

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Term Sheet with Oakdale Irrigation District for Water Transfer


DATE: October 15, 2012

This staff report forwards the identical information provided to Council for their regularly scheduled meeting of October 1, 2012. At that meeting, Council did hear a brief staff report and take public testimony, but tabled action on this item to a date when all Councilmembers would be present for voting.

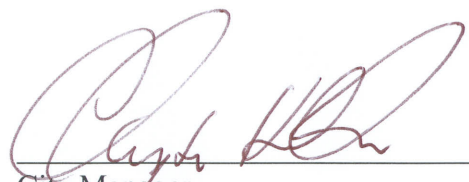
The only new information on this matter is that on October 2, the Oakdale Irrigation District did approve the Term Sheet (revised 9-25-12) that was included for action in Council's October 1 packet.

Attachments:

10/1/12 Staff Report, with all attachments.



Director of Public Works/City Engineer



City Manager

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Term Sheet with Oakdale Irrigation District for Water Transfer

DATE: October 1, 2012

City Council Goals:

To provide for effective and efficient delivery of City services. (#1)

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane. (#9)

Purpose:

To obtain Council's approval of a Term Sheet with Oakdale Irrigation District outlining the general framework for a possible future agreement that would provide potable water to the Baylands development, and possibly also to undeveloped parcels in Sierra Point. This future agreement shall not be entered into unless and until the completion and certification of required CEQA analyses, and not until the conclusion of agreements with other entities not a party to the Term Sheet, but whose concurrence is required for an ultimate water transfer.

This action is consistent with the community's value of ensuring the highest level of water quality, in that it examines a means of providing future developments with potable water of the same quality provided to existing Brisbane citizens and businesses.

Recommendation:

Approve the draft Term Sheet and authorize the City Manager to sign the document on the city's behalf.

Background:

This item was continued for discussion from the Council's regularly scheduled 9/17/12 meeting. Please see the attached Staff Report from that meeting for additional information.

At the 9/17/12 meeting, Council formed an ad hoc subcommittee consisting of Mayor Pro Tempore Miller and Councilmember O'Connell. The subcommittee's purpose was to review the proposed Term Sheet relative to the concerns raised at the meeting. The City Attorney

subsequently revised the Term Sheet, and forwarded it via email to the subcommittee. The City Attorney, City Manager and the Director of Public Works also met in person with Mr. Miller.

Oakdale Irrigation District's Board of Directors received a detailed presentation on the Term Sheet from their General Manager at their 9/18/12 meeting. That Board is scheduled to consider a vote on this Term Sheet at their regularly scheduled 10/2/12 meeting.

Discussion:

The changes recommended by the subcommittee have been incorporated into the Term Sheet attached to this report, and have been forwarded to Oakdale Irrigation District for their consideration. In general, the changes clarify language from the original Term Sheet. Examples of the changes include:

- Inclusion of the phrase, "a non-binding framework for negotiations" in the first sentence of the document to highlight that this document is a starting point of discussion, not a final commitment. Similar language is also included in the "Therefore" paragraph.
- In the third "Whereas" and in Paragraph 3, language has been included to refer the reader to the meaning of the terms, "municipal and industrial" and "reasonable and beneficial uses". (The source document for those definitions is attached to this staff report.)
- Paragraphs 9, 13, 14 and 20 have been revised to clarify all of the Developer's (UPC) fiscal responsibilities, and to clarify that the city will not enter into a future Water Transfer Agreement prior to the developer committing to its responsibilities by executing the Developer Funding Agreement.
- Some language has been added to Paragraph 6 to clarify that the cost of living adjustment will begin in year 6 and applies only to water purchased by Brisbane. Note that starting with year 6 when a commitment is made for the quantity of water to be provided by OID, all of such water will be deemed to have been "purchased" by Brisbane and the price for that water will be subject to the annual CPI adjustment.

Please refer to the attached "redline" and final versions of the Term Sheet to review all changes made to the earlier draft.

A final question from the subcommittee was in regards to Paragraph 13's statement that Brisbane will be the lead agency for CEQA. Oakdale Irrigation District (OID) previously adopted a Water Resources Plan that addressed a programmatic approach to using conserved water for water transfers and agricultural land annexations, with a financial goal of rebuilding and modernizing OID. The environmental document for that plan was certified in 2007. OID has in recent years transferred as much as 41,000 acre-feet outside of its district boundaries.

The programmatic EIR being prepared by the City of Brisbane for the Baylands will address the environmental impacts of all aspects of the water transfer, including impacts to the OID watershed, transmission-related impacts, and impacts associated with the end-use of the water in Brisbane. OID, as a responsible agency in the water transfer, will rely on the Baylands EIR to provide the environmental basis for its decision-making process as required pursuant to CEQA.

To the extent that OID determines that supplemental environmental analysis is required before the water transfer agreement can be approved, the project sponsor (UPC) is responsible for the cost of such additional studies. (See attachments for definitions of "lead" and "responsible" agencies.)

As noted in the 9/17/12 staff report, the Baylands applicant is required to demonstrate a readily available supply of water for their proposed project. The CEQA law does not specify any particular type of document that is required to demonstrate this availability. Since it would be premature to enter into any form of binding agreement at this time (which itself would probably violate CEQA since the agreement would need an environmental analysis) a Term Sheet is generally considered to be the least binding form of documentation that will satisfy the requirement to identify an available source of water for the project.

Fiscal Impact:

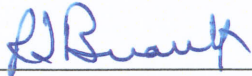
Unchanged from the 9/17/12 staff report.

Measure of Success:

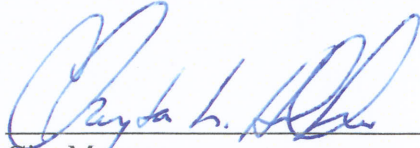
Unchanged from the 9/17/12 staff report.

Attachments:

- 9/17/12 Staff Report "Term Sheet with Oakdale Irrigation District for Water Transfer"
- "Redline" Draft Term Sheet 9-25-12 Oakdale Irrigation District - City of Brisbane
- Draft Term Sheet 9-25-12 Oakdale Irrigation District - City of Brisbane
- State Water Resources Control Board reference for "reasonable and beneficial"
- State Water Resources Control Board reference for "municipal and industrial"
- CEQA Definitions



Director of Public Works/City Engineer



City Manager

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Term Sheet with Oakdale Irrigation District for Water Transfer

DATE: September 17, 2012

City Council Goals:

To provide for effective and efficient delivery of City services. (#1)

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane. (#9)

Purpose:

To obtain Council's approval of a Term Sheet with Oakdale Irrigation District outlining the general framework for a possible future agreement that would provide potable water to the Baylands development, and possibly also to undeveloped parcels in Sierra Point. This future agreement shall not be entered into unless and until the completion and certification of required CEQA analyses, and not until the conclusion of agreements with other entities not a party to the Term Sheet, but whose concurrence is required for an ultimate water transfer.

