



SAN JOAQUIN TRIBUTARIES AUTHORITY

www.SanJoaquinTributariesAuthority.org

COMMISSION MEETING OF THE SAN JOAQUIN TRIBUTARIES AUTHORITY

MONDAY, MAY 13, 2024 – 10:00 A.M.
REGULAR MEETING AGENDA

TURLOCK IRRIGATION DISTRICT
BOARD ROOM 105
333 E. CANAL DRIVE
TURLOCK, CA 95380

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
CRYSTAL SPRINGS CONFERENCE ROOM
525 GOLDEN GATE AVENUE, 9th FLOOR
SAN FRANCISCO, CA 94102

FRANTZ WHOLESALE NURSERY, LLC
OAK ROOM
12161 DELAWARE ROAD
HICKMAN, CA 95323

ALTERNATE FORMATS OF THIS AGENDA WILL BE MADE AVAILABLE UPON REQUEST TO QUALIFIED INDIVIDUALS WITH DISABILITIES. PERSONS WHO REQUIRE A DISABILITY-RELATED MODIFICATION OR ACCOMMODATION, INCLUDING AUXILIARY AIDS OR SERVICES, SHOULD CONTACT JENNIFER LAND, COMMISSION SECRETARY, IN PERSON OR BY MAIL, AT THE ABOVE (TID) ADDRESS, OR BY TELEPHONE AT (209) 883-8353, NOT LESS THAN 24 HOURS PRIOR TO THE MEETING FOR WHICH THE MODIFICATION OR ACCOMMODATION IS REQUIRED.

1. CALL TO ORDER

Members of the public will have the opportunity to provide public input in-person or via the webinar or phone features. If you wish to speak, click on the “Raise Hand” button via Zoom, or press *9 if using a phone, and wait until your name (or other identifying information) is called by the Commission Secretary.

To join the meeting:

- [Click here to join the video meeting](#)
- Or to join by phone, please dial 669-900-9128 or 346-248-7799;
Meeting ID: 964 5761 3911

2. SALUTE TO THE FLAG

3. ROLL CALL OF COMMISSIONERS

4. **PUBLIC COMMENT PERIOD** (5 minutes per speaker)
This time is provided for the public to address the Commissioners of the Authority on matters of concern that fall within the jurisdiction of the Authority that are not on the agenda. Speakers are encouraged to consult Member Management or Directors prior to agenda preparation regarding any Authority operation or responsibility as no action will be taken on non-agenda issues.
5. **MOTION TO APPROVE MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 2024, MINUTES OF THE SPECIAL MEETING OF FEBRUARY 29, 2024, AND MINUTES OF THE SPECIAL MEETING OF MAY 2, 2024**
6. **MOTION TO APPROVE THE TREASURER'S REPORT**
Presentation and acceptance of the Treasurer's Report through April 30, 2024.
- Michael Clipper, Treasurer
7. **MOTION TO APPROVE THE EXECUTION OF THE AGREEMENT FOR FUNDING & OPERATION OF DISSOLVED OXYGEN AERATION FACILITY**
- Valerie Kincaid, Legal Counsel
8. **MOTION TO ADJOURN TO CLOSED SESSION**
 - A. **Conference with Legal Counsel – Existing Litigation**
California Government Code Section 54956.9
San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board
Fresno County Superior Court – Case Number 21CECG02632
- Valerie Kincaid, Legal Counsel
 - B. **Public Employee Appointment**
California Government Code Section 54957(b)(1)
Title: Executive Director
- Valerie Kincaid, Legal Counsel
- Art Godwin, Legal Counsel
9. **RECONVENE - REPORT OF ANY ACTION TAKEN IN CLOSED SESSION**
10. **MATTERS TOO LATE FOR THE AGENDA**
11. **NEXT REGULAR MEETING DATE - MONDAY, AUGUST 12, 2024 AT 10:00 A.M.**
12. **MOTION TO ADJOURN**

**MINUTES OF THE REGULAR COMMISSION MEETING
OF THE SAN JOAQUIN TRIBUTARIES AUTHORITY**

Turlock, California
12 February 2024

The Commission Meeting of the San Joaquin Tributaries Authority was called to order at 10:01 a.m. in regular session on the 12th day of February, 2024, conducted in-person from the Turlock Irrigation District located at 333 E. Canal Drive, Turlock, CA, via Zoom Webinar, and the remote teleconference locations as described on the agenda.

Present were the following representatives of the member agencies:

Michael Frantz – Turlock Irrigation District, Chair
Glenn Spyksma – South San Joaquin Irrigation District, Vice Chair
Robert Frobose – Modesto Irrigation District (*remote teleconference*)
Newsha Ajami – City and County of San Francisco (*remote teleconference*)

PUBLIC COMMENT

There were no comments from the public.

