

RECLAMATION DISTRICT NO. 1614

AGENDA FOR REGULAR BOARD OF TRUSTEES MEETING 2:00 P.M. MARCH 7, 2016 509 WEST WEBER, 5TH FLOOR STOCKTON, CALIFORNIA

AGENDA

1. Call to Order/Roll Call.
2. Public Comment. The public may comment on any matter within the District's jurisdiction that is not on the agenda. Matters on the agenda may be commented on by the public when the matter is taken up.
3. Approval of Minutes of the regular meeting of February 1, 2016.
4. Presentation of Financial Status Report.
5. Presentation of Engineer's Report. Discussion and possible action:
 - a. Permit requests
 1. 2011 Lake Court
 - b. Wisconsin Pump Station.
 - c. Adopt Resolution 2016-03 Approving And Adopting Reclamation District 1614 Emergency Operations Plan.
6. Presentation of Superintendent's Report; request for direction.
 - a. Authorize Superintendent to hire part time employees.
 - b. Approve Contract with STANTEC regarding system alarm system.
7. Newsletter
8. Report on Meetings Attended.
9. District Calendar.
10. Closed Session.
 - a. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Levee Superintendent
 - b. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: District Secretary.

This agenda shall be made available upon request in alternative formats to persons with a disability, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and the Ralph M. Brown Act (California Government Code §54954.2). Persons requesting a disability related modification or accommodation in order to participate in the meeting should contact Rhonda Olmo at 209/948-8200 during regular business hours, at least forty-eight hours prior to the time of the meeting.

Materials related to an item on this Agenda submitted to the Trustees after distribution of the agenda packet are available for public inspection in the office of the District Secretary at Neumiller & Beardslee, 509 W. Weber Avenue, 5th Floor, Stockton, California during normal business hours. The agenda is also available on the Reclamation District website at: <http://www.rd1614.com/>

- c. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: District Engineer
- d. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: District Counsel.

- 11. Report out of Closed Session.
- 12. Consultant and Employee Contracts. Discussion and possible action regarding changes to contracts.
- 13. Items for future meetings.
- 14. Correspondence Received.
- 15. Motion to Approve of Bills.
- 16. Adjournment.

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**AGENDA PACKET
RECLAMATION DISTRICT 1614
MARCH 7, 2016**

<u>ITEM</u>	<u>COMMENTARY</u>
1.	Self-explanatory.
2.	Self-explanatory.
3.	Please see attached.
4.	Self-explanatory.
5.	Please see attached.
6.	Please see attached.
7.	Please see attached.
8.	Self-explanatory.
9.	Please see attached.
10.	Self-explanatory.
11.	Self-explanatory.
12.	Self-explanatory.
13.	Self-explanatory.
14.	Please see attached.
15.	Self-explanatory.
16.	Self-explanatory.

ITEM 3

MINUTES OF REGULAR MEETING OF BOARD OF TRUSTEES
FOR RECLAMATION DISTRICT 1614
HELD MONDAY, FEBRUARY 1, 2016

The February meeting of the Board of Trustees of Reclamation District 1614 was held on Monday, February 1, 2016, at the law office of Neumiller & Beardslee, 509 W. Weber Avenue, 5th Floor, Stockton, California, at the hour of 2:00 p.m.

TRUSTEES PRESENT WERE:

WILLIAM DUNNING
BEN KOCH

OTHERS PRESENT WERE:

DANIEL J. SCHROEDER
CHRISTOPHER H. NEUDECK
JEAN L. KNIGHT
ORLANDO LOBOSCO
JACOB BEJARNO, Engineer, Kjeldsen, Sinnock & Neudeck
BRENNAN HOWELL, Howell Consulting (subcontractor with KSN)
RICHARD GACER, homeowner
ROBERT BELLIN, homeowner
PAUL GUERRERO, homeowner

ABSENT WERE:

ROBERT WISE, Trustee
RHONDA OLMO, District Secretary

Item 1. Call to Order/Roll Call. The meeting was called to order by President Dunning at 2:00 p.m.

Item 2. Public Comment. Mr. Gacer reported that at the last meeting, he had asked that election information be made part of the agenda. He said, referring to the agenda, that this was not done. Mr. Gacer then gave the Ms. Knight an envelope containing his letter requesting this, along with copies of section 50730 and following of the Election Code. Mr. Schroeder noted that the agenda packet already had election information in it. In addition, when asked how votes are calculated, Mr. Schroeder said it was a weighted analysis related to the property's assessment.

Item 3. Approval of Minutes of regular meeting of January 11, 2016. After review, the minutes of the regular meeting of January 11, 2016 were approved as read.

Item 4. Presentation of Financial Status Report. Acting District Secretary Jean Knight handed out the Financial Report. She stated that \$5,510.14 was paid out for the auditor's assessment service charge - \$527.90 from Smith Tract and \$4,982.24 from the

General Account. She also noted that \$64,382.19 (property taxes) and \$205,426.46 (special assessments) were deposited into the District's general fund, along with \$59,757.18 special assessments into the Smith Tract fund. She stated the PG&E bill was \$980.68 this last month. After this report, Mr. Gacer noticed that there were no election expenses on the budget. Mr. Schroeder advised that there was no District election for this fiscal year and therefore no amounts were budgeted for this item.

Item 5. Presentation of Engineer's Report. Discussion and possible action:

- a. Permit Requests. See below.
- b. Wisconsin Pump Station. See below.
- c. DWR Emergency Response Grant. See below

Excerpts from the engineer's report.

I. Wisconsin Pump Station Reconstruction Update

A. Review current status of Grant opportunities.

Exhibit A. E-mail summary from KSN Inc. regarding ongoing summary of Grants requested and status thereof.

Mr. Neudeck reported that he wanted to give an update on the ongoing effort for funding for the grants – where the District has been and where it is going. This is included in Exhibit A. He also noted that things are moving slowly but there were two he wanted to mention specifically and these are the last two grants -- 4) and 5).

4) This funding opportunity relates to preparing a Notice of Interest for a Hazard Mitigation Grant Program following the Valley (Lake) and Butte fires this past summer in January of 2016. This grant would provide 75% Federal 25% local match for the \$2.3 million Wisconsin Storm Water Pump Station Rehabilitation project if the District is successful in being requested to submit a full application and is selected as a funded project.

5) The District is currently exploring Proposition 1 Storm Water Grant Program (SWGP) as part of the 2014 water bond. He noted the guidelines for this Grant Proposal were recently published and applications are due 4/15/16. The engineers, in cooperation with their grant consultant, Scott L. Brown with Larsen Wurzel & Associates, Inc. are looking at the potential opportunity to team up with Stockton East Water District again and pursue this grant.

II. Plan Review

Mr. Neudeck gave an update on the status of the application for constructing a new redwood fence and pouring of concrete on the District's parcel adjacent to the Kirk Avenue Pump Station. He noted that Mr. Schroeder is working with Randy's attorney on resolving the Title on the property.

III. DWR Emergency Response Grant Awarded to San Joaquin County.

Chris Neudeck, along with consultant Brenna Howell of Howell Consulting and civil engineer, Jason Tokheim of KSN, gave a presentation of the map and plan. They also distributed a one sheet document entitled "Reclamation District 1614 Emergency Operations Plan Project Overview." Mr. Neudeck started the presentation and discussed the background of the emergency operation plan and the flood contingency map. The District never had a plan but did have maps. He also discussed Levee patrols (protocol), training, and tides. He also noted there are courses to take – some as long as 4 hours. They are NIMS – National Incident Management System and SEMS (Standardized Incident Management System – State of CA). The District Superintendent will get more involved with these trainings and right now, KSN has about 8-10 personnel trained.

Ms. Howell then walked through the outline of the plan that is, as noted above, a newly developed operations plan and noted that levee maintaining agencies must now have plans. KSN had accelerated this in January of 2016 and it has already been submitted but changes can be made. The engineers will e-mail the plan and map to all and give everyone 30-60 days for review and then come out for a final approval.

The engineers noted that the District needs clear documentation as to protocols and following required contacts in order to qualify for reimbursement from the government. The plan has been adopted by the county. Within 60 days it will be implemented. It is effective now.

A question arose - What is the plan to get to the residents? It was suggested that it (or a summary) be posted to the District's website and also to mention it in a newsletter. It was noted that this is a working, living, working document that will be exercised, reviewed and updated each year.

The next piece to discuss was the maps. It shows where materials are stored, delivered, etc. The County has them, along with the State and the District. One thing left to be

discussed is the evacuation. There's a public map and then there is a private map that includes, among other things in the public map, health care facilities, school population details.

A question: Is this widely published? Response: No as it is really hard to do. The uses are for public resources until something occurs. Fliers go out from County and City OES offices and there would be rally point signs in parks. If you give to people now, people do not remember all the details.

A website and phone number will be available on the District's website and newsletter.

IV. Weather Patterns Predicted for Balance of the Year and Early 2016.

Mr. Neudeck included in his report, in Exhibit B., predicted weather plans that had been presented at a TAC meeting by Mike Cockrell, San Joaquin County Office of Emergency Services Director.

As an additional note, Mr. Guerrero also wanted it to be known that if the District is working on federal grants, Congressman McNerny needs to be aware and if the District gets to the point of completing an application, it should use McNerny. If a state grant, Mr. Guerrero would like to be contacted.

Item 6. Presentation of Superintendent's Report; request for direction.

Superintendent Lobosco distributed his written report and discussed several items within it. He noted that the float system discussed last month is working well. He also reported that at the Wisconsin Pump Station, a main breaker needed to be replaced. The station was shut down and a new main breaker was installed on January 25th. He also mentioned that there was a pump fail alarm light at River Walk and he was unable to re-set the pump. It took some research for the literature for him to be able to re-set the pump.

Mr. Lobosco also reported that a cargo ship traveling through the port took down an over the channel power line. This ended up causing an area wide power outage affecting Plymouth and Smith Canal, as well as the Franklin pump stations. Power was restored and some areas had minor street flooding that cleared fairly quickly once the power started back up.

With respect to the S.C.A.D.A system mentioned at the January meeting, Mr. Lobosco included further details, including a proposal from from Stantec for 5 stations. As this item was not agenized, it will be put on the March meeting for further discussion and consideration. The proposal was for providing and installing cellular alarm modems at five storm water pump stations within the District at a cost of \$20,400.

In furtherance of the above, the proposal came from Matt Long, of Stantec. He had noted that the stations were set up right and he was very impressed with Max Gallegos' work.

He felt that stations could be set up relatively quick at about \$3,300 per station and it was thought at this time to keep it with five stations and perhaps do others in the next fiscal year.

At this time, Trustee Bill Dunning wanted to thank Max for his availability and expertise.

After presentation of the above, the Superintendent's report was approved by the Trustees.

Item 7. Report on Board Meetings Attended. None.

Item 8. District Calendar. Dan Schroeder wanted to remind trustees and staff about the Form 700. Trustees and staff now have the forms they need to complete and return. The next District meeting will be held on March 7, 2016

Items 11. Items for Future Meetings. None. Other than what was discussed, nothing else. It was brought up – what is the status of gate? The response was - SJAFCA is overseeing the gate, not the District.

Item 12. Correspondence Received. None.

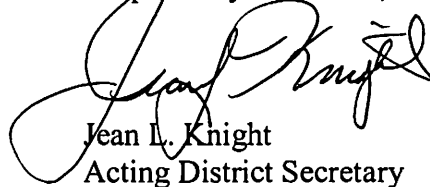
Item 13. Motion to Approve Bills.

It was moved, seconded (Dunning/Koch), and unanimously carried by the Board of Trustees for Reclamation District 1614 that the Trustee's authorize/approve the Bills to be Paid for February, 2016.

Item 14. Adjournment. The meeting was adjourned at 3:35 p.m.

Secretary: The agenda for this meeting was posted at 509 W. Weber Avenue, Stockton California at least 72 hours preceding the meeting.

