OCEANO COMMUNITY SERVICES DISTRICT

RESOLUTION NO: 2014 - 16

OCEANO COMMUNITY SERVICES DISTRICT, STATE OF CALIFORNIA

RESOLUTION ENDORSING POLICIES AND PROCEDURES SET FORTH IN THE LOW RESERVOIR RESPONSE PLAN FOR THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ZONE 3

The following Resolution is now offered and read:

WHEREAS, the San Luis Obispo County Flood Control and Water Conservation District ("District") constructed, owns and operates the Lopez Dam and Reservoir, the Lopez Water Treatment Facilities, and the Lopez Water Conveyance System; and

WHEREAS, the District has agreements with the Cities of Arroyo Grande, Grover Beach and Pismo Beach, the Oceano Community Services District and San Luis Obispo County (on behalf of County Service Area No. 12) (collectively, "Zone 3 Member Agencies") for delivery of water from the Lopez Reservoir to the Zone 3 Member Agencies (collectively, "Water Supply Agreements"); and

WHEREAS, the District also releases water from the Lopez Reservoir into Arroyo Grande Creek for the benefit of agriculture and other beneficiaries downstream of Lopez Dam, which are hereinafter referred to as "Downstream Releases;" and

WHEREAS, the Water Supply Agreements include numerous provisions establishing the rights and responsibilities of the District and the Zone 3 Member Agencies; and

WHEREAS, Article 4 of the Water Supply Agreements provide that the District can curtail delivery of water to Zone 3 Member Agencies in situations, including but not limited to, drought conditions; and

WHEREAS, on March 11, 2014, the San Luis Obispo County Board of Supervisors proclaimed a local emergency for the entire County due to exceptional drought conditions; and

WHEREAS, the District and the Zone 3 Member Agencies have prepared a Low Reservoir Response Plan (LRRP) for the purpose of providing greater certainty regarding the quantities of water that will be delivered to the Zone 3 Member Agencies during the current and future droughts and other emergencies when less than 20,000 acre feet of water is stored in the Lopez Reservoir; and

WHEREAS, the LRRP has been developed in consultation with the Zone 3 Advisory Committee and representatives of local agricultural operations; and

WHEREAS, the LRRP includes prescribed actions and an adaptive management approach that together will help to ensure that the needs of the Zone 3 Member Agencies and the beneficiaries of Downstream Releases are met during droughts and other emergencies; and

WHEREAS, during droughts and other emergencies, the LRRP provides incentives for water conservation by the Zone 3 Member Agencies by extending the period in time that the Zone 3 Member Agencies can use water that has been allocated to them in accordance with the Water Supply Agreements and/or as provided in the LRRP; and

WHEREAS, during droughts and other emergencies, the LRRP considers the needs of agriculture and other downstream beneficiaries by prescribing a reduction in water that is allocated to the Zone 3 Member Agencies by eliminating "Surplus Water" allocations to Zone 3 Member Agencies, that pursuant to the Water Supply Agreements, would otherwise result from Downstream Releases; and

WHEREAS, the adaptive management approach in the LRRP provides a reasonable mechanism to manage the Lopez Water Supply during droughts and other emergencies where conditions can change depending on hydrological and other conditions that persist during droughts and other emergencies; and

WHEREAS, it is in the public interest that policies and procedures set forth in the LRRP be implemented.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the Oceano Community Services District, San Luis Obispo County, State of California, as follows:

1. That the Oceano Community Services District endorses the policies and procedures set forth in the Lopez Low Reservoir Response Plan for the San Luis Obispo County Flood Control and Water Conservation District, including the policy pursuant to which the Zone 3 Agencies will only request an amount of "Surplus Water" attributable to their unused entitlements.

2. That the action of endorsing the policies and procedures set forth in the Lopez Low Reservoir Response Plan for the San Luis Obispo County Flood Control and Water Conservation District is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Section 21169 and CEQA Guidelines Section 15261(a) in that the storage and annual release of water for various uses is part of the ongoing operation of the Lopez Reservoir; and CEQA Section 21080(b)(5) and CEQA Guidelines Section 15269(c) in that the endorsement of the policies and procedures set forth in the Lopez Low Reservoir Response Plan for the San Luis Obispo County Flood Control and Water Conservation District is a specific action necessary to prevent or mitigate an emergency.

Upon motion of Director Blackburn, seconded by Director White , and on the following roll call vote, to-wit:

AYES: Directors Blackburn, White and Angello, President Guerrero
NOES: None
ABSENT: Vice President Lucey
ABSTAINING: None

The foregoing resolution is hereby ADOPTED on the 12 th day of November, 2014.

President, Board of Directors

ATTEST:

Marie McGrath, Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

Jeffrey Minnery
District Legal Counsel

By: Jeffrey Minnery
District Legal Counsel

NOTICE OF EXEMPTION

Pursuant to the California Environmental Quality Act
(CA Public Resources Code §21000 et seq.)

TO:	Office of the County Clerk County Government Center San Luis Obispo, CA

Title of the Action:

Agreement to implement the Low Reservoir Response Plan for the Lopez Project (Zone 3 of the San Luis Obispo County Flood Control and Water Conservation District); ED14-087

Location of the Action - Specific:

Oceano Community Services District (OCSD)

Location of the Action - County:

San Luis Obispo

Description of Nature, Purpose, and Beneficiaries of the Action:

The proposed action is Oceano Community Services District's agreement to the municipal and downstream release amounts and protocols specified in the Low Reservoir Response Plan for the Lopez Project. In 2007, the Flood Control and Water Conservation District adopted an Interim Downstream Release Schedule (IDRS) to provide a plan for managing downstream releases from Lopez Dam prior to the approval of the project's Habitat Conservation Plan (HCP). Included in the IDRS is a Low Reservoir Response Plan (LRRP) consisting of a methodology to assess near term reservoir levels and a set of actions that could be taken to mitigate the impacts of low reservoir levels. In response to the current drought, the Zone 3 Technical Advisory Committee has developed municipal delivery and downstream release amounts to ensure delivery of water to urban water contractors, downstream agricultural users, and in-stream environmental values, for the longest feasible period in the event current drought conditions continue.

Name of Public Agency Approving the Action:

Lead Agency: County of San Luis Obispo

Responsible Agency: Oceano Community Services District

Name of Person or Agency Carrying Out the Action:

Lead Agency: San Luis Obispo County Department of Public Works

Responsible Agency: Oceano Community Services District

Exempt Status:

The activity is statutorily exempt from CEQA pursuant to:

1. CEQA Section 21169 and State CEQA Guidelines section 15261(a) (ongoing projects; and

2. CEQA Section 21080(b) (5) and State CEQA Guidelines Section 15269(c) (specific actions necessary to prevent or mitigate an emergency).

Reasons why the action is exempt:

Adoption and implementation of the LRRP by the Oceano Community Services District is not subject to the requirements of the California Environmental Quality Act (CEQA) for each of the following reasons:

Statutory Exemptions

1. Ongoing Project

The California Environmental Quality Act (CEQA) applies only to discretionary government activities that have the potential for a significant effect on the physical environment. However, CEQA exempts certain activities that were approved prior to November 23, 1970 as "ongoing projects". According to the State CEQA Guidelines (Title 14 California Code of Regulations) section 15261(a):

> If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exist:
>
> > A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National

> Environmental Policy Act (NEPA) shall be exempt from CEQA as an on-going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.
> (1) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

Lopez Dam was built in 1968 and filled to capacity in 1969. Since its construction, the dam has operated with municipal contracts and downstream release schedules as a normal, intrinsic part of the ongoing operation of the reservoir (see *Nacimiento Regional Water Management Advisory Commission v. Monterey County Water Resources Agency* (2d Dist. 1993) 15 Cal. App. 4th 200, 207-208 [19 Cal. Rptr. 2d 1] *(Nacimiento).* These schedules have been adjusted over time to address various changes in requirements, primarily in response to changing downstream and environmental needs. However, modifying municipal and downstream release volumes has been a key part of the operation of the reservoir since its construction.

The downstream release amounts proposed in the LRRP downstream releases, at or above inflow amounts, will occur for the months of June, July, August, and September both to ensure adequate water for in-stream environmental uses but also for agricultural uses. Should the reservoir fall to below 5,000 acre feet in storage, summer downstream releases will be adjusted to match in-flows, thereby ensuring that the LRRP will have no effect on downstream environmental needs. In a continuing drought such releases would continue until such time as releases from the darn are no longer possible, at approximately 4,000 acre feet in storage. As a result, implementation of the LRRP will have no new significant effects on the environment.

2. Emergency Project

Section 15269(c) of the State CEQA Guidelines concludes that the following emergency projects are exempt from the requirements of CEQA.

> (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

Adoption and implementation of the LRRP will help ensure that a water supply emergency of critical proportions does not occur within the next 3-4 years in Zone 3 under current drought conditions. Because the LRRP is effective only when reservoir levels drop below 20,000 acre feet in storage and the system is under an emergency proclamation by the Board of Supervisors, the LRRP is not a long-term change in water delivery or downstream release rates.

Nevertheless, this notice of exemption will not exempt future actions that may arise from the on-going operation and maintenance of the Lopez Water Project.

Future activities that fall within the CEQA definition of "project" and are not otherwise exempt in their own right will require compliance with CEQA.

Responsible Agency Contact Person	**Area Code Telephone**
Paavo Ogren, General Manager Oceano Community Services District	(805) 481-6730

Paavo Ogren, General Manager
Oceano Community Services District

Date

Low Reservoir Response Plan- Public Review Draft

for the

San Luis Obispo County Flood Control and Water Conservation District Zone 3

October 6, 2014

Table of Contents

1 INTRODUCTION, PURPOSE AND PLAN ADOPTION

The Low Reservoir Response Plan (LRRP) describes a set of actions that the San Luis Obispo County Flood Control and Water Conservation District (District) Zone 3 will implement when the amount of water in storage within the Lopez Reservoir drops below 20,000 Acre-Feet (AF) provided that the District's Board of Supervisors has declared an emergency related to Zone 3. The purpose of the LRRP is to limit downstream releases and municipal diversions from Lopez Reservoir during periods of low reservoir storage (i.e. less than 20,000 AF) to preserve water within the reservoir, above the minimum pool level, for a minimum of 3 to 4 years under continuing drought conditions. The criteria for reducing municipal diversions and downstream releases are summarized in Section 3.

Droughts have unpredictable impacts on water supplies. The duration of droughts and the actual amount of rainfall and run-off during droughts can differ significantly. As a result, the LRRP has been developed to provide an initial set of prescribed actions combined with an adaptive management approach. The purpose of the LRRP is to act as the guiding document during drought emergencies, as outlined in the Interim Downstream Release Schedule (IDRS). The initial prescribed actions establish baseline actions, and several adaptive management scenarios are included so that actual hydrological conditions can be evaluated during a drought. In summary, ongoing evaluation of actual hydrological conditions is needed during a drought, and through the adaptive management approach, prescribed actions can be modified, if needed, so that the 3-4 year target can be achieved.

The District's Board of Supervisors (BOS) is responsible for final adoption of the LRRP. Prior to adoption by the Board of Supervisors, the following steps are necessary:

1. Development of the draft LRRP guided by the Zone 3 Technical Advisory Committee (TAC).
2. Review of the draft LRRP with Zone 3 agricultural stakeholders.
3. Consideration of policy direction that may be provided by any of the governing boards of the Zone 3 agencies as the draft LRRP is being developed.
4. Review and approval by the Zone 3 Advisory Committee (AC).
5. Formal approval by the governing boards of the Zone 3 member agencies, by resolution, with appropriate findings to address the following:
    a. The California Environmental Quality Act (CEQA).
    b. Emergency provisions that are unique and necessary to the LRRP, but which may differ from contract provisions that control Zone 3 operations and deliveries during normal operating conditions.
6. Final approval by the BOS.
7. Enacting the LRRP as described in this document and outlined in Appendix A.

2 BACKGROUND

Since completion of its construction in 1969, the Lopez reservoir has experienced extended periods of low reservoir inflow that have led to decreased storage levels within the lake. Analysis of historical storage data from Lopez Reservoir identified that the lowest storage water level (16,455 AF) within the

reservoir occurred in November of 1992. Figure 1 shows monthly storage levels within Lopez Reservoir since April 1969. Since 1992, there have been significant changes in dam operations, (e.g. Interim Downstream Release Schedule (IDRS) implementation) that affect the amount of water that is released and diverted from the reservoir on an annual basis. Modified operations and historic drought conditions have highlighted the need for evaluation of LRRP reduction scenarios.

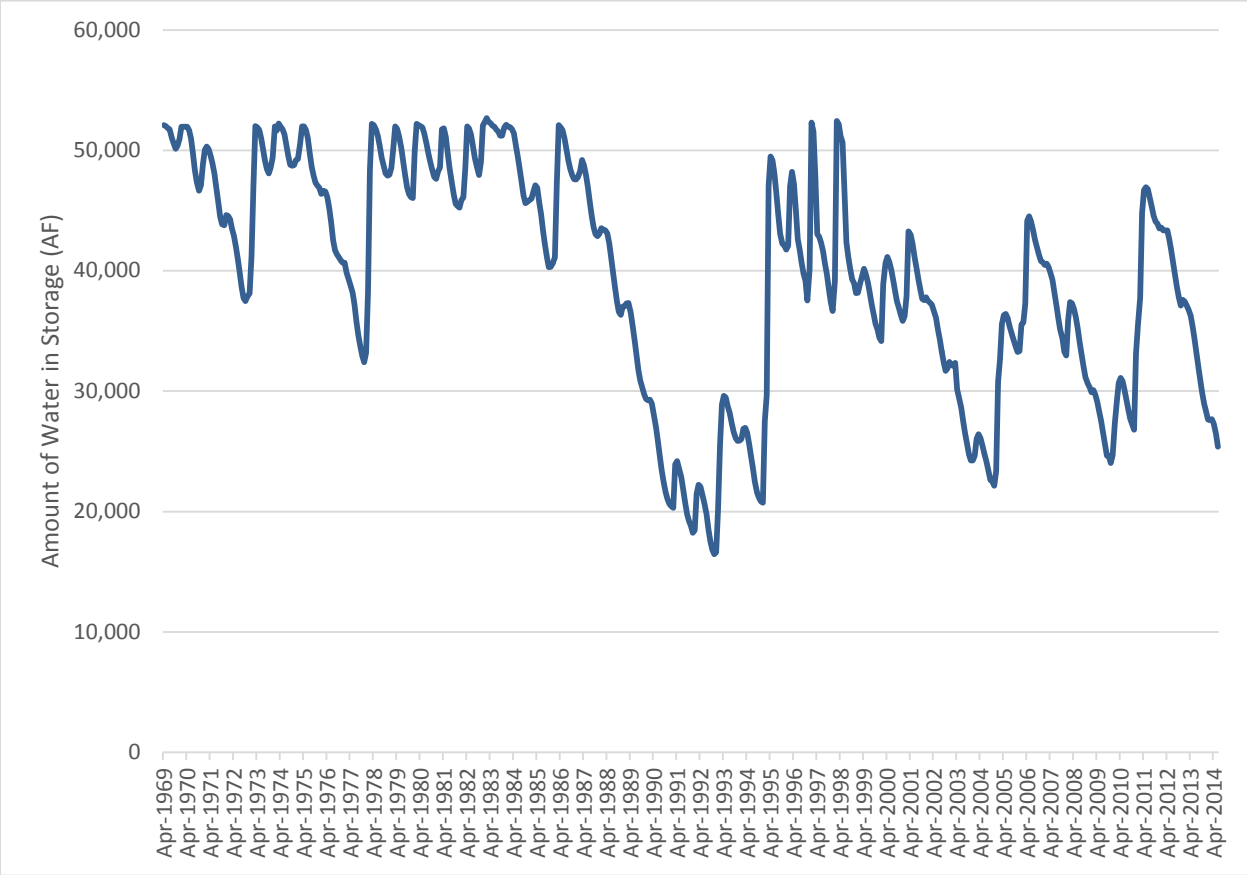


Figure 1. Lopez Reservoir Storage

3 LRRP ELEMENTS

3.1 ENACTING THE LRRP AND INITIAL PRESCRIBED ACTIONS

The LRRP is automatically enacted if the total volume of water in the Lopez Reservoir falls below 20,000 AF and the BOS has declared an emergency related to Zone 3. The initial prescribed actions, once the LRRP is enacted, are as follows:

- Reductions in entitlement water deliveries as set forth in Table 1; and
- Reductions in downstream releases as set forth in Table 2, with actual releases timed to best meet the needs of agricultural stakeholders and to address environmental requirements; and
- No new allocations of Surplus Water from unreleased downstream releases; and

- Extension of time that agencies can take delivery of existing unused water; throughout the duration that the Drought Emergency is in effect, subject to evaporation losses if the water is not used in the year originally allocated.

3.2 ADAPTIVE MANAGEMENT

To provide the District, the Zone 3 agencies and agricultural stakeholders with sufficient flexibility to adapt to changing drought conditions and to address the environmental requirements, the LRRP includes an adaptive management component that allows the initial prescribed actions to be modified and adapted to the specific drought conditions. The steps for modifying the initial prescribed actions are outlined below and are show in Appendix A.

1. The TAC will review several factors including the time of year that the LRRP is enacted, when the reservoir level drops to lower triggers, and Hydrologic Conditions including but not limited to: predicted climatic conditions; anticipated reservoir inflow; and the availability of the Zone 3 agencies' other water supplies.
2. If determined to be necessary, the TAC will make a recommendation to the AC on a strategy for modifying the initial prescribed actions, hereafter referred to as an Adaptive Management Strategy.
3. Upon review of the TAC's recommendation, the AC will vote to approve, deny, modify or continue consideration of the Adaptive Management Strategy for a period not to exceed 30 days, at which time the AC will act to approve, deny or modify. If approved by the AC, the Adaptive Management Strategy will be implemented 14 days following its approval. If the Adaptive Management Strategy is approved, denied, or modified by the AC, AC members, Zone 3 member agencies, and other 3rd parties in interest may appeal to the BOS, within 14 days. If no appeal is made to the BOS, the AC action will be final.
4. If appealed to the BOS, the BOS action shall be final.

3.3 REDUCTION & RECOVERY TRIGGERS

To provide the District, Zone 3 agencies and the agricultural stakeholders with an initial framework for water supply planning, Reduction & Recovery Triggers, tied to the amount of water within the reservoir, were developed for the LRRP. Under the initial prescribed actions the Reduction & Recovery Triggers were set for the following storage levels: 20,000; 15,000; 10,000; 5,000; and 4,000 AF. As the amount of water in the reservoir drops below or rises above these triggers, the TAC will review the hydrologic condition and if necessary, utilize adaptive management to modify municipal diversions and downstream releases to meet the objectives of the LRRP.

Example scenarios provided in Appendix B show how the reservoir would respond to the implementation of the initial prescribed actions and an alternate reduction strategy under various historical hydrological patterns.

3.4 MUNICIPAL DIVERSION REDUCTIONS

Upon enactment of the LRRP, the initial prescribed actions dictate that municipal diversions are to be reduced according to the reduction strategy described in Table 1, which includes Reduction Triggers, reduction percentages and resulting municipal diversions. This municipal diversion reduction strategy may be modified through adaptive management, following the protocol outlined in Section 3.2.