MOTION APPROVING THE CHAIR

Commissioner Frantz spoke about the rotation of the Chair and Vice Chair, and asked Secretary Land to provide some additional information regarding the upcoming rotation. Secretary Land confirmed that the JPA Agreement and Bylaws contain language that at the very first Commission meeting, the Chair and Vice Chair shall be selected for a term of two years. In 2012, Executive Director Allen Short recommended the Commissioners establish a rotation among the six member agencies (at that time), of which that series of appointments has been followed every two years thereafter. Commissioner Spyksma spoke regarding the two year term, noting he is more than happy to serve if nominated, and asked staff to review the rotation and term. Secretary Land noted that Administrator Jennifer Persike and the member agency attorneys are in the process of reviewing the JPA and Bylaws and that perhaps this could be reviewed as part of that process. Commissioner Ajami asked for clarification regarding review of the JPA and Bylaws, of which Commissioner Spyksma indicated he would like staff to provide a recommendation regarding the rotation with current and any new members. Legal Counsel Art Godwin provided some context regarding the history of the two year rotation, noting new agencies could be added to the rotation.

Hearing no further comments, the Commission took the following action:

Moved by Commissioner Frobose, seconded by Commissioner Ajami, that the South San Joaquin Irrigation District member is hereby appointed as Chair of the San Joaquin Tributaries Authority for a term of two (2) years, with an amendment that the appointment becomes effective February 13, 2024.

Upon roll call the following vote was had:

Ayes: Commissioners Spyksma, Frobose, Ajami, and Frantz
Noes: None
Absent: None

All voted in favor with none opposed. The Chair declared the motion carried.

MOTION APPROVING THE VICE CHAIR

Moved by Commissioner Ajami, seconded by Commissioner Spyksma, that the Modesto Irrigation District member is hereby appointed as Vice Chair of the San Joaquin Tributaries Authority for a term of two (2) years, with an amendment that the appointment becomes effective February 13, 2024.

Upon roll call the following vote was had:

Ayes: Commissioners Spyksma, Frobose, Ajami, and Frantz
Noes: None
Absent: None

All voted in favor with none opposed. The Chair declared the motion carried.

MOTION APPROVING THE TREASURER

Moved by Commissioner Ajami, seconded by Commissioner Spyksma, that Turlock Irrigation District employee Michael Clipper is hereby appointed as Treasurer of the San Joaquin Tributaries Authority for a term of two (2) years.

Upon roll call the following vote was had:

Ayes: Commissioners Spyksma, Frobose, Ajami, and Frantz
Noes: None
Absent: None

All voted in favor with none opposed. The Chair declared the motion carried.

MOTION APPROVING COMMISSION MEETING MINUTES

Moved by Commissioner Spyksma, seconded by Commissioner Frobose, that the minutes of the regular meeting of November 13, 2023 are approved as presented.

Upon roll call the following vote was had:

Ayes: Commissioners Spyksma, Frobose, Ajami, and Frantz
Noes: None
Absent: None

All voted in favor with none opposed. The Chair declared the motion carried.

PRESENTATION OF TREASURER'S REPORT

SJTA Treasurer Michael Clipper presented the cash reconciliation, bank statement activity, and year-to date comparison of revenue and expenditures to budget through the end of January 2024. Mr. Clipper also provided an updated account balance after checks cleared and remaining agency payments made.

Commissioner Ajami inquired about the \$300,000 budget line item in 2023 for the Executive Director, to which the Treasurer clarified the year should reflect 2024.

Hearing no further comments, the Commission took the following action:

MOTION APPROVING TREASURER'S REPORT

Moved by Commissioner Spyksma, seconded by Commissioner Ajami, that the Treasurer's Report through January 31, 2024, be approved as amended (with an update of the year from 2023 to 2024).

Ayes:	Commissioners Spyksma, Frobose, Ajami, and Frantz
Noes:	None
Absent:	None

All voted in favor with none opposed. The Chair declared the motion carried.

UPDATES ON THE STATUS OF THE SJTA EXECUTIVE DIRECTOR RECRUITMENT PROCESS AND OTHER STRATEGIC PLAN IMPLEMENTATION ITEMS

Administrator Jennifer Persike spoke regarding the detailed memo included in the agenda packet and provided updates on recent activity and progress, including the request for proposals and related processes for selecting a search firm for the Executive Director recruitment. A smaller work group of the General Managers was established to review and evaluate proposals, of which a recommendation was made to select Wendy Brown Consulting Partners (WBCP). Ms. Persike provided an overview of WBCP's experience, preliminary conversations had with the firm to negotiate terms, reference checks, the contract with WBCP will be held by Paris Kincaid Wasiewski, and noted the recruitment will be launched immediately to keep with the anticipated timeframe of Commissioner interviews in early May. Ms. Persike also reminded the Commissioners to send her any ideas for potential Executive Director candidates.