Respectfully submitted,



Jean L. Knight
Acting District Secretary

ITEM 5

**RECLAMATION DISTRICT NO. 1614
RESOLUTION 2016-03**

**RESOLUTION APPROVING AND ADOPTING RECLAMATION DISTRICT 1614
EMERGENCY OPERATIONS PLAN**

WHEREAS, Reclamation District 1614 ("District") desires to adopt an updated Districts emergency operations plan;

WHEREAS, the engineering firm of Kjeldsen Sinnock & Neudeck has prepared an updated Reclamation District 1614 Emergency Operations Plan ("Plan") attached hereto, and has presented the Plan to the Board;

WHEREAS, the Board of Trustees ("Board") of Reclamation District 1614 ("District") has reviewed, and desires to adopt, that certain Reclamation District 1614 Emergency Operations Plan ("Plan"), attached hereto as prepared by Kjeldsen Sinnock & Neudeck, Inc.;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Plan attached hereto is approved and is adopted by the Board, and will replace any prior existing District emergency operation plan(s).

PASSED AND ADOPTED by the Board of Trustees of Reclamation District No. 1614 at a meeting thereof held on this 7th day of March, 2016, by the following vote,
TO WIT:

AYES: _____

NOES: _____

ABSTENTION: _____

ABSENT: _____

RECLAMATION DISTRICT NO. 1614
A Political Subdivision of the
State of California

By: _____
William Dunning, President

ATTEST:

RHONDA OLMO, Secretary

CERTIFICATION

I, RHONDA OLMO, Secretary of Reclamation District No. 1614, do hereby certify that the foregoing is a full, true and correct copy of a resolution of Reclamation District No. 1614 duly passed and adopted at a regular meeting of the Board of Trustees thereof held on the 7th day of March, 2016.

Dated: _____, 201_.

RHONDA OLMO, Secretary
Reclamation District No. 1614

ITEM 6



Stantec Consulting Services Inc.
3017 Kilgore Road Suite 100, Rancho Cordova CA 95670-6150

January 26, 2016
File: 1840xxxxx

Attention: David Carr
Construction Manager
KSN Inc.
711 N. Pershing Ave.
Stockton, Ca. 95203
dcarr@ksninc.com

**Reference: Reclamation Dist. 1614 Smith Tract Storm Water Pump Station Alarm System; KSN
Project 0806-9016-07-001**

Mr. Carr,

We are pleased to offer this proposal to provide and install cellular alarm modems at five storm water pump stations for the Reclamation District 1614, Smith Tract. The effort presented in this proposal is based on our understanding of the project gained from our site visit on January 18th as well as various subsequent emails and phone conversations with you. Please refer to the included cost break down for individual task budget allowances.

Task 1-Procure Equipment

Stantec will procure the Raco AlarmAgent cellular alarm modems and associated equipment necessary for a complete and operational alarm system at five storm water pump stations within the Reclamation District. The alarm modems will be installed inside of existing control panels and be electrically interfaced with existing relays for wet well high and low level alarms. The modems will also be configured to alarm on loss of utility power.

Task-2 Cellular Alarm System Service Plan

A Raco AlarmAgent service plan is required for each of the five modems. Stantec will coordinate and procure three year service plans for each modem. The service plan includes the interface of the modem to the web interface for the alarm functionality as well as access to Raco technical support. The service plans will be setup in the name of the Reclamation District and will need to be renewed at the end of the three year contract for service to remain in effect.



January 26, 2016

David Carr

Page 2 of 3

Reference: Reclamation Dist. 1614 Smith Tract Storm Water Pump Station Alarm System; KSN Project 0806-9016-07-001

Task-3 Configuration and Training

Stantec will configure the AlarmAgent web interface as required for a functional system. This will include configuration of alarm notifications for wet well high and low alarms as well as utility power failure for each of the five stations. Alarms will be setup to report via voice, email, and text notifications to District operations staff. We will also provide one session of basic training for up to three Reclamation District staff members on the operation and functionality of the AlarmAgent web interface as well as instructions for contacting technical support and renewal requirement.

Travel Time and Expense

Our proposal assumes a maximum of two trips to Stockton to install and test equipment and train staff. If additional trips are required they will be invoiced on a time and expense basis in addition to the total presented below.

Schedule and Budget

Services provided by Stantec Consulting Services Inc. under this scope of work as outlined above will be provided for an estimated not to exceed cost of twenty thousand four hundred dollars (\$20,400.00). The budgets for the individual sub-tasks shown below are estimates only. The individual budget items may be re-distributed by Stantec as needed for Project completion as long as the overall budget is not exceeded. Note that Stantec is not responsible for the services provided by Raco Manufacturing in regards to the service plans.

The cost estimate budget assumes a schedule the 90 days. Services under this agreement will begin immediately after approval of this proposal and execution of an Agreement by KSN Inc.

FEE SCHEDULE

Task 1	Alarm System hardware procurement	\$12,000
Task 2	Three Year Service Plan	\$3,800
Task 3	Installation, Configuration and Training	\$3,600
Task 4	Travel Time and Expense	\$1,000
	Total	\$20,400



January 26, 2016
David Carr
Page 3 of 3

Reference: Reclamation Dist. 1614 Smith Tract Storm Water Pump Station Alarm System; KSN Project 0806-9016-07-001

Please do not hesitate to contact us if you have any questions or would like to discuss this proposal further.

Regards,

STANTEC CONSULTING SERVICES INC.

Handwritten signature of Matt Boring in cursive script.

Matt Boring
Senior SCADA Specialist
Phone: (916) 861-0400
Matt.Boring@stantec.com

Handwritten signature of Sarah McIlroy in cursive script.

Sarah McIlroy
Principal
Phone: (916) 773-8100
Fax: (916) 773-8448
sarah.mcilroy@stantec.com

Attachement: 2016 standard rate table

bj document1

SCHEDULE OF BILLING RATES – 2016

Billing Level	Hourly Rate	Description
4	\$84	Junior Level position <input type="checkbox"/> Independently carries out assignments of limited scope using standard procedures, methods and techniques <input type="checkbox"/> Assists senior staff in carrying out more advanced procedures <input type="checkbox"/> Completed work is reviewed for feasibility and soundness of judgment <input type="checkbox"/> Graduate from an appropriate post-secondary program or equivalent <input type="checkbox"/> Generally, one to three years experience
5	\$92	
6	\$101	Fully Qualified Professional Position <input type="checkbox"/> Carries out assignments requiring general familiarity within a broad field of the respective profession <input type="checkbox"/> Makes decisions by using a combination of standard methods and techniques <input type="checkbox"/> Actively participates in planning to ensure the achievement of objectives <input type="checkbox"/> Works independently to interpret information and resolve difficulties <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, three to six years experience
7	\$109	
8	\$118	
9	\$127	First Level Supervisor or first complete Level of Specialization <input type="checkbox"/> Provides applied professional knowledge and initiative in planning and coordinating work programs <input type="checkbox"/> Adapts established guidelines as necessary to address unusual issues <input type="checkbox"/> Decisions accepted as technically accurate, however may on occasion be reviewed for soundness of judgment <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, five to nine years experience
10	\$137	
11	\$148	
12	\$161	Highly Specialized Technical Professional or Supervisor of groups of professionals <input type="checkbox"/> Provides multi-discipline knowledge to deliver innovative solutions in related field of expertise <input type="checkbox"/> Participates in short and long range planning to ensure the achievement of objectives <input type="checkbox"/> Makes responsible decisions on all matters, including policy recommendations, work methods, and financial controls associated with large expenditures <input type="checkbox"/> Reviews and evaluates technical work <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, ten to fifteen years experience with extensive, broad experience
13	\$173	
14	\$186	
15	\$196	Senior Level Consultant or Management <input type="checkbox"/> Recognized as an authority in a specific field with qualifications of significant value <input type="checkbox"/> Provides multidiscipline knowledge to deliver innovative solutions in related field of expertise <input type="checkbox"/> Independently conceives programs and problems for investigation <input type="checkbox"/> Participates in discussions to ensure the achievement of program and/or project objectives <input type="checkbox"/> Makes responsible decisions on expenditures, including large sums or implementation of major programs and/or projects <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, more than twelve years experience with extensive experience
16	\$216	
17	\$252	
18	\$294	Senior Level Management under review by Vice President or higher <input type="checkbox"/> Recognized as an authority in a specific field with qualifications of significant value <input type="checkbox"/> Responsible for long range planning within a specific area of practice or region <input type="checkbox"/> Makes decisions which are far reaching and limited only by objectives and policies of the organization <input type="checkbox"/> Plans/approves projects requiring significant human resources or capital investment <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, 15 years experience with extensive professional and management experience
19	\$319	

Note: Rates subject to escalation at end of calendar year.

ITEM 7



NEWSLETTER

DECEMBER 2014

P.O. Box 773, Stockton, CA 95201-0773

December 2014

Dear Homeowners and Businesses:

Thank you for your help in keeping our levees clean and safe. It requires the commitment and cooperation of each property owner and resident of the District, and your efforts are appreciated.

We live in an area surrounded by water and protected by levees, and constant vigilance is required by each of us to appropriately and safely maintain our levees.

The safety of our District neighborhoods is dependent on our attention to maintaining a strong levee system. Feel free to contact Lonnie Lobasco, our new District Superintendent, for clarification on any requirements.

The Board of Trustees extends its appreciation to Max Gallegos, our retiring District Superintendent, for his years of dedicated and effective services

Sincerely,

Board of Trustees
Reclamation District 1614

joint state grant for which the RD 1614 and Stockton East Water District applied. Unfortunately, the grant application was unsuccessful. At this time, District representatives are working to identify and apply for possible funding sources for the remaining 50% of the costs.

Emergency Plan

While RD 1614 work to locate grant funding, it has taken steps to stabilize and repair the Station so it can continue to pump storm water as it has for decades until it is replaced. As a precaution, the RD 1614 has prearranged the use of portable pumps that can be utilized immediately to continue pumping storm water from the Station should a problem arise with the existing equipment.

Planning

RD 1614 will continue to plan for the replacement of the Station and will report to you and other property owners when grant funding for the project is located.

Wisconsin Pump Station Update

History

In June 2013, District property owners approved an assessment to assist in the replacement of the Wisconsin Pump Station (Station). The Station pumps storm water from a large portion of properties and streets within (RD 1614). The Station is nearing the end of its useful life and is in an advanced state of deterioration. The estimated cost to replace the Station so that it meets the FEMA requirements is \$2.6 million.

Funding Issues

The assessments approved by the property owners in 2013 were to cover 50% of the cost of replacing the Station with the remaining 50% anticipated from a



District Superintendent Responsibilities

Did you ever wonder what our RD 1614 Superintendent does? Following are some examples of the wide range of services each month that are needed to maintain and protect our pump stations and levees.

The pump stations are inspected for wear, noisy bearings, vandalism, and property damage. Pump oil reservoirs are inspected to ensure proper bearing lubrication. Safety inspections of motor starters, motors, electrical switching equipment, siphon brake valves, and general electrical equipment are made at each visit. The Superintendent designs and re-engineers, as needed, electrical wiring systems to comply with the National Electrical Codes for California, state safety orders, and Cal-OSHA industrial safety requirements.

The Superintendent maintains the operation of the Programmable Pump Controller's air compressor and drains water out of the air tank monthly, or as needed.

The pump discharge pipes through the Smith Tract levees are inspected for any signs of metal fatigue and possible water leaks. The security fences and buildings that house and protect pump station equipment are inspected. The roads are inspected and maintained into and out of all pump station facilities.

The levees are inspected twice weekly for any encroachments, erosion, rodent control (especially beavers), seepage, and boils/toe drains. The vegetation control program is conducted monthly, year-round.

When rain storms occur, the Superintendent performs additional inspections and monitors any street flooding, at all hours of day or night.

In the event of major utility power failures, the Superintendent provides emergency services with portable emergency pumps or generators.

Lastly, the Superintendent also maintains and provides information and documentation for the RD 1614 Operation and Maintenance Manuals (O&M).



Rodent Reminders

If beavers, ground squirrels, or other large, semi-aquatic rodents pop up in your neighborhood, please call our District

Superintendent immediately. These pesky creatures can significantly damage RD 1614 levees.



