EXECUTIVE DIRECTOR
MARIO SANTOYO
TELEPHONE
(559) 779-7595
E-MAIL AND WEBSITE
Msantoyo@sjvwia.org
www.buildtemperanceflat.com

San Joaquin Valley Water Infrastructure Authority

2800 Burrel Avenue, Visalia, California 93291
www.tularecounty.ca.gov

February 25, 2019

Mr. Joseph Yun
Executive Officer
Via Electronic Mail
joseph.yun@water.ca.gov
California Water Commission
Sacramento, California

Dear Mr. Yun:

On behalf of the San Joaquin Valley Water Infrastructure Authority (SJVWIA), I am writing to notify you and members of the California Water Commission that the SJVWIA Board of Directors has unanimously acted to authorize transfer of its application for Water Storage Investment Program (WSIP) funding to the newly-organized Temperance Flat Reservoir Authority (TFRA).

This will serve as the SJVWIA's official notice to the Water Commission of SJVWIA's desire, intent and formal action by its Board of Directors to authorize transfer its WSIP application to the TFRA. It is the request of both the SJVWIA and TFRA that the Commission grant authorization for the intended transfer to take place.

In so doing, the SJVWIA, its Board of Directors and member agencies do hereby grant the release and the responsibility in and for the Temperance Flat Project (the Project) and related WSIP application. Further, SJVWIAaffirms that it does hereby assign said interest and responsibility for the Project to the TFRA. In a separate communication to the Water Commission, the TFRA will provide all organizational information requested by the Commission.

TFRA's membership will include public agency stakeholders and beneficiaries for San Joaquin River water storage created by the proposed Temperance Flat Dam and Reservoir.

A formal Transfer Agreement, negotiated between the parties over the past few months, was finalized and adopted by the SJVWIA Board of Directors on February 8, 2019. Said Transfer Agreement was adopted by the TFRA Board of Directors on February 25, 2019. I have attached an originally executed copy of the Agreement.

This Agreement details future duties and responsibilities of the parties. I am pleased to advise you that, under the Agreement, the SJVWIA is to remain an active participant in this process with one of our five county supervisorial members serving on the TFRA Board of Directors.

The parties request your prompt consideration of approval and acceptance of this request in order that the TFRA and its members may assume management and administration as the Project's WSIP applicant as quickly as possible. Please contact the SJVWIA's Executive Director, Mario Santoyo, with any questions or further process instructions you may have.

Thank you for your assistance on and attention to this matter.

Sincerely,

Buddy Mendes

Buddy Mendes, President
San Joaquin Valley Water Infrastructure Authority

cc: **Temperance Flat Reservoir Authority**

- Mr. Aaron Fakuda, *Tulare Irrigation District*

Agreement Regarding Transfer of Applicant Status
for
Proposition 1 Water Storage Investment Program Funding

This Agreement Regarding Transfer of Applicant Status for Proposition 1 WSIP Funding ("**Agreement**") is between the San Joaquin Valley Water Infrastructure Authority, a California joint powers authority ("**SJVWIA**"), and the Temperance Flat Reservoir Authority, a California joint powers authority ("**TFRA**"); and is effective as of 2/25, 2019 ("**Effective Date**").

Recitals

A. SJVWIA filed an application with the California Water Commission ("**Commission**") under the Water Storage Investment Program ("**WSIP**") established pursuant to Proposition 1, the Water Quality, Supply and Infrastructure Improvement Act of 2014, for funding of the undertaking commonly known as the Temperance Flat Reservoir Project ("**Project**").

B. The crisis facing the San Joaquin Valley is dire, with millions of acre-feet in persistent annual overdraft and a correspondingly massive acreage of active farmland threatened with fallowing requirements through implementation of the California Sustainable Groundwater Management Act ("**SGMA**").

C. The SJVWIA membership currently includes the Counties of Fresno, Tulare, Kings, Madera, and Merced; the Cities of Avenal and Orange Cove (representing disadvantaged communities), and the City of Fresno; the Friant Water Authority (**"Friant"**), San Joaquin River Exchange Contractors Water Authority (**"Exchange Contractors"**) and San Luis & Delta-Mendota Water Authority (**"SLDMWA"**); and one at-large Public Member. The SJVWIA was established to advance regional collaboration in water infrastructure development in the San Joaquin Valley, including the proposed Temperance Flat Reservoir Project, in order to provide additional water supplies to a wide range and variety of potential water users, improve statewide water system operational flexibility, and produce numerous public benefits.

D. The Commission has granted a maximum conditional WSIP eligibility determination of $171,330,000 to the SJVWIA for the Project.

E. Certain water agencies that are members of SJVWIA have recently established TFRA to, among other things, plan for and implement the Project.

F. SJVWIA and TFRA are equally motivated to protect San Joaquin Valley interests.

G. TFRA has requested that SJVWIA transfer the WSIP applicant status and all related application documents and materials to TFRA; and SJVWIA is willing to transfer such applicant status and materials provided certain conditions are met and maintained by TFRA.

The parties agree as follows:

1. **TFRA GENERAL MEMBERSHIP.** The TFRA Joint Exercise of Powers Agreement ("**JEPA**") and Bylaws will allow public agencies (as defined by Government Code section 6500) to be eligible for membership including public agencies eligible for membership in Friant, Exchange Contractors, and SLDMWA, the three of which are currently SJVWIA members.

