



This meeting is not subject to Brown Act noticing requirements. The agenda is subject to change.

Legislative Advocacy Committee Members:
David Potter, Chair
Robert S. Brower, Sr.
Andrew Clarke

Alternate:
David Pendergrass

Staff Contact
Dave Stoldt,
General Manager

After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda, they will be made available at 5 Harris Court, Building G, Monterey, CA during normal business hours. In addition, such documents may be posted on the District website at mpwmd.dst.ca.us. Documents distributed at the meeting will be made available in the same matter.

AGENDA
Legislative Advocacy Committee
Of the Monterey Peninsula Water Management District

Monday, December 12, 2016, 4:30 pm
District Conference Room, 5 Harris Court, Building G, Monterey, CA

Call to Order

Comments from Public

The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.

Action Items -- Public comment will be received on all Action Items

1. Adopt Minutes of March 18 and March 29, 2016 Committee Meetings
2. Develop Recommendation to the Board of Directors on Retention of Federal Legislative Consultant

Discussion Items -- Public comment will be received on all Discussion Items

3. Report from John Arriaga on Legislative Status and Tracking
4. Development of 2017 Legislative Platform
5. Update on State Water Bond
6. Discuss Status of Feinstein Rider to Water Resources Development Act
7. ACWA Washington DC Conference/Meet with Sacramento Legislators

Other Items

Set Next Meeting Date

Adjournment

Upon request, MPWMD will make a reasonable effort to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. MPWMD will also make a reasonable effort to provide translation services upon request. Please send a description of the requested materials and preferred alternative format or auxiliary aid or service by 5 PM on Thursday, December 8, 2016. Requests should be sent to the Board Secretary, MPWMD, P.O. Box 85, Monterey, CA, 93942. You may also fax your request to the Administrative Services Division at 831-644-9560, or call 831-658-5600

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LEGISLATIVE ADVOCACY COMMITTEE

ITEM: ACTION ITEM

1. ADOPT MINUTES OF MARCH 18 AND MARCH 29, 2016 COMMITTEE MEETINGS

Meeting Date: December 12, 2016

From: David J. Stoldt,
General Manager

Prepared By: Arlene Tavani

SUMMARY: Attached as **Exhibits 1-A and 1-B**, respectively, are draft minutes of the March 18 and March 29, 2016 Legislative Advocacy committee meetings.

RECOMMENDATION: The Committee should review the draft minutes and approve them by motion.

EXHIBITS:

1-A Draft Minutes of the March 18, 2016 Committee Meeting

1-B Draft Minutes of the March 29, 2016 Committee Meeting



EXHIBIT 1-A

DRAFT MINUTES **Legislative Advocacy Committee of the** **Monterey Peninsula Water Management District** *March 18, 2016*

Call to Order

The meeting was called to order at 4:05 pm in the MPWMD conference room.

- Committee members present:** David Potter, Chair
Robert S. Brower, Sr.
Andrew Clarke
- Staff members present:** David J. Stoldt, General Manager
Arlene Tavani, Executive Assistant
- District Counsel present:** David C. Laredo
- Consultant present:** John Arriaga, JEA and Associates
- Comments from the Public:** No comments.

Action Items

- 1. Adopt Minutes of December 14, 2015 Committee Meeting**
On a motion by Brower and second of Clarke, the minutes were approved on a vote of 3 – 0 by Brower, Clarke and Potter.
- 2. Consider Retention of Federal Legislative Consultant**
On a motion by Brower and second of Clarke, the committee recommended that staff distribute a request for proposals for retention of a legislative consultant, submit the proposals received for committee review, and then refer them to the Board of Directors for a final decision. The motion was approved unanimously on a vote of 3 – 0 by Brower, Clarke and Potter. No comments were directed to the committee during the public comment period on this item.

Presentations

- 3. Report on Legislative Status and Tracking from John Arriaga**
Arriaga reported that the deadline for introduction of new legislation was February 19, 2016. The Association of California Water Agencies was monitoring 220 bills. Arriaga had identified 22 bills of interest to the Water Management District, and following discussions with Stoldt, the list was reduced to 16. Arriaga and Stoldt reviewed the list of bills and responded to questions from the committee members. No comments were directed to the committee during the public comment period on this item.

Discussion Items

- 4. Review Draft 2016-17 Legislative Advocacy Plan**
Stoldt distributed the draft 2016-17 Legislative Advocacy Plan that was scheduled for Board review and adoption on April 18, 2016.

5. Report on February 2016 Trip to Washington DC

Stoldt distributed letters of support for the Pure Water Monterey Project received from Senator Diane Feinstein and Congressman Sam Farr. Receipt of these letters was in response to contacts made with legislators during the February 2016 trip to Washington DC. Stoldt noted that he also expects to receive a letter of support from Senator Barbara Boxer.

6. Update on State Water Bond

No discussion. Reviewed under agenda item 4.

Other Items: No other items were discussed.

Set Next Meeting Date

No follow-up meeting was scheduled.

Adjournment

The meeting was adjourned at 5:00 pm.

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EXHIBIT 1-B

DRAFT MINUTES **Legislative Advocacy Committee of the** **Monterey Peninsula Water Management District** *March 29, 2016*

Call to Order

The meeting was called to order at 10:00 am in the MPWMD conference room.

Committee members present: David Potter, Chair
Robert S. Brower, Sr.
David Pendergrass (Committee Alternate)

Committee members absent: Andrew Clarke

Staff members present: David J. Stoldt, General Manager
Arlene Tavani, Executive Assistant

District Counsel present: David C. Laredo

Comments from the Public: No comments.

