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BY EMAIL ONLY

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Re: Proposed FWA MRCCP Cost Recovery Methodology
Notice of Dispute Resolution

Dear Mr. Stock and Ms. Brathwaite,

Please consider this correspondence on behalf of Terra Bella Irrigation District ("**TBID**") regarding Friant Water Authority's ("**FWA's**" or "**Authority's**") attempts to revise the Cost Share Methodology for Advanced Costs ("**Methodology**") for purposes of Phase 1 of the Middle Reach Capacity Correction Project ("**MRCCP**").

On August 12, 2024,[1] FWA held a special board meeting to consider taking action on the following as listed on the board agenda:

[1] Please note that TBID has given FWA an opportunity to cure severe Brown Act violations that occurred immediately prior to and during the August 12, 2024 meeting. FWA staff has conducted, and continues to conduct, serial meetings in an effort to obtain and coerce preferred votes of the FWA Board of Directors.

Establishment of an Updated Cost Share Methodology for the Friant-Kern Canal Middle Reach Capacity Correction Project and Provision of 60-day Notice to Friant-Kern Canal Contractors.

After discussion of this agenda item, FWA voted to "establish" the following "methodology:" FWA will unilaterally *impose* an obligation exclusively upon TBID—and three other special districts contracting for FKC water, Porterville Irrigation District ("**PID**"), Saucelito Irrigation District ("**SID**"), and Tea Pot Dome Water District (collectively with TBID, the "**Districts**")—to pay amounts in excess of $95 million dollars for Phase 1 of the MRCCP and additional amounts for Phase 2, not to exceed $200 million for the two phases combined ("**Board Action**").

TBID's understanding is that FWA purports this "methodology" to be an "equitable" application of its "authority" to implement the "cost recovery methodology" for allocation of future repayment of costs relating to extraordinary maintenance ("**XM**") of the Friant-Kern Canal ("**FKC**") via the MRCCP.[2] FWA's *Special Board of Directors Agenda Report* ("***Special Report***") admits, "the traditional methodology to recover such costs would be to spread the costs among all those that benefit from the original project in proportion to the amount each entity would be benefitting from the entire project."[3] The *Special Report* rationalizes parting from the traditional methodology because "the situation is different if an OM&R project is necessary due to damage caused by actions of known entities."[4] The *Special Report* continues, "[i]n these circumstances, the recovery of costs for the project *should* be guided by the equitable principle to collect from the entities that caused the damage, and only seek to recover funds from other contractors if collecting the full project costs from the damaging entities is not possible."[5] Accordingly, contrary to the law, FWA purports to have revised the Methodology based upon its own opinion of what the "principles" guiding the process *should* be—as opposed to what the principles and processes actually are—as explained further below.

Bluntly, the Board Action reached far beyond the authority that the Bureau of Reclamation ("**BOR**" or "**Reclamation**") delegates to FWA for FKC management, as FWA has no authority in equity to unilaterally adjust the Methodology relating to extraordinary maintenance of federal water project contracts.[6] Specifically, at the outer most limit of delegable authority is a requirement that FWA—if it has the basis in this case for reaching the outer most limit at all—must follow certain procedures when adjusting the Methodology for XM costs,[7] the process requires negotiations with project beneficiaries

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TBID will pursue all legal avenues to ensure the practice is ceased. TBID fully supports the September 18, 2024, letter to FWA from Herr Pedersen Berglund Attorneys at Law LLP regarding FWA's serial violations of the Brown Act ("**Herr Firm Letter**").

[2] See *Special Board of Directors Agenda Report*, Friant Water Authority at p. 3 (Aug. 12, 2024).

[3] *Ibid*.

[4] *Ibid*. (*emphasis added*).

[5] *Ibid*. (*emphasis added*).

[6] The irony of FWA's actions versus the MRCCP cannot be understated given FWA's own statements concerning the Delta-Mendota Canal Subsidence Correction Project ("DMC").

[7] *See* Reclamation Manual, Policy PEC P07 ("**PEC P07**"), ¶ 8. In April 2024, San Luis & Delta Mendota Water Authority and FWA entered into an MOU formalizing DMC compliance with PEC P07. (*See Second Amended and Restated Memorandum of Understanding Between Friant Water Authority and San Luis &*

(who are responsible for repaying reimbursable costs[8]). Here, FWA's process encompassing the Board Action completely ignored that procedure, which appears in paragraph 8 of Reclamation Manual Policy PEC P07, *Allocation of Operation, Maintenance, and Replacement Costs*.[9]

Paradoxically, in the context of the Delta-Mendota Canal Subsidence Correction Project ("**DMC**"), FWA underscores the importance of complying with PEC P07. For example, FWA voiced support for the "establishment of a new Planning Committee that will be responsible for reviewing, evaluating, and recommending cost allocation of any proposed large XM project cost based upon a benefits analysis."[10] Importantly for FWA, the "new Planning Committee will include FWA and other potential ratepayers, and XM project recommendations will require unanimous findings and recommendations from the Committee."[11] Given its conduct in the context of the MRCCP—described in detail in this letter—FWA adds a rather hollow commentary on the importance of full participation of project stakeholders, "[s]uccessful initiation and completion of a project like the DMC Project requires transparency, engagement, and support from stakeholders."[12] TBID asserts that the process for revising the MRCCP Methodology should be the same as the process that FWA demanded in the DMC context.

