

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
DECEMBER 6, 2016**

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION TO APPROVE FUNDING FOR THE KETTLEMAN CITY COMMUNITY SERVICES DISTRICT (DISTRICT) SURFACE WATER TREATMENT PLANT PROJECT (PROJECT), DRINKING WATER STATE REVOLVING FUND (DWSRF) NO. 1610009-005C AND PROPOSITION 84 PROJECT NO. P84C-1610009-010C.

DISCUSSION

The District is a community water system that serves approximately 1,500 people through 354 service connections in Kettleman City. Kettleman City is a severely disadvantaged community with the median household income of \$21,000. In 2009, the District received a compliance order for exceeding maximum contaminant level for Arsenic. The District has since been working closely with the State Water Board and the County of Kings (County) on a solution to remediate arsenic issue.

On June 30, 2010, the State Water Resources Control Board (State Water Board) (California Department of Public Health at the time) executed a Funding Agreement for a Planning Project in the amount of \$225,676 to the District to evaluate alternatives for a cost-effective long-term solution to reduce arsenic in drinking water. The scope of the planning also included the preparation of plans and specifications for the selected construction project, and necessary environmental documents to meet California Environmental Quality Act (CEQA) as well as federal cross-cutting requirements.

The alternatives considered in the Planning Project were to 1) drill a new well and install arsenic treatment, 2) consolidate with the City of Avenal (City), or 3) construct a surface water treatment plant using State Water Project (SWP) from California Aqueduct. Although groundwater would provide the lowest capital and operations and maintenance (O&M) costs, groundwater was dismissed as a viable alternative because the District has been experiencing declined groundwater supply and the community is wary of the quality of groundwater. Consolidation with the City was also dismissed as a viable alternative due to the 8-mile transmission pipeline and the City would have to upgrade its water treatment plant. That left construction of a surface water treatment plant to be the most cost-effective long-term solution to bring safe drinking water to Kettleman City residences. At the end of this Planning Project, the District could only produce 70 percent plans and specifications for an unknown surface water treatment type. The Division of Drinking Water (DDW) required the District to conduct a pilot study to determine the type of surface water treatment plant prior to finalizing the plans and specifications.

On August 28, 2012, the State Water Board executed a Second Funding Agreement for a Planning Project in the amount of \$756,176 to the District to conduct a pilot study, prepare environmental documents and final plans and specifications for the construction project.

Through the pilot study, the selected project is a surface water treatment plant that will use membrane filtration. The proposed capacity of the treatment plant is 900 gallons per minute or 1.3 million gallons per day. Raw water would be pre-treated with coagulants before entering the clarifier, then filtration and chlorination prior to leaving the treatment plant. The District anticipates construction to start in April 2017 and complete in December 2018.

Although construction of a surface water treatment plant is considered to be the most cost-effective long-term solution, the DDW has concerns on the availability of surface water to the District to operate the surface water treatment plant. The District was granted in an agreement by the County the right to utilize 900 acre-feet of SWP. This right is subject to a prorated reduction on an annual basis due to shortage of SWP. The water allocation through the agreement with the County during the shortage is unknown and the District does not have any backup of surface water supply. This agreement also stipulates that the District will assume all of the obligations imposed on the County by the Department of Water Resources.

Additionally, the Division of Financial Assistance (Division) has concerns regarding the District's financial capability. It is difficult for this severely disadvantaged community to afford a rate increase that typically comes with improvement projects. To help offset significant rate increases imposed on residential connections due to the O&M cost associated with this Project, the County has entered into an agreement with the District to contribute tipping fees collected from Chemical Waste Management to a Trust Fund created solely for the District's O&M cost. The District depends on this Trust Fund to cover any shortages of revenue for the O&M cost of the treatment plant. The District approved Prop. 218 water rate increases in March 2015 and implemented the first increase in July 2015 with an average residential rate of \$48.59, an increase from \$44.84. The current average residential rate is \$49.49 and the average rate of \$56.67 is anticipated when the water treatment plant is online in 2019. This proposed water rate increases already factored in the availability of this Trust Fund. In the event that Chemical Waste Management ceases to operate the hazardous waste facility, the District will lack sufficient revenue to sustain operations.

