Debt Management and Disclosure Policy
# TABLE OF CONTENTS

Section I. Debt Management ........................................................................................................................................... 1  
A. Purpose and Overview ............................................................................................................................................... 1  
B. Roles and Responsibilities ........................................................................................................................................... 1  
C. Purpose for Borrowing ............................................................................................................................................... 2  
D. Ethical Standards Governing Conduct ...................................................................................................................... 2  

Section II. Integration of Capital Planning and Debt Activities ......................................................................................... 3  
A. Policy Goals Guiding Capital Improvement Program Spending .................................................................................. 3  
B. Debt Service Coverage Policies .................................................................................................................................. 3  

Section III. Procurement and Evaluation of Professional Services ......................................................................................... 4  
A. Selection Process ........................................................................................................................................................... 4  
B. Appointment of Municipal Financial Advisor ........................................................................................................... 4  
C. Appointment of Legal Counsel ..................................................................................................................................... 7  
D. Appointment of Trustee and Paying Agent .................................................................................................................. 8  
E. Appointment of Printer .................................................................................................................................................. 8  
F. Appointment of Letter of Credit or Liquidity Facility Provider ..................................................................................... 8  
G. Appointment of Remarketing Agents ........................................................................................................................ 9  
H. Appointment of Verification Agent ............................................................................................................................ 9  
I. Appointment of Underwriters ....................................................................................................................................... 9  
J. Appointment of Other Service Providers .................................................................................................................... 10  

Section IV. Transaction-Specific Policies .......................................................................................................................... 10  
A. Method of Sale .............................................................................................................................................................. 10  
B. Structural Elements ...................................................................................................................................................... 11  

Section V. Refunding Policies ................................................................................................................................................ 13  
A. Savings Thresholds ....................................................................................................................................................... 13  

Section VI. Reinvestment of Proceeds and Internal Controls on Use of Funds ....................................................................... 15  
A. Compliance with Laws and Other Legal Documents Governing  
Reinvestment of Proceeds ............................................................................................................................................. 15  
B. Internal Controls for Use of Proceeds ........................................................................................................................ 16  

Section VII. Creation and Maintenance of Funds .................................................................................................................. 16  
A. Operating Fund .............................................................................................................................................................. 16  
B. Stored Water Fund ....................................................................................................................................................... 16  
C. Equipment Replacement Fund .................................................................................................................................... 17
D. Rate Stabilization Fund ................................................................. 17
E. Pay-As-You-Go Fund ................................................................. 17
F. Debt Proceeds Fund ................................................................. 18
G. Debt Service Reserve Fund ....................................................... 18

Section VIII. Compliance ............................................................... 18
A. Arbitrage Liability Management .............................................. 18
B. Post-Issuance Tax Compliance .................................................. 19
C. Continuing Disclosure .............................................................. 19
D. Legal Covenants ............................................................... 19

Section IX. Communication and Disclosure Policies ...................... 19
A. Rating Agencies ............................................................... 19
B. Bond Insurers ............................................................... 20
C. Public Statements Made by the Water Authority ....................... 20
D. Initial or Primary Market Disclosure ........................................ 20
E. Continuing or Secondary Market Disclosure ......................... 21

Section X. Debt Database Management .......................................... 21

Glossary ........................................................................................................ 23

APPENDICES

Appendix A Legal Governing Principles ........................................ A-1
Appendix B County Water Authority Act ........................................ B-1
Appendix C Water Authority’s Standard Professional Service Contract .... C-1
Appendix D Written Procedures to Ensure Compliance with Requirements for Tax-Exempt Bonds .... D-1
Appendix E Written Procedures for Issuance of Direct Pay Build America Bonds ... E-1
Appendix F Continuing Disclosure Procedures .................................. F-1
A. Key Participants in Continuing Disclosure .................................... F-1
B. General Disclosure Procedures .................................................... F-2
C. Event Notices Procedures .......................................................... F-6
D. Website .................................................................................. F-7
E. Investor Relations Program and Inquiries ..................................... F-8
F. Presentations/Releases and Other Public Statements .................... F-9
G. Training ................................................................................ F-9
H. Annual CDIAC Reporting Procedures ........................................ F-10
I. Updates to Policies and Procedures .............................................. F-10
J. Miscellaneous ......................................................................... F-11
Appendix G General Resolution ...................................................... G-1
Appendix H Administrative Code .................................................. H-1
SAN DIEGO COUNTY WATER AUTHORITY

Statement of Debt Management and Disclosure Policy

Section I. Debt Management

A. Purpose and Overview

Govt. Code Section 8855 requires local governmental issuers of debt to establish and maintain a debt policy incorporating certain provisions. In addition, in its publication entitled Best Practice Debt Management Policy, the Government Finance Officers Association (GFOA) states that “Debt management policies are written guidelines, allowances, and restrictions that guide the debt issuance practices of state or local governments, including the issuance process, management of a debt portfolio, and adherence to various laws and regulations.” A debt management policy should improve the quality of decisions, articulate policy goals, provide guidelines for the structure of debt issuance, and demonstrate a commitment to long-term capital and financial planning.”1 GFOA recommends as a best management practice that state and local governments adopt comprehensive written debt management policies.

The San Diego County Water Authority (Water Authority) has adopted this Statement of Debt Management and Disclosure Policy (Debt and Disclosure Policy) as set forth herein in order to provide a set of comprehensive guidelines for the issuance and management of the Water Authority’s debt portfolio. Adherence to the Debt and Disclosure Policy is essential to ensure the Water Authority maintains a diversified debt portfolio that supports the Water Authority’s financing needs and minimizes the Water Authority’s cost of funds.

Certain capitalized terms used in this Debt and Disclosure Policy and not defined in the body of the document have the meanings set forth in the Glossary attached at the end of this Debt and Disclosure Policy.

B. Roles and Responsibilities

Director of Finance – The primary responsibility for debt management rests with the Director of Finance. The Director of Finance shall:

• Provide for the issuance of Water Authority debt at the lowest possible cost and risk;
• Determine the available debt capacity of the Water Authority;
• Provide for the issuance of Water Authority debt at appropriate intervals and in reasonable amounts as required to fund approved capital expenditures;
• Recommend to the Water Authority’s Board of Directors (Board) the method and manner of sale of Water Authority debt;
• Monitor opportunities to refund debt and recommend such refunding as appropriate to reduce costs or to achieve other policy objectives;

1 See http://www.gfoa.org/debt-management-policy
Comply with all applicable IRS, MSRB, and SEC rules and regulations governing the issuance of debt;
Maintain a current database with all outstanding Water Authority debt;
Provide for the timely payment of principal and interest on all Water Authority debt;
Comply with all terms and conditions, and disclosure obligations required by the legal documents governing the debt issued;
Submit to the Board all recommendations to issue debt in accordance with the County Water Authority Act and Resolution No. 89-21 (the General Resolution);
Distribute to appropriate repositories information regarding the Water Authority’s financial condition and affairs at such times and in the form required by law, regulation and general practice;
Provide for the frequent distribution of pertinent information to the rating agencies;
Provide for the ongoing management of an Investor Relations Program; and
Apply and promote prudent fiscal practices.

C. Purpose for Borrowing

The Water Authority shall issue debt solely for the purpose of financing the cost of design, acquisition, and/or construction of water system improvements, in furtherance of the Water Authority’s Capital Improvement Program (CIP). In the issuance and management of debt, the Water Authority must comply with all legal constraints and conditions imposed by federal, State and local law. Appendix A attached hereto highlights the key governing documents and certain debt limitations, and Appendix B attached hereto contains a copy of the County Water Authority Act, California Statutes 1943, Chapter 45, as amended.

D. Ethical Standards Governing Conduct

Members of the Water Authority, the Board and its consultants, service providers, and underwriters shall adhere to standards of conduct as stipulated by the San Diego County Water Authority Local Conflict of Interest Code or the California Political Reform Act, as applicable. All debt financing participants shall maintain the highest standards of professional conduct at all times, in accordance with:

MSRB Rules, including Rule G-37, shall be followed at all times;
Municipal Advisors shall adhere to applicable SEC rules;
Debt financing participants will assist the Water Authority staff in achieving its goals and objectives as defined in this Debt and Disclosure Policy;
Review any G-17 notices received from the Water Authority’s broker-dealers, and determine whether further investigation is needed based on such notice received; and
All debt financing participants shall make cooperation with the Water Authority staff their highest priority.
Section II. Integration of Capital Planning and Debt Activities

A. Policy Goals Guiding Capital Improvement Program Spending

The Water Authority shall develop and maintain a capital finance model to evaluate the impact of capital program spending, operations and maintenance costs, and debt service on its financial condition. As discussed in the Water Authority’s Long-Range Financing Plan (LRFP), the Water Authority’s overarching financial management objectives are, maximize cost efficiency (minimize costs/rates), provide predictable (smooth) rates and charges to member agencies and maintain intergenerational equity for system users over time (see a copy of the full LRFP on the Water Authority’s website located at http://www.sdcwa.org/mission-vision-values-strategies). To that end, the Director of Finance shall oversee the ongoing maintenance of quantitative modeling that includes, but is not limited to, the following:

- Historic and projected cash flows;
- Historic and projected capital expenditures;
- Historic and projected operating costs;
- Historic and projected fund balances, including the Operating Fund, the Rate Stabilization Fund (RSF), Pay-As-You-Go Fund (PAYGO), Debt Proceeds Fund, Stored Water Fund and Debt Service Reserve Fund
- Historic and projected debt service coverage;
- The most efficient mix of funding sources (long-term debt; short-term debt, and cash);
- Projected revenue requirements; and
- Projected rates and charges.

B. Debt Service Coverage Policies

1. Debt Service Coverage - The Debt Service Coverage Ratio (DSCR) measures the availability of current financial resources to pay for debt service. It is the ratio of annual revenues (net of operating expenses) to total annual debt service. For example, a DSCR of 1.00 means that after paying all operating expenses, an issuer only has exactly enough funds to pay its debt service obligations.

The DSCR is one of the primary metrics used by credit rating agencies and investors to assess the creditworthiness of an issuer. In this way it is similar to the income to loan ratio used in qualifying for home mortgage. All other things being equal, a higher DSCR means less borrowing, better credit ratings, and a lower cost of debt. Conversely, a lower DSCR means more borrowing, lower credit ratings, and more expensive debt.

The Water Authority’s General Resolution is the document governing outstanding debt issues. In this document, the Water Authority contractually commits to set rates so as to maintain a minimum DSCR of 1.20 times on
senior lien debt. The Water Authority also covenants to maintain net revenues of at least 1.00 times on all outstanding obligations. A copy of the General Resolution can be found in Appendix G.

2. **Enhanced Debt Service Coverage Ratio Target** – Highly-rated issuers generally have DSCRs that exceed the covenanted levels. In August 2006, along with the RSF funding policies, the Board adopted a DSCR policy target of 1.50 times. This DSCR target provided levels more appropriate to preserve the long-term financial integrity of ‘AA’ rated agency in the midst of a large capital program. In addition to this 1.50 times policy target, the Board also adopted another policy target of 1.00 times on senior lien debt net of capacity charge revenues.

**Section III. Procurement and Evaluation of Professional Services**

The Water Authority shall procure professional services as required to execute financing transactions and to advise on non-transaction related work. Professional services include Consultants (Municipal Advisor, Legal Counsel-Bond, Disclosure Counsel and Tax); Service Providers (Trustee, Paying Agent, Dissemination Agent, Arbitrage Consultant, Escrow Verification Agent, Bidding Agent for escrow investments, Printer, Letter of Credit, Verification Agent); and an Underwriting Team (Senior Manager, Co-Manager, Selling Group).

**A. Selection Process**

The selection of financial and legal professionals to assist the Water Authority in carrying out financing programs shall be made through a selection process consistent with the Water Authority’s procurement policies and procedures. All consultants, service providers and underwriting team members shall provide the Water Authority with objective advice and analysis, shall maintain the confidentiality of Water Authority financial plans, and shall be free from any conflict of interest pursuant to applicable law. The Water Authority’s Local Conflict of Interest Code, and procurement policies and procedures, can be found in in the Water Authority’s Standard Professional Service Contract, a copy of which is attached as Appendix C, and in the Water Authority’s Administrative Code (see chapters 1.04 and 4.04 therein) a copy of which is attached as Appendix H.

**B. Appointment of Municipal Financial Advisor**

The Water Authority will select a Municipal Advisor or advisors to assist in the issuance and administration of debt (Municipal Advisor) through the Request for Proposals (RFP) process.

The criteria to be used in evaluating and selecting a Municipal Advisor should include:

- Experience in providing formal financial advisory services to major utility issuers;
- Experience with diverse financial structuring requirements of major utility issuers;
- Experience and reputation of assigned personnel; and
• Fees and expenses.

A Municipal Advisor under contract with the Water Authority shall not purchase or sell any Water Authority debt. The Director of Finance shall submit to the Board a recommendation for the appointment of a Municipal Advisor. The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action. The Director of Finance shall monitor the services rendered by the Municipal Advisor.

Assistance to be provided by a Municipal Advisor will include, but not be limited to:

1. **Ongoing Services/Long-Term Forecasting**

   (i) Review and update as needed the existing model and the LRFP; provide analysis of funding methods and options including analysis of the structure of the LRFP; discussion of issues or difficulties which may be encountered in implementing the LRFP and the strategies to address such issues; prepare and deliver presentations regarding various financial issues to Water Authority staff and the Board as requested.

   (ii) Assist the Water Authority in interfacing with rating agencies with the objective of developing a strategy and plan to maintain at a minimum the Water Authority’s senior lien and subordinate lien ratings at “AA+/AA” and “AA/AA-”, respectively.

   (iii) Provide timely information, judgments, and forecasts regarding general economic and capital market conditions.

   (iv) Assist the Water Authority in updating its financial strategies and policies when requested. This includes analyzing short, intermediate and long-term financing options.

   (v) Advise the Water Authority on the timing, method and structure of its Securities sales.

   (vi) Update, modify, evaluate, and improve as necessary the revenue program and rate model which is used to help determine the Water Authority’s ability to meet funding requirements for the CIP.

   (vii) Be available at reasonable times for consultation to render advice regarding the financial aspects of the Water Authority’s program as may be requested by the Board, the General Manager, or the Director of Finance.

   (viii) Serve as an IRMA to the Water Authority in accordance with the SEC Municipal Advisor Rule.
(ix) Be available to attend meetings related to MWD LRFP and other related rate issues.

2. **Debt Issuance**

   (i) Prepare financing schedule, monitor progress of financing team participants, facilitate and coordinate completion of tasks and responsibilities in accordance with schedule and revise schedule as necessary.

   (ii) Assist in and coordinate the preparation of legal and disclosure documents related to debt issuance.

   (iii) Develop a rating agency strategy, prepare rating agency presentation material, schedule meetings with rating agencies, organize and coordinate Board and staff rehearsals and presentations, and coordinate itinerary for rating agency visits as required.

   (iv) Prepare and distribute RFP’s for underwriters, printers, and other team participants as directed by the Water Authority. Assist in evaluation of proposals, assist in conducting interviews as necessary, and provide recommendation as to firms selected.

   (v) Develop and take a primary responsibility for quantitative analysis of structuring alternatives for debt issues including sizing, structure, and term of issue; provide computer modeling and comparison of alternatives analysis; make recommendations and provide rationale for preferred alternatives and ensure that selected alternative provides the best solution as part of the LRFP.

   (vi) Assist and coordinate discussions and prepare presentation materials for identified key institutional investors. Coordinate itinerary as necessary for visits to institutional investors or meeting sites.

   (vii) Analyze and participate in decision as to timing of sale and consult as to advisability or necessity for rescheduling sale depending on market conditions.

   (viii) Prepare analytical discussion of market conditions and projected pricing results prior to sale. Provide independent pre-pricing analysis to Water Authority prior to sale including market activity, projected results, market supply and demand characteristics, and comparable sale analysis.

   (ix) Coordinate and monitor marketing programs initiated by underwriter to develop pre-sale market interest. Prepare and coordinate placement of notices and advertisements in periodical publications (e.g. the Bond Buyer) to stimulate market interest.
(x) Assist in development of and recommendation with respect to pre-sale interest rate scale and structure for pre-marketing purposes. Provide recommendation with respect to underwriter retention and syndicate sales prior to sale.

(xi) Analyze market conditions with respect to underwriters’ compensation; provide comparable transaction comparisons and recommendation with respect to underwriting spread and components thereof. Negotiate with underwriters’ representatives with respect to underwriters’ compensation, including liquidity agreement terms and conditions.

(xii) Participate in pricing process, monitor order flow to all managers, analyze volume and type of orders, and provide recommendation as to acceptance of offer to underwrite at conclusion of pricing period.

(xiii) Provide pricing analysis and comparisons following sale; document pricing results and provide written report to Water Authority with respect to final pricing and underwriter compensation level; and deliver quantitative schedules showing results of final pricing.

(xiv) Assist and coordinate administrative matters related to transaction closing, including preparation and distribution of final official statement. Participate in closing procedures.

3. Miscellaneous

(i) Upon request, assist in reviewing and analyzing legislation that may have a financial impact on the Water Authority.

(ii) Assist, when requested, by conducting surveys of the financial activities of other major operating utilities.

(iii) Attend Board meetings and make presentations to the Board, its committees and staff when requested.

(iv) Prepare graphs, charts, etc. for staff presentations, as needed.

(v) Upon request, assist in reviewing and analyzing MWD and State Water issues as they relate to the Water Authority and provide advice, as needed.

C. Appointment of Legal Counsel

All debt issued by the Water Authority shall include a written opinion by legal counsel affirming that the Water Authority is authorized to issue the proposed debt, that the Water Authority has met all federal, state, and local legal requirements necessary for issuance and a determination of the
proposed debt’s federal income tax status. This approving opinion and other documents relating to the issuance of debt shall be prepared by a nationally recognized legal firm with extensive experience in public finance and tax issues. The General Counsel of the Water Authority shall appoint the legal counsel.

For any negotiated sale of debt in which legal counsel is required to represent the underwriter, the lead underwriter shall make the appointment. Unless otherwise justified, the appointment shall be made from among nationally recognized law firms with significant ownership or operations in California.

D. Appointment of Trustee and Paying Agent

The Director of Finance shall appoint a fiscal agent to provide for the payment of all debt issued by the Water Authority. The selection of a fiscal agent shall be based upon a competitive evaluation of proposals submitted in response to an RFP.

The Director of Finance shall submit to the Board a recommendation for the appointment of a fiscal agent. The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action. The Director of Finance shall monitor the services rendered by the fiscal agent to ensure prompt and efficient service to bondholders.

E. Appointment of Printer

The Director of Finance shall select a printer or electronic dissemination provider as required in conjunction with a proposed sale of bonds, for the purpose of printing and mailing Preliminary Official Statements and Final Official Statements to potential investors and members of the finance team. The selection of a printer shall be based on a competitive evaluation of proposals.

F. Appointment of Letter of Credit or Liquidity Facility Provider

In order to comply with the requirements of the bond documents and to ensure the liquidity and marketability of the Water Authority’s variable rate debt (including, but not limited to, variable rate bonds and a tax-exempt commercial paper program), the Director of Finance shall take such actions as necessary to procure a letter of credit or line of credit in support of such variable rate debt. The selection of a letter of credit/liquidity bank shall be based on a competitive evaluation of proposals submitted in response to an RFP.

The Director of Finance shall submit to the Board a recommendation for the appointment of a Letter of Credit/Liquidity Facility provider. The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action. The Director of Finance shall monitor the trading value and credit ratings of the provider to ensure that the Water Authority’s variable rate debt is remarketed at the lowest possible cost, given the legal and policy considerations governing the selection of the bank.
G. **Appointment of Remarketing Agents**

The Director of Finance shall, in conjunction with selecting a letter of credit provider, solicit proposals from and select commercial paper remarketers/dealers.

H. **Appointment of Verification Agent**

In conjunction with the sale of refunding bonds, if required, the Director of Finance shall procure the services of a verification agent. The purpose of the verification agent is to confirm that sufficient proceeds are invested in permitted federal securities and to ensure the timely repayment of principal and interest on the bonds being refunded. The verification agent must be a nationally recognized provider of verification services. The selection of a verification agent shall be based upon a competitive evaluation of proposals submitted in response to an RFP.

I. **Appointment of Underwriters**

To provide for the negotiated issuance of Water Authority debt, the Director of Finance shall maintain an Underwriter Pool (Pool). The appointment to the Water Authority’s Pool shall be based upon a competitive evaluation of proposals submitted in response to a Request for Qualifications. The Director of Finance shall submit to the Board a recommendation for the appointment of underwriters to the Pool to serve a three-year term. The size and composition of the Pool shall be based upon the projected financing needs of the Water Authority. Criteria used in the appointment of qualified underwriters to the Pool shall include:

- Demonstrated ability serving on complex financial transactions;
- Demonstrated ability with major water issuer financings;
- Demonstrated ability to structure a debt issue efficiently and effectively;
- Demonstrated ability to sell Water Authority debt to institutional and retail investors;
- Demonstrated ability to put capital at risk;
- Quality and applicability of financing ideas;
- Experience and reputation of assigned personnel; and
- Indicative fees and expenses.

Prior to any negotiated transactions, an RFP will be issued to the Pool and a financing team recommended to the Board for selection. The composition of the team will be dependent on the size of the sale and the need to achieve a broad distribution of Water Authority debt among both retail and institutional investors. The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action.

In connection with the approval of the underwriting team, the Board shall appoint a lead underwriter. The lead underwriter shall have demonstrated ability to manage a number of firms in a complex financial transaction.
J. Appointment of Other Service Providers

The Director of Finance will solicit proposals for the following services as needed:

- Continuing Disclosure Agent – Service provider that ensures disclosure documents are disseminated to regulators and investors in compliance with regulations and continuing disclosure agreements.
- Arbitrage Consultant – Service provider that calculates the arbitrage accrued to transactions for the purpose of IRS filings.
- Open Market Securities Agent – Service provider that solicits prices for escrow fund investments and executes the purchase of selected investments.

Section IV. Transaction-Specific Policies

A. Method of Sale

1. Competitive Bid Method - Unless otherwise justified and deemed necessary to minimize the costs and risks of the Water Authority’s bond issue, the issuance and sale of all fixed rate Water Authority debt shall be achieved by competitive bid. Such bid may take the form of hand-delivered or electronically transmitted offers to purchase the bonds. Any competitive sale of Water Authority debt will require approval of the Board. Water Authority debt issued on a competitive bid basis will be sold to the bidder proposing the lowest true interest cost to the Water Authority provided the bid conforms to the official notice of sale.

2. Negotiated Bid Method – When necessary to minimize the costs and risks of Water Authority borrowing, the Director of Finance will submit to the Board a request to sell bonds on a negotiated basis. A negotiated bond issue will provide for the sale of debt by negotiating the terms and conditions of the sale, including price, interest rates, credit facilities, underwriter or remarketing fees, and commissions. Examples of such sales include:

   - Variable rate demand obligations;
   - An issue of debt so large that the number of potential bidders would be too limited to provide the Water Authority with truly competitive bids;
   - An issue requiring the ability to react quickly to sudden changes in interest rates (e.g. refunding bonds);
   - An issue requiring intensive marketing efforts to establish investor acceptance;
   - An issue of debt with specialized distribution requirements; and
   - An issue of debt sold during a period of extreme market disruption or volatility.

If bonds are sold on a negotiated basis, the negotiations of terms and conditions shall include, but not be limited to, prices, interest rates, underwriting or remarketing fees, and commissions. The
Water Authority, with the assistance of its Municipal Advisor, shall evaluate the terms offered by the underwriting team. Guidelines with respect to price, interest rates, fees, and commissions shall be based on prevailing terms and conditions in the marketplace for comparable issuers.

If more than one underwriter is included in the negotiated sale of debt, the Water Authority shall establish appropriate levels of liability, participation and priority of orders. Such levels shall be based upon Water Authority policy with regards to the underwriting responsibility among the team members, the desired allocation of total fees, and the desired distribution of bonds. Guidelines for establishing liability, participation, and priority of orders shall be based on prevailing terms and conditions in the marketplace for comparable issuers.

The Water Authority shall, with the assistance of its Municipal Advisor, oversee the bond allocation process. The bond allocation process shall be managed by the lead underwriter, with the following requirements:

- The bonds are allocated fairly among members of the underwriting team, consistent with the previously negotiated terms and conditions;
- The allocation process complies with all MSRB regulations governing order priorities and allocations;
- The lead underwriter shall submit to the Director of Finance a complete and timely account of all orders, allocations, and underwriting activities with the investor names identified as appropriate.

The Director of Finance shall require a post-sale analysis and reporting for each negotiated bond sale. The Municipal Advisor or the lead underwriter may perform such analysis. A post-sale analysis will include, but not be limited to:

- Summary of the pricing, including copies of the actual pricing wires;
- Results of comparable bond sales in the market at the time of the Water Authority’s pricing;
- Detailed information on orders and allocation of bonds, by underwriting firm;
- Detailed information on final designations earned by each underwriter; and
- Summary of total compensation received by each underwriter.

**B. Structural Elements**

1. **Pledge of Revenues** – The Water Authority’s pledge of revenues shall be determined for each debt issue depending upon the debt instrument:

   - *General Obligation Bonds* of the Water Authority shall be repaid from voter-approved property taxes on property within the jurisdiction of the Water Authority.
   - *Certificates of Participation* of the Water Authority shall be repaid from net revenues, as defined in the General Resolution.
• **Revenue Bonds** of the Water Authority shall be repaid from net revenues, as defined in the General Resolution.

• **Assessment Bonds** of the Water Authority shall be repaid from levies or charges collected within an assessment district formed by the Water Authority pursuant to the Municipal Improvement Act of 1913.

2. **Maturity** – The Water Authority shall issue debt with an average life less than or equal to the average life of the assets being financed. The final maturity of the debt should be no longer than 40 years. Factors to be considered when determining the final maturity of debt include: the average life of the assets being financed, relative level of interest rates, and the year-to-year differential in interest rates.

3. **Maturity Structure** – The Water Authority’s long-term debt may include serial and term bonds. Other maturity structures may also be considered if they are consistent with the objectives of the Water Authority’s Debt Management Policy.

4. **Coupon Structure** – Debt may include par, discount and premium. Discount and premium bonds must be demonstrated to be advantageous relative to par bond structures. For variable rate debt, the variable rate may be based on one of a number of commonly used interest rate indices and the index will be determined at the time of pricing.

5. **Debt Service Structure** – Debt service will be structured primarily on an approximate level (combined annual principal and interest) basis. Certain individual bond issues, such as refunding bonds, may have debt service that is not level. However, on an aggregate basis, debt service should be structured primarily on a level basis.

6. **Redemption Features** – In order to preserve flexibility and refinancing opportunities, Water Authority debt will generally be issued with call provisions. The Water Authority may consider calls that are shorter than traditional and/or non-call debt when warranted by market conditions and opportunities. For each transaction, the Water Authority will evaluate the efficiency of call provision alternatives.

7. **Credit Enhancement** – The Water Authority shall competitively procure credit enhancement for a sale of bonds if the Director of Finance, in consultation with the Municipal Advisor and the underwriters, determines that it is cost effective to do so.

8. **Senior/Subordinate Lien** – The Water Authority shall utilize both a senior and a subordinate lien structure. The choice of lien will be determined based on such factors as overall cost of debt, impact on debt service, impact on
water rates, and marketing considerations.

9. **Debt Service Reserve Funds** – The Water Authority shall provide for debt service reserve funds to secure Water Authority debt when necessary pursuant to the legal documents governing the transaction or market factors.

**Section V. Refunding Policies**

The Water Authority shall strive to refinance debt to maximize savings and minimize the cost of funds as market opportunities arise. A present value analysis will be prepared that identifies the economic effects of any refunding to be proposed to the Board. Upon the advice of the Director of Finance, with the assistance of the Municipal Advisor and Bond Counsel, the Water Authority will consider undertaking refundings for other than economic purposes, such as to restructure debt, change the type of debt instruments being used, or to retire a bond issue and indenture in order to remove undesirable covenants.

On December 22, 2017, the Tax Cuts and Jobs Act (H.R. 1) was signed into law. The Tax Cuts and Jobs Act eliminates the ability to issue tax-exempt advance refunding bonds after December 31, 2017. An advance refunding bond is generally defined as any refunding bond issued more than 90 days before the redemption of the refunded bond. While the use of tax-exempt advance refunding bonds is no longer available, the Water Authority may still use taxable debt to advance refund bonds and may use tax-exempt bonds when the refunding bonds are issued within 90 days of the call date (i.e., a current refunding).

**A. Savings Thresholds**

Minimum savings thresholds have been established to help guide the economic analysis of refunding bonds. The minimum savings guidelines are applicable on a maturity-by-maturity basis and are expressed as a percentage of refunded bond par calculated by dividing the expected net present value savings generated by the proposed refunding by the par amount of refunded bonds. Generally, the Water Authority shall only refund bonds to generate debt service savings if the specified minimum savings set forth in the following matrix can be achieved.

To determine if a potential refunding candidate meets the applicable minimum savings threshold specified in the matrix, the Water Authority shall:

<table>
<thead>
<tr>
<th>Years from Call to Maturity</th>
<th>Years to Call</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-1</td>
</tr>
<tr>
<td>0-2</td>
<td>1%</td>
</tr>
<tr>
<td>3-7</td>
<td>3%</td>
</tr>
<tr>
<td>8-15</td>
<td>4%</td>
</tr>
<tr>
<td>16+</td>
<td>4%</td>
</tr>
</tbody>
</table>

**Step 1.** Identify which specific savings threshold applies to the potential refunding candidate by
determining (a) how many years there are between the expected refunding date and the first call date and (b) how many years there are from the first call date to the final maturity of the refunding candidate, as shown in the examples below:

<table>
<thead>
<tr>
<th>Expected Refunding Date</th>
<th>Refunding Candidate First Call Date</th>
<th>Refunding Candidate Final Maturity Date</th>
<th>Minimum Threshold Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>12-1-2013</td>
<td>12-1-2016</td>
<td>12-1-2027</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>(3 years to call date)</td>
<td>(11 years call to maturity)</td>
<td></td>
</tr>
<tr>
<td>12-1-2013</td>
<td>12-1-2015</td>
<td>12-1-2022</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>(2 years to call date)</td>
<td>(7 years call to maturity)</td>
<td></td>
</tr>
</tbody>
</table>

**Step 2.** Determine the expected net present value savings for the potential refunding candidates on a maturity-specific basis. Net present value savings are the expected net present value savings resulting from the potential refunding of the specific-maturity refunded bond. Net present value debt service savings are calculated by discounting the relevant cash flows to the expected refunding bond closing date at a rate equal to the True Interest Cost of the associated, maturity-specific refunding bond, and taking into account all costs of issuance, including underwriters’ discount.

**Step 3.** Divide the net present value savings for the specified maturity calculated as described above by the par amount of the refunded bonds. If the percentage savings calculated is equal to or greater than the specified minimum savings threshold, the potential refunding candidate is deemed to meet the minimum savings threshold. If the percentage savings is less than the specified minimum savings threshold the refunding candidate does not meet the threshold.

As noted previously, the Director of Finance shall have discretion in making the final determination to include individual refunding candidates that are above or below the target in order to optimize policy and/or financial objectives. Factors that may be considered by the Director of Finance include, but are not limited to:

1. **Escrow Investment Yields (Negative Arbitrage)** – For advance refundings, the Director of Finance may take into consideration the available escrow yields relative to the refunding bond yields. If the available escrow yields are lower than the refunding bond yields (negative arbitrage), it will reduce the net present value savings otherwise available from the refunding. The Director of Finance may take negative arbitrage into account in assessing the appropriateness of a potential refunding, especially if the present value cost of such negative arbitrage is significant relative to the overall net present values savings expected to be achieved by the refunding.

2. **Coupon on Refunded Bond** – The Director of Finance may take into consideration whether the coupon on the refunded bond is significantly
higher or lower than the most common outstanding bond coupons of approximately five percent.

3. **General Interest Rate Environment** – The Director of Finance may take into consideration whether the available refunding bond interest rates are generally high or generally low relative to long-term averages of historical rates.

4. **General Interest Rate Outlook** – The Director of Finance may take into consideration the general outlook for future interest rates, as derived from economic forecasts, market forecasts, implied forward rates, or other sources.

5. **Debt Management Considerations** – The Director of Finance may take into consideration debt management issues such as cost and staff efficiencies associated with combining multiple refunding bond issues or combining refunding and new money bond issues.

Section VI. **Reinvestment of Proceeds and Internal Controls on Use of Funds**

A. **Compliance with Laws and Other Legal Documents Governing Reinvestment of Proceeds**

1. **General** – The Water Authority shall comply with all applicable Federal, State, and contractual restrictions regarding the use and investment of bond proceeds. This includes compliance with restrictions on the types of investment securities allowed, restrictions on the allowable yield of some invested funds, as well as restrictions on the time period during over which some bond proceeds may be invested. To the extent that a bond issue is credit enhanced, the Water Authority shall adhere to the investment guidelines of the credit enhancement provider.

2. **Requirements of Resolution** – The Water Authority will comply with all terms and conditions of the General Resolution. Such limitations shall include, but not be limited to Section 5.06 of the resolution.

3. **Investment Policies** – The Water Authority’s Annual Statement of Investment Policy defines the permitted investments for proceeds from debt issuances. The permitted investments comply with the California State Code. The investment of bond proceeds shall be made in accordance with the Water Authority’s Annual Statement of Investment Policy. For the current Annual Statement of Investment Policy, see the Water Authority’s website located at [http://www.sdcwa.org/policies-resolutions-ordinances](http://www.sdcwa.org/policies-resolutions-ordinances).
B. Internal Controls for Use of Proceeds

The Treasurer’s Investment Manual outlines the internal controls relating to the investment and management of debt proceeds. The Director of Finance manages the investment of proceeds in accordance with the investment policy. Key elements of the internal controls include dual verification of payments made by wire and department approval of construction invoices remitted by contractors. As discussed below, debt funds are also managed in separate accounts to eliminate the possible use of funds for operating expenditures.

Projects eligible for debt proceeds are limited to projects included in the Water Authority’s current CIP. Debt proceeds are restricted to capital projects with no private activity associated with them. Any project with a private activity benefit are cash funded. Projects eligible for the CIP are determined by the Finance Department and validated by the independent financial auditor.

Section VII. Creation and Maintenance of Funds

The Water Authority maintains a number of different funds integral to the LRFP process. Each of these funds is held for a specific purpose and can generally be categorized as either an operating, capital or debt reserve fund. Operating funds provide the Water Authority with monies for emergencies, working capital and water rate management and consist of the Operating Fund and the RSF. Capital funds, currently the largest component of Water Authority funds, are held strictly for capital expenditures and consist of the PAYGO Fund and Debt Proceeds Fund (which includes both long-term and short-term debt proceeds). Debt reserve funds are held in trust for the benefit of investors in the Water Authority’s long-term debt.

A. Operating Fund

The Operating Fund holds the Water Authority’s working capital, emergency operating reserve and Equipment Replacement Fund. As previously indicated, the Water Authority’s Administrative Code sets the target ending balance of the Operating Fund at 45 days of average annual operating expenditures provided that $5 million of such calculated amount to be designated and held available for emergency repairs to the Water Authority’s system due to unforeseen events. Working capital ensures that even with a cash receipts and disbursements mismatch, the Water Authority will have at least 30 days of Operating Funds on hand at all times. Given the short-term nature of this fund, liquidity of investments is critical and is ensured by investing the Operating Fund on a monthly basis to cover water purchases and ongoing cash disbursements. The Operating Fund, together with water sales revenue and other revenue sources, provide ample liquidity for working capital.

B. Stored Water Fund

The Stored Water Fund provides the working capital necessary to optimize the Water Authority’s local storage assets. Specifically, the Stored Water Fund is designed to ensure that funds are available to maintain the target level of local storage at 70,000 acre-feet in the San Vicente Reservoir and to track revenues from the sale of emergency waters necessary to replenish the water.
drawn down. Excess monies in the Stored Water Fund may be used to pay for capital projects or to reduce debt costs. For further information on the Stored Water Fund, see the Board’s Policy Guidelines for Managing Carryover Storage Supplies and Revisions to the Stored Water Fund Policy dated November 30, 2016.

C. Equipment Replacement Fund

This fund is used to purchase minor capital equipment such as computer systems, vehicles and parts of the Supervisory Control and Data Acquisition (SCADA) system. It is funded by transfers from the Operating Fund per depreciation schedule.

D. Rate Stabilization Fund

The RSF was created in Fiscal Year 1989-1990 for the purpose of collecting amounts of water revenues greater than expenditures in years of strong water sales. Funds can then be used to mitigate “rate shock” in years of weak water sales, to manage debt service coverage, or to smooth out water rate increases. The RSF is a critical short-term water rate management tool that provides the necessary funds to maintain a smooth water rate pattern over a long period of time. With the new melded supply rate, and the expansion of the Water Authority’s functional areas with treatment and desalination, the RSF will have an increasingly important role in managing hydrology risk and stabilizing annual revenue needs.

Board policy sets a target funding level for the RSF equal to the financial loss resulting from 2.5 years of above average rainfall, calculated at a 95% exceedance level. Additionally, it establishes a maximum funding level equal to the financial loss resulting from 3.5 years of above average rainfall. Defining the target and maximum funding levels of the RSF in terms of the financial impact of above average rainfall matches the size of the fund to the primary risk it is designed to mitigate and provides additional capacity for rate smoothing.

As a general rule, the Water Authority will transfer portions of its net water revenues not required to meet either its debt service coverage ratio requirement or operating fund requirement into the RSF. The Board may choose to budget for RSF deposits resulting in balances in excess of the target level but not in excess of the maximum level for the purposes of rate smoothing. Balances below the target level are to be replenished within three years. As necessary, the Water Authority will transfer amounts from its RSF into net water revenues to meet its debt service coverage requirements, Operating Fund requirements or to smooth rate increases. Interest earnings accrue to the RSF unless the maximum balance is achieved, at which point they will be deposited into the Operating Fund. The RSF is managed so that any funds above the maximum balance will be transferred to the Operating Fund—Operating Fund balances above the existing 45-day policy are subject to discretionary use by the Board. For further information on the RSF, see Sections 2.01 and 2.03 of the General Resolution.

E. Pay-As-You-Go Fund

The PAYGO Fund was established in Fiscal Year 1990 to serve as a mechanism to collect Capacity
Charges and Standby Charges to be used to pay for the cash portion of the CIP. The PAYGO Fund is a “capital fund”, as opposed to a “reserve fund,” meaning that the monies in the fund will be spent directly on capital expenditures, not held in reserve for some other purpose. The PAYGO Fund is projected to be spent over the next eleven years in conjunction with cash generated by operations to fund the pay-as-you-go portion of the CIP. Typically, the annual expenditure of PAYGO funds corresponds to a percentage of the annual CIP expenditure for a particular year, as dictated by the optimal funding mix derived through the long-range computer modeling process.

F. Debt Proceeds Fund

Similar to the PAYGO Fund, the Debt Proceeds Fund also holds capital funds for eventual expenditure towards the Water Authority’s CIP. Monies deposited into the Debt Proceeds Fund are produced by the Water Authority’s sale of tax-exempt securities in the form of long-term and short-term debt. Upon the sale of any single issue of tax-exempt debt, federal tax law currently dictates that the Water Authority must reasonable expect to spend the proceeds of the issue within three years. As a result, the Debt Proceeds Fund will typically fluctuate over two-to-three year periods as funds are raised through debt issuance every two-to-three years and then largely spent prior to the next issuance.

G. Debt Service Reserve Fund

Debt Service Reserve Funds maybe be required under legal documents governing the issuance of the Water Authority’s long-term debt. They are funded as either a percentage of the par amount of long-term debt issued or as one year of debt service on the issue and are held in trust for the benefit of investors in the debt issued. The funds may be used for debt service on an issue, if for any reason the Water Authority is unable to make a scheduled payment. In lieu of holding a cash-funded reserve fund, the Water Authority may substitute a surety bond or other credit facility in its place. The decision to cash-fund a reserve fund versus using a credit facility is dependent upon the cost of the credit facility and the investment opportunities and restrictions on a cash-funded reserve fund.

Section VIII. Compliance

A. Arbitrage Liability Management

The Water Authority shall minimize the cost of arbitrage rebate and yield restrictions while strictly complying with tax law. Because of the complexity of arbitrage rebate regulations and the severity of non-compliance penalties, the Water Authority shall solicit the advice of bond counsel and other qualified experts about arbitrage rebate calculations.

The Water Authority must assure payment of the required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the bonds, and no later than 60 days after the last bond of each issue is redeemed. Five year anniversary payments require 90% payment of the required rebate amount within 60 days after each 5-year anniversary of the issue date, while redemption payments require 100% payment due within 60 days after the final redemption or
maturity date of the bond issue. The Water Authority shall contract with a qualified third-party for preparation of the arbitrage rebate calculation and determination of any required rebate amount.

The Water Authority shall maintain an internal system for tracking expenditure of bond proceeds and investment earnings to meet the arbitrage rebate compliance requirements, including causing arbitrage to be reviewed approximately one year following the issuance of each series of Securities. The expenditure of bond proceeds shall be tracked in the financial accounting system by issue. Investment may be pooled for financial accounting purposes and for investment purposes. When investment of bond proceeds are co-mingled with other investments, the Water Authority shall adhere to IRS rules on accounting allocations.

B. Post-Issuance Tax Compliance

The Water Authority has adopted Written Procedures to Ensure Compliance with Requirements for Tax-Exempt Bonds found in Appendix D and Written Procedures for Issuance of Direct Pay Build America Bonds found in Appendix E. The Water Authority shall comply with such procedures to maintain the tax-exempt status of Water Authority debt obligations or to maintain eligibility for direct pay subsidy payments, as applicable.

C. Continuing Disclosure

The Water Authority shall comply with the requirements of each Continuing Disclosure Certificate entered into at the time of a sale of bonds and in accordance with this Debt and Disclosure Policy as set forth in Section IX below. Annual information provided by the Water Authority generally should be consistent with information contained in any contemporaneous Water Authority Official Statement that is being utilized in a primary offering. In addition to annual disclosure, the Water Authority shall provide ongoing information about certain enumerated events, as defined by regulation and as set forth in the Water Authority’s continuing Disclosure Certificates, to the MSRB.

D. Legal Covenants

The Water Authority shall comply with all covenants and conditions contained in governing law and any legal documents entered into at the time of a bond offering.

Section IX. Communication and Disclosure Policies

A. Rating Agencies

The Water Authority shall maintain its strong ratings through prudent fiscal management and consistent communications with the rating analysts. The Director of Finance shall manage relationships with the rating analysts assigned to the Water Authority’s credit, using both informal and formal methods to disseminate information. Communication with the rating agencies shall include:
• Full disclosure on an annual basis of the financial condition of the Water Authority;
• A formal presentation, at least biennially or as becomes necessary to the rating agencies, covering economic, financial, operational, and other issues that impact the Water Authority’s credit;
• Timely disclosure of major financial events that impact the Water Authority’s credit;
• Timely dissemination of the Comprehensive Annual Financial Report, following its acceptance by the Board;
• Full and timely distribution of any documents pertaining to the sale of bonds; and
• Periodic tours of the water system operations, as appropriate.

B. Bond Insurers
The Director of Finance shall manage relationships with the analysts and the bond insurers assigned to the Water Authority’s credit, using both informal and formal methods to disseminate information. Communication with the bond insurers shall be undertaken when the Director of Finance, with the assistance of the Water Authority’s Municipal Advisor, determines that credit enhancement is cost effective for a proposed bond issue.

C. Public Statements Made by the Water Authority.
In connection with the marketing of its Securities, Water Authority management will make formal presentations to the rating agencies engaged to rate the Securities as stated above and may make presentations to groups of prospective investors. These presentations are governed by, and the Water Authority is required to comply with, the same rules described in this Debt and Disclosure Policy.

Statements which may be considered information expected to reach investors and thus possibly subject to the rules described in this Debt and Disclosure Policy include public addresses, statements and speeches; press releases; information posted anywhere on the Water Authority’s website; press conferences; and Board proceedings, all of which may be monitored by rating agencies, investor analysts and other market participants. Accordingly, Water Authority officials should not make statements that are misleading about Water Authority finances and operations, and any such statements should be accurate and complete.

D. Initial or Primary Market Disclosure
The Water Authority must comply with the securities laws when it initially issues Securities and has a continuing obligation to comply with securities laws while its Securities are outstanding. In order to inform potential investors of what they need to know in order to decide whether or not to transact in the Water Authority’s Securities, its initial or primary market disclosure (generally in the form of an Official Statement or Offering Memorandum) should include information that describes (i) the Securities, (ii) the Water Authority, (iii) the projects to be financed or refinanced, and (iv) the security and sources of repayment of the Securities. The Water Authority’s initial or primary market disclosure will be used by the underwriters in the marketing of its Securities and should contain a description of risks associated with investment in the Securities. A well prepared
Official Statement may also function as the Water Authority’s primary defense against claims that the Water Authority violated the antifraud rules in connection with offerings of its Securities.

E. Continuing or Secondary Market Disclosure

The Rule requires underwriters of Securities to obtain a written agreement that the issuer will provide to investors certain ongoing, or “continuing”, disclosure. Continuing disclosure information is intended to reflect the financial or operating condition of the Water Authority as it changes over time, as well as specific events occurring after issuance, that can have an impact on both the ability to pay amounts owed and the market value of the Securities if bought or sold prior to maturity. Each publicly-issued Security has its own continuing disclosure requirements, and not all types of continuing disclosure will apply to each.

In furtherance of its continuing disclosure undertakings and to promote compliance with applicable law, the Water Authority has adopted and maintains disclosure policies and procedures that are reasonably designed to (a) result in accurate, timely and complete public disclosures; (b) identify the persons involved in the disclosure process; (c) evaluate other public disclosures that the Water Authority has made, including financial information and other statements, prior to public dissemination; and (d) assure that responsible individuals receive adequate training about their obligations under the Federal securities laws.

The Water Authority’s Continuing Disclosure Procedures are set forth in Appendix F attached hereto. Those procedures provide that the Director of Finance, or his or her designee, serves as Disclosure Coordinator for the Water Authority.

Section X. Debt Database Management

The Water Authority shall maintain complete information on its outstanding debt portfolio, in a spreadsheet or database program format. The information in the database shall include, but not be limited to, the following:

- Issue Name
- Initial Issue Par Amount
- Dated Date of the Issue
- Principal Maturity Amounts
- Coupon Rate by Maturity
- Amount Outstanding
- Call Provisions
- Purpose of the Issue
- Credit Enhancer, if any
- Competitive or Negotiated Sale
- Names of Underwriting Team Members
- Other information as applicable
The Water Authority shall use the debt database for the following purposes:

- Generate reports
- Gross annual debt service
- Net annual debt service
- Refunding Analyses
- Output to Fund Accounting System
GLOSSARY

For purposes of this Debt and Disclosure Policy:

“Annual Debt Transparency Report” means the annual debt transparency report required to be filed with CDIAC pursuant to Govt. Code Section 8855.

“Annual Filing” means annual financial information and operating data to be filed with the MSRB pursuant to Disclosure Agreements.

“CDIAC” means California Debt and Investment Advisory Commission.

“DAC” means Digital Assurance Certification, LLC, an accounting firm that provides post-issuance securities and tax compliance services to municipal securities market participants.

“Disclosure Agreement” means the provisions of each continuing disclosure agreement, ordinance, order, resolution, letter of credit reimbursement agreement, commercial paper dealer agreement, indenture, bond insurance commitment or other agreement of the Water Authority by which the Water Authority undertakes to provide financial and operating data periodically, and timely notices of certain events or other reporting requirements, to the MSRB or others, whether expressly or as the only nationally recognized municipal securities information repository under the Rule.


“Disclosure Counsel” means counsel engaged from time to time by the Water Authority with the approval of the General Counsel to give advice to the Water Authority in accordance with this Debt and Disclosure Policy.

“Disclosure Coordinator” means the officers or employees of the Water Authority charged with exercising the responsibilities of a Disclosure Coordinator under this Debt and Disclosure Policy as described in Appendix F.

“Disclosure Working Group” means the officers or employees of the Water Authority charged with exercising the responsibilities of the Disclosure Working Group in preparing or reviewing any Public Statements under this Debt and Disclosure Policy.

“EMMA” refers to MSRB’s Electronic Municipal Market Access reporting system.

“Event Notice” refers to notice of a Listed Event required to be delivered by the Water Authority to the MSRB pursuant to the Disclosure Agreements and the Rule.


“Financial Professionals” means financial professionals performing services for the Water
Authority’s debt programs, such as financial advisors, accountants, consultants and underwriters.

“General Counsel” means the General Counsel to the Water Authority.


“Investor Inquiry Coordinator” means the Director of Finance/Treasurer or the officers or employees of the Water Authority charged with exercising the responsibilities of an Investor Inquiry Coordinator under this Debt and Disclosure Policy.

“IRS” means the Internal Revenue Service.

“IRMA” means Independent Registered Municipal Advisor.

“Listed Events” a list of any list of events required to be disclosed under any Disclosure Agreements.

“Material”, “Materiality” or “Materially” when used with respect to a fact included in a Disclosure Document means, generally, that a reasonable investor likely would attach significance to it in making a decision to buy, hold or sell Securities of the Water Authority. When questions of Materiality arise, the General Counsel and/or Disclosure Counsel should be consulted, however ultimately it is the issuer’s responsibility. When determining Materiality, some items that auditors consider include, for example, whenever the item (i) has a material impact on the financial statements (e.g. a critical accounting estimate or significant unusual transaction), (ii) may become a matter of public interest or exposure, (iii) applies to a new accounting standard or policy or (iv) relates to changes in internal control over financial reporting.

“Member Agency” means the 24 member agencies are comprised of 6 cities, 5 water districts, 3 irrigation districts, 8 municipal water districts, 1 public utility district, and 1 federal military base.

“MSRB” means the Municipal Securities Rulemaking Board.

“MWD” means the Metropolitan Water District of Southern California.

“Offering Documents” means preliminary and final Official Statements, commercial paper offering memoranda and other documents by which Securities are offered to the public by the Water Authority as well as solicitation statements by which the Water Authority offers to purchase its Securities or requests consents or waivers regarding Securities.

“Official Statements” means any preliminary and final official statements, together with any supplements issued in primary offerings of Securities.

“Public Information Officer” means the Director of Public Outreach and Conservation of the Water Authority or the officers or employees of the Water Authority charged with exercising the responsibilities of a Public Information Officer under this Debt and Disclosure Policy.
“Presentations/Releases” means press releases, publications, media interviews, presentations (including investor presentations), speeches, and other statements of the Water Authority or its officials and employees that could reasonably be Material to investors in Securities.

“Public Statement” means any statement or other communication that is intended (or reasonably can be expected) to be accessible to and reasonably relied upon by investors in Securities, including, as applicable: (i) Offering Documents; (ii) information filed with the MSRB through the EMMA, including Annual Filings and Event Notices; (iii) information uploaded or linked or posted to the website of the Water Authority; or (iv) statements made by the Water Authority or any of its officials and employees that could reasonably be Material to investors in Securities, including Presentations/Releases.

“Report of Final Sale” means a report of the final sale no later than 21 days after the sale of any debt issue.

“Reporting Period” refers to the reporting period beginning July 1 through June 30.

“Rule” means Rule 15c2-12 adopted by the SEC under the Exchange Act, as the same may be amended from time to time.

“Securities” means bonds, notes, certificates of obligation, certificates of participation and other debt obligations or securities of the Water Authority, or the payment of which the Water Authority is obligated to support by a lease, contract or other arrangement, that are sold to or otherwise held or traded in by investors.

“Securities Act” means the Securities Act of 1933, as amended.

“SEC” means the United States Securities and Exchange Commission.

“Transcript and File” means the form of an electronic or paper file for each Public Statement that the Water Authority completes.

“Water Authority” means the San Diego County Water Authority.

“Web Manager” means [the Information Systems Manager], who reports to the Director of Administrative Services and is the employee of the Water Authority charged with operating, updating, and maintaining the Water Authority’s website and exercising the responsibilities of the Web Manager under this Debt and Disclosure Policy.
Appendix A
Legal Governing Principles

A. Governing Law

County Water Authority Act – The Water Authority is a public agency created in 1944 under the County Water Authority Act (the Act), California Statutes 1943, Chapter 45, as amended. The Act establishes the Water Authority’s legal authority to issue debt and the limitations therein. A copy of the Act can be found in Appendix B. The Water Authority shall comply with all constraints of the Act.

Federal Tax Law – The Water Authority shall issue and manage debt in accordance with the limitations and constraints imposed by federal tax law, to maximize its ability to sell tax-exempt debt. Such constraints include, but are not limited to, private activity tests, review of eligible projects, spend-down tests, and arbitrage rebate limitations.

Securities Law – The Water Authority shall comply with the requirements of federal and state securities laws in offering Water Authority debt and the Water Authority shall comply with securities law requirements in providing ongoing disclosure to the securities markets.

B. Governing Legal Documents

General Resolution – The Water Authority’s debt issuance is further governed by Resolution No. 89-21, adopted May 11, 1989, Resolution No. 97-52, adopted December 11, 1997, and Resolution No. 09-23, adopted on December 17, 2009, all of which together constitute the General Resolution. The General Resolution establishes the basic security structure of debt issued by the Water Authority that is secured by Net Water Revenues. Key terms and conditions include, but are not limited to, the definition of pledged revenues, the rate covenant and the additional bonds test. A copy of the General Resolution can be found in Appendix G. The Water Authority shall comply with all limitations imposed under the General Resolution.

C. Permitted Debt by Type

The Water Authority may legally issue both short-term and long-term debt, using the debt instruments described below and any Securities. The Director of Finance, in consultation with the Water Authority’s General Counsel and Bond Counsel, shall determine the most appropriate instrument for a proposed bond sale.

General Obligation Bonds – The Water Authority is empowered, under its Act, to levy taxes on all taxable property within its boundaries for the purpose of paying its voter-approved general obligation bonds and, subject to certain limitations in the Act, the California Revenue and Taxation Code and the California Constitution, for other Water Authority purposes. The Water Authority is authorized to sell general obligation bonds under Section 7 of the Act, subject to the approval of a two-thirds majority of those voting in a local election.
Certificates of Participation – Certificates of Participation (COP) provide debt financing through a lease, installment sale agreement or contract of indebtedness and typically do not require voter approval. Board action is sufficient to legally authorize a COP issue. The Water Authority is permitted to use the installment sale form of COPs, based upon its ability to execute installment sale agreements (Section 5 of the Act) and contracts of indebtedness (Section 8 of the Act). The Water Authority’s issuance of COPs is facilitated by the San Diego County Water Authority Financing Corporation, a California nonprofit benefit corporation that was created by the Water Authority specifically to serve as party to the installment sale agreements and contracts of indebtedness securing Water Authority COPs. The Water Authority shall pledge net revenues to the repayment of its COPs, under the terms and conditions specified in the General Resolution.

Joint Powers Agency Revenue Bonds – As an alternative to COPs, the Water Authority may obtain financing through the issuance of bonds by a joint exercise of powers agency with such bonds payable from amounts paid by the Water Authority under a lease, installment sale agreement, or contract of indebtedness. The San Diego County Water Authority Financing Agency is a joint exercise of powers agency formed for the purpose of facilitating Water Authority financing through the issuance of such revenue bonds.

Commercial Paper – Per Section 8.2 of the Act, the Water Authority may issue short-term revenue certificates, including commercial paper and extendable commercial paper. Board action is sufficient to legally authorize a commercial paper issue. The Water Authority’s commercial paper is secured by net revenues, but on a subordinate lien basis to the Water Authority’s long-term debt (i.e. COPs). Voter approval is not required to issue commercial paper.

Variable Rate Debt – The Water Authority is authorized to issue variable rate debt including, but not limited to, public market indexed notes, indexed notes or loans placed directly with financial institutions and other alternative variable rate and market access products as well as traditional variable rate demand obligations backed by bank liquidity facilities. Prior to the issuance of variable rate debt, the savings and other possible advantages compared to a fixed rate borrowing will be evaluated and a comparative analysis presented to the Board as part of the approval process.

Revenue Bonds – The Water Authority is authorized to issue revenue bonds (Section 7.5 of the Act), as further described in the Revenue Bond law of 1941 (Chapter 6, commencing with Section 54300, or Part 1 of Division 2 of Title 5 of the Government Code). The Water Authority shall pledge net revenues to the repayment of any revenue bonds under the terms and conditions specified in the General Resolution.

Refunding Revenue Bonds – The Water Authority is authorized to issue refunding revenue bonds to refund outstanding Water Authority indebtedness pursuant to the State of California local agency refunding revenue bond law (Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code).

Assessment Bonds – The Water Authority is authorized to issue assessment bonds pursuant to the Improvement Bond Act of 1915, subject to requirements imposed by Proposition 218. Such bonds are typically repaid from assessments collected within an assessment district formed pursuant to the Municipal Improvement Act of 1913. Assessments are levies of charges on real property to pay for projects or services that specifically benefit that parcel of property.
D. Limitations on Debt Issuance

Subordinate Lien Short-Term Debt – The Water Authority’s subordinate short-term debt shall not exceed 30 percent of its total debt at the time of issuance. The calculation of short-term debt shall include variable rate demand obligations, the authorized amount of commercial paper, any notes/bonds with a maturity equal to or less than five years, and any variable rate debt. The Water Authority’s subordinate lien debt, for which net revenues are pledged, shall be limited to that amount for which current and projected revenues generate overall debt service coverage of at least 100 percent if no subordinate bonds are outstanding, and 105 percent if subordinate bonds are outstanding.

Senior Lien Long-Term Debt – The Water Authority’s senior lien long-term debt, for which net revenues are pledged, shall be limited to that amount for which current and projected revenues generate a senior lien debt service coverage of at least 120 percent. The calculation of debt service shall not include general obligation bonds or assessment bonds, to which revenue sources other than pledged revenues, as defined in the General Resolution, are pledged. It should be noted that the Board has adopted a policy that sets the senior lien debt service coverage target of 150 percent in keeping with its prudent financial management.
COUNTY WATER AUTHORITY ACT
(As of January 1, 2008)

From West’s Annotated California Codes

Water Code-Appendix

Chapter 45
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>45-1</td>
<td>Title of act</td>
</tr>
<tr>
<td>45-2</td>
<td>Public agencies</td>
</tr>
<tr>
<td>45-3</td>
<td>Incorporation; Incorporators; exercise of powers</td>
</tr>
<tr>
<td>45-4</td>
<td>Organization and corporation procedure</td>
</tr>
<tr>
<td>45-5</td>
<td>Powers</td>
</tr>
<tr>
<td>45-5.1</td>
<td>Hydroelectric power</td>
</tr>
<tr>
<td>45-5.2</td>
<td>Standby water charges</td>
</tr>
<tr>
<td>45-5.3</td>
<td>Standby water charges; election; payment</td>
</tr>
<tr>
<td>45-5.5</td>
<td>Surplus money; investment</td>
</tr>
<tr>
<td>45-5.9</td>
<td>Connection and capacity charges; collection; reimbursement</td>
</tr>
<tr>
<td>45-5.10</td>
<td>Judicial action or proceeding involving ordinance fixing water standby availability, or connection or capacity charge; limitation</td>
</tr>
<tr>
<td>45-6</td>
<td>Directors; total financial contribution and vote of member public agencies of the San Diego County Water Authority</td>
</tr>
<tr>
<td>45-7</td>
<td>Bond issues</td>
</tr>
<tr>
<td>45-7.5</td>
<td>Revenue bonds; authority; law governing</td>
</tr>
<tr>
<td>45-8</td>
<td>Contract to incur indebtedness; election; indebtedness by contract in lieu of bond issuance; second indebtedness by contract if project construction not commenced</td>
</tr>
<tr>
<td>45-8.1</td>
<td>Repair or replacement of damaged or demolished structures; authorization; bonds</td>
</tr>
<tr>
<td>45-8.2</td>
<td>Borrowing money; short-term revenue certificates</td>
</tr>
<tr>
<td>45-9</td>
<td>Taxation</td>
</tr>
<tr>
<td>45-9.1</td>
<td>Reimbursement of lost tax revenues</td>
</tr>
<tr>
<td>45-10</td>
<td>Annexation</td>
</tr>
<tr>
<td>45-10.1</td>
<td>Annexation; special tax levy; payment of amount specified to authority; effect</td>
</tr>
<tr>
<td>45-10.2</td>
<td>Annexation of territory within federal military reservation to county water authority</td>
</tr>
<tr>
<td>45-10.3</td>
<td>Public agency within unit of county water authority; procedure to become separate unit</td>
</tr>
<tr>
<td>45-11</td>
<td>Exclusion of territory</td>
</tr>
<tr>
<td>45-11.1</td>
<td>Territory within multiple public agencies in authority as separate units</td>
</tr>
<tr>
<td>45-13</td>
<td>Administrative authority</td>
</tr>
<tr>
<td>45-13.5</td>
<td>Authority report; standing committees</td>
</tr>
<tr>
<td>45-14</td>
<td>Deposit of funds</td>
</tr>
<tr>
<td>45-15</td>
<td>Fiscal year; statement of revenues and expenditures; statement of water storage and use</td>
</tr>
<tr>
<td>45-15.5</td>
<td>Claims for money or damages; law governing</td>
</tr>
<tr>
<td>45-16</td>
<td>Partial invalidity</td>
</tr>
</tbody>
</table>
CHAPTER 45. COUNTY WATER AUTHORITY ACT

An Act to provide for the organization, incorporation and government of county water authorities, authorizing and empowering such authorities to acquire water and water rights, and to acquire, construct, operate and manage works and property, to incur bonded indebtedness therefor, to provide for the taxation of property therein, and the performance of certain functions relating thereto by officers of county within which any such authority may be located, to provide for addition of areas thereto, and the exclusion of areas therefrom (Stats.1943, c. 545, p. 2090.)

§ 45-1. Title of act

Section 1. This act shall be known as the County Water Authority Act. (Stats.1943, c. 545, p. 2090, § 1.)

§ 45-2. Public agencies

Sec. 2. The term "public agencies," wherever appearing in this act, shall be deemed to mean and include any municipal corporation of the State of California, whether organized under a freeholders' charter or under the provisions of general law, any municipal water district, any municipal utility district, any public utility district, any county water district, any irrigation district, organized under the laws of the State of California, or any other public corporation or agency of the State of California of similar character, with power to acquire and distribute water. (Stats.1943, c. 545, p. 2090, § 2.)

§ 45-3. Incorporation; incorporators; exercise of powers

Sec. 3. County water authorities may be organized and incorporated hereunder by two or more public agencies in any county, which public agencies need not be contiguous, and when so incorporated, such authorities shall exercise the powers herein expressly granted, together with such implied powers as are necessary to carry out the objects and purposes of such authorities. Each such authority when so organized, shall be a separate and independent political corporate entity. (Stats.1943, c. 545, p. 2091, § 3.)

§ 45-4. Organization and corporation procedure

Sec. 4. The procedure for organizing and incorporating a county water authority under the provisions of this act is as follows:

1) Resolutions; petition. Resolutions shall first be passed by the legislative bodies of the public agencies designated to be incorporated in the proposed authority, declaring that in their opinion public interest or necessity demands the creation and maintenance of a county water authority to be known as the "(giving the name) County Water Authority." Said resolutions shall contain a statement of the names of such public agencies as are intended to be incorporated in said authority. Certified copies of said resolutions shall be presented to the board of supervisors of the county within which said public agencies are located, requesting said board to call an election without delay for determining whether such authority shall be created.

If for any reason the legislative body of any public agency designated as intended to be incorporated fails or refuses to adopt the resolution above referred to, then instead of said resolutions, a petition may be presented to the board of supervisors of said county on behalf of said public agency signed by qualified electors within the boundaries of any such public agency, in number to at least 10 per cent of the total vote cast at the last general State election within the territory of said public agency. Said petition shall contain substantially the same declarations and statements required to be contained in the resolutions hereinbefore mentioned. Such petition may be on separate papers but each paper shall contain the affidavit of the party who circulated it, certifying that each name signed thereto is the true signature of the person whose name it purports to be. The clerk of the board of supervisors of said county shall compare the signatures with the affidavits of registration and certify to the board of supervisors the sufficiency or insufficiency of said petition. If found and certified by said clerk as being sufficient such petition shall have all the force and effect of a resolution adopted by the legislative body of said public agency.
(2) **Election; call.** Upon the receipt of the resolutions and petitions hereinbefore mentioned, said board of supervisors shall call an election within the territorial boundaries of the public agencies who have adopted such resolutions or on whose behalf a proper petition has been presented, for the purpose of determining whether the proposed county water authority shall be created and established.

(3) **Election procedure—notice of elections.** The board of supervisors of said county shall give notice of said election by publishing the same once a week for at least three weeks before the date of said election in a newspaper of general circulation, published within the proposed authority. In case no newspaper of general circulation is published within said proposed authority, said notice shall be posted for at least three weeks in not less than three public places within said proposed authority.

Said notice shall state, among other things, the name of the proposed authority and set forth the public agencies proposed to be included therein.

**Ballot.** The ballot for said election shall contain such instructions as are required by law to be printed thereon, and in addition thereto there shall appear the following:

<table>
<thead>
<tr>
<th>Shall the “(giving the name thereof) County Water Authority” be created and established?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

**Conduct of election.** Said election and all matters pertaining thereto, not otherwise provided for herein, shall be held and conducted, and the results thereof ascertained, determined and declared in accordance with the general election laws of the State, as nearly as may be, and no person shall be entitled to vote at said election unless he or she be a qualified elector of one of the public agencies proposed to be incorporated in the proposed authority. Said election may be held on the same day as any other State, county or city election, and may be consolidated therewith.

**Canvass; order of establishment.** The board of supervisors shall meet on Monday next succeeding the day of said election and canvass the votes cast thereat. They shall canvass the returns of each public agency separately and shall order and declare said authority created and established consisting of the public agencies in which a majority of those who voted on the proposition voted in favor of the creation of said authority; provided, however, that the total number of electors in such approving public agencies be not less than two-thirds the number of the electors within the authority as first proposed, according to the register of voters used at said election.

**Completion of establishment.** The board of supervisors shall cause a certified copy of said order declaring the result of said election to be filed in the office of the Secretary of State, and with the legislative body of each of the public agencies in which said election was held. From and after the filing of said order in the office of the Secretary of State the establishment of said county water authority shall be deemed complete.

**Cost of election.** The board of supervisors calling the election shall make all provision for the holding thereof throughout the entire authority as proposed, and the cost thereof shall be a proper charge against the county. In case a special election is held exclusively on the proposition of organizing such an authority, the expenditure therefor shall be reimbursed to the county by means of a special tax on all of the taxable property within the public agencies which was proposed to be included in the authority, which tax shall be added to the next county tax bills by the proper officers of the county.

**Insubstantial irregularities.** No informality in any proceeding or in the conduct of said election not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water authority, and any proceedings attacking the validity of such incorporation, shall be commenced within three months from the date of filing the aforesaid order with the Secretary of State, otherwise such incorporation and the legal existence of said county water authority shall be held to be valid and in every respect legal and incontestable.

(Stats.1943, c. 545, p. 2091, § 4.)

**§ 45-5. Powers**

Sec. 5. An authority may do all of the following:
(1) Have perpetual succession.

(2) Sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

(3) Adopt a corporate seal and alter it at pleasure.

(4) Acquire by grant, purchase, bequest, devise or lease, and hold, enjoy, lease, or sell or otherwise dispose of, any real and personal property of any kind within or without the authority and within and without the state necessary or convenient to the full exercise of its powers; acquire, construct or operate, control, and use any works, facilities, and means necessary or convenient to the exercise of its powers, both within and without the authority, and within and without the state, and perform all things necessary or convenient to the full exercise of the powers granted in this act.

(5) Exercise the power of eminent domain to take any property necessary to the exercise of the powers granted in this act.

