



PHASE 2 LOS VAQUEROS RESERVOIR EXPANSION PROJECT  
REQUEST FOR PROPOSALS (RFP) FOR SPECIAL COUNSEL SERVICES

NOTICE TO SUBMITTING FIRMS

1. Proposals will be submitted electronically to Douglas E. Coty at [dcoty@bpmnj.com](mailto:dcoty@bpmnj.com), as a single Adobe Acrobat (PDF) file, with search capability to ensure readability and compatibility, not more than 10 pages long, not including cover letter, exhibits, and resumes.
2. All Proposals must be received by **October 25, 2019 at 5:00 p.m.**
3. Responding firms may submit a proposal for one or any combination of the legal services described herein.
4. If additional information is needed, contact Douglas E. Coty at (925) 933-7777, or [dcoty@bpmnj.com](mailto:dcoty@bpmnj.com). Email is encouraged, additional information provided as a result of inquiries shall be distributed via the project website at [ccwater.com/lvstudies](http://ccwater.com/lvstudies).
5. Any changes to this RFP are invalid unless specifically modified by the requestor and issued as a separate addendum document. It is the submitting firm's sole responsibility to ensure that their Proposal, inclusive of any or all addenda, is received at the proper place at the proper time. The requestor will not accept submittals after the due date/time.

## Section 1 – INTRODUCTION AND OVERVIEW

Los Vaqueros Reservoir is an off-stream reservoir located in southeastern Contra Costa County that is owned and operated by the Contra Costa Water District (CCWD). It was originally constructed with a capacity of 100 thousand acre-feet (TAF) in 1997 and was expanded to 160 TAF in 2012. CCWD operates Los Vaqueros Reservoir as an integrated system with: the Contra Costa Canal and Rock Slough Intake, which were completed as part of the Central Valley Project (CVP) in 1948; the Old River Intake and Pump Station, which CCWD built as part of the original Los Vaqueros Reservoir Project; and the Middle River Intake and Pump Station at Victoria Canal, which CCWD built in 2009. These facilities are operated to balance delivered water quality, water supply for droughts and emergencies, and cost considerations. CCWD also owns Los Vaqueros Watershed, which encompasses approximately 20,000 acres surrounding Los Vaqueros Reservoir. Los Vaqueros Watershed lands are managed for water quality, conservation and recovery of special status species and their habitats, protection of cultural resources, and recreation.

Phase 2 LVE is the second phase of the Los Vaqueros Reservoir Expansion Project and would expand Los Vaqueros Reservoir from 160 TAF to 275 TAF storage capacity, upgrade existing conveyance facilities, construct new conveyance, and re-operate existing facilities, to achieve the intended objectives. The two primary objectives are (1) to develop water supplies for environmental water management and (2) to increase water supply reliability for Bay Area water providers. A secondary objective is to improve the quality of water deliveries to municipal and industrial customers in the San Francisco Bay Area without impairing the project's ability to meet the environmental and water supply reliability objectives.

## B. PHASE 2 LOS VAQUEROS RESERVOIR EXPANSION PROJECT PARTNERSHIP

The potential beneficiaries of the Phase 2 LVE Project include the local water agencies as identified below (Local Agency Partners) and the fourteen South-of-Delta wildlife refuge units (Refuges) in the San Joaquin Valley named in the Central Valley Project Improvement Act (CVPIA) that are managed by the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), and the landowners of privately owned and managed wetlands in the Grassland Resource Conservation District (GRCD).

The Local Agency Partners are: Alameda County Water District (ACWD), Bay Area Water Supply and Conservation Agency (BAWSCA), City of Brentwood (Brentwood), Contra Costa Water District (CCWD), East Bay Municipal Utility District (EBMUD), Grassland Water District (GWD), Santa Clara Valley Water District (SCVWD), San Francisco Public Utilities Commission (SFPUC), San Luis & Delta-Mendota Water Authority (SLDMWA)<sup>1</sup>, and Alameda County Flood Control and Conservation District, Zone 7 (Zone 7 Water Agency, or Zone 7). All of the Local Agency Partners are signatories to the Los Vaqueros Memorandum of Understanding (LV MOU) and are contributing funding and in-kind services towards project planning. The Local Agency Partners comprise the Project Partners for the purposes of this Request for Proposals.

More information regarding the Project Partners appears below.