On February 6, 2015, State Water Board staff initiated informal consultation with the United States Department of the Interior, Fish and Wildlife Service (USFWS) for federal Endangered Species Act. On October 26, 2016, the USFWS issued a letter of concurrence with the determination that the project "may affect, but is not likely to adversely affect the San Joaquin kit fox, the Tipton kangaroo rat, the blunt-nosed leopard lizard, the San Joaquin woolly threads, and the California jewel flower" provided that the District implements all conservation measures listed in the USFWS concurrence letter of October 26, 2016.

The District prepared and adopted the Mitigated Negative Declaration (MND) with a Mitigated Measures Reporting Plan (MMRP) in 2011. The District has complied with the CEQA and its guidelines. In August 2016, the District prepared an Addendum to the MND to clarify the project description and present the results from the additional biological studies that support the CEQA determination in 2011. The Addendum was circulated through the Governor's Office of Planning and Research (OPR) on October 10, 2016 for comments and closed on November 7, 2016. The District certified the Addendum and re-approved the Project on November 15, 2016. The District filed a Notice of Determination with the Kings County Clerk on November 16, 2016, and OPR on November 16, 2016.

At the August 31, 2016 public meeting that was held by the State Water Board in conjunction with the Kettleman City Elementary School District, Greenaction for Health & Environmental Justice (Greenaction) along with El Pueblo/People for Clean Air & Water of Kettleman City demanded that the State of California (State) accelerate the funding process. The groups

wanted to know the reasons why it took so long for the State to assist with the Kettleman City community's ability to access safe drinking water. They also wanted to know why the State did not review the environmental documents, as it was produced a few years ago. Staff explained the federal cross-cutting requirements and the status of the review process.

For the State Water Board's consideration, Division staff recommends approving \$3,000,000 in DWSRF principal forgiveness and \$4,500,000 in Proposition 84 grant to the District for construction of the Project. The construction of the surface water treatment plant is critical to the District to serve safe and reliable drinking water to Kettleman City. The District will also receive \$1,900,000 from the United States Department of Agriculture Rural Development (USDA) for a fully funded project with a total project cost of \$9,400,000.

ENVIRONMENTAL IMPACT

State Water Board staff conducted a CEQA-Plus environmental review, reviewed the environmental documents, and determined that the Project will not result in any potential significant adverse water quality impacts.

The District is the lead agency under CEQA for the Arsenic Exceedance – Remediation Project, Surface Water Treatment Plant and Storage Tanks Project (Project; 1610009-005C), and has complied with CEQA and CEQA Guidelines. The District prepared a MND in 2011. This document was noticed to the public and distributed through the OPR (State Clearinghouse (SCH) No. 2007121098) on October 24, 2011 through November 14, 2011. The District received four (4) comments and considered them when certifying the MND with a MMRP on December 20, 2011. Following adoption, the District filed a Notice of Determination (NOD) with the County on July 6, 2012 and with OPR on July 6, 2012. In 2016, the District prepared an Addendum to the Project to clarify the project description (for example, the storage tanks are no longer part of the project description) and to present the results from additional biological studies that support the CEQA determinations made in 2011. The notice of availability of the Addendum was posted by the County and OPR on October 10, 2016. The Addendum was noticed to the public and circulated through OPR (SCH No. 2007121098), as required by State Revolving Fund guidance. The District did not receive comment letters. The District certified the Addendum and MMRP, and re-approved the Project on November 15, 2016. The District filed a NOD with the County Clerk on November 16, 2016, and OPR on November 16, 2016.