This action is consistent with the community's value of ensuring the highest level of water quality, in that it examines a means of providing future developments with potable water of the same quality provided to existing Brisbane citizens and businesses.

Recommendation:

Approve the draft Term Sheet and authorize the City Manager to sign the document on the city's behalf.

Background:

SB 610 (Costa), the Water Supply Planning Act, specifies certain projects subject to the California Environmental Quality Act that must complete a Water Supply Assessment (WSA). The proposed Baylands development is such a project. The WSA to be completed must demonstrate a readily available water supply to serve the project for at least a 20-year period, and must also consider reduction from single and multiple dry years. The WSA will be a supporting document for completion of the project's Program Environmental Impact Report.

The City of Brisbane operates two distinct water systems that are interconnected; the city system, and the Guadalupe Valley Municipal Improvement District's system. The combined "water supply assurance" for these systems is 0.98 million gallons per day (MGD), 100% of which is water supplied under contract with the San Francisco Public Utilities Commission (SFPUC).

The sum of our current water use trends, a development agreement commitment to the Health Care Partners project at Sierra Point, and projected central Brisbane residential growth projects our uncommitted supply of water in 2030 to range from 0.14 - 0.24 MGD. This "reserve" supply is appropriate to deal with unexpected supply reductions, but is inadequate to supply undeveloped parcels in the Baylands and at Sierra Point.

The Baylands project maximum expected need for water is 2 MGD. Based on current zoning, staff has estimated the future water needs of undeveloped parcels at Sierra Point as 0.4 MGD.

Oakdale Irrigation District's Board of Directors is scheduled to consider this Term Sheet at their regularly scheduled 9/18/12 meeting.

Discussion:

The Term Sheet is not a binding agreement between the agencies. The document simply lays out a preliminary framework negotiated between the parties, and informs the public of the goals and principles that will guide any ultimate transfer that might be approved. Additionally, the Term Sheet provides basic project definition so that CEQA review may be commenced now by the appropriate agencies for the future "project", that is, any "Water Exchange Agreement" that might ultimately be approved by the parties.

Project level environmental review for the future project will need to address impacts in at least three geographic areas:

1. Within the OID service area.
2. Along the transmission route of Modesto Irrigation District (MID) and SFPUC.
3. Within the City of Brisbane where the water will be used.

The identification of environmental review required within the MID and SFPUC systems leads us to a discussion of the other agreements specified in the Term Sheet, which will have to be completed, in addition to the CEQA review before the future Water Exchange Agreement could be finalized.

The Term Sheet discusses that OID water will be delivered from their system, directly to the MID system. MID will then utilize this delivered water in lieu of Tuolumne River water, thus creating an excess of water in New Don Pedro Reservoir. MID will then exchange this excess water to SFPUC, directly transferring it to them in the "water bank" that SFPUC owns in New Don Pedro. The Exchange Agreement in Paragraph 8 of the Term Sheet deals with this transfer of water.

The SFPUC (an agency of the City and County of San Francisco), will then be able to wheel banked water through its Regional Water System to Brisbane. The Wheeling Agreement in Paragraph 7 of the Term Sheet deals with this transfer.

The last agreement required for a future Water Exchange Agreement is the Developer Funding Agreement. This document will require UPC to fully fund the costs of delivering transferred water to Brisbane, and will also require UPC to demonstrate its commitment to sustainability by agreeing to build a recycled water system as part of its project. (Note that the 0.4 MGD requested for Sierra Point is not 100% the responsibility of UPC. Staff expects to offer this source of water to the other developers in this area, and if they choose to not participate, we have the option of reducing the ultimate volume of water.)

With regards to the future delivery of water, the Term Sheet envisions a future Water Exchange Agreement that could provide up to 2,400 acre-feet per year¹ (AFY) for a term of 50 years, with permitted renewals in 25-year increments.

For the first 5 years of the Agreement, any water taken/delivered is paid for at \$500 per acre-foot. The amount not taken, (e.g., 2,400 – the quantity delivered) is paid for at \$100 per acre-foot.

At the beginning of the 6th year, Brisbane is required to notify OID how much water will be taken during the remainder of the Agreement. All of that water is paid for at \$500 per acre-foot, regardless of whether or not it is actually taken.

Fiscal Impact:

The costs that are the City of Brisbane's responsibility to complete environmental review and other agreements will be borne by UPC. The costs for delivered water will be borne by UPC. The requirement for UPC to pay these costs will be memorialized in the "Developer Funding Agreement" discussed in paragraph 9 of the Term Sheet.

Measure of Success:

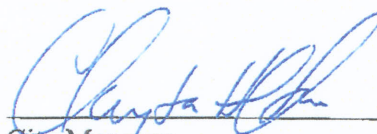
Completion of the required environmental review for the provision of any new potable water supply into Brisbane, and the development of any necessary agreements to provide such a new supply of water to meet the demands of any Baylands development that might ultimately approved by the City Council and Brisbane voters.

Attachments:

Draft Term Sheet Oakdale Irrigation District – City of Brisbane



Director of Public Works/City Engineer



City Manager

¹ 1,000 AFY is approximately equal to 1 MGD. So, 2,400 AFY equals 2.4 MGD.

DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

TERM SHEET FOR WATER TRANSFER AGREEMENT
BY AND BETWEEN THE OAKDALE IRRIGATION DISTRICT AND
THE CITY OF BRISBANE

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This Term Sheet, a non-binding framework for negotiation, is entered into this ___ day of _____, 2012, between and among the Oakdale Irrigation District (“OID”) and the City of Brisbane (“Brisbane”), both of which are collectively referred to hereafter as “Parties”.

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RECITALS

WHEREAS, OID is operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, Brisbane is a general law city subject to the California Government Code; and

WHEREAS, Brisbane desires to acquire water from OID for municipal and industrial (M&I) purposes, as those terms are generally defined by the California State Water Resources Control Board, including a water supply for the project referred to herein as the Baylands Project, a brownfield development located adjacent to the west side of Highway 101; and

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WHEREAS, OID is interested in transferring water to Brisbane; and

WHEREAS, if OID transfers water to Brisbane, the Parties expect that the water will be delivered utilizing, among other facilities, OID’s reservoirs, South Main Canal and laterals, certain designated facilities partially or fully owned and operated by the Modesto Irrigation District (“MID”), and the City and County of San Francisco’s (“CCSF”) Regional Water System; and

WHEREAS, this Term Sheet sets forth an understanding between the Parties to cooperate in the development, processing and completion of appropriate environmental review pursuant to the California Environmental Quality Act (“CEQA”) by the designated Lead Agency; and

WHEREAS, this Term Sheet sets forth some of the potential terms and conditions related to a sale of water from OID to Brisbane so that the appropriate Lead Agency can commence development, processing and completion of the appropriate CEQA documentation, and

WHEREAS, this Term Sheet ~~provides~~ a general framework for the subsequent negotiation of definitive agreements regarding the transfer and delivery of water from OID, and will not create any binding contractual obligations on any party hereto or to commit any party to a particular course of action. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that, in order to effectuate the proposed transfer, binding agreements will have to be negotiated.

