



CENTRAL COAST WATER AUTHORITY

MEMORANDUM

January 22, 2021

TO: CCWA Board of Directors

FROM: Ray A. Stokes
Executive Director 

SUBJECT: Santa Barbara Flood Control and Water Conservation District's Proposed Conditions of Approval of Amendment No. 21 (the Water Management Amendment) to the State Water Contract

SUMMARY:

As a condition of executing Amendment No. 21 (the Water Management Amendment), the Santa Barbara County Flood Control and Water Conservation District (District) requires that CCWA negotiate a "revenue sharing and water sales agreement" with the District. A copy of the District's January 21, 2021 Agenda Letter is attached to this report.

RECOMMENDED ACTION:

Staff recommends that the Board of Directors:

1. decline to negotiate the proposed "revenue sharing and water sales agreement" as a condition of the District's execution of Amendment No. 21; and
2. authorize the Chair of the Board to send the attached draft letter to the Santa Barbara County Board of Supervisors objecting to the proposed conditions, declining to negotiate the proposed "revenue sharing and water sales agreement" as a condition of the District's execution of Amendment No. 21, and requesting that the Board of Supervisors direct the District to execute Amendment No. 21 in accordance with the Transfer of Financial Responsibility Agreement as soon as possible and without conditions; and
3. authorize the Executive Director to expend up to \$50,000 for professional government relations services that may be required to communicate with the Santa Barbara County Board of Supervisors and the public regarding Amendment Nos. 20 and/or 21.¹

BACKGROUND:

In 1991, the same year in which CCWA was created, CCWA and the District entered into the Transfer of Financial Responsibility Agreement. Pursuant to the Transfer of Financial Responsibility Agreement, the District agreed to relinquish all responsibility for the State Water Contract and CCWA, on behalf of its 13 participants (the cities and water districts that voted to

¹ For clarity, this is a single request for approval of a total expenditure of up to \$50,000 for both amendments. The request is repeated in Staff's separate reports on each amendment.

participate in the State Water Project on behalf of their ratepayers), agreed to assume total operational and financial responsibility for the State Water Contract. Because the Department of Water Resources would not, at least at that time, approve a full assignment of the State Water Contract to CCWA, the District remained the contracting party.

On October 22, 2020, this Board unanimously approved Amendment No. 21 to the State Water Contract (the Water Management Amendment). On October 28, 2020, pursuant to the Transfer of Financial Responsibility Agreement, CCWA requested that the District execute Amendment No. 21 to the State Water Contract on behalf of CCWA.

District staff's January 21, 2021 Agenda Letter to the Santa Barbara County Board of Supervisors (Board of Supervisors), recommends that the Board, acting in its capacity as the governing board of the District, approve and authorize the Public Works Director to "negotiate a revenue sharing and water sales agreement with CCWA as a contingency for approval of Amendment No. 21," and "to return to the Board with both the revenue sharing and water sales agreement and Amendment No. 21 for approval."

The Board of Supervisors is anticipated to consider this matter on February 2, 2021.

Amendment No. 21 is anticipated to become effective on January 31, 2021. Thereafter, any State Water Contractor who has yet to execute the amendment has 60 days to do so, or risk participation in the amendment.

DISCUSSION:

For 30 years, the District, which is not a water supplier, has had no role in the delivery of, and payment for, State Water to the ratepayers. Since 1991, CCWA has been solely responsible for the delivery of State Water to the participants and the ratepayers (not the District) have invested more than \$ 1 billion in State Water.

During this time, pursuant to the 1991 Transfer of Financial Responsibility Agreement, CCWA has approved, and the District has executed on behalf of CCWA, Amendment Nos. 14, 15, 16, 17, 18 and 19, without conditions. Now the District seeks to impose conditions on its execution of Amendment No. 21 (and also Amendment No. 20).

