



CENTRAL COAST WATER AUTHORITY

MEMORANDUM

October 20, 2022

TO: CCWA Board of Directors

FROM: Ray A. Stokes
Executive Director 

SUBJECT: Aquaterra Water Bank

SUMMARY

At its meeting on May 26, 2022, the CCWA Board of Directors received an informational presentation on a proposed new water bank called the Aquaterra Water Bank. The Aquaterra Water Bank is a project of the McMillian Area Groundwater Sustainability Agency (MAGSA).

The Aquaterra Water Bank is currently in the process of identifying partners to participate in the Water Bank, with the first 800,000 AF reserved for a "Priority Phase Storage" for both deposits and withdrawals from the bank, once operational. The Bank anticipates executing Subscription Agreements with participating partners this fall and into the first quarter of 2023 along with initial deposits of the non-refundable Subscription Fees payable in March 2023 (discussed in more detail below).

The MAGSA General Manager, Matt Hurly, will provide a presentation at the October 27, 2022 CCWA Board meeting.

RECOMMENDATION

None. This item is for discussion only.

DISCUSSION

I. Background

The State Water Project is increasingly becoming a "wet year project." In other words, in wet years, there is an abundance of State water available, but in dry years, there is very little water available. Therefore, being able to take "big gulps" when the water is available for use in dry years, becomes vitally important. Groundwater storage is one of the key water management tools that can be used to better manage extreme wet and extreme dry year conditions.

Following adoption of the Water Management Amendment to the State Water Contract, at its March 24, 2022 Board Meeting, this Board authorized me to engage the Hallmark Group and Provost & Pritchard to reevaluate how State Water Project (SWP) allocations can be optimized to meet the needs of CCWA and the San Luis Obispo County Flood Control and Water Conservation District, both Coastal Branch SWP Contractors. In January, 2022, the consultants presented their final report to this Board. The report develops and evaluates potential water management alternatives such as storing, exchanging, and transferring SWP

water and other supplies to optimize the yield of SWP water for Coastal Branch Contractors in both Santa Barbara and San Luis Obispo counties. Subsequently, the Board elected not to proceed with the recommended phase II of the study, but did agree to retain Provost & Pritchard for the purpose of identifying specific groundwater storage opportunities.

In early 2022, Terri Erlewine of Provost & Prichard¹ contacted me about a groundwater storage opportunity with MAGSA. On May 26, 2022, Matt Hurly and Terri Erlewine first presented the Aquaterra project to this Board. The MAGSA team also briefed the CCWA Operating Committee at its July and October, 2022 meetings. Additionally, CCWA staff have had several discussions with the MAGSA team about the project over the past several months.

Based on the information available to us, the Aquaterra Water Bank appears to be a good option for addressing two important water management issues: (1) loss of carryover water at San Luis Reservoir, and (2) drought protection, as further discussed in this report.

This report provides a brief discussion of these issues, the potential benefits of the program, pricing, and timing.

II. Minimum Participation to Maximize Use of Carryover Supplies

Since 1997 when State Water deliveries first commenced after completion of construction on the Coastal Branch Facilities, CCWA has lost approximately 173,000 AF to spill at San Luis Reservoir. That's because when CCWA has carried over unused water from one calendar year to the next and then San Luis Reservoir fills, DWR "spills" the water that was carried over from the prior year using certain parameters and rules. San Luis Reservoir does not physically spill water, but is deemed to be "spilling" when DWR can no longer pump water into the reservoir thereby pushing out the water that was carried over from the prior year. DWR provides estimates and projections about the probability of San Luis Reservoir filling and spilling, but historically, the time between CCWA's receipt of notice of the projected spill from DWR and the actual spilling of carryover water is very short – sometimes, only a few days.

For example, in 2017, CCWA had a carried over approximately 30,000 AF of water in San Luis Reservoir from 2016. In early 2017, after receiving significant rainfall, DWR updated spill projections which showed that the probability of San Luis spilling increasing significantly in a very short amount of time. CCWA staff quickly looked for ways to save as much of our carryover water as possible and ultimately entered into an Exchange Agreement with Metropolitan Water District of Southern California to save some of the water. However, we were only able to save a small portion of the water sent to MWD due to San Luis spilling the water we sent to MWD (the water lost was counted as MWD spill). Of the approximate 26,000 AF of water subject to spill, CCWA retained the right to only 3,900 AF through its exchange.

The following schedule shows the annual spill amounts attributable to CCWA since 1997 in the column in yellow.

¹ Please note that Mr. Erlewine contacted me in his capacity as a consultant to MAGSA and continues to represent MAGSA, not CCWA, with respect to the Aquaterra project.

DWR Allocation Percentage		Available Water			Water				
Calendar Year	DWR Allocation %	Table A Available	Purchase/Art 21 Exchange In	Total Available Water	Delivered	Sold	Transferred	Banked	Spilled
					Total Water Deliveries	Santa Ynez Exchange (South Coast Participants Only)	Sold/Exch Banked/Out	Spilled	
1997	100%	16,244	-	16,244	7,439	-	-	-	-
1998	100%	38,986	-	38,986	18,618	-	-	-	-
1999	100%	45,486	-	45,486	20,137	-	-	-	-
2000	90%	40,937	-	40,937	22,741	-	8,392	79,494	-
2001	39%	17,740	5,995	23,735	18,945	-	1,335	-	-
2002	70%	31,840	2,875	34,715	27,600	-	2,861	-	-
2003	90%	40,937	539	41,476	26,970	-	155	-	-
2004	65%	29,566	1,227	30,793	29,705	-	880	-	-
2005	90%	40,937	155	41,092	23,343	-	-	-	-
2006	100%	45,486	4,020	49,506	23,275	-	-	49,820	-
2007	60%	27,292	4,225	31,517	27,740	-	2,635	21,353	-
2008	35%	15,920	6,116	22,036	18,391	-	1,568	-	-
2009	40%	18,194	5,968	24,162	15,452	-	-	-	-
2010	50%	22,743	1,290	24,033	17,775	-	1,150	-	-
2011	80%	36,389	2,000	38,389	21,050	-	19,400	9,109	-
2012	65%	29,566	-	29,566	19,474	-	1,443	-	-
2013	35%	15,920	6,510	22,430	18,018	-	6,670	-	-
2014	5%	2,274	7,865	10,139	16,757	-	1,930	-	-
2015	20%	9,097	10,364	19,461	11,673	-	-	-	-
2016	60%	27,292	28,753	56,045	27,182	-	6,941	-	-
2017	85%	38,663	15,336	53,999	29,740	-	30,229	10,517	-
2018	35%	15,920	5,633	21,553	28,348	-	-	-	-
2019	75%	34,115	1,653	35,768	18,138	-	5,661	2,578	-
2020	20%	9,097	400	9,497	12,175	-	193	-	-
Average:	63%	650,642	110,924	761,566	500,686	-	91,443	172,871	-

In recent years, exchanges and other arrangements have reduced the volume of CCWA water lost to spill, but losses still do occur when CCWA is not able to move the water out of San Luis Reservoir quickly enough and prior to it filling and spilling.