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**DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE**

agreed to by the Parties and submitted for approval to the OID Board of Directors and the Brisbane City Council; and

WHEREAS, this Term Sheet is intended to memorialize the preliminary terms that have been negotiated among the Parties, and to inform the public regarding the goals and principles identified by OID that will guide the proposal to transfer water to Brisbane throughout the public review process; and

WHEREAS, the terms set forth in this Term Sheet are the Parties' preliminary concepts that may be included in a final water transfer agreement. They are not intended, nor should they be considered as, binding on the Parties; and

WHEREAS, the Parties reserve their complete and sole discretion to evaluate and determine project impacts, alternatives and mitigation measures including, but not limited to, the ability to choose the "No Project" alternative, under CEQA; and

WHEREAS, by entering into this Term Sheet, the Parties do not intend to make an irrevocable commitment of resources or to commit to any course of action prior to completion of all appropriate environmental review and all necessary prior agreements.

NOW, THEREFORE, the Parties, on the terms and conditions herein set forth, recognize the following as the framework for their negotiations:

TERMS

1. DEFINITIONS:

The following definitions shall govern this Term Sheet:

(a) "Delivery" means that the water is to be made available to Brisbane on an annual basis pursuant to an agreed upon schedule at a designated point(s) of delivery. The points of delivery can be Goodwin Dam or any lateral or canal at OID's boundary. It is the responsibility of Brisbane to develop an exchange of water between OID, MID and CCSF, and to develop a wheeling agreement with the CCSF, so that OID's transfer water can be delivered to the CCSF water system intake. If no exchange and/or wheeling agreements are entered into between OID, MID, CCSF, and Brisbane, as necessary, at Brisbane's option, the Delivery may be made pursuant to an alternative arrangement between OID and Brisbane that utilizes the CCSF system, the State Water Project and/or Central Valley Project facilities, or through another means of transfer. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

(b) "Transfer Water" shall mean and refer to the water transferred by OID to Brisbane under the terms and conditions of the final Water Transfer Agreement.

(c) "Water Transfer Agreement" or "the Agreement" means the final water transfer agreement executed by OID and Brisbane for the transfer of water by OID to Brisbane.

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DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

2. TERM:

The Parties expect a term for the Water Transfer Agreement of fifty (50) years from the effective date of the Agreement. The Parties also expect to permit renewals of the Water Transfer Agreement of twenty-five (25) years. Brisbane may terminate the Agreement on two (2) years prior notice at any time after five (5) years from the effective date.

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3. THE WATER TRANSFER:

Brisbane will have an option under the Water Transfer Agreement to reserve or purchase for Transfer Water and may exercise the option at its discretion. If Brisbane does exercise its option, OID will annually sell and deliver Transfer Water for reasonable and beneficial uses, as those terms are generally defined by the California State Water Resources Control Board. The Parties intend that the Transfer Water will be used within the political boundaries of Brisbane, except that Brisbane may sell, lease, transfer, or assign the water for use outside its boundaries within the Hetch Hetchy water service area.

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4. QUANTITY:

OID will make available for transfer up to a maximum of 2,400 acre-feet of water to Brisbane beginning on the effective date of the Water Transfer Agreement. For the first five (5) years following the execution of the Agreement, Brisbane shall provide OID with a delivery schedule that will identify the minimum quantity of water that OID shall deliver to Brisbane for the following year. During this five (5) year period, Brisbane can take delivery of as much or as little water as it determines necessary in the annual delivery schedule, subject to the 2,400 AF maximum.

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On or before January 1 of the sixth year following the effective date of the Agreement, Brisbane must notify OID in writing how much water it will be acquiring by transfer during the remainder of the term of the Agreement. Brisbane does not need to take delivery of this quantity in each year of the term, but must pay for the identified quantity of water regardless of whether or not the full quantity is taken. The quantity identified by Brisbane shall not exceed 2,400 acre-feet.

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5. RESERVATION AND PURCHASE PRICE:

Brisbane will pay the following amounts:

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(a) Reservation Price. For the first five (5) years following the execution of the Water Transfer Agreement, Brisbane shall pay OID the sum of \$500 per acre foot for which delivery was taken and \$100 per acre foot derived by 2,400 minus the acre-feet taken.

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(b) Purchase Price. Beginning in year six (6) following the execution of the Water Transfer Agreement, and for each year thereafter remaining in the term of the Agreement, Brisbane shall pay to OID \$500 per acre foot of water. Such price shall apply to the quantity identified by Brisbane in writing on or before January 1 of the sixth year, and will be paid to OID regardless of the quantity of water actually taken by Brisbane in any particular year.

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OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

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6. ANNUAL CHANGES TO PURCHASE PRICE:

(a) The purchase price in year six (6) shall be adjusted based on changes to the Consumer Price Index as shown as the urban wage earners and clerical workers, U.S. City average (CPI-W)("Index") for the twelve-month period concluding with the August CPI index of each preceding year. Effective October 1 of each year, following the initial delivery of water, the base purchase price shall be modified based upon the same percentage that the Index as published in August of such year has changed, as compared to the Index published in August of the preceding year, provided, however, that the increase shall be no less than two percent (2%) and shall not exceed four percent (4%) in any year.

(b) If the Index is discontinued or revised during the term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised, and in the absence of such a comparable replacement index, the Parties shall mutually determine a comparable replacement index.

(c) The provisions of this Section 6 shall apply only to water actually purchased by Brisbane. The provisions of this Section 6 shall not apply to the \$100 reservation price as set forth in Section 5(a).

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7. WHEELING AGREEMENT:

The Agreement is contingent upon an agreement with CCSF that provides for the wheeling of water on an annual basis pursuant to an agreed-upon schedule that permits Brisbane to acquire and use the water transferred by OID.

8. EXCHANGE AGREEMENT:

The Agreement is contingent upon an agreement between OID and Modesto ID, and between Modesto ID and CCSF for the exchange of water. Any costs, approvals or permits associated with the exchange agreement will be borne or obtained by OID. OID staff will cooperate with Brisbane in the development, negotiation and preparation of an exchange agreement to be presented to Modesto ID and to CCSF for consideration and possible approval. Notwithstanding such cooperation, OID retains the sole right to reject any such exchange agreement between OID and Modesto ID.

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9. DEVELOPER FUNDING AGREEMENT:

The future Water Transfer Agreement is contingent upon an agreement between Baylands Project developer and Brisbane for developer to fully fund the development of all agreements and associated costs and for the delivery of Transfer Water to the Baylands ("the Developer Funding Agreement"). Within the Developer Funding Agreement, the developer will commit to sustainability by agreeing to build a recycled water system sized for irrigation and building plumbing demands for the final approved Baylands Project. Brisbane retains the sole right to negotiate and approve the Developer Funding Agreement. The Developer Funding Agreement will include, but not be limited to, an assumption by the developer of responsibility for payment

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**DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE**

of all costs imposed upon Brisbane for reservation and delivery of water for the Baylands Project, referred to in Sections 4 and 5, all costs arising from the Wheeling Agreement and Exchange Agreement for water delivered to the Baylands, referred to in Sections 7 and 8, and all costs for the environmental reviews referred to in Section 13.

