

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *R. Johnson*

BOARD AGENDA # C-3

Urgent  Routine

AGENDA DATE September 1, 2015

CEO Concur with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Withdraw as a Member of the Gomes Lake Joint Powers Agreement

STAFF RECOMMENDATIONS:

Approve to withdraw as a member of the Gomes Lake Joint Powers Agreement, effective July 1, 2016.

FISCAL IMPACT:

Under the 2011 Joint Powers Agreement, Stanislaus County is responsible for 16% of the expenses. The Department of Public Works has incurred more than \$50,000 of expenses for Gomes Lake in the past five years. This action will reduce Public Works' financial liability and promote a fair and equitable expense allocation.

BOARD ACTION AS FOLLOWS:

No. 2015-416

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

*Christine Ferraro*  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

C-5-F-2, DI-03-24, DR-03-19, DR-04-28

**DISCUSSION:**

The Gomes Lake facility is a pumping station and associated infrastructure constructed by the State of California located just west of Carpenter Road, north of Crows Landing Road, approximately 3.5 miles adjacent to the San Joaquin River. Levees were constructed in the 1950's and 1960's in this area along the San Joaquin River to provide flood protection to certain properties within lands identified as Reclamation District (RD) 2063 and Reclamation District (RD) 2091. The construction of these levees affected natural drainage courses resulting in storm, irrigation tail water, and other waters that would flow to the San Joaquin River being blocked by the levees. The Gomes Lake facility was constructed to correct this situation. This facility allows waters backed up by the levees to be pumped through the levees and into the San Joaquin River.

The Gomes Lake facilities are State owned and locally operated and maintained previously through a Joint Powers Agreement (JPA) between Stanislaus County, Turlock Irrigation District (TID), City of Turlock, RD 2063, and RD 2091. Effective August 1, 2010 the 2001 JPA was terminated. This termination was due to the fact that the RD's were willing to negotiate an equitable revision to the 2001 Agreement. Subsequent to the termination of the JPA, an Interim Operations and Maintenance Agreement for the Gomes Lake Facility was executed with a term of December 1, 2010 through May 31, 2011. In June of 2011 an Amendment No. 1 to the Interim Agreement was executed to extend the period through July 31, 2011.

Gomes Lake was required by the State to be maintained locally. The JPA, which was first approved in 1972, accepted the maintenance responsibilities with percentage shares of the costs. The JPA included Stanislaus County, TID, City of Turlock, RD 2063, and RD 2091. The major difference between the JPA in 1972 and the JPA revised in 2001 was the formal lack of financial participation by RD 2063 and RD 2091.

In the 1972 JPA, expenses were allocated as follows:

- Turlock Irrigation District - 41%
- City of Turlock - 30%
- Stanislaus County - 19%
- Reclamation District 2063 - 8%
- Reclamation District 2091 - 2%

Under the 2001 revised JPA, expenses were allocated as follows:

- Turlock Irrigation District - 20%
- City of Turlock - 35%
- Stanislaus County - 45%
- Reclamation District 2063 - 0%
- Reclamation District 2091 - 0%

## Approval to Withdraw as a Member of the Gomes Lake Joint Powers Agreement

Under the 2011 Interim Operations and Maintenance Agreement, expenses were allocated as follows:

Turlock Irrigation District - 21%  
City of Turlock - 31%  
Stanislaus County - 16%  
Reclamation District 2063 - 18.1%  
Reclamation District 2091 - 13.9%

According to County records, neither the original allocation in 1972 nor the revised allocation in 2001 were based upon an area of benefit study. This lack of backup and technical support for the cost share formula resulted in the JPA members to request the State to complete a detailed study of area of benefit to determine the proper cost allocation. The State was willing to conduct this study, but would prefer local stakeholders to maintain a JPA. A revised JPA was approved August 16, 2011. Upon review of current floodway maps, the Gomes Lake facility, and associated levees, does provide some flood control protection to County roads and rights of way. When defined as a percentage of the total area being protected by the levee and pumping system, the roadway area is less than 2% of the total area being protected. This 1%-2% would be the justified share of the County's responsibility for the JPA. The JPA has a term of five years, with the intention of revising the JPA at the end of this term from the current County share of 16% to the more equitable share of 1%-2%. The current JPA has expenses allocated as follows:

Turlock Irrigation District - 21%  
City of Turlock - 31%  
Stanislaus County - 16%  
Reclamation District 2063 - 18.1%  
Reclamation District 2091 - 13.9%

Below are three critical sections of the JPA Agreement, which document the County's cost share and term of this cost share. These sections also describe the intent of how cost shares should change after the five year term:

*5A. Subject to the limitation of Subsection 5.5, the cost of operation, repair, and routine maintenance of the facilities and equipment will be apportioned among the following Parties to this agreement as follows:*

*Turlock Irrigation District - 21%  
City of Turlock - 31%  
Stanislaus County - 16%  
Reclamation District No. 2063 - 18.1%  
Reclamation District No. 2091 - 13.9%*

## Approval to Withdraw as a Member of the Gomes Lake Joint Powers Agreement

*5.5. After the effective date of this Agreement, the Parties will review and reconsider in good faith the percentages in Subsection 5A every five years or at any time the budget exceeds \$63,000 the Parties will confer and review and consider in good faith the percentages set forth in Subsection 5A. If within 12 months of the time the Parties commence a review of the percentages set forth in Subsection 5A, the Parties fail to reach an agreement as to a revision of the percentages or as to making no change in the percentages, a technical Area of Benefit study will be conducted to determine the proportional share each Party should pay pursuant to Subsection 5A, which provision 5 automatically will be amended in accordance with the study and the study will be paid for by the Parties in the percentages set forth in Subsection 5.4. During the up to 12 months of review of the percentages by the Parties and, if necessary, during the Area of Benefit study, this Agreement shall remain in effect and the percentages and budget limit of \$63,000 shall remain applicable to the Parties.*

*12.1. Upon full execution by all parties this Agreement will continue for a period of five years and continue on a year-to-year basis thereafter, and after the initial five-year period, a Party may withdraw as a member of this Agreement by giving each of the other Parties written notice of withdrawal at least one year prior to August 1st of each year. If a party gives a one year notice, the remaining parties agree to meet and confer in good faith during the one year notice period and endeavor to agree upon terms to continue the Agreement in effect.*

The recommended action of this Board report is to give the one-year notice required to terminate the JPA and to negotiate a more equitable JPA as described above.

With the existing fund balance and projected fund balance for the existing fiscal year, it appears there will be a healthy capital reserve of nearly \$200,000. Fiscal year 2015/2016 is the final year of the five year agreement.

### **POLICY ISSUES:**

Section 12 of the Gomes Lake Joint Powers Agreement allows for termination by giving each of the other parties written notice of termination at least one year prior to the annual renewal date of August 1<sup>st</sup> of each year. The filing of a Notice of Termination will allow all parties to discuss the potential renegotiation of the JPA and appropriate proportional costs and benefits. The recommended action is consistent with the Board's priorities of Effective Partnerships and A Well-Planned Infrastructure System.

### **STAFFING IMPACT:**

There are no staffing impacts at this time.

## Approval to Withdraw as a Member the Gomes Lake Joint Powers Agreement

### **CONTACT PERSON:**

Matthew Machado, Public Works Director. Telephone: (209) 525-4153.

### **ATTACHMENT:**

Gomes Lake Joint Powers Agreement

**GOMES LAKE  
JOINT POWERS AGREEMENT**

THIS AGREEMENT, entered into pursuant to Title 1, Division 7, Chapter 5, Article 1, Section 6500 et seq. of the California Government Code by and between the TURLOCK IRRIGATION DISTRICT (“TID”), the CITY OF TURLOCK (“CITY”), the COUNTY OF STANISLAUS (“COUNTY”), RECLAMATION DISTRICT 2063 (“RD 2063”), and RECLAMATION DISTRICT 2091 (“RD 2091”) (collectively, the “Parties”):

WITNESSETH

WHEREAS, each Party hereto is a public agency within the meaning of Section 6500 of the Government Code, and each has the legal power to acquire, develop, maintain, operate, dispose of, and replace facilities and equipment for flood control and land reclamation; and,