2. **SJVWIA MEMBERSHIP IN TFRA**. TFRA will permit the SJVWIA to be a member and that such membership will have the following characteristics:

   a. The membership will permit one SJVWIA Board of Directors member who is also a member of a county Board of Supervisors to participate as a voting member of the TFRA Board and allow for another SJVWIA board member from another member agency as designated by the SJVWIA, to participate as a TFRA Board alternate.
   b. The SJVWIA representative will have all power, rights, and privileges of every other TFRA Board of Directors member, with the exception that for all decisions requiring unanimous approval under the TFRA's JEPA or Bylaws or other agreement, such approval will be deemed to have been granted if all other members of the TFRA Board of Directors have voted in the affirmative or have otherwise not opposed the action item.
   c. The SJVWIA will not be assessed or in any way levied dues or other financial contribution requirements for membership; provided, however, that SJVWIA's representatives will not be entitled to any compensation or reimbursement from TFRA for their participation and service on the TFRA Board.

3. **PROJECT OPERATING PRINCIPLES**. SJVWIA and TFRA acknowledge their shared interests to protect San Joaquin Valley interests, including, but not limited to, those of Disadvantaged Communities ("DACs") with respect to the Project. To that end, the parties agree that the JEPA provides in Section 7.1.1 that one of the first priorities of the members of TFRA is to work towards reaching an agreement on Project operating principles. By participating in TFRA as a member, including attendance by its representative at Board meetings, SJVWIA will be in a unique position to review and guide the development of such operating principles and help ensure that the Project will appropriately protect San Joaquin Valley interests, including DACs and areas not within the management area of a groundwater sustainability agency (commonly referred to as "white areas").

4. **COOPERATION IN TRANSFER OF WSIP APPLICATION.** SJVWIA will cooperatively perform such acts, and make, execute, and deliver such documents as may be reasonably necessary or required by the California Water Commission, to transfer the WSIP applicant status for the Project. The SJVWIA also agrees to authorize, by no later than 30 days from the Effective Date, its principle WSIP Application consultant to provide copies of all related WSIP application materials in such consultant's possession (including all studies, data, reports, and correspondence) to TFRA. All costs for the incurred for the production of documents or other materials will be the responsibility of TFRA.

5. **COMMISSION APPROVAL**. This Agreement is predicated on the Commission's approval of the Application transfer, and if such approval is not granted after good faith, reasonable efforts of the parties to comply with the terms of this Agreement, the Agreement may be terminated by either party in accordance with Section 8.

6. **RECITALS**. The Recitals to this Agreement are fully incorporated into and are integral parts of this Agreement.

7. **TERM OF AGREEMENT**. The terms of this Agreement will remain in full force and effect until terminated as provided in Section 8, below.

8. **TERMINATION**.

a. This Agreement may be terminated at any time by mutual written consent of the parties.
b. The Agreement may be terminated by either party if the Commission does not grant approval of the Application transfer after good faith, reasonable efforts to obtain such transfer approval within six months of the Effective Date.
c. This Agreement may be terminated by TFRA if it ceases to pursue or elects not to receive any of the WSIP funding for which SJVWIA applied.
d. SJVWIA may terminate the agreement at any time after completion of its obligations regarding the Transfer of the Application by surrendering its rights under the agreement, which surrender shall be in writing and delivered to all parties to this Agreement.

9. **INDEMNIFICATION**. Subsequent to the effective date of transfer of the WSIP application by the Commission, if at all, ("**Transfer Date**"), TFRA accepts all liabilities and responsibilities associated with the WSIP application occurring after the Transfer Date and agrees to indemnify and defend (at TFRA's sole cost and expense and with legal counsel approved by SJVWIA, which approval may not be unreasonably withheld) SJVWIA, its successors, and assigns against any claims made against SJVWIA arising out of the WSIP application or this Agreement after the Transfer Date. SJVWIA accepts all liabilities and responsibilities associated with the WSIP application occurring prior to the Transfer Date and agrees to indemnify and defend (at SJVWIA's sole cost and expense and with legal counsel approved by TFRA, which approval may not be unreasonably withheld) TFRA, its successors, and assigns against any claims made against TFRA arising out of the WSIP application prior to the Transfer Date. Each party's obligations under this section will survive the expiration or earlier termination of this Agreement until action against the indemnified parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. This section will survive any termination of the Agreement effected after the Transfer Date.

10. **ASSIGNMENT**. TFRA may not transfer or assign this Agreement or the WSIP application or associated rights to funding without the prior written consent of SJVWIA, such consent not to be

unreasonably withheld, conditioned, or delayed, provided that SJVWIA may require that any agreement transferring the WSIP application or associated rights to funding will contain the provisions granting and reserving to SJVWIA the same rights, privileges, and immunities contained herein and in the TFRA's founding documents. SJVWIA may assign its rights under this Agreement to an individual member County or another JPA that includes all five County members of SJVWIA and that has similar interests and purposes as the SJVWIA. The terms of this Agreement shall bind the parties' valid successors and assigns.

11. **BREACH**. Any breach of this Agreement by TFRA that is not cured within 30 days of written notice of such breach by SJVWIA or TFRA has commenced to cure such breach and thereafter diligently pursues to completion the cure of the breach if such breach may not reasonably be cured within such time 30-day time period, will result in the voidance of the transfer and reversion of the WSIP application to SJVWIA, in addition to any other remedy allowed by law.