(6) Construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands which are now, or may become, the property of the State of California; provided that the authority shall promptly restore the street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such a manner as to completely or unnecessarily impair its usefulness. The grant of the right to use the vacant state lands shall be effective upon the filing by the authority, with the Division of State Lands, of an application showing the boundaries, extent, and locations of the lands, rights-of-way, or easements desired for those purposes. If the land, rights-of-way, or easement for which application is made is for the construction of any aqueduct, ditch, pipeline, conduit, tunnel, or other works for the conveyance of water, or for roads, or for poles, or towers and wires for the conveyance of electrical energy or for telecommunication, no compensation shall be charged the authority, unless, in the opinion of the Chief of the Division of State Lands the construction of the works will render the remainder of the legal subdivision through which the works are to be constructed valueless or unsalable, in which event the authority shall pay for the lands to be taken and for that portion of any legal subdivision which, in the opinion of the Chief of the Division of State Lands, are rendered valueless or unsalable. If the lands for which application is made are for purposes other than the construction of roads or for works for the conveyance of water, or electricity, or telecommunication, the authority shall pay to the state for the lands at the reasonable rate determined by the Division of State Lands. Upon filing the application, accompanied by map or plat showing the location or proposed location of the works or facilities, the fee title to so much of those state lands as shall be found by the Chief of the Division of State Lands to be necessary or convenient to enable the authority to construct or maintain its works or to establish or maintain its facilities, shall be conveyed to the authority by patent executed by the Governor of the State of California, attested by the Secretary of State with the Great Seal of the state affixed, and countersigned by the Registrar of State Lands; if only an easement or right-of-way over the lands is sought by the authority, that easement or right-of-way shall be evidenced by permit or grant executed by the Chief of the Division of State Lands. The Chief of the Division of State Lands may reserve in the patents, grants, or permits, easements and rights-of-way across any lands therein described for the construction of streets, roads, and highways. Before the patent, grant, or permit shall be executed any compensation due to the state under this section shall be paid. If the duties or titles of any of the officers mentioned are changed by lawful authority, the functions required to be performed shall be performed by the appropriate officer or officers of the State of California. No fee shall be exacted from the authority for any patent, permit, or grant so issued or for any service rendered pursuant to this act. In the use of streets or highways, the authority shall be subject to the reasonable rules and regulations of the governmental agency in charge thereof, concerning excavations and the refilling of excavations, and the relaying of pavements and the protection of the public during periods of construction, provided that the authority shall not be required to pay any license or permit fees or file any bonds. The authority may be required to pay reasonable inspection fees.

(7) Borrow money and incur indebtedness and issue bonds or other evidence of that indebtedness; provided, however, that no authority shall incur indebtedness which, in the aggregate, exceeds 15 percent of the taxable property of the authority as shown by the last equalized assessment roll of the county in which the authority is located.

(8) Impose and collect taxes for the purpose of carrying on the operations and paying the obligations of the authority; provided, however, that the taxes imposed pursuant to this section exclusive of any tax imposed to meet the bonded indebtedness of the authority and the interest thereon and exclusive of any tax imposed to meet any obligation to the United States of America or to any board, department, or agency thereof, shall not exceed five
cents ($0.05) on each one hundred dollars ($100) of assessed valuation.

(9) Enter into contracts, employ and retain personal services, and employ laborers; create, establish, and maintain such offices and positions as shall be necessary and convenient for the transaction of the business of the authority, and elect, appoint, and employ officers, attorneys, agents, and employees the board of directors finds to be necessary and convenient for the transaction of the business of the authority.

(10) Join with one or more other public corporations for the purpose of carrying out any of its powers, and for that purpose to contract with the other public corporation or corporations for the purpose of financing the acquisitions, constructions, and operations. The contracts may provide for contributions to be made by each party and for the division and apportionment of the expenses of the acquisitions and operations, and the division and apportionment of the consequent benefits, services, and products. The contracts may contain other and further covenants and agreements as necessary and convenient to accomplish those purposes. The term "public corporation" as used in this subdivision includes the United States or any public agency thereof or this or any other state or any political district, subdivision, or public agency thereof.

(11) Acquire water and water rights within or without the state; develop, store, and transport that water; provide, sell, and deliver water for beneficial uses and purposes; and provide, sell, and deliver water of the authority not needed or required for beneficial purposes by any public agency, the corporate area of which is included in the authority, to areas outside the boundaries of the authority, provided, that the supplying of that water shall, in every case, be subject to the paramount right of the authority to discontinue those activities, in whole or in part, by resolution adopted by the board of directors. The board of directors, as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs. If available supplies become inadequate to fully meet the needs of its member agencies, the board shall adopt reasonable rules, regulations, and restrictions so that the available supplies are allocated among its member agencies for the greatest public interest and benefit.

(12) Acquire, store, treat, reclaim, repurify, reuse, distribute, and sell sewage water, wastewater, and seawater for beneficial uses and purposes. "Repurify" means, for the purpose of this paragraph, to treat reclaimed water sufficiently so that the water may be discharged into a reservoir that supplies water to the treatment facility for a domestic water system.

(13) Fix, revise, and collect rates or other charges for the delivery of water, use of any facilities or property, or provision of services. In fixing rates the board may establish reasonable classifications among different classes and conditions of service, but rates shall be the same for similar classes and conditions of service.

(14) Cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all amendatory or supplementary acts, or any other act of Congress enacted authorizing or permitting that cooperation, for the purposes of construction of works, necessary or proper for carrying out the purposes of the authority, or for the acquisition, purchase, extension, operation or maintenance of constructed works, or for a water supply, or for the assumption as principal or guarantor of indebtedness to the United States; and borrow or procure money from the United States, or any agency thereof for the purpose of financing any of the operations of the authority.

(15) To change the name of the authority from that designated pursuant to Section 4.

(Stats.1943, c. 545, p. 2093, § 5. Amended by Stats.1945, c. 670, p. 1337, § 1; Amended by Stats.1968, c. 424, p. 876, § 1; Stats.1975, c. 566, p. 1257, § 4; Stats.1978, c. 363, p. 1066, § 1; Stats.1981, c. 456, p. 1708, § 1; Stats.1989, c. 32, § 1, eff. May 31, 1989; Stats.1995, c. 73 (S.B.1173), § 1.)

HISTORICAL AND STATUTORY NOTES

1975 Legislation.

Operative effect of 1975 amendment, see note under § 98-61.

§ 45-5.1. Hydroelectric power

Sec. 5.1. (a) Any authority incorporated under this act may utilize any part of its water, and any parts of its works, facilities, improvements, and property used for the development, storage, or transportation of water, to provide,
generate, and deliver hydroelectric power, and may acquire, construct, operate, and maintain any and all works, facilities, improvements, and property necessary or convenient for that utilization.

(b) Any authority incorporated under this act may do any of the following:

(1) Pursuant to contract, provide, sell, and deliver hydroelectric power to the United States of America or to any board, department, or agency thereof, to the state for the purposes of the State Water Development System, and to any public agency, private corporation, or any other person or entity, or any combination thereof, engaged in the sale of electric power at retail or wholesale.

(2) Use all or any part of hydroelectric power directly, or indirectly through exchange, in exercising any other power of an authority.

(c)(1) An authority located within San Diego County may acquire, construct, own, operate, control, or use, within or without, or partially within or partially without, its territory, works or parts of works for supplying its member public agencies, or some of them, with gas or electricity, or both gas and electricity, and may do all things necessary or convenient to the full exercise of these powers.

(2) An authority located within San Diego County may, pursuant to a contract, purchase gas, electricity, or related services from the United States of America or any board, department, or agency thereof, the State of California, any public agency, person, or private company and provide, sell, exchange, or deliver them to any public agency, private company, or person, or any combination thereof, engaged in the sale of gas or electricity at retail.

(d) For the purposes of this section, "public agency" means a city, county, city and county, district, local agency, public authority, or public corporation.


§ 45-5.2. Standby water charges

Sec. 5.2. (a) Any authority may, pursuant to the notice, protest, and hearing procedures in Section 53753 of the Government Code, by ordinance, fix on or before the third Monday of August, in each fiscal year, a water standby availability charge on land within the boundaries of the authority, to which water is made available by the authority, whether the water is actually used or not.

(b) The standby availability charge shall not exceed ten dollars ($10) per acre per year for each acre of land within the authority or ten dollars ($10) per year for a parcel less than one acre, unless the standby charge is imposed pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) If the procedures set forth in this section as it read at the time an availability charge was established were followed, the authority may, by ordinance, continue the charge pursuant to this section in successive years at the same rate. If new, increased, or extended assessments are proposed, the authority shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

(d) On or before the third Monday in August, the board of directors shall furnish in writing to the board of supervisors and the county auditor of each affected county a description of that parcel of land within the authority upon which an availability charge is to be levied and collected for the current fiscal year, together with the amount of availability charge fixed by the authority on each parcel of land which is to be added to the assessment roll.

(e) The authority shall direct that, at the time and in the manner required by law for the levying of taxes for county purposes, the board of supervisors shall levy, in addition to any other taxes levied, the availability charge in the amounts for the respective parcels fixed by the authority.

(f) All county officers charged with the duties of collecting taxes shall collect the authority's availability charges with the regular tax payments to the county. The availability charges shall be collected in the same form and manner as county taxes are collected, including procedures in the event of delinquency. Upon collection of the availability charges by the tax collector, the collections shall be paid to the authority. The county may deduct the reasonable administrative costs incurred in levying and collecting the water standby availability charge.
Appendix B

(Added by Stats.1988, c. 536, § 1. Amended by Stats.2007, c.27 (S.B.444), § 42.)

§ 45-5.3. Standby water charges: election; payment

Sec. 5.3. (a) On or before the 15th day of December of each year, the governing body of each member public agency may elect to pay out of its funds available for that purpose, other than funds derived from ad valorem taxes, all or any portion of the amount of standby charges which would otherwise be levied upon parcels of land within that public agency for the following fiscal year.

(b) If that election is made, the member agency shall promptly notify the controller of the authority of that fact by causing personal delivery to be made of a certified copy of the action taken by the governing body, together with a financial statement showing its financial condition, and the source of funds and revenues to be used to make the in lieu cash payments.

(c) If the authority fixes standby charges pursuant to Section 5.2, it shall also determine the total amount to be fixed against all parcels of land in each member public agency. The authority shall specify in the ordinance fixing the standby charges the cash payment elected by each member agency to be made pursuant to subdivision (a) and cause the balance, if any, to be levied and collected against the parcels of land in that member public agency.

(d) Each member agency which makes the election shall pay the full amount due in cash installments at the times and in the proportionate amounts as established by the authority, pursuant to subdivision (d) of Section 9, for in lieu cash payments of ad valorem property taxes.

(e) Any cash payments made in avoidance of standby charges are hereby declared to be for a public purpose and shall not be deemed gratuitous or in the nature of gifts, but shall be deemed to be payments for water or services in connection with the distribution of water.

(Added by Stats.1989, c. 32, § 2, eff. May 31, 1989.)

§ 45-5.5. Surplus money; investment

Sec. 5.5. An authority may invest any surplus money in the authority treasury, including money in any sinking fund established to provide for the payment of the principal or interest of any bonded or other indebtedness or for any other purpose, not required for the immediate necessities of the authority, pursuant to Article 1 (commencing with Section 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. The treasurer shall perform the functions and duties authorized by this paragraph pursuant to rules and regulations adopted by the board of directors of the authority.

(Formerly § 45.5/1, added by Stats.1949, c. 43, p. 65, § 1. Renumbered § 45-5.5 and amended by Stats.1997, c. 349 (S.B.106), § 1.)

§ 45-5.9. Connection and capacity charges: collection; reimbursement

Sec. 5.9. An authority may fix and impose connection charges and capacity charges upon each public agency, the area of which is included within the authority, or upon the ultimate users of water delivered by the authority to the public agency. If imposed upon the ultimate users of water, an authority may require the public agency to collect the charges on behalf of the authority. If an authority requires collection, the authority shall reimburse the public agency for all reasonable costs incurred in collecting those charges.

Any capacity charge proposed to be imposed upon an ultimate user of water is subject to Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code.

(Added by Stats.1989, c. 430, § 1.)

§ 45-5.10. Judicial action or proceeding involving ordinance fixing water standby availability, or connection or capacity charge: limitation

Sec. 5.10. Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance fixing and establishing either a water standby availability charge pursuant to Section 5.2, or a connection or capacity charge
Appendix B

pursuant to Section 5.9. shall be commenced within 120 days after adoption of the ordinance or prior to May 1, 1991, for ordinances adopted prior to January 1, 1991.

(Added by Stats.1990, c. 129 (S.B.2014), § 1.)

§ 45-5 1/2 Renumbered Water Code Appendix § 45-5.5 and amended by Stats.1997, c. 349 (S.B.105), § 1

§ 45-6. Directors; total financial contribution and vote of member public agencies of the San Diego County Water Authority

Sec. 6. (a) All powers, privileges, and duties vested in or imposed upon any authority incorporated under this act shall be exercised and performed by and through a board of directors. The exercise of any and all executive, administrative, and ministerial powers may be delegated by the board of directors to any of the offices created by this act or by the board of directors acting under this act.

(b) The board of directors shall consist of at least one representative from each public agency, the area of which is within the authority. The representatives shall be designated and appointed by the chief executive officers of those public agencies, respectively, with the consent and approval of the legislative bodies of the public agencies, respectively. Any member of the governing body of a member agency may be appointed by that member agency to the board of the authority to serve as the agency's representative. A majority of the members of the governing body of an agency may not be appointed by the agency to serve as representatives on the board of the authority, and, for a member agency that is not a water district, only one of the representatives of that agency may be a member of the governing body of the agency. Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the authority's board. As used in this subdivision, "water district" has the same meaning as in subdivision (a) of Section 10.

(c) Members of the board of directors shall hold office for a term of six years, and until their successors are appointed and qualified. However, the terms of the members of the first board shall be determined by lot so that the terms of not less than one-half of the members shall be three years and the terms of the remainder shall be six years. Every member shall be subject to recall by the voters of the public agency from which that member is appointed, in accordance with the recall provisions of the freeholders' charter or other law applicable to the public agency. Notwithstanding that representatives are appointed for a fixed term of years, members of the board of directors serve at the will of the governing body of the public agency from which the member is appointed and may be removed by a majority vote of the governing body without a showing of good cause.

(d) In addition to one representative, any public agency may, at its option, designate and appoint one additional representative for each full 5 percent of the assessed value of property taxable for authority purposes which is within the public agency. However, the term of office of any representative shall not be changed or terminated by reason of any future change in the assessed value of property within any member agency.

(e) Each member of the board of directors shall be entitled to vote on all actions coming before the board and shall be entitled to cast one vote for each five million dollars ($5,000,000), or major fractional part thereof, of the total financial contribution paid to the authority that is attributable to the public agency of which the member is a representative provided that no public agency shall have votes that exceed the number of the total votes of all the other public agencies. A public agency with more than one representative shall have the option, by ordinance, to either require its representatives to cast all of that agency's votes as a unit, as a majority of the representatives present shall determine, or to entitle each such representative to cast an equal share of the total vote of such agency. A copy of the ordinance shall be delivered to the secretary of the board of directors. The affirmative votes of members representing more than 50 percent of the number of votes of all the members shall be necessary, and except as herein provided, sufficient to carry any action coming before the board of directors. If the public agency member having the largest total financial contribution to the authority has more than 38 percent of the total financial contribution to the authority, the affirmative votes of members representing more than 55 percent of the number of votes of all the members shall be necessary, except as herein provided, to carry any action coming before the board of directors. Any meeting may be adjourned, continued, or recessed from day to day or from time to time, by vote of the director or directors present, regardless of the number of directors present.

(f) For the purposes of this section, "total financial contribution" includes all amounts paid in taxes, assessments, fees, and charges to or on behalf of the authority with respect to property located within the boundaries of member public agencies, including, but not limited to, standby charges, capacity charges, readiness to serve charges,
connection and maintenance fees, annexation fees and charges for water delivered to member public agencies by the authority excluding the cost of treatment for the water. The total financial contribution shall be determined by the board of directors at the end of each fiscal year. Allocation of voting power shall be reestablished by the board of directors on January 1 of each year based upon the calculation determined for the previous fiscal year.

(g) Subject to confirmation by his or her public agency, a member of the board of directors may designate another member of the board of directors to vote in his or her absence. The designation and the confirmation shall be by a written instrument filed with the authority. If a director will be absent and wishes the designee to cast the vote, a written notice shall be filed with the secretary of the board of directors. If the notice is not received by the authority, the vote of the absent director will not be counted. The designation, confirmation, and notices shall be maintained on file with the authority. The designation may be changed from time to time with the confirmation of the representative's agency. The designation shall not direct how the absent representative's vote shall be cast on any matter. Directors from a public agency represented by more than one director shall be deemed confirmed as designated representatives to vote for absent directors from that public agency. This section does not apply to a public agency that has exercised the option under subdivision (e) to cast all of that agency's votes as a unit.

(h) Notwithstanding subdivision (f), the total financial contribution and the vote of each member public agency of the San Diego County Water Authority as of July 1, 1997, shall be as follows:

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Total Financial Contribution July 1, 1997</th>
<th>VOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlsbad Municipal Water District</td>
<td>$ 129,787,887</td>
<td>25.96</td>
</tr>
<tr>
<td>City of Del Mar</td>
<td>$ 13,712,138</td>
<td>2.74</td>
</tr>
<tr>
<td>City of Escondido</td>
<td>$ 128,929,059</td>
<td>25.78</td>
</tr>
<tr>
<td>Fallbrook Public Utilities District</td>
<td>$ 116,801,107</td>
<td>23.36</td>
</tr>
<tr>
<td>Helix Water District</td>
<td>$ 356,506,629</td>
<td>71.30</td>
</tr>
<tr>
<td>National City</td>
<td>$ 45,046,553</td>
<td>9.01</td>
</tr>
<tr>
<td>City of Oceanside</td>
<td>$ 192,690,117</td>
<td>38.53</td>
</tr>
<tr>
<td>Olivenhain Municipal Water District</td>
<td>$ 73,733,684</td>
<td>14.75</td>
</tr>
<tr>
<td>Otay Water District</td>
<td>$ 146,294,367</td>
<td>29.26</td>
</tr>
<tr>
<td>Padre Dam Municipal Water District</td>
<td>$ 142,768,644</td>
<td>28.55</td>
</tr>
<tr>
<td>Pendleton Military Res.</td>
<td>$ 10,921,265</td>
<td>2.18</td>
</tr>
<tr>
<td>City of Poway</td>
<td>$ 82,602,257</td>
<td>16.52</td>
</tr>
<tr>
<td>Rainbow Municipal Water District</td>
<td>$ 194,841,500</td>
<td>38.96</td>
</tr>
<tr>
<td>Ramona Municipal Water District</td>
<td>$ 65,220,318</td>
<td>13.04</td>
</tr>
<tr>
<td>Rincon Del Diablo Municipal Water District</td>
<td>$ 69,024,271</td>
<td>13.80</td>
</tr>
<tr>
<td>City of San Diego</td>
<td>$1,864,642,414</td>
<td>372.97</td>
</tr>
<tr>
<td>San Dieguito Water District</td>
<td>$ 51,831,643</td>
<td>10.37</td>
</tr>
<tr>
<td>Santa Fe Irrigation District</td>
<td>$ 64,860,359</td>
<td>12.97</td>
</tr>
</tbody>
</table>
Appendix B

<table>
<thead>
<tr>
<th>South Bay Irrigation District</th>
<th>$139,063,657</th>
<th>27.81</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vallecitos Water District</td>
<td>$64,994,093</td>
<td>13.00</td>
</tr>
<tr>
<td>Valley Center Municipal Water District</td>
<td>$243,877,685</td>
<td>48.77</td>
</tr>
<tr>
<td>Vista Irrigation District</td>
<td>$118,493,448</td>
<td>23.70</td>
</tr>
<tr>
<td>Yuima Municipal Water District</td>
<td>$15,146,776</td>
<td>3.03</td>
</tr>
</tbody>
</table>

TOTALS: $4,331,789,341 866.36

(i) The total financial contribution for the San Diego County Water Authority shall be determined by the board of directors as of the end of each fiscal year by adding the total financial contribution of each agency for the fiscal year to the totals provided for in subdivision (h) establishing the total financial contribution as of July 1, 1997. Allocation of voting power shall be reestablished by the board of directors to be effective on January 1 of each year based upon the calculation determined for the previous fiscal year. In addition to the definition in subdivision (f), "total financial contribution" shall also include all amounts paid in taxes, assessments, fees, and charges paid to or on behalf of the Metropolitan Water District of Southern California with respect to property located within the boundaries of member public agencies including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees, and charges for water sold to member public agencies by the authority excluding the cost of treatment for the water.

(j) Members of the first board of directors so constituted shall convene at the call of the clerk of the board of supervisors in the meeting room of the board of supervisors at the county seat of the county, and immediately upon convening, the board of directors shall elect from its membership a chairperson, a vice chairperson, and a secretary, who shall serve for a period of two years, or until their respective successors are elected and qualified.

(k) A quorum necessary for the transaction of business at any meeting of the board of directors exists whenever there are present at the meeting a majority of the membership of the board of directors that includes at least one-half of the number of representatives of each public agency member having more than six representatives serving on the board of directors. Designees appointed pursuant to subdivision (g) shall not be considered "present" for the purposes of establishing a quorum. However, any regular or special meeting of the board of directors at which a quorum is not present may be continued from time to time until a quorum is present to transact the business of the board of directors.

(Stats.1943, c. 545, p. 2096, § 6. Amended by Stats.1957, c. 1356, p. 2684, § 1; Stats.1959, c. 1561, p. 3895, § 1; Stats.1963, c. 711, p. 1715, § 1.)

(Amended by Stats.1968, c. 424, p. 880, § 2; Stats.1972, c. 605, p. 1069, § 1; Stats.1973, c. 754, p. 1356, § 1, eff. Sept. 25, 1973; Stats.1987, c. 272, § 1; Stats.1995, c. 73 (S.B.1173), § 2; Stats.1997, c. 368 (A.B.692), § 1; Stats.1998, c. 214 (A.B.540), § 1; Stats.2004, c. 60 (A.B.2243), § 1.)

§ 45-7. Bond issues

Sec. 7. (a) Determination of necessity; election call. Whenever the board of directors of any authority incorporated under this act shall, by ordinance adopted by a vote of a majority of the aggregate number of votes of all the members of the board of directors, determine that the interest of said authority and the public interest or necessity demand the acquisition, construction or completion of any public improvement or works, necessary or convenient to carry out the objects or purposes of said authority the cost of which will be too great to be paid out of the ordinary annual income and revenue of the authority said board of directors may order the submission of the proposition of incurring bonded indebtedness, for the purposes set forth in the said ordinance, to the qualified voters of such district, at an election held for that purpose. Any election held for the purpose of submitting any proposition or propositions of incurring such bonded indebtedness may be held separately, or may be consolidated or held concurrently with any other election authorized by law at which the qualified electors of the authority are entitled to vote. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same ordinance, which ordinance, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the public works or improvements, the amount of the principal of the indebtedness to be incurred therefor and the maximum rate of interest to be paid on such indebtedness, which rate shall not exceed six (6) percent per annum, payable semiannually. Such ordinance shall also fix the date upon which such election
shall be held and the manner of holding the same and the method of voting for or against incurring the proposed indebtedness. Such ordinance shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint the officers of such election, which officers shall consist of one inspector, one judge and two clerks in each precinct. The description of precincts may be made by reference to any order or orders of the board of supervisors of the county in which the authority is situated, or by reference to any previous order or ordinance of the legislative body of any public agency, or by detailed description of such precincts. Precincts established by the board of supervisors of the county, to a number not exceeding six (6) may be consolidated for special elections held hereunder. In the event any bond election shall be called to be held concurrently with any other election or shall be consolidated therewith, the ordinance calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefor.

Publication

(b) The ordinance provided for in subdivision (a) of this section shall be published once, at least ten (10) days before the date of the election therein called, in a newspaper of general circulation printed and published within the authority, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

Conduct of election; canvass; declaration of result

(c) The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the authority. At any regular or special meeting of the board of directors held not earlier than five (5) days following the date of such election, the returns thereof shall be canvassed and the results thereof declared. In the event that any election held hereunder shall be consolidated with any primary or general election and the proposition to incur indebtedness shall be printed upon a ballot containing other propositions, the returns of the election held hereunder shall be made with the returns of the primary or general election to the board of supervisors or other bodies whose duty it shall be to canvass the returns thereof, and the results of the election held hereunder shall be canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body to promptly certify and transmit to the board of directors of the authority a statement of the result of the vote upon the proposition submitted hereunder. Upon receipt of such certificates, it shall be the duty of the board of directors to tabulate and declare the results of the election held hereunder.

Vote authorizing issuance and sale

(d) In the event that it shall appear from said returns that a two-thirds majority of the electors voting on any proposition submitted hereunder at such election voted in favor of such proposition, the authority shall thereupon be authorized to issue and sell bonds of the authority in the amount and for the purpose or purposes and object or objects provided for in such proposition in such ordinance, and at a rate of interest, not exceeding the rate recited in said ordinance.

Form and contents of bond

(e) The board of directors shall prescribe the form of the bonds issued by the authority and of the interest coupons to be attached thereto. Such bonds shall mature serially at times and in amounts to be fixed by the board of directors; provided, that the payment of said bonds shall begin not later than 10 years from the date thereof and be completed in not more than 50 years from said date. The bonds shall be issued in such denominations as the board of directors may determine, except that no bonds shall be of less denomination than one hundred dollars ($100), nor of a greater denomination than fifty thousand dollars ($50,000), and shall be payable on the day and at the place or places fixed in such bonds and with interest at the rate specified therein, which rate shall not be in excess of six percent (6%) per annum, and shall be payable semiannually.

The board of directors may provide for the call and redemption of any or all of said bonds on any interest payment date prior to their fixed maturity at not exceeding the par value thereof and accrued interest plus a premium of not exceeding 5 percent upon the principal amount of said bonds in which event a statement to that effect shall be set forth in the ordinance calling the election and the call price fixed by the board of directors shall be set forth on the face of the bond. Notice of such redemption shall be published once a week for three successive weeks in a newspaper of general circulation printed and published within the authority or if there be no such newspaper printed
and published within the authority then the publication shall be made in a newspaper of general circulation printed and published within the county in which the said authority is situated, the first publication of which shall be at least 30 days prior to the date fixed for such redemption. After the date fixed for such redemption, interest on said bonds thereafter shall cease.

Such bonds shall be signed by the chairman of said board of directors, or by such other officers as said board of directors shall, by resolution adopted by a majority vote of its members, authorize and designate for that purpose, and such bonds shall also be signed by the controller, or assistant controller, and countersigned by the secretary of said board of directors. The coupons of said bonds shall be numbered consecutively, and signed by said controller, or assistant controller by his lithographed or engraved signature. All such signatures and countersignatures excepting that of the controller, or assistant controller, on said bonds, may be printed lithographed or engraved.

Signatures; continuing validity

(f) In case any of such officers, whose signatures or countersignatures appear on the bonds or coupons, shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery of such bonds.

Price; bids

(g) Such bonds shall not be sold at a price less than the par value thereof, together with accrued interest to the date of delivery, nor until notice calling for bids therefor shall have been published in a newspaper of general circulation published and circulated in the county wherein the principal place of business of said authority shall be located. Said notice, calling for bids, shall state the time for the receipt of such bids, which shall not be less than twenty (20) days after the first publication thereof. Such notice may offer the bonds at a fixed interest rate or with the interest rate undetermined, in which event the bids shall contain a statement of the lowest rate of interest at which the bidder will take the bonds and pay par value or more therefor, together with accrued interest. Bids for such bonds shall be opened publicly and the results thereof publicly announced. Such bonds shall be sold to the highest bidder. "Highest bidder" as used in this subsection, shall mean the one which gives the authority the lowest net cost. Temporary, or interim, bonds or certificates, of any denomination whatsoever, to be signed by the controller or assistant controller, may be issued until the definitive bonds are executed and available for delivery.

Sale; proceeds

(h) Such bonds may be issued and sold by said board of directors as they shall determine, and the proceeds thereof, excepting premium and accrued interest, shall be placed in the treasury of said authority to the credit of the proper improvement fund, and shall be applied exclusively to the purposes and objects mentioned in said ordinance; provided, that the interest on said bonds accruing during the construction period and for one year thereafter shall be deemed to be a construction cost within the meaning of the purposes and objects mentioned in said ordinance, and such interest may be paid from said proceeds of the sales of such bonds. Premium and accrued interest shall be placed in the fund to be applied to the payment of interest on, and the retirement of, the bonds so sold. For the purposes of this section, the construction period shall be deemed to end when the works, the construction of which shall have been authorized from the proceeds of any such bond issue, shall have been placed in operation to such extent as to result in the sale and delivery in the authority, of water transported and provided by means of such works.

Action to determine validity of bonds

(i) An action to determine the validity of bonds and the sufficiency of the provision for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due and to constitute a sinking fund for the payment of the principal thereof on or before maturity may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

Water rate; taxation

(j) The board of directors, so far as practicable, shall fix such rate or rates for water as will result in revenue which will pay the operating expenses of the authority, provide for repairs and maintenance, and provide for the payment
Appendix B

of the interest and principal of the bonded debt. If, however, from any cause, the revenues of the authority shall be inadequate to pay the interest or principal of any bonded debt as the same becomes due, the board of directors shall, at the time of fixing the tax levy and in the manner for such tax levy provided, levy and collect annually until said bonds are paid or until there shall be a sum in the treasury of the authority set apart for that purpose sufficient to meet all sums coming due for principal and interest on such bonds, a tax sufficient to pay the annual interest on such bonds, or such part thereof as shall not be met from revenues of the authority, and also sufficient to pay such part of the principal of such bonds as shall become due before the time when money will be available from the next general tax levy, or such portion thereof as shall not be met from revenues of the authority; provided, however, that if the maturity of the indebtedness created by the issue of bonds be made to begin more than one year after the date of the issuance of such bonds, such tax shall be levied and collected at the time and in the manner aforesaid annually sufficient when added to revenues of the authority available for that purpose to pay the interest on such indebtedness as it falls due and also to constitute, together with the revenues of the authority available for such purpose, a sinking fund for the payment of the principal of such bonds on or before maturity. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for authority purposes and shall be collected at the time and in the same manner as other authority taxes are collected and shall be used for no purpose other than the payment of such bonds and accruing interest.

Registration

(k) Coupon bonds issued hereunder, at the request of the holder, may be registered as to principal and interest in the holder's name on the books of the treasurer of the district, and the coupons surrendered and the principal and interest made payable only to the registered holder of the bond. For that purpose the treasurer of the authority shall detach and cancel the coupons, and shall endorse a statement on the bonds that the coupon sheet issued therewith has been surrendered by the holder, and the coupons canceled by such treasurer, and that the principal and the semiannual interest are thereafter to be paid to the registered holder or order, by draft, check or warrant drawn payable at a place of payment specified in the bond, after which no transfer shall be valid unless made on such treasurer's books by the registered holder, or by his attorney duly authorized, and similarly noted on the bond. After such registration, the principal and interest of such bond shall be payable only to the registered owner. Bonds registered under this paragraph may, with the consent of the authority and the holders of the bonds, be reconverted into coupon bonds at the expense of the holder thereof, and again reconverted into registered bonds from time to time, as the board of directors of the authority and the holders of the bonds may determine. In converting coupon bonds into registered bonds, coupon bonds may be exchanged for registered bonds of one hundred dollars ($100) each, or multiples thereof, but not exceeding fifty thousand dollars ($50,000) each, in which event new registered bonds shall be issued at the expense of the holder. Coupon bonds may be exchanged for other coupon bonds of one hundred dollars ($100) each, or multiples thereof, but not exceeding fifty thousand dollars ($50,000) each, in which event new coupon bonds shall be issued at the expense of the holder.

For each conversion or reconversion of a coupon or registered bond, the treasurer of the authority shall be entitled to charge and collect such fee as the board of directors of the authority may prescribe from time to time.

Legal investment

(l) All bonds heretofore or hereafter issued by any county water authority shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings and trust companies, and for the state school funds, and for all sinking funds under the control of the State Treasurer, and whenever any moneys or funds may by law now or hereafter enacted be invested in, or loaned upon the security of, bonds of cities, cities and counties, counties, or school districts in the State of California, such moneys or funds may be invested in, or loaned upon the security of, the bonds of such county water authority, and whenever bonds of cities, cities and counties, counties or school districts, by any law now or hereafter enacted, may be used as security for the faithful performance or execution of any court or private trust or of any other act, bonds of such county water authority may be so used.

(Stats.1943, c. 545, p. 2098, § 7. Amended by Stats.1961, c. 1505, p. 3348, § 1.)

§ 45-7.5. Revenue bonds; authority; law governing

Sec. 7.5. Revenue bonds, including refunding revenue bonds, may be issued by an authority under the Revenue Bond Law of 1941, Chapter 6 (commencing with Section 54300), Part 1, Division 2, Title 5 of the Government Code or any other law which by its terms is applicable.
§ 45-8. Contract to incur indebtedness; election; indebtedness by contract in lieu of bond issuance; second indebtedness by contract if project construction not commenced

Sec. 8. (a) An authority may incur indebtedness by contract other than by voting bonds or expenditure of bond proceeds up to a total amount equal to one-tenth of 1 percent of the assessed value, as defined in Section 135 of the Revenue and Taxation Code, or as otherwise hereafter defined by an act of the Legislature, of property taxable for authority purposes by a vote of three-fourths or more of the aggregate number of votes of all members of the board of directors. Any proposal to incur an indebtedness in excess of that amount by contract other than by voting bonds or expenditure of bond proceeds, and any proposal to purchase, lease, or otherwise acquire rights, privileges, or services by contract, the compensation for which shall be payable over a period exceeding 40 years, shall be submitted to the qualified electors of the authority for their approval and shall be voted upon at an election where the proceedings are held, insofar as applicable, in the manner provided in this act for the authorization and issuance of the bonds of the authority, except that the vote of a majority of the electors voting upon the proposition shall be sufficient to authorize the incurring of the indebtedness. Notice of the election shall contain, in addition to the information required in the case of bond elections, a statement of the maximum amount of money to be paid under the contract, exclusive of penalties and interest, for what purposes the money is to be expended, and the property, improvements, works, rights, privileges, or services to be acquired thereby. The ballots at the election shall contain a brief statement of the general purposes of the contract and the amount of the obligation to be assumed, with the words "Contract--Yes" and "Contract--No." The board of directors may submit the contract or proposed contract to the superior court of the county where the authority is located to determine the validity of the contract and the legal authority of the board to enter into the contract, with the same proceedings to be held as provided in this act in the case of the judicial determination of the validity of bonds issued pursuant to this act and with like effect.

(b) A proposal to purchase, lease, or otherwise acquire rights, privileges, or services by contract for which the compensation shall be payable over a period that exceeds 20 years but is not more than 40 years, is subject to referendum. To initiate a referendum, a petition protesting the proposed action shall be signed by voters within the jurisdiction of the authority equal in number to at least 5 percent of the entire number of votes cast within that jurisdiction for all candidates for governor at the last gubernatorial election.

(c) If a proposition to consider the issuance of revenue bonds under the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 6 of the Government Code) has been submitted to the qualified voters of an authority at an election held for that purpose and received the affirmative vote of a majority of the electors voting upon the proposition and, therefore, constitutes authority to issue revenue bonds under the Revenue Bond Law of 1941, the authority may, in lieu of issuing those revenue bonds, incur an indebtedness by contract, in addition to the indebtedness authorized by subdivision (a), in an amount, excluding penalties and interest, up to the amount authorized by and for the purpose authorized by the revenue bond proposition. The indebtedness shall be payable over a period of not to exceed 30 years, as provided in the resolution of the board of directors.

(d) If a contract of indebtedness incurred pursuant to subdivision (c) is repaid in full because construction of the project approved by the electorate was not commenced due to administrative, court, or other delays, resulting in failure to obtain necessary governmental permits, an authority may incur a second contract of indebtedness pursuant to subdivision (c) to fund construction of the project. The second indebtedness shall not exceed the amount authorized by the proposition approved by the electorate as provided in subdivision (c).

(Stats.1943, c. 545, p. 2104, § 8)


§ 45-8.1. Repair or replacement of damaged or demolished structures; authorization; bonds

Sec. 8.1. (a) Whenever the board of directors of any authority incorporated under this act by ordinance adopted by a vote of three-fourths or more of the aggregate number of votes of all members of the board of directors finds and determines that any part of the works of the authority has been damaged or demolished by reason of fire, flood, earthquake, sabotage, act of God or the public enemy, that the cost of repairing or replacing such works so damaged or demolished will be too great to be paid out of the ordinary annual income and revenue of the authority, and that the public interest requires the incurring of indebtedness for the purpose of providing moneys for the repair or
Appendix B

replacement of such works, the board of directors may authorize the incurring of such indebtedness by the issuance
and sale of bonds or other evidence of indebtedness and shall determine the manner in which such indebtedness
shall be incurred and evidenced.

(b) The total indebtedness incurred pursuant to this section shall not exceed one-half of 1 percent of the assessed
valuation of the property taxable for authority purposes, and the term of any such indebtedness shall not exceed 12
years.

(c) The bonds or other evidence of indebtedness authorized to be issued pursuant to this section shall bear interest at
a rate or rates specified therein, which rate or rates shall not be in excess of 8 percent per annum, and shall be in
such form, bear such signatures, and be subject to such provisions as may be determined by the board of directors.
The board of directors may provide for the call and redemption of bonds or other evidence of indebtedness before
maturity at such times and at such prices as it may determine. A bond or other evidence of indebtedness shall not be
subject to call or redemption prior to maturity unless it contains a recital to that effect.

(d) The bonds or other evidence of indebtedness shall be sold at not less than par and accrued interest in the manner
provided for the issuance of other bonds of the authority in subdivision (g) of Section 7, provided that if no bids are
received, or if the board determines the bids received are not satisfactory in the opinion of the board, the board may
reject all bids and either readvertise or sell the bonds or other evidence of indebtedness at private sale.

(e) The proceeds of any borrowing pursuant to this section, other than accrued interest, shall be applied solely to the
purpose specified in the ordinance authorizing the incurring of such indebtedness or to the retirement of the principal
of the obligation issued pursuant to such ordinance. Any accrued interest received shall be applied to payment of
interest on such indebtedness.

(f) The provisions of subdivisions (i), (j), and (l) of Section 7, which are applicable to other bonds of the authority,
shall apply to bonds or evidence of indebtedness incurred pursuant to this section.

(Added by Stats 1976, c 1457, p 6530, § 2)

§ 45-8.2. Borrowing money; short-term revenue certificates

Sec. 8.2. (a) Any authority may, pursuant to this section, borrow money and incur indebtedness for any of the
purposes for which it is authorized by law to spend money. The indebtedness shall be evidenced by short-term
revenue certificates issued in the manner and subject to the limitations set forth in this section. Any authority may
also borrow money and incur indebtedness to pay the principal or interest on certificates issued pursuant to this
section.

(b) Certificates issued by any authority pursuant to this section may be negotiable or nonnegotiable, and all
certificates shall be, and shall recite upon their face that they are, payable both as to principal and interest out of any
revenues of the authority that are made security for the certificates pursuant to an indenture or resolution duly
adopted by the board of directors. The word "revenues," as used in this section, refers to any revenues derived from
the sale of water and power, annexation charges (whether collected through tax levies or otherwise), grants,
available tax revenues, or any other legally available funds. In no event shall any resolution or indenture preclude
payment from the proceeds of sale of other certificates issued pursuant to this section or from amounts drawn on a
bank, or other financial institution, line or letter of credit pursuant to subdivision (c), or any other lawfully available
source of funds.

c) To exercise the power to borrow money pursuant to this section, the board shall adopt a resolution, or approve an
indenture, authorizing the sale and issuance of certificates for that purpose, which resolution or indenture shall
specify all of the following:

(1) The purpose or purposes for which the proposed certificates are to be issued.

(2) The maximum principal amount of the certificates that may be outstanding at any one time.

(3) The maximum interest cost, to be determined in the manner specified in the resolution, to be incurred through the
issuance of the certificates.
Appendix B

(4) The maximum maturities of the certificates, which shall not exceed 270 days from the date of issue.

(5) The obligations to certificate holders while the certificates are outstanding.

(d) The board may also provide, in its discretion, for any of the following:

(1) The times of sale and issuance of the certificates, the manner of sale and issuance (either through public or private sale), the amounts of the certificates, the maturities of the certificates, the rate of interest, the rate or discount from par, and any other terms and conditions deemed appropriate by the board or by the general manager of the authority or any other officer designated by the board.

(2) The appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery, and the payment, of the certificates.

(3) The employment of one or more persons or firms to assist the authority in the sale of the certificates, whether as sales agents, as dealer managers, or in some other comparable capacity.

(4) The refunding of the certificates without further action by the board, unless and until the board specifically revokes that authority to refund.

(5) Other terms and conditions the board determines to be appropriate.

(c) The board may arrange for a bank, or other financial institution, a line or letter of credit (1) for the purpose of providing an additional source of repayment for indebtedness incurred under this section and any interest thereon or, (2) for the purpose of borrowing for any purpose for which short-term revenue certificates could be issued under this section. Amounts drawn on a line or letter of credit may be evidenced by negotiable or nonnegotiable promissory notes or other evidences of indebtedness. The board is authorized to use any of the provisions of this section in connection with the entering into of the line or letter of credit, borrowing thereunder, or repaying of the borrowings.

(Amended by Stats. 1984, c. 1268, § 1, eff. Sept 19, 1984. Amended by Stats.1998, c. 812 (S.B.133), § 1; Stats.1999, c. 83 (S.B.966), § 211.)

1999 Legislation

Subordination of legislation by Stats.1999, c. 83(S.B.966), to other 1999 legislation, see Historical and Statutory Notes under Business and Professions Code § 2530.2.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

§ 45-9. Taxation

Sec. 9. (a) Certificate of assessed valuation. Immediately after equalization and not later than the 15th day of August of each year, it shall be the duty of the auditor of the county wherein such authority shall lie, to prepare and deliver to the controller of the authority a certificate showing the assessed valuation of all property within the authority, and also such assessed valuation segregated according to public agencies, the areas of which lie within the authority.

(b) Tax levy. On or before the 20th day of August the board of directors of the authority shall by resolution determine the amount of money necessary to be raised by taxation during the fiscal year beginning the first day of July next preceding and shall fix the rate of taxation of the authority, designating the number of cents upon each one hundred dollars ($100) assessed valuation of taxable property and shall levy a tax accordingly:

(1) Sufficient, when taken with other revenues available for the purpose, to meet interest and sinking fund requirements on all outstanding bonded indebtedness of said authority; and sufficient, when taken with other revenues available for the purpose, to meet the payment of the principal and interest on any refunding bonds, or any bonds the issuance of which may have been authorized by the electors and which bonds have not been sold but which, in the judgment of the board of directors, will be sold prior to the time when money will be available from the next subsequent tax levy, and in case such bonds are not so issued and sold or such tax for any other reason is not required for said purpose, the tax so levied shall be applied to the payment of interest and/or principal on any
Appendix B

refunding bonds, or on any bonds authorized by the electors, then outstanding or subsequently issued and/or sold; and

(2) For all other authority purposes.

(c) Public agencies; amount of payment in lieu of taxes. The board of directors shall also cause to be computed and shall declare in said resolution the amount of money to be derived from the area of the authority lying within each separate public agency by virtue of the tax levy. In such resolution the board shall also fix and determine the times and proportional amounts of installments in which any public agency may elect to make payment in lieu of taxes as hereinafter provided. The board shall immediately cause certified copies of such resolution to be transmitted to the presiding officer of the governing body of each such public agency.

(d) Public agencies; election to make payment in lieu of taxes. On or before the 15th day of December of each year the governing body of each such public agency may elect to pay out of its funds available for that purpose, other than funds derived from ad valorem property taxes, all or any portion of the amount of tax which would otherwise be levied upon property within such public agency. Such election shall be made by order upon motion, which order shall recite that such payment shall be made in cash concurrently with the certification of such order to the controller of the authority, or that such payment shall be made in installments and the times wherein such installments shall be payable and the amounts thereof, which amounts shall be in accordance with the requirements of the board of directors of the authority as approved by resolution. In the event that any public agency shall elect to pay in cash, or by deferred installments, money or any part thereof which would otherwise be levied upon property within the public agency, it shall immediately certify to the controller of the authority a copy of such order and a statement showing its financial condition, the funds from which such payments shall be made and the sources of revenue to be used therefor; provided, however, that in the event any public agency shall elect to pay in cash all or any portion of the amount of tax which would otherwise be levied upon property within such public agency to meet interest and sinking fund requirements on the outstanding bonded indebtedness of said authority, such amount so elected to be paid shall be deposited with the treasurer of said authority on or before the 27th day of August next following such election; and provided, also, that unless such payment is so made in the case of interest and sinking fund requirements, and unless such election, as to all other taxes, shall provide for payments in accordance with the resolution of the board of directors as hereinafter provided for, then such election shall be ineffective for any purpose.

(e) Statement of tax rate. Before the first day of September the controller of the authority shall cause to be prepared and transmitted to the auditor of the county in which the authority shall lie, a statement showing the tax rate to be applied to assessed property in each public agency, which rate shall be the rate fixed by resolution of the board of directors modified to the extent necessary to produce from each public agency only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such public agency, or credited thereto as herein provided.

(f) Collection of taxes. Upon receipt by the auditor of the county in which such authority shall lie, of a certified copy of the controller's statement showing the tax rate to be applied to assessed property in each public agency, and showing the public agencies, the assessed property in which is exempt therefrom, if any, it shall be the duty of the county officers to collect taxes for the benefit of the authority at the rate specified as herein provided. The taxes so levied shall be computed and collected at the same time and in the same manner required by law for the assessment, computation and collection of taxes for county purposes, and the property subject to such tax shall be subject to the same penalties for delinquency, and the same provisions of law relating to the sale of property for nonpayment of county taxes and redemption thereof shall apply to the tax herein authorized. When so collected, such taxes shall be paid over to the treasurer of the authority, subject to the deduction herein authorized.

In consideration of services rendered hereunder, any county shall annually be entitled to deduct and retain for its own use and benefit an amount not exceeding 1 percent on the first twenty-five thousand dollars ($25,000) collected hereunder, and one-fourth of 1 percent of any amount in excess of twenty-five thousand dollars ($25,000) collected hereunder. The board of supervisors of each such county may provide such extra help as in their judgment may be necessary for the proper performance of duties hereunder.

(g) Redemption, disposition of proceeds; tax lien. Whenever any real property situated in any authority organized hereunder and upon which a tax shall have been levied, as herein provided, shall be sold for taxes and shall be redeemed, the money paid for such redemption, except advertising costs, shall be apportioned and paid in part to such authority in the proportion which the tax due to such authority shall bear to the total tax for which such property shall have been sold. All taxes levied together with penalties, interests and costs under the provisions of
Appendix B

this act shall be a lien upon the property upon which levied, and the enforcement of the collection of such tax shall be had in the same manner and by the same means as is or shall be provided by law for the enforcement of liens for county taxes, and all of the provisions of law relating to the enforcement of such taxes are hereby made a part of this act so far as applicable.

(h) Public agencies; payments; reimbursement for expenses. Public agencies, the areas of which are included within any county water authority incorporated hereunder are hereby authorized to pay to any such authority, out of funds derived from the sale of water or other funds not appropriated to some other use, such amounts as may be determined upon by the governing bodies thereof, respectively. Such payments may be made in avoidance of taxes as herein provided, or otherwise, and are hereby declared to be for a public purpose and shall not be deemed gratuitous or in the nature of gifts, but shall be deemed payments for water or services in connection with the distribution of water. Any public agency making any such payment to any authority incorporated hereunder, whether in avoidance of taxes or otherwise, shall receive credit therefor and the amount of the payment so made by any public agency shall be deducted from the amount of taxes which would otherwise be levied against property lying therein as herein provided. In the event that payment so made by any public agency shall exceed the amount of taxes which would otherwise have been levied against property within such public agency, the amount of such excess without interest shall be carried over and applied in reduction of taxes levied, or which would otherwise have been levied during the ensuing year or years.

Any public agency, including a county, which shall have incurred expenses in negotiating contracts or in the investigation of or preliminary work upon any works or projects or in making payments on account of any such contracts, works or projects, taken over by the authority, may receive, and the authority so taking over any such contracts, works or projects may make to such public agency, reimbursement for all such sums so expended, or to be expended, for expenses incurred in such negotiations for, investigation of, preliminary work upon, or payments made on account of the contracts, works or projects so taken over by the authority, to the extent that the board of directors of the authority shall find that such expenditures have benefited such authority, it being the intention of this provision to permit the authority to purchase, and the public agency to sell, assign and transfer such contracts, works or projects taken over by such authority. The sum so to be paid by such authority to such public agency shall be such amount as may be mutually agreed upon.

As an alternative to the purchase and sale of any contracts, works or projects taken over by the authority, as hereinabove provided, any public agency which shall have incurred expenses in negotiating contracts or in the investigation of or preliminary work upon any such works or projects or in making payments on account of any such contracts, works or projects taken over by the authority, may certify the amount thereof, without interest, to the board of directors of said authority at any time within four (4) years from the date of the incorporation of such authority, or the incurring of such expenses, if such authority be already incorporated, and if allowed by the board of directors, such amount shall be credited to the public agency which incurred the same, and such expenditures shall be considered as a payment of money made as herein provided for which deduction shall be made from the amount of taxes which would otherwise be levied against property lying within such public agency.

Any public agency which shall incur expenses in preliminary work in preparing for the incorporation of or in the incorporation of any authority hereunder likewise may certify the amount thereof, without interest, to the board of directors of said authority at any time without four (4) years from the date of the incorporation of such authority, and if allowed by the board of directors, such amount shall be credited to the public agency incurring the same, and shall be considered as a payment of money made as herein provided, for which deduction shall be made from the amount of taxes which would otherwise be levied against property lying within such public agency.

No such payments of money made in lieu of taxes or otherwise, or such credit allowed by such board of directors, as hereinabove provided, shall apply to reduce the amount of taxes which would otherwise be levied against the property within such public agencies, respectively, to meet interest and sinking fund requirements on outstanding bonded indebtedness of such authority.

Such certification and allowance shall be made on or before the first Monday in July, and the amount of money to be raised by taxation shall be computed with reference to the credit to be allowed as herein provided, but such credit may, in the discretion of the board of directors, be considered in connection with the amount of money to be raised by the next tax levy, or may be spread over subsequent years, not to exceed five.

(i) Public agencies; delinquency; penalty. If any public agency shall fail to comply with the terms of the order relating to payments to be made to the authority in lieu of taxation, or if any public agency annexed to the authority shall fail to comply with the terms and conditions fixed by the board of directors and upon which such annexation
occurred, the amount of the delinquency, plus a penalty of 8 percent shall be added to the taxes to be collected during the ensuing fiscal year, from the property within such delinquent public agency, and therefor for a period of two (2) years no order or ordinance shall be sufficient to exempt the property in said public agency from taxation hereunder unless it be accompanied by payment in cash of the amount which would otherwise be collected from owners of property within the public agency, together with all moneys due but unpaid under any previous order, or annexation provision.

(j) Construction. All provisions herein, or in any ordinance adopted pursuant hereto, relating to the respective times when the various acts pertaining to the levy of taxes are to be performed, are directory only, and failure to perform any such act or acts within the time so specified shall not impair the legal authority herein conferred to perform all subsequent acts relating to the levy of such taxes. In the event that any of the provisions of law respecting the time and manner of assessing property for purposes of taxation, of equalizing such assessments, of certifying such assessed valuations to the taxing authorities, of making the tax levies, of certifying such tax levies to the proper authorities for extension upon the tax rolls, and for enforcement and collection of such taxes or of performing any other act regarding the assessment, levy or collection of taxes be amended, changed, repealed or newly enacted, and as a result thereof, it should appear to the board of directors of the authority that the time schedule provided herein respecting the levy of authority taxes be no longer consistent with such modified tax procedure, then said board of directors by ordinance may prescribe a new schedule setting forth the times when the various acts herein required to be done in levyng authority taxes shall be performed. Nothing contained in this paragraph shall relieve the board of directors of its duty to provide adequate funds, by annual tax levies if necessary, to meet the interest and principal requirements of the bonded debts as they fall due.

(k) Tax rate; amount of payment by public agency; claims for refunds. For the purpose of assessing and collecting, under the provisions of Section 9(a) of Article XIII of the Constitution of the State of California, the taxes levied by any authority incorporated hereunder, the rate for taxes levied for the preceding tax year, as such phrase is employed in said section of the Constitution, shall be the rate fixed for such preceding tax year by the board of directors of such authority pursuant to Section 9, subdivision (b) of this act. In the event that any public agency, pursuant to the provisions of Section 9, subdivision (d) of this act, shall elect to pay the whole or any portion of the amount of taxes to be derived from the area of the authority within such public agency, as such amount shall have been fixed by resolution of the board of directors, a refund shall be made by the authority to each taxpayer thereof who shall have theretofore paid any tax collected under the provisions of said section of the Constitution, in the proportion that such public agency shall have so elected to pay the amount so to be derived. The board of directors shall adopt regulations providing for the presentation and audit and payment of claims for such refunds. No claim for such refund shall be granted unless such claim shall have been filed within one year from the date when the right to such refund shall have accrued.

(Stats.1943, c. 545, p. 2105, § 9.)

(Amended by Stats.1968, c. 424, p. 881, § 3; Stats.1971, c. 1499, p. 2959, § 3; Stats.1981, c. 874, p. 3357, § 2, eff. Sept. 27, 1981.)

§ 45-9.1. Reimbursement of lost tax revenues

Sec. 9.1. Wherever, under any provision of law, state, county, or other public agency reimbursement is made for lost tax revenue to taxing authorities by reason of any property tax exemption, or treatment or assessment of certain property in a manner different from that regularly done by a county for property generally, the loss of tax revenue to the authority by reason of public agencies within the authority paying out of their funds, other than funds derived from ad valorem property taxes, all or a stated percentage of the taxes levied by the authority shall be reimbursed by the state, county, or other public agency to the authority in the same manner as provided by law for other taxing authorities and to the same extent as if all of the taxes of the authority had been carried on the county assessment roll. In the case of reimbursement for lost revenue due to reduction of property taxes on business inventories, the authority's right to reimbursement is effective only insofar as the county receives reimbursement from the state.

(Added by Stats.1971, c. 1499, p. 2965, § 4.)

§ 45-10. Annexation

Sec. 10. (a) For the purposes of this section, the following definitions apply to the terms used: the term "city" means and includes any municipal corporation or municipality of the State of California, whether organized under a freeholder's charter or under the provisions of general law of the type and class of cities and incorporated towns;
and the term “water district” means and includes any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or any other public corporation or agency of the State of California of similar character.

(b) Territory may be annexed to any county water authority organized under this act by one of the following methods:

1. By annexation to, or consolidation with, the area of any city, the area of which, as a separate unit, has become a part of any county water authority organized under this act, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the authority at the time authorized or outstanding.

2. By annexation to, or consolidation with, any city which, as a separate unit, has become a part of any water district whose area, as a separate unit, has become a part of any county water authority organized under this act, in instances where, under the applicable provisions of law governing the change of boundaries of the water district, the annexation or consolidation automatically will result in the enlargement of the area of the water district, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the water district and of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the water district and of the county water authority, including payment of bonds and other obligations of the water district and of the county water authority at the time authorized or outstanding. If any territory has been so annexed to, or consolidated with, any city prior to the effective date of this paragraph, under conditions which would have resulted in the enlargement of the area of the county water authority had this paragraph then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be annexed to, and shall become and be part of, the county water authority and shall be a part of the water district for all purposes, the last-mentioned provisions being as follows:

A. The governing body of the city, at any time after the effective date of this paragraph, may adopt an ordinance which, after reciting that the territory has been annexed to, or consolidated with, the city by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date and place of filing of the certificate or certificates evidencing the annexation or consolidation, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, annexed to the county water authority, and the ordinance shall further determine and declare that the territory shall become and be, and thereby is, a part of the water district for all purposes.

B. The governing body, or clerk thereof, of the city shall file a certified copy of the ordinance with the county clerk of the county in which the county water authority is situated. Upon the filing of the certified copy of the ordinance in the office of the county clerk of the county in which the county water authority is situated, the territory shall become, and be, a part of the county water authority and shall be a part of the water district for all purposes, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority and of the water district, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding.

C. Upon the filing of the certified copy of the ordinance, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate, describing the territory, reciting the filing of the certified copy of the ordinance and the annexation of the territory to the county water authority, and declaring that the territory is a part of the county water authority and of the water district. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority and a duplicate of the original certificate to the clerk of the governing body of the water district.

3. Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in subdivision (c), by direct annexation, as a separate unit, of the corporate area of any water district or city.

4. Upon terms and conditions fixed by the board of directors of the county water authority and in the manner
provided in subdivision (d), by annexation to, or consolidation with, any water district, the area of which, in whole or in part, is included within the county water authority as a separate unit; provided that, unless the territory is so annexed to the county water authority with the consent of the board of directors, the annexation of territory to, or the consolidation of the territory with, the water district does not authorize or entitle the water district or the territory to demand or receive any water from the county water authority for use in the territory; and provided further, that, except where automatic annexation results under the conditions specified in paragraph (2), nothing in this act prevents the annexation of territory to, or the consolidation of territory with, any water district for its local purposes only and without annexing their territory to the county water authority, and the local annexation or consolidation may occur without requesting or obtaining the consent thereto of the board of directors of the county water authority.

(c) The governing body of any water district or city may apply to the board of directors of the county water authority for consent to annex the corporate area of the water district or city to the county water authority. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the corporate area of the water district or city may be annexed to, and become a part of, the county water authority. These terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the water district or city, in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case these terms and conditions provide for the levy of these special taxes, the board of directors, in fixing these terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising the aggregate sum, and that substantially equal annual levies will be made for the purpose of raising the sum over the period so prescribed. The action of the board of directors, evidenced by resolution, shall be promptly transmitted to the governing body of the applying water district or city and, if the action grants consent to the annexation, the governing body may thereupon submit to the qualified electors of the water district or city at any general or special election held therein, the proposition of the annexation subject to the terms and conditions. Notice of the election shall be mailed to each voter qualified to vote at the election and shall be given by posting or publication. When notice is given by posting, the notices shall be posted at least 10 days and in three public places in the water district or city. When notice is given by publication, the notice shall be published in the water district or city pursuant to Section 6061 of the Government Code, at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed in the manner provided by law for elections in the water district or city. If the proposition receives the affirmative vote of a majority of electors of the water district or city voting thereon at the election, the governing body of the water district or city shall certify the result of the election on the proposition to the board of directors of the county water authority, together with a legal description of the boundaries of the corporate area of the water district or city, accompanied by a map or plat indicating those boundaries. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing thereof in the office of the county clerk of the county in which the county water authority is situated, the corporate area of the water district or city shall become, and be, an integral part of the county water authority, and the taxable property therein shall be subject to taxation therefor for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed as authorized. Upon the filing of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate, reciting the filing of the papers and the annexation of the corporate area of the water district or city to the county water authority. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority.

(1) If a water district applies to a county water authority for consent to annex its corporate area, as a separate unit, the water district shall include as a part of its corporate area the corporate areas of any cities (whether one or more) which are already included within the county water authority as separate units, or the water district shall include as a part of its corporate area the corporate areas, or portion thereof, already included within the county water authority, of any water districts (whether one or more) whose corporate areas, in whole or in part, are already included within the county water authority as separate units. That fact shall be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the applying water district may be annexed to the county water authority, to the end that the areas within the unit member cities or water districts which are already a part of the county water authority, shall not be required to assume any greater financial burden or obligation to the county water authority than they would have had if they had remained a part of the county water authority as separate units.

Concurrently with any election called by an applying water district to submit to the qualified electors of the water
district the question of whether the terms and conditions fixed by the board of directors of the county water authority for annexation shall be approved, the governing bodies of the unit member cities or water districts may call and hold elections within their respective corporate limits or portions thereof already included within the county water authority, to determine whether or not the cities or water districts shall withdraw from the county water authority as separate units, and the proposed withdrawal may be made and submitted conditioned upon and effective when the applying water district has finally been annexed to the county water authority.

The effect of the concurrent elections, if a majority of the electors of the applying water district voting thereat vote in favor of annexation, and a majority of the electors of the unit member cities or water districts voting thereat vote in favor of withdrawing, shall be that the annexing water district thereafter shall be authorized to exercise the privileges and to discharge the duties prescribed in this act for public agencies whose areas, as separate units, are included within the county water authority, in place of and instead of the cities or water districts so withdrawing. Notwithstanding Section 11 of this act, the areas within the withdrawing cities or water districts shall remain a part of the county water authority and shall not be excluded therefrom, notwithstanding the fact that the cities or water districts, as corporate entities, have withdrawn from the authority.

If the water district does annex to the county water authority, the directors representing the withdrawing cities or water districts on the board of directors of the county water authority shall continue to act until their successors have been chosen and designated by the appropriate officers of the annexing water district and have qualified as members of the board of directors of the county water authority, after which time the directors representing the withdrawing cities or water districts shall no longer sit or vote on the board.

(2) If a water district applies to a county water authority for consent to annex its corporate area as a separate unit, the water district shall include as a part of its corporate area lands which are in public ownership exempt from taxation by a county water authority, and not within or adjacent to the area within the water district served with water by the district, and which are not to be supplied by the water district with water obtained from, and by reason of, its annexation to the county water authority. That fact may be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the water district may be annexed to the county water authority and in determining the boundaries of the area to be annexed, and the county water authority may, in the discretion of its board of directors, annex all of the corporate area of the water district as a separate unit excepting that portion consisting of the publicly owned and tax-exempt lands.

(d) The governing body of any water district, the area of which, in whole or in part, is included within a county water authority as a separate unit, may apply to the board of directors of the county water authority for consent to annex to the county water authority territory which the water district seeks to annex to, or consolidate with, the water district, or territory which, without making the territory a part of the county water authority, already has been annexed to, or consolidated with, the water district. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the territory may be annexed to, and become a part of, the county water authority. The terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the territory in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case the terms and conditions provide for the levy of those special taxes, the board of directors, in fixing those terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising that aggregate sum and that substantially equal annual levies will be made for the purpose of raising that sum over the period so prescribed. The action of the board of directors evidenced by resolution shall be promptly transmitted to the governing body of the applying water district and to the executive officer of the local agency formation commission of the county in which the county water authority is situated, who may defer the issuance of a certificate of filing until receipt of that resolution, and if the action grants consent to the annexation, the territory may be annexed to the county water authority as provided in paragraph (1) or (2).

(1) If the territory has not been previously annexed to, or consolidated with, the water district, upon completion of the annexation to, or consolidation with, the water district in compliance with the provisions of law applicable thereto, including this section, the territory shall become and be a part of the county water authority and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed; provided that, if the applicable provisions of law governing the annexation to, or consolidation with, the water district require any notice of any election called for the purpose of determining whether the proposed annexation or consolidation shall occur, or shall require any notice of hearing or other notice to be given to the residents or electors of, or owners of property in, the territory, the notice shall contain the
substance of the terms and conditions of annexation to the county water authority fixed by the board of directors of the county water authority; and provided further, that the local agency formation commission shall require that the annexation to the water district be subject to the terms and conditions fixed by the board of directors of the county water authority in addition to any other terms and conditions that may be required by the commission; and provided further, that the executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion resulting in the annexation to, or consolidation with, the water district, pursuant to the provisions of law applicable thereto, shall include in the certificate of completion the terms and conditions fixed by the board of directors of the county water authority in accordance with the provisions of this act, and shall file a duplicate of the certificate with the board of directors of the county water authority.

(2) If the territory sought to be annexed to a county water authority has been previously annexed to, or consolidated with, the water district, the governing body of the water district, upon being advised of the action of the board of directors of the county water authority, and if the action grants consent to the annexation, may submit to the qualified electors of the territory, if the territory has 12 or more registered voters, at any general or special election held therein, the proposition of the annexation to the county water authority subject to the terms and conditions fixed by the board of directors of the county water authority. Notice of the election shall be given by publication. When the notice is given by posting, the notice shall be posted at least 10 days and in three public places in the territory. When the notice is given by publication, the notice shall be published in the water district pursuant to Section 6061 of the Government Code at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed by the governing body of the water district in the manner provided by law for elections in the water district. If the proposition receives the affirmative vote of a majority of electors of the territory voting thereon at the election, the governing body of the water district shall certify the result of the election on the proposition to the board of directors of the county water authority. If the territory has less than 12 registered voters, no election shall be required, and, following written notice to each owner of property shown on the last equalized assessment roll and the holding of a hearing not less than 10 days after that notice, the annexation may be approved upon the written consent of the owners of more than 50 percent of the assessed valuation of the territory. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing thereof in the office of the county clerk of the county in which the county water authority is situated, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation of the territory to the county water authority fixed by its board of directors. Upon the filing of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate reciting the filing of the papers and the annexation of the territory to the county water authority. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority.

(e) Should the corporate area, or all portions thereof already included within a county water authority, of any water district or city, the corporate area of which, in whole or in part, already is included within the county water authority as a separate unit, annex to a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, upon the completion of the annexation pursuant to the law pertaining thereto, the water district or city, the corporate area (or portions thereof) of which is so annexed, shall automatically cease to be a separate unit member of the county water authority, but the corporate area (or portions thereof) shall remain a part of the county water authority as a part of the unit member water district or city to which it was annexed. The executive officer of the local agency formation commission having the duty of preparing, executing, and filing the certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

Should any water district or city, the corporate area of which, in whole or in part, already is included within a county water authority as a separate unit, consolidate with a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, under the provisions of any law by the terms of which, after consolidation, a new district or city will result and the former water districts or cities participating in the consolidation shall no longer exist, the resulting new water district or city shall be substituted for the water districts or cities whose corporate existence has been terminated by the consolidation as a unit member of the county water authority, and the corporate areas (or portions thereof) of the former water district or cities shall remain a part of the county water authority as a part of the consolidation. The executive officer of the local agency formation
Appendix B

commission having the duty of preparing, executing, and filing a certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

(f) The validity of any proceedings for the annexation to any county water authority organized under this act, of the corporate area of a water district or city as a separate unit, or of territory annexed to, or consolidated with, a water district or city which, as a unit, has been included within a county water authority, shall not be contested in any action unless the action has been brought within three months after the completion of the annexation or, in case the annexation is completed prior to the time that this subdivision takes effect, then within three months after this subdivision became effective.

(g) Whenever territory is annexed to or consolidated with any water district, the corporate area of which, as a unit, has become a part of any county water authority organized under this act, regardless of whether the territory is annexed to and becomes a part of the county water authority, or whenever territory is annexed to any city under the conditions specified in paragraph (1) or (2) of subdivision (b), or whenever territory previously annexed to any city is annexed to the county water authority under the conditions specified in paragraph (2) of subdivision (b), the governing or legislative body, or clerk thereof, of the water district or city, shall file with the board of directors of the county water authority a statement of the change of boundaries of the water district or city, setting forth the legal description of the new boundaries of the water district or city, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

(h) The inclusion in a county water authority of the corporate area, in whole or in part, of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, referred to in Section 2, shall not destroy the identity or legal existence or impair the powers of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, notwithstanding the identity of purpose or substantial identity of purpose of the county water authority.