WHEREAS, the Parties and the State of California through the California Department of Water Resources desire to administer the flood control and land reclamation facilities and equipment covered by the originally proposed State Maintenance Area No. 14 (a map of which is attached to this agreement as Exhibit “A”); and,

WHEREAS, the Parties executed a Joint Powers Agreement dated April 5, 1972 that provided for the administration of the above-mentioned flood control and land reclamation facilities; and,

WHEREAS, the Parties executed a subsequent Joint Powers Agreement dated October 2, 2001 (the “JPA”); and

WHEREAS, the Parties hereto wish to revise the current Joint Powers Agreement dated October 2, 2001; and

WHEREAS, the State of California owns the facilities and equipment covered by the originally proposed State Maintenance Area No. 14 and desires to have the facilities and equipment administered by a properly authorized local agency or agencies, and the Parties to the JPA collectively are such local agencies; and,

WHEREAS, each Party hereto recognizes the need to continue to operate, maintain and replace the facilities and equipment covered by the originally proposed State Maintenance Area No. 14 and to share in the cost thereof; and,

WHEREAS, each Party hereto recognizes the need to continue to operate, maintain and replace the facilities and equipment covered by the originally proposed State Maintenance Area No. 14 so as to provide for the movement of channelized drainage water reaching Gomes Lake to the San Joaquin River and thus to prevent or reduce flooding of the land surrounding Gomes Lake, and to share in the cost thereof in fair and reasonable proportions; and,

WHEREAS, it is the desire of each Party hereto that TID provide primary leadership for the implementation of the provisions of this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the Parties hereto as follows:

1. **OPERATION OF JPA:**

1.1. This Gomes Lake Joint Powers Agreement ("Agreement") will be jointly administered by a commission ("Commission") comprised of 1 representative appointed, from time to time by each of the 5 Parties to this Agreement. The members of the Commission shall each serve at the pleasure of the respective appointing entity. The persons appointed to the Commission may, but need not be, a member of the governing body of the appointing Party. The Commission will meet at such times and places as the Commission determines are appropriate. The Commission will meet at least twice each year, once during the month of June and once during the month of October. A Commission meeting may be called by any one of the Parties to this Agreement at any time. If a Commission member wishes to call a meeting, that member will contact TID who will send out written notices of the meeting to all Commission members. Notice will be mailed at least 7 days prior to the date of the proposed meeting. No meeting will be held without the required notice to all 5 Commission members. A minimum of 3 Commission members are required for the Commission to be able to conduct official

business. If a minimum quorum of 3 Commission members is present and two Commission members are absent, a vote of at least 2 of the Commission members present is required to take action. If 4 or 5 Commission members are present, a vote of at least 3 of the Commission members present is required to take action.

1.2. In an emergency situation, where there is an immediate threat to life and/or property, any Commission member can call an emergency meeting of the Commission. Reasonable efforts must be made to notify all Commission members of the emergency meeting.

1.3. In the event that flooding exceeds the capacity of the facilities or in the event of failure of any of the facilities resulting in an immediate threat to life and property, the protection of life will be the primary objective and the protection of agriculture or undeveloped property will have the lowest priority.

1.4. The Commission will, during 2011, adopt an Operations Plan and Procedures and each year thereafter will review, and revise as necessary, the Emergency Plan and Procedures at the Commission's October meeting. The Operations Plan and Procedures will be implemented when the San Joaquin River forecast of the California Department of Water Resources indicates that the gravity drain into the San Joaquin River will cease to operate and that thus Gomes Lake will be filled.

1.5. The Commission will, during 2011, adopt a Capital Improvement Plan ("CIP") and each year thereafter the Commission will review and as necessary revise the CIP.

2. **ANNUAL BUDGET:** The Commission will adopt an annual Operations and Maintenance (O & M) budget and a Capital budget for the period of July 1 to the following June 30 on or before June 30 of each year. All Parties will fund the account in one installment on or before August 1 of each year. Failure of any Party to fund the account by August 1 will be considered a breach of the Agreement, and until the O & M budget is fully funded, any obligations of a Party under this Agreement, including operation and maintenance, shall be suspended and TID may discontinue electric service.