10. WATER QUALITY:

OID will not warranty the quality or fitness for use of Transfer Water.

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11. WATER SUPPLY REDUCTIONS:

Water transferred to Brisbane will not be reduced on an annual basis by OID for any reason, unless by mutual agreement of the Parties.

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12. WATER RIGHTS:

OID will transfer water that is not subject to the permitting jurisdiction of the State Water Resources Control Board (SWRCB).

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13. ENVIRONMENTAL REVIEW:

Brisbane will be the lead agency for purposes of the California Environmental Quality Act (CEQA) with respect to the transfer of water from OID to Brisbane. Brisbane is also undertaking CEQA review of its local development and water supply analysis, including growth inducing impacts and its receipt of water from OID. The expenses of environmental review and approval for both OID and Brisbane will be paid entirely by Brisbane with funds to be provided by the developer of the Baylands Project pursuant to the Developer Funding Agreement referred to in Section 9.

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14. NO IRRETRIEVABLE COMMITMENT OF RESOURCES:

By agreeing to this Term Sheet, neither Party is agreeing to commit any resources that could result in an environmental impact. It is a condition to the obligations of the Parties that environmental review be completed prior to entering into any binding agreement regarding the transfer of water from OID to Brisbane and the obligation of Brisbane to pay for Transfer Water.

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Following completion of the above-referenced CEQA document and any supplements thereto, unless OID selects the "No Project" alternative (in which case no Water Transfer Agreement will be negotiated), and execution of the Developer Funding Agreement referred to in Section 9, OID will negotiate in good faith with Brisbane to develop a Water Transfer Agreement acceptable to both Parties, which Agreement will be consistent with the above-referenced CEQA documents. OID and Brisbane each expressly retain its discretion with respect to whether it will enter into a Water Transfer Agreement, and on what terms, as well as its discretion to consider any and all alternatives, including the "No Project" alternative, and any and all mitigation measures indentified in the above-referenced CEQA process.

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15. COOPERATION:

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DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

To the extent reasonably required, each Party shall, in good faith, assist the other in developing the information and agreements necessary to develop and enter into a Water Transfer Agreement, as well as obtaining all necessary approvals and preparation of required environmental documents.

16. RESALE, LEASE OR ASSIGN:

Brisbane will be entitled to resell, lease, transfer, or assign the Transfer Water. However, any such resale, lease, transfer or assignment shall only be to water entities within the Hetch Hetchy water service area.

17. ADDITIONAL ITEMS TO BE DISCUSSED, NEGOTIATED AND RESOLVED

The Parties anticipate that terms addressing several additional topics will be needed including, but not limited to:

- (a) Additional acts
- (b) Force Majeure
- (c) Assignment
- (d) Third Party Beneficiaries
- (e) Default, Cure and Remedies
- (f) Attorneys Fees
- (g) Notices
- (h) Miscellaneous Provisions
- (i) Applicable Law and Forum

18. NOTICES:

All notices that are required, either expressly or by implication, to be given by any Party to the other will be signed for by OID and Brisbane by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be emailed, delivered or mailed. United States first-class postage prepaid or by private mail courier, e.g. FedEx, addressed as follows:

OAKDALE IRRIGATION DISTRICT
Attn: Steve Knell
General Manager
Oakdale Irrigation District
1205 E F Street.
Oakdale, CA 95361-4198

CITY OF BRISBANE
Attn: Clay Holstine
City Manager
50 Park Place

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Deleted: Randy Breauli

Deleted: Director of Public Works

Deleted: Engineer

DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

Brisbane, CA 94005

With copy to:
Randy Breault
Director of Public Works City Engineer
50 Park Place
Brisbane, CA 94005

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And Brisbane City Attorney
50 Park Place
Brisbane, CA 94005

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Notice shall be deemed given (a) two business days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, or (c) upon actual receipt of notice, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

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19. MEDIATION:

In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Term Sheet, the Parties shall make a good faith effort to resolve the dispute by nonbinding mediation prior to the commencement of any lawsuit by one party against the other.

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20. EFFECTIVE DATE:

The effective day and date of this Term Sheet shall be the day and date, on which this Term Sheet is executed by both parties.

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The Parties hereby re-confirm that neither the Water Transfer Agreement, nor the proposed water transfer, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, and subject to all applicable governmental approvals and execution of the Developer Funding Agreement by Brisbane and the developer of the Baylands Project. The Parties intend by this Term Sheet to inform and focus the work necessary to develop and review a proposed water transfer, not to pre-determine whether or not that proposed water transfer shall be done or, if so, under what conditions.

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By signing below, the Parties evidence their general agreement with the provisions of this Term Sheet and agree to use this Term Sheet as the framework for the good faith negotiations of binding definitive agreements. Any agreements resulting from negotiations will become effective only if and after such agreement has been considered and approved by the OID Board of Directors and the Brisbane City Council following conduct of all legally required procedures.

DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE

Nothing contained in this Term Sheet or in the Water Transfer Agreement shall control or regulate Brisbane's determination and approval of land uses to be included as part of the Baylands Project.

With the above understandings and agreements the Parties hereto do execute this Term Sheet.

OAKDALE IRRIGATION DISTRICT,
a political subdivision of the State of California

Dated: _____

By: _____
Steve Knell, General Manager

CITY OF BRISBANE,
a California municipal corporation

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Dated: _____

By: _____
Clayton L. Holstine, City Manager

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Approved as to form:

Harold S. Toppel, City Attorney

**DRAFT TERM SHEET
OAKDALE IRRIGATION DISTRICT – CITY OF BRISBANE**

**TERM SHEET FOR WATER TRANSFER AGREEMENT
BY AND BETWEEN THE OAKDALE IRRIGATION DISTRICT AND
THE CITY OF BRISBANE**

This Term Sheet, a non-binding framework for negotiation, is entered into this ___ day of _____, 2012, between and among the Oakdale Irrigation District (“OID”) and the City of Brisbane (“Brisbane”), both of which are collectively referred to hereafter as “Parties”.