12. **ATTORNEY'S FEES AND COSTS**. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs in addition to any other relief to which such party may be entitled.

13. **SEVERABILITY**. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

14. **FURTHER ASSURANCES**: Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

15. **CONSTRUCTION**: This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

16. **HEADINGS**: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

17. **NO THIRD-PARTY BENEFICIARIES INTENDED**: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

18. **WAIVERS**: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any

subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES of the parties have executed this Agreement as of the effective date set forth above

SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY

By: Ernest Buddy Mendes Date: 2/25/19

Name: Ernest Buddy Mendes

Title: President, SJVWIA

TEMPERANCE FLAT RESERVOIR AUTHORITY

By: Kole Upton Date: 2/19/2019

Name: Kole UPTON

Title: Chairman

TEMPERANCE FLAT RESERVOIR AUTHORITY

February 19, 2019

Joe Yun – Executive Officer
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

Subject: Acceptance of Applicant Status for the Temperance Flat Reservoir Project

Dear Mr. Yun:

On behalf of the Temperance Flat Reservoir Authority (TFRA), we would like to request that the applicant status on the Temperance Flat Reservoir Project be changed from the San Joaquin Valley Infrastructure Authority (SJVWIA) to the TFRA. The SJVWIA and the TFRA have mutually agreed to this change in applicant status as evidenced by the attached Agreement Regarding Transfer of Applicant Status for Prop 1 Water Storage Investment Program Funding.

Participants in the TFRA have been active members of the SJVWIA and have participated in the Water Storage Investment Program (WSIP) application process. The TFRA was created to manage, promote, develop, design, permit, finance, acquire, construct, maintain, and operate the Temperance Flat Dam and related facilities. In the pursuit of the project, engagement with the California Water Commission as the WSIP applicant will help further the mission of the TFRA.

At its February 19, 2019 Board Meeting the TFRA adopted Resolution No. 19-01, which accepts the WSIP applicant status and allows TFRA to enter into a funding agreement with the California Water Commission for funding the Temperance Flat Reservoir Project.

We look forward to working with the California Water Commission on the Temperance Flat Reservoir Project. If you have any questions or need further information, please contact Aaron Fukuda at (559) 686-3425 or akf@tulareid.org.

Sincerely,

Kole Upton
Chair of the TFRA Board of Directors

TEMPERANCE FLAT RESERVOIR AUTHORITY

RESOLUTION 19-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TEMPERANCE FLAT RESERVOIR AUTHORITY AUTHORIZING THE AUTHORITY TO ASSUME THE STATUS OF APPLICANT FOR FUNDING UNDER THE STATE OF CALIFORNIA WATER STORAGE INVESTMENT PROGRAM (WSIP) AND TO TAKE ALL ACTIONS NECESSARY TO PROPER TO RECEIVE FUNDING UNDER SUCH PROGRAM

WHEREAS, the Temperance Flat Reservoir Authority (TFRA) was formed under California Government Code sections 6500-6599.3 (the "Joint Exercise of Power Act") with its mission to promote, develop, design, permit, finance, acquire, construct, manage, maintain and operate a dam and reservoir at Temperance Flat and related facilities.

WHEREAS, the current members of TFRA are the Friant Water Authority (FWA) and the San Joaquin River Exchange Contractor Water Authority (SJRECWA), who deliver surface water to the lands within the counties of Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern.

WHEREAS, members of the TFRA have worked with the San Joaquin Valley Water Infrastructure Authority (SJVWIA), the U.S. Bureau of Reclamation, and other water agencies within the Central Valley to develop a plan for the operations of the proposed Temperance Flat Reservoir that would provide additional water supply to a wide variety of potential water users, improve statewide water system operational flexibility, and produce public benefits consistent with the State of California Water Storage Investment Program (WSIP) requirements;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Temperance Flat Reservoir Authority that, TFRA will perform the necessary functions required to be the applicant to the California Water Commission to obtain 2017 WSIP funding pursuant to Title 23, Division 7, Chapter 1 of the California Code of Regulations, and to enter into an agreement to receive funding for the Temperance Flat Reservoir Project.

BE IT FURTHER RESOLVED, that the Chair of TFRA, or designee, is hereby authorized and directed to prepare the necessary data, conduct investigations, file such application, execute a funding agreement and any amendments thereto, and sign invoices with the California Water Commission.

THE FOREGOING RESOLUTION WATER PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Temperance Flat Reservoir Authority held on February 19, 2019 by the following vote:

Ayes: Kole Upton, Jim Obanion

Noes:

Abstain:

Absent:

Kole Upton, Chair of the Board of Directors

ATTEST:

Aaron Fukuda, Secretary

TEMPERANCE FLAT RESERVOIR AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement ("**Agreement**") is entered into by the parties on the attached Exhibit A, which are referred to in this Agreement individually as a "**Member**" and collectively as the "**Members**."

RECITALS

A. Each of the Members is a public agency organized and operating under the laws of the State of California.

B. California Government Code sections 6500 – 6599.3 (the "**Joint Exercise of Powers Act**" or "**Act**") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties.

C. The Members desire by this Agreement to establish an independent special agency known as the Temperance Flat Reservoir Authority ("**Authority**"), that will have as its mission, to promote, develop, design, permit, finance, acquire, construct, manage, maintain, and operate a dam and reservoir at Temperance Flat and related facilities.