For these reasons—and numerous others—TBID's position is twofold: (1) the Board Action is void, and (2) BOR should support the Districts in demanding FWA change course.

I.
BACKGROUND.

The Board Action arises from FWA's contractual obligation to pay for Phase 1 of the MRCCP. In 2021, FWA and BOR entered into numerous agreements for the MRCCP, including an XM Repayment Contract, a Cost Share Agreement, and an amended Transfer Agreement regarding the operation, maintenance, and replacement of the FKC. In 2021, FWA also entered into a Settlement Agreement with Eastern Tule Groundwater Sustainability Agency ("**ETGSA**") regarding mitigation costs associated with future subsidence along the FKC.

On September 23, 2021, FWA and BOR entered into an agreement entitled, *Contract Between the United States of American and Friant Water Authority for the Repayment of Extraordinary Maintenance Costs for the Friant-Kern Canal Middle Reach Capacity Correction Project* ("**XM Contract**"). In the XM Contract, FWA and BOR both

Delta-Mendota Water Authority Relating to Allocation, Collection, and Payment of Operation, Maintenance, and Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities, ¶ V.A.4(c).)

[8] *See* PEC P07, ¶ 2 fn. 1 ("Project costs allocated to reimbursable purposes are repaid by project beneficiaries, such as irrigation, municipal and industrial (M&I), and commercial power.").

[9] PEC P07, *Allocation of Operation, Maintenance, and Replacement Costs* (version (345) 5/29/2020).

[10] Friant Water Authority January 18, 2024, letter re *Significant Progress on Resolving Friant Water Authority's Concerns Related to the Proposed Delta-Mendota Canal Subsidence Correction Project* at p. 1.

[11] *Id*. at pp. 1-2.

[12] *Id*. at p. 2.

specifically acknowledge that the MRCCP "meets the definition of 'Extraordinary Operation and Maintenance Work'" under Title IX, Section 9601 of Public Law 111-11.[13] Furthermore, in the XM Contract, both FWA and BOR *expressly promise* that "[t]he Repayment of XM Project Costs will be structured consistent with P.L. 111-11, Section 9603."[14]

A key basis for FWA's assertion of authority to the XM Methodology for the MRCCP is that certain *Agreement Between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant Kern Canal and Associated Works* ("**Transfer Agreement**") that BOR and FWA entered into on October 5, 2020. Article 12 of the Transfer Agreement states that, "Reclamation hereby delegates to the Authority all required authority under statutes, contracts, regulations, and policies to collect for [annual, routine operation, maintenance, and replacement ("**OM&R**")] . . . of the Project Works."[15] Moreover, the XM Contract states that the Transfer Agreement establishes the basis for FWA's identification, planning, financing, construction, and collection of funds for the XM work that is the subject of the XM Contract.[16] As explained in Section III below, FWA's attempted exercise of this authority contradicts the Districts' 9(d) long-term repayment contracts.

II.
FWA'S BOARD ACTION EXCEEDS THE SCOPE OF BOR'S DELEGABLE AUTHORITY.

Put simply, BOR does not have the power to delegate authority to FWA to either (a) *sua sponte* adjust the Methodology for XM costs relating to the MRCCP or (b) unilaterally allocate—*ex post*—such costs to entities based on their alleged culpability in causing damage to the FKC (as opposed to allocating those costs to project beneficiaries).

To start, Public Law 111-11 authorizes BOR to fund XM work and "execute contracts for extended repayment of the reimbursable costs[,]" *e.g.*, agreements concerning repayment for the MRCCP.[17] Accordingly, it would appear that the authority to establish the Methodology is readily delegable from BOR to FWA.[18] While such delegation of authority is possible under Public Law 111-11, due to BOR's and FWA's characterization of XM Costs as OM&R costs for the purpose of establishing the Methodology, FWA's Board Action is invalid under Reclamation Manual, Directive and Standards, *Extended*