The Water Management Amendments are specifically designed to give retail water providers—like CCWA's participants—the tools they need to address changing water supply circumstances. The amendments provide numerous checks and balances to ensure that retail water providers make informed decisions about their portfolio. They also provide CCWA's participants to access to the supplemental water supplies when they need them, just as was the case during the last historic drought.²

To the extent Staff understands the District's conditions on the execution of Amendment No. 21,³ District staff's proposed "revenue sharing" concept would impose a fee on every transfer of State Water out of the County. Such a fee that would be passed directly on to CCWA's participants, making the cost of State Water Project water even more expensive for the ratepayers and/or negating any potential financial benefits of the sale in the first place. For example, in a year in which a CCWA participant has determined that it has adequate supplies

² The benefits of Amendment No. 21, and the risks of not executing Amendment No. 21, are detailed in Staff's prior reports.

³ The District's January 21, 2021 Agenda Letter suggests that the District also reserves the right to impose additional conditions on any transfer of State Water out of the county at the time a transfer is proposed.

to meet its customers' needs, and that it can better manage the overall costs of its water supply portfolio by transferring a portion of its supply to a third party, the District's fee could make the proposed transfer infeasible, in which case the excess water supply would be wasted if the participant does not have sufficient storage capacity. District staff has cited no authority for its "revenue sharing" proposal and has provided no information about the use of the fee.

Further, Staff is concerned that if the District does not execute Amendment No. 21, at the latest by March 31, 2021,⁴ CCWA may lose the right to participate in Amendment No. 21 entirely. Water year 2020-21 is anticipated to be a critically dry year, much like 2014 when some of CCWA's participants experienced severe water supply shortages. It is Staff's belief that when the Water Management Amendment becomes effective on January 31, 2021, most State Water Contractors will prefer to negotiate one-way transfers (sales), as opposed to exchanges which require a return of a portion of the water exchanged and are limited in the amount of money the exchanging Contractor may receive. If the transfer provisions included in the Water Management Amendment are not available to CCWA, its participants may not be able to get access to supplemental water supplies when they need them.

For these reasons, it is Staff's conclusion that conditions on the District's execution of Amendment No. 21 are not only not appropriate, but would harm CCWA's participants and their ratepayers, potentially as soon as this year.

ATTACHMENTS:

1. District's January 26, 2021 Agenda Letter
2. Draft proposed letter from CCWA Board Chair to County Board of Supervisors

⁴ State Water Contractors who have not executed the amendment prior to its effective date have an additional 60 days to do so. Thereafter, the Department of Water Resources may, or may not, permit the contractor to participate.



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Flood Control
Department No.: 054
For Agenda Of: January 26, 2021
Placement: Set Hearing
Estimated Time: 90 minutes on
February 2, 2021
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Directors, Flood Control and Water Conservation District

FROM: Department Scott D. McGolpin, Public Works Director, 805-568-3010
Director(s)
Contact Info: Thomas D. Fayram, Deputy Public Works Director, 805-568-3436

SUBJECT: State Water Project Contract Amendments

County Counsel Concurrence

As to form: Yes

Other Concurrence: County Executive Office

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Directors:

Set a hearing for February 2, 2021 (ESTIMATED TIME: 90 MINUTES) to consider the request of the Central Coast Water Authority (CCWA) to approve two Water Supply Contract Amendments as follows:

- a) Consider the request of the Central Coast Water Authority (CCWA) to approve Amendment 20 (Contract Extension Amendment) to the State Water Project (SWP) Contract;
 - i. Approve and authorize the Public Works Director or his designee to execute Amendment 20 (Contract Extension) to the SWP Contract contingent upon full approval and execution of the First Amendment to the Transfer of Financial Responsibility Agreement;
 - ii. Approve and authorize the Public Works Director or designee to execute the First Amendment to the Transfer of Financial Responsibility Agreement (TFRA) with CCWA to extend the term of the TFRA to match the extended term of the SWP as approved in Amendment 20;
 - iii. Certify that the Board, acting as a Responsible Agency, has reviewed and considered the information and environmental effects contained in the Final Environmental Impact Report (FEIR) for Amendment 20 to the SWP Contract, and that the California Department of Water Resources (DWR) as Lead Agency found no significant impacts and is the custodian of the records located at <https://ceqanet.opr.ca.gov/2014092036/2>;

- b) Consider the request of the Central Coast Water Authority (CCWA) to approve Amendment 21 (Water Management Amendment) to the SWP Contract;
 - i. Authorize the Public Works Director or his designee to negotiate a revenue sharing and water sales agreement with CCWA as a contingency for approval of Amendment 21 to the SWP Contract;
 - ii. Direct staff to return to the Board with both the revenue sharing and water sales agreement and Amendment 21 for approval;
- c) Provide additional direction to staff regarding the State Water Project; and
- d) Determine that the proposed actions are not a project under the California Environmental Quality Act, pursuant to Guidelines Section 15378(b)(5), organization or administrative activities that will not result in a direct or indirect physical change in the environment.