RECITALS

WHEREAS, OID is operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, Brisbane is a general law city subject to the California Government Code; and

WHEREAS, Brisbane desires to acquire water from OID for municipal and industrial (M&I) purposes, as those terms are generally defined by the California State Water Resources Control Board, including a water supply for the project referred to herein as the Baylands Project, a brownfield development located adjacent to the west side of Highway 101; and

WHEREAS, OID is interested in transferring water to Brisbane; and

WHEREAS, if OID transfers water to Brisbane, the Parties expect that the water will be delivered utilizing, among other facilities, OID’s reservoirs, South Main Canal and laterals, certain designated facilities partially or fully owned and operated by the Modesto Irrigation District (“MID”), and the City and County of San Francisco’s (“CCSF”) Regional Water System; and

WHEREAS, this Term Sheet sets forth an understanding between the Parties to cooperate in the development, processing and completion of appropriate environmental review pursuant to the California Environmental Quality Act (“CEQA”) by the designated Lead Agency; and

WHEREAS, this Term Sheet sets forth some of the potential terms and conditions related to a sale of water from OID to Brisbane so that the appropriate Lead Agency can commence development, processing and completion of the appropriate CEQA documentation, and

WHEREAS, this Term Sheet provides a general framework for the subsequent negotiation of definitive agreements regarding the transfer and delivery of water from OID, and will not create any binding contractual obligations on any party hereto or to commit any party to a particular course of action. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that, in order to effectuate the proposed transfer, binding agreements will have to be negotiated,

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agreed to by the Parties and submitted for approval to the OID Board of Directors and the Brisbane City Council; and

WHEREAS, this Term Sheet is intended to memorialize the preliminary terms that have been negotiated among the Parties, and to inform the public regarding the goals and principles identified by OID that will guide the proposal to transfer water to Brisbane throughout the public review process; and

WHEREAS, the terms set forth in this Term Sheet are the Parties' preliminary concepts that may be included in a final water transfer agreement. They are not intended, nor should they be considered as, binding on the Parties; and

WHEREAS, the Parties reserve their complete and sole discretion to evaluate and determine project impacts, alternatives and mitigation measures including, but not limited to, the ability to choose the "No Project" alternative, under CEQA; and

WHEREAS, by entering into this Term Sheet, the Parties do not intend to make an irretrievable commitment of resources or to commit to any course of action prior to completion of all appropriate environmental review and all necessary prior agreements.

NOW, THEREFORE, the Parties, on the terms and conditions herein set forth, recognize the following as the framework for their negotiations:

TERMS

1. DEFINITIONS:

The following definitions shall govern this Term Sheet:

(a) "Delivery" means that the water is to be made available to Brisbane on an annual basis pursuant to an agreed upon schedule at a designated point(s) of delivery. The points of delivery can be Goodwin Dam or any lateral or canal at OID's boundary. It is the responsibility of Brisbane to develop an exchange of water between OID, MID and CCSF, and to develop a wheeling agreement with the CCSF, so that OID's transfer water can be delivered to the CCSF water system intake. If no exchange and/or wheeling agreements are entered into between OID, MID, CCSF, and Brisbane, as necessary, at Brisbane's option, the Delivery may be made pursuant to an alternative arrangement between OID and Brisbane that utilizes the CCSF system, the State Water Project and/or Central Valley Project facilities, or through another means of transfer. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

(b) "Transfer Water" shall mean and refer to the water transferred by OID to Brisbane under the terms and conditions of the final Water Transfer Agreement.

(c) "Water Transfer Agreement" or "the Agreement" means the final water transfer agreement executed by OID and Brisbane for the transfer of water by OID to Brisbane.

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2. TERM:

The Parties expect a term for the Water Transfer Agreement of fifty (50) years from the effective date of the Agreement. The Parties also expect to permit renewals of the Water Transfer Agreement of twenty-five (25) years. Brisbane may terminate the Agreement on two (2) years prior notice at any time after five (5) years from the effective date.

3. THE WATER TRANSFER:

Brisbane will have an option under the Water Transfer Agreement to reserve or purchase for Transfer Water and may exercise the option at its discretion. If Brisbane does exercise its option, OID will annually sell and deliver Transfer Water for reasonable and beneficial uses, as those terms are generally defined by the California State Water Resources Control Board. The Parties intend that the Transfer Water will be used within the political boundaries of Brisbane, except that Brisbane may sell, lease, transfer, or assign the water for use outside its boundaries within the Hetch Hetchy water service area.

4. QUANTITY:

OID will make available for transfer up to a maximum of 2,400 acre-feet of water to Brisbane beginning on the effective date of the Water Transfer Agreement. For the first five (5) years following the execution of the Agreement, Brisbane shall provide OID with a delivery schedule that will identify the minimum quantity of water that OID shall deliver to Brisbane for the following year. During this five (5) year period, Brisbane can take delivery of as much or as little water as it determines necessary in the annual delivery schedule, subject to the 2,400 AF maximum.

On or before January 1 of the sixth year following the effective date of the Agreement, Brisbane must notify OID in writing how much water it will be acquiring by transfer during the remainder of the term of the Agreement. Brisbane does not need to take delivery of this quantity in each year of the term, but must pay for the identified quantity of water regardless of whether or not the full quantity is taken. The quantity identified by Brisbane shall not exceed 2,400 acre-feet.

5. RESERVATION AND PURCHASE PRICE:

Brisbane will pay the following amounts:

(a) **Reservation Price.** For the first five (5) years following the execution of the Water Transfer Agreement, Brisbane shall pay OID the sum of \$500 per acre foot for which delivery was taken and \$100 per acre foot derived by 2,400 minus the acre-feet taken.

(b) **Purchase Price.** Beginning in year six (6) following the execution of the Water Transfer Agreement, and for each year thereafter remaining in the term of the Agreement, Brisbane shall pay to OID \$500 per acre foot of water. Such price shall apply to the quantity identified by Brisbane in writing on or before January 1 of the sixth year, and will be paid to OID regardless of the quantity of water actually taken by Brisbane in any particular year.

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6. ANNUAL CHANGES TO PURCHASE PRICE:

(a) The purchase price in year six (6) shall be adjusted based on changes to the Consumer Price Index as shown as the urban wage earners and clerical workers, U.S. City average (CPI-W)(“Index”) for the twelve-month period concluding with the August CPI index of each preceding year. Effective October 1 of each year, following the initial delivery of water, the base purchase price shall be modified based upon the same percentage that the Index as published in August of such year has changed, as compared to the Index published in August of the preceding year, provided, however, that the increase shall be no less than two percent (2%) and shall not exceed four percent (4%) in any year.

(b) If the Index is discontinued or revised during the term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised, and in the absence of such a comparable replacement index, the Parties shall mutually determine a comparable replacement index.

(c) The provisions of this Section 6 shall apply only to water actually purchased by Brisbane. The provisions of this Section 6 shall not apply to the \$100 reservation price as set forth in Section 5(a).

7. WHEELING AGREEMENT:

The Agreement is contingent upon an agreement with CCSF that provides for the wheeling of water on an annual basis pursuant to an agreed-upon schedule that permits Brisbane to acquire and use the water transferred by OID.

8. EXCHANGE AGREEMENT:

The Agreement is contingent upon an agreement between OID and Modesto ID, and between Modesto ID and CCSF for the exchange of water. Any costs, approvals or permits associated with the exchange agreement will be borne or obtained by OID. OID staff will cooperate with Brisbane in the development, negotiation and preparation of an exchange agreement to be presented to Modesto ID and to CCSF for consideration and possible approval. Notwithstanding such cooperation, OID retains the sole right to reject any such exchange agreement between OID and Modesto ID.