D. The Members each possess the powers to promote, develop, design, permit, finance, acquire, construct, manage, maintain and operate water storage and related infrastructure projects.

E. The Members each desire to exercise those powers as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth in this Agreement, the Members agree as follows:

I. DEFINITIONS

As used in this Agreement, the following words and phrase will have the meaning set forth in this article:

1.1 **Agreement**: This Joint Exercise of Powers Agreement as it currently exists or as it may be amended or revised from time to time.

1.2 **Authority**: The legal entity established by this Agreement to be known as the Temperance Flat Reservoir Authority.

1.3 **Board of Directors or Board**: The governing body of the Authority as established in Article IV of this Agreement.

1.4 **Bylaws**: Additional requirements to those contained in the Agreement related to the construction of the Temperance Flat Reservoir; emphasizing delegations of authority, decision-making; membership types; budgeting; and cost management.

1.5 **Central Valley Project or CVP**: The federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.

1.6 **Exchange Contract**: Second Amended Contract for Exchange of Waters (I1r-1144) dated December 6, 1967.

1.7 **Member**: An eligible public agency that is a signatory to this Agreement.

1.8 **Non-Member Participating Party**: An agency or entity that is not an Authority Member, but is deemed eligible by the Authority to participate by contract in certain elements of the Project. The Bylaws may provide for additional requirements for such Non-Members.

1.9 **Project**: The promotion, development, design, permitting, financing, acquisition, construction, management, and operation of a dam and reservoir and related facilities at Temperance Flat to be carried out pursuant to this Agreement.

1.10 **Purchase Contract**: Contract for Purchase of Miller & Lux Water Rights- July 27, 1939.

1.11 **Reclamation**: The United States Department of Interior, Bureau of Reclamation.

1.12 **State Water Project or SWP**: The state water facilities defined in California Water Code section 12934(d).

1.13 **Upstream Power Agreements**: Certain contracts between Miller and Lux Inc. and Southern California Edison Company, Limited and its predecessors in interest of dates: August 17, 1906, and supplemental contract of the same date; June 14, 1909; February 21, 1916; October 3, 1916; August 16, 1918; April 27, 1920; November 2, 1922; February 11, 1924; October 7, 1924; December 3, 1925; April 25, 1928; July 19, 1933; November 25, 1936; June 30, 1949; April 9, 1953; and May 1, 1957, and certain contracts between Miller and Lux Inc. and the San Joaquin light and power Corporation, and its predecessors in interest, of dates: June 14, 1909, and September 16, 1919.

II. GENERAL PROVISIONS REGARDING THE CREATION, TERM, PURPOSES, AND POWERS OF THE AUTHORITY

2.1 Creation: Pursuant to the Act a public entity is created to be known as the Temperance Flat Reservoir Authority, which will be a public agency that is separate from the Members.

2.2 Term: This Agreement will become effective on the first day of the month after the Friant Water Authority and at least one other of the initial public agencies listed on Exhibit A execute this Agreement. The Agreement will remain in effect until terminated pursuant to the provisions of Article VII [Termination].

2.3 Purposes: The purpose of this Agreement is to establish an independent joint powers authority ("**JPA**") to exercise powers common to the Members to, among other things, effectively promote, develop, design, permit, finance, acquire, construct, manage, maintain, and operate the Temperance Flat Reservoir and its related facilities, including any related facilities for recreation and hydro-electric power generation.

2.4 Powers: The Authority will have the power to pursue the purposes described above and to perform all acts necessary for the exercise of such powers, including, but not limited to, the ability to:

2.4.1 make and enter into contracts necessary for the full exercise of its powers;

2.3.1. perform studies, environmental review, engineering and design, and if appropriate, permitting, construction of water storage facilities, and related conjunctive management;

2.4.2 contract for the services of engineers, attorneys, scientists, planners, financial consultants, and other professionals or to employ such professionals as it deems necessary;

2.4.3 acquire, hold, lease and dispose of any property;

2.4.4 apply for, accept, and receive permits, licenses from any federal, state or local public agency;

2.4.5 apply for, accept, and receive federal, state or local grants, loans, or other aid from any agency of the United States, the state or other public or private entities;

2.4.6 receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity;

2.4.7 issue revenue bonds and other forms of indebtedness to the extent, and on the terms, provided by the Act;

2.4.8 incur debts, liabilities, and obligations;

2.4.9 sue and be sued in its own name;

2.4.10 adopt Bylaws, rules, regulations, and procedures, governing the operation of the Authority;

2.4.11 perform all acts necessary or proper to carry out fully the purposes of this Agreement; and

2.4.12 exercise any independent or supplementary powers of a joint powers agency, as provided by the Act or other law.

2.5 Manner of Exercise of Powers: To the extent not specifically provided for in this Agreement or the Act, the Authority will exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to the Friant Water Authority, which in accordance with California Government Code section 6509 exercises its powers in the manner specified in the Irrigation District Law, Division 11 of the California Water Code, commencing at Section 20500.

2.6 No Implied Effect on Rights: Except as expressly provided in this Agreement, nothing in this Agreement may be construed as affecting the rights or obligations of the Members, including but not limited to any rights or obligations pursuant to contracts for delivery of water from the CVP or SWP, the Exchange Contract, the Purchase Contract, or Upstream Power Agreements.