Contact Information

DISTRICT TRUSTEES

William Dunning, President
Ben Koch
Robert Wise

DISTRICT SUPERINTENDENT

Lonnie Lobasco (209) 992-2827
RD1614@neumiller.com

ATTORNEY FOR THE DISTRICT

Dan Schroeder (209) 948-8200

DISTRICT ENGINEER

Christopher Neudeck
Kjeldsen, Sinnock & Neudeck, Inc.
(209) 946-0268

Thank you for your individual efforts in keeping our levees safe and well maintained.



ITEM 9

RD 1614: MASTER CALENDAR

JANUARY

- Renewal of Insurance

FEBRUARY

- Send out Form 700s, remind Trustees of April 1 filing date

MARCH

- Evaluation Review of Contracts for Consultants and Employees

APRIL

- April 1: Form 700s due

MAY

- Draft Budget

JUNE

- June 15: Provide notice/make available to the public, documentation/materials regarding determination of Appropriations (15 days prior to meeting at which Appropriations will be adopted) (*Government Code §7910*).
- Approve Audit Contract for expiring fiscal year
- Adopted Annual Budget.
- Reminder that Liability Insurance Expires Annually the end of July.

JULY

- Adopt Resolution for setting Appropriations and submit to County Assessor's Office.
- Adopt Resolution Establishing Annual Assessments.

AUGUST

- August 1: Deadline to certify assessments for tax-roll and deliver to County (duration of current assessment: no expiration).
- Send handbills for collection of assessments for public entity-owned properties
- In election years, opening of period for secretary to receive petitions for nomination of Trustees (75 days from date of election.) (*Cal. Wat. Code §50731.5*)

SEPTEMBER

- In election years, last legal deadline to post notice that petitions for nomination of Trustees may be received (7 days prior to close of closure.) (*Cal. Wat. Code §50731.5*).

- In election years, closing of acceptance of petitions for nomination of Trustees (54 days from date of election.) (*Cal. Wat. Code §50731.5*).
- Review Status of Encroachment Permit request from Randy Pierson for fence at corner of Del Rio Ave and Kirk Ave.

OCTOBER

- Publish Notice of Election, even numbered years (once per week, 4 times, commencing at least 1 month prior to election).

NOVEMBER

- Election: to be held first Tuesday after first Monday of each even-numbered year.

DECEMBER

- New Trustee(s) take office, outgoing Trustee(s) term(s) end on first Friday of each even-numbered year.
- Follow up on Smith Canal Proposition 218 Reimbursement for costs advanced to SJAFCA.

Term of Current Board Members:

Name	Term Commenced	Term Ends
Ben Koch	First Friday 11/2012	First Friday of 11/2016
Robert Wise	First Friday 11/2012	First Friday of 11/2016
William Dunning	First Friday 11/2014	First Friday of 11/2018

No Expiration on Assessment

Reclamation District Meetings

- **First Monday of each month, at 2:00 P.M.**
at the offices of
Neumiller & Beardslee
509 W. Weber Avenue, Suite 500
Stockton, California 95203

ITEM 14



APPLICATION REFERRAL

PUBLIC HEARING

**FROM: SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT**
Development Services Division
1810 East Hazelton Avenue
Stockton, CA 95205
Phone: (209) 468-3120
Fax: (209) 468-3163

Contact: Kerry Sullivan
(209) 468-3140
ksullivan@sigov.org

Jennifer Jolley
(209) 468-8908
jjolley@sigov.org

Mo Hatef
(209) 468-8477
mhatef@sigov.org

The following project has been filed with this Department: **APPLICATION NUMBER: PA-1500274 (TA)**

PROPERTY OWNER: San Joaquin County
1810 E. Hazelton Avenue
Stockton, CA 95205

APPLICANT: Same

PROJECT DESCRIPTION: A Development Title Text Amendment application to amend Chapter 9-1075 Wineries and Related Facilities to include Sections 9-1075.8 (Existing Wineries and Wine Cellars), 9-1075.9(c) (Marketing Calendars), 9-1075.9(f) (Outdoor Amplified Sound), and 9-1075.9(h) (Parking Requirements); and Section 9-110.4 (Definitions of Accessory Winery Event and Marketing Event). See attached for proposed text changes. Please note: only the sections proposed for amendment are included in this application. All other sections of the revised winery ordinance remain in effect. Information about the project can also be reviewed on the Department's webpage at <http://sigov.org/commdev/cgi-bin/cdyn.exe/handouts-planning/PA-1500274-TEXTAMENDMENT-WINERY.pdf>.

PROJECT LOCATION: The project is countywide.

ENVIRONMENTAL DETERMINATION: A Negative Declaration is being proposed for adoption. Copies of the Initial Study and proposed Negative Declaration are available at the Community Development Department.

APPLICATION REVIEW: If you have any recommendations or comments on this project, please submit them to the Community Development Department no later than February 11, 2016. Comments or recommendations received after that date would not be used in staff's analysis and recommendation for this application.

NOTE TO SURROUNDING PROPERTY OWNERS: The Planning Commission will hold a public hearing on this project. You will receive notice of the date, time, and place of the public hearing at a later date.

NOTE TO REVIEW AGENCIES: If you wish to be notified of the Planning Commission hearing date for this project, inform the contact person noted above, and you will be placed on the mailing list. Any public agency which comments on the proposed project or negative declaration will automatically be placed on the Planning Commission mailing list.

AGENCY REFERRALS MAILED ON JANUARY 21, 2016 TO:

- | | | |
|---------------------------|-------------------------------------|--------------------------------|
| AG COMMISSIONER | DELTA STEWARDSHIP COUNCIL, ABC | ALCOHOL & TOBACCO TAX BUREAU |
| SJ COUNTY ASSESSOR | MOSQUITO & VECTOR CONTROL, CHP | US ARMY CORPS, DELTA KEEPER |
| SJ BOARD OF SUPERVISORS | ALAMEDA COUNTY PLANNING DIVISION | CALTRANS-DIST. 10, KATHY PEREZ |
| SJ BUILDING INSPECTION | AMADOR COUNTY PLANNING DIV., CVFPB | CALTRANS-DIV. OF AERONAUTICS |
| SJ CODE ENFORCEMENT | CALAVERAS COUNTY PLANNING DIV. | PG&E, PG&E-EEP, FARM BUREAU |
| SJ COUNTY COUNSEL, SJ OES | CONTRA COSTA COUNTY PLANNING DIV. | BUILDERS EXCHANGE, LDGGA |
| SJ ENVIRONMENTAL HEALTH | SACRAMENTO COUNTY PLANNING DIV. | ALL SJ CO. AIRPORTS |
| SJ FIRE PREVENTION BUREAU | STANISLAUS COUNTY PLANNING DIV. | ALL SJ CO. CITIES, SIERRA CLUB |
| SJ PARKS & RECREATION | DEPT. OF CONSERVATION, CRWQCB | ALL SJ CO. FIRE DIST., COMCAST |
| SJ PUBLIC WORKS, ALUC | CA DEPT. OF FISH & WILDLIFE REG-ALL | ALL SJ CO. FLYING SERVICES |
| SJ COUNTY SHERIFF | CA DEPT. OF FOOD & AGRICULTURE | ALL SJ CO. MACS, KATHY PEREZ |
| SJ AIR POLLUTION CONTROL | CA STATE LANDS COMMISSION | ALL SJ CO. RECLAMATION DIST. |
| SJ COUNCIL OF GOVERNMENTS | CA STATE RECLAMATION BOARD, BIA | ALL SJ CO. SCHOOL & DISTRICT |
| SJ RESOURCE CONSERVATION | BUREAU OF RECLAMATION, EBMUD | ALL SJ CO. TELEPHONE COMPANIES |
| DELTA COMMISSION | FISH & WILDLIFE, SOIL CONSERVATION | ALL SJ CO. WINERIES |

Proposed Text Amendment Changes

SECTION 9-110.4 DEFINITIONS: "Accessory Winery Event" and "Marketing Event".

Accessory Winery Event. "Accessory winery event" is an event hosted by the on-site winery or off-site wine cellar and that includes the congregation of persons for the purpose of promoting and marketing wine, the wine industry, winery or off-site wine cellar. Accessory winery events may include but are not limited to: wine release parties, barrel tasting and wine club activities, and always include wine tasting and the sale of wine. Accessory winery events exclude events that are open to the public and/or where the facility is rented (or otherwise made available) to a second party. Accessory winery events shall have a maximum of forty (40) attendees per event. Marketing of wine as an accessory winery event may include food service and/or food and wine pairings provided all such food service is provided on a fixed cost basis and not in a way that is defined under the use type Eating Establishment, Convenience or Full Service pursuant to Development Title Section 9-115.425. Outdoor amplified sound shall be prohibited at Accessory winery events. Accessory winery events shall be identified in a supplemental Marketing Calendar filed with the Department pursuant to 9-1075.9(c).

Marketing Event. "Marketing event" means the congregation of persons for the purpose of promoting the wine industry and marketing wine. Marketing events always include wine tasting and the sale of wine. Activities or events include but are not limited to: non-profit community fund raising, weddings, concerts, and/or any other event where the winery or off-site wine cellar facility is rented or otherwise made available to a second party ~~or the public~~ and wine is served. Marketing events may include food service (but not in a way that is defined under the use type Eating Establishment, Convenience or Full Service pursuant to Development Title Section 9-115.425). Marketing events shall be identified in a supplemental Marketing Calendar filed with the Department pursuant to 9-1075.9(c).

SECTION 9-1075.8 EXISTING WINERIES AND WINE CELLARS.

Existing permitted wineries or wine cellars established prior to the adoption of the ordinance codified in this Chapter will continue to be governed by the conditions of approval from their original Discretionary Permit, with the exception of applicable operational standards contained in Section 9-1075.9(l).

SECTION 9-1075.9 MARKETING EVENTS, INDUSTRY EVENTS, & ACCESSORY WINERY EVENTS

Notwithstanding any other provision of this Chapter, all new Wineries and Off-Site Wine Cellars and existing Wineries and Off-Site Wine Cellars who request to add Marketing Events or modify an existing Marketing Event approval, have Accessory Winery Events and/or participate in Industry Wide Events will be subject to the following requirements.

(c) **Marketing Calendar.** A Marketing Calendar shall be filed with the Community Development Department on a bi-annual basis and updated monthly as necessary for any Winery or Off-Site Wine Cellar with approved Marketing Events, Accessory Winery Events and/or who will participate in Industry Events subject to the following requirements: ~~—A copy of the Marketing Calendar shall be kept on the Winery or Off Site Wine Cellar premises at all times. The Plan shall be made available to the Community Development Department for review upon request. See Section 9-1075.9(m) for applicability of operational standards for existing Wineries and Off-Site Wine Cellars with previously approved Marketing Events.~~

- (1) Marketing Events, Accessory Winery Events and/or Industry Wide Events shall be reported to the Community Development Department a minimum of five (5) days prior to each event.
- (2) A copy of the Marketing Calendar shall be kept on the Winery or Off-Site Wine Cellar premises at all times. The Marketing Plan shall be made available to the Community Development Department for review upon request.

(f) **Outdoor Amplified Sound.** Outdoor amplified sound may be conditionally permitted with an approved land use permit at Marketing Events and Industry Events ~~and/or Accessory Winery Events~~ subject to the following standards:

- (1) Outdoor amplified sound shall be permitted between the hours of 10 a.m. and 9 p.m.
- (2) A Winery or Off-Site Wine Cellar may be permitted to have a maximum of six (6) Marketing Events per calendar year where the outdoor amplified sound may continue until 10 p.m. if the Winery or Off-Site Wine Cellar is in compliance with their land use permit and has no prior enforcement violations from the previous twelve (12) month period. The event dates shall be identified in the Marketing Calendar.
- (3) A Noise Study shall be required prior to permitting outdoor amplified sound to ensure compliance with the Noise Standards specified in Section 9-1025.9.
- (4) Indoor amplified sound may be permitted at approved Marketing Events, Accessory Winery Events and Industry Events, in compliance with the Noise Standards specified in Section 9-1025.9.
- (5) Outdoor amplified sound shall be prohibited at all Accessory Winery Events.

