

OFFICE OF
RECLAMATION DISTRICT No. 3
GRAND ISLAND
PO BOX 1011
WALNUT GROVE, CA 95690

MINUTES
REGULAR MEETING

Chairman Daniel Wilson opened the regular meeting at 9:04 A.M.

The regular meeting of Reclamation District #3 was held **February 21, 2019** at 14160 Grove Street Walnut Grove. Present were:

Trustees:	Jason Culbertson, Daniel Wilson, Les Lyman (absent), Joey Sanchez, Robert Bromell
Secretary/Treasurer:	Suzanne Daggert
General Manager:	Dave Robinson
Others:	Gil Cosio, Engineer from MBK; Rebecca Smith, Attorney from Downey Brand; James Johas of Reclamation District 307, Alex Wilson, Harvey Correia of Reclamation District No 2067 and Barry Sgarrella of SolAgra

MANAGER'S REPORT: The water levels in the river and canals are down. Most of the flooding from the recent heavy rains were in places that had standing water and south of Walker Landing. PG&E lost power for about 5 hours so the pumps were not able to run for that time. Dave estimates that the water level rose about 18 inches during that time. The pumps ran for about 4 days and the places that had flooded emptied pretty quickly.

APPROVAL OF MINUTES

It was moved by Jason and seconded by Robert to approve the agenda and minutes from the prior meeting. Motion passed 4-0-1.

TREASURER'S REPORT

The report was distributed to those present and is included as part of the minutes.

Suzanne recommended that a \$100,000 warrant be approved.

Jason motioned that the Treasurer's report and warrant be approved. Robert seconded. Motion passed 4-0-1.

CHAIRMAN'S REPORT

NONE

ENGINEER'S REPORT: The report was distributed to those present and is included as part of the minutes.

Daniel asked Gil to run scenarios with an additional pump at Galindo's property and 2 pumps at existing lift station that drain into the river.

PUBLIC COMMENT: NONE

OLD BUSINESS:

Purchase of Property

Joey offered to donate some land for use as an installation site for the solar array. Daniel indicated that logistically the cattle land near pump station 2 is appealing. Barry indicated that the optimal setup is to have the panels face east/west.

Rebecca distributed a proposed land lease to Daniel prior to the meeting. Daniel asked if there were any guidelines about the rental rate for a ground lease. Rebecca advised that there was not and that while a market survey was not required, it may be a good idea to obtain one in order to substantiate the land rent. She also discussed appointing a subcommittee to handle the lease negotiations. Daniel requested that Dave be the point of contact and advised the trustees not to meet separately as a group with Robert or Joey or to have successive meetings.

NDGSA Membership

Daniel advised that he feels that as the application for a separate subbasin was unsuccessful that the NDGSA has outlived its purpose. He is planning to remove RD 2111 from membership and RD 307 is also considering withdrawing. No resolution is required, but a board action (e.g. motion) must be in place.

Rebecca advised that a written letter would need to be addressed to the NDGSA board members 60-days prior to the desired effective date of withdrawal. She also informed the trustees that the joint power agreement only allows fees to be assessed to existing members and only upon the unanimous written agreement of the members.

Harvey advised the trustees about his previous attendance at the Solano County collaborative meeting late last year. His concern is that the collaborative is not yet well organized and he would like to stay in the NDGSA for another year (2019-2020).

Daniel moved that the District seriously consider resigning its membership in the NDGSA prior to the April 30th 60-day notice deadline, but to not move forward with actually resigning at this time. Jason seconded.

The following trustees approved the motion by a show of hands: Jason Culbertson, Les Lyman, Daniel Wilson, Joey Sanchez, Robert Bromell

Solar Energy Proposal

Barry Sgarrella of SolAgra distributed a Solar Energy Proposal to those present and is included as part of these minutes.

