



**A REGULAR MEETING OF THE OPERATING COMMITTEE
of the
CENTRAL COAST WATER AUTHORITY**

will be held at 9:00 a.m., on Thursday, October 13, 2022

Via URL: <https://meetings.ringcentral.com/j/1489466640>
or telephone by dialing 1(623)404-9000 and entering code 148 946 6640

In response to the spread of the COVID-19 virus, Governor Newsom declared a state of emergency which directly impacts the ability of legislative bodies and the public to meet safely in person. To help minimize the potential spread of the COVID-19 virus, the CCWA Board of Directors shall consider whether to hold this public meeting telephonically pursuant to the requirements of Government Code section 54953(e), as amended by Assembly Bill 361 (2021). The CCWA Board of Directors and public will participate in this meeting by video call or telephone.

Eric Friedman
Chairman

Jeff Clay
Vice Chairman

Ray A. Stokes
Executive Director

Brownstein Hyatt
Farber Schreck
General Counsel

Member Agencies

City of Buellton

Carpinteria Valley
Water District

City of Guadalupe

City of Santa Barbara

City of Santa Maria

Goleta Water District

Montecito Water District

Santa Ynez River Water
Conservation District,
Improvement District #1

Associate Member

La Cumbre Mutual
Water Company

Public Comment on agenda items may occur via video call or telephonically, or by submission to the Board Secretary via email at lfw@ccwa.com no later than 8:00 a.m. on the day of the meeting. In your email, please specify (1) the meeting date and agenda item (number and title) on which you are providing a comment and (2) that you would like your comment read into the record during the meeting. If you would like your comment read into the record during the meeting (as either general public comment or on a specific agenda item), please limit your comments to no more than 250 words.

Every effort will be made to read comments into the record, but some comments may not be read due to time limitations. Please also note that if you submit a written comment and do not specify that you would like this comment read into the record during the meeting, your comment will be forwarded to Board members for their consideration.

Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available on the CCWA internet web site, accessible at <https://www.ccwa.com>.

I. Call to Order and Roll Call

II. Public Comment – (Any member of the public may address the Committee relating to any matter within the Committee’s jurisdiction. Individual Speakers may be limited to five minutes; all speakers to a total of fifteen minutes.)

III. * Consent Calendar

- A. Minutes of the July 14, 2022 Operating Committee Meeting
Staff Recommendation: Approve Consent Calendar.

IV. Executive Director’s Report

- A. Operations Update
Staff Recommendation: Informational item only.
- B. Water Supply Situation Report
Staff Recommendation: Informational item only.
- C. 2022 Supplemental Water Purchase Program Update
Staff Recommendation: Informational item only.
- * D. Aquaterra Water Bank Proposal
Staff Recommendation: Informational item only.
- E. Planning for a Dry 2023 Water Year: Operational and Water Supply Contingency Plans
Staff Recommendation: Informational item only.
- F. Overview of 2022 Water Quality Challenges and Plans to Mitigate Future Water Quality Issues
Staff Recommendation: Informational item only.

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Buellton, CA 93427
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Fax (805) 686-4700
www.ccwa.com

* Indicates attachment of document to agenda packet

Continued

V. Reports from Committee Members for Information Only

VI. Date of Next Regular Meeting: January 12, 2023

VII. Adjournment

**MINUTES OF THE
CENTRAL COAST WATER AUTHORITY
OPERATING COMMITTEE**

July 14, 2022

I. Call to Order and Roll Call

Mr. Garcia, Committee Chair, called the July 14, 2022, Central Coast Water Authority Operating Committee meeting held at 255 Industrial Way, Buellton, California, to order at 9:03 a.m.

Committee members present:

| | | |
|---------------|---|--|
| Paeter Garcia | - | Santa Ynez River Water Conservation District, ID#1 |
| Ryan Drake | - | Goleta Water District |
| Rose Hess | - | City of Buellton |
| Pernell Rush | - | Vandenberg SFB |
| Shad Springer | - | City of Santa Maria |

The Committee went to closed session at 9:03 a.m.

II. Closed Session

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Government Code section 54956.9(d) (1)
Name of case: Central Coast Water Authority, et al. v. Santa Barbara County Flood Control and Water Conservation District, et al. (Case No. 21CV02432)
- B. CONFERENCE WITH LEGAL CONSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code § 54956.9(d)(2)
Number of cases: 1

III. Return to Open Session

The Committee returned to open session at 9:51 a.m.

Ms. Hastings, CCWA General Counsel, announced there were no reportable actions as a result of closed session.

IV. Public Comment

There was no public comment.

V. Election of Officers

Mr. Stokes, CCWA Executive Director, reported that the Operating Committee elects its Chairman and Vice Chairman on a biennial basis in July.

A motion to nominate Mr. Garcia as Chairman and Mr. Springer as Vice Chairman of the Operating Committee for a two year term was made by Ms. Hess, seconded by Mr. Rush, and carried with all in favor and none opposed.

VI. Consent Calendar

A. Approve Minutes of the March 10, 2022 Operating Committee Meeting

Motion to approve the consent calendar was made by Ms. Hess, seconded by Mr. Springer, and carried with all in favor and none opposed.

VII. Executive Director's Report

A. Operations Update

John Brady, CCWA Deputy Director, reported on plant production, chemical costs, and totals pumped into Lake Cachuma. Chemical costs have increased significantly due to supply chain issues and the Ukraine conflict. Mr. Brady reviewed CCWA's contract prices, which were adjusted in May after Board approval.

- Westlands Water District began their planned pump-in and due to the salinity of the pump in water, has provided mitigation water to affected state water contractors. CCWA may receive 37.5% of the mitigation water.
- Weekly sample collection procedures have been modified to allow collection of samples in a timely manner, refrigerate the samples, and revise the benchsheet to include additional data.
- The Tank 5 inlet chloramination boosting station design was reviewed and CCWA staff will construct the system in the next few months.
- The process logic controller system project is on schedule and under budget with implementation anticipated for the 2022 winter shutdown.
- The leak in the Bradbury bypass at the 42" line was detailed, and the two options for repair were explained.
- The HVAC replacement project contract has been awarded and work is expected to begin soon.
- Regulatory Submittals to the RWQCB, U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife have been completed.
- A simulated "emergency data back-up" was performed to confirm function of the Datto cloud.
- Accounting staff has been trained on water tracking protocols.
- Mr. Brady has been appointed to the California Drinking Water Operator Certification Advisory Committee for two year term.

B. Water Supply Situation Report and 2022 Supplemental Water Purchase Program Update

Ray Stokes, CCWA Executive Director, reviewed total amounts requested and acquired to date in the 2022 Supplemental Water Purchase Program with purchases from Casitas Water District, the Yuba Accord Program, 2022 Mojave Water Agency and the Dry Year Transfer Program. The consultant hired to identify additional water sources has located a potential 1,700 additional AF and Mr. Stokes will be meeting with the seller later today.

The State Water Allocation for 2022 remains at 5%, or 2,276 AF. CCWA participants have 7,568 AF of carryover water, for a total of 9,908 AF of water available in 2022. Total deliveries as of June 30, 2022 are 4,348 AF.