When San Luis Reservoir “spills,” DWR makes available “Article 21” water, which is essentially water that could have been pumped into San Luis Reservoir, but cannot be pumped because the Reservoir is full, called “foregone pumping.” Article 21 must be taken on a real-time basis every week that DWR makes Article 21 available. Pursuant to the Water Management Amendment of the State Water Contract, Article 21 can be transferred into water banks or other storage facilities and later withdrawn for use.

Typically, CCWA is not able to take delivery of Article 21 water because it occurs in a very low demand period for our Project Participants and we do not currently have the ability to store Article 21 water when it is made available. However, the availability of a water bank could mitigate this problem. If CCWA had carryover water in San Luis Reservoir that was at risk of spilling, we could move the carryover water into San Luis Reservoir as quickly as possible. Then, if we begin to lose carryover water to spill and DWR has declared Article 21 water available, CCWA could begin taking Article 21 water. So, carryover water could be delivered into a water bank and then Article 21 water could subsequently be delivered into a water bank allowing us to take advantage of this water management tool now available to CCWA and its participants.

For example: If DWR projected a higher probability of San Luis Reservoir spilling, CCWA could immediately begin pumping water into the Water Bank thereby saving water that would/could be otherwise lost to spill. Then, if Article 21 were made available, CCWA could move our share of the Article 21 water into the Water Bank.

Further, because it is projected that if the Delta Conveyance Project (tunnel project under the Sacramento-San Joaquin Delta) is completed, San Luis Reservoir will fill and spill much more frequently, CCWA may be at risk of losing additional carryover water. Therefore, the need to actively manage carryover water supplies will only increase in the future, making the need for a place to store water when it is not needed, that much more important.

Based on past spill amounts in 2011 and 2017, CCWA staff believe a base participation level of between 7,500 AF to 10,000 AF would provide a relief valve in the event of imminent spill of carryover water in San Luis Reservoir while also allowing us to take advantage of Article 21 water when it is made available by DWR.

III. Additional Participation to Maximize Use of SWP Allocation and Guard Against Drought

From time to time, for reasons that are specific to each of CCWA's Participants, the Participants may have a desire to bank some of their project allocation. For example, one or more Participants may wish to bank their SWP allocation when demand is low and other local supplies are available. If banked, these supplies would be available in dry years like 2022, in lieu of having to purchase supplemental supplies.

IV. Aquaterra Project and Costs

Project Description

The Aquaterra project is described in detail in the attachments. Additionally, MAGSA released the Feasibility Study for the Aquaterra Water Bank in June 2022. The link to that Feasibility Study is [here](#) on the CCWA website.

Mr. Hurly will make a presentation to the Board at the Board meeting and will be available to answer any questions the Board may have.

Subscription Fee Payments

As described in the attached "Groundwater Banking Priority Phase Storage Subscription Agreement", the first \$25/AF deposit of the estimated total \$900/AF Subscription Fee will be due in March 2023. Then, additional deposits are due each year through 2026, with increases each year up to the estimated total of \$900/AF.

If CCWA (on behalf of one or more Participants) elects to participate in the Water Bank, the first installment of \$25/AF (or \$250,000 assuming a 10,000 AF participation level), would be due in March 2023.

Estimated Costs to Participate in the Aquaterra Water Bank

The following excerpt from the Aquaterra Feasibility Study (see below), shows the estimated capital costs and recharge and recovery cost estimates:

Table ES-0-1 Total Capital Project Costs

Range of Total Capital Costs	
Low	\$478,250,000
High	\$777,156,000
Range of Capital Costs (\$/AF Storage Capacity)	
Low	\$598
High	\$971
Range of Baseline Annual Costs	
Low	\$26,383,500
High	\$42,873,600
Recovery Costs (\$/AF)	\$164
Recharge Costs (\$/AF)	\$93

In addition to the recovery and recharge costs listed above, CCWA (on behalf of one or more Participants) would have to pay the DWR Variable O&M costs to move the water from San Luis Reservoir into the groundwater bank which are estimated to be between \$11 and \$27/AF. When the water is returned to CCWA, we would have to pay the normal DWR Variable O&M costs to move the water from San Luis Reservoir to the Coastal Branch facilities which currently are around \$250/AF.

V. Timing

The information related to the Aquaterra project and presentations from the MAGSA staff are intended to provide a basis for each CCWA participant to evaluate whether participation in the project is beneficial for their individual agencies. CCWA staff hope to obtain participation decisions from CCWA participants in advance of the January 26, 2023 CCWA Board meeting.

MAGSA has indicated that it anticipates executing Subscription Agreements by March, 2023.

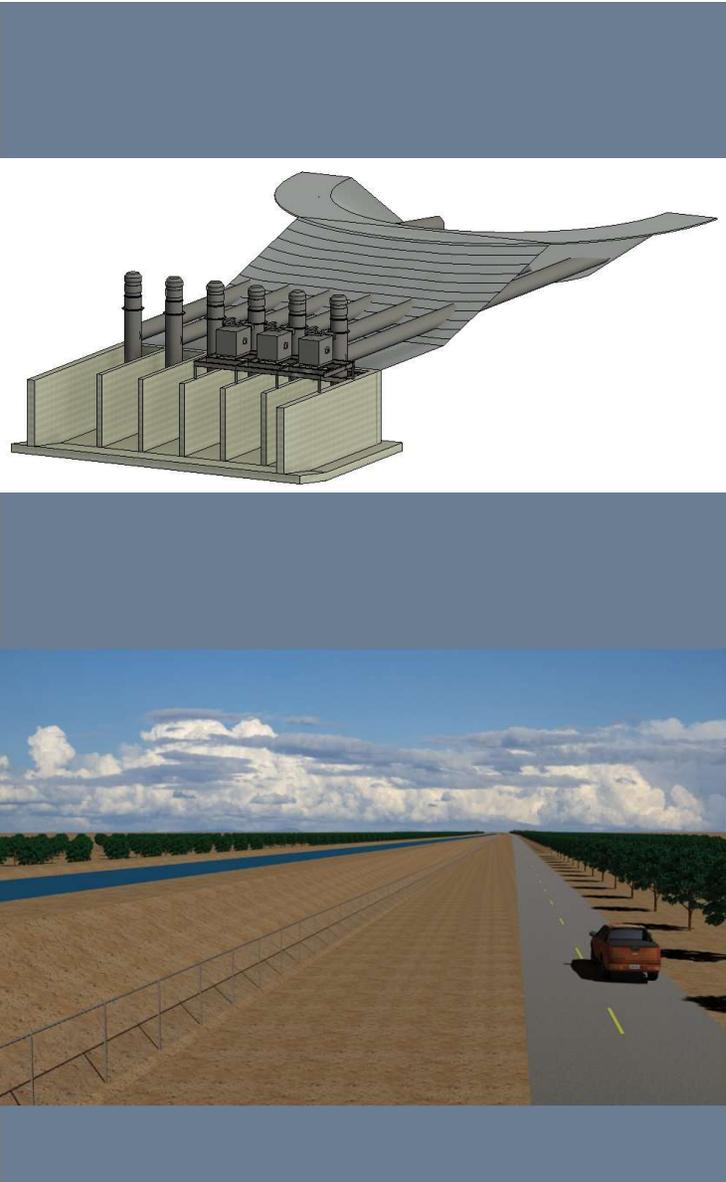
ENVIRONMENTAL REVIEW

Not applicable.