[13] XM Contract, Recital "l." ("Reclamation has determined that the XM Project in this Repayment Contract meets the definition of 'Extraordinary Operation and Maintenance Work' (Title IX, Section 9601 of Public Law 111-11).").
[14] XM Contract, Recital "o."
[15] Transfer Agreement, Article 12 (bracketed language added).
[16] XM Contract, ¶ 3(d) ("[The] Transfer Agreement including but not limited to Articles 1, 3, 5 and 12, establishes what constitutes the OM&R of the Friant-Kern Canal and how FWA may identify, plan, finance, construct and collect funds for such work, including the XM Work that is the subject of this Repayment Contract.").
[17] Reclamation Manual, Directives & Standards, *Extended Repayment of Extraordinary Maintenance Costs* ("**PEC 05-03**"), ¶ 1 (678) 03/08/2022. Unless otherwise stated, the references to PEC 05-03 stated herein are to the 2022 version cited in this footnote.
[18] *See, e.g.,* RM, Delegations of Authority, ¶ 4.N.(3)(a).

Repayment of Extraordinary Maintenance Costs ("**PEC 05-03**"), which plainly states, **"[t]he XM authority does not include extended repayment of [OM&R] costs**."[19]

More importantly, even if BOR can delegate the authority for FWA to develop the Methodology for XM costs as OM&R costs, that authority does not allow FWA to alter the methodology *ex post*.[20] At the time BOR advanced funds to FWA for the MRCCP—November 9, 2023[21]—PEC 05-03 did not set forth any power to later adjust the Methodology as provided for in the current version of PEC 05-03. Specifically, the 2022 version of PEC 05-03 provides, BOR "will allocate costs for XM . . . work in accordance with the *existing* allocation of OM&R costs of the project or facility."[22] The 2024 version of PEC 05-03, on the other hand, adds the following to the end of the provision quoted in the preceding sentence, "that is in effect when it incurs costs or advances funds for XM work, *subject to any modified cost allocation formally identified in an XM Justification Report prepared for support of the work*, in accordance with CMP 09-04, *provided the modified cost allocation and initiation of changes to the cost allocation are compliant with the Paragraph 8 of RM Policy, Allocation of Operation and Maintenance Costs (PEC P07)*."[23] Accordingly, in November 2023 when the 2022 version of PEC 05-03 was still in effect, BOR's standard for the allocation of costs for XM work did not contemplate modifying OM&R cost allocations. Instead, in 2023, BOR was directing that the basis for the allocation of XM costs be *existing* methodologies.

Moreover, even if the 2024 revisions to PEC 05-03 would have authorized FWA to adjust the Methodology for MRCCP XM work, FWA has not met the requirements of Reclamation Manual Policy, *Allocation of Operation, Maintenance, and Replacement Costs* ("**PEC P07**"), paragraph 8, which set forth rules concerning the initiation of adjustments to the Methodology, as explained in Section V below.[24]

III.
FWA'S CONDUCT IS UNLAWFUL, AND VIOLATES MULTIPLE CONTRACTUAL, STATUTORY, AND REGULATORY REQUIREMENTS AND PROTECTIONS.

FWA claims that it possesses the authority to impose XM cost allocations ("XM Charges") based upon Article 12 Transfer Agreement, which provides, "Reclamation hereby delegates to the Authority all required authority under statutes, contracts, regulations, and policies to collect for OM&R of the Project Works." FWA contends that the authority delegated to it in Article 12 includes the power to unilaterally impose these XM Charges upon the Districts.

[19] PEC 05-03, ¶ 1 (*emphasis added*).
[20] PEC 05-03 (678) 03/08/2022). Notably, FWA apprised none of the Districts as to substantial lobbying efforts undertaken to amend PEC 05-03, despite the clear impacts those changes would have on the Districts. (*See* Farm Family Alliance memorandum at p. 4 (Dec. 4, 2023), https://www.sldmwa.org/OHTDocs/pdf_documents/Meetings/Board/Prepacket/AgendaItem16b_December_2023_FFA.pdf?_ga=2.114810951.1544190283.1702576819-1600878817.1667342599).
[21] Resolution of San Luis & Delta-Mendota Water Authority (Nov. 9, 2023).
[22] PEC 05-03 (678) 03/08/2022, ¶ 8.A (*emphasis added*).
[23] PEC 05-03 (703) 07/10/2024, ¶ 8.A (*emphasis added*).
[24] Reclamation Manual Policy, *Allocation of Operation, Maintenance, and Replacement Costs* ("**PEC P07**"), ¶ 8.

Unfortunately, FWA has disregarded the basic contractual, statutory, and regulatory requirements and strictures associated with extraordinary maintenance. Under Reclamation Manual, Directives and Standards, "[t]he XM authority does not address funding for or authorize extended repayment of annual, routine operation, maintenance, and replacement (OM&R) costs."[25]

A similar disregard was recently noted by the Tulare County Superior Court, with respect to FWA's tendency to frame its own obligations in deceptive fashion. In each case, FWA's attempts to mislead others has led only to its own detriment. In this case, FWA's act of *purporting to unilaterally "bind"* the Districts to a "cost allocation" without their consent, and above their objection, reflects a fundamental ignorance of very elementary and conspicuous statutory and regulatory requirements. Attempting to further "double down" on its ill-conceived and unlawful demand for money will only make the situation worse for all parties involved, including BOR.