Ms. Persike also provided an update regarding efforts/meetings with the member agency attorneys to review the current JPA Agreement and Bylaws to make obvious updates and determine what additional content needs to be included. More refined documents will be presented to the General Managers and the Commissioners.

Ms. Persike also spoke about the minor refresh that was made to the SJTA website, including new content and contact information, same platform was used to save costs, expressed thanks to TID staff for their work on the website, reminded about the vision to revamp the website once a new Executive Director is on board, and also noted that a new domain specific to the SJTA has been secured.

Commissioners and Ms. Persike discussed use of the .gov extension, securing similar domain names so they aren't used by other agencies, and whether the SJTA.org or SJTA.com was considered. Further discussion included an overview of the timeline for the Executive Director position recruitment and the series of steps that will occur between now and May, as well as the desire not to rush the process but to move expeditiously.

MOTION ADJOURNING TO CLOSED SESSION

Moved by Commissioner Spyksma, seconded by Commissioner Frobose, that the Commission meeting be adjourned to closed session at approximately 10:37 a.m.:

- A. Conference with Legal Counsel – Existing Litigation**
California Government Code Section 54956.9
San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board
Tuolumne County Superior Court – Case Number CV62094
Judicial Council Coordinated Proceeding No.5013
- Valerie Kincaid, Legal Counsel
- B. Conference with Legal Counsel – Existing Litigation**
California Government Code Section 54956.9
San Joaquin Tributaries Authority vs. California State Water Resources Control Board
Fresno County Superior Court – Case No. 21CECG02632
- Valerie Kincaid, Legal Counsel
- C. Conference with Legal Counsel – Existing Litigation**
California Government Code Section 54956.9
San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board
Court of Appeals 6th District – Case No. H047270
Consideration of Settlement Proposal
- Valerie Kincaid, Legal Counsel
- D. Conference with Legal Counsel – Existing Litigation**
California Government Code Section 54956.9
San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board
Fresno County Superior Court – Case No. 23CECG04201
- Valerie Kincaid, Legal Counsel
- E. Conference with Legal Counsel – Anticipated Litigation**
California Government Code Section 54956.9(d)(2)-(3)
Anticipated Litigation – two potential cases
Potential future State Water Board Action
- Valerie Kincaid, Legal Counsel

All voted in favor with none opposed. The Chair declared the motion carried.

RECONVENE – OPEN SESSION

The Commission meeting was reconvened at 10:57 p.m. in open session with all Commissioners present as per the previous open session.

REPORT OF ANY ACTION TAKEN IN CLOSED SESSION

The Chair announced no reportable action was taken in closed session.

MATTERS TOO LATE FOR THE AGENDA

There were none.

FUTURE MEETING

Commissioner Frantz expressed thanks to Commissioner Spyksma for his willingness to serve as chair and noted that while the organization may not be nimble, it is effective and stronger together.

The next regular meeting is scheduled for Monday, May 13, 2024 at 10:00 a.m.

ADJOURNMENT

There being no further business, moved by Commissioner Spyksma, seconded by Commissioner Frobose, that the meeting be adjourned at 10:58 a.m.

All voted in favor with none opposed. The motion was carried.

Secretary to the Commission of the
SAN JOAQUIN TRIBUTARIES AUTHORITY

**MINUTES OF THE SPECIAL COMMISSION MEETING
OF THE SAN JOAQUIN TRIBUTARIES AUTHORITY**

Turlock, California
29 February 2024

The Commission Meeting of the San Joaquin Tributaries Authority was called to order at 10:30 a.m. in special session on the 29th day of February, 2024. The meeting was conducted in-person from the Turlock Irrigation District located at 333 E. Canal Drive, Turlock, CA, via Zoom Webinar, and the remote teleconference locations as described on the agenda.

Present were the following representatives of the member agencies:

Glenn Spyksma – South San Joaquin Irrigation District, Chair (*remote teleconference*)
Robert Frobose – Modesto Irrigation District, Vice Chair (*remote teleconference*)
Newsha Ajami – City and County of San Francisco (*remote teleconference*)
Michael Frantz – Turlock Irrigation District (*remote teleconference*)

PUBLIC COMMENT

There were no comments from the public.

MOTION ADJOURNING TO CLOSED SESSION

Moved by Commissioner Frantz, seconded by Commissioner Ajami, that the Commission meeting be adjourned to closed session at approximately 10:32 a.m.:

- A. Public Employee Appointment**
California Government Code Section 54957(b)(1)
Title: Executive Director
- Valerie Kincaid, Legal Counsel
- Art Godwin, Legal Counsel

All voted in favor with none opposed. The Chair declared the motion carried.

RECONVENE – OPEN SESSION

The Commission meeting was reconvened at 11:44 a.m. in open session with all Commissioners present as per the previous open session.