Action Items

1. Review Legislative History of California State Model Water Efficient Landscape Ordinance and Consider Recommending Approval by Board of District Ordinance Implementing State Requirements

Brower offered a motion that was seconded by Potter to refer this issue for a second time to the Technical Advisory Committee (TAC). Staff should prepare for the TAC a list of the existing landscaping requirements, and the new requirements mandated by the state. If the jurisdictions support the Water Management District's effort to become the regional agency that _____ the ordinance and reports to the state on compliance, then each jurisdiction should submit a letter expressing support to the Board of Directors. The motion was approved on a vote of 3 – 0 by Brower, Potter and Pendergrass.

During receipt of public comment, Jeanne Byrne addressed the committee. She described the new regulations as “onerous” due to the cost to the applicant of developing landscaping and, in some cases, grading plans. Also the cost to the Water Management District staff to process the landscape plan application. She proposed that the Water Management District analyze the landscaping plan at no charge to the applicant. Byrne stated that if the jurisdictions preferred to adopt the landscaping regulations individually, there may be support for requesting that the State modify the landscaping ordinance.

Other Items: No other items were discussed.

Set Next Meeting Date

No follow-up meeting was scheduled.

Adjournment

The meeting was adjourned at 10:55 am.

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LEGISLATIVE ADVOCACY COMMITTEE

ITEM: ACTION ITEM

2. DEVELOP RECOMMENDATION TO THE BOARD OF DIRECTORS ON RETENTION OF FEDERAL LEGISLATIVE CONSULTANT

Meeting Date: December 12, 2016 **Budgeted:** N/A

From: David J. Stoldt **Program/
General Manager** **Line Item No.:** N/A

Prepared By: David J. Stoldt **Cost Estimate:**

General Counsel Approval: N/A
Committee Recommendation: N/A
CEQA Compliance: N/A

SUMMARY: At its April 18, 2016 meeting the District Board adopted the 2016-17 Legislative Advocacy Plan to establish District legislative and government affairs priorities for FY 2016-17. The first of six items with respect to the District's Federal strategy was to evaluate hiring a Washington DC consultant that offers a deep understanding of the federal budget, legislative process, funding opportunities, and regulatory setting. The consultant needs established relationships with both Congress and regulatory departments related to water, including but not limited to BLM, NOAA (NMFS), USBR, USDA, and EPA.

An amount of \$30,000 was included in the FY 2016-17 General Manager's professional services budget as a placeholder to represent approximately a half-year expenditure. This amount may be insufficient, based on statements of qualifications received.

On November 1, 2016 a Request for Qualifications (RFQ) was issued, with the following proposed scope:

Scope of work will include, but is not limited to:

- Identifying legislation or proposed regulatory changes that may impact the District.
- Consult with staff to develop positions on relevant legislation.
- Advocate the District's position on bills and matters of interest.
- Represent the District in meetings with staff, directors, or independently with congressional members and staff, administration officials, regulatory agencies.
- Coordinate federal outreach with District's State governmental outreach
- Identify funding opportunities and notify of timing, requirements, and advocate on behalf of District
- Direct contact with associations including ACWA, WateReuse, etc.
- Prepare materials for briefing – talking points, briefing books, letters, as necessary

- Coordinate with other water district lobbyists and organizations
- Maintain close relationships with Monterey legislative delegation
- Organize timely trips as needed, but at least once a year separate from ACWA trip.
- Provide similar services for the District’s project partner(s), as needed and at the direction of the District.
- Periodic reporting of activities

The full RFQ is attached as **Exhibit 2-A**.

The RFQ was sent to 3 firms: The Ferguson Group (Roger Gwinn), The Furman Group (Hal Furman), and Nossaman LLP (Brent Heberlee). All three firms responded. Their responses are summarized in the “DISCUSSION” section below. Each Committee member was provided a copy of each submittal in order to inform the Committee discussion and recommendation.

RECOMMENDATION: It is recommended that the Committee review the statements of qualifications and develop a recommendation of a consulting firm for the Board, at its December 12, 2016 meeting, to authorize the General Manager to enter into an agreement.

DISCUSSION: The respondents were told that their statements of qualifications would be evaluated with equal weight on 4 criteria as shown in the summary table below. The General Manager performed his evaluation shown below, but each of the Legislative Advocacy Committee members are asked to perform their own evaluation, to inform the Committee recommendation. Additionally, qualitative factors such as professional appearance of the submittal, overall quality of the submittal, consultant familiarity with the District, outside third-party references, and so on may be considered. Finally, the proposing firms’ cost proposals were considered.

Summary of General Manager’s Evaluation

Criteria	Nossaman	The Ferguson Group	The Furman Group
Experience - with municipalities, special districts, agency’s & other governmental entities	15	20	25
Experience - with specific federal agencies	15	20	20
Experience - with specific water-related issues	7	25	25
Personnel	10	20	15
Total Points	47	85	85

Qualitative Overview:

The submittals by The Ferguson Group and Nossaman were clearly more professional looking. Nossaman has a solid foundation on Monterey County issues and some knowledge of the District, but very limited water experience. The Ferguson Group has the strongest familiarity with the District, but the Furman Group did a very good job of researching District needs and activities. The Ferguson Group and The Furman Group clearly outpace Nossaman on water issues, but The Furman Group looks small compared to The Ferguson Group’s resources. All three firms were supported in conversation with a California water association governmental affairs representative, but references for The Ferguson Group were very strong from a General Manager of another California water agency with projects similar to Pure Water Monterey. The Furman Group references were also strong. No references for Nossaman were contacted because no water agency references were provided – however, the County of Monterey has been satisfied with Nossaman and Directors Potter and Brower had a very positive experience with them in February 2016 on a Washington DC visit. The District General Manager will have other qualitative factors that will be discussed with the Committee at its meeting.

Fees:

	Nossaman	The Ferguson Group	The Furman Group
Fee Proposal	\$60,000 (no hourly option)	\$96,000 (or hourly)	\$150,000 - \$180,000 (no hourly option)

Out-of pocket expenses billed at cost by all three respondents.