Table 1. Initial Prescribed Municipal Diversion Reduction Strategy

Amount of Water In Storage (AF)	Municipal Diversion Reduction	Municipal Diversion (AFY)[1]
20,000	0%	4,530
15,000	10%	4,077
10,000	20%	3,624
5,000	35%[2]	2,941
4,000	100%	0

3.5 DOWNSTREAM RELEASE REDUCTIONS

Upon enactment of the LRRP, the initial prescribed actions dictate that downstream releases are to be reduced according to the reduction strategy described in Table 2, which includes Reduction Triggers, reduction percentages and resulting downstream releases. The Initial Prescribed Downstream Release Reduction Strategy was developed through a collaborative process that included input from the District and agriculture and municipal stakeholders. The resulting downstream releases represent the maximum amount of water that can be released. The District will control the timing of the reduced releases to meet the needs of the agricultural stakeholders and to address environmental requirements. This downstream release reduction strategy may be modified through adaptive management, following the protocol outlined in Section 3.2.

[1] The actual amount of water diverted may vary as agencies extend the delivery of their Lopez Entitlement, as described in Section 3.6.
[2] The 35% reduction provides sufficient water to supply 55 gallons per capita per day (GPCD) for the estimated population of the Zone 3 agencies (47,696 in 2010 per the 2010 Zone 3 UWMP). 55 GPCD is the target residential indoor water usage standard used in California Department of Water Resource's 2010 UWMP Method 4 Guidelines.

Table 2. Initial Prescribed Downstream Release Reduction Strategy

Amount of Water In Storage (AF)	Downstream Release Reduction	Downstream Releases (AFY)[3]
20,000	9.5%	3,800
15,000	9.5%	3,800
10,000	75.6%	1,026
5,000	92.9%	300
4,000	100.0%	0

3.5.1 HCP Reduction Strategy

An alternate downstream reduction strategy that could be implemented through adaptive management includes the Habitat Conservation Plan (HCP) Reduction Strategy. Under the HCP Reduction Strategy, downstream releases would be reduced according criteria outlined in the proposed HCP Water Release Program for consecutive low inflow years. Under this strategy, downstream releases would be either 3 cfs or equal to the average inflow over the previous 14-day period, whichever is less.

3.6 EXTENDED DELIVERY PROVISIONS

Once the LRRP is enacted, and in order to promote conservation and a reduction in the demand on Zone 3 water, Zone 3 member agencies will be provided the ability to extend the time that they may have water delivered, while the BOS drought emergency is in effect. The following is how water allocations to Zone 3 member agencies will be determined at the beginning of each water year while the LRRP is in effect. It is important to note that during a water year, increases and decreases in allocations are possible as a result of adaptive management strategies.

1. At the end of each Water Year (WY) (March 31st), the amount of unused Lopez water from the previous WY will be calculated and documented for each member agency for later use.
2. On April 1st, the quantity of Entitlement Water for the new WY will be documented for each agency in accordance with the LRRP determinations. Unused water from the prior WY is subject to evaporation losses, which are further described in Section 3.6.1.

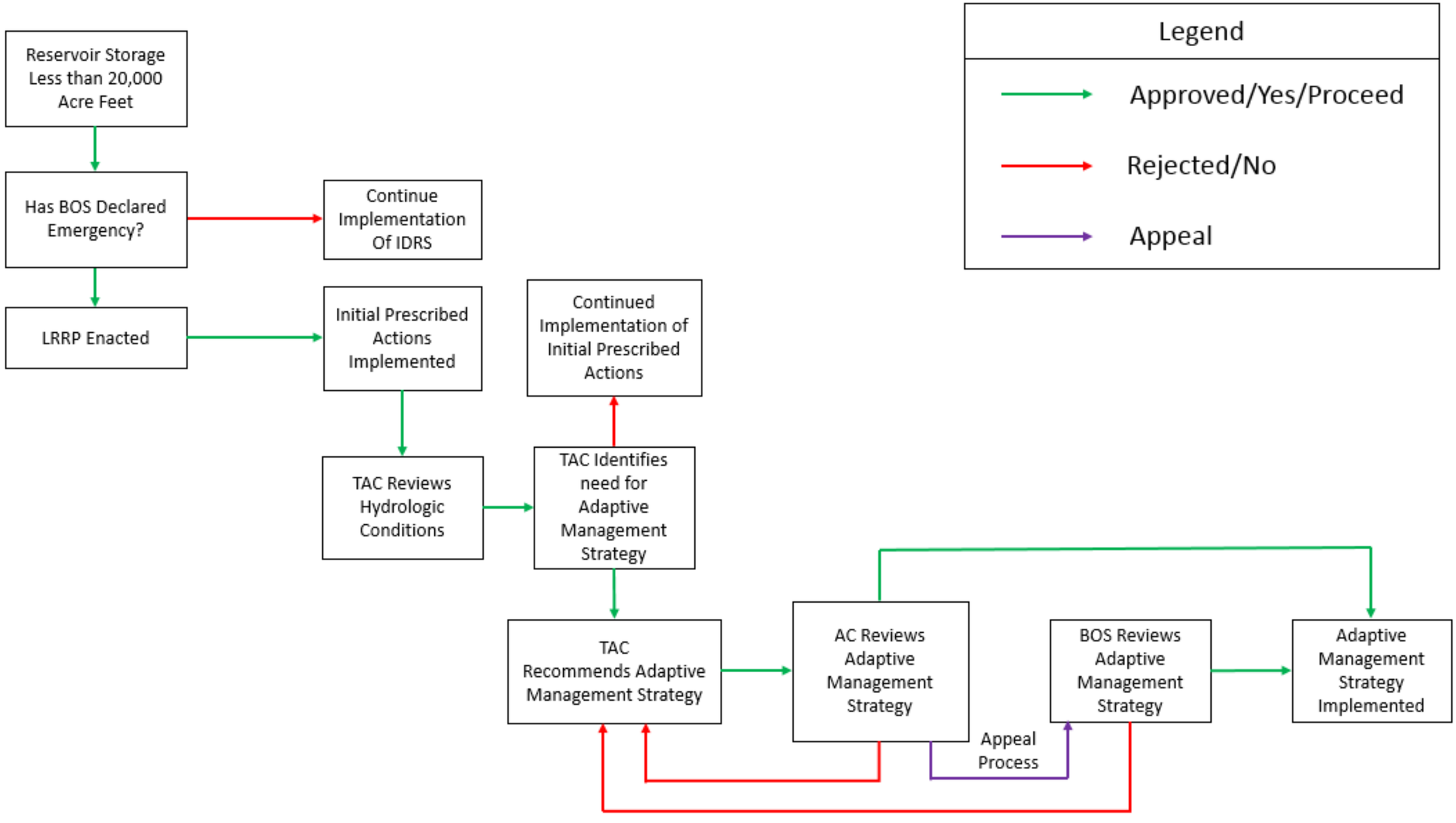
[3] These downstream releases represent the maximum amount of water that can be released. Actual releases may be less if releases can be reduced while still meeting the needs of the agricultural stakeholders and addressing the environmental requirements.

3.6.1 Evaporation Losses

While unused water from the prior WY is retained within the Lopez Reservoir, it is subject to evaporation losses. Evaporation losses are to be calculated quarterly and applied to the total amount of unused prior WY water retained by each agency at the end of the quarter. Evaporation losses will be calculated by comparing the surface area of the reservoir with the unused water against what the surface area would be if there were no unused water retained in the reservoir. Evaporation estimates from the District's weather station would then be applied to the difference in surface area to calculate the increased evaporation losses due to the storage of the unused water. The unused water evaporation losses will be subtracted from each agency's unused water at a rate proportional to the amount of unused water retained by each individual agency.

APPENDIX A. LRRP ENACTMENT & ADAPTIVE MANAGEMENT FLOW CHART

LRRP Enactment & Adaptive Management Flow Chart



A

APPENDIX B. REDUCTION STRATEGY EVALUATION

Scenario A-1-Water Year 1989/90 Inflow & Rainfall **Initial Prescribed Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	3,440	465	2,240	0%	4,530	3,800	-6,666	13,334
2	3,440	465	1,691	10%	4,077	3,800	-5,664	7,671
3	3,440	465	1,260	20%	3,624	1,026	-2,006	5,665
4	3,440	465	1,077	20%	3,624	1,026	-1,823	3,842

[1] Value assumed to be same as Water Year 1989/90 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are controlled by the Initial Prescribed Downstream Release Reduction Strategy, which was developed through a collaborative effort by the District and agriculture and municipal stakeholders.

Scenario A-2-Water Year 1989/90 Inflow & Rainfall **Potential Adaptive Management Scenario-HCP Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	3,440	465	2,240	0%	4,530	2,060	-4,926	15,074
2	3,440	465	1,808	0%	4,530	2,060	-4,493	10,582
3	3,440	465	1,494	10%	4,077	2,060	-3,726	6,856
4	3,440	465	1,188	20%	3,624	2,060	-2,968	3,888

[1] Value assumed to be same as Water Year 1989/90 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the amount of water in storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are assumed to be equivalent to a release rate of 3 cfs or 181 AF/Month or equal to the amount of inflow to the reservoir for that month, whichever is less. This scenario is based on the HCP Hydrologic Analyses report recommended release program provision that sets the maximum release at 3 cfs or the average inflow to the reservoir over the previous 14-day period, when the 3-year running average inflow to Lopez Reservoir is less than 26,190 AFY.

Scenario B-1- Water Year 2013/14
Inflow & Rainfall **Initial Prescribed Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	1,519	337	2,240	0%	4,530	3,800	-8,714	11,286
2	1,519	337	1,546	10%	4,077	3,800	-7,567	3,719
3	1,519	337	870	100%	0	0	986	4,705
4	1,519	337	980	35%	2,941	300	-2,364	2,340

[1] Value assumed to be same as Water Year 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are controlled by the Initial Prescribed Downstream Release Reduction Strategy, which was developed through a collaborative effort by the District and agriculture and municipal stakeholders.

Scenario B-2- Water Year 2013/14
Inflow & Rainfall **Potential Adaptive Management Scenario-HCP Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	1,519	337	2,240	0%	4,530	1,253	-6,167	13,833
2	1,519	337	1,725	10%	4,077	1,253	-5,199	8,633
3	1,519	337	1,341	20%	3,624	1,253	-4,362	4,272
4	1,519	337	933	35%	2,941	1,253	-3,271	1,001

[1] Value assumed to be same as Water Year 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the amount of water in storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are assumed to be equivalent to a release rate of 3 cfs or 181 AF/Month or equal to the amount of inflow to the reservoir for that month, whichever is less. This scenario is based on the HCP Hydrologic Analyses report recommended release program provision that sets the maximum release at 3 cfs or the average inflow to the reservoir over the previous 14-day period, when the 3-year running average inflow to Lopez Reservoir is less than 26,190 AFY.

Scenario C-1- Average of Water Years **Initial Prescribed Reduction Strategy**

2012/13-2013/14 Inflow & Rainfall

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	2,176	806	2,240	0%	4,530	3,800	-7,588	12,412
2	2,176	806	1,627	10%	4,077	3,800	-6,522	5,890
3	2,176	806	1,099	20%	3,624	1,026	-2,767	3,123
4	2,176	806	798	100%	0	0	2,184	5,307

[1] Value assumed to be same as 2 year average from Water Year 2012/13 through 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are controlled by the Initial Prescribed Downstream Release Reduction Strategy, which was developed through a collaborative effort by the District and agriculture and municipal stakeholders.

Scenario C-2- Average of Water Years

2012/13-2013/14 Inflow & Rainfall **Potential Adaptive Management Scenario-HCP Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	2,176	806	2,240	0%	4,530	1,435	-5,223	14,777
2	2,176	806	1,788	10%	4,077	1,435	-4,318	10,458
3	2,176	806	1,484	10%	4,077	1,435	-4,014	6,444
4	2,176	806	1,151	20%	3,624	1,435	-3,228	3,216

[1] Value assumed to be same as 2 year average from Water Year 2012/13 through 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the amount of water in storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are assumed to be equivalent to a release rate of 3 cfs or 181 AF/Month or equal to the amount of inflow to the reservoir for that month, whichever is less. This scenario is based on the HCP Hydrologic Analyses report recommended release program provision that sets the maximum release at 3 cfs or the average inflow to the reservoir over the previous 14-day period, when the 3-year running average inflow to Lopez Reservoir is less than 26,190 AFY.

Scenario D-1- Average of Water Years

2011/12-2013/14 Inflow & Rainfall **Initial Prescribed Reduction Strategy**

Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	4,305	827	2,240	0%	4,530	3,800	-5,438	14,562
2	4,305	827	1,774	10%	4,077	3,800	-4,519	10,044
3	4,305	827	1,453	10%	4,077	3,800	-4,197	5,847
4	4,305	827	1,095	20%	3,624	1,026	-612	5,235

[1] Value assumed to be same as 3 year average from Water Year 2011/12 through 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are controlled by the Initial Prescribed Downstream Release Reduction Strategy, which was developed through a collaborative effort by the District and agriculture and municipal stakeholders.

Scenario D-2- Average of Water Years 2011/12-2013/14 Inflow & Rainfall

Potential Adaptive Management Scenario-HCP Reduction Strategy

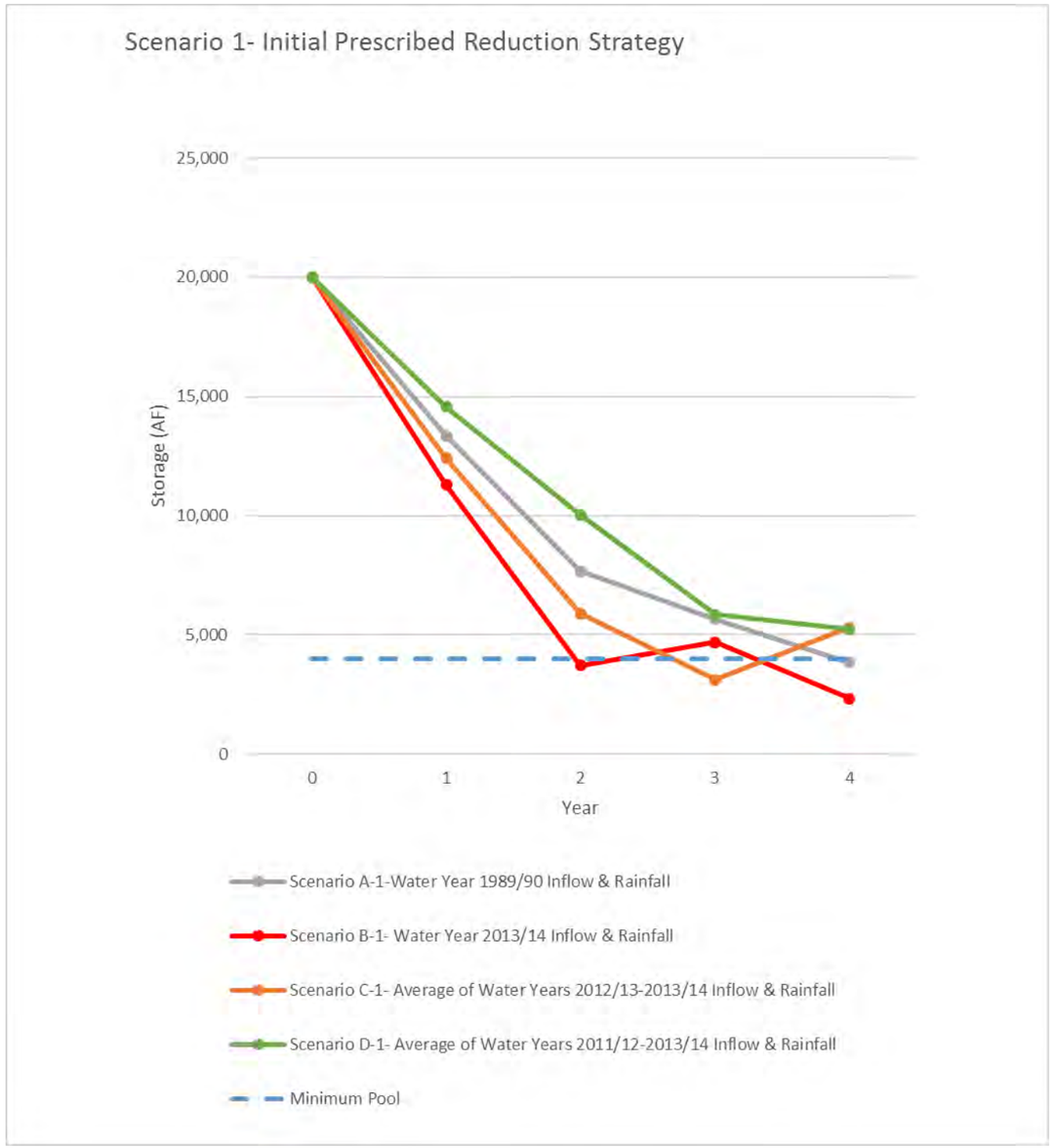
Year	Inflow[1]	Rainfall [1]	Evap. [2]	Municipal Reduction [3]	Municipal Diversions [3]	Downstream Releases [4]	Change in Storage	Total Storage
0								20,000
1	4,305	827	2,240	0%	4,530	1,681	-3,318	16,682
2	4,305	827	1,878	0%	4,530	1,681	-2,956	13,726
3	4,305	827	1,718	10%	4,077	1,681	-2,343	11,383
4	4,305	827	1,553	10%	4,077	1,681	-2,178	9,205

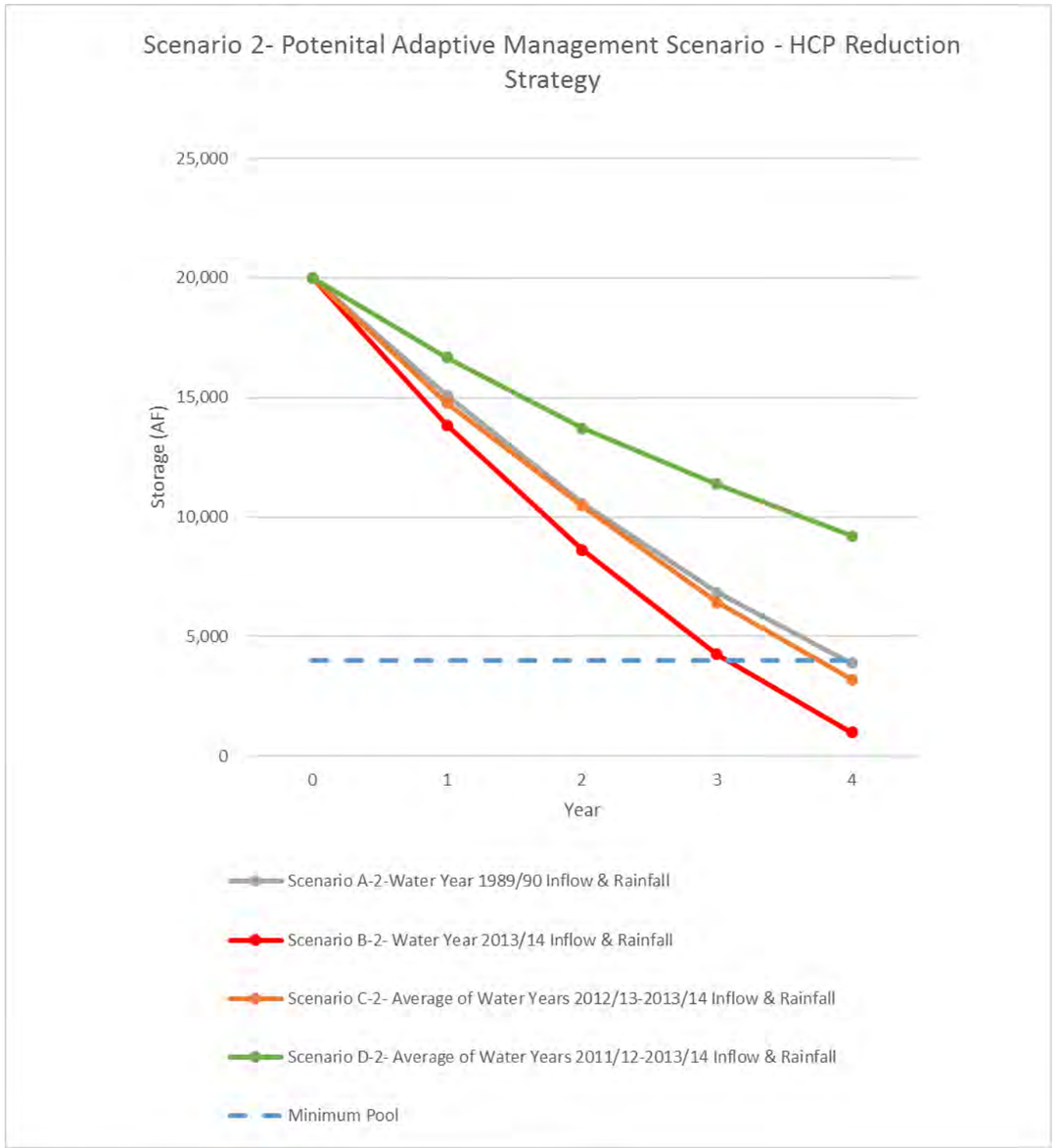
[1] Value assumed to be same as 3 year average from Water Year 2011/12 through 2013/2014 measurement.