Even more fundamentally, FWA's actions are clearly unlawful in a number of respects, the result being that FWA's attempt to treat XM Costs under the Transfer Agreement violates the Transfer Agreement, federal "9(d) contracts" (defined below), and the statutory and policy structure governing XM finance.

A. FWA's Board Action Violates Article 29(a) of the 9(d) Contracts.

FWA's actions violate the specific protection afforded to the Districts in Article 29(a) of their long-term repayment contracts ("**9(d) contracts**"). In Article 29(a) thereof, BOR agreed that the Transfer Agreement "**shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.**"[26] One of the rights afforded to the Districts by their 9(d) contracts is the *exclusion of capital replacement costs from the contractors' OM&R obligations*.[27] The complete text of Article 1(w) is as follows (*emphasis added*):

> "Operation and Maintenance" or "O&M" shall mean **normal and reasonable care, control, operation, repair, replacement (other than Capital replacement), and maintenance** of Project facilities . . . .

Neither BOR nor FWA assert that the MRCCP constitutes "normal" operation, maintenance, or repair. Both FWA and BOR acknowledge that the MRCCP constitutes "extraordinary operation maintenance." BOR's regulations—like the 9(d) contract—categorically separate XM costs from normal operation and maintenance. FWA's purported exercise of authority under the Transfer Agreement would destroy the contractual protection found in Article 1(w) of the 9(d) contracts and would, as a

[25] PEC 05-03, ¶ 1.
[26] *Contract Between the United States and Terra Bella Irrigation District Providing for Project Water Service from Friant Division and for Facilities Repayment*, Article 29(a) (Dec. 16, 2010) (*emphasis added*) ("**9(d) Contract**").
[27] 9(d) Contract, Article 1(w).

consequence, also violate Article 29(a) of the 9(d) contracts. Neither BOR nor FWA can disregard this categorical distinction and levy charges for XM projects.

B. FWA's Board Action Violates the Statutory Requirements for Extraordinary Maintenance Repayment Contracts Under 43 U.S.C. § 510b.

Section 510b of Title 43 of the United States Code governs the conditions under which extraordinary operation and maintenance work may be financed. In the XM Contract, FWA and BOR both specifically acknowledge that the MRCCP "meets the definition of 'Extraordinary Operation and Maintenance Work'" under Title IX, Section 9601 of Public Law 111-11.

The Secretary of the Interior advanced the costs of the MRCCP, with BOR and FWA contemplating in the XM Contract that FWA would be responsible for reimbursement. Subdivision (b) of Section 510b imposes specific requirements in the context of such reimbursement (*emphasis added*):[28]

> For transferred works, the Secretary is authorized to advance the costs incurred by the transferred works operating entity in conducting extraordinary operation and maintenance work **and negotiate appropriate 50-year repayment contracts with project beneficiaries** providing for the return of reimbursable costs, with interest, under this subsection . . . .

On April 28, 2021, prior to execution of the XM Contract, BOR and FWA entered into a Cost Share and Contributed Funds Agreement ("**Cost Share Agreement**"). The Cost Share Agreement is appended to the XM Contract. The Cost Share Agreement explicitly recognizes that the phrase "project beneficiaries" means the Friant Contractors—not FWA.[29] Accordingly, 50-year repayment contracts with the Friant Contractors are a legally necessary component of any reimbursement to BOR.

It is noteworthy that, in connection with the Cost Share Agreement in 2021, BOR and FWA *did obtain written MOUs with the actual project beneficiaries.* However, for reasons unknown to TBID, no 50-year repayment contracts with project beneficiaries were negotiated, as required by Section 510b(b).

However, FWA's Board Action simply ignores the basic statutory requirement that BOR must negotiate 50-year repayment contracts with project beneficiaries, rejects the MOUs between BOR, FWA, and the project beneficiaries, and makes not even the slightest pretense of compliance. Instead, without any intelligible analysis, FWA simply claims authority to impose the "charges" under Article 12 of the Transfer Agreement. Had BOR desired to levy those charges for the purposes of reimbursement, Section 510b would have mandated that BOR *negotiate those terms with the project beneficiaries*. As BOR itself

[28] 43 U.S.C. § 510b(b).