EXHIBIT

2-A Request for Qualifications – Federal Legislative and Agency Lobbyist

EXHIBIT 2-A



November 1, 2016

To Selected Recipients

Re: Request for Qualifications – Federal Legislative and Agency Lobbyist

Dear Sir or Madam:

The Monterey Peninsula Water Management District (District), is seeking a qualified Consultant to provide Federal Legislative and Agency Lobbyist services for the District's water supply activities on behalf of the Monterey Peninsula. You are invited to submit a Statement of Qualifications for such services.

In general, the selected consultant should offer a deep understanding of the federal budget, legislative process, funding opportunities, and regulatory setting, including both Congress and regulatory departments related to water, including but not limited to BLM, NOAA (NMFS), USBR, USDA, and EPA. Consultant should be able to identify federal crossover with District activities (Pure Water Monterey, Los Padres Dam, Carmel River Mitigation Program, other?) and what benefits of a federal strategy may accrue.

Scope of Services

Scope of work will include, but is not limited to:

- Identifying legislation or proposed regulatory changes that may impact the District.
- Consult with staff to develop positions on relevant legislation.
- Advocate the District's position on bills and matters of interest.
- Represent the District in meetings with staff, directors, or independently with congressional members and staff, administration officials, regulatory agencies.
- Coordinate federal outreach with District's State governmental outreach
- Identify funding opportunities and notify of timing, requirements, and advocate on behalf of District
- Direct contact with associations including ACWA, WateReuse, etc.
- Prepare materials for briefing – talking points, briefing books, letters, as necessary
- Coordinate with other water district lobbyists and organizations
- Maintain close relationships with Monterey legislative delegation

- Organize timely trips as needed, but at least once a year separate from ACWA trip.
- Provide similar services for the District's project partner(s), as needed and at the direction of the District.
- Periodic reporting of activities

It is understood that the responding Consultant's Statement of Qualifications will be used by the District as the basis to qualify firms for further consideration.

This RFQ is issued by the District to provide potential Firms with information, guidelines and rules to prepare and submit a Statement of Qualifications. The submittal must satisfy all criteria established in this RFQ and described in Attachment A to qualify for evaluation.

Any written proposals, other submissions, correspondence and all records made thereof, pursuant to this RFQ shall be opened in public in compliance with state law governing public records and meetings.

Reservation of Rights

The issuance of this RFQ constitutes only an invitation to present qualifications. The District reserves the right to determine, in its sole discretion, whether any aspect of the Statement of Qualifications satisfactorily meets the criteria established in this RFQ, the right to seek clarification from any Consultant submitting qualifications, and the right to reject any or all responses with or without cause. The District also reserves the right to modify the Scope of Services to be considered for this project. In the event that this RFQ is withdrawn by the District, or the District does not proceed for any reason, including but not limited to the failure to occur of any of those things or events set forth herein, the District shall have no liability to any Consultant for any costs of expenses incurred in connection with the preparation and submittal of this RFQ, or otherwise.

Term

Provide Federal Legislative and Agency Lobbying Services to District for a period of two (2) years with the option of one (1) renewal for two (2) additional years.

Qualifications and Selection Process

The District will receive Qualification Statements from potential Firms in response to the Request for Qualifications included in Attachment A of this RFQ. Based on the objective criteria for each of the Response Requirements, Executive Summary, Experience, and Personnel and Equipment, and other such factors as may be determined by the District to be applicable to the particular requirements of the project, the Agency will qualify Firms for further consideration.

Proposals should be submitted by 4:00 p.m. on Thursday, December 1, 2016. Three (3) hard copies shall be addressed and sent to the address below and a copy in PDF format shall be emailed to dstoldt@mpwmd.net

Monterey Peninsula Water Management District (MPWMD)
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

Thank you for your cooperation. If you have any questions or comments concerning the scope of services or Statement of Qualifications, please contact me at 831-658-5651 or dstoldt@mpwmd.net

Very truly yours,



David J. Stoldt
General Manager

ATTACHMENT A

REQUEST FOR QUALIFICATIONS SUBMITTAL REQUIREMENTS

INTRODUCTION AND GENERAL INFORMATION

Proposals should be submitted by 4:00 p.m. on Thursday, December 1, 2016. Three (3) hard copies shall be addressed and sent to the address below and a copy in PDF format shall be emailed to dstoldt@mpwmd.net

Monterey Peninsula Water Management District (MPWMD)
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

Qualification statements received after the aforementioned time and date will not be considered. Submittals shall include all of the information requested in a concise, organized manner. Extraneous material shall not be included.

Respond concisely to each of the requirements or questions as set forth below. Each requirement or question should be addressed separately, with the requirement or question preceding each response. Responses shall be on 8 ½" x 11" format.

All responses to this RFQ shall be prepared at the sole cost and expense of the Consultant. The District assumes no liability for the Consultant's costs for participating in this procurement.

The District reserves the rights stated this RFQ including, in its sole discretion, to modify the procurement process and schedule at any time, to determine, in its sole judgment, those Consultants qualified for the procurement.

CONSULTANT QUALIFICATIONS

Qualification Statements will be considered only from firms normally engaged in the provision of the services specified herein. Firms must have adequate organization, facilities, equipment and personnel to ensure prompt and efficient service to District. The District reserves the right before recommending any award to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with the terms and conditions. The District will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory and reserves the right to reject qualification statements where evidence submitted, or investigation and evaluation indicates inability of the Firm to perform.

Due to the nature of services provided through this qualification statement the District requires

that the key contact or provider of services to the District maintain residency in the Washington, DC area.