REPORT OF ANY ACTION TAKEN IN CLOSED SESSION

The Chair announced no reportable action was taken in closed session.

MATTERS TOO LATE FOR THE AGENDA

There were none.

FUTURE MEETING

The next regular meeting is scheduled for Monday, May 13, 2024 at 10:00 a.m.

ADJOURNMENT

There being no further business, moved by Commissioner Frantz, seconded by Commissioner Frobose, that the meeting be adjourned at 11:44 a.m.

All voted in favor with none opposed. The motion was carried.

Secretary to the Commission of the
SAN JOAQUIN TRIBUTARIES AUTHORITY

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**MINUTES OF THE SPECIAL COMMISSION MEETING
OF THE SAN JOAQUIN TRIBUTARIES AUTHORITY**

Turlock, California
2 May 2024

The Commission Meeting of the San Joaquin Tributaries Authority was called to order at 12:04 p.m. in special session on the 2nd day of May, 2024. The meeting was conducted in-person from the Turlock Irrigation District located at 333 E. Canal Drive, Turlock, CA, via Zoom Webinar, and the remote teleconference location as described on the agenda.

Present were the following representatives of the member agencies:

Glenn Spyksma – South San Joaquin Irrigation District, Chair
Robert Frobose – Modesto Irrigation District, Vice Chair
Michael Frantz – Turlock Irrigation District

Absent was the following representatives of the member agencies:

Newsha Ajami – City and County of San Francisco

Commissioner Spyksma announced that Commissioner Ajami will be joining the closed session (*via remote teleconference*).

PUBLIC COMMENT

There were no comments from the public.

MOTION ADJOURNING TO CLOSED SESSION

Moved by Commissioner Frobose, seconded by Commissioner Frantz, that the Commission meeting be adjourned to closed session at approximately 12:07 p.m.:

A. Conference with Legal Counsel – Existing Litigation

California Government Code Section 54956.9

San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board

Tuolumne County Superior Court – Case Number CV62094

Judicial Council Coordinated Proceeding No. 5013

- Valerie Kincaid, Legal Counsel

B. Conference with Legal Counsel – Existing Litigation

California Government Code Section 54956.9

San Joaquin Tributaries Authority, et al vs. California State Water Resources Control Board

Fresno County Superior Court – Case Number 21CECG02632

- Valerie Kincaid, Legal Counsel

C. Public Employee Appointment

California Government Code Section 54957(b)(1)

Title: Executive Director

- Valerie Kincaid, Legal Counsel

All voted in favor with none opposed. The Chair declared the motion carried.

RECONVENE – OPEN SESSION

The Commission meeting was reconvened at 3:52 p.m. in open session with all Commissioners present as per the previous open session.

REPORT OF ANY ACTION TAKEN IN CLOSED SESSION

The Chair announced that SJTA approved appeal of the 2018 Bay Delta Challenge in the matter referred to as Judicial Council Coordinated Proceeding No. 5013. The appeal was approved by a 3/1 vote with the City & County of San Francisco voting no.

MATTERS TOO LATE FOR THE AGENDA

There were none.

FUTURE MEETING

The next regular meeting is scheduled for Monday, May 13, 2024 at 10:00 a.m.

ADJOURNMENT

There being no further business, moved by Commissioner Frantz, seconded by Commissioner Frobose, that the meeting be adjourned at 3:52 p.m.

All voted in favor with none opposed. The motion was carried.

Secretary to the Commission of the
SAN JOAQUIN TRIBUTARIES AUTHORITY

SAN JOAQUIN TRIBUTARIES AUTHORITY

MOTION APPROVING TREASURER'S REPORT

Moved by Commissioner , seconded by Commissioner , that the Treasurer's Report through April 30, 2024, be approved as presented.

Upon roll call the following vote was had:

Ayes:

Noes:

Absent:

The Chair declared the motion _____.

I, Jennifer Land, Secretary of the Commission of the SAN JOAQUIN TRIBUTARIES AUTHORITY, a California joint powers agency, hereby certify that the foregoing is a full, true, and correct copy of a motion duly adopted at a regular meeting of said Commission thereof duly called and held at Turlock Irrigation District office on the 13th day of May, 2024

Secretary to the Commission of the
SAN JOAQUIN TRIBUTARIES AUTHORITY



SAN JOAQUIN TRIBUTARIES AUTHORITY

P.O. Box 949
Turlock, CA 95381-0949
(209) 883-8293

San Joaquin Tributaries Authority Cash Reconciliation

Balance as of 4/1/24: **\$1,332,191.82**

Receipts for the month:

0.00	Cash Call ()	
0.00	Miscellaneous	
<u>0.00</u>		\$0.00

Disbursements for the month:

49,229.00	Paris / Kincaid	
14,127.30	J. Persike	
<u>38,802.22</u>	Paris / Kincaid	
102,158.52		\$102,158.52

Bank Account Balance: **\$1,230,033.30**

Balance as of 4/30/24: **Total Cash Balance: \$1,230,033.30**

6 36FDP 8111BX.002 FMCC: 0018079



Account Number
Page
1

ACCOUNT SUMMARY

ACCOUNT NUMBER	STARTING BALANCE	TOTAL NO	DEBITS AMOUNT	TOTAL NO	CREDITS AMOUNT	TOTAL CHGS	INT PD	NEW BALANCE
CHECKING	1,332,191.82	3	102,158.52	0	.00	.00	.00	1,230,033.30

✓ PUBLIC FUNDS DDA

ACCOUNT	DATE	TRANSACTIONS		DEBITS	CREDITS	BALANCE
	11-APR	CHECK (DIGITAL)	1096	49,229.00		1,282,962.82
	15-APR	CHECK (DIGITAL)	1095	14,127.30		1,268,835.52
	25-APR	CHECK (DIGITAL)	1098	38,802.22		1,230,033.30
		Average Daily Balance				1,284,077.48



San Joaquin Tributaries Authority

Comparison of Revenue and Expenditures to Budget

Year-to-Date April 2024

	Month of <u>April</u>	2024 <u>YTD Activity</u>	2024 <u>Budget</u>	Budget <u>Variance</u>
Revenue				
2024 Cash Call	0.00	1,516,852.00	1,516,852.00	0.00
Carryover	0.00	(35,957.04)	(35,957.04)	0.00
	<u>0.00</u>	<u>1,480,894.96</u>	<u>1,480,894.96</u>	<u>0.00</u>
Expenditures				
Administration	14,000.00	56,127.30	155,850.00	(99,722.70)
General Legal				
Paris Kincaid	38,802.22	198,734.36	1,061,000.00	(862,265.64)
Strategic Visioning Plan	0.00	0.00	0.00	0.00
Executive Director	0.00	0.00	300,000.00	(300,000.00)
Total Expenditures	<u>52,802.22</u>	<u>254,861.66</u>	<u>1,516,850.00</u>	<u>(1,261,988.34)</u>
Revenue Over Expenditures	<u>(52,802.22)</u>	<u>1,226,033.30</u>	<u>(35,955.04)</u>	<u>1,261,988.34</u>

SAN JOAQUIN TRIBUTARIES AUTHORITY

**MOTION APPROVING THE EXECUTION OF THE AGREEMENT FOR FUNDING &
OPERATION OF DISSOLVED OXYGEN AERATION FACILITY**

Moved by Commissioner _____, seconded by Commissioner _____, approving the execution of the Agreement for Funding & Operation of Dissolved Oxygen Aeration Facility as presented.

Upon roll call the following vote was had:

Ayes:

Noes:

Absent:

The Chair declared the motion _____.

I, Jennifer Land, Secretary of the Commission of the SAN JOAQUIN TRIBUTARIES AUTHORITY, a California joint powers agency, hereby certify that the foregoing is a full, true, and correct copy of a motion duly adopted at a regular meeting of said Commission thereof duly called and held at Turlock Irrigation District office on the 13th day of May, 2024

Secretary to the Commission of the
SAN JOAQUIN TRIBUTARIES AUTHORITY



PRIVILEGED AND CONFIDENTIAL DOCUMENT

MEMORANDUM

To: San Joaquin Tributaries Authority

From: Paris Kincaid Wasiewski LLP

Issue: **Dissolved Oxygen Agreement and Payment**

Date: September 15, 2023

I. Background

The SJTA entered into an Agreement between the Port of Stockton, the San Luis & Delta-Mendota Water Authority, the San Joaquin Valley Drainage Authority and the State Water Contractors, to fund the San Joaquin River Dissolved Oxygen Control Program ("DO Program"). The DO Program was adopted as a Basin Plan Amendment to the Central Valley Regional Board's Basin Plan for the purpose of establishing water quality objectives for dissolved oxygen in the Stockton Deep Water Ship Channel (SDWSC). The Central Valley Regional Board supports the DO Program as a way to comply with the Regional Basin Plan dissolved oxygen objectives. (Regional Board letter dated May 9, 2011.)

II. Purpose

The Agreement was entered into for the purpose of funding the operation and maintenance of the SDWSC Aeration Facilities for the purposes of 1) maintaining or increasing DO concentrations in the SDWSC in an effort to help meet the dissolved oxygen water quality objectives established by the Regional Board for the SDWSC, and 2) providing a stable regulatory environment while the Regional Board develops additional information and refines the San Joaquin River DO Control Program.