(i) In determining the number of members of the board of directors of a county water authority organized under this act from the component public agencies, the corporate area of which, in whole or in part, are included as units within the county water authority, there shall be considered only the assessed valuation of the property taxable for county water authority purposes lying in the public agencies and in the county water authority. The directors shall be appointed by the chief executive officers, with the consent and approval of the governing bodies, of the component public agencies, respectively, without regard to whether the chief executive officers or members of the governing bodies have been chosen from, or represent, areas of their respective public agencies which lie outside of the county water authority. The phrase "any water district, the corporate area of which is included within the county water authority" and the phrase "each city, the area of which shall be a part of any county water authority incorporated under this act," and like phrases, used elsewhere in this act, shall be deemed to mean and refer to any water district or city, the corporate area of which, either in whole or in part, is included within the county water authority, but the duties and obligations of the county water authority shall extend only to that part of the corporate area of the water district or city that lies within the county water authority. As to the water district, city, or public agency, the corporate area of which lies partly within and partly without the county water authority, the word "therein" and the phrase "within the city" and like words and phrases, used elsewhere in this act, shall be deemed to mean and refer to that part of the corporate area of the water district, city, or public agency which lies within the county water authority. The charges for water supplied by the county water authority to any component public agency, pursuant to its request, shall be and become an obligation of the public agency, regardless of whether the entire corporate area of the public agency is included within the county water authority, and the county water authority, in administrative and contractual matters, shall deal with the chief executive officers and governing bodies and other proper officials of the component public agencies as chosen or constituted under applicable laws governing the respective public agencies.

(Stats.1943, c. 545, p. 2110, § 10. Amended by Stats.1947, c. 922, p. 2133, § 1; Stats.1953, c. 1236, p. 2793, § 1; Stats.1957, c. 357, p. 1097, § 244.)


§ 45-10.1. Annexation; special tax levy; payment of amount specified to authority; effect

Sec. 10.1. Where territory is annexed to a county water authority pursuant to any of the provisions of Section 10 of
this act upon terms and conditions providing for the levy of special taxes upon taxable property within such annexed territory and specifying the aggregate amount to be raised by such taxes, the governing body of the public agency of which such territory is a part may pay to the county water authority the amount so specified, or any balance thereof for which such special tax has not been levied at the time of payment. Upon receipt of such payment the amount paid shall be credited to the obligation fixed by the terms and conditions of the annexation of such territory to such county water authority, in the same manner and with the same effect as though collected by the levy of special taxes for such purpose, and such payment shall terminate the right and obligation of such county water authority to levy the special taxes provided for in such terms and conditions of annexation.

(Added by Stats.1957, c. 1356, p. 2685, § 2.)

§ 45-10.2. Annexation of territory within federal military reservation to county water authority

Sec. 10.2. (a) Notwithstanding any other provisions of this act, territory within a federal military reservation may be annexed to any county water authority organized hereunder as a single member of an authority in the manner provided in this section. As used in this section, "federal military reservation" or "military reservation" means a single federal military reservation or separate but contiguous federal military reservations which are jointly annexed to a county water authority as a single member agency of an authority.

(b) Proceedings for the annexation of a military reservation shall be initiated by the adoption by the board of directors of an authority of a resolution proposing annexation of a military reservation to an authority as a member of an authority.

(c) The resolution proposing the annexation may provide that the annexation shall include one or more separate areas, which may be separately identified for assessing and tax collecting purposes, and that each such area may be subject to one or more of the following terms and conditions:

1. The fixing and establishment of priorities for the use of, or right to use, water, or capacity rights in any public improvement or facilities, and the determination of, or limitation on, the quantity of, the purposes for which, and the places where, water may be delivered by the authority to the military reservation for military purposes and uses incidental thereto, as well as for nonmilitary purposes.

2. The levying by the authority of special taxes upon any private leasehold, possessory interest or other taxable property within the territory annexed, and the imposition and collection of special fees or charges prior to the annexation.

3. Should portions of any area annexed hereunder be subsequently made available for nonmilitary purposes not in existence at the time of the annexation of the area, the board of directors of the authority may impose new terms and conditions for any subsequent service of water, directly or indirectly, by the authority to that area, including the separation of such an area for assessing and tax collecting purposes and the levying by the authority of special taxes on those portions.

4. The effective date of the annexation.

5. Any other matters necessary or incidental to any of the foregoing.

(d) A certified copy of the resolution proposing annexation shall be sent to the official in authority over the military reservation. If the military reservation consents in writing to the annexation and to the terms and conditions established by the board of directors, the board may, by resolution, order the annexation to the authority of the territory situated within the military reservation, subject to said terms and conditions.

(e) A certificate of proceedings taken hereunder shall be made by the secretary of the authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing in his or her office of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate reciting the filing of those papers in his or her office and the annexation of the territory to the authority. The county clerk of the county in which the county water authority is situated shall transmit the original of said certificate to the secretary of the authority.

(f) Upon the filing of the certificate of proceedings with the county clerk of the county in which the county water authority is situated, or upon the effective date of the annexation provided for in the terms and conditions, whichever
Appendix B

is later, the territory within the military reservation shall become and be an integral part of the authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of said authority, including the payment of bonds and other obligations of the authority at the time authorized or outstanding, and the board of directors of the authority shall be empowered to do all things necessary to enforce and make effective the terms and conditions of annexation fixed as hereinabove authorized.

(g) On and after the effective date of the annexation, the military reservation shall be a separate unit member of the authority and shall be entitled to one representative on the board of directors of the authority. For the purposes of this act, a military reservation shall be deemed a public agency. The representative shall be designated and appointed by the official in authority over the military reservation, shall hold office for a term of six years or until his or her successor is appointed and qualified, and may be recalled by that official.

(h) The transfer of ownership of the fee title of a military reservation, or of any portion thereof to nonmilitary ownership after annexation to the authority pursuant to this section shall result in the automatic exclusion from the authority of the territory transferred to that ownership.

(i) If a county water authority is a member public agency of a metropolitan water district organized under the Metropolitan Water District Act (Chapter 200 of the Statutes of 1969), that metropolitan water district may impose any or all of the terms and conditions that may be imposed by a county water authority pursuant to subdivisions (a) through (h) of this section in any resolution fixing the terms and conditions for the concurrent annexation of territory in a military reservation.


§ 45-10.3. Public agency within unit of county water authority: procedure to become separate unit

Sec. 10.3. (a) A public agency whose corporate area is wholly within the corporate area of another public agency which is already included within a county water authority as a separate unit, may also become a separate unit of such county water authority in the manner provided in this section.

(1) The governing body of a public agency seeking status as a separate unit of a county water authority shall apply by resolution to the board of directors of such county water authority for consent to detach its corporate area from the existing separate unit of which it is a part and to become a separate unit of such county water authority.

(2) The board of directors of the county water authority may grant or deny such application and in granting the same may fix the terms and conditions upon which such applying public agency may become a separate unit of the county water authority; provided, however, that such consent shall not be given unless and until by resolution the governing body of the existing separate unit of the county water authority also gives its consent to the proposed detachment of such territory and to the applying public agency becoming a separate unit of such county water authority.

(3) Proceedings for the detachment of the corporate area of the public agency seeking status as a separate unit of the county water authority from the corporate area of the existing separate unit shall be conducted in the manner prescribed by law; provided, however, that the effective date of such detachment shall be after the completion of the proceedings provided by paragraph (4) of this subdivision.

(4) The detachment of the corporate area of the public agency seeking status as a separate unit from the corporate area of the existing separate unit shall not be effective until the secretary of the agency seeking status as a separate unit has filed with the secretary of the county water authority a certificate certifying the completion of all requirements of law for such detachment. A certificate of proceedings hereunder shall thereupon be prepared by the secretary of the county water authority and filed with the Secretary of State. Upon filing of such certificate of proceedings with the Secretary of State or upon the effective date of the detachment as set forth in any terms and conditions applicable thereto, whichever is later, the corporate area of the agency seeking separate unit status shall thereupon become a separate unit of the county water authority and shall have all of the rights and privileges thereof.

(b) Notwithstanding anything to the contrary in Section 11 of this act, if proceedings are conducted in accordance with this section, the territory detached from the existing separate unit of the county water authority shall remain at all times a part of the corporate area of such authority.

(Added by Stats.1979, c. 22, p. 67, § 1, eff. April 5, 1979.)
§ 45-11. Exclusion of territory

Sec. 11. (a) Methods. Exclusion of territory from any county water authority may be effected by either of the following methods:

(1) Territory excluded from the portion of the corporate area of any public agency which lies within the exterior boundaries of a county water authority, the public agency being a unit of the authority, and which exclusion occurs in accordance with the provisions of law applicable to those exclusions, shall thereby be excluded from and shall no longer be a part of the authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof shall be, at the time of the exclusion, subject to special taxes levied, or to be levied, by the county water authority pursuant to terms and conditions previously fixed under paragraph subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to those special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies.

Exclusion of territory from a county water authority pursuant to this paragraph shall not occur if two or more public agencies that are included in a county water authority as separate units are subject to a reorganization of their boundaries under applicable provisions of law which would result in an exchange or transfer, but not an overlapping, of territory that is entirely within the county water authority. The boundaries of those agencies within the county water authority, upon that reorganization and the filing with the secretary of the county water authority of a copy of the certificate of completion prepared, executed, and filed by the executive officer of the local agency formation commission responsible therefor constitute the boundaries of the agencies for all purposes of the county water authority, without action by the board of directors of the county water authority. If the exchange includes territory subject to special conditions and tax levies pursuant to the terms of annexation at the time the territory became a part of the county water authority, the territory shall continue to be subject to those conditions and to be taxable by the county water authority or those levies.

From and after the effective date of the inclusion of the territory by the including public agency, the territory shall be considered to be a part of the corporate area of the including agency; provided, however, that, if the taxable property within the territory, or any portion thereof, is subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the territory or portion thereof to the county water authority, then the taxable property within the territory shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of the special taxes pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levy.

(2) Any public agency whose corporate area as a unit has become or is a part of any county water authority may obtain the exclusion of the area therefrom in the following manner:

The governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority. A certificate of the proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing of the certificate, the corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so
subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers in his or her office and the exclusion of the corporate area of the public agency from the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

(b) Statement of boundary changes. Whenever territory is excluded from any public agency in accordance with paragraph (1) of subdivision (a), the governing body, or clerk thereof, of the public agency shall file with the board of directors of the county water authority a statement of the change of boundaries of the public agency, setting forth the legal description of the boundaries of the public agency, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating the boundaries.

(c) Previously excluded territory. Whenever any territory has been excluded from any public agency prior to the effective date of this section, under conditions which would have resulted in the exclusion of the territory from a county water authority had paragraph (1) of subdivision (a) then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be excluded from and shall no longer be a part of, the authority, the last-mentioned provisions being as follows:

(1) The governing body of the public agency may adopt an ordinance which, after reciting that the territory has been excluded from the public agency by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date or dates upon which the exclusion became effective, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, excluded from the county water authority.

(2) The governing body, or clerk thereof, of the public agency shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall be excluded from, and shall no longer be a part of, the county water authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion, and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof is subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed, and until the aggregate sums have been so raised by the special tax levies.

(3) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days issue a certificate describing the territory, reciting the filing of certified copy of the ordinance and the exclusion of the territory from the county water authority, and declaring that the territory is no longer a part of the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

(d) Territory exchanged or transferred among public agencies. Whenever any territory has been exchanged or transferred pursuant to law prior to January 1, 1986, among two or more public agencies that are included in a county water authority as separate units, the territory shall not be deemed excluded from the county water authority, notwithstanding the failure of the county water authority to give its consent to the exchange or transfer of the territory, if there has been filed with the board of directors of the county water authority prior to January 1, 1986, a statement of the change of boundaries of the agencies, as so changed, and of the part within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

(Stats.1943, c. 545, p. 2111, § 11. Amended by Stats.1951, c. 997, p. 2628, § 1; Stats.1957, c. 1356, p. 2685, § 3.)

(Amended by Stats.1985, c. 1408, § 3, eff. Oct. 1, 1985.)
§ 45-11.1. Territory within multiple public agencies in authority as separate units

Sec. 11.1. Any territory within a county water authority which lies within two or more public agencies, the corporate areas of which are included within such county water authority as separate units, shall, subject to the conditions hereinafter provided, for the purposes of this act and for all related purposes (other than local purposes of such public agencies) involving in any manner the respective territorial boundaries and jurisdiction of such public agencies, be considered to be a part of the respective public agency which will supply water to such overlapping territory, as determined in the manner provided hereina; provided, that if the taxable property within such overlapping territory or any portion thereof shall be subject to special taxes levied or to be levied by such county water authority pursuant to terms and conditions theretofore fixed under the provisions of paragraph (c) or paragraph (d) of Section 10 of this act for the annexation of such overlapping territory or portion thereof to such county water authority, then such taxable property within such overlapping territory shall continue taxable by such county water authority for the purpose of raising the aggregate sum or sums to be raised by the levy of such special taxes pursuant to terms and conditions for such annexation or annexations as so fixed and until such aggregate sum or sums shall have been so raised by such special tax levies; and provided, further, that the public agency of which such overlapping territory shall be considered to be a part shall be determined in the following manner and subject to the following conditions:

(1) The governing body of each public agency in which any such overlapping territory lies, shall, on or before October 1st of any calendar year, file with the board of directors of the authority a certified copy of a resolution of such governing body which shall contain a legal description of any such overlapping territory or portion thereof which will be supplied with water by such public agency during the next ensuing fiscal year commencing July 1st next following, and such certified copy of such resolution so filed shall be accompanied by a map or plat showing the respective boundaries of each overlapping territory or portion thereof so to be supplied with water by such public agency.

(2) On or before November 1st of such calendar year, the board of directors of the authority shall consider all documents so filed with the authority as required under subparagraph (1) above, and by resolution shall determine which public agency will supply water to each such overlapping territory or portion thereof during the next ensuing fiscal year commencing July 1st next following: in the event that the board of directors of the authority, from the evidence submitted, cannot determine which public agency will supply water to any overlapping territory or portion thereof, then the board of directors shall determine that such overlapping territory or portion thereof shall be considered to be a part of, and shall designate, the public agency within which such overlapping territory or portion thereof first was included; and such resolution shall contain a legal description of each such overlapping territory or portion thereof respecting which any such determination is made.

(3) The board of directors of the authority, on or before November 20th of such calendar year, shall file with the county assessor of the county in which such overlapping territory shall lie and with the State Board of Equalization and in the event that such county water authority shall be included within a metropolitan water district as a separate unit then also with the board of directors of such metropolitan water district, a certified copy of such resolution of the board of directors of the authority so determining the matters required to be determined by it under subparagraph (2) above, accompanied by map or maps or plat or plats showing the respective boundaries of each overlapping territory or portion thereof described in such resolution.

(4) Any determination made by the board of directors of the authority and evidenced by the filing of the documents required by subparagraph (3) hereof shall be effective until changed by later determination by said board of directors and the evidencing thereof by the filing of the required documents.

(5) Any overlapping territory or portion thereof respecting which no determination shall have been made by the board of directors of the authority and evidenced by the filing of the documents required by subparagraph (3) hereof shall be considered to be a part of the public agency within which such overlapping territory or portion thereof first was included.

(Added by Stats.1951, c. 997, p. 2631, § 2.)


§ 45-13. Administrative authority

Sec. 13. (a) All matters and things necessary for the proper administration of the affairs of the authority that are not
Appendix B

provided for in this act shall be provided for by the board of directors of the authority by ordinance or resolution. Any action required by this act to be done by resolution may be done, with equal validity, by ordinance.

(b)(1) The board of directors of the authority may adopt regulations regarding its facilities, property, and rights-of-way. The board of directors, by ordinance, may make a violation of any regulation adopted pursuant to this subdivision subject to an administrative fine.

(2) The board of directors shall set forth, by ordinance or resolution, the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the authority of those administrative fines.

(3) The amount of the administrative fine shall not exceed the maximum fine for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the Government Code. For the purpose of carrying out this subdivision, Section 53069.4 of the Government Code shall apply, except that any action required by that section to be taken by ordinance may be taken by resolution of the board of directors.

(c) The board of directors of the authority, by ordinance, may establish procedures for the abatement of encroachments that violate any regulation adopted pursuant to subdivision (b) and to recover the costs of abatement by means of a lien with the status and priority of a judgment lien on the property that is subject to the easement or right-of-way from which the encroachment is abated. These procedures shall provide for a reasonable period, specified in the ordinance, during which a person responsible for a continuing violation may abate the encroachment before the commencement of any abatement under this section. For the purposes of carrying out this subdivision, Section 38773.1 of the Government Code applies, except that any action required by that section to be taken by the legislative body shall be taken by the board of directors of the authority. The remedy authorized in this subdivision is cumulative to any other remedy authorized by law.

(d) An encroachment maintained in violation of a regulation adopted pursuant to subdivision (b) is a public nuisance that is subject to abatement by bringing a civil proceeding.


HISTORICAL AND STATUTORY NOTES

2003 Legislation
Stats. 2003, c. 863, in par. (3) of subd. (b), substituted “applies” for “shall apply” following “Section 53069.4 of the Government Code”; and, added subd. (c), related to abatement of encroachments.

2005 Legislation
Stats. 2005, c. 599 (S.B.373), added subd. (d).

§ 45-13.5 Authority report; standing committees

Sec. 13.5. An authority formed pursuant to this act shall prepare and submit, at its own expense, a report to the Legislature, not before January 1, 2008, and not later than January 1, 2009, regarding the implementation of the procedures governing the meetings and actions of the standing committees of the board of directors that were adopted by the board of directors in 2004 or 2005.

(Added by Stats.2006, c. 243 (S.B.511), § 1.)

HISTORICAL AND STATUTORY NOTES

2006 Legislation
Section 2 of Stats. 2006, c. 243, (S.B.511), provides: “SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.”

§ 45-14. Deposit of funds

Sec. 14. The treasurer of any authority organized under the provisions of this act is hereby expressly authorized to
deposit funds of such authority in banks in the manner provided by law for the deposit of moneys of a municipality or other public or municipal corporation.

(Stats.1943, c. 545, p. 2112, § 14.)

§ 45-15. Fiscal year; statement of revenues and expenditures; statement of water storage and use

Sec. 15. The fiscal year of any authority incorporated hereunder shall commence on the first day of July of each year and shall continue until the close of the thirtieth day of June of the year following. As promptly as shall be possible after the close of each fiscal year, it shall be the duty of the controller of the authority to prepare and transmit to the chief executive officer of each public agency, the area of which shall lie within the authority, a statement of revenues and expenditures in such detail as shall be prescribed by the board of directors; also a statement of the amount of water stored by the authority and the amounts used by the respective public agencies, the areas of which shall lie within the authority.

(Acts.1943, c. 545, p. 2112, § 15.)

§ 45-15.5. Claims for money or damages; law governing

Sec. 15.5. All claims for money or damages against the authority are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.


HISTORICAL AND STATUTORY NOTES

Applicability of Stats.1963, c. 1715, p. 3369, see Historical Note under Government Code § 900.

§ 45-16. Partial invalidity

Sec. 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

(Stats.1943, c. 545, p. 2113, § 16.)
PROFESSIONAL SERVICES CONTRACT

1. **PARTIES:**

The parties to this contract are the San Diego County Water Authority, a county water authority, (the Water Authority) and __________________________, [a / an] ______________ (Contractor).

2. **SCOPE OF SERVICES:**

The services to be provided by Contractor [are described in Attachment A] [are (describe within paragraph)].

3. **PAYMENT:**

(a) Payment for services. **[Option 1]** The Water Authority shall pay for services in a lump sum of $______________ upon satisfactory completion of the services and delivery of the work product.

**[Option 2]** The Water Authority shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

**[Option 3]** The Water Authority shall pay for services performed in accordance with this contract at an hourly rate of $___.

(b) Reimbursement of expenses. **[Option 1]** The payment for services includes payment for all costs and expenses that may be incurred by Contractor in the performance of services.

**[Option 2]** Contractor will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the expense reimbursement schedule included in Attachment B.

(c) Maximum payment. The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed $______________.

(d) Invoices. **[Option 1]** An invoice for services shall be submitted upon completion of all services. **[Additional Option.]** If reimbursement of expenses is authorized, Contractor may submit monthly invoices for such expenses, including appropriate documentation of each expense incurred.] The Water Authority generally will process and pay bills within thirty (30) days from receipt.

**[Option 2]** All invoices for services will be submitted on a monthly basis to the Contract Manager. The Water Authority generally will process and pay bills within thirty (30) days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. **[Additional Option A.]** If reimbursement of expenses is authorized, Contractor shall submit monthly invoices for such expenses, including full
documentation of each expense incurred.] [Additional Option B. The invoice shall be accompanied by a separate confidential invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work, the time of performance if payment is on an hourly basis, and itemized reimbursable expenses.] Payments are subject to a final audit upon completion of services or other termination of this contract.

(e) Audit of Records. Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Water Authority for establishing the basis of an invoice, for a minimum of four (4) years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow Water Authority representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours’ notice.

4. TIME FOR PERFORMANCE:

(a) [Option 1] Contractor will complete all services by ________________.

[Option 2] Contractor will perform the services according to the schedule contained in Attachment C. If the schedule calls for the services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the Contract Manager. Contractor will complete all services by ________________.

(b) Extension of time for unforeseen circumstances. In the event that the Contractor is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Contractor’s reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, except strikes, lockouts, or work slow down or stoppage of Contractor’s employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Contractor shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

5. COMPLIANCE WITH APPLICABLE LAWS AND STANDARD OF PERFORMANCE:

Contractor’s services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor’s profession currently practicing under similar conditions. Contractor shall comply with all applicable federal, state, and local laws relating to this scope of work. Whenever the scope of work requires or permits approval by the Water Authority, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors. By delivery of completed work, Contractor
certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

6. **INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor. Neither Contractor nor any of Contractor’s officers, employees, agents or subcontractors, if any, is an employee of the Water Authority by virtue of this contract or performance of any work under this contract. Contractor retains the right to pay and supervise its employees and subcontractors as it sees fit. The Water Authority has no right to supervise Contractor’s employees or subcontractors, and if any issues arise with Contractor’s employees or subcontractors as to their performance, the Water Authority shall contact the Contractor directly so that Contractor may address any issues. If for any reason Contractor, or any of Contractor’s officers, employees, agents or subcontractors, believes that any actions of the Water Authority are inconsistent with Contractor’s role as an independent contractor they shall provide written notice to the Water Authority of such action(s) within 30 days of their occurrence or they are waived to the extent permitted by law. If such written notice is not timely provided and then any claims are later made against the Water Authority related to such action(s), Contractor agrees that such claims qualify under Section 18 below as being subject to defense and indemnity by Contractor for the benefit of the Water Authority. Contractor agrees that any employee or subcontractor whom Contractor engages to do work under the scope of this contract shall be made aware of this contract and shall agree in writing to abide by the provisions of this section.

7. **ASSIGNMENT:**

Contractor shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the Water Authority in each instance.

8. **SUBCONTRACTORS AND CONTRACTOR EMPLOYEES:**

[Option 1](a) Contractor shall comply with all requirements of the Small Contractor Outreach and Opportunities Program (SCOOP). Contractor will perform the work personally or through Contractor’s employees except for those tasks to be performed by the subcontractors designated on Attachment D (SCOOP Form A-1). Contractor may add or delete a designated subcontractor only in compliance with provisions of the Water Authority’s Small Contractor Outreach and Opportunities Program. Contractor is responsible to the Water Authority for the acts and omissions of Contractor's employees, its subcontractors, and of the subcontractor’s employees in performance of this contract. Nothing contained in this contract shall create any contractual relationship between any employee or subcontractor of Contractor and the Water Authority. Contractor shall pay subcontractors within ten (10) days of receipt of payment by Water Authority for work performed by a subcontractor and billed by the Contractor.
(b) Failure by the Contractor to fulfill any of the SCOOP requirements constitutes breach of contract. The Water Authority may seek, without limitation, the following remedies:

(1) Withholding progress payments until the Water Authority deems the Contractor to be in compliance.

(2) Withholding an amount equal to the unmet portion of the amount contracted to the subcontractor, vendor, or supplier in question.

(3) Suspension or debarment pursuant to the Water Authority’s Administrative Code Chapter 4.12 Section 4.12.020.

(4) Termination of the contract.

[Option 2] Contractor will perform the work personally or through Contractor’s employees. Contractor may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority’s Small Contractor Outreach and Opportunities Program, if the Water Authority determines that the program provisions are applicable. Contractor is responsible to the Water Authority for the acts and omissions of Contractor's employees, its subcontractors, and of the subcontractor’s employees in performance of this contract. Nothing contained in this contract shall create any contractual relationship between any employee or subcontractor of Contractor and the Water Authority.

9. CONTRACTOR’S EMPLOYEES:

(a) Immigration Reform and Control Act of 1986. Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all of Contractor’s agents, employees, subcontractors and Contractors that are included in this contract.

(b) Limitation of Water Authority Liability. The payment made to Contractor pursuant to this contract shall be the full and complete compensation to which Contractor and Contractor’s officers, employees, agents and subcontractors are entitled for performance of any work under this contract. Neither Contractor nor Contractor’s officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Water Authority. The Water Authority will not make any federal or state tax withholdings on behalf of Contractor. The Water Authority shall not be required to pay any workers' compensation insurance on behalf of Contractor.

(c) Indemnification for Employee Payments. To the extent permitted by law, Contractor agrees to defend and indemnify the Water Authority for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the California Public Employees Retirement System (CalPERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Water Authority may be required to make on behalf of
Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of the Water Authority, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

10. DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION:

DIR registration must be maintained for the life of the contract.

11. PREVAILING RATES OF WAGES:

(a) In accordance with the provisions of the California Labor Code, the Water Authority has obtained from the Department of Industrial Relations the general prevailing rates of wages in the locality in which the Work is to be performed, and it shall be mandatory upon the Contractor to whom the contract is awarded and upon any subcontractor to pay not less than the specified rates to all workers employed in the execution of the contract. The Contractor shall cause a copy to be posted at the jobsite. For current prevailing wage rates see http://www.dir.ca.gov/OPRL/PWD/. Copies of the prevailing rates of wages are on file at the office of the Water Authority, 4677 Overland Avenue, San Diego, CA 92123, and are available for review by any interested party on request. This provision applies to the following portions of the scope of work: surveying, inspection, drilling, geotechnical services and all other public works components of this contract.

(b) The Contractor and any subcontractor under the Contractor shall, as a penalty to the State or Water Authority, forfeit not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or, except as provided in the subdivision (b) of Labor Code Section 1775, by any subcontractor under the Contractor. The penalty shall be determined by the Labor Commissioner.

12. EMPLOYMENT OF APPRENTICES:

The Contractor shall comply with all applicable Labor Code requirements, including but not limited to California Labor Code Sections 1777.5, 1777.6 and 1777.7 concerning the employment of apprentices by the Contractor or any subcontractor.

13. CERTIFIED PAYROLL RECORDS:

(a) Pursuant to California Labor Code Section 1776, the Contractor and each subcontractor shall keep accurate records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.
The employer has complied with the requirements of California Labor Code Sections 1771, 1811 and 1815 for any work performed by his or her employees on the project.

(b) The payroll records enumerated under paragraph (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in paragraph (a) shall be made available for inspection or furnished upon request to the Contract Manager, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in paragraph (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the Water Authority, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b)(2), the requesting party shall, before being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through with the request was made. The public shall not be given access to the records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as provided by the division.

(d) The Contractor or subcontractor shall file a certified copy of the records enumerated in paragraph (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Water Authority, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address, and social security number. The name and address of the Contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) Agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made
available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual’s name, address, and social security number.

(g) The Contractor shall inform the Water Authority of the location of the records required under paragraph (a), including the street address, city and county, and shall, within 5 work days, provide a notice of a change of location and address.

(h) The Contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, the Contractor, as a penalty to the Water Authority, shall forfeit $100 for each day, or portion thereof, for each worker, until compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty assessment pursuant to this section due to failure of a subcontractor to comply with this section.

(i) The Contractor shall furnish monthly a copy of each certified payroll record to the Engineer. The Contractor shall be responsible for the submission of copies of payroll records of all subcontractors. Such payroll records shall include the written declarations made under penalty of perjury required by paragraph (a), and shall also be accompanied by a statement signed by the Contractor, or the subcontractor in the case of subcontractor payroll records, indicating that the payroll is complete, that the wage rates contained therein are not less than those required to be paid, and that the classifications set forth for laborers and mechanics, including apprentices and trainees, truly reflect the work performed in each case. After the Contractor or subcontractor starts work on the project and submits a monthly payroll record, payroll records shall continue to be required until all work by the Contractor or subcontractor is complete. If no work was performed during any month, the payroll record shall indicate that fact.

(j) The Contractor and subcontractors shall submit all certified payroll records directly to the Department of Industrial Relations electronically in accordance with requirements of Department of Industrial Relations and Labor Code Sections 1771.4 and 1776. For more information on this requirement, refer to Department of Industrial Relations’ website or upload at: https://efiling.dir.ca.gov/eCPR/pages/home.jsp.

14. FAIR EMPLOYMENT PRACTICES:

(a) Administrative Code Provisions. Contractor acknowledges and agrees to abide by the following provision of the Water Authority Administrative Code Section 2.24.010 that states:

“(a) It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed,
veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, gender, gender identity, gender expression or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, contractor, vendor, or recipient of Authority services on account of the person’s race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, gender, gender identity, gender expression or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

“(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority.”

(b) Civil Rights Act. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Water Authority’s Small Contractor Outreach and Opportunities Program.

(c) Water Authority Discrimination/Harassment Policy. Contractor and its officers, employees, agents and subcontractors shall comply with the Water Authority’s Discrimination/Harassment Prohibition Policy in performance of this contract.

(d) Indemnification. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, the Contractor shall also indemnify, defend and hold harmless the Water Authority, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute
resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor’s officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the services or termination of the Contract.

15. **CONDUCT AND BEHAVIOR AT WATER AUTHORITY PROPERTY:**

If Contractor and Contractor’s officers, employees, agents and subcontractors are on Water Authority property they shall comply with the Water Authority’s Substance-free Workplace Policy, Information and Communications Systems Policy, and other rules and regulations governing workplace safety, conduct, and behavior, for any portion of the work performed on the premises of the Water Authority or using Water Authority facilities or equipment.

16. **OWNERSHIP OF WORK PRODUCT:**

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the Water Authority. Contractor agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the Water Authority and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Water Authority. Water Authority acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

17. **FORMAT OF DOCUMENTS:**

Documents submitted to the Water Authority in electronic format shall be formatted according to specifications provided by the Water Authority, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office format as appropriate for the particular work product or, if directed by the Contract Manager, in Adobe Acrobat pdf format.

18. **CHANGES IN WORK:**

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work.
work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract. All changes in work that increase the amount of payment shall be subject to Section 4.04.040 of the Water Authority Administrative Code.

19. **CONFIDENTIALITY:**

(a) Confidential Nature of Information. Contractor shall treat all information obtained from the Water Authority in the performance of this contract as confidential and proprietary to the Water Authority. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this contract as confidential. Contractor warrants that it has systems in place to assure its compliance with applicable state and federal laws relating to the collection and management of personal and confidential information.

(b) Limitation on use and disclosure. Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor’s scope of work. Contractor will not disclose any information prepared for the Water Authority, or obtained from the Water Authority or obtained as a consequence of the performance of work to any person other than the Water Authority, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the Water Authority.

(c) Security plan. Contractor shall prepare a security plan to assure that information obtained from the Water Authority or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Contractor shall establish, implement, and maintain safeguards reasonably designed to ensure the security of personal and confidential information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Contractor shall provide to its employees, subcontractors, and any personnel working with Water Authority data, reasonable information security awareness training. Contractor shall immediately advise the Water Authority of any request for disclosure of information or of any actual or potential unauthorized disclosure of confidential or personal information. Contractor is responsible for taking reasonable responsive security and identity protection measures should an unauthorized disclosure occur at the sole cost to the Contractor.

(d) Survival. Contractor’s obligations under this paragraph shall survive the termination of this contract.

20. **PROHIBITED INTEREST:**

No official or employee of the Water Authority who is authorized in such capacity on behalf of the Water Authority to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the Water Authority who is authorized
in such capacity and on behalf of the Water Authority to exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

21. CONFLICT OF INTEREST:

(a) Local Conflict of Interest Code Compliance.[OPTION 1]: The Water Authority has determined, based on the scope of the services to be provided by Contractor under this contract, that this contract does not confer on Contractor or any of Contractor’s employees the status of a “designated employee” or “Consultant” of the Water Authority for the purposes of the Water Authority’s Local Conflict of Interest Code and the California Political Reform Act. This contract does not require or permit Contractor to make a governmental decision as specified in 2 Cal. Code of Regs. § 18700.3, subdiv. (a)(1), or serve in a staff capacity as specified in 2 Cal. Code of Regs. § 18700.3, subdiv. (a)(2).

[OPTION 2]: The Water Authority has determined, based on the scope of the services to be provided by Contractor under this contract, that this contract confers on Contractor or any of Contractor’s employees the status of a “designated employee” or “Consultant” of the Water Authority for the purposes of the Water Authority’s Local Conflict of Interest Code and the California Political Reform Act. Contractor will be subject to the same provisions as the __________ Designation in the Water Authority’s Local Conflict of Interest Code.

(b) Disqualification. Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this contract. Contractor will not have such interest during the term of this contract. Contractor will immediately advise the General Counsel of the Water Authority if Contractor learns of a financial interest of Contractor's during the term of this contract. If Contractor’s participation in another Water Authority project would create an actual or potential conflict of interest, in the opinion of the Water Authority, the Water Authority may disqualify Contractor from participation in such other project during the term of this Contract.

22. INDEMNIFICATION:

(a) To the fullest extent permitted by law, the Contractor shall (1) immediately defend, and (2) indemnify the Water Authority, and its directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Contractor’s performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor’s officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. The Contractor’s obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or
willful misconduct of an indemnified party, the Contractor’s indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) The duty to defend is a separate and distinct obligation from the Contractor’s duty to indemnify. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Water Authority, the Water Authority and its directors, officers, and employees, immediately upon tender to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend Water Authority. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the Water Authority for reimbursement of reasonable attorneys’ fees and defense costs.

(c) The review, acceptance or approval of the Contractor’s work or work product by any indemnified party shall not affect, relieve or reduce the Contractor’s indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

23. INSURANCE:

(a) Requirement. Contractor shall procure and maintain during the period of performance of this contract and for ___ months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority so that any other coverage held by the Water Authority shall not contribute to any loss under Contractor's insurance.

   General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \([\$2,000,000]\) general aggregate and \([\$1,000,000]\) per occurrence for general liability, bodily injury, personal injury, and property damage.

   Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for “any auto”) coverage in an amount not less than \([\$1,000,000]\) per accident for personal injury, including death, and property damage.

   Professional liability: (errors and omissions) for damage alleged to be as a result of errors, omissions or negligent acts of Contractor coverage in an amount not less than \([\$1,000,000]\) per claim.

   Workers' compensation and employer's liability: coverage shall comply with the laws of
the State of California, but not less than an employer’s liability limit of [\$1,000,000.]

A deductible or retention may be utilized, subject to approval by the Water Authority. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party including additional insureds or insurers, shall satisfy the self-insured retention limits.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the Water Authority (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this contract.

Contractor’s insurance is primary to any other insurance available to the Water Authority with respect to any claim arising out of this Agreement. Any insurance maintained by the Water Authority shall be excess of the Contractor’s insurance and shall not contribute with it. The Contractor’s endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority, and its directors, officers, employees and agents.

Contractor’s insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after thirty (30) days’ written notice has been given to the Water Authority, or after ten (10) days’ written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "$10 million to $24 million (Class V) or better", or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers’ Compensation and Employer’s Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier’s A-V rating to Water Authority.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority, or on equivalent ISO forms that contain provisions required by this contract.

24. ACCIDENT REPORTS:
Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the Water Authority any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Water Authority’s Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

25. COVENANT AGAINST CONTINGENT FEES:

Contractor agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the Water Authority shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

26. TERMINATION OR ABANDONMENT:

(a) Water Authority’s Rights. The Water Authority has the right to terminate or abandon any portion or all of the work by giving ten (10) days’ written notice. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to Water Authority all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Water Authority shall pay Contractor for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the Water Authority and Contractor for the portion of work completed in conformance with this contract before the date of termination. In addition, the Water Authority will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The Water Authority shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) Contractor’s Rights. Contractor, if Contractor is not in default or breach, may terminate Contractor’s obligation to provide further services under this contract upon thirty (30) days’ written notice only in the event of a material default by the Water Authority, which default has not been cured within thirty (30) days following the written notice.

27. SUCCESSORS OR ASSIGNS:

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is
intended to affect the limitation on assignment.

28. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

(a) General Obligation. Contractor shall pay to the Water Authority the replacement cost of any equipment or repair cost of any facilities provided by the Water Authority for Contractor’s use in performance of services that is lost or damaged by Contractor or Contractor’s officers, employees, agents or subcontractors.

(b) Keys. During the term of the contract, Contractor may be issued keys to Water Authority facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Contractor will sign for each key and each key will be returned to the project manager when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Contractor shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Water Authority, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the Water Authority security level is returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as $40,000.

29. ELECTRONIC COMMUNICATIONS:

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor and the Water Authority acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor and the Water Authority view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Contractor agrees to update its system with the software vendor’s most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

Contractor shall identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Contractor shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment.
Contractor shall maintain its own e-mail system. Neither Contractor, its employees, its subcontractors, or subcontractor’s employees shall be given a Water Authority e-mail address.

30. LAWS AND VENUE:

This contract and disputes arising out of or relating to the contract or the parties’ relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties’ relationship shall be brought in a state or federal court situated in the County of San Diego, State of California.

31. ADMINISTRATION:

(a) Contractor’s principal place of business and agent for service of process. Contractor’s principal place of business is _______________________________. Contractor’s agent for service of process is ____________________.

(b) Water Authority’s Representative. The Water Authority’s representative for administration of this contract is ______________, who is the designated Contract Manager. The Water Authority may change the Contract Manager at any time upon notice to the Contractor.

(c) Contractor’s Representative. The Contractor’s representative for administration of this contract is ______________, who is designated as the Project Manager. The Contractor may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) Notices. Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA  92123-1233

Attn: _______________________________(Contract Manager)

Contractor:
_____________________________________
_____________________________________
_____________________________________

Attn: _______________________________(Project Manager)

Either party may change the address or identity of the person for notices under this paragraph by
written notice to the other delivered in accordance with this paragraph.

(e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor and Contract Manager.

32. INTEGRATION AND MODIFICATION:

This contract represents the entire understanding of the Water Authority and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the Water Authority and Contractor.

33. ADVICE OF COUNSEL:

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

34. INDEPENDENT REVIEW:

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

35. TIME:

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

36. ASSIGNMENT OF ANTI-TRUST CLAIMS:

The Contractor offers and agrees to assign to the Water Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the Water Authority tenders final payment to Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.
37. **TAXES:**

The Contractor shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

38. **SIGNATURES:**

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

DATED: _________________, 20___

San Diego County Water Authority

___________________________________
By: ________________________________

Contractor:

____________________________________
By: ________________________________

Approved as to form:
San Diego County Water Authority

By: ________________________________
Rosann Gallien, Assistant General Counsel
ATTACHMENT A

SCOPE OF WORK
Appendix C

ATTACHMENT B

PAYMENT and FEE SCHEDULE
ATTACHMENT B

REIMBURSEMENTS

1. The administrative, overhead, payroll and similar charges, secretarial time or secretarial
time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business
expenses are included within the scope of payment for services and are not reimbursable expenses.

2. Copying and report production expenses by outside copying or printing services, when
necessary for the services are reimbursable at actual cost.

3. Long distance telephone, cellular phone, facsimile transmission and postage charges are
reimbursable at actual cost.

4. Federal Express and similar delivery services should be avoided without the prior approval
of the Contract Manager. Charges for approved delivery services are reimbursable at actual cost.

5. Travel costs, including transportation and meals, will be reimbursed at actual cost subject
to the Water Authority’s policy for reimbursement of travel and meal expenses for Water
Authority employees. Any travel with an estimated expense of $1,000 or more requires advance
approval of the Contract Manager. Travel expenses incurred for services within the county of
the home office of the Contractor or the Contractor’s employee or subcontractor incurring the
travel expense is not reimbursable. Meals are not billable to the Water Authority, except for meals
necessarily incurred in connection with approved travel. The Water Authority does not reimburse
for cost of alcoholic beverages.
Appendix C

ATTACHMENT C

PERFORMANCE SCHEDULE
Appendix C

CERTIFICATES OF INSURANCE

and

ADDITIONAL INSURED ENDORSEMENTS
The following procedures are a supplement to the San Diego County Water Authority’s existing “Debt Management Policy”[, and have been incorporated as a new Section ___ of the Policy]. These supplemental procedures apply to tax-exempt obligations (“Bonds”) issued by the San Diego County Water Authority (the “Water Authority”) or the San Diego County Water Authority Financing Agency, unless the Water Authority’s Director of Finance/Treasurer otherwise directs for a particular issue of Bonds based on particular circumstances that relate to that Bond issue, including changes in guidance promulgated by the IRS, changes in law, the advice of bond counsel, or other factors the Director of Finance/Treasurer deems relevant.

These procedures are intended to supplement and explain certain general debt issuance procedures already followed by the Water Authority and to provide a more formal record of the procedures followed and to be followed by the Water Authority when it issues Bonds. These procedures are also supplemented by various documents executed in connection with each individual bond issuance, including the certificate of the lead underwriter as submitted at the time of closing of the Bond issue, as well as the Tax Certificates executed by the Water Authority to represent various facts regarding federal tax law compliance, and the Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) which is filed around the time of issuance.

Ultimate responsibility for all matters relating to Water Authority financings and refinancings rests with the Director of Finance/Treasurer.

A. Arbitrage Rebate and Yield

Unless a Tax Certificate documents that bond counsel has advised that arbitrage rebate will not be applicable to an issue of Bonds:

- The Water Authority shall engage the services of a Rebate Service Provider, and the Water Authority or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;

- upon request, appropriate Water Authority personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- appropriate Water Authority personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
Appendix D

• during the construction period of each capital project financed in whole or in part by the Bonds, appropriate Water Authority personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issuance date of the Bonds.

The Water Authority shall retain copies of all arbitrage reports and trustee statements as described below under Section D, “Record Keeping”.

B. Procedures regarding use of Bond proceeds

After a Bond sale, Bond proceeds are deposited into separate accounts (i.e., they are not commingled with revenues of the Water Authority). Once the proceeds are deposited in such accounts, investment earnings are allocated to the same accounts. Set forth below are the procedures of the Water Authority to ensure the correct use of Bond proceeds.

Appropriate Water Authority personnel shall:

• monitor the use of Bond proceeds, the use of Bond-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Bond-financed assets throughout the term of the Bonds (and in some cases, beyond the term of the Bonds) to ensure compliance with covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates;

• maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds;

• consult with bond counsel prior to entering into any licenses, leases, management contracts, or other contracts or arrangements potentially resulting in the use of Bond-financed facilities by nongovernmental persons, in order to ensure compliance with all covenants and restrictions set forth in applicable Water Authority resolutions or Tax Certificates;

• maintain records for any contracts or arrangements involving the use of Bond-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates;

• meet at least annually with personnel responsible for Bond-financed assets to identify and discuss any existing or planned use of Bond-financed assets, and the use of output or throughput of Bond-financed assets, to ensure that those uses are consistent with all covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates.

All relevant records and contracts shall be maintained as described below under Section D, “Record Keeping”.

OHSUSA:753127356.2
C. **Ongoing Procedures**

This policy, the Tax Certificate for each Bond issue, and to the extent incorporated in the Tax Certificates, Form 8038-G, will be reviewed by the Director of Finance/Treasurer or her designee (i) on or prior to each 5-year anniversary date of the issue date of the Bonds; (ii) on or within 30 days of the date the Bonds are retired, defeased or refunded; (iii) on or prior to the date of any rebate payment made if that date is not within 60 days of one of the dates mentioned in (i) or the date the Bonds are retired, defeased or refunded; (iv) at the time of any change in use of any asset that was funded with a material amount of Bond proceeds; and (v) at the time of the occurrence or non-occurrence of any other event that could affect the tax-exempt status of the Bonds as indicated in the Tax Certificate (e.g., the occurrence of an event which the Tax Certificate represents will not occur or is not expected to occur, or the non-occurrence of an event the Tax Certificate represents will or is expected to occur). This review will be made for the purposes of identifying any possible violation of federal tax requirements related to BABs and to ensure the timely correction of those violations for remedial action described in Treasury Regulations or through the Tax-Exempt Bonds Voluntary Closing Agreement Program. If a possible violation is identified, the Director of Finance/Treasurer will consult with the Water Authority’s bond counsel.

D. **Record Keeping**

Records necessary to support the status of Bonds as tax-exempt will be maintained for the life of the Bonds, and any bonds that refund the Bonds plus three years. These records may be maintained on paper, or by electronic media, or by any combination thereof.

Adopted ________, 2013
San Diego County Water Authority

Supplement to Debt Management Policy - Written Procedures for Issuance of Direct Pay Build America Bonds

The following procedures are a supplement to the San Diego County Water Authority’s existing “Debt Management Policy”, and have been incorporated as a new Section XII of the Policy. These supplemental procedures apply to Direct Pay Build America Bonds (“BABs” or “Bonds”) issued by the San Diego County Water Authority (the “Water Authority”) through the San Diego County Water Authority Financing Agency, unless the Water Authority’s Director of Finance/Treasurer otherwise directs for a particular issue of BABs based on particular circumstances that relate to that BAB issue, including changes in guidance promulgated by the IRS, changes in law, the advice of bond counsel, or other factors the Director of Finance/Treasurer deems relevant.

These procedures are intended to supplement and explain certain general debt issuance procedures already followed by the Water Authority and to provide a more formal record of the procedures followed and to be followed by the Water Authority when it issues BABs. These procedures are also supplemented by various documents executed in connection with each individual bond issuance, including the certificate of the lead underwriter as submitted at the time of closing of the BABs issue, as well as the Tax Certificates executed by the Water Authority to represent various facts regarding federal tax law compliance, the Forms 8038-G (Information Return for Tax-Exempt Governmental Obligations) or 8038-B (Information Return for Build America Bonds), as applicable, which are filed around the time of issuance, and the Form 8038-CP for “Credit Payments to Issuers of Qualified Bonds”, which is filed annually to receive reimbursement for a portion of BABs’ interest expense, and the IRS instructions for each of these forms.

A. Procedures to ensure BABs are issued with no more than a de minimis premium

The Water Authority closed its only BABs issue to date on February 4, 2010 (the Series 2010B Water Revenue Bonds), prior to the IRS’ release of a questionnaire that inquired about the issuer’s policies and procedures for ensuring that BABs were sold with only a minimum amount of premium. At the time of sale of its BABs issue, the Water Authority received from its lead underwriter certification as to the price of the bonds, and bond counsel relied upon such certification in determining compliance with federal requirements.

After execution of the bond purchase agreement, the Water Authority’s financial advisors reviewed reports of secondary market trades on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (“EMMA”). The purpose of this review was to validate the underwriters’ performance in pricing the bonds, but was not intended to address federal tax law requirements. The secondary market review appeared to support the appropriateness of the original pricing.

Given questions raised by the IRS questionnaire on the subject of the pricing of BABs, the Water Authority is adopting the following as temporary procedures regarding bond pricing on any future BABs sales pending expected clarification by the IRS. These procedures will be updated to reflect that clarification.
1. In a negotiated sale, the book-running lead underwriter(s) will be notified in writing (by being given a copy of these supplemental procedures and a form of the certificate described in Section A.2 below) prior to the sale of the BABs that either none of the maturities of the BABs may have an issue price of greater than par or none may have an issue price with more than a “de minimis amount” of premium. If the latter applies, the book-running lead underwriter(s) is responsible for discussing with the Water Authority’s bond counsel the computation of the “de minimis” amount of premium.

In a competitive sale, premiums will be prohibited or a maximum premium (or premiums) which bond counsel has determined is not in excess of the “de minimis” premium will be specifically set forth in the “Official Notice of Bond Sale” for the BABs issue.

2. The book-running lead underwriter(s) in a negotiated sale or book-running successful bidder in a competitive sale (collectively, the “Lead Underwriter”) will be required to establish and certify, in a writing determined to be sufficient by the Water Authority’s bond counsel, the issue price of the Bonds as to (a) the occurrence of a bona fide public offering of the Bonds, (b) the fair market value of the Bonds, and (c) the initial price(s) at which a substantial amount of the Bonds were sold.

B. Procedures designed to comply with other BAB requirements or provisions in Federal Tax Certificate

The provisions of the Tax Certificate executed by the Water Authority at the time of closing of the BABs (the “Tax Certificate”) constitutes the Water Authority’s written procedures designed to ensure that the BABs remain in compliance with the following federal tax requirements after the BABs are issued:

1. Timely expenditure of Bond proceeds
2. Correct calculation of available project proceeds
3. Costs of issuance financed by the Water Authority do not exceed 2% of proceeds of the Bonds

C. Arbitrage Rebate and Yield

Unless a Tax Certificate documents that bond counsel has advised that arbitrage rebate will not be applicable to an issue of Bonds:

- The Water Authority shall engage the services of a Rebate Service Provider, and the Water Authority or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;

- upon request, appropriate Water Authority personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- appropriate Water Authority personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and

- during the construction period of each capital project financed in whole or in part by the Bonds, appropriate Water Authority personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period.
period up to 6 months, 18 months or 24 months, as applicable, following the issuance date of the Bonds.

The Water Authority shall retain copies of all arbitrage reports and trustee statements as described below under Section H, “Record Keeping”.

D. Procedures designed to comply with BAB requirements contained in Forms 8038-G or 8038-B

The exhibit to the 8038-G or 8038-B forms filed in connection with the BABs issuance, which shows the amount of interest payable on each payment date and the amount of the refundable credit, will be prepared by the Water Authority’s financial advisor or lead underwriter on the issue, and will be examined by the Water Authority and its bond counsel. The Water Authority will amend this schedule on its own books and records in the event that any Bonds of the issue are redeemed prior to maturity. The preparation and examination of this exhibit, together with any amendments in connection with the early redemption of the Bonds, will constitute the Water Authority’s written procedure to ensure the proper determination of the amount of interest payable on each interest payment date and the proper amount of the refundable credit reportable on Form 8038-CP.

E. Procedures regarding use of Bond proceeds

After a BABs sale, available project proceeds are deposited into separate accounts (i.e., they are not commingled with proceeds of tax-exempt bonds or revenues of the Water Authority). Once the proceeds are deposited in such accounts, investment earnings are allocated to the same accounts. If the Water Authority issues BABs that includes a Debt Service Reserve Fund that holds sale proceeds of the BABs issue (there is no Debt Service Reserve Fund for the Water Authority’s Series 2010B Water Revenue Bonds issued on February 4, 2010), the Water Authority will treat all investment earnings on the Debt Service Reserve Fund during the construction period as available project proceeds. Set forth below are the procedures of the Water Authority to ensure the correct use of available project proceeds.

1. Procedures designed to comply with Capital Expenditure Requirement

Federal law requires that 100% of the proceeds of a BABs issue, less any amount of reasonably required reserve, be used only for capital expenditures. All proposed expenditures of BAB proceeds will be examined and approved as a “qualified expenditure” for federal tax purposes by a person with knowledge of the federal tax rules and provisions of the Tax Certificate executed as part of the BABs transaction.

2. General

Appropriate Water Authority personnel shall:

- monitor the use of BABs proceeds, the use of BAB-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of BAB-financed assets throughout the term of the BABs (and in some cases, beyond the term of the BABs) to ensure compliance with covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates;

- maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of BABs;
consult with bond counsel prior to entering into any licenses, leases, management contracts, or other contracts or arrangements potentially resulting in the use of BAB-financed facilities by nongovernmental persons, in order to ensure compliance with all covenants and restrictions set forth in applicable Water Authority resolutions or Tax Certificates;

- maintain records for any contracts or arrangements involving the use of BAB-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates;

- meet at least annually with personnel responsible for BAB-financed assets to identify and discuss any existing or planned use of BAB-financed assets, and the use of output or throughput of BAB-financed assets, to ensure that those uses are consistent with all covenants and restrictions set forth in applicable Water Authority resolutions and Tax Certificates.

All relevant records and contracts shall be maintained as described below under Section H, “Record Keeping”.

F. Procedure designed to comply with BAB requirements in Form 8038-CP and instructions thereto

The Water Authority has entered into a Filing Agent Agreement with U.S. Bank, N.A. to file the Form 8038-CP on an annual basis. This Agreement, together with the IRS instructions for filing Form 8038-CP, which describe how and when to file Form 8038-CP, will constitute the Water Authority’s written procedures for timely filing of Form 8038-CP. The Director of Finance/Treasurer shall be responsible for making such filing or causing it to be made. Payment of the refundable credit will be made to the Water Authority or the trustee for the BABs issue, as determined by the Director of Finance/Treasurer, unless otherwise provided by the Director of Finance/Treasurer. The Water Authority’s completion and examination of Form 8038-CP constitute its procedure for ensuring that the refundable credit is made to the proper party.

F. Ongoing Procedures

This policy, the Tax Certificate for each BABs issue, and to the extent incorporated in the Tax Certificates, Forms 8038-G, 8038-B, 8038-CP and instructions therefore for the BABs issue, will be reviewed by the Director of Finance/Treasurer or his designee (i) on or prior to each 5-year anniversary date of the issue date of the BABs; (ii) on or within 30 days of the date the BABs are retired, defeased or refunded; (iii) on or prior to the date of any rebate payment made if that date is not within 60 days of one of the dates mentioned in (i) or the date the BABs are retired, defeased or refunded; (iv) at the time of any change in use of any asset that was funded with a material amount of BAB proceeds; and (v) at the time of the occurrence or non-occurrence of any other event that could affect the tax status of the BABs as indicated in the Tax Certificate (e.g., the occurrence of an event which the Tax Certificate represents will not occur or is not expected to occur, or the non-occurrence of an event the Tax Certificate represents will or is expected to occur). This review will be made for the purposes of identifying any possible violation of federal tax requirements related to BABs and to ensure the timely correction of those violations for remedial action described in Treasury Regulations or through the Tax-Exempt Bonds Voluntary Closing Agreement Program. If a possible violation is identified, the Director of Finance/Treasurer will consult with the Water Authority’s bond counsel.
H. Record Keeping

Records necessary to support the status of bonds as qualified to receive a BABs credit will be maintained for the life of the BABs, and any bonds that refund the BABs plus three years. These records may be maintained on paper, or by electronic media, or by any combination thereof.

Adopted ________, 2010

Title: Director of Finance/Treasurer
Appendix F
Continuing Disclosure Procedures

The Water Authority has adopted this Debt and Disclosure Policy in order to assist the Water Authority in preparing, reviewing and timely filing of, as applicable, Public Statements which includes any statement or other communication that is intended (or reasonably can be expected) to be accessible to and reasonably relied upon by investors in Securities, including: Offering Documents; Annual Filings and Event Notices; or statements made by the Water Authority or any of its officials and employees that could reasonably be Material to investors in Securities. This Debt and Disclosure Policy is intended to guide the Water Authority’s compliance with its initial and continuing disclosure obligations with respect to the Securities it issues or that are issued on its behalf, under applicable laws, rules, regulations and contractual obligations.

A. Key Participants in Continuing Disclosure

1. Disclosure Coordinator. The Director of Finance, or his or her designee, will serve as Disclosure Coordinator for the Water Authority. Should the designated Disclosure Coordinator be unavailable to act as Disclosure Coordinator, the Director of Finance, or the General Manager if the Director of Finance is unavailable, will appoint someone to act in his or her place. The Disclosure Coordinator will:

   (i) Serve as the primary point of contact for the Water Authority personnel and other persons to communicate issues or information that should be or may need to be considered for inclusion in any Public Statement;

   (ii) Monitor and coordinate timely compliance by the Water Authority and the Disclosure Working Group with this Debt and Disclosure Policy and applicable laws;

   (iii) Recommend changes to this Debt and Disclosure Policy to the Disclosure Working Group or the Board as necessary or appropriate;

   (iv) Maintain records documenting the Water Authority’s compliance with this Debt and Disclosure Policy and applicable laws; and

   (v) Whenever the Disclosure Coordinator determines that a Public Statement could be Material to investors, consult with Disclosure Counsel and determine whether to (a) cause such Public Statement to be filed with the MSRB through EMMA and/or (b) send a link to such filing to the Web Manager, for inclusion on the Water Authority’s investor relations website.

2. Disclosure Working Group. The persons charged with preparing or reviewing any Public Statements under this Debt and Disclosure Policy (the Disclosure Working Group) shall consist of the following and should convene in person, by telephone and/or via other methods of communications if, when and as needed, and at least once prior to the finalization of any preliminary and final Official Statements, commercial paper offering memoranda and other documents by which Securities are offered to the public by the Water Authority as well as
solicitation statements by which the Water Authority offers to purchase its Securities or requests consents or waivers regarding Securities:

(i) Disclosure Coordinator;

(ii) General Counsel, or his or her designee;

(iii) Disclosure Counsel, as designated by the General Counsel;

(iv) Financial Professionals, if applicable and as designated by the Director of Finance; and

(v) Such other members of the Disclosure Working Group as the Director of Finance determines to be appropriate, including Department Heads staff level and above.

**B. General Disclosure Procedures**

The Disclosure Working Group will implement the procedures set forth in this Debt and Disclosure Policy in preparing, reviewing or disseminating all Public Statements. Procedures that are specific to the monitoring, preparing, reviewing or disseminating of Event Notices, website postings, Investor Inquiries and Presentations/Releases are described herein and are in addition to the procedures described in this section.

1. **Establishing Scope and Process.** Prior to making any Public Statement, to establish scope and process for such Public Statement, the Disclosure Working Group should:

   (i) determine what information should be contained in the Public Statement;

   (ii) ensure that the information provided in the Public Statement is current and meets the requirements of any Disclosure Agreement or applicable laws with respect to the information required to be included in such Public Statement;

   (iii) assign responsibilities for assembling and verifying the information to be included in the Public Statement; and

   (iv) establish a schedule for producing the information to be contained in the Public Statement that will allocate sufficient time for any final review and approvals required pursuant to this Debt and Disclosure Policy and to meet any deadlines under applicable Disclosure Agreements.

While the information included in a prior Public Statement of the same nature may be used as a starting point for a new Public Statement, the Disclosure Working Group should provide suggestions for improvement to each Public Statement and should not assume that any prior Public Statements contain all of what may be then appropriate to include in the new Public Statement.
2. **Assembling Current Information.** The Disclosure Coordinator should:

   (i) as applicable, solicit information via email from the General Manager, Director of Finance, General Counsel and Disclosure Counsel and others who are likely to know or be able to obtain and verify information required to be included in the Public Statement;

   (ii) assign responsibilities to the applicable persons for assembling and verifying the information required to be included in the Public Statement;

   (iii) work with the General Manager, Director of Finance, General Counsel and Disclosure Counsel to assure that providers of information required to be included in a Public Statement devote sufficient time and care to produce timely and accurate information, when requested;

   (iv) work with providers of information required to be included in a Public Statement to (1) assemble, verify and forward such information to the Disclosure Coordinator and (2) notify the Disclosure Coordinator of any other facts which may be Material to investors or with respect to the information required to be included in the Public Statement;

   (v) when questions of Materiality arise, consult with the General Counsel and/or Disclosure Counsel;

   (vi) for Annual Filings, compile and maintain (and update after every issuance, redemption or defeasance or other satisfaction of Securities) a list of all financial information and operating data required to be filed in an Annual Filing;

   (vii) with advice from Disclosure Counsel, determine whether information contained in a Public Statement would Materially change the total mix of information about the Water Authority that is available to investors;

   (viii) distribute drafts of the Public Statements to the Disclosure Working Group for review together with, if necessary for the Disclosure Working Group’s consideration, a description of the process used to compile the Public Statement;

   (ix) if necessary, modify or cause to be modified the Public Statements as the Disclosure Coordinator deems advisable on the advice of Disclosure Counsel to respond to comments from members of the Disclosure Working Group;

   (x) submit such Public Statements to the Director of Finance and General Counsel for approval; and

   (xi) where applicable and appropriate, coordinate with the Water Authority Member Agencies, or the Member Agency employee responsible for preparing information contained in other Member Agency Public Statements, to align the Water Authority’s Public Statement with the contents of such other Member Agency Public Statements.
3. **Review for Process, Accuracy and Completeness.** The members of the Disclosure Working Group should review the materials provided by the Disclosure Coordinator for accuracy, completeness and compliance with federal and state laws, and should, if applicable, ask questions of the Disclosure Coordinator to determine whether, based on information known or reported to them, (i) this Debt and Disclosure Policy was followed, (ii) the Material facts in the Public Statements are consistent with those known to the members of the Disclosure Working Group and (iii) the Public Statements contain any untrue statement of any Material fact or omit to state a Material fact that is necessary to be included or revised to prevent the Public Statements from being misleading to investors. The Disclosure Coordinator should take such action as may be necessary, based on comments from the Disclosure Working Group, to enable the Disclosure Working Group to conclude that the issues described above can be answered in the affirmative.

4. **Final Approval.** The Disclosure Working Group or Disclosure Coordinator, as applicable, should approve the final draft of any Public Statement. Approval of the Disclosure Working Group should be obtained for:

(i) Offering Documents;

(ii) Annual Filings;

(iii) investor presentations; and

(iv) any forward looking Public Statements of the Water Authority.

The Disclosure Coordinator may approve, without formal approval of the Disclosure Working Group:

(i) Event Notices;

(ii) Website postings;

(iii) Press releases;

(iv) Financial or operational information that has already been disseminated publicly, and

(v) Disclosure Documents that contain no discretionary content;

unless any of the foregoing information described in this sentence Materially changes information regarding the Water Authority which is already publicly available, in which case approval of the Disclosure Working Group should be obtained.

If the Public Statement is to be disseminated by or through Disclosure Counsel, the Public Statement may be disseminated when the Disclosure Coordinator confirms that (i) the Public Statement has been reviewed and approved by all required persons, (ii) there are no Material errors, misrepresentations, or omissions of which the Disclosure Coordinator is aware, and (iii) the Water Authority authorizes the Public Statement to be disseminated.
5. **Dissemination.** After the Public Statement is approved as provided in this Debt and Disclosure Policy, the Disclosure Coordinator should:

   (i) authorize and direct Disclosure Counsel, DAC or other contracted dissemination agent, or the underwriters in a negotiated sale of Securities, to disseminate the Public Statement, as applicable, and in compliance with any applicable Disclosure Agreement and applicable law;

   (ii) if applicable, notify the Web Manager (as defined below) of the dissemination of the Public Statement;

   (iii) if applicable, provide the Web Manager with a link to the page on which the Public Statement is posted on EMMA;

   (iv) if applicable, provide the Web Manager with appropriate text and text edits for the Water Authority website, to accompany the posting of the Public Statement;

   (v) if applicable, include the link on the Water Authority’s website or otherwise post the Public Statement in the appropriate section of the Water Authority’s investor relations website; and

   (vi) if applicable and/or required by contract, provide a copy to third parties including service providers in connection with Securities, Dissemination Agent(s), liquidity provider(s), custodian(s), trustee(s), bond insurer(s) and rating agencies.

6. **Documentation and Document Retention.** The Disclosure Coordinator will be responsible for retaining records of compliance with this Debt and Disclosure Policy in the Transcript and File. He or she will compile and retain the Transcript and File, which may be in electronic or email form, of the actions taken to prepare, review and approve each Public Statement, including the sources of the information included, the comments and actions of the Disclosure Working Group, the description of the process followed by the Disclosure Coordinator and the approvals required by this Debt and Disclosure Policy. Such Transcript and File should be accessible to other members of the Disclosure Working Group and all electronic records should be backed up regularly. Each Transcript and File should include the following, as applicable:

   (i) final versions of the Public Statement;

   (ii) the information required to be collected pursuant to this Debt and Disclosure Policy, the certifications described in this Debt and Disclosure Policy, and any other confirmations, opinions or documents related to the Public Statement;

   (iii) copies of this Debt and Disclosure Policy;

   (iv) copies of any training materials provided to the Disclosure Working Group or the Water Authority staff; and
(v) a record of the dates of any meetings of the Disclosure Working Group, if any.

Each Transcript and File should be maintained on a continuous basis in a central repository for a period of five years from the later of: (x) the date the applicable content of the Transcript and File is published, posted or otherwise made publicly available, as applicable or (y) the date that all of the Securities described therein are no longer outstanding.

C. Event Notices Procedures

1. Identification of Reportable Events. The Disclosure Coordinator should maintain a list of any list of events required to be disclosed under any Disclosure Agreements (Listed Events) which may require notice of a Listed Event required to be delivered by the Water Authority to the MSRB pursuant to the Disclosure Agreements and the Rule (an Event Notice). The Disclosure Coordinator should review this list at least once each week to determine whether any Listed Event has occurred that may require the filing of an Event Notice. The Disclosure Coordinator (with the assistance of members of the Disclosure Working Group) should:

   (i) identify the officers and employees of the Water Authority who are most likely to first obtain knowledge of the occurrence of any Listed Events;

   (ii) on a weekly basis, request in writing that the identified officers and employees notify the Disclosure Coordinator immediately after learning of any Listed Event, regardless of Materiality; and

   (iii) on a weekly basis, monitor, or direct the Disclosure Counsel or a contracted vendor to monitor, bond ratings for changes.

The timing of Event Notices, and the specific types of events which are subject to the notices, depend on the specific terms of the applicable Disclosure Agreement. Certain items are required to be reported as soon as within ten (10) business days following their occurrence (and certain of such occurrences, for example, ratings changes, can happen without notice to the Water Authority). Others are required to be reported only if they are deemed to be Material. The General Counsel and Disclosure Counsel should be consulted for specific advice regarding timing and Materiality.

2. Preparation of Event Notice. The Disclosure Coordinator should:

   (i) assess whether the Listed Event is reportable under the Disclosure Agreements upon consultation with counsel and, if notice of the Listed Event must be given;

   (ii) prepare an Event Notice; and

   (iii) comply with the final approval and documentation procedures in this Debt and Disclosure Policy.
3. **Review and Approval of Event Notice.** The Director of Finance and General Counsel or if so designated by the General Counsel, Disclosure Counsel, should promptly review and approve or comment on the draft Event Notice. The Disclosure Coordinator should incorporate such comments into the Event Notice to be filed with EMMA.

4. **Posting.** The Disclosure Coordinator should authorize and direct Disclosure Counsel, DAC or other contracted dissemination agent to file the Event Notice with the MSRB through EMMA by the deadline established by the Disclosure Agreements in the format and with the identifying information required by the Disclosure Agreements, including CUSIP numbers for the applicable Securities.

**D. Website**

1. **Review of Website.** The Disclosure Coordinator and the employees of the Water Authority charged with operating, updating, and maintaining the Water Authority’s website and exercising the responsibilities of the Web Manager should review the investor relations section of the Water Authority’s website at least quarterly to assure that (i) information provided by third parties and/or divisions of the Water Authority other than the finance division is not included, linked or referred to without appropriate disclaimers, and is not included unless the Disclosure Coordinator has reason to believe that it is reliable and identifies the source of the information, (ii) dated information is removed from the website or clearly labeled as archived information, as appropriate, (iii) all Material financial and operating data is presented as of a specific date with appropriate disclaimers as to the currency of the data, (iv) no Material forward-looking statements (projections, forecasts, etc.) are included unless they are based on reasonable assumptions and are accompanied by a description of the substantial risks to achieving the forecasted results and (v) the Material information presented is consistent with the knowledge of such persons and not internally inconsistent.

2. **Postings.** The Web Manager should review each posting of information to the website to assure consistency with this Debt and Disclosure Policy. With respect to each Public Statement it receives from the Disclosure Coordinator, the Web Manager should add a link to the document or post the document in the appropriate section of the website.

3. **Documentation of Procedures.** The Web Manager should compile and maintain a record of (i) the source of all Material information included on the Water Authority’s website, (ii) the scope and results of each review of the website pursuant to this Debt and Disclosure Policy and (iii) the actions taken following each such review.