[2] Evaporation assumed to equal the maximum historical value between April 1970 and March 2014 (76.25 in/yr in WY 1971-72) applied to the previous year's total lake surface area. Lake surface area estimated based on a lookup table provided by the County, which uses a 2002 survey to correlate reservoir elevation, storage, and surface area.

[3] Municipal diversions are assumed to be the same as the contract amount for the duration of the first year. Years following are dependent upon the amount of water in storage at the end of the water year and municipal reduction assumptions.

[4] Release volumes are assumed to be equivalent to a release rate of 3 cfs or 181 AF/Month or equal to the amount of inflow to the reservoir for that month, whichever is less. This scenario is based on the HCP Hydrologic Analyses report recommended release program provision that sets the maximum release at 3 cfs or the average inflow to the reservoir over the previous 14-day period, when the 3-year running average inflow to Lopez Reservoir is less than 26,190 AFY.


Scenario 1- Initial Prescribed Reduction Strategy
25,000
20,000
15,000
10,000
5,000
0
Storage (AF)
0
1
2
3
4
Year
Scenario A-1-Water Year 1989/90 Inflow & Rainfall
Scenario B-1- Water Year 2013/14 Inflow & Rainfall
Scenario C-1- Average of Water Years 2012/13-2013/14 Inflow & Rainfall
Scenario D-1- Average of Water Years 2011/12-2013/14 Inflow & Rainfall
Minimum Pool


Scenario 2- Potenital Adaptive Management Scenario - HCP Reduction Strategy
25,000
20,000
15,000
10,000
5,000
0
Storage (AF)
0
1
2
3
4
Year
Scenario A-2-Water Year 1989/90 Inflow & Rainfall
Scenario B-2- Water Year 2013/14 Inflow & Rainfall
Scenario C-2- Average of Water Years 2012/13-2013/14 Inflow & Rainfall
Scenario D-2- Average of Water Years 2011/12-2013/14 Inflow & Rainfall
Minimum Pool

OCEANO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2000 - 14

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OCEANO COMMUNITY SERVICES DISTRICT APPROVING A WATER SUPPLY CONTRACT WITH THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

WHEREAS, this Governing Board (the Board) has been presented with a form of Water Supply Contract (the "Contract") by the San Luis Obispo County Flood Control and Water Conservation District (the "District"), respecting the water to be provided through the District's Lopez Dam facility, including its appurtenances (collectively, the "Facility"); and,

WHEREAS, the Oceano Community Services District ("OCSD") has heretofore purchased water from the Facility for its water enterprise, pursuant to an existing water supply contract with the District; and,

WHEREAS, OCSD now wishes to insure the availability of water from the Facility and, to that end, wishes to approve the terms of the Contract and to authorize its execution.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE OCEANO COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The terms and provisions of the Contract, as presented to and reviewed at this meeting of the Governing Board, are hereby approved, and the President of the OCSD Board is hereby authorized and directed to execute the Contract in the name and on behalf of OCSD, in substantially the form presented to and approved at this meeting of the Governing Board.

Section 3. This resolution shall take effect immediately upon its adoption.

Upon the motion of Director Angello, seconded by Director Darneal, and upon the following roll call vote, to wit:

AYES:	President Searcy, Vice President Gallardo, Director Angello, Director Mann, Director Darneal
NOES:	(None)
ABSENT:	(None)
ABSTENTIONS:	(None)

the foregoing Resolution is hereby adopted this 23rd day of August, 2000.

_____
Richard P. Searcy, President

ATTEST:

_____
Gina A. Davis, Deputy Secretary

Oceano Community Services District

1655 Front Street, P. O. Box 599, Oceano, CA 93445 (805) 481-6730 FAX (805) 481-6836

August 23, 2000

TO: Board of Directors, OCSD

FROM: Francis M. Cooney, General Manager

SUBJECT: LOPEZ DAM WATER SUPPLY CONTRACT

BACKGROUND

In 1992, engineering consultants evaluated the stability of the Lopez Dam should a major earthquake occur. Their studies determined that if there was an earthquake of magnitude "7" on the Richter Scale, the dam could fail.

The California Division of Safety of Dams (DSOD) determined that Lopez Dam should be retrofitted and brought to current standards by the year 2002 or be drained. In 1997, San Luis Obispo County began evaluating possible methods of retrofitting the dam and determined that the most acceptable solution would be to use stone columns with berm cut at the cost of approximately $26 million. This retrofit method was determined to be the least expensive option, with the least environmental disruption, the shortest construction period, and would not require further lowering of the reservoir.

DISCUSSION

In connection with the efforts to complete the seismic remediation of Lopez Dam by the date established by the State of California, the parties considered amendments to the existing Water Supply Contracts which would permit bond financing of the improvements. At the latter part of last year, a Contracts Committee comprised of City Managers, City Attorneys, the District's General Manager, and the District's Legal Counsel was formed to review proposed agreement modifications. The Committee consisted of representatives from Arroyo Grande, Pismo Beach, Grover Beach, Oceano, and County Staff. The County's bond counsel also served as staff support to the Contracts Committee. The purpose of the Contracts Committee was to work as representatives of the individual contracting agencies (Arroyo Grande, Pismo Beach, Grover Beach, Oceano) to develop acceptable terms and conditions for modifying the existing agreements.

Public finance practice has evolved a great deal since the 1960s: drafting styles have become more rigorous and formal. The original water supply contract was not designed to meet the strict review standards for today's revenue bond obligations. In today's business world, when rating analysts and bond insurance providers are called upon to review supply contracts supporting revenue bonds, they have certain expectations. The further the contracts fall from these expectations, the more difficult the rating and insurance process, and the higher the costs to the issuer. The proposed Water Supply contract before your Board for consideration is the best attempt to prepare documentation and amendments which would result in the best possible interest rates and terms to the District and its participating agencies.

The following comprises the more substantive provisions to be included in the amended and restated Contracts. These general terms and conditions are specified in much more detail in the attached proposed amended contract, which are being submitted to the governing body of each Agency for approval.

Summary of Contents:

Terms and Conditions. Each of the contracting agencies (collectively, the "Agencies") will need to approve and execute an amended and restated Water Supply Contract with the District, reflecting the Agency's proportionate share of water to be purchased from the Project and its Pro Rata Share of costs of operating and maintaining the Project, debt service on the Bonds, and providing for capital reserves for the Project.

Construction of Remediation; Issuance of New Bonds. As stated above, each Agency will bear its Pro Rata Share of debt service on the New Bonds, in proportion to the amount of water it is purchasing from the Project. However, an Agency may reduce its portion of debt service on its Enterprise Fund by (1) contributing cash towards the remediation project from any lawful source; or (2) passing an assessment or special tax within its jurisdiction, which will go directly towards debt service.

Source of Agency Payments. Unless an Agency has elected to pursue an alternate source of repayment for debt service on the Bonds, as provided in the paragraph above, the Agency will pledge revenues from its water enterprise fund, and will agree to set rates and charges for such enterprise fund at levels to cover all Contract payments, plus a Coverage Factor sufficient to provide coverage that may be required by the municipal capital markets. Failure to set such rates and charges will obligate the Agency to establish a Coverage Account, either with the District or with a depository bank, as additional security for the Agency's Contract obligations.

Term of Contract. The new Contract will run through the date of payment of the final Bond outstanding, or 30 years following its effective date, whichever is later.

Entitlement of Agencies to Project Water. Prior to the distribution of Entitlements under the Contracts, the District shall make available Project water in amounts sufficient to satisfy legally required water releases. Following these legally required set-asides, each Agency shall be entitled to purchase Project water from the District (an "Entitlement"), based upon its Proportionate Share of water designed for distribution to the Agencies, provided that the Entitlements may be reduced following written notice given to the Agency from the District due to (1) permanent or long-term restrictions imposed upon the District caused by (i) extreme changes in the long-term meteorological pattern that reduce the Safe Yield assumptions for the Project, or (ii) multi-year drought conditions; or (2) temporary or short-term limitations based upon (i) reduced ability of the Project either to treat or distribute water because of *force majeure*; (ii) drought conditions; or (iii) water quality standards which reduce the safe, treated output of the Project at the time.

Sales of Surplus Water. Water carried forward afer the distributions described above shall be made available to the Agencies for purchase, at a price equal to the cost thereof.

Capital Reserves. The District shall plan and calculate its needs for capital reserves (the "Capital Reserves") for the Project on at least an annual basis, and shall provide its plan and calculations to the Agencies. Each Agency shall contribute to Capital Reserves in accordance with its Pro Rata Share.

Take-or-Pay Contracts. The Contracts will continue to be take-or-pay obligations of the Agencies, the obligations under which will remain unaffected by the inability of the District to deliver the Entitlements due to the reasons outlined above, or by the failure of any Agency to accept Project water delivered to it.

Voting and Amendments. The Contracts will provide for three types of amendments, having different approval and/or voting requirements, all of which are conditioned upon there being no adverse effect on the Bonds or the New Bonds:

(1) Amendments to the Contracts which have the effect of selling some or all of an Agency's Proportionate Share to another Agency or to a new customer shall be subject to the approval only of the affected Agency(ies)/entity(ies) and the District;

(2) Upon the written request of any Agency, the District may order the expansion of the Project, or the addition of a new or modification of existing Project facilities (an "Additional Project"), so long as the requesting Agency demonstrates that either (a)

(2) the proposed Additional Project will be economically feasible with the financial support of only the requesting Agency, or (b) 100% of the Agencies approve the Additional Project and agree to increase total Project costs sufficient to provide for the costs thereof;

(3) Amendments to this Contract and to the other Water Supply Contracts other than those specified above shall be approved only upon the prior written and unanimous consent of the District, the Agency and all Other Agencies.

Additional Projects Implemented without Consent of the Agencies. At any time, without the consent of, but following notice to, the Agencies, the District shall be entitled to undertake the construction or equipping of any Additional Project, or other improvements to or repairs of the Project if (i) it shall determine that such Additional Project, improvements or repairs are necessary in order to keep the Project functioning at the level and to maintain the Project water supply at the quality required under the Contracts or (ii) competent Governmental Authority shall direct such Additional Projects, improvements or repairs.

Conclusion

There are other provisions and covenants contained in the agreement than those summarized above. Staff has worked cooperatively with the other agencies to draft an agreement that is a functional document and meets the needs of the contracting parties.

Financial Impact

On March 7, 2000, a bond issue, known as Measure C, was passed by voters of Flood Control Zone 3. Measure C was a $13.2 million General Obligation (G.O.) Bond that would finance an estimated 50% of the Lopez Dam Seismic Remediation Project cost to be repaid through Ad-Valorem property taxes on properties within the zone.

As of this date, the total cost of the Lopez Dam Seismic Remediation Project Costs are unknown. The bid opening for the final construction phase is scheduled for September 14, 2000. Should the project costs exceed $30,000,000 (Thirty Million Dollars), OCSD has the option of rescinding its approval of the proposed contract upon giving twenty (20) days written notice to the District (Zone 3).

Water rate increases needed to fund Oceano's share of the Seismic Retrofit Project are unknown at this time and will not be known until after the September 14, 2000, bid opening date. Attached to this report is a projection of the impact to water rates for the projected $26,000,000 (Twenty-six Million Dollars) cost based upon the Engineer's estimate for the project. The attached analysis does not include the 25% Coverage Factor of Agency Debt Service.

As soon as the bid opening occurs, OCSD staff will bring a proposed Ordinance to your Board with recommended rates sufficient to fund OCSD's portion of the Water Supply Contract.

THE RECOMMENDED ACTION BEFORE YOUR BOARD is to: by Board discussion, public comment, motion, second, and roll call vote, adopt OCSD Resolution 2000-14, A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OCEANO COMMUNITY SERVICES DISTRICT APPROVING A WATER SUPPLY CONTRACT WITH THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT.

OCEANO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2000 - 14

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OCEANO COMMUNITY SERVICES DISTRICT APPROVING A WATER SUPPLY CONTRACT WITH THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

WHEREAS, this Governing Board (the Board) has been presented with a form of Water Supply Contract (the "Contract") by the San Luis Obispo County Flood Control and Water Conservation District (the "District"), respecting the water to be provided through the District's Lopez Dam facility, including its appurtenances (collectively, the "Facility"); and,

WHEREAS, the Oceano Community Services District ("OCSD") has heretofore purchased water from the Facility for its water enterprise, pursuant to an existing water supply contract with the District; and,

WHEREAS, OCSD now wishes to insure the availability of water from the Facility and, to that end, wishes to approve the terms of the Contract and to authorize its execution.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE OCEANO COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The terms and provisions of the Contract, as presented to and reviewed at this meeting of the Governing Board, are hereby approved, and the President of the OCSD Board is hereby authorized and directed to execute the Contract in the name and on behalf of OCSD, in substantially the form presented to and approved at this meeting of the Governing Board.

Section 3. This resolution shall take effect immediately upon its adoption.

Upon the motion of Director _____, seconded by Director _____, and upon the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

the foregoing Resolution is hereby adopted this 23rd day of August, 2000.

_____
Richard P. Searcy, President

ATTEST:

_____
Gina A. Davis, Deputy Secretary

CONTRACT BETWEEN

SAN LUIS OBISPO COUNTY FLOOD CONTROL

AND

WATER CONSERVATION DISTRICT

AND

OCEANO COMMUNITY SERVICES DISTRICT

FOR A WATER SUPPLY

Dated as of

August __, 2000

595314.1

EXHIBIT "A"
OCSD RESOLUTION 2000 - 14

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CONTRACT BETWEEN SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND OCEANO COMMUNITY SERVICES DISTRICT FOR A WATER SUPPLY

This Contract (the "Contract"), made this ___ day of August, 2000, by and between the San Luis Obispo County Flood Control and Water Conservation District (the "District"), established under and pursuant to Chapter 1294 of the 1945 Statutes of the State of California (the "State") and Oceano Community Services District, a public agency organized and existing under the laws of the State of California, acting pursuant to the laws of such State (the "Agency"), amends and restates that certain contract for a water supply by and between the District and the Agency, dated October 24, 1966, as amended (the "Prior Supply Contract"), with reference to the following facts:

W I T N E S S E T H:

WHEREAS, the District has heretofore constructed, improved and operated a public works project (the "Project," as more particularly defined below) that provides a supply of water available for use within the District; and

WHEREAS, the State now requires the District to make certain repairs and improvements to the Project for public safety reasons, which improvements (the "Seismic Remediation Improvements") must be financed with the proceeds of certain future obligations of the District; and

WHEREAS, the lands and inhabitants within the jurisdiction of the Agency are in need of water provided by the Project for beneficial uses; and

WHEREAS, the District has provided water from the Project to the City of Grover Beach, the City of Pismo Beach, the City of Arroyo Grande, the Oceano Community Services District and County of San Luis Obispo Service Area No. 12 (being, collectively, the Agency and the Other Agencies, as hereinafter defined) since 1966, pursuant to several water supply contracts, including the Prior Supply Contract (collectively, the "Prior Supply Contracts"), and the parties now wish to amend and restate the Prior Supply Contracts, preserving the same basic structure and obligations; and

WHEREAS, the District desires to sell to public water distribution agencies, including the Agency and the Other Agencies, the water provided by the Project under terms and conditions which, as far as practicable and consistent with the ultimate use of the water, shall be fair and equitable to all such agencies and to the inhabitants of the District; and

WHEREAS, the Agency desires to contract with the District for a water supply to be for the use and benefit of the lands and inhabitants served by the Agency and for which the Agency will make payment to the District upon the terms and conditions hereinafter set forth; and

WHEREAS, the District and the Agency wish to provide for the financing of the Seismic Remediation Improvements and Additional Projects (as defined herein), and for the future

maintenance of the Project in order to preserve the water supply provided by the Project to the Agency; and

WHEREAS, obtaining the necessary financing for the Seismic Remediation Improvements and Additional Projects (as defined herein) will aid the District in meeting its intended communitywide results of: maintaining and encouraging a safe, healthful and pleasant living environment, and encouraging a strong and viable economy;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by the parties hereto, as follows:

Article 1. Definitions. When used in this Contract, the following terms shall have the meanings hereinafter set forth:

"Additional Projects" shall mean those capital projects to be undertaken by the District in addition to the Seismic Remediation Improvements which have the effect of (i) preserving and maintaining the Safe Yield of the Project (a "Type I Additional Project"); (ii) maintaining the quality of water provided by the Project (a "Type II Additional Project"); or (iii) any other capital project agreed to by the Agency and all of the Other Agencies (a "Type III Additional Project").

"Calendar Quarter" shall mean each three-month period commencing on January 1, April 1, July 1 and October 1 of each year.

"Calendar Year" shall mean the twelve-month period from January 1 of a calendar year to December 31 of the same calendar year, both dates inclusive.

"Capital Costs" shall mean costs expended by the District at or appurtenant to the Project, for permanent improvements to the Project or equipment which is capitalizable on the books of the District.

"Capital Reserves" shall mean those reserves established by the District for the Scheduled Maintenance of the Project or for anticipated costs of upgrade and improvements likely to be imposed by Governmental Authority (each, an"External Requirement") in order for the District to continue to operate the Project for water supply purposes, established either (a) on a year-to-year basis by the District in its annual budgets, copies of which shall be provided to the Agency promptly following adoption, or (b) on a multi-year basis by the District through the development and promulgation to the Agency of a long-term capital improvement plan of the District; provided, however, that no Type III Additional Projects shall be funded from Capital Reserves; and provided further, that the District shall not expend any portion of Capital Reserves for any External Requirement until and unless such External Requirement becomes a final order of such Governmental Authority, not subject to further appeal.

"Contract Payments" shall mean those payments due from the Agency to the District hereunder, as more particularly set forth in Article 14 hereof.

"County Board" shall mean the Board of Supervisors of the County of San Luis Obispo, California.

"Coverage Account" shall mean the account established for the Agency either with the District or with a Depository, as provided in Article 18 hereof.

"Coverage Factor" shall mean 25% of Agency Debt Service, determined in accordance with Article 14 hereof, calculated for each Fiscal Year.

"Debt Service" shall mean, in the aggregate, (a) principal and interest (or mandatory sinking fund payments, installment or lease or similar payments due) with respect to all Tax-Exempt Obligations at the time outstanding in accordance with their terms, provided that capitalized interest funded from the proceeds of Tax-Exempt Obligations need not be taken into account, (b) annual costs of administering the Tax-Exempt Obligations, including the annual fees of any trustee or paying agent therefor, and (c) the costs, if any, of annual credit enhancement for the Tax-Exempt Obligations.