State Water Board staff reviewed the biological documents submitted by the District and sought Endangered Species Act (ESA), Section 7, concurrence from the USFWS on February 6, 2015. Originally, State Water Board staff proposed that the Project "may affect, but is not likely to adversely affect" San Joaquin kit fox. The USFWS staff had concerns regarding other species known to inhabit the area. These federally-listed, threatened and/or endangered species are: Tipton kangaroo rat, blunt-nosed leopard lizard, San Joaquin woolly threads, and California jewel flower. After discussion with the USFWS, the District, and Chevron (who is providing the easements for this project), it was determined that a new habitat assessment and plant survey should be conducted and that the results of the habitat assessment would inform whether protocol-level surveys would be conducted for the kangaroo rat and the blunt-nosed leopard lizard.

The Plant Survey was conducted according to protocol and had negative findings. The Habitat Assessment was conducted and reported the presence of habitat for kangaroo rat and blunt-nosed leopard lizard. This triggered the need to conduct protocol-level surveys for the kangaroo rat and the blunt-nosed leopard lizard. Both the kangaroo rat survey and the blunt-nosed leopard lizard survey had negative findings.

Following the reporting of these results, the USFWS concurred with a revised State Water Board staff finding of “may affect, but is not likely to adversely affect the San Joaquin kit fox, the Tipton kangaroo rat, the blunt-nosed leopard lizard, the San Joaquin woolly threads, and the California jewel flower” on October 26, 2016. Conservation measures were provided by the USFWS for the Project. The District agreed to implement these conservation measures.

Additionally, for this Project, State Water Board staff reviewed cultural resources documents developed to comply with the National Historic Preservation Act (NHPA), Section 106 and requested concurrence on the determination of “no historic property affected” from the State Historic Preservation Officer (SHPO) on May 4, 2012. On October 8, 2012, State Water Board staff received concurrence on the determination as well as for the recommendation of archaeological monitoring. In 2016, a new search of the California Historic Resources Information System database was conducted to determine if any new resources had been added. The results were negative. In addition, a new outreach to Native American Tribes was conducted. During this outreach, the Santa Rosa Rancheria Tachi-Yokut Tribe (Tribe) requested to have a tribal monitor for the Project. These new activities on the Project were communicated to SHPO staff on September 20, 2016 with additional information on October 6, 2016. The SHPO in the letter dated October 18, 2016 offered the following comments and modified findings:

- No objections to the area of potential effects;
- No objections to use of archaeological monitors during the proposed undertaking;
- No objections to future involvement by the Tribe in this proposed undertaking;
- No objection to the State Water Board considering the aqueduct to be eligible for listing on the National Register for Historic Places;
- Believes that the proposed undertaking will have an effect on the aqueduct, but that effect will not be adverse;
- Because the aqueduct is located within the Area of Potential Affect (APE), a finding of No Adverse Effect is more appropriate for this proposed undertaking; and
- No objection to a finding of No Adverse Effect for the proposed undertaking.

The State Water Board staff will file a NOD for the Project with the OPR following funding approval.

FISCAL IMPACT

The total cost of the construction project is \$9,400,000, which will be funded through the following sources:

SRF Principal Forgiveness:	\$3,000,000
Prop 84 Grant:	\$4,500,000
USDA Rural Development:	\$1,900,000

The District’s median household income (MHI) is \$21,000, approximately 34% of the California Statewide MHI, with a population of 1,500. The District is considered a small, severely-disadvantaged community.

The comparative revenue and expense analysis of the Water Enterprise Fund for FY 12/13, 13/14, 14/15, and 15/16, and three years’ Budget Projections are summarized below.

Projections for 2019 were included due to 2019 being the expected year that the new Water Treatment Plant will be in operation. The District's approved Prop. 218 rate increases in March 2015 and implemented the first increase in July 2015 with an average residential rate of \$48.59, an increase from \$44.84. However, this year the District decided to not impose a significant rate increase as projected in Prop. 218 due to the water treatment plant have not been constructed. The District instead approved a smaller increase to just account for the current O&M. The current average residential rate is \$49.49. The District anticipates resuming the rate increases schedule as early as 2019 when the water treatment plant is expected to be online. At that time, the average residential water rate is expected to be \$56.67.