(h) **Parking Requirements.** The following parking requirements shall apply to Wineries and Off-Site Wine Cellars with Marketing Events, Industry Events, and/or Accessory Winery Events.

- (1) A minimum of one (1) parking space shall be provided for every two (2) event attendees. Overflow parking areas utilized for event parking may be permitted using alternative surfacing materials pursuant to Section 9-1015.5(e) (2).

(2) A minimum of one (1) on-site parking attendant shall be required for any Marketing Event or ~~Accessory Winery Event~~ that exceeds one hundred (100) attendees. This person shall be available for the duration of the event.

(3) A minimum of one (1) on-site parking attendant shall be required for any winery or off-site wine cellar participating in an Industry Event. This person shall be available for the duration of the event.



**California Special
Districts Association**

CSDA

Districts Stronger Together

February 12, 2016

Mr. John Stovall
Reclamation District 1614
PO Box 20
Stockton, CA 95201-3020

1,483

RE: The New Year Brings New Investment Options for Your District!

Dear John Stovall:

Are you looking for ways to diversify your district's investments in a trusted, proven program that is governed by and understands local governments in California?

As a special district in California, you have access to a program CSDA is a partner in called CalTRUST. This local government, joint investment pool has grown significantly in recent years reaching over \$2.4 billion in assets with special districts now representing 1/3 of the CalTRUST program! Below are just some of the reasons districts like yours are choosing CalTRUST...

Safety

CalTRUST accounts comply with all limits & restrictions placed on local investments in California

As a public agency, you have a responsibility to safeguard the public's money. The CalTRUST funds are designed specifically with this in mind. They provide instant diversification of the investments, professional portfolio and risk management, and is a highly cost-efficient approach to investing local government funds with easy and transparent reporting. All of the CalTRUST funds are in full compliance with the California investment guidelines for public agencies.

Liquidity & Flexibility

CalTRUST options fit the liquidity & financial management needs of your district!

Choose between Money Market, Short-Term and/or Medium-Term funds to manage your district's cash flow based on your needs. You can also setup specific accounts to manage reserves or project funds at no additional costs.

Yield

CalTRUST consistently outperforms LAIF!

The CalTRUST funds are managed by professionals at Wells Fargo Asset Management who seek to as high a yield as possible, consistent with the preservation of principal by investing in high-quality, fixed-income securities while keeping safety and liquidity at the forefront. Further, year after year, the CalTRUST Short-Term and Medium-Term funds have proven to outperform LAIF regularly.

Find out why more districts are joining CalTRUST each month!

Simply complete and return the enclosed interest form and we will be in touch to tell you more about the program, answer your questions and get you started. You can also contact me directly at 916.442.7887. I look forward to welcoming your district into CalTRUST!

Best Regards,

Neil McCormick
Chief Executive Officer
California Special Districts Association

1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
t: 916.442.7887
f: 916.442.7889
www.csda.net

A proud California Special Districts Alliance partner

Special District Risk Management Authority
1112 I Street, Suite 300
Sacramento, CA 95814
toll-free: 800.537.7790
f: 916.231.4111

CSDA Finance Corporation
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
f: 916.442.7889



INVESTMENT TRUST
OF CALIFORNIA

www.caltrust.org



POOLED INVESTMENT FUNDS FOR DISTRICTS

Diversify your district's investments in a trusted, proven program that is governed by and understands local governments in California!

CalTRUST was developed to provide local agencies in California, like special districts, with an efficient, cost-effective, and convenient method of pooling local assets for investment.

Why invest with CalTRUST?

Safety - CalTRUST accounts comply with all limits & restrictions placed on local investments in California.

CalTRUST invests in fixed-income securities eligible for investment pursuant to California Government Code Sections 53601, et seq. and 53635, et seq. Investment guidelines adopted by the CalTRUST Board of Trustees may further restrict the types of investments held in the program. Leveraging within the CalTRUST program is prohibited.

Liquidity and Flexibility - CalTRUST options fit the liquidity and financial management needs of your district. CalTRUST offers the option of three funds to provide participants with a convenient method of pooling their assets. Each of the funds seeks to attain as high a level of current income as is consistent with the preservation of principal. The funds invest only in fixed-income oriented instruments eligible for local agency investment.

Account	Liquidity	Target Duration
Money Market Fund	Same Day	< 60 days
Short-Term	Daily	0 - 2 Years
Medium-Term	Monthly	1 1/2 - 3 1/2 Years

Yield - CalTRUST consistently outperforms LAIF.



Districts already represent 1/3 of the \$2.4 billion in assets managed in the CalTRUST program!



Find out why
MORE DISTRICTS ARE JOINING
CalTRUST each month!



Complete and return the contact form below to learn more about how your district can benefit as a participant in CalTRUST.

YES! I would like to learn more about how my district can diversify our investments with CalTRUST.

YES! I'm ready to join the hundreds of districts and other local agencies already in CalTRUST.
Please send me the paperwork to get started.

CONTACT NAME:

TITLE:

DISTRICT:

ADDRESS:

CITY:

STATE:

ZIP:

CONTACT EMAIL:

CONTACT PHONE:

Return this completed form by mail, fax, or email. You can also call Neil McCormick directly at 916.442.7887.

California Special Districts Association (CSDA)

1112 I Street, Ste. 200, Sacramento, CA 95814 • F - 916.442.7889 • E - neilm@csga.net

SAMPLING OF CURRENT CALTRUST PARTICIPATING AGENCIES

(as of Jan. 28, 2016)

Special Districts

- Antelope Valley – East Kern Water District
- Bay Area Toll Authority
- CalViva Health
- Castroville Community Services District
- Central California Irrigation District
- Central Sanitary District
- Chino Basin Water Conservation District
- Chino Basin Watermaster
- Chino Valley Independent Fire District
- Consolidated Central Valley Table Grape Pest & Disease Control District
- Costa Mesa Sanitary District
- Crestline Sanitation District
- Dudley Ridge Water District
- Eastern Municipal Water District
- Fallbrook Healthcare District
- Helendale Community Services District
- Inland Empire Resource Conservation District
- Inland Empire Utilities Agency
- James Irrigation District
- Kaweah Health Care District
- Kings River Conservation District
- Kinneola Irrigation District
- Lake Hemet Municipal Water District
- Lamont Public Utility District
- Las Virgenes Municipal Water District
- Los Angeles County Metropolitan Transportation Agency
- Mammoth Community Water District
- Maxwell Irrigation District
- McKinleyville Community Services District
- Midway City Sanitary District
- Monterey Peninsula Regional Park District
- North of the River Municipal Water District
- Oildale Mutual Water Company
- Orange County Cemetery District
- Palm Ranch Irrigation District
- Regional Government Services Authority
- Rialto Utility Authority
- Rio Alto Water District
- Rosamond Community Services District
- Sacramento Regional Transit Authority
- San Bernardino Valley Water Conservation
- San Diego County Regional Airport Authority
- San Diego Unified Port District
- San Geronio Pass Water Pass Agency
- San Luis & Delta-Mendota Water Authority
- San Mateo Transit Authority
- Santa Ana Watershed Project Authority
- Santa Lucia Preserve Community Services District
- South Coast Water District
- South Feather Water & Power Agency
- Transportation Authority of Marin
- Tulare Irrigation District
- Tulare Local Healthcare District
- Victor Valley Wastewater Reclamation Authority
- West County Wastewater District
- West Valley Mosquito and Vector Control District
- West Valley Water District
- Westlands Water District
- Yorba Linda Water District

Counties

- Alameda County
- Butte County
- Contra Costa County
- Del Norte County
- Imperial County
- Kings County
- Madera County
- Modoc County
- Mono County
- Monterey County
- Riverside County
- San Diego County
- San Luis Obispo County
- Santa Barbara County
- Solano County
- Sonoma County
- Ventura County
- Yuba County

Cities

- Albany
- Arvin
- Bellflower
- Beverly Hills
- Chino
- Chula Vista
- Concord
- Delano
- El Centro
- Elk Grove
- Fowler
- Gardena
- Hercules
- Jackson
- Lafayette
- Laguna Niguel
- Larkspur
- Lodi
- Martinez
- National City
- Norwalk
- Oakley
- Ojai
- Palm Springs
- Pinole
- Port Hueneme
- Poway
- Rancho Cucamonga
- Rialto
- Richmond
- Riverside
- Sacramento
- San Bernardino
- San Dimas
- Town of Ross
- Villa Park



CalTRUST
is governed
by your
peers in local
government.

Other agencies/Public Non-Profit

- ABAG Finance Authority
- ACWA Joint Powers Insurance Authority
- Alameda Alliance for Health
- ALPHA Fund
- Association of California Water Agencies
- California Counties Foundation
- California State Association of Counties
- CPS Human Resource Services
- CRHMFA Homebuyers Fund
- CSAC Finance Corporation
- CSAC Public Funds
- California Special Districts Association
- CSDA Finance Corporation
- El Dorado LAFCO
- Fresno-Madera-Kings Regional Health Authority
- Gold Coast Health Plan
- League of California Cities
- National Association of Counties (NACO)
- National Homebuyers Fund, Inc.
- Regional Council of Rural Counties
- Santa Barbara San Luis Obispo Regional Health Authority
- Special District Leadership Foundation
- State Association of County Retirement Systems (SACRS)

Sponsoring Associations



OMB Number and Expiration

You are not required to respond to this collection of information if it does not display a valid approval number from the Office of Management and Budget (OMB). The eight-digit OMB number is 0607-0930 and appears in the upper right corner of the report form/login screen.

Authority and Confidentiality

Title 13 U.S.C., Section 161; and Title 13 U.S.C., Section 193 authorizes the Census Bureau to conduct this collection and to request your voluntary assistance. Information provided in this collection tool compiled from or customarily provided in public records are exempt from confidential treatment as cited in Title 13 U.S.C., Section 9(b).

Burden Estimate Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: ECON Survey Comments 0607-0930, U.S. Census Bureau, 4600 Silver Hill Road, Room EMD-6K064, Washington, DC 20233. You may e-mail comments to ECON.Survey.Comments@census.gov. Be sure to use ECON Survey Comments 0607-0930 as the subject.

1 PATRICK M. SOLURI (SBN 210036)
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6 Telephone: (916) 455-7300
7 Facsimile: (916) 244-7300
8 Email: patrick@semlawyers.com

9 Attorneys for Plaintiff
10 ATHERTON COVE PROPERTY OWNERS ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
12 COUNTY OF SAN JOAQUIN

13 ATHERTON COVE PROPERTY OWNERS
14 ASSOCIATION,

15 Plaintiff,

16 v.

17 SAN JOAQUIN AREA FLOOD CONTROL
18 AGENCY,

19 Defendant.

CASE NO. STK-CV-UWM-2015-0011847

**NOTICE TO RESPONSIBLE AND
TRUSTEE AGENCIES OF
COMMENCEMENT OF ACTION
UNDER CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

**(Pub. Resources Code, § 21167.6.5,
subd. (c))**

**DEPT.: 41
JUDGE: Honorable Carter Holly**

ACTION FILED: December 21, 2015

1 Pursuant to Public Resources Code section 21167.6.5, subdivision (c), notice is hereby
2 given to responsible agencies and public agencies having jurisdiction over affected natural
3 resources that on December 21, 2015; Petitioner and Plaintiff Atherton Cove Property Owners
4 Association filed a petition for writ of mandate under the provisions of the California
5 Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA") against the San
6 Joaquin Area Flood Control Agency ("Respondent") challenging Respondent's November 19,
7 2015 certification of an Environmental Impact Report and associated approvals for the Smith
8 Canal Gate Project, and required findings and adopted mitigation measures under CEQA. A
9 copy of the Petition for Writ of Mandate and Complaint for Declaratory Relief is attached to
10 this notice.