"Depository" shall mean a financial institution designated for the deposit and administration of the Coverage Account of the Agency, as and when appointed in accordance with Article 18 hereof.

"Entitlements" shall mean the quantity of water to be distributed to the Agency under this Contract and to the Other Agencies under their Water Supply Contracts with the District, as established in Article 4(B) hereof and of such other Water Supply Contracts.

"Fiscal Year" shall mean the twelve-month period from July 1 of a Calendar Year to June 30 of the immediately following Calendar Year, both dates inclusive.

"General Obligation Bonds" shall mean those certain general obligation bonds of the District, issued pursuant to authorization received from the voters of the District at the election conducted on March 7, 2000, in an aggregate principal amount of not to exceed $13,200,000, supported by a levy of *ad valorem* taxes throughout the District.

"Governmental Authority" shall mean any State, federal or local governmental authority with cognizance over the District or the Project, or any portion thereof, empowered to regulate or control any aspect of its or their operations.

"Operating Segment," as to the Agency, shall mean the segment of the Project constructed for, and providing service directly to, the Agency, which, as at the date hereof, consists of Unit(s) A, B and D.

"Operation and Maintenance Costs" shall mean the reasonable and necessary current expenses of maintaining, repairing and operating the Project, including District administrative expenses directly attributable to Project function, but excluding Capital Reserves and Debt Service, all computed in accordance with generally accepted accounting principles applicable to enterprise funds of government agencies.

"Other Agency" shall mean any other water-distributing public agency of the State, which, having the legal power to do so, executes a water supply contract with the District substantially identical to this Contract, except for agency information, dates, Unit participations, Proportionate Share and Percentage Share, other than for the purpose of purchasing Surplus Water, including, as of the date hereof, the County of San Luis Obispo on behalf of Service Area No. 12, The City of Arroyo Grande, The City of Grover Beach, and The City of Pismo Beach.

"Percentage Share" shall mean the Agency's aggregate attributed share, by percentage, of charges for Operation and Maintenance Costs and Capital Reserves for any given Water Year for each respective Unit, as compared to all of the charges for Operation and Maintenance Costs and Capital Reserves attributable to each such Unit levied against the Agency and all Other Agencies, and as specified for the Agency below:

Unit A	6.69%
Unit B	6.69
Unit C	0.00
Unit D	100.00

Unit E	0.00
Unit F	0.00
Unit G	0.00
Unit H	0.00
Unit I	0.00
Unit J	0.00

"Project" shall mean (A) the 1965 Zone 3 Project described in Resolution No. 377-65 and Ordinance No. 813 of the District, adopted August 17, 1965, consisting of the following works and improvements: (i) Lopez Dam and Reservoir, (ii) Lopez Dam-Arroyo Grande Conduit System, (iii) Arroyo Grande-Avila Conduit System, (iv) Arroyo Grande-Oceano Conduit System, (v) water treatment plant, (vi) terminal reservoir, (vii) all land, easements, rights-of-way, pumping plants, pipes, valves, fittings, machinery and other property necessary for any of the foregoing, and (B) the Seismic Remediation Improvements.

"Proportionate Share" shall mean the percent of the total Entitlements available to the Agency, as compared to the aggregate of all Entitlements given to the Agency and all Other Agencies hereunder and under all Water Supply Contracts in any given Water Year, as set forth in Article 4(B) hereof.

"Rates and Charges" shall mean the rates and charges imposed and collected by the Agency for the provision of water services by its Water Enterprise, or, if the Agency shall instead have levied special taxes as described in Article 14(C)(b) below, such special taxes.

"Recreational Budget Transfers" shall mean the annual transfer ordered by action of the County Board from revenues earned from recreational uses of the Project, based on the

percentage of recreational usage, initially established under the terms of County Board Resolution No. 2000-133, adopted on April 4, 2000.

"Safe Yield" shall mean the safe yield of the Project, calculated and established from time to time in accordance with the provisions of Article 4 hereof, being 8,730 acre-feet of water as of the date hereof.

"Scheduled Maintenance" shall mean the maintenance tasks for the Project which are required to be accomplished less frequently than annually, a portion of the cost of which is set aside in each annual budget of the District in anticipation of such requirement.

"Seismic Remediation Improvements" shall mean those certain improvement, more particularly described on Exhibit A hereto, to the 1965 Zone 3 Project required by State mandate, and necessary in order for the Project to continue to operate as a supplier of water to the District, the Agency and the Other Agencies.

"Surplus Water" shall mean the water available from the Project following distributions of water described in Article 4, paragraphs (A), (B) and (C) hereof.

"Tax-Exempt Obligations" shall mean those certain obligations executed and delivered by or on behalf of the District, representing and evidencing interests of the owners thereof in certain installment payments to be made by the District for the acquisition of the Project, whose proceeds are to be used to finance or reimburse the costs of the Seismic Remediation improvements, in an aggregate principal amount of not to exceed the net amount, following the application of proceeds of sale of the General Obligation Bonds, required to complete the Seismic Remediation Improvements pursuant to State mandate and the District's competitive bid process for such Improvements.

"Total Contract Payments" shall mean all of the payments due from the Agency and the Other Agencies pursuant to Article 14 hereof and the same Article of the other Water Supply Contracts.

"Total Project Costs" shall mean, for any given Water Year, the aggregate amount necessary to provide for (i) Operation and Maintenance Costs; (ii) Debt Service; and (iii) Capital Reserves, as calculated by the District in accordance with Article 14 hereof and noticed to the Agency and the Other Agencies.

"Unit" shall mean those facilities which collectively make up the Project, delineated as follows:

(1) "Unit A" shall consist of the Lopez Dam and Reservoir, including access roads, fish trapping facilities and outlet works, all expenses of executing and delivering the Tax-Exempt Obligations, all moneys necessary to fund interest with respect to the Tax-Exempt Obligations prior to receipt of the first payments under this Contract and the other Water Supply Contracts, and all engineering and legal fees for the entire Project.

(2) "Unit B" shall consist of the terminal reservoir, a pumping plant and bypass conduit, the water treatment plant and the Lopez Dam-Arroyo Grande Conduit System. The "Lopez Dam-Arroyo Grande Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the Lopez Dam outlet works to and including a bifurcation structure located at the intersection of the Highway 101 south frontage road and Brisco Road in Arroyo Grande.

(3) "Unit C" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the bifurcation structure which is a part of Unit B to the intersection of the Highway 101 south frontage road and Eighteenth Street in Grover City.

(4) "Unit D" shall consist of the Arroyo Grande-Oceano Conduit System. The "Arroyo Grande-Oceano Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the south end of the Lopez Dam-Arroyo Grande Conduit System to a connection to the Oceano water system at the intersection of Lancaster Drive and Elm Street in Arroyo Grande.

(5) "Unit E" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west

end of Unit C to the intersection of the Highway 101 south frontage road with Vista del Mar in Shell Beach.

(6) "Unit F" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit E to the intersection of the Sheel Beach Road with El Portal Drive in Pismo Beach.

(7) "Unit G" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit F to the intersection of Avila Road (San Luis Obispo County Road No. 3016) with Ontario Road (San Luis Obispo County Road No. 33090).

(8) "Unit H" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to the intersection of First Street and San Juan Street in the community of Avila Beach.

(9) "Unit I" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit H to the Port San Luis Harbor District Tank site.

(10) "Unit J" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to a storage take site at an approximate elevation of 260 feet above sea level located at a point approximately 1,300 feet westerly of the center line of Highway 101 and 1,500 feet southerly of Avila Drive (San Luis Obispo County Road No. 13015).

"Water Enterprise" shall mean the water system operated and to be operated by the Agency for sales of water to the general public within its jurisdiction.

"Water Supply Contracts" shall mean the water supply contracts respecting Project output, entered into by and between the District and the Other Agencies.

"Water Year" shall mean the twelve-month period from April 1 of a Calendar Year to March 31 of the immediately following Calendar Year, both dates inclusive.

"Zone 3" shall mean the area comprising Zone 3 of the District.

"Zone 3 Advisory Committee" shall mean that certain advisory committee comprised of representatives of the District, the Agency and each of the Other Agencies, appointed by the District, the Agency and the Other Agencies, from time to time and meeting at scheduled intervals to advise the District on matters relating to the Project, this Contract and the Water Supply Contracts.

Article 2. Term of Contract. This Contract shall become effective when the District has executed (a) this Contract with the Agency; and (b) Water Supply Contracts with Other Agencies; which, taken in the aggregate, establish Entitlements for at least 4,530 acre-feet of water from the Project, as set forth in Article 4(B) of this Contract and of such other Water Supply Contracts, and the District shall promptly advise the Agency in writing of the effective date hereof. This Contract shall remain in effect through the later of (i) the date which is six (6) months following the repayment of the final Certificate of Participation outstanding; or (ii) the date which is thirty (30) years from the effective date hereof; provided, however, that the term of this Contract shall automatically be extended for additional periods of five (5) years from the scheduled expiration date hereof, so long as the Agency has not, by the date which is 180 days prior to the scheduled expiration date hereof, given written notice to the District to the effect that it wishes to terminate this Contract. The Agency understands and agrees that each of the Other Agencies has the right to terminate its Water Supply Contract on similar terms and that, if any Other Agency shall so elect to terminate its Water Supply Contract, the Entitlement and corresponding obligations of such Other Agency shall be apportioned among the Agency and the remaining Other Agencies, based upon a recalculation of Proportionate Share or Percentage Share, based, where appropriate, on their access to and use of Units, or as otherwise unanimously agreed by the Agency (unless the Agency shall have withdrawn), all remaining Other Agencies and the District.

The parties hereto understand and agree that the Project must be constructed in accordance with State mandate and that its costs are determined through a competitive bid process applicable to public works undertaken by the County and its agencies, now set for a date on or about September 14, 2000 (the "Project Bids"). Notwithstanding the foregoing paragraph, therefore, the Agency and Other Agencies (collectively, the "Participating Agencies") may rescind their approval of their respective Water Supply Contract and declare it cancelled and of no further force or effect, but only if, following the County's opening of the Project Bids, the lowest response bidder for the remaining work on the Project submits a Project Bid which, taken together with the other Project Costs, would result in a total Project Cost in excess of $30,000,000 (Thirty Million Dollars). The District covenants and agrees to provide prompt notice, and in any event within 48 hours of its determination of the apparent winning Project Bid, to the Participating Agencies of the then-estimated total Project Costs. The Participating Agencies shall have twenty (20) calendar days from the date of receipt of such notice to exercise their rights of termination and recission hereunder; such exercise shall be evidenced by delivery of written notice of such participating Agency's election to the District and to each other Participating Agency. The District covenants and agrees not to award any construction contract based on the Project Bids until after the foregoing twenty-day period has elapsed.

Article 3. Validation. Either the District, the Agency or any Other Agency may file and diligently prosecute to a final decree in a court of competent jurisdiction a proceeding in *mandamus* or other appropriate proceeding or action for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and for the participation of the Agency in the Project hereunder, or for the validation of the Installment Purchase Agreement which is the basis for the Tax-Exempt Obligations, or any of them, or the proceedings of the governing body of the

Agency leading up to and including the making of this Contract and the validity of the provisions thereof and hereof.

Article 4. Distribution and Sale of Project Water. The following provisions govern the distribution of water from the Project to the Agency, to the Other Agencies and for other purposes, in the priorities set forth below:

(A) Legally Required Water Releases. The parties hereto acknowledge and agree that Project water is subject to certain releases and minimum storage requirements imposed by law which are not affected by the terms hereof.

(B) Entitlements. Subject to the foregoing, the District shall make available to the Agency in each Water Year, to the extent possible, 303 acre-feet of Project water. The District will, in order to satisfy this entitlement and the entitlements of Other Agencies, set aside from the Safe Yield the total of 4,530 acre-feet of Project water which will be distributed to the Agency and the Other Agencies, as established under Article 4(B) hereof and of their respective Water Supply Contracts. The Agency's Entitlement comprises 6.69 percent of the aggregate Entitlements awarded under all the Water Supply Contracts, including this Contract. Such percentage comprises the Agency's Proportionate Share hereunder. Notwithstanding the foregoing, the aggregate Entitlements available under this Contract and under the Water Supply Contracts may be reduced, following written notice given to the Agency from the District, due to (1) permanent or long-term restrictions imposed upon the District caused by (i) extreme changes in long-term meteorological patterns that reduce the Safe Yield assumptions for the Project; or (ii) multi-year drought conditions; or (2) temporary or short-term limitations based upon (i) reduced ability of the Project either to treat or distribute water because of *force majeure*; (ii) drought conditions; or (iii) water quality standards which reduce the safe, treated output of the Project at the time.

(C) Surplus Water Rates. Project water remaining after the distribution of Project water as described in paragraphs (A) and (B) above shall comprise "Surplus Water" hereunder. Surplus Water shall be sold in accordance with the provisions of this paragraph.

(1) Surplus Water shall first be offered by the District to the Agency and the Other Agencies in accordance with their Proportionate Shares, with a price for such Surplus Water to be established based on the Operation and Maintenance Cost of the District incurred in delivering the Surplus Water actually purchased by the Agency or the Other Agencies. If the Agency or any Other Agency shall commit in writing to purchase Surplus Water from the District under this subparagraph, it shall be obligated to pay for such Surplus Water, whether or not in fact ordered from the District or accepted by the Agency, so long as such Surplus Water was in fact available for the period in question. Neither the Agency nor any Other Agency shall resell Surplus Water at any time to third parties, without the prior written consent of all Other Agencies.

(2) The District may offer to sell and deliver any Surplus Water not purchased by the Agency or the Other Agencies hereunder to any other prospective purchaser without right of renewal, in a manner and at prices which will return to the District the largest net revenue practicable, but in no event at prices less than those at which such Surplus Water is offered to the Agency, unless the Agency is first allowed another opportunity to purchase such Surplus Water at the lower price, and in each case, attempting to recapture the Operation and Maintenance Cost, the variable costs, if any, and Debt Service attributable to the volume of Surplus Water actually purchased by such third parties, at the highest price the market will then bear.

(3) All revenues derived by the District from the sale of Surplus Water to the Agency, any Other Agency or any third party hereunder shall be applied as a credit to the obligations of the Agency and the Other Agencies, based on the Proportionate Shares of the Agency and each Other Agency.

(D) Surplus Water. Beginning with the 2000-01 Water Year, Surplus Water shall be the portion of the Safe Yield for Project water remaining after distributions of water during the said previous Water Year, as described below.

Surplus Water shall be calculated for each Water Year by subtracting from the Safe Yield of the Project an amount equal to the sum of the quantity of water released downstream during the immediately prior Water Year, which shall not exceed 4,200 acre feet unless legally required by Article 4(A) hereof, and the quantity of Entitlement water delivered to the Agency and the Other Agencies during the immediately prior Water Year, excluding downstream releases and Entitlement deliveries that occurred during the period of time that the District determined that continuous spillway flow was occurring at Lopez Dam.

The District shall notify the Agency of the total amount of Surplus Water available for the current Water Year, and once so declared by the District, said amount shall not be changed by the District without first obtaining the consent of the Agency and all Other Agencies.

Surplus Water purchased by the Agency will be delivered to Agency in the manner provided for the delivery of its Entitlement and to the extent that all of said surplus water purchased by Agency is not so delivered by the end of the Water Year in question, then such undelivered amount shall revert to District and shall not thereafter be available to Agency.

Article 5. Water Shortages. From time to time during the term of this Contract, there may occur a shortage in the quantity of Project water available for delivery to the Agency by the

District under this Contract, including, without limitation, for the reasons enumerated in Article 4(B). In such event, no liability shall accrue against the District or any of its officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of any reason beyond the control of the District. In any Water Year during which such a shortage has caused a reduction as described in said Article 4(B), so that the total quantity of the Entitlements available for the District to distribute is less than the total established in said Article 4(B), following giving of notice by the District as provided in Article 4(B), the Proportionate Share of the Agency and each Other Agency under its Water Supply Contract shall be applied to such reduced amount in determining the volume of Project water to be delivered to the Agency and such Other Agencies in such Water Year.

Article 6. Completion of Seismic Remediation Improvements. The Agency understands and acknowledges that the District intends to commence and complete the Seismic Remediation Improvements with due diligence; in order to finance the construction of the Seismic Remediation Improvements, the Agency understands and agrees that the District will have to cause the execution and delivery of the Tax-Exempt Obligations on terms and conditions favorable to the District, the Agency and the Other Agencies, to be established at the time of sale of the Tax-Exempt Obligations. In particular, the Agency covenants and agrees that:

(A) The District shall contract for the public works comprising the Seismic Remediation Improvements on such terms as the District, in its sound business judgment, may deem in the best interests of the District, the Agency and the Other Agencies, but only following consideration by the Zone 3 Advisory Committee of any such contracts in excess of the minimum standards for contracts of a similar type then mandated for formal approval by the County Board (the "County Standards"); provided, however, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(B) The District may engage, but only (except in an emergency, in which case no such consideration shall be required as a precondition) following consideration by the Zone 3 Advisory Committee of any such contracts in excess of County Standards, contractors and consultants, including, without limitation, environmental specialists, engineers, financial consultants, underwriters, attorneys and accountants (collectively, the "Consultants"), as may be necessary in order to plan and construct the Seismic Remediation Improvements and to issue and sell the Tax-Exempt Obligations, on such terms and conditions as the District shall determine; provided, however, that the District and the Agency hereby covenant and agree that all such contracts already in place as of the effective date of this Contract shall be deemed noticed to and considered by the Zone 3 Advisory Committee; and provided further, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(C) The District may authorize and sell at either public or private sale, or cause to be executed and delivered, the Tax-Exempt Obligations at any time following the effective date hereof, to provide for the financing or reimbursement to the District of the costs of the Seismic Remediation Improvements, to establish a reserve fund for the Tax-Exempt Obligations and to pay the costs of delivery thereof;

(D) The Agency will execute and provide such instruments, certificates and agreements as may be necessary in order for the District to deliver the Tax-Exempt Obligations, including, without limitation, information for inclusion in the disclosure document for the Tax-Exempt Obligations and a continuing disclosure agreement to permit compliance with Rule 15c2-12 of the Securities and Exchange Commission, respecting the Agency's financial condition and operations; and

(E) The Agency will cooperate with the District and its Consultants in connection with the planning and construction of the Seismic Remediation Improvements and the authorization and delivery of the Tax-Exempt Obligations.

The District covenants and agrees to use its best efforts to complete the Seismic Remediation Improvements by a date no later than June 30, 2002.

Article 7. Delivery of Water. All water to be furnished to the Agency pursuant to this Contract shall be delivered to the Agency at the intersection of Lancaster Drive and Elm in the City of Arroyo Grande.

If the Agency shall desire at any time during the term of this Contract to change the address at which it receives water from the District hereunder, or to install additional points of delivery, it may do so if it furnishes all funds necessary to cover any District expenses involved, or if it undertakes the construction of the necessary conduits and appurtenances at its own expense; provided that the Agency shall not undertake any such construction until it has first obtained District approval of the plans and specifications for such work. Upon the receipt of a request for a change in or addition to the place of delivery of water thereunder, and the deposit of any required funds as set forth in this paragraph, the District shall, if it has elected to perform its own construction of conduits and appurtenances, diligently proceed to construct the same.