**E. Investor Relations Program and Inquiries**

The Water Authority shall establish and maintain an Investor Relations Program. The objectives of the program will be to:

- Reduce borrowing costs by improving demand for future bond sales;
- Keep investors continually informed of the issues facing the Water Authority;
- Obtain investor feedback on debt management considerations; and
• Create access to market opportunities such as shorter call provisions or tender programs.

1. **Investor Inquiry Coordinator.** The Director of Finance, or such person appointed by the Director of Finance to act in his or her place, will serve as the Investor Inquiry Coordinator.

2. **Processing of Investor Inquiries.** Except for communications that occur in connection with primary offerings of Securities which are handled by the Director of Finance, all inquiries from investors will be managed by the Investor Inquiry Coordinator. If any other employee of the Water Authority receives an inquiry from a person that identifies himself or herself as an investor or potential investor in the Water Authority Securities, that employee should refer such inquiry to the Investor Inquiry Coordinator.

3. **Responses to Investor Inquiries.** With respect to each inquiry from an investor, (i) if information necessary to respond to such inquiry has already been included in a Public Statement, then the Investor Inquiry Coordinator may respond to such inquiry using information contained in the Public Statement and (ii) if information necessary to respond to such inquiry is not obtainable from information included in a Public Statement, then the Investor Inquiry Coordinator will coordinate with the Disclosure Coordinator and General Counsel to develop a response to such inquiry in a manner that assures that it is accurate and available to all investors at the same time. This process may include convening a meeting of the Disclosure Working Group for broader inquiries or ones that require subjective judgment in responding.

4. **Documentation.** The Investor Inquiry Coordinator will compile and maintain a record of investor inquiries and responses and forward such record to the Disclosure Coordinator for retention in accordance with this Debt and Disclosure Policy. The record of investor inquiries should be retained for a period of five years from the later of: (x) the date of the response to each investor inquiry or (y) the date that all of the Securities described therein are no longer outstanding.

5. **Investor Survey –** The Water Authority will periodically create and disseminate a survey for the purpose of assessing investors’ needs for specific information. Upon completing a survey, the Water Authority may then prepare a financial disclosure statement for investors.

**F. Presentations/Releases and Other Public Statements**

1. **Notification of Disclosure Coordinator.** The Public Information Officer and/or the Director of Finance, as applicable, will notify the Disclosure Coordinator of each Presentation/Release proposed to be issued and, whenever possible, provide the Disclosure Coordinator with an opportunity to review and comment before release.

2. **Review of Presentations/Releases.** The Disclosure Coordinator should review each such Presentation/Release to determine whether it could reasonably be Material to investors in Securities and, if so, take steps to assure that the factual statements in the Presentation/Release are supported and appropriately qualified. The Disclosure Coordinator will
forward his or her comments to the Public Information Officer and/or Director of Finance, as applicable, who will take such comments into account and obtain legal advice if appropriate, before releasing the Presentation/Release.

**G. Training**

1. **Personnel to be Trained.** Each member of the Disclosure Working Group, the Disclosure Coordinator, the Director of Finance, the Deputy Executive Directors, the General Counsel, the Web Manager, the Investor Inquiry Coordinator, the Public Information Officer and each person identified as a source of data for any Public Statement pursuant to this Debt and Disclosure Policy should undergo periodic training consistent with this Debt and Disclosure Policy.

   2. **Training Content.** The training program and materials will be prepared by or with the assistance of Disclosure Counsel and approved by the General Counsel. The training program will include a description of (i) the requirements of federal and state securities laws, including the Securities Act and Govt. Code Section 8855, and the applicable rules promulgated thereunder; (ii) the roles of the Municipal Securities Rulemaking Board and the CDIAC, (iii) the Disclosure Agreements, (iv) considerations in determining whether an issue is Material and (v) the duties of such persons under this Debt and Disclosure Policy.

   3. **Training Frequency.** Each applicable person should undergo training (i) promptly after being appointed to his or her position and (ii) annually as necessary to address any changes in law or this Debt and Disclosure Policy.

**H. Annual CDIAC Reporting Procedures**

1. Govt. Code Section 8855 requires any issuer of public debt to provide to CDIAC a report of the proposed issuance no later than 30 days prior to the sale of any debt issue (Report of Proposed Debt Issuance) and a Report of Final Sale no later than 21 days after the sale of any debt issue. CDIAC provides online forms to submit information to CDIAC in compliance with these requirements. The Disclosure Coordinator should work with the General Counsel or his or her designee to assure timely filing of the required transaction-specific reports.

2. Additionally, pursuant to Govt. Code Section 8855, with respect to Reports of Final Sale filed after January 21, 2017, the Water Authority will have an ongoing obligation to file an annual debt report (the Annual Debt Transparency Report) on or before January 31 for the reporting period beginning July 1 through June 30 (the Reporting Period) of the subsequent year, each year that the subject debt is outstanding or until the proceeds of such debt have been spent, whichever is later. The General Counsel, with the advice of Disclosure Counsel, and the Disclosure Coordinator, will work with the Water Authority to complete the annual debt transparency report and timely file it with CDIAC.

**I. Updates to Policies and Procedures**

1. **Periodic Review.** The Disclosure Policy should be reviewed annually by the Disclosure Coordinator and Disclosure Counsel. In addition, officers and employees of the
Water Authority should be encouraged to make recommendations for changes to this Debt and Disclosure Policy at any time.

2. **Recommendations for Change.** Following receipt of any recommendation for updates to this Debt and Disclosure Policy, the Disclosure Coordinator should give his or her advice regarding the recommendation to the Disclosure Working Group. The Disclosure Working Group should consider the recommendation and advice, determine whether to propose a change to this Debt and Disclosure Policy and submit such proposal to the Director of Finance and the General Counsel.

3. **Changes to Disclosure Policy.** The General Manager, with advice from the Director of Finance, the General Counsel and Disclosure Counsel, may approve and implement any change to this Debt and Disclosure Policy that advances the goals of this Debt and Disclosure Policy. The Disclosure Coordinator will disseminate any modifications to this Debt and Disclosure Policy after receiving any such modifications.

**J. Miscellaneous**

1. **Internal Use Only.** This Debt and Disclosure Policy is intended for the internal use of the Water Authority only and is not intended to establish any duties in favor of or rights of any person other than the Water Authority.

2. **Waiver of Procedures.** The officers and employees charged by this Debt and Disclosure Policy with performing or refraining from any action may deviate from this Debt and Disclosure Policy when they and the Disclosure Coordinator in good faith determine that such deviation is in the best interests of the Water Authority and consistent with the duties of the Water Authority under federal and state securities laws and with approval of the General Counsel.
SAN DIEGO COUNTY WATER AUTHORITY

RESOLUTION NO. 89-21

A Resolution of the Board of Directors of the San Diego County Water Authority Providing for the Allocation of Water System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Revenues

(General Resolution)

Adopted May 11, 1989
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>RECITALS</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>SECTION 1.01</td>
<td>Definitions</td>
<td>1</td>
</tr>
<tr>
<td>SECTION 2.01</td>
<td>Establishment of Funds</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 2.02</td>
<td>Allocation of Water Revenues</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 2.03</td>
<td>Rate Stabilization Fund</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 2.04</td>
<td>Installment Payment Fund</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 2.05</td>
<td>Subordinate Obligation Payment Fund</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 2.06</td>
<td>General Reserve Fund</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 3.01</td>
<td>1989 Installment Sale Agreement; 1989 Contract of Indebtedness</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 3.02</td>
<td>Additional Bonds and Contracts</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 3.03</td>
<td>Obligations</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 4.01</td>
<td>Against Encumbrances</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 4.02</td>
<td>Against Sale or Other Disposition of Property</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 4.03</td>
<td>Maintenance and Operation of the Water System; Budgets</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 4.04</td>
<td>Compliance with Contracts</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 4.05</td>
<td>No Superior Liens</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 4.06</td>
<td>Insurance</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 4.07</td>
<td>Accounting Records and Financial Statements</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 4.08</td>
<td>Payment of Taxes and Compliance with Governmental Regulations</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 4.09</td>
<td>Amount of Rates, Fees and Charges</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 4.10</td>
<td>Collection of Rates, Fees and Charges</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 4.11</td>
<td>Eminent Domain and Insurance Proceeds</td>
<td>19</td>
</tr>
</tbody>
</table>
## ARTICLE V
### MISCELLANEOUS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.01</td>
<td>Benefits of Resolution Limited to Parties</td>
<td>19</td>
</tr>
<tr>
<td>5.02</td>
<td>Successor Is Deemed Included in all References to Predecessor</td>
<td>19</td>
</tr>
<tr>
<td>5.03</td>
<td>Article and Section Headings, Gender and References</td>
<td>19</td>
</tr>
<tr>
<td>5.04</td>
<td>Partial Invalidity</td>
<td>20</td>
</tr>
<tr>
<td>5.05</td>
<td>Funds</td>
<td>20</td>
</tr>
<tr>
<td>5.06</td>
<td>Investments</td>
<td>20</td>
</tr>
<tr>
<td>5.07</td>
<td>Repeal of Inconsistent Resolutions</td>
<td>20</td>
</tr>
<tr>
<td>5.08</td>
<td>Effective Date</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>EXECUTION</td>
<td>21</td>
</tr>
</tbody>
</table>
SAN DIEGO COUNTY WATER AUTHORITY

RESOLUTION NO. 89-21

A Resolution of the Board of Directors of the San Diego County Water Authority Providing for the Allocation of Water System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Revenues

(General Resolution)

WHEREAS, the San Diego County Water Authority owns and operates the Water System;

WHEREAS, the Authority expects to issue Bonds and enter into Contracts, including the 1989 Installment Sale Agreement and the 1989 Contract of Indebtedness, the obligations of the Authority under which will be payable from Net Water Revenues;

WHEREAS, the Authority now desires to provide for the allocation of revenues of the Water System; and

WHEREAS, the Authority also desires to establish covenants to secure the payment of obligations payable from Net Water Revenues;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

Accreted Value

"Accreted Value" means, with respect to any Capital Appreciation Bonds or Capital Appreciation Certificates, as of
the date of calculation, the initial amount thereof plus the interest accrued thereon to such date of calculation, compounded from the date of initial delivery at the approximate interest rate thereof on each semiannual date specified with respect thereto, as determined in accordance with the table of accreted values for any Capital Appreciation Bonds or Capital Appreciation Certificates prepared by the Authority at the time of sale thereof, assuming in any year that such Accreted Value increases in equal daily amounts on the basis of a year of three hundred sixty (360) days composed of twelve (12) months of thirty (30) days each.

**Accreted Value Payment Date**

"Accreted Value Payment Date" means any Installment Payment Date on which Accreted Value is payable.

**Authority**

"Authority" means the San Diego County Water Authority, a county water authority duly organized and existing under and by virtue of the laws of the State of California.

**Bond or Contract Reserve Fund**

"Bond or Contract Reserve Fund" means any debt service reserve fund established to secure the payment of Bond Payments or Installment Payments.

**Bond Payments**

"Bond Payments" means the principal and interest payments scheduled to be paid by the Authority on Bonds.

**Bonds**

"Bonds" means all revenue bonds of the Authority authorized, executed, issued and delivered by the Authority under and pursuant to applicable law, the interest and principal and redemption premium, if any, payments under and pursuant to which are payable from Net Water Revenues on a parity with all other Bonds and Contracts.

**Capital Appreciation Bonds**

"Capital Appreciation Bonds" means any Bonds described as such when issued.
Capital Appreciation Certificates

"Capital Appreciation Certificates" means any certificates of participation in Installment Payments described as such when issued.

Certificate of the Authority

"Certificate of the Authority" means an instrument in writing signed on behalf of the Authority by the Chairman of the Board of Directors of the Authority, or by any other officer of the Authority duly authorized by the Board of Directors of the Authority to sign documents on its behalf with respect to the matters referred to therein.

Certificates

"Certificates" means any certificates of participation representing interests in payments to be made by the Authority pursuant to Leases, Installment Sale Agreements or Contracts of Indebtedness.

Contract Payments

"Contract Payments" means the contract payments scheduled to be paid by the Authority under and pursuant to Contracts of Indebtedness.

Contracts

"Contracts" means all Installment Sale Agreements, Leases and Contracts of Indebtedness.

Contracts of Indebtedness; 1989 Contract of Indebtedness

"Contracts of Indebtedness" means contracts of indebtedness or similar obligations of the Authority authorized and executed by the Authority under and pursuant to applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues on a parity with all other Contracts and Bonds. "1989 Contract of Indebtedness" means the contract of indebtedness by and between the Authority and Security Pacific National Bank, dated as of May 1, 1989, as originally executed and as it may from time to time be amended or supplemented and which constitutes a Contract of Indebtedness hereunder.

Current Water Revenues

"Current Water Revenues" means all gross income and revenue received or receivable by the Authority from the
ownership or operation of the Water System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including connection fees and charges and standby charges) received by the Authority for the Water Service and the other services of the Water System and all other income and revenue however derived by the Authority from the ownership or operation of the Water System or arising from the Water System, and also including (1) all income from the deposit or investment of any money in the Water Revenue Fund, the General Reserve Fund and the Rate Stabilization Fund, and (2) all income from the deposit or investment of money held in the Installment Payment Fund, the Subordinate Obligation Fund or any Bond or Contract Reserve Fund or other fund established pursuant to a Trust Agreement to the extent such income will be available to pay Bond Payments or Installment Payments, but excluding any proceeds of taxes and any refundable deposits made to establish credit and advances or contributions in aid of construction.

Debt Service

"Debt Service" means, for any Fiscal Year or other period, the sum of (1) the interest accruing during such Fiscal Year or period on all outstanding Bonds, assuming that all outstanding serial Bonds are retired as scheduled and that all outstanding term Bonds are redeemed or paid from sinking fund payments as scheduled, (2) that portion of the principal amount of all outstanding serial Bonds maturing on the next succeeding principal payment date that would have accrued during such Fiscal Year or period if such principal amount were deemed to accrue daily in equal amounts from the next preceding principal payment date or during the year preceding the first principal payment date, as the case may be, (3) that portion of the principal amount of all outstanding term Bonds required to be redeemed or paid on the next succeeding redemption date (together with the redemption premiums, if any, thereon) that would have accrued during such Fiscal Year or period if such principal amount (and redemption premiums) were deemed to accrue daily in equal amounts from the next preceding redemption date or during the year preceding the first redemption date, as the case may be, and (4) that portion of the Installment Payments required to be made at the times provided in the Contracts that would have accrued during such Fiscal Year or period if such Installment Payments were deemed to accrue daily in equal amounts from, in each case, the next preceding Installment Payment Date of interest or principal or the date of the pertinent Contract, as the case may be; provided, that (a) if any of such Bonds are Capital Appreciation Bonds or if the Installment Payments due under any of such Contracts are evidenced by Capital Appreciation
Certificates, then the Accreted Value payment shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond or Capital Appreciation Certificate; (b) if any of such Bonds or if the Installment Payments due under any such Contracts bear interest payable pursuant to a variable interest rate formula, the interest rate on such Bonds or such Contracts for periods when the actual interest rate cannot yet be determined, shall be assumed to be equal to the greater of (1) the current interest rate calculated pursuant to the provisions of the terms of such Bonds or Contracts (with respect to the issuance of Bonds or the execution of Contracts pursuant to Section 3.02, the initial interest rate on such Bonds or Contracts), or, (2) if available, the average interest rate on such Bonds or Contracts during the thirty-six (36) months preceding the date of calculation or, (3) if such Bonds or Contracts have not been outstanding for such thirty-six month period (or with respect to the issuance of Bonds or the execution of Contracts pursuant to Section 3.02), such average interest rate on comparable debt of a state or political subdivision of a state which debt is then rated by the rating agencies rating such Bonds or Contracts in a rating category equivalent to the rating on such Bonds or Contracts; and (c) if 20% or more of the original principal of such Bonds or the Installment Payments due under such Contracts is not due until the final stated maturity of such Bonds or the Installment Payments due under such Contracts, such principal may, at the option of the Authority, be treated as if it were due based upon a level amortization of such principal over the term of such Bonds or Contracts or twenty (20) years, whichever is greater; provided further, that "Debt Service" shall not include (1) payments due on voter-approved general obligation bonds and other voter-approved general obligation debts for which taxes are then being levied and collected or (2) interest on Bonds or Contracts which are to be paid from amounts constituting capitalized interest held pursuant to a Trust Agreement.

Director of Finance

"Director of Finance" means the Director of Finance of the Authority or its successor designated by the Board of Directors of the Authority.

Fiscal Year

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the Board of Directors of the Authority as the Fiscal Year of the Authority.
Appendix G

General Reserve Fund

"General Reserve Fund" means the fund by that name established pursuant to Section 2.01.

Generally Accepted Accounting Principles

"Generally Accepted Accounting Principles" means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

Installment Payment Date

"Installment Payment Date" means any date on which Bond Payments or Installment Payments are scheduled to be paid by the Authority under and pursuant to any Contract or Bonds.

Installment Payment Fund

"Installment Payment Fund" means the fund by that name established pursuant to Section 2.01.

Installment Payments

"Installment Payments" means Contract Payments, Installment Sale Payments or Lease Payments.

Installment Sale Agreements; 1989 Installment Sale Agreement

"Installment Sale Agreements" means installment sale agreements or similar obligations of the Authority authorized and executed by the Authority under and pursuant to applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues on a parity with all other Contracts and Bonds. "1989 Installment Sale Agreement" means the installment sale agreement by and between the Authority and Security Pacific National Bank, dated as of May 1, 1989, as originally executed and as it may from time to time be amended or supplemented and which constitutes an Installment Sale Agreement hereunder.

Installment Sale Payments

"Installment Sale Payments" means the installment sale or other periodic payments scheduled to be paid by the Authority under and pursuant to Installment Sale Agreements.
Interest Payment Date

"Interest Payment Date" means an Installment Payment Date on which interest is payable.

Law

"Law" means the County Water Authority Act, being California Water Code Appendix, Sections 45-1 et seq., and all laws amendatory thereof or supplemental thereto.

Lease Payments

"Lease Payments" means the rental payments scheduled to be paid by the Authority under and pursuant to Leases.

Leases

"Leases" means capital leases or similar obligations of the Authority authorized and executed by the Authority under and pursuant to applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues on a parity with the payment of all other Contracts and Bonds.

Maintenance and Operation Costs

"Maintenance and Operation Costs" means all costs paid or incurred by the Authority for maintaining and operating the Water System, determined in accordance with Generally Accepted Accounting Principles, including all costs of water purchased by the Authority for resale, and including all expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including all administrative costs of the Authority, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and including all other costs of the Authority or charges required to be paid by it to comply with the terms hereof or of any resolution authorizing the execution of any Contract or of such Contract or of any resolution authorizing the issuance of any bonds or of such bonds, such as compensation, reimbursement and indemnification of the trustee for any such Contracts or bonds and fees and expenses of Independent Certified Public Accountants; but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense and (3) amounts paid from other than Water Revenues (including, but not limited to, amounts paid from the proceeds of ad valorem property taxes).
Maximum Annual Debt Service

"Maximum Annual Debt Service" means the greatest total Debt Service payable in any Fiscal Year during the period commencing with the next ensuing Fiscal Year and terminating with the Fiscal Year in which payments are due under the last outstanding Bonds or the last outstanding Contract, whichever is later.

Monthly Accrued Debt Service

"Monthly Accrued Debt Service" means, with respect to any month, an amount equal to the sum of Debt Service with respect to all Bonds and Contracts accrued and to accrue to the end of such month; provided, in calculating the amount of Monthly Accrued Debt Service (i) Accreted Value with respect to Capital Appreciation Bonds and Capital Appreciation Certificates shall be deemed to accrue over the twelve-month period immediately preceding the scheduled redemption or prepayment date of such Capital Appreciation Bond or Capital Appreciation Certificate, (ii) the adjustment to principal described in provision (c) of the definition of Debt Service shall not be made and (iii) if the interest on any Bonds or Installment Payments due under any Contract bear interest payable pursuant to a variable rate formula, the amount of interest deemed to accrue during any period shall be the actual interest borne by such Bonds or Installment Payments during such period.

Net Water Revenues

"Net Water Revenues" means, for any Fiscal Year or other period, the Water Revenues during such Fiscal Year or period less the Maintenance and Operation Costs during such Fiscal Year or period.

Obligation

"Obligation" means any contract or lease for the purchase of any facilities, properties, structures, or works, or any loan of credit to or guaranty of debts, claims or liabilities of any other person for the purpose of obtaining any facilities, properties, structures or works, the final payments under which are due more than five years following the effective date thereof, so long as in each case the payments thereunder are to constitute Maintenance and Operations Costs.

Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel of national representation generally recognized to be
well qualified in the field of law relating to municipal bonds, retained by the Authority.

**Outstanding**

"outstanding" means with respect to any Bonds or Contracts, Bonds or Contracts the payment obligations of the Authority under which are not deemed paid in accordance with the terms of such Bonds or Contracts or applicable Trust Agreement.

**Principal Payment Date**

"Principal Payment Date" means any Installment Payment Date on which principal is payable.

**Rate Stabilization Fund**

"Rate Stabilization Fund" means the fund by that name established pursuant to Section 2.01.

**Reimbursement Agreement**

"Reimbursement Agreement" means an agreement between the Authority and a bank or financial institution providing for the issuance of a letter of credit, reserve fund insurance policy, guaranty or surety bond for the purpose of making Bond Payments or Installment Payments and requiring the Authority to make payments to reimburse or compensate such bank or financial institution for draws under such instruments from Net Water Revenues on a parity with all Contracts and Bonds.

**Reimbursement Payments**

"Reimbursement Payments" means amounts payable by the Authority as compensation or reimbursement for a draw on a letter of credit, reserve fund insurance policy, guaranty or surety bond for the purpose of making Bond Payments or Installment Payments in accordance with any Reimbursement Agreement.

**Subordinate Obligation Payment Fund**

"Subordinate Obligation Payment Fund" means the fund by that name established pursuant to Section 2.01.

**Subordinate Obligation Payments**

"Subordinate Obligation Payments" means the payments scheduled to be paid by the Authority under and pursuant to Subordinate Obligations.
Subordinate Obligations

"Subordinate Obligations" means obligations of the Authority authorized and executed by the Authority under applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues, from the Subordinate Obligation Payment Fund, subject and subordinate to Bond Payments and Installment Payments.

Trust Agreement

"Trust Agreement" means any indenture or trust agreement providing for the issuance of Bonds or Certificates.

Trustee

"Trustee" means the trustee under any Trust Agreement.

Water Revenue Fund

"Water Revenue Fund" means the San Diego County Water Authority Water Revenue Fund established pursuant to Section 2.01.

Water Revenues

"Water Revenues" means Current Water Revenues plus deposits to the Water Revenue Fund from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in Section 2.03, less amounts transferred to the Rate Stabilization Fund.

Water Service

"Water Service" means the water service furnished, made available or provided by the Water System.

Water System

"Water System" means all property rights, contractual rights and facilities of the Authority, including all facilities for the conservation, storage, transmission and distribution of water and the generation and delivery of hydroelectric power in connection therewith now owned by the Authority and all other properties, structures or works for the conservation, storage, transmission and distribution of water and the generation and delivery of hydroelectric power in connection therewith hereafter acquired and constructed by or for the Authority and determined by the Authority to be a part of the Water System; together with all additions,
betterments, extensions or improvements to such facilities, properties structures or works or any part thereof hereafter acquired and constructed.

ARTICLE II

WATER REVENUES

SECTION 2.01. Establishment of Funds. The Authority hereby establishes and agrees to maintain, so long as any Bonds, Certificates or Subordinate Obligations remain outstanding, the following funds, each such fund to be held by the Director of Finance:

(1) Rate Stabilization Fund;
(2) Water Revenue Fund;
(3) Installment Payment Fund;
(4) Subordinate Obligation Payment Fund; and
(5) General Reserve Fund.

Amounts in such funds shall be disbursed, allocated and applied solely to the uses and purposes hereinafter in this article set forth, and shall be accounted for separately and apart from all other accounts, funds, money or other resources of the Authority. The Authority will only have such beneficial right or interest in such money as is provided herein.

SECTION 2.02. Allocation of Water Revenues. In order to carry out and effectuate the obligations of the Authority to make Bond Payments, Installment Payments, Reimbursement Payments and Subordinate Obligation Payments, the Authority agrees and covenants that all Current Water Revenues received by it shall be deposited when and as received in the Water Revenue Fund. The Authority may, to the extent provided in Section 2.03, transfer amounts in the Water Revenue Fund to the Rate Stabilization Fund or from the Rate Stabilization Fund to the Water Revenue Fund.

The Authority shall pay all Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not then immediately required) from the Water Revenue Fund as they become due and payable, and all remaining money on deposit in the Water Revenue Fund shall be set aside and deposited or transferred
by the Authority, as the case may be, at the following times in the following order of priority:

(a) Installment Payment Fund. On or before the last business day of each month, beginning in May, 1989, the Authority shall deposit in the Installment Payment Fund, a sum equal to the Monthly Accrued Debt Service for such month, plus a sum equal to all Reimbursement Payments then due and payable; provided that no such deposit need be made if amounts on deposit in the Installment Payment Fund equal the amount of Bond Payments or Installment Payments due with respect to all Bonds and Contracts on the next succeeding Interest Payment Date (with respect to interest), Principal Payment Date (with respect to principal) and Accreted Value Payment Date (with respect to Accreted Value) for such Bonds or Contract, and the Reimbursement Payments then due and payable.

(b) Bond or Contract Reserve Funds. On or before the last business day of each month, the Authority shall transfer to each Trustee for deposit in the applicable Bond or Contract Reserve Fund an amount equal to the amount, if any, required to be deposited therein to build up or replenish such Bond or Contract Reserve Fund as and to the extent required by the applicable Contract or Trust Agreement.

(c) Subordinate Obligation Payment Fund. On or before the last business day of each month, the Authority shall deposit in the Subordinate Obligation Payment Fund the sum or sums required to be deposited under or pursuant to the indenture, trust agreement or other instrument securing each Subordinate Obligation.

(d) Subordinate Obligation Reserve Funds. On or before the last business day of each month, the Authority shall transfer to each trustee with respect to Subordinate Obligations for deposit in the debt service reserve fund with respect to such Subordinate Obligations an amount equal to the amount, if any, required to be deposited therein to build up or replenish such debt service reserve fund as and to the extent required by the applicable Subordinate Obligation or the indenture, trust agreement or other instrument securing such Subordinate Obligation.

(e) General Reserve Fund. On the last business day of each month, the Authority shall, after making each of the foregoing deposits and transfer, transfer all money remaining in the Water Revenue Fund to the General Reserve Fund.

SECTION 2.03. Rate Stabilization Fund. From time to time the Authority may deposit in the Rate Stabilization Fund from Current Water Revenues such amounts as the Authority
shall determine. All amounts transferred by the Authority from the Rate Stabilization Fund to the Water Revenue Fund shall be used by the Authority solely to pay Maintenance and Operation Costs. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Current Water Revenues.

SECTION 2.04. Installment Payment Fund. The Authority may withdraw amounts from the Installment Payment Fund solely for the purpose of paying Bond Payments, Installment Payments and Reimbursement Payments at the times and in the amounts required by applicable Bonds, Contracts, Trust Agreements and Reimbursement Agreements.

SECTION 2.05. Subordinate Obligation Payment Fund. The Authority may withdraw amounts from the Subordinate Obligation Fund solely for the purpose of paying or providing for the payment of Subordinate Obligation Payments at the times and in the amounts required by applicable Subordinate Obligations or trust agreement or indenture securing such Subordinate Obligations.

SECTION 2.06. General Reserve Fund. The Authority may withdraw money in the General Reserve Fund for any lawful purpose of the Authority except to make transfers to the Rate Stabilization Fund.

ARTICLE III

BONDS AND CONTRACTS; OBLIGATIONS

SECTION 3.01. 1989 Installment Sale Agreement; 1989 Contract of Indebtedness. (a) The Authority may execute the 1989 Installment Sale Agreement and the 1989 Contract of Indebtedness without the necessity of complying with Section 3.02.

(b) The Authority may not execute any amendment to the 1989 Installment Sale Agreement or the 1989 Contract of Indebtedness if such amendment would increase the amount of Installment Payments thereunder; provided, the Authority may execute such an amendment if the requirements of Section 3.02 will be satisfied in connection therewith.

SECTION 3.02. Additional Bonds and Contracts. The Authority may at any time issue any Bonds the payments under and pursuant to which or execute any Contract the Installment Payments under and pursuant to which, as the case may be, are payable from the Net Water Revenues on a parity with the 1989 Installment Sale Agreement, the 1989 Contract of Indebtedness and all other Contracts and Bonds; provided:
(a) For any period of twelve (12) consecutive
calendar months within the twenty-four (24) calendar
month period ending on the last day of the month
preceding the date of issuance of such Bonds or execution
of such Contract, as evidenced by a Certificate of the
Authority (together with supporting calculations prepared
by the Authority) to the effect that (1) the Net Water
Revenues shall have been equal to at least one hundred
twenty per cent (120%) of the Maximum Annual Debt Service
on all Bonds and Contracts outstanding after the issuance
of such Bonds or the execution of such Contract, as the
case may be, and (2) the Net Water Revenues shall have
been sufficient for the payment of all amounts payable
from Net Water Revenues during such twelve-month period
and at least equal to one hundred twenty percent (120%)
of Debt Service on all Bonds and Contracts outstanding
during such twelve-month period, or

(b) (i) For any period of twelve (12) consecutive
calendar months within the twenty-four (24) calendar
month period ending on the last day of the month
preceding the date of issuance of such Bonds or the
execution of such Contract, as evidenced by a
Certificate of the Authority (together with
supporting calculations prepared by the Authority)
to the effect that the Net Water Revenues shall have
been sufficient for the payment of all amounts
payable from Net Water Revenues during such
twelve-month period and at least equal to one
hundred twenty percent (120%) of Debt Service on all
Bonds and Contracts outstanding during such
twelve-month period, and

(ii) As evidenced by a Certificate of the
Authority (together with supporting calculations and
assumptions prepared by the Authority) to the effect
that, in each of the five succeeding Fiscal Years,
projected Net Water Revenues shall be sufficient for
the payment of all amounts to be payable from Net
Water Revenues in each such Fiscal Year and at least
equal to one hundred twenty percent (120%) of Debt
Service on all Bonds and Contracts to be outstanding
in each such Fiscal Year, and

(c) The Authority shall file a Certificate of the
Authority to the effect that the Authority is not then in
default under any Trust Agreement or with respect to any
Bonds or Contracts, and

(d) Such Bond or Contract shall not allow the
declaration of Bond Payments or Installment Payments
thereunder to be immediately due and payable in the event of a default by the Authority thereunder or under the applicable Trust Agreement unless such remedy is then allowed with respect to all Bonds and Contracts then outstanding.

Notwithstanding the foregoing provisions, there shall be no limitations on the ability of the Authority to execute any Contract or to issue any Bonds at any time to refund any outstanding Bonds or any outstanding Contract or to execute Reimbursement Agreements.

SECTION 3.03. Obligations. Amounts to be paid by the Authority with respect to any Obligation shall constitute Maintenance and Operation Costs only if at the time such Obligation is entered into the Authority shall deliver a Certificate of the Authority to the effect that (i) the making of payments on such Obligation as Maintenance and Operation Costs will not impair the Authority's ability to comply with the covenant set forth in Section 4.09 hereof during the next five Fiscal Years or five years beyond the commercial operation date of the project being financed with such Obligation, whichever is later and (ii) the properties, services or commodities to be furnished pursuant to such Obligation can be economically and beneficially utilized by the Authority. If the amounts to be paid by the Authority for an Obligation do not constitute Maintenance and Operation Costs, then such amounts shall be paid out of the Subordinate Obligation Payment Fund or the General Reserve Fund.

ARTICLE IV

COVENANTS OF THE AUTHORITY

SECTION 4.01. Against Encumbrances. The Authority will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the Authority in, upon, about or relating to the Water System and will keep the Water System free of any and all liens against any portion of the Water System. In the event any such lien attaches to or is filed against any portion of the Water System, the Authority will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the Authority desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay
thereafter expires, the Authority will forthwith pay or cause to be paid and discharged such judgment.

SECTION 4.02. Against Sale or Other Disposition of Property. The Authority will not sell, lease or otherwise dispose of the Water System or any part thereof essential to the proper operation of the Water System or to the maintenance of the Net Water Revenues, and will not enter into any agreement or lease which would impair the operation of the Water System or any part thereof necessary to secure adequate Net Water Revenues for the payment of Bond Payments, Installment Payments or Subordinate Obligation Payments, or which would otherwise impair the rights of the holders of Bonds or Certificates with respect to the Net Water Revenues or the operation of the Water System; provided, that any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Water System, or any material or equipment which has become worn out, may be sold if such sale will not reduce the Net Water Revenues below the requirements to be maintained under Section 4.09.

SECTION 4.03. Maintenance and Operation of the Water System; Budgets. The Authority will maintain and preserve the Water System in good repair and working order at all times and will operate the Water System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable.

Not later than September 1 of each year, the Authority will adopt and, if requested, make available to each Trustee, a budget approved by the Board of Directors of the Authority setting forth the estimated Maintenance and Operation Costs, the estimated payments for Debt Service and the estimated debt service payments on all Subordinate Obligations for the then current Fiscal Year; provided, that any such budget may be amended at any time during any Fiscal Year and, if requested, such amended budget shall be made available to each Trustee.

SECTION 4.04. Compliance with Contracts. The Authority will 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 System and all other contracts affecting or involving the Water System to the extent that the Authority is a party thereto.

SECTION 4.05. No Superior Liens. The Authority will not create or allow any lien on or payment from the Net Water Revenues or any part thereof prior or superior to the
obligation to make the Bond Payments or Installment Payments as provided herein or which might impair the security of the Bond Payments or Installment Payments other than Subordinate Obligations.

SECTION 4.06. Insurance. The Authority will procure and maintain such insurance relating to the Water System 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 facilities, properties, structures and works similar to the Water System; provided, the Authority shall not be required to procure or maintain any such insurance unless such insurance is commercially available at reasonable cost; provided, further, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with facilities, properties, structures and works similar to the Water System. All policies of insurance required to be maintained herein shall provide that each Trustee shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.


(a) The Authority will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Water System, which records shall be available for inspection by each Trustee at reasonable hours and under reasonable conditions.

(b) The Authority will prepare and file with each Trustee annually within one hundred and twenty (120) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 1989):

(1) financial statements of the Authority for the preceding Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, certified by the Independent Certified Public Accountant who examined such financial statements stating that nothing came to his attention in connection with such examination that caused him to believe that the Authority was not in compliance with any of the agreements or covenants contained herein; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the Authority with respect to the Water
Appendix G

System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

(c) The Authority will prepare annually not more than one hundred twenty (120) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 1989) a summary report showing in reasonable detail the results of the operations of the Authority for such Fiscal Year and containing a general statement of the physical condition of the facilities, properties, structures or works of the Authority. The Authority will furnish a copy of such summary report to each Trustee.

SECTION 4.08. Payment of Taxes and Compliance with Governmental Regulations. The Authority will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water System or any part thereof when the same shall become due. The Authority will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water System or any part thereof, but the Authority shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

SECTION 4.09. Amount of Rates, Fees and Charges. The Authority will at all times fix, prescribe and collect or cause to be collected rates, fees and charges for the Water Service which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield during the next succeeding Fiscal Year of the Authority Net Water Revenues sufficient for the payment of all amounts payable from Net Water Revenues during such Fiscal Year and at least equal to one hundred twenty per cent (120%) of the Debt Service on all Bonds and Contracts for such Fiscal Year. The Authority may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Water Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this section.

SECTION 4.10. Collection of Rates, Fees and Charges. The Authority will charge and collect or cause to be collected the rates, fees and charges applicable to the Water Service and will not permit any part of the Water System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of
California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the Authority may without charge use the Water Service.

SECTION 4.11. Eminent Domain and Insurance Proceeds. If all or any part of the Water System shall be taken by eminent domain proceedings, or if the Authority receives any insurance proceeds resulting from a casualty loss to the Water System, the proceeds thereof shall be used to substitute other components for the condemned or destroyed components of the Water System.

ARTICLE V
MISCELLANEOUS

SECTION 5.01. Benefits of 1989 Resolution Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the Authority, the Trustees, the other parties to any Trust Agreement, Contract or Reimbursement Agreement or the holder of any Bonds, Certificates or Subordinate Obligations any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the Authority shall be for the sole and exclusive benefit of such other party.

SECTION 5.02. Successor Is Deemed Included in all References to Predecessor. Whenever the Authority is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority, and all agreements and covenants required hereby to be performed by or on behalf of the Authority shall bind and inure to the benefit of the successors thereof whether so expressed or not.

SECTION 5.03. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," "Exhibits" and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Resolution as a whole and not to any particular article, section, exhibit, subdivision or clause hereof.
SECTION 5.04. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Authority shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Authority hereby declares that it would have adopted this Resolution, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 5.05. Funds. Any fund required to be established and maintained herein by the Director of Finance may be established and maintained in the accounting records of the Director of Finance either as an account or a fund, and may, for the purpose of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice and with due regard for the protection of the security of the rights of the holders of Bonds, Certificates and Subordinate Obligations.

SECTION 5.06. Investments. Any money held by the Authority in any of the funds provided herein shall be invested in lawful investments of Authority funds, provided that money held in the Installment Payment Fund and the Subordinate Obligation Payment Fund shall be invested in lawful investments which will, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed to pay Bond Payments, Installment Payments, Reimbursement Payments or Subordinate Obligation Payments.

SECTION 5.07. Repeal of Inconsistent Resolutions. Any resolution of the Authority and any part of any resolution inconsistent herewith is hereby repealed to the extent of such inconsistency.

SECTION 5.08. Effective Date. This Resolution shall take effect from and after its passage and approval.
PASSED AND ADOPTED this 11th day of May, 1989, by
the following vote:

AYES: 29

NOES: 0

ABSENT: 6

Approved:

Chairman of the Board of Directors
of the San Diego County Water
Authority

[SEAL]

Attest:

Secretary of the Board of Directors
of the San Diego County Water
Authority
RESOLUTION NO. 97-52

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY PLEDGING NET WATER REVENUES TO SECURE THE PAYMENT OF OBLIGATIONS PAYABLE FROM NET WATER REVENUES

WHEREAS, the San Diego County Water Authority, a county water authority duly organized and existing under and pursuant to the Constitution and laws of the State of California (the "Authority"), is authorized under provisions of the Constitution and laws of the State of California, and in accordance therewith, to incur indebtedness and to purchase real and personal property as the Authority may determine is necessary or proper; and

WHEREAS, the Board of Directors of the Authority adopted, on May 11, 1989, Resolution No. 89-21 of the Authority providing for the allocation of water system revenues and establishing covenants to secure the payment of obligations payable from the net water revenues of the Authority (the "General Resolution"); and

WHEREAS, it is now desirable to amend the General Resolution to pledge net water revenues to secure the payment of Bonds, Contracts, Reimbursement Payments and Subordinate Obligations (as defined in the General Resolution);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Diego County Water Authority, as follows:

Section 1. The Authority hereby specifically finds and declares that the statements, findings and determinations of the Authority set forth above are true and correct.

Section 2. Section 2.07 is hereby added to the General Resolution to read in full as follows:

Section 2.07 Pledge of Net Water Revenues. Net Water Revenues are hereby pledged to secure the payment of all Bond Payments, Installment Payments and Reimbursement Payments and, subordinate thereto, the payment of all Subordinate Obligations."

Section 3. This resolution shall take effect upon receipt of the consent of all parties from whom consent is required for amendments to the General Resolution.
PASSED, APPROVED and ADOPTED this 11th day of December, 1997.

AYES:

NOES: Manning

ABSTAIN:

ABSENT: Broomell, Chenelle, Davis, Newton, Quist, Slater, R. Williams

Chris Frahm, Chair

ATTEST:

Harold W. Ball, Secretary

I, Janet R. Maltman, Board Secretary of the San Diego County Water Authority, do hereby certify that the above and foregoing is a full, true and correct copy of said resolution No. 97-5 of said Board and that the same has not been amended or repealed.

Janet R. Maltman, Board Secretary

njs
Administrative Code
(Recodified)

(Updated 8/24/17)
### Administrative Code (Recodified)

#### Table of Contents

**Article 1. General Provisions**

**Chapter 1.00 Code Adoption**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00.010</td>
<td>Authority</td>
</tr>
<tr>
<td>1.00.020</td>
<td>Citation</td>
</tr>
<tr>
<td>1.00.030</td>
<td>Amendments</td>
</tr>
<tr>
<td>1.00.040</td>
<td>Ordinances and Resolutions</td>
</tr>
</tbody>
</table>

**Chapter 1.04 Local Conflict of Interest Code**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.04.010</td>
<td>Title</td>
</tr>
<tr>
<td>1.04.020</td>
<td>Authority</td>
</tr>
<tr>
<td>1.04.030</td>
<td>Purpose</td>
</tr>
<tr>
<td>1.04.040</td>
<td>Incorporation of Standard Code by Reference</td>
</tr>
<tr>
<td>1.04.050</td>
<td>Filing of Statements of Economic Interests</td>
</tr>
<tr>
<td>1.04.060</td>
<td>Public Officers Who Manage Public Investments</td>
</tr>
<tr>
<td>1.04.070</td>
<td>Designated Employees</td>
</tr>
<tr>
<td>1.04.080</td>
<td>Designated Positions</td>
</tr>
<tr>
<td>1.04.090</td>
<td>Disqualification</td>
</tr>
<tr>
<td>1.04.100</td>
<td>Determination of Conflicts of Interest</td>
</tr>
<tr>
<td>1.04.110</td>
<td>Application of Other Laws</td>
</tr>
<tr>
<td>1.04.120</td>
<td>Appendix</td>
</tr>
<tr>
<td>1.04.130</td>
<td>Use or Disclosure of Confidential Information for Pecuniary Gain</td>
</tr>
<tr>
<td>1.04.140</td>
<td>Restriction on Contracts with Directors</td>
</tr>
</tbody>
</table>

**Chapter 1.08 Official Designations**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.08.010</td>
<td>Official Seal</td>
</tr>
<tr>
<td>1.08.020</td>
<td>Principal Place of Business</td>
</tr>
<tr>
<td>1.08.030</td>
<td>Agent for Service of Process</td>
</tr>
<tr>
<td>1.08.040</td>
<td>Business Hours and Holidays</td>
</tr>
<tr>
<td>1.08.050</td>
<td>Designation of Newspapers for Publication of Official Notices</td>
</tr>
</tbody>
</table>

**Chapter 1.12 Administrative Fines**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.12.010</td>
<td>Authority</td>
</tr>
</tbody>
</table>
Section 1.12.020 Administrative Fines for Violation of Regulations Regarding Authority Facilities, Property and Rights-of-Way
Section 1.12.030 Definitions
Section 1.12.040 Issuance of Administrative Citations / Notice of Violation
Section 1.12.050 Service of Administrative Citation
Section 1.12.060 Contents of Administrative Citation
Section 1.12.070 Hearing on Administrative Citation
Section 1.12.080 Appeal Procedures
Section 1.12.090 Enforcement of Administrative Fine
Section 1.12.100 Severability

Chapter 1.16 Claims
Section 1.16.010 Requirement
Section 1.16.020 Delegation of Authority
Section 1.16.030 False Claims
Section 1.16.040 Refunds

Chapter 1.20 Definitions and Interpretation
Section 1.20.010 Definitions
Section 1.20.020 Titles and Headings
Section 1.20.030 Limitation on Liability

Article 2. Administration

Chapter 2.00 Board of Directors
Section 2.00.010 Officers - Designation
Section 2.00.020 Officers - Duties
Section 2.00.030 Officers - Selection
Section 2.00.040 Officers - Term
Section 2.00.045 Grouping of Directors
Section 2.00.050 Emergency Operations
Section 2.00.060 Standing Committees
Section 2.00.066 Audit Committee
Section 2.00.070 Temporary Committees
Section 2.00.080 Meetings
Section 2.00.085 Standing Committee Recommendations
Section 2.00.090 Representative of the County Board of Supervisors
Section 2.00.100 Appointment Authority
Chapter 2.04  General Manager
Section 2.04.010  Office Established
Section 2.04.020  Appointment
Section 2.04.030  Qualifications
Section 2.04.040  Compensation
Section 2.04.050  Authority and Duties
Section 2.04.060  Assistants and Deputies
Section 2.04.070  Delegation of Authority
Section 2.04.080  Board – Manager Relations
Section 2.04.090  Appointment Authority
Section 2.04.100  Departmental Cooperation

Chapter 2.05  Official Duties and Directors Compensation and Reimbursement
Section 2.05.010  Compensation
Section 2.05.020  Reimbursement for Expenses of Office
Section 2.05.030  Organizations of Which the Authority is a Member
Section 2.05.040  Organization Memberships of Authority Employees

Chapter 2.08  General Counsel
Section 2.08.010  Office Established
Section 2.08.020  Appointment
Section 2.08.030  Qualifications
Section 2.08.040  Compensation
Section 2.08.050  Authority and Duties
Section 2.08.060  Assistants and Deputies
Section 2.08.070  Employment of Special Counsel
Section 2.08.080  Board – General Counsel Relations
Section 2.08.090  Appointment Authority
Section 2.08.100  Departmental Cooperation
Section 2.08.110  Limitation on Private Practice

Chapter 2.12  Departments
Section 2.12.010  Departments Established
Section 2.12.020  General Manager Authority
Section 2.12.030  Department Directors
Section 2.12.040  Departmental Functions
Section 2.12.050  Delegated Duties
Section 2.12.060  Departmental Cooperation
Chapter 2.16  Personnel
Section 2.16.010  Personnel System
Section 2.16.020  Scope and Application
Section 2.16.030  Personnel Officer
Section 2.16.040  Personnel Rules, Policies and Procedures
Section 2.16.050  Classification of Positions
Section 2.16.060  Compensation Plan
Section 2.16.070  Reimbursement of Expenses
Section 2.16.080  Fair Employment Practices
Section 2.16.090  Political Activity
Section 2.16.100  Incompatible Activity
Section 2.16.110  Access to Information
Section 2.16.120  Contracts for Service

Chapter 2.20  Employer – Employee Relations
Section 2.20.010  Purpose and Scope
Section 2.20.020  Definitions
Section 2.20.030  Administration of Employer/Employee Relations
Section 2.20.040  Employee Rights
Section 2.20.050  Authority Rights
Section 2.20.060  Bargaining Units
Section 2.20.070  Rights of Recognized Employee Organizations
Section 2.20.080  Certification of Recognized Employee Organizations
Section 2.20.090  De-certification of Recognized Employee Organizations
Section 2.20.100  Meet and Confer Process
Section 2.20.110  Memoranda of Understanding
Section 2.20.120  Impasse Resolution Process
Section 2.20.130  Rules and Regulations
Section 2.20.140  Construction
Section 2.20.150  Social Employee Association

Chapter 2.24  Fair Employment and Contracting Policies
Section 2.24.010  Fair Employment and Contracting Policy
Section 2.24.020  Small Contractors Outreach and Opportunities Program
## Article 4. Acquisitions and Contracts

### Chapter 4.00 Real Property
- Section 4.00.010 General Authorization
- Section 4.00.020 Execution of Documents
- Section 4.00.030 Requirements for Acquisition
- Section 4.00.040 Approval of Appraisals
- Section 4.00.050 Purchase Procedures
- Section 4.00.060 Supplemental Regulations
- Section 4.00.070 Conveyances for Project Implementation

### Chapter 4.04 Goods and Services
- Section 4.04.010 General Provisions
- Section 4.04.020 Award and Execution of Contracts - Generally
- Section 4.04.030 Award and Execution of Contracts - Emergencies
- Section 4.04.040 Amendments to Contracts
- Section 4.04.050 Contract Documents
- Section 4.04.060 Exemptions and Exceptions
- Section 4.04.070 Open Market Acquisitions
- Section 4.04.080 Sheltered Market Program Solicitation for Bids or Proposals for Purchases of Goods and Services Other than Professional Services Valued at Greater Than $10,000 and Up to $150,000
- Section 4.04.090 Informal Bids
- Section 4.04.100 Formal Bids
- Section 4.04.110 Withdrawal or Correction of Formal Bid
- Section 4.04.120 Inspection of Supplies and Equipment
- Section 4.04.130 Use of Brand Name in Specifications; Offers of “Or Equal”; Testing
- Section 4.04.140 Sole Source Procurement
- Section 4.04.150 Cooperative Procurement
- Section 4.04.160 Contracts for Goods and Services with Government Agencies, Nonprofits and Others
- Section 4.04.170 Procedures for Professional and Technical Services
- Section 4.04.180 Sheltered Market Program Solicitation for Proposals and Award of Contracts for Professional and Technical Services Valued at Greater Than $10,000 and Up to $150,000
### Chapter 4.08  Public Works

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.08.010</td>
<td>General Authorization</td>
</tr>
<tr>
<td>4.08.020</td>
<td>Procedures</td>
</tr>
<tr>
<td>4.08.030</td>
<td>Sheltered Market Program Solicitation of Bids and Award of Public Works Contracts Valued at Greater Than $10,000 and Up To $150,000</td>
</tr>
<tr>
<td>4.08.040</td>
<td>Authority to Contract</td>
</tr>
<tr>
<td>4.08.050</td>
<td>Bid and Contract Requirements</td>
</tr>
<tr>
<td>4.08.060</td>
<td>Required Security for Performance and Payment</td>
</tr>
<tr>
<td>4.08.070</td>
<td>Project Labor Agreements</td>
</tr>
<tr>
<td>4.08.080</td>
<td>General Requirements Contracts</td>
</tr>
<tr>
<td>4.08.090</td>
<td>Design-Build Contracts</td>
</tr>
<tr>
<td>4.08.100</td>
<td>Supplemental Regulations</td>
</tr>
<tr>
<td>4.08.110</td>
<td>Exemptions</td>
</tr>
</tbody>
</table>

### Chapter 4.12  Contractors and Bidders

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.12.010</td>
<td>Prequalification</td>
</tr>
<tr>
<td>4.12.020</td>
<td>Debarment</td>
</tr>
</tbody>
</table>

### Article 5.  Water Service

### Chapter 5.00  Water Service

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.00.010</td>
<td>Installation of Service Connections</td>
</tr>
<tr>
<td>5.00.020</td>
<td>Metering of Water, Meter Readings, Meter Testing</td>
</tr>
<tr>
<td>5.00.030</td>
<td>Failure to Comply with Delivery Requests</td>
</tr>
<tr>
<td>5.00.040</td>
<td>Water Allocation</td>
</tr>
<tr>
<td>5.00.050</td>
<td>Rate Structure</td>
</tr>
</tbody>
</table>

### Article 7.  Authority Property

### Chapter 7.00  Regulation of Rights of Way and Property

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.00.010</td>
<td>Purpose</td>
</tr>
<tr>
<td>7.00.020</td>
<td>General Authorization</td>
</tr>
<tr>
<td>7.00.030</td>
<td>Definitions</td>
</tr>
</tbody>
</table>
Appendix H

Chapter 7.04  Use of Authority Buildings and Equipment

Section 7.04.010  Use of Authority Buildings
Section 7.04.020  Use of Authority Equipment
Section 7.04.030  General Restrictions
Section 7.04.040  Loan of Equipment to Member Agencies
Section 7.04.050  Emergency Use
Section 7.04.060  Supplemental Regulations

Chapter 7.08  Surplus Property

Section 7.08.010  General Authorization
Section 7.08.020  Conveyance of Surplus Real Property
Section 7.08.030  Appraisals
Section 7.08.040  Acceptance of Offers to Purchase Surplus Real Property
Section 7.08.050  Execution of Documents
Section 7.08.060  Conveyance of Surplus Personal Property
Section 7.08.070  Procedure for Public Sale
Section 7.08.080  Incidental Sale of Low Value or Perishable Items
Section 7.08.090  Property with Historic, Cultural, or Educational Value
Article 8. **Environmental Review**

Chapter 8.00 **Environmental Review**

- Section 8.00.010 Purpose
- Section 8.00.020 State CEQA Guidelines Adopted by Reference
- Section 8.00.030 Application of Chapter
- Section 8.00.040 Duties of Board and General Manager
- Section 8.00.050 Water Supply Assessments
- Section 8.00.060 Statutory Exemptions
- Section 8.00.070 Categorical Exemptions
- Section 8.00.080 Projects for Which a Person or Entity other than the Authority is the Applicant
- Section 8.00.090 Initial Study – Authority Projects
- Section 8.00.100 Notice of Intent to Adopt a Proposed Negative Declaration or Mitigated Negative Declaration
- Section 8.00.110 Public Hearings on Proposed Negative Declarations or Mitigated Negative Declarations
- Section 8.00.120 Adoption of Negative Declaration or Mitigated Negative Declaration
- Section 8.00.130 Notice of Completion of Draft Environmental Impact Reports – Notice of Availability
- Section 8.00.140 Public Hearings on Draft Environmental Impact Reports
- Section 8.00.150 Responsible Agency – Activities Subject to Chapter 7.00
- Section 8.00.160 Environmental Documents

Article 9. **Intergovernmental Affairs**

Chapter 9.00 **Metropolitan Water District**

- Section 9.00.010 Appointment of Metropolitan Delegates
- Section 9.00.020 Attendance at Meetings
- Section 9.00.030 Representation of Authority
- Section 9.00.040 Term of Office
- Section 9.00.050 Qualifications
- Section 9.00.060 Biennial Review
Section 9.00.070  Replacement of Delegates Except Upon a Contingent Appointment
Section 9.00.080  Emeritus Delegates

Chapter 9.04  Colorado River Board
Section 9.04.010  Nomination of Representatives
Section 9.04.020  Attendance at Meetings
Section 9.04.030  Representation of the Authority
Chapter 1.00
Code Adoption

Section 1.00.010 Authority
(a) The Administrative Code of the San Diego County Water Authority is the official administrative code of the San Diego County Water Authority and has been established by the board of directors pursuant to Section 13 of the County Water Authority Act [Stats. 1945, c. 545, as amended].

(b) This Code shall be construed in a manner that is consistent with the provisions of the County Water Authority Act.

Section 1.00.020 Citation
(a) This Code shall be referred to as the Administrative Code of the San Diego County Water Authority. However, for the purposes of referring to this Code in any ordinance, resolution, motion, rule, regulation, or policy of the Authority it shall be sufficient to refer to this Code as the Administrative Code. Citation to this Code may be by reference to the articles, chapters, sections and subsections hereof. Reference herein to this Code shall mean the Administrative Code of the San Diego County Water Authority.

(b) Whenever reference is made to this Code as the Administrative Code of the San Diego County Water Authority, or to the Administrative Code as authorized by subsection (a), or to any article, chapter, section or subsection thereof, it shall be presumed that the reference is to the most current version of the Code, including all amendments, corrections, additions, deletions or other modification thereto, unless the contrary is clearly indicated from the context.

(c) Article, chapter and section headings of this Code are for convenience only and shall not be construed to govern or in any manner affect the meaning or intent of any of the provisions of this Code.

Section 1.00.030 Amendments
(a) This Code and any of its provisions may be amended, supplemented or repealed by ordinance of the board of directors.

(b) The adoption, repeal or amendment of this Code or any of its provisions shall not affect any action, proceeding, debt, obligation, or right commenced, established or vested prior to the effective date of the ordinance adopting, repealing or amending this Code or any of its provisions unless a contrary intent is clearly indicated in the ordinance.
1.00.040  **Ordinances and Resolutions**

(a) Legislative actions of the Board may be taken by resolution or ordinance.

(b) Administrative, executive and ministerial actions of the Board may be taken by resolution or motion duly noted in the record of the meeting at which the motion is made.

(c) Actions to levy, impose, fix, adjust or increase taxes, standby water availability charges, fees, rates or other charges, shall be taken by ordinance.

(d) All ordinances or resolutions shall be prepared or approved as to form and legality by the General Counsel.

(e) Except as otherwise required by law, ordinances and resolutions shall be adopted by the affirmative votes of members of the Board representing more than fifty percent of the number of votes of all member public agencies, except that if the public agency member having the largest total financial contribution to the Authority has more than thirty-eight percent of the total financial contribution to the Authority, the affirmative votes of members representing more than fifty-five percent of the number of votes of all member public agencies shall be necessary.2

(f) Ordinances shall be adopted at a regular meeting or adjourned regular meeting. Resolutions may be adopted at any meeting subject to the provisions of the Ralph M. Brown Act (Gov’t Code §§ 54950 et seq.). The title of resolutions appropriating or ordering payment of money and ordinances shall be printed on the agenda of the meeting at which the ordinance or resolution is scheduled for consideration.

(g) Ordinances and resolutions shall be effective upon adoption. Within seven days after the adoption of an ordinance the Clerk of the Board shall cause the ordinance to be posted in full in a prominent location on the Water Authority’s website for not less than 30 days along with the votes for and against the ordinance. The failure to post an ordinance in a timely manner shall not affect its validity or effective date.

(h) Within seven days after adoption, the Clerk of the Board shall post each ordinance or resolution in a place at the Authority’s principal business office designated by the General Manager and accessible to the public during regular business hours. Ordinances and resolutions shall remain posted for at least two weeks. The failure to post an ordinance or resolution in a timely manner shall not affect its validity or effective date.

(i) The Clerk of the Board shall keep a permanent record of ordinances and resolutions.

(j) Ordinances and resolutions may be signed by the chairperson of the Board and by the secretary of the Board. No ordinance or resolution duly adopted by the Board shall be deemed invalid due to the delay or failure of the chairperson or secretary to sign it.
(k) The Clerk of the Board or the General Manager are authorized to provide a conformed copy of any ordinance or resolution of the Authority to any person, and to certify that such conformed copy is a true and correct copy of an original official record of the Authority.

(l) Except as otherwise specifically authorized, ordinances and resolutions shall not be amended, superseded or repealed except by adoption of an amending superseding or repealing ordinance or resolution, respectively. However, at any time corrections of typographical or clerical errors in ordinances and resolutions may be made upon approval of the General Counsel. Ordinances or resolutions submitted in draft form, or to which spot amendments have been made, or in which typographical or other technical errors are found, may be rewritten by the General Counsel within five days following adoption to accurately reflect the action of the Board. Such rewritten version shall become the original for all purposes, including publication and posting.

---

1 The predecessor of this Code was first adopted by reference on August 10, 1961, by Ordinance No. 76, and identified as Document No. 1338, on file in the office of the Clerk of the Board. The original code was recodified on March 13, 1997 by Resolution No. 1997-06. The Code referred to in this section is a comprehensive revision and recodification that supersedes and replaces all prior codes. Existing administrative ordinances and resolutions in conflict with the provisions of this Code were repealed concurrently with its adoption.

2 The number of votes of each member public agency is determined according to section 6 of the County Water Authority Act.
Chapter 1.04
Local Conflict of Interest Code

Section 1.04.010 Title
This chapter shall be known and may be cited as “Local Conflict of Interest Code of the San Diego County Water Authority.”

Section 1.04.020 Authority
This chapter is adopted pursuant to the provisions of the “Political Reform Act of 1974,” Title 9 of the Government Code commencing with Government Code Section 81000 and Section 18730 of Article 2 of Chapter 7 of Division 6 of Title 2 of the California Code of Regulations.

Section 1.04.030 Purpose
(a) This chapter establishes the provisions of the Local Conflict of Interest Code of the San Diego County Water Authority; provided, however, that prior conflict of interest codes shall be applicable to acts or omissions subject thereto and occurring before November 1, 2000.

(b) This chapter is adopted in order to:

1. Comply with the requirements of Government Code Section 87300, requiring local agencies to adopt and promulgate a local conflict of interest code that has the force of law.

2. Enumerate and differentiate the positions of employment within the Authority for which the customary and usual job duties involve the making of decisions that may have a reasonably foreseeable material effect upon a financial interest.
3. Require the disclosure of such interests, by setting forth the specific types of financial interests that are reportable for each designated position.

4. Require that officers and designated employees disqualify themselves from making, participating in making or using their position to influence Authority decisions that may have a reasonably foreseeable material impact on a financial interest of the officer or designated employee.

(c) This chapter shall be reviewed and may periodically be revised as required by the provisions of the Political Reform Act of the State of California.

Section 1.04.040 Incorporation of Standard Code by Reference

The provisions of Title 2, Section 18730 of the California Code of Regulations existing on October 1, 2000 and as may from time-to-time be amended by the Fair Political Practices Commission, except those provisions thereof that apply solely to members of state boards or commissions or designated employees of state agencies, are hereby adopted by this reference. The provisions of Title 2, Section 18730 of the California Code of Regulations are referred to hereinafter as the “Standard Code.” The most recent version of the Standard Code shall be kept on file with the Clerk of the Board.

Section 1.04.050 Filing of Statements of Economic Interests

Pursuant to Section 4 of the Standard Code, designated employees shall file statements of economic interests with the Clerk of the Board. Upon receipt of the statements of members of the Board, the General Manager, the Director of Finance and the Treasurer the Clerk of the Board shall make and retain a copy and forward the original statements to the Clerk of the San Diego County Board of Supervisors, who shall be the filing officer. The Clerk of the Board is the filing officer for and will retain statements for all other designated employees.

Section 1.04.060 Public Officers Who Manage Public Investments

The members of the Board, the General Manager, the Director of Finance and the Treasurer are designated under Government Code Section 87200 and 2 Cal. Code of Regs. 18720 as “other public officials who manage public investments.” Persons in these positions are subject to and required to disclose financial interests pursuant to Government Code Sections 87200 – 87210. Persons in these positions are subject to the disqualification requirements of this chapter.

Section 1.04.070 Designated Employees

“Designated employee” means any officer, employee or consultant of the Authority who has a designated position with the Authority.
Section 1.04.080  **Designated Positions**

“Designated position” means a position with the Authority specified in the Appendix to this Code or that is determined by the General Manager to entail the making or participation in the making of decisions that foreseeably may have a material effect on any financial interest and is so designated pursuant to section 1.04.120.

Section 1.04.090  **Disqualification**

No designated employee or public official who manages public investments shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the designated employee or public official, or a member of his or her immediate family, or on any financial interest identified in subdivision (b)(9) of Title 2, Section 18730 of the California Code of Regulations.

Section 1.04.100  **Determination of Conflicts of Interest**

If a member of the Board or Authority staff member has reason to believe he or she has a potential conflict of interest with respect to a governmental decision, he or she may give the full facts of the matter to the General Counsel and request advice thereon. The request for advice should be submitted to the General Counsel at a time that will allow the General Counsel a reasonable opportunity to analyze the facts and law and to seek appropriate assistance from the Fair Political Practices Commission. Any response by the General Counsel shall be in writing, if time permits, and delivered to the requestor with a copy to the Clerk of the Board before the time scheduled for the decision. A memorandum filed with the Clerk of the Board shall memorialize oral responses. The Authority may retain the services of an appraiser, economist or similar experts whenever the General Counsel determines that such services are necessary for the analysis of the potential conflict of interest. Nothing in this section shall be construed to preclude any official from seeking advice regarding a conflict of interest from the Fair Political Practices Commission or any other person. Nothing in this section shall be construed to create an individual attorney-client relationship between the General Counsel and any person.

Section 1.04.110  **Application of Other Laws.**

Nothing in this chapter shall be construed to limit the application of any other law relating to conflicts of interest, including, but not limited to, Government Code Sections 1090 through 1098, inclusive.

Section 1.04.120  **Appendix**

The Board, by resolution, shall adopt and periodically revise as required by the Political Reform Act of the State of California a list of designated positions and disclosure requirements for employees holding designated positions. The resolution shall constitute the "Appendix" referred to in subsection (b)(3) [Disclosure Categories] of 2 Cal. Code of Regs. Section 18730.
The General Manager, in consultation with the General Counsel, may add designated positions and establish disclosure requirements for such positions whenever a new job classification is created. Such designation shall be effective pending amendment of this chapter or the appendix by the board of directors.

Section 1.04.130  **Use or Disclosure of Confidential Information for Pecuniary Gain**

Pursuant to Government Code Section 1098, no director, officer or employee of the Authority shall use or disclose confidential information received in the course and scope of their office or employment, for pecuniary gain. Such use of confidential information constitutes a violation of Government Code Section 1098, a misdemeanor. The definitions and other provisions of Government Code Section 1098 shall apply to the interpretation of this section.

Section 1.04.140  **Restriction on Contracts with Directors**

(a) The Authority shall not directly or indirectly contract with or employ any Director during the Director's term of service and (1) for a period of twelve months after the date service is terminated or, (2) for a period of twenty-four months after the date service is terminated as provided in sections 2.04.030 and 2.08.030 of this Code.

(b) Nothing in this section shall be construed to prohibit any contract: authorized and made pursuant to Government Code Section 1090.5 or 1091; or relating to compensation, benefits and reimbursement authorized by law and applicable to Directors generally; or publicly bid and awarded to the lowest responsible bidder pursuant to Chapter 4.08 of this Code and otherwise authorized by law.
## Chapter 1.08
### Official Designations

<table>
<thead>
<tr>
<th>Section Code</th>
<th>Official Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.08.010</td>
<td>Official Seal</td>
</tr>
<tr>
<td>1.08.020</td>
<td>Principal Place of Business</td>
</tr>
<tr>
<td>1.08.030</td>
<td>Agent for Service of Process</td>
</tr>
<tr>
<td>1.08.040</td>
<td>Business Hours and Holidays</td>
</tr>
<tr>
<td>1.08.050</td>
<td>Designation of Newspapers for Publication of Official Notices</td>
</tr>
</tbody>
</table>

**1.08.010 Official Seal**

(a) The design of the official seal of the San Diego County Water Authority is a circle with the words "San Diego County Water Authority - California" inscribed around the perimeter thereof with the words "Organized June 9, 1944" in the center thereof.

(b) The official seal may be affixed to an instrument, document or thing upon order of the board of directors. However, affixing the official seal to an instrument, document or thing shall not be required for the execution of any instrument or document of the Authority.

(c) The Board may develop and adopt an emblem, symbol, logo or other distinctive mark of the Authority.

(d) The official seal and any emblem, symbol, logo or other distinctive mark of the Authority shall be used solely for Authority purposes and programs, unless otherwise authorized by the Board. Private, commercial or non-commercial use of the official seal, mark, name or identity of the Authority is prohibited.

**1.08.020 Principal Place of Business**

The principal place of business and office of the Authority is 4677 Overland Avenue, San Diego, California. The board of directors may change the principal place of business as it determines necessary and convenient for the conduct of Authority business.

**1.08.030 Agent for Service of Process**

(a) Unless otherwise provided in this Code, the Clerk of the Board is designated as the agent for service of process on the Authority and is designated as the clerk of the legislative body of the Authority for such purpose.

(b) The Clerk of the Board shall include the designated agent for service of process on the Authority in the statement filed with the Secretary of State and the county clerk of San Diego County for placement in the Roster of Public Agencies pursuant to California Government Code Section 53051.
1.08.040  **Business Hours and Holidays**

(a)  The General Manager shall establish and post the Authority’s general business days and hours at its principal places of business.

(b)  The holidays of the Authority on which the offices normally will be closed are: January 1 (New Year’s Day); the third Monday in January (Dr. Martin Luther King, Jr. Day); the third Monday in February (President’s Day); March 31 (Cesar Chavez Day); the last Monday in May (Memorial Day); July 4 (Independence Day); the first Monday in September (Labor Day); November 11 (Veteran’s Day); the Thursday in November designated as Thanksgiving Day and the Friday following Thanksgiving Day; December 25 (Christmas Day). If any of these holidays falls on a Sunday, the following Monday is a holiday. If November 11 falls on a Saturday, the preceding Friday is a holiday. If any holiday other than November 11 falls on a Saturday, the General Manager shall determine whether the holiday is the preceding Friday or the following Monday. Nothing in this section precludes the establishment of additional holidays pursuant to Chapter 2.16 or by a memorandum of understanding with one or more recognized employee organizations.