III. Term

The SJTA executed the Agreement on June 10, 2019, and the Term of the Agreement was from June 1, 2019, through May 31, 2022. Following the final Year of the Term, the Parties may extend this Agreement by implied mutual consent on the same terms and

To: San Joaquin Tributaries Authority
From: PARIS KINCAID WASIEWSKI LLP
Issue: **Dissolved Oxygen Agreement and Payment**
Date: September 15, 2023

conditions for up to two additional one-year renewal periods, June 1, 2022, through May 31, 2023; and June 1, 2023 through May 31, 2024 as follows: Each such one-Year Extended Term shall automatically take effect unless any Party provides written notice to all of the other Parties not later than the March 1 immediately prior to the end of the then-current Term or Extended Term Year that such Party does not intend to renew its participation in the Agreement.

IV. Payment

The estimated cost to operate and maintain the SDWSC Aeration Facilities for each Year of the Term and each Extended Term is the sum of \$100,000, including the purchase of oxygen (the "Annual Commitment"). The funding allocation of the Parties was agreed as follows:

Port of Stockton	33.33% of the Annual Commitment
San Joaquin Tributaries Authority	25.00% of the Annual Commitment
San Luis & Delta-Mendota Water Authority	25.00% of the Annual Commitment
State Water Contractors	16.67% of the Annual Commitment

The Port of Stockton has recently provided the following invoices due to SJTA:

The 2022 invoice is for June 1, 2022 – May 31, 2023 for the amount of \$25,000

The 2023 invoice is for June 1, 2023 – May 31, 2024 for the amount of \$25,000.

AGREEMENT
FOR FUNDING & OPERATION OF
DISSOLVED OXYGEN AERATION FACILITY

This Agreement is entered into by and between the Port of Stockton, a California Port District with municipal powers organized pursuant to Harbors and Navigations Code section 6200 *et seq.*; the San Joaquin River Group Authority, the San Luis & Delta-Mendota Water Authority, San Joaquin Valley Drainage Authority and the State Water Contractors, each of which may be referred to herein individually as a “Party” or jointly as the “Parties.” The Department of Water Resources (DWR) also enters into this Agreement, not as a “Party”, but as a signatory for the purpose of making arrangements for payment of the (cost) share of the Annual Commitment as described in Section 3.4 herein for the State Water Contractors. DWR shall have no obligations and makes no representations hereunder except to make such payments.

RECITALS

- A. The California Water Quality Control Board, Region 5, Central Valley Region (the “Regional Board”) has heretofore adopted a Basin Plan Amendment setting forth its San Joaquin River Dissolved Oxygen (“DO”) Control Program, establishing water quality objectives for dissolved oxygen levels in the Stockton Deep Water Ship Channel (the “SDWSC”), and adopting a DO Total Maximum Daily Load (DO TMDL) for meeting the water quality objectives.
- B. The Regional Board, by letter dated May 9, 2011, has advised the Parties that the Regional Board supports continued use of aeration technology and facilities that have been developed, permitted and installed on the Port of Stockton’s West End (the “SDWSC Aeration Facilities”) as an alternate measure to maintain DO concentrations in the SDWSC in compliance with the Basin Plan Amendment.

Since 2012, the Parties have provided funding for the SDWSC Aeration Facilities to maintain DO concentrations in the SDWSC as successful compliance mechanism under the Basin Plan. The prior Agreement for Funding & Operation of Dissolved Oxygen Aeration Facility was in effect for the term of June 1, 2019, through May 31, 2024. The Parties executed this Agreement to continue providing funding for the SDWSC Aeration Facilities as herein described.

- C. The Parties continue to believe that a sound, justifiable and sustainable DO Control Program requires 1) further refinement of the DO TMDL through the development of additional information; 2) updating the DO TMDL to address changes in load inputs to the San Joaquin River; 3) taking into consideration changing San Joaquin River flows; development of averaging periods for the DO objective; and 4) reexamination of the water quality objectives based on present day science.

- D. The Parties further continue to believe allocating responsibility to meet load and non-load factors in the current DO TMDL is not justified or adequate.
- E. The Parties nonetheless desire to cooperate with the Regional Board and to assist in meeting requirements of the existing DO TMDL.
- F. By this Agreement the Parties intend to set forth their mutual understandings and commitments to fund operation and maintenance of the SDWSC Aeration Facilities on an interim basis for the purposes of 1) maintaining or increasing DO concentrations in the SDWSC in an effort to help meet the dissolved oxygen water quality objectives established by the Regional Board for the SDWSC; and 2) providing a stable regulatory environment while the Regional Board develops additional information and refines the San Joaquin River DO Control Program.