Summary Text:

This item is on the agenda to consider the request of the Central Coast Water Authority (CCWA) to approve two proposed amendments to the State Water Project (SWP) Contract, Amendment 20, Contract Extension and; Amendment 21 Water Management. As the SWP Contract is between the Santa Barbara County Flood Control and Water Conservation District (District) and the California Department of Water Resources (DWR) your Board must approve any amendments to the Contract.

Amendment 20 (Contract Extension)

CCWA sent a letter dated November 3, 2020 (Attachment A) requesting that your Board approve Amendment 20 to the SWP Contract (Attachment B).

Amendment 20 extends the Contract term to 2085, from its current expiration in 2038, or 17 years from now. Amendment 20 makes it clear that Santa Barbara County, as well as the other SWP Contractors, would continue to receive water deliveries from the SWP past 2038. This extension would continue the SWP deliveries to 2085. These deliveries are critical for several CCWA participants where SWP deliveries are an important part of their water supplies. In addition, it must be noted that surface water reservoirs in the County are aging and suffering from siltation and other restrictions that result in less water available moving forward.

SWP deliveries are plumbed from Santa Maria to Carpinteria with participating agencies as follows:

- City of Buellton
- Carpinteria Valley Water District
- Goleta Water District
- City of Guadalupe
- La Cumbre Mutual Water Company
- Montecito Water District
- Morehart Land Company
- City of Santa Barbara
- Raytheon Systems Company (SBRC)
- City of Santa Maria
- Santa Ynez River W.C.D., ID #1 (includes City of Solvang)
- Golden State Water (SCWC)

- Vandenberg Air Force Base

CCWA reports that several financial benefits are realized associated with adoption of this amendment. DWR typically finances capital projects over a 30-year period to obtain the most favorable rates. However, because the current contract expires in less than 20 years, DWR has been forced to finance capital projects over a shorter, 15-year bonding period, which has resulted less favorable financing terms. The Contract Extension Amendment is intended to alleviate this problem and reduce costs associated with the SWP.

Amendment 20 also increases the maximum amount of “rate management credits” which are applied to charges roughly in proportion to the capital charges paid by each SWP contractor. Amendment 20 increases the maximum rate management credits from \$40.5 million per year available for all contractors, to \$48 million per year, an increase of \$7.5 million per year. According to CCWA, its share of the increase is projected to be approximately \$520,000 per year, or roughly \$7.8 million between 2020 and the year 2035. This would be a significant financial benefit to project participants.

This amendment also eliminates a fixed interest rate for amortizing capital and operations and maintenance costs known as the project interest rate (PIR). The PIR, set at 4.16% for many years, is also used to collect interest on underpayments or pay interest on overpayments by contractors. Recently, under collection by DWR to CCWA resulted in interested rate payments at the PIR of roughly \$1.2 million. Elimination of the PIR would result in avoidance of these types of charges in the future.

Extending the contract is unrelated to the Delta Conveyance Project. DWR has allowed contractors to choose to opt-out of this project, and CCWA has elected to do so. No planning or constructions costs for the Delta Conveyance would accrue to CCWA as a result of approving Amendment 20.