**Alameda County Flood Control and Water Conservation District, Zone 7, (Zone 7 Water Agency)**, is a special district organized and existing under Act 20, Section 36 of the Water Code – Uncodified Acts. Zone 7 Water Agency supplies treated drinking water to retailers serving approximately 240,000 people and businesses in Pleasanton, Livermore, Dublin, and, through special agreement with the Dublin San Ramon Services District, the Dougherty Valley area in San Ramon. Zone 7 also supplies untreated irrigation water to local vineyards, farms and golf courses, and provides flood protection to all of eastern Alameda County.

**Alameda County Water District (ACWD)**, is a county water district organized and existing under Division 12 of the California Water Code. ACWD supplies drinking water to over 349,000 residents and the businesses in the cities of Fremont, Newark, and Union City in southern Alameda County. ACWD's primary sources of supply come from the Bay-Delta (via the State Water Project), the San Francisco Regional Water System, and local supplies including groundwater and surface water. ACWD is a member of BAWSCA.

**Bay Area and Water Supply & Conservation Agency, (BAWSCA)**, is a public agency organized and existing under Division 31 of the California Water Code. BAWSCA is a special district that provides regional water supply planning, resource development, and conservation program services to enhance the reliability of the 16 cities, 8 water districts, and 2 private water providers that provide water to over 1.7 million people and 40,000 commercial, industrial and institutional accounts in Alameda, Santa Clara and San Mateo Counties. BAWSCA was enabled by a special act of the California Legislature and was formed by its member agencies in 2003 to

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<sup>1</sup> SLDMWA is participating in coordination with and on behalf of those member agencies participating through a separate activity agreement: Byron Bethany Irrigation District, Del Puerto Water District, Panoche Water District, and Westlands Water District.

directly represent the interests of its member agencies in matters related to the San Francisco Regional Water System (SF RWS). BAWSCA enables the customers of the SF RWS to work with the San Francisco Public Utilities Commission (SFPUC) on an equal basis to ensure that the system is maintained, and to collectively and efficiently meet local responsibilities. BAWSCA's member agencies include: Alameda County Water District, City of Brisbane, City of Burlingame, California Water Service (CWS) – Bear Gulch, CWS – Mid-Peninsula, CWS – South San Francisco, Coastside County Water District, City of Daly City, City of East Palo Alto, Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, Town of Hillsborough, City of Menlo Park, Mid-Peninsula Water District, City of Millbrae, City of Milpitas, City of Mountain View, North Coast County Water District, City of Palo Alto, Purissima Hills Water District, City of Redwood City, City of San Bruno, San Jose Municipal Water System, City of Santa Clara, Stanford University, and Westborough Water District.

**The City of Brentwood (Brentwood)**, is a community of over 60,000 residents in eastern Contra Costa County. Brentwood utilizes groundwater from its seven groundwater wells and surface water diverted by CCWD to supply domestic water to more than 18,500 service connections.

**Contra Costa Water District (CCWD)**, is a county water district organized and existing under Division 12 of the California Water Code. CCWD was approved by Contra Costa County voters in 1936 as the legal entity to contract, purchase, and distribute water provided by Reclamation through the Contra Costa Canal. The 48-mile Contra Costa Canal conveys water from the Sacramento-San Joaquin Delta (Delta), through Rock Slough, Old River and Middle River, to eastern and central Contra Costa County (County). CCWD's service area encompasses most of central and northeastern Contra Costa County, a total area of more than 140,000 acres (including the Los Vaqueros watershed area of approximately 19,100 acres). Water is provided to a combination of municipal, residential, commercial, industrial, landscape irrigation, and agricultural customers. Major municipal customers include the Diablo Water District (Oakley) and the Cities of Antioch, Pittsburg, Golden State Water Company (Bay Point) and Martinez, each of which distribute water to their retail customers. Treated water is distributed to individual customers living in the following communities in the Treated Water Service Area: Clayton, Clyde, Concord, Pacheco, Port Costa, and parts of Martinez, Pleasant Hill, and Walnut Creek. In addition, CCWD delivers water to the Diablo Water District, City of Brentwood, Golden State Water Company (Bay Point) and the City of Antioch. Antioch, Pittsburg and Martinez operate their own water treatment plants.

**East Bay Municipal Utility District (EBMUD)**, a municipal utility district organized and existing under Division 6 of the California Public Utilities Code. EBMUD provides high-quality drinking water for 1.4 million customers in Alameda and Contra Costa counties. EBMUD has water rights on the Mokelumne River and also a long-term dry year CVP water supply contract.