Article 8. Measurement. All water furnished pursuant to this Contract shall be measured by the District at each point of delivery established pursuant to Article 7 hereof with equipment satisfactory to the District and the Agency. Said equipment shall be installed, operated and maintained by the District. All determinations relative to the measuring of Project water shall be made by the District and, upon request of the Agency, the accuracy of such measurement shall be investigated by the District and certified to the Agency in writing. Any error appearing in the course

of such investigation and certification shall be cause for an adjustment by the District. The Agency may inspect any such measuring equipment for the purpose of determining the accuracy thereof, at its own expense at reasonable times upon reasonable notice. The District will install, or cause to be installed, backflow prevention devices in connection with such measuring equipment to prevent Project water delivered to the Agency or to the Other Agencies from returning to the District's lines.

Article 9. Time for Delivery of Project Water. The amounts, times and rates of delivery of Project water to the Agency during any Water Year shall be in accordance with a water delivery schedule determined in the following manner:

(A) On or before October 1 of each Calendar Year, the Agency shall submit in writing to the District a preliminary water delivery schedule subject to the provisions of this Article and Article 4, indicating the amounts of water desired by the Agency during each month of the succeeding three (3) Water Years.

(B) Upon receipt of a preliminary schedule the District shall review it and after consultation with the Agency shall make such modifications in it as are necessary to insure that the amounts, times and rates of delivery to the Agency will be consistent with the available supply of water from the Project, considering the current delivery schedules of all Other Agencies. On or before January 1 of each Calendar Year, the District shall determine and furnish to the Agency a water delivery schedule for the next succeeding Water Year, which shall show the amounts of water to be delivered to the Agency during each month of that Water Year.

(C) A water delivery schedule may be amended by the District upon the Agency's written request, and subject to (i) the circumstances described in Article 4(B) hereof and (ii) the pre-existing requirements of the District under the water delivery schedules with the Other Agencies for the same period of time. Proposed amendments to such schedules shall be submitted by the Agency

within a reasonable time prior to the date the desired change is to become effective, and they shall be subject to review and modification by the District in the same manner as the preliminary water schedule described in paragraph (B) above.

(D) In no event shall the District be obligated to deliver Project water to the Agency at a combined instantaneous rate of flow exceeding 0.14 cubic feet per second.

Article 10. Responsibility for Delivery and Distribution of Water Beyond Delivery Points. After Project water has passed the delivery points established in accordance with Article 7 above, neither the District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Agency or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water beyond said delivery points, and the Agency shall defend, indemnify and hold harmless the District and its officers, agents and employees from and against any such damages or claims of damage.

Article 11. Operation and Maintenance of Project and Water Enterprise. The parties hereto acknowledge and agree that the primary goal of the District shall be to maximize deliveries of Project water, subject to Safe Yield and cost considerations, as to which the District shall be expected to exercise sound business judgment.

(A) The District covenants and agrees that it will operate and maintain the Project, as improved by the Seismic Remediation Improvements, in accordance with all governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the District. The District further covenants and agrees that it will

maintain and operate the Project and all pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind in or that shall be placed in any building or structure or made a part of any conduit or easement now or hereafter at any time constituting part of the Project in good repair, working order and condition, and that it will from time to time inspect and test all Project facilities against then-current water supply industry standards, and to pursue or recommend all necessary and proper replacements, repairs, renewals and improvements thereto.

(B) In order to satisfy its covenants set forth in this Article, the District shall determine, prior to each Water Year, the amount of Capital Reserves necessary for the Project for the upcoming Water Year, shall prepare its draft annual budget by no later than March 1 to reflect such Capital Reserves, shall provide copies of each such budget to the Zone 3 Advisory Committee, the Agency and the Other Agencies for review and comment, prior to its distribution to and consideration by the Board of Supervisors of the County, and shall, if deemed necessary or advisable, develop and promulgate to the Agency and the Other Agencies a multi-year improvement plan for the Project, reflecting the annual requirements for Capital Reserves.

(C) At any time, or from time to time, without the consent of the Agency or any Other Agency, the District shall be entitled to undertake the construction or equipping of any Additional Project or other improvements to or repairs of the Project not comprising a Type III Additional Project, but only if (i) it shall determine that such Additional Project, improvements or repairs are necessary in order to keep the Project functioning at the levels and to maintain the water supply at the quality required hereunder and under the other Water Supply Contracts; or (ii) competent Governmental Authority shall direct such Additional Projects, improvements or repairs; provided that, before an Additional Project other than a Type III Additional Project, improvements or repairs may be ordered pursuant to direction of competent Governmental Authority, the District,

the Agency and the Other Agencies shall be afforded notice thereof and the opportunity to oppose the imposition of such requirement before a court of competent jurisdiction; only if a final judgment is thereafter rendered, in favor of such Additional Project, improvements or repairs, or if no such opposition is filed, shall an Additional Project other than a Type III Additional Project, improvements or repairs be constructed or made pursuant to this clause (ii). Emergency repairs to the Project may, notwithstanding the above, be made by the District without the requirement of notice and opportunity to oppose described herein. It is the intention of the parties hereto that the District shall, as and when necessary, be deemed to assign its rights to pursue opposition to the creation of any obligations hereunder by a Governmental Authority to the Agency and/or the Other Agencies, as their interests may appear, in recognition of the status of the Agency and the Other Agencies as third party beneficiaries hereof and real parties in interest. No preexisting right of the Agency or the Other Agencies to pursue actions administratively, by law or in equity associated with the construction, maintenance and operation of the Project shall be abrogated by the Agency or such Other Agencies by its or their execution of this Contract or the other Water Supply Contracts.

(D) For its part, the Agency covenants and agrees:

(1) not to sell, lease or otherwise dispose of its Water Enterprise or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Water Enterprise, nor to enter into any agreement or lease which would impair the operation of the Water Enterprise or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this Contract; *provided, however,* that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Water Enterprise may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Water Enterprise below the levels required under this Contract;

(2) to maintain and preserve the Water Enterprise in good repair and working order at all times, operate the same in an efficient and economical manner and pay all operation and maintenance costs of the Water Enterprise as they become due;

(3) not later than the first day of each Fiscal Year, to adopt and make available to the District a budget approved by its governing board setting forth the amounts budgeted to be paid under this Contract;

(4) to comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Enterprise and all other contracts affecting or involving the Water Enterprise to the extent that the Agency is a party thereto;

(5) not to create or allow any lien on or payment from the revenues of the Water Enterprise or any part thereof prior to or superior to its obligation to pay amounts payable under this Contract;

(6) to procure and maintain such insurance relating to the Water Enterprise which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; *provided,* that the Agency shall not be required to procure or maintain any such insurance unless such insurance is commercially available at reasonable cost; and *provided further,* that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water enterprises in the State of California;

(7) to pay and discharge all taxes, assessments and others governmental charges which may hereafter be lawfully imposed upon the Water Enterprise or any part thereof when the

same shall become due; duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Enterprise, that are not being contested in good faith; and

(8) if all or any material part of the Water Enterprise shall be taken by eminent domain proceedings, or if the Agency receives any insurance proceeds resulting from a casualty loss to any material portion of the Water Enterprise, the proceeds thereof shall be used to construct or install replacements for the condemned or destroyed components of the Water Enterprise or to prepay the Agency's share of Debt Service under this Contract.

Article 12. Water Quality. All water delivered to the Agency under this Contract shall meet all State of California and San Luis Obispo County minimum water quality standards for water for domestic use.

Article 13. Curtailment of Delivery of Project Water for Maintenance Purposes. The District may temporarily discontinue or reduce the amount of water to be furnished to the Agency for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of Project water to the Agency hereunder. Insofar as it is feasible, the District will give the Agency advance notice of any such temporary discontinuance or reduction, except in the case of emergency, in which case no advance notice need be given. In the event of such discontinuance or reduction, the District will apply its best efforts to minimize the duration and severity of service interruption hereunder and shall, as nearly as possible, make available to the Agency Project water sufficient to make up for any shortfall in deliveries of water to the Agency during the period of curtailment.

Article 14. Rate and Method of Payment. Commencing with the first Water Year during which Project water is made available to the Agency hereunder, the Agency shall pay to the District

in advance and on a semiannual basis, its Contract Payments, calculated and paid in accordance with the further provisions of this Article, for the Project water made available under this Contract for such Water Year, plus a variable charge, to be determined as set forth in paragraph (D) of this Article, to be calculated on a quarterly basis and paid in arrears.

(A) *Allocation of Total Project Costs and Debt Service.* On or before April 1 of each Calendar Year, the District shall calculate, or cause to be calculated, Total Project Costs for the Fiscal Year commencing on the immediately following July 1. The District shall deduct from the calculated Total Project Costs for such Fiscal Year: (1) the general *ad valorem* property taxes to be received by the District during the Fiscal Year in question; provided that any *ad valorem* taxes levied and paid to provide debt service on the District's General Obligation Bonds outstanding at any time shall be restricted to use for the payment of debt service on such General Obligation Bonds and shall not be included in the deducted amount represented by the foregoing clause; and (2) a sum equal to Recreational Use Revenues received by the District during the Fiscal Year about to be concluded. The result shall comprise the Total Contract Payments due, collectively, from the Agency hereunder and from the Other Agencies under their respective Water Supply Contracts.

In determining the Debt Service portion of Total Project Costs during any Fiscal Year to be supported by the Agency, the District shall make the following calculations:

- [(G.O. Debt Service) + (Installment Debt Service)] - (District Revenues) = Allocable Debt Service ("ADS")
- [(Proportionate Share) x ADS] = Annual Agency Obligations ("AAO")
- AAO - (G.O. Tax Collections) = Agency Debt Service

For purposes of the above calculations, the term "*G.O. Debt Service*" above refers to the debt service on the District's General Obligation Bonds; the term "*Installment Debt Service*" refers to the installment payments due with respect to the Tax-Exempt Obligations; the term "*Proportionate Share*" refers to the Agency's Proportionate Share hereunder; the term "*District Revenues*" refers to the amounts available to the District under the second sentence of this paragraph (A) of Article 14; and the term "*G.O. Tax Collections*" refers to amounts collected to support the General Obligation Bonds within the boundaries of the Agency during the Fiscal Year in question, based upon then-current levies; *provided, however*, that in the case of County Service Area No. 12, such boundaries shall be deemed to include that area comprising Avila Beach Community Services District, as well as the area comprising such County Service Area No. 12. In no event shall Agency Debt Service, as calculated above, be a figure less than zero. The foregoing calculations shall be performed by the District each Fiscal Year and shall be made available to the Agency with respect to each Other Agency, as well.

No more frequently than annually, the District shall retain a certified public accountant, or firm thereof, with the approval of the Zone 3 Advisory Board, which shall be responsible for reviewing and confirming the Agency Debt Service figures resulting from the foregoing calculations, and reporting the same to the Agency, the District and each Other Agency.

(B) *Agency Contract Payments.* Unless the Agency shall, in accordance with paragraph (C) below, be entitled to an offsetting credit, the Agency shall be obligated to pay to the District:

(1) on or before July 1 and the immediately following January 1 of each Fiscal Year, a sum equal to one-half of its Percentage Share of charges for Operation and Maintenance and Capital Reserves for such Fiscal Year;

(2) on or before July 1 of each Fiscal Year, a sum equal to Agency Debt Service, as calculated under paragraph (A) above; and

(3) on or before the fifteenth day following the end of each Calendar Quarter during a Fiscal Year, the variable charge calculated in accordance with paragraph (D) below for the Calendar Quarter ending on the last day of the Calendar Quarter most recently concluded.

(C) *Agency Credits against Contract Payments.* The following shall constitute credits against the obligations of the Agency to pay Contract Payments to the District:

(1) (a) If, prior to the date upon which the District causes the Tax-Exempt Obligations to be sold, the Agency shall contribute, in cash, a sum as and for its Proportionate Share of the total amount of costs and expenses projected by the District as the basis for the Seismic Remediation Project, or any portion of its Proportionate Share, so that the aggregate principal component of the Tax-Exempt Obligations is reduced by such sum, the Agency's Proportionate Share of Debt Service, and therefore, of Total Project Costs, shall be reduced accordingly; and

(b) If the Agency shall, following the date of delivery of the Tax-Exempt Obligations, successfully implement a financing plan within its jurisdiction to fund all or a portion of Debt Service during the term of the Tax-Exempt Obligations through the levy of *ad valorem* property taxes, special assessments or special taxes, then the Agency shall be entitled to a credit from amounts paid under such levy as though such amounts were paid directly by the Agency hereunder, subject to the prior approval of each rating agency then rating the Tax-Exempt Obligations and any bond insurer then providing insurance therefor; provided, however, that the District shall be made a third-party beneficiary of any pledge of such alternate source of revenues, with the power to enforce collection thereof, in the event the Agency should fail to do so; and

(c) The Agency shall be entitled to a credit equal to a Percentage Share of the net revenues the District shall have received from the sale of Surplus Water and from the delivery of any water wheeled for Wheeling Customers, as defined in and pursuant to the provisions of Section 31, during the Fiscal Year in question; in determining the amount of such wheeling credits against the obligations of the Agency hereunder, the District shall apportion its net revenues from the foregoing sources, taking into account the particular Unit or Units through which delivery of Surplus Water or wheeled water was made, and shall compare the Agency's Percentage Share for such Unit or Units with the aggregate Percentage Share for all Other Agencies and the Agency for such Unit or Units.

(2) On or before December 1 of each year, the District shall deliver to the Agency a statement as to the actual Operation and Maintenance Costs and Capital Reserve charges incurred or imposed during the Fiscal Year most recently concluded, and shall set forth in such statement its determination as to whether the amounts theretofore paid by the Agency as its Percentage Share of estimated charges for Operation and Maintenance Costs and for Capital Reserves were in excess of or less than its Percentage Share of such costs and charges for the Fiscal Year most recently concluded. If the Agency shall have paid less than its Percentage Share of actual Operation and Maintenance Costs and charges for Capital Reserves for such Fiscal Year, the Agency shall remit the difference to the District within (180) days of the date upon which it receives such a statement; if the Agency shall have paid more than its Percentage Share of such costs and charges for such Fiscal Year, the District shall rebate the difference to the Agency promptly following its delivery of the closing statement, and, in any event, within thirty (30) days thereafter.

(D) *Quarterly Variable Charges.* The sum of quarterly variable charges to the Agency and the Other Agencies shall be an amount which is estimated to be sufficient to compensate

the District for actual Project pumping energy charges incurred during the respective Calendar Quarter. The variable charge shall be determined for each Calendar Quarter during which Project water is made available to the Agency under this Contract by (1) dividing the District's actual cost of pumping energy during that Calendar Quarter by the total acre-feet of Project water delivered by the District during such Calendar Quarter to the Agency and all Other Agencies pursuant to this Contract and the other Water Supply Contracts, and (2) multiplying this acre-foot charge by the number of acre-feet of Project water delivered by the District to the Agency during such Calendar Quarter. The District shall notify the Agency in writing of such variable charge by a date no later than the fifteenth day following the end of each Calendar Quarter, for the variable charges attributable to the Calendar Quarter most recently concluded.

(E) *Use by District of Total Contract Payments.* During the term of this Contract and of the other Water Supply Contracts, the District shall proceed with due diligence to collect Total Contract Payments as and when due, and shall apply amounts collected in the following order of priority:

(1) to the payment of Operation and Maintenance Costs;

(2) to the payment of Debt Service with respect to the Tax-Exempt Obligations; and

(3) to the replenishment or funding of Capital Reserves for the Project, in accordance with the provisions set forth in Article 10 hereof.

Article 15. Take-or-Pay Obligation of Agency. Commencing on the first date upon which Project water is provided under this Contract, the Agency shall pay all amounts due hereunder, including, without limitation, under Article 14 hereof, without reduction or offset of any kind, whether or not the Project or any part thereof is then operating or operable or its service is

suspended, interfered with, reduced or curtailed or terminated in whole or in part, due to any of the reasons outlined in Articles 4(B), 5 and 13 or otherwise, and such Agency payments shall not be conditional upon the performance or nonperformance by any party for any cause whatsoever, including the Other Agencies; provided, however, that savings from nonoperation of the Project shall be apportioned among the Agency and the Other Agencies in accordance with their Percentage Shares.

The Agency's failure or refusal to accept delivery of Project water to which it is entitled under this Contract shall in no way relieve the Agency of its obligation to make payments to the District as provided for herein.

Article 16. Pledge; Establishment and Collection of Rates and Charges. The Agency, unless it shall have paid cash as its share of the Total Project Costs, as provided in Article 14(C)(1) hereof, hereby pledges gross water sale revenues of its Water Enterprise to its obligations under this Contract, and covenants and agrees to establish, fix and collect Rates and Charges from the customers of its Water Enterprise at levels sufficient to produce revenues from the Water Enterprise at least equal to (A) the costs of operating and maintaining the Water Enterprise, plus (B) the Agency's Contract Payments, calculated in accordance with Article 14(B) hereof, including (C) the Agency's Proportionate Share of Debt Service, plus (D) the Coverage Factor for the Debt Service portion of the Agency's Contract Payments; provided, however, that the provisions of Article 21(C) hereof may impose upon the Agency a surcharge following the occurrence of any payment default by the Agency. The Agency acknowledges and agrees that its obligations hereunder shall comprise, for accounting purposes, an operation and maintenance expense of its Water Enterprise.

Article 17. Default. (A) The following shall constitute events of default hereunder:

(1) The Agency shall fail to make timely payment in full of all amounts due from the Agency under the terms of this Contract; or

(2) The Agency shall fail to establish or collect, or cause to be collected, all fees, charges and other sums necessary to enable it to make the payments required hereunder, as provided in Article 16 hereof, and, following thirty (30) days' written notice from the District to the Agency, shall fail to remedy such failure to the satisfaction of the District; or

(3) The Agency shall fail to perform any other obligation or covenant hereunder and shall fail to remedy such failure to the satisfaction of the District within thirty (30) days following the Agency's receipt of written notice from the District, or for such additional time as is reasonably required, in the sole discretion of the District, to correct the same; or

(4) The Agency shall file any petition or institute any proceedings under any act or acts, State or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment to such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the Agency seeks or prays to be adjudicated a bankrupt or is to be discharged from any or all of its debts or obligations, or offers a reorganization of its obligations for the benefit of creditors, or asks for similar relief.

(B) Upon the occurrence of an event of default hereunder, the District shall be entitled to proceed to protect and enforce the rights vested in the District by this Agreement by appropriate judicial proceedings as the District may deem most effective, either in equity or law. Without limiting the generality of the foregoing, the District shall be entitled to pursue any of the following remedies:

(1) The District may suspend the delivery of water hereunder during the period when the Agency is delinquent in its payment for or other obligations to the District hereunder,

but only following notice to the Agency and the imposition of such remedy following a formal hearing conducted by the County Board;

(2) The District may compel the Agency, or its governing board, by action or suit in equity to account to the District as the trustee of an express trust;

(3) The District may pursue by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the District hereunder; and

(4) The District may proceed in *mandamus* or other suit, action or proceeding at law or in equity to enforce its rights against the Agency (and its board, officers, agents and employees) and to compel the Agency to perform and carry out its duties and obligations under the law and its covenants and obligations as set forth herein.

The use by either party to this Contract of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provide hereunder or by law or equity.

(C) Upon each charge to be paid by the Agency to the District pursuant to this contract which remains unpaid after the same shall have become due and payable, interest shall accrue at an annual rate equal to that earned by the County Treasurer's investment fund as provided in Government Code Section 16480 *et seq.* calculated monthly on the amount of such delinquent payment from and after the due date when the same becomes due until paid, and the Agency hereby agrees to pay such interest; provided, that no interest shall be charged to or be paid by the Agency unless such delinquency continues for more than thirty (30) days. The Agency hereby agrees to pay such interest to the District, whether or not the District shall pursue any of the remedies specified in this Article. In no event shall default interest be compounded.