Transfer of Financial Responsibility (TFRA)

While extension of the contract ensures continued deliveries from the SWP, the Staff is also proposing extension of the Transfer of Financial Responsibility Agreement (Attachment C) between the District and CCWA to limit the financial liability to the Flood Control District. In 1991, the TFRA was executed to address administration and financial responsibilities for the SWP Contract. Because the current Contract runs to 2038, the proposed amendment to the TFRA makes it clear that the provisions of the TFRA continue past 2038 should the Board approve Amendment 20. One concern staff has raised on contract extension with DWR and with CCWA is how it impacts Article 34(a) post-Proposition 13 limitations. DWR has filed a validation action on the Contract Extension which is currently pending in the Sacramento Superior Court. The Contract Extension Amendment provides that if it is determined by a court of competent jurisdiction determines that nay part of the amendment is invalid or unenforceable then the amendment will be of no force and effect unless waived in writing by DWR and 15 SWP Contractors.

Amendment 21 (Water Management Amendment)

In a letter dated October 28, 2020, CCWA requested that your Board execute Amendment 21 (Attachment D). This amendment (Attachment E) to the SWP Contract was negotiated by the State and various SWP Contractors, would allow individual contractors the ability to sell and buy water without a commitment to return or receive water in exchange.

The current State Water Contract does not allow outright sales of water, but only allows exchanges, with repayment of water in future water years. These exchanges are allowed to be unbalanced, with a higher repayment in future years in order to receive urgently needed water in the short term. This exchange mechanism is not well defined in the current contract and is used infrequently. Amendment 21 clarifies existing exchange practices, provides for single and multi-year water transfers with compensation to be determined by the participants, and allows for transfers of water stored outside of a contractor's service area. The amendment also requires that a selling agency confirm to the State that the transfer not cause harm to the SWP and other contractors, and that DWR approve the transfer and ensure that these conditions are met. A more detailed technical explanation of the mechanisms included in Amendment 21 are included in the attached CCWA Request Letter (Attachment D).

Amendment 21 has the potential to provide benefits to CCWA members. The flexibility to acquire water without the need to repay a water debt in future years could be beneficial to an agency in urgent need of additional supplies. Similarly, a SWP Contractor with excess supply in a given year could offset costs by selling unneeded water. Participating in the water market could provide CCWA members flexibility in managing their supply portfolios.

However, the amendment raises several policy issues. When the SWP was extended to Santa Barbara County, the entire County tax base paid for capital costs until 1986, in recognition that the entire County required a stable external supply of water for residents and businesses. If water is sold out of the County, a given purveyor may benefit financially, but the regional water supply situation may deteriorate. The County as a whole has a distinct financial investment in the SWP and as such should a sale be proposed, how the County's investment is addressed is needed. To this end your Board may wish to direct staff to negotiate a revenue sharing agreement with CCWA so that the District to can recoup its costs in revenue from any sales of SWP water to entities outside of the County.

Currently, within CCWA if a member wishes to exchange water, other CCWA members have a right of first refusal before the water is offered outside of the County. There are currently no such provisions on the water transfers provided for in Amendment 21, and CCWA has not yet developed administrative procedures to ensure that local needs are met first.

The SWP was originally signed in 1963 to provide for secure water supplies for the County. In 1991, following a significant drought, the voters in several areas of the County voted to begin importing SWP Supplies. In addition, overall groundwater conditions in the County were cited as another need for the SWP. In the most recent drought, the SWP was an important supply and several exchanges were executed to increase deliveries to the County. The drought also highlighted concerns on the overall water supply in the County.

If your Board approves Amendment 21, it should be noted that all sales of Santa Barbara County SWP water to entities outside the County would need approval by the County Flood Control District as the SWP Contractor and as such any proposed sales or purchase would come back to your Board for approval.

Background:

The District entered into a contract with DWR in 1963 to receive an allocation of up to 57,700 acre-feet per year (AFY) of water from the State Water Project. The District then began making annual payments to DWR for its share of the capital costs of the project.

The SWP is an important element of the County's overall water supplies and deliveries of SWP water helps offset use/overuse of groundwater and compliments other local supplies. Delivery of high quality water (low in Total Dissolved Solids) provides additional benefits to water purveyors as well. As other existing supplies, such as surface reservoirs, are now and will continue to deliver far less water than originally developed. For example, the Cachuma Project now has shown its inability to provide its original planned allocations through a drought period.

In the early 1980s, after an unsuccessful bond election to pay for local facilities, several water purveyors opted to assume responsibility for payment for 45,486 AFY of the District's allocation through a series of Water Supply Retention Agreements (WSRAs). Up until approximately 1986 the District made all payments to DWR for the capital costs of the SWP.