11
12 Dated: February 2, 2016

SOLURI MESERVE,
A LAW CORPORATION

13
14 By: 

15 Patrick M. Soluri
16 Attorney for Atherton Cove Property Owners
17 Association
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9 Attorneys for Plaintiff
10 AHERTON COVE PROPERTY OWNERS ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
12 COUNTY OF SAN JOAQUIN

13 AHERTON COVE PROPERTY OWNERS
14 ASSOCIATION,

15 Plaintiff,

16 v.

17 SAN JOAQUIN AREA FLOOD CONTROL
18 AGENCY,

19 Defendant.

20 CASE NO. STK-CV-~~UWM~~-2015-0011847

21 VERIFIED PETITION FOR WRIT OF
22 MANDATE AND COMPLAINT FOR
23 DECLARATORY RELIEF
24 (Code Civ. Proc., §§ 1060, 1085, 1094.5;
25 Pub. Resources Code, § 21000 et seq.)

26 BY FAX

FILED
SUPERIOR COURT - STOCKTON

2015 DEC 21 AM 10:39

ROSA JUNQUEIRO, CLERK
Stephanie Ceja

BY _____
DEPUTY

1 Plaintiff Atherton Cove Property Owners Association (“Plaintiff” or “APCOA”) alleges
2 as follows:

3 1. By this action, Plaintiff challenges Defendant San Joaquin Area Flood Control
4 Agency’s (“Defendant” or “SJAFCA”) November 19, 2015 certification of an Environmental
5 Impact Report (“EIR”) and associated approvals for the Smith Canal Gate Project (“Project”),
6 required findings and adopted mitigation measures under the California Environmental Quality
7 Act (“CEQA”), Public Resources Code, section 21000 et seq., and the public trust doctrine.
8 Plaintiff also challenges the Defendant’s authority to construct the Project as it requires but
9 does not include acquisition of the property interest on tidal and submerged lands that have
10 been conveyed in perpetuity to the United States for another purpose.

11 **PARTIES**

12 2. Plaintiff is an unincorporated association of Atherton Cove residents committed
13 to the environmental and recreational benefits from Atherton Cove and the San Joaquin River.
14 Plaintiff and its members have direct and substantial beneficial interest in ensuring that
15 Defendant complies with laws relating to environmental protection. Plaintiff’s members
16 appreciate and routinely utilize the environmental and recreational amenities of Atherton Cove,
17 and will be adversely affected if the Project is developed without proper compliance with
18 CEQA and other applicable legal requirements.

19 3. Defendant is a joint powers agency organized under the laws of the state of
20 California. Defendant is the “lead agency” for the Project under CEQA. As lead agency,
21 Defendant is responsible for preparation of an environmental document that describes the
22 Project and its impacts and, if necessary, evaluates mitigation measures and/or alternatives to
23 lessen or avoid any significant environmental impacts, and to make findings in that regard.

24 4. Plaintiff is unaware of the true names and capacities of defendants identified as
25 Does 1-20. Plaintiff is informed and believes, and on that basis alleges, that defendants Does 1-
26 20, inclusive, are individuals, entities or agencies with material interests affected by the Project
27 or by the Defendant’s actions with respect to the Project. When the true identities and
28

1 capacities of these defendants have been determined, Plaintiff will, with leave of Court if
2 necessary, amend this Complaint to insert such identities and capacities.

3 **BACKGROUND FACTS**

4 5. The Project is the construction and indefinite operation of a gated fixed wall
5 structure at the mouth of Atherton Cove and Smith Canal, located adjacent to the San Joaquin
6 River in and adjacent to the city of Stockton, in the county of San Joaquin, California. The
7 fixed wall would extend approximately 800 feet from the north tip of Dad's Point levee to the
8 bank of the San Joaquin River.

9 6. The Project area has two complex hydraulic features, Atherton Cove, which
10 forms a nearly 90-degree, dead-end bend and Smith Canal, a backwater slough of the
11 Sacramento-San Joaquin Delta, located south of the Calaveras River.

12 7. The claimed primary purpose of the Project is to provide 100-year flood
13 protection to the areas in the Smith Canal floodplain.

14 8. The Project would close the mouth of Atherton Cove by 92 percent, from
15 approximately 625 feet wide down to merely 50 feet wide. This reduction in the opening width
16 of Atherton Cove would result in a completely different hydraulic configuration with
17 profoundly negative ecological and water quality effects. For example, it will significantly
18 exacerbate the proliferation of water hyacinth in Atherton Cove by trapping water hyacinth
19 mats behind the fixed wall. Presently, water hyacinth mats will simply drift out of Atherton
20 Cove into the San Joaquin River. Under the Project, the existing natural flushing process will
21 be virtually eliminated because water hyacinth mats, which grow to more than two acres in
22 size, will be trapped behind the Project, which would reduce the channel width to only a 50 foot
23 opening. This significant contribution to water hyacinth proliferation behind the fixed wall
24 will, in turn, significantly degrade water quality in Atherton Cove.

25 9. The Project may also exacerbate the presence of other invasive species, which
26 will further contribute to degraded water quality in Atherton Cove.

27 10. The Project's water quality impacts are not limited to the proliferation of invasive
28 species. Constricting the mouth of Atherton Cove by approximately 92 percent will also

1 significantly affect the hydrodynamics of Atherton Cove thereby further contributing to water
2 quality degradation.

3 11. There are also other questions about the Project's legality. SJAFCA concedes
4 that it does not own fee title to the property upon which the Project would be constructed. The
5 land is owned in fee simple by the State of California, and the United States of America owns a
6 perpetual easement over the land for purposes that are inconsistent with the Project.

7 12. By Act of January 21, 1927, the United States Congress authorized the San
8 Joaquin River Project, what has come to be known as the Stockton Deep Water Channel
9 Project. (P.L. 560, 69th Cong., Ch. 47, Stat. 1927.) To further the San Joaquin River Project,
10 the California Legislature directed the Governor to convey to the United States lands including
11 the Project site for the "rectification" of the San Joaquin River. (Ch. 435, Stats. 1929, pp. 754
12 et seq.)

13 13. Consistent with this direction by the California Legislative, the Governor of the
14 State of California in 1930 granted the United States of America a "perpetual" easement to
15 lands in question to remain in full force and effect forever," and for "the purpose of depositing
16 spoil thereon as may be required at any time, in any manner necessary for the construction and
17 maintenance of the channel and necessary levees" for the Stockton Deep Water Channel
18 Project. This deed is recorded June 11, 1930, in Book 316, Official Records of San Joaquin
19 County, at page 41. Even broader rights were conveyed to the federal government in a deed to
20 Dad's point that was recorded in Book 251, Official Records of San Joaquin County, at page
21 66.

22 14. As a property of the United States, the easement cannot be relinquished or
23 otherwise disposed of without the authority of Congress. On information and belief, SJAFCA
24 is not seeking Congressional authorization to construct the Project.

25 15. The land upon which the Project would be constructed also consists of submerged
26 lands within the historic natural riverbed of the San Joaquin River and is therefore subject to the
27 public trust doctrine. In 1927, the California Legislature decided upon the appropriate public
28 trust use for the Project site, namely the Stockton Deep Water Channel Project. On information

1 and belief, SJAFCA is not seeking legislation from the California Legislature to change the
2 authorized public trust use of that property, even if such legislation would be effective given the
3 United States' property interest.

4 16. In addition to its questionable legality and significant environmental impacts, the
5 Project's effectiveness for its purported fundamental purpose is inadequately substantiated. On
6 information and belief, the Federal Emergency Management Agency ("FEMA") has very
7 recently questioned whether the Project would actually provide 100-year flood protection. On
8 information and belief, FEMA's concerns had not been satisfied by SJAFCA at the time the
9 Project was approved.

10 17. An alternative to the Project, consisting of a floodwall along the existing levee
11 within Atherton Cove, has been proposed by Plaintiff ("Atherton Cove Floodwall"). By not
12 constricting the mouth of Atherton Cove, the Atherton Cove Floodwall would have the benefit
13 of essentially eliminating all biological and water quality impacts to Atherton Cove. It would
14 also eliminate the need for perpetual mechanical harvesting of water hyacinth required by the
15 Project. It would also avoid the other questions of legality raised by the Project.

16 18. SJAFCA rejected the Atherton Cove Floodwall alternative, however, in part
17 based on an allegation that it would cost more to construct than the Project.

18 19. A notice of preparation ("NOP") of an Environmental Impact Report ("EIR") for
19 the Project was released on June 24, 2014. The Draft Environmental Impact Report ("DEIR")
20 was circulated for the statutory minimum 45-day review period beginning on June 25, 2015.
21 Plaintiff submitted written comments raising concerns regarding invasive species proliferation,
22 water quality impacts and inadequate mitigation, among other issues.

23 20. The DEIR failed to provide a good faith analysis of the Project, its impacts,
24 feasible mitigation measures, and alternatives to the Project. As just one example, the DEIR
25 failed to acknowledge the Project would result in even a potentially significant impact
26 concerning water hyacinth. In an effort to mislead the public, the DEIR stated that there would
27 be "no impact" regarding water hyacinth proliferation. This conclusion was based on
28 SJAFCA's strategy of mischaracterizing what was clearly mitigation for the water hyacinth

1 impact as Project components. Legal deficiencies resulting from this strategy included but are
2 not limited to:

3 a. the DEIR failed to adequately disclose the Project's potentially significant
4 water hyacinth impacts and resulting water quality impacts without application of any
5 mitigation or any other feasible mitigation measures that could address these impacts;

6 b. the DEIR failed to include sufficiently information about the proposed
7 water hyacinth management program that would allow the public and decision-makers to assess
8 its effectiveness, enforceability and potentially significant impacts associated with its operation;
9 and

10 c. the DEIR disingenuously concluded that the Project represented the
11 environmentally superior alternative under CEQA by whitewashing the Project's significant
12 long term operational impacts to water quality in Atherton Cove.

13 21. On November 9, 2015, Plaintiff learned that SJAFCA intended to certify the
14 FEIR on November 19, 2015. Plaintiff requested a copy of the FEIR from SJAFCA. Although
15 Plaintiff had previously commented on the DEIR, SJAFCA did not allow Plaintiff to view the
16 Final Environmental Impact Report ("FEIR"), or even SJAFCA's responses to Plaintiff's
17 comments. On information and belief, on or before that same day, SJAFCA provided public
18 agencies with responses to public comments submitted on the DEIR.

19 22. Three days later, on November 12, 2015, and merely seven days before
20 certification, the FEIR was released to the public, which purported to respond to all public
21 comments received on the DEIR.

22 23. In light of the mere seven days provided to review and comment on the FEIR,
23 Plaintiff asked SJAFCA to reschedule its certification of the FEIR until a later date. SJAFCA
24 refused Plaintiff's request.

25 24. SJAFCA held a public hearing on November 19, 2015, to consider approval of
26 the Project and certification of the FEIR. Plaintiff, among others, provided written and oral
27 comments. In response to oral comments, SJAFCA staff disclosed for the first time very recent
28 written and oral communication with FEMA staff regarding FEMA's concerns about the

1 Project's adequacy to address flood control. Notwithstanding this significant new information,
2 SJAFCA certified the FEIR and approved that Project that same day.

3 25. Defendant also filed its Notice of Determination ("NOD") for the Project on that
4 same day, November 19, 2015.

5 JURISDICTION AND VENUE

6 26. This Court has jurisdiction over the matters alleged in this Petition pursuant to
7 Code of Civil Procedure sections 1060, 1085 and 1094.5, and Public Resources Code sections
8 21168 and 21168.5.

9 27. Venue is proper in the County of San Joaquin under Code of Civil Procedure
10 section 394.

11 28. This Petition is timely filed in accordance with Public Resources Code section
12 21167, subdivision (c). Defendant filed a NOD for the Project on November 19, 2015.

13 29. Plaintiff has complied with Public Resources Code section 21167.5 in serving
14 notice of this action to Defendant on December 16, 2015. (Exhibit 1).