3. **FACILITIES:** The facilities and equipment subject to this Agreement are:
  - 3.1. The pipes extending through the levee at the end of TID's Harding Drain,, including the slide gates and flap gates.
  - 3.2. The Gomes Lake Pumping Plant and sump, including the gates and pipes.
  - 3.3. The levee located immediately north of Gomes Lake, known as the Gomes Lake Dyke, approximately 2,100 feet in length, formerly known as the "Stub Levee."
  - 3.4. The Bypass Ditch running from the end of TID's Harding Drain parallel to the project levee and extending to Gomes Lake (known as the "Bypass Ditch").
  
4. **FACILITIES EXCLUDED FROM THIS AGREEMENT:** The Parties do not accept from the Department of Water Resources responsibility to administer the following facilities and equipment covered by the proposed State Maintenance Area 14:
  - 4.1. The levee, levee toe, or any part thereof which will remain the responsibility of RD 2063 and RD 2091 and will be maintained in accordance with the U.S. Army Corps of Engineers Supplement to Standard Operation and Maintenance Manual, Lower San Joaquin and Tributaries Project, California, Unit No. 6, East Levee of the San Joaquin River in Reclamation Districts No. 2063 & 2091.
  - 4.2 Any and all other facilities not identified in paragraph 3 of this agreement.
  
5. **OPERATION AND ROUTINE MAINTENANCE OF FACILITIES AND EQUIPMENT:**
  - 5.1. The JPA will provide for the operation and routine maintenance of the facilities and equipment set forth in paragraph 3 in accordance with the U.S. Army Corps of Engineers Supplement to Standard Operation and Maintenance Manual, Lower San Joaquin and Tributaries Project, California, Unit No. 6-A, Lower San Joaquin River Pumping Plant to the extent applicable.

5.2. The Parties agree that the operation and routine maintenance of the facilities and equipment set forth in paragraph 3 can be accomplished by the use of either contractors or by one or more of the Parties to this Agreement as shall be determined, from time to time, by the Commission. If a contractor is used, the contractor will be chosen by following the purchase requirements of TID. The contractor must also be approved by a vote in accordance with Section 1.1 of this Agreement. A contractor may be removed and a contract terminated also by a vote in accordance with Section 1.1 of this Agreement. If a Party to this Agreement provides for operation and maintenance, then an agreement will be negotiated between the Party and the Commission that clearly explains the duties to be performed and clearly establishes costs, procedures, and liabilities.

5.3. The Parties agree that said facilities and equipment set forth in paragraph 3 will be continuously operated and maintained so as to accomplish the intended purpose of flood control and land reclamation, provided that the scope of the operation will not be enlarged without the written agreement of each Party.

5.4. Subject to the limitation of Subsection 5.5, the cost of operation, repair, and routine maintenance of the facilities and equipment will be apportioned among the following Parties to this agreement as follows:

Turlock Irrigation District	21%
City of Turlock	31%
Stanislaus County	16%
Reclamation District No. 2063	18.1%
Reclamation District No. 2091	13.9%

5.5. After the effective date of this Agreement, the Parties will review and reconsider in good faith the percentages in Subsection 5.4 every 5 years or at any time the budget exceeds \$63,000 the Parties will confer and review and consider in good faith the percentages set forth in Subsection 5.4. If within 12 months of the time the Parties commence a review of the percentages set forth in Subsection 5.4, the Parties fail to reach an agreement as to a revision of the percentages or as to making no change in the percentages, a technical Area of Benefit study will be conducted to determine the proportional share each Party should pay pursuant to Subsection 5.4, which provision

automatically will be amended in accordance with the study and the study will be paid for by the Parties in the percentages set forth in Subsection 5.4. During the up to 12 months of review of the percentages by the Parties and, if necessary, during the Area of Benefit study, this Agreement shall remain in effect and the percentages and budget limit of \$63,000 shall remain applicable to the Parties.