Article 18. Failure to Levy, Set or Collect Taxes, Rates and Charges; Establishment of Coverage Account. If the Agency for any reason shall fail or refuse to establish or levy taxes or Rates and Charges sufficient to satisfy the requirements of Article 16 hereof, or if the Agency shall be precluded from establishing rates and charges at the levels required in said Article 16, then the Agency shall promptly notify the District of such fact, in writing, and shall establish either (a) with the District; or (b) with a Depository designated by the Agency to the District in writing; a Coverage Account, into which the Agency shall deposit, from the first lawfully available funds therefor, an amount equal to one year's Coverage Factor for the Debt Service portion of the Agency's Contract Payments hereunder. The Coverage Account shall be invested in accordance with applicable provisions of the Government Code, subject to any limitations established pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, applicable to surplus moneys of the Agency and shall be and remain available to the Agency and to the District as a source of funds to remedy any shortfall in the payment of Agency Contract Payments hereunder. The Coverage Account shall be pledged to the District for the purposes described herein, and the Agency covenants and agrees to execute such instruments as may be necessary in order to effect a pledge of amounts on deposit in the Coverage Account, acknowledging and agreeing as well to follow the advice of special tax counsel to the District in connection with the pledge and investment of the Coverage Account, as may be necessary or advisable in order to maintain the tax status of the Tax-Exempt Obligations.

If at any time following the establishment of the Coverage Account hereunder, the Agency shall again be able to and shall collect rates and charges as required under Article 16 hereof, the Coverage Account may be released to the credit and name of the Agency for any lawful purpose thereof, upon delivery to the District of evidence satisfactory to the District that (i) the Agency has successfully levied rates and charges for its Water Enterprise at the appropriate levels for at least one

full Fiscal or Water Year since the Coverage Account was first created, and (ii) the Agency is then current on all payments due under this Contract; whereupon, the District shall either release the Coverage Account to the Agency or shall direct the Depository to do so, free from the lien described herein.

Article 19. Area Served by Agency. Water delivered to the Agency pursuant to this Contract shall not be sold or otherwise disposed of by the Agency for use outside the boundaries of Zone 3 as they may now or hereafter exist, without the prior written consent of the District.

Article 20. Changes in Organization of Agency. The Agency will furnish the District with maps showing the territorial limits of the Agency and the service area or areas of its water distribution system. Throughout the term of this Contract, the Agency will promptly notify the District of any changes, either by including or exclusion, in said territorial limits and service area or areas. The Agency shall take no action to exclude any lands from the Agency or its service area or areas without the prior written consent of the District.

Article 21. Agency's Obligations Several and Not Joint; Limited Step-up Provisions and Reimbursement. (A) Except as provided in paragraph (B) of this Article, the Agency and the Other Agencies shall be solely responsible and liable for performance under this Contract or under the other Water Supply Contracts, as applicable. Their obligations to the District to make payments under this Contract and the other Water Supply Contracts are expressly recognized by the District as several, and not joint, and no default on the part of one of the Other Agencies shall, in and of itself, create an event of default hereunder. The Coverage Account of the Agency, if any is established hereunder, shall not be available for any shortfall in payments under any of the other Water Supply Contracts, unless otherwise directed or approved in writing by the Agency.

(B) In the event that the Agency or any Other Agency (each, a "Delinquent Agency") shall fail to pay its Contract Payments hereunder or under the Other Agency's Water Supply Contract, as appropriate, for any reason, then the Contract Payments for each non-delinquent agency (each, a "Non-Delinquent Agency") then participating in the Project shall be increased for the particular Water Year by an amount equal to the sum of Contract Payments not paid in full by Delinquent Agencies (collectively, the "Shortfall"); *provided, however,* that Non-Delinquent Agencies shall contribute to the Shortfall in a proportion determined by dividing the Debt Service portion of the Contract Payments attributable to each particular Non-Defaulting Agency by the aggregate Debt Service portions of the Contract Payments attributable to all Non-Defaulting Agencies; and *provided further,* that the Agency in no event shall be required under this paragraph to contribute to the Shortfall by an amount in any Water Year exceeding the amount which is 20% of the portion of the Agency's Contract Payments representing Debt Service for that Water Year.

(C) If payments are made by Non-Delinquent Agencies under the foregoing paragraph (B) during any Water Year, the District shall, beginning on the first date upon which payments are due from a Delinquent Agency and not paid in accordance with its Water Supply Contract (each, a "Due Date"), declare a default as to such Delinquent Agency under its Water Supply Contract and shall be entitled to curtail all deliveries of Project water under such Water Supply Contract to such Delinquent Agency; notwithstanding the foregoing, such Delinquent Agency shall nonetheless continue to be obligated under its Water Supply Contract for amounts paid on its behalf by the Non-Delinquent Agencies, until it has reimbursed each Non-Delinquent Agency in full. Amounts advanced by the Non-Delinquent Agencies hereunder are immediately due and payable by the responsible Delinquent Agency, and, if not so paid, and notwithstanding the provisions of Article 17(C), incur interest on the unpaid portion until paid in full at a rate per annum equal to the average

rate for the County Treasury Pool, plus two percent (2.0%) per annum, for the month for which the County Treasury Pool rate was most recently calculated, based on a 360-day year of twelve 30-day months; provided, however, that payments to be made as reimbursements under this paragraph (C) are deemed and understood to be subordinate to the obligations of the Delinquent Agencies to pay their Proportionate Shares of Debt Service.

(D) Shortfalls in Total Contract Payments shall be remedied under this Article prior to the District's making any withdrawal from the debt service reserve fund established, or under the reserve surety bond posted, for the Tax-Exempt Obligations, if any, drawings on or under which shall be delayed until and unless insufficient moneys are available from Non-Defaulting Agencies hereunder.

(E) The District covenants and agrees to enforce the provisions of this Water Supply Contract with due diligence, including, without limitation, the provisions of this Section for the benefit of the owners, from time to time, of the Tax-Exempt Obligations.

Article 22. Contracts to Be Uniform. Water Supply Contracts executed by the District with the Other Agencies shall be substantially uniform with respect to basic terms and conditions, when compared with this Contract, but shall provide for different dates, quantities of water to be delivered, water delivery points, Proportionate Shares and Percentage Shares and payment amounts.

Article 23. Amendments. This Contract shall be subject to amendment at any time by mutual agreement of the parties hereto, except insofar as any proposed amendments are in any way contrary to applicable law, or would have a material adverse effect upon the owners of any of the Tax-Exempt Obligations. As a condition to any amendment to this Contract or to the other Water Supply Contracts, the District shall first have received written confirmation from the rating agency or agencies then providing a rating for the Tax-Exempt Obligations, to the effect that the proposed

amendments will not adversely affect the rating of the Tax-Exempt Obligations and, in the event that the Tax-Exempt Obligations, or any portion thereof, shall be covered by municipal bond insurance, the District shall have received prior written consent to such proposed amendments from the provider of such bond insurance. Amendments may be effected upon the following conditions:

(A) Amendments to this Contract or the other Water Supply Contracts which have the effect of replacing the Agency's or any Other Agency's Proportionate Share of Project water or Percentage Share of Total Contract Payments with water purchases by or revenues contributed from either (i) the Agency or some Other Agency or (ii) a new customer, shall be subject to the approval only of those entities whose Proportionate Shares or Percentage Shares will be affected, and the District.

(B) Upon the written request of the Agency or any Other Agency, the District may order the construction or equipping of any Type III Additional Project; provided, however, that the requesting Agency or Other Agency shall first demonstrate to the satisfaction of the District that either (i) the proposed Type III Additional Project will be economically feasible with the financial support of only the requesting Agency and/or Other Agencies who voluntarily participate (whose Percentage Shares will thereafter be appropriately adjusted); or (ii) the Agency and all of the Other Agencies will consent to the funding of the Type III Additional Project and will agree to increase Total Project Costs sufficiently to provide for the costs thereof. The financing of a Type III Additional Project may be accomplished through the levy of additional Capital Reserves, the issuance of additional bonds or other evidences of indebtedness or otherwise. The undertaking of Type I or Type II Additional Projects shall not require the consent of the Agency or any Other Agency nor the amendment of this Contract.

(C) Amendments to this Contract and to the other Water Supply Contracts other than those specified above shall be approved only upon the prior written and unanimous consent of the District, the Agency and all Other Agencies.

Article 24. Opinions and Determinations; Good Faith; Information to Be Provided to Zone 3 Advisory Committee. (A) Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review of determination to be arbitrary, capricious or unreasonable. The District and the Agency shall each act in good faith in performing their respective obligations as set forth in this Contract.

(B) The Zone 3 Advisory Committee, created by appointment of designated representatives made by the Agency, each Other Agency and the District, is hereby continued for the purpose of advising the District regarding administrative and operational concerns affecting the Project. The District covenants and agrees to present to the Zone 3 Advisory Committee, at its regularly scheduled or specially called meetings, the following items for advice and comment, in each case, prior to final presentation of the same item to the Board of Supervisors of the County:

(i) the annual budgets for the District;

(ii) the approval of each non-emergency Capital Project which has not theretofore been included in an annual budget of the District; it being understood and agreed that emergency repairs and improvements shall be exempt from any requirement for preview established hereby;

(iii) the mid-year review of actual fiscal performance of the Project, provided for the then-current Fiscal Year, and in any event, prior to March 31 of each calendar

year, which may, to the extent practicable, be combined with the review of the District's annual budget for the next Fiscal Year; and

(iv) amendments to the methodology or formula established in County Board Resolution No. 2000-133, adopted April 4, 2000, with respect to the making of Recreational Budget Transfers.

Article 25. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Contract, shall not be deemed to be a waiver with respect to any other breach, default or matter hereunder, nor as to a breach or default occurring or having occurred under any other Water Supply Contract.

Article 26. Notices. All notices that are required either expressly or by implication to be given by either party to the other under this Contract shall, if given in writing, be executed on behalf of the District or for the Agency by such authorized officers as they may each, from time to time, authorize in writing for such purposes. All notices shall be deemed to have been given and delivered if delivered personally or if deposited, postage prepaid, with the United States Postal Service for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown on the signature page of this Contract; provided, however, that either party may give written notice to the other of a change in such notice address.

Article 27. Assignment; Pledge. The provisions of this Contract shall apply to and bind the successors and assigns of the respective parties, including any assignee hereof designated in connection with the execution and delivery of the Tax-Exempt Obligations, but no assignment or transfer of this Contract by the Agency, or any part hereof or interest herein, shall be valid until and unless approved by the District; *provided, however,* that no further assignment by the District shall be valid until and unless approved by the Agency and all of the Other Agencies; and *provided further,*

that, so long as any Tax-Exempt Obligations are outstanding, no such assignment shall be effective until such time as the District has received assurances from each rating agency then rating the Tax-Exempt Obligations, to the effect that such transfer shall not adversely affect the rating on the Tax-Exempt Obligations, and, so long as any Tax-Exempt Obligations are then being insured by a municipal bond insurance company, until such time as the District has received the written consent from such bond insurer as to such assignment. The Agency understands and acknowledges that the District intends to pledge amounts received and to be received hereunder and under the other Water Supply Contracts to a financial institution and/or nonprofit corporation as further support for its obligations under the Tax-Exempt Obligations.

Article 28. Inspection of Books and Records. The authorized officers of the Agency shall have full and free access at all reasonable times to the account books and official records of the District insofar as the same pertain to the matters and services provided for in this Contract, with the right at any time during regular office hours of the District to make copies thereof at the Agency's expense, and the authorized officers of the District shall have similar rights in respect to the account books and records of the Agency for its Water Enterprise.

Article 29. Severability. Any provision of this Contract that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof of affecting the validity, enforceability of legality of such provision in any other jurisdiction.

Article 30. Water Rights. No provision of this Contract shall be considered to be in derogation of any existing waiver of right(s) or claim(s) to Water Right(s) by or any agreements concerning Water Rights of either party hereof, including but not limited to overlying, prescriptive,

appropriative, riparian, or pueblo rights, nor shall it be construed to result in any relinquishment or adjustment of any such Water Rights or claims thereof; and, in particular, no provision of this Contract shall be considered to diminish, reduce or affect, in any way, either party's rights pursuant to California Water Code Section 1005.1 and/or Section 1005.2

Article 31. Wheeling of Water. As used in this Article, the term "Existing Contractor" shall refer to this Agency and any Other Agencies presently having a contract with the District for the delivery of Project water; any person other than an Existing Contractor which shall arrange for the delivery of water other than Project water from the District under the terms hereof shall be described as a "Wheeling Customer." The Agency, as an Existing Contractor, shall be entitled to have additional water wheeled to it by the District through the various Units of the Project, at the actual cost of such wheeling, determined in accordance with the terms and conditions of the existing contracts by and between the District and the Agency or Other Agencies for the delivery of State Project Water to the Agency or Other Agencies through the Project.

If at any time during the term of this Contract, the District delivers water, other than Project water, through any Unit of the Project to any Wheeling Customer, said Wheeling Customer shall be required to pay for such delivery service in a manner and at prices which will return to the District the largest net revenue practicable, but in no event shall such deliveries be effected at charges less than those applicable to the delivery of Project water to the Agency through the same Unit or Units.

In determining the appropriate charges for water delivered to a Wheeling Customer hereunder, the District shall take into account the particular Unit or Units through which delivery of such water is made, shall compare the Operation and Maintenance Costs and Debt Service costs apportionable to such Unit or Units with Total Project Costs, and shall further compare the amount

of water delivered to Wheeling Customers through such Unit or Units with the amount of Project water delivered to Existing Contractors through such Unit or Units for the same period of time.

In calculating credits to the Existing Contractors from the delivery of water to Wheeling Customers under this Contract and the other Water Supply Contracts, the District shall apportion such credits according to the Unit or Units through which such water was in fact delivered, as described in the preceding paragraph.

The provisions of this Article shall be subject to any contracts which the District may execute with the United States of America for any grants from the Department of Housing and Urban Development.

Article 32. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same document.

Article 33. Governing Law. This Contract shall be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts made and performed in such State.

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

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
Chair, Board of Supervisors

Address for Notices:
Engineering Department
County Government Center
San Luis Obispo, California 93408
Attn: County Engineer

APPROVED AS TO FORM:
COUNTY COUNSEL

By_____
Senior Deputy County Counsel

ATTEST:
COUNTY CLERK

By_____
Deputy

OCEANO COMMUNITY SERVICES DISTRICT

By_____
President

Address for notices:
P.O. Box 559
Oceano, California 93445
Attn: District Manager

ATTEST:

By_____
Francis M. Cooney

APPROVED AS TO FORM:

_____
Jon S. Seitz, Esq.

EXHIBIT A

THE PROJECT

Alluvium Strengthening

A portion of the downstream shell of Lopez Dam will be removed temporarily to allow access for strengthening of the foundation with stone columns. The area of alluvium to be excavated would extend about 150 feet downstream from the existing toe of the dam, and the excavation would be to approximately elevation 340 feet in the center and to 370 feet on the sides. The total volume of excavated materials to be temporarily stored is estimated to be 400,000 to 500,000 cubic yards (cy). This includes the topsoil, which will be salvaged and stored separately. During excavation of the alluvium and installation of the stone columns, groundwater will need to be lowered as much as 30 feet in the excavation area. In addition, the outlet control building, portions of the associated piping, and the outflow channels connecting to Arroyo Grande Creek will need to be relocated downstream prior to the excavation, or a temporary bypass will need to be constructed, so that the outlet works can remain operational during the work. The bypass flows could enter the creek either through an existing pipe that discharges at the County property line (about 1,000 feet downstream) or at a location developed by the construction contractor near the western edge of the abandoned trout farm ponds. The outlet control building will be moved approximately 300 feet west along the access road while the channels will be moved into either one or two new channels 50 to 200 feet downstream from the existing discharge location.

Stone columns will be installed using a crane-operated vibrating probe. The vibration acts to densify and strengthen the ground, and the stone columns provide additional strength. Approximately 2000 columns, approximately 3 to 4 feet in diameter, will be installed in a triangular pattern with the columns spaced at approximately 7 to 9 feet on centers. The area of installation will extend from abutment to abutment (approximately 570 feet) and be about 200 feet in width (upstream/downstream distance) under the existing berm of the downstream shell. Gravel material for the stone columns (65,000 to 75,000 cy) will be imported by truck throughout the process.

The downstream berm, including the filter/drain material, will be replaced after the columns are installed using the material removed and stored as well as additional filter/drain material imported from a commercial source. Additional buttress material will be placed over the downstream shell after the stone columns are installed and the alluvium and shell materials that were removed are replaced. As a result, the Dam crest would be widened by approximately 130 feet. The buttress may be extended if testing during stone column installation indicates that strengthening of the alluvium is less than predicted. This additional buttress would require 200,000 to 400,000 cy of material.

Water level in the reservoir will need to be maintained at or below the currently mandated level of 510 feet, possibly down to elevation 480 feet. Construction is estimated to take approximately 18 months.

Dewatering will be necessary during excavation of the alluvium to elevation 340 feet, installation of the central stone columns, and replacement of the alluvium to maintain the ground water level approximately 10 feet below the excavated ground surface. Dewatering may also be required during excavation ground surface. Dewatering may also be required during excavation of the borrow material for the buttress if groundwater is encountered.

Borrow areas for material needed in strengthening the dam can come from the Arroyo Grande Creek floodplain downstream of the dam that was excavated during the original construction of the dam. Approximately 25,000 to 35,000 cy of commercially obtained materials are expected to be required for "filter and drain" zones of the Dam. The materials will be needed at the beginning of backfill after the stone columns are completed.

Appurtenant Facility Improvements

The left abutment has been suspected of having seepage, and the spillway structure (on the right abutment) requires repairs to areas of the concrete floor and walls. Construction activities will occur at the spillway and at the left abutment to correct these problems.

Seepage in the left abutment may have carried some abutment materials out though the drains in the dam, resulting in voids. Grouting will be used to reduce this seepage by filling any such voids. This work is independent of the remediation activities and could be performed in parallel with them.

Filed 8/29/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ENVIRONMENTAL LAW FOUNDATION et al., Plaintiffs and Respondents, v. STATE WATER RESOURCES CONTROL BOARD, Defendant, Cross-defendant and Respondent; COUNTY OF SISKIYOU, Defendant, Cross-complainant and Appellant.	C083239 (Super. Ct. No. 34201080000583)

APPEAL from a judgment of the Superior Court of Sacramento County, Christopher E. Krueger, Judge. Affirmed.

James M. Underwood, Interim County Counsel and Natalie E. Reed, Assistant County Counsel; Best Best & Krieger and Roderick E. Walston for Defendant, Cross-complainant and Appellant.

Downey Brand, Christian L. Marsh, Arielle O. Harris and Austin C. Cho for California State Association of Counties, California Association of Sanitation Agencies and League of California Cities as Amici Curiae on behalf of Defendant, Cross-complainant and Appellant.

Damien M. Schiff and Jeremy Talcott for Pacific Legal Foundation and California Farm Bureau Federation as Amici Curiae on behalf of Defendant, Cross-complainant and Appellant.

Briscoe Ivester & Bazel, John Briscoe and Lauren Bernadett for Association of California Water Agencies as Amicus Curiae on behalf of Defendant, Cross-complainant and Appellant.

James Wheaton and Lowell Chow; Glen H. Spain; UC Davis School of Law and Richard M. Frank for Plaintiffs and Respondents.

Xavier Becerra, Attorney General, Robert W. Bryne, Assistant Attorney General, Tracy L. Winsor, Daniel M. Fuchs, Allison E. Goldsmith and Mark W. Poole, Deputy Attorneys General, for Defendant, Cross-defendant and Respondent.