[29] Cost Share Agreement, Article VI.C. For the purpose of funding and extended repayment of extraordinary maintenance costs, "project beneficiary" is defined as "[a]n entity that receives benefits from a Reclamation project and is responsible for repayment of reimbursable costs on reserved or transferred works." (PEC 05-03, ¶ 11.E.)

could not simply "allocate" costs to project beneficiaries without first negotiating repayment contracts with the project beneficiaries to be charged, FWA certainly also lacks the authority to do so.

C. FWA's Board Action Violates BOR's Directives and Standards for Repayment of Extraordinary Maintenance Costs.

The Reclamation Manual's Directives and Standards for Funding and Extended Repayment of Extraordinary Maintenance Cost, PEC 05-03, provides as follows at Paragraph 8(a) (*emphasis added*):

> Reclamation will allocate costs for XM and EXM work **in accordance with the allocation of OM&R costs for the project or facility that is in effect when it incurs costs or advances funds for XM work** . . . .[30]

As noted above, although there was no execution of 50-year repayment contracts with FKC project beneficiaries in 2021, there was, at least, a process of negotiating written memorandums of understanding ("**MOUs**") between FWA and certain project beneficiaries, including TBID, PID, and SID. Through the MOUs, project beneficiaries agreed to a specific cost share allocation, equal to a portion of the $50 million set forth in section 2, paragraph A of FWA Resolution No. 2021-02.[31] The methodology for determining that cost share allocation was the allocation in effect at the time FWA incurred and BOR advanced the costs for the MCRRP; *i.e.*, the invalid methodology set forth in the XM Contract. Accordingly, that allocation, insofar as it was lawful in the first place, determines the relative cost share responsibilities of the parties. The Board Action violates the MOUs because (1) it purports to unilaterally increase cost share allocations of the project beneficiaries and (2) rely on a new Methodology altogether.

Despite this fact, on August 12, 2024, FWA determined that it possessed the authority to unilaterally alter the relative responsibilities of the project beneficiaries and the MOUs with project beneficiaries, even though FWA has no such authority.[32] Moreover, the Board Action also violates BOR's regulations for cost allocation as described in Section V below. Even more problematic are FWA's representative's statements at the August 12, 2024 meeting: **FWA's lead executive, Jason Phillips, represented to the Friant Contractors that BOR had sanctioned and approved the "revised allocation," which FWA purported to impose upon the Districts.**

Moreover, as discussed in Section IV below, FWA's conduct is offensive to fundamental constitutional protections, in addition to the contractual, statutory, and regulatory protections discussed above.

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[30] PEC 05-03 (703) 07/10/2024.
[31] *Memorandum of Understanding Regarding the Project OM&R Budget and the Cost Share and Contributed Funds Agreement with the Bureau of Reclamation for the Friant-Kern Canal Middle Reach Capacity Correction Project* between FWA and TBID, section 1.
[32] Section IV below discusses FWA's egregious and highly improper conduct.

IV.
FWA IS ATTEMPTING TO EXTORT THE DISTRICTS IN VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

FWA's action was made in response to a judicial ruling in pending litigation in California, *Friant Water Authority et al. v. Eastern Tule Groundwater Sustainability Agency*, Tulare County Superior Court Case No. VCU306343. For several years, FWA has falsely claimed that a contract between FWA and the ETGSA requires that ETGSA pay FWA a "lump sum" in the amount of $220,000,000.00. This claim is incorrect, as the terms of that contract make clear.

On July 2, 2024, the Tulare County Superior Court made specific findings concerning FWA's claim. Specifically, the Court found that FWA's argument was deceptive, and expressly found that the contract with ETGSA "does not state an obligation to collect an unconditional minimum of $220,000,000.00 . . . ." FWA reacted to this ruling as if there had been some type of surprise change in circumstances. However, the only change occasioned by the Court's ruling was that FWA could no longer rely upon the fiction it had created regarding the ETGSA contract. The contract never contained the terms represented by FWA, and any person willing to read the contract can confirm that conclusion.

In response to the Court's ruling, FWA orchestrated the August 12, 2024 action described in this letter. Incredibly, at the August 12, 2024 meeting, FWA staff did not even present the pretense of compliance with the numerous laws and regulations discussed above. The "reason" for FWA's unlawful conduct, according to FWA at that time, was to cause the Districts—who have voting representatives on *ETGSA's* governing board—to "do something" to provide more money to FWA, in light of the Court's ruling on FWA's own deceptive conduct. The fact that FWA openly admitted to this purpose shows that the action was not based upon any legitimate legal considerations. Moreover, FWA's brazen approach toward the Districts is properly characterized as civil extortion under California law.[33]

An equal protection cause of action exists when specific persons or entities are "singled out" in an irrational and arbitrary manner.[34] **TBID's landowners rely almost exclusively upon surface water and use only minimal groundwater.** PID and SID operate under conjunctive use, primarily relying on surface water. Nevertheless, FWA has purported to "order" TBID to pay millions of dollars in excess of TBID's obligation in reality. The only reason for including TBID in FWA's unlawful attempt at allocation was to *create greater pressure upon TBID as a voting member of ETGSA*. In other words, the only basis for including TBID among the "punished" members was to optimize the extortionary effect of FWA's unlawful conduct.