III. AUTHORITY MEMBERSHIP

3.1 Generally: Authority membership is comprised of public agencies (as defined in Section 6500 of the Act) that are authorized to be Members, including under California Water Code section 79759(a) and (b) if funds are allocated to the Project under Chapter 8 of Division 26.7 of the Water Code beginning at section 79700, and are signatories to this Agreement.

3.2 Bureau of Reclamation: The Authority may enter into a contract or other arrangement with Reclamation to carry out the purposes of this Agreement.

3.3 Department of Water Resources: If the Authority receives funding for the Project under Chapter 8 of Division 26.7 of the California Water Code beginning at section 79700, the California Department of Water Resources ("**DWR**") will be an ex officio Member of the Authority as provided in Water Code section 79759(b), but in accordance with that provision will have no control with respect to the governance, management, or operation of the Project.

3.4 Addition of Members: Entities authorized by law to participate in a JPA may subsequently become Members upon the unanimous vote of all Members and the new Member's execution of this Agreement, as it may be amended. An entity requesting to become a Member must provide certification of compliance with the membership requirements of this Agreement and the Bylaws. The entity requesting to become a Member may represent a group of other entities. Terms and conditions for a new Member's participation in the Authority, if any, will be set forth in an amendment to this Agreement or in the Bylaws. Such terms and conditions must be consistent with this Agreement and any contracts, resolutions, or indentures of the Authority then in effect.

3.5 Non-Membership Participation Types: The Board may approve the creation of different types of non-membership participation that may include governmental agencies, public agencies, or private entities, with respect to the funding and financing of the different elements of the Project. The creation of any additional non-membership participation types will be defined in the Bylaws. Participation by such Non-Member Participating Parties will be upon the affirmative vote of at least seventy-five percent (75%) of the total number of Members.

IV. GOVERNANCE AND INTERNAL ORGANIZATION

4.1 Board of Directors: The governing body of the Authority is a Board of Directors ("**Board**") that will conduct all business on behalf of the Authority consistent with this Agreement and applicable law. The Board consists of one representative of each Member. To remain in an active status, each Member having representation on the Board must be in "Good Standing" as defined in the Bylaws.

4.2 Exercise of Authority: All the power and authority of the Authority will be exercised by the Board subject to the rights reserved by the Members as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to the Chair or Chief Executive Officer as the Board may determine by motion, resolution or ordinance. The Board may also appoint and delegate such powers and authority to such committees as the Board may determine by motion, resolution or ordinance.

4.3 Directors and Alternates:

4.3.1 Each Member must appoint a Director to the Board. Each Member must also appoint at least one Alternate Director to the Board. The role of the Alternate Director will be to assume the duties of a Member's Director in case of the absence or unavailability of such Director.

4.3.2 The Directors and Alternate Directors must be directors or members of the governing body of the Member agency, or employees of the Member he or she represents.

4.3.3 Directors and Alternates both serve at the pleasure of the governing body of their respective Member agency. Authority Member agencies must communicate their initial Director and Alternate selections, and any subsequent changes in representatives, to the Authority in writing and include a certified copy of the resolution of the governing body, minutes of the relevant meeting, or other formal documentation evidencing the appointment.

4.3.4 Should a Director who is also an officer of the Board not be in attendance at a meeting, the Member's Alternate Director may not assume the duties of such officer. Should the Chair be absent, the Vice Chair will assume the Chair's responsibilities until the Chair is present, and if both are absent the Board may appoint a temporary Chair.

4.3.5 A Director and Alternate Director office will be declared vacant if the person serving dies, resigns, the Member for which the Director or Alternate Director serves withdraws from this Agreement, the membership of the Member for which the Director or Alternate Director serves is terminated, or whenever, at the discretion of the particular Member, the Director or Alternative Director is incapable of serving. Upon the Director office becoming vacant, the Alternate Director, if the office is not vacant, will serve as Director, until the Member appoints a new Director or Alternate, as applicable.

4.4 Meetings: The Board must hold at least one regular meeting per year, and may hold regular or special meetings at more frequent intervals. All meetings of the Board will be called, held, noticed, and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code sections 54950 and following).

4.5 Quorum: A majority of the total number of Directors will constitute a quorum.

4.6 Voting:

4.6.1 Each Member agency is only entitled to have one vote, either by its Director or the Alternate, at a meeting of the Board.

4.7 Officers: The officers of the Authority will be a Chair, Vice Chair, Treasurer, and Secretary.

4.7.1 Chair; Vice Chair. The Board will select, from among the Directors, a Chair, who will be the presiding officer for all Board meetings, and a Vice Chair, who will preside in the absence of the Chair.

4.7.2 Treasurer. The Board, or its designated representative, will contract either with an independent certified public accountant or the treasurer, chief financial officer, or other employee of any Member, to serve as Treasurer of the Authority. The Treasurer will be the depository of and have custody of funds, subject to the requirements of California Government Code sections 6505-6505.6. The Treasurer will have custody of all money of the Authority from whatever source and will perform the duties specified in Government Code section 6505.5. The Treasurer will be bound in accordance with Government Code section 6505.1 and will pay demands against the Authority that have been approved by the Board.

4.7.3 Secretary. The Board will also select a Secretary, who will be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority. The Board may combine the positions of Secretary and Treasurer.

4.7.4 The Bylaws may further address the duties, responsibilities and administrative requirements for the respective officers.