This appeal presents two important questions involving the application of the public trust doctrine to groundwater extraction—whether the doctrine has ever applied to groundwater and, if so, whether the 2014 Sustainable Groundwater Management Act (SGMA) abrogated whatever application it might have had, replacing it with statutory rules fashioned by the Legislature. We are invited to opine on these questions in the absence of a specific and concrete allegation that any action or forbearance to act by the State Water Resources Control Board (Board) or permit issued by County of Siskiyou (County) to extract groundwater actually violated the public trust doctrine by damaging the water resources held in trust for the public by the Board or the County. Rather, the Environmental Law Foundation and associated fishery organizations Pacific Coast Federation of Fishermen's Association and Institute for Fisheries Resources (collectively ELF), the Board, and the County amicably solicit our opinion as to whether the public trust doctrine giveth the Board and the County a public trust duty to consider whether the

extractions of groundwater adversely affect public trust uses of the Scott River and whether SGMA taketh those duties away. (Wat. Code, § 10720 et seq.)[1]

Concerned that the parties had merely solicited an advisory opinion, we asked them to brief the threshold question whether the case is justiciable. In its tentative ruling, the trial court too had found declaratory relief was not available because there was no real controversy between the parties. The parties, including amici curiae, urge us as they did the trial court, to address what they characterize as an issue of great public importance. The trial court acquiesced because "[i]f the issue of justiciability is in doubt, it should be resolved in favor of justiciability in cases of great public interest." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 432, fn. 14 (*National Audubon*).) We agree with the trial court and will consider the case on the merits.

But the supplemental briefing also illuminates the narrowness of the issues before us. We are asked to determine whether the County and the Board have common law fiduciary duties to consider the potential adverse impact of groundwater extraction on the Scott River, a public trust resource**,** when issuing well permits and if so, whether SGMA on its face obliterates that duty. There are no challenges to any specific action or failure to act by the County or the Board in betrayal of their duties to protect the Scott River. Thus, while the issue may have significant importance to the public and its fiduciaries, any potential transgressions remain abstractions.[2]

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[1] Further undesignated statutory references are to the Water Code.

[2] As the trial court pointed out, "The present motions concern only the existence, *vel non*, of the Board's authority and duty under the public trust doctrine to take *some* action regarding groundwater extractions, where those extractions harm public trust uses in public trust waters. Precisely *what* that action would be is an issue that is left for another day."

In a similar vein, the County cites a new case assertedly in support of its argument that it lacks discretion to administer the public trust. But *California Water Impact Network v.*

The scope of our ruling in this context, therefore, is extraordinarily narrow. We eschew consideration of any hypothetical factual scenarios and will not attempt to define the common law public trust duties of the Board or the County in light of how SGMA is actually implemented. The parties insist this seeks only to determine whether the enactment of SGMA, without more, abolishes or fulfills the common law duty to consider the public trust interests before allowing groundwater extraction that potentially harms a navigable waterway. We need not, and do not, opine on a host of arguments that go beyond the limited scope of the two dispositive issues framed above.[3]

County of San Luis Obispo (2018) 25 Cal.App.5th 666, is a California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) case, not a case involving the public trust doctrine. Whether approval of well permits are ministerial acts exempt from CEQA bears no relevance to the important questions involving the public trust doctrine and groundwater raised in this case.

[3] Amici curiae Pacific Legal Foundation and the California Farm Bureau Federation raise a host of issues, including unlawful takings that are not ripe for our consideration. " 'Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered.' " (*Pratt v. Coast Trucking, Inc*. (1964) 228 Cal.App.2d 139, 143, quoting *Eggert v. Pacific States S. & L. Co.* (1943) 57 Cal.App.2d 239, 251; see also, *Bialo v. Western Mutual Ins. Co.* (2002) 95 Cal.App.4th 68, 73-74.)

Echoing the need for a narrow ruling, amicus Association of California Water Agencies points out the Scott River has received unique attention from the Legislature. "The Legislature finds and declares that by reasons of the geology and hydrology of the Scott River, it is necessary to include interconnected ground waters in any determination of the rights to the water of the Scott River as a foundation for a fair and effective judgment of such rights, and that it is necessary that the provisions of this section apply to the Scott River only." (§ 2500.5, subd. (d).) While we acknowledge the limited scope of our review, dictated as it must be by only those issues that are ripe for review and raised by the parties, we do not base our decision on the special legislation pertaining to the Scott River. The fact that the Scott River stream system includes groundwater interconnected with the Scott River may exacerbate the adverse impacts on the public trust but the legal issue is whether the state has a fiduciary duty to consider any adverse impacts when groundwater extraction harms a navigable waterway.

FACTS

We need not recite the procedural journey since this case began in 2009 because the parties ultimately stipulated to 11 undisputed material facts and ELF dismissed its claim for injunctive relief. All that is left of the initial complaint is ELF's request for declaratory relief. The County's second amended cross-complaint against the Board is similarly confined to declaratory relief. The trial court resolved the questions of law at issue here in three steps: (1) granting a partial judgment on the pleadings in July 2014; (2) denying the County's motion for reconsideration in April 2015; and (3) granting ELF's motion for summary judgment and denying the County's cross-motion for summary judgment in August 2016. We begin with the pertinent stipulated facts and end with a summary of the trial court's legal conclusions. Our review is de novo. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767.)

The subject of the public trust is the Scott River in Siskiyou County, a tributary of the Klamath River and a navigable waterway for the purposes of the public trust doctrine. This case does not involve any of the water or water rights previously adjudicated in the Scott River Decree in 1980. The Scott River Decree does not adjudicate groundwater extractions from wells outside the geographical area covered by the decree. Yet pumping of interconnected groundwater in the Scott River system that has an effect on surface flows is occurring outside of the geographical area covered by the decree. The County established a permit program for the construction standards for new wells and a groundwater management program that regulates the extraction of groundwater for use outside the basin from which it is extracted.

ELF and the County filed cross-motions for partial judgment on the pleadings as to the four affirmative defenses raised by the County. In granting ELF's partial judgment on the pleadings, the court made important findings. "[T]he public trust doctrine protects the Scott River and the public's right to use the Scott River for trust purposes, including

fishing, rafting and boating. It also protects the public's right to use, enjoy and preserve the Scott River in its natural state and as a habitat for fish. [Citation.] If the extraction of groundwater near the Scott River adversely affects those rights, the public trust doctrine applies."

The court also ruled on arguments "directed at [ELF's] request for injunctive and writ relief, and concern[ing] the County's duty, if any, under the public trust doctrine." In this context, the court ruled: (1) section 10750 et seq. concerning groundwater management plans "does not subsume the public trust doctrine, rendering it inapplicable to groundwater;" (2) "[T]here is no conflict between authorizing the County to adopt a groundwater management plan, and requiring it to comply with the public trust doctrine," and therefore "[i]f the County's issuance of well permits will result in extraction of groundwater adversely affecting the public's right to use the Scott River for trust purposes, the County must take the public trust into consideration and protect public trust uses when feasible;" (3) "As a subdivision of the State, the County 'shares responsibility' for administering the public trust" and has a public trust duty to consider the impacts of new wells on public trust uses in the Scott River, when it issues permits for construction of the wells; (4) there is no violation of the separation of powers; and (5) the Scott River Decree does not preclude the application of the public trust doctrine to Scott River groundwater, because ELF alleges that the public trust doctrine applies only to groundwater outside the area of adjudication.

Initially, the trial court did not decide whether the Board had authority to regulate the groundwater under the public trust doctrine because "neither motion for judgment on the pleadings is brought by, or asserted against, the Board." The County filed a cross-complaint against the Board alleging that the Board is not authorized to regulate groundwater under the public trust doctrine.

After the proceedings on the motions for judgment on the pleadings, the Legislature enacted SGMA, a system of groundwater regulation in California to take

effect in varying stages over the next decade regarding designated groundwater basins. (Stats. 2014, Ch. 346, § 3; see, e.g., §§ 10720.7, subd. (a), 10735.8, subd. (h).) The County asked the trial court to reconsider its order in light of the new legislation. The court denied the County's motion, finding that the Legislature did not intend to supplant the common law but to the contrary, "rather than stating SGMA supplants the common law, the Legislature went out of its way to state that SGMA supplements and does not alter the common law." The court explained further that there is no sound reason why the Supreme Court's holding in *National Audubon, supra*, 33 Cal.3d at p. 445 "about the relationship between the appropriative water rights system and the public trust doctrine would not apply equally to the relationship between SGMA and the public trust doctrine – they coexist and neither occupies the field to the exclusion of the other."

Anxious to avoid trial and expedite an appeal, the parties entered into an extensive stipulation about further proceedings and withdrew all of their claims but for the request for declaratory relief on the questions of law resolved in the motions for judgment on the pleadings, the motion for reconsideration, and ultimately on the cross-motions for summary judgment. As mentioned, the parties also filed a statement of undisputed material facts and agreed "that any factual issues not included in the Stipulation of Undisputed Facts are not raised in this litigation, and are not relevant to the issues raised in this litigation."

The parties agreed the court had decided the following questions of law:

"1. The public trust doctrine applies to extraction of groundwater from the Scott River system, to the extent that such extraction of groundwater affects public trust resources and uses in the Scott River.

"2. The County, in issuing permits for wells that would result in extraction of groundwater has a public trust duty to consider whether the wells will affect public trust resources and uses in the Scott River.

"3. The Groundwater Management Act, Water Code sections 10750 *et seq*., does not conflict with the County's public trust duty as described in Paragraph V(A)(2) above.

"4. The Sustainable Groundwater Management Act ("SGMA"), Water Code sections 17320 [*sic*] *et seq*., which was enacted by the Legislature in 2014, does not conflict with the County's public trust duty as described in Paragraph V(A)(2) above.

"5. The Scott River Decree of 1980 does not alter the County's public trust duty as described in Paragraph V(A)(2) above."

The cross-motions for summary judgment presented one legal issue: whether the Board has the authority and duty under the public trust doctrine to regulate extractions of groundwater that affect public trust uses in the Scott River. The trial court granted summary judgment in favor of ELF and the Board and against the County. The court explained: "The Water Code as a whole, as construed by the courts, 'vest[s] in the Board broad adjudicatory and regulatory power and suggest the Board's regulatory authority is coincident with that of the Legislature.' [Citation.] Given the Board's broad authority to administer the State's water resources, it is but a short step to the conclusion that the Board has the authority to administer the public trust on behalf of the State. In other words, assuming the public trust doctrine is applicable to the facts alleged in this case, the Board is the logical entity to exercise the State's authority and obligations thereunder. Simply put, if not the Board, then who?"

On appeal, the County contends the Board has neither the authority nor the duty to consider how the use of groundwater affects the public trust in the Scott River; nor does the County have a public trust duty to consider whether groundwater uses by new wells affect public trust uses in the Scott River. Several amici add their voices to the merits of the appeal.[4]

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[4] The parties filing amicus curiae briefs are: California State Association of Counties, California Association of Sanitation Agencies and League of California Cities; Pacific

DISCUSSION

I

Does the public trust doctrine apply to the extraction of groundwater that adversely impacts a navigable waterway?

From ancient Roman roots, the English common law has developed a doctrine enshrining humanity's entitlement to air and water as a public trust.[5] The public trust doctrine rests on several related concepts. "First, that the public rights of commerce, navigation, fishery, and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society. [Citation.] 'An allied principle holds that certain interests are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace. . . . [¶] Finally, there is often a recognition, albeit one that has been irregularly perceived in legal doctrine, that certain uses have a peculiarly public nature that makes their adaptation to private use inappropriate. The best known example is found in the rule of water law that one does not own a property right in water in the same way he owns his watch or his shoes, but that he owns only a usufruct—an interest that incorporates the needs of others. It is thus thought to be incumbent upon the government to regulate water uses for the general benefit of the community and to take account thereby of the public nature and the interdependency which the physical quality of the resource implies.' [Citation.]" (*Zack's, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1175-1176.)

In a then shocking renunciation of the fee title to the submerged lands in the harbor of Chicago the State of Illinois had transferred to a railroad, the United States

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Legal Foundation and California Farm Bureau Federation; and Association of California Water Agencies.

[5] " 'By the law of nature these things are common to mankind – the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1.)" (*National Audubon, supra*, 33 Cal.3d at pp. 433-434.)

Supreme Court in 1892 first enunciated the sanctity of a public trust over navigable waterways. *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387 [13 S.Ct. 110] (*Illinois Central*), established that "the title which a State holds to land under navigable waters is . . . held in trust for the people of the State, in order that they may enjoy the navigation of the waters and carry on commerce over them, free from obstruction or interference by private parties; that this trust devolving upon the State in the public interest is one which cannot be relinquished by a transfer of the property; that a State can no more abdicate its trust over such property, in which the whole people are interested, so as to leave it under the control of private parties, than it can abdicate its police powers in the administration of government and the preservation of the peace; and that the trust under which such lands are held is governmental so that they cannot be alienated, except to be used for the improvement of the public use in them." (*Long Sault Development Co. v. Call* (1916) 242 U.S. 272, 278-279 [37 S.Ct. 79].)

Illinois Central remains the seminal case on the public trust doctrine. (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 234 (*Baykeeper*).) The case instructs courts to " 'look with considerable skepticism upon *any* governmental conduct which is calculated *either* to reallocate that resource to more restricted uses *or* to subject public uses to the self-interest of private parties.' [Citation.]" (*Zack's, Inc. v. City of Sausalito, supra*, 165 Cal.App.4th at p. 1176.)

The doctrine is expansive. (*Colberg, Inc. v. State of California ex rel. Dept. Pub. Wks.* (1967) 67 Cal.2d 408, 416-417.) "The range of public trust uses is broad, encompassing not just navigation, commerce, and fishing, but also the public right to hunt, bathe or swim. [Citation.] Furthermore, the concept of a public use is flexible, accommodating changing public needs. [Citation.] For example, an increasingly important public use is the preservation of trust lands ' "in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the

scenery and climate of the area." [Citation.]' [Citation.]" (*Baykeeper, supra*, 242 Cal.App.4th at p. 233.)

Moreover, the public trust doctrine is more than a state's raw power to act; it imposes an affirmative duty on the state to act on behalf of the people to protect their interest in navigable water. As our Supreme Court has mandated: "[T]he public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*National Audubon, supra*, 33 Cal.3d at p. 441.)

What *Illinois Central* was on the national level in the nineteenth century, *National Audubon* was to California in the twentieth century—a monumental decision enforcing, indeed expanding, the right of the public to benefit from state-owned navigable waterways and the duty of the state to protect the public's "common heritage" in its water. We reject the County's effort to diminish the importance of the opinion, including its mistaken labeling of its central holdings as dicta.[6] To the contrary, *National Audubon* is binding precedent, factually analogous, precisely on point, and indeed dispositive of the threshold question in this appeal: does the public trust doctrine apply to the extraction of groundwater that adversely impacts the Scott River, a navigable waterway?

We begin with the extraordinary collision of values exposed in *National Audubon*. The Department of Water and Power of the City of Los Angeles (DWP), pursuant to a

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[6] We reject any notion that the Supreme Court's discussion of the public trust doctrine in *National Audubon* was mere dicta. To the contrary, the discussion was essential to the decision. We agree with ELF that the public trust doctrine's relationship to the regulation of water was literally the substantive question before the court. "Statements by appellate courts 'responsive to the issues on appeal and . . . intended to guide the parties and the trial court in resolving the matter following . . . remand' are not dicta." (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1158.)

permit issued by the Division of Water Resources, the predecessor to the Board, diverted water from nonnavigable tributaries that would have otherwise flowed into Mono Lake. (*National Audubon, supra*, 33 Cal.3d at p. 424.) The diversion of the water caused the level of the lake to drop, thereby imperiling its scenic beauty and ecological value. (*Id*. at pp. 424-425.) The permit was issued under the appropriative water rights system, a system that dominated California water law since the gold rush (*id*. at p. 442) and was formally enshrined in statute with the enactment in 1913 of the Water Commission Act. (*People v. Shirokow* (1980) 26 Cal.3d 301, 308.) In *National Audubon*, the values undergirding that legislative mandate collided with those that had been, until then, embodied but ignored in the public trust doctrine. (*National Audubon, supra*, at p. 445.)

The Supreme Court captured the intensity of the drama involved in the high stakes contest between the two distinct systems of legal thought. The court wrote: "They meet in a unique and dramatic setting which highlights the clash of values. Mono Lake is a scenic and ecological treasure of national significance, imperiled by continued diversions of water; yet, the need of Los Angeles for water is apparent, its reliance on rights granted by the board evident, the cost of curtailing diversions substantial." (*National Audubon, supra*, 33 Cal.3d at p. 425.) Despite the historical significance of appropriative water rights in the state, the comprehensiveness of the water rights system, the threat to the water supply for the City of Los Angeles, and perhaps, most significantly, the fact that the tributaries from which the water was being diverted were not themselves navigable, the public trust prevailed. Yet the County would have us now dilute or ignore the trust for far less compelling reasons.

Pointing out that groundwater is not navigable, the County insists that it should not be subject to the public trust doctrine, reminding us that no court has held that groundwater is a public trust resource. But the trial court did not find the public trust doctrine embraces all groundwater. To the contrary, the water subject to the trust is the Scott River, a navigable waterway. "[T]he court does not hold the public trust doctrine

applies to groundwater itself. Rather, the public trust doctrine applies if extraction of groundwater adversely impacts a navigable waterway to which the public trust doctrine does apply."

Thus, the trial court's finding is unremarkable and well supported by the facts and logic of *National Audubon* and the precedent upon which it relies. The most notable similarity between this case and *National Audubon* is the fact that nonnavigable water was diverted or extracted. In *National Audubon*, the diversion of nonnavigable tributaries had a deleterious effect on Mono Lake, a navigable waterway. (*National Audubon, supra*, 33 Cal.3d at pp 424-425.) Similarly, ELF alleges in this case that the extraction of groundwater potentially will adversely impact the Scott River, also a navigable waterway. The fact the tributaries themselves were not navigable did not dissuade the Supreme Court from concluding the public trust doctrine protects the navigable water (Mono Lake) from harm by diversion of nonnavigable tributaries. (*Id*. at p. 437.) Nor does the fact that nonnavigable groundwater rather than nonnavigable tributaries is at issue here dissuade us where, in both cases, it is alleged the removal of water will have an adverse impact on navigable water clearly within the public trust.

Thus, the pivotal fact is not whether water is diverted or extracted or the fact that it is water itself adversely impacting the water within the public trust. Rather, the determinative fact is the impact of the activity on the public trust resource. Indeed, the Supreme Court in *National Audubon* highlighted an illustrative early case. In *People v. Gold Run D. & M. Co.* (1884) 66 Cal. 138 (*Gold Run*), the state utilizing the public trust doctrine enjoined a mining company from dumping sand and gravel into an nonnavigable stream that flowed into the navigable Sacramento River, because the dumping raised the bed of the Sacramento River impairing navigation. (*National Audubon, supra*, 33 Cal.3d at p. 436.) Focusing on whether the activity had deleterious impacts on navigable waterways, the Supreme Court concluded: " 'If the public trust doctrine applies to constrain *fills* which destroy navigation and other public trust uses in navigable waters, it

should equally apply to constrain the *extraction* of water that destroys navigation and other public interests. Both actions result in the same damage to the public trust.' " (*Id.* at pp. 436-437.)

The County's squabble over the distinction between diversion and extraction is, therefore, irrelevant. The analysis begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust. The fact that in this case it is groundwater that is extracted, in *National Audubon* it was nonnavigable tributaries that were diverted, and in *Gold Run* it was sand and gravel that was dumped, is not determinative. Each and every one of these activities negatively impacted a navigable waterway. As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway.