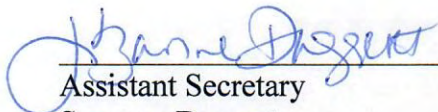
NEW BUSINESS:

NONE

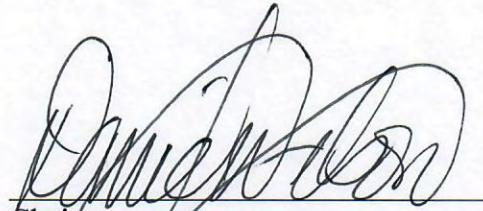
Meeting was adjourned at 11:00 AM.

NEXT REGULAR MEETING: Thursday, March 21, 2019

Respectfully submitted,



Assistant Secretary
Suzanne Daggert



Chairman
Daniel Wilson

MEMORANDUM

February 20, 2019

TO: Reclamation District No. 3
FROM: MBK Engineers
SUBJECT: February 2019 Engineer's Report

Gentlemen:

Described below are the items constituting the engineer's report to be discussed at your scheduled February 21, 2019 meeting.

Subventions Program 2017-18– Your final claim has been submitted in the amount of \$270,571. If there are no deductions, you can expect approximately \$181,178 reimbursement this spring.

Five Year Plan – Your request for advance funds has been submitted. We are beginning our work on the five year plan this month. [Expect \\$26k](#)

Ditch Boils – The boils in the Stefani ditch upstream from the seepage berm project along Steamboat Slough is continuing and the sides of the ditch are collapsing. We would recommend a temporary repair of placement of a sand filter on top of the seepage area. We estimate it will take about 200 tons of sand to fill the area of concern. A long term fix should be considered, such as constructing a filter along the entire ditch.

FSRP – The DWR has decided to continue repair work on the erosion at the lower end of Steamboat Slough under FSRP and not under the 2017 damage repair. The good news is the CCVFCA has approved the work as maintenance and thus alleviating a very lengthy approve under the Corps section 408 process. We are working on the Corps to determine how to deal with the disposal area decant pipes.

FMAP – An application to the Flood Maintenance Assistance Program (FMAP) was submitted on your behalf on January 25. The application requests \$20,000 for a grant to compile a LOI/SWIF and \$20,000 to compile reports and services for a Prop 218 election. Agreements for the funds and a new assurance agreements are forthcoming. The District would then need to decide if it is willing to sign both. Downey Brand has reviewed the new assurance agreement. The draft agreement and Downey Brand's comments are attached.

Erosion Repair – We sent a letter out this week petitioning the state to consider repairing additional 2017 erosion damage sites. The state has indicated even though they may get accepted in to the 100% state funded repair, they could possibly use FSRP grant funds which are 85-90% state share. FSRP allows the District to perform the work, with 75% of the FSRP grant advanced to the District.

Federal Legislation - On 1/29 Representative Garamendi introduced H.R. 830 "To amend the National Flood Insurance Act of 1968 to allow the repair, expansion, and construction, without elevation, of agricultural structures located in special flood hazard zones, and for other purposes" to the House with Representative LaMalfa. The text is not available yet, but this builds upon what Representatives LaMalfa

and Garamendi introduced in 2017, the "Flood and Agriculture Risk Management (FARM) Cost Reduction Act of 2017".

The proposed legislation is intended to do the following:

- lifts the de facto federal prohibition on new construction and repairs of agriculture structures in high flood risk areas designated by FEMA
- authorize FEMA to develop a new flood mapping zone for areas protected by levees that do not currently meet the federally mandated 100 year level of flood protection. Rates charged under NFIP in this new flood zone would be based on actuarial risk.

Flood Season – Attached are plots of gage data for the Sacramento River at Walnut Grove for 2019 and 2017. Note the peak so far is within 2.5-feet of the peaks in 2017.

Deferred Maintenance Program – RD 3 will have to perform video inspections or pressure tests on penetrations that they own/operate. This includes discharge pipes from District pump stations. These features need to be inspected/tested every 5 years. District should consider how to install access ports for the future needs of the District to inspect these features. In the future the DMP may provide funds to support District features, but at this time the program is only looking at gravity features.