**Grassland Water District (GWD)**, a water district organized and existing under Division 13 of the California Water Code. Located in Merced County, GWD delivers water to more than 65,000 acres of private and public wetland habitat areas in the Grasslands Ecological Area, including state wildlife areas and national wildlife refuges. GWD is a Central Valley Project contractor and a member of the SLDMWA.

**San Francisco Public Utilities Commission (SFPUC)**, a department of the City and County of San Francisco. SFPUC is the third largest municipal utility in California, serving 2.6 million residential, commercial, and industrial customers in the San Francisco Bay Area. Approximately one-third of the SFPUC's system-wide deliveries go to retail customers in San Francisco, and the other two-thirds go to 26 wholesale customers, who are represented collectively by BAWSCA. Approximately 85% of the SFPUC's regional water supply comes from the Tuolumne River watershed, which includes storage at Hetch Hetchy Reservoir in Yosemite National Park. Local reservoirs in the Alameda and Peninsula watersheds provide the remaining 15% of the SFPUC's regional supply. The SFPUC also has a Local Water Program, which includes conservation as well as groundwater, recycled water and other nonpotable supplies to meet demands in its retail service area.

**San Luis & Delta-Mendota Water Authority (SLDMWA)**, a California joint powers authority operating under and by virtue of Section 6500, et seq., of the California Government Code. SLDMWA consists of 28 member agencies. Member agencies provide water to approximately 1.2 million acres of highly productive farmland, 2 million California residents, and millions of waterfowl depending upon the nearly 200,000 acres of managed wetlands within this area of the Pacific Flyway. SLDMWA member agencies include: Banta-Carbona Irrigation District, Broadview Water District, Byron Bethany Irrigation District, Central California Irrigation District, City of Tracy, Columbia Canal Company (a friend), Del Puerto Water District, Eagle Field Water District, Firebaugh Canal Water District, Fresno Slough Water District, Grassland Water District, Henry Miller Reclamation District #2131, James Irrigation District, Laguna Water District, Mercy Springs Water District, Oro Loma Water District, Pacheco Water District, Panoche Water District, Patterson Irrigation District, Pleasant Valley Water District, Reclamation District 1606, San Benito County Water District, San Luis Water District, Santa Clara Valley Water District, Tranquillity Irrigation District, Turner Island Water District, West Side Irrigation District, West Stanislaus Irrigation District, and Westlands Water District. The SLDMWA is participating in coordination with and on behalf of Byron Bethany Irrigation District, Del Puerto Water District, Panoche Water District, and Westlands Water District.

**Santa Clara Valley Water District (SCVWD)**, is an independent special district created by an act of the Legislature of the State of California and Water Code Appendix, Chapter 60. SCVWD provides wholesale water supply, groundwater management, flood protection, and stream stewardship services to approximately 2 million people in Santa Clara County. It serves the cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale, and the towns of Los Gatos and Los Altos Hills. Thirteen water retailers serve the county – California Water Service Company, City of Milpitas Community Services, City of Morgan Hill, City of Mountain View Public Works, City of Palo Alto Utilities Department, City of Santa Clara Water Department, City of Sunnyvale Public Works Department, Gilroy Community Services Department, Great Oaks Water Company, Purissima Hills Water District, San Jose Municipal Water System, San Jose Water Company, and Stanford University. Some retailers are also customers of SFPUC and members of BAWSCA. SCVWD is a State Water Project contractor, a Central Valley Project contractor, and a member of SLDMWA.

### C. PURPOSE OF REQUEST FOR PROPOSALS

CCWD and the Project Partners are issuing this Request for Proposals (RFP) in order to select a qualified firm/qualified firms to provide legal services primarily to assist the Project Partners in the creation of the proposed Joint Powers Authority (JPA), including, but not limited to, the preparation, revision, and completion of a joint powers agreement to be considered by each Project Partner's legislative body.

In addition, the Project Partners desire, but do not require, that the firm selected to assist with formation of the JPA have experience advising public entities, including joint powers agencies, with the issuance of public debt.

Location of the selected firm may be anywhere within the State of California as the geographic location of the Project Partners extends from the San Francisco Bay area to the southern extent of the Central Valley.