(c)  If a payment to the Water Authority is due to be made, or any notice to the Authority is due to be given, on any day that the Authority is closed under subdivision (a) or (b), the payment or notice shall be made or given on the next following business day. In the absence of an adopted schedule, the Authority’s business days are Monday through Friday.

1.08.050  **Designation of Newspapers for Publication of Official Notices**

The Board may by resolution designate the newspaper or newspapers for publication of official notices of the Authority.
Chapter 1.12
Administrative Fines

1.12.010 Authority

This chapter is adopted pursuant to Section 13, subdivision (b) of the CWA Act.

1.12.020 Administrative Fines for Violation of Regulations Regarding Authority Facilities, Property and Rights-of-Way

(a) Whenever a provision of this code prohibits an act or omission of a person with respect to Authority facilities, property, or rights-of-way, the violation of such provision is subject to administrative citation and payment of an administrative fine according to the provisions of this chapter.

(b) The amount of the administrative fine for each violation of a provision of this code prohibiting an act or omission of a person with respect to Authority facilities, property, or rights-of-way is as follows:

1. One hundred dollars for a first violation;

2. Two hundred dollars for a second violation of the same provision within one year;

3. Five hundred dollars for each additional violation of the same provisions within one year.

(c) If a violation involves a trespass or encroachment on Authority property or right of way, and a written notice to cease, terminate, eliminate or remove the trespass or encroachment has been posted on the Authority property or right of way where the trespass or encroachment occurs, then following the tenth day from the posting of the notice each day thereafter that the violation continues shall be a separate violation.
(d) The administrative fines established by this chapter shall be in the nature of civil penalties and shall be additional and cumulative to any other criminal or civil penalty or remedy established pursuant to state law.

(e) Administrative fines assessed by means of an administrative citation are payable directly to the Authority, are due upon issuance of an administrative citation and are delinquent 30 days from the date of the citation. Civil penalties assessed by means of an administrative citation will be collected according to the procedures specified in this chapter.

1.12.030 Definitions

The following words and phrases whenever used in this chapter shall have the meaning defined in this section:

“Administrative fine” means a civil penalty imposed by this chapter and assessed for violation of a provision of this Code pursuant to an administrative citation.

“Administrative citation” means a notice of a violation issued by an authorized employee or agent of the Authority pursuant to the provisions of this chapter.

“Appellant” means any person or entity who is the registered owner, property owner, legal owner, driver, operator, tenant, lessee, or is otherwise liable for penalties in accordance with the applicable section of this Code, and who contests or disputes liability for an administrative fine.

“Citable violation” means any violation of any provision of this Code that prohibits an act or omission of a person with respect to Authority facilities, property, or rights-of-way that is subject to administrative citation and payment of an administrative fine according to the provisions of this chapter.

“Enforcement officer” means the Director of Engineering, Right of Way Manager, Right of Way Technicians, and other employees of the Engineering Department that have been designated by the Director of Engineering and have received training in the issuance of administrative citations. Enforcement officer also means any peace officer having jurisdiction within the territory of any member agency of the Authority.

“Hearing officer” means any person appointed by the General Manager to preside over the administrative hearings provided for in this section.

“Person” means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity, which is recognized by law as the subject of rights or duties.

“Party” means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity that is legally recognized as the subject of rights or duties.

“Responsible party” means the person committing a violation. Responsible party also means an owner or manager of a business or property who directs or permits a violation of this Code to be done by any other person in the course or apparent course of business of the owner or manager or on the property of the owner.
1.12.040 **Issuance of Administrative Citations / Notice of Violation**

(a) Upon discovering or observing any citable violation for which an administrative fine has been prescribed, the enforcement officer may issue an administrative citation to the violator or property owner in the manner prescribed in Section 1.12.050. The administrative citation shall be issued on a form prescribed by the General Counsel. Once the party responsible for the violation is identified, the enforcement officer may issue an administrative citation to that person or entity.

(b) Any party responsible for a continuing citable violation shall be provided a Notice of Violation/Order to Correct prior to the issuance of an administrative citation. The Notice of Violation/Order to Correct shall specify the action required to correct or otherwise remedy the violation(s). Not less than 72 hours shall be allowed from the date of the Notice of Violation/Order to Correct for the party to correct or otherwise remedy the violation. The enforcement officer shall assign a specific reasonable period within which to correct or otherwise remedy each violation. The enforcement officer shall consider the cost of abatement or correction, the time needed to obtain estimates, drawings and contracts for correction, time required for physical relocation of personal property, and the time required to review submittals in determining the reasonable warning period to be assigned for each violation. A Notice of Violation/Order to Correct is not required before issuance of a second or any subsequent administrative citation for a continuing or repeated violation. Failure to comply with any portion of a Notice of Violation/Order to Correct may result in the issuance of an administrative citation.

(c) Notwithstanding subdivision (b) of this section, an enforcement officer may issue an administrative citation without providing a Notice of Violation/Order to Correct to any person who:

1. Trespasses on Authority property in violation of any sign prohibiting trespassing;
2. Damages, defaces or destroys any sign, fence, vent, valve, or other structure of the Authority;
3. Dumps, deposits, casts or places any waste, rock, dirt or other material on the right of way or other property of the Authority;
4. Grades, digs, excavates, fills or trenches any right of way or other property of the Authority.

(d) An enforcement officer may issue a Notice of Violation/Order to Correct a citable violation even if such notice and order is not required by this Section. If such a notice and order is issued the failure to comply with any portion of a Notice of Violation/Order to Correct may result in the issuance of an administrative citation.
1.12.050 **Service of Administrative Citation**

Service of an administrative citation may be accomplished as follows:

1. By personal service on the responsible party. The enforcement officer may obtain the signature of the responsible party to establish personal service of the citation. If the responsible party refuses or otherwise fails to sign the administrative citation, the lack of signature shall not affect the validity of the citation or the proceedings.

2. By substituted service by certified or first class mail as follows: The administrative citation shall be mailed to the responsible party or property owner(s) by first class mail, postage prepaid. The citation shall be accompanied by declaration of service that complies with California Code of Civil Procedure Section 1013a. The failure of any responsible party to receive a properly addressed citation shall not affect the validity of the notice. Service of the administrative citation by mail shall be effective on the date of mailing.

1.12.060 **Contents of Administrative Citation**

The administrative citation shall include all the following:

1. A brief description of the violation;
2. The date and location of the violation(s) and the approximate time the violation(s) was observed;
3. The code section(s) violated;
4. A brief description of corrective action required, if appropriate;
5. A statement explaining that each day the violation continues constitutes a new violation, if applicable;
6. The amount of civil penalty imposed for the violation(s);
7. A statement advising that the fine is delinquent 30 days from the date the administrative citation was issued, the procedure for payment, and the consequences of failure to pay; and
8. A brief statement describing the responsible party’s right of appeal.

1.12.070 **Hearing on Administrative Citation**

(a) Persons receiving an administrative citation may request a hearing within 10 calendar days from the date the citation is served. The hearing request must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the hearing in detail, and must be filed with the Authority as indicated in the administrative citation. If the deadline falls any day that the Authority’s offices are closed for a holiday, then the deadline shall be extended until the next regular business day.
(b) As soon as practicable after receiving the written request for a hearing, the Authority shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the hearing date notice must be made at least 10 days prior to the date of the hearing to the appellant.

(c) The failure of any person with an interest in the property, or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid shall be effective on the date of mailing.

(d) Failure of any person to file a request for a hearing in accordance with the provisions of this section shall constitute a waiver of that person’s rights to administrative hearing determination of the merits of the citation and the amount of the penalty. If no request for a hearing is filed, the citation shall be deemed a final administrative order.

(e) A hearing officer shall be a person designated by the General Manager, and may be an Authority employee vested with discretionary authority to make independent decisions on appeals. A hearing officer shall not be a subordinate of an enforcement officer, but may be an enforcement officer’s supervisor. The hearing officer shall not have been involved in the issuance of the administrative citation that is the subject of an appeal. The responsible party may request the General Manager disqualify a hearing officer for reasons of actual bias, prejudice or financial conflict of interest.

(f) The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs, however, the formal rules of evidence and procedure applicable to judicial proceedings shall not apply. Cross-examination of witnesses is not required, but may be permitted as deemed appropriate by the hearing officer. Notwithstanding any provision of this section to the contrary:

1. A valid citation shall be prima facie evidence of the violation;
2. The hearing officer shall accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;
3. The owner, agent, person responsible for the violation, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction;
4. At the request of the appellant, the hearing officer shall permit the hearing to be conducted by submission of written declaration and authenticated documents alone.

(g) The General Manager, subject to approval by the General Counsel, may establish appropriate administrative regulations for implementing this ordinance, conducting hearings and rendering decisions pursuant to this section.
(h) The hearing officer may reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer states specific grounds for reduction or waiver in the written decision. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.

(i) The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The processing agency shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the responsible party within 10 working days after the hearing. The decision of the hearing officer dismissing the citation is final and conclusive. The decision of the hearing officer affirming the citation is final and conclusive, subject only to review by the Court.

1.12.080 Appeal Procedures

(a) After receipt of the hearing officer’s decision, the person receiving the citation may file an appeal with the Court for de novo review. The request for review shall be submitted within 20 days of the date of mailing of the hearing officer’s decision. The request for review shall be submitted on a form prescribed by the Court to the Authority, along with the applicable filing fee. The request for judicial review shall state the reasons the appellant objects to the hearing officer’s findings or decision.

(b) The Court shall conduct a de novo hearing except that the contents of the processing agency file shall be received into evidence.

(c) A copy of the administrative citation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(d) The Court filing fee shall be such amount as determined by the Court. If the Court finds in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the Authority. Any deposit of penalty shall be refunded by the Authority in accordance with the judgement of the Court.

(e) If the penalty has not been deposited, and the decision of the Court is against the appellant, the Authority may proceed to collect the civil penalty in the manner provided by law.

1.12.090 Enforcement of Administrative Fine

(a) Payment of an administrative fine shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the Authority.

(b) All administrative fines shall be payable to the San Diego County Water Authority.
(c) If a person fails to pay an administrative fine assessed by administrative citation within the time specified pursuant to this Chapter, without the filing of a request for hearing or appeal as provided in this Chapter, the person shall pay an additional administrative penalty in the amount of 100 percent of the total amount of the administrative fine.

(d) The failure of any person to pay an administrative fine, or an administrative penalty, assessed by administrative citation within the time specified on the citation constitutes a debt to the Authority. To enforce that debt, the Authority may file a civil action or pursue any other legal remedy to collect such money.

(e) The failure to pay an administrative fine after adjudication by a court on appeal shall be enforceable by any method available for enforcement of civil judgments.

1.12.100 Severability

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent and severable provision and such holding shall not affect the validity of the remaining portions hereof.
Chapter 1.16
Claims

Section 1.16.010  Requirement
(a) Claims against the Authority for money or damages which are excepted by California Government Code Section 905, subparagraphs (a), (c), (f), (g), (h), (i) and (k) from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Title 1, Division 3.6, Part 3 of the California Government Code shall be governed by the procedure described in this section.

(b) The procedure for presentation of and action upon claims for money or damages subject to subsection (a) of this section shall be the same as for all other claims required to be submitted and acted upon prior to commencement of suit under the provisions of Title 1, Division 3.6 (commencing with Section 810) of the California Government Code. Any action brought against the Authority on any such claim shall be subject to the provisions of Sections 945.6 and 946 of the California Government Code.

(c) When a claim required by subsection (b) to be presented within a period of less than one year after the accrual of the cause of action is not presented within the required time, an application may be made to the Authority for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 of the California Government Code are applicable to all such claims, and the time specified in subsection (b) shall be deemed the “time specified in Section 911.2” within the meaning of Sections 911.6 and 946.6 of the Government Code.

Section 1.16.020  Delegation of Authority
(a) All claims shall be filed with the General Manager. The General Manager is authorized to accept for filing timely claims, to return or accept for filing untimely claims, and to deny or grant applications for leave to present late claims. The General Manager shall promptly provide the General Counsel with a copy of each claim accepted for filing. The General Manager is authorized to delegate administrative responsibilities under this subdivision to a risk manager.

(b) The General Manager, with the consent of the General Counsel, may deny or reject any claim or permit denial or rejection of a claim by operation of law. The General Manager shall cause notice of the denial or rejection of a claim to be given as provided by the California Government Code. The General Manager is authorized to delegate administrative responsibilities under this subdivision to a risk manager.
(c) The General Manager and General Counsel are authorized to grant, settle or compromise any claim in an amount not to exceed $50,000. The General Manager and General Counsel are authorized to grant, settle or compromise any workers’ compensation claim in an amount not to exceed $250,000 when permitted or required by an approved alternative dispute resolution system established in connection with a project labor agreement. The General Manager and General Counsel, subject to ratification by the Board when required by statute, are authorized to reimburse advances made against a deductible or self-insured retention in amounts not to exceed $250,000 per occurrence when required by the terms of a policy of insurance of the Authority under a wrap-up or owner controlled insurance program established in connection with a project labor agreement.

(d) The General Counsel is authorized to defend, retain special counsel to defend, or tender pursuant to any contract or agreement the defense of any action, proceeding or suit brought against the Authority, or against any officer or employee of the Authority whenever the Authority is or may be required by law to provide for the defense or indemnification of the officer or employee. Whenever the Authority provides for the defense and indemnification of an officer or employee, the Authority shall have the complete right to compromise the action, proceeding or suit at any time. The General Counsel is authorized to retain additional special counsel at the expense of the Authority to provide for the defense of an officer or employee whenever the General Counsel determines that such retention is appropriate to comply with rules of professional conduct of attorneys in California or otherwise in the best interest of the Authority.

(e) The General Counsel and General Manager are authorized to settle or compromise any action, proceeding or suit for money or damages in an amount not to exceed $50,000.

(f) All power to grant, settle, compromise, defend, initiate or prosecute any claim, action, proceeding or suit for money or damages not otherwise delegated by this Chapter is reserved to the Board.

Section 1.16.030 False Claims

No person shall submit a false claim to the Authority.

Section 1.16.040 Refunds

The General Manager is authorized, when the General Manager deems it appropriate, to refund any monies previously paid to the Authority in an amount not to exceed $100,000. However, notwithstanding the foregoing, the General Manager shall not refund capacity charges except in cases where a member agency has also refunded its portion of capacity charges, or where otherwise required by law.
Chapter 1.20
Definitions and Interpretation

Section 1.20.010  Definitions
Section 1.20.020  Titles and Headings
Section 1.20.030  Limitation on Liability

Section 1.20.010  Definitions

(a) The following words and phrases whenever used in this Code shall have the meaning defined in this section unless a different meaning is specifically defined elsewhere in this Code and specifically stated to apply:

“Authority” means the San Diego County Water Authority, a county water authority organized and existing pursuant to the County Water Authority Act (Stats. 1943, c. 545, as amended).

“Board” means the board of directors of the Authority.

“Chair” means the chairperson of the Board as designated in Chapter 2.00. The Chair may use the title of Chair, Chairman, Chairwoman or Chairperson, as he or she may deem appropriate. The Chair is an officer of the Authority designated by subsection (j) of section 6 of the CWA Act.

“Clerk of the Board” means the employee of the Authority appointed by the General Manager to which the General Manager has delegated ministerial duties of clerk or secretary to the Board.

“Code” means, when used in the context of “this Code” means the Administrative Code of the San Diego County Water Authority.

“CWA Act” means the County Water Authority Act adopted as Stats. 1943, c. 545 and all amendments thereto (West’s Annotated California Codes, Water Code Appendix, Chapter 45.)

“Director” means a duly appointed member of the Board representing a Member Agency.

“General Counsel” means the chief legal officer of the Authority appointed by the Board pursuant to this Code. The term General Counsel includes any deputy or assistant of the General Counsel to whom the General Counsel has delegated responsibility.

“General Manager” means the executive and administrative officer of the Authority appointed by the Board pursuant to this Code. The term General Manager includes any deputy, assistant, department director, or other employee of the General Manager to whom the General Manager has delegated executive, administrative or ministerial responsibility.

“Member Agency” means a public agency the area of which is within the Authority. The term Member Agency as used in this Code shall have the same meaning as in the CWA Act.

“Metropolitan” or “Metropolitan Water District” means the Metropolitan Water District of Southern California.

“Metropolitan Delegate” means a Director appointed by the Board to serve as a representative of the Authority on the board of directors of Metropolitan.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, agent, servant, officer or employee of any of them or any other entity that is recognized by law as the subject of rights or duties.
“Secretary” means the secretary of the Board as designated in Chapter 2.00. The Secretary is an officer of the Authority designated by subsection (j) of section 6 of the CWA Act.

“Vice-Chair” means the vice-chairperson of the Board as designated in Chapter 2.00. The Vice-Chair may use the title of Vice-Chair, Vice-Chairman, Vice-Chairwoman or Vice-Chairperson, as he or she may deem appropriate. The Vice-Chair is an officer of the Authority designated by subsection (j) of Section 6 of the CWA Act.

(b) For the purposes of this Code the following rules of interpretation shall be used:

1. Reference to any gender shall include the other gender;
2. “Shall” is mandatory; “may” is permissive;
3. The singular number includes the plural and the plural the singular, unless otherwise clearly intended from the context;
4. Words used in the present tense include the past and future tense and vice versa;
5. Words and phrases used in this Code that are not specifically defined shall be construed according to the context and approved usage of the language;
6. Words and phrases used in this Code and also in the CWA Act shall be construed to the greatest extent possible as consistent and to the extent of any inconsistency, the provisions of the CWA Act shall prevail.

1.20.020 **Titles and Headings**

Article, chapter and section titles or headings of this Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article, chapter or section.

1.20.030 **Limitation on Liability**

It is the intent of the Board that any provision of this Code establishing performance standards or establishing an obligation or duty to act or to refrain from acting by any Authority officer or employee shall not be construed as creating a mandatory duty for the purposes of tort liability if the officer or employee fails to perform a directed obligation or duty.
Chapter 2.00
Board of Directors

Section 2.00.010 Officers - Designation

The officers of the Board are the Chair, the Vice-Chair and the Secretary.

Section 2.00.020 Officers – Duties

(a) The Chair is the presiding officer of the Board and shall perform such other duties as may be prescribed by the CWA Act, this Code or other action taken by the Board. The Chair shall be recognized as the official head of the Authority for all ceremonial and public purposes, and for the signing of legal instruments and documents. At meetings of the Board, the Chair shall not be deprived of any of the rights and privileges of a Director by reason of being presiding officer.

(b) The Vice-Chair is the presiding officer of the Board in the absence of the Chair. The Vice-Chair shall perform the duties of the Chair whenever the Chair is absent, temporarily incapacitated from performing the duties of Chair, or as may be delegated by the Chair. At meetings of the Board, the Vice-Chair shall not be deprived of any of the rights and privileges of a Director by reason of serving as presiding officer.

(c) The Secretary is the presiding officer of the Board in the absence of the Chair and Vice-Chair. The Secretary shall perform the duties of the Chair whenever the Vice-Chair is unable to perform the duties of the Chair as specified in subdivision (b). The Secretary shall attest or counter-sign the signature of the Chair on legal instruments and documents required by law to have the attestation or counter-signature of the secretary of the Board.

(d) The Chair, Vice-Chair and Secretary, in consultation with the General Manager and General Counsel, shall determine the agenda for meetings of the Board. The agendas for
meetings of committees of the Board will be determined by consultation among the chairperson of the committee, the General Manager and General Counsel.

Section 2.00.030 Officers – Selection

(a) At its regular meeting in September of each even-numbered year, the Board shall select from among its members a Chair, Vice-Chair and Secretary. At its regular meeting in August of each even-numbered year, the Board shall take nominations for each office. A nomination shall be considered if made by a Director of a Member Agency and seconded by a Director of another Member Agency. Action to select each officer shall be made in the same manner as other actions of the Board. The Board may adopt supplementary rules for the nomination and selection of officers of the Board.

(b) If a position as officer of the Board becomes vacant, the Board may select a successor to fill the vacancy for the remainder of the unexpired term.

(c) The Chair shall be selected according to the groups established by Section 2.00.045. Commencing with Chair whose term of office began on January 1, 2005, and for each successive term thereafter, qualification for the office of Chair will be determined by group as follows: Group B, Group A, Group B. This order will be repeated to assure that the directors within Group A are qualified for Chair every third term.

Section 2.00.040 Officers – Term

(a) The term of the officers of the Board shall be two years. Beginning in 2010, the term of office shall commence on October 1 of each even-numbered year. An officer shall continue to serve until his or her successor is selected and takes office.

(b) An officer shall not serve more than one consecutive term in each office. The limitation on service in an office for consecutive terms shall not apply to selection to fill the remainder of an unexpired term if the remainder of the term is 12 or fewer months.

(c) Officers serve at the pleasure of the Board.

Section 2.00.045 Grouping of Directors

For purpose of determining Board Chair and other purposes as specified in this Chapter, Directors shall be grouped as follows: Directors representing the City of San Diego (Group A); Directors representing other member agencies (Group B).

Section 2.00.050 Emergency Operations

In any circumstance justifying an emergency meeting of the Board under the Section 54956.5 of the California Government Code, the General Manager or the Chair may instead call an emergency meeting of the officers of the Board, the immediate past Chair and the chairs of each of
the standing committees listed in Section 2.00.060. Upon a determination by a majority of these
directors of the existence of an emergency, any action approved by a majority of these directors to
respond to that emergency shall be deemed action of the Board. Any actions taken pursuant to this
subdivision shall be reported to the Board not later than seven days after the action or at its next
regularly scheduled meeting, if that meeting will occur not later than 14 days after the action. The
report shall include details of the emergency situation and the reasons justifying the actions taken.
Any action taken pursuant to this subdivision may be rescinded by the Board, provided, however,
that such rescission shall operate prospectively. Nothing in this section is intended to limit the
powers delegated to the General Manager by this Code to declare or act in an emergency. Solely for
the purposes of this section, after a meeting of the directors designated in this section has been
called and for the duration of the emergency, the group of directors shall be designated as the
Emergency Operations Committee.

Section 2.00.060  Standing Committees

(a) The Board shall be organized into the following standing committees that are
advisory to the Board with respect to matters within their respective areas of responsibility:

1. An Administrative and Finance Committee responsible for administrative and
finance matters including: rates, fees, charges, and other sources of revenue; budget;
investments; human resources; employer-employee relations; information
technology; insurance; risk management; and other matters of general business
operations.

2. An Engineering and Operations Committee responsible for matters of design,
construction, replacement, maintenance and operation of the Authority's facilities,
property and equipment, including: administration of the Capital Improvement
Program; administration of the Aqueduct Protection Program; right of way
acquisition and management; system and facility security; water quality; and other
matters relating to facility operations.

3. An Imported Water Committee responsible for imported water supply matters
including: activities and issues as a member agency of the Metropolitan Water
District of Southern California; administration of the Quantification Settlement
Agreement and related agreements; Colorado River Board; State Water Project;
CalFed; and other matters relating to water supplies from sources outside San Diego
County.

4. A Legislation and Public Outreach Committee responsible for community and
governmental matters including: legislation, lobbying and intergovernmental
relations; community relations; media relations; outreach for shortage allocation
programs and policies; and the Small Contractors Outreach and Opportunities
Program.
5. A Water Planning Committee responsible for water planning and local supply development including: water demand and supply planning; shortage allocation planning; water supply forecasting and reporting; seawater desalination; water reclamation; groundwater and conjunctive use; local surface water; water conservation programs; treated water demand and peaking management; environmental management; Urban Water Management Plans; and other planning matters.

(b) Each standing committee shall have not less than fourteen members appointed by the Chair in consultation with the Vice-Chair and Secretary. Committees shall be comprised solely of directors, provided, however, that the representative of the County of San Diego shall be eligible to serve on committees. The Chair, in consultation with the Vice-Chair and Secretary, shall designate a chairperson and two vice-chairpersons of each standing committee. In designating the chairpersons of standing committees, the Chair shall assure that not less than one-third and not more than one-half of the chairpersons are Directors representing the City of San Diego.

(c) Standing committees shall be reorganized every two years following the selection of the Board officers. Appointments to standing committees and designation of the chairperson and vice-chairpersons of each committee shall be made during January of odd numbered years, and may be made as necessary due to vacancies or as determined necessary and convenient by the Chair. Members of standing committees or subcommittees serve at the pleasure of the Chair, provided however, that each Director shall be entitled to serve on at least two standing committees. The term of the chairperson and vice-chairpersons of each standing committee shall be two years, subject to the pleasure of the Chair. The chairperson of a standing committee shall not serve more than one consecutive term. The vice-chairpersons of a standing committee shall not serve more than two consecutive terms. The limitation on service for consecutive terms shall not apply to appointments to the remainder of an unexpired term if the remainder of the term is 12 or fewer months. Members of standing committees or subcommittees, including the chairperson and vice-chairpersons, shall serve until their successors are appointed. The chairperson of a standing committee is its presiding officer and shall be responsible for communicating the recommendation of the committee to the Board. In the absence of the chairperson, a vice-chairperson shall perform the duties of the chairperson. The presiding officer is not deprived of any of the rights and privileges of a committee member by reason of being presiding officer.

(d) Whenever feasible, the General Manager or General Counsel shall present matters to the Board for consideration at regular meetings by written communication via the standing committee having responsibility for the subject. In the event a matter could fall within the responsibility of more than one committee, the Chair in consultation with the Board vice-chair and secretary, and the chairs of the standing committees shall determine which committee will be responsible for the matter. Regular meetings of the standing committees will be on the day of each regular monthly meeting of the Board. A standing committee may meet at such other times as may be determined by the committee or the chairperson of the committee provided that notice of such meetings is given according to law. Meetings of standing committees for which an
agenda is posted 72 hours in advance pursuant to law shall be considered regular meetings of the committee.

(e) Each standing committee is designated as and shall be considered a legislative body of the Authority for the purposes of any law requiring a noticed public hearing prior to taking an action. This subdivision shall not apply to the hearing required by Code of Civil Procedure Section 1245.235 unless otherwise authorized by that section. The recommendation of a standing committee on a matter for which a public hearing has been held shall include a summary of the information presented at the public hearing. The record of the proceedings before the standing committee shall be made available to the Board and shall be considered as part of the record of proceedings of the Board. No person who presented information to a standing committee regarding a matter shall be precluded from presenting the same or similar information during a meeting of the Board on the same matter.

(f) A majority of the members of each standing committee shall constitute a quorum for the transaction of business. If a quorum of a standing committee is not present during the time designated for a meeting of the committee, the chairperson may designate any Director present at the meeting as a temporary committee member. The number of temporary committee members shall be limited to the number necessary to achieve a quorum. A temporary committee member shall serve until the arrival of a regular member or the end of the meeting. If more than one temporary committee member is appointed, the chair shall determine which temporary member is replaced upon the arrival of a regular member. Temporary committee members shall be entitled to participate and vote on all matters coming before the committee for the duration of the temporary appointment.

(g) Directors that are not members of a standing committee may attend only as observers unless the agenda of the committee meeting indicates that a meeting of the Board has also been noticed as required by law. Whenever a standing committee meeting is also noticed as a meeting of the Board, it shall be conducted as a committee meeting and Directors that are not members of the committee may participate in discussions upon recognition by the chairperson, but only members of the committee are entitled to make, second or vote on any motion or other action of the committee. During regular Board meetings, a vote or other formal action of the Board shall be taken only during the portion designated as the formal Board meeting. This subdivision shall not be construed to limit participation by a Director serving a temporary appointment under subdivision (f).

(h) Each standing committee member shall be entitled to one vote on all matters considered by the committee.

(i) The General Manager is responsible for the preparation of minutes of each meeting of each standing committee. The minutes shall be provided to the Board as soon as practical following the committee meeting.
Section 2.00.066  **Audit Committee**

(a) The Board shall have an Audit Committee comprised of five members appointed by the Chair in consultation with the Vice-Chair and Secretary, at least one member of which should have basic knowledge of financial reporting and audit principles. The Administrative and Finance Committee chairperson and vice-chairpersons are ineligible to serve on the Audit Committee. The Chair shall designate one member of the committee to serve as chairperson. The committee may select a vice chairperson. Members of the committee shall serve an indefinite term at the pleasure of the Chair. The affirmative vote of three members is required for any recommendation or other action of the committee. The committee may establish a schedule of regular meetings and shall meet not less than three times annually.

(b) The Audit Committee is a standing advisory committee responsible for the following matters:

1. Recommending selection of the independent auditor or auditing firm, including participation in the selection process;

2. Oversight of the audit contract and annual audit;

3. Oversight of supplemental audits, or agreed upon procedures, including audits of member agency obligations, within the scope of the audit contract as the committee determines are necessary or appropriate;

4. Review of the annual audit, including all portions of any associated Comprehensive Annual Financial Report (CAFR), at one or more public meetings and provision of a report of recommendations to the Board based upon the review;

5. Preparation of an annual report to the Board summarizing its activities, actions, and recommendations, which report may be combined with the report of recommendations on the annual audit.

Section 2.00.070  **Temporary Committees**

(a) The Chair may establish temporary advisory committees as he or she deems appropriate for the conduct of Authority business. Members of such committees shall be appointed by the Chair in consultation with the Vice-Chair and Secretary. Temporary advisory committees composed solely of Directors shall be less than a quorum of the Board. In order to assure compliance with law, Directors that are not members of a temporary advisory committee shall not receive notice of or attend meetings of the committee, unless specifically authorized by the Board officers or unless the meeting is otherwise open to the public.

(b) With the permission of the Chair, a chairperson of a standing committee may establish a temporary committee comprised of less than a quorum of the standing committee. In
order to assure compliance with law, Directors that are not members of a temporary advisory committee shall not receive notice of or attend meetings of the committee, unless specifically authorized by the chairperson of the standing committee or unless the meeting is otherwise open to the public.

(c) The Board may establish other temporary committees as the Board deems appropriate for the conduct of Authority business.

(d) Temporary committees shall have a term determined by the Chair, or the Board for committees established pursuant to subdivision (c), but in any event the term of a temporary committee shall not exceed the term of office of the Chair.

Section 2.00.080 Meetings

(a) Dates. Regular monthly meetings of the Board shall be held on the fourth Thursday of each month, except November and December, in the boardroom of the building that is the Authority’s principal place of business. Regular meetings in the months of November and December shall be on days determined by formal action of the Board.

(b) Times. Regular meetings of the Board will commence at the time stated on the agenda but no earlier than 9:00 a.m., or as soon thereafter as a quorum is present. Regular meetings of standing committees listed in subdivision (a) of section 2.00.060 will commence at the same time and in the same location as the Board meeting and may continue throughout the day. If the agenda states a specific time for commencement of a standing committee meeting, the committee meeting shall not commence before the time stated on the agenda. The formal Board meeting for the conduct of business will convene at 3:00 p.m. on the day of the regular meeting or as soon thereafter as the committee meetings are completed.

(c) Holidays. When the day for a regular meeting falls on a legal holiday, such meeting shall be held at such other time as may be determined by resolution of the Board.

(d) Adjournment. Meetings of the Board may be adjourned to a time and place stated in the notice of adjournment and as permitted by law. The presiding officer may adjourn any meeting without need for a motion.

(e) Special meetings. Special meetings may be called by the presiding officer in accordance with law.

(f) State law / notices. Meetings of the Board, standing committees and temporary committees will be conducted in accordance with the Ralph M. Brown Act and the CWA Act. The Clerk of the Board is responsible for the posting of all notices required by this Code, the Ralph M.

1 Section 6, subdiv. (k) of the CWA Act states, “A quorum necessary for the transaction of business at any meeting of the board of directors exists whenever there are present at the meeting a majority of the membership of the board of directors that includes at least one-half of the number of representatives of each public agency member having more than six representatives serving on the board of directors.”
Brown Act or the CWA Act, unless otherwise specifically stated in this Code. The Clerk of the Board is responsible for giving the mailed notice of regular and special meetings as required by Government Code section 54954.1. The Clerk of the Board may charge an annual fee in an amount determined by the General Manager to reasonably cover the cost of preparing, copying and mailing the notice.

(g) Agenda. Subject to section 2.00.020, subdivision (d), the General Manager is responsible for preparing a written agenda as required by law for each meeting of the Board, a standing committee or any other committee. Items of business shall be placed on an agenda at the direction of the Chair, the General Manager or the General Counsel, and, also, with respect to an agenda for a meeting of a committee, by the chairperson of the committee. Any Director may request that an item be placed on the agenda of any standing committee subject to approval by the chairperson of the committee or consent by a majority of the committee in accordance with applicable law. Before posting, the agenda shall be approved by the Chair, or the committee chairperson for an agenda for a committee meeting, and as to form and legality by the General Counsel. An agenda shall contain information relating to the time and place of the meeting, the order of business and a brief general description of each item of business to be considered at the meeting. For the convenience of the legislative body, items may be designated as “action,” “discussion” or “information;” however such designation shall not limit the power of the legislative body to take action on any item placed before it for consideration on an agenda. The agendas for the regular Board meeting and standing committee meetings held on the day of regular board meetings shall be considered as a single agenda and any item listed on the agenda of any committee may be acted upon by the Board. The description of items to be discussed in closed session may be done by substantially complying with the provisions of Government Code Section 54954.5. An agenda shall also contain information relating to special services available to persons with disabilities to permit those persons to participate in meetings of the Authority’s Board and committees. An agenda may contain other information necessary or convenient for the conduct of Authority business. The Clerk of the Board shall mail an agenda to each person who has filed a request therefore. An agenda may be mailed at the time the agenda is posted. Written requests shall be valid for one year and shall be filed within 90 days after January 1 of each year. The Clerk of the Board may charge an annual fee in an amount determined by the General Manager to cover the reasonably estimated cost of copying and mailing an agenda. The inadvertent failure of the manager to mail an agenda, or the failure of any person to receive the agenda, shall not deprive the Board or any committee of jurisdiction or constitute grounds to invalidate any action.

(h) Staff reports. The General Manager is responsible for establishing a process for preparing staff reports and compiling such reports and other documents relevant to matters of business listed on the agenda of the Board and standing committees (the “agenda packet”). All items listed on the agenda other than presentations, oral communications and closed session items shall have a corresponding staff report included in the agenda packet. The agenda packet shall include all written material delivered, or to be delivered, to all or a majority of the Board members with respect to an item listed on the agenda. The agenda and agenda packet may be delivered to the Board members in cd-rom or other machine-readable format. The agenda packet shall be made available to the public as soon thereafter as practicable. In order to facilitate
public access to the agenda packet, the Clerk of the Board shall place a copy of the agenda packet for public inspection in the reception area of the Authority’s principal place of business. The General Manager may place the agenda and agenda packet on the Internet.

(i) Consent calendar. An agenda may contain a consent calendar of items grouped together for action by single motion and without discussion. The description of items of business listed on the consent calendar shall contain a summarized statement of the action or actions recommended by the General Manager or General Counsel. Items for which substantive review by a standing committee has or will occur prior to consideration by the Board may be included on the consent calendar of the formal Board meeting. If necessary to reflect the recommendation of the standing committee with jurisdiction over a matter, an item listed on the consent calendar of the formal Board meeting shall be modified before consideration of the consent calendar. Items shall not be added to the consent calendar of an agenda pursuant to Section 54954.2 of the California Government Code. Before adoption of the consent calendar the presiding officer shall first determine whether any Director, Authority staff or member of the audience desires to remove an item for comment or discussion. In that event, the presiding officer shall defer action on the particular matter or matters and place them on the regular agenda for consideration in any order deemed appropriate. In lieu of removing an item from the consent calendar, the chair or other member of a standing committee may request amendment of the proposed action to reflect the recommendation of the standing committee. After acting on requests for removal or amendment of items, the presiding officer shall confirm the consent calendar and call for a motion to approve the consent calendar as confirmed. Any Director, including a Director holding a proxy, may record a negative vote or an abstention on a consent calendar item without removing the item for discussion by so stating prior to the vote on the motion to approve the consent calendar as confirmed.

(j) Minutes and records. Minutes of the Board and standing committee meetings shall be kept as provided in this subdivision:

1. Unless the reading of the minutes is requested by a majority of the quorum, the minutes may be approved without reading if the Clerk of the Board has furnished each member with a copy thereof before the meeting. If the minutes have not been so distributed, approval of those minutes shall automatically be deferred to the next meeting.

2. The minutes of the Board meetings, except closed sessions, shall be kept by the Clerk of the Board. The minutes of standing committee meetings shall be kept by the Clerk of the Board or such other person as designated by the General Manager. The minutes shall be a record of each particular type of business transacted or discussed but a verbatim transcript of the proceedings is not required.

3. A Director may request the privilege of having an abstract of his or her statement on any subject under consideration at a meeting entered in the minutes.
4. An audio or video recording may be used as an aid in the preparation of the minutes. Pursuant to Government Code Section 54953.5 the recordings may be erased or destroyed thirty days after the recording. Thereafter, the recording medium may be reused or erased unless the Chair, General Manager or General Counsel has directed otherwise as to certain recordings. Prior to reuse or erasure, the recordings shall be subject to inspection pursuant to the California Public Records Act. Members of the public may hear recordings of meetings during office hours at times convenient to the Clerk of the Board. Duplicate recordings may be made under procedures established by the Clerk of the Board. The Clerk of the Board shall allow Authority machines capable of replaying a recording to be used by the public, free of charge, for listening or recording purposes when such machines are not necessary for use by the Authority. Except as required by law in connection with a legal proceeding or upon request of a Director approved by the Chair, a written transcript of any recording shall not be provided unless the person requesting the transcript has first paid a deposit of an amount reasonably estimated by the Clerk of the Board for the full cost of preparation of the transcript. The General Manager is authorized to adopt administrative rules, regulations or procedures for the implementation of this section, including without limitation procedures to safeguard the recordings against theft, mutilation or accidental damage, to prevent inspection or recording from interfering with the orderly function of the office, and to ensure that the integrity of the records is maintained. Except as otherwise prohibited by law, the Authority may charge a fee sufficient to cover and which does not exceed the cost, including labor and materials, of, but not limited to, providing records and administering this provision. The Clerk of the Board is authorized to authenticate any transcription of a meeting at the expense of the person requesting the authentication.

5. If any person desires to have a matter reported by a stenographer reporter, the person may employ one directly at his or her expense. The General Manager may make reasonable accommodations in order to assure such reporter is seated in such a position at the meeting as to permit accurate recording of the proceedings.

6. Any person may film, video tape, photograph or audio tape a Board or a committee of the Board meeting in the absence of a reasonable finding by the presiding officer that the recording cannot continue without noise, illumination or obstruction of view that constitutes or would constitute a persistent disruption of the proceedings. Meetings may be televised by any person provided that it can be accomplished without noise, illumination or obstruction of view that constitutes or would constitute a persistent disruption of the proceedings.

7. Following approval, minutes of Board meetings shall be permanently kept in a record called “Book of Minutes of the Board of Directors, San Diego County Water Authority.” Ordinances and resolutions may be referenced in the minutes by title and number, provided however, that the same are set forth in full in a permanent record called “Book of Ordinances” and “Book of Resolutions.”
respectively. The Book of Minutes, Book of Ordinances and Book of Resolutions may be kept in any format or medium suitable for storage of permanent public records.

(k) Procedures. The following procedural rules apply to meetings of the Authority Board and committees:

1. General rule of conduct. The presiding officer shall endeavor to conduct the meeting in an orderly, even-handed and businesslike manner in substantially the order and manner provided on the agenda. Members should have a full and equal opportunity to express their respective views. Matters should be fully deliberated before action is taken. The presiding officer may make or second any motion and present and discuss any matter as a member of the legislative body.

2. Closed Sessions. Personal electronic communication devices of any kind – including cell phones, laptops, and tablets – are not permitted to be used by Board members during closed sessions. Any Board members who are “on call” for emergency purposes shall: (a) notify General Counsel in advance of the meeting that they may have to take an emergency call; and (b) have their phone in “vibrate” mode and leave the closed session if they receive such a call.

3. Authority of Presiding Officer. The presiding officer shall make all determinations of parliamentary procedure, subject to appeal by any member to the Board or committee. Appeals of decisions by the presiding officer shall require a second and shall be promptly considered. Appeals of decisions by the presiding officer shall be determined by a majority of the members present at the meeting. The presiding officer may confer with the General Counsel before making a determination.

4. Motions Generally. A motion is the formal statement of a proposal or question to the Board or a committee for consideration and action. The presiding officer is not disqualified from making, seconding or voting on a motion. If a motion contains two or more divisible propositions, the presiding officer may divide it and call for a separate vote on each proposition. If a motion is properly made, the presiding officer shall call for a second. No further consideration is required on a motion that does not receive a second. The presiding officer may restate a motion, or call for restatement by the clerk, before a vote. A motion once made and seconded may not be withdrawn by the maker without the consent of the second. A motion may be made at any time during consideration of a matter on the agenda; however, the presiding officer may defer recognizing a motion until after presentation of a report of staff, public comment and questions by members. It is not necessary for a motion to be pending in order for deliberation of a matter on the agenda.

5. Precedence of motions. When a main motion is pending, no other motion shall be entertained except the following which shall have precedence, one over the other, in the following order: (1) Adjourn; (2) Recess; (3) Lay on the Table; (4) Order the
previous question (calling the question); (5) Limit or extend debate; (6) Refer to committee or staff; (7) Continue; (8) Amend; (9) Main motion.

A motion shall not be in order to revive a motion previously defeated at the meeting, or to rescind or otherwise change the nature of a motion previously approved at the meeting, unless a motion to reconsider is first made and approved. A motion shall not be in order when the previous question has been ordered. A motion shall not be in order while a vote is being taken. A motion shall not be in order when made as an interruption of a member while speaking. A motion considered in committee may be reconsidered during the formal Board meeting.

6. Particular motions, purpose and criteria. The purpose and salient criteria of the motions listed in paragraph 4 are as follows:

(1) Motion to adjourn:
   (A) Purpose: To terminate a meeting.
   (B) Debatable or Amendable. No, except a motion to adjourn to another time is debatable and amendable as to the time to which the meeting is to be adjourned.

(2) Motion to recess:
   (A) Purpose: To permit an interlude in the meeting and to set a definite time for continuing the meeting.
   (B) Debatable or Amendable. Yes, but restricted as to time for continuing the meeting.

(3) Motion to table:
   (A) Purpose: To set aside, on a temporary basis, a pending main motion; provided that, it may be taken up again for consideration during the current meeting or at the next regular meeting. If a matter is placed on the table at a meeting and not taken off the table for consideration before adjournment of that meeting, the matter shall be placed on the agenda for further consideration at the next regular meeting. The Board may consider any matter properly on its agenda regardless of whether a committee has previously tabled the matter.
   (B) Debatable or Amendable. It is debatable but not amendable.

(4) Motion for previous question (“calling the question”):
   (A) Purpose: To prevent or stop discussion on the pending question or
questions and to bring such question or questions to vote immediately. If the motion passes, a vote shall be taken on the pending motion or motions.

(B) Debatable or Amendable. No.

(5) Motion to limit or extend debate:

(A) Purpose: To limit or determine the time that will be devoted to discussion of a pending motion or to extend or remove limitations already imposed on its discussion.

(B) Debatable or Amendable. Not debatable; amendments are restricted to period of time of the proposed limit or extension.

(6) Motion to refer to committee or staff:

(A) Purpose: To refer the question to a committee or to General Manager or General Counsel for the purpose of investigating or studying the proposal and to make a report and recommendation thereon. If the motion fails, discussion or vote on the question resumes.

(B) Debatable or Amendable. Yes.

(7) Motion to continue:

(A) Purpose: To prevent further discussion and voting on the main motion until a specified future date or event. If the motion fails, discussion and voting on the main motion resumes. If it passes, the subject of the main motion shall not be brought up again until the specified date or event.

(B) Debatable or Amendable. It is debatable but not amendable.

(8) Amend:

(A) Purpose: To modify or change a motion that is being considered. An amendment may be in any of the following forms: to "add" or "insert" certain words or phrases; to "strike out certain words or phrases and to add others"; to "replace" certain words, phrases or actions on the same subject matter as the one pending; to "divide the question" into two or more questions so as to get a separate vote on particular points. A motion to amend shall relate to the subject of the main motion. A motion to amend, including a motion to substitute an entire motion for the one pending, shall not be used to change the nature of the main motion, for example a motion to replace the word “approve” with the word “disapprove” is prohibited where the nature of the main motion is changed. If a motion to amend passes, then the main motion should be voted on as amended.
(B) Debatable or Amendable. It is debatable if the main motion to which it applies is debatable. It is amendable, but a motion to amend an amendment is not further amendable.

(9) Main Motion:

(A) Purpose: To bring before the Board, for its consideration, any particular subject independent of any other pending motion or parliamentary situation.

(B) Debatable or Amendable. Yes.

7. Action taken. Action of the Board is taken with respect to a pending motion whenever the requisite number of affirmative votes required by Section 6 of the CWA Act has been cast at a meeting. If the requisite number of affirmative votes is not obtained with respect to a pending motion, the presiding officer shall deem the pending motion to have failed. If a motion fails because of a failure to receive the requisite number of affirmative votes, the presiding officer may entertain a different motion with respect to the same subject matter. Action by a committee requires the affirmative vote of a majority of the quorum. A Director may change his or her affirmative or negative vote on a motion only if a timely request to do so is made immediately following the announcement of the vote by the presiding officer and prior to the time the meeting is adjourned. A Director who publicly announces that he or she is abstaining from voting on a particular matter shall not subsequently be allowed to withdraw the abstention.

8. Reconsideration. A motion to reconsider any action taken by the Board may be made at the meeting such action was taken only during the same meeting or at a recessed or adjourned session thereof upon a motion by one of the directors who voted with the prevailing side. A motion to rescind, repeal, cancel, or otherwise nullify or amend a prior Board action shall be in order at any subsequent meeting of the Board and may be made by any director, subject to placement on the agenda. The effect of such action shall operate prospectively and not retroactively and shall not operate to adversely affect rights which may have been vested in the interim without notice and an opportunity to be heard having been given to the affected party or parties. Any interested person aggrieved by a decision of the Board may request the rescission, repeal, cancellation, nullification or amendment of the decision by filing a written request for such action, including the grounds upon which the request is made, with the Clerk of the Board.

(I) Public hearings. Wherever by law the Board or a committee of the Board is required to hold a public hearing on any matter before it, such hearing will be held in accordance with the
rules and procedures set forth in this subdivision. When a public hearing is required or permitted by law, the standing committee listed in subdivision (a) of section 2.00.060 having subject matter jurisdiction may hold the hearing, except that hearings required before the declaration of an emergency, including a water shortage emergency shall be by the Board. Nothing in this subdivision shall prohibit or limit the Board or a committee of the Board from holding a public hearing on any matter before it, whether required by law or not, and nothing in this subdivision shall prohibit or limit any member of the public from addressing the Board or committee in accordance with the procedures provided for in this section, or as required by law, irrespective of whether or not a public hearing is being held.

1. The presiding officer shall announce that it is the time and place for a public hearing scheduled on the agenda.

2. Prior to public hearings, copies of the agenda with attachments, including the staff report, if any, shall be available at the office of the Clerk of the Board at least twenty-four hours prior to commencement of the hearing; provided, however, the presiding officer may allow the filing of supplemental reports which shall be made public at the commencement of the hearing.

3. The order of the hearing shall be as follows unless otherwise required by law:
   
   (A) Presentation of staff and/or advisory commission report.
   
   (B) Presentation by the Clerk of previously filed written correspondence or petitions.
   
   (C) Questions from the Directors.
   
   (D) Presentation by the applicant or other parties whose rights or interests are directly the subject matter of the hearing.
   
   (E) Public testimony.
   
   (F) Response by staff or the applicant to facts or issues presented during public testimony.
   
   (G) Further questions from Directors. During this portion of the hearing, no further public testimony shall be permitted, except direct responses to questions by a member if permitted by the presiding officer.

4. The presiding officer may, dependent upon the necessity for ensuring adequate presentation of testimony and evidence to provide a fair hearing to all participants, set appropriate time limits for presentations, giving due consideration to other business on the agenda.

5. If a public hearing cannot be reasonably concluded in light of other business to be
conducted and the number of persons desiring to present testimony, the hearing may be continued to another date or dates by the presiding officer.

6. During the public hearing, the Board or committee shall receive oral or written evidence relevant to the matter being considered which shall become part of the record. Evidence received at public hearings provided for in this ordinance shall be relevant and material to the issues to be decided or determined. The rules of evidence as established by law for judicial proceedings in the State of California shall not be applicable and during the hearing any credible evidence appropriate to afford a full presentation of the facts essential for judicious consideration of the matter which is the subject of the public hearing may be presented at the discretion of the Chair. Failure on the part of the presiding officer to strictly enforce rules of evidence or to reject matters that may be irrelevant or immaterial shall not affect the validity of the hearing. Any procedural errors that do not affect the substantial rights of the parties shall be disregarded.

7. If there is a staff report, it shall be considered as evidence and shall become part of the record of a public hearing without the necessity of being read in full as part of the staff presentation. In addition, any of the following may be presented to the Board or a committee of the Board and, if presented, shall also become part of the record:

(A) Exhibits and documents used by the Authority staff and any persons participating in the hearing;

(B) Maps and displays presented for use at the hearing; provided that, whenever practicable, they shall be displayed in full view of the participants and the audience;

(C) All communications and petitions concerning the subject matter of the hearing; provided that, a reading of such matters only shall be had with permission of the presiding officer;

(D) Information obtained outside the board meeting such as a view of the site, provided such information, to the extent it forms the basis for findings in a quasi-adjudicative matter, shall be disclosed for the record.

8. All exhibits, reports, maps and other physical evidence placed before the Board shall be retained by the Clerk. Such exhibits may be released by the clerk with the approval of the General Counsel. Items that are large, perishable, bulky or otherwise difficult to store may be returned to the person submitting the item provided that a photographic or videotape record of the item is retained by the Clerk.

9. Following the presentations, the presiding officer shall order closed the public input portion of the hearing, at which time no further evidence, either oral or written, will be accepted except in response to a question by a member of the Board or committee;
provided, however, that this rule may be relaxed by the presiding officer where it appears that good cause exists to hear further evidence concerning the matter which is the subject of the public hearing. Following completion of questions by members of the Board or committee, the presiding officer may order the public hearing closed. A public hearing on any matter once closed cannot be reopened on the date set for hearing unless the presiding officer determines that all persons who were present when the hearing closed are still present. Nothing in this section, however, is intended to prevent or prohibit the reopening of a public hearing at any subsequent regular or special meeting of the Board or committee, provided notice is first given.

10. A decision may be made at any time following the close of the public hearing. Unless the documents are presented as part of the staff report, the Board or committee may indicate its intended decision and instruct the General Counsel to return with the documents necessary to affect that decision including findings as may be necessary and appropriate to the matter. Upon return of such documents, the Board or committee shall determine if the findings are supported by the evidence before it at the hearing, and if the decision is supported by the findings, and after making any changes render its decision by taking action on the documents. The decision of the Board or a committee of the Board is not final until approval of the documents.

11. A Director who was absent from all or a part of a public hearing on matters for which a public hearing is required by law shall not participate in a decision on the matter unless he or she has examined the evidence including listening to a recording of the oral testimony and represents that he or she has a full understanding of the matter.

12. Whenever the requirements of this code or other law require that hearings with regard to a particular matter be conducted pursuant to a specific procedure, the provisions of the law establishing the requirements shall prevail over this subdivision to the extent of any inconsistency. Specific rules of procedure for administrative hearings established by official action of the Board or a committee of the Board shall prevail over the provisions of this subdivision to the extent of any inconsistency.

(m) Board Operating Policies. To maintain a cohesive, productive working environment, the members of the San Diego County Water Authority Board of Directors commit to:

1. Support the Authority’s mission.

2. Bring Authority related concerns, issues, and conflicts to the Authority Board for discussion.

3. Offer alternative solution(s) when addressing a problem or issue.

4. Show respect to each other as appointed representatives of their member agencies.
5.  Promote civility during Board meetings and tolerate nothing less.

6.  Maintain the confidentiality of material discussed during closed Board meeting sessions. Similarly, not to disclose the content or substance of confidential or privileged communications relating to Authority business.

7.  Limit the length of comments during Board meetings to three minutes per Director per item and not repeat points that already have been stated by other Directors.

(n) Oath or affirmation. Whenever any law requires that testimony presented to the Board or a committee of the Board be under oath or affirmation, the persons presenting such testimony shall be sworn in by the presiding officer.

(o) Failure to observe procedures--Waiver. The failure to strictly observe the procedural provisions of this Section shall not affect the jurisdiction of the Board or a committee of the Board or invalidate any action taken at a meeting that is otherwise held in conformity with law so long as the requisite number of affirmative votes has been cast for the particular action. To the extent that this Article establishes requirements that are more restrictive than the Ralph M. Brown Act, or other provisions of state statute applicable to meetings of the Authority, the provisions of this Section shall prevail. A failure on the part of any person to register a timely objection of an alleged procedural violation shall constitute a waiver of all such objections. An objection shall be deemed timely only if it is made during the meeting, proceeding or public hearing to which the alleged violation relates. Nothing in this section shall preclude the Board or a committee from taking any action it deems appropriate to cure a violation or alleged violation of the procedures of this Article that is brought to its attention.

(p) Limitation on liability. The procedural provisions of this Section establishing duties of Authority officers or employees are directory in nature and shall not be deemed to create a mandatory duty, the breach of which could result in liability to the Authority or to the officer or employee pursuant to state statute or other law.

Section 2.00.085  Standing Committee Recommendations

(a) A standing committee has jurisdiction to consider and make a recommendation to the Board regarding any item of business within the responsibility of the committee. Committee recommendations may be communicated to the Board in any manner necessary and convenient to the transaction of Board business. A standing committee may consider other matters referred to it by the Board, the Chair, or the General Manager.

(b) During its consideration of a matter, a standing committee may determine, due to the urgent nature of the matter, that prompt final action by the Board is in the best interest of the Authority. Any such determination shall be communicated to the Board along with the
committee’s recommendation for action and the procedure established by subdivisions (c) and (d) for referral of a matter for reevaluation by committee shall not apply to that matter.

(c) Except as provided in subdivisions (b) or (e), any matter upon which a standing committee has made a recommendation for action shall be referred back to the committee for reevaluation if either:

1. The Board approves a motion for action that changes the nature of or is materially different from the committee recommendation, in which case the vote of the board shall be deemed to constitute preliminary consideration of the matter and approval of action to refer the matter back to committee, or

2. The Board approves a motion to refer the matter back to committee for reevaluation. Such a motion may be made by any director if during Board deliberations it appears there is significant disagreement with the committee recommendation among the Directors. Such a motion shall take precedence over all other motions relating to the matter.

(d) If a matter is referred back to a committee for reevaluation, the committee shall reevaluate the matter and make a recommendation to the Board at the Board’s next regular meeting. The chair of the standing committee may request the General Manager to obtain a recommendation of the member agency managers for the committee to consider during its reevaluation of a matter. If the committee fails to make a recommendation for consideration by the Board at the Board’s next regular meeting or the committee reaffirms its prior recommendation, the Board Chair shall consult with the Chair and Vice-Chairs of the committee and may present a compromise recommendation to the Board. The Board may take final action on a matter referred back to a committee at the Board’s next regular meeting following the referral.

(e) A matter shall not be referred back to committee if, during the formal Board meeting, a majority of the members of the committee vote in favor of a motion for action that changes the nature of or that is materially different from the committee recommendation.

(f) This section applies to standing committees listed in section 2.00.060.

Section 2.00.090 Representative of the County Board of Supervisors

(a) The Board of Supervisors of San Diego County may designate one of its members to serve at its pleasure as the County’s representative to the Board. The County’s representative shall be eligible to participate in all meetings and functions of the Authority in the same manner and extent as a Director, except as follows:

1. The County’s representative may not be counted toward determination of a quorum of the Board;
2. The County’s representative may not move, second or vote on any action of the Board;

3. The County’s representative may not serve as Chair, Vice-chair or Secretary of the Board;

4. The County’s representative may not receive compensation under section 2.05.010, but may be reimbursed for actual and necessary expenses under section 2.05.020.

(b) The Board of Supervisors of San Diego County may designate one of its members to serve at its pleasure as the County’s alternate representative to the Board. In the absence of the County’s representative to the Board, the County’s alternate representative shall be eligible to participate in all meetings and functions of the Authority in the same manner and extent as the County’s representative.

Section 2.00.100 Appointment Authority

The Board shall appoint and fix the compensation of the General Manager and General Counsel. The Board may retain or appoint, special counsel, an independent auditor, lobbyists and other independent contractors or consultants who may report directly to the Board or may be subject supervision of the General Manager or General Counsel as the Board deems appropriate.
Chapter 2.04

General Manager

Section 2.04.010 Office Established

The office of the General Manager is created and established. The General Manager is the chief administrative and executive officer of the Authority.

Section 2.04.020 Appointment

The General Manager shall be appointed by and serve at the pleasure of the Board.

Section 2.04.030 Qualifications

The General Manager shall be a college graduate and shall have had extensive administrative, supervisory and management experience and training in the planning, coordination and financing of varied governmental or enterprise activities. Members of the Board are ineligible for appointment as General Manager for a period of two years following the date upon which the person ceases to be a member of the Board.

Section 2.04.040 Compensation

(a) The compensation, including without limitation, salary, benefits, reimbursement of expenses, and other terms and conditions of employment of the General Manager shall be determined from time to time by the Board.

(b) The compensation, including salary, benefits, reimbursements and other terms and conditions of employment of the General Manager may be established by contract.

(c) Annually, each member of the Board shall be requested to evaluate the performance of the General Manager by completing and returning to the Secretary of the Board an evaluation form approved by the Chair. The officers of the Board shall review the completed evaluation forms and meet with the General Manager to discuss the results of the collective performance evaluations. The completed evaluation forms shall be confidential among the officers of the Board, the Board and the General Manager and shall not be subject to public disclosure. After completion of the
review, the Chair shall report to the Board that the review process has been completed and highlight any evaluation results deemed appropriate. The Board may meet in closed session as authorized by state law to review the report and the performance of the General Manager. Based upon the performance evaluation, the officers of the Board may recommend changes in annual salary and other compensation in the form of fringe benefits for the General Manager to the Board for action as appropriate. The officers of the Board are designated as the representatives of the Board for the purposes of negotiating with the General Manager regarding salary and other compensation paid in the form of fringe benefits. The Board may meet in closed session as authorized by state law with the officers of the Board for the purpose of reviewing its position and providing instructions. Any action affecting the salary or other compensation in the form of fringe benefits of the General Manager shall be taken in open session, unless otherwise specifically authorized by state law. The review process shall be commenced and completed, as nearly as practicable, during the anniversary month of the General Manager's employment.

Section 2.04.050 Authority and Duties

(a) The General Manager shall give full time attention to the duties of the office.

(b) The General Manager is responsible for the efficient administration of all the affairs of the Authority the responsibility for which is not otherwise delegated to the General Counsel or another officer appointed directly by the Board, or is reserved to the Board. In addition to the general powers as administrative head of the Authority, and not as a limitation thereon, the General Manager shall:

1. Supervise and control the administrative, executive and financial activities of the Authority;

2. Make such recommendations to the Board, the Board Officers, or committees of the Board concerning the affairs of the Authority as the Manager determines to be appropriate;

3. Bi-annually prepare and submit to the Board a two-year budget and such other financial reports as the Board may require;

4. Attend all meetings of the Board and its standing committees;

5. Make investigations of complaints regarding the administration or affairs of the Authority and any department or division thereof;

6. Have charge of and supervise the property of the Authority;

7. Administer and enforce contracts of the Authority, except contracts administered and enforced by the General Counsel or directly by the Board;

8. Enforce all ordinances, resolutions, policies and regulations of the Authority;
9. Perform such other duties as the Board may from time to time delegate or require.

(c) The General Manager is responsible for the preparation of the annual report of the Authority, covering all activities of the Authority, including information on operations and maintenance, engineering projects, financial matters, legal activities, and the Authority's relationship with Metropolitan Water District.

(d) The General Manager is responsible for implementation of the budget adopted by the Board, for making and controlling all expenditures and for collecting all revenues of the Authority. The General Manager shall appoint a treasurer and controller.

(e) The General Manager may declare an emergency and in such event shall have the additional powers specified in the Authority’s Emergency Plan. An emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services. In a declared emergency, the General Manager may direct Authority employees and take action to continue or restore Authority service capability and may execute any contracts for the construction of works, purchase of equipment, materials, goods or supplies, or performance of labor or services as provided in Sections 4.04.020, 4.04.030 and 4.08.040 of this Code. The General Manager shall report to the Board not later than seven (7) days after the emergency action or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the emergency and reasons justifying the actions taken. At each regularly scheduled meeting following the declaration of emergency, the Board may by formal action determine whether the need to take immediate action in response to the emergency continues. If the Board takes no action to determine that the emergency and need to take immediate action in response to the emergency continue, the power to operate under emergency conditions will terminate and any new work not yet procured shall be accomplished in accordance with applicable provisions of this Code.

Section 2.04.060 Assistants and Deputies

(a) The General Manager may appoint assistants and deputies as the Manager deems necessary or convenient, subject only to the budgetary limitations imposed by the Board. Subject to limitations as may be imposed by the General Manager, deputies and assistants possess the powers and may perform the duties of the General Manager.

(b) In the event of a temporary absence or disability of the General Manager, the Deputy General Manager, if any, shall serve as the General Manager pro tempore. If there is no Deputy General Manager or if the Deputy General Manager is absent, the Assistant General Manager, if any, shall serve as the General Manager pro tempore. In the absence of a deputy or assistant, the General Manager may designate a qualified head of a department to perform the duties of the General Manager during the temporary absence or disability. The Board may designate an acting General Manager if the Manager’s absence or disability extends longer than two months, or if the absence or disability is permanent.
Section 2.04.070  **Delegation of Authority**

(a) The General Manager may delegate authority vested in the General Manager to any subordinate employee, agent or consultant of the Authority, provided, however, that ultimate responsibility for performance of delegated functions remains with the General Manager.

(b) The General Manager may promulgate and issue administrative orders and policies for the exercise of delegated authority by department directors and employees of the Authority.

Section 2.04.080  **Board – Manager Relations**

Members of the Board shall deal with the administrative services of the Authority through the General Manager. The General Manager shall take orders and instructions from the Board only when sitting in a duly convened meeting, and no individual Board member shall give any orders or instructions to the General Manager.

Section 2.04.090  **Appointment Authority**

The General Manager is the appointing authority for all subordinate employees of the Authority, except for the General Counsel, employees appointed by the General Counsel and employees, agents or consultants directly appointed by the Board. Subject to applicable personnel rules and regulations, the General Manager is responsible for the appointment, removal, promotion, demotion and discipline of all employees of the Authority for which the General Manager is the appointing authority. The General Manager shall have authority to control, order and direct heads of departments and subordinate employees, and to determine reporting relationships and responsibilities.

Section 2.04.100  **Departmental Cooperation**

(a) The General Manager shall cooperate with and assist the General Counsel in the implementation of the General Counsel’s duties and functions.

(b) Subject to the control of their appointing authority, subordinate employees under the supervision of the General Manager or General Counsel shall assist the General Manager in administering the affairs of the Authority as the General Manager may direct or request.
Chapter 2.05

Official Duties and Directors Compensation and Reimbursement

Section 2.05.010 Compensation

(a) Subject to the limitations of this section, Directors shall receive compensation of one hundred fifty dollars ($150) per day (per diem compensation) for each day's attendance at meetings of the Board, or for each day's service rendered as a member of the Board by request of the Board, and for each day while reasonably engaged in travel time to attend authorized meetings.

(b) Notwithstanding subdivision (a), the Chair, Vice Chair and Secretary shall receive compensation of one hundred eighty dollars ($180) (per diem compensation) for each day's attendance at meetings of the Authority, or for each day's service rendered as an officer of the Board, and for each day while reasonably engaged in travel time to attend meetings or perform service. Per diem compensation paid to the Chair, Vice Chair and Secretary is subject to the limitation of subdivision (d).

(c) Unless otherwise provided in this section or when specifically authorized in each instance by the Board, per diem compensation shall be limited to the matters listed in this subdivision:

1. Attendance at a meeting of the Board.

2. Attendance at a meeting of a standing committee of the Board.

3. Attendance at a meeting of a temporary committee by members of the committee.

4. Attendance at a meeting or other official business event of the Metropolitan Water District attended as a Metropolitan Delegate or the Colorado River Board of Southern California attended as the Authority’s representative on its board of directors.

5. Attendance at a meeting of a legislative body or advisory body of another government agency or of an organization of which the Authority is a member as the Authority’s designated representative to that agency or organization.

6. Attendance at a semi-annual conference of the Association of California Water Agencies or regular ACWA Region 10 meetings. A Director shall not receive compensation for attendance at more than one conference and more than two Region 10 meetings in a calendar year.
7. Attendance at a conference or organized educational activity conducted in compliance with subdivision (c) of Government Code Section 54952.2, including, but not limited to, ethics training required by Government Code Sections 53234 – 53235.5, when attendance by the Director has been authorized in advance by the Chair.

8. Attendance at a regular monthly meeting of the Council of Water Utilities. A Director shall not receive compensation for attendance at more than four meetings in a calendar year.

9. Attendance at business meetings and conferences of the California Special District Association. A Director shall not receive compensation for attendance at more than two events in a calendar year.

10. Attendance at the annual conference of the Colorado River Water Users Association. A Director shall not receive compensation for attendance at more than one conference every two calendar years.

11. Attendance at a meeting, event or conference of an organization of which the Authority is a member when attendance by the Director has been authorized in advance by the Chair.

12. Attendance at a meeting of a legislative body of another government agency, or an official event sponsored by another government agency when attendance by the Director has been authorized in advance by the Chair.

13. Attendance at a meeting with members of the legislative, executive or judicial branch of the state or federal government when attendance by the Director is authorized in advance by the Chair.

14. Attendance by a committee chair or vice chair at a meeting with the General Manager, General Counsel, or Board Chair, Vice-chair or Secretary to discuss matters of Authority business.

15. Attendance by a member of a committee at a meeting, other than a committee meeting, with a committee chair, vice chair, or both to review with staff matters of Authority business when attendance is authorized in advance by the committee chair.

16. Attendance at a meeting with the General Manager or General Counsel, or a member of their respective staffs, at the request of the General Manager or General Counsel.

17. Attendance at a training meeting sponsored by the Special Districts Risk Management Association when the attendance is authorized in advance by the Chair. The Chair shall not authorize attendance by more Directors than necessary to obtain for the Authority the maximum premium reduction provided by the Association.
(d) For purposes of this section, attendance includes:

1. Physical presence for a majority of the time scheduled on the agenda for a meeting, event or occurrence listed in subdivision (c), unless presence for a lesser time is authorized by the Chair, or, for a meeting of a committee, by the committee chair, or by the board or committee, respectively. If no specific time is scheduled, a majority of the meeting is at least one half of the actual time.

2. Participation by teleconference at the majority of a meeting pursuant to California Government Code section 54953.

3. Participation by teleconference in a meeting listed in paragraphs 4, 5, 13, 14, 15, or 16 of subdivision (c) provided the duration of the teleconference is one hour or more.

4. Participation in an approved home study or online ethics course to meet the requirements of Government Code Sections 53234 – 53235.5, when participation of the Director has been authorized in advance by the Chair.

(e) A Director desiring compensation authorized by this section shall submit a claim for compensation not later than 90 days following the date of the occurrence for which the compensation is claimed. The General Manager shall review claims for per diem compensation for compliance with this section. If a claim is preliminarily determined not to be authorized by this section, the matter shall be referred to the Chair or to the Board for a final determination.

(f) Per diem compensation is limited to ten days in any calendar month. If a Director attends more than one meeting, event or occurrence listed in subdivision (c) on a day, the Director may be paid compensation for one day, regardless of the number of meetings, events or occurrences attended. If a Director participates in a home study or online ethics course ethics training pursuant to Government Code Sections 53234 – 53235.5, the Director may be paid compensation for one day upon verification of successful completion of the course.