To qualify for consideration for selection as a qualified Consultant, a Consultant must meet certain designated minimum experience and qualifications must be met. These minimum qualifications are outlined in the following sections.

EXPERIENCE

A minimum of five (5) years experience in lobbying on behalf of a municipality, special district, agency, or other local government is required. Consultant shall describe experience, including specific tasks performed and furnished. See “Response Requirements and Format”, below.

CONTRACTOR'S LIABILITY INSURANCE

The Consultant will provide and maintain such insurance as will protect them from claims under Worker's Compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property including loss of use resulting therefrom any or all of which may arise out of or result from the Consultant's operations, whether such operations be by itself or any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified in the form of Contract (see Attachment B) or required by law, whichever is greater, and shall include contractual liability insurance. As a prerequisite to the District signing the Contract, the Consultant will file with the District certificates of such insurance, acceptable to the District; these certificates shall contain a provision for cancellation.

PERSONNEL

Consultant shall demonstrate its capability to provide sufficient staffing to perform under this contract.

OTHER PROJECT CRITERIA

Consultant shall provide copy of most recent Financial Disclosure, if required to file.

CRITERIA FOR EVALUATION AND AWARD

The successful Consultant will be selected based upon the best response offered to the District. Consultants may be requested to participate in a telephone interview after submission of responses or an in-person interview.

Submitted Qualification Statements will be evaluated and scored on the following criteria:

Criteria (1 – Poor – Max Points – Excellent)	Possible Points
Experience - with municipalities, special districts, agency's & other governmental entities	25
Experience - with specific federal agencies	25
Experience - with specific water-related issues	25
Personnel	25
Total Possible Points	100

RESPONSE REQUIREMENTS AND FORMAT OF THE QUALIFICATION STATEMENT

CONSULTANT INFORMATION

- Name of Firm
- Contact person
- Telephone number
- Email address

EXECUTIVE SUMMARY

The Executive Summary shall not exceed two (2) pages. The Executive Summary shall include a brief description of the Consultant's understanding of the role and key responsibilities of the Consultant in this contract. Please describe the scope of services you intend to provide under a contract with the District. **DO NOT address specific technical details, means, methods, and techniques for this project.**

EXPERIENCE QUESTIONS

1. How many years of experience in lobby on behalf of a municipal, special district, agency, or other local government water entities does your firm have?
2. What percentage of your clients are public sector (local government or local agency) water entities?
3. Current and Previous Contracts - list all water-related clients for whom you have previously and/or are currently servicing. Also list any non-water-related clients in Monterey County, if any.
4. Describe any experience your firm has working with BLM, NOAA (NMFS), USBR, USDA, and EPA, or any other federal agencies you believe relevant to the District.
5. Describe any experience your firm has working with legislative delegations, their staff, and committees.
6. Provide references with contacts, name, title, affiliation, telephone numbers and email addresses

PERSONNEL AND EQUIPMENT QUESTIONS

1. Organization - a brief Corporate (firm, partnership, etc.) history, number of personnel, table of organization, scope of operations.
2. Personnel - list all persons authorized to negotiate for your Consultant, provide the names of all Consultant officers or directors, provide the names and credentials of all persons who will be specifically committed to working for the District.
3. Provide the appointed name of person or persons to act as a primary contact for all District members.
4. The Consultant shall identify available hours for District activities, examples of reports and analysis, and how the District accounts will be managed.

FEE QUESTION

Please provide a fee quote and describe your billing practice. Fees may be quoted as an annual retainer, a retainer plus fees for additional services, or hourly as incurred.

ATTACHMENT B – SAMPLE CONSULTANT CONTRACT

**AGREEMENT BETWEEN THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND
_____ (“CONSULTANT”)
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this ____ day of _____ 2016, by and between _____, hereinafter called "Consultant," and the Monterey Peninsula Water Management District, hereinafter called "MPWMD".

SECTION I - SCOPE OF SERVICES

MPWMD hereby engages Consultant for services as set forth in **Exhibit A**, Scope of Work.

SECTION II – COMPENSATION

A. FEE SCHEDULE

Fees payable to Consultant for services specified herein shall be in accordance with the Fee Schedule in **Exhibit B**.

B. METHOD OF PAYMENT

Payment of fees shall be based on work completed, as documented in monthly billings submitted by Consultant. Work reports shall be rendered in accordance with the schedule shown in **Exhibit C**, Work Schedule. Payments are due and payable within thirty (30) days after receipt of each invoice subject to a finding by MPWMD that work performed has been satisfactory and that payment is for the work specified in **Exhibit A**, Scope of Work. Where MPWMD finds the work to be unsatisfactory, MPWMD shall describe deficiencies in writing to Consultant within ten (10) days.

Five percent (5%) of the maximum payment shall be retained until all work described in **Exhibit A, Scope of Work** is completed to the satisfaction of MPWMD. The final invoice for work performed shall be submitted not later than sixty (60) days following notification by MPWMD of completion of such work. The final invoice shall be paid not later than 30 days after receipt of the final invoice.

C. MAXIMUM PAYMENT

Payments to Consultant for services rendered and expenses incurred under this Agreement **shall not exceed \$ _____**.

SECTION III - INSPECTION OF WORK

The books, papers, records and accounts of Consultant or any subconsultants retained by Consultant insofar as they relate to charges for services, or are in any way connected with the work herein contemplated, shall be open at all reasonable times to inspection and audit by the agents and authorized representatives of MPWMD. Said records shall be retained for a minimum of five (5) years after completion of services.

SECTION IV - OWNERSHIP OF PROJECT REPORT AND EQUIPMENT PURCHASED

All original documents, explanations of methods, maps, tables, computer programs, reports and other documents prepared under this Agreement and equipment purchased specifically for the project shall become the exclusive property of MPWMD. Digital data used to generate tables, figures, diagrams, images, Geographical Information System (GIS) or Computer Aided Design (CAD) layers shall be considered separate deliverables and shall be provided to MPWMD after acceptance by MPWMD of the final work product(s).