RAS

Attachments

1. Aquaterra Water Bank Powerpoint Presentation
2. Aquaterra Water Bank Quarterly Spending Projection
3. DRAFT Aquaterra Water Bank Subscription Agreement
4. DRAFT Aquaterra Water Bank Subscription Agreement Exhibit A



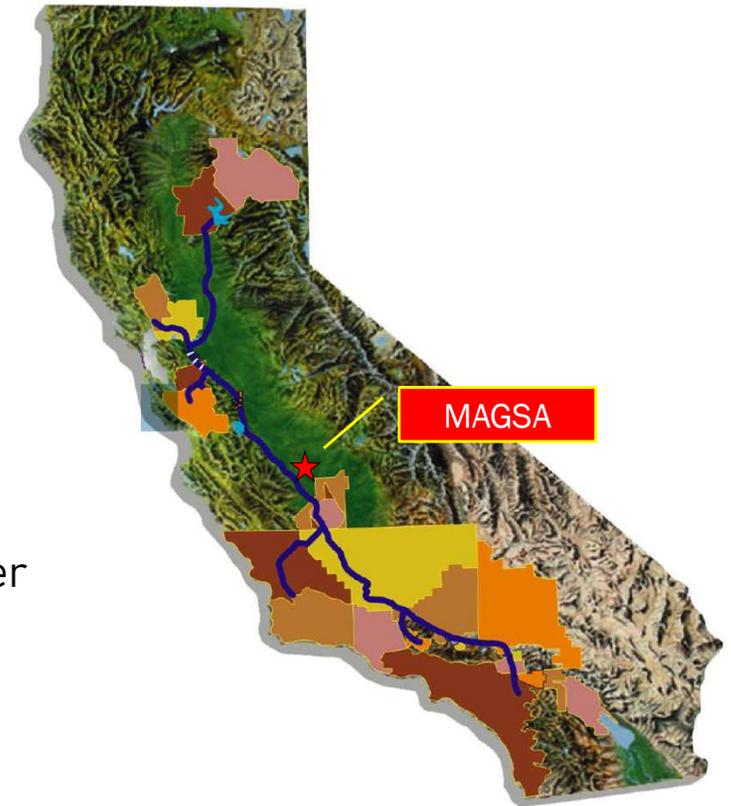
AQUATERRA

WATER BANK

MCMULLIN AREA GSA, FRESNO COUNTY

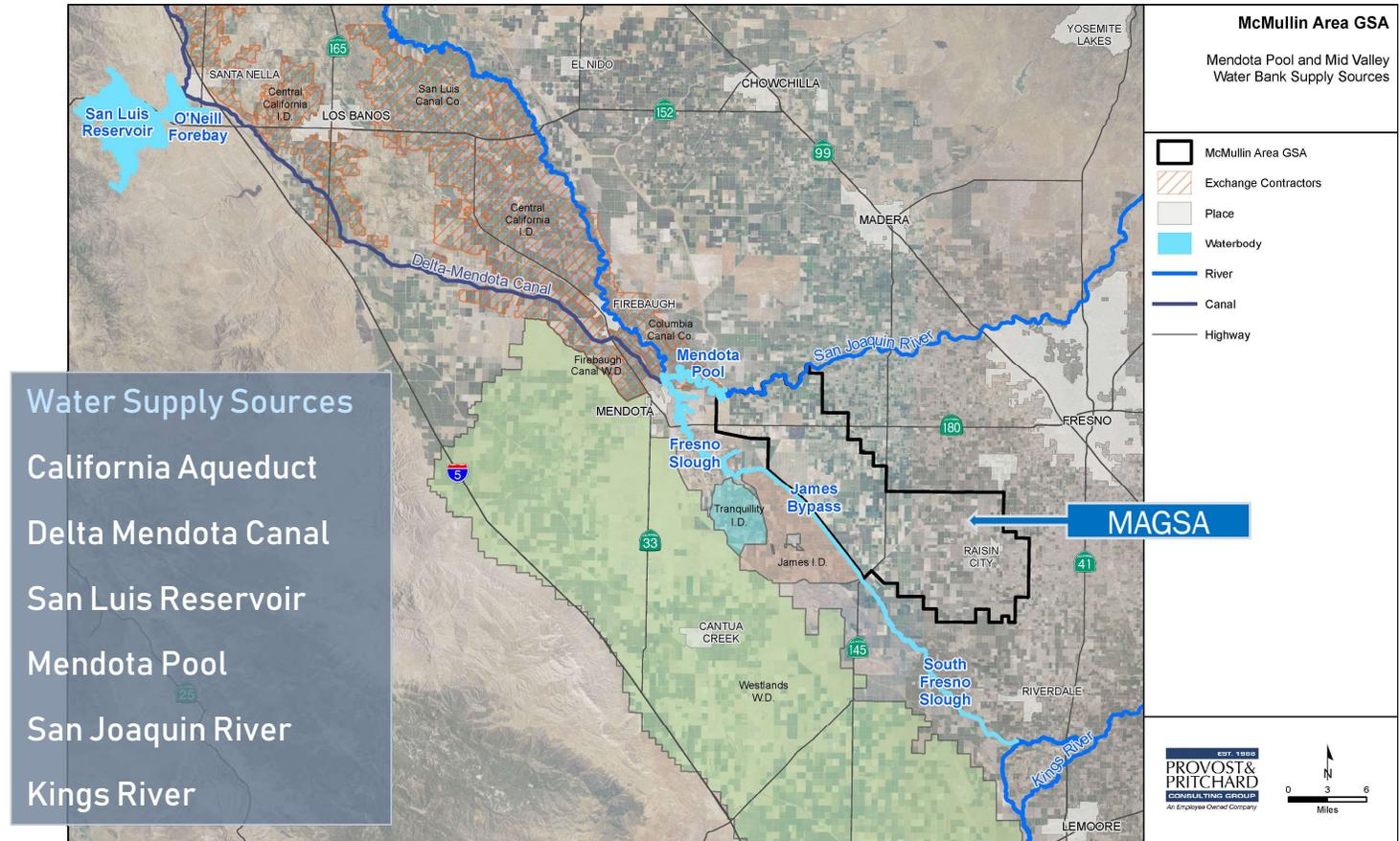
McMullin Area GSA (MAGSA)