9. DEVELOPER FUNDING AGREEMENT:

The future Water Transfer Agreement is contingent upon an agreement between Baylands Project developer and Brisbane for developer to fully fund the development of all agreements and associated costs and for the delivery of Transfer Water to the Baylands ("the Developer Funding Agreement"). Within the Developer Funding Agreement, the developer will commit to sustainability by agreeing to build a recycled water system sized for irrigation and building plumbing demands for the final approved Baylands Project. Brisbane retains the sole right to negotiate and approve the Developer Funding Agreement. The Developer Funding Agreement will include, but not be limited to, an assumption by the developer of responsibility for payment

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of all costs imposed upon Brisbane for reservation and delivery of water for the Baylands Project, referred to in Sections 4 and 5, all costs arising from the Wheeling Agreement and Exchange Agreement for water delivered to the Baylands, referred to in Sections 7 and 8, and all costs for the environmental reviews referred to in Section 13.

10. WATER QUALITY:

OID will not warranty the quality or fitness for use of Transfer Water.

11. WATER SUPPLY REDUCTIONS:

Water transferred to Brisbane will not be reduced on an annual basis by OID for any reason, unless by mutual agreement of the Parties.

12. WATER RIGHTS:

OID will transfer water that is not subject to the permitting jurisdiction of the State Water Resources Control Board (SWRCB).

13. ENVIRONMENTAL REVIEW:

Brisbane will be the lead agency for purposes of the California Environmental Quality Act (CEQA) with respect to the transfer of water from OID to Brisbane. Brisbane is also undertaking CEQA review of its local development and water supply analysis, including growth inducing impacts and its receipt of water from OID. The expenses of environmental review and approval for both OID and Brisbane will be paid entirely by Brisbane with funds to be provided by the developer of the Baylands Project pursuant to the Developer Funding Agreement referred to in Section 9.

14. NO IRRETRIEVABLE COMMITMENT OF RESOURCES:

By agreeing to this Term Sheet, neither Party is agreeing to commit any resources that could result in an environmental impact. It is a condition to the obligations of the Parties that environmental review be completed prior to entering into any binding agreement regarding the transfer of water from OID to Brisbane and the obligation of Brisbane to pay for Transfer Water.

Following completion of the above-referenced CEQA document and any supplements thereto, unless OID selects the "No Project" alternative (in which case no Water Transfer Agreement will be negotiated), and execution of the Developer Funding Agreement referred to in Section 9, OID will negotiate in good faith with Brisbane to develop a Water Transfer Agreement acceptable to both Parties, which Agreement will be consistent with the above-referenced CEQA documents. OID and Brisbane each expressly retain its discretion with respect to whether it will enter into a Water Transfer Agreement, and on what terms, as well as its discretion to consider any and all alternatives, including the "No Project" alternative, and any and all mitigation measures indentified in the above-referenced CEQA process.

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15. COOPERATION:

To the extent reasonably required, each Party shall, in good faith, assist the other in developing the information and agreements necessary to develop and enter into a Water Transfer Agreement, as well as obtaining all necessary approvals and preparation of required environmental documents.

16. RESALE, LEASE OR ASSIGN:

Brisbane will be entitled to resell, lease, transfer, or assign the Transfer Water. However, any such resale, lease, transfer or assignment shall only be to water entities within the Hetch Hetchy water service area.

17. ADDITIONAL ITEMS TO BE DISCUSSED, NEGOTIATED AND RESOLVED

The Parties anticipate that terms addressing several additional topics will be needed including, but not limited to:

- (a) Additional acts
- (b) Force Majeure
- (c) Assignment
- (d) Third Party Beneficiaries
- (e) Default, Cure and Remedies
- (f) Attorneys Fees
- (g) Notices
- (h) Miscellaneous Provisions
- (i) Applicable Law and Forum

18. NOTICES:

All notices that are required, either expressly or by implication, to be given by any Party to the other will be signed for by OID and Brisbane by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be emailed, delivered or mailed, United States first-class postage prepaid or by private mail courier, e.g. FedEx, addressed as follows:

OAKDALE IRRIGATION DISTRICT
Attn: Steve Knell
General Manager
Oakdale Irrigation District
1205 E F Street,
Oakdale, CA 95361-4198

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CITY OF BRISBANE
Attn: Clay Holstine
City Manager
50 Park Place
Brisbane, CA 94005

With copy to:
Randy Breault
Director of Public Works/City Engineer
50 Park Place
Brisbane, CA 94005

And:
Brisbane City Attorney
50 Park Place
Brisbane, CA 94005

Notice shall be deemed given (a) two business days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring “next day” delivery, or (c) upon actual receipt of notice, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

19. MEDIATION:

In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Term Sheet, the Parties shall make a good faith effort to resolve the dispute by nonbinding mediation prior to the commencement of any lawsuit by one party against the other.

20. EFFECTIVE DATE:

The effective day and date of this Term Sheet shall be the day and date on which this Term Sheet is executed by both parties.

The Parties hereby re-confirm that neither the Water Transfer Agreement, nor the proposed water transfer, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, and subject to all applicable governmental approvals and execution of the Developer Funding Agreement by Brisbane and the developer of the Baylands Project. The Parties intend by this Term Sheet to inform and focus the work necessary to develop and review a proposed water transfer, not to pre-determine whether or not that proposed water transfer shall be done or, if so, under what conditions.

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By signing below, the Parties evidence their general agreement with the provisions of this Term Sheet and agree to use this Term Sheet as the framework for the good faith negotiations of binding definitive agreements. Any agreements resulting from negotiations will become effective only if and after such agreement has been considered and approved by the OID Board of Directors and the Brisbane City Council following conduct of all legally required procedures.

Nothing contained in this Term Sheet or in the Water Transfer Agreement shall control or regulate Brisbane's determination and approval of land uses to be included as part of the Baylands Project.

With the above understandings and agreements the Parties hereto do execute this Term Sheet.

OAKDALE IRRIGATION DISTRICT,
a political subdivision of the State of California

Dated: _____

By: _____
Steve Knell, General Manager

CITY OF BRISBANE,
a California municipal corporation

Dated: _____

By: _____
Clayton L. Holstine, City Manager

Approved as to form:

Harold S. Toppel, City Attorney

Reference for use of terms "reasonable and beneficial" in Para. 3.

[Home](#) » [Board Info](#)

The Water Rights Process

A water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself. They possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Resources Control Board (State Water Board), whose objective is to ensure that the State's waters are put to the best possible use, and that the public interest is served.

In making decisions, the State Water Board must keep three major goals in mind:

- >> developing water resources in an orderly manner;
- >> preventing waste and unreasonable use of water; and
- >> protecting the environment.