JPA formation shall necessarily include interaction with, but not limited to, legal counsel, executive management, and staff from each Partner.

Work will be directed by a Legal Work Group formed among the Project Partners, which shall consist of Project Partner legal counsel and executive management as appointed by each in its own discretion.

#### D. THE ATTORNEY CLIENT RELATIONSHIP AND CONTRACTING

The selected firm(s) shall jointly represent the Project Partners in the preparation of the Joint Powers Authority documents and in the formation of the Joint Powers Authority. The attorney client relationship shall adhere to each of the Project Partners and to the Project Partners collectively and shall extend to those member agencies of SLDMWA participating through a separate activity agreement, as referenced in footnote 1 and above.

The selected firm(s) shall execute an agreement with the law firm of Bold, Polisner, Maddow, Nelson and Judson (“BPMNJ”), which serves as General counsel to CCWD. BPMNJ will be acting as the contracting and fiscal agent for the Project.

Notwithstanding the foregoing, BPMNJ serves as counsel for CCWD for the Project, and, as such, the selected firm will share confidential information with BPMNJ, including information in invoices from the selected firm, the confidentiality of which will be maintained due, at least in part, to the attorney-client relationship between the selected firm and BPMNJ’s client, CCWD.

## E. JOINT POWERS AUTHORITY FORMATION COUNSEL

Foremost, the Partners wish to engage a firm to assist with the formation of a Joint Powers Authority (“Formation Counsel”). The selected firm for this activity shall have the experience, skills, and knowledge necessary to assist a diverse group of special agencies in drafting, revising, and preparing the documents and filings necessary to form a joint powers authority for the purposes described herein.

If selected for this activity, a firm will have demonstrated legal expertise in the following practice areas as they relate to joint powers authorities, governmental entities, and special districts in California:

- Drafting of joint exercise of powers agreements, by-laws, and related documents necessary for the formation of a joint powers authority. This experience should include an understanding of principles of cost allocation between member agencies, payment of same, and penalties for non-payment.
- Laws pertaining to the operations of a joint powers authority and funding of special projects, including financings via a joint power authority.
- California Government Code, including the Joint Exercise of Powers Act, Ralph M. Brown Act, Public Records Act, Political Reform Act, General Municipal Law, and California Water Code; and operating procedures relative to the conduct of joint powers authority business.
- Experience and knowledge of Public Contracting Code, Labor Code and other California statutes governing the procurement process including bidding, awarding, contracting and construction of public works and improvements. Understanding of Federal and State Budgeting process whereby various funds are authorized and appropriated.
- Preparation, review and adoption of legal opinions, contracts, memoranda of understanding (including risk transfer and avoidance provisions), resolutions, and policies.
- The Joint Powers Authority once formed shall, on behalf of its members, issue any public debt or financing for the Phase 2 Los Vaqueros Expansion Project. Specific expertise and experience in the following areas is desired, but not required for selection.
  - Laws pertaining to funding the operations of a joint powers authority and funding special projects, including financings via a joint power authority such as tax-exempt and taxable municipal debt, leases, bank loans, commercial paper, and other short-term debt.
  - Understanding of relevant Federal and California statutes and regulations governing the issuance and post-issuance compliance of municipal debt, use of

proceeds, and disclosure requirements. In addition, the firm should have experience advising clients regarding federal loans, state revolving loans, and grants and an understanding of the financing elements associated with various procurement practices.

- Preparation, review and adoption of legal opinions, contracts, memoranda of understanding (including risk transfer and avoidance provisions), resolutions, and policies.

## Section 2 – PROPOSAL REQUIREMENTS AND FORMAT

Proposals must be structured as follows, including responses to questions noted below. Proposals are limited to 10 pages, not including cover letter, exhibits, and resumes.