- Formed in response to the passing of the Sustainable Groundwater Management Act (SGMA)
- Located in Fresno County, encompassing 120,635 acres
 - 83% permanent and field crops
 - 1.2% rural residential
 - Two ecological reserves
- MAGSA last developed area of Kings Subbasin
 - No Kings River water rights for surface irrigation
 - Agriculture developed based exclusively on groundwater
 - **1.8 Million acre-feet** of available groundwater storage in cone of depression created by local pumping



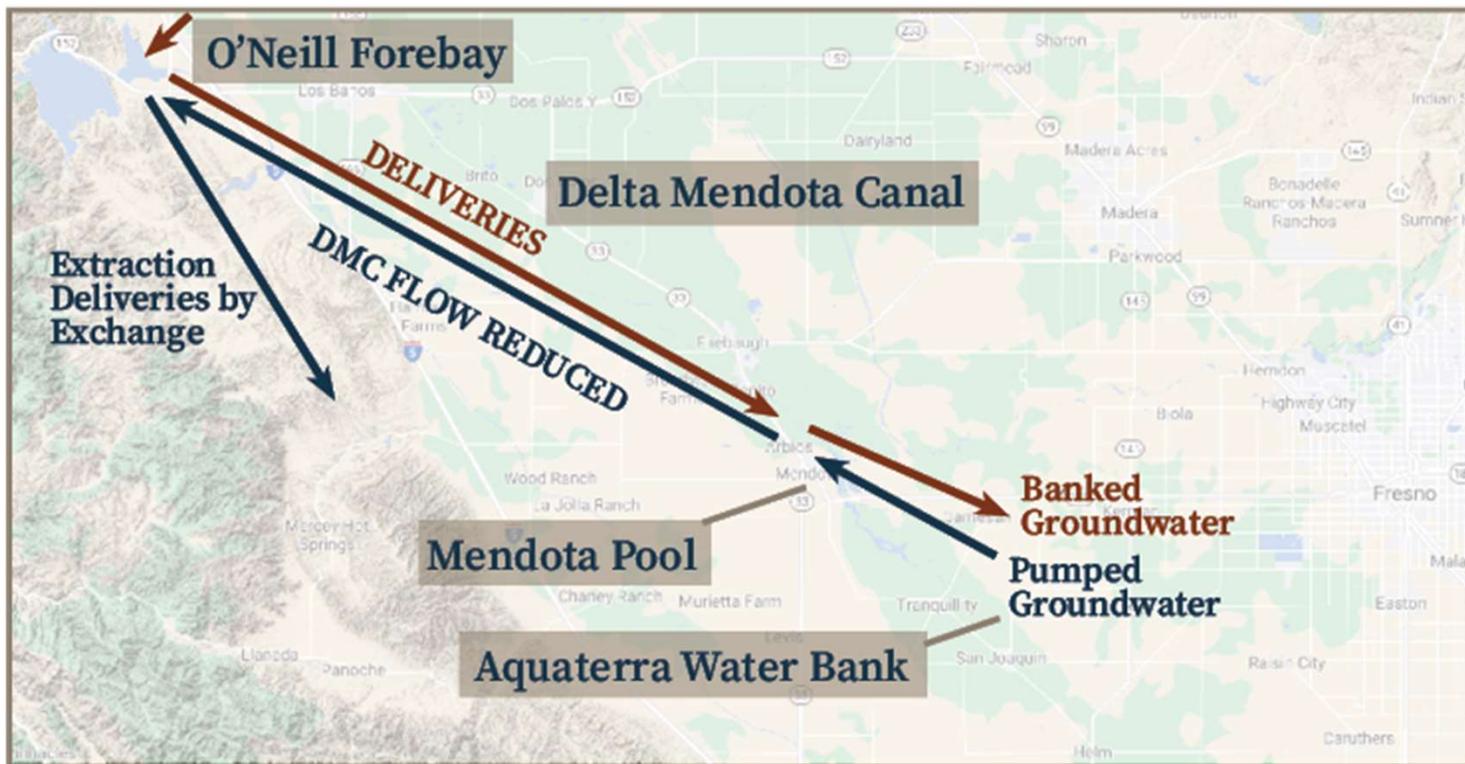
Aquaterra Water Bank

- Situated near major water systems
- Direct connections to water sources.
- Soils suited for water percolation and recovery.
- Partner with Exchange Contractors to facilitate project recovery and their needs





Delivery and Extraction Infrastructure



Aquaterra Water Bank Characteristics

High recharge rates, with ability to capture Article 21 Water

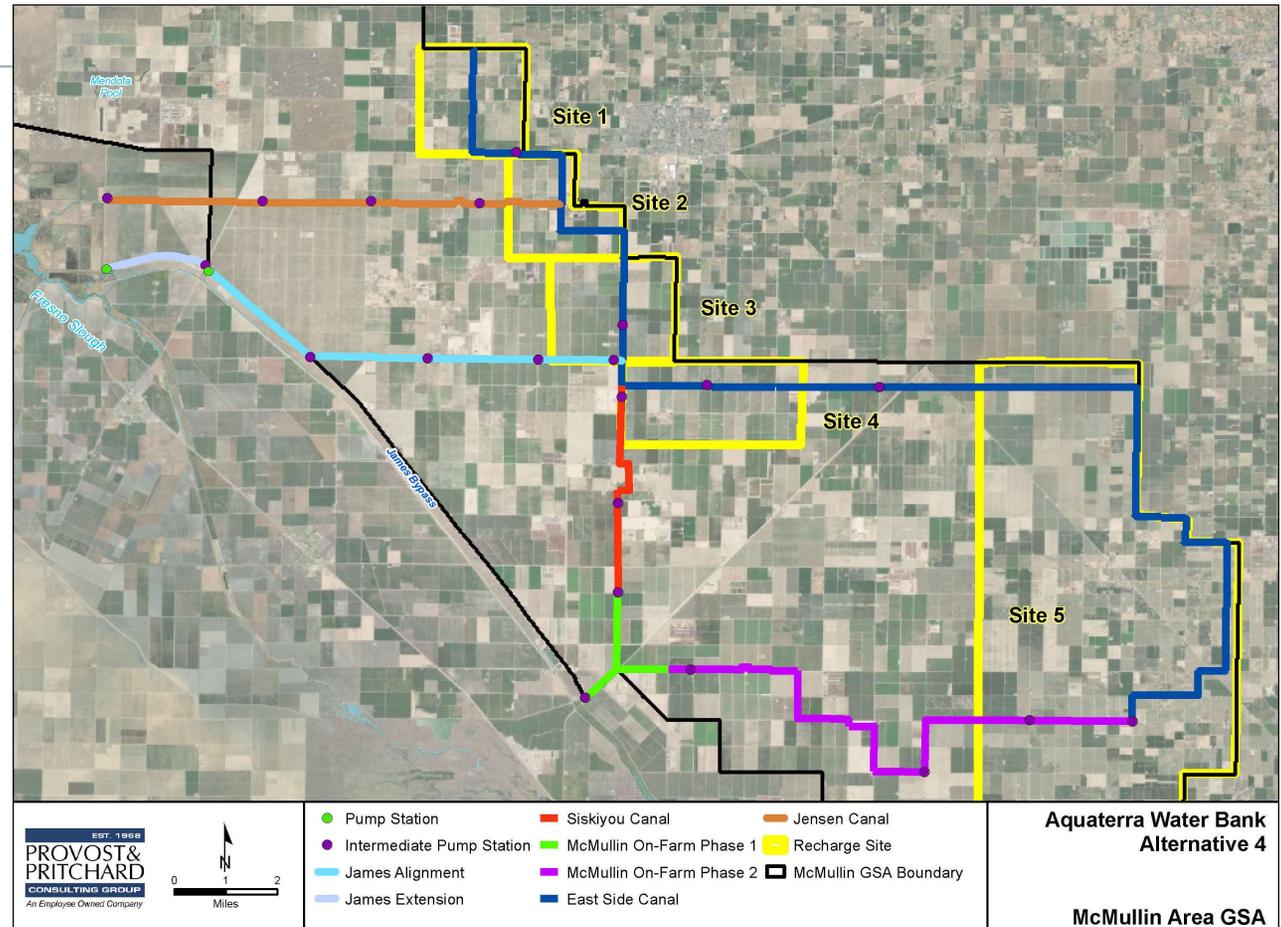
Upstream location on California Aqueduct

