

### **Common Interest and Confidentiality Agreement**

Various water users have been participating in the Voluntary Agreement process associated with the California State Water Resources Control Board's amendments to the Bay-Delta Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Bay Delta Estuary ("Bay-Delta Plan"). The participating water users are referred to herein individually as a "Party" and collectively as "Parties." These Parties desire to continue to meet and communicate over the course of 2019 to address issues related to development and implementation of voluntary agreements to support amendments to the Bay-Delta Plan for protection of fish and wildlife beneficial uses ("Voluntary Agreement Discussions").

The issues subject to the Voluntary Agreement Discussions relate to current, pending, or anticipated legal or administrative proceedings. On advice of their respective counsel, the undersigned Parties have executed this document in furtherance of their common interests in resolving these issues related to the amendments to the Bay-Delta Plan, and/or to settle potential claims.

The Voluntary Agreement Discussions will be more productive if Parties freely share information, including information related to current, pending, or anticipated legal or administrative proceedings. All statements made by the several Parties in preparation for, or during the Voluntary Agreement Discussions will be considered privileged statements ("Communications") subject to California Evidence Code §§ 1152 and 1154, Federal Rules of Evidence § 408, and other authorities related to confidentiality of settlement discussions. These Communications are made without prejudice to any Party's legal position, and will be inadmissible for any purpose in any legal or administrative proceeding. Similarly, all documents that are or were exchanged by the several Parties in preparation for, or during the Voluntary Agreement Discussions ("Documents") shall be maintained as confidential under California Evidence Code §§ 1152 and 1154, Federal Rules of Evidence § 408, and other authorities related to confidentiality of settlement discussions. These Documents are exchanged without prejudice to any Party's legal position, and will be inadmissible for any purpose in any legal or administrative proceeding. Given the common interests of the Parties: (1) any Communications among the Parties that would otherwise qualify as attorney-client communications shall remain privileged despite disclosure to a person outside the attorney-client relationship; and (2) any Documents exchanged among attorneys of the Parties that would otherwise qualify for the attorney work product protection shall maintain that protected status despite disclosure to an attorney representing a separate Party. Communications and Documents are individually and collectively "Confidential Information."

Confidential Information does not include, and restrictions and obligations of this Agreement do not apply to (a) information which is, or becomes, publicly known or available other than as a result of a violation of this Agreement; (b) information or document(s) jointly prepared by a Party or Parties in preparation for or during the meetings where such Parties agree in writing that the information or document(s) are not Confidential Information; and (c) information or documents disclosed by the originator with third parties so long as that information or those documents do not contain Confidential Information from another Party. For purposes of this

*Confidential/Common Interest/Attorney Client Privileged/Attorney Work Product*

Agreement, a “third party” means an entity that is not a participant in the Voluntary Agreement Discussions, or a person that is not affiliated with a participating entity.

The Parties shall have an independent duty to maintain and preserve the confidentiality of any Confidential Information subject to this Agreement.

Upon receiving Confidential Information, each receiving Party shall, with respect to such Confidential Information:

1. treat such information as confidential; and
2. not disclose it to any third party except as required by law or court order; and
3. restrict access to such information to employees (and consultants who agree to be bound by this Agreement) whose access is reasonably necessary to prepare for, or participate in a meeting related to the Voluntary Agreement Discussions; and not disclose it or utilize it in any legal or administrative proceeding; and
4. at the conclusion of any meeting related to the Voluntary Agreement Discussions, destroy or return any such information if requested to do so by the disclosing Party.

Nothing in this Agreement requires an originator of Confidential Information to prevent disclosure of its own information or document(s).

This Agreement does not authorize disclosure of Confidential Information prepared by third parties as defined above.

Each signatory represents that he or she is duly authorized to bind the Party for which he or she signs. This Agreement shall be binding upon all successors and assigns of the Parties.

This Agreement shall be governed by applicable law. The Agreement shall be effective as of December 13, 2018.

**Water User/Participant**

Stefanie Morris  
Signed

Stefanie Morris  
Name

Metropolitan Water District  
Agency

Senior Deputy General Counsel  
Title

2/20/19  
Date

**Water User/Participant**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date