Consultant may retain copies for his/her own use.

SECTION V - TIME OF PERFORMANCE

Consultant shall begin work upon the effective date of this Agreement and shall complete all tasks described herein according to the schedule shown in **Exhibit C**, Work Schedule. Time is of the essence to this Agreement, and late performance shall result in a waiver of a part of the fees payable pursuant to the terms of this Agreement.

SECTION VI – RESPONSIBILITIES

- A. Consultant represents that he/she has or will secure at his/her own expense all personnel, materials, and related services required to perform the services under this Agreement. Consultant shall act as an independent consultant and not as an agent or employee of MPWMD. Consultant shall have exclusive and complete control over his/her employees and subconsultants, and shall determine the method of performing the services hereunder.
- B. MPWMD shall provide Consultant with all relevant data and studies in its possession without charge.
- C. MPWMD shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder, unless otherwise specified in **Exhibit A**, Scope of Services.
- D. Consultant shall be responsible for the reproduction of work produced by Consultant hereunder.
- E. The officers, agents, and employees of MPWMD shall cooperate with Consultant in the performance of services under this agreement without charge to Consultant. Consultant agrees to use such services insofar as feasible in order to effectively discharge his/her obligations

hereunder and further agrees to cooperate with MPWMD's officers, agents and employees.

F. The Consultant agrees to indemnify, defend and save harmless MPWMD, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all consultants, subconsultants, material men, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Consultant, Consultant's employees, or Consultant's subconsultants or subconsultants in the performance of this Agreement.

SECTION VII – INSURANCE

A. Consultant shall obtain and keep insurance policies in full force and effect for the following forms of coverage as shown in **Exhibit D**, Insurance Requirements.

SECTION VIII - CHANGES AND CHANGED CONDITIONS

A. If, during the course of the work herein contemplated, the need to change the Scope of Work or the Work Schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. The representatives of the parties shall meet within seven (7) working days of the date of such notice to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Scope of Work may also result in a change in the compensation amount. Compensation changes shall be based upon the Consultant Fee Schedule (**Exhibit B**) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement.

B. MPWMD reserves the right to specify individual employees, subconsultants or agents of Consultant who shall be assigned to perform the tasks specified in **Exhibit A**, Scope of Services. If, during the course of the work herein contemplated, there is a change such that the specified individual employees, subconsultants or agents are no longer assigned to the work described in this contract and/or are no longer affiliated with Consultant, Consultant shall immediately notify MPWMD in writing. Consultant shall assign the rights to this contract to another entity, if requested by MPWMD, as part of termination proceedings pursuant to Section IX, Termination.

SECTION IX - TERMINATION

A. MPWMD may terminate Consultant's services at any time by written notice to Consultant at least thirty (30) days prior to such termination. Upon receipt of written notice from MPWMD that this Agreement is terminated, Consultant shall submit an invoice for an amount that represents the value of services actually performed to the date of said notice for which he/she has not previously been compensated. Upon approval of this invoice by MPWMD, Consultant shall be paid from the sum found due and MPWMD shall have no further obligation to Consultant, monetarily or otherwise.

B. Upon receipt of written notice of termination, the Consultant shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to MPWMD, copies, including magnetic media, of data, design

calculations, drawings, specifications, reports, estimates, summaries and other such information and materials as may have been accumulated by the Consultant in performing the services under this Agreement.

SECTION X - SUB-CONTRACTING AND ASSIGNABILITY

Consultant shall not sub-contract any portion of the work required by this Agreement nor otherwise assign or transfer any interest in it without prior written approval of MPWMD. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

SECTION XI - DISCRIMINATION AND FAIR EMPLOYMENT

Attention is directed to Section 1735 of the California Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the government code and every Consultant for public works violating this section is subject to all penalties imposed by a violation of this chapter.”

During the performance of this Agreement, Consultant and its Consultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant and its Consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its Consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

SECTION XII - INTEREST OF CONSULTANT

Consultant covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIII - CONTINGENT FEES

Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company, or person, other than a bona fide

employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, MPWMD shall have the right to annul this Agreement without liability or at its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift or contingent fee.

SECTION XIV – DISPUTES

In the event of a dispute arising out of the performance of this Agreement either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law and it is agreed that venue shall be in the County of Monterey. The prevailing party shall be awarded costs of suit, and attorneys' fees.

SECTION XV – NOTICES

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address, as follows:

MPWMD: General Manager
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 Monterey CA 93940
 or
 P. O. Box 85
 Monterey, CA 93942-0085

CONSULTANT: (TBD)

SECTION XVI – AMENDMENTS

This Agreement together with **Exhibits A, B, C, and D** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.

SECTION XVII – ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

- Exhibit A. Scope of Work
- Exhibit B. Fee Schedule
- Exhibit C. Work Schedule
- Exhibit D. Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

BY: David J. Stoldt, General Manager

CONSULTANT

BY:

FEDERAL TAX IDENTIFICATION NUMBER: _____

EXHIBIT D

INSURANCE REQUIREMENTS

I. Consultant shall provide evidence of valid and collectible insurance carried for those exposures indicated by an "X".

- A. Professional Liability Errors & Omissions
- B. Workers Compensation and Employers Liability
- C. Automobile Liability - "Any Auto - Symbol 1"
- D. Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
- E. Owners & Consultants Protective
- F. Protection & Indemnity (Marine/Aviation)

II. The minimum limit of protection provided by insurance policies for each of the coverages listed above shall be not less than \$1,000,000, except for coverage "D", which shall not be less than \$2,000,000. The procurement and maintenance by the Consultant of the policies required to be obtained and maintained by Consultant under this Agreement shall not relieve or satisfy Consultant's obligation to indemnify, defend and save harmless the District.