6. **ADMINISTRATION OF FACILITIES AND EQUIPMENT:**

6.1. Subject to the specific conditions and limitations herein provided, TID, by and through its Board of Directors and established departments, will provide primary leadership for implementation of the provisions of this Agreement

6.2. In pursuance thereof, subject to approval of the parties, the TID will possess the common powers specified in this Agreement to contract and to acquire real or personal property to be held in the name of TID for the mutual benefit of the Parties, employ agents and employees, and maintain and operate sites and facilities for the purpose hereof.

6.3. Administration of this Agreement and the operation of all facilities and equipment will be performed in accordance with the most recent version of the "Supplement to Standard Operation and Maintenance Manual, Lower San Joaquin and Tributaries Project, California, Unit No. 6-A, Lower San Joaquin River Pumping Plant" prepared by the U.S. Army Corps of Engineers.

7. **CAPITAL IMPROVEMENTS:** For the purpose of this Agreement, a "capital improvement" will mean the construction of a new facility or the replacement of an existing facility that is subject to this Agreement. Capital improvements will also include emergency measures necessary to prevent flooding and major repairs, including, but not limited to, replacing a motor in a pump or replacing a gravity drain. Capital improvement will not include ordinary operation and maintenance, including, but not limited to, the cost of operating the pumps, inspecting the facilities, cleaning the facilities, and replacing minor components of any of the facilities.

7.1. Capital improvements to increase landside flood protection and/or increase ability of a Party to discharge storm flows (e.g., permanent increased pumping capacity at Gomes Lake) will be at the sole expense of the Party or Parties desiring to increase landside flood protection and/or increase their ability to discharge storm flows at Gomes Lake and not according to the proportions set forth in Subsection 5.4 above.

Additionally, in the event that permanent capital improvements are made to the Gomes Lake Pumping Plant to accommodate increased discharges of storm flows, those Parties initiating the improvements will increase their respective share of the operation and maintenance costs, set forth in Subsection 5.4 above in proportion to the increased pumping capacity, as it relates to the existing pumping capacity.

7.2. The cost of other capital improvements, including emergency repairs and replacement of facilities, will be apportioned according to Subsections 5.4 and 5.5 above.

8. **MANAGEMENT OF NON-JPA FACILITIES:** The Parties will manage their non-JPA facilities in an effort to prevent flooding on or of the facilities subject to this Agreement to the best of their ability. The Parties recognize and acknowledge that a large amount of the water present in TID's facilities is storm runoff over which TID has no control or ability to control.

9. **LIABILITY INSURANCE:** The JPA Commission may, based upon a majority vote of the Commission, obtain up to one million dollars in insurance in order to cover both potential liability and damage to the facilities and equipment. The premium and cost will be apportioned according to Subsection 5.4 above, and subject to the budget limitation in Subsection 5.5 above. The amount or type of insurance can be increased by an affirmative vote of at least 3 members of the Commission.

10. **TID'S RIGHT TO DRAIN:**

10.1. The Parties agree that TID has the right to drain water through its system and to the San Joaquin River up to the design capacity of TID's canals, and that the Parties will not take any action that limits or restricts TID's right. Further, the Parties agree that TID has a right to drain water through the facilities subject to this Agreement, and these

facilities were designed and constructed to ensure TID's continued right to drain. Nothing in this Agreement, or in the operation and maintenance of the facilities subject to this Agreement will limit, restrict, or adversely impact TID's right to drain. For the purpose of this Agreement, TID will have the sole discretion to determine whether any action arising out of this Agreement, impacts or restricts TID's right to drain.

10.2. If TID reasonably determines that any action arising out of this Agreement, or out of the operation and maintenance of the facilities subject to this Agreement, impacts or restricts TID's right to drain, and if TID is not operating the facilities, TID will give immediate notice (orally or in writing) of such impact or restriction to the Party operating the facilities. If after giving notice, TID determines that no action has been taken or that additional action is necessary to ensure its right to drain and if TID is not already operating the facilities, TID may operate and maintain the facilities in order to eliminate the impact or restriction.

**11. ADMINISTRATION OF FUNDS:**

11.1. TID will administer the funds received pursuant to this agreement in accordance with standard accounting procedures. All funds received from the Parties pursuant to this Agreement will be deposited with the TID and will be disbursed in the usual manner that TID disburses funds.