(g) A Director who requests compensation for attendance at a meeting except a meeting listed in paragraph 1, 2, 3, 14, 15 or 16 of subdivision (c) shall provide a brief report of the meeting to the Board through the standing committee having jurisdiction over the subject matter at the next regular meeting of the committee following the meeting that was attended.

(h) The limitations of paragraphs 6, 8, 9, 10, and 17 do not apply to attendance by a Board Officer or committee chair that has been authorized in advance by the Chair.

Section 2.05.020 Reimbursement for Expenses of Office

(a) Directors may be reimbursed for the actual and necessary expenses of travel, meals and lodging incurred in the performance of duties that qualify for compensation under section 2.05.010, notwithstanding subdivision (f) of that section, and for attendance at other
meetings or performance of other duties when authorized in each instance in advance by the Board. The following expenses are not reimbursable: alcoholic beverages, tips greater than 15 percent, parking or traffic violation fines, in-room movies, laundry service, recreational expenses, personal losses, companion expenses, and personal telephone calls in excess of one 15-minute call per day. Rental car expenses are not reimbursable unless use of a rental car is authorized by the Chair before the travel. Third-party expenses are not reimbursable except as provided in subdivision (k). Questions regarding the propriety of a particular type of expense should be resolved by consultation with the General Manager or General Counsel before the expense is incurred. Except when otherwise authorized by the Chair, a Director shall make travel arrangements through the General Manager.

(b) A Director desiring reimbursement shall submit a claim for expenses, including proof of expenses, not later than 90 days following the date the expense is incurred. The General Manager shall provide an expense report form for submission of claims and proof of expenses. Receipts are required for all expenses in excess of $10.00 for which reimbursement is claimed. A written statement of the Director filing the claim may be submitted in lieu of a receipt if the amount claimed is $10.00 or less. Receipts and written statements shall be itemized. If a vendor’s receipt does not itemize the charges, the Director filing the claim shall provide an itemized written statement along with the receipt.

(c) Except for expenses of mileage, parking, or fares for commuter rail, trolley or bus transportation, reimbursement for travel and lodging shall be limited to travel outside of San Diego County. Except when otherwise authorized in writing by the Chair, reimbursement for lodging shall be limited to circumstances where a Director cannot reasonably expect to attend the occasion by commencing travel from his or her home by 6:00 a.m. or reasonably expect to return to his or her home following the occasion by 11:59 p.m. of the same day as the occasion. The Chair’s written authorization shall include a brief description of the circumstances justifying the authorization and be filed with the Clerk of the Board.

(d) Directors shall not be reimbursed by the Authority for expenses for which the Director receives reimbursement from any other agency, including, without limitation, a vehicle allowance or agency vehicle.

(e) If lodging is in connection with a conference or organized educational activity for which compensation is authorized pursuant to section 2.05.010, subdivision (c), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Director at the time of booking. If the group rate is not available, a Director shall use comparable lodging consistent with the requirements of this subdivision.

(f) Directors shall use government and group rates offered by a provider of transportation or lodging services when available. It is the Water Authority’s policy to seek and reimburse the cost of moderately priced accommodations (based on prevailing rates in the community where the lodging is located) that are within reasonable walking or public transportation distance of the location of the meeting, conference, or other event that is the reason for the travel.
(g) The maximum daily amount reimbursable for meals, including beverages and tips, is $65. In certain high cost cities, the maximum daily amount reimbursable for meals, including beverages and tips, is $80.00. Frequently traveled, high cost cities are identified as Sacramento, San Francisco, San Jose, Las Vegas, Dallas, Chicago, Phoenix, Philadelphia, Washington DC, New York City and Los Angeles.

(h) Reimbursement of expenses of attendance at an authorized conference or organized educational activity shall include any registration, attendance, tuition, materials or other similar charge of the conference organizer or activity provider.

(i) A member who requests reimbursement for expenses of attendance at a meeting except a meeting listing in paragraph 1, 2, 3, 14, 15 or 16 of subdivision (c) of section 2.05.010 shall provide a brief report of the meeting to the Board through the standing committee having jurisdiction over the subject matter at the next regular meeting of the committee following the meeting that was attended.

(j) Claims for reimbursement shall be paid following the written approval of the Controller.

(k) Actual third-party hosting expenses, including meals and alcoholic beverages, incurred in connection with a meeting on matters directly affecting Water Authority interests with a member of the legislative, executive or judicial branch of the state or federal government, or a local agency public official a may be reimbursed when the purpose of the third-party hosting has been approved in advance by the Chair. All third-party hosting expenses shall be promptly reported in writing to the Clerk of the Board.

(l) A director who is not authorized to receive per diem compensation for attendance at a meeting of a legislative body of another government agency, an official event sponsored by another government agency, or event or conference of an organization of which the Authority is a member, may be reimbursed for the actual and necessary expenses of attendance if the attendance has been approved in advance by the Chair.

Section 2.05.030 Organizations of Which the Authority is a Member

The Authority may join and pay dues to civic, educational, and governmental organizations as the Board deems appropriate to furtherance of the Authority’s purposes. For purposes of this Chapter, “organizations” includes individual civic, educational and governmental organizations as well as associations, leagues, coalitions and similar affiliations of persons or entities. Authority memberships include agency memberships and individual memberships of organizations that do not have agency memberships, and sponsorship of or purchase of admission tickets to organization events. For purposes of this Chapter, an event of an organization of which the Authority is a member includes an activity sponsored by the Water Authority or to which the Water Authority has purchased one or more admission tickets. The General Manager shall keep a list of the Authority’s memberships and the annual membership payments. The Board shall review the list of Authority memberships annually.
Section 2.05.040  Organization Memberships of Authority Employees

(a) The General Manager and General Counsel, respectively, at Authority expense may join and participate in governmental and professional organizations, associations and societies as necessary or convenient for the performance of their respective functions.

(b) Executive, managerial and professional employees may join and participate in professional organizations, associations and societies related to their respective positions as approved by the General Manager or General Counsel, whichever is the appointing authority. Membership dues, attendance at meetings, conferences and events, and other similar expenses of membership or participation may be at the expense of the Authority, if the General Manager or General Counsel find that the membership or attendance benefits the Authority.
Chapter 2.08

General Counsel

Section 2.08.010  Office Established
The office of the General Counsel is created and established. The General Counsel is the chief legal officer of the Authority.

Section 2.08.020  Appointment
The General Counsel shall be appointed by and serve at the pleasure of the Board.

Section 2.08.030  Qualifications
The General Counsel shall be appointed by the Board on the basis of legal ability and experience, particularly in the areas of law directly applicable to the Authority. The General Counsel shall be licensed to practice law in the State of California. Members of the Board are ineligible for appointment as General Counsel for a period of two years following the date upon which the person ceases to be a member of the Board.

Section 2.08.040  Compensation
(a) The compensation, including without limitation, salary, benefits, reimbursement of expenses, and other terms and conditions of employment of the General Counsel shall be determined from time to time by the Board.

(b) The compensation, including salary, benefits, reimbursements and other terms and conditions of employment of the General Counsel may be established by contract.

(c) Annually, each member of the Board shall be requested to evaluate the performance of the General Counsel by completing and returning to the Secretary of the Board an evaluation form approved by the Chair. The officers of the Board shall review the completed evaluation forms and meet with the General Counsel to discuss the results of the collective performance evaluations. The completed evaluation forms shall be confidential among the officers of the Board, the Board
and the General Counsel and shall not be subject to public disclosure. After completion of the
review, the Chair shall report to the Board that the review process has been completed and highlight
any evaluation results deemed appropriate. The Board may meet in closed session as authorized by
state law to review the report and the performance of the General Counsel. Based upon the
performance evaluation, the officers of the Board may recommend changes in annual salary and
other compensation in the form of fringe benefits for the General Counsel to the Board for action as
appropriate. The officers of the Board are designated as the representatives of the Board for the
purposes of negotiating with the General Counsel regarding salary and other compensation paid in
the form of fringe benefits. The Board may meet in closed session as authorized by state law with
the officers of the Board for the purpose of reviewing its position and providing instructions. Any
action affecting the salary or other compensation in the form of fringe benefits of the General
Counsel shall be taken in open session, unless otherwise specifically authorized by state law. The
review process shall be commenced and completed, as nearly as practicable, during the anniversary
month of the General Counsel's employment.

Section 2.08.050  Authority and Duties

The General Counsel is responsible for the efficient and effective administration of all legal
affairs of the Authority the responsibility for which is not otherwise delegated to a special counsel
appointed directly by the Board, or is reserved to the Board. In addition to the general powers as
chief legal officer of the Authority, and not as a limitation thereon, the General Counsel shall:

(1) Advise the Board, its officers and committees and the General Manager upon all
legal questions arising in the conduct of Authority business;

(2) Make recommendations for ordinances, resolutions or other documents or
procedures affecting the legal position of the Authority;

(3) Give an opinion upon any legal matter or question submitted by the Board or the
General Manager;

(4) Attend all Board meetings and Board Committee meetings;

(5) Attend such other meetings of the Authority as deemed necessary and proper or as
the Board may direct;

(6) Prepare for execution, or approve as to form and legality, all contracts and
documents to which the Authority is a party, and approve as to form and for filing
all bonds and insurance policies submitted to the Authority;

(7) Report on the outcome of any litigation or other legal proceeding in which the
Authority has an interest to the General Manager and the Board;

(8) Prepare or revise ordinance or resolutions upon request of the Board or the General
Manager;
(9) Enforce Authority ordinances and regulations;

(10) Supervise the representation of the Authority in judicial, administrative and legislative proceedings subject to the oversight and case management responsibilities established under section 2.08.070, subdivision (b);

(11) Protect the Authority’s legal position and perform such other duties as may be imposed by statute, this Code or other action of the Board;

(12) Deliver all records, documents and property of every description belonging to the office or to the Authority to any successor in office;

(13) Manage the office consistent with the budget adopted pursuant to section 2.04.050, subdivision (b), paragraph 3, and report to the Board expenditures for litigation and other legal services;

(14) Represent the Authority on other legal matters as directed by the Board.

Section 2.08.060 Assistants and Deputies

(a) The General Counsel may appoint assistants and deputies as the General Counsel deems necessary or convenient, subject only to the budgetary limitations imposed by the Board. Subject to limitations as may be imposed by the General Counsel, deputies and assistants possess the powers and may perform the duties of the General Counsel.

(b) In the event of a temporary absence or disability of the General Counsel, the Assistant General Counsel, if any, shall serve as the General Counsel pro tempore. If there is no Assistant General Counsel or if the Assistant General Counsel is absent, a Deputy General Counsel, if any, shall serve as the General Counsel pro tempore. The Board may designate an acting General Counsel if the General Counsel’s absence or disability extends longer than two months, or if the absence or disability is permanent.

Section 2.08.070 Employment of Special Counsel

(a) The Board is the awarding authority for contracts for special counsel services with an attorney fee amount of more than $50,000. The General Counsel may award contracts for special counsel services with an attorney fee amount of $50,000 as the General Counsel determines are necessary or convenient for management of the Authority’s legal affairs to the extent budgeted funds are available. In addition, the Board may delegate to the General Counsel the authority to select and retain special counsel notwithstanding the provisions of this section on a case-by-case basis.

(b) The Board may establish the level of Board oversight and responsibilities of the General Counsel and special counsel at the time of execution of a contract for special counsel services and may amend the same at any time. The Board Officers may establish protocols for the management and supervision of litigation on a case-by-case basis.
Section 2.08.080  **Board – General Counsel Relations**

Members of the Board shall deal with the legal services of the Authority through the General Counsel. The General Counsel shall take orders and instructions from the Board only when sitting in a duly convened meeting, and no individual Board member shall give any orders or instructions to the General Counsel.

Section 2.08.090  **Appointment Authority**

The General Counsel shall have appointment authority over all employees of the General Counsel’s office.

Section 2.08.100  **Departmental Cooperation**

(a) The General Counsel shall cooperate with and assist the General Manager in the implementation of the General Manager’s duties and functions.

(b) Subject to the control of their appointing authority, subordinate employees under the supervision of the General Manager or General Counsel shall assist the General Counsel in administering the legal affairs of the Authority as the General Counsel may request or direct.

Section 2.08.110  **Limitation on Private Practice**

The General Counsel shall not engage in the private practice of law without the consent of the Board, and then only upon such conditions as the Board may impose.
The General Manager shall organize the administrative and operational functions of the Water Authority into departments. The General Manager may combine, eliminate or reorganize departments, and may re-designate funds appropriated by an approved budget to an affected department or departments as necessary to implement such reorganizations.

The authority of departments and department directors shall be subordinate to the authority of the General Manager.

Each department shall be under the management and supervision of a department director appointed by the General Manager. With the approval of the General Manager, a department director may appoint a qualified member of the department to serve as acting department director during the temporary absence or disability of the director.

The functions, duties and responsibilities of each department shall be determined by the General Manager.

With the approval of the General Manager and subject to the provisions of this Code, the department directors may employ and direct employees and other persons as are necessary or convenient for the efficient operation of the department, and may delegate to such persons authority as the director deems appropriate; provided, however, that ultimate responsibility for performance of delegated functions remains with the director.

With the approval of the General Manager, a department director may promulgate and issue administrative orders and policies for the operation of the department and the exercise of delegated authority by department employees.
Section 2.12.060  Departmental Cooperation

Department directors shall cooperate to administer the affairs of the Authority efficiently, economically and harmoniously.
Chapter 2.16
Personnel

Section 2.16.010 Personnel System
Section 2.16.020 Scope and Application
Section 2.16.030 Personnel Officer
Section 2.16.040 Personnel Rules, Policies and Procedures
Section 2.16.050 Classification of Positions
Section 2.16.060 Compensation Plan
Section 2.16.070 Reimbursement of Expenses
Section 2.16.080 Fair Employment Practices
Section 2.16.090 Political Activity
Section 2.16.100 Incompatible Activity
Section 2.16.110 Access to Information
Section 2.16.120 Contracts for Service

Section 2.16.010 Personnel System

The Authority’s personnel system is intended to establish an equitable and uniform procedure for dealing with personnel matters. Employment by the Authority is governed by the provisions of this Code and the personnel rules, regulations and policies promulgated pursuant to this Chapter.

Section 2.16.020 Scope and Application

(a) All positions of employment for the Authority shall be either general category positions or special category positions. Volunteers and independent contractors are not employees. Members of the Board, members of appointive commissions, committees, or other bodies of the Authority are not employees for the purposes of this Chapter. Appointments to special category positions serve at-will and employment of persons in those positions is at the pleasure of the appointing authority. Employees in general category positions are subject to discipline or discharge for cause according to procedures established and adopted pursuant to section 2.16.040.

(b) General category include all positions of Authority employment except special category positions.

(c) Special category positions include:

1. All positions filled by appointment by the Board;
2. All positions in the office of the General Manager;
3. All positions in the office of the General Counsel;
4. All department head and other executive positions;
5. All senior manager positions except appointments to a senior manager position made on or before November 17, 2005;

6. Appointments to a temporary position that is not authorized as a regular position in the budget (temporary position);

7. Appointments to fill a budgeted regular position on a temporary basis (temporary appointment), provided, however, that temporary appointments of a general category employee to serve in another position on an acting basis shall not result in a change of status with respect to prior general category employment;

8. Appointments to fill positions to meet immediate needs in response to a declared emergency;

9. Appointments to positions for less than half-time (less than 1040 hours in any one fiscal year);

10. Appointments, whether full-time or part-time, to fill a position created under a special program for which funding is provided in whole or in part by a grant or other specific funding source;

11. Appointments to full-time or part-time employment to fill a position for a limited or certain duration and the terms of which are established by a written contract (limited duration employment positions);

12. Probationary appointments;

13. Appointments to fill educational intern positions;

14. Appointments of retired annuitants to any position without reinstatement as a member of the retirement system.

(d) The Board may by amendment of this section change the designation of a position from a general category position to a special category position, provided, however, that no such change shall affect any vested rights of incumbents in the previous general category position.

Section 2.16.030 Personnel Officer

The General Manager is the personnel officer of the Authority. Management of Authority employees and of other persons engaged in service to the Authority pursuant to this Chapter is vested in the General Manager, except that the General Counsel is vested with management of the persons employed or engaged in services in the general counsel’s office. The General Manager is the appointing authority for all positions established pursuant to this Chapter except positions in the general counsel’s office. The General Counsel is the appointing authority for all positions in the general counsel’s office. The General Manager may delegate appointment authority to department heads. The management authority delegated by this section includes, but is not limited to, the full
authority to employ, assign, classify, reclassify, train, manage, terminate, discipline, and fix the compensation of employees, subject only to limits established by the Board in the budget or this code. The duties of the personnel officer may be delegated. The General Manager shall establish a department, program or division to administer the personnel system.

Section 2.16.040 Personnel Rules, Policies and Procedures

(a) The personnel officer shall adopt and promulgate personnel rules, policies and procedures for the implementation and administration of this Chapter. The personnel officer may amend, replace or repeal any rule, policy or procedure. The personnel officer shall obtain the General Counsel’s approval as to legality before taking action to adopt, amend, replace or repeal any rule, policy or procedure.

(b) The personnel rules, policies and procedures shall:

1. Establish a standard of conduct for Authority employees;

2. Establish policies and procedures for discipline of Authority employees, provided, however, that such policies and procedures shall prohibit imposition of any discipline in a manner that is inconsistent with the “salary basis test” against any employee employed in an executive, administrative, or professional capacity and whose duties exempt the employee from the wage and hour provisions of the federal Fair Labor Standards Act and implementing federal regulations, including amendments thereto;

3. Establish procedures to provide employees in general category positions with notice and a meeting before the imposition of discipline or discharge;

4. Establish procedures for employees in general category positions to appeal the imposition of discipline or a dismissal to an independent hearing officer;

5. Establish hours of operation, work schedules, payroll periods and pay dates, and procedures for the management of payroll, attendance, absences and overtime;

6. Establish procedures, standards and policies for the management of payroll, hours of work, overtime, attendance, working conditions, work requirements, training, performance evaluations, employee morale, organization visions and values and other conditions of employment as the personnel officer deems necessary or convenient;

7. Establish procedures, standards and policies for the administration of the compensation plan and fringe benefits, including, without limitation, evaluation of employee performance, compensation adjustments, vacation and other leaves of absence;
8. Implement the provisions of the various memoranda of understanding with recognized employee organizations following approval of the memoranda by the Board;

9. Establish procedures for the investigation of charges of discrimination, harassment, workplace violence, including threats thereof, or unlawful activity in the workplace, including procedures and requirements for remedial action;

10. Establish procedures for the appointment to vacant positions, including without limitation provisions for appointment or promotion to vacant general category positions based upon merit as determined, as reasonably practicable, by competitive examination;

11. Establish procedures for layoffs and other reductions of the workforce, and corresponding demotions, transfers, reassignments and reclassifications as may be necessary due to reorganization of the workforce, economic circumstances, reduction in work load and other reasons, and may include in those procedures provisions for reemployment following layoff, demotion, transfer or reassignment;

12. Establish procedures, standards and policies for the appointment to positions of employment, including provisions regarding probationary appointments;

13. Establish procedures, standards and policies for the maintenance, handling and disclosure of personnel records, including procedures regarding employee access to and review of records relating to their own employment;

14. Establish rules governing application of Government Code section 1126 relating to inconsistent, incompatible or conflicting employment; which rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken for engaging in prohibited activities, and for appeal rights of employees;

15. Establish rules and procedures for resolution of employee grievances regarding application of rules and policies;

16. Include such other provisions relating to the administration of the personnel system or the means and methods by which Authority employees accomplish the purposes of the Authority as the personnel officer deems appropriate;

17. Establish programs and policies to promote workplace safety and injury and accident prevention.

(c) The personnel rules, procedures and policies shall not conflict with the provisions of this code or general law. If a rule, procedure or policy conflicts with a provision of an approved memorandum of understanding with a recognized employee organization, the provision of the approved memorandum of understanding shall prevail.
(d) The personnel officer is responsible for compiling the rules, procedures and policies into one or more manuals, handbooks or pamphlets and for providing such manuals, handbooks or pamphlets to Authority employees.

(e) The personnel rules, procedures and policies promulgated prior to and in effect on the date of adoption of this Chapter shall continue in effect until replaced, amended, or repealed by an action taken by the personnel officer pursuant to the provisions of this Chapter.

Section 2.16.050 Classification of Positions

(a) The personnel officer shall maintain a list of and a current job description for each position of employment or potential employment in the personnel system, except for the General Manager, General Counsel and other positions appointed directly by the Board. The job description may include: the position title; a summary statement of purpose and function; a statement of reporting relationship; a description of essential functions, including daily duties and periodic functions; a statement of minimum qualifications. The job description is not a promise, express or implied, that the functions and duties are the only functions or duties of the position or that the position may not be changed, eliminated, or filled.

(b) The personnel officer shall maintain a classification plan for positions in the personnel system. The classification plan may designate positions according to executive, management, supervisory, professional, administrative, or other appropriate categories. The classification plan may classify employees in general category positions according to probationary, promotional probationary or regular status. The classification plan may categorize employee according to full-time and part-time work schedules. The classification plan may designate whether a position is exempt from requirements for payment of overtime pursuant to the Fair Labor Standards Act. The classification plan shall be correlated to the compensation plan.

(c) The classification plan in effect on the date of adoption of this Chapter shall continue in effect until replaced, amended, or repealed by an action taken by the personnel officer pursuant to the provisions of this Chapter.

(d) The classification plan shall not change the status of a position as either a general category position or a special category position; any change in such status shall be made by amendment of this Chapter.

Section 2.16.060 Compensation Plan

(a) The personnel officer shall maintain a compensation plan including a classification and salary schedule that is correlated to the classification plan. The compensation plan may be comprised of separate sections, which may vary in consideration of differences in memoranda of understanding, among groups or categories of represented and unrepresented employees, administrative convenience or other factors.
(b) In addition to provisions relating to levels of pay and administration of salary and wages, the compensation plan shall include provisions relating to other compensation in the form of fringe benefits including, without limitation: holidays; vacation, medical, executive, compensatory, family, bereavement, military and other leaves of absence; medical, dental and other health insurance; deferred compensation; and retirement. The compensation plan may include provisions and programs for incentive awards, length of service awards, pay for performance, tuition reimbursement and other methods of recognizing employee work performance. The compensation plan may include other provisions relating to the compensation of employees.

(c) The compensation plan shall be consistent with the adopted budget, applicable memoranda of understanding, and this Chapter, including the personnel rules, regulations and policies adopted pursuant to this Chapter.

(d) The classification and salary schedule or amendments thereto, shall be approved by resolution of the Board. The Personnel Officer may make additions or modifications to the classification and salary schedule, to add, delete or modify positions and establish corresponding salary bands or ranges, subject to ratification by the Board not later than the time of approval of the next bi-annual budget, provided that the addition or modification does not increase the bi-annual budget for the department or office affected by the addition or modification. The Personnel Officer may make modifications or adjustments to the classification and salary schedule to implement an approved memorandum of understanding or an approved plan of compensation for unrepresented employees.

Section 2.16.070  Reimbursement of Expenses

The General Manager shall establish policies and procedures for reimbursement to employees of costs incurred for travel, lodging, meals and other expenses of employees engaged in authorized Authority business, conferences, educational or professional development and other approved work or work related activity within the scope of employment. Proof of an expense shall be submitted not later than 90 days following the date the expense is incurred.

Section 2.16.080  Fair Employment Practices

The personnel system will be administered in compliance with applicable state and federal laws prohibiting discrimination with respect to employment. The General Manager and General Counsel are responsible for enforcement of this section.

Section 2.16.090  Political Activity

(a) Authority employees shall not engage during working hours in political activity, including activity otherwise permitted by Government Code § 3209.

(b) Political activities on or using Authority property is prohibited. This section shall not be construed to prohibit lawful educational, informational, lobbying or other activities for which public funds of the Authority may lawfully be spent.
Section 2.16.100  **Incompatible Activity**

(a) Personnel rules and policies adopted pursuant to section 2.16.040 implementing Government Code section 1126 shall prohibit an employee’s outside employment, activity or enterprise if it:

1. Involves the use for private gain or advantage of the Authority’s time, facilities, equipment or supplies;

2. Involves the use of an Authority seal, emblem, symbol, logo or other distinctive mark, or the Authority’s name, identity or prestige;

3. Involves the receipt or acceptance by the employee of money or other consideration from anyone other than the Authority for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her Authority employment;

4. Involves the performance of an act within the scope of their discipline or profession that is subject to review, approval or a permit of the Authority.

(b) Personnel rules and policies adopted pursuant to section 2.16.040 may prohibit an employee’s outside employment activity or enterprise in any other circumstance permitted by law.

Section 2.16.110  **Access to Information**

The personnel officer, and any subordinate employee to whom the personnel officer has delegated duties, and the General Counsel, and any subordinate employee to who the General Counsel has delegated duties, shall have access to and may utilize state summary criminal history information whenever such access and use is required to determine the qualifications of an applicant or employee for a position for which conviction of a crime has been established as an exclusion.

Section 2.16.120  **Contracts for Service**

(a) Nothing in this chapter shall be construed to preclude the Authority from contracting with independent contractors for the provision of goods or services.

(b) The personnel officer may establish the terms and conditions of an individual appointment specified in paragraphs 9, 11 and 12 of subdivision (c) of section 2.16.020 by written contract. The personnel officer may fill a position specified in paragraphs 7, 8, 9, 10, 11, and 12 by written contract with an employment service agency or other entity. Any contract establishing the terms and conditions of an appointment shall be subject to the following provisions:
1. All employment agreements with individuals shall be in writing, executed by the appointing authority and approved as to form and legality by the General Counsel. The Board may approve a written agreement or agreements with one or more employment service agency to provide services through individuals who are assigned to work at the Authority.

2. Employment agreements with individuals shall comply with the requirements of the Internal Revenue Service, Social Security, the Fair Labor Standards Act, the Public Employees Retirement System, laws relating to workers’ compensation and other laws applicable to such employment, provided however, that such employment agreements shall not be subject to the provisions of the California Labor Code that do not apply to public employees.

3. Agreements with an employment service agency shall contain a requirement that the employment service agency shall be responsible for the payment of all wages and benefits to the individual providing service to the Authority and limiting the Authority’s responsibility to payments to the employment service agency as provided in the agreement. Notwithstanding this provision, all persons assigned to provide service to the Authority under an agreement with an employment service agency shall be subject to the direction and control of the Authority with respect to the performance of such services.

4. Employment agreements with individuals may provide that such persons shall be considered public employees for the purposes of laws relating to the liability of public agencies, or the liability, defense and indemnification of public employees, or relating to the performance of duties by public employees.

5. The compensation, fringe benefits and other terms and conditions of the employment shall be determined solely by the provisions of the contract. No contract authorized under this subdivision shall provide total compensation, including fringe benefits, that is greater, or has a higher economic value, than the compensation provided to regular Authority employees in the same or substantially similar job classification.

6. Such appointments shall be at-will and at the pleasure of the Authority. Such agreements shall not provide greater rights than are provided by statute, this chapter, or the personnel rules, regulations and policies to Authority employees generally.
Chapter 2.20
Employer-Employee Relations

Section 2.20.010 Purpose and Scope

This chapter implements the Meyers-Milias-Brown Act (Chapter 10, Division 4, Title 1 of the Government Code of the State of California, commencing with Section 3500) by establishing regulations and orderly procedures for the administration of employer-employee relations between the Authority and employee organizations. The intent of this chapter is to promote full communication between the Authority and its employees by providing procedures for meeting and conferring in good faith with recognized employee organizations regarding wages, hours, and other terms and conditions of employment, and to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the Authority, consistent with the purpose and intent of the Meyers-Milias-Brown Act.

Section 2.20.020 Definitions

As used in this Chapter, the following terms, whether capitalized or lower-case, shall have the meanings indicated in this section, unless a different meaning is plainly apparent from the context of the sentence or paragraph in which the term is used. Terms used in this Chapter and defined in the Meyers-Milias-Brown Act shall have the meaning defined in that Act, except as modified by this section.

1. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Section 2.20.060.

2. "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential information relating to the administration of...
employer-employee relations.

3. "Consult" means to communicate orally or in writing for the purpose of presenting and obtaining views, or advising of intended actions; and, as distinguished from meeting and conferring regarding matters within the scope representation, does not involve an exchange of proposals and counter proposal with a recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of understanding, nor is it subject to sections 2.20.100 or 2.20.110.

4. "Day" means calendar day unless expressly stated otherwise.

5. "Employee" means any person employed by the Authority and designated as an employee pursuant to section 2.16.020, except persons employed in any of the following capacities: positions to meet immediate needs in response to a declared emergency; positions for less than half-time (less than 1040 hours in any one fiscal year); engagements for services, including consultant engagements, to fill a position for a limited or certain duration and the terms of which are established by a written contract; educational intern positions.

6. "Employee Organization" means any organization comprised of Authority employees that has as one of its primary purposes representing those employees in the relations with the Authority.

7. "Employee Relations Officer" means the General Manager as stated in Section 2.20.030.

8. "Impasse" means that the representatives of the Authority and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences and matters to be included in a Memorandum of understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring to reach resolution would be futile.

9. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of Authority policies and programs.

10. "Proof of employee support" when required by this Chapter may be demonstrated by (1) submission of authorization cards recently signed and personally dated by an each employee, or (2) submission of a verified authorization petition or petitions recently signed and personally dated by each employee, or (3) submission of employee dues deduction authorizations of each employee, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof.
of employee support for any employee organization. If an employee has signed more than one authorization or petition, only the authorization or petition that is last signed by the employee may be considered as proof of the employee’s support. The words "recently signed" shall mean signed within ninety (90) days prior to the filing of the proof of employee support.

11. "Recognized Employee Organization" means an employee organization which, in accordance with the provisions for an election set forth in Section 2.20.070, has been formally acknowledged by the Authority as the sole employee organization representing the employees in an appropriate bargaining unit having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and therefore has the corresponding obligation of fairly representing such employees.

12. "Supervisory Employee" means any employee having specific authority in their job description or as delegated by the Personnel Officer, in the interest of the Authority, to hire, transfer, suspend, lay-off, recall, promote, dismiss, assign, evaluate, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2.20.030 Administration of Employer/Employee Relations

(a) The General Manager is the Authority’s Employee Relations Officer. The Employee Relations Officer is the designated representative of the Authority for the purposes of employer-employee relations, including meeting and conferring in good faith with designated representatives of recognized employee organizations. The powers and duties of the Employee Relations Officer may be delegated.

(b) The Administrative and Finance Committee is the standing committee of the Board with jurisdiction over for employer-employee relations. The Board may designate additional representatives for the purposes of meeting and conferring with designated representatives of recognized employee organizations and with self-represented employees.

Section 2.20.040 Employee Rights

(a) Except as otherwise provided by the Legislature, and subject to the provisions of this chapter, each Authority employee has a right:

1. To form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations;

2. To refuse to join or to refuse to participate in the activities of employee organizations;
3. To represent themselves individually in their employment relations with the Authority, provided, however, that the right of self-representation does not include the right to meet and confer with the Authority.

A member of an employee organization who, at any time, wishes to represent himself or herself individually in his/her employment relations with the Authority may do so upon filing a written statement to that effect with the General Manager. The employee shall not be considered as being represented by an employee organization while such an unrevoked, written statement is on file.

(b) The Authority, employee organizations and their respective representatives or agents shall not discriminate against, interfere with, intimidate, restrain or coerce any Authority employee because of the employee’s exercise of a right under this section.

Section 2.20.050 Authority Rights

The Authority retains the power to direct, manage and control its affairs to the full extent of the law. That power includes, without limitation, the exclusive right to: determine its organization; direct the work of its employees; determine the times and hours of operation; determine the kinds, levels and standards of services to be provided and the methods, means, and personnel by which such services are provided; establish policies, goals and objectives; maintain the efficiency of its operations; acquire and dispose of property; build, move or modify facilities; establish budget procedures and determine budgetary allocation; determine the methods of raising revenue and means of financing Authority projects; contract or subcontract for work; establish and modify a personnel system; hire, assign, evaluate, promote, terminate and discipline employees, and establish rules, procedures and policies therefor; reduce or expand its workforce; determine the standards of conduct and performance of employees; classify positions and determine the content of job descriptions; take necessary actions to carry out its mission in emergencies; determine the technology of performing its functions and services.

Section 2.20.060 Bargaining Units

(a) Employees having a community of interests may join together in an appropriate bargaining unit. An appropriate bargaining unit of employees shall be determined by the Employee Relations Officer. A bargaining unit should be the broadest feasible grouping of positions that share an identifiable community of interests given consideration of the following factors:

1. The efficient operations of the Authority;

2. The compatibility of such a unit with the primary responsibility of the Authority and its employees to effectively and economically serve the public;

3. Effective representation of employees based on recognized "community of interest" considerations;
4. Similarity of the kinds of work performed, types of qualifications required, and the general working considerations;

5. History of representation in the Authority and similar employment if any; provided however, no unit shall be deemed to be appropriate solely on the basis of the extent to which employees in the proposed unit have organized;

6. Consistency with organizational patterns within the Authority;

7. Number of employees and classifications and the effect on the administration of employer-employee relations created by the fragmentation of classifications or the proliferation of units.

(b) Professional employees shall have the right to form a bargaining unit independent of non-professional employees.

(c) Management and confidential employees shall not be included in a bargaining unit with non-management or non-confidential employees.

(d) Employees may apply to the Employee Relations Officer to modify an existing bargaining unit during the month of January of any calendar year in which there is no memorandum of understanding or during any month which is twelve or more months after the execution of an unexpired memorandum of understanding excluding the month during which the memorandum of understanding was executed. A written application by employees to modify an existing bargaining unit shall be filed with the Employee Relations Officer and shall state: (1) with particularity the reasons for modifying the unit; (2) the reasons why the proposed modification satisfies the criteria for determining an appropriate unit and (3) the name and address of the person authorized to receive notices and other correspondence from the Employee Relations Officer regarding the application. The Employee Relations Officer shall process such requests for modification in the same manner as an initial request for determination of an appropriate bargaining unit. The determination of the Employee Relations Officer shall be made in writing within 14 days after the filing of the application. Notice of the determination shall be given to the affected employee organization and the person authorized by the applicant to receive notices by mail personal delivery within five days following the determination.

The Employee Relations Officer may, during the period specified in this subdivision, propose modification of an established bargaining unit. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be given the opportunity to be heard. Thereafter the Employee Relations officer shall determine the composition of the appropriate bargaining unit or units and shall give written notice of such determination to the affected employee organizations in accordance with this section. If a unit is modified pursuant to an action initiated by the Employee Relations Officer hereunder, employee organizations may thereafter file recognition petitions seeking to become the Recognized Employee Organization for such new appropriate unit or units.
(e) The determination of the Employee Relations Officer regarding the appropriateness of a bargaining unit is not subject to administrative appeal.

(f) Whenever positions are added to or deleted from the Authority service, or are reclassified, the Employee Relations Officer, after notice and consultation with an affected employee organization, may assign the position to or delete the position from a bargaining unit.

Section 2.20.070  Rights of Recognized Employee Organizations

(a) Subject to the provisions of law, a recognized employee organization has the right to represent its members in their employment relations with the Authority. Recognized employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) The scope of representation includes all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation does not include consideration of the merits, necessity or organization of any service or activity provided by law or established by the Authority.

(c) The Authority will meet and confer in good faith, as provided in Government Code section 3505, with representatives of recognized employee organizations. The Authority is not obligated to meet or confer with employee organizations that are not recognized employee organizations or with self-represented employees, but should consult with such employees regarding wages, hours and other terms and conditions of employment.

Section 2.20.080  Certification of Recognized Employee Organizations

(a) Following determination of an appropriate bargaining unit, an employee organization that seeks formal certification as a recognized employee organization representing employees in that bargaining unit may file with the Employee Relations Officer a recognition petition, signed under penalty of perjury by a duly-authorized officer of the organization, containing the following information and documents:

1. Name and address of the employee organization;

2. Names and titles of its officers;

3. Names of employee organization representatives who are authorized to represent its members;

4. A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional, state, national or international organization, and, if so, the name and address of such regional, state, national or international organization;
5. Copies of the employee organization's constitution and bylaws;

6. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice to the employee organization for any purpose;

7. A statement that the employee organization has no restriction on membership based on race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation or age;

8. A statement that the employee organization has in its possession written proof of employee support, dated within three months of the date upon which the petition is filed, to establish that at least thirty percent (30%) of the employees in the bargaining unit have designated the employee organization as the employees representative for the purposes of employer-employee relations.

(b) Within a reasonable time, not to exceed twenty (20) calendar days after receipt of a petition, the Employee Relations Officer shall determine whether the petition fully complies with the requirements of these rules and the petitioner qualifies to be a recognized employee organization. The Employee Relations Officer may require the employee organization to submit the written proof of employee support that it has been designated by as the representative of the employees in the bargaining unit.

(c) If the Employee Relations Officer determines that one or more employee organizations have satisfied the requirements of subdivisions (a) and (b) the Employee Relations Officer shall authorize the conducting of a representation election to be supervised and administered by the State Conciliation and Mediation Service (Service). Each ballot shall contain the choice of "represent myself" in addition to the other choices designated by the Service. The Service shall certify to the Employee Relations Officer the results of the election. If the Service certifies that an organization has been selected by a majority of the employees voting, then the Authority will recognize that organization as a recognized employee organization. If the Service certifies that an organization has been selected by a majority of all the employees in the bargaining unit, then the Authority will certify the organization as a recognized employee organization and the exclusive representative of the bargaining unit.

(d) No employee may be represented by more than one recognized employee organization.

(e) No more than one election affecting the same unit shall be held within any 12-month period.

(f) A Recognized Employee Organization shall keep current the information contained in the recognition petition. The Employee Relations Officer, from time to time, may require verification by the recognized employee organization of the information including updated proof of employee support.
Section 2.20.090  De-certification of Recognized Employee Organizations

(a)  De-certification proceedings may be commenced by filing of a de-certification petition during the month of January of any calendar year in which there is no memorandum of understanding or during any month which is twelve or more months after the execution of an unexpired memorandum of understanding, provided however that no petition may be filed until after a Recognized Employee Organization has been certified for a period of twelve months. A de-certification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

1. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

2. The name of the established appropriate unit and of the Recognized Employee Organization sought to be de-certified as the representative of that unit.

3. An allegation that the incumbent Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

4. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer within the time limits specified in the first paragraph of this Section.

An employee organization may satisfy the requirements of this section by, filing a recognition petition under section 2.20.070 that includes the allegation and information required under subparagraph 3.

(b)  Within five days after its submission, the Employee Relations Officer shall initially determine whether the petition complies with subdivision (a). If the Employee Relations Officer initially determines that the petition does not comply with subdivision (a), but that the failure can be cured, the Employee Relations Officer shall give a notice of deficiency to the petitioners and shall permit the petitioners to cure the deficiency within the time period for submission of the petition. A final determination of the sufficiency of the petition shall be made within ten days after the close of the period within which a petition may be filed. If a petition finally determined not to comply with subdivision (a) the Employee Relations Officer shall return such Petition to the petitioning employees or employee organization with a written statement of the reasons for the determination. If Employee Relations Officer determines that the petition complies with subdivision (a) shall give written notice of the petition to the Employee Organization, to unit employees, and to the petitioner.

(c)  After a petition is determined to be sufficient, the Employee Relations Officer
shall arrange for a secret ballot election to determine the wishes of unit employees as to the question of de-certification. If one or more Recognition Petitions were duly filed hereunder, the election on question of representation may be combined with the election on de-certification. Such election shall be conducted in conformance with subdivision (c) of section 2.20.070.

(d) During the period specified in subdivision (a) Employee Relations Officer may without a petition and upon a reasonable belief that a majority of unit employees no longer wish to be represented by a Recognized Employee Organization, give notice to that organization and all unit employees that the Employee Relations Officer will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a petition in accordance with section 2.20.070. If one or more Recognition Petitions were duly filed hereunder, the election on question of representation may be combined with the election on de-certification. Such election shall be conducted in conformance with subdivision (c) of section 2.20.070.

(e) If a different employee organization is formally acknowledged as the Recognized Employee Organization due to de-certification proceedings, such organization shall be bound by all the terms and conditions of any memorandum of understanding then in effect for its remaining term.

Section 2.20.100 Meet and Confer Process

(a) The scope of representation includes wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or established by the Authority.

(b) The Employee Relations Officer, on behalf of the Authority, shall meet and confer in good faith with representatives of Recognized Employee Organizations on matters within the scope of representation. The Employee Relations Officer, on behalf of the Authority, may consult with Recognized Employee Organizations on matters affecting employees when meeting and conferring is not required and shall consult with self represented employees regarding wages, hours, and other terms and conditions of employment. The Employee Relations Officer may retain the assistance of counsel, labor relations experts, financial consultants and others, as the Employee Relations Officer deems necessary or convenient to carry out the duties of this subdivision.

(c) A Recognized Employee Organization may select a reasonable number of employee members of the organization as representatives to attend scheduled meetings with the Employee Relations Officer during regular work hours without loss of compensation. The number of representatives is subject to approval of the Employee Relations Officer. The employee organization shall submit the names of the employee representatives to the Employee Relations Officer at least five working days in advance of such meetings. Any such meeting is subject to scheduling by the Employee Relations Officer in order to minimize adverse impacts on the operating needs and work schedules of the Authority. A memorandum of understanding for its duration may supersede the provisions of this paragraph.
Section 2.20.110  Memoranda of Understanding

If the Employee Relations Officer and a recognized employee organization reach agreement a written memorandum of understanding will be prepared jointly. The memorandum of understanding between the Employee Relations Officer and the recognized employee organization shall be presented to the Board of Directors for consideration of approval, conditional approval or rejection. The memorandum of understanding shall not be binding until it is approved by the Board of Directors.

Section 2.20.120  Impasse Resolution Process

(a) The Board of Directors retains full authority to determine wages, hours, and other terms and conditions of employment of Authority employees. In the course of the meet and confer process with a recognized employee organization an impasse may arise. The purpose of this section is to establish methods for resolution of an impasse consistent with the retained authority of the Board.

(b) If the meet and confer process has reached impasse, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be to review the position of the parties in a final effort to reach agreement on a memorandum of understanding, and if the impasse is not resolved, to discuss arrangements for the utilization of the impasse resolution process.

(c) The procedures for resolution of an impasse are mediation and resolution by the Board of Directors. Mediation is voluntary and shall be used only by agreement of the Employee Relations Officer and the Recognized Employee Organization. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues. If the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, or such longer time as agreed by the Employee Relations Officer and representatives of the Recognized Employee Organization, the impasse shall be scheduled for resolution by the Board. The Employee Relations Officer may agree with the Recognized Employee Organization to another means of resolving an impasse, except that nothing in this section shall be construed to permit impasse resolution by binding arbitration or other methods that delegates the Board’s legislative authority to determine wages, hours and terms and conditions of employment and all other matters relating to employment.

(d) If there is no memorandum of understanding reached following completion of mediation or other impasse resolution procedure agreed to between the Employee Relations Officer and the Recognized Employee Organization, and if the parties are still at impasse, then the Board
shall receive written presentations by representatives of the two parties, shall finally determine the
issues that remain at impasse and may take such action regarding the impasse as it in its discretion
deems appropriate as in the public interest. Such a determination by the Board shall conclude the
meeting and conferring process for the fiscal year. Any legislative action by the Board on the
impasse shall be final and binding.

(e) The costs for the services of a mediator and other mutually incurred costs of
mediation and fact-finding, shall be borne equally by the Authority and the Recognized
Employee Organization.

Section 2.20.130 Rules and Regulations

(a) The Authority will furnish, for the exclusive use of recognized employee
organizations, adequate bulletin board space at the Authority office and at the Operations Center.
The bulletin boards shall be used for the following subjects:

1. Information on recognized employee organization elections, reports, and notices.

2. Reports of official business of recognized employee organizations including reports
   of committees or the governing boards thereof.

3. Recognized employee organization membership benefits, programs, and
   promotions.

4. Any other written material pertaining to the official business of the recognized
   employee organization.

(b) Access to Authority locations and the use of Authority paid time, facilities,
equipment, and other resources by employee organizations and those representing them shall be
authorized only to the extent provided for in memoranda of understanding or in administrative
procedures adopted by the General Manager. Such access and use shall be limited to lawful
activities that pertain directly to the employer-employee relationship and not such internal employee
organization business as soliciting membership, campaigning for office, and organization meetings
and elections. Such access and use and shall not interfere with the efficiency, safety, and security of
Authority operations. Access to work locations may be regulated by the General Manager so as not
to constitute a safety hazard or to interfere with operations of the Authority. Except as authorized by
a memorandum of understanding, or when permitted pursuant to personnel rules, policies and
procedures, representatives of a recognized employee organization that are not Authority employees
shall not enter a work location without the consent of the General Manager.

(c) Authority will make available to recognized employee organizations such non-
confidential information pertaining to employment relations as is contained in the public records of
Authority, subject to the limitations of the Government Code section 6254. Requests for such
information shall be made to the Employee Relations Officer, and such information shall be made
available during regular office hours after payment of reasonable costs of duplication if duplication
is requested. Nothing herein shall be construed as requiring the Authority to furnish confidential information or to do research, to assemble information or compile data.

(d) If and to the extent provided in a memorandum of understanding, a Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization of employees in the unit represented by the Recognized Employee Organization.

(e) After consultation with affected employee organizations and self-represented employees, the General Manager may establish additional administrative policies and procedures to implement and administer the provisions of this chapter. The General Manager shall establish administrative policies and procedures for the hearing of grievance regarding the administration of employee relations and other matters by self-represented employee and employees of an employee organization that are not subject to a ratified memorandum of understanding.

Section 2.20.140 Construction

(a) Nothing in this chapter shall be construed to deny to any person, employee, organization, the Authority, or any authorized officer, body or other representative of the Authority, the rights, powers and authority granted by Federal or State law.

(b) Nothing in this chapter shall be construed as making the provisions of California Labor Code Section 923 applicable to Authority employees or employee organizations.

Section 2.20.150 Social Employee Association

The employees of the Authority are urged to form an employee association to coordinate social functions, amenities, and improve communications between the employees, the several departments, management, and the Board. The Authority will contribute an amount equal to bi-weekly association dues, not to exceed $10.00 per regular employee monthly. The contributions will be made to the Employees Association to assist with expenses incurred in carrying out the activities of the Employees Association. The monies are to be paid to the Association after each payroll is issued and expended under the control of the Association for the use and benefit of all employees whether members of the Association or not. An employees association under this section is primarily a social organization. Meetings and gatherings thereof shall be in furtherance of the objective stated above. The Employees Association shall not represent any employee or bargaining unit of employees with respect to employer-employee relations matters, including wages, hours, and conditions of employment. Monies accumulated by the Employees Association shall be expended only in support of Association social activities and not in connection with activities of any the bargaining units or recognized employee organization.
Section 2.24.010  **Fair Employment and Contracting Policy**

(a)  It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, gender, gender identity, gender expression or other status protected from workplace discrimination by state or federal law. Authority officers, employees and consultants shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, contractor, vendor, or recipient of Authority services on account of the person’s race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, gender, gender identity, gender expression or other status protected from workplace discrimination by state or federal law. Authority officers, employees and consultants shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

(b)  This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

(c)  Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

(d)  Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority

(e)  The General Manager may issue written supplemental regulations and policies to implement this section. The regulations and policies may include programs for outreach and recruitment designed to increase diversity in Authority employment and contracting. Such supplemental regulations and policies shall be subject to approval by the General Counsel for consistency with the provisions of this Chapter and applicable law.
Section 2.24.020  Small Contractors Outreach and Opportunities Program

(a)  In addition to the fair employment and contracting policy, it is the policy of the Authority to eliminate unreasonable barriers to participation by all qualified individuals and businesses in solicitation and award of contracts for goods, services and works. It is the further policy of the Authority to encourage participation by small businesses through programs of education, outreach and assistance.

(b)  A Small Contractors Outreach and Opportunities Program is established for the purpose of encouraging and enhancing participation of small businesses in the Authority’s contracting and subcontracting opportunities.

(c)  Upon recommendation of the Small Contractors Outreach and Opportunities Program Committee and Administrative and Finance Committee, the Board may, by resolution establish programs to: provide for a small business contractor preference in procurement of certain goods and services where responsibility and quality are equal; provide a preference to contractors who meet small business subcontracting participation goals; require contractors proposing the use of subcontractors to make good faith efforts to meet a subcontracting participation goal for small business contractors; and otherwise implement the provisions of this section.
Section 4.00.010  General Authorization

(a) Acquisition of real property necessary or convenient for Authority purposes is governed by the provisions of this chapter.

(b) The General Manager may acquire real property necessary or convenient for an approved Authority project in accordance with the procedures established by this chapter whenever the acquisition is consistent with any approved budget and funds have been appropriated. Inclusion of a capital project in an adopted budget constitutes authorization for the General Manager to acquire all real property necessary or convenient to implement the project and the fair market value of the property is $250,000 or less or the fair rental value of the property is $250,000 or less. All other acquisitions of real property shall be approved by the Board. A project subject to the California Environmental Quality Act or National Environmental Policy Act will not be deemed approved for the purposes of this subdivision until after completion of applicable environmental review.

(c) Acquisition of real property includes, without limitation, purchase, lease, license, easement, acceptance of gift, dedication, or bequest, or any other lawful means of conveyance of any estate or interest in real property.

(d) Prior to acquiring any real property, the General Manager shall comply with applicable state or federal laws governing the acquisition of real property, including the relocation assistance act (California Government Code section 7260 et seq.). The General Manager shall not acquire property contaminated with hazardous materials or hazardous waste unless a remediation plan has been approved by federal, state or local agencies with jurisdiction and the remediation plan will be implemented at the cost and liability of the person conveying the property, or unless the acquisition has otherwise been authorized by the Board.

(e) Acquisition of water or water rights, other than water of the Metropolitan Water District of Southern California, is subject to approval by the Board.

(f) When the Board has adopted a resolution of necessity for acquisition of property by eminent domain, the General Manager and General Counsel are authorized to take all actions necessary to accomplish the acquisition, subject to budgetary limitations and the provisions of section 4.00.020.
Section 4.00.020 Execution of Documents

(a) The General Manager may execute any contract, lease, easement, deed, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land when the consideration to be paid by the Authority for the estate, interest or rights is $250,000 or less and the transfer otherwise complies with this chapter.

(b) The General Manager may execute any contract, lease, deeds, easement, license or other document necessary to accomplish an exchange of property for the purpose of correcting Authority right of way alignments or otherwise where the properties exchanged have substantially the same estimated value.

(c) When not otherwise authorized by subdivisions (a) and (b), the General Manager may execute any contract, lease, deed, easement, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land whenever the acquisition has been approved by the Board.

(d) If a proposed acquisition will create an uneconomic remnant that may be corrected by acquiring a larger or smaller parcel that will still serve the Authority’s interest, the General Manager may execute documents necessary to acquire the greater or lesser property interest that best meets the Authority’s needs.

(e) The General Manager shall not execute any contract, lease, easement, deed, license or other document necessary to accomplish the transfer to the Authority of any estate, interest, or right in land unless it has first been approved as to form and legality by the General Counsel.

(f) The General Manager may accept any deed conveying any property or property interest in connection with any conveyance transaction approved pursuant to this chapter.

(g) The General Manager may accept or reject any gift, bequest, donation, dedication, or offer of dedication of property or any interest in property whenever in the best interests of the Authority.

Section 4.00.030 Requirements for Acquisition

(a) Before acquiring property by purchase or lease the General Manager shall obtain an estimate of its fair market value or fair market rent. The estimate of fair market value or fair market rent shall be made by a qualified independent appraiser, except that appraisals may be performed by qualified Authority employees if the expected value of the property is less than $25,000 or the expected rental value is less than $2,000 per month. Appraisals shall conform to the requirements of state law and industry standards applicable to real estate appraisals as well as the requirement of the California Eminent Domain Law.

(b) Before acquiring property the General Manager shall obtain an assessment of hazardous materials or other environmental, geological or other conditions of the property.
(c) Before acquiring property the General Manager shall determine that the project is exempt from environmental review or that all environmental review required for the project has been completed in accordance with applicable state or federal law.

Section 4.00.040 Approval of Appraisals

The Director of Engineering, General Counsel and Right of Way Manager, are jointly authorized to approve appraisals on behalf of the Authority.

Section 4.00.050 Purchase Procedures

(a) Following approval of the appraisal and before commencing any eminent domain proceeding, the General Manager shall make an offer to purchase the property in accordance with the Relocation Assistance Act (Government Code Section 7260 et seq.), any implementing regulations (Title 25 of the California Code of Regulations), and if federal funding is involved, applicable federal law.

(b) The General Manager shall make every reasonable effort to expeditiously acquire the real property through negotiation prior to the institution of any action in eminent domain. If the property owner agrees to sell, the acquisition agreement and deed may be processed according to the requirements of this chapter.

(c) If real property is acquired by purchase, the Authority shall pay all reasonable expenses incident to transfer including but not limited to recording fees, transfer fees and similar expenses incident to the conveyance of real property.

(d) Whenever the Authority has formally communicated a notice of decision to appraise or has made a firm offer to purchase and subsequently decides not to acquire the property, the Authority shall serve a notice in writing on the owner, all persons occupying the property and all other persons potentially eligible for relocation payments and assistance. This notice shall state that the Authority has decided not to acquire the property. It shall be served not later than 30 days following the date of the Authority’s decision not to acquire, unless an earlier notice is required by law.

(e) After all property acquisitions for a project have been completed, the General Manager shall provide a report to the Board listing the cost of the acquisitions.

Section 4.00.060 Supplemental Regulations

The General Manager may issue written supplemental regulations for the acquisition of real property. Such supplemental regulations shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter.

Section 4.00.070 Conveyances for Project Implementation

The General Manager may execute easement deeds, licenses, leases or other documents
granting easements or other interests in Authority property to public utilities or public agencies necessary to provide service to or implement construction, operation, or maintenance of an Authority facility or approved project. For purposes of this section, a project is approved when it has been included in an approved budget and a determination to proceed with the project has been made in accordance with the California Environmental Quality Act.
Chapter 4.04
Goods and Services

(a) The General Manager may procure goods and services as provided in this chapter. Acquisitions shall be consistent with the budget approved by the Board. When used in this chapter the term General Manager includes General Counsel for procurements by the office of the General Counsel. This chapter is adopted for the benefit of the Authority in order that it may obtain goods and services of suitable quality to meet the Authority’s needs at the highest reasonable value and at least available cost.

(b) In furtherance of the Authority’s Small Contractors Outreach and Opportunities Program (SCOOP) and as provided in sections 4.04.080 and 4.04.180, the General Manager may utilize a Sheltered Market Program which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process. Except as provided
herein, the Sheltered Market Program shall comply with the requirements of this chapter, including procedures for formal and informal bidding.

(c) Environmentally Preferable Procurement: The Authority seeks to maximize the environmental benefits of its activities by encouraging the procurement of services and products that minimize environmental impacts, reduce waste, and maximize recyclability and recycled content. Whenever feasible, products made from recycled material, containing environmentally preferable materials, having demonstrated water, energy or resource savings shall be specified in Authority procurements. Bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The General Manager may establish policies and procedures to promote environmentally preferable procurement, including incentives for products with demonstrated energy, water, or other resource savings.

(d) "Duly authorized employee" means an Authority employee authorized by the administrative policy to approve expenditures and bind the Authority by contract within certain monetary limits.

(e) "Goods" means materials, equipment, supplies, furnishings, consumer products, motor vehicles and other tangible personal property. Procurement of goods may include incidental services of the vendor necessary or convenient for the delivery, installation, set-up, testing or use of goods acquired from the vendor.

(f) "Services" means a service or services provided by an independent contractor.

(g) The value or amount of a contract or contract change or revision is the price in dollars to be paid by the Authority for the goods or services provided under the contract. For purposes of this chapter, when determining the value of contracts for services of professionals such as appraisers, attorneys, accountants, auditors, economists, financial advisors, litigation experts, lobbyists and similar consultants compensated based on an hourly or fixed rate for professional services, costs of reimbursement for actual and necessary costs and expenses customarily excluded from the fee for services need not be considered unless otherwise provided in the contract.

(h) The General Manager shall report to the Board not later than three months after the end of each fiscal year listing all contracts and contract amendments greater than $10,000 made or awarded by the General Manager during the preceding fiscal year. The report will identify how each contract was procured. Reports of contract amendments will identify the original amount and term of the contract, the total number of amendments, the cumulative dollar value of the contract and the extension to the term of the contract.

(i) "Published" or “publication” means publication once in a newspaper designated under section 1.08.050, or posting in a conspicuous location on the Authority’s website, or posting on an Internet site commonly used for the posting of procurement announcements for public agencies in California.
Section 4.04.020  Award and Execution of Contracts - Generally

(a) The Board is the awarding authority for contracts in an amount of more than $150,000, except as provided in this chapter. Unless otherwise determined by the Board at the time of award, a contract awarded by the Board may be executed by the Chair or Vice-Chair in the absence of the Chair or may be executed by the General Manager in the absence of the Chair and Vice-Chair. The signature of the Chair or Vice-Chair may be attested by the Secretary. The signature of any Authority officer or authorized employee may be attested by the Clerk of the Board. Unless required by law, other than this paragraph, the lack of attestation shall not affect the validity of a duly executed contract.

(b) The General Manager is the awarding authority for contracts in an amount of $150,000 or less, and may execute such contracts.

(c) In furtherance of the Authority’s pipeline inspection program and to maintain system reliability, the General Manager may award and execute contracts without regard to the limits of subdivisions (a) or (b) for either (1) work during the period of the Authority’s annual pipeline shutdown to repair or correct a condition discovered during the shutdown, or (2) repair or relining work to an area of pipeline at which the Authority’s electronic pipeline monitoring systems indicates a condition requiring an urgent response. The General Manager shall report to the Board not later than seven (7) days after the discovery of the condition requiring repair or correction or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the condition and of the repair or corrective action. Any contract in excess of $250,000 issued pursuant to this subsection (c) is subject to ratification by the Board at its first regular meeting following the discovery of the condition.

(d) The General Manager may execute any contract for utility service or work performed by a utility for the installation or relocation of utilities consistent with any approved budget or appropriation of funds.

Section 4.04.030  Award and Execution of Contracts - Emergencies

In an emergency the General Manager may award and execute contracts without regard to the limits of section 4.04.020 provided that the goods and services are of an urgent nature, directly and immediately required by the emergency. The General Manager shall report to the Board not later than seven days after the emergency action or at its next regularly scheduled meeting, if that meeting will occur not later than 14 days after the action, the details of the emergency and reasons justifying the actions taken. Any contract having a value more than $250,000 shall be subject to ratification by the Board at its first regular meeting following the onset of the emergency. As defined in section 2.04.050(e) of this Code an emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services. An emergency also includes a material interruption of the Authority’s ability to operate due to acts that disable the Authority’s computer-based information systems such as cyber terrorism, virus attacks, network security breaches, or other impairment of the computer system.
Section 4.04.040 Amendments to Contracts

The General Manager is authorized to issue amendments to contracts as follows:

(a) When the original contract amount is more than $150,000, amendments may be issued up to a cumulative total of $150,000 or 10 percent of the original contract amount, whichever is greater. The cumulative sum of all amendments that have not been previously approved by the Board may not exceed $250,000.

(b) When the cumulative sum of amendments to a contract would exceed the limits in (a) above, a report of such amendments will be presented to the Board at its next meeting. Upon acceptance of the amendments by the Board, the General Manager shall have additional authorization to issue amendments as if the original contract amount were the total of the original amount and all accepted amendments.

(c) Amendment means any amendment, change, modification, revision, or novation of a contract.

Section 4.04.050 Contract Documents

(a) Contracts of the Authority shall be made only by a duly authorized officer or employee of the Authority.

(b) Contracts for sale to the Authority of goods over $500 shall be in writing. A duly authorized and issued Authority purchase order may be used to satisfy the requirements of this section provided that the purchase order contains all the requirements of a contract under California law. The Authority shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Authority.

(c) Contracts for services having a contract value of greater than $10,000 shall be in writing. The Authority shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Authority.

(d) All changes, modifications, amendments or novations of written contracts shall be in writing. Any change, modification, amendment or novation of an oral contract that causes the total contract value to exceed the limit of subdivision (a) or subdivision (b) shall be in writing. The Authority shall not be bound by any change order, modification, amendment or novation that is not first executed by a duly authorized officer or employee of the Authority.

(e) When permitted by state or federal statute and authorized by the Authority, computer or electronic communication technology may be used whenever a written document is required by this chapter, provided, however, that the communication is capable of being translated into a written or other record of the Authority capable of being retained, accessed and reproduced in accordance with the Authority's policies governing records of the Authority. The General Manager may develop policies and procedures for use of computer or electronic...
communication technology for procurement purposes. The policies and procedures shall be subject to approval by the General Counsel for consistency with this chapter and applicable law.

(f) At its option, the Authority may use digital signatures. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. The use of digital signatures shall comply with the requirements of Government Code Section 16.5, and Title 2 California Code of Regulations Sections 22000-22005.

Section 4.04.060 **Exemptions and Exceptions**

(a) This chapter shall not apply to goods and services provided pursuant to a contract that is subject to the provisions of chapter 4.08 relating to public works.

(b) The provisions of sections 4.04.080, 4.04.090 and 4.04.100 of this chapter requiring competitive bidding shall not apply to the following transactions, purchases or contracts:

1. Purchase of used equipment, which in the opinion of the General Manager is satisfactory for the work of the Authority;

2. Contracts for governmental or proprietary services provided by any government agency;

3. Public service announcements, advertisements notices, airtime or official publications;

4. Membership in professional organizations or associations;

5. Acquisition of water or water related service;

6. Goods or services required to respond to an emergency as described in section 4.04.030, or a pipeline condition described in subdivision (c) of section 4.04.020;

7. Work performed by a utility for the installation, maintenance, operation, or relocation of utility facilities or components to provide service to the Authority;

8. Acquisitions where due to special circumstances of an acquisition the General Manager in consultation with the General Counsel determines, in writing, that implementation of the informal or formal competitive acquisition process is infeasible, impractical or otherwise not in the best interest of the Authority. The authority of this paragraph is non-delegable.

(c) The provisions of Sections 4.04.070 through 4.04.190, inclusive, shall not apply to contracts for professional and specialized services such as, but not limited to, services rendered by appraisers, attorneys, accountants, auditors, economists, financial advisors, lobbyists...
and other specialized or professional services whenever the General Manager or General Counsel determines the contract is in the best interests of the Authority.

Section 4.04.070 Open Market Acquisitions

The General Manager may acquire goods and consumer services in the open market without a requirement for informal or formal competitive bidding as follows:

(a) Purchases of consumer goods and services having a price of $10,000 or less, excluding applicable taxes;

(b) Purchases of books, periodicals, newspapers, trade journals and other publications, including individual purchases and subscriptions;

(c) Purchases of fuel, oil, or other products in connection with the immediate use or emergency repair of Authority vehicles;

(d) Telephone, cable television, Internet, telecommunication, gas, electric, water, sewer and refuse collection and other utility services;

(e) Subscriptions to social media, job recruitment, public bid notification, software, news, and other Internet provided consumer services;

(f) Airline tickets, train tickets, hotels and other travel expenses according to the travel policy;

(g) Training, including related instruction, materials and classroom or venue services.

Section 4.04.080 Sheltered Market Program Solicitation for Bids or Proposals for Purchases of Goods and Services Other than Professional Services Valued at Greater Than $10,000 and Up to $150,000

(a) Goods and Services shall comply with the advertising, proposal, and award procedures under this chapter. In addition, in furtherance of the SCOOP Program and as provided herein, the General Manager may utilize a Sheltered Market Program for the purchase of goods and services (other than professional services) having a value of greater than $10,000 and up to $150,000 which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Goods and Services Other than Professional Services, having a value of greater than $10,000 and up to $150,000 may be awarded through a competitive bid process open only to registered, certified, small businesses. If no responsible or responsive bids are received, these purchases will be opened to all bidders under this chapter.
Section 4.04.090  **Informal Bids**

(a) The General Manager may acquire a good having a unit price, excluding applicable taxes, of more than $10,000 and up to $50,000 or may contract for the acquisition of goods having a contract price, excluding applicable taxes of more than $10,000 and up to $50,000 in compliance with the informal competitive bids process of this subdivision. Informal bids may be solicited by publication or by soliciting bids from not fewer than three qualified vendors. Where appropriate, the General Manager may request sealed, written informal bids. The notice inviting informal bids and the bids shall be in writing. Bids may be transmittable to the Authority by facsimile, mail, courier, electronic mail (e-mail), or any other means of delivery. A qualified vendor is a vendor capable of delivering the good or goods meeting the Authority’s specifications and requirements at the time specified by the General Manager. During the process of soliciting price quotations, a vendor's or prospective vendor's price quotations shall be kept confidential except for internal use by Authority personnel for purposes of the pending acquisition.

(b) When soliciting price quotations or informal bids under paragraph (a), the Authority shall (1) describe to the vendor in general terms the goods; (2) advise vendors how to obtain additional information about the goods; (3) state the date, time and place for the submission of bids; (4) state whether the selection of the successful bidder will be based on price alone or whether vendor reliability, experience, availability, expertise or designation by Authority as a Small Business will be considered; (5) include a description of additional items such as insurance, bonding, and warranties to be included in the price; (6) include any other information required by law.

(c) If the acquisition specified in the bid is of a generic quality and a vendor with particular attributes is not required to meet the needs of the Authority and the purposes of this chapter, then the General Manager shall select the vendor whose responsive bid offers to sell the goods at the lowest price.

(d) If vendor reliability, experience, availability, expertise or designation by Authority as a Small Business are a component in meeting the needs of the Authority and the purposes of this chapter, then the General Manager need not necessarily purchase from the vendor proposing the lowest price but may select a vendor that best meets the Authority's requirements including price.

(e) The respective department responsible for an acquisition subject to paragraph (a) shall keep a record of requests for quotations or bids and all responses submitted for the acquisition in compliance with the Authority’s Record Retention Program.

Section 4.04.100  **Formal Bids**

(a) Except as otherwise provided in this chapter or where the General Manager determines that competitive bidding is infeasible or impractical, when a contract has a value of more than $50,000, it will be awarded to the lowest responsible and responsive bidder after a formal competitive process.

Chapter 4.04
7 of 14
(b) The notice inviting bids shall include a general description of the goods to be purchased and bond requirements, if any, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids. It shall incorporate by reference all other bid documents.

(c) The notice inviting bids shall be published not less than 14 days before the date of opening of the bids.

(d) The notice inviting bids shall also be mailed by first class mail or transmitted via courier, e-mail or facsimile, or any combination of mailing, e-mail and facsimile, to prospective suppliers known to the Authority or who have requested their names be considered and from lists of small contractors under the Authority’s Small Contractor Outreach and Opportunity Program (SCOOP), and any other source that will ensure the maximum participation by qualified vendors in the formal bid competition. The notices shall be mailed or sent not less than 14 days before the date of opening of the bids.

(e) When deemed necessary by the General Manager, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within 15 days after the notice of award of contract has been mailed, unless the Authority is responsible for the delay. On refusal or failure of the successful bidder to execute the contract, it may be awarded to the next lowest bidder; the amount of the lowest bidder's security may be applied by the Authority to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

(f) Sealed bids shall be submitted to the Authority’s addressee identified in the notice inviting bids and shall be identified as bids on the envelope.

(g) Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open to public inspection during regular business hours for a reasonable period of time. No bidder may withdraw his bid for a period of at least 90 days after the date set for the opening thereof. Bids received after the time set for the opening of bids shall be returned unopened to the bidder.

(h) At its sole discretion, the awarding authority may reject any and all bids presented and re-advertise for bids or exclude any item or items from the award of bid or waive any informalities in a bid.

(i) If two or more bids are received for the same total amount or unit price, quality and service being equal, the awarding authority may accept the one it chooses or accept the lowest bid made by negotiations with the bidders after the bid opening.