15 EXHAUSTION OF ADMINISTRATIVE REMEDIES

16 30. Plaintiff has performed all conditions precedent to this filing and participated in
17 the administrative process. Plaintiff actively participated in the administrative process leading
18 up to Defendant's approval of the Project and issuance of the NOD, and stated their objections
19 to Defendant's actions. (See Pub. Resources Code, § 21177.)

20 31. Acting as the CEQA lead agency, Defendant has a mandatory duty to comply with
21 CEQA prior to undertaking the discretionary actions at issue in this lawsuit.

22 32. Plaintiff possesses no other remedy than to challenge Defendant's abuse of
23 discretion other than by means of this lawsuit.

24 STANDING

25 33. Plaintiff and its members have standing to assert the claims raised in this Petition
26 because Plaintiff's members are residents of Joaquin County in close proximity of the Project
27 site and have recreational and environmental interests that are directly and adversely affected by
28 SJAFCA's approval of the Project and certification of the EIR.

1 **IRREPARABLE HARM**

2 34. Defendant's failures, set forth in this Petition, constitute a prejudicial abuse of
3 discretion within the meaning of the Code of Civil Procedure and CEQA. (See Code Civ.
4 Proc., §§ 1085, 1094.5; Pub. Resources Code, §§ 21168, 21168.5.)

5 35. Plaintiff has no plain, speedy or adequate remedy in the ordinary course of law.
6 If Defendant's actions regarding the Project are effectuated, Plaintiff and the environment will
7 be irreparably harmed. No money damages could adequately compensate for that harm.

8 **PUBLIC BENEFIT**

9 36. This action involves enforcement of an important right affecting the public
10 interest. Plaintiff will confer a substantial benefit to the citizens of San Joaquin County and the
11 region in in which San Joaquin County is located, as well as on citizens of the state of California
12 generally, and therefore will be entitled to an award of reasonable attorneys' fees pursuant to
13 section 1021.5 of the Code of Civil Procedure.

14 **FIRST CAUSE OF ACTION**

15 (Violations of CEQA (Public Resources Code, §§ 21000, et. seq.))

16 37. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs
17 1 through 36, inclusive, of the Petition as if fully set forth herein.

18 38. The EIR fails to comply with the requirements of CEQA in that it fails to
19 adequately disclose, analyze and/or mitigate the Project's environmental impacts as required by
20 law, and its conclusions regarding the Project's environmental impacts are not supported by
21 substantial evidence. The EIR also fails to disclose, analyze and/or mitigate the Project's
22 cumulative environmental impacts as required by law, and its conclusions regarding the
23 Project's cumulative environmental impacts are not supported by substantial evidence. These
24 deficiencies include, but are not limited to:

25 **Analysis of Significant Environmental Impacts**

26 39. CEQA requires that an EIR describe the proposed project's significant
27 environmental effects. Each must be revealed and fully analyzed in the EIR. (Pub. Resources
28 Code, § 21100, subd. (b); CEQA Guidelines § 15126.2, subd. (a).) Defendant committed a

1 prejudicial abuse of discretion and failed to proceed in a manner required by law by relying on
2 an EIR that fails to meet the requirements of CEQA for analysis and disclosure of the Project's
3 impacts, including cumulative impacts. The EIR's deficiencies include, but are not limited to:

4 a. The EIR failed to adequately analyze and disclose baseline conditions and
5 the impacts associated with the Project's proliferation of water hyacinth and other invasive
6 species;

7 b. The EIR failed to adequately analyze the resulting impact to water quality
8 in Atherton Cove resulting from the Project's proliferation of invasive species;

9 c. The EIR failed to adequately analyze the Project's impacts with respect to
10 listed aquatic species and critical habitat;

11 d. The EIR failed to adequately analyze the Project's hydrodynamic impact
12 within Atherton Cove and the resulting impact on water quality in Atherton Cove; and

13 e. The EIR failed to adequately analyze the environmental impacts associated
14 with the perpetual use of mechanical harvesting of water hyacinth.

15 **Analysis of Feasible, Effective and Enforceable Mitigation Measures**

16 40. "An EIR shall describe feasible measures which could minimize significant
17 adverse impacts." (CEQA Guidelines § 15126.4, subd. (a)(1).) An EIR may not defer the
18 formulation of mitigation measures to a future time, but mitigation measures may specify
19 performance standards that would mitigate significant effects and may be accomplished in more
20 than one specified way. "Impermissible deferral of mitigation measures occurs when an EIR
21 puts off analysis or orders a report without either setting standards or demonstrating how the
22 impact can be mitigated in the manner described in the EIR." (*Preserve Wild Santee v. City of*
23 *Santee* (2012) 210 Cal.App.4th 260, 280-281 (2012).)

24 41. The EIR improperly defers analysis and formulation of mitigation measures. For
25 example:

26 a. The EIR relies on *de facto* mitigation in the form of "water hyacinth
27 removal maintenance activities" that had not been prepared by the time the EIR was
28 certified. No explanation whatsoever was provided for SJAFCA's failure to timely prepare the

1 plan. Although mechanical harvesting would be conducted “whenever cover of water hyacinth
2 reaches 20 percent in the most impacted areas behind the sheet pile wall, the EIR fails to explain
3 the limitation to “most impacted areas.” Further, the EIR fails to set a performance standard for
4 this mitigation because no resulting coverage standard was established that would trigger the
5 cessation of harvesting activities once commenced. Although the FEIR purported to establish a
6 budget for ongoing maintenance activities in perpetuity, the FEIR, however, provides no
7 explanation about how the budget figure is derived, including the assumptions regarding
8 resulting water hyacinth coverage following harvesting, the number of times per year harvesting
9 will be required, or any information supporting this budgeted amount as being sufficient to
10 address the water hyacinth impact. There is no way for the decision-makers and public to
11 determine whether this mitigation will actually be effective to reduce the impact.

12 b. The EIR relies on deferred analysis of the identification of affected
13 sensitive aquatic species and critical habit, and the formulation of mitigation measures to
14 purportedly address those impacts.

15 42. By impermissibly deferring formulation of mitigation measures to address water
16 hyacinth, the EIR failed to address the environmental impacts of such activities. Mechanical
17 harvesting, for example, can result in the following environmental issues that were not
18 adequately addressed in the EIR:

19 a. Harvesting is a non-selective operation that does not discriminate nuisance
20 plants from beneficial plants. This lack of sensitivity can negatively impact desirable, native
21 aquatic species.

22 b. The physical actions from these operations can cause direct harm to fish,
23 amphibians and invertebrates and other organisms through injury or mortality or by removing
24 cover to protect native fish from prey. These impacts are directly related to the scale of
25 operations and to the abundance and occurrence of non-target organisms in the treatment area.

26 c. Mechanical harvesting can impact water quality by increasing turbidity and
27 releasing nutrients usually bound in the sediment.

28

1 d. Mechanical cutting is conducted during the early rapid growth phase and
2 continuing growth period of the plants throughout the summer. Cutting plants during these
3 periods can stimulate their growth and also cause more lateral growth or side-branching to occur
4 which results in a denser plant canopy.

5 e. Disposal costs can be expensive. Often plant material must be hauled to
6 locations remote from the harvested area and disposal costs can constitute a large part of the
7 budget.

8 f. The fuel used to run harvesters and associated vehicles adds to the overall
9 air quality impacts and carbon footprint of the maintenance operation.

10 43. Mitigation must be enforceable in order to be effective. (CEQA Guidelines, §
11 15126.6, subd. (a)(2).) SJAFCA's mischaracterization of the water hyacinth removal plan as a
12 component of the Project rather than a mitigation measure means that it is not adequately
13 enforceable. Nothing in the Project's CEQA documents affirmatively require SJAFCA to
14 prepare the plan, much less actually implement that plan. The program is not mandated in the
15 Project's MMRP or the CEQA Findings. There are also no other enforceable conditions of
16 approval that affirmatively require implementation of this program.

17 **Consideration of Project Alternatives**

18 44. An EIR must "consider a reasonable range of potentially feasible alternatives that
19 will foster informed decision making and public participation." (CEQA Guidelines, § 15126.6.)
20 CEQA further requires that, "the EIR shall also identify an environmentally superior alternative
21 among the other alternatives." (CEQA Guidelines, § 15126.6, subd. (e)(2).) The EIR's analysis
22 of alternatives fails to comply with CEQA. These violations include but not limited to the
23 following:

24 45. The Project's objectives were impermissibly manipulated to avoid good faith
25 consideration of Project alternatives, including those involving rehabilitation of the existing
26 levees.

27 46. No meaningful engineering analysis was performed to determine whether it was
28 feasible to simply repair the existing levees in order to obtain the necessary flood protection.

1 47. Insufficient construction cost information was obtained in order to justify rejection
2 of any alternative based on higher construction cost.

3 48. The EIR included an unnecessary and unsupported project objective, namely the
4 requirement for a patrol road, in order to reject otherwise feasible alternatives.

5 49. By holding a special assessment election in 2013, long before release of the EIR,
6 based on estimated Project construction cost of approximately \$36 million, SJAFCA foreclosed
7 meaningful, good faith consideration of any Project alternative requiring a higher construction
8 cost. SJAFCA also failed to recognize the feasibility of holding a subsequent assessment
9 election to finance other Project alternatives.

10 50. The EIR's analysis of the environmentally superior alternative is premised upon
11 the EIR's failure to acknowledge the Project's significant impacts in the resources areas
12 including but not limited to biological resources, invasive species and water quality.

13 51. SJAFCA's consideration and approval of the Project in relation to other Project
14 alternatives is not supported by substantial evidence. The FEIR fails to address the Project's
15 legal infeasibility. Approval of the Project requires us of submerged lands for a purpose that is
16 inconsistent with the designated public trust purpose of that property as designated by the
17 California Legislature. Further, a lease agreement with the California State Lands Commission
18 is not sufficient to convey the property interest necessary to construct the Project on tidal and
19 submerged lands that have been conveyed in perpetuity to the United States for another purpose.

20 **Failure to Provide Good Faith Responses to Comments**

21 52. The Final EIR failed to respond in good faith to public comments raising
22 deficiencies with the EIR. Here, however, the FEIR offers conclusory statements, unsupported
23 by specific reference to explanatory information, that are insufficient to adhere to CEQA's
24 public participation requirements. (CEQA Guidelines, § 15088, subd. (c).) These deficiencies
25 include, but are not limited to, the following:

26 53. The FEIR inadequate response to public comments about how the Project's
27 narrow, 50-foot wide gate would trap large mats of hyacinth within Atherton Cove.

28

1 54. The FEIR failed to respond in good faith to public comments challenging the
2 impermissible deferral, lack of specificity, lack of effectiveness, and lack of enforceability of the
3 *de facto* mitigation measures for water hyacinth impacts.

4 55. The FEIR failed to respond in good faith to comments about the Project's failure
5 to analyze other invasive species, and resulting water quality, in Atherton Cove.

6 56. The FEIR failed to respond in good faith to comments questioning the
7 methodology and underlying data utilized in the EIR's hydrodynamic modelling.

8 57. The FEIR failed to respond in good faith to comments about the relative cost of
9 constructing the Project and Project alternatives, including rehabilitation of the existing levees.

10 58. The FEIR failed to respond in good faith to comments about the Project's legal
11 infeasibility.

12 59. The FEIR failed to respond in good faith to comments about the relationship of the
13 special assessment election for the Project in 2013 to the feasibility of alternatives to the Project.

14 **Failure to Recirculate the EIR Due to Significant New Information**

15 60. CEQA requires a lead agency to recirculate an EIR whenever the addition of
16 information, after the close of public comment, would deprive the public and public agencies
17 with the ability to comment "upon a substantial adverse environmental effect of the project or a
18 feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the
19 project proponents have declined to implement." (CEQA Guidelines, § 15088.5, subd. (a);
20 *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.*, (1993) 6 Cal.4th 1112.) These
21 deficiencies include, but are not limited to, the following:

22 61. Defendant failed to recirculate the DEIR after receiving expert testimony
23 indicating that the Project would have considerably more significant environmental impacts in
24 the areas of invasive species, sensitive species and critical habitat, and water quality.