DWR 2018 PSP – DWR is planning on issuing a Project Solicitation Package (PSP) requesting project proposals for levee improvement projects, habitat projects, or multi-benefit projects. The total amount available is \$60 million. DWR has closed the comment period for the draft PSP and will be issuing the final PSP in February. The District can discuss this more when the PSP comes out, but at first glance, we do not see RD 3 participating, however, if we can design an erosion repair project with habitat benefits, it may pan out to be more cost effective to perform the erosion repair under Special Projects rather than the Subventions Program.

Master Drainage Plan – We have received pump tests for the centrifugal pump and are incorporating it into the drainage model. We have inserted the centrifugal pump flows into the model and initial results indicate it increases the total volume of water pulled out of the canal by about 200 acre feet. This amount is probably not enough to make a difference in the flooded areas. We are confirming our model results and will have more detailed results and results from the requested option of blocking all flow across Highway 220 at the meeting.

Thanks,



Subject: RE: FMAP and OMRR&R
Date: Thursday, January 24, 2019 at 9:53:29 PM Pacific Standard Time
From: Shapiro, Scott
To: Gilbert Cosio, Michael Moncrief, Mike Kynett, Tina Anderson, 'Chris Neudeck', 'wdarsie@ksninc.com', 'Melinda Terry (melinda@floodassociation.net)', 'Mike Hardesty', 'Robert Reeb', 'Lewis Bair', Ric Reinhardt, Thomas Engler, Meegan Nagy
CC: Smith, Rebecca, Clark, Andrea, Aladjem, David, O'Brien, Kevin
Attachments: OMRRRfinalLHRBeditsfinal.docx

Friends:

I have finished my negotiation with DWR on the form of OMRR&R Agreement. Attached is a redline showing the changes DWR made in response to my requests. DWR negotiated in good faith. In fact, it was one of the most open and productive discussions I have had with DWR.

Each of you is going to have to decide whether to recommend executing an OMRR&R agreement with DWR as part of the FMAP program. This OMRR&R agreement would commit many LMAs to more obligations than they current have agreed to in writing:

- Explicit acknowledgment that the three Rs have been added;
- Explicit authority for DWR to bill an LMA if the LMA doesn't do work that is necessary and DWR steps in;
- Explicit obligation of the LMA to be the lead on hazardous waste issues, and as between the two to be liable;
- Explicit indemnity of the State and Feds.

But each of these issues needs to be measured against other factors:

- Most LMA's have already agreed to maintain to Federal standards, and Federal standards include the three Rs;
- DWR/CVFPB can form a maintenance area and charge landowners for the cost of work that is necessary;
- A finding of hazardous materials on the levee as a result of O&M is extremely unlikely after so many years of maintaining the levee;
- We succeeded in better defining what the three Rs are, so as to reduce (although not eliminate) the risk of the State transferring huge obligations to LMAs;
- The State water code already obligates LMAs to maintain the levee and imposes an indemnity.

For all of these reasons, I can't recommend that the LMAs NOT sign the agreement. Rather, it comes down to a business decision for each LMA at this point. Does an LMA want to be perceived as a team player? Is the LMA interested in pursuing an LOI and SWIF? Would the LMA like State assistance with O&M through the FMAP program? If the answer to these questions is "yes," then I think it is exceedingly reasonable for an LMA to sign the new OMRR&R agreement. By signing, the LMAs do give up some arguments, but I am not sure if they are worth the candle.

If the LMA does sign the agreement, I recommend that the cover letter transmitting the agreement contain the following:

We note that Civil Code section 1668 provides that "All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the

law." In signing this agreement which includes indemnity obligations to the State and Federal government, it is not our intention to waive the protections of Civil Code section 1668 or any other protections provided under law.

Please let me know if you have any questions.

Scott

PS: I am told that I will be able to view the funding agreement next week. I will let you know if I have any comments on that agreement once I see it.

CONFIDENTIALITY NOTICE: This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. If you have received this communication in error, please contact our IS Department at its Internet address (is@downeybrand.com), or by telephone at (916)444-1000x5325. Thank you.

