRWD shall conduct a joint meeting of their legislative bodies to resolve the deadlock. In the event that such a joint meeting does not resolve the deadlock, then the Parties shall participate in mediation to resolve the deadlock. Finally, in the event mediation fails to resolve the deadlock, either Party may initiate litigation to resolve the deadlock subject to any defenses raised in response to such litigation. This process of resolving deadlocks of proposed actions can be further defined in bylaws adopted by Board of Directors; provided, however, that nothing in this Agreement or the bylaws shall limit either Party's discretion to exercise its own independent judgment upon issues before the Authority in any manner.
- E. **Bylaws.** The Board of Directors shall adopt bylaws detailing how the Board of Directors' business is to be conducted. Those bylaws shall not conflict with the provisions of this Agreement or any law.

6. **General Manager**

The Authority Board of Directors shall appoint a representative of RRB to serve as General Manager of the Authority, unless the Board of Directors elects to appoint another

individual to serve as the General Manager of the Authority. The General Manager shall not be an employee or independent contractor of the same Party as the Treasurer. An assignment to serve as the General Manager of the Authority shall not be construed to be permanent. The General Manager shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors.

7. **Treasurer**

The Authority Board of Directors shall appoint a representative of IRWD to serve as Treasurer of the Authority, unless the Board of Directors elects to appoint another individual to serve as the Treasurer of the Authority. The Treasurer shall not be an employee or independent contractor of the same Party that employs the General Manager. The Treasurer shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors. IRWD shall be the depository and manage custody of all monies of the Authority and maintain all monies under the oversight and direction of the Treasurer. Furthermore, the Treasurer shall:

- A. Receive and receipt all funds of the Authority and place them in the separate accounts established and maintained for the Authority.
- B. Receive and invest funds and be responsible for the safekeeping of all funds of the Authority.
- C. Pay, when due, out of the Authority's funds, all properly approved disbursements due by the Authority including amounts due on outstanding bonds and coupons.
- D. Verify and report to the Authority and the Parties, in writing, on a monthly basis, the amount of money held for the Authority, the amount of receipts since the last report, and disbursements since the last report.

Treasurer may designate other individuals, as approved by the Board of Directors, necessary to carry out the Treasury function.

8. **Accounting and Financial Reporting**

The Treasurer shall have overall responsibility to maintain the accounting books and records of the Authority. This includes maintenance of the accounting records, monthly report preparation of all receipts and disbursement activities and grant administration and compliance. Such reporting activity shall be provided to each of the Authority parties.

9. **Legal Counsel**

Legal Counsel for the Authority shall be selected by the Board of Directors. Legal Counsel shall also serve as the Secretary of the Authority. The Legal Counsel and Secretary shall serve at the pleasure of the Board of Directors.

10. **Staff**

The staff of the Parties shall serve as the staff of the Authority. The primary responsibility for providing adequate staff support for the operation of the Kern Fan Project shall belong to RRB, unless the Board of Directors appoints a IRWD representative as General Manager pursuant to article 6. The primary responsibility for the treasury function and financial accounting of the Authority shall belong to IRWD, unless the Board of Directors appoints a RRB representative as Treasurer pursuant to article 7. The Authority Board shall negotiate rates of reimbursement and payment schedules with the Parties for staff time and incorporate such requirements into the bylaws of the Authority.

11. **Official Bonds**

The General Manager and the Treasurer are designated as public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer or person shall obtain, maintain, and file an official bond. Alternatively, a government crime insurance policy or employee dishonesty insurance policy, including faithful performance, shall be obtained and maintained, with the Authority so long as such insurance policy is in conformance with Government Code section 1463.

12. **Funds and Accounts; Fiscal Year; Annual Budgets**

- A. ***Funds and Accounts.*** The Authority shall establish and maintain such funds and accounts as may be required by the California Government Code, other applicable laws, the Governmental Accounting Standards Board, good accounting practice, this Agreement, and any ordinance, resolution, or policy of the Board of Directors.
- B. ***Funding.*** The Authority's accounts shall be funded with the WSIP grant funding awarded by the Commission or any other grant funding that may be awarded for the Kern Fan Project and with such additional funding that each Party contributes to enable the Authority to successfully implement the Kern Fan Project pursuant to this Agreement; subject to the Parties' respective financial obligations under article 3 of this Agreement.
- C. ***Fiscal Year.*** For the purposes of this Agreement, the Authority shall have such fiscal year from July 1 to and including the following June 30.
- D. ***Annual Budget.*** An annual capital and operating budget shall be prepared or caused to be prepared by the General Manager and presented to the Board of Directors for its adoption or amendment, pursuant to the Authority's article 4 powers, above, not later than May 1 of each fiscal year. The budget shall establish any necessary rates, capital expenditures, and charges to be paid for operation and maintenance activities and such other matters as shall be determined by the Board of Directors.