III. Evidence of insurance carried shall be Certificates of Insurance for the current policies. The District shall be listed as a certificate holder on the Consultant's Comprehensive General Liability insurance policy and the policy must be endorsed to provide a 60-day prior written notice of cancellation.

IV. The District requires that the Consultant carry a commercial liability policy written on a broad comprehensive general liability form.

A. Such protection is to include coverage for the following hazards, indicated by an "X":

- 1. Premises and Operations
- 2. Products and Completed Operations
- 3. Explosion Collapse and Underground
- 4. Broad Form Blanket Contractual
- 5. Broad Form Property Damage
- 6. Personal Injury, A, B & C
- 7. Employees named as Persons Insured
- 8. Protective and/or Contingent Liability (O&CP)

B. The "Persons Insured" provision on each comprehensive general liability policy shall include as an insured the "Monterey Peninsula Water Management District, its officers, directors, agents and employees."

C. This policy shall contain a severability of interest clause or similar language to the following:

"The insurance afforded applies separately to each insured against whom claim is made or suit is brought including claims made or suits brought by any persons included within the persons insured provision of the insurance against any other such person or organization."

D. All policies shall contain a provision that the insurance company shall give the District at least thirty (30) days prior written notice mailed to the address shown below prior to any cancellation, lapse or non-renewal. The 30-day written notice must be shown on all certificates of insurance.

E. Certificates of Insurance for the current policies shall be delivered by the Consultant to the Risk Manager for the District as verification that terms A, B, C and D have been met.

V. All insurance correspondence, certificates, binders, etc., shall be mailed to:

Monterey Peninsula Water Management District
Attn: Administrative Services Manager
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942-0085

VI. All policies carried by the Consultant shall be primary coverage to any and all other policies that may be in force. The District shall not be responsible for payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements.

VII. All such policies of insurance shall be issued by domestic United States insurance companies with general policy holders' rating of not less than "B" and admitted to do business in the State of California. The policies of insurance so carried shall be carried and maintained throughout the term of this Agreement.

LEGISLATIVE ADVOCACY COMMITTEE

ITEM: DISCUSSION ITEM

6. DISCUSS STATUS OF FEINSTEIN RIDER TO WATER RESOURCES DEVELOPMENT ACT

Meeting Date: December 12, 2016 **Budgeted:** N/A

From: David J. Stoldt **Program/**
 General Manager **Line Item No.:** N/A

Prepared By: David J. Stoldt **Cost Estimate:**

General Counsel Approval: N/A
Committee Recommendation: N/A
CEQA Compliance: N/A

SUMMARY: Senator Dianne Feinstein (D-Calif.) announced on December 5, 2016 her support for a drought language rider in the Water Resources Development Act, a bill that authorizes water projects across the country. Broadly based on Feinstein's February 2016 legislation, the drought language is the result of three years of work, more than 50 drafts and vigorous consultation with federal agencies and the White House to ensure the bill complies with environmental laws including the Endangered Species Act and biological opinions. The February 2016 bill specifically identified the Monterey Peninsula's desalination and water recycling projects.

Retiring Sen. Barbara Boxer, angrily denounced it, saying that it would override endangered species protections for native California fish for the purpose of sending water to San Joaquin Valley farmers. "This is so wrong it is shocking," Boxer said of the provision, saying it would authorize water pumping from the state's rivers beyond what is allowed under the biological opinions for fish protection. She said the legislation also would transfer from Congress to the incoming Trump administration the power to approve big dam projects in the West.

Senator Feinstein released the following statement:

"The question I ask myself about this bill is will it help California? Will the \$558 million in long-term authorizations help California develop a new water infrastructure? Will the short-term operational improvements help us hold more water in a way that does not negatively affect fish or the environment? I believe the answer is yes.

This bill isn't perfect but I do believe it will help California and it has bipartisan support including Republicans and Democrats in the House, and that's why I'm supporting it.

After three years and dozens of versions of legislation, I think this is the best we can do. If we don't move now, we run the real risk of legislation that opens up the Endangered Species Act in the future, when Congress will again be under Republican control, this time backed by a Trump administration.

As a result of our work with experts from federal and state agencies, we have included strong savings clauses and environmental protections to ensure this bill is entirely within the bounds of both the Endangered Species Act and relevant biological opinions. The bill also includes \$43 million for important programs to restore salmon and smelt and to benefit refuges. But those environmental protections certainly won't be included if a new bill is drafted next year by the Republican majority.

Action is long overdue. California is entering its sixth year of drought. Experts state it will take four or more years to recover. We are seeing water wells in the thousands running dry. At the same time, smelt populations have plummeted to historic lows and salmon populations are struggling.

I know that we absolutely can protect California's environment and wildlife while improving how we move and store water in California. After all, the state is home to 40 million people, but we have essentially the same water system we had five decades ago when the population was 16 million people.

To address the demands of population growth and climate change, we must make sure we can store water from wet years for use in dry years and stretch our existing supplies through conservation, recycling and desalination.

And this bill does that with both long-term and short-term provisions as well as strong environmental protections.

The long-term provisions are centered around \$558 million that will help supplement state and local funding to build the 137 projects identified by the Feinstein drought bill introduced in February (S. 2533). Those projects—desalination, recycling and reuse—could produce upwards of 1.4 million acre feet of water, enough for 2.8 million households. \$335 million is included for storage, funds that will go a long way toward preparing for future dry years, and \$43 million is included to benefit salmon, smelt and wildlife refuges.

The short-term, five-year operational provisions will ensure the system is operated using science, not intuition. They will help operate the water system more efficiently, pumping water when fish are not nearby and reducing pumping when they are close.