4.7.5 Chief Executive Officer. The Board may appoint a Chief Executive Officer or assign staff of one or more Members to conduct the business of the Authority in accordance with the policies of the Board; provided that no Member's staff will be so assigned without the consent of that Member. The Chief Executive Officer will serve at the pleasure of the Board and may be an employee or a contractor of the Authority.

4.7.6 General Counsel. The Board may retain general counsel, who reports to the Board and serves at the pleasure of the Board.

4.7.7 Staff. The Authority may employ such full-time and part-time employees and independent contractors as may be necessary from time to time to accomplish the purposes of the Authority.

4.8 Bylaws: At, or as soon as practical after, the first meeting of the Board of Directors, the Board will approve the Bylaws of the Authority to govern the day-to-day operations of the Authority. The Board may adopt such other policies, rules and regulations for the conduct of its affairs as may be necessary for the purposes of this Agreement in a manner consistent with this Agreement and the Bylaws.

4.9 Liability of Authority, Officers, and Employees: The Directors, officers, and any employees of the Authority must use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Director, officer, employee or agent will be responsible for any act or omission by another Director, officer, employee, or agent. As further set forth in Section 5.10, the Authority will indemnify, defend, and hold harmless the individual Directors, officers, employees, and agents of the Authority for any action taken within the course and scope of their duties while acting on behalf of the Authority pursuant to this Agreement. The Authority may purchase such insurance as the Board may deem appropriate for this purpose. Nothing in this section may be construed to limit the defenses available under the law, to the Members, the Authority, or its Directors, officers, employees, or agents.

V. FINANCIAL PROVISIONS

5.1 Fiscal year: The fiscal year will be July 1 through June 31, unless the Directors decide otherwise, and will also apply to any Project Agreements unless the parties to such Project Agreement decide otherwise.

5.2 Depository: All funds of the Authority will be held in separate accounts in the name of the Authority and not commingled with the funds of any Member or any other person or entity. Regular reports will be made as directed by the Board, but at least quarterly, to the Board of all receipts and disbursements. The books and records will be open to inspection by the Board and individual Directors upon reasonable notice.

5.3 Budgets: A draft budget will be prepared for the Member agencies to review at least 45 days before the beginning of the Authority's next fiscal year. The Board will approve the budget no later than 15 days before the beginning of the fiscal year. The budget must include:

5.3.1 General and administrative costs for the general operation and administration of the Authority. These costs do not include any costs incurred by the Authority directly as a result of a specific Project Agreement as described in Article VI.

5.3.2 Project specific costs will be fully described and specified in a Project Agreement. The Board will ensure that all costs incurred by the Authority directly relating to any specific project will be paid only by the parties to the Project Agreement and will not be paid for by the Authority as general and administrative costs. The Bylaws may include additional requirements and criteria for such costs.

5.4 Initial Contributions: Upon formation of the Authority, each initial Member will make an admission contribution of $15,000 for the purpose of funding anticipated operation and administrative expenses for the initial six months or more of operation of the Authority until a budget for the first full fiscal year is approved.

5.5 Recovery of General and Administrative Costs:

5.5.1 The Board may assess each Member for the general and administrative costs to operate the Authority. Payments of public funds may be made to defray the costs incurred in carrying out such purposes, and advances of funds may be made for use in doing so, to be repaid as provided in this Agreement. Personnel, equipment or property of one or more of the Members may be used in lieu of other contributions or advances, upon Board approval, and will be treated as a contribution from that Member.

5.5.2 General and administrative costs incurred by the Authority in carrying out its purposes, as described in Section 5.3.1, will be shared by the Members as determined by the Board.

5.5.3 The Authority will periodically, as necessary, issue an invoice to each Member reflecting the expenses attributable to that Member in accordance with this Agreement or the applicable Project Agreement, respectively. The Authority must receive payment within 60 days of the date listed on the invoice. Delinquent sums will bear interest at a rate established in the Bylaws, which may include additional requirements.

5.5.4 Upon request of any Member, the Authority will produce and allow the inspection of all documents relating to the computation of expenses attributable to the Members under this Agreement. If a Member does not agree with the amount listed on the invoice, it must make full payment and provide a cover letter accompanying payment to the Authority specifying the amount in dispute and providing a detailed explanation of the basis for the dispute. The Authority will advise the disputing Member of the Authority's determination within 30 business days.

5.6 Recovery of Project Agreement Costs: Each Project Agreement will specify the requirements for recovery of costs.

5.7 Auditor; Audit: An auditor will be chosen annually by, and serve at the pleasure of, the Board. The auditor will make an annual audit of the accounts and records of the Authority. A report will be filed as a public record with the auditor of the county where the Authority is domiciled, consistent with Section 6505 of the Act, and with each agency or entity that is a Member, and to any public agency or person in California that submits a written request to the Authority.

5.8 Bonds: The Board may, from time to time, designate the officers or other persons who have charge of, handle, or have access to any property of the Authority and will require such officers or persons to file an official bond, at the Authority's expense, in an amount to be fixed by the Board.

5.9 No Authority Member Liability: As provided by California Government Code section 6508.1, the debts, liabilities, and obligations of the Authority will be the debts, liabilities, and obligations of the Authority only, and not of the individual Members.