[33] *See* Flatley v. Mauro (2006) 39 Cal.4th 299, 326-333.
[34] *See* Village of Willowbrook v. Olech (2000) 528 U.S. 562, 564 ("[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." (citation omitted)).

While the Board Action was taking place, text messages between FWA administrative staff, Johnny Amaral, and representatives of other FWA members shows that FWA staff was **fully cognizant** of the fact that minimal groundwater is pumped in TBID, and, therefore, *cannot*, as a matter of both analytic logic and very simple physics, be responsible for overextraction of groundwater.[35]

In light of the foregoing, TBID is skeptical that, as FWA has reported, BOR has joined or will join FWA in this effort to circumvent federal law concerning finance of XM projects. TBID is also highly doubtful that BOR would repudiate the protections it agreed upon in Article 29(a) of the 9(d) contracts. However, BOR would be a necessary party to any federal proceeding concerning the validity of FWA's claims to the authority discussed in this letter.

V.
FWA'S CONDUCT IS WHOLLY CONTRARY TO BOR'S OWN POLICES CONCERNING THE MODIFICATION OF OM&R CHANGES.

As referenced above, pursuant to BOR's own policy, MRCCP XM costs *are not* regular OM&R costs. As such, FWA's attempt to characterize MRCCP construction costs as "OM&R" is sorely misguided.

However, even if that characterization is correct, each of the Friant Contractors—including the Districts—should reasonably expect that FWA follow BOR's Reclamation Manual Policy, *Allocation of Operation, Maintenance, and Replacement Costs* ("**PEC P07**"). But FWA failed to do so. PEC P07 applies "to all future changes in the allocation of project OM&R costs on both reserved and transferred Reclamation project facilities where such allocation is not otherwise specifically addressed in law or in a contract executed prior to the release of this Policy."[36]

Paragraph 8 of PEC P07 sets forth the requirements for the "initiation of changes to present OM&R allocations."[37] Subparagraph A of paragraph 8 sets forth prerequisites for the undertaking of "studies to analyze current benefits for the purpose of modifying the allocation of joint MO&R costs:"[38]

> (1) A determination by the regional director that the study is warranted and that the entity or entities responsible for repayment of the reimbursable joint OM&R costs have been given ample opportunities for consultation and collaboration in the decision to perform the study; and

[35] *See* Herr Firm Letter (Sept. 18, 2924).
[36] PEC P07, ¶ 2. As discussed above, the repayment of statutory XM costs is subject to the *statutory* requirement of a contract between BOR and the project beneficiaries. Nonetheless, discussion of the norms governing OM&R modifications appears appropriate in this instance, given the Board Action's degree of deviation from BOR policy.
[37] *Id*., ¶ 8.
[38] *Id*., ¶ 8.A.

(2) Payment in advance by the appropriate entity or entities of Reclamation's estimated costs of conducting the benefits study. The payment responsibility will be in accordance with the allocation in effect at the time of the decision to conduct the study.

Moreover, paragraph 8, subparagraph B requires that *all 3 of the following conditions* be met prior to modification of current OM&R charges:[39]

(1) Completion of a current benefits study conducted at no less than an appraisal level and no more than 5 years prior to the proposed modification;

(2) A decision memorandum signed by the regional director detailing the manner in which the OM&R allocation will be modified, the basis for the modification, and the extent to which the entity or entities responsible for payment of the reimbursable OM&R costs have been given opportunities to collaborate with Reclamation in the development of the study and the propose modification to the cost allocation; and

(3) Notification of the entity or entities responsible for payment of the reimbursable OM&R costs of the intent to adopt the propose modification . . . .

FWA's Board Action is violative of portions or all of each component of subparagraphs A and B of paragraph 8 of PEC P07 enumerated above.

First, FWA failed to give entities responsible for the reimbursable joint OM&R costs (e.g., Project Beneficiaries) ample opportunities for consultation and collaboration in the decision of whether to perform a study analyzing current benefits for the purpose of modifying the allocation of the OM&R costs.[40]

Second, FWA failed to collect payment in advance from project beneficiaries for the costs of conducting FWA's purported benefits study.[41]

Third, FWA failed to complete a current benefits study (a) at least at an appraisal level and (b) at least five years prior to the proposed modification to the current OM&R allocations.[42]

Fourth, FWA failed to include in a decision memorandum an explanation of how FWA gave project beneficiaries an opportunity to collaborate with FWA in the development of the study and proposed modification concerning the cost allocation.[43]

Fifth, FWA failed to provide notification to project beneficiaries of FWA's intent to adopt modifications to OM&R allocations as described in a decision memorandum.[44]

[39] *Id*., ¶ 8.B.
[40] *Id*., ¶ 8.A.1.
[41] *Id*., ¶ 8.A.2.
[42] *Id*., ¶ 8.B.1.
[43] *Id*., ¶ 8.B.2.
[44] *Id*., ¶ 8.B.3.