The vast majority of the bill has been public for months or years as part of previous versions and has been the subject of public hearings in May 2016 and October 2015. While there have been some changes to achieve broad agreement by all parties, the bill is largely similar to the bill I introduced in February.

We have also worked with a wide range of federal and state agencies to ensure this bill can be implemented in a way that remains within the bounds of the Endangered Species Act and biological opinions.

We must continue to press forward as the rainy season begins so we can begin to relieve serious water shortages in significant parts of the state.”

EXHIBIT

6-A Summary of the Rider

EXHIBIT 6-A

Summary of Legislation

- Overview: California's water infrastructure is largely unchanged since the 1960s, when California was home to 16 million people. Our state—with a population of 40 million and the 6th largest economy in the world—relies on water infrastructure that is stretched to the breaking point and desperately needs to be improved and changed.
- Environmental protections: We worked with experts from federal and state agencies to draft an environmental protection mandate and a strong, comprehensive savings clause that makes clear the legislation must be implemented consistent with the Endangered Species Act and relevant biological opinions.
- Long-term provisions: This bill includes \$558 million in long-term funding authorizations. Paired with state and local funding, many of the 137 projects identified by the Feinstein drought bill introduced in February (S. 2533) will be within reach. Those projects could produce upwards of 1.4 million acre feet of water, enough for 2.8 million households. (See additional details below.)
- Short-term provisions: The bill also includes short-term provisions to ensure the system is operated using science, not intuition. This will help operate the water system more efficiently, pumping water when fish are not nearby and reducing pumping when they are close.
- Duration: The short-term operations will last for five years. Long-term construction projects still underway at the end of five years will continue to receive federal funding. One provision that expires after 10 years provides additional opportunities to environmental groups and water districts to consult on any future biological opinions.
- Federal and State input: The bill was reviewed extensively by federal and state agencies to ensure it is consistent with environmental laws, including the Endangered Species Act and biological opinions.

Environmental protections

- Most importantly, the bill includes a strong, comprehensive savings clause. This clause is included at the end of this press release.
- Drafted by Department of the Interior and the Commerce Department, the savings clause prohibits any federal agency from taking any action that would violate any environmental laws, including the Endangered Species Act and biological opinions.
- The savings clause is stronger than the clause included in Feinstein's February 2016 drought bill, containing additional language to make clear nothing in the bill overrides or amends any obligations to manage coastal fisheries off the coasts of California, Oregon and Washington.
- Includes an environmental protection mandate drafted by NOAA Fisheries to ensure full consistency with the Endangered Species Act.
- Includes language at the request of the administration that protects agencies' abilities to develop successor biological opinions.
- The long-term authorizations include \$43 million to benefit endangered fish and wildlife, including:

- \$15 million for the protection and restoration of salmon: These funds will be used to increase spawning habitat on the Sacramento River and purchase water to increase flows to reducing predation at Clifton Court Forebay. These funds can also be used to fix the broken cold water valve at Shasta to prevent 98 percent mortality rates from happening again. These devices must be fixed and functioning so that we can avoid what we saw in 2015, when 98 percent of the salmon year class died, and in 2014 when 95 percent of the salmon year class died.
- \$15 million for fish passage projects: Reauthorizes at \$15 million the Fisheries Restoration and Irrigation Mitigation Act (which expired in 2015), a voluntary, cost-sharing program the U.S. Fish and Wildlife Service uses to pay for installing fish screens and diversions that protect migrating salmon.
- \$3 million for a Delta Smelt Distribution Study: The better the fish is understood, the better we can operate the system and protect this endangered species. The Fish and Wildlife Service recommended this provision.
- A program to reduce predation: The bill directs agencies to address the threat to smelt and salmon by reducing the threat of predators. The regional administrator for NOAA Fisheries (who oversees salmon in California) has stated that predation in the Delta is “unequivocally” a problem.
- A program to purchase additional water: The bill authorizes the federal government to purchase water from willing sellers to augment flows needed for fish. Currently there is limited workable authority to accomplish this. The Department of the Interior requested this authority to enable targeted water purchases to provide more water for fish in conjunction with measures to improve habitat and food supply, which will help restore fish populations.
- Programs to reduce invasive species that harm fish: The bill authorizes pilot projects under a [CALFED](#) program to control invasive species. Invasive species—such as water hyacinth and Asian clams—have contributed to the decline of native listed fish in the Bay-Delta, including the Delta smelt.
- \$10 million for wildlife refuges: This will allow refuges to connect to additional sources of water supply, for example through channels.
- The bill has a comprehensive environmental protection mandate drafted by NOAA Fisheries and the Department of the Interior to ensure that the actions under this bill fully reflect the protections of the Endangered Species Act.
- Consistency with state law: All provisions in the bill must be consistent with state law including water quality and salinity control standards.
- Coastal salmon fisheries: The bill protects agencies’ authority to manage salmon and other fisheries off the coast of California, Oregon and Washington under the Magnuson Stevens Act or the Endangered Species Act.
- Environmentalist and water district input into Endangered Species Act consultation: The bill increases transparency and public input during any Endangered Species Act consultations by providing environmental groups and water districts with the opportunity to work with the agencies on any future biological opinions. The provisions also provide for quarterly stakeholder meetings so the public is kept informed of any Endangered Species Act consultations. Nothing in this section affects in any way the substantive requirements of consultation under the Endangered Species Act to protect species.