The District has no outstanding long-term debt. In April 2015, the District received a monetary donation from Chemical Waste Management to pay-off the remaining balance of the District's USDA loan. The donation is reflected in the 2015 Non-Operating Revenues, and the pay-off is reflected in the 2015 Outstanding Debt Service.

The Water Enterprise Fund ending cash balance for FY 14/15 was \$754,954.

Fiscal Year	Audited Financials 2013	Audited Financials 2014	Audited Financials 2015	Draft Actuals 2016	Projections 2017	Projections 2018	Projections 2019
Operating Revenues	\$347,106	\$385,967	\$460,293	\$335,821	\$342,329	\$344,000	\$538,239
Non-Operating Revenues	\$53,431	\$49,977	\$578,478	\$30,579	\$27,521	\$27,500	\$0
Operating Expenses	\$353,117	\$410,057	\$510,492	\$346,641	\$356,350	\$363,350	\$507,372
Non-Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Revenues	\$47,420	\$25,887	\$528,279	\$19,759	\$13,500	\$8,150	\$30,867
Outstanding Debt Service	\$50,065	\$49,657	\$418,992	\$0	\$0	\$0	\$0
Proposed Debt Service	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service	\$50,065	\$49,657	\$418,992	\$0	\$0	\$0	\$0
Debt Coverage Ratio	0.95	0.52	1.26	1.06	1.04	1.02	1.06

Per the 2014 Agreement (Resolution #14-029) (Agreement) between the County and the District, two interest-bearing Trust Funds have been set up by and are maintained by the County on behalf of the District. These Trust Funds were funded through Chemical Waste Management.

Fund #7018 (KCTPR1) was established through a one-time deposit of \$90,000 to provide a way to get water if there is a catastrophic outage of the California Aqueduct that would prevent water being delivered to the District. This fund has a current balance of \$91,719.84.

Fund #7019 (KCTPR2) was established to offset O&M Costs above the O&M Baseline resulting from the Project. The Agreement states that Chemical Waste Management will deposit annually, over a 20-year period, up to \$150,000 of its hazardous waste tax revenues into Fund

#7019 (waste tax revenues source permitting). This annual contribution will be recalculated every 5 years. This fund has a current balance of \$504,744.08.

The Agreement further states that the Trust Funds shall continue in existence for 25 years from the date of Project Completion.

Financial Risk:

The District is depending on the funding from Chemical Waste Management to cover any shortages of revenue for O&M of the project. Given that the Agreement between the County and Kettleman City states that Chemical Waste Management will deposit up to \$150,000 annually into Fund #7019, a minimum deposit amount has not been agreed upon; therefore, the reliability of this O&M supplemental funding source cannot be determined. Furthermore, in the event that Chemical Waste Management ceases to operate the hazardous waste facility, the recipient will lack sufficient revenue to sustain the project O&M without raising rates or seeking additional subsidization for the project.

REGIONAL BOARD IMPACT

None.

POLICY ISSUE

Should the State Water Board approve the resolution to:

1. Authorize the Deputy Director of the Division to execute the DWRSF Financing Agreement and Proposition 84 grant with the District for the construction of the Project.
2. Condition this approval, as determined by the District environmental reviews, with the following:
 - The District shall implement the mitigation measures identified in the IS/MND (SCH 2007121098) prepared for the project. These mitigation measures are consolidated in a MMRP adopted by the District Board on 12/20/2011.
 - The District shall implement the mitigation measures recommended in the Archaeological Report Survey (Negative Archaeological Survey Report for the Kettleman City Water Treatment Project; Kettleman City, Kings County, California; May 2012) and supported by the SHPO (letters dated October 8, 2012 and October 18, 2016). These include:
 - In all subsurface disturbances, monitoring by a qualified archaeologist to identify potentially significant archaeological resources;
 - If prehistoric or historic-period materials are encountered, work is to stop in the immediate vicinity until a qualified archaeologist can evaluate the finds and make recommendations; and
 - If human remains are discovered, work shall halt and specific protocol, guidelines, and channels of communication (as outlined by the Native American Heritage Commission and in accordance with Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code) shall be followed. Should human remains be encountered during ground disturbing activities, the County Coroner shall be notified.
 - The District shall allow tribal monitoring by the Tribe.