Appendix 3

OMRR&R Agreement Template

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION
AGREEMENT BETWEEN
The Central Valley Flood Protection Board
AND
[insert name of funding recipient]
FOR
[Insert project name]

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board") and the [name of Funding Recipient] ("Funding Recipient") on this _____ day of _____, 20 [enter execution year] in view of the following circumstances:

1. **Flood Maintenance Assistance Program (FMAP) funds were authorized and appropriated by the California legislature for costs associated with improving the operations, maintenance, repair, rehabilitation, and replacement of state flood control levees and infrastructure of Local Maintaining Agencies (LMAs), pursuant to Water Code Section 12878 et seq.**
2. State funding is available for Eligible Activities pursuant to the FMAP:
 - ☐ The State, acting by and through the Department of Water Resources, has solicited applications for funding for its FMAP program.
 - ☐ The Funding Recipient applied for funding and has signed a Funding Agreement. This Funding agreement is between the State of California Department of Water Resources and the [insert name of Funding Recipient] for [insert project name] ("Funding Agreement").
 - ☐ The Funding Agreement provides that the Funding Recipient will be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of State Plan of Flood Control facilities.
 - ☐ The Department has agreed to enter into the Funding Agreement on the condition that the Funding Recipient enters into this OMRR&R Agreement for State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

3. The Funding Recipient already has responsibility for OMRR&R for the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

"Basin:" A separable hydraulic area protected by a system of flood-management infrastructure.

"Board:" The State of California Central Valley Flood Protection Board or any successor thereto.

"Department:" The State of California Department of Water Resources.

"Eligible Activities:" The development of System Wide Improvement Framework plans (SWIFs), and associated supporting documents, such as the required Letter of Intent to USACE to create a SWIF, and any of the activities identified by the California Department of Water Resources and U.S. Army Corps of Engineers inspections that help achieve acceptable level of maintenance to assure system performance are eligible for funding from FMAP. This includes all activities required under Code of Federal Regulations, title 33, section 208.10 and the O&M Manual Standards, such as:

- Levee and channel vegetation management
- Rodent abatement and damage repair
- Maintenance of levee slopes and patrol roads
- Minor erosion, seepage, and stability repairs
- Channel scour repair
- Addressing USACE and DWR identified levee deficiencies and unacceptable problems
- Maintenance of structures and other SPFC facilities
- Encroachment management
- Debris and obstruction removal
- Small sediment removal

"Funding Agreement:" The agreement between the State of California Department of Water Resources and the [insert name of Funding Recipient] for [insert project name] dated _____.

"Funding Recipient:" A public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, which is the signatory to the Funding Agreement and this OMRR&R Agreement.

"OMRR&R:" Operation, maintenance, repair, replacement, and rehabilitation of the portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient in accordance with applicable federal law, including without limitation, compliance with O&M

requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.

“OMRR&R Agreement:” This agreement between the Central Valley Flood Protection Board and the [insert name of Funding Recipient] for OMRR&R of the State Plan of Flood Control within the jurisdiction of [insert name of the Funding Recipient]

“Overall Work Plan:” The plan described in the Funding Agreement in Paragraph 22, as amended, and Funding Agreement Exhibit A, as amended.

“State:” The State of California, acting by and through the Board.

“State Plan of Flood Control:” The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Public Resources Code section 5096.805(j).

SECTION I: Obligations of the Funding Recipient

A. General Obligations. The Funding Recipient agrees to the following:

1. To perform OMRR&R of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. The duties of the Funding Recipient to perform OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient shall be accomplished in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, and the flood control system of which those facilities are a part. The duties of the Funding Recipient pursuant to this paragraph are described further in Section I-B below.
2. To defend, indemnify, hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys and agents and consultants, as well as their successors and assigns, free and harmless from any and/or all claims, damages, liabilities, charges, losses, expenses, and costs including the State's attorneys' fees including claims based upon inverse condemnation, arising from the operation, maintenance, repair, replacement, or rehabilitation of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient
3. To defend, indemnify, hold and save the federal government and the State, their representatives, officers, directors, employees, including their attorneys, agents and consultants, as well as their successors and assigns free and harmless from any and/or all claims or damages, liabilities, charges, losses, expenses, and costs including the State's attorneys' fees arising out of or in connection with the obligations herein assumed by the Funding Recipient, including any responsibility for claims or damages arising out of work performed by the State