Long-term water infrastructure provisions

- Authorization of projects: \$515 million, fully offset, goes to storage, recycling, reuse and desalination projects. These funds will help supplement California's water bond.
- Funds: The bill authorizes the following funds:
- Desalination: \$30 million for design and construction of desalination projects.
- Water recycling, reuse and conservation: Increases funding for WaterSMART by \$100 million (from \$350 million to \$450 million), including \$50 million for water supply and conservation activities on the Colorado River. Includes another \$50 million for water recycling through a new Title XVI grant program that actually works for new water recycling projects, unlike the current program. The revised program will allow new water recycling projects to get federal funding even if Congress has not authorized each specific project.
- Storage: \$335 million in funding for storage and groundwater projects.
- Coordinated implementation with the state water bond: This will allow federal funding to go to qualified, environmentally-mitigated and cost-beneficial projects such as desalination, recycling, groundwater and storage projects on the same timeframe as projects funded under the state water bond.

Short-term operational provisions

- Duration: The short-term operational provisions expire after five years. Researchers from UCLA have reported that it will take approximately four and a half years for a full recovery from the drought.

Eight key provisions will allow more water to be captured and stored:

- 1) Daily monitoring for fish closer to the pumps will allow pumps to be operated at higher levels while better protecting fish. This daily boat monitoring for smelt will occur when water [turbidity](#) levels are high (cloudy water attracts fish to pumps), which will allow pumping decisions to be made based the actual location of the fish.
- 2) Ending the winter storm "payback" requirement will allow agencies to capture additional water during winter storms. Agencies may increase pumping during winter storms so long as they do not violate the environmental protection mandate. Once storms end, agencies would no longer be required to "pay back" water already pumped unless there was an environmental reason to do so.
- 3) Requires agencies to explain why pumping occurs at lower levels than allowed by the biological opinions. The requirement is about transparency: agencies must provide reasons for why pumping was reduced.
- 4) Agencies must maximize water supplies consistent with applicable laws and biological opinions. The bill also makes very clear that agencies can take no action that would violate the Endangered Species Act or biological opinions.
- 5) Pilot Project to open Delta Cross-Channel Gates in a manner that achieves increased water supply without any harm to fish. The agencies would evaluate alternative ways to open the gates and protect fish during their migration. If the pilot project is successful, it would yield extra water with no harm to the fish or water quality.
- 6) Extending the time period for water transfers by five months. The current transfer window of July through September is extended to April through November. This makes water available during the critical spring planting season.

7) Allowing a 1:1 ratio for water transfers. The provision provides a strong incentive for water transfers during critical salmon migratory periods in April and May in the lower San Joaquin. Through transfers, the same unit of water can therefore help both fish and farms. This provision helps facilitate voluntary transfers in April and May by allowing a 1:1 inflow to export ratio solely for water transfers. Buyers and sellers have little incentive to transfer water unless they receive the full value of their water—the 1:1 ratio. The bill includes strong environmental protections to ensure this water is in addition to the regular flow of the river, extra water that will benefit fish.

8) Allowing expedited reviews of transfers and the construction of barriers. To expedite environmental reviews of proposed water transfers, agencies are directed to finish their reviews within 45 days of receiving complete applications for the transfers. The approval of temporary salinity barriers must be completed within 60 days. If environmental impact statements must be prepared under NEPA, the agencies can take longer than the generally applicable deadlines.

Outreach process

- Over the course of two years, Senator Feinstein and her staff took hundreds of meetings, phone calls and discussions. Feedback was accepted from Republicans and Democrats and Senator Feinstein made dozens of changes to the bill text in response to comments from environmental groups, water districts, cities, rural communities, fishermen and farmers.
- The bill was also reviewed by experts with federal and state agencies to ensure it would remain within the bounds of the Endangered Species Act and relevant biological opinions.
- A previous version of the bill introduced in February 2016 (S. 2533) received support from 151 organizations and public officials from across California.

Savings clause

- Following is the bill's savings clause that prevents the legislation from violating state or federal environmental laws including the Endangered Species Act and biological opinions. Bracketed text is where each part of the clause originated.

Sec. 4012. SAVINGS LANGUAGE.

(a) IN GENERAL.—This Act shall not be interpreted or implemented in a manner that—

(1) preempts or modifies any obligation of the United States to act in conformance with applicable State law, including applicable State water law; [requested by Governor Brown's office; also included in February 2016 Feinstein drought bill] (2) affects or modifies any obligation under the [Central Valley Project Improvement Act](#) (Public Law 102–575; 106 Stat. 4706), except for the savings provisions for the Stanislaus River predator management program expressly established by section 12(b); [included in February 2016 Feinstein drought bill] (3) overrides, modifies, or amends the applicability of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the application of the smelt and salmonid biological opinions to the operation of the Central Valley Project or the State Water Project; [drafted by NOAA Fisheries and the

Department of the Interior; also included in February 2016 Feinstein drought bill] (4) would cause additional adverse effects on listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable [biological opinion](#), using the best scientific and commercial data available; [drafted by NOAA Fisheries and the Department of the Interior] or (5) overrides, modifies, or amends any obligation of the Pacific Fisheries Management Council, required by the Magnuson Stevens Act or the Endangered Species Act, to manage fisheries off the coast of California, Oregon, or Washington. [requested by Senator Wyden]

SUCCESSOR BIOLOGICAL OPINIONS.

(1) IN GENERAL. —The Secretaries of the Interior and Commerce shall apply this Act to any successor biological opinions to the smelt or salmonid biological opinions only to the extent that the Secretaries determine is consistent with: (A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), its implementing regulations, and the successor biological opinions; and (B) Subsection (a)(4) above. [requested by administration] (2) LIMITATION. — Nothing in this Act shall restrict the Secretaries of the Interior and Commerce from completing consultation on successor biological opinions and through those successor biological opinions implementing whatever adjustments in operations or other activities as may be required by the Endangered Species Act and its implementing regulations. [requested by administration] (c) SEVERABILITY.— If any provision of this Act, or any application of such provision to any person or circumstance, is held to be inconsistent with any law or the biological opinions, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected. [included in February 2016 Feinstein drought bill]