- Minimizes potential operational capacity limitations
- Reduced initial costs – Minimal initial pumping costs
- Reduced operational costs – Low energy costs
- Physical connection to the Mendota Pool

Firm Recovery Capability – Extractions exchanged with highest seniority
Delta water user

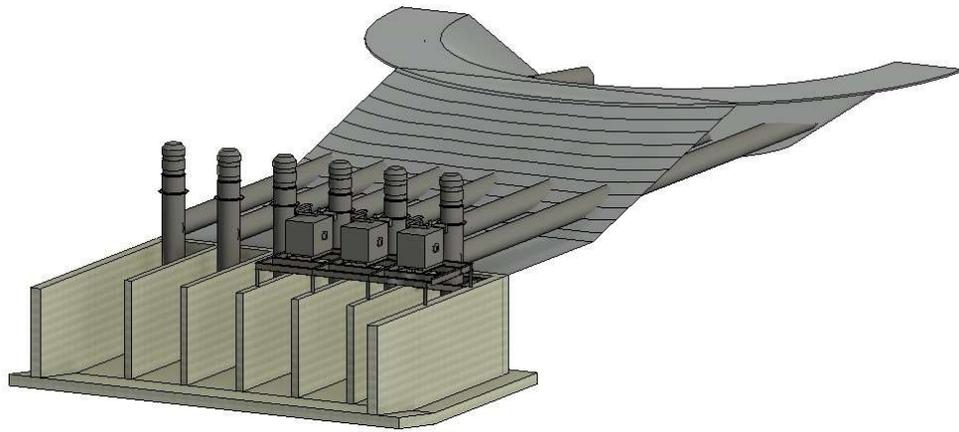
Project Scale

- 800,000 acre-feet groundwater storage capacity
- 208,000 acre-feet annual recharge capacity
- 770 cfs conveyance & spreading
- 146,000 acre-feet per year scheduled extraction capability
- 480 cfs recovery (extraction) capacity
- Two conveyance facilities for recharge & recovery



Aquaterra Water Bank Specifications

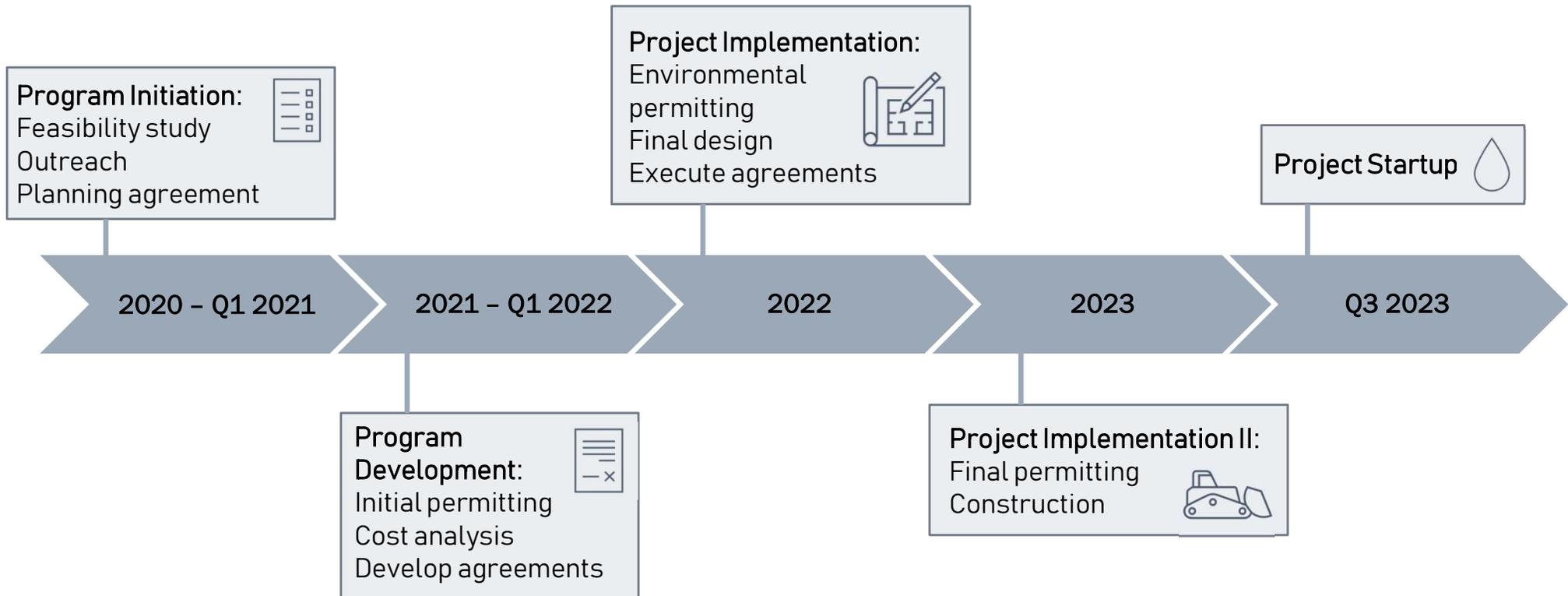
250 – 500 cfs conveyance canal capacity
3,900 acres of recharge basins
65 miles of bidirectional canals