TBID looks forward to working with BOR in a manner that affords proper consideration to the considerable statutory and regulatory guidance at the parties' disposal.

VI.
DEMAND FOR DISPUTE RESOLUTION.

As a result of the forgoing, TBID hereby provides notice of its dispute of FWA's proposed Cost Recovery Methodology for the MRCCP. The notice is made pursuant to:

1) Article 34 of the Contract Between the United States and Terra Bella Irrigation District Providing for Project Water Service from Friant Division and for Facilities Repayment, Contract No. I75r-2446D;

2) Section 10 of the Agreement Between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant-Kern Canal and Associated Works, Contract No. 8-07-20-X0356-X;

3) Article 8 of the Contract Between the United States of America and Friant Water Authority for the Repayment of Extraordinary Maintenance Costs for the Friant-Kern Canal Middle Reach Capacity Correction Project, Contract No. 21-WC-20-5855; and

4) the Cost Share Agreement and Contributed Funds Agreement Between the Friant Water Authority and the United States of America for the Friant-Kern Canal Middle Reach Capacity Correction Project, Contract No. 21-WC-20-5856.

VII.
CONCLUSION.

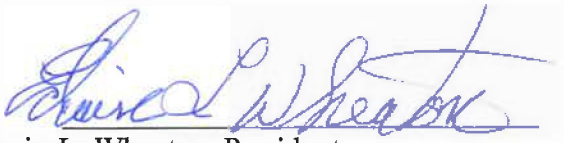
FWA's Board Action is in violation of numerous laws and regulations as described above. In addition, the revisions to the Methodology is troubling on a policy level. To allow a non-federal operating entity to adjust the Methodology after the advancement of funds and to the detriment of a small subset of contractors is not sound policy and would result in devasting impacts to the overall project. The purpose of Reclamation Law, Rules and Regulations, Policies, and Standards and Directives is to avoid this exact result.

It is imperative that BOR (1) take immediate corrective measures to enforce its own regulations concerning the Methodology, and (2) clarify that it was not involved in FWA's unlawful attempt to circumvent basic statutory and regulatory requirements in a clear attempt to exact severe financial harm upon the Districts. BOR must strongly condemn FWA's conduct, if only to effectively enforce BOR's own regulations.

TBID opposes the "Updated Cost Recovery Methodology" as reported at FWA's August 12, 2024, board meeting.

Very truly yours,

TERRA BELLA IRRIGATION DISTRICT



Edwin L. Wheaton, President

Dated: September 26, 2024

PORTERVILLE IRRIGATION DISTRICT

September 25, 2024

VIA EMAIL

Jason R. Phillips
Chief Executive Officer
Friant Water Authority
854 N. Harvard Ave
Lindsay, CA 93247

Re: Objection to Proposed FWA MRCCP Cost Recovery Methodology

Dear Mr. Phillips,

Porterville Irrigation District vehemently objects to the Cost Share Methodology for Advanced Costs (Methodology) for Phase 1 of the Friant-Kern Canal Middle Reach Capacity Correction Project (MRCCP) proposed by the Friant Water Authority (FWA) at its August 12, 2024 Special Meeting and demands that FWA rescind the actions it took on August 12. The proposed Methodology would unlawfully obligate four FWA contractors within the boundary of Eastern Tule Groundwater Sustainability Agency—Porterville Irrigation District, Saucelito Irrigation District, Tea Pot Dome Water District and Terra Bella Irrigation District—to pay between $95 million dollars and $200 million dollars for Phases 1 and 2 of the MRCCP. The Methodology would not impose payment obligations on other FWA contractors who benefit from the Friant-Kern Canal and MRCCP.

FWA's action on August 12, 2024 is either void or voidable due to severe serial meeting violations of the Brown Act committed prior to and during the meeting by FWA staff and directors. FWA staff has conducted, and continues to conduct, serial meetings in an effort to obtain and coerce preferred votes of the FWA Board of Directors. Porterville Irrigation District fully supports the September 18, 2024, letter to FWA from Herr Pedersen Berglund Attorneys at Law LLP regarding FWA's serial violations of the Brown Act. Porterville Irrigation District will take legal action if FWA's violations are not cured.