(j) The awarding authority may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interest of the Authority. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.
(k) If no bids are received in response to an invitation for competitive bids, a contract may be negotiated with any qualified person.

(l) If the apparent successful bidder fails to meet deadlines for submitting documents required by the notice inviting bids or instructions to bidders, the awarding authority may award a contract to the next lowest bidder meeting all requirements.

(m) If a contract let pursuant to the provisions of this chapter is terminated because of breach by the contractor, the awarding authority may complete the project by negotiated contract with any qualified individual or firm.

Section 4.04.110  Withdrawal or Correction of Formal Bid

(a) Prior to bid opening date and time, bids submitted may be withdrawn by written or electronic request received by the designated Authority officer or employee before the hour set for opening. After such hour it may not be withdrawn.

(b) After bid opening date and time, any bidder who seeks to withdraw or modify a bid because of inadvertent computational error shall notify the Authority department responsible for the bid no later than three working days following the bid opening. The bidder shall provide worksheets and other such information as may be appropriate or required by the department to substantiate the claim of inadvertent error. Failure to do so may bar such relief and allow recourse from the bid surety if applicable. The burden shall be upon the bidder to prove such error.

Section 4.04.120  Inspection of Supplies and Equipment

The General Manager shall inspect goods delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The General Manager shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

Section 4.04.130  Use of Brand Name in Specifications; Offers of “Or Equal”; Testing

(a) Any reference to a specific Brand Name in specifications is illustrative only. A reference to a Brand Name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the Authority.

(b) A bidder may offer an equivalent (“or equal”) in response to a Brand Name reference. When an “or equal” is offered, the Authority may test and evaluate the product prior to award of the contract.

(c) At bidder’s expense, bidder bears sole responsibility for providing any information, test data, or document required by the Authority to fully evaluate the acceptability
of the “or equal”. At bidder’s expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

(d) The Authority reserves the right to reject a bid containing any “or equal” offered.

Section 4.04.140 Sole Source Procurement

When requirements are so critical or call for such specialized expertise that only one source is capable of satisfying those requirements, the awarding authority may waive the competitive procurement procedures. Sole source means that only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies or the ability to deliver at a particular time. Purchasing from a sole source shall be permitted after written justification from the requesting department explaining why a sole source has been specified, and a factual finding by the awarding authority that it is in the best interest of the Authority to purchase without competitive purchasing.

Section 4.04.150 Cooperative Procurement

(a) Purchases of goods and services by contract arrangement and agreement for cooperative purchasing programs with the federal, state, the county, any public or municipal corporation of the state, or intergovernmental cooperative purchasing agreement, may be made by the Authority when the administering or lead agency has based its contract on competitive pricing procedures and the purchase is determined to be in the best interest of the Authority. The purchase agreement utilized must specifically include the item or service to be purchased by the Authority.

(b) The General Manager is authorized to enter into contracts greater than $150,000 for the purchase of goods and services available through a cooperative purchasing agreement provided: (a) goods and services to be purchased were approved in the budget, and (b) the cooperative purchasing agreement being utilized was awarded as a result of a competitive pricing procedure containing a public agency clause.

Section 4.04.160 Contracts for Goods and Services with Government Agencies, Nonprofits and Others

(a) The General Manager may enter into contracts for goods and services with any federal, state or local agency, any nonprofit agency qualified under Section 501(c)(3) of the Internal Revenue Code, any public educational institution, including program services established and supervised by any federal, state or local agency, without observing the competitive bidding provisions of this chapter provided that all of the following conditions are met:

1. The contract does not exceed $250,000 per year, except that any contract having an expenditure of greater than $150,000 shall be awarded by the Board;
2. The agency agrees to direct supervision of the workers or employees;

3. The agency agrees to provide workers’ compensation insurance for the workers or employees;

4. The agency agrees to indemnify, protect, defend and hold the Authority harmless against any and all claims alleged to be caused or caused by any act or omission of the agency’s worker or employee.

(b) Many governmental, non-profit and educational institutions provide job training, work furlough, educational and similar human service programs that make goods and services available at a competitive cost while also furthering the public welfare. This section is intended to provide an expedient method for Authority participation in such programs and is not intended to limit the exemption of Section 4.04.060, subdivision (b), 2, for services provided directly by a government agency.

Section 4.04.170 Procedures for Professional and Technical Services

(a) Unless otherwise provided in this Chapter, the Authority’s selection of the architects, landscape architects, professional engineers, environmental consultants, land surveyors, and construction managers shall be in accordance with the provisions of this Section and on the basis of professional qualifications and competence to perform the particular services required and at fair and reasonable prices to the Authority.

(b) Any department may establish a list or lists of pre-qualified service providers for award of contracts on a rotational, as-needed basis. A list shall be established after public advertisement of solicitation of statements of qualification; once established a list shall be valid for a period not to exceed five years. The department head may remove from a list any service provider that no longer meets the qualifications or has violated the Authority’s procurement or contract requirements.

(c) When a service contract has a value of $10,000 or less, the General Manager may award a contract to a provider selected from a rotational as-needed list established pursuant to subdivision (b), or from the open market. The solicitation of proposals and responses may be made by any commercially acceptable form of communication. The General Manager may negotiate prior to award of a contract in the best interest of the Authority.

(d) When a service contract has a value greater than $10,000 and not more than $50,000, the General Manager may award a contract to a provider selected from a rotational as-needed list established pursuant to subdivision (b), or by soliciting no fewer than three qualified vendors from the open market. The solicitation of proposal may be made by any commercially acceptable form of communication, including publication, but responses shall be in writing. Unless the General Manager selects a provider from an established rotational as-needed list, the General Manager will determine the selected provider based on responses to a solicitation, however, the General Manager may reject all proposals. If all proposals are rejected, the General
Manager will follow the procedures of this subdivision for any subsequent selection. The General Manager may negotiate prior to award of a contract in the best interests of the Authority.

(e) When a professional service contract has a value greater than $50,000, the awarding authority may award a contract to a qualified provider that has submitted a written proposal in response to a request for written proposals. Proposals shall be solicited through public advertisement. Alternatively, the General Manager may solicit proposals from a short list of pre-qualified providers. The short list of pre-qualified providers may be developed based upon responses to requests for qualifications solicited through public advertisement; provided, however, in determining selected providers invited to submit a proposal the General Manager shall endeavor to assure participation opportunities among all similarly qualified providers, including providers without previous Water Authority service history. The method for evaluating, ranking and selecting proposals, or for establishing the short list of pre-qualified providers shall be stated in the request for proposals or request for qualifications. The General Manager may negotiate with the top ranked firm and recommend award of a contract to the Board for the most qualified firm or individual to perform the service and which best meets the needs of the Authority.

(f) If no proposals are received in response to a solicitation, the General Manager may negotiate a contract with any qualified service provider.

(g) If a contract let pursuant to the provisions of this chapter is terminated because of breach, the Authority may complete the work by negotiated contract with any qualified service provider.

Section 4.04.180 Sheltered Market Program Solicitation for Proposals and Award of Contracts for Professional and Technical Services Valued at Greater Than $10,000 and Up to $150,000

(a) Professional and Technical Services shall comply with advertising, proposal, and award procedures under this chapter. In addition, in furtherance of the SCOOP Program and as provided herein, the General Manager may utilize a Sheltered Market Program for services valued at greater than $10,000 and up to $150,000 which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Professional or technical services with a value of greater than $10,000 and up to $150,000 may be awarded through a competitive negotiated process open only to registered, certified, small businesses which are licensed and qualified to perform the work in accordance with Section 4.04.170.

(c) If there are no proposals which meet the necessary qualifications and experience, the competitive negotiated process shall follow the advertising, bid and award procedures under Section 4.04.170.
Nothing in this Section shall limit the General Manager’s right to reject all proposals if it is in the best interest of the Authority. If all proposals are rejected the process shall be reopened to all and bid in accordance with this chapter.

As long as the original value of the contract is $150,000 or less as determined at the time of contract award, any future amendments increasing the value of that contract will not render the award or contract invalid.

Section 4.04.190 Procedures for Other Services

Maintenance services not covered under chapter 4.08 and services not covered under section 4.04.170 and 4.04.180 of this chapter shall be procured either by informal or formal bidding procedures as set forth in sections 4.04.080, 4.04.090 and 4.04.100 of this chapter.

Section 4.04.200 Procedures for Bid Protests

Protests by unsuccessful proposers or bidders shall be submitted to the Authority department where bids or proposals were submitted and to the protested bidder setting forth in detail the grounds for such protest.

Protests shall be submitted to the Authority and the protested bidder no later than 10 calendar days after the date of the announcement of selection.

All protests shall be in writing and must include the following information:

1. The name, address and telephone number of the protestor;
2. The signature of the protestor or protestor’s representative;
3. The solicitation, bid or contract number;
4. A detailed statement of all legal and factual grounds for the protest;
5. All documentation supporting the protestor’s grounds for the protest;
6. The form of relief requested and the legal basis for such relief.

If a valid protest is timely filed, the Authority shall investigate or cause to be investigated the bid protest.

The protested bidder shall have five calendar days to respond to the protesting bidder and to the Authority and to provide any information requested by the Authority.

The awarding authority will rule on the bid protest. The decision of the awarding authority is final, except for the possibility of judicial review. The awarding authority may hold a hearing among interested parties prior to the determination of the protest.
awarding authority, the General Manager may make a recommendation to the Board regarding the bid protest.

Section 4.04.210 Collusion with Bidder

Any employee of the Authority shall be deemed guilty of malfeasance and shall be disciplined in accordance with Authority personnel rules and regulations for engaging in any of the following activities:

(a) Aiding or assisting a bidder in securing a contract to furnish supplies, materials, equipment or contractual services at a higher price than that proposed by any other bidder;

(b) Favoring one bidder over another by giving or withholding information;

(c) Willfully misleading any bidder in regard to any matter relevant to the competitive bidding process or the character of the materials or supplies called for by the contract;

(d) Knowingly accepting commodities of a quality inferior to those called for by the contract contrary to the best interest of the Authority;

(e) Knowingly certifying to a greater amount of service or work performed than has actually been performed;

(f) Knowingly certifying to the receipt of an amount or different kind of materials, supplies or equipment than have actually been received.

Section 4.04.220 Supplemental Regulations

The General Manager may issue written supplemental regulations for the making and administration of contracts. Such supplemental regulations shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter.
Section 4.08.010 General Authorization
(a) The Authority may construct, reconstruct or erect works, facilities and improvements necessary or convenient for the purposes of the Authority by contract or by its own forces.
(b) The Authority may keep, operate or maintain its works, facilities and improvements by contract or by its own forces.
(c) The Authority may landscape its property and grounds by contract or by its own forces.
(d) The Authority may acquire works, facilities and improvements necessary or convenient for the purposes of the Authority.
(e) The Authority may determine to contract for one or more items or units of work or may contract for all items and units of work under a single contract. Such a determination shall be made before publication of a notice inviting bids.
(f) In furtherance of the Authority’s Small Contractor Outreach and Opportunities Program and as provided in section 4.08.030, the General Manager may utilize a Sheltered Market Program which provides that selected public works procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services for a Sheltered Market procurement process. Except as provided herein, the Sheltered Market Program shall comply with the requirements of this chapter.

Sections

Section 4.08.020 Procedures
Section 4.08.030 Sheltered Market Program Solicitation of Bids and Award of Public Works Contracts Valued at Greater Than $10,000 and Up To $150,000
Section 4.08.040 Authority to Contract
Section 4.08.050 Bid and Contract Requirements
Section 4.08.060 Required Security for Performance and Payment
Section 4.08.070 Project Labor Agreements
Section 4.08.080 General Requirements Contracts
Section 4.08.090 Design-Build Contracts
Section 4.08.100 Supplemental Regulations
Section 4.08.110 Exemptions
(g) “Published” or “publication” means publication once in a newspaper designated under section 1.08.050, or posting in a conspicuous location on the Authority’s website, or posting on an Internet site commonly used for the posting of procurement announcements for public agencies in California.

Section 4.08.020 Procedures

(a) Contracts for construction, reconstruction or erection of works, facilities and improvements, in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding, except in an emergency declared by Board. When the estimated contract exceeds ten thousand dollars and does not exceed fifty thousand dollars, the General Manager may award a contract after seeking a minimum of three quotations, either written or oral, which permit prices and other terms to be compared. When the estimated contract does not exceed ten thousand dollars, the General Manager may award a contract after such negotiation as the General Manager deems appropriate.

(b) Contracts for maintenance of works, facilities and improvements, in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding, except in an emergency declared by Board. When the estimated contract exceeds ten thousand dollars and does not exceed fifty thousand dollars, the General Manager may award a contract after seeking a minimum of three quotations, either written or oral, which permit prices and other terms to be compared. When the estimated contract does not exceed ten thousand dollars, the General Manager may award a contract after such negotiation as the General Manager deems appropriate. Maintenance includes, without limitation, repairs that are expected at intervals of five or fewer years. Maintenance does not include refuse removal.

(c) Contracts for landscaping of Authority property or grounds may be awarded after competitive negotiations following the solicitation of requests for proposals, when not included as a part of a construction or maintenance contract. Landscaping contracts for the abatement of weeds from Authority rights-of-way in excess of fifty thousand dollars as estimated by the General Manager shall be awarded to the lowest responsible bidder submitting a timely, responsive bid after competitive bidding.

(d) The Authority may acquire works, facilities and improvements, necessary and convenient to the purposes of the Authority upon such terms and conditions as the Board deems appropriate.

(e) If no bids or quotations are received in response to an invitation for competitive bids or quotations, a contract may be negotiated with any qualified person.

(f) If a contract let pursuant to the provisions of this Chapter is terminated because of breach by the contractor, the Authority may complete the project by negotiated contract with any qualified person.
(g) If two or more bids of responsive responsible bidders are the same and lowest, the Authority may accept the one it chooses or may negotiate a contract with any of the low bidders.

(h) If the apparent successful bidder fails to meet deadlines for submitting required bond and insurance documents, or other documents required by the notice inviting bids or instructions to bidders, the Authority may award a contract to the next lowest bidder meeting all requirements.

(i) Nothing in this section shall be construed to limit the power of the Authority to perform work by its own forces.

Section 4.08.030  Sheltered Market Program Solicitation of Bids and Award of Public Works Contracts Valued at Greater Than $10,000 and Up To $150,000

(a) All public works contracts shall be advertised, bid, and awarded in accordance with this chapter. In addition, in furtherance of the SCOOP Program and in accordance with this section, the General Manager may utilize a Sheltered Market Program for public works projects valued at $150,000 or less which provides that selected procurement opportunities are designated, before solicitation, for competition among registered, certified, small businesses only. There must be at least three registered, certified, small businesses that can provide the needed services or goods for a Sheltered Market procurement process.

(b) Public works contracts valued at greater than $10,000 and up to $150,000 may be awarded through a competitive bid process open only to registered, certified, small businesses which are licensed and qualified to perform the work, unless there are no registered, certified, small businesses which have the requisite licenses or qualifications for the contract, in which case the competitive bid process will be open to all and advertised, bid, and awarded under this chapter.

(c) The lowest responsible and responsive bidder shall be awarded the public works contract. If there are no responsible bids, the competitive bid process shall follow the advertising, bid and award procedures under this chapter.

(d) Nothing in this Section shall limit the General Manager’s right to reject all bids if all bids received for a particular project exceed the Engineer’s estimate for that project. If all bids are rejected the process shall be reopened to all and bid in accordance with this chapter.

(e) As long as the original value of a Sheltered Market Program public works contract as determined at bid opening is $150,000 or less, any future amendments increasing the value of that contract will not render the bidding or award invalid.

Section 4.08.040  Authority to Contract

(a) The Board is the awarding authority for contracts in an amount in excess of $150,000, except as otherwise provided in this chapter. Unless otherwise determined by the Board
at the time of award, a contract awarded by the Board may be executed by the Chair or Vice-Chair in the absence of the Chair or may be executed by the General Manager. The signature of the Chair or Vice-Chair may be attested by the Secretary. The signature of any officer or authorized employee may be attested by the Clerk of the Board. Unless otherwise required by law other than this paragraph, the lack of attestation shall not affect the validity of a duly executed contract.

(b) The General Manager is the awarding authority for contracts in an amount of $150,000 or less, and may execute such contracts.

c) In an emergency, the General Manager may award and execute contracts without regard to the limits of this section or of sections 4.08.020 or 4.08.030 provided that the work, facility or improvement is of an urgent nature, directly and immediately required by the emergency. The General Manager shall report to the Board not later than seven (7) days after the emergency action or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the emergency and reasons justifying the actions taken. Any contract in excess of $500,000 issued pursuant to this subsection (c) is subject to ratification by the Board at its first regular meeting following the onset of the emergency. An emergency is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services.

d) In furtherance of the Authority’s pipeline inspection program and to maintain system reliability, the General Manager may award and execute contracts without regard to the limits of this section or of sections 4.08.020 or 4.08.030 for work either: (1) during the period of the Authority’s annual pipeline shutdown to repair or correct a condition discovered during the shutdown, or (2) repair or relining work to an area of pipeline at which the Authority’s electronic pipeline monitoring system indicates a condition requiring an urgent response. The General Manager shall report to the Board not later than seven (7) days after the discovery of the condition requiring repair or correction or at its next regularly scheduled meeting, if that meeting will occur not later than fourteen (14) days after the action, the details of the condition and of the repair or corrective action. Any contract in excess of $500,000 issued pursuant to this subsection (d) is subject to ratification by the Board at its first regular meeting following the discovery of the condition.

e) The General Manager is authorized to issue changes, modifications or amendments to contracts, as follows:

1. When the original contract amount is more than $150,000, modifications may be issued up to a cumulative total of $150,000 or 10% of the original contract amount, whichever is greater, except that the cumulative sum of all modifications which have not been previously approved by the Board may not exceed $500,000.

2. When the cumulative sum of modifications to a contract would exceed the limits in paragraph 1 above, a report of such modifications will be presented to the Board at its next meeting. Upon acceptance of the modifications by the Board, the General
Manager shall have additional authorization to issue modifications as if the original contract amount were the total of the original amount and all accepted modifications.

3. When the accumulated contract amount is $150,000 and above, a report will be presented to the Board documenting all modifications to the contract as part of the project acceptance, prior to the filing of a notice of completion.

Section 4.08.050  **Bid and Contract Requirements**

(a) Nothing in this chapter shall be construed to relieve bidders, contractors and the Authority from compliance with provisions of the California Public Contract Code applicable to public entities including the Authority and to public works contracts generally, including public works contracts of the Authority.

(b) Notices inviting bids shall be published at least 14 calendar days before the date set for opening of bids. The General Manager may provide additional notice as may be appropriate. Notices shall comply with the Small Contractor Outreach and Opportunities Program established pursuant to this Code.

(c) To be eligible for consideration, bids must comply with the following requirements:

1. Bids shall be presented under sealed cover.

2. Bids shall be submitted to the Authority, at the specified location, at or before the closing deadline stated in the notice inviting bids. Bids received after the closing deadline shall be returned unopened to the sender if a return address is stated on the cover, otherwise the bid shall be discarded.

3. Bids shall be accompanied by a bidder’s security as required by Section 4.08.060.

4. Bids shall conform to the requirements stated in the notice inviting bids, the instructions to bidders and any supplemental instructions or addenda issued by the Authority. However, the Authority may waive immaterial defects and irregularities when it determines that such a waiver is in the best interests of the Authority.

(d) Bids will be opened and made public at the time and place specified in the notice inviting bids.

(e) All contracts shall be in writing. All changes, modifications, amendments or novations of contracts shall be in writing. The Authority shall not be bound by any contract, change order, modification, amendment or novation that is not first executed by a duly authorized officer or employee of the Authority.

(f) Protests of a bid shall be made according to the following procedures:
1. Protests by unsuccessful bidders shall be delivered to the Authority department designated for receipt of the bids and to the protested bidder no later than 10 calendar days after the date of the bid opening.

2. Protests shall be in writing signed by the protestor or the protestor’s authorized representative and include the following information:

   (A) The name, address and telephone number of the protestor;
   
   (B) The solicitation, bid or contract number;
   
   (C) A detailed statement of all legal and factual grounds for the protest; all documentation supporting the protestor’s grounds for the protest; the form of relief requested and the legal basis for such relief.

3. A protest that is not timely filed or that does not contain the required information may be summarily rejected. Upon timely filing of a protest that contains the required information, the Authority shall notify the protested bidder and may investigate the bid protest.

4. The protested bidder shall have five calendar days from the date the Authority delivers notice of the filing of the protest to respond to the protest. The response shall be in writing, signed by the bidder or the bidder’s designated representative, and delivered to the Authority. The bidder shall also mail or otherwise deliver a copy of the response to the protestor within the five-day period.

5. Unless requested by the Authority, neither the protestor nor the bidder shall submit additional written material. If additional information is requested, the party from whom it is requested shall deliver the information to the Authority and the other party by the date specified by the Authority.

6. The awarding authority will rule on the bid protest. The decision of the awarding authority is final, except for the possibility of judicial review. If the General Manager is the awarding authority, the manager may hold a hearing among interested parties prior to the determination of the protest, or may determine the protest based on the written submissions. If the Board is the awarding authority, the bid protest will be determined at a public meeting. The General Manager or General Counsel, or both, may make a recommendation regarding the bid protest. The Engineering and Operations Committee may consider the protest based on the written information provided by the parties, the recommendations of the General Manager and General Counsel, and oral presentations at the meeting at which the protest is considered. The Engineering and Operations Committee may, upon advance request by a party, permit submission of further written information or argument, provided however, that if submission of additional written information or argument is permitted, the committee shall permit the other
party to file a response. The meeting to consider a protest may be continued to permit the submission of additional written information or as deemed appropriate by the presiding officer or the committee. The protest shall be decided by the Board upon recommendation of the Engineering and Operations Committee and the evidence presented to the committee.

Section 4.08.060 **Required Security for Performance and Payment**

(a) All bids exceeding $50,000 shall be secured in an amount of ten percent of the bid amount by one of the following: cash, a cashier’s check made payable to the Authority, a certified check made payable to the Authority, a bidder’s bond made payable to the Authority and executed by an admitted surety insurer authorized to do business in California, unless otherwise specified by statute.

(b) Every original contractor on a contract equal to or exceeding $25,000 shall provide a payment bond in the amount of 100% approved by the Authority. In order to be approved, the payment bond must comply with the requirements of this subsection and applicable law, including the provisions of the California Civil Code relating to payment bonds for public works. The payment bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer authorized to do business in California, unless otherwise specified by statute. The bond shall be in a sum equal to 100% of the total amount payable by the contract.

(c) Except as provided herein, every contract equal to or exceeding $25,000 shall be accompanied by a performance bond approved by the Authority. The performance bond shall be executed by an admitted surety insurer authorized to do business in California, meet other requirements of the Authority as set forth in the contract, and comply with the requirements of this subsection, unless otherwise required by statute. Where in the best interest of the Authority, the performance bond amount may be set by the Authority based upon adjustable scale, but shall not exceed 100% of the total amount payable by the contract.

(d) The General Manager is delegated the authority to make estimates and approve progress payments, but such payments shall not be made in excess of 95 percent of the portion of actual work completed, plus a like percentage of a value of any material under Authority control and unused. If a finding is made that the project is complex and retention of greater than five percent must be withheld, then payments shall not be made in excess of 90 percent of the portion of the actual work completed plus a like percentage of a value of any material under Authority control and unused.

(e) The General Manager may require payment and performance bond for maintenance or other contracts, not otherwise subject to the provisions of this section, in such amounts as is reasonably necessary to protect the best interests of the Authority. The bond forms and amounts shall be described in the notice inviting bids. Bonds shall be executed by an admitted surety insurer authorized to do business in California.
Section 4.08.070 **Project Labor Agreements**

A contract subject to this chapter in an amount of $100 million or greater may include a requirement for a project labor agreement. Before issuing procurement documents for a contract in an amount of $100 million or greater, the General Manager shall obtain a determination by the Board whether a project labor agreement is a requirement of the contract. If the Board determines that a project labor agreement is a requirement of the contract, the requirement shall be included in the procurement documents and contract.

Section 4.08.080 **General Requirements Contracts**

(a) General Requirements Contracts are contracts for the construction, reconstruction, erection, maintenance or landscaping of Authority works, facilities, improvements, property or grounds that contain a unit price book of detailed specifications and unit prices for typical tasks or items of work. Specific construction projects are not contemplated or authorized at the time of contract award. Instead, work is authorized by separate job orders specifying and directing the performance of work under the General Requirements Contract. A contractor under a General Requirements Contract is not guaranteed any particular amount of work under the contract.

(b) The General Manager may authorize use of General Requirements Contracts not to exceed an annual amount of five hundred thousand dollars each and one million dollars cumulatively. General Requirements Contracts may be let according to the procedures of subsection (c) or subsection (d).

(c) General Requirements Contracts may be let to lowest responsive responsible bidder under procedures established by Section 4.08.050 and on specifications that provide for unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual job orders. General Requirements Contracts let under this subsection shall not exceed a term of two years in duration. If a General Requirements Contract is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the contract, including extensions, may not exceed two years.

(d) General Requirements Contracts may be let to more than one contractor that is either a small local contractor or a contractor that has not previously performed work for the Authority. The specifications for such contracts provide for unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual job orders and the cost for each unit shall be determined according to the lowest responses for units or items of work submitted pursuant to a notice inviting proposals published according to the procedures established by Section 4.08.050. Following the submission of responses, the General Manager shall establish the terms of a General Requirements Contract and may enter into the contract with more than one qualified contractor. Job orders under a General Requirements Contract made under this subsection shall be issued to contractors by rotation or other fair and equitable system developed by the General Manager. General Requirements Contracts let under this subsection shall not exceed a term of three years in duration. If a General Requirements Contract is
awarded for a term less than three years, one or more extensions may be awarded but the entire
term of the contract, including extensions, may not exceed three years.

(e) General Requirements Contracts shall be awarded by the Board or General
Manager as provided in Section 4.08.040.

(f) Following award of a General Requirements Contract, the General Manager may
thereafter identify and issue job orders under the General Requirements Contract. An individual
job order may not exceed the sum of $50,000, except in the case of an emergency.

(g) General Requirements Contracts shall be subject to the provisions of Sections
4.08.050 and 4.08.060, except that bidder’s bonds may be waived on contracts let according to
subsection (d) of this section.

Section 4.08.090 Design-Build Contracts

(a) For the purposes of this Section, the following definitions apply:

“Design-Build” means a public works contract procurement method in which both the design
and construction of a project are procured from a single entity.

“Design-Build Entity” means a partnership, corporation, or other legal entity that is able to
provide appropriately licensed contracting, architectural, and engineering services as needed.

“Design-Build Entity Member” includes any person who provides licensed contracting,
architectural, or engineering services.

(b) The Authority may enter into Design-Build contracts according to the provisions
of this Section.

(c) Before procuring a Design-Build contract, the General Manager shall prepare a
request for proposal setting forth the scope of the project that may include, but is not limited to,
the size, type, and desired design character of the works, improvements, facilities, buildings and
site, and performance specifications. The performance specifications shall describe the quality
of construction materials, assemblies, and other information deemed necessary to adequately
describe the Authority’s needs. The performance specifications shall be prepared under the
direction of the Director of Engineering or Director of Operations and Maintenance, as
appropriate, and approved by the Board.

(d) The Authority may establish a competitive prequalification and selection process
for Design-Build Entities that specifies the prequalification criteria, as well as recommends the
manner in which the winning entity will be selected. Nothing in this Section precludes a Design-
Build contract from being awarded to a sole source, if, in advance of the contract, the General
Manager certifies in writing the sole source status of the provider.
Prequalification may be limited to consideration of all or any of the following criteria supplied by a Design-Build Entity:

1. Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

2. Submission of documentation establishing that the Design-Build Entity Members have completed, or demonstrated the capability to complete projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

3. Submission of a proposed project management plan establishing that the Design-Build Entity has the experience, competence, and capacity needed to effectively complete the project.

4. Submission of evidence establishing that the Design-Build Entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the Authority that the Design-Build Entity has the capacity to complete the project.

5. Provision of a declaration that the applying members of the Design-Build Entity have not had a surety company finish work on any project within the past five years.

6. Provision of a declaration providing detail for the past five years concerning all of the following:

(A) Civil or criminal violations of the Occupational Safety and Health Act against any member of the Design-Build Entity.

(B) Civil or criminal violations of the Contractors’ State License Law against any member of the Design-Build Entity.

(C) Any conviction of any member of the Design-Build Entity of submitting a false or fraudulent claim to a public agency.

(D) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the Design-Build Entity. For purposes of Section 22.3305(f)(4), only violations by a Design-Build Entity Member as an employer shall be deemed applicable, unless it is shown that the Design-Build Entity Member, in his or her capacity as an employer, had knowledge of a subcontractor’s violations or failed...
to comply with the conditions set forth in Section 1775(b) of the State Labor Code.

(E) Civil or criminal violations of federal or state law against any Design-Build Entity Member governing equal opportunity employment, contracting or subcontracting.

7. Provision of a declaration that the Design-Build Entity will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer’s knowledge.

(f) The Design-Build Entity shall provide documentation of its subcontractor and employment outreach program to all subcontractors in the required disciplines of the project.

(g) The Authority shall select one of the following methods as the process to be used for the selection of the winning entity:

1. A Design-Build competition based on performance, specifications, and criteria set forth by the Authority in the request for proposals. Criteria used in this form of evaluation of proposals may include, but not be limited to, items such as proposed design approach, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for Design-Build proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made to the Design-Build Entity whose proposal is judged as providing best value meeting the interests of the Authority and meeting the objectives of the project.

2. A competition based on program requirements, performance specifications, and a preliminary design or combination thereof set forth by the Authority in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals. The Authority shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for Design-Build proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made to the Design-Build Entity on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the Authority and meeting the objectives of the project.
3. A Design-Build competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the Authority in the request for proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the Authority to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity. Award shall be made on the basis of the lowest responsible and reliable bid.

4. A sole source award if a Design-Build Entity Member is also the owner of real property that will be acquired by the Authority as a part of the project.

(h) The Authority recognizes that the Design-Build Entity is charged with performing both design and construction. Because a Design-Build contract may be awarded prior to the completion of the design, it is often impracticable for the Design-Build Entity to list all subcontractors at the time of the award. It is the intent of the Authority to establish a clear process for the selection and award of subcontracts entered into pursuant to this Section in a manner that retains protection for subcontractors while enabling Design-Build project to be administered in an efficient fashion. All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on Design-Build projects undertaken pursuant to this Section.

1. The Design-Build Entity in each Design-Build proposal shall specify the construction trades or types of subcontractors that may be named as members of the Design-Build Entity at the time of award. In selecting the trades that may be identified as members of the Design-Build Entity, the Design-Build Entity shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.

2. All subcontracts that were not listed by the Design-Build Entity at the time of award in accordance with paragraph 1 shall be performed and awarded by the Design-Build Entity, in accordance with a bidding process set forth in the Design-Build package.

(i) Notwithstanding anything in this section to the contrary, the Authority may enter into a Design-Build contract with a person or entity with whom the Water Authority has or will enter into a long term Water Purchase Agreement for facilitating the production, transmission or delivery of water.

Section 4.08.100 Supplemental Regulations

The General Manager may issue written supplemental regulations for the making and administration of contracts. Such supplemental regulations shall be subject to approval by the General Counsel for consistency with the provisions of this Chapter and applicable law.
Section 4.08.110  Exemptions

(a) The procedures and requirements of this chapter shall extend only to contracts of the type enumerated in this chapter.

(b) Notwithstanding anything in this chapter to the contrary, the General Manager may enter into contracts with a federal, state or local agency, including public educational institutions, for the performance of landscaping, refuse removal, and surface maintenance of Authority rights-of-way through labor provided by inmates, community service workers, students and other persons under work programs established and supervised by the federal, state or local agency provided that:

1. The contract does not exceed $250,000 per year;

2. The agency agrees to permit supervision of the workers by Authority personnel;

3. The agency agrees to defend, indemnify and hold harmless the Authority against all claims caused or alleged to be caused by any act or omission of the agency or of any worker provided by the agency;

4. The agency agrees to provide workers’ compensation coverage for the workers; and

5. The General Manager determines that the cost to the Authority is not estimated to exceed the cost of similar work obtained by a contract made in accordance with the provisions of this chapter.
Section 4.12.010  Prequalification

(a) The General Manager may authorize the Contract Administrator to establish in the contracting procedure for a contract requiring competitive bidding under Chapters 4.04 or 4.08 a process for prequalification of potential bidders or subcontractors, or both bidders and subcontractors. When authorized, the process shall conform to the requirements of this Section. As used in this Section, the terms “applicant” and “applicants” include prospective bidders and subcontractors for contracts to be performed for the Authority. For the purposes of this Section the term Contract Administrator means the Director of the Department with primary responsibility for the project or a contract implementing the project.

(b) The prequalification process may include a notice inviting prequalification information or a notice inviting technical proposals, or both such notices.

(c) The notice inviting prequalification information shall invite each applicant to submit information that will permit the Contract Administrator to determine in advance of advertising of a Notice Inviting Bids that a prospective bidder is responsible to perform a proposed contract or that a prospective subcontractor is responsible to perform specified kinds of work.

(d) The notice inviting technical proposals shall invite each applicant to submit a technical proposal to the Authority and the responsiveness of such proposal to the specifications shall be determined by the Contract Administrator in advance of receipt of bids and bidding shall be restricted to bidders determined by the Contract Administrator to have furnished a technical proposal determined by the Contract Administrator to be responsive. A notice inviting technical proposals shall not be included in the contract documents unless the Contract Administrator determines all of the following:

1. There are not sufficiently definite or complete specifications or purchase descriptions available to permit free competition without engineering evaluation and discussion of the technical aspects of the procurement;

2. Criteria do exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements; and special requirements for operational suitability and ease of maintenance; and

3. It is expected that more than one technically qualified source will be available, both initially and after technical evaluation.

(e) Based upon the notice inviting prequalification information or notice inviting technical proposals, the Contract Administrator shall determine the responsibility of applicants in

Appendix H

Chapter 4.12

Contractors and Bidders

Section 4.12.010  Prequalification
Section 4.12.020  Debarment

Section 4.12.010  Prequalification

(a) The General Manager may authorize the Contract Administrator to establish in the contracting procedure for a contract requiring competitive bidding under Chapters 4.04 or 4.08 a process for prequalification of potential bidders or subcontractors, or both bidders and subcontractors. When authorized, the process shall conform to the requirements of this Section. As used in this Section, the terms “applicant” and “applicants” include prospective bidders and subcontractors for contracts to be performed for the Authority. For the purposes of this Section the term Contract Administrator means the Director of the Department with primary responsibility for the project or a contract implementing the project.

(b) The prequalification process may include a notice inviting prequalification information or a notice inviting technical proposals, or both such notices.

(c) The notice inviting prequalification information shall invite each applicant to submit information that will permit the Contract Administrator to determine in advance of advertising of a Notice Inviting Bids that a prospective bidder is responsible to perform a proposed contract or that a prospective subcontractor is responsible to perform specified kinds of work.

(d) The notice inviting technical proposals shall invite each applicant to submit a technical proposal to the Authority and the responsiveness of such proposal to the specifications shall be determined by the Contract Administrator in advance of receipt of bids and bidding shall be restricted to bidders determined by the Contract Administrator to have furnished a technical proposal determined by the Contract Administrator to be responsive. A notice inviting technical proposals shall not be included in the contract documents unless the Contract Administrator determines all of the following:

1. There are not sufficiently definite or complete specifications or purchase descriptions available to permit free competition without engineering evaluation and discussion of the technical aspects of the procurement;

2. Criteria do exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements; and special requirements for operational suitability and ease of maintenance; and

3. It is expected that more than one technically qualified source will be available, both initially and after technical evaluation.

(e) Based upon the notice inviting prequalification information or notice inviting technical proposals, the Contract Administrator shall determine the responsibility of applicants in
advance of receipt of bids and that bidding shall be restricted to bidders determined by the Contract Administrator to be responsible or that the performance of subcontracts shall be restricted to subcontractors determined by the Contract Administrator to be responsible. In determining responsibility, the Contract Administrator may consider:

1. An applicant’s experience in the design, construction, fabrication, assembly, or manufacture of works or materials similar to what will be called for under the contract documents;

2. The experience of others with the applicant in the construction, fabrication, assembly, or operation of similar works or materials designed, constructed, fabricated, or assembled by the applicant;

3. The physical plant, facilities, and equipment the applicant proposes to employ in the performance of a proposed contract or subcontract;

4. The experience and expertise of an applicant’s responsible managing personnel, key staff members, and other employees who would be assigned to the work if the applicant were awarded the contract or subcontract;

5. As to prospective bidders, the extent to which any part of the contract is to be performed by subcontractors or suppliers;

6. The financial capability, capability to procure appropriate insurance and bonding, and resources of the applicant to perform the proposed contract or subcontract;

7. Any other factor bearing on the responsibility of an applicant that is specified in the notice inviting prequalification information.

(f) As a condition to submitting a bid or performing a specified portion of the proposed contract, an applicant shall comply with any and all conditions precedent determined by the Contract Administrator to be necessary to enable the applicant to submit a bid to the Authority or any other applicant, as the case may be, which takes into account all factors affecting performance of the work or portion of the work to be performed by the applicant.

(g) The Contract Administrator may determine that an applicant is responsible to perform more than one contract for which notices inviting bids are to be posted and advertised after the date of the Contract Administrator’s determination. In the event of such prior determination, the Contract Administrator may, at any time thereafter determine that an applicant is no longer responsible, or advertise and post additional notices inviting prequalification information and determine that additional applicants are responsible to perform contracts subsequent to the contract for which prequalification information is initially requested.

(h) In the event any applicant is determined by the Contract Administrator not to be responsible, or no longer responsible after previously having been determined to be responsible, or a prospective bidder’s proposal is determined by the Contract Administrator not to be technically
responsive to the contract documents, or the Contract Administrator determines that a bidder or an applicant has failed to comply with a condition precedent, the Contract Administrator shall state the determination in writing together with the reasons therefor and shall deliver a copy of such determination and reasons on the bidder or applicant. The bidder or applicant may appeal the Contract Administrator’s decision, by filing with the General Manager a written notice of protest and demand for hearing not later than 5:00 p.m. of the fifth business day following delivery of the decision. The General Manager shall conduct a hearing under procedures prescribed by the General Manager, and shall make a determination whether to approve or reverse the determination of the Contract Administrator. Hearing procedures shall, at a minimum: provide the bidder or applicant not less than five business days notice of the time and date of the hearing; provide the bidder or applicant the opportunity to present oral and/or documentary evidence rebutting the determination and reasons of the Contract Administrator; and permit the bidder or applicant to be represented by an attorney or other designated representative. The hearing shall not be conducted according to the technical rules relating to evidence and witnesses applicable to judicial proceedings. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The determination of the General Manager shall be made in writing, shall include findings of fact which support the determination, and shall be served personally upon the bidder or applicant, or by registered or certified mail. The General Manager’s determination shall be final. The General Manager may delegate responsibility for conducting the hearing to the Deputy General Manager. If a decision on a bidder’s or applicant’s protest is made less than 20 days before a date set for the opening of proposals, such opening shall be postponed to a date not less than 20 days after the date of decision. Notwithstanding any provision to the contrary in this Section, there shall be no right to a hearing on a bidder’s or applicant’s protest when the General Manager is acting under emergency authority granted by this Code.

(i) A notice inviting prequalification information or a notice inviting technical information shall be posted and advertised in the manner prescribed by Chapter 4.04 or 4.08 for the proposed contract; provided, however, that a notice inviting technical proposals need not be posted or advertised where bidding is restricted to bidders previously determined to be prequalified under the procedure set forth in this Section. When bids will be considered only from bidders determined to be prequalified or whose technical proposal is determined to be responsive to the Authority’s specifications under the procedure set forth in this Section the notice inviting bids may or notice requesting proposals will be provided to the prequalified or technically responsive applicants.

Section 4.12.020 Debarment

(a) Debarment is an administrative sanction to be imposed only in the public interest for the Authority’s protection and not for purposes of punishment. Debarment is designed to protect the Authority by ensuring full and open competition by granting awards only to responsible contractors. This section establishes debarment and the procedure for imposition of debarment.

(b) Unless from the context a different interpretation is plainly indicated, the definitions contained in this subsection govern the interpretation of this Section. The definitions shall apply regardless of whether the term is capitalized.
1. Affiliate means business entities, organizations, or individuals that either directly or indirectly, control one another or have the power to control one another, or are controlled by a third party or are subject to control by a third party.

2. Affiliates include chief executive officers and members of boards of directors or their equivalents.

3. Bidder means any individual, organization, legal entity, company or affiliate submitting a bid or proposal in response to a solicitation or other request by the Authority for bids or proposals.

4. Claim includes any request or demand for money or damages submitted or made, pursuant to a contract, statute or law, to the Authority, or an officer, employee or agent of the Authority.

5. Contractor means any individual or other legal entity that either (i) directly or indirectly, for example, through an affiliate, submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, an Authority contract for works, supplies or services; or (ii) conducts business or reasonably may be expected to conduct business with the Authority as an agent or representative of another contractor. Contractor includes bidder.

6. Debarment means action taken by the hearing committee to exclude a contractor from contracting with the Authority for a reasonable, specified period.

7. Hearing committee means a subcommittee of the Board composed of not less than three members, including the Chair or Vice-Chair of the Engineering and Operations Committee who shall be the presiding officer of the hearing committee. The members of the hearing committee shall be Directors as appointed by the Chair of the Board.

8. Knowing or knowingly means that with respect to information, a person has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.

9. General Manager means the Authority General Manager as specified in Section 3.1 of this Administrative Code, or any employee or other person to whom the General Manager has delegated responsibility for the administration of a contract.

10. Person includes a natural person, corporation, firm association, organization, partnership, limited liability partnership, limited liability company, business, trust or affiliate.

(c) Grounds for debarment. In addition to all other remedies permitted by law, upon a finding of grounds as set forth in this section, the hearing committee, or the Board of Directors upon appeal, may declare by resolution that a contractor is ineligible to bid on, submit a proposal for, or
be awarded an Authority service, procurement, public works or other contract for a period not to exceed three years for any of the following reasons:

1. Two or more claims of computational or other error in bid submission within a two-year period;
2. Unjustified failure or refusal to timely provide or properly execute contract documents;
3. Unsatisfactory performance of contract;
4. Two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to the Authority in the time periods required;
5. Unjustified refusal to properly perform or complete contract work or warranty performance;
6. Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to an Authority contract;
7. Conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;
8. Any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with the Authority;
9. Any debarment of the contractor by another governmental agency on grounds justifying debarment under this section, during the period of such debarment;
10. Submission to the Authority of a false or fraudulent claim;
11. Violation with respect to the bidding upon, award of, or performance of, an Authority contract, of any state statute relating or pertaining to public contracts;
12. Any serious safety violation, whether or not resulting in a citation by OSHA or CalOSHA.

(d) Additional grounds for debarment. In addition to the reasons set forth in subsection (c), any of the following acts by a person is reason for debarment of that person:

1. Knowingly presenting or causing presentation of a false claim for payment or approval to any Authority officer or employee;
2. Knowingly making or using, or causing to be made or used, a false record or statement to support a false claim;

3. Conspiring with any other person to defraud the Authority by seeking to obtain payment or approval of a false claim.

(e) Collusion / permanent debarment. If at any time it shall be found that any party or parties to whom a contract has been awarded has, in presenting any bid or bids, been guilty of collusion with any party or parties in the submission of any bid or for the purpose of preventing any other bid being made, then the contracts so awarded may be declared null and void by the Authority’s Board of Directors and the Authority’s Board of Directors shall thereupon re-advertise for new bids for said work or the incomplete portion thereof. The hearing committee shall debar from future bidding all persons or firms found to be in violation of this subdivision, or any future firm in which such person has a financial interest of twenty-five percent or more, or holds a management position.

(f) Permanent debarment/additional ground. The hearing committee may permanently debar any contractor that has been permanently debarred by another governmental agency.

(g) Scope of Debarment.

1. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual’s performance of duties for, or on behalf of, the contractor, or with the contractor’s knowledge, approval, or acquiescence. The contractor’s acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

2. The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor’s conduct.

3. The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for, on approval of, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(h) Procedure. The administrative procedure for debarment is as follows:

1. Proceedings may be commenced upon the issuance by the General Manager of a Notice of Intent to Debar stating the grounds and factual basis for proposed debarment.
2. The Notice of Intent to Debar shall be given in the manner specified by state law for the service of process. The Contractor shall have ten days following service of the notice to file with the General Manager a written request for hearing on the proposed debarment. If no such request is timely filed, the Notice of Intent to Debar shall be deemed a final order for debarment. Such final order shall not be subject to appeal.

3. Upon receipt of a timely request for hearing, the General Manager shall set the time and date for an administrative hearing by the hearing committee. The Contractor shall be given not less than 30 days written notice of the time and date set for hearing. Such notice may be given in the manner specified by state law for the service of process.

4. In proceedings under this section, an individual contractor may appear in person, or be represented by an agent with written authorization, a contractor that is not an individual person may be represented by an authorized officer, employee, member or agent. The General Manager may also designate a representative. In addition, any party may be represented by a member in good standing the State Bar of California.

5. No later than 5:00 p.m., six days prior to the date set for hearing, the contractor and the General Manager shall file with the Board Secretary a list of all witnesses to be presented by such party and fifteen copies of each written or graphic item such party intends to offer into evidence during the hearing, and shall exchange one copy of such list and written or graphic items. The written recommendation of the General Manager described in paragraph (1) above, shall be admitted into evidence and copies of the recommendation need not be filed or exchanged as provided in this paragraph. Any contract, document incorporated by reference into a contract, notice inviting bids, request for proposals, bid, or response to request for proposals, referenced in the written recommendation of the General Manager shall be admitted into evidence and copies of such documents need not be filed or exchanged as provided in this paragraph. Only the contractor, the General Manager, the designated representative of the contractor or of the General Manager, or a person whose name appears on a witness list filed with the Board Secretary shall be permitted to present oral evidence. Only those documents and graphic items filed with the Board Secretary, or otherwise required by this paragraph to be admitted, shall be considered for admission into evidence.

6. Oral evidence shall be taken only under oath or affirmation. The hearing shall not be conducted according to technical rules relating to evidence and witnesses applicable to judicial proceedings. Subject to the limitation of paragraph (5), above, any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs; provided, however, that a determination of debarment shall not be based solely on hearsay evidence. The presiding officer of the hearing committee may set reasonable limitations on the time for presentation of evidence.
7. Continuances or extensions of time may be granted by the hearing committee for good cause or upon agreement of the Contractor and General Manager. 

8. The order of the hearing shall be as set forth in this paragraph unless the contractor and General Manager agree to some other order, with the consent of the hearing committee. First, the General Manager and contractor shall each have an opportunity to make a brief opening statement. Second, the General Manager shall present the grounds and evidence for debarment. Third, the contractor may present evidence in explanation or rebuttal. Fourth, the General Manager may present evidence in rebuttal. Fifth, the contractor may present evidence in rebuttal. Sixth, the contractor may make any a closing argument. Seventh, the General Manager may make a closing argument. During the presentation of evidence each party may cross-examine the witnesses for the other party, subject to reasonable limitation imposed by the presiding officer of the hearing committee, including a limitation to cross-examination conducted through the presiding officer. Members of the hearing committee may also ask questions of any witness during the presentation of evidence. Arguments of representatives of the contractor or the General Manager shall not be considered evidence. 

9. The hearing committee shall announce its final decision by resolution. The hearing committee may direct the preparation of a proposed decision and proposed findings prior to announcing its final decision. 

10. The contractor may appeal an adverse decision to the entire Board of Directors by filing a written appeal stating with particularity the exceptions to the decision or the findings of the hearing committee. The written appeal shall be filed with the Board Secretary within ten days following the final decision of the hearing committee. Within ten days following the submission of the written appeal the General Manager may file a response with the Board Secretary. The Board of Directors shall consider the appeal based upon the written appeal, the written response of the General Manager and the record of the proceedings before the hearing committee. The Board of Directors by resolution may affirm, modify or reverse the decision of the hearing committee. 

(i) Effect of Debarment. Debarment prohibits Authority officers and employees from executing contracts with a debarred contractor. Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. Authority officers, employees and agents shall not solicit offers from or award contracts to debarred contractors. Debarred contractors are also excluded from conducting business with the Authority as agents or representatives of other contractors. The Authority may extend the debarment decision to include any affiliate of the contractor if the affiliate is both specifically named and given written notice of the proposed debarment and an opportunity to respond. 

(j) List of Debarred Contractors. The General Manager shall compile and maintain a current, consolidated list of all debarred contractors. The list shall indicate the names and addresses
of all debarred contractors, the ground(s) for debarment, and the termination date for each listing. After the opening of bids or receipt of proposals, the contracting officer shall review the list of debarred contractors. Bids received from any listed contractor in response to an invitation for bids shall be recorded as received, and then rejected by reason of debarment. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive process during the period the contractor is on the list. Immediately prior to award of a contract, the General Manager shall again review the debarred contractors’ list to ensure that no award is made to a listed contractor.

(k) Continuation of Existing Contracts. Debarment shall be deemed a material breach of any other contract between the Authority and the contractor, and any existing contracts between the Authority and the contractor shall be terminated immediately upon debarment. However, notwithstanding the foregoing, the Authority may continue contracts in existence at the time the contractor is debarred, upon a determination by the Authority’s Board of Directors, after receiving advice from the General Manager and General Counsel as to the effects of termination of an existing agreement.
Chapter 5.00
Water Service

Section 5.00.010 Installation of Service Connections

(a) A service connection is a permanent Authority owned, operated, and maintained facility that has a specific purpose to convey water from an Authority supply source to a member agency owned distribution system. A member agency desiring to relocate or increase the delivery of treated or untreated water through a new or existing service connection shall submit a written request to the Director of Operations and Maintenance, and if such request is granted by the Board, member agency shall pay for the entire cost thereof.

1. The requesting member agency shall prepare and submit to the Authority information for establishing the need of a new, expanded, or relocated service connection. Such information shall include, but not be limited to, the flow of treated or untreated water in cubic feet per second (cfs), a description of the project location, new infrastructure requirements, right-of-way requirements, and connections to Authority facilities.

2. The requesting member agency shall be responsible for payment of Authority expenses incurred to perform planning and environmental studies, project alternatives, costs estimates, hydraulic analyses, designs, right-of-way acquisitions and reviews, construction, construction inspections, submittal reviews, and all other Authority costs relating to the planning, design, and construction of a new, expanded, or relocated service connection.

3. Service connections shall be constructed to current Authority standards, must be a minimum 10 cfs with a minimum flow range of 10 percent of the meter size, and shall be subject to the current flow request requirements.

4. Service connections shall be planned, designed, and constructed by the Authority. At the Authority’s discretion, the member agency may be given the option to prepare the planning studies, design plans, and to construct the service connection. The Authority may review and approve all planning studies and design plans, and perform construction inspections of service connection implemented by the member agency.

5. Authority service connections, and all meters, control valves, structures, and appurtenances pertaining thereto, shall be owned, operated and maintained by the Authority.
6. The Authority shall prepare at its expense, in coordination with the requesting agency, an agreement consistent with the requirements of this subdivision. Upon execution of the agreement, the requesting member agency shall deposit the total estimated Authority costs as specified by the agreement before commencement of work.

(b) The Director of Operations and Maintenance may approve a temporary service connection upon written request by a member agency if either a demonstrated need for temporary service exists, or while a permanent service connection has been approved and is being designed and constructed. A temporary service is service for a period of not more than two years after the date of first delivery of water through a temporary service connection. A temporary service connection shall not be permitted if the Director finds it will create conditions detrimental to the service, hydraulic, or structural conditions of the Authority’s aqueduct system. All of the provisions of subdivision (a) shall apply to temporary service connections except that a temporary service connection shall be designed and constructed at a size and standard approved by the Director as appropriate for the circumstances of the request with a minimum flow range of 10 percent of the meter size. A temporary service connection shall be removed at the end of the two year temporary service period, unless an extension of the temporary service period is granted, at the expense of the member agency.

1. Upon written request by a member agency, the Director, or the Board of Directors on appeal, may grant an extension of the temporary service period for up to two additional years if:

(A) The request includes a definite plan and schedule to complete a service connection prior to the expiration of the extension period; and

(B) The request demonstrates that the member agency has made a good faith effort to comply with this section and that the delay in completion of the permanent connection was caused by new regulatory requirements, legal restrictions, design or construction delays or other unforeseen matters beyond the agency’s control; or

(C) The delay in removal of the temporary service connection is for the convenience of the Authority or is of benefit to the region.

2. If use of a temporary service connection is not terminated at the end of a two year temporary service period, or an authorized extension period, the member agency shall pay a penalty as follows:

(A) $100 per acre-foot of water delivered through the temporary service connection commencing at the beginning of the first year after the end of the temporary service period or authorized extension period;
(B) $200 per acre-foot of water delivered through the temporary service connection commencing at the beginning of the second year after the end of the temporary service period or authorized extension period.

The Director may cause the removal of a temporary service connection commencing at the beginning of the third year after the end of the temporary service period or authorized extension period. Provided an extension has not previously been granted, the Director may waive the penalty upon written application of a member agency and finding that the grounds for granting an extension exist.

3. Member agencies with existing temporary service connections are subject to the provisions of this subdivision.

Section 5.00.020 Metering of Water, Meter Readings, Meter Testing

All water delivered by the Authority shall be metered. Meter readings shall be made on the last day of each calendar month. Meters shall be tested at intervals of not less than one year at the expense of the Authority. Any member agency may have the meter through which it is served tested at any time at its own expense, but such test shall be made by the Authority. Any member agency affected shall have the right to be represented by a qualified observer at and during such tests. In the event that any such test shall disclose an error exceeding plus or minus two percent, an adjustment shall be made in charges against the agency affected covering the known or estimated period of duration of such error, but in no event exceeding six months.

Section 5.00.030 Failure to Comply with Delivery Requests

(a) If a member agency fails to accept delivery according to its request, the charges set forth in Section 5.00.030 (b) and 5.00.030 (c) shall be assessed to offset extra costs and to provide incentives for member agencies to develop facilities necessary to avoid such incidents. A member agency will be deemed to have complied with its requested order if actual deliveries are within 10 percent of the amount requested.

(b) Excess Delivery Charge. If actual deliveries exceed the order by ten percent because of actions by the member agency, a charge of $150 per cfs and $200 per acre-foot shall be made for the amount of excess deliveries.

(c) Rejection Charge. If actual deliveries are less than 10 percent of the order because the member agency has rejected a portion of the water ordered, a charge of $150 per cfs of the flow rejected, plus $200 per acre-foot of the amount of water rejected, shall be made.

(d) Unintended Actions - No Charge. If a member agency fails to comply with its order only one time in a consecutive thirty-day period, it shall be deemed to be an unintended failure to comply and no charge shall be made for such infractions. If a failure to comply lasts less than fifteen minutes, it shall be considered unintended and no charge shall be made for such infraction.
(e) The Director of Operations and Maintenance may waive charges which are the result of rejected or excess deliveries, if a member agency is making good faith progress toward resolving the issue.

(f) Determination of good faith progress will be at the discretion of the Director of Operations and Maintenance and generally means that the member agency has either under construction or definitive plans which will, within a reasonable time frame, correct the situation. Appeals of charges may be heard by the Board and resolved at the Board’s discretion.

Section 5.00.040  Water Allocation

The Board may adopt policies, regulations or procedures for allocation of water. The Board may impose penalties for violation of such policies, regulations or procedures. Water may be allocated because of facilities constraints, supply limitations, or both.

Section 5.00.050  Rate Structure

(a) Subject to the CWA Act and applicable provisions of the state Constitution and statutes, the Board shall levy, impose, fix, adjust or increase: taxes; standby availability charges; capacity charges; and fees, rates, or charges for delivery and supply of water, use of facilities and provision of other services.

(b) The Authority’s rates and charges for delivery and supply of water, use of facilities, and provision of services to its member agencies include: a customer service charge, a storage charge, a supply reliability charge, an infrastructure access charge, a transportation rate, a treatment rate, and supply charges. The Board may establish additional or different rates and charges, including special agricultural rates based on service differentials.

(c) An infrastructure access charge, in an amount set from time-to-time by the Board by ordinance or resolution, is imposed as a condition of maintaining a connection of a member agency to Authority facilities. The annual revenues collected through the infrastructure access charge shall be set at an amount which, when added to the standby availability charge and property tax revenues, will provide funding for at least 25 percent of the Authority’s fixed costs, as determined by the Board of Directors. Member agencies shall pay the infrastructure access charge based on the number and size of retail water meter connections within their respective jurisdictions, as established by a water meter count under rules determined by the Board of Directors. The Board of Directors may establish a system of credits to member agencies to allocate the infrastructure access charge among the member agencies.

(d) The Board may adopt policies for the billing and collection of fees, rates and charges, including provisions for interest and penalties for delinquent payments.
Chapter 7.00
Regulation of Rights of Way and Property

Section 7.00.010  Purpose

(a) The Authority exists to provide each of its member public agencies with adequate supplies of water to meet their expanding and increasing needs and to provide other necessary services. In furtherance of the full exercise of its statutory purpose, the Authority has acquired and will acquire real property and interests therein, and has acquired or constructed and will acquire and construct, and control, operate, maintain and use works and facilities necessary or convenient to the full exercise of its powers. This chapter is intended to establish regulations, policies and procedures in order to protect and preserve the Authority’s property, property interests, works and facilities of the Authority.

(b) The Authority’s Board of Directors finds and determines that the Authority’s property, property interests, works and facilities must be protected and preserved against unauthorized use. The Board further finds and determines that uses of the Authority’s rights of way which interfere with, hinder, delay or obstruct the Authority’s ability to immediately construct, reconstruct, install, repair, maintain, remove, inspect, replace, relocate, and operate its works and facilities are detrimental to the Authority, to the public health, safety and welfare and to the Authority’s regional public water conveyance system and water supplies. Such uses are incompatible with the Authority’s use and ownership of its property, property interests, works and facilities. This chapter has been adopted to prohibit such incompatible uses.
(c) The Authority’s Board of Directors also finds and determines that certain uses by other public agencies, public utilities, owners of adjoining, adjacent or underlying property, or the public generally are compatible with the Authority’s use and ownership of its property, property interests, works and facilities or may be compatible under certain conditions and subject to certain restrictions. This chapter has been adopted to establish regulations for authorizing compatible uses or uses that may be compatible under certain conditions and subject to certain restrictions.

(d) Nothing in this chapter is intended to grant, alter, expand, or limit any title or interest in or to any Authority property or property interest.

(e) No permit issued pursuant to this chapter is intended to grant any title or interest in Authority property or create any agency or independent contractor relationship between the Authority and any person.

Section 7.00.020  General Authorization

(a) This chapter is adopted pursuant to Section 5, paragraph (4) and Section 13, subdivision (b) of the County Water Authority Act.

(b) Except as authorized by Section 7.00.140, when the Authority’s interest in property is a fee, leasehold or other possessory interest, no person shall use or occupy such property except as specifically authorized by a duly executed deed (including an easement deed), lease, license, contract or other written instrument approved by the board or General Manager.

1. Unless authorized by paragraph 2 of this subdivision, all deeds, leases, licenses, contracts or other written instruments shall be approved by the board.

2. The General Manager is authorized to approve leases, licenses, contracts or other written instruments where the consideration paid for the interest is $50,000 or less, and the term of the use is 10 years or less.

3. Except as otherwise approved by the board, a deed, lease, license, contract or other written instrument shall be on terms and conditions governing use that are substantially similar to those established by this chapter for major encroachment permits and shall include a requirement for consideration based upon fair market value or fair market rent, as appropriate, for the interest conveyed.

Section 7.00.030  Definitions

The following words and phrases whenever used in this chapter shall have the meaning defined in this section.

“Abatement” means action as may be necessary to remove, terminate or alleviate a nuisance, including but not limited to demolition or removal of property.
“Abatement notice” means a notice issued by the General Manager which requires a responsible person to abate a public nuisance.

“Applicant” means the person that has submitted an application to the Authority for any permit, license, or other authorization to use the Authority’s right of way.

“Detrimental use” means any use of right of way or property which interferes with, impedes, hinders, delays or obstructs the Authority’s ability to immediately construct, reconstruct, install, repair, maintain, inspect, remove, replace, relocate, and operate its works and facilities.

“Encroachment” means a physical occupation in, on, across, under or upon Authority right of way or property. Encroachment also means any radio or similar telecommunication transmissions that interfere with the operation of Authority works.

“Facility” means any aqueduct, dam, reservoir, pipeline, pump, generator, diversion structure, vault, manhole, meter, valve, flow control device, air release and air vacuum valve, alarms, erosion control device, blow-off, pump well, power transmission and communication line or equipment, underground anode, anode well or other related facility for cathodic protection of pipes and any other structure necessary or convenient to the full exercise of the Authority’s rights and purposes.

“Joint Use Agreement” means an agreement between the Authority and one or more government agency or public utility to use Authority’s right of way or property to install facilities for streets, sewer, water, cable, electric or gas subject to Authority’s superior rights.

“Owner” means a person having an estate in land encumbered by an Authority easement or other interest in property. Owner also means a person entitled to exercise a reserved right pursuant to Sections 7.00.050 or 7.00.060.

“Permittee” mean a person who holds or has received, pursuant to this chapter, a permit, license or other authorization to use Authority right of way or property, and includes any agent, contractor or employee of the permittee.

“Person” means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity, which is recognized by law as the subject of rights or duties. Person includes a public utility or a public or governmental agency.

“Parallel encroachment” means an encroachment by a surface or subsurface pipeline, conduit, channel, aqueduct or similar structure, overhead electrical or telecommunication wires and surface street improvements, which has an alignment parallel to an Authority pipeline.

“Public nuisance” means any encroachment caused, maintained or allowed to exist in violation of this Chapter. A public nuisance also has the same meaning as defined in California Civil Code Section 3479.
“Public utility” means a person providing public gas, electric, water or communication service pursuant to a franchise, certificate or permit issued by the State or a local government and subject to regulation by the California Public Utilities Commission.

“Reserved right” means a property right owned by others to make joint use of Authority right of way, existing by virtue of a limitation or condition of the deed, order of condemnation or other instrument by which the Authority acquired title to specific right of way.

“Responsible person” means the person committing a violation. Responsible person also means an owner or manager of a business or property who directs or permits a violation of this Chapter to be done by any other person in the course or apparent course of business of the owner or manager or on the property of the owner. A “responsible person” is a responsible party as defined in section 1.12.030 of this Code.

“Right-of-way” means and includes any land, easement, franchise, or other interest in real property held, owned, leased or otherwise belonging to the Authority.

“Structure” means anything constructed or put together and includes, without limitation, a building, or building part, manufactured or mobile home, fence, gate or chain, post, wall, pipe, foundation, concrete or asphalt formation, driveway or pad, and other similar physical constructions.

“Use” includes any use of property and placing, causing or permitting an encroachment. Use also includes any structure or thing constructed, placed, or maintained in furtherance of a use. Use includes, without limitation, excavation, grading, filling and similar earth movement activity.

“Works” means any facility or improvement to real property necessary or convenient to the full exercise of the Authority’s statutory purpose. Works includes, without limitation, improved or unimproved access roads, wetlands, uplands and other lands set aside for habitat or natural resource preservation.

Section 7.00.040 Prohibited Uses

(a) Use of Authority right of way by any person except the Authority or the Authority’s officers, employees, agents or contractors for Authority purposes is prohibited except as otherwise authorized by this chapter. Whenever an exemption or exception from the provisions or requirements of this chapter is claimed by any person under the terms of a franchise, agreement, deed, statute, governmental regulation or legal ground the burden shall be on the person claiming the exemption to establish the authority, scope and extent of the exemption to the reasonable satisfaction of the Authority.

(b) The following detrimental uses are prohibited in Authority’s rights of way:
1. Telecommunication antennas or towers, or satellite dishes on permanent foundations, except receive-only or “ham” radio antenna of the owner property subject to Authority right of way;

2. Any use or structure that blocks or restricts free Authority access to a right of way, work or facility;

3. Encroachment by a building, any portion of a building, a building foundation, or any part of a foundation or anything supported by a slab or a footing;

4. Electric fencing;

5. Gates or access barriers made of cable, rope, chain, barbed or ribbon wire;

6. Swimming pools, ponds, spas or hot tubs, and other similar structures;

7. Retaining walls, structural walls or walls containing mortar or reinforcement bar;

8. Private sewage treatment systems including septic tank and leach field systems;

9. Dumping, depositing, casting, placing, or stockpiling any waste, rock, dirt or other materials, including without limitation, abandoned vehicles;

10. Dumping, depositing, casting, placing, handling, stockpiling or storing of hazardous, toxic or explosive materials;

11. Corrals or pens for animals except as allowed under section 7.00.050 (c) 1;

12. Water wells;

13. Water tanks over 1,500 gallons in capacity;

14. Water pipeline valves, thrust blocks, backflow preventers, and flow sensors, except as specifically authorized by the Authority when no alternate location outside of the Authority's right of way is feasible;

15. Fertilizer injection systems;

16. Apiaries, whether permanent or temporary;

17. Unrestrained dogs, horses, cattle or other animals that are not under the immediate physical control of the owner;

18. Utility pole anchors;

19. Columns made of concrete, concrete block, rock or any combination of these;
20. Solar electrical generation or water heating systems, including solar panels.

(c) No person shall install, construct, or maintain, or cause to be installed, constructed or maintained any parallel utility in the Authority’s right of way except as otherwise specifically authorized pursuant to this chapter.

(d) No person shall trespass on the Authority’s right of way or property in violation of any sign prohibiting trespass.

(e) No person shall damage, deface, destroy, modify, alter or mark any Authority facility or work except as otherwise specifically authorized pursuant to this chapter.

(f) No person shall grade, dig, excavate, fill, or trench any Authority right of way except as otherwise specifically authorized pursuant to this chapter.

(g) Any encroachment or use done, constructed, installed, or maintained in violation of any subdivision of this section is a public nuisance and may be abated pursuant to this chapter or other law. The General Counsel is authorized to enforce this section by civil action to enjoin or abate a public nuisance.

(h) No person shall blast within 400 feet of an Authority facility, except as specifically permitted by the Authority and subject to all applicable State and local laws.

Section 7.00.050 Uses Allowed Without a Permit – Notice to Authority

(a) The Board finds and declares that underlying owners of land may have reserved rights to use Authority right of way under the deed or final order of condemnation pursuant to which the Authority holds title to its right of way. The purpose of this section is to provide owners having reserved rights with guidelines, terms, and conditions for the exercise of reserved rights in a manner that will not be incompatible with or detrimental to the Authority’s property or property rights. Subject to the provisions of this section, an underlying owner may exercise a reserved right for a use without obtaining a permit from the Authority, except that owner shall give Authority a minimum of 10 calendar days’ notice before exercising any reserved right. The notice shall be in writing and filed with the Director of Engineering.

(b) The following is a list of uses and structures generally allowed as an exercise of a reserved right subject to the provisions of this section:

1. Vegetable and flower gardens, lawns and ground cover (such as low growing vegetation, mulch, bark or crushed rock).

2. Bushes and shrubs, but not trees. Bushes and shrubs must be maintained so as not to obstruct visual inspection of the right of way. Hedges shall be trimmed to a height of thirty-six inches (36”) or less.
3. Mortarless unreinforced walls thirty-six inches (36") or less in height for landscape purposes. Such walls shall be set back at least ten feet from the closest edge of an Authority pipeline.

4. Low voltage/decorative lighting (12 volt / 75 watt maximum).

5. Storage or parking of operational vehicles, trailers, or mobile equipment authorized for travel on public streets subject to the following weight and spacing limits. Single vehicles not exceeding sixteen thousand pounds or a combination of adjacent vehicles within a thirty-foot square having a combined weight that does not exceed sixteen thousand pounds. Vehicles weighing more than fourteen thousand pounds shall be spaced not less than sixty feet (60’) apart.