88 recovery wells
25 pump stations
3 pump stations in Mendota Pool



Aquaterra Water Bank Status

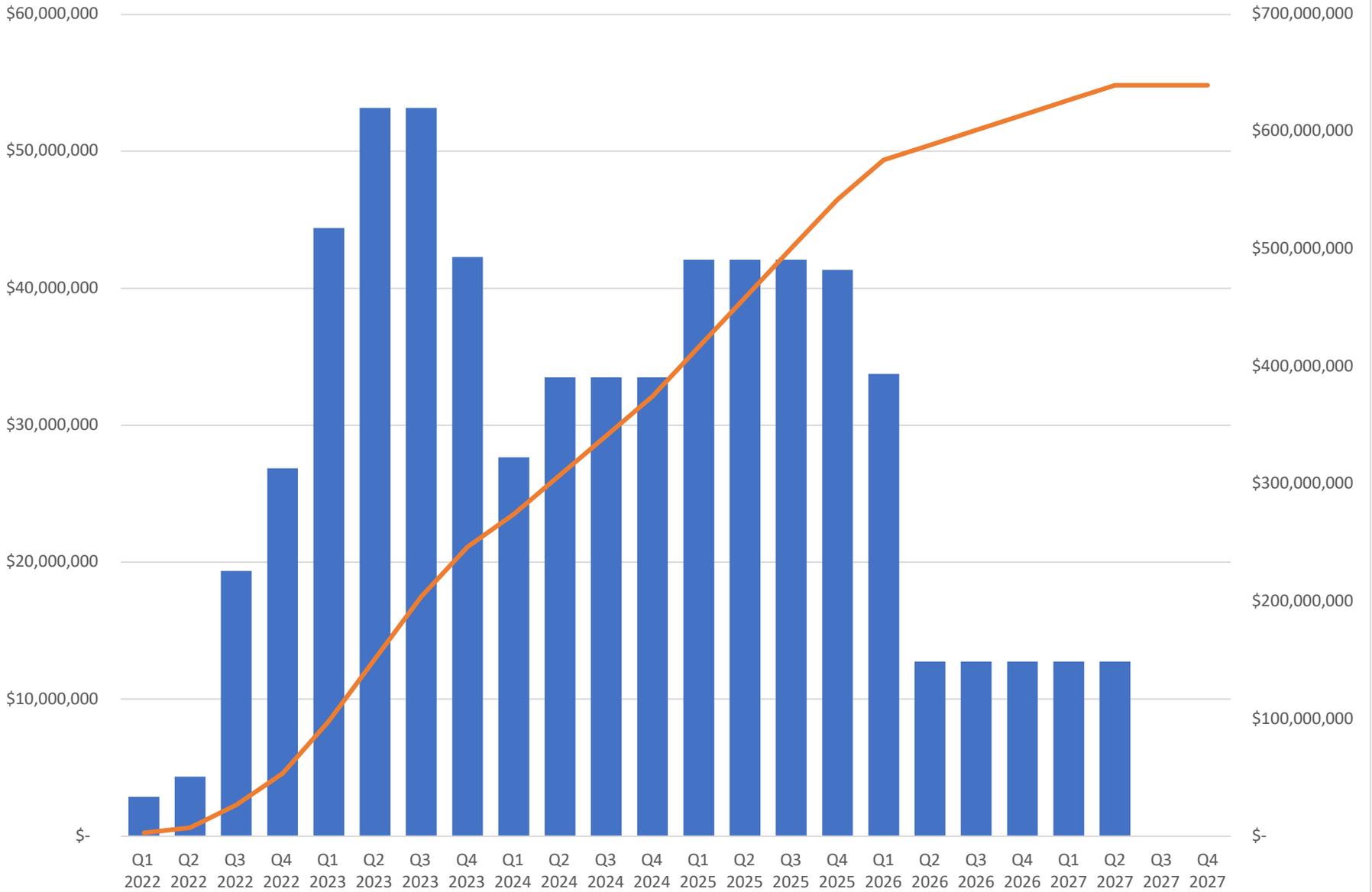


QUESTIONS



AQUATERRA
WATER BANK

Aquaterra Groundwater Bank Quarterly Spending Projection



**GROUNDWATER BANKING PRIORITY PHASE STORAGE
SUBSCRIPTION AGREEMENT**

This Groundwater Banking Priority Phase Storage Subscription Agreement (“**Agreement**”) is entered into as of this ____ day of _____ 2022 between McMullin Area Groundwater Sustainability Agency (“**MAGSA**”) and _____ (“**Account Holder**”). MAGSA and Account Holder may also be referred to herein individually as a “**Party**” or collectively as “**Parties**.”

RECITALS

WHEREAS, MAGSA is a Groundwater Sustainability Agency (“**GSA**”) properly organized pursuant to the Sustainable Groundwater Management Act of 2014 (Water Code §§ 10720, et seq.) (“**SGMA**”);

WHEREAS, due to historical groundwater pumping in excess of the safe yield of the groundwater basin underlying MAGSA’s boundaries, estimated underutilized groundwater storage capacity in excess of one million eight hundred thousand (1,800,000) acre-feet has resulted;

WHEREAS, MAGSA has determined that the operation of water banking facilities will contribute to improved conditions of groundwater overdraft within its boundaries, and will assist in MAGSA’s efforts to enhance, protect, and sustainably manage the water resources within its boundaries pursuant to and consistent with SGMA;

WHEREAS, Account Holder seeks to participate in water banking efforts with MAGSA that will result in beneficial storage, recovery, and exchange opportunities for Account Holder within MAGSA;

WHEREAS, MAGSA intends to develop, construct, and operate groundwater banking facilities within its boundaries as described in **Exhibit A** attached hereto (“**Project**” or “**Aquaterra**”);

WHEREAS, in order to generate capital needed to conduct the requisite environmental review, to complete permitting processes, to obtain necessary fee title ownership to land and/or right-of-way easements, and to develop and construct the Project facilities, MAGSA proposes an investment opportunity consisting of priority access to a portion of the total storage space, for direct or in-lieu recharge and/or access to a broad range of exchange possibilities pursuant to the terms set forth below;

WHEREAS, Account Holder seeks to invest in the development and construction of the Project in exchange for the opportunity to obtain senior priority storage capacity and appurtenant rights upon the construction and operation of the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Definitions.

- (a) Anticipated Total Project Storage: MAGSA anticipates that the total water storage available within the Project will be one million eight hundred thousand (1,800,000) acre feet.
- (b) Priority Phase Investor: Those parties that invest in the first eight hundred thousand (800,000) acre-feet of reserved storage space within the Project.
- (c) Priority Phase Storage: The entire first eight hundred thousand (800,000) acre-feet of reserved storage space within the Project, to which each Priority Phase Investor shall share Priority Access.
- (d) Priority Access: The seniority of access to deposits (“puts”) or withdrawals (“takes”) associated with Priority Phase Storage ahead of later phase investors, which shall be in proportion to each Priority Phase Investor’s share of the Phase One Priority Storage in acre feet.
- (e) Subscription Fee: The total amount due to MAGSA to access the Priority Phase Storage as provided herein, which must be paid in five (5) non-refundable installment payments, as detailed in Paragraph 3 below.