- The District shall implement the USFWS revised conservation measures for the San Joaquin kit fox, the Tipton Kangaroo Rat, and the blunt-nosed leopard lizard. These conservation measures are presented in the October 26, 2016 letter from Jennifer Norris (USFWS) to Carol E. Atkins (State Water Board)
3. Condition this approval, as determined by the District's credit reviews, with the following:
 - The District shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover O&M costs.
 4. Condition this approval on the District submitting a detailed operations plan for the treatment plant and the permit amendment application to the DDW, Visalia District Office.
 5. Condition this approval on the District completing the Technical, Managerial and Financial Assessment prior to completion of the Project.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016 -

TO APPROVE FUNDING FOR THE KETTLEMAN CITY COMMUNITY SERVICES DISTRICT (DISTRICT) SURFACE WATER TREATMENT PLANT PROJECT (PROJECT), DRINKING WATER STATE REVOLVING FUND (DWSRF) NO. 1610009-005C AND PROPOSITION 84 NO. P84C-1610009-010C

WHEREAS:

1. The State Water Resources Control Board (State Water Board) implements the DWSRF and Proposition 84 funds as successor to California Department of Public Health per Health and Safety Code Section 116271;
2. The Division of Financial Assistance implements the DWSRF pursuant to the DWSRF Policy and the DWSRF Intended Use Plan;
3. The District is a community water system that serves approximately 1,500 people through 354 service connections in Kettleman City. Kettleman City is a severely disadvantaged community with the median household income less than \$21,000;
4. On January 23, 2009, the Division of Drinking Water (DDW) issued a Compliance Order for violation of the arsenic maximum contaminant level to the District;
5. The selected construction Project is to construct a surface water treatment plant using membrane filtration with the water intake from the State Water Project;
6. The total cost of the Project is estimated at \$9,400,000;
7. The District intends to finance the Project through grant funding from the State Water Board and the United States Department of Agriculture Rural Development (USDA);
8. Kings County has established two secondary reserve funds for operations and maintenance;
9. The District is the lead agency under the California Environmental Quality Act (CEQA) for the Project. The District prepared a Mitigated Negative Declaration (MND) titled "Kettleman City Water Treatment Plant and Commercial Water Storage Tanks Project," which was circulated through the State Clearinghouse (SCH)(SCH #2007121098) for review and comment from October 24 through November 14, 2011. The District adopted the MND and Mitigation Monitoring and Report Program (MMRP) on December 20, 2011;
10. The Notice of Determination for the MND was filed with the Kings County Clerk's office and with the Office of Planning and Research (OPR), SCH on July 6, 2012;
11. The District prepared an Addendum to the MND (titled Addendum to the Initial Study/Mitigated Negative Declaration Kettleman City Water Treatment Plant and Commercial Water Storage Tanks Project), which was circulated through the SCH (SCH #2007121098) for review and comment, per DWSRF requirements;