NOW, THEREFORE, the Parties, on the terms and conditions set forth herein, agree as follows:

AGREEMENT

Section 1. Purposes. The Parties are executing this Agreement to fund operation and maintenance of the SDWSC Aeration Facilities for the purposes of 1) maintaining or increasing DO concentrations in the SDWSC in an effort to help meet the dissolved oxygen water quality objectives established by the Regional Board for the SDWSC, and 2) providing a stable regulatory environment while the Regional Board develops additional information and refines the San Joaquin River DO Control Program. The Parties further agree that, in order to facilitate coordination of information for the purposes of this Agreement, the funding provided herein shall also be available to fund the San Joaquin River Dissolved Oxygen Technical Working Group website at <http://sjrdotmdl.org/>.

Section 2. Term. The Term of this Agreement shall be from May 1, 2024, through May 31, 2027. For purposes of this Agreement, the term “Year” shall mean the twelve-month period commencing on June 1st and ending on the following May 31st. Following the final Year of the Term, the Parties may extend this Agreement by implied mutual consent on the same terms and conditions for up to two additional one-year renewal periods, June 1, 2027, through May 31, 2028; and June 1, 2028 through May 31, 2029 (Extended Terms”), as follows: Each such one-Year Extended Term shall automatically take effect unless any Party provides written notice to all of the other Parties not later than the March 1st immediately prior to the end of the then-current Term or Extended Term Year that such Party does not intend to renew its participation in the Agreement on the following June 1st.

Section 3. Operation of SDWSC Aeration Facilities. The Parties will provide funding for operation and maintenance of the SDWSC Aeration Facilities on the basis described in this Section.

3.1 Funding Commitment.

a. The estimated cost to operate and maintain the SDWSC Aeration Facilities for each Year of the Term and each Extended Term is the sum of \$100,000, including the purchase of oxygen (the “Annual Commitment”). The Parties agree pay to the Port of Stockton by June 1, 2024, the Annual Commitment for the first Year of the Term.

b. If immediately prior to the end of the first, second, and/or third Year of the Term or of an Extended Term, the Port determines that unspent money collected from any prior Annual Commitment is sufficient to fund Aeration Facilities O&M for such Year, the Port will notify the other Parties and the Parties shall not be obligated to pay an Annual Commitment for such Year. If the Port determines that unspent money remains, but the sum is insufficient to fully cover its O&M during that Year, the Port shall notify the other Parties, who agree to pay such partial Annual Commitment as the Port determines is needed to fully fund the anticipated cost of Aeration Facilities O&M for such Year, up to but not exceeding the full amount of the Annual Commitment; provided, that the Parties shall not be obligated to pay to not pay more than \$100,000 per Year for the operation and maintenance of the SDWSC Aeration Facilities through May 31, 2027.

c. Should any Party exercise its right to not participate in any Extended Term pursuant to Section 2, the terminating Party will not be entitled to the return of any money except as stated in 3.1 d. of this Agreement. A party that does not participate in any Extended Term pursuant to Section 2 will not be obligated to pay any money for any Year following notice of termination.

d. At the termination of this Agreement, the Port of Stockton will refund to the Parties money that has not been expended based on their respective Allocation of Funding Commitments described in Section 3.2.

3.2 Allocation of Funding Commitment. The Parties each agree to pay the following amounts toward Aeration Facilities O&M:

Port of Stockton	33.33% of the Annual Commitment
San Joaquin River Group Authority	25.00% of the Annual Commitment
San Luis & Delta-Mendota Water Authority & San Joaquin Valley Drainage Authority	25.00% of the Annual Commitment
State Water Contractors	16.67% of the Annual Commitment

3.3 Aeration Facilities O&M. The Parties agree that the Port of Stockton shall perform the Aeration Facilities O&M as the owner of the Facilities. The Port of Stockton hereby agrees that the primary purpose for use of the Facilities shall be meeting the Regional Board’s water quality objective for dissolved oxygen in the SDWSC throughout the life of the Facilities.

In such case, the Port of Stockton at the Port's sole expense, will have the right to utilize the SDWSC Aeration Facilities for the secondary purpose of meeting permit obligations of the Port or of the US Army Corps of Engineers, provided that use for such secondary purpose shall not prevent the use of the SDWSC Aeration Facilities to the extent needed to meet dissolved oxygen water quality objective obligations assigned by the Regional Board to the Parties.

3.4 Payment to Port of Stockton. Except when no additional funding is required as provided in Subsection 3.1 b, each Party will pay to the Port its respective share of the Annual Commitment or any partial Annual Commitment on or before June 1st of the Year ("Annual Payment Due Date"). The Port agrees to hold such money in an interest-bearing segregated account dedicated and maintained solely for purposes of funding Aeration Facilities O&M throughout any Further Extended Term. Funding from the State Water Contractors shall be made by DWR upon such schedule as may be agreed to by separate agreement between the Port and DWR.