on the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient for which the State may be held liable and any claims based upon inverse condemnation.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Funding Recipient hereby accepts responsibility for OMRR&R for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient. Specifically, the Funding Recipient shall be responsible for OMRR&R in accordance with applicable federal laws, including without limitation, compliance with O&M requirements contained in Code of Federal Regulations, title 33, section 208.10, Board Resolution No. 2018-06 and future amendments thereto, and applicable Operation and Maintenance manuals for the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, any revised or updated version of the Operation and Maintenance Manual, or any supplement to the Operation and Maintenance Manual.
2. The Funding Recipient hereby gives State the right to enter, at reasonable times and in a reasonable manner land which it owns or controls for access to for the purpose of: (i) conducting subsequent inspections to verify that the Funding Recipient is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient located at or in conjunction with any present or future flood control plan if in the reasonable judgment of State, the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Funding Recipient needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Funding Recipient to enter the land to fulfill its obligations under this OMRR&R Agreement.
3. If the Funding Recipient has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code section 12878 et seq.

If the Funding Recipient fails to fulfill its obligations under this Agreement and if the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient to perform in a manner necessary to provide its designed level of flood protection, then the State, after notifying the Funding Recipient and providing a sixty (60) day opportunity to cure period, (except in the case of an emergency), may in its sole discretion develop a work plan and present it to the Funding Recipient with instructions that if the Funding Recipient does not agree to carry out, or is unable to carry out, the work plan within the

time specified in the work plan, the State will perform the necessary work or do so by contract. The Funding Recipient will reimburse the State for the costs of performing such work. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Funding Recipient of responsibility to meet the Funding Recipient's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

SECTION II: Hazardous Substances

The Funding Recipient acknowledges the State may incur obligations with respect to hazardous substances regulated under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. §§ 9601-9675); California Hazardous Substances Account Act, (Health & Safety Code, § 25310 et seq.) or other statutes or regulations (collectively referred to as "state and federal Hazardous Substances Laws") on lands necessary for OMRR&R to the extent the Funding Recipient fails to comply with its obligations under this OMRR&R Agreement. The Funding Recipient agrees:

- A. That in the event that the Funding Recipient discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for OMRR&R of State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient contain hazardous substances regulated under state and federal Hazardous Substances Laws, the Funding Recipient shall promptly notify the State of that discovery.
- B. That in the event hazardous substances regulated under state and federal Hazardous Substances Laws have been found, the Funding Recipient shall initiate and complete any and all necessary response and cleanup activity required under state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under state and federal Hazardous Substances Laws shall be made by the Funding Recipient. In the event that the Funding Recipient fails to provide the funds necessary for response and cleanup activity required under state and federal Hazardous Substances Laws or to otherwise discharge the Funding Recipient's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Funding Recipient shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under state and federal Hazardous Substances Laws, the State shall consult with the Funding Recipient concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

- C. That the Funding Recipient shall consult with the State in order to ensure that responsible persons under state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in state and federal Hazardous Substances Laws.
- D. That the Funding Recipient shall operate, maintain, repair, replace, and rehabilitate State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient in a manner that will control and minimize the release or threatened release of hazardous substances regulated under state and federal Hazardous Substances Laws on lands necessary for OMRR&R of the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient.
- E. That in the event that the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, are found to be liable under state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the portions State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient, then the Funding Recipient shall indemnify and hold the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, harmless, including all reasonable costs and attorneys' fees, including, but not limited to, those charged to it by the California Office of Attorney General, that the State incurs in connection with the defense of any action brought against it from any response or cleanup costs for which the State, their representatives, officers, directors, employees, including their attorneys and other persons, as well as their successors and assigns, may be found to be liable under state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of this OMRR&R Agreement shall relieve any responsible person from any liability that may arise under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Funding Recipient of any right to seek from any responsible person as defined by state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Funding Recipient for response or cleanup activity required under state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

SECTION III: Authorization for Delegation or Subcontracting

The Funding Recipient may delegate or subcontract its responsibilities under this OMRR&R Agreement. The Funding Recipient shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Funding Recipient; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