In 1991, CCWA was formed by various water purveyors to manage the delivery of State Water to Santa Barbara County. Under the management of CCWA, the Coastal Branch connection to the SWP was studied, as required by CEQA, and completed in 1995 with a design capacity of 39,078 AFY. Since then, CCWA has operated the Coastal Branch and distributed water to its member water purveyors. In addition, with the execution of the Transfer of Financial Responsibility Agreement (TFRA) with the District, CCWA has been responsible for fiscal matters relating to State Water, including all the payments to DWR and protecting the District in the event that one or more of its member units fail to meet its financial obligations. To date neither CCWA nor the District have ever defaulted on SWP payments.

Fiscal and Facilities Impacts:

Budgeted: Yes

Narrative:

Management of the water supply agreements are ongoing programs and staff time is included every year in the budget in the Water Resources Division of the Public Works Department. However, pursuant to the TFRA costs relating to management of the SWP are reimbursed by CCWA.

Special Instructions:

Direct the Clerk of the Board to email the minute order of these actions to clopez@cosbpw.net.

Attachments:

- Attachment A - CCWA Request for Amendment 20
- Attachment B - Copy of SWP Contract Amendment No. 20 (FINAL)
- Attachment C - Draft First Amendment to the Transfer of Financial Responsibility Agreement
- Attachment D - CCWA Request for Amendment No. 21
- Attachment E - Copy of SWP Contract Amendment No. 21 (FINAL)
- Attachment F - EIR for SWP Amendment No. 20
- Attachment G - EIR for SWP Amendment No. 21

State Water Project Contract Amendments

Agenda Date: January 26, 2021

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Authored by:

Matt Young, Water Agency Manager, (805) 568-3546

cc: Jeff Frapwell, Assistant CEO



January 28, 2021

Eric Friedman
Chairman

Ed Andrisek
Vice Chairman

Ray A. Stokes
Executive Director

Brownstein Hyatt
Farber Schreck
General Counsel

Member Agencies

City of Buellton

Carpinteria Valley
Water District

City of Guadalupe

City of Santa Barbara

City of Santa Maria

Goleta Water District

Montecito Water District

Santa Ynez River Water
Conservation District,
Improvement District #1

Associate Member

La Cumbre Mutual
Water Company

Honorable Gregg Hart, Chair and
Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Santa Barbara Flood Control and Water Conservation District's Proposed
Conditions of Approval of Amendment No. 21 (the Water Management
Amendment) to the State Water Contract

Dear Chair Hart and Members of the Board of Supervisors:

On October 28, 2020, Ray Stokes, Executive Director of the Central Coast Water Authority (CCWA), pursuant to the Transfer of Financial Responsibility Agreement, requested that the Santa Barbara County Flood Control and Water Conservation District (District) execute Amendment No. 21 (the Water Management Amendment) to the State Water Contract on behalf of CCWA. Amendment No. 21 is anticipated to become effective on January 31, 2021. Accordingly, the District's failure to execute Amendment No. 21 as soon as possible jeopardizes CCWA's right to participate in the amendment.

District staff's January 21, 2021 Agenda Letter to you, the Santa Barbara County Board of Supervisors (Board), recommends that the Board, acting in its capacity as the governing board of the District, approve and authorize the Public Works Director to "negotiate a revenue sharing and water sales agreement with CCWA as a contingency for approval of Amendment No. 21," and "to return to the Board with both the revenue sharing and water sales agreement and Amendment No. 21 for approval." To date, CCWA has not received any proposed "revenue sharing and water sales agreement." However, based on CCWA staff's conversations with District staff, and the January 21, 2021 Agenda Letter, it appears that the District wishes to recoup the District's capital costs paid to retain State Water until 1986.

CCWA objects to the District's imposition of conditions on its execution of Amendment No. 21 and CCWA declines to negotiate a "revenue sharing and water sales agreement."