2. Purchase of Phase One Priority Storage.

In consideration of the terms and conditions contained in this Agreement and upon receipt of **all** Subscription Fees, as provided herein, MAGSA shall grant and convey to Account Holder the perpetual right to access _____ acre-feet (the “**Subscribed Quantity**”) of Priority Phase Storage in the Project pursuant to the terms provided herein.

3. Non-Refundable Subscription Fees and Payment Schedule.

It is MAGSA’s intention to construct the necessary capital improvements and thereafter operate the Project on a cash basis as compared to a bonded or financed basis. Therefore, each Priority Phase Investor shall be responsible for the determination as to what method they might choose to utilize for their required cash contributions set forth below. The aforementioned notwithstanding, MAGSA will do what it can to accommodate minor scheduling and other potentially variable aspects associated with scheduled payments from Priority Phase Investors. As of the date of this Agreement, the total Subscription Fee is estimated to be Nine Hundred Dollars (\$900.00) per acre-foot for Priority Phase Storage (“**Estimated Subscription Fee**”). This amount accounts for the estimated cost of construction of the capital improvements and all related non-construction related expenses with a twenty percent (20%) contingency factor. The actual total Subscription Fee shall be determined at Project completion and shall be based upon the cost to build and place the Project into full operational mode. As such, determination of the final total Subscription Fee amount shall be ongoing. MAGSA shall provide written updates on the estimated total Subscription Fee to Priority Phase Investors as provided in Paragraph 4, below, but in no event shall the total Subscription Fee payable by Account Holder exceed one hundred and twenty five percent (125%) of the Estimated Subscription Fee as identified herein.

To purchase the right to access Priority Phase Storage, Account Holder shall pay the total Subscription Fee for its Subscribed Quantity pursuant to the following schedule:

- (a) First Payment: The first payment shall be equal to \$25.00 per acre-foot of Subscribed Quantity, shall serve as a down payment placeholder for Account Holder's Investment Account, and shall be delivered to MAGSA, as provided herein, on or before March 1, 2023.
- (b) Second Payment: The second payment shall be twenty percent (20%) of the outstanding balance of the total Subscription Fee, or an estimated \$175.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2024.
- (c) Third Payment: The third payment shall be thirty percent (30%) of the remaining balance of the total Subscription Fee, or an estimated \$210.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2025.
- (d) Fourth Payment: The fourth payment shall be fifty percent (50%) of the remaining balance of the total Subscription Fee, or an estimated \$245.00 per acre-foot of Subscribed Quantity, and shall be delivered to MAGSA, as provided herein, no later than March 1, 2026.
- (e) Final Payment: The final payment shall be the remaining balance of the total Subscription Fee, as adjusted for project construction closeout, and shall be delivered to MAGSA, as provided herein, no later than December 31, 2026.

4. **Notice of Change in Cost**

In order to calculate the amount due for each of the Subscription Fee payments, as set forth above, MAGSA shall provide Account Holder notice, as provided herein, of any change in the total Subscription Fee no later than one hundred twenty (120) days in advance of the payment due dates set forth above. The actual final amount of the per acre foot Subscription Fee shall be determined by actual cost true-up prior to the final installment.

5. **Election Not to Complete Purchase.**

In the event the Account Holder elects at any point not to complete the transaction contemplated herein, any amounts paid to MAGSA pursuant to this Agreement at the time of Account Holder's election not to complete the transaction shall **not** be refunded to Account Holder in whole or in part.

6. **Option to Assign.** Account Holder may, subject to prior approval by MAGSA, which approval will not be unreasonably withheld, assign its rights and responsibilities under this Agreement upon the execution by Account Holder's duly authorized representative and execution by assignee of a Subscription Agreement, in a form similar to this Agreement, modified to reflect the withdrawing Account Holder's position at the time of withdrawal and assignment and acknowledging any and all provisions contained herein as if executed at the origination of the Project.

7. **Covenants of the Parties.**

(a) **Project Status Updates.**

MAGSA shall provide Account Holder quarterly written reports on the status of the construction of the Project, including periodic accounting updates and budget comparisons.

(b) **Notice of Readiness to Accept Water Deposits (“Puts”).**

MAGSA shall notify Account Holder at least thirty (30) days prior to the anticipated partial completion of the Project facilities sufficient to allow Account Holder to make initial water deposits into the water bank (“puts”).

(c) **Notice of Readiness to Accomplish Water Withdrawals (“Takes”).**

MAGSA shall notify Account Holder at least thirty (30) days prior to the anticipated partial completion of the Project facilities sufficient to make initial withdrawals of water from storage (“takes”).

(d) **Operations and Maintenance of the Project Post-Construction.**

Following execution of this Agreement, and upon the “Activating Subscription for Priority Phase Storage” (Payment of the First Installment Payment by Priority Phase Investors holding more than fifty (50%) percent of the Priority Storage), MAGSA shall convene a representative committee of all Priority Phase Storage Account Holders for the purpose of conferring and making recommendations to the MAGSA Board of Directors of anticipated best management practices associated with ongoing Project operations and maintenance, including suggested rules and regulations, fee schedules and cost apportionment formulas for equitable access to and participation in the Project. Thereafter, MAGSA shall prepare and circulate for consideration and concurrence of the Priority Phase Storage Account Holders a Standard Operations and Maintenance Manual, which will serve as the initial Standard Operating Procedures for the Project.

(e) **Access to Project.**

MAGSA shall provide Account Holder reasonable access to the Project and Project facilities.

(f) **Mutual Indemnification, Defense, Hold Harmless.**

The Parties agree to indemnify, defend, and hold the other and its respective officers, directors, shareholders, partners, managers, members, trustees, beneficiaries, employees, contractors, licensees, invitees, representatives, agents, successors, and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (including, without limitation, attorneys’ fees) by reason of property damage, death, or injury to persons arising from or relating to the construction, improvement, installation, access to, use, inspection, maintenance, repair, or modification of the Project facilities, except to the extent

that such death, injury, or property damage arises from the gross negligence or willful misconduct.

(g) Evaluation of Risk.

Account Holder is managed by and/or staffed with persons who are knowledgeable, sophisticated, and experienced in business and financial matters; has access to information sufficient to conduct appropriate due diligence in relation to this Agreement; is capable of evaluating the merits and risks involved in this Agreement, is prepared to timely provide for scheduled payments, and is able to bear the risk of this Agreement, including a complete loss of its investment.

8. Notices.

Any notice, consent, approval or request for consent required or permitted to be given under this Agreement shall be given in writing and shall be effective: (i) if personally delivered, upon delivery or the recipient's refusal to accept such delivery; or (ii) if mailed, five (5) days after mailing, by United States registered or certified mail, postage pre-paid, return receipt requested, to the applicable address set forth below:

If to MAGSA:

McMullin Area Groundwater Sustainability Agency
275 S. Madera Avenue, Suite 301
Kerman, CA 93630

Attn: General Manager

If to the Account Holder:

Name
Address 1
Address 2

Attn:

The foregoing addresses and addressees may be changed by giving written notice of such change to the other Party in the manner provided for in this section.