13. **Records and Reports; Audit**

The Board of Directors shall establish reporting requirements and direct staff to maintain such reports. All books and records of the Authority shall be open to inspection at all

reasonable times by any party to this Agreement or its representatives. Annual audits of the Authority's accounts and records shall be made by an independent certified public accountant or firm of independent certified public accountants selected by the Board of Directors, and reports of such audits shall be filed in the manner provided in section 6505 of the Government Code.

14. **Debts, Liabilities, and Obligations**

The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities or obligations incurred by any Party under this Agreement.

15. **Privileges and Immunities**

All of the privileges and immunities from liability, exemptions from law, ordinances, and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents or employees of any Party when performing their respective functions within their territorial limits, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially.

16. **Indemnification**

A. ***Authority.*** The Authority Board of Directors, officers, representatives, consultants, contractors and agents shall be entitled to defense and indemnification by the Authority as provided under Government Code sections 825 et seq. and section 995 et seq. The Authority shall at all times indemnify, defend and save the Parties from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that the Parties, their Boards of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner relating to the Authority's performance under this Agreement for any action.

B. ***RRB.*** RRB shall at all times indemnify, defend and save IRWD and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of RRB's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents and employees.

C. ***IRWD.*** IRWD shall at all times indemnify, defend and save RRB and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that RRB, its Board of Directors, officers, representatives, consultants,

contractors, agents, and/or employees may sustain or incur in any manner arising out of IRWD's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement for any action, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of RRB, its Board of Directors, officers, representatives, consultants, contractors agents and employees.

- D. ***Mutual Indemnification.*** Except as set forth above, each Party shall indemnify, defend and save the other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that said other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of specific Kern Fan Project operations undertaken on behalf of the indemnifying Party under this Agreement for any action. Without limiting the generality of the foregoing, and by way of example, IRWD shall indemnify, defend and save Rosedale free and harmless from claims of damages and expenses to neighboring water wells that result from recovery operations made on the behalf of IRWD, except to the extent caused by the sole active negligence or willful misconduct of Rosedale. Costs for any claim relating to Kern Fan Project operations that is made and administered pursuant to the *Project Recovery Operations Plan Regarding Pioneer Project, Rosedale-Rio Bravo Water Storage District, And Kern Water Bank Authority Projects* shall be allocated between the Parties in the same manner as claims paid by the parties to said *Project Recovery Operations Plan, a copy of which is attached as Exhibit A to this Agreement.*
- E. ***No Right of Contribution; Indemnification Agreement.*** The indemnification and hold-harmless provisions of article 16 shall apply in lieu of the right of contribution provisions at Government Code sections 895-895.8; the provisions of this article 16 are entered into pursuant to Government Code sections 895.4 and 895.6.

17. **Insurance**

- A. ***Authority.*** During the term of this Agreement, the Authority shall maintain general liability insurance coverage in a sum not less than five million dollars (\$5,000,000) per occurrence. The insurance shall also contain a written endorsement to such policy or policies which names each of the Parties as an additional insured. RRB and IRWD will equally fund through the Authority the general liability insurance coverage premium and any deductible.
- B. ***RRB.*** RRB shall name the Authority as an additional insured covered by RRB's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.

- C. **IRWD.** IRWD shall name the Authority as an additional insured covered by IRWD's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.
- D. If a claim is made against one or the other Party's insurance policy as a result of Kern Fan Project operations, the Parties agree to each pay half of the deductible on each such claim.

18. **Modification**

This Agreement may only be amended by the written agreement signed by authorized representatives of the Parties.

19. **Notice**

Notice under this Agreement shall be made by: (1) overnight courier or (2) certified mail, return receipt requested. Additionally, notice under this Agreement shall be made by electronic mail. All such notices shall be deemed delivered upon actual receipt from (1) overnight courier or (2) certified mail, return receipt requested (or upon first attempt at delivery pursuant to either of the two methods specified herein if the intended recipient refuses to accept delivery).

Notice to IRWD shall be made to:

Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, California 92618
Attn: General Manager
Telephone: (940) 453-5300
Facsimile: (949) 453-1228
Electronic Mail: cook@irwd.com

Notice to RRB shall be made to:

Rosedale-Rio Bravo Water Storage District
P.O. Box 867
Bakersfield, California 93302-0867
Attn: General Manager
Telephone: (661) 589-6045
Facsimile: (661) 589-1867
Electronic Mail: eaverett@rrbwsd.com

20. **Severability**

Should any part, term, or provision of this Agreement be adjudged by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the remaining portions of this Agreement shall remain in full force and effect.

21. **Representations**

Each Party represents and warrants to the other Party that it is a duly organized or constituted entity, with all requisite power to carry out its obligations under this Agreement, and that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the board of directors or other governing body of such Party, and shall not result in a violation of such Party's organizational documents or any agreement to which it is a party or to which it is otherwise subject or bound. Each Party further represents and warrants to the other Party that, to its knowledge at the time it executed this Agreement, there is no pending or threatened litigation involving such representing Party that will affect this Agreement. The Parties have relied on the forgoing representations as a material inducement to execute this Agreement, and should any representation not be correct or true in any material respect, it shall constitute a material breach of this Agreement.