SECTION IV: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

SECTION V: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

SECTION VI: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

SECTION VII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the [Funding Recipient]:

xxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxxxxxxxx

If to the Board:

xxxxxxxxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxxxxxxxx

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

SECTION VIII: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Exhibit 1 to this OMRR&R Agreement

SECTION IX: Authority

The Funding Recipient has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Exhibit 2 to this OMRR&R Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

The Central Valley Flood Protection Board **[Funding Recipient]**

By _____
(Name)
(Title)

Date: _____

By _____
(Name)
(Title)

Date: _____

Approved as to Legal Form
and Sufficiency:

(Name)
(Title)

Approved as to Legal Form
and Sufficiency:

(Name)
(Title)

Exhibit 1

STANDARD CONDITIONS OF OMRR&R AGREEMENT

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF PROPERTY:** Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the existing portions of the State Plan of Flood Control facilities within the jurisdiction of the funding recipient, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of property be remitted to State.
7. **NO THIRD-PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.

8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
11. **SEVERABILITY:** Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this OMRR&R Agreement should Funding Recipient fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided.
14. **INDEPENDENT CAPACITY:** Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
 - A. **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - B. **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a

contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

- C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
- D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

16. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all applicable provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to this OMRR&R Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.

17. AMERICANS WITH DISABILITIES ACT: By signing this OMRR&R Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. NONDISCRIMINATION CLAUSE: During the performance of this OMRR&R Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Funding

Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. **DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. Funding Recipient's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 - i. Will receive a copy of Funding Recipient's drug-free policy statement, and
 - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

20. **UNION ORGANIZING:** Funding Recipient, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Funding Recipient, by signing this OMRR&R Agreement, hereby certifies that:

- A. No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
- B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
- C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
- D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

21. **COMPUTER SOFTWARE:** Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. **DELIVERY OF INFORMATION, REPORTS, AND DATA:** Funding Recipient agrees to expeditiously provide, throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.
23. **CHILD SUPPORT COMPLIANCE ACT:** The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
 - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **INSPECTIONS OF OMRR&R BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.
25. **ACCESS:** The Funding Recipient shall ensure that the State, or any authorized representative of the foregoing, will have safe and suitable access to the portions of the State Plan of Flood Control facilities within the jurisdiction of the Funding Recipient at all reasonable times during the term of this Agreement.
26. **VENUE:** The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

Exhibit 2

Sample OMRR&R Resolution

Resolution No. _____

Resolved by the _____
(Governing body, city council, or other)

of the _____
(Funding Recipient-agency, city, county, or other)

that pursuant and subject to all of the terms and provisions of Budget Act of 2018 (Stats. 2018, ch. 29), that funds awarded to _____
(Agency, city, county, or other)

by the Department of Water Resources for a Flood Maintenance Assistance Program project titled: _____
(Project title)

have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires _____
(Agency, city, county, or other)

to assume responsibility for operation and maintenance of _____
(Project title)

Therefore, the _____
(Presiding officer, president, city manager, or other official)

of the _____ is hereby authorized and directed to sign an operation, maintenance, repair, rehabilitation, and replacement agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the _____
(Board of Directors, Supervisors, etc.)

of the _____
(Name of Funding Recipient)

on _____
(Date)



Authorized Signature _____

Printed Name _____

Title _____

Clerk/Secretary _____

Exhibit 3

State Audit Requirements

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. The list of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each project.

List of Documents for Audit

Internal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State-funded Program/Project).
2. Written internal procedures and flowcharts for the following:
 - a) Receipts and deposits
 - b) Disbursements
 - c) State reimbursement requests
 - d) Expenditure tracking of State funds
 - e) Guidelines, policy, and procedures on State-funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State-funded Program/Project.

State Funding:

1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all grants, loans or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State-funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests, and related Funding Agreement budget line items.