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12. The District adopted the Addendum on November 15, 2016;
13. The Notice of Determination on the Addendum was filed with the County Clerk's office on November 16, 2016 and with the OPR, SCH on November 16, 2016;
14. The State Water Board has considered the MND and the Addendum for the Kettleman City Water Treatment Plant and Commercial Water Storage Tanks project, respectively, and finds that neither the MND nor the Addendum identifies any potentially significant effects of the Project related to water quality or hydrology. Accordingly, any impacts to water quality or hydrology associated with the Project will be less than significant.
15. On February 6, 2015, State Water Board staff initiated informal consultation with the United States Department of the Interior, Fish and Wildlife Service (USFWS) for the federal Endangered Species Act. On October 26, 2016, the USFWS issued a letter of concurrence with the determination that the Project "may affect, but is not likely to adversely affect the San Joaquin kit fox, the Tipton kangaroo rat, the blunt-nosed leopard lizard, the San Joaquin woolly threads, and the California jewel flower" provided that the District implements all conservation measures listed in the USFWS concurrence letter of October 26, 2016.
16. On September 20, 2016, State Water Board staff contacted the office of the State Historic Preservation Officer (SHPO) to submit a more recent search of the California Historic Resources Information Search as well as to present documentation for more recent outreach to Native American Tribes. The State Water Board initiated consultation under Section 106 of the National Historic Preservation Act with the SHPO on May 4, 2012. On October 8, 2012, SHPO concurred with the State Water Board's determination of "no historic properties affected" by the Project. Following review of the more recent information, the SHPO offered the following comments in the October 18, 2016, letter:
 - a. No objections to the area of potential effects;
 - b. No objections to use of archaeological monitors during the proposed undertaking;
 - c. No objections to future involvement by the Tribe in this proposed undertaking;
 - d. No objection to the State Water Board considering the aqueduct to be eligible for listing on the National Register for Historic Places;
 - e. Believes that the proposed undertaking will have an effect on the aqueduct, but that effect will not be adverse;
 - f. Because the aqueduct is located within the Area of Potential Affect (APE), a finding of No Adverse Effect is more appropriate for this proposed undertaking; and
 - g. No objection to a finding of No Adverse Effect for the proposed undertaking.
17. The environmental documents provided for this Project present an adequate disclosure of the environmental relationships of all water quality aspects of the project. Mitigation measures have been incorporated into the Project's design or implementation to reduce any potentially significant environmental impacts. The Project will not result in any significant adverse water quality impacts.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division of Financial Assistance to:

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- Execute a financing agreement in an amount not to exceed \$7,500,000 in principal forgiveness and grant funding to the District for this Project, and
 - Increase the financing agreement amount for good cause, subject to determination that such increase is consistent both with the financing limit determined by subsequent financial review and with the funding cap in this year's DWSRF Intended Use Plan
2. Conditions this approval, as determined by the District's environmental reviews, with the following:
- The District shall implement the mitigation measures identified in the IS/MND (SCH 2007121098) prepared for the Project. These mitigation measures are consolidated in a MMRP adopted by the District Board on December 20, 2011.
 - The District shall implement the mitigation measures recommended in the Archaeological Report Survey (Negative Archaeological Survey Report for the Kettleman City Water Treatment Project; Kettleman City, Kings County, California; May 2012) and supported by the SHPO (letters dated October 8, 2012 and October 18, 2016). These include:
 - In all subsurface disturbances, monitoring by a qualified archaeologist to identify potentially significant archaeological resources;
 - If prehistoric or historic-period materials are encountered, work is to stop in the immediate vicinity until a qualified archaeologist can evaluate the finds and make recommendations; and
 - If human remains are discovered, work shall halt and specific protocol, guidelines, and channels of communication (as outlined by the Native American Heritage Commission and in accordance with Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code) shall be followed. Should human remains be encountered during ground disturbing activities, the County Coroner shall be notified.
 - The District shall allow tribal monitoring by the Santa Rosa Rancheria Tachi-Yokut Tribe.
 - The District shall implement the USFWS revised conservation measures for the San Joaquin kit fox, the Tipton Kangaroo Rat, and the blunt-nosed leopard lizard. These conservation measures are presented in the October 26, 2016 letter from Jennifer Norris (USFWS) to Carol E. Atkins (State Water Board).
 - The District shall implement conditions in the Project Permit from DWR (DWR project name: Kettleman City Community Services District Turnout located at Milepost 173.12 of the California Aqueduct).
3. Conditions this approval, as determined by the District's financial reviews, with the following:
- The District shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operating and Maintenance costs.
4. Conditions this approval, as determined by the District's technical reviews, with the following:
- The District shall submit a detailed operations plan for the treatment plant and submit a permit amendment application to the DDW, Visalia District Office.

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- The District shall complete the Technical, Managerial and Financial Assessment to the satisfaction of the Division prior to completion of the Project.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 6, 2016.

Jeanine Townsend
Clerk to the Board