1. Cover letter. The cover letter should provide an overview of the firm’s qualifications, including a brief description of the firm’s proposed lead counsel’s background and skills.
2. Qualifications. This section should be a description of the firm’s and lead counsel’s capabilities and ability to provide the scope of services specified herein. This section should demonstrate the firm’s and lead counsel’s experience and expertise with respect to forming and advising joint powers authorities and providing finance counsel services to joint power agencies (if applicable).
3. Personnel. Provide summary resumes for all personnel expected to provide services if selected. Please include the qualifications, training, and certifications of lead counsel and all other attorneys and staff who will perform the services outlined. Please identify any known constraints on the availability of lead counsel, if any, during the first 18 months of the anticipated engagement.
4. References. Please provide three client references for whom your firm has had a longstanding relationship extending at least five years. Include the name and contact information of an appropriate individual with each client.
5. Additional Firm Information. Please include the following: (a) the Firm’s scope of practice (national, regional, statewide, or local); (b) Number of firm partners, “of counsel,” associates, paralegals and other employees; and (c) Location of primary office which would provide the services requested herein.
6. Questions. Please respond to the following questions:
  - a) Please describe any potential conflicts of interest in serving in any requested capacity. Please indicate if you are representing any client that is a Project Partner in any capacity, and if you anticipate the need to receive a conflict waiver if your firm is selected.
  - b) Are you aware of any other ethical conflicts or other related issues which would preclude the firm from providing any of the services requested or for which the firm is proposing to provide.
  - c) Please describe your experience serving California water clients. Discuss your firm’s experience in supporting the structuring and closing of financing documents, in particular those involving joint powers authorities. Please describe two relevant projects for which the firm has provided services similar to those requested herein.
  - d) Provide a summary of the services and the work products that your firm proposes to provide to the Project Partners. Describe the overall relationship you envision for your firm’s role as Formation Counsel to the Project Partners. What unique services or approach would your firm provide? What distinguishes your firm? What challenges, if any, would you anticipate in completing the services described in this RFP?

e) Within the last five (5) years, has the firm been subject to any litigation for malpractice, ethics violations, negligence, errors and omissions or improper practices arising out of its performance of legal services for any firm client? If so, please provide the: (a) name and court case identification number for each case; (b) the jurisdiction in which it was filed; and (c) the outcome of the litigation, i.e. whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed.

7. Fee Schedule. Fees are one consideration in the selection process.

a) Please provide a description of the fee structure and estimated fees to perform the scope of services outlined in this Request for Proposals. Please include hourly rates and fees, and flat fee proposals as appropriate.

### Section 3 – SELECTION PROCESS AND EVALUATION CRITERIA

Proposals will be examined for compliance with all of the requirements in this RFP. The Project Partners' Legal Working Group will evaluate each proposal submitted for completeness, including all of the information requested in this RFP pertaining to the ability of the firm to provide and perform the services as described herein. Proposing firms should note that the fee proposal and pricing while important will not be the deciding factor in final selection. Oral presentations and written questions for further clarifications may be required of some or all firms. Final selection will be based on evaluation of the Proposal and interview (if required). The Proposals will be initially screened by the Legal Work Group and an invitation to interview may be extended to selected firms. The Project Partners reserve the right to modify the process and waive any irregularities or omissions deemed as immaterial. Proposing firms shall bear the cost of the proposals and any interviews or meetings.

#### PUBLIC RECORDS ACT

All Proposals submitted in response to this RFP will become the property of the Project Partners upon submission and will be a matter of public record pursuant to the Public Records Act under California Government Code section 6250, et. seq. As such, all required submitted information is subject to disclosure to the general public.

#### PROPOSAL ACCURACY

A Proposal which is incomplete, irregular, or conditional may be rejected. By submitting a Proposal, the submitting firm agrees that any significant inaccuracy in information given by the firm will constitute good and sufficient cause for rejection of the Proposal.

#### SUBMISSION AND CONSIDERATION SCHEDULE

- RFP Posted/Distributed: September 24, 2019
- Final Date for Submission: October 25, 2019 at 5:00 p.m.
- Interviews: October 28, 2019 – November 15, 2019
- Selection of Counsel: November 22, 2019
- Enter into agreement with BPMNJ and joint representation agreements with Project Partners: November 25, 2019 – December 13, 2019
- Begin Work: January 1, 2020

#### Section 4 – MISCELLANEOUS

A. Disclosure: Firms providing financial counsel or support to the JPA may be prohibited by Government Code section 1090 from proposing to perform work as bond counsel should the JPA issue public debt.

B. Special Agreement Terms: The selected firm(s) may be required to consent to agreement terms and provisions specific to Project Partners as provided for by their legislative bodies.

**ACKNOWLEDGMENT FORM**

Request for Proposals for Formation Counsel

The proposing firm warrants the following:

That it will not delegate or subcontract its responsibilities under contract without express, prior written permission.

That all information provided in connection with this Proposal is true and correct.

Firm Name (Respondent to RFP): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_