25 62. Defendant failed to recirculate the DEIR after receiving information about the
26 economic feasibility of Project alternatives.

27 63. Defendant failed to recirculate the DEIR after receiving information about the
28 legal feasibility of the Project.

1 64. Defendant failed to recirculate the DEIR after changing the Project's objectives in
2 response to comments raised by Plaintiff.

3 65. Defendant failed to recirculate the DEIR after receiving communications from
4 FEMA questioning the Project's ability to provide 100-year flood protection.

5 **Findings Not Supported By Substantial Evidence**

6 66. Defendant's Findings violate the requirements of CEQA and the CEQA
7 Guidelines. For example, the Findings fail to identify the changes or alterations that are
8 required to avoid or substantially lessen the Project's significant environmental effects (CEQA
9 Guidelines, §15091, subd. (a)(1); the Findings are not supported by substantial evidence (CEQA
10 Guidelines, § 15091, subd. (b).) These deficiencies include, but are not limited to, the
11 following:

12 a. Defendant's finding that the Project is the environmentally superior
13 alternative;

14 b. Defendant's finding justifying rejection of Alternative 2 based on cost;

15 c. Defendant's finding justifying rejection of Alternative 2 because it "is not
16 expected to be resilient to climate change and associated sea level rise;"

17 d. Defendant's finding justifying rejection of Alternative 2 because of alleged
18 higher construction-related environmental impacts; and

19 e. Defendant's statement of overriding considerations.

20 67. For all of the above reasons, Defendant's failure to act as required by CEQA
21 constitutes a prejudicial abuse of discretion. Therefore, Plaintiff prays for the relief requested
22 below.

23 **SECOND CAUSE OF ACTION**

24 (Declaratory Relief)

25 68. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs
26 1 through 67, inclusive, of the Petition as if fully set forth herein.

27 69. On or about 1930, the property upon which the Project would be constructed was
28 the subject of a granted the United States of America a "perpetual" easement to lands in question

1 to remain in full force and effect forever, and for “the purpose of depositing spoil thereon as
2 may be required at any time, in any manner necessary for the construction and maintenance of
3 the channel and necessary levees” for the federal San Joaquin River Project.

4 70. Since the property had already been granted, the California State Lands
5 Commission maintains no present authority to convey, lease or otherwise dispose the subject
6 property to SJAFCA for purposes of the Project or otherwise. (Pub. Resources Code, §§ 6216,
7 6301.)

8 71. Further, consistent with its authority to prefer one public trust over another, the
9 California Legislature has already chosen the appropriate public trust use for the Project site,
10 namely the Stockton Deep Water Channel Project, and not the Project. The California State
11 Lands Commission has no authority to second-guess or overrule that prior determination of the
12 California Legislature.

13 72. An actual controversy has arisen and now exists between APCOA and SJAFCA
14 concerning their respective rights and duties in that:

15 a. APCOA claims that SJAFCA may not lawfully construct the Project on
16 submerged lands without express authorization from Congress, whereas Defendant claims that a
17 lease with the California State Lands Commission is sufficient; and

18 b. APCOA claims that utilizing submerged lands to construct and operate the
19 Project violates the public trust doctrine because the California Legislature has already
20 determined public trust use for that submerged property that is inconsistent with the Project,
21 whereas SJAFCA claims that the Project is consistent with the public trust doctrine.

22 73. To resolve this controversy, APCOA desires a judicial determination and
23 declaration of the legal issues set forth herein.

24 74. A judicial determination of these issues and of the respective duties of APCOA
25 and SJAFCA is necessary and appropriate at this time because SJAFCA has approved the
26 Project, which constitutes final agency action, and intends to move forward with construction of
27 the Project.

28

1 WHEREFORE, Plaintiff prays for judgment and relief as follows:

2 1. For alternative and peremptory writs of mandate, commanding Defendant:

3 a. To vacate and set aside approval of the Project;

4 b. To vacate and set aside certification of the Final EIR and Notice of
5 Determination for the Project;

6 c. To prepare a legally adequate EIR for the Project; and

7 d. To suspend any and all activity pursuant to Defendant's approval of the
8 Project that could result in an adverse change or alteration to the physical environment until
9 Defendant has complied with all requirements of CEQA, and all other applicable federal, state
10 and local laws, policies, ordinances, and regulations, as directed by this Court pursuant to
11 Public Resources Code section 21168.9;

12 2. For a stay, temporary restraining order, preliminary injunction, and permanent
13 injunction prohibiting any actions by Defendant, and all persons working on Defendant's
14 behalf, from proceeding with any activity in furtherance of the Project that may result in any
15 physical change in the environment pending completion of this litigation and full compliance
16 with CEQA;

17 3. For a declaration that a lease between SJAFCA and the California State Lands
18 Commission is inadequate to convey the property interest held by the United States that is
19 necessary to construct and operate the Project;

20 4. For a declaration that the Project violates the public trust doctrine;

21 5. For costs of suit;

22 6. For an award of reasonable attorneys' fees for this action pursuant to Code of
23 Civil Procedure section 1021.5, and any other applicable provisions of law; and

24 7. For such other and further relief as the Court deems just and proper.

25 Dated: December 21, 2015

SOLURI MESERVE,
A LAW CORPORATION

26
27 By: 
28 Patrick M. Soluri

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VERIFICATION

I, Patrick Soluri, am the attorney of record for Plaintiff ATHERTON COVE PROPERTY OWNERS ASSOCIATION in the above-entitled action, and am authorized to execute this verification on its behalf because Plaintiff's members are absent from Sacramento County, the location of my office. I have read the foregoing petition and complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of December 2015, in Sacramento, California.


Patrick M. Soluri

EXHIBIT 1

1 PATRICK M. SOLURI (SBN 210036)
2 OSHA R. MESERVE (SBN 204240)
3 SOLURI MESERVE, A LAW CORPORATION
4 1010 F Street, Suite 100
5 Sacramento, CA 95814
6 Telephone: (916) 455-7300
7 Facsimile: (916) 244-7300

8
9 Attorneys for Petitioners
10 AATHERTON COVE PROPERTY OWNERS ASSOCIATION

11
12 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SAN JOAQUIN

14 AATHERTON COVE PROPERTY OWNERS
15 ASSOCIATION, an unincorporated
16 association,
17
18 Petitioners and Plaintiffs,
19
20 v.
21
22 SAN JOAQUIN AREA FLOOD CONTROL
23 AGENCY,
24
25 Respondent and Defendant

26 CASE NO.
27
28 NOTICE OF INTENT TO COMMENCE
ACTION AGAINST THE SAN JOAQUIN
AREA FLOOD CONTROL AGENCY

(California Environmental Quality Act, Pub.
Resources Code, § 21167.5)

29 DOES 1 through 20, inclusive,
30
31 Real Parties in Interest.

1 TO THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY:


2 PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Petitioner
3 and Plaintiff ATHERTON COVE PROPERTY OWNERS ASSOCIATION intends to file a
4 petition for writ of mandate under the provisions of the California Environmental Quality Act
5 ("CEQA") against the SAN JOAQUIN AREA FLOOD CONTROL AGENCY ("Respondent")
6 challenging Respondent's November 19, 2015 certification of an Environmental Impact Report
7 ("EIR") and associated approvals for the Smith Canal Gate Project ("Project"), required
8 findings and adopted mitigation measures under the California Environmental Quality Act
9 ("CEQA"), Public Resources Code, section 21000 et seq.

10 The lawsuit will be based on violations of CEQA, and other applicable laws as discussed
11 more fully in the Project's administrative and environmental review proceedings. The exact
12 nature of the allegations and relief sought is described in a Petition for Writ of Mandate that
13 Petitioner plans to file on December 21, 2015.

14 Sincerely,

15 Dated: December 18, 2015

SOLURI MESERVE,
A LAW CORPORATION

16
17 By: 

18 Patrick M. Soluri
19 Attorney for Petitioner
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1 **PROOF OF SERVICE**

2 I hereby declare that I am employed in the City of Sacramento, County of Sacramento,
3 California. I am over the age of 18 years and not a party to the action. My business address is
4 1010 F Street, Suite 100, Sacramento, California 95814.

5 On December 18, 2015, I served the attached document: **NOTICE OF INTENT TO**
6 **COMMENCE ACTION AGAINST THE SAN JOAQUIN AREA FLOOD CONTROL**
7 **AGENCY**, on the following parties or attorneys for parties, as shown below:

8 San Joaquin Area Flood Control Agency
9 22 East Weber Avenue, Suite 301
10 Stockton, CA 95202-2317
11 Email: marlo.duncan@stocktongov.com

12 ✓ **BY FIRST CLASS MAIL:** I am readily familiar with this business's practice for
13 collecting and processing correspondence for mailing with the U.S. Postal Service. In the
14 ordinary course of business, correspondence would be deposited with the U.S. Postal Service
15 on the day on which it is collected. On the date written above, following ordinary business
16 practices, I placed for collection and mailing at my place of business the attached document in a
17 sealed envelope, with postage fully prepaid, addressed as shown above.

18 ✓ **BY ELECTRONIC MAIL:** I caused each such document to be sent by electronic
19 mail to the addressee at the email address listed above. The document was served
20 electronically from my place of business at 1010 F Street, Suite 100, Sacramento, California
21 95814 from my electronic service address at mae@semlawyers.com.

22 I declare under penalty of perjury that the foregoing is true and correct and that this
23 declaration was executed at Sacramento, California on December 18, 2015.

24 

25 Mae Ryan Empleo
26
27
28

PROOF OF SERVICE

I hereby declare that I am employed in the City of Sacramento, County of Sacramento, California. I am over the age of 18 years and not a party to the action. My business address is 1010 F Street, Suite 100, Sacramento, California.

On February 2, 2016, I served the attached document:

NOTICE TO RESPONSIBLE AND TRUSTEE AGENCIES OF COMMENCEMENT OF ACTION UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT

on the following parties or attorneys for parties, as shown below:

California Department of Conservation
801 K Street, MS 24-01
Sacramento, CA 95814

California Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

California Department of Fish and Wildlife
Region 3, Bay Delta Region
7329 Silverado Trail
Napa, CA 94558

California Department of Parks and Recreation
Division of Boating and Waterways
1 Capitol Mall, Suite 500
Sacramento, CA 95814

California Department of Parks and Recreation
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

California Environmental Protection Agency
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

California Environmental Protection Agency
Central Valley Regional Water Quality Control Board
Region 5
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

California Environmental Protection Agency
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

City of Stockton
345 North El Dorado Street
Stockton, CA 95202

1 Reclamation District 828 and
2 Reclamation District 1614
3 c/o Neumiller & Beardslee
4 Attention: Dan Schroeder
5 P.O. Box 20
6 Stockton, CA 95201-3020

San Joaquin County
1810 East Hazelton Avenue
Stockton, CA 95205

7 San Joaquin Valley Air Pollution Control
8 District
9 4800 Enterprise Way
10 Modesto, CA 95356

11 I served the document as follows:

12 **BY FIRST CLASS MAIL.** I am readily familiar with this business's practice of
13 collecting and processing correspondence for mailing with the U.S. Postal Service. On the date
14 written above, following ordinary business practices, I placed for collection and mailing at my
15 place of business the attached document in a sealed envelope, with postage fully prepaid,
16 addressed as shown above.

17 I declare under the penalty of perjury that the foregoing is true and correct and that this
18 declaration was executed at Sacramento, California on February 2, 2016.