3. Reimbursement requests submitted to the State for the Funding Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on the State-funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

Project Files:

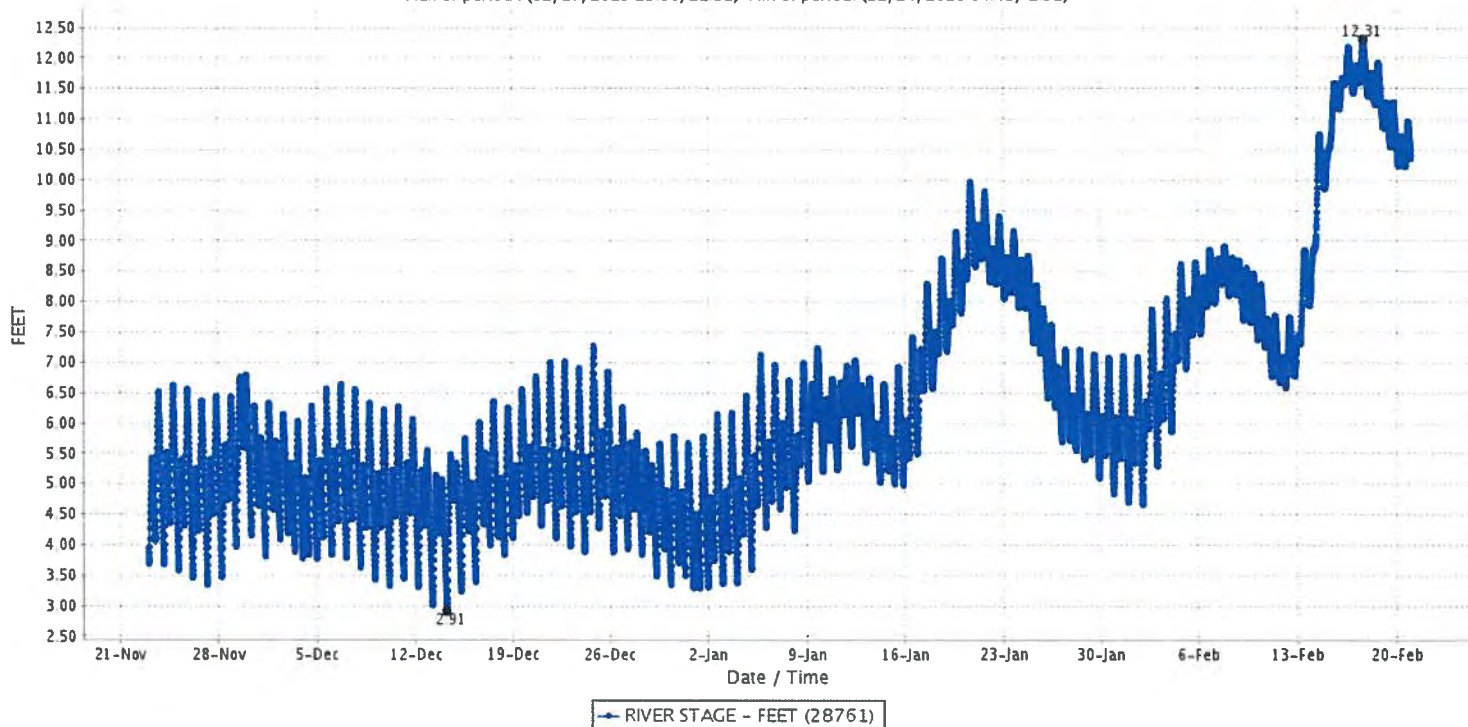
1. All supporting documentation maintained in the Project files.
2. All Funding Agreement related correspondence.

2019

SACRAMENTO R AT WALNUT GROVE STAGE (WGS)