11.2. TID will annually report to each Party and will account for all receipts and disbursements into and out of the fund created for this purpose.

11.3. TID will prepare a draft annual budget which will be reviewed by each Party hereto and acted upon by the Commission.

11.4. The budget will include payments into a Capital Improvement and Replacement Reserve Account (Reserve Account) to provide for adequate available funds to replace facilities and equipment in emergencies or as may be necessary to make major repairs or to replace facilities and equipment to ensure they operate to design capacity. Payment

into the Reserve Account will be apportioned according to Subsection 5.4 above, and subject to the budget limitation in Subsection 5.5 above. The balance in the Reserve Account will be increased to at least \$200,000.00. Funds held in the Reserve Account shall be invested in the same manner as TID invests its surplus and reserve funds and all interest earned shall be deposited to the Reserve Account.

12. **TERMINATION:**

12.1. Upon full execution by all parties this Agreement will continue for a period of 5 years and continue on a year-to-year basis thereafter, and after the initial 5-year period, a Party may withdraw as a member of this Agreement by giving each of the other Parties written notice of withdrawal at least one year prior to August 1st of each year. If a party gives a 1 year notice, the remaining parties agree to meet and confer in good faith during the 1 year notice period and endeavor to agree upon terms to continue the Agreement in effect.

12.2. This Agreement may be amended at any time, including the addition of new parties, by the unanimous written consent of the Parties hereto.

12.2.1. In order to continue the flood control and land reclamation purposes of this Agreement, upon termination hereof, all remaining assets acquired pursuant hereto will be transferred to any successor agency or to the California Department of Water Resources; provided, however, in the event the operation is to be discontinued, such assets will, upon liquidation, be disbursed to the Parties hereto in proportion to the contributions made by the Parties.

13. **INDEMNITY:** None of the Parties, nor any of their officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by a Party under or in connection with any work delegated to that Party under this Agreement. The Parties further agree, pursuant to Government Code section 895.4, that each Party shall fully indemnify and hold harmless the other Parties and their agents, officers, employees and contractors from and against all claims, damages, losses,

judgment, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by one of the Parties under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Gomes Lake JPA Agreement on


August 16, 2011.

COUNTY OF STANISLAUS

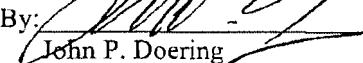
By:   
Dick Monteith  
Chair of the Board of Supervisors

"County"

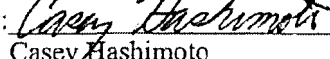
ATTEST:  
Christine Ferraro Tallman  
Clerk of the Board of Supervisors of the  
County of Stanislaus, State of California

By:   
Deputy Clerk

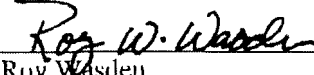
APPROVED AS TO FORM:  
John P. Doering  
County Counsel