19 

20 _____
21 Mae Ryan Empleo
22
23
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28

Dominick Gulli
1314 Paloma Avenue
Stockton CA 95209

2/12/16

209 478 6525 (Work) 209 649 4555 (Mobile)
Email: greenmountaindom@hotmail.com

To: Responsible Public Agencies and Stewards of the Delta on the Attached Mailing List:

Re: Lawsuit filed in San Joaquin County Superior Court Case # STK-CV-UWM-2015-0011880 Petitioner, Dominick Gulli vs. Respondents, San Joaquin Area Flood Control Agency (SJAFCA) et al. Final Environmental Impact Report and Other Causes of Action

PROJECT: The Smith Canal Gate, Stockton CA

San Joaquin Area Flood Control Agency is proposing to construct a Dam in the San Joaquin River from Dads Point to the Stockton Country Club. The Dam will be approximately 800 ft long and 12 ft above the water constructed of a Dual steel sheetpile wall with engineered fill. There will be a 50 ft opening with a Gate that will close when the San Joaquin River approaches flood stage. The intent is to keep the water level below the flood stage in the Smith Canal.

In addition the Dads point recreational peninsula will be converted into a Project levee to also keep the high water out of the Smith Canal.

The Writ of Mandate (lawsuit) can be viewed at the savedadspoint.org website. The lawsuit alleges eight causes of action (COA) relative to CEQA and two COA's relative to other legal issues as follows:

1st COA- Not following CEQA procedures.

2nd COA-Filing a false and misleading "notice of intent" and filing a false and misleading "findings of fact and statement of overriding considerations."

3rd COA-Incomplete notification of interested parties and landowners.

4th COA-Incomplete and erroneous evaluation of water quality impacts

5th COA- Incomplete evaluation of alternates

6th COA- Incomplete and understated impacts of visual resources.

7th COA- Failure to review impacts of flooding impacts caused by the project

8th COA- Failure to review impacts of navigational safety hazards created by the project.

9th COA- imposing an assessment in violation of the California Constitution

10th COA- Administering contracts in violation of state contracting laws, public bidding laws and statement of proposal procedures.

The California Environmental Quality Act (CEQA) Section 21167.6.5 (b) thru (e) requires Respondents to provide a list of "responsible agencies" and the Petitioners shall notify said parties of the lawsuit. As follows:

21167.6.5.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and a public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and a public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential persons, other than those real parties in interest described in subdivision (a), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) This section is not intended to affect an existing right of a party to intervene in the action.

My local small business has been extensively involved with watchdogging this project and submitted a proposal to reinforce the levees along the Smith Canal or to construct a smaller gate within the Canal itself. These alternatives are less expensive and much less degrading to the environment as well as providing substantial additional levee benefits toward the State Mandated Senate Bill 5 (Urban Level of Protection (ULOP) or the Urban Levee Design Criteria (ULDC), commonly referred to as "200 year protection".

If you have any question please contact me via the above email.

Dominick Gulli, Professional Engineer and Land Surveyor

List of Agencies Provided by SJAFCA

CA Dept. of Conservation
801 K Street, MS 24-01
Sacramento, CA 95814

California Dept. of Fish and Wildlife
DFG Headquarters
1416 9th Street
Sacramento, CA 95814

State Dept. of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296

CA Dept. of Boating & Waterways
2000 Evergreen St. Suite 100
Sacramento, CA 95815

California State Lands Commission
100 Howe Ave Suite 100 South
Sacramento, CA 95825-8202
Attn. Cy R.Oggins Chief Environmental; Planning
Afifa Awan, DEPM CSLC
Eric Gillies, DEPM CSLC
Pamela Grigggs, Legal CSLC
Eric Millistein Legal CSLC
Jonathon Sampson, LMD, CSLC

Central Valley Flood Protection Board
Len Marino and James Herota @ james.herota@water.ca.gov
P. O. Box 942836
Sacramento, CA 94236

California Air Resources Control Board
1001 "I" Street
Sacramento, CA 95814

P.O. Box 2815
Sacramento, CA 95812

State Water Resources Control Board

P.O. Box 100
Sacramento, CA 95812-0100

Central Valley Regional Water Quality Control Board (Region 5)

Sacramento Office
11020 Sun Center Drive, Suite 200 christine.joab@waterboards.ca.gov
Rancho Cordova, CA 95670-6114

Department of Water Resources

DWR
PO BOX 942836
Sacramento CA 94236
Attn: Gary Bardini and David Mraz

DWR
Urban Flood Risk Reduction Program
3464 El Camino Ave, Suite 200,
Sacramento CA, 95821
Attn: Michael Sabbaghian Mahyar.Sabbaghian@water.ca.gov

CA Native American Heritage Commission
1550 Harbor BLVD suit 100
West Sacramento, CA
95691 (916) 373-3710
Email: nahc@nahc.ca.gov

San Joaquin County

Board of Supervisors
Clerk of the Board of Supervisors Office
Mimi Duzenski Email: mduzenski@sjgov.org
44 North San Joaquin Street
Sixth Floor Suite 627
Stockton, CA 95202

Department of Parks and Recreation
11793 N. Micke Grove Rd.
Lodi, CA 95240

Office of the County Counsel
Mark Myles, County Counsel
44 North San Joaquin Street
Sixth Floor Suite 679
Stockton, CA 95202

Flood Control and Water Conservation District
1810 East Hazelton Avenue
Stockton, CA 95205
Attn: Kris Balaji Director of Public Works
Flood Management. John Maguire jmaguire@sjgov.org
Water Resources Brandon W. Nakagawa, P.E. bnakagawa@sjgov.org

San Joaquin Valley Air Pollution Control District
Attn: Sharla Yang
NORTHERN REGION
4800 Enterprise Way
Modesto, CA 95356

City of Stockton

425 N. El Dorado Street, 2nd Floor
Stockton, CA 95202

Mayor Anthony Silva
City Attorney John Luebberke
City Clerk Bonnie Paige
City Manager Kurt Wilson
Public Works Gordon MacKay

City of Stockton
Community Development Department
Attn: Mike Niblock Director
345 N Eldorado Street
Stockton CA 95202

Reclamation District's # 1614 (Smith Tract) and # 828 (Weber Tract)
c/o Neumiller & Beardslee
P.O. Box 20
Stockton, CA 95201-3020
etrujillo@neumiller.com

Other Agencies with Jurisdiction

FEMA

Attention: Brian Kopper @ Brian.Koper@fema.dhs.gov.
US Department of Homeland Security
Washington DC 20472

FEMA

US Department of Homeland Security
1111 Broadway Suite 1200
Oakland CA 94607-4052

United States Army Corps of Engineers

Sacramento District USACE

1325 J Street

Sacramento, CA 95814

Email: cespk-regulatory-info@usace.army.mil spk-pao@usace.army.milU.S.

US Fish and Wildlife Service

Chief, Division of Endangered Species

2800 Cottage Way, Suite W2606

Sacramento, California 95825

National Marine Fisheries Service (NOAA)

West Coast Region

650 Capitol Mall Suite 5-100 and Suite 8-300

Sacramento CA 95814

US Coast Guard Eleventh District

Waterways Management Branch

Bridges Section Chief

BLDG 50-2 Coast Guard Island

Alameda CA 94501—5100

San Joaquin County Local Agency Formation Commission

509 West Weber Ave # 420

Stockton CA 95203

Ames E Glaser, Executive Officer jglaser@sjgov.org

San Joaquin County Mosquito and vector Control District

Environmental Review Section

7759 South Airport Way

Stockton CA 95206

Department of General Services - Office of Legal Services
707 Third Street, 7th Floor, Suite 7-330, MS-102
West Sacramento, CA 95605
Email: DGSOLSContact@dgs.ca.gov

California Special Districts Association
11121 I Street Suite 200
Sacramento CA 95814

Fair Political Practices Commission
428 J ST,
Sacramento, CA 95814
PH: 866 275-3772

Governors Office of Planning and Research
State Clearing House
1400 Tenth ST, ROOM 121,
Sacramento, CA 95814

Stewards of The Delta:

Delta Protection Commission
Erik Vink ,Executive Director [erik.vink@delta .ca.gov](mailto:erik.vink@delta.ca.gov)
2101 Stone Blvd, Suite 210
West Sacramento, CA 95691

Delta Stewardship Council
Attention Tim Chao @ YouChen.Choa@deltacouncil.ca.gov
Attention Daniel Huang @ Daniel.Huang@deltacouncil.ca.gov
980 9th ST, Suite 1600
Sacramento, CA 95814
(916) 445-5511

Central Delta Water Agency
235 Weber Ave
Stockton CA 95201

California Sport fishing Protection Alliance
Bill Jennings, Executive Director
3536 Rainier Avenue Stockton, CA 95204

E-mail: deltakeep@aol.com
Tel: 209-464-5067
Fax: 209-464-1028

Restore the Delta
42 N. Sutter Street Suite 506
Stockton CA 95202
Barbara Barrigan-Parilla, Executive Director @ Barbara@restorethedelta.org

Office of Delta Watermaster
Michael George Deltawatermaster@waterboards.ca.gov
State Water Resources Control Board
PO Box 100
Sacramento CA 95812-0100

Other Affected or Interested Parties:

The Port of Stockton
Attn. Richard Aschieris, Jason Cashman and Jeff Wingfield.
2201 West Washington St
Stockton CA 95203
PO Box 2089 Stockton CA 95201

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



February 19, 2016

Ms. Rhonda Olmo, Secretary
Reclamation District No. 1614 (Smith Tract)
Post Office Box 4807
Stockton, California 95204

Delta Levees Special Flood Control Projects Program – Projects Solicitation Package

Dear Ms. Olmo:

Introduction

The Delta Levee Special Flood Control Projects Program (Program) is pleased to announce the release of the February 2016 Multi-Benefit Projects Solicitation Package (PSP). This PSP provides \$60,000,000 in local assistance funding from Propositions 1E and 84 for multi-benefit projects that integrate levee and habitat improvement while protecting discrete and identifiable public benefits in the Delta.

Background

The Program was established in 1988 by Senate Bill 34, and continues to operate under subsequent legislation that extends and provides funding for the Program. Originally, the Program was authorized to address flooding on the Eight Western Islands, Thornton, New Hope and Walnut Grove. In 1996, the Program was expanded to the entire Delta and to portions of Suisun Marsh. The passage of Proposition 1E and Proposition 84 in November 2006 significantly increased the amount of money available for levee projects in the Delta. The Department has invested over \$350 million dollars in flood control and habitat projects through the Program, carried out by local levee maintaining agencies in the Delta.

Projects Solicitation Package for Multi-Benefit Projects

This PSP solicits eligible projects that integrate levee improvement (up to the DWR Bulletin 192-82 template), habitat enhancement, emergency response, seismic resiliency, and export water supply reliability. The PSP is available on the Department's website at:

http://www.water.ca.gov/floodsafe/fessro/deltalevees/special_projects/docs/special_PSP2016.pdf

The PSP follows criteria under the current Program Guidelines: 2014 Guidelines for Providing Funding to Local Public Agencies. The Guidelines are available at:

http://www.water.ca.gov/floodsafe/fessro/deltalevees/special_projects/special_guidelines.cfm

Ms. Olmo

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The PSP has a two phase process. The first phase requires the submittal of a Concept Proposal. Applicants who submit a Concept Proposal that successfully meets the PSP requirements may be asked by the Program to participate in phase two, and provide a Full Application for the Program's review and consideration. The PSP details the scoring for the criterion discussed in the Guidelines, and the submittal process. The Concept Proposal submittal form is available at:

http://www.water.ca.gov/floodsafe/fessro/deltalevees/special_projects/docs/special_PSP_concept_form_program_final.pdf

Concept Proposals may be submitted to the Program electronically (ADOBE pdf format using the form provided) or by United States Post Office. **The deadline to submit Concept Proposals, under this PSP, to the Department of Water Resources is March 18, 2016.** Completed Concept Proposals may be mailed or hand delivered to:

**Andrea L. Lobato, P.E., Manager
Delta Levees Program
Department of Water Resources
1416 Ninth Street, Room 1641-2
Sacramento, California 95814**

Submittal by US Post Office **must be postmarked no later than March 18, 2016.**

For electronic submittals, please send Concept Proposal form to:

DeltaLeveesProgram@water.ca.gov.

If you have any questions please call me at (916) 651-9295. You may also call Jon Wright at (916) 651-7010 or Rebecca Barrón at (916) 651-0868.

Sincerely,



Andrea L. Lobato, P.E., Manager
Delta Levees Program