The State Water Board's duties are by no means limited to permits and licenses. It may be called upon to adjudicate water for entire systems or to act as a "referee" or fact-finder in court cases involving water rights. These activities are described later.

- >> [Water Right Law](#)
- >> [GroundWater Rights](#)
- >> [The Permit Process](#)
- >> [Additional Duties](#)
- >> [Public Trust](#)
- >> [Complaints](#)
- >> [Water Transfers](#)
- >> [Flowcharts](#)

Water Right Law

Water right law in California and the rest of the West is markedly different from the laws governing water use in the eastern United States.

Seasonal, geographic, and quantitative differences in precipitation caused California's system to develop into a unique blend of two very different kinds of rights: riparian and appropriative. Other types of rights exist in California as well, among them reserved rights (water set aside by the federal government when it reserves land for the public domain) and pueblo rights (a municipal right based on Spanish and Mexican law).

Riparian rights usually come with owning a parcel of land that is adjacent to a source of water. With statehood, California adopted the English common law familiar to the eastern seaboard; such law also included the riparian doctrine.

A riparian right entitles the landowner to use a correlative share of the water flowing past his or her property. Riparian rights do not require permits, licenses, or government approval, but they apply only to the water which would naturally flow in the stream. Riparian rights do not entitle a water user to divert water to storage in a reservoir for use in the dry season or to use water on land outside of the watershed. Riparian rights remain with the property when it changes hands, although parcels severed from the adjacent water source generally lose their right to the water.

Water right law was set on a different course in 1849, when thousands of fortune seekers flocked to California following the discovery of gold. Water development proceeded on a scale never before witnessed in the United States as these "49ers" built extensive networks of flumes and waterways to work their claims. The water carried in these

CHAPTER 2: BENEFICIAL USES

State policy for water quality control in California is directed toward achieving the highest water quality consistent with maximum benefit to the people of the state. Aquatic ecosystems and underground aquifers provide many different benefits to the people of the state. The **beneficial uses described in detail in this chapter define the resources, services, and qualities of these aquatic systems that are the ultimate goals of protecting and achieving high water quality.** The Water Board is charged with protecting all these uses from pollution and nuisance that may occur as a result of waste discharges in the region. Beneficial uses of surface waters, groundwaters, marshes, and wetlands presented here serve as a basis for establishing water quality objectives and discharge prohibitions to attain these goals.

Beneficial use designations for any given water body do not rule out the possibility that other beneficial uses exist or have the potential to exist. Existing beneficial uses that have not been formally designated in this Basin Plan are protected whether or not they are identified. While the tables in this Chapter list a large, representative portion of the water bodies in our region, it is not practical to list each and every water body.

2.1 DEFINITIONS OF BENEFICIAL USES

The following definitions (in *italic*) for beneficial uses are applicable throughout the entire state. A brief description of the most important water quality requirements for each beneficial use follows each definition (in alphabetical order by abbreviation).

2.1.1 AGRICULTURAL SUPPLY (AGR)

Uses of water for farming, horticulture, or ranching, including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing.

The criteria discussed under **municipal and domestic water supply (MUN)** also effectively protect farmstead uses. To establish water quality criteria for livestock water supply, the Water Board must consider the relationship of water to the total diet, including water freely drunk, moisture content of feed, and interactions between irrigation water quality and feed quality. The University of California Cooperative Extension has developed threshold and limiting concentrations for livestock and irrigation water. Continued irrigation often leads to one or more of four types of hazards related to water quality and the nature of soils and crops. These hazards are (1) soluble salt accumulations, (2) chemical changes in the soil, (3) toxicity to crops, and (4) potential disease transmission to humans through reclaimed water use. Irrigation water classification systems, arable soil classification systems, and public health criteria related to reuse of wastewater have been developed with consideration given to these hazards.

2.1.2 AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS)

Areas designated by the State Water Board.

2.1.6 FRESHWATER REPLENISHMENT (FRSH)

Uses of water for natural or artificial maintenance of surface water quantity or quality.

2.1.7 GROUNDWATER RECHARGE (GWR)

Uses of water for natural or artificial recharge of groundwater for purposes of future extraction, maintenance of water quality, or halting saltwater intrusion into freshwater aquifers.

The requirements for groundwater recharge operations generally reflect the future use to be made of the water stored underground. In some cases, recharge operations may be conducted to prevent seawater intrusion. In these cases, the quality of recharged waters may not directly affect quality at the wellfield being protected. Recharge operations are often limited by excessive suspended sediment or turbidity that can clog the surface of recharge pits, basins, or wells.

Under the state [Antidegradation Policy](#), the quality of some of the waters of the state is higher than established by adopted policies. It is the intent of this policy to maintain that existing higher water quality to the maximum extent possible.

Requirements for groundwater recharge, therefore, shall impose the Best Available Technology (BAT) or Best Management Practices (BMPs) for control of the discharge as necessary to assure the highest quality consistent with maximum benefit to the people of the state. Additionally, it must be recognized that groundwater recharge occurs naturally in many areas from streams and reservoirs. This recharge may have little impact on the quality of groundwaters under normal circumstances, but it may act to transport pollutants from the recharging water body to the groundwater. Therefore, groundwater recharge must be considered when requirements are established.

2.1.8 INDUSTRIAL SERVICE SUPPLY (IND)

Uses of water for industrial activities that do not depend primarily on water quality, including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, and oil well repressurization.

Most industrial service supplies have essentially no water quality limitations except for gross constraints, such as freedom from unusual debris.

2.1.9 MARINE HABITAT (MAR)

Uses of water that support marine ecosystems, including, but not limited to, preservation or enhancement of marine habitats, vegetation such as kelp, fish, shellfish, or wildlife (e.g., marine mammals, shorebirds).

In many cases, the protection of marine habitat will be accomplished by measures that protect wildlife habitat generally, but more stringent criteria may be necessary

for waterfowl marshes and other habitats, such as those for shellfish and marine fishes. Some marine habitats, such as important intertidal zones and kelp beds, may require special protection.

2.1.10 FISH MIGRATION (MIGR)

Uses of water that support habitats necessary for migration, acclimatization between fresh water and salt water, and protection of aquatic organisms that are temporary inhabitants of waters within the region.

The water quality provisions acceptable to cold water fish generally protect anadromous fish as well. However, particular attention must be paid to maintaining zones of passage. Any barrier to migration or free movement of migratory fish is harmful. Natural tidal movement in estuaries and unimpeded river flows are necessary to sustain migratory fish and their offspring. A water quality barrier, whether thermal, physical, or chemical, can destroy the integrity of the migration route and lead to the rapid decline of dependent fisheries.

Water quality may vary through a zone of passage as a result of natural or human-induced activities. Fresh water entering estuaries may float on the surface of the denser salt water or hug one shore as a result of density differences related to water temperature, salinity, or suspended matter.

2.1.11 MUNICIPAL AND DOMESTIC SUPPLY (MUN)

Uses of water for community, military, or individual water supply systems, including, but not limited to, drinking water supply.

