



Staff Report

for the Board of Directors Meeting of February 24, 2021

TO: Board of Directors

FROM: Chip Close, Water Operations Manager

DATE: February 10, 2021

SUBJECT: Watershed Sanitary Survey Memorandum of Understanding

OPERATIONS

RECOMMENDATION:

Authorize the Interim General Manager to execute a Memorandum of Understanding (MOU) between Nevada Irrigation District (District) and Placer County Water Agency (PCWA) to share in the development and costs for the 2021 Watershed Sanitary Survey as recommended by the Water and Hydroelectric Operations Committee.

BACKGROUND:

The State Water Resources Control Board Division of Drinking Water requires all water suppliers using surface water to complete a Watershed Sanitary Survey (WSS) every 5 years. The last update was completed in January of 2017; therefore, an update is required by the end of 2021.

PWCA and the District share the same watershed and have the same source water supply. This shared supply has allowed both agencies to work collaboratively on the development of previous WSS reports. The sharing of workload and funds provides the most efficient means in updating the WSS and is in the ratepayer's best interest.

The attached Memorandum of Understanding memorializes an agreement between the District and PCWA with respect to contracting for the 2021 WSS update. The MOU has been reviewed and edited by legal counsel. Staff is recommending the Interim General Manager be authorized to execute the MOU as has been done in years past.

BUDGETARY IMPACT:

The MOU establishes a cap cost of \$50,000 for each agency

AC

Attachment (1):

- Proposed Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
REGARDING CONTRACTING AND APPORTIONMENT OF COSTS FOR A
YUBA AND BEAR RIVER WATERSHEDS SANITARY SURVEY UPDATE

This Memorandum of Understanding (hereinafter referred to as “MOU”) is entered into on _____, 2021, by and between Placer County Water Agency (hereinafter referred to as “Agency”) and Nevada Irrigation District (hereinafter referred to as “District”).

RECITALS

A. The purpose of this MOU is to memorialize an agreement and understanding of the parties hereto (hereinafter referred to as “Parties”) with respect to the contracting and apportionment of costs for the 2020 sanitary survey update of the Yuba River and Bear River watersheds.

B. The Parties each are required by the California State Water Resources Control Board, Division of Drinking Water to comply with regulations passed in June 1991 requiring all water suppliers using surface water sources to complete a sanitary survey of their respective watershed(s) and to provide an update report every five (5) years (see California Code of Regulations, Title 22, Division 4, Chapter 17, Article 7, §64665).

C. The Parties believe it to be in their best interest, as well as the public’s best interest, to enter into a contract with a consultant to conduct the sanitary survey update and to cooperatively and jointly share in the cost of the sanitary survey update.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual obligations set forth herein, the Parties agree as follows:

1. Technical Committee: The Parties hereby form a Technical Committee consisting of two representatives of each of the Parties, as identified on the list titled “Yuba and Bear River Watersheds Sanitary Survey Update – Representatives,” attached hereto as “Exhibit A” and fully

incorporated herein by this reference. A representative named herein may, from time to time, designate individuals to act on the representative's behalf. Meetings of the Technical Committee may be attended by anyone authorized by any representative. The purpose of the Technical Committee will be to (a) share information related to the technical work for the sanitary survey update, (b) determine the consultant's scope of work or any changes in the scope of work or cost for same, (c) review the consultant's progress reports and work products related to the sanitary survey update, (d) discuss consultant recommendations concerning the sanitary survey update, and (e) take such other action as the Technical Committee deems appropriate to further the interest of the Parties as related to the sanitary survey update. The Technical Committee shall meet as needed at such locations and times as the Technical Committee may agree. The Technical Committee serves the limited purposes set forth above and shall be dissolved once the specific tasks set forth in this MOU have been completed. Attendance at meetings may be in person, by telephone, or by any other electronic means agreed to by the Technical Committee representatives.

2. Decisions of Technical Committee: The Parties expect and intend that decisions of the Technical Committee will be made by unanimous agreement of the representatives present at the meetings.

3. Selection of Consultant: The Agency will act as the lead agency in contracting with one or more consultants to complete the sanitary survey update. Selection of the consultant will be in accordance with standard Agency consultant selection procedures. The Agency's professional services agreement will require the consultant to (a) carry professional liability insurance and (b) name the District as an additional insured, and indemnify the District, to the same extent that the

consultant is required to name the Agency as an additional insured and indemnify the Agency. The Agency's professional services agreement will also provide that (a) all written, electronic, and other work product performed or undertaken by consultant shall be the joint property of Agency and District and may be used by Agency or District for any purpose; and (b) consultant shall provide copies of all work product and related documents to the parties listed in Exhibit A.

4. Cost Sharing for Consultant Invoices: The Agency will be responsible for administering all contracts for consultant services to perform the sanitary survey update. It is understood and agreed, however, that any such contract with the consultant will be in part a pass-through agreement, and that the Parties shall each pay fifty percent (50%) of the total contract amount due. Upon receipt of an invoice from the consultant(s), the Agency will forward a copy of the invoice to the District, who within ten (10) days of the receipt of said invoice shall review the work performed and either approve or dispute any part or all of the invoice. Within fourteen (14) days of the approval of the consultant invoice for payment, the District will tender payment to the Agency for its fifty percent (50%) of the approved costs. The Agency will make payment to the consultant for the approved amount of each invoice. In the event one of the Parties believes an invoice should not be paid in whole or in part, the dispute shall be resolved by the Technical Committee as set forth in Paragraph 2, above. The Parties agree to exercise good faith and diligence in the resolution of any disputed invoice amounts. Notwithstanding any provisions contained herein, the Agency shall be reimbursed by the District for its respective fifty percent (50%) share of any and all money ultimately paid to the consultant by the Agency, as contemplated in this Paragraph 4 of this MOU and subject to the price ceiling specified in Paragraph 5.

5. Price Ceiling: In no case shall the total value of costs shared pursuant to this MOU exceed

\$100,000.00 (\$50,000.00 to each party) except by written Amendment to this MOU.

6. Notices: Any invoice, payment, notice, electronic or hard copy work product from the consultant, or other written communication related to this MOU will be promptly provided to those representatives identified in Exhibit A.

7. Term of MOU: This MOU shall be effective as of the date first written above and shall remain in effect until one of the following occurs: (a) all services and contracts covered by this MOU have been completed and performed and all payments required under this MOU have been made, or (b) the MOU is terminated by the mutual written agreement of both Parties or by operation of law.

8. Amendments: Amendments to this MOU must be in writing and executed by both Parties.

9. Assignment: Except as otherwise provided in this MOU, the rights and duties of the Parties may not be assigned or delegated without the written consent of the other Party and its respective governing body. Subject to the foregoing, this MOU will inure to the benefit of, and be binding on, the successors and assigns of the Parties hereto.

10. General Provisions: Each Party understands and agrees that there is no agency or joint venture relationship between the Parties. It is further understood and agreed by the Parties that notwithstanding anything contained herein, the employees of each Party shall continue to be entirely and exclusively under the direction, supervision and control of the employing Party.

Each Party understands and agrees that any internal, in-house or administrative costs or expenses incurred by either Party related to that Party's obligations under this MOU shall be the sole responsibility of the Party incurring said costs and expenses.

The Parties understand and agree that this MOU creates rights and obligations solely among

the Parties and is not intended to benefit any other party. No provision of this MOU shall in any way inure to the benefit of any third person so as to constitute any such third-person as a third-party beneficiary of this MOU or any of its items or conditions, or otherwise give rise to any cause of action in any person not a Party hereto.

This MOU shall be governed by the laws of the State of California.

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, but only to the extent that the intent of the Parties can be effectuated without the provision or provisions held invalid, void, or unenforceable.

The waiver by any Party to this MOU of any requirements, condition or provision of this MOU shall not be deemed a waiver of any subsequent breach of that or any other requirement, condition or provision of this MOU.

The Parties represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind said Parties to the obligations set forth herein.

The Parties hereto agree that this Agreement may be executed and delivered in counterparts which, when taken together, shall constitute a fully-executed Agreement. In addition, this Agreement may be executed via electronic pdf transmission and any such pdf signature shall be deemed to be an original signature.

This instrument and any attachments hereto constitute the entire MOU between the Parties concerning the subject matter hereof.

PLACER COUNTY WATER AGENCY (AGENCY)

Date: _____

By: _____ Title: _____

ATTEST:

_____ Title: _____

NEVADA IRRIGATION DISTRICT (DISTRICT)

Date: _____

By: _____ Title: _____

ATTEST:

_____ Title: _____

EXHIBIT A

Yuba and Bear River Watersheds Sanitary Survey Update – Representatives

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Nevada Irrigation District (District)

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(530) 273-6185

(530) 477-2646 fax

Chip Close, Water Operations Manager

Fred Waymine, Treated Water Superintendent