Date from 11/22/2018 23:07 through 02/20/2019 23:07 Duration : 90 days

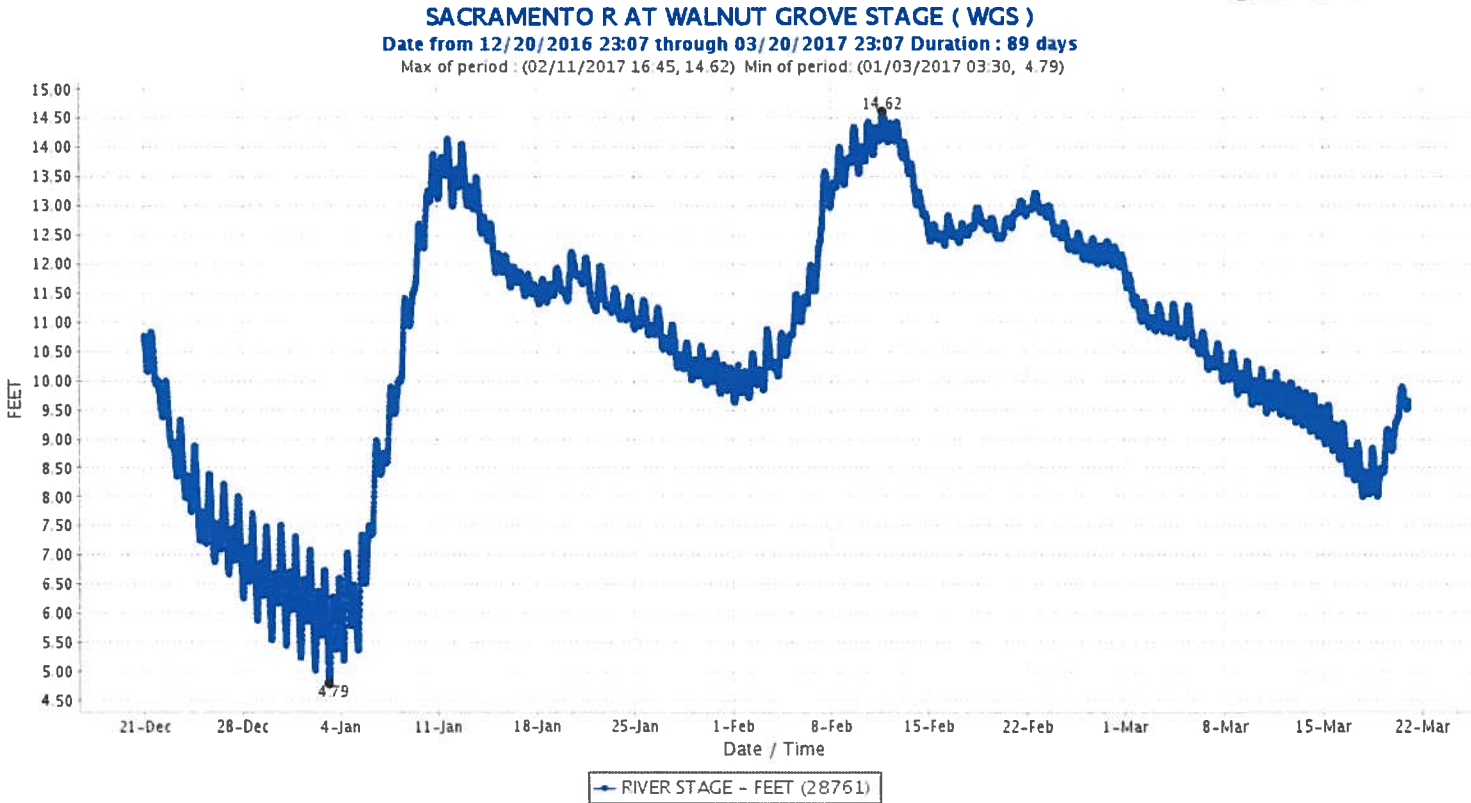
Max of period : (02/17/2019 15:00, 12.31) Min of period: (12/14/2018 04:45, 2.91)



Generated on Wed Feb 20 23:07:52 PST 2019

[Plot all WGS Sensors](#) | [Real-Time WGS Data](#) | [WGS Data](#) | [Daily WGS Data](#) | [Show WGS Map](#) | [WGS Info](#)Plot from ending date: 02/20/2019 23:07 Span: 90 days [Get custom plot](#)

2017



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[Plot all WGS Sensors](#) | [Real-Time WGS Data](#) | [WGS Data](#) | [Daily WGS Data](#) | [Show WGS Map](#) | [WGS Info](#)

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