22. **Choice of Law; Venue**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue over any and all disputes arising from this Agreement shall be proper in Los Angeles County, California or in the United States District Court for the Central District of California.

23. **Dispute Resolution**

For matters involving a dispute under this Agreement, the following provisions shall apply:

A. **Mediation**

The Parties agree that any and all disputes, claims or controversies arising under this Agreement, whether for breach, enforcement, or interpretation thereof, shall be submitted to mediation in a mutually agreeable venue. Either Party may commence mediation by providing to the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The Parties covenant that they shall participate in the mediation in good faith, and that they shall share equally in costs charged by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any Party, its agents, employees, experts or attorneys, or by the mediator or any of the mediator's employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. A Party may request arbitration with respect to the matters submitted to mediation by filing a written request for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first; provided, however, the other Party is not required to accept a request for arbitration. The mediation may continue after the commencement of arbitration if the Parties so desire. Unless otherwise agreed by

the Parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this article 23 may be enforced by any Court of competent jurisdiction, and the Party seeking such enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom such enforcement is ordered.

B. Selection of Mediator

The Parties shall first attempt to mutually agree to a mediator. If the Parties fail to agree on the mediator, the Parties shall each nominate and exchange with each other the names of three persons to resolve the dispute. From this group of nominated mediators, the Parties shall select the Mediator. If each of the Parties selects the same Mediator, that person shall be the Mediator. In the event two or more same persons are selected by the Parties, the person whose name precedes the other alphabetically shall be the Mediator. If the Parties do not select the same person, then each Party shall eliminate two of the other's selection and the remaining names shall be randomly drawn in order by either Party. The first drawn shall be the Mediator unless there is a conflict of interest or the mediator cannot serve because of scheduling conflicts. In that case, the second name drawn shall be the Mediator. No Mediator shall be nominated or selected if they have any actual or perceived conflict of interest. If necessary, this process can be repeated to nominate or select a mediator if the final two selected Mediators have any actual or perceived conflict of interest.

24. Force Majeure

All obligations of the Parties, other than payment of accrued monetary obligations, shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, compliance with applicable statutes, regulations, ordinances, laws or other events, conditions or causes beyond the control of the nonperforming Party. In no event shall any liability accrue against a non-performing Party, its officers, agents or employees, for any claim of damage arising out of or connected with a suspension of performance pursuant hereto.

25. Assignment; Delegation

A. ***Prior Written Consent.*** Except as otherwise provided in this Agreement, the Authority and the Parties shall not assign any rights or delegate any duties or obligations arising from this Agreement without the written consent of the Parties. Any attempt at such an assignment or delegation shall be null and void. Any assignment or delegation shall be in writing and shall expressly provide that the assignee or delegatee accepts all rights and duties or obligations of the assignor or

delegator, including but not limited to any obligations imposed as a condition of outside funding of the Kern Fan Project.

- B. ***Temporary Use of Kern Fan Project Capacity.*** Each Party's use of its respective Kern Fan Project capacity to implement another independent operating program or project with a third party shall not be deemed an assignment requiring prior written consent pursuant to article 25(A). The Parties agree that any agreement each might enter with a third party to provide recharge, storage or recovery operations for the third party shall be characterized as providing a recharge, storage or recovery service and not as an assignment, unless an assignment proposed by one Party is approved in writing by the other Party under article 25(a).

26. **Hierarchy of Documents**

This Agreement, as may be amended from time to time, shall govern over all other Authority documents and agreements, including the Bylaws of the Board of Directors.

27. **Entire Agreement**

This Agreement contains the entire agreement between the Parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Modifications, changes or supplements shall not be effective unless in conformance with article 18 of this Agreement. Termination of this Agreement shall not be effective unless in conformance with article 1 of this Agreement.

28. **Joint Drafting and Negotiation**

This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and without regard to or aid of Civil Code section 1654 or similar judicial rules of construction. Each Party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of its terms and the legal consequences thereof.

29. **Counterparts and Effective Date**

This Agreement may be executed in counterparts and be as valid and binding as if each Party signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative.

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30. **Headings**

Article and section headings contained herein are for convenience only. Such headings shall not control or affect the meaning or construction of this Agreement.

IN WITNESS WHEREOF, each Party has executed this Agreement on the date set forth below its signature.

Irvine Ranch Water District

Rosedale-Rio Bravo Water Storage District

By: 

By: 

Name: PAUL COOK

Name: Eric Averett

Title: GENERAL MANAGER

Title: General Manager

Date: 8 April 2020

Date: April 8, 2020

Approved as to Form:

Approved as to Form:



