

City Council Special Meeting Agenda



MAY 15, 2015

2:30 p.m.

City of Turlock Yosemite Room

156 S. Broadway, Turlock, California

Mayor
Gary Soiseth

City Manager
Roy W. Wasden
City Clerk
Kellie E. Weaver
City Attorney
Phaedra A. Norton

Council Members

William DeHart, Jr. **Steven Nascimento**
Matthew Jacob **Amy Bublak**
 Vice Mayor

SPEAKER CARDS: To accommodate those wishing to address the Council and allow for staff follow-up, speaker cards are available for any agenda item or any other topic delivered under Public Comment. Please fill out and provide the Comment Card to the City Clerk or Police Officer.

NOTICE REGARDING NON-ENGLISH SPEAKERS: The Turlock City Council meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

EQUAL ACCESS POLICY: If you have a disability which affects your access to public facilities or services, please contact the City Clerk's Office at (209) 668-5540. The City is committed to taking all reasonable measures to provide access to its facilities and services. Please allow sufficient time for the City to process and respond to your request.

NOTICE: Pursuant to California Government Code Section 54954.3, any member of the public may directly address the City Council on any item appearing on the agenda, including Consent Calendar and Public Hearing items, before or during the City Council's consideration of the item.

AGENDA PACKETS: Prior to the City Council meeting, a complete Agenda Packet is available for review on the City's website at www.cityofturlock.org and in the City Clerk's Office at 156 S. Broadway, Suite 230, Turlock, during normal business hours. Materials related to an item on this Agenda submitted to the Council after distribution of the Agenda Packet are also available for public inspection in the City Clerk's Office. Such documents may be available on the City's website subject to staff's ability to post the documents before the meeting.

1. **CALL TO ORDER**

2. **PUBLIC PARTICIPATION – LIMITED TO ITEMS DESCRIBED IN THE NOTICE FOR THIS MEETING**
This is the time set aside for citizens to address the City Council concerning any item that has been described in the notice for the meeting, including Consent Calendar items, before or during consideration of that item. You will be allowed five (5) minutes for your comments. If you wish to speak regarding an item on the agenda, you may be asked to defer your remarks until the Council addresses the matter.

3. **DECLARATION OF CONFLICTS OF INTEREST AND DISQUALIFICATIONS**

4. **SCHEDULED MATTERS:**
 - A. Request to approve a Memorandum of Understanding to create a Cooperating Agency Agreement between the Department of the Interior, the City of Turlock, the City of Modesto and Del Puerto Water District for the preparation of an Environmental Impact Statement on the proposed North Valley Regional Recycled Water Program. (Cooke)

Recommended Action:

Motion: Approving a Memorandum of Understanding to create a Cooperating Agency Agreement between the Department of the Interior, the City of Turlock, the City of Modesto and Del Puerto Water District for the preparation of an Environmental Impact Statement on the proposed North Valley Regional Recycled Water Program

5. ADJOURNMENT

The foregoing meeting is hereby called by Mayor Gary Soiseth at the above mentioned date and time pursuant to California Government Code §54956.



GARY SOISETH, Mayor



Council Synopsis

4A
May 15, 2015

From: Michael Cooke, Municipal Services Director

Prepared by: Michael Cooke, Municipal Services Director

Agendized by: Roy W. Wasden, City Manager

1. ACTION RECOMMENDED:

Motion: Approving a Memorandum of Understanding to create a Cooperating Agency Agreement between the Department of the Interior, the City of Turlock, the City of Modesto and Del Puerto Water District for the preparation of an Environmental Impact Statement on the proposed North Valley Regional Recycled Water Program

2. DISCUSSION OF ISSUE:

The US Bureau of Reclamation (Reclamation), in coordination with the City of Modesto, is preparing an Environmental Impact Statement / Environmental Impact Report (EIS/EIR). The EIS/EIR evaluates the potential environmental impacts of the North Valley Regional Recycled Water Program (NVRWP). If implemented the NVRWP would involve the construction of a new pipeline to convey recycled water from the Cities of Modesto and Turlock to the Delta-Mendota Canal (DMC).

Reclamation invited the City of Turlock to participate as a cooperating agency pursuant to NEPA because of the City's involvement in the project. As a cooperating agency, the City assumes certain responsibilities, including assisting the lead agency in the preparation of the EIS as it pertains to the City of Turlock's area of expertise or authority. A list of the cooperating agency's responsibilities can be found on page 3 of the attached Memorandum of Understanding (MOU).

The Draft EIS was released in January 2014. Reclamation and the City of Modesto are currently responding to the various public comments made on the project. By entering into the MOU at this time, the City of Turlock will be able to:

- Provide timely review of draft responses to comments
- Retain the right to comment on all issues related to the EIS throughout the entire EIS comment process
- Develop information and data that will assist Reclamation and the City of Modesto in responding to comments

By entering into the MOU, the City of Turlock will have no additional financial or legal obligations.

3. BASIS FOR RECOMMENDATION:

- A) By entering into the MOU with Reclamation, the City of Turlock will be able to more actively participate in the EIS/EIR preparation process.
- B) As a participant in the MOU, the City of Turlock will be able to review draft documents to ensure that Turlock-related data is accurate and that the City's and the Project's interests are represented.
- C) The North Valley Regional Recycled Water Program and the Regional Surface Water Supply Project are important long-term regional water resource projects. It is imperative that the City remain actively engaged in such collaborative regional efforts.

Strategic Plan Initiative: MUNICIPAL INFRASTRUCTURE

Goal(s): b. Address Growth-Related Issues (Current and Future)

- iii) Wastewater
- viii) Beneficial Reuse of Recycled Water
- ix) Collaborative regional efforts on water resources planning and management

4. FISCAL IMPACT / BUDGET AMENDMENT:

Fiscal Impact

There is no cost to entering into the Memorandum of Understanding with Reclamation. The cost of participating in the Phase III Feasibility Study for the NVRWP has already been budgeted in the Water Quality Control Fund 410-51-530.43340 "North Valley Regional Recycled Water Project." There is no cost to the General Fund.

5. CITY MANAGER'S COMMENTS:

Recommend approval.

6. ENVIRONMENTAL DETERMINATION:

N. A.

7. ALTERNATIVES:

- A. Not approve the Memorandum of Understanding. This alternative is not recommended because without the MOU the City cannot fully participate in the EIS/EIR preparation process.

**Memorandum of Understanding
Between
U.S. Department of the Interior
Through the Bureau of Reclamation
And
City of Turlock
As a Cooperating Agency**

1. Introduction

Pursuant to the National Environmental Policy Act (NEPA), this memorandum of understanding (MOU) creates a cooperating agency relationship between the Department of the Interior, through the Bureau of Reclamation, Mid-Pacific Region, and the Del Puerto Water District, the City of Modesto and the City of Turlock, (Cooperators) in the preparation of an environmental impact statement on the proposed North Valley Regional Recycled Water Program (NVRWWP).

2. Purpose

The purpose of this MOU is to define the relationships and duties of the lead and cooperating agency(ies) in the EIS preparation process. Reclamation will work jointly with the City of Modesto, which has been designated by the NVRWWP to act as the Lead Agency for meeting California's requirements under the California Environmental Quality Act (CEQA) to prepare an Environmental Impact Report (EIR), by producing one joint document, an EIS/EIR. Although there is no requirement under CEQA for cooperating agencies, the Del Puerto Water District and the City of Turlock have jointly executed a similar cooperative arrangement with the City of Modesto to support the CEQA process; this separate MOU applies only to the NEPA process. It is understood by all parties that this MOU provides the framework to fulfill compliance requirements for NEPA and for other applicable environmental laws and regulations.

3. Authorities for the MOU

Activities of the lead and cooperating agencies contemplated under this MOU are authorized under:

- A. The National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321-4347)
- B. Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500-

1508; in particular 1501.5 on lead agencies and 1508.5 on cooperating agencies)

C. Department of the Interior Regulations for the Implementation of the National Environmental Policy Act of 1969 (43 CFR 46; in particular 46.220 on lead agencies and 46.225 on cooperating agencies)

4. Lead Agency Responsibilities

As lead agency, the Department of the Interior (Department), through Reclamation shall:

A. Be Responsible for preparation of the EIS/EIR and the NEPA compliance process pursuant to and contingent upon the terms of this Agreement. The Department's responsibilities include determining the purpose and need, selecting alternatives for analysis, identifying effects of alternatives, selecting the preferred alternative, issuing the record of decision, filing, developing schedules, and making staff commitments to complete the NEPA process within the time schedule. Amongst other requirements mentioned in this Agreement, the Department shall seek the Cooperators' guidance while completing each of those responsibilities.

B. Address other environmental review and consultation requirements such as the Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act, and Executive Order 12898.

C. Involve the public as defined in the Council on Environmental Quality regulations at 40 CFR 1500-1508 and Section 106 of the National Historic Preservation Act. Also, as defined at 43 CFR 46.110, be responsible for incorporating consensus-based management into the NEPA analyses and for involving persons, organizations, or communities who might be interested in or affected by the project. Planning for all Public Notices and Public Meetings shall be done in coordination with the Cooperators. The Department shall work cooperatively to develop and prepare for such meetings, as well as jointly draft and share comment and final approval of all meeting/hearing exhibits, handouts, presentation plans/outlines or other materials prior to any public meetings/hearings

D. Sponsor meetings of other cooperating agencies not party to this Agreement, as appropriate, either individually or as a group, and provide advance information for discussion at these meetings when possible. The Department shall include the Cooperators as invitees at these meetings, as appropriate.

E. To the fullest extent possible, consistent with its responsibility as lead agency, use the data, environmental analyses, and technical studies of the Cooperator, giving particular weight to those topics on which the Cooperator is acknowledged to possess special expertise. As appropriate, ensure the cooperators' comments, including divergent views, are appropriately documented.

F. Provide advance copies of all Environmental Review Documentation (including, but not limited to, administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created or utilized during the Environmental Review Process) to Cooperators at the earliest possible time to provide the Cooperators with sufficient time to review and comment. Parties will not distribute, release, or share said documents with anyone other than employees, agents and Consultants of the Parties who require access to complete the work or review contemplated by this Agreement and to perform their duties pursuant to the Environmental Review Process unless required to do so by law.

5. Cooperating Agency Responsibilities

In accordance with 40 CFR 1501.6 and 43 CFR 46.230, the Cooperator shall:

A. Participate in scoping process and in particular, assist with identification of significant environmental issues to be addressed.

B. Assume responsibility for developing information, arranging for the collection or assembly of data; and analyzing data, especially related to those portions of the EIS/EIR for which the cooperators have special knowledge, expertise or jurisdiction.

C. Make staff available to enhance the interdisciplinary capability of the EIS team.

D. Assist in the development and evaluation of alternatives, and the estimation of the effects of implementing each alternative on resources for which the cooperator has jurisdiction or special knowledge, expertise, or jurisdiction.

E. Provide timely review of draft documents when requested.

F. Attend cooperating agency meetings.

G. Retain the right to comment on all issues related to the EIS through the normal EIS public review and comment process.

H. Promptly inform the Department of concerns related to the EIS process.

- I. The special knowledge, expertise and/or jurisdiction of the City of Turlock includes the following:
 - a. Any items and information pertaining to the City of Turlock.
 - b. Any items and information pertaining to the North Valley Regional Recycled Water Program.

6. Joint Responsibilities

A. The parties will not release any pre-decisional draft documents to the public or other parties unless mutually agreed to by the Department and the cooperator or required through the Freedom of Information Act or the Public Records Act. This is not intended to interfere with cooperators seeking input from the entity they represent. Draft documents can be provided to such organizations as long as the cooperator abides by these non-release terms, and comments are directed back to the cooperating agency representative or point of contact specified in the MOU.

B. The Department may meet separately with any one or more cooperators not party to this Agreement to discuss specific topics. The Department will include Cooperators party to this Agreement in such meetings, as appropriate, and will inform all other cooperators of the results of these discussions.

C. This MOU does not affect funding agreements already in place or to be executed among the parties regarding the Department's completion of NEPA compliance. For costs not explicitly covered under such agreements, it is understood that the respective cooperators are responsible for their own costs with regard to completion of tasks outlined herein such as attendance at meetings, analyzing effects, writing sections of the EIS, etc.

D. All parties agree that work will proceed as expeditiously as possible. The parties agree to comply with the scheduled milestones and timeframes, including those for cooperator review and submissions.

7. Other Provisions

A. Authorities not altered. Nothing in this MOU alters, limits, or superseded the authorities or responsibilities of any party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the parties to perform beyond their respective authorities.

B. Financial obligations. Nothing in the MOU shall require any of the parties to assume any obligation or expend any sum or funds in excess of authorization and appropriations available or in any other way take action in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

C. Immunity and defenses retained. Each party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU and cooperative work on the EIS.

D. Conflict of interest. The parties agree not to utilize any individual for purposes of EIS development, environmental analyses, or representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS.

E. Management of information. The cooperators acknowledge that all data and information provided will become part of the Department's official record and will be available for public review, except as restricted by the Freedom of Information Act or the Privacy Act. The cooperators agree that internal working draft documents for the development of the EIS will not be made available for review by individuals or entities other than the parties to this MOU. All draft documents are also part of the official Departmental record and may only be released by the Department to the extent allowable by the Freedom of Information Act or the Privacy Act. Cooperators agree that to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.

F. Responsibility for decision making. While the parties agree to make reasonable efforts to resolve procedural and substantive disagreements, they acknowledge that the Department retains final responsibility for the decisions identified in the EIS and Record of Decision.

G. Coordination with Departmental contractors. The services of contractors will be used for the preparation of this EIS. The cooperator may communicate with the contractor only through the Department's representative or with the Department's permission.

8. Agency Representative

The Department and the cooperator shall designate a point of contact for the EIS. Each party may change the point of contract by providing written notice to the other party. An alternate or backup representative may also be appointed.

9. Resolution of Disputes

The Department is responsible for all decisions involving the EIS and will make all final decisions on disputes arising during the NEPA process. Reclamation will document for the administrative record the nature of any dispute and the resolution process used. For disputes involving different interpretations of information, the Department agrees to consider different interpretations if such interpretations are supported by sufficient

credible data, as determined by the Department. For other disputes, the Department and the cooperating agency will use their best efforts to resolve issues in a manner agreeable to both parties. If a disputed issue cannot be resolved in a collaborative and timely manner, the Department will make the final decision. The cooperator retains the right to comment on all issues related to the EIS, including those in dispute, through the normal EIS public review and comments process.

10. Administration of the MOU

A. Approval. This MOU becomes effective on the date of the last signature.

B. Amendment. This MOU may be amended through written agreement of all signatories.

C. Termination. The Department or the cooperator may terminate their status by providing written notice of termination to the other party. Otherwise, the roles and responsibilities will terminate when a Record of Decision is issued.

City of Turlock

_____ date _____
Signature

_____ Title or position _____
Printed name

Bureau of Reclamation, on behalf of the Department of the Interior

_____ date _____
Signature

_____ Title or position _____
Printed name