DWR is currently planning for a fourth consecutive dry year, which potentially equates to a zero percent allocation in 2023. If this happens, Mr. Stokes anticipates that finding supplemental water in 2023 would be especially difficult.

In response to a question, Mr. Stokes explained there was a direct correlation between reservoir levels and the annual allocation provided by DWR. This is due to senior water rights holders as well as environmental obligations of water that may be in Lake Oroville.

C. Planning for a Dry 2023 Water Year: Water Supply and Operational Challenges and Possible Mitigation Measures

Mr. Brady provided a presentation explaining the possible operating scenarios to maintain water potability based on an extended water travel time anticipated as the water flows are decreased due to limited supply.

Mr. Stokes noted that potentially DWR costs will increase significantly next year, due to SB 1020, increased variable costs, and decreased power generation from Lake Oroville. The recommendations being made by CCWA would maximize deliveries for participants while addressing increased costs.

Members of the public provided comment on the recommended scenarios.

D. Warren Act Contract Update

CCWA has received the temporary Warren Act Contract, which will be in effect until 2024. CCWA will request commencement of negotiations for the long term contract as soon as possible.

E. Alternative Discharge Point for State Water at the Lake Cachuma Penstock Facilities

The current delivery method for State Water to the Bradbury Dam facilities was reviewed, and Mr. Brady reviewed the constraints to water delivery due to water rights releases and regulatory issues. CCWA has identified possible options to circumvent the constraints through alternative delivery methods, and Mr. Brady reviewed the options.

The CCWA Board will be requested for permission to send the options to the USBR for evaluation.

F. Aquaterra Water Bank Proposal and Term Sheet

Mr. Matthew Hurley, General Manager of the McMullin Area Groundwater Sustainability Agency (MAGSA), provided information on the Aquaterra Water Bank.

In response to a question, Mr. Hurley stated the subscription for the original 800,000 AF of storage capacity will be on a pay-go basis, and March 1, 2023 has

been identified as the date to begin payments for subscriptions, with 2026 currently estimated as the date of completion. The 800,000 AF will be available on a first come first served basis, and all current information including subscription leave behind of 10%, is included in the project description.

Maintaining the water in the Water Bank will be achieved through a new canal system providing in lieu deliveries to landowners and new policies related to well management for property owners and pump tracking in the MAGSA GSA.

Mr. Stokes stated he would like to bring the matter to the Board of Directors before the end of 2022 for a decision on participation either as a group or by individual member agencies. Allocation of quantity would be considered as part of the discussion of participation.

G. DWR Calendar Year 2023 State of Charges

DWR released the calendar year 2023 Statement of Charges on July 1, 2022, as required under the water supply contract. After receipt of the Statement of Charges, CCWA compared the actual charges from DWR to the amounts used in preparing the fiscal year budget, to determine the difference between the estimates and the actual costs.

Ms. Dessi Mladenova, CCWA Controller, provided a review of the differences in the cost components. The biggest differences are an increase in the Transportation Minimum OMP&R component of \$2.4 Million followed by a decrease in the Transportation Capital charges of \$1 Million and a decrease in the Delta Water Charge of \$0.8 Million. The combined increase in the Water System Revenue Bond and the Coastal Branch Extension is \$172,000.

In total, the charges are almost \$0.8 million higher than the estimates used in the FY 2022/23 Budget. The additional charges due for FY 2022/23 fixed DWR costs will be invoiced in October 2022.

VIII. Reports from Committee Members for Information Only

There were no reports from the Committee members.

IX. Date of Next Regular Meeting:

October 13, 2022 is the date of the next Regular meeting.

X. Adjournment

The meeting was adjourned at 11:53 AM.

Respectfully submitted,

Elizabeth F. Watkins
Secretary to the Board




CENTRAL COAST WATER AUTHORITY

MEMORANDUM

September 29, 2022

TO: CCWA Operating Committee

FROM: Ray A. Stokes
Executive Director 

SUBJECT: Aquaterra Water Bank

SUMMARY

At its meeting on May 26, 2022, the CCWA Board of Directors received an informational presentation on a proposed new water bank called the Aquaterra Water Bank. The Aquaterra Water Bank is a project under the McMillian Area Groundwater Sustainability Agency (MAGSA).

The Aquaterra Water Bank is currently in the process of identifying partners to participate in the Water Bank, with the first 800,000 AF having a Priority Phase Storage for both deposits and withdrawals from the bank, once operational. The Bank anticipates executing the Subscription Agreements this fall and into the first quarter of 2023 along with initial deposits of the non-refundable Subscription Fees payable in March 2023 (discussed in more detail below).

The MAGSA General Manager, Matt Hurly, will provide a presentation at the October 13, 2022 Operating Committee meeting. The information included with this report is being provided early to enable each CCWA Project Participant to review the information prior to the Operating Committee Meeting and therefore allow the participants to ask questions of Mr. Hurly at the meeting.

DISCUSSION

CCWA staff believe the Aquaterra Water Bank to be a good option for CCWA Project Participants and is therefore requesting consideration by each Participant. A brief discussion on timing, subscription deposits and other information follows. Again, more detailed questions may be answered by Mr. Hurly at the Operating Committee meeting and again at the CCWA Board meeting on October 27, 2022.

CCWA Participation or Individual CCWA Participant Participation

CCWA could potentially participate in the Bank as one entity for the benefit of all CCWA participants. The value of this is that CCWA could help manage water supplies for all participants and simplifying the water accounting. It is anticipated that if CCWA were to participate as a whole, whatever amount CCWA elects to participate in the Bank would be allocated in proportion to the Table A amounts and thus the costs would be allocated in the same manner.

Alternatively, if some CCWA participants do not wish to participate, CCWA could participate in the Bank for only a subset of CCWA participants in proportion to each participant's elected amount. For example, a CCWA participant may have a Table A amount of 3,000 AF, but wish to participate in the Bank for a total of 4,000 AF. This would allow for customized participation amounts.

Subscription Fee Payments

As described in the attached "Groundwater Banking Priority Phase Storage Subscription Agreement", the first \$25/AF deposit of the estimated total \$900/AF Subscription Fee will be due in March 2023. Then, additional deposits are due each year through 2026, with increases each year up to the estimated total of \$900/AF.

Feasibility Study

MAGSA released the Feasibility Study for the Aquaterra Water Bank in June 2022. The link to that Feasibility Study is shown below:

[2022-0601 Aquaterra Feasibility Study](#)

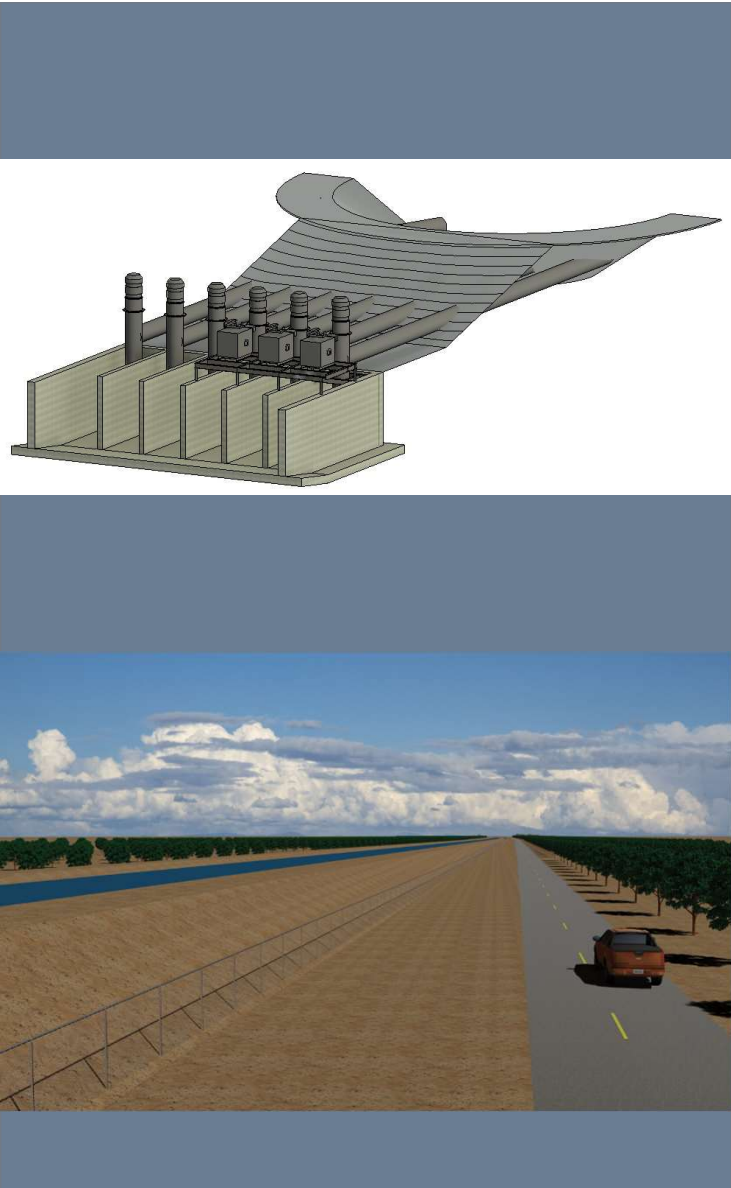
Timing

The information related to the Water Bank and presentations from the MAGSA staff are intended to provide a basis for each CCWA participant to evaluate whether participation in the Water Bank is beneficial for their individual agencies. CCWA staff hope to obtain participation decisions from CCWA participants by the January 26, 2023 CCWA Board meeting.

RAS

Attachments

1. Aquaterra Water Bank Powerpoint Presentation
2. Aquaterra Water Bank Quarterly Spending Projection
3. DRAFT Aquaterra Water Bank Subscription Agreement
4. DRAFT Aquaterra Water Bank Subscription Agreement Exhibit A



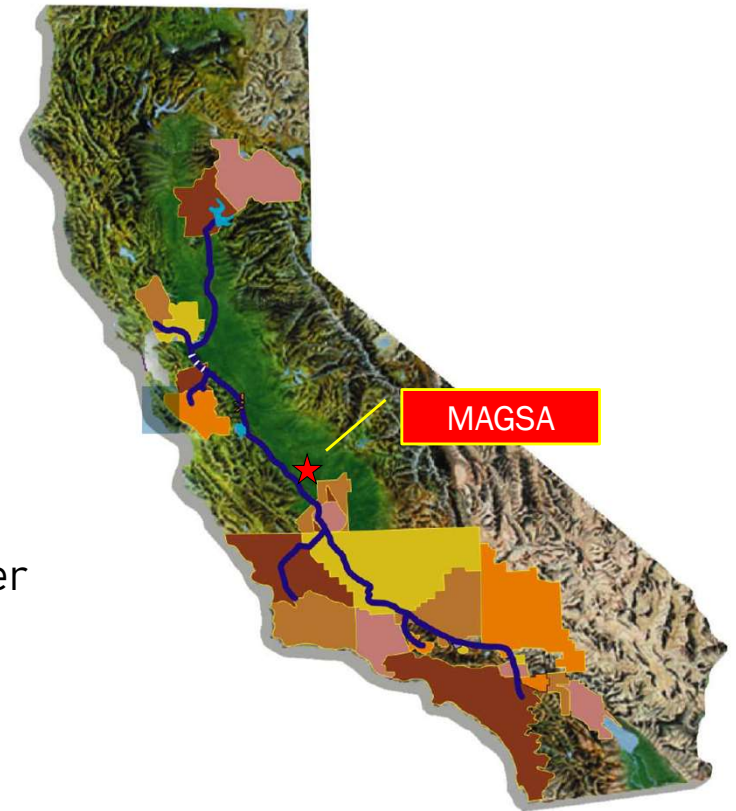
AQUATERRA

WATER BANK

MCMULLIN AREA GSA, FRESNO COUNTY

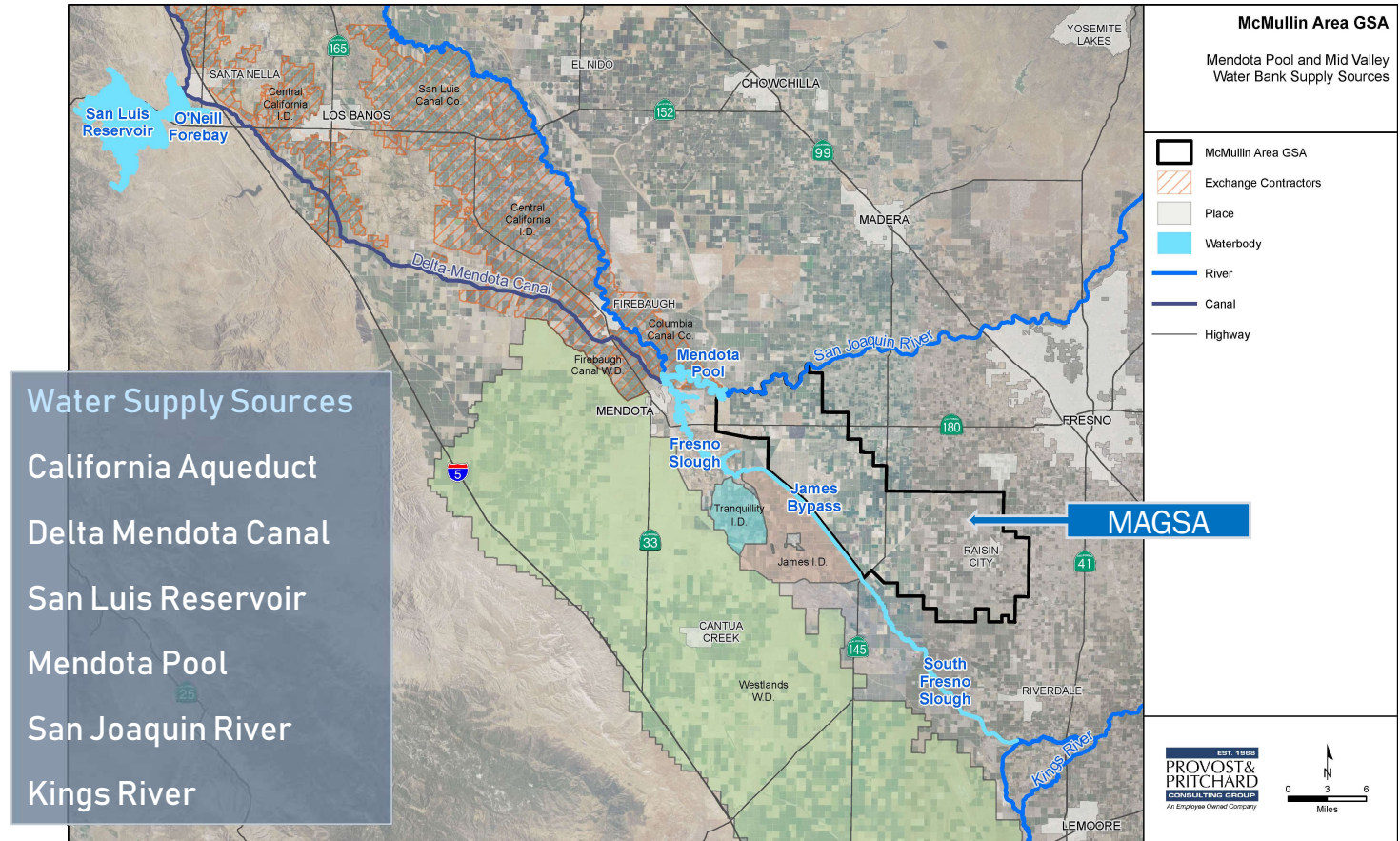
McMullin Area GSA (MAGSA)

- Formed in response to the passing of the Sustainable Groundwater Management Act (SGMA)
- Located in Fresno County, encompassing 120,635 acres
 - 83% permanent and field crops
 - 1.2% rural residential
 - Two ecological reserves
- MAGSA last developed area of Kings Subbasin
 - No Kings River water rights for surface irrigation
 - Agriculture developed based exclusively on groundwater
 - **1.8 Million acre-feet** of available groundwater storage in cone of depression created by local pumping



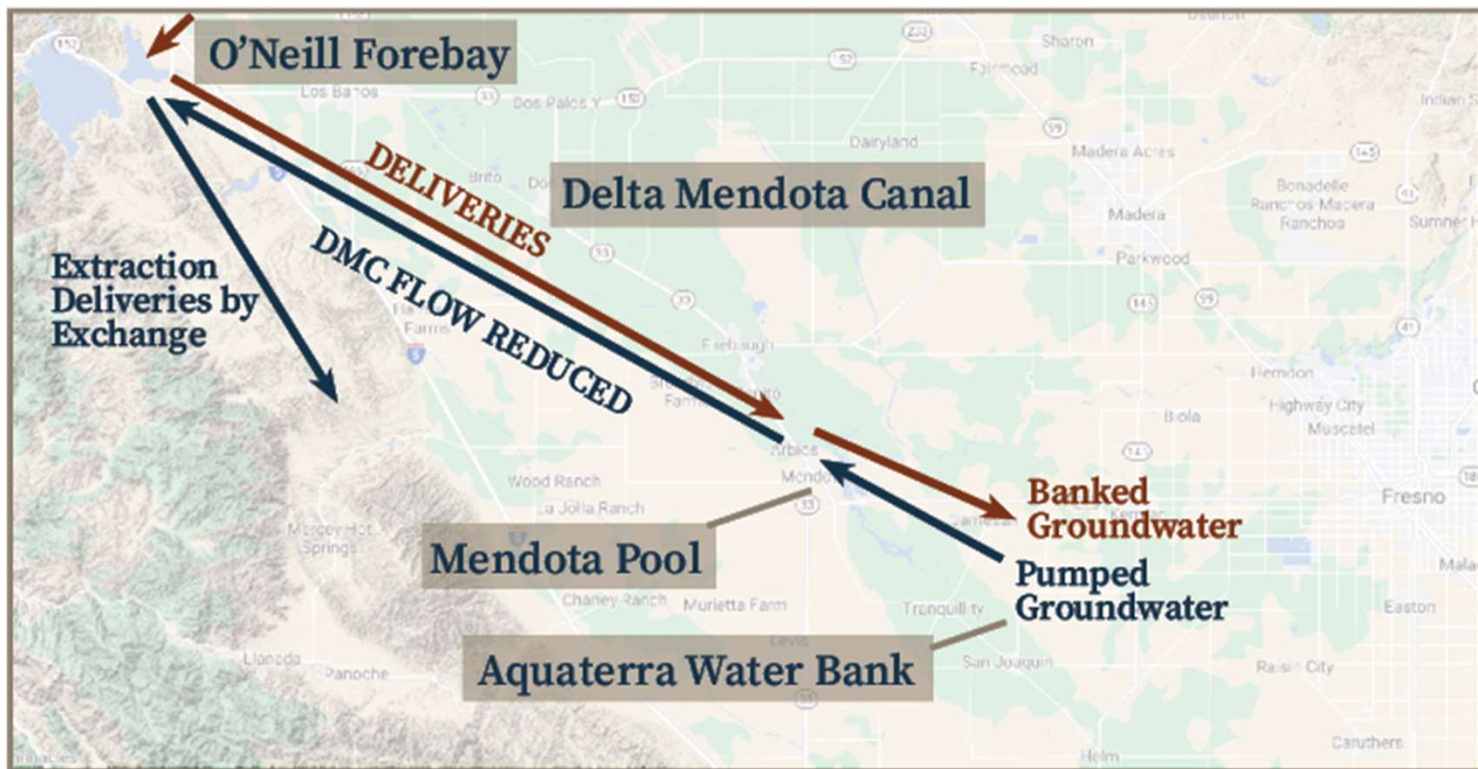
Aquaterra Water Bank

- Situated near major water systems
- Direct connections to water sources.
- Soils suited for water percolation and recovery.
- Partner with Exchange Contractors to facilitate project recovery and their needs





Delivery and Extraction Infrastructure



Aquaterra Water Bank Characteristics

High recharge rates, with ability to capture Article 21 Water

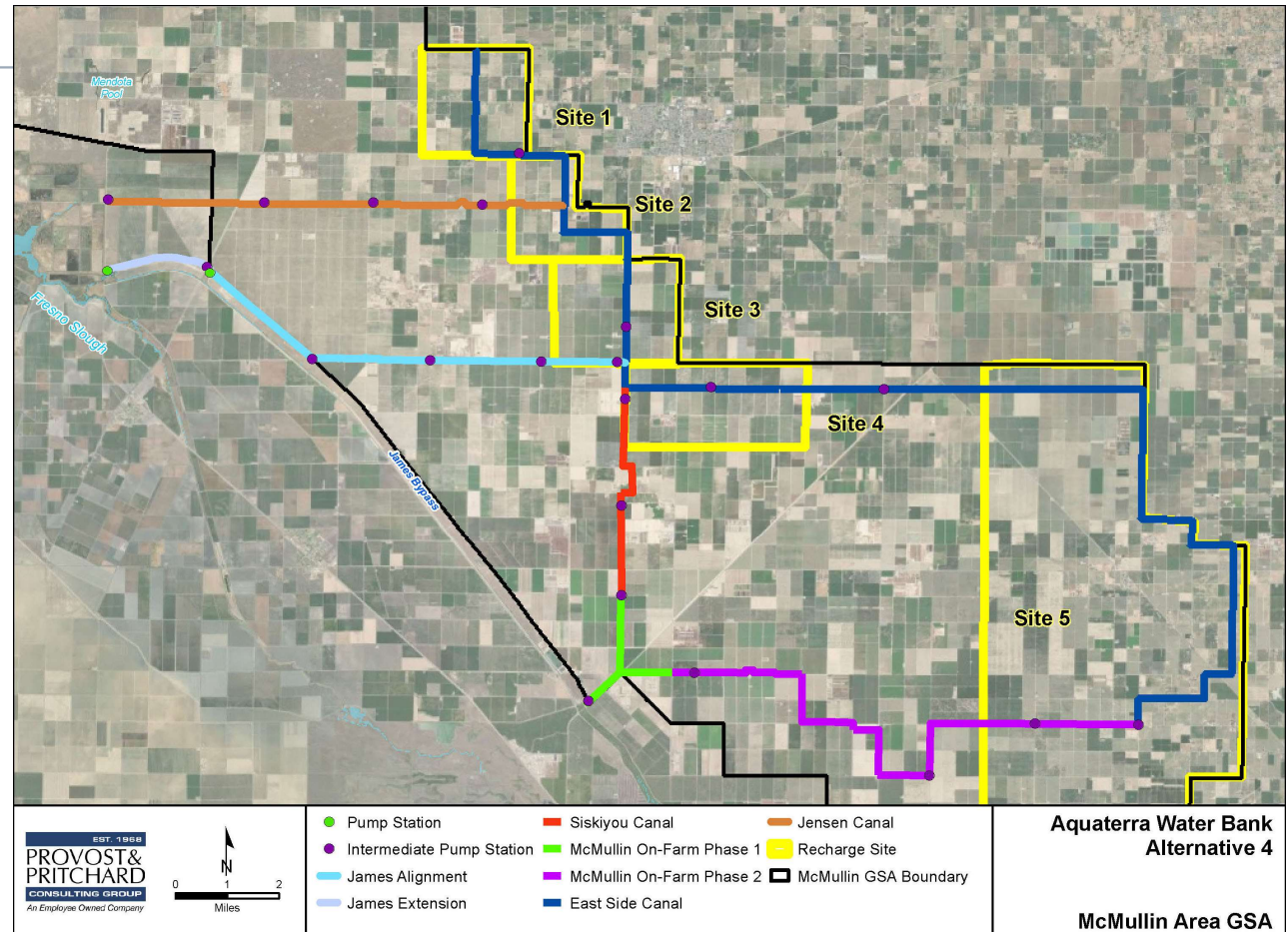
Upstream location on California Aqueduct

- Minimizes potential operational capacity limitations
- Reduced initial costs – Minimal initial pumping costs
- Reduced operational costs – Low energy costs
- Physical connection to the Mendota Pool

Firm Recovery Capability – Extractions exchanged with highest seniority
Delta water user

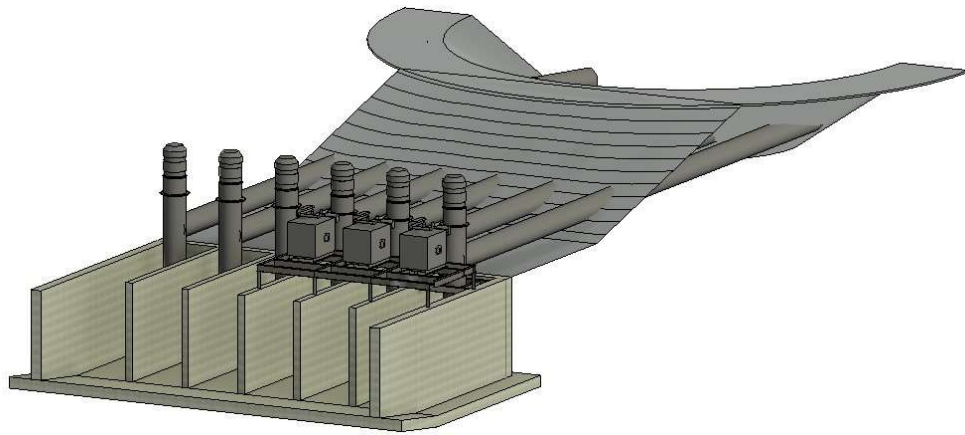
Project Scale

- 800,000 acre-feet groundwater storage capacity
- 208,000 acre-feet annual recharge capacity
- 770 cfs conveyance & spreading
- 146,000 acre-feet per year scheduled extraction capability
- 480 cfs recovery (extraction) capacity
- Two conveyance facilities for recharge & recovery



Aquaterra Water Bank Specifications

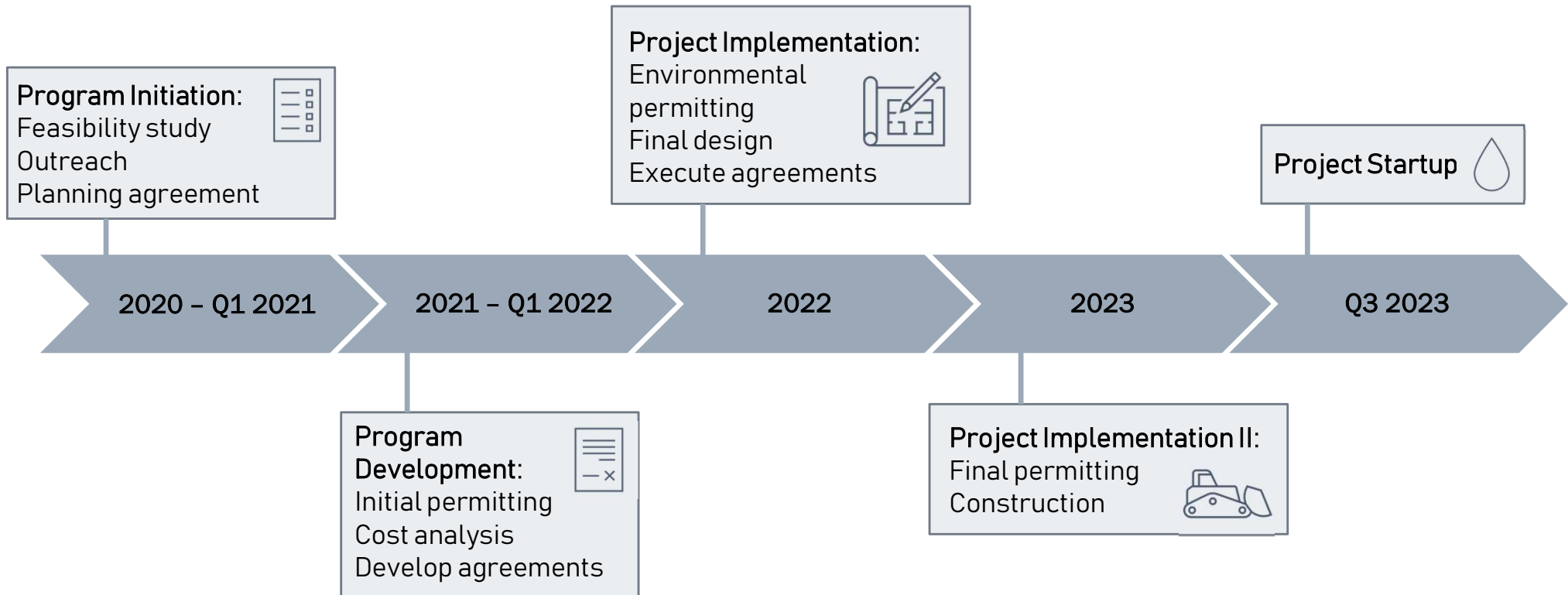
250 – 500 cfs conveyance canal capacity
3,900 acres of recharge basins
65 miles of bidirectional canals



88 recovery wells
25 pump stations
3 pump stations in Mendota Pool



Aquaterra Water Bank Status

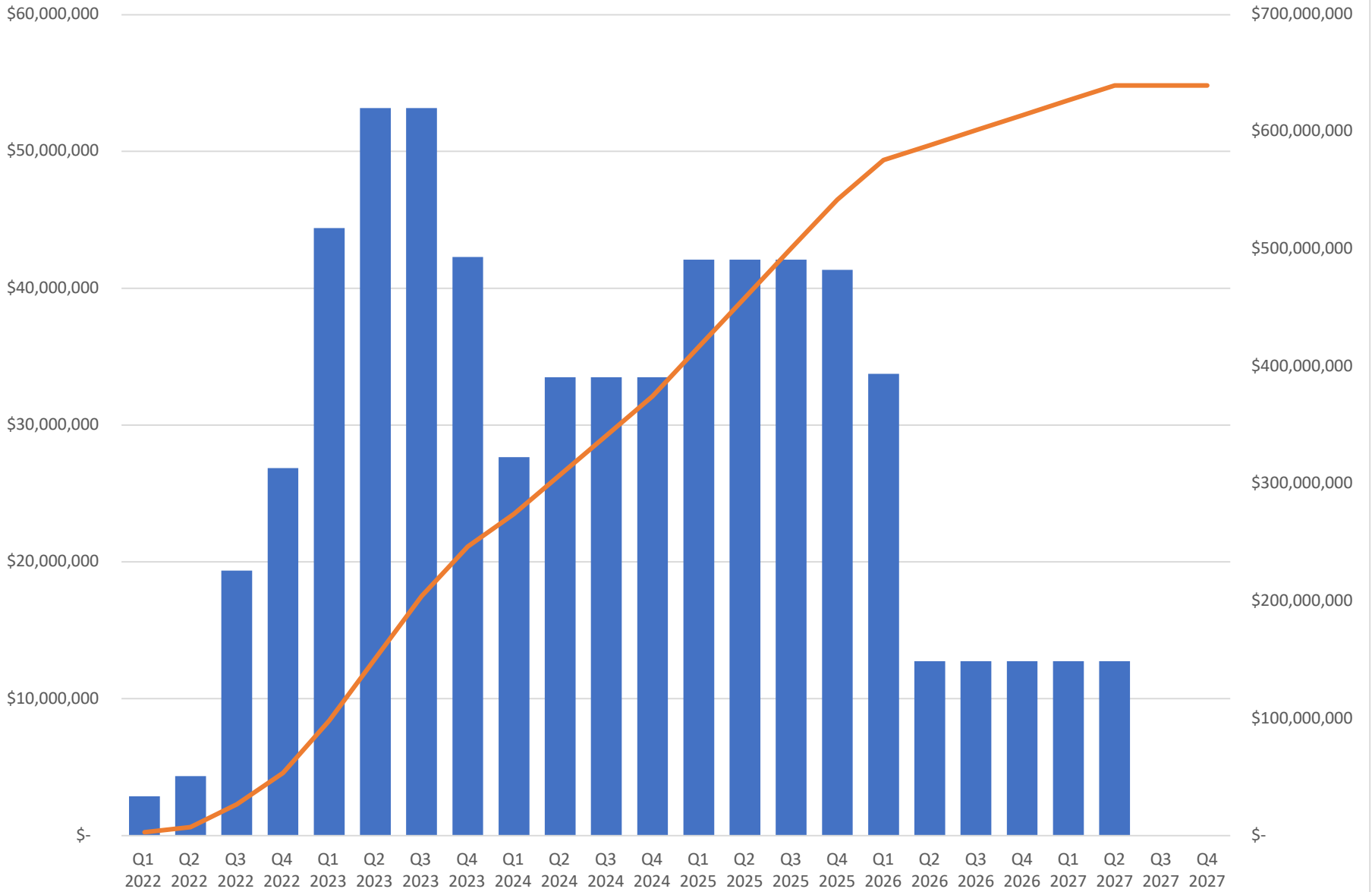


QUESTIONS



AQUATERRA
WATER BANK

Aquaterra Groundwater Bank Quarterly Spending Projection



**GROUNDWATER BANKING PRIORITY PHASE STORAGE
SUBSCRIPTION AGREEMENT**

This Groundwater Banking Priority Phase Storage Subscription Agreement (“**Agreement**”) is entered into as of this ____ day of _____ 2022 between McMullin Area Groundwater Sustainability Agency (“**MAGSA**”) and _____ (“**Account Holder**”). MAGSA and Account Holder may also be referred to herein individually as a “**Party**” or collectively as “**Parties**.”

RECITALS

WHEREAS, MAGSA is a Groundwater Sustainability Agency (“**GSA**”) properly organized pursuant to the Sustainable Groundwater Management Act of 2014 (Water Code §§ 10720, et seq.) (“**SGMA**”);

WHEREAS, due to historical groundwater pumping in excess of the safe yield of the groundwater basin underlying MAGSA’s boundaries, estimated underutilized groundwater storage capacity in excess of one million eight hundred thousand (1,800,000) acre-feet has resulted;

WHEREAS, MAGSA has determined that the operation of water banking facilities will contribute to improved conditions of groundwater overdraft within its boundaries, and will assist in MAGSA’s efforts to enhance, protect, and sustainably manage the water resources within its boundaries pursuant to and consistent with SGMA;

WHEREAS, Account Holder seeks to participate in water banking efforts with MAGSA that will result in beneficial storage, recovery, and exchange opportunities for Account Holder within MAGSA;

WHEREAS, MAGSA intends to develop, construct, and operate groundwater banking facilities within its boundaries as described in **Exhibit A** attached hereto (“**Project**” or “**Aquaterra**”);

WHEREAS, in order to generate capital needed to conduct the requisite environmental review, to complete permitting processes, to obtain necessary fee title ownership to land and/or right-of-way easements, and to develop and construct the Project facilities, MAGSA proposes an investment opportunity consisting of priority access to a portion of the total storage space, for direct or in-lieu recharge and/or access to a broad range of exchange possibilities pursuant to the terms set forth below;

WHEREAS, Account Holder seeks to invest in the development and construction of the Project in exchange for the opportunity to obtain senior priority storage capacity and appurtenant rights upon the construction and operation of the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Definitions.

- (a) Anticipated Total Project Storage: MAGSA anticipates that the total water storage available within the Project will be one million eight hundred thousand (1,800,000) acre feet.
- (b) Priority Phase Investor: Those parties that invest in the first eight hundred thousand (800,000) acre-feet of reserved storage space within the Project.
- (c) Priority Phase Storage: The entire first eight hundred thousand (800,000) acre-feet of reserved storage space within the Project, to which each Priority Phase Investor shall share Priority Access.
- (d) Priority Access: The seniority of access to deposits (“puts”) or withdrawals (“takes”) associated with Priority Phase Storage ahead of later phase investors, which shall be in proportion to each Priority Phase Investor’s share of the Phase One Priority Storage in acre feet.
- (e) Subscription Fee: The total amount due to MAGSA to access the Priority Phase Storage as provided herein, which must be paid in five (5) non-refundable installment payments, as detailed in Paragraph 3 below.

2. Purchase of Phase One Priority Storage.

In consideration of the terms and conditions contained in this Agreement and upon receipt of **all** Subscription Fees, as provided herein, MAGSA shall grant and convey to Account Holder the perpetual right to access _____ acre-feet (the “**Subscribed Quantity**”) of Priority Phase Storage in the Project pursuant to the terms provided herein.

3. Non-Refundable Subscription Fees and Payment Schedule.

It is MAGSA’s intention to construct the necessary capital improvements and thereafter operate the Project on a cash basis as compared to a bonded or financed basis. Therefore, each Priority Phase Investor shall be responsible for the determination as to what method they might choose to utilize for their required cash contributions set forth below. The aforementioned notwithstanding, MAGSA will do what it can to accommodate minor scheduling and other potentially variable aspects associated with scheduled payments from Priority Phase Investors. As of the date of this Agreement, the total Subscription Fee is estimated to be Nine Hundred Dollars (\$900.00) per acre-foot for Priority Phase Storage (“**Estimated Subscription Fee**”). This amount accounts for the estimated cost of construction of the capital improvements and all related non-construction related expenses with a twenty percent (20%) contingency factor. The actual total Subscription Fee shall be determined at Project completion and shall be based upon the cost to build and place the Project into full operational mode. As such, determination of the final total Subscription Fee amount shall be ongoing. MAGSA shall provide written updates on the estimated total Subscription Fee to Priority Phase Investors as provided in Paragraph 4, below, but in no event shall the total Subscription Fee payable by Account Holder exceed one hundred and twenty five percent (125%) of the Estimated Subscription Fee as identified herein.

To purchase the right to access Priority Phase Storage, Account Holder shall pay the total Subscription Fee for its Subscribed Quantity pursuant to the following schedule:

- (a) First Payment: The first payment shall be equal to \$25.00 per acre-foot of Subscribed Quantity, shall serve as a down payment placeholder for Account Holder's Investment Account, and shall be delivered to MAGSA, as provided herein, on or before March 1, 2023.
- (b) Second Payment: The second payment shall be twenty percent (20%) of the outstanding balance of the total Subscription Fee, or an estimated \$175.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2024.
- (c) Third Payment: The third payment shall be thirty percent (30%) of the remaining balance of the total Subscription Fee, or an estimated \$210.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2025.
- (d) Fourth Payment: The fourth payment shall be fifty percent (50%) of the remaining balance of the total Subscription Fee, or an estimated \$245.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2026.
- (e) Final Payment: The final payment shall be the remaining balance of the total Subscription Fee, as adjusted for project construction closeout, and shall be delivered to MAGSA, as provided herein, no later than December 31, 2026.

4. **Notice of Change in Cost**

In order to calculate the amount due for each of the Subscription Fee payments, as set forth above, MAGSA shall provide Account Holder notice, as provided herein, of any change in the total Subscription Fee no later than one hundred twenty (120) days in advance of the payment due dates set forth above. The actual final amount of the per acre foot Subscription Fee shall be determined by actual cost true-up prior to the final installment.

5. **Election Not to Complete Purchase.**

In the event the Account Holder elects at any point not to complete the transaction contemplated herein, any amounts paid to MAGSA pursuant to this Agreement at the time of Account Holder's election not to complete the transaction shall **not** be refunded to Account Holder in whole or in part.

6. **Option to Assign.** Account Holder may, subject to prior approval by MAGSA, which approval will not be unreasonably withheld, assign its rights and responsibilities under this Agreement upon the execution by Account Holder's duly authorized representative and execution by assignee of a Subscription Agreement, in a form similar to this Agreement, modified to reflect the withdrawing Account Holder's position at the time of withdrawal and assignment and acknowledging any and all provisions contained herein as if executed at the origination of the Project.

7. **Covenants of the Parties.**

(a) **Project Status Updates.**

MAGSA shall provide Account Holder quarterly written reports on the status of the construction of the Project, including periodic accounting updates and budget comparisons.

(b) **Notice of Readiness to Accept Water Deposits (“Puts”).**

MAGSA shall notify Account Holder at least thirty (30) days prior to the anticipated partial completion of the Project facilities sufficient to allow Account Holder to make initial water deposits into the water bank (“puts”).

(c) **Notice of Readiness to Accomplish Water Withdrawals (“Takes”).**

MAGSA shall notify Account Holder at least thirty (30) days prior to the anticipated partial completion of the Project facilities sufficient to make initial withdrawals of water from storage (“takes”).

(d) **Operations and Maintenance of the Project Post-Construction.**

Following execution of this Agreement, and upon the “Activating Subscription for Priority Phase Storage” (Payment of the First Installment Payment by Priority Phase Investors holding more than fifty (50%) percent of the Priority Storage), MAGSA shall convene a representative committee of all Priority Phase Storage Account Holders for the purpose of conferring and making recommendations to the MAGSA Board of Directors of anticipated best management practices associated with ongoing Project operations and maintenance, including suggested rules and regulations, fee schedules and cost apportionment formulas for equitable access to and participation in the Project. Thereafter, MAGSA shall prepare and circulate for consideration and concurrence of the Priority Phase Storage Account Holders a Standard Operations and Maintenance Manual, which will serve as the initial Standard Operating Procedures for the Project.

(e) **Access to Project.**

MAGSA shall provide Account Holder reasonable access to the Project and Project facilities.

(f) **Mutual Indemnification, Defense, Hold Harmless.**

The Parties agree to indemnify, defend, and hold the other and its respective officers, directors, shareholders, partners, managers, members, trustees, beneficiaries, employees, contractors, licensees, invitees, representatives, agents, successors, and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (including, without limitation, attorneys’ fees) by reason of property damage, death, or injury to persons arising from or relating to the construction, improvement, installation, access to, use, inspection, maintenance, repair, or modification of the Project facilities, except to the extent

that such death, injury, or property damage arises from the gross negligence or willful misconduct.

(g) Evaluation of Risk.

Account Holder is managed by and/or staffed with persons who are knowledgeable, sophisticated, and experienced in business and financial matters; has access to information sufficient to conduct appropriate due diligence in relation to this Agreement; is capable of evaluating the merits and risks involved in this Agreement, is prepared to timely provide for scheduled payments, and is able to bear the risk of this Agreement, including a complete loss of its investment.

8. Notices.

Any notice, consent, approval or request for consent required or permitted to be given under this Agreement shall be given in writing and shall be effective: (i) if personally delivered, upon delivery or the recipient's refusal to accept such delivery; or (ii) if mailed, five (5) days after mailing, by United States registered or certified mail, postage pre-paid, return receipt requested, to the applicable address set forth below:

If to MAGSA:

McMullin Area Groundwater Sustainability Agency
275 S. Madera Avenue, Suite 301
Kerman, CA 93630

Attn: General Manager

If to the Account Holder:

Name
Address 1
Address 2

Attn:

The foregoing addresses and addressees may be changed by giving written notice of such change to the other Party in the manner provided for in this section.