By seeking to impose conditions on its execution of Amendment No. 21, the District is reneging on its agreements and seeking to expand its oversight of the State Water Contract. The immediate effect of this will be to jeopardize the participants' access to the operational and financial benefits of Amendment No. 21 and potentially to State Water itself, irreparably harm and damage CCWA and its participants, impair CCWA's and its participants' rights under their respective agreements with the District, and to hold the ratepayers hostage to the whims of the District.

First, the District has no authority to impose conditions on its execution of Amendment No. 21. At the time the Transfer of Financial Responsibility Agreement was executed, the State Water Contract had already been amended 14 times, and future additional amendments were fully anticipated. The District and CCWA expressly agreed that the District's financial obligations under the State Water Contract, as that contract had been amended, "and as it may be amended and supplemented from time to time" in the future, would be completely and fully assumed and satisfied by CCWA.¹ Accordingly, Amendment No. 21, which supplements the State Water Contract by creating new water management tools and enhanced flexibility to respond to changes in hydrology and increasing constraints on the operation of the State Water Project, among other things, is squarely within the scope of the Transfer of Financial Responsibility Agreement.

Second, to the extent Staff understands the "revenue sharing" concept, it would impose a fee on every transfer of State Water out of the County that a CCWA participant proposes pursuant to the Water Management Amendment. Such a fee that would be passed directly on to the participant, and in turn to its ratepayers, making the cost of State Water Project water even more expensive for the ratepayers and/or negating any potential financial benefits of the sale in the first place. For example, in a year in which a CCWA participant has determined that it has adequate supplies to meet its customers' needs, and that it can better manage the overall costs of its water supply portfolio by transferring a portion of its supply to a third party, the District's fee could make the proposed transfer infeasible, in which case the excess water supply would be wasted if CCWA and/or the participant does not have sufficient storage capacity. District staff has cited no authority for its "revenue sharing" proposal—it is CCWA's position that there is none—and has provided no information about the use of the fee.

Lastly, Staff is concerned that if the District does not execute Amendment No. 21, at the latest by March 31, 2021, CCWA risks losing the right to participate in Amendment No. 21 entirely. Water year 2020-21 is anticipated to be a critically dry year, much like 2014 when some of CCWA's participants experienced severe water supply shortages. It is CCWA staff's belief that when the Water Management Amendment becomes effective on January 31, 2021, most State Water Contractors will prefer to negotiate one-way transfers (sales), as opposed to exchanges which require a return of a portion of the water exchanged and are limited in the amount of money the exchanging Contractor may receive. If the transfer provisions included in the Water Management Amendment are not available to CCWA, its participants may not be able to get access to supplemental water supplies when they need them.

On behalf of CCWA, I urge the Board to authorize the District to execute Amendment No. 21 (the Water Management Amendment) on February 2, 2020 **without conditions**.

If you have any questions or require any additional information, please let me know.

Respectfully,

Eric Friedman, Chair of the Board of Directors

cc: CCWA Board of Directors
Ed Andrisek, Vice Chair, City of Buellton
Farfalla Borah, Goleta Water District
Jeff Clay, Santa Ynez River Water Conservation District, ID #1
Shirley Johnson, Carpinteria Valley Water District

¹ Transfer of Financial Responsibility Agreement, Recitals A and J.

Gina Rubalcaba, City of Guadalupe
Etta Waterfield, City of Santa Maria
Floyd Wicks, Montecito Water District
CCWA Operating Committee
Mike Alvarado, La Cumbre Mutual Water Company
Paeter Garcia, Santa Ynez River Water Conservation District, ID #1
Rose Hess, City of Buellton
Robert McDonald, Carpinteria Valley Water District
John McInnes, Goleta Water District
Pernell Rush, Vandenberg AFB 30 CES/CEOEO 1028
Shad Springer, City of Santa Maria
Shannon Sweeney, City of Guadalupe
Cathy Taylor, City of Santa Barbara
Nick Turner, Montecito Water District
Matt van der Linden, City of Solvang
Mona Miyasato, County Executive Officer, Santa Barbara County
Matt Young, Water Agency Manager, Santa Barbara County FC&WCD
Tom Fayram, Deputy Director, Santa Barbara County Public Works Dept.
Johannah Hartley, Deputy County Counsel, Santa Barbara County