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Website: https://portervilleid.org

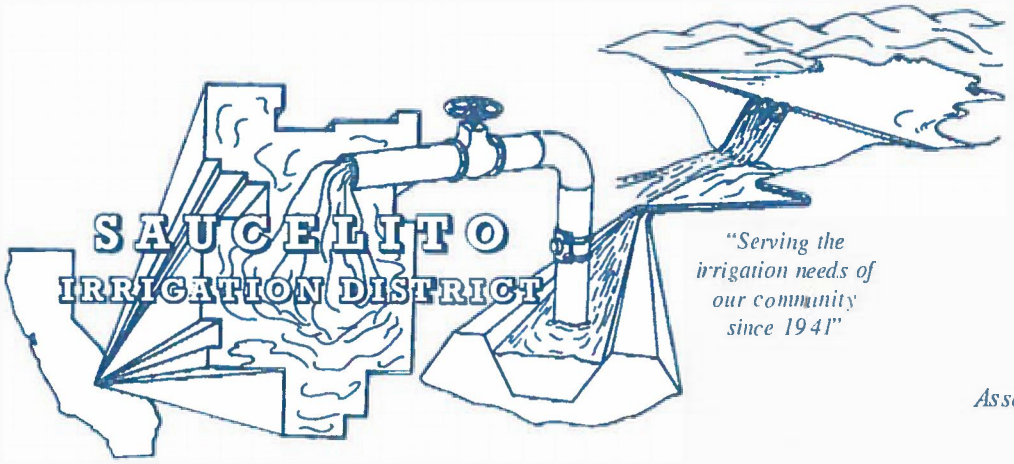
The proposed Methodology is unlawful and must be rejected. Porterville Irrigation District supports and adopts the arguments and analysis presented in Terra Bella Irrigation District's September 25, 2024 letter to Reclamation that explains why the proposed Methodology (1) exceeds Reclamation's delegable cost recovery authority for extraordinary maintenance, (2) breaches multiple contracts, including the MRCCP Extraordinary Maintenance Repayment Contract, Cost Share Agreement, and Transfer Agreement entered into between Reclamation and FWA, and (3) violates basic constitutional and contractual protections afforded to the four districts.

Porterville Irrigation District demands that FWA rescind the proposed Methodology.

Porterville Irrigation District

By: Eric L Borba

Eric L. Borba, President



"Serving the irrigation needs of our community since 1941"

September 26, 2024

VIA EMAIL

Jason R. Phillips
Chief Executive Officer
Friant Water Authority
854 N. Harvard Ave
Lindsay, CA 93247

Re: Objection to FWA's Proposed MRCCP Cost Recovery Methodology

Dear Mr. Phillips:

Friant Water Authority's proposed Cost Share Methodology for Advanced Costs (hereafter, "Methodology") for Phase 1 of the Friant-Kern Canal Middle Reach Capacity Correction Project (hereafter, "MRCCP") is (1) unlawful as explained in Terra Bella Irrigation District's letter dated September 26, 2024, (hereafter, "Demand Letter") to the Bureau of Reclamation (hereafter, "BOR"), and (2) voidable or void due to Brown Act violations involving serial meetings. Therefore, Saucelito Irrigation District (hereafter, "Saucelito ID") objects to the Methodology and demands FWA rescind the actions it took at the August 12, 2024 Special Meeting (hereafter, "Board Action").

First, the Methodology unlawfully seeks to force special districts within the Eastern Tule Groundwater Sustainability Agency, including Saucelito ID, as well as Terra Bella Irrigation District, Porterville Irrigation District, and Tea Pot Dome Water District, to pay between $95 million dollars and $200 million dollars for Phases 1 and 2 of the MRCCP. Meanwhile, the Methodology releases all other beneficiaries of the Friant-Kern Canal from any such obligation.

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Second, the Board Action is void or voidable because FWA staff and directors committed severe serial meeting violations of the Brown Act before and during the Special Meeting. Moreover, in blatant disregard for the Brown Act, FWA staff continues to conduct serial meetings in order to influence FWA Board of Directors' support for the Methodology. The letter to FWA from Herr Pedersen Berglund Attorneys at Law LLP dated September 18, 2024, receives Saucelito ID's full support. FWA should anticipate Saucelito ID commencing legal action based upon the Brown Act violations unless FWA takes corrective action.

Saucelito ID supports and adopts the position of the Terra Bella Irrigation District as stated in the Demand Letter, which explains why the proposed Methodology (1) exceeds Reclamation's delegable authority concerning cost recovery methodologies for extraordinary maintenance, (2) breaches multiple contracts, including the MRCCP Extraordinary Maintenance Repayment Contract, Cost Share Agreement, and Transfer Agreement entered into between Reclamation and FWA, and (3) violates basic constitutional and contractual rights of the districts.

FWA must rescind the proposed Methodology.

Saucelito Irrigation District

By: _____
Steven G. Kisling, President

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