9. Partial Invalidity/Severability.

If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. Breach.

In the event of an alleged breach of this Agreement, the Party asserting the breach shall promptly advise the other Party of the alleged breach and provide, in writing, a notice to cure within seven (7) business days of the delivery of the written notice. Should the alleged breaching Party dispute

the alleged breach, they must, within that same seven (7) business day period, advise the other Party of the dispute and the basis for their contention.

Should the Party disagree as to whether a breach has occurred, and the alleged breach remains after a period of seven (7) business days, the Parties agree to engage in good-faith negotiations as set forth below.

However, in the event Account Holder breaches the Agreement in a manner that constitutes a violation of the terms of any State, County, or other permit or license by which MAGSA is bound, and Account Holder fails to cure such breach within seven (7) business days of the notice, upon a showing of documentation from a government entity confirming the nature of the violation, MAGSA may immediately terminate this Agreement.

11. **No Refund for Delay and/or Failure to Complete.**

The Parties acknowledge that the Project is still in the design phase and completing the Project will require the acquisition of real property and/or easements, the completion of environmental review, and obtaining various permits and approvals, as well as funding sufficient to complete the Project. The Parties further understand and acknowledge that these processes and any number of unforeseen issues could delay or prevent completion of the Project in whole or in part. In the event that the Project is delayed or that MAGSA is unable to complete the Project, in whole or in part, whether due to inability to obtain approvals, real property, easements, and/or any other reason, Account Holder shall not be entitled to a refund of any amounts paid.

12. **Impact to Water Supply/Storage.**

The Parties acknowledge that the Project is subject to changes as a result of climate and/or geologic activities. As a result, the Parties agree that MAGSA provides no assurance that the capacity, conveyance rates and the priority space will not change from that which is understood at this time. As a result, restrictions may be imposed on the Account Holder's use of the Project, including, but not limited to, limits or restrictions on: allowable recharge rates, allowable recovery rates, and/or the time between recharge and recovery.

13. **Negotiation, Mediation, and Mandatory Binding Arbitration.**

The Parties agree that, should any controversy or claim arise out of or in relation to this Agreement, including any alleged breach of the Agreement, the Parties shall promptly make good faith efforts to negotiate a written voluntary resolution of the matter directly between themselves.

With the exception of the limited circumstance that allows for immediate termination set forth above, if any dispute that relates to this Agreement remains unsettled for fifteen (15) days after notification that a dispute exists, the Parties shall immediately and jointly retain a mutually- agreed upon neutral mediator and participate in confidential mediation to continue attempting to work out a written voluntary settlement. The costs of the mediation shall be born equally by the Parties. If any Party(ies) files any legal or administrative action to which this clause applies, without first having attempted to resolve the dispute through neutral mediation, then that filing Party(ies) shall be responsible for all legal fees and costs, including reasonable attorneys' fees, of the other Party(ies), regardless of the outcome of the case.

Should mediation efforts fail, any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration administered by one neutral, agreed upon

by the Parties, from the American Arbitration Association, JAMS, or similar organization, under their Commercial Arbitration Rules. Any such arbitration shall be conducted in Fresno County and judgment on the award rendered may be entered in any court having jurisdiction thereof.

14. **Binding Effect.**

This Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity and without regard to technical classifications or designations, be binding upon and inure to the benefit of the Parties hereto.

15. **Governing Law.**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

16. **Attorneys' Fees.**

In the event of any controversy, claim or dispute relating to or arising out of this Agreement, except as specifically set forth within paragraph 13, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses including, without limitation, attorneys' fees.

17. **Entire Agreement.**

This Agreement, including the recitals and **Exhibits A** through ___ attached hereto, all of which are incorporated herein by this reference, constitutes the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties concerning the subject matter of this Agreement and supersede any and all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

18. **Amendments.**

This Agreement may be amended, modified or supplemented only by a written document executed by all of the parties hereto (or their successors-in-title).

19. **Assignments.**

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Party. Upon an assignment pursuant to this provision, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties, which shall include any agreed-upon successors and assigns.

20. **No Third-Party Beneficiaries.**

This Agreement is only among and for the benefit of the Parties hereto and their successors-in-title. No other person or entity or property shall be entitled to rely hereon, receive any benefit from

this Agreement or enforce any provision of this Agreement against any other Party to this Agreement.

21. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DRAFT

**EXHIBIT “A” TO GROUNDWATER BANKING PRIORITY PHASE STORAGE
SUBSCRIPTION AGREEMENT**

The overall Project (hereinafter “Aquaterra”) includes construction and operation of an approximately 146,000-acre-foot per year dry-year return water bank. During wet year operations, up to 208,000 acre-feet of water could be recharged. There is approximately 1.8 million acre-feet of available storage under MAGSA’s boundaries in the unconfined aquifer above the E-Clay (Corcoran Clay). The Project as it specifically relates to Priority Phase Storage, includes the following elements:

- 1) Approximately 4,000 acres of new dedicated recharge basins,
- 2) A well field of up to 90 dedicated recovery wells located generally within the area of the recharge basins,
- 3) Up to three new lift pump stations in, or within the vicinity of, the Mendota Pool,
- 4) Approximately 70 miles of bi-directional high capacity conveyance canals,
- 5) Approximately twenty five (25) canal lift pumping stations with individual flow top-end capacities between 300 and 500 cubic feet per second,
- 6) Federal Acknowledgement as a Groundwater Bank to accommodate storage and return, as well as exchange, of federal contract water supply, and
- 8) The creation of a Groundwater Monitoring Committee to assist and advise MAGSA in establishment and oversight of on-going Standard Operations policies and procedures.

Location: The Aquaterra facilities would be located west of SR-99 and east of the James Bypass on the north fork of the Kings River within an agricultural region of the mid-northern portion of Fresno County, CA contained within the boundaries of MAGSA.

Operation and Maintenance:

The Groundwater Monitoring Committee will assist and advise in ensuring that operation of Aquaterra will not adversely affect the groundwater pumping conditions of any property owners in close proximity to the Aquaterra facilities.

MAGSA anticipates utilization of Supervisory Control and Data Acquisition (“SCADA”) or other telemetry equipment and full metering that would allow MAGSA, if it so desires, to remotely operate and monitor Aquaterra well and pump facilities. Occasionally, service employees may be required to be on-site for scheduled, preventive maintenance or unscheduled service. Site maintenance is anticipated to include levee maintenance, weed abatement, trash removal, periodic sediment removal and water-control structure adjustments and maintenance.

Construction:

Construction activity for Aquaterra would commence in late 2022 or early 2023, with recharge basin site preparation and grading and construction of conveyance canals. Construction of recharge basin infrastructure, pump stations and conveyance canal construction is expected to begin in 2023 and will be ongoing until fully complete. Construction of the conveyance canals and recharge basins would continue into 2025. Recovery well and pipeline construction is anticipated to begin in 2024 and continue into 2026.