By:   
John P. Doering  
County Counsel


TURLOCK IRRIGATION DISTRICT

By:   
Casey Hashimoto  
General Manager

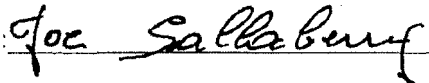
CITY OF TURLOCK

By:   
Roy Wasden  
City Manager

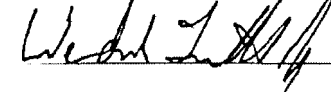
APPROVED AS TO FORM

By:   
Phaedra Norton  
City Attorney

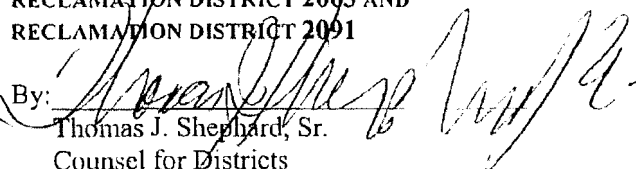
RECLAMATION DISTRICT 2063

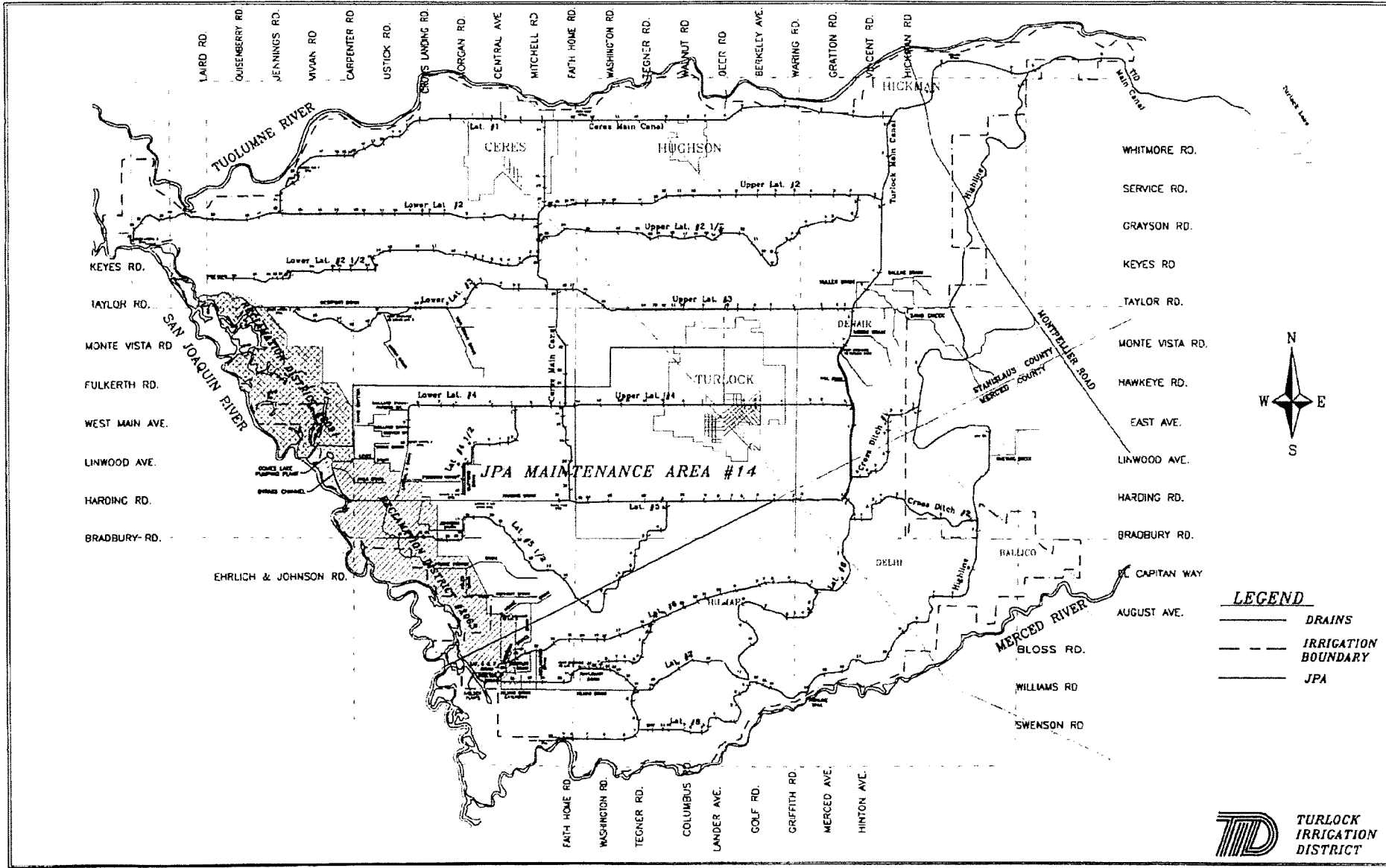
By: 

RECLAMATION DISTRICT NO. 2091

By: 

APPROVED AS TO FORM ON BEHALF OF  
RECLAMATION DISTRICT 2063 AND  
RECLAMATION DISTRICT 2091

By:   
Thomas J. Shephard, Sr.  
Counsel for Districts



**LEGEND**

- DRAINS
- ..... IRRIGATION BOUNDARY
- JPA

**TID** TURLOCK IRRIGATION DISTRICT