9. Partial Invalidity/Severability.

If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. Breach.

In the event of an alleged breach of this Agreement, the Party asserting the breach shall promptly advise the other Party of the alleged breach and provide, in writing, a notice to cure within seven (7) business days of the delivery of the written notice. Should the alleged breaching Party dispute

the alleged breach, they must, within that same seven (7) business day period, advise the other Party of the dispute and the basis for their contention.

Should the Party disagree as to whether a breach has occurred, and the alleged breach remains after a period of seven (7) business days, the Parties agree to engage in good-faith negotiations as set forth below.

However, in the event Account Holder breaches the Agreement in a manner that constitutes a violation of the terms of any State, County, or other permit or license by which MAGSA is bound, and Account Holder fails to cure such breach within seven (7) business days of the notice, upon a showing of documentation from a government entity confirming the nature of the violation, MAGSA may immediately terminate this Agreement.

11. **No Refund for Delay and/or Failure to Complete.**

The Parties acknowledge that the Project is still in the design phase and completing the Project will require the acquisition of real property and/or easements, the completion of environmental review, and obtaining various permits and approvals, as well as funding sufficient to complete the Project. The Parties further understand and acknowledge that these processes and any number of unforeseen issues could delay or prevent completion of the Project in whole or in part. In the event that the Project is delayed or that MAGSA is unable to complete the Project, in whole or in part, whether due to inability to obtain approvals, real property, easements, and/or any other reason, Account Holder shall not be entitled to a refund of any amounts paid.

12. **Impact to Water Supply/Storage.**

The Parties acknowledge that the Project is subject to changes as a result of climate and/or geologic activities. As a result, the Parties agree that MAGSA provides no assurance that the capacity, conveyance rates and the priority space will not change from that which is understood at this time. As a result, restrictions may be imposed on the Account Holder's use of the Project, including, but not limited to, limits or restrictions on: allowable recharge rates, allowable recovery rates, and/or the time between recharge and recovery.

13. **Negotiation, Mediation, and Mandatory Binding Arbitration.**

The Parties agree that, should any controversy or claim arise out of or in relation to this Agreement, including any alleged breach of the Agreement, the Parties shall promptly make good faith efforts to negotiate a written voluntary resolution of the matter directly between themselves.

With the exception of the limited circumstance that allows for immediate termination set forth above, if any dispute that relates to this Agreement remains unsettled for fifteen (15) days after notification that a dispute exists, the Parties shall immediately and jointly retain a mutually- agreed upon neutral mediator and participate in confidential mediation to continue attempting to work out a written voluntary settlement. The costs of the mediation shall be born equally by the Parties. If any Party(ies) files any legal or administrative action to which this clause applies, without first having attempted to resolve the dispute through neutral mediation, then that filing Party(ies) shall be responsible for all legal fees and costs, including reasonable attorneys' fees, of the other Party(ies), regardless of the outcome of the case.

Should mediation efforts fail, any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration administered by one neutral, agreed upon

by the Parties, from the American Arbitration Association, JAMS, or similar organization, under their Commercial Arbitration Rules. Any such arbitration shall be conducted in Fresno County and judgment on the award rendered may be entered in any court having jurisdiction thereof.

14. **Binding Effect.**

This Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity and without regard to technical classifications or designations, be binding upon and inure to the benefit of the Parties hereto.

15. **Governing Law.**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

16. **Attorneys' Fees.**

In the event of any controversy, claim or dispute relating to or arising out of this Agreement, except as specifically set forth within paragraph 13, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses including, without limitation, attorneys' fees.

17. **Entire Agreement.**

This Agreement, including the recitals and **Exhibits A** through ___ attached hereto, all of which are incorporated herein by this reference, constitutes the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties concerning the subject matter of this Agreement and supersede any and all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

18. **Amendments.**

This Agreement may be amended, modified or supplemented only by a written document executed by all of the parties hereto (or their successors-in-title).

19. **Assignments.**

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Party. Upon an assignment pursuant to this provision, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties, which shall include any agreed-upon successors and assigns.

20. **No Third-Party Beneficiaries.**

This Agreement is only among and for the benefit of the Parties hereto and their successors-in-title. No other person or entity or property shall be entitled to rely hereon, receive any benefit from

this Agreement or enforce any provision of this Agreement against any other Party to this Agreement.

21. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DRAFT

**EXHIBIT “A” TO GROUNDWATER BANKING PRIORITY PHASE STORAGE
SUBSCRIPTION AGREEMENT**

The overall Project (hereinafter “Aquaterra”) includes construction and operation of an approximately 146,000-acre-foot per year dry-year return water bank. During wet year operations, up to 208,000 acre-feet of water could be recharged. There is approximately 1.8 million acre-feet of available storage under MAGSA’s boundaries in the unconfined aquifer above the E-Clay (Corcoran Clay). The Project as it specifically relates to Priority Phase Storage, includes the following elements:

- 1) Approximately 4,000 acres of new dedicated recharge basins,
- 2) A well field of up to 90 dedicated recovery wells located generally within the area of the recharge basins,
- 3) Up to three new lift pump stations in, or within the vicinity of, the Mendota Pool,
- 4) Approximately 70 miles of bi-directional high capacity conveyance canals,
- 5) Approximately twenty five (25) canal lift pumping stations with individual flow top-end capacities between 300 and 500 cubic feet per second,
- 6) Federal Acknowledgement as a Groundwater Bank to accommodate storage and return, as well as exchange, of federal contract water supply, and
- 8) The creation of a Groundwater Monitoring Committee to assist and advise MAGSA in establishment and oversight of on-going Standard Operations policies and procedures.

Location: The Aquaterra facilities would be located west of SR-99 and east of the James Bypass on the north fork of the Kings River within an agricultural region of the mid-northern portion of Fresno County, CA contained within the boundaries of MAGSA.

Operation and Maintenance:

The Groundwater Monitoring Committee will assist and advise in ensuring that operation of Aquaterra will not adversely affect the groundwater pumping conditions of any property owners in close proximity to the Aquaterra facilities.

MAGSA anticipates utilization of Supervisory Control and Data Acquisition (“SCADA”) or other telemetry equipment and full metering that would allow MAGSA, if it so desires, to remotely operate and monitor Aquaterra well and pump facilities. Occasionally, service employees may be required to be on-site for scheduled, preventive maintenance or unscheduled service. Site maintenance is anticipated to include levee maintenance, weed abatement, trash removal, periodic sediment removal and water-control structure adjustments and maintenance.

Construction:

Construction activity for Aquaterra would commence in late 2022 or early 2023, with recharge basin site preparation and grading and construction of conveyance canals. Construction of recharge basin infrastructure, pump stations and conveyance canal construction is expected to begin in 2023 and will be ongoing until fully complete. Construction of the conveyance canals and recharge basins would continue into 2025. Recovery well and pipeline construction is anticipated to begin in 2024 and continue into 2026.