The principal issues involving municipal water supply quality are (1) protection of public health; (2) aesthetic acceptability of the water; and (3) the economic impacts associated with treatment- or quality-related damages.

The health aspects broadly relate to: direct disease transmission, such as the possibility of contracting typhoid fever or cholera from contaminated water; toxic effects, such as links between nitrate and methemoglobinemia (blue babies); and increased susceptibility to disease, such as links between halogenated organic compounds and cancer.

Aesthetic acceptance varies widely depending on the nature of the supply source to which people have become accustomed. However, the parameters of general concern are excessive hardness, unpleasant odor or taste, turbidity, and color. In each case, treatment can improve acceptability although its cost may not be economically justified when alternative water supply sources of suitable quality are available.

Published water quality objectives give limits for known health-related constituents and most properties affecting public acceptance. These objectives for drinking water include the [U.S. Environmental Protection Agency Drinking Water Standards](#) and the [California State Department of Health Services](#) criteria.

2.1.12 NAVIGATION (NAV)

Uses of water for shipping, travel, or other transportation by private, military, or commercial vessels.

2.1.13 INDUSTRIAL PROCESS SUPPLY (PRO)

Uses of water for industrial activities that depend primarily on water quality.

Water quality requirements differ widely for the many industrial processes in use today. So many specific industrial processes exist with differing water quality requirements that no meaningful criteria can be established generally for quality of raw water supplies. Fortunately, this is not a serious shortcoming, since current water treatment technology can create desired product waters tailored for specific uses.

2.1.14 PRESERVATION OF RARE AND ENDANGERED SPECIES (RARE)

Uses of waters that support habitats necessary for the survival and successful maintenance of plant or animal species established under state and/or federal law as rare, threatened, or endangered.

The water quality criteria to be achieved that would encourage development and protection of rare and endangered species should be the same as those for protection of fish and wildlife habitats generally. However, where rare or endangered species exist, special control requirements may be necessary to assure attainment and maintenance of particular quality criteria, which may vary slightly with the environmental needs of each particular species. Criteria for species using areas of special biological significance should likewise be derived from the general criteria for the habitat types involved, with special management diligence given where required.

2.1.15 WATER CONTACT RECREATION (REC1)

Uses of water for recreational activities involving body contact with water where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs.

Water contact implies a risk of waterborne disease transmission and involves human health; accordingly, criteria required to protect this use are more stringent than those for more casual water-oriented recreation.

Excessive algal growth has reduced the value of shoreline recreation areas in some cases, particularly for swimming. Where algal growths exist in nuisance proportions, particularly bluegreen algae, all recreational water uses, including fishing, tend to suffer.

One criterion to protect the aesthetic quality of waters used for recreation from excessive algal growth is based on chlorophyll a.



The California Environmental Quality Act

Title 14. California Code of Regulations
**Chapter 3. Guidelines for Implementation of the
California Environmental Quality Act**

Article 20. Definitions

Sections 15350 to 15387

15350. General

The definitions contained in this article apply to terms used throughout the Guidelines unless a term is otherwise defined in a particular section.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code.

15351. Applicant

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21065, Public Resources Code.

Discussion: This section defines a term used frequently in the Guidelines to refer to a person who applies to a public agency for a lease, permit, license, certificate, or other entitlement in the Guidelines apply only to applicants and not to governmental agencies that carry out projects directly.

15352. Approval

(a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061 and 21065, Public Resources Code.

Discussion: The term "approval" needs definition because the term is critical to the CEQA process. A public agency must comply with CEQA when the agency proposes to approve some kind of project. The statute does not define the term, and it is often difficult to identify the time when the project is approved. This section spells out criteria for determining when the approval occurs.

- (2) The area in which the major environmental effects will occur: and/or
- (3) The area in which reside those citizens most directly concerned by any such environmental effects.
- (c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a Responsible Agency, see Section 15381, or the Lead Agency, see Section 15367.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

Discussion: This section defines the term "jurisdiction by law" in order to establish which agencies must be consulted by the Lead Agency in preparing an EIR. The statute does not define this term.

15367. Lead Agency

"Lead Agency" means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15051.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code.

Discussion: This section combines the statutory definition of the term "Lead Agency" with a more complete explanation in terms related to the CEQA process. The fundamental point is that CEQA gives the Lead Agency the tasks of determining whether an EIR or a Negative Declaration will be required for the project and preparing the document.

15368. Local Agency

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21062 and 21151, Public Resources Code.

Discussion: This section supplements the definition of the term "local agency" contained in the Public Resources Code to recognize the possibility that a city may designate a particular sub-unit of the city government as being a separate Lead Agency for a particular project. In this situation, the subunit would qualify as a local agency under these Guidelines, and all the requirements placed on a local agency would apply to that unit.

An agency created by state statute such as an agricultural district may be considered a local agency for the purposes of CEQA even though it may be considered a state agency for other purposes; this is possible because the agency's activities are most likely to affect only the local area in which it operates. (See: *Lewis v. 17th District Agricultural Ass'n.* (1985) 165 Cal. App. 3d 823. Agencies should be aware that the notice and filing requirements stated either in Sections 21150 et seq. or Sections 21100 et seq. of CEQA may apply depending upon whether the agency is defined as "state" or "local" for CEQA purposes.

15369. Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by the public

shall not be applied to insect pests designated by the Director of Food and Agriculture as meeting the criteria in this section.

15381. Responsible Agency

"Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2, and 21167.3, Public Resources Code.

Discussion: This section provides explanation of the term "Responsible Agency".

15382. Significant Effect on the Environment

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068, 21083, 21100, and 21151, Public Resources Code; *Hecton v. People of the State of California*, 58 Cal. App. 3d 653.

Discussion: The first sentence combines the statutory language in the definitions of "significant effect" and "environment" in the interest of clarity because they are interrelated.

The second and third sentences pose a problem of interpretation that has caused controversy for many years. The controversy centers around the extent to which CEQA applies to economic and social effects of projects. In determining whether an effect is significant, however, Section 21083(c) of CEQA requires an effect to be found significant if the activity would cause an adverse effect on people.

This section also codifies the holding in *Hecton v. People of the State of California*, 58 Cal. App. 3d 653, which ruled that a claim that a project would cause a decline in property values was not enough by itself to require an EIR to be prepared.

In *Cathay Mortuary, Inc. v. San Francisco Planning Commission* (1989) 207 Cal. App. 3d 275, the court in analyzing significant effect' offered inverse guidance regarding whether an alternative site for a proposed park would have better access to sunlight, i.e., it is irrelevant whether some body of opinion views some other alternative site as "better suited" (essentially as a planning determination), if the net impact of the project site is not an adverse change, no EIR is required. In this case, demolition of a building would provide access to sunlight in a portion of the impacted area that currently did not have access to sunlight -- in other words, access to sunlight when none currently exists is not an adverse change.

15383. State Agency

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public