5.10 Indemnity: Funds of the Authority may be used to defend, indemnify and hold harmless the Authority, each Member, each Director, and any officers, agents and employees of the Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority, including pursuant to a Project Agreement . Other than for gross negligence or intentional acts, the Authority will indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted in performance of this Agreement and will defend each of them against any claim, cause of action, liability, or damage resulting therefrom. The Directors, officers, employees, agents and volunteers of the Authority will be entitled to defense and indemnification by the Authority as provided under California Government Code Title 1, Division 3.6, Part 2, Chapter 1, Article 4 (commencing with Section 825) and Title 1, Division 3.6, part 7 (commencing with section 995). The indemnification and hold harmless provisions of this section apply in lieu of the right of contribution provisions at Government Code Sections 895-895.8. The provisions of California Civil Code section 2778 regarding the interpretation of indemnity provisions are made a part of this Agreement.

VI. PROJECT AGREEMENTS

6.1 General: The Authority intends to carry out many of the purposes of this Agreement through projects that are consistent with the purposes of the Authority as described in this Agreement. Funding and participation in certain projects undertaken by the Authority will be governed by a "**Project Agreement**". The Authority may undertake all or any portion of each project on its own or it may enter into agreements with the State of California, the United States, or any other public or private entity.

6.2 Parties to Agreement: Prior to undertaking a project, the Members and any Non-Member Participating Parties electing to participate in the project must enter into a Project Agreement. No Member will be required to be involved in a Project Agreement.

6.3 Project Agreement: All assets, rights, benefits, and obligations attributable to the project will be assets, rights, benefits, and obligations of those Members and Non-Member Participating Parties that have entered into the Project Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Authority in regard to a particular project will be the debts, liabilities, obligations, and indebtedness of the Members and Non-Member Participating Parties who have executed the respective Project Agreement and will not be the debts, liabilities, obligations or indebtedness of the Members and Non-Member Participating Parties that have not executed the Project Agreement, nor of the Authority. The Bylaws may provide additional requirements regarding the implementation of each Project Agreement.

VII. TERMINATION, WITHDRAWAL, AND SUSPENSION

7.1 Termination:

7.1.1 Automatic Termination. Within twelve months of the effective date of this Agreement under Section 2.2, the Members will attempt to reach an agreement on operating principles of the Project. If agreement on such operating principles is not reached by the Members or the time period to reach an agreement under this Section is not extended by an amendment to this Agreement, then this Agreement will automatically terminate at the expiration of such twelve-month period.

7.1.2 Mutual Termination. This Agreement may be terminated by the mutual agreement of at least seventy-five percent (75%) of the total number of the boards or governing bodies of the Member agencies in writing.

7.1.3 Termination of a Member by the Authority. This Agreement may be terminated with respect to any Member upon the affirmative vote of all Directors less one. Prior to any vote to terminate this Agreement with respect to a Member, written notice of the proposed termination and the reason(s) for such termination will be presented at a regular Board meeting with opportunity for discussion. The Member subject to possible termination will have the opportunity at the next following regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote. If a Member is terminated, that Member will be responsible for its proportionate share of any costs incurred by the Authority up to the date of termination.

7.2 Member Voluntary Withdrawal from Authority:

7.2.1 Any Member may unilaterally withdraw from the Authority by giving at least 60 days' written notice of its election to do so, which notice will be given to the Authority and each Member; provided that such withdrawal does not in any way impair any contracts or obligations of the Authority then in effect. Prior to withdrawal or as soon as an accounting can be completed, the withdrawing Member must pay its proportionate share of (1) general and administrative costs, described in Section 5.5, budgeted and approved prior to the effective date of withdrawal and (2) any multi-year contract entered into by the Authority while it was a member unless the remaining Members agree to assume the withdrawing Member's obligations. The withdrawing Member will also be responsible for its share of any claims, demands, damages, or liability arising from this Agreement through the date of withdrawal.

7.2.2 With respect to a particular project, and subject to the terms of the applicable Project Agreement, the withdrawing Member will be responsible for its share of all costs, expenses, advances, contractual obligations, and other obligations, including bonds, notes or other indebtedness issued by the Authority while such withdrawing entity was a party to a Project Agreement. The remaining parties to a Project Agreement will have the option of discontinuing a project and/or acquiring the interests of the withdrawing party, as may be more particularly described in the Project Agreement. If the remaining Members to a Project Agreement under Article VI decide to terminate the Project Agreement, any remaining funds will be allocated pursuant to the terms of the Project Agreement and the costs will be allocated to all parties as described in the Project Agreement, including the withdrawing party.

7.3 Withdrawal by Operation of Law: Should the participation of any Member be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, such Member must withdraw no later than the date such determination becomes final and must pay its proportionate share of the matters set forth in Section 7.2.1.

7.4 Disposition of Assets Upon Termination: Upon termination of this Agreement, any surplus money or assets in the possession of the Authority for use under this Agreement, after payment of liabilities, costs, expenses and charges incurred under this Agreement, will be returned to the then-existing Members in proportion to the total contributions made by each Member. The Board of Directors will first offer the properties, works, rights and interests of the Authority for sale to Members. If such sale is not consummated or only partially consummated, the Board of Directors will offer to sell the properties, works, rights and interests of the Authority to any public utility, governmental agency, or other entity or entities for good and adequate consideration. The Authority will have the power to consummate such sales and the net proceeds from the sales will be distributed among the Members in proportion to their total contributions.

VIII. MISCELLANEOUS PROVISIONS

8.1 Amendment of Agreement: This Agreement may be amended only by the unanimous vote of all of the Member agencies. The Authority will provide notice to all Members of amendments to this Agreement, including the effective date of such amendments. .