The authority provided by the County does not persuade us otherwise. The County cites *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689 for the bold assertion that the public trust doctrine does not apply to groundwater, ignoring, as we explained above, the crucial detail that the trial court did not find the public trust doctrine applies to groundwater. But more importantly, *Santa Teresa* is not on point because there was no evidence in that case of any negative impact on the surface water body and, therefore, no showing of a harmful impact on public trust resources. Here, the issue is not about protecting public trust uses in groundwater, but about protecting the public trust uses of the Scott River that are at risk of being impaired due to groundwater pumping of contributory flows.

Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection (2008) 44 Cal.4th 459 (*EPIC*) is equally inapposite. *EPIC* is not a water case. At issue in *EPIC* is the public trust in wildlife, which is primarily statutory, unlike the public trust in water, which is based on common law. Moreover, the County misrepresents the court's holding. The County argues that "*EPIC* held that the 'common

law' public trust doctrine does not apply in defining an agency's regulatory duties where the Legislature has enacted a statute defining the agency's duties." But the case did not hold that the state's wildlife protection statutes supersede the common law public trust doctrine regarding water or fish; it merely held that the Department of Forestry and Fire Protection's statutory duty to comply with wildlife protection statutes should not be equated with a public trust duty. (*Id.* at pp. 515-516.) Thus, we agree with the Attorney General that since *EPIC* addressed only the statutory (and not the common law) public trust in nonaquatic wildlife, nothing in the Supreme Court's opinion suggests that the Department of Forestry and Fire Protection's statutory responsibilities displaced or superseded any of its responsibilities under the common law public trust doctrine in water resources; nor is there any indication the court sought to merge the two doctrines.

Amici accuse the trial court of confusing a municipality's authority to adopt an ordinance or regulatory system under its police power with its public trust authority. The parties do not challenge the County's police powers. (See, e.g. *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1283; *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 173-174.) The trial court properly addressed the very different question of whether the public trust doctrine imposes a fiduciary duty on the County. There is no allegation here the County overstepped the scope of its public power and any issue outside the public trust doctrine is not before this court.

National Audubon and its progeny recognize that government has a duty to consider the public trust interest when making decisions impacting water that is imbued with the public trust. The County raises two additional objections to imposition of the duty to consider the public's inherent interest in its navigable waterways. First, the County insists that the constitutional imperative compelling the reasonable use of water subsumes any parallel duty under the public trust doctrine. And, secondly, the County rejects the notion that any duty imposed upon the state to enforce the public trust devolves to it as a mere political subdivision of the state.

Article X, section 2 of the California Constitution provides: "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. . . . This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained." (Cal. Const., art X, § 2.) All uses of water, including public trust uses, are subject to the constitutional standard of reasonable use. (*National Audubon, supra*, 33 Cal.3d at p. 443.)

The County asserts that article X, section 2 subjects groundwater to the reasonable use standard, and "thus there is no basis or need to apply the public trust doctrine to groundwater." *National Audubon* answers the County's argument. The Supreme Court quoted article X, section 2 and expressly recognized that public trust uses of water remain subject to reasonable use. Nevertheless, the court rejected the notion that reasonable use or the appropriative rights system supplanted the public trust doctrine. The court wrote: "The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. [Citations.] As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm

to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust [citation], and to preserve, so far as consistent with the public interest, the uses protected by the trust." (*National Audubon, supra*, 33 Cal.3d at pp. 446-447, fn. omitted.)

Despite such a formidable acknowledgment by the Supreme Court that multiple standards can exist simultaneously, the County claims the public trust doctrine and the reasonable use standard are incompatible. Missing is any citation to authority. *National Audubon* rebuts the County's unsupported and unsupportable assertion that the reasonable use standard obliterates the public trust doctrine.

Finally, the County contends the Water Code restricts the Board's authority to protect the public trust. The argument leads us down a now familiar rabbit hole. The County argues that sections 1200 and 1221 restrict the Board's authority by defining its permitting authority. But the Board's authority to apply the public trust doctrine extends to rights not covered by the permit and license system. (*In re Water of Hallet Creek Stream System* (1988) 44 Cal.3d 448, 472, fn. 16.) In fact, the Board's authority to protect the public trust is independent of and not bounded by the limitations on the Board's authority to oversee the permit and license system. (*Ibid*.) The County offers no compelling argument to the contrary and we see no rationale for finding the permitting and licensing system incompatible with the public trust doctrine.

II

Did the Legislature intend to occupy the entire field of groundwater management and thereby abolish all fiduciary duties to consider potential adverse impacts on the Scott River, a navigable waterway and public trust resource?

Although one-third of Californians' water is extracted from groundwater basins and many of the state's basins are suffering from overdraft, it was not until 2014 that the California Legislature passed the Sustainable Groundwater Management Act. (§ 10720

et seq., added by Stats. 2014, ch. 346, § 3.) SGMA allows local agencies to voluntarily form groundwater sustainability agencies (GSA's) over a number of years. (§§ 10723, 10727.2.) They manage and regulate groundwater basins through adoption and implementation of groundwater sustainability plans (GSP's). (§§ 10723, 10727.) The GSA's are charged with procedural and substantive obligations designed to balance the needs of the various stakeholders in groundwater in an effort to preserve, and replenish to the extent possible, this diminishing and critical resource. (§§ 10721, subds. (u), (v), (x)(6), 10723.2, 10725.2, 10725.4, 10726.2, 10726.4, 10726.5.) The County hails the legislation as a general and comprehensive regulatory scheme fulfilling the Legislature's duty to protect the public trust. Specifically, the County points out that GSA's are required to regulate groundwater extractions from wells (§ 10726.4, subd. (a)(2)), the same obligation the trial court thrust upon it under the public trust doctrine. The occupation of the field by SGMA absolves the County and the Board of any common law duty it might have to consider and protect the Scott River from harmful groundwater extraction. We disagree.

It is true that a cornerstone of SGMA is a transfer of responsibility for groundwater management from the state to local jurisdictions when possible. The Legislature intended to "manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner." (§ 10720.1, subd. (h).) The Legislature expressly stated its intent "[t]o recognize and preserve the authority of cities and counties to manage groundwater pursuant to their police powers." (Stats. 2014, ch. 346, § 1.) The County argues that in so doing the Legislature has precluded the Board from acting to protect the public trust from groundwater extraction except in limited circumstances. (§§ 10735.2, 10735.8.) As a consequence, according to the County, neither its nor the Board's public trust duties

survive the enactment of SGMA. In the case of the Board, the County maintains it no longer has the authority to act.

As a general rule, statutes do not supplant the common law. (*I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285.) " 'Accordingly, "[t]here is a presumption that a statute does not, by implication, repeal the common law. [Citation.] Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws." ' [Citation.]" (*Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 326 (*Verdugo*).) But the County relies on an exception to the general rule. A statute may supplant the common law if "it appears that the Legislature intended to cover the entire subject or, in other words, to 'occupy the field.' [Citations.] '[G]eneral and comprehensive legislation, where course of conduct, parties, things affected, limitations and exceptions are minutely described, indicates a legislative intent that the statute should totally supersede and replace the common law dealing with the subject matter.' " (*I.E. Associates, supra*, at p. 285.) The County insists (1) the general rule does not apply because no court has found a duty under the public trust doctrine to regulate groundwater, and (2) SGMA is a comprehensive statutory scheme reflecting the Legislature's intent to occupy the field of groundwater management and the statute, therefore, does supplant the common law public trust doctrine. *National Audubon* persuades us otherwise.

The County mischaracterizes the public trust duty. By repeatedly referring to the fact that no court has held that groundwater constitutes a public trust resource nor imposed on the state or a county the duty to regulate groundwater, the County begins with a false premise. The trial court did not find that groundwater itself was protected by the public trust doctrine; nor did it find either the Board or the County had the duty to regulate groundwater. To the contrary, the trial court found a duty to consider any adverse impacts groundwater extraction would have on a public trust resource, the Scott River. The duty, the court found, was not to regulate but to consider the impact on the

public trust resource and, where feasible, to preserve the public interest in the Scott River, a navigable waterway. The trial court's narrow rulings are fully supported by *National Audubon*.

National Audubon clarifies the common law public trust doctrine as we discussed in part I, *ante*. The court emphasized that no public agency had ever considered the adverse impacts on Mono Lake, a navigable waterway protected by the public trust doctrine, by diverting the entire flow of the Mono Lake nonnavigable tributaries into the Los Angeles Aqueduct. (*National Audubon, supra*, 33 Cal.3d at p. 447.) The DWP acquired the rights to the entire flow in 1940 from a water board "which believed it lacked both the power and the duty to protect the Mono Lake environment." (*Ibid*.) Those rights were acquired pursuant to a comprehensive appropriative water rights system administered by the Division of Water Resources. The Supreme Court analyzed the relationship between the public trust doctrine and the California water rights system. (*Id*. at pp. 445-448.) Its analysis is equally apt to the relationship between the public trust doctrine and SGMA.

The court explained: "As we have seen, the public trust doctrine and the appropriative water rights system administered by the Water Board developed independently of each other. Each developed comprehensive rules and principles which, if applied to the full extent of their scope, would occupy the field of allocation of stream waters to the exclusion of any competing system of legal thought. Plaintiffs, for example, argue that the public trust is antecedent to and thus limits all appropriative water rights, an argument which implies that most appropriative water rights in California were acquired and are presently being used unlawfully. Defendant DWP, on the other hand, argues that the public trust doctrine as to stream waters has been 'subsumed' into the appropriative water rights system and, absorbed by that body of law, quietly disappeared; according to DWP, the recipient of a board license enjoys a vested right in perpetuity to take water without concern for the consequences to the trust. [¶] We are

unable to accept either position. In our opinion, both the public trust doctrine and the water rights system embody important precepts which make the law more responsive to the diverse needs and interests involved in the planning and allocation of water resources." (*National Audubon, supra*, 33 Cal.3d at p. 445, fn. omitted.)[7]

The court concluded that neither system of thought occupied the field and both ought to be accommodated. In other words, the court endorsed two parallel systems. Moreover, the court provided a concise statement of the state's common law duty under the public trust doctrine. "The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. [Citations.] As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public

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[7] Sensitive to the Supreme Court's rejection of the notion that the comprehensive water rights system "subsumed" the public trust doctrine, the County avoids the use of the word subsumed or any of its synonyms. Rather, the County argues that SGMA "fulfills" the state's public trust duties with respect to groundwater. The County's clever word play does not save its discredited argument. In *National Audubon*, the court made the important observation that even the comprehensive appropriative water rights system in California did not weaken or decimate the public trust doctrine. Had the court accepted the essence of the County's argument it could have found, as the County urges us to do, that the Legislature fulfilled its public trust duty by enacting the appropriative water rights system. The point is not whether the public trust duty is characterized as "fulfilled" or whether a statutory scheme is characterized as "subsuming" the common law, but whether the fiduciary duties imposed by the public trust doctrine survive a statutory scheme regulating water in the state. In *National Audubon*, they did. We conclude the same fiduciary duties survive the enactment of SGMA.

trust [citation], and to preserve, so far as consistent with the public interest, the uses protected by the trust." (*National Audubon, supra*, 33 Cal.3d at pp. 446-447, fn. omitted.)

The SMGA is not as comprehensive as the appropriative water rights system. As ELF points out, SMGA's coverage of groundwater is incomplete by its own terms in at least four ways. First, a covered basin for purposes of SMGA means only a designated basin or subbasin identified and defined in the Department of Water Resources' Bulletin 118 or as modified pursuant to a procedure outlined in SGMA. (§ 10721, subd. (b).) Second, SGMA does not apply to any groundwater basin listed in section 10720.8, including the adjudicated portions of the Scott River stream system. (§ 10720.8, subds. (a)-(e).) Third, many requirements in SGMA do not take effect for a number of years, and even then only for some subset of the total corpus of groundwater in the state. (See, e.g., §§ 10720.7, subd. (a) [setting deadlines of 2020 or 2022 for adopting groundwater sustainability plans for certain identified basins], 10735.8, subd. (h) [delaying until 2025 any SGMA-based Board interim plan intended to remedy depletions of interconnected groundwater in probationary basins].) Finally, 26 fully adjudicated basins and three pending adjudicated basins are exempted from SGMA under section 10720.8.

We reject, therefore, the County's position that because SGMA is comprehensive it occupies the field and supplants the common law. But even if the legislation was deemed comprehensive, *National Audubon* teaches the two systems can live in harmony. If the expansive and historically rooted appropriative rights system in California did not subsume or eliminate the public trust doctrine in the state, then certainly SGMA, a more narrowly tailored piece of legislation, can also accommodate the perpetuation of the public trust doctrine.

We highlight *National Audubon* because it is factually on point, it encapsulates the most basic and important principles governing the public trust doctrine as applied to

navigable waterways, and it answers both of the County's arguments that no court has held that the public trust doctrine applies to groundwater and that the comprehensiveness of SGMA precludes further consideration of the public trust doctrine in approving extraction of groundwater. On the more mundane issue of whether a statute impliedly supplants the common law, *Verdugo, supra*, 59 Cal.4th 312 echoes the conclusions reached by the Supreme Court decades earlier.

In *Verdugo*, the Supreme Court attempted to discern legislative intent from the scope of the legislation, in this case the statutes governing automated external defibrillators (AED's) for use in a medical emergency. (*Verdugo, supra*, 59 Cal.4th at pp. 325-334.) The court acknowledged the presumption that a statute does not impliedly supplant the common law. (*Id.* at p. 317.) The question was whether the statutes were sufficiently comprehensive to evince a legislative intent to occupy the field. The court concluded the AED statutes did not evince any such legislative intent. (*Id*. at p. 334.)

As in *National Audubon*, there was no incongruity between the legislation and the common law. In both cases, the Supreme Court harmonized the two, concluding the parallel systems did no violence to the legislative objectives. In *Verdugo* that meant businesses could obtain immunity by voluntarily providing AED's for emergency use under the AED statutes but those statutes did not preclude the courts from finding a common law duty to acquire and make available AED's in a medical emergency. "The applicability of the immunity statutes to entities that are under a common law duty to acquire and provide an AED would not in any way reduce or undermine the incentive that the immunity statutes provide to persons or entities that voluntarily obtain and make available AEDs." (*Verdugo, supra*, 59 Cal.4th at p. 332.)

Similarly, we can evince no legislative intent to eviscerate the public trust in navigable waterways in the text or scope of SGMA. While the public trust is not expressly mentioned in SGMA, there are many provisions that reflect a legislative desire not to interfere with the existing law. These provisions certainly do not suggest the

Legislature intended to dismantle one of the hallmarks of water policy in the state for over 35 years. Nor is the scope of SGMA any more comprehensive than the statutes in *National Audubon* or *Verdugo*. Indeed, given the number of groundwater basins that are not covered and the time horizon before GSA's are operational, SGMA's scope is arguably even more narrow than the counterpart legislation in either case. And by whatever measure is used, the County has fallen far short of overcoming the presumption that a statute does not supplant the common law, particularly when the common law at issue embodies a doctrine as significant to the people of the state as a trust on their water. We conclude the enactment of SGMA does not, as the County maintains, occupy the field, replace or fulfill public trust duties, or scuttle decades of decisions upholding, defending, and expanding the public trust doctrine.

The County makes a valiant effort to demonstrate that the public trust doctrine does not apply to groundwater under the common law and, even if it did, SGMA abolishes any fiduciary duties the Board or the County have to take the public trust interests into account when making decisions involving groundwater that will adversely impact navigable waterways. That effort fails. Independent of these claims, however, remains the County's contention that even if the Board's fiduciary duties survive SGMA, its own duties do not. In the County's view, it never had and, continues not to have, any fiduciary duties involving groundwater. Not so.

A county is a legal subdivision of the state and references to the "state" may include counties. (*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 175-176.) Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and "may not approve of destructive activities without giving due regard to the preservation of those resources." (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1370, fn. 19.)

We need only address one further argument raised by the County. The County asserts the Legislature, by enacting SGMA, rendered a conclusive judgment about the administration of the public trust, and the venerable separation of powers principle prohibits courts from intruding on the legislative prerogative. In this scenario, the Legislature is the sole keeper of the trust. The County's argument derives from a mere footnote in a case factually and legally inapposite.

We begin with the footnote in *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462 (*Mansell*). "The administration of the trust by the state is committed to the Legislature, and a determination of that branch of government made within the scope of its powers is conclusive in the absence of clear evidence that its effect will be to impair the power of succeeding legislatures to administer the trust in a manner consistent with its broad purposes." (*Id*. at p. 482, fn. 17.) Relying on this footnote, the County concludes the Legislature can administer the public trust and a "system of regulation based on judicially-fashioned public trust principles" would usurp the Legislature's "conclusive" judgment in administering the trust. But the County ignores the context in which this footnote was written.

The dispute in *Mansell* involved tidelands the Legislature freed from the public trust, thereby cutting them off from water resources. (*Mansell, supra*, 3 Cal.3d at p. 482.) The dispositive issue was whether the Legislature's action violated a state constitutional provision prohibiting the grant to private persons of tidelands within two miles of any city. (*Id*. at p. 478.) The Supreme Court examined the relationship between the constitutional provision and the public trust doctrine, noting that although public trust tidelands generally are not alienable, the Legislature may determine the tidelands are no longer useful for trust purposes and free them from the trust. It was in this context the court added a footnote observing that the Legislature's decision to free the tidelands from the public trust was "conclusive." (*Id*. at p. 482, fn. 17.) The court emphasized that the case was exceptional and involved a "rare combination of government conduct and

extensive reliance" that "will create an extremely narrow precedent for application in future cases." (*Id*. at p. 500.)

Mallon v. City of Long Beach (1955) 44 Cal.2d 199 (*Mallon*), cited by the Supreme Court in *Mansell*, involved the same basic fact pattern. Again the Legislature freed income derived from tidelands from the public trust. And, as in *Mansell*, the legislative decision to curtail the trust was deemed conclusive. The court explained: "[T]he Legislature has 'found and determined' that . . . the income derived from the production of oil and gas from the tide and submerged lands of Long Beach harbor is 'no longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by' statutes granting the said tide and submerged lands in trust. [Citation.] That determination and finding is conclusive upon this court." (*Mallon, supra*, at pp. 206-207.)

Neither case found an implied legislative intent to dismantle the public trust from the mere scope of a statute. Neither case compelled wholesale abolition of public trust fiduciary duties. Both instead relied on an express and limited legislative determination that specific tidelands or income derived from tidelands no longer served the public interest. As the trial court aptly found, *Mansell* and *Mallon* "stand for a limited proposition: If the Legislature determines public trust lands or waterways are no longer useful for trust purposes and frees them from the trust, that determination is conclusive. It will not be second guessed by the courts. Neither case is applicable here. The Legislature has not released the Scott River from the public trust. Therefore, requiring the County to consider the public trust in approving well permits does not infringe upon any 'conclusive' legislative determination."

The County concedes this case involves the regulation of water rather than the ownership of tidelands and urges us to follow water regulation cases such as *Colberg, Inc. v. State of California ex rel. Dept. Pub. Wks, supra*, 67 Cal.2d 408 and *Boone v. Kingsbury* (1928) 206 Cal. 148. We agree with ELF that neither case actually involves

the regulation of water. By means of a specific state statute in both cases the Legislature weighed the competing public interests and made a determination which interest prevailed. The cases bear no relevance to the dispositive questions before us.

Whether the Legislature could supersede or limit the Board's public trust authority if it wanted to is a question for another day. At present, we can find no violation of the separation of powers because, as we explained at length above, we have found no legislative intent to occupy the field and thereby to dissolve the public trust doctrine within the text or scope of SGMA.

DISPOSITION

The judgment is affirmed. ELF and the Board shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

RAYE, P. J.

We concur:

ROBIE, J.

BUTZ, J.