6. Moveable garden or storage sheds, and gazebos, constructed of wood, sheet-metal or plastic, with a maximum size of eight feet wide by ten feet long by eight feet high (8’ x 10’ x 8’) with no electrical, gas or water utilities. Such sheds shall be set back at least ten feet from the closest edge of any Authority pipeline.

7. Playground equipment, trellises and similar yard or landscape structures, provided that support posts do not extend beyond twelve inches deep and are not secured by concrete or other permanent method. Such uses shall be set back at least ten feet from the closest edge of an Authority pipeline.

8. Asphalt paving or unreinforced concrete driveways, walkways, and pads six inches (6") or less in thickness and requiring no grade modifications.

9. Water lines to provide potable or non-potable water service (except reclaimed sewage or sewer water) to the property to which the reserved right is attached provided the lines are two inches (2") or less in diameter, have a minimum depth of twenty-four inches (24") at crossings under patrol or access roads, are installed above the Authority’s pipeline and have a minimum vertical separation of eighteen inches (18") from bottom of line to top of the Authority’s pipeline, and are installed such that crossings of the Authority’s pipelines are at right angles or as close to a right angle as possible. If pipelines will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off valves. Shut-off valves shall be located at the edge of the Authority’s right of way.

10. Pipes, conduit, wires and cables to provide electric, gas, sewer, and communications service (“utility facilities”) to the property to which the reserved right is attached. Subsurface utility facilities shall be installed above the Authority's pipelines and shall have a minimum vertical separation of eighteen inches (18") from bottom of utility to top of the Authority’s pipeline and be
installed such that crossings of the Authority’s pipelines are at right angles or as close to a right angle as possible. Conductor clearances for overhead electrical and telephone lines shall conform to California Public Utilities Commission General Order 95 for Overhead Electrical Line Construction or at a greater clearance if required by the Authority. The clearance shall not be less than thirty-five feet (35’). Overhead lines shall be located a minimum of thirty feet (30’), measured laterally, away from all aboveground facilities on the pipelines. When underground electric lines provide service at 120 volts or greater, conduits shall be encased in a minimum of three inches (3”) of red concrete. Aboveground warning signs shall be placed at the right of way lines where subsurface utility facilities enter and exit the right of way. Non-metallic gas lines shall be placed with a twelve-gauge (12 gauge) tracer wire a minimum of twelve inches (12”) above the buried utility, terminating in an Authority-approved junction box. If utility facilities will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off switches or valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off switches or valves. Shut-off switches or valves shall be located to provide easy access by Authority personnel using the Authority’s right of way. Septic systems and leach fields are not permitted. Utility poles are not permitted except pursuant to a major encroachment permit or joint use agreement.

11. Storage of boxed landscape trees may be allowed under the following conditions: (a) the boxes must be no larger than 24 inches on each side, (b) the box must have a bottom, (c) the tree, including the box, must not exceed 15 feet in height, and (d) the trees can be stored no closer than 8 feet apart measured from the edges of the boxes. Boxed trees shall be set back at least 10 feet from the closest edge of an Authority pipeline.

12. Any other use or structure not otherwise prohibited by Section 7.00.040 that the Director of Engineering determines in writing not to be incompatible with or detrimental to the Authority’s property or property rights. The Director of Engineering shall keep a log of written determinations made pursuant to this paragraph on file in the Engineering Department and with the Clerk of the Board. The log shall be a public record.

(c) Fences are authorized in accordance with this subdivision and subject to the provisions of subdivision (d).

1. Fences constructed of wood, plastic or metal, and pre-fabricated corrals, may be permitted no closer than ten feet (10’) from the centerline of a pipeline or access or patrol road, and twenty feet (20’) from the edge of any surface or above-ground facility; however, the setback from the centerline of a pipeline may be reduced upon approval by the Director of Engineering to allow a fence on a property line or right-of-way boundary that is within the ten foot setback area. Fences of
concrete, stone, or similar materials, are considered walls and not permitted under this subdivision.

2. Fence posts may be secured in concrete or similar material that is poured into the post hole.

3. When a fence is located in a manner that obstructs direct access to an Authority pipeline or other structure, or between an Authority pipeline or other structure and the Authority’s regular patrol road, the Director shall require that a fence be constructed and maintained in a manner that permits visibility through the fence at a height of thirty-six inches (36”), and may require installation of a gate.

4. The Director may permit a fence that crosses a pipeline if the fence (i) meets the requirements of paragraph 5 of this subdivision, and (ii) has posts that are constructed to minimize interference with the Authority’s works and have a minimum of eighteen inches (18”) of vertical separation from bottom of the post hole to the top of pipe. Fences include, without limitation, prefabricated portable corrals.

5. Any fence that crosses the Authority’s right of way shall include a gate within the right of way as specified by the Director of Engineering. Gateposts shall be installed in accordance with the provisions of this chapter governing fence posts. Gates must not swing to the open or closed position uncontrollably, unless constructed with a latching mechanism to control undesired movement of the gate. Gates shall have reflective caution signs or markings easily visible from a distance of one hundred (100) yards. Gate attachment/locking device shall provide space for an Authority lock that works independently of any lock installed by the permittee. Chains may be used as a locking mechanism for gates. If a gate is located adjacent to a public or private roadway that crosses the right of way, then the gate shall be set back, whenever feasible, as follows: (i) if the gate opens towards the roadway, the setback shall be a minimum of forty feet (40’) from the closest edge of the roadway, (ii) if the gate opens away from the roadway, the setback shall be a minimum of thirty (30’) feet from the closest edge of the roadway. Subject to the provisions of this chapter, fencing or other material to deter access around the gate may be placed in the right of way as specified by the Director of Engineering.

(d) The exercise of any reserved right within an Authority right of way as authorized by this section is subject to the following:

1. Any structure or use shall be set back a minimum of twenty (20’) feet from the edge of any Authority surface facility, unless otherwise provided in subdivisions (b) or (c). The setback from rights of way used for access or patrol road purposes shall be 10 feet from the centerline of the road.

2. The Authority shall not be liable for any damage or injury caused by or attributable to the exercise of a reserved right.
3. Any exercise of a reserved right shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority’s powers according to the terms of the Authority’s document of title.

4. No person shall exercise a reserved right in a manner that creates a nuisance or causes a dangerous condition of property.

5. Any structures or uses placed are maintained pursuant to this section are subject to immediate removal by the Authority as may be necessary or convenient for the Authority's purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the owner’s expense.

6. Excavation over the Authority’s pipelines shall be done with hand tools only.

7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.

8. Before performing any excavation in the Authority’s right of way the owner shall contact the Director of Engineering for a determination whether a Pothole License Agreement is required pursuant to Section 7.00.150.

Section 7.00.060 Encroachment Permits – Required – Minor Encroachments

(a) The Board finds and declares that underlying owners of land may have reserved rights to use the Authority’s right of way under the deed or final order of condemnation pursuant to which the Authority holds title to its right of way. The purpose of this section is to provide owners with an expedited process for obtaining a permit from the Authority when a proposed use or structure, appropriately located and conditioned, is or may be compatible with the Authority’s property rights or interests. This section is intended to apply to uses proposed by owners that are accessory to or necessary for the owner’s primary use of the parcel subject to the Authority’s right of way. It is not intended for use in connection with construction of improvements for subdivision or other development of property or for uses that benefit others; rather, those uses are subject to issuance of a major encroachment permit as provided in Section 7.00.070. Except as specifically authorized pursuant to Section 7.00.050 uses of the Authority’s rights of way by persons other than the Authority are generally incompatible with or detrimental to the Authority’s property or property rights, but, unless otherwise prohibited by Section 7.00.040, such uses may be made compatible and authorized upon compliance with certain requirements and conditions set forth in this section and in the encroachment permit issued by the Director of Engineering after an evaluation of the facts and circumstances of the use. Subject to the provisions of this section an underlying owner may exercise a reserved right upon obtaining an encroachment permit from the Authority.

(b) The following requirements apply to uses authorized pursuant to this section:
1. Addition, alteration, modification or demolition of a permitted use is itself a use subject to permit.

2. The Director of Engineering may establish conditions limiting the time, duration and method of construction. In addition to any other condition authorized by this section, the Director of Engineering may establish conditions for use that are consistent with the requirements for use established by Section 7.00.050.

3. Any use or structure shall be set back a minimum of twenty feet (20’) from the edge of any Authority surface facility unless otherwise provided in this section. The setback from rights of way used for access or patrol road purposes shall be 10 feet from the centerline of the road. The Director of Engineering may reduce or eliminate the setback requirement for a use if the Director finds that the reduction will not be detrimental to the Authority. The reasons for and conditions of the reduction or elimination shall be stated in the permit issued for the use.

4. No use shall be permitted that would create an unacceptable load on a pipeline or subsurface structure as determined by the Director of Engineering.

5. Grading, including both excavation and fill, shall be permitted only if the Director of Engineering determines that the proposed grading will not pose a hazard to the integrity of the pipeline, cause an impediment to its maintenance, result in an unacceptable increase or reduction in cover, or cause ponding or erosion within the easement. Grading requiring a permit from another government agency is not allowed unless both the permit of the other agency and the permit of the Authority are obtained.

6. Avocado, citrus and other similar fruit trees, so long as the trunks are no closer than five (5’) feet from the centerline of any Authority pipeline. Shallow-rooted trees that grow no higher than twenty-five feet (25’) and have a mature root spread of no more than twenty feet (20’) may be permitted provided the trees are planted no closer than twenty-five feet (25’) from the closest edge of any of the Authority’s pipelines. Deep-rooted trees are prohibited.

7. Conductor clearances for overhead electrical and telephone lines shall conform to the California State Public Utilities Commission, General Order 95, for Overhead Electrical Line Construction or at a greater clearance if required by Authority. Clearance shall not be less than thirty-five feet (35’). Overhead lines shall be located at least thirty feet (30’), measured laterally, away from all aboveground structures on the pipelines. Utility poles are not permitted except pursuant to a major encroachment permit or joint use agreement.

8. When underground electric lines provide service at one hundred twenty (120) volts or greater, conduits shall be encased in a minimum of three inches (3”) of red concrete. Above-ground warning signs shall be placed at the right of way lines where the conduits enter and exit the right of way.
9. Hard-surface, sports courts shall be of asphalt or unreinforced concrete, six inches (6”) or less in thickness, with a 10-foot setback from the centerline of an access or patrol road and a 10-foot setback from the centerline of the pipeline. Fencing of sport courts shall comply with the provisions of this subdivision applicable to fences.

10. Playground equipment may be permitted within 10 feet (10’) from the centerline of the pipeline and from the centerline of an access or patrol road. Playground equipment may be anchored to the ground in the same manner as fence posts.

11. Paved parking lots may be approved subject to conditions controlling loading to pipelines, landscaping, type of light standards, depth and location of light standard foundations, drainage, access and other aspects of design and improvement.

12. The Director shall not approve a permit for a reclaimed or recycled water line unless the applicant has obtained Department of Health approval.

13. Water tanks less than 1,500 gallons in capacity and not anchored to the ground may be permissible with a setback from an Authority facility as determined by the Director of Engineering.

(c) Encroachment permits issued under this section shall be processed as provided in this subdivision.

1. An owner may file an application for a minor encroachment permit with the Director of Engineering. The Director may establish and make available guidelines for submission of applications.

2. The application shall contain such information as the Director deems appropriate for complete review of the application, and shall include the address to which correspondence regarding the application shall be mailed.

3. Within thirty calendar days following submission of an application, the Director shall notify the applicant that the application is complete or the nature and extent of additional information that is required to make the application complete. If the Director determines that the proposed use poses a significant risk to the Authority’s right of way or facilities, the Director may also advise the applicant that the application will be processed as an application for a major encroachment permit subject to the provisions of this chapter applicable to major encroachment permits.

4. If the applicant submits additional information, the Director shall have thirty calendar working days to notify the applicant that the application is complete or whether further additional information is required.
5. Within thirty calendar days after the Director has determined and notified the applicant that the application is complete, the Director shall approve, conditionally approve or deny a permit. In addition to the information contained in the application, the Director may consider any of the following: topography, soils, drainage, access or other characteristics of the property and adjacent property; community characteristics; location, condition, or nature of existing or reasonably foreseeable future works of the Authority. The Director’s determination shall be in writing delivered to the applicant by personal delivery or first class mail.

6. An applicant may appeal the denial of a permit or any condition imposed on a permit to the General Manager by filing a written notice of appeal with the Director within thirty calendar days after the date of mailing or of personal service. The notice shall specify the particular reasons for the appeal. Within fifteen calendar days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.

7. Applications, correspondence, decisions and other permit records are public records and shall be kept in the Engineering Department.

(d) The following provisions apply to all uses and structures authorized by an encroachment permit issued pursuant to this section:

1. Any use shall be located, constructed and maintained according to the terms and conditions of the minor use permit issued pursuant to this section.

2. The Authority shall not be liable for any damage or injury caused by or attributable to the use or structure.

3. Any use shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority’s rights according to the terms of the Authority’s document of title.

4. The owner shall not allow the use or structure to create a nuisance or cause a dangerous condition of property.

5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the Authority as may be necessary or convenient for the Authority’s purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the owner’s expense.
6. The Authority may, at the Owner’s expense, cause the encroachment permit to be recorded in the Office of the County Recorder.

7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.

8. The Authority and its officers and employees shall not be liable for any damages resulting from the issuance, denial, revocation or enforcement of an encroachment permit. The owner shall be responsible for the accuracy and completeness of the permit application and any plans, specifications or other information required by the Director pursuant to this Chapter.

Section 7.00.070  
Encroachment Permits – Required – Major Encroachments

(a) Except for an owner using the Authority’s right of way pursuant to a reserved right as authorized by Section 7.00.050 or 7.00.060 no person shall use, or cause others to use, Authority right of way except pursuant to a current, unexpired major encroachment permit issued pursuant to this chapter. Except as may be authorized pursuant to a joint use agreement under Section 7.00.150, a major encroachment permit shall be required for any building, public or private street, public or private utility, public or private drainage facility or other permanent surface or subsurface use. For facilities of a public agency or a public utility the General Manager may require a license agreement, construction permit and owner agreement, construction and maintenance agreement or other similar document as approved by the General Counsel in lieu of, or in conjunction with an encroachment permit.

(b) A major encroachment permit may be issued subject to any condition or requirement the Director of Engineering, or the General Manager on appeal, determines appropriate to protect the Authority’s works, facilities, property and property interests.

(c) The General Manager may promulgate rules and regulations consistent with this chapter for the administration of major encroachment permits. The rules and regulations shall include provisions for issuance of annual master encroachment permits to repetitive users. A “repetitive user” is any public agency or public utility that contemplates repetitive facility installations in the Authority’s rights of way and property.

(d) The Director of Engineering may issue a minor encroachment permit instead of a major use permit if the Director determines that all of the following circumstances exist: the use or structure is minor in nature; issuance of a minor encroachment permit would not negatively impact the ability of the Water Authority to construct, operate or maintain facilities; and the procedures for issuance of a major encroachment permit would be unduly burdensome on the applicant and the Water Authority staff.
Section 7.00.080  Encroachment Permits – Mandatory Requirements – Major Encroachments

All major encroachment permits and any use or structure within an Authority right of way requiring a major encroachment permit are subject to the following mandatory requirements:

1. Any use shall be located, constructed and maintained according to the terms and conditions of the major use permit issued pursuant to this chapter.

2. The Authority shall not be liable for any damage or injury caused by or attributable to the exercise of major encroachment permit. The Director may require the permittee to obtain and maintain insurance, at the permittee’s expense, which insurance shall be provided by an insurer approved by the Authority and authorized to do business in the State of California and which names the Authority as an additional insured. Public agencies may satisfy insurance requirements through coverage under joint power insurance or similar agreements or defense and indemnification agreements approved by the Authority. The permittee shall not be responsible to indemnify the Authority for liability caused by the sole negligence of the Authority or the Authority’s officers, employees or agents.

3. The use or structure shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority’s powers according to the terms of the Authority’s title.

4. The owner shall not allow the use or structure to create a nuisance or cause a dangerous condition of property.

5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the permittee upon demand of the Authority, or by the Authority at the permittee’s cost, as may be necessary or convenient for Authority purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the permittee’s expense. A permittee shall also be required to pay for the cost of relocating other previously permitted encroachments when necessary to accommodate the work of the Authority.

6. The Authority may, at the permittee’s expense, cause the major encroachment permit to be recorded in the Office of the County Recorder.

7. The permittee’s performance of the requirements, terms or conditions of a major use permit shall be secured by one or more of the following, at the discretion of the permittee, subject to approval of the Authority:
(A) A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the State of California;

(B) A deposit with the Authority of money or negotiable bonds of the kind approved for securing deposits of public moneys;

(C) An irrevocable letter of credit from one or more financial institutions subject to regulation by the State of California or federal government and authorized to do business in the State;

(D) An agreement by a licensed contractor of the permittee which agreement is secured by one or more of the securities listed in paragraphs (A), (B) and (C).

Security may be waived for major encroachment permits issued to public agencies or public utilities and performed by employees of the agency or utility. The Director of Engineering may require the security of performance to include security for payment of laborers and materials suppliers, which may be in the form of a separate security. The Director may release security upon successful performance of secured obligations.

8. The permittee shall be responsible for compliance with all applicable zoning, building, grading, subdivision and other laws.

9. The Authority and its officers and employees shall not be liable for any damages resulting from the issuance, denial, revocation or enforcement of an encroachment permit. The applicant shall be responsible for the accuracy and completeness of the permit application and any plans, specifications or other information required by the Director pursuant to this Chapter.

10. The Director shall not issue a permit for any encroachment that presents a material risk of harm to Authority works or facilities.

11. Issuance of a permit does not constitute a representation by the Authority that subsurface conditions are accurately reflected in the records of the Authority. Each permittee assumes the risk and responsibility for damage to previously installed permitted encroachments and facilities. Each permittee shall be responsible for repair or reimbursement for damage to or for relocating previously installed encroachment or facilities, when caused or necessitated by the installation of its encroachment. The permittee shall notify the Authority and any affected prior permittee(s) when relocation may become necessary. Relocation of a previously approved and permitted encroachment will be subject to review and approval pursuant to this Chapter.

12. Except as to those matters preempted by state or federal statute or regulation of the Public Utilities Commission, the Federal Communications Commission, or other state or federal agency, the Authority shall have the authority to coordinate
and prescribe conditions for the installation, use, duration and removal of the encroachment and other encroachments by the permittee. These conditions may include submittal of record drawings, U.S.A. “Dig-alert” subscription, joint trench cost sharing, screening of aboveground utility cabinets, coordination of construction with other agencies or Authority projects, and full cost reimbursement for Authority inspection services during construction. The permittee is responsible for reviewing Authority and other public records, and contacting existing Authority permittees and public utility companies to determine the location of existing facilities that will impact upon or be impacted by the proposed encroachment, and provide any necessary assurances or provisions regarding noninterference with prior permitted encroachments. If determined appropriate by Director, the permittee shall pay the reasonable costs of hiring a qualified construction inspector and/or construction supervisor to protect the Authority’s interests during construction pursuant to an encroachment permit.

Section 7.00.090  Encroachment Permits – Process – Major Encroachments

(a) An application for a major encroachment permit may be submitted by an owner of an estate in land, easement or other interest in property subject to Authority right of way or by a public agency or public utility. An application for a major encroachment permit shall be filed with the Director of Engineering and be accompanied by a processing fee in an amount established pursuant to resolution of the Board. The Director may establish and make available to owners guidelines for submission of applications, including but not limited to requirements for submission of improvement or construction plans. The application shall contain such information as the Director deems appropriate for complete review of the application, and shall include the address to which correspondence regarding the application shall be mailed.

(b) The Director of Engineering shall refer the application to the Director of Operation and Maintenance for initial review as to completeness. Within forty-five calendar days following submission of an application, the Director of Engineering shall notify the applicant that the application is complete or the nature and extent of additional information that is required to make the application complete. If the applicant submits additional information, the Director shall have an additional thirty calendar days to notify the applicant that the application is complete or whether further additional information is required. If the application requires environmental review under the provisions of the California Environmental Quality Act, the application shall not be deemed complete until completion of the environmental review process.

(c) After the application is determined to be complete, the Director of Engineering shall refer the application to the Director of Operation and Maintenance for a report and recommendation. The Director of Operation and Maintenance has ninety calendar days from the date the application is determined to be complete to make a report and recommendation. After receipt of the report and recommendation from the Director of Operation and Maintenance, the Director of Engineering may approve, conditionally approve or deny a permit. In addition to the information contained in the application and the report, the Director may consider any of the following: topography, soils, drainage, access or other characteristics of the property; community
characteristics; location, condition, or nature of existing or foreseeable future works of the Authority. The Director’s determination shall be in writing delivered to the applicant by personal delivery or first class mail.

(d) An applicant may appeal the denial of a permit or any condition imposed on a permit to the General Manager by filing a written notice of appeal with the Director within thirty calendar days after the date of mailing or of personal service. The notice shall specify the particular reasons for the appeal. Within fifteen calendar days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.

(e) Applications, correspondence, decisions and other permit records are public records and shall be kept in the Engineering Department.

Section 7.00.100 Authority of Director of Engineering

(a) The Director of Engineering, or General Manager on an appeal, shall deny an application for an encroachment permit unless the Director finds that the encroachment as proposed or subject to terms and requirements imposed as a condition of approval meets all of the following:

1. The proposed encroachment will not be detrimental to the Authority’s facilities or works;

2. The proposed encroachment will not materially interfere with the Authority’s use of right of way;

3. The applicant has complied with the requirements of this chapter and all applicable local, state and federal laws;

4. The applicant has agreed to abide by all requirements, terms and conditions of the permit including without limitation the provision requirement that the permittee indemnify, defend and hold harmless the Authority, its officers, agents, and employees from all liability occasioned from or caused by the issuance of the encroachment permit or by the construction, installation, maintenance or operation of the encroachment.

(b) In addition to other requirements, the Director may impose conditions for approval of a major encroachment permit as follows:

1. Traffic and pedestrian safety measures;

2. Environmental impact mitigation measures;
3. Limits on construction times, noise, duration and method;

4. Limits on duration and requirements for removal of an encroachment;

5. Coordination of construction with other existing encroachments or reasonably anticipated encroachments, other existing or reasonably anticipated construction pursuant to encroachment permits issued to others, and existing or reasonably anticipated Authority projects.

Section 7.00.110 Assignment of Encroachment Permit

A permittee shall not assign rights or delegate obligations of a minor or major encroachment permit without the prior written consent of the Authority. Any assignment or delegation in violation of this section shall constitute abandonment of the permit and relinquishment of any rights thereunder. The Authority may condition any assignment or delegation as necessary to protect the Authority’s interests, including without limitations, imposition of conditions to assure faithful performance of the obligations imposed by the permit by the person assuming responsibility under the assignment or delegation.

Section 7.00.120 Encroachment Permits – Revocation – Penalty for Violation of Terms

(a) The Director of Engineering is authorized to revoke an encroachment permit upon determining that the permittee has failed to comply with one or more of the material terms, conditions or restrictions incorporated in the permit or has provided materially false or misleading information regarding the encroachment or its installation. Upon the revocation of an encroachment permit, the permittee shall immediately discontinue any work and cease and desist from further encroaching upon the Authority’s right of way or property. The permittee shall restore the site to an as-near original condition as shall be feasible under the supervision and direction of the Authority in accordance with code and legal requirements in effect at the time of restoration. Installed encroachments shall be removed, unless authorized to be disabled and abandoned in place when determined to be feasible by the Authority. Except in cases where immediate revocation is necessary to protect Authority works or facilities, the Director shall not revoke a permit except upon fifteen-calendar days written notice to the permittee. Such notice may be given by first class mail to the permittee at the address stated in the permit application or such other more recent address as provided by the permittee and on file with the Director of Engineering. The notice shall advise the permittee of the permittee’s right to file a written statement of good cause why the permit should not be revoked within ten days following the date of the notice. A determination of revocation shall be in writing and shall state the grounds for the revocation. The determination shall be delivered to the permittee by personal delivery or mailed to the permittee by first class mail.

(b) Any permittee who violates any of the terms, conditions or restrictions of an encroachment permit and thereby materially and adversely affects the public health and safety shall be ineligible to receive another encroachment permit from the Authority for a period of one year following the date of such determination, unless this restriction is waived by the General Manager.
(c) Any person who has received a determination of revocation of an encroachment permit may appeal the revocation to the General Manager. The appeal shall be in writing and filed within ten days following the date of the determination of revocation. The appeal shall state grounds upon which the appeal is based. Within twenty working days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.

Section 7.00.130 Nonexclusive Use of Right of Way

(a) Encroachment permits are nonexclusive. Any permit issued by the Authority pursuant to this Chapter which permits the applicant to excavate, construct or remove improvements or encroachments, or grade or encroach within any public right of way also permits the Authority or other Authority permittee to utilize the right of way for its own public purposes during the same time period as the applicant’s use. The Authority may extend the time period of the applicant’s proposed use of the right of way to suit the Authority’s own public purposes.

(b) Permittees shall not interfere with encroachments installed under prior permits, unless arrangements satisfactory to the Authority and the prior permittee are made to protect or relocate the prior encroachments at the expense of the subsequent permittee. Notwithstanding, the Authority shall have the right to remove, relocate or displace any previously allowed or permitted encroachment without liability to a permittee when necessitated by public emergency or the Authority’s exercise of its rights.

Section 7.00.140 Joint Use Agreements

(a) In lieu of an encroachment permit, public agencies and public utilities desiring to use Authority’s rights of way and property for construction, operation and maintenance of compatible public facilities may apply to the Authority for a Joint Use Agreement. The Director of Engineering is authorized to execute Joint Use Agreements on behalf of the Authority.

(b) Application for Joint Use Agreements shall be submitted to the Director of Engineering and shall be evaluated on a case-by-case basis to determine whether such joint use is compatible with the work of the Authority. The applicant shall be advised of the type of joint use, if any, which will be authorized. If it is determined that joint use will not be authorized, a notice of denial shall be mailed to the applicant which explains the reason for the denial.

(c) The Joint Use Agreement shall specify the requirements, terms and conditions of construction, operation and maintenance of the compatible public facilities. Except as otherwise specifically authorized by the Board, a Joint Use Agreement shall include the following requirements:
1. The public agency or public utility shall defend, indemnify and hold the Authority harmless from any damage or injury to Authority works or facilities. The public agency or public utility shall defend, indemnify and hold the Authority harmless from any claim, cause of action, suit, proceeding, or liability of or to any person resulting from the construction, reconstruction, repair, maintenance, operation, condition or existence of any work or facility of the public agency or public utility, or from the acts or omissions of the public agency or public utility or its officers, employees, agents or contractors, except for liabilities resulting from the sole negligence of the Authority or the Authority’s officers, employees or agents.

2. Any compatible public agency or public utility use shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority’s statutory purposes and rights according to the terms of the Authority’s documents of title.

3. Any structures or uses placed or maintained pursuant to a Joint Use Agreement are subject to removal or relocation by the permittee upon reasonable demand by the Authority, or by the Authority at the permittee's cost, as may be necessary or convenient for Authority purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the permittee to remove or relocate a structure or use at the permittee’s expense. A permittee shall also be required to pay for the cost of relocating other previously permitted encroachments when necessary to accommodate the work of the Authority.

4. Performance of the requirements, terms or conditions of a Joint Use Agreement by a contractor shall be secured by one or more of the following, at the discretion of the permittee, subject to approval of the Authority:

   (A) A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the State of California;

   (B) A deposit with the Authority of money or negotiable bonds of the kind approved for securing deposits of public moneys;

   (C) An irrevocable letter of credit from one or more financial institutions subject to regulation by the State of California or federal government and authorized to do business in the State.

5. A Joint Use Agreement shall not constitute a representation by the Authority that subsurface conditions are accurately reflected in the records of the Authority. The party requesting the agreement assumes the risk and responsibility for damage to previously installed permitted encroachments and facilities.
Plans for installation of joint user’s facilities including protection of Authority’s facilities shall be approved by the Authority in advance of construction. Notice of construction of such facilities shall be provided to Authority at least two weeks in advance.

An applicant denied an agreement may, within 60 days after a notice of denial is mailed, appeal in writing to the Board of Directors. The Board shall consider the information presented in the appeal, comments from the General Manager, and other such data considered appropriate. The denial will be upheld unless it is determined by the Board of Directors that it was arbitrary, or inconsistent with this Chapter.

Section 7.00.150  Pothole License

Before commencing any excavation work, except work using hand-tools, in Authority’s rights of way or on Authority’s property, a person shall obtain a Pothole License from the Director of Engineering. The Pothole License shall be issued solely to authorize limited excavation as necessary to determine the vertical depth and horizontal location of the Authority’s subsurface works. The Director of Engineering may approve, conditionally approve or deny a Pothole License. Performance of work pursuant to a Pothole License constitutes consent and agreement by the licensee to be bound by, and perform all work in accordance with, all terms and conditions of the Pothole License. The Director may require a Pothole License prior to or in connection with any encroachment permit application, issuance of an encroachment permit or any joint use agreement. The Director may establish a standard form Pothole License.

Section 7.00.160  Guidelines for Parallel Encroachments

Public agencies and public utilities may request authorization to place a parallel encroachment in the Authority’s right of way. A permit or approval for a parallel encroachment shall be issued only if the applicant has demonstrated good cause for the parallel encroachment to the satisfaction of the Authority official authorized to permit or approve the encroachment.

An applicant for a parallel encroachment may demonstrate good cause based on any of the following grounds:

1. Other possible alignments would have a severe economic impact on the applicant which impact would be substantially reduced or avoided by the parallel encroachment.

2. Other feasible alignments would result in significant environmental impacts which cannot be feasibly mitigated to a level of insignificance and which would be avoided by the parallel encroachment.

3. Other feasible alignments would require the relocation of a substantial number of businesses or residences or have a severe and extended negative impact on business operations or residents.
4. Other feasible alignments would have severe economic or operational impact, or both, on the applicant which impact or impacts would be substantially reduced or avoided by the parallel encroachment.

5. The parallel encroachment will provide a direct and substantial benefit to the Authority that outweighs the adverse impact of the encroachment.

(c) The following facilities are prohibited as parallel encroachments:

1. Sewer, storm water or non-potable water pipelines except that on a case-by-case basis the following facilities may be authorized:

   (A) Pipelines which transport recycled water meeting at a minimum Title 22 of the California Code of Regulations tertiary standards and which satisfy the pipeline separation requirements set forth in the American Water Works Association Guidelines for the Distribution of Non-Potable Water, and is approved by the California Department of Health Services;

   (B) Pipelines which transport brine from a water treatment plant;

   (C) Storm drain pipes 18 inches in diameter or less.

2. Electric transmission lines.

3. Gas transmission pipelines.

4. Petroleum transmission pipelines.

(d) Parallel encroachments shall be subject to the following requirements:

1. Except street pavement, they shall not be located within an area designated by the Director of Engineering as the probable trench zone in event of an emergency. The probable trench zone is generally an area along the path of the pipeline determined using a slope ratio of two feet horizontal to one foot vertical (2:1 slope), starting at a point five feet from the outside edge and at the bottom of the Authority pipeline and ending at a point on the surface of the right of way. Parallel encroachments, except street pavement, shall be installed in a location as close to the edge of the right of way as possible, and it must be demonstrated that the Authority can excavate its pipelines without disruption to the encroachment;

2. They shall not be located between or over Authority pipelines;

3. Isolation or other shut-off valves or switches shall be located at the entry and exit points of the Authority’s right of way and at such other locations as may be determined appropriate by the Authority. Valves or switches shall be readily accessible to the Authority;
4. All of the requirements applicable to encroachment permits or joint use agreements;

5. A property use payment shall be made to the Authority in an amount to be determined by the Authority for use or injury to property or property rights, increased maintenance and repair costs, and all other costs or expense associated with the parallel use;

6. The Authority reserves the right, but not the obligation, to repair, restore service and backfill prior to the encroaching utility undertaking similar efforts for the interrupted parallel encroachment in the event of a simultaneous interruption to the operation of an Authority work and a parallel encroachment;

7. The applicant is to be responsible for obtaining, providing and authenticating all necessary plans, profile, and other drawings from the Authority’s Engineering Department and shall be responsible to make all the necessary calculations prior to submittal for review by the Authority;

8. Such other terms and conditions as may be imposed on issuance of the encroachment permit or joint use agreement for the parallel encroachment.

Section 7.00.170 Violations and Enforcement

(a) Each day a violation of this chapter exists is a separate violation, and each violation may be charged as a separate offense. Violations may be enforced by civil or administrative measures, or a combination, as provided for in this Chapter and Chapter 1.12 of this Code.

(b) Notwithstanding subdivision (a), violations of this chapter constitute a public nuisance and may be enjoined or abated as provided in subdivision (g) of Section 7.00.040.

Section 7.00.180 Statement of Enforcement Policy

For the purposes of administration of this chapter, the Authority establishes the following enforcement priority:

1. The first priority for enforcement of this chapter shall be those encroachments placed after September 26, 2002 and those encroachments existing before September 26, 2002 within 40 feet of the centerline of any pipeline.

2. The next priority for enforcement shall be those encroachments existing before September 26, 2002 within remaining portions of the right of way.
Section 7.00.190  **Leases for Right of Way Management**

The General Manager may execute a lease for right of way management purposes when all of the following circumstances exist:

1. The lessee is the record owner of land that adjoins the Authority property;
2. The lease establishes terms and conditions for use of the leased property consistent with the provisions of this chapter;
3. The rent is not less than the fair market rent as determined by the Director of Engineering;
4. The lease term does not exceed 10 years.
Chapter 7.04

Use of Authority Buildings and Equipment

Section 7.04.010 Use of Authority Buildings

(a) The Authority’s buildings and appurtenant grounds and parking lots shall be used for Authority purposes only, unless otherwise authorized by this chapter or by action of the Board.

(b) The General Manager may authorize the use by the Authority’s member agencies or other government agencies of meeting rooms and similar facilities for governmental and civic purposes provided the use does not interfere with Authority business.

Section 7.04.020 Use of Authority Equipment

(a) “Equipment” means the Authority’s tangible and intangible personal property and fixtures, including, without limitation, vehicles, machinery, tools, communication and information systems, office equipment and office supplies.

(b) The Authority’s equipment shall be used for Authority purposes only, unless otherwise authorized by this chapter or by action of the Board.

(c) The General Manager shall establish policies and procedures for use of the Authority’s equipment by Authority officers, employees, contractors and consultants.

Section 7.04.030 General Restrictions

(a) The Authority’s buildings and equipment shall not be used for any private commercial or advertising purpose unless specifically authorized on a case-by-case basis by resolution of the Board.

(b) The General Manager, in establishing policies, procedures and regulations for use of Authority buildings and equipment shall not permit uses that compromise the security of Authority facilities, interfere with the performance of Authority functions or create a public forum. Public access to Authority buildings shall be limited to that necessary to comply with applicable state and federal law, or to the accomplishment of Authority purposes.
Section 7.04.040  Loan of Equipment to Member Agencies

(a) The General Manager may temporarily loan Authority vehicles, machinery and tools to the Authority’s member agencies for mutual aid or other public purposes, provided that the loan will not interfere with Authority purposes.

(b) The identity of the equipment lent and the duration of the loan shall be specified in writing and signed by the General Manager.

(c) As a condition of any loan, the member agency borrowing equipment shall defend, indemnify and hold the Authority harmless from any damage or injury to the equipment and any claim, cause of action, suit, proceeding, or liability of or to any person resulting from use of the equipment, except for liabilities resulting from the sole active negligence of the Authority or the Authority’s officers, employees or agents.

(d) As a condition of any loan, the member agency shall provide proof of insurance, or proof of coverage by a contract of coverage provided by an authorized joint powers agency, as well as proof that the Authority and the Authority’s officers, employees and agents are named as “additional insureds” on any policy of insurance or contract of coverage.

Section 7.04.050  Emergency Use

Nothing in this chapter shall limit the immediate availability and use of Authority buildings and equipment by any government or civil defense entity during emergencies according to the Authority’s adopted emergency operations plan.

Section 7.04.060  Supplemental Regulations

The General Manager may issue written supplemental regulations or policies for the use of the Authority’s buildings and equipment. Such supplemental regulations or policies shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter. The supplemental regulations or policies may authorize limited, occasional personal use of facilities and equipment as a privilege provided by the Authority for its employees, so long as the use is compatible with Authority employment and does not interfere with Authority operations or result in increased costs to the Authority.
Chapter 7.08
Surplus Property

Section 7.08.010 General Authorization
(a) The General Manager may dispose of surplus property pursuant to the provisions of this chapter.

(b) The Board reserves the right to lease, sell or otherwise dispose of any property of the Authority for the Authority’s benefit and without any requirement for a declaration that the property is surplus property. Any such lease, sale or other disposition shall be upon terms and conditions as the Board determines are in the best interest of the Authority.

(c) Surplus personal property is property of the Authority that the General Manager has determined meets both of the following tests:

1. Is obsolete, or has been fully depreciated, or is scheduled for replacement pursuant to a replacement schedule approved by the General Manager, or is no longer necessary for Authority purposes, and

2. Has more than a de minimus potential resale value.

Personal property that has de minimus potential resale value or residual value merely as scrap or recyclable material may be disposed of in any manner the General Manager deems appropriate.

(d) Surplus real property is property of the Authority that the Board has determined, by resolution, is no longer necessary for Authority purposes. For purposes of this chapter, real property includes, without limitation, land, buildings, fixtures and improvements. Fixtures that may be severed from real property may be disposed of as surplus personal property.
Section 7.08.020  **Conveyance of Surplus Real Property**

(a) Except as provided in subdivisions (b) or (c), surplus real property shall be sold for fair market value.

(b) If the surplus property is right of way and the Authority’s interest in the surplus real property is an easement, the Authority will quitclaim its interest to the owner of the underlying fee for the consideration, if any, paid by the Authority at the time it acquired its interest. The quitclaim may reserve or except any rights or interests previously conveyed to other public agencies or public utilities.

(c) If the surplus property is right of way and the Authority’s interest in the surplus real property is a fee or other estate in land, the General Manager may offer to convey the surplus property to the owner or owners of the adjoining parcel or parcels. If an entire width of right of way is determined to be surplus and the owners of the adjoining land on opposite sides of the right of way are different, the offer of conveyance will be from the boundary of the adjoining parcel to the centerline of the right of way unless the General Manager determines that a different offer is more appropriate under the circumstances. The General Manager may convey the property on such terms and conditions as the General Manager deems is reasonable under the circumstances. The deed may reserve or except any rights or interests previously conveyed to other public agencies or public utilities.

(d) Except as provided in subdivisions (b) and (c), and subject to state statutory requirements to offer surplus real property to public agencies for certain public purposes, the General Manager shall market surplus property in a manner designed to obtain the highest price and best terms, including, without limitation, competitive negotiation or sealed bids. Before marketing surplus real property to the general public or other public agencies, the General Manager shall offer the property for purchase by Authority member agencies.

Section 7.08.030  **Appraisals**

Before marketing property pursuant to subdivision (d) of Section 7.08.020, the General Manager shall obtain an appraisal. If the property value is estimated to be $25,000 or less, the appraisal may be performed by qualified Authority employees. All other appraisals will be performed by a qualified independent real estate appraiser approved by the Director of Engineering. Appraisals shall be subject to approval by the General Manager and General Counsel upon a recommendation by the Director of Engineering.

Section 7.08.040  **Acceptance of Offers to Purchase Surplus Real Property**

The General Manager, after consultation with the General Counsel, may accept a bid or offer to purchase property marketed pursuant to subdivision (d) of Section 7.08.020 if the bid or offer is not less than ninety percent of the value determined by the approved appraisal performed.
pursuant to Section 7.08.030. All other bids or offers shall be subject to acceptance by the Board.

Section 7.08.050 **Execution of Documents**

The General Manager may execute all documents approved by the General Counsel necessary or convenient to convey surplus property pursuant to this chapter.

Section 7.08.060 **Conveyance of Surplus Personal Property**

(a) Except as provided in subdivisions (b) or (c), or in Section 7.08.080, surplus personal property shall be sold to the highest bidder responding to a request for sealed bids or at a public auction, including, without limitation Internet auction services (such as e-Bay and Public Surplus). Notice of sale or auction of surplus personal property shall be published in any newspaper, or any government website, or on the Authority's website, for no less than three consecutive days.

(b) Before marketing surplus personal property to the general public or offering to other public agencies, the General Manager may offer the property for purchase by Authority member agencies. Surplus personal property may be sold to member agencies upon such price and terms as the General Manager determines to be fair and reasonable under the circumstances, or donated for a use that furthers an Authority purpose.

(c) Before marketing surplus personal property to the general public, the General Manager may offer the property for purchase by any public agency or any non-profit entity exempt from federal income tax under 26 U.S.C. § 501(c)(3) that provides a public educational or water related benefit. Surplus personal property may be sold pursuant to this subdivision upon such price and terms as the General Manager determines to be fair and reasonable under the circumstances, or donated for a use that furthers an Authority purpose.

(d) All surplus personal property shall be sold or donated “as-is” without warranty express or implied.

Section 7.08.070 **Procedure for Public Sale**

(a) Surplus personal property may be sold to the highest bidder at a public auction conducted by a licensed auctioneer or through participation in a cooperative auction of government agencies. Surplus personal property may be sold to the highest bidder submitting a sealed bid in response to a notice of sale by sealed bid or Internet auction sale. Trade-in of surplus personal property may be utilized when procuring a similar type of personal property where such trade-in is allowed by a seller.

(b) Notice of sale by sealed bid shall be published in any newspaper, on any government website, or on the Authority's website, for not fewer than three consecutive days. Additional notice of sale by sealed bid may be given in any manner the General Manager determines is appropriate. The notice shall describe the property offered for sale; the place, date
and time for submittal of sealed bids, which date shall be not less than five calendar days following the last date of publication of the notice; the location where the property may be inspected; any special terms or conditions of sale; and the place, date and time when the bids will be opened and tabulated. The General Manager may accept the highest bid or may reject all bids, and at a later date hold another public sale by either public auction or sealed bid.

(c) Notice of sale by public auction shall be published in any newspaper, on any government website, or on the Authority's website, for not fewer than three consecutive days. The auction may be held on the day of the last publication or such later day as specified in the notice. If the auction is part of a cooperative auction, the notice given by or on behalf of the agency coordinating the auction will satisfy the requirements of this subdivision and no additional notice is required. The property shall be sold to the highest bidder, provided the bid exceeds the minimum bid price, if any.

(d) If no bids are received in response to a notice of sale by sealed bid or at auction, the General Manager may dispose of the surplus personal property in any manner including without limitation donation to any public agency or charitable, tax-exempt organization or disposal.

(e) The General Manager shall keep a written record of surplus personal property sold, donated or disposed of pursuant to this chapter. If the property was sold, the record shall include the price or other consideration paid and the identity of the purchaser. If the property was donated, the record shall include the identity of the donee.

Section 7.08.080 Incidental Sale of Low Value or Perishable Items

(a) The General Manager may sell any item of surplus personal property by incidental sale if the item is perishable or has an estimated value of less than $500.00.

(b) For the purpose of this section the term "incidental sale" shall mean the sale at price and other terms and conditions negotiated by the General Manager with any buyer without first advertising such sale or calling for the receipt of bids.

Section 7.08.090 Property with Historic, Cultural or Educational Value

Personal property having historic, cultural or educational value may be donated to a public agency, public library, public or private school, college or university, or non-profit public benefit organization or entity.

Section 7.08.100 Authority Personnel Prohibited from Purchasing

Authority directors, officers, employees, agents or members of the immediate family of an officer, employee or agent shall not purchase directly or indirectly Authority property sold or otherwise disposed of pursuant to this chapter.
Section 7.08.110  **Supplemental Regulations**

The General Manager may issue written supplemental regulations to implement the provisions of this chapter. Such supplemental regulations shall be approved by the General Counsel and shall not be inconsistent with the provisions of this chapter.
Chapter 8.00
Environmental Review

Section 8.00.010  Purpose
This Chapter is intended to implement the Authority’s responsibilities under Public Resources Code Section 21082 and California Code of Regulations, Title 14, Section 15022 to adopt objectives, criteria and procedures for evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to the California Environmental Quality Act (CEQA).

Section 8.00.020  State CEQA Guidelines Adopted by Reference

(a) The State CEQA Guidelines [Title 14, Division 6, Chapter 3 of the California Code of Regulations], including all sections thereof and appendices thereto, as amended from time to time, are adopted by reference as the environmental review regulations of the Authority. Reference in this Code to this Chapter shall include reference to the State CEQA Guidelines.

(b) The provisions of this Chapter shall be construed as consistent with CEQA and the State CEQA Guidelines. If a provision, by its terms, cannot be construed as consistent with CEQA or the State CEQA Guidelines, the provisions of CEQA or the State CEQA Guidelines shall prevail to the extent of the inconsistency.
Section 8.00.030  **Application of Chapter**

This Chapter applies to all projects undertaken by the Authority or subject to discretionary approval of the Authority except:

1. Any activity that is not a project as defined in CEQA or other State statute or that will not result in a direct or reasonably foreseeable indirect physical change in the environment;

2. Activities that are statutorily exempted from CEQA by its own terms or by other state statute;

3. Projects that meet the criteria of a categorical exemption from CEQA or this Chapter.

4. Administrative or operational activities, such as the purchase and use of supplies and equipment, use and operation of existing facilities, personnel-related actions, general policy and procedure making and other activities necessary or convenient to the routine conduct of Authority business.

Section 8.00.040  **Duties of Board and General Manager**

(a) The Board shall:

1. Prior to approving the project, certify that a final EIR has been completed in compliance with CEQA and this Chapter, certify that it reviewed and considered the information contained in the final EIR, and certify that the final EIR reflects the Authority’s independent judgment and analysis.

2. Adopt final negative declarations and final mitigated negative declarations prior to approving a project where such projects would not have a significant impact on the environment.

3. Make or adopt findings as required by Section 15091 of the State CEQA Guidelines.

4. Make or adopt statements of overriding considerations as required by Section 15093 of the State CEQA Guidelines.

5. Adopt mitigation monitoring and reporting programs as required by Section 15097 of the State CEQA Guidelines.


7. Exercise any power of the Authority necessary to implement CEQA or this Chapter that is not otherwise delegated to the General Manager.
8. Be responsible, at its discretion, for establishing additional thresholds of significance to help determine when a proposed project or activity may have a significant effect on the environment.

(b) The following responsibilities are delegated to the General Manager:

1. Administer this Chapter and perform such administrative, technical and other work necessary for compliance with CEQA and this Chapter, including preparation and adoption of forms, checklists and other standard documents consistent with this Chapter.

2. Perform all preliminary reviews and initial studies.

3. Determine whether a project is exempt from the requirements of CEQA. The General Manager’s determination of exemption shall be final, unless the final decision-making authority for the project is vested in the Board.

4. Prepare, circulate and schedule for hearing as appropriate proposed negative declarations, proposed mitigated negative declarations, draft environmental impact reports and other documents necessary to comply with CEQA or this Chapter.

5. Prepare final environmental documents, including preparation of proposed findings, for adoption or certification by the Board.

6. File notices as appropriate or as required.

7. Schedule and notice public hearings when required by CEQA or this Chapter, or as otherwise deemed appropriate by the General Manager or directed by the Board.

8. Approve addenda to previously certified environmental impact reports, or adopted negative declarations or mitigated negative declarations, which make minor technical changes or additions to projects and where none of the conditions described in Section 15162 of the State CEQA Guidelines has occurred.

9. Determine whether a previously certified or adopted environmental impact report, negative declaration or mitigated negative declaration is sufficient to cover changes or modifications to a project or whether additional environmental review is required.

10. Recommend to the Board additions to the list of Authority projects and activities that are exempt from review under this Chapter or over which the Authority exercises only ministerial authority.
11. Execute agreements with public agencies determining the lead agency for a project.

12. Coordinate with lead agencies where the Authority will be a responsible agency.

13. Promulgate supplemental policies for administration of this Chapter.

14. Make the determinations specified in paragraphs 1 through 5, inclusive, of subdivision (a) for projects for which approval authority has been delegated to the General Manager by this Code or by other specific action of the Board. Decisions of the General Manager under this section are subject to appeal to the Board as provided in this Chapter or Code.

(c) The General Manager may delegate responsibility under this Chapter as provided in Section 2.04.070 of this Code.

(d) In furtherance of this Chapter, the Authority may contract with qualified persons or entities for the conduct of investigations, studies, tests, evaluations or other technical or scientific work and for the preparation and processing of documents, including, without limitation, initial studies, negative declarations, mitigated negative declarations and environmental impact reports.

(e) The Board intends, by this Section, to delegate to the General Manager the greatest degree of responsibility for implementation of CEQA and this Chapter permitted by law and to reserve to itself only those decisions or duties that are non-delegable under applicable law or are reserved to the Board by this Chapter.

Section 8.00.050 Water Supply Assessments

(a) The General Manager shall provide each Authority member agency and the County of San Diego and each city in the County of San Diego with a copy of the Authority's most recently adopted Urban Water Management Plan and an annual statement regarding the Authority's water supplies and implementation of Authority plans and programs to meet the future water supply requirements of its member agencies as determined by the Authority pursuant to law and the memorandum of agreement between the Authority and the San Diego Association of Governments.

(b) The General Manager may prepare water supply assessments and written verifications of sufficient water supply for use by its member agencies.

Section 8.00.060 Statutory Exemptions

The following specific Authority activities are considered statutorily exempt from CEQA. Nothing in this section precludes a determination, on a case-by-case basis, that other Authority activities are statutorily exempt from CEQA or this Chapter. Nothing in this section is intended to limit application of any statutory exemption.
(a) Ministerial Projects (State CEQA Guidelines Section 15268).

1. Exercise of reserved rights for which no encroachment permit is required pursuant to Section 7.00.050 of this Code.

2. Filling water orders of member agencies from existing Authority supplies.

3. Deferral of water standby availability charges that meet the criteria established by ordinance of the Board.

(b) Emergency Projects (State CEQA Guidelines Section 15269).

1. Projects to repair or correct a condition of an existing facility, which condition is discovered during the annual or periodic shutdown pursuant to the Authority’s pipeline inspection and aqueduct protection program, and the repair or correction of which is necessary to maintain system reliability or to prevent or mitigate a foreseeable risk of damage if prompt remedial action is not taken.

2. Projects to repair, restore, demolish, or replace property or facilities damaged or destroyed as the result of an emergency as defined in Section 2.04.050, subdivision (e) of this Code, or projects to repair, restore or replace facilities the damage to or destruction of which results in an emergency as defined in Section 2.04.050, subdivision (e).

(c) Rates, Tolls, Fares and Charges and Budget (State CEQA Guidelines Sections 15060, subdivision (c), 15273).

1. Water rates, tax rates and other charges for the purpose of meeting operating expenses, including employee compensation and benefits, purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs and requirements, or obtaining funds for capital projects necessary to maintain service within existing service areas. Written findings setting forth with specificity the basis for the claim of this exemption shall be incorporated in the record of the project.

2. Inclusion of a project in the Capital Improvement Program Budget for planning and environmental review purposes shall not be construed as an irrevocable commitment to the project or its implementation. A project shall be subject to revision or deletion from the Capital Improvement Program as necessary to comply with CEQA and this Chapter. A project that is subject to CEQA and which is identified in the Capital Improvement Program Budget shall not be deemed approved until after completion of applicable environmental review. No appropriation in a budget for a capital project that provides new or expanded service shall be spent for activities other than exempt planning, feasibility, environmental review and other similar purposes until the Board certifies or
adopts the environmental review document for the project pursuant to this Chapter.

Section 8.00.070  **Categorical Exemptions**

(a) Specific Authority activities falling within the classes of categorical exemptions described in the CEQA Guidelines are listed below under the applicable exemption categories. Nothing in this Section shall be construed to prevent application of a categorical exemption to an Authority activity that is not listed.

1. **Class 1**: Existing Facilities (State CEQA Guidelines Section 15301).
   
   i. Operation, repair and maintenance of the existing pipelines, pumps, tanks, reservoirs, vents, valves, vaults, rights of way and appurtenant facilities comprising the Authority’s aqueduct system involving negligible or no expansion of use. This includes grading, mowing and regrading for maintenance of an existing right of way.
   
   ii. Draining pipelines or other structures at existing vent or drain locations for purposes of inspection, repair or maintenance, provided the drainage is regulated in a manner reasonably calculated to avoid damage to adjoining property and discharge into a water course complies with the Clean Water Act or other applicable law governing water quality.
   
   iii. Installation of security devices, including without limitation, fences or gates, and implementation of programs for the security of the Authority’s facilities and water supplies.
   
   iv. Issuance of water vouchers and rebates for conservation devices.
   
   v. Issuance of encroachment permits or joint use agreements for activity that qualifies as minor modifications of an existing facility.

2. **Class 2**: Replacement or Reconstruction (State CEQA Guidelines Section 15302)
   
   i. Replacement or reconstruction of existing pipelines, pumps, tanks, reservoirs, vents, valves, vaults and other structures comprising the Authority’s aqueduct system where the new structure will be located on the same site and have substantially the same purpose and capacity as the former structure.
3. **Class 3**: Construction, installation or conversion of small structures, equipment or facilities (State CEQA Guidelines Section 15303)
   
i. The addition of appurtenant structures and equipment to existing facilities including garages, sheds, fences, and gates; valve vaults, flow control facilities less than 500 square feet, and pipeline segments less than 150 linear feet to connect such structures to an existing aqueduct.
   
ii. Issuance of encroachment permits or joint use agreements for activity that qualifies as construction, installation or conversion of small structures, equipment or facilities.

4. **Class 4**: Minor alterations to land. (State CEQA Guidelines Section 15304)
   
i. Minor grading to establish access roads over land with a slope of less than 10 percent, except in waterways, wetlands or designated scenic or geologic hazard areas.
   
ii. Issuance of encroachment permits or joint use agreements for activity that qualifies as minor alteration to land.
   
iii. Issuance of pothole licenses.
   
iv. Temporary use of land for discharge of potable or raw water from pipelines and facilities provided erosion is controlled and the discharge into a watercourse complies with the Clean Water Act or other applicable laws governing water quality.
   
iv. New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient landscaping.
   
vi. Geologic sampling, boring, surveying and other similar exploratory or testing activities for purposes of feasibility, planning or design studies where the property is restored to its preexisting condition as near as reasonably feasible under the circumstances.

5. **Class 5**: Minor alterations in land use limitations (State CEQA Guidelines Section 15305)
   
i. Issuance of minor encroachment permits for structures or activities that do not require a building, grading or similar construction permit under applicable ordinances of a city or county.

6. **Class 6**: Information Collection (State CEQA Guidelines Section 15306)
   
i. Leak detection, turf and agricultural audits.
ii. Resource data collection that does not result in a serious or major disturbance to an environmental resource, including geotechnical investigations, biological sampling, and cultural resource testing and recovery.

7. **Class 9**: Inspections (State CEQA Guidelines Section 15309)
   i. Inspections to check performance and operation of pipelines and appurtenant facilities and structures, as well as inspections to check on quality, health or safety of a project.

8. **Class 12**: Sale of surplus property (State CEQA Guidelines Section 15312)
   i. The sale of surplus Authority property subject to limitations in Section 15312 of CEQA Guidelines.

9. **Class 13**: Acquisition of lands for wildlife conservation purposes (State CEQA Guidelines Section 15313).
   i. Acquisition of habitat mitigation lands.

10. **Class 21**: Enforcement Action (State CEQA Guidelines Section 15321)
    i. Actions to enforce Chapter 7.00 of this Code.

11. **Class 25**: Transfer of ownership of interests in land in order to preserve open space (State CEQA Guidelines Section 15325).
    i. Acquisition of areas to preserve the existing and natural conditions or to allow restoration of natural conditions.
    ii. Transfer of land title to a local, state or federal agency, or approved land conservation organization for management purposes, including transfers of mitigation credits in mitigation land bank programs of the Authority.

12. **Class 28**: Small hydroelectric generating facilities at existing facilities where the capacity of the generating facilities is 5 megawatts or less (CEQA Guidelines Section 15328).
    i. Installation of hydroelectric generating facilities of 5 megawatts or less in connection with existing pipelines, subject to the limitations in CEQA Guidelines Section 15328.
(b) The exemptions listed in subdivision (a) may not apply to particular projects if there exists one or more of the circumstances listed in Section 15300.2 of the State CEQA Guidelines.

Section 8.00.080 Projects for Which a Person or Entity other than the Authority is the Applicant

(a) Whenever a person or entity submits an application for a discretionary permit or other governmental determination of the Authority the person or entity shall also submit a completed Environmental Information Form (State Guidelines Appendix H) and such other information as the General Manager may require. After a preliminary review of the form the General Manager may require the person or entity to submit a completed draft Environmental Checklist Form (State Guidelines Appendix G) and additional information necessary to make a determination of the environmental effects of the project. The General Manager shall prepare an initial study as applicable. Based upon the findings of the initial study, the General Manager shall determine whether to prepare an EIR, a negative declaration, or mitigated negative declaration, or reaffirm a previously certified EIR or adopted negative declaration, or adopted mitigated negative declaration.

(b) If Authority is a responsible agency for the project, the applicant shall submit the approved negative declaration, mitigated negative declaration, environmental impact report or other final environmental determination of the lead agency instead of the other information required by this section.

(c) The application shall not be deemed complete until the applicant has submitted all the information required by subdivision (a) or (b). The applicant shall bear the Authority’s cost of the environmental review for the project.

(d) The Board, General Manager or other employee having decision-making authority for the project under this Code shall approve or certify the exemption, negative declaration, mitigated negative declaration or environmental impact report for the project. If the decision of the General Manager or other employee having decision-making authority is subject to appeal as provided in this Code, the appeal of the decision on the project shall also constitute an appeal of the decision approval or certification of the exemption, negative declaration, mitigation declaration or environmental impact report.

Section 8.00.090 Initial Study – Authority Projects

(a) Except as provided in this subdivision, the General Manager shall prepare an initial study for all Authority projects. An initial study is not required for a project that is determined to be exempt following a preliminary review. An initial study is not required for a project for which the General Manager has determined to prepare an environmental impact report without the need for an initial study.

(b) Based on the initial study, the General Manager may:
1. Determine that the project is exempt from further review;

2. Determine that the project has been reviewed by a previously approved or certified negative declaration, mitigated negative declaration or environmental impact report and that there are no material changes to the project that warrant further environmental review;

3. Prepare a proposed negative declaration;

4. Prepare a proposed mitigated negative declaration;

5. Prepare a draft environmental impact report.

Section 8.00.100 Notice of Intent to Adopt a Proposed Negative Declaration or Mitigated Negative Declaration

(a) At the time it gives notice of intent to adopt a proposed negative declaration or mitigated negative declaration, the Authority will make a copy of the notice of intent available in electronic format through the Authority’s website on the Internet.

(b) The Authority will give notice of intent to adopt a proposed negative declaration or mitigated negative declaration by:

1. Mailing to organizations and individuals who have previously requested such notice in writing.

2. Publication at least one time in a newspaper of general circulation in the community where the project is located. The newspapers specified pursuant to Section 1.08.050 of this Code may be used for this purpose.

3. Mailing by first class mail, postage prepaid, to the owners and occupants of property within 600 feet of the proposed project. Owners shall be determined using the latest equalized assessment roll. The General Manager may provide additional mailed notice whenever the Manager determines that additional notice is appropriate under the circumstances.

4. Posting for a period of at least 20 days in the office of the county clerk of each county in which the project will be located.

(c) Notice of the public hearing required by Section 8.00.110 may be included in the notice of intent to adopt a proposed negative declaration or mitigated negative declaration. If the notice of the public hearing is not included in the notice of intent to adopt, then the notice of the public hearing shall be given at least 10 days before the hearing in the same manner as specified in subdivision (a). Published notice shall be complete on the date of publication. Mailed notice shall be complete on the date of mailing.
Section 8.00.110  **Public Hearings on a Proposed Negative Declarations or Mitigated Negative Declarations**

(a) As part of the public review process for proposed negative declarations and mitigated negative declarations the Water Planning Committee shall hold a public hearing to receive comments from the public. The public hearing will be held during the period for public review required by Section 15073 of the State CEQA Guidelines.

(b) The public hearing on a proposed negative declaration or mitigated negative declaration may be combined with any other public hearing or meeting for the project.

Section 8.00.120  **Adoption of Negative Declaration or Mitigated Negative Declaration**

(a) If final decision-making authority for a project, except for possibility of appeal, has been delegated by the Board to the General Manager or Authority employee subordinate to the General Manager, then the General Manager or employee may adopt the proposed negative declaration or mitigated negative declaration as presented, conditionally adopt the proposed negative declaration including additional or substitute mitigation measures, order substantial revision and recirculation of the proposed negative declaration or mitigated negative declaration, or order preparation of an environmental impact report if it finds the project may have a significant effect on the environment.

(b) Except as provided in subdivision (a), the Board may adopt the proposed negative declaration or mitigated negative declaration as presented, conditionally adopt the proposed negative declaration including additional or substitute mitigation measures, order substantial revision and recirculation of the proposed negative declaration or mitigated negative declaration, or order preparation of an environmental impact report if it finds the project may have a significant effect on the environment.

Section 8.00.130  **Notice of Completion of Draft Environmental Impact Reports – Notice of Availability**

(a) At the time it provides a notice of completion of a draft environmental impact report to OPR, the Authority will make a copy of the notice of completion available in electronic format through the Authority’s website on the Internet.

(b) The Authority will give notice of availability of a draft environmental impact report by:

1. Mailing to organizations and individuals who have previously requested such notice in writing.

2. Publication at least one time in a newspaper of general circulation in the community where the project is located. The newspapers specified pursuant to Section 1.08.050 of this Code may be used for this purpose.
3. Mailing by first class mail, postage prepaid, to the owners and occupants of property within 600 feet of the proposed project. Owners shall be determined using the latest equalized assessment roll. The General Manager may provide additional mailed notice whenever the Manager determines that additional notice is appropriate under the circumstances.

4. Posting for a period of at least 30 days in the office of the county clerk of each county in which the project will be located.

(c) Notice of the public hearing required by Section 8.00.140 may be included in the notice of availability of a draft environmental impact report. If the notice of the public hearing is not included in the notice of availability, then the notice of the public hearing shall be given at least 10 days before the hearing in the same manner as specified in subdivision (b). Published notice shall be complete on the date of publication. Mailed notice shall be complete on the date of mailing.

Section 8.00.140 Public Hearings on Draft Environmental Impact Reports

(a) As part of the public review process for draft environmental impact reports the Water Planning Committee shall hold a public hearing to receive comments from the public. Based on the record of the hearing, the Planning and Environmental Committee may direct preparation of appropriate responses to comments received during the public hearing or order revisions of the draft environmental impact report. If the Committee orders revisions, it may also require further review by the Committee of the draft as revised.

(b) The public hearing on a draft environmental impact report may be combined with any other public hearing or meeting for the project.

(c) The public hearing will be held during the period for public review required by Section 15105 of the State CEQA Guidelines.

Section 8.00.150 Responsible Agency –Activities Subject to Chapter 7.00

The Authority will be a responsible agency for encroachment and other permits for activities that require a discretionary permit of a city or county and for joint use agreements issued pursuant to Chapter 7.00 of this Code.

Section 8.00.160 Environmental Documents

The Water Resources Department is designated as the custodian of Authority environmental review records. The Water Resources Department is responsible for preparing the record of proceedings of public hearings held pursuant to this Chapter.
Chapter 9.00
Metropolitan Water District

Section 9.00.010  Appointment of Metropolitan Delegates

The Chair, with the approval of the Board, shall appoint the Metropolitan Delegates, who are the Authority’s representatives on the board of directors of the Metropolitan Water District. Nothing shall preclude the Chair from appointing himself or herself as a Metropolitan Delegate.

Section 9.00.020  Attendance at Meetings

The Metropolitan Delegates are authorized to attend Metropolitan or Authority meetings, sessions or other events as may be necessary or convenient to the performance of the office or representation of the Authority.

Section 9.00.030  Representation of the Authority

The Chair shall appoint the full number of representatives on the Metropolitan board of directors to which the Authority is entitled under the Metropolitan Water District Act, with such representatives to vote as provided under that Act.

Section 9.00.040  Term of Office

The Authority’s representatives on the board of directors of the Metropolitan Water District shall serve an indefinite term at the pleasure of the Board. Representatives may be removed from office at any time by majority vote of the Board and shall be replaced upon failure to receive confirmation of continued representation upon biennial review as provided in Section 9.00.060.

Section 9.00.050  Qualifications

Each Metropolitan Delegate shall be a Director of the Authority. If a Metropolitan Delegate ceases to be a Director, the Delegate may continue to serve for a period of 90 days or until a successor is appointed and approved, whichever is less.
Section 9.00.060    Biennial Review

(a) The Chair, in consultation with the Vice-Chair and Secretary, shall conduct a review of the Water Authority’s representation at Metropolitan during October of each even-numbered year. Review may be based on considerations of the Water Authority’s policies and objectives, Delegate experience and performance individually and as a delegation, continuity of representation, changes in short-term and long-range objectives regarding Metropolitan services and supplies, and other factors deemed appropriate by the Chair.

(b) The matter of the Water Authority’s representation at Metropolitan shall be placed on the agenda for the regular Board meeting in October of even-numbered years. The Chair shall provide a report of the review conducted according to subdivision (a) along with a recommendation for continuation or change of representation. If the Chair recommends a change of representation, the Chair may also make a contingent appointment of a successor Delegate. Reasons for recommendations shall be provided in writing. At the meeting, the Board may confirm the Delegates. A delegate that is not confirmed shall be replaced upon approval of a contingent appointee or an appointee designated pursuant to Section 9.00.070.

(c) To assist the biennial review process, any Director may submit to the Chair a written request for consideration of appointment. A written request shall be provided to the Chair not later than October 1 of an even-numbered year. A request for consideration of appointment may be submitted on the Director’s own behalf or as a recommendation on behalf of any other Director.

Section 9.00.070    Replacement of Delegates Except Upon a Contingent Appointment

Except for a contingent appointment made pursuant to Section 9.00.060, the Chair shall provide 30 days notice to the Board before making an appointment. Notice of a pending appointment may be made orally at a regular meeting of the Board. Individual members of the Board may make suggestions for consideration by the Chair in making the appointment. If the notice of a pending appointment is made at a regular meeting of the Board, the appointment may be made and approved at the regular meeting of the Board held one month after the meeting at which the notice is given.

Section 9.00.080    Emeritus Delegates

Any member of the Board who has served as a Met Delegate for 15 or more years may, upon cessation of service as a delegate, be designated by the Chair as a Met Delegate Emeritus. A Met Delegate Emeritus shall have all the rights and privileges of a Met Delegate under this Code, except section 9.00.030. The designation shall be for a period determined by the Chair, but shall not exceed the term of office of the Chair.
Chapter 9.04

Colorado River Board

Section 9.04.010 Nomination of Representatives

The Chair, in consultation with the Vice-Chair and Secretary, shall make nominations to the Governor for the Authority’s representative and alternate representative on the Colorado River Board of California. The Chair shall recommend for approval by the Board one person as the Authority’s representative and one person as the alternate representative. A copy of the Board’s resolution approving the recommendation for the representative and the alternate representative, along with a list of two other names for nomination will be submitted to the Governor pursuant to Water Code section 12512.

Section 9.04.020 Attendance at Meetings

The Authority’s representative and alternate representative on the Colorado River Board of California are authorized to attend meetings, sessions or events as may be necessary or convenient to the performance of the office or representation of the Authority.

Section 9.04.030 Representation of the Authority

The Authority’s representative, or alternate representative, on the Colorado River Board is authorized to represent the Authority in all matters within the jurisdiction of the Colorado River Board.