8.2 Adoption and Amendment of Bylaws: The Bylaws may be adopted or amended only by the unanimous vote of the total number of Directors. The Authority will provide notice to all Members of amendments to the Bylaws, which includes the effective date of such amendments.

8.3 Assignment: Except as otherwise expressed in this Agreement, the rights and duties of the Members may not be assigned or delegated without the advance written consent of all the other Members, and any attempt to assign or delegate such rights or duties in contravention of this section will be null and void. This Agreement inures to the benefit of, and is binding upon, the successors and assigns of the Members. This section does not prohibit a Member from entering into an independent agreement with another agency, person or entity regarding the funding or financing of that Member's contributions to the Authority, or the disposition of the proceeds which that Member receives under this

Agreement, so long as the independent agreement does not affect or purport to affect, the rights and duties of the Authority or the Members under this Agreement.

8.4 Severability: If one or more clauses, sentences, paragraphs or provisions of this Agreement is be held to be unlawful, invalid or unenforceable, the remainder of the Agreement will not be affected. Such clauses, sentences, paragraphs or provisions will be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.

8.5 Complete Agreement; Counterparts: This Agreement constitutes the entire agreement between the Members with respect to the subject matter of the Agreement. This Agreement may be executed in any number of counterparts and upon execution by all Members, each executed counterpart will have the same force and effect as an original instrument and as if all Members had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form but have attached to it one or more signature pages. Facsimile and electronic signatures will be deemed valid and binding.

8.6 Authority Members to be Served Notice: Any notice authorized to be given pursuant to this Agreement will be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service will be conclusively deemed received at the time of delivery and receipt; (ii) by mail will be conclusively deemed given 48 hours after the deposit thereof if the sender returns the receipt; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices will be sent to the addresses listed in Exhibit A to this Agreement.

8.7 Dispute Resolution: Any dispute between or among the Members arising out of this Agreement that cannot be resolved following written notice to the Member or Members of the basis of the dispute and the proposed resolution and a reasonable opportunity for such Member or Members to cure or remedy the dispute, will be submitted to mediation. The mediator will be selected by mutual agreement. If the matter cannot be resolved through mediation, or the Members cannot agree upon a mediator, then the matter will be submitted to arbitration in accordance with the provisions of the California Arbitration Act (California Code of Civil Procedure section 1280 and following).

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES of the Members have executed this Agreement as of the date shown below:

[Signatures on the following pages]

CITY OF FRESNO

By:____________________________ Date:____________________________
Name:____________________________
Title:____________________________

FRIANT WATER AUTHORITY

By: Kent H. Stephens Date: 10-15-2018
Name: Kent H. Stephens
Title: Chair, Board of Directors

SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY

By:____________________________ Date:____________________________
Name:____________________________
Title:____________________________

SAN LUIS & DELTA MENDOTA WATER AUTHORITY

By:____________________________ Date:____________________________
Name:____________________________
Title:____________________________

WESTLANDS WATER DISTRICT

By:____________________________ Date:____________________________
Name:____________________________
Title:____________________________

CITY OF FRESNO

By:______________________________ Date:______________________________
Name:______________________________
Title:______________________________

FRIANT WATER AUTHORITY

By:______________________________ Date:______________________________
Name:______________________________
Title:______________________________

SAN JOAQUIN RIVER EXCHANGE
CONTRACTORS WATER AUTHORITY

By: Chris White Date: October 10, 2018
Name: Chris White
Title: Executive Director

SAN LUIS & DELTA MENDOTA
WATER AUTHORITY

By:______________________________ Date:______________________________
Name:______________________________
Title:______________________________

WESTLANDS WATER DISTRICT

By:______________________________ Date:______________________________
Name:______________________________
Title:______________________________

EXHIBIT A

PARTIES TO THE TEMPERANCE FLAT RESERVOIR AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT [As of October 15, 2018]

	PARTY	CONTACT INFORMATION
1	Friant Water Authority	854 N. Harvard Ave. Lindsay, CA 93247 Tel: 559-562-6305
2	San Joaquin River Exchange Contractor Authority	541 H Street P.O. Box 2115 Los Banos, CA 93635 Tel: 209-827-8616

CALIFORNIA WATER COMMISSION
901 P STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 651-7501

March 13, 2019

Mr. Mario Santoyo
San Joaquin Valley Water Infrastructure Authority
2800 West Burrel Ave
Visalia, CA 93291

Mr. Aaron Fukuda
Tulare Irrigation District
Tulare, CA 93274

RE: Requested Temperance Flat Reservoir Applicant Change, Water Storage Investment Program

Dear Mr. Santoyo and Mr. Fukuda,

California Water Commission staff has completed its review of the documents supplied to change the applicant on the Temperance Flat Reservoir project from the San Joaquin Valley Water Infrastructure Authority (SJVWIA), as the original applicant, to the Temperance Flat Reservoir Authority (TFRA), as the incoming applicant. The request to change the applicant from SJVWIA to TFRA is complete. As of March 13, 2019, TFRA is recognized as the applicant for the Temperance Flat Project. This change is limited to the applicant, the project remains the same. Appropriate references on our website will be changed soon. We appreciate the work of SJVWIA to date and look forward to working with TFRA for the remainder of the process.

Sincerely,

Joseph R. Yun,
Executive Officer, California Water Commission