3.5 Annual Accounting. Prior to March 15 of each Year, beginning with March 15, 2025, the Port will provide an accounting to each of the remaining Parties as of the end of the preceding Year. The accounting will include the actual Aeration Facilities O&M costs, the funds applied, and the balance of funds remaining at the end of such Year. This obligation shall continue in the Year following expiration of the final extension of the Term and shall include an accounting for any funds available for refund pursuant to Subsection 3.1 d.

3.6 Annual Reports. The Port agrees to provide to each of the other Parties an annual report describing its operations of the SDWSC Aeration Facilities, the effect of such operations on Dissolved Oxygen levels in the DWSC, a description of maintenance accomplished and projected maintenance requirements. The Port also agrees that it shall take the lead in briefing the Regional Board on such operations at least annually, or as requested by the Regional Board.

Section 4. Conditions for Extended Terms. In considering whether or not to extend the Agreement beyond the initial three-year Term, the Parties will take into account whether or not the Regional Board has made substantial progress in refining its DO Control Program, including the TMDL and water quality objective for the SDWSC. Factors of special interest to the Parties include those set forth in this Section.

4.1 New Data and Studies. Updated information on DO conditions in the SDWSC since adoption of the TMDL, including but not limited to, a) data from dissolved oxygen monitoring, b) information about any changes in flow quantity or patterns, such as from implementation of the San Joaquin River Restoration Project or of any other regulations increasing flows into the SDWSC, c) information from changes in load inputs to the San Joaquin River of algae, or nutrients or other substances that may affect dissolved oxygen, and d) information developed through completion of the downstream studies or other scientific information.

4.2 Refinement of Criteria. Information on the development of new or revised criteria for determining whether or not the dissolved oxygen TMDL is being met, such as allowance of averaging periods and reliance upon readings at an agreed-upon monitoring station, rather than instantaneous measurement or consideration of measurements taken anywhere in the SDWSC.

4.3 Reconsideration of the Fall Objective. Information on revising the current dissolved oxygen objective for the September-November period.

The progress may be demonstrated, for example, by a Regional Board Staff Report presented to the Regional Board prior to the end of the initial three-year Term with an update prior to the end of each Extended Term.

Section 5. Agreement Not Admission of Responsibility. The Parties assert that the Regional Board's allocation of responsibility to meet load and non-load factors in the current DO TMDL is not justified or based upon adequate information and dispute that they are legally obligated for the Regional Board's stated allocation of responsibility under its DO Control Program. The Parties enter into this Agreement as an interim measure to further test the feasibility of using the SDWSC Aeration Facilities as an alternate, non-load-reducing mechanism to resolve SDWSC DO problems in cooperation with the Regional Board and to induce the Regional Board to consider refinements to its DO Control Program. Nothing in this Agreement reflects or should be interpreted to reflect an admission by any Party of responsibility for implementation of the DO TMDL or any other regulation, nor does it impair or prevent any Party from affirmatively asserting any right or making any claim against the Regional Board. In the event the Regional Board seeks to take any enforcement action against the Parties or any Party, each Party hereby specifically reserves all rights and defenses it may have to resist any such Regional Board enforcement action for DO water quality violations during the Initial Term and any Extension Term.

Section 6. Additional Parties. The Parties assert there are other persons or entities that have a responsibility to join in efforts to improve DO in the SDWSC. The Parties urge the Regional Board to encourage those persons or entities to join in this effort. This Agreement may be amended at any time to admit such additional parties, in which case the Parties agree to execute an appropriate amendment that assigns an Annual Payment Allocation to any such additional party and adjusts on a prorated basis their respective Annual Payment Allocations.

Section 7. Effective Date. This Agreement shall become effective and be retroactive to May 1, 2024, upon the date the last of the Parties listed below execute the Agreement.

Section 8. Miscellaneous.

8.1 Amendment. This Agreement can be amended only by a written instrument executed by the Parties.

8.2 Integration. This Agreement contains the entire understanding of the Parties related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

8.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the assigns or successors in-interest of the Parties herein.

8.4. Headings. The titles of the paragraphs of this Agreement are for convenience only, and no presumption or implication of the intent of the parties as to the construction of this Agreement shall be drawn there from.

8.5 Execution in Counterpart. This Agreement may be executed in any number of counterparts which collectively shall constitute the full agreement of the Parties.

8.6 Authority to Execute. Each person executing this Agreement represents and warrants that he or she is authorized to execute the Agreement on behalf of the Party and that the Party is legally bound by the Agreement.

IN WITNESS WHEREOF, the undersigned hereto have executed this agreement effective as of the date set forth herein.

Port of Stockton

By: _____

Dated: _____

San Joaquin River Group Authority

By: _____

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____

Dated: _____

[Signatures continue on following page.]

San Joaquin Valley Drainage Authority

By: _____

Dated: _____

State Water Contractors

By: _____

Dated: _____

Department of Water Resources

By: _____

Dated: _____