

ORIGINAL

TRANSFER OF FINANCIAL RESPONSIBILITY AGREEMENT

This Agreement is dated NOVEMBER 12, 1991 and is by and between the Central Coast Water Authority, a California joint exercise of powers agency (hereafter "CCWA"), and the Santa Barbara County Flood Control and Water Conservation District (hereafter "District").

Recitals

A. On February 26, 1963, the District and the State of California Department of Water Resources (hereinafter "DWR" or "State") entered into an agreement entitled "Water Supply Contract" regarding the District's participation in the State Water Project. That agreement, as amended to the date hereof, and as it may be amended and supplemented from time to time, is referred to herein as the "SWP Contract."

B. At various times between 1983 and 1986, the District assigned its rights under the SWP Contract to cities, public water districts, private water utilities, mutual water companies and others by means of a series of agreements, each of which is entitled "Water Supply Retention Agreement." Each of those agreements, as amended to the date hereof, is referred to herein as a "WSRA."

C. DWR has approved the WSRA's in a letter to the District dated August 13, 1991, but specified that the WSRA's, the creation of CCWA, and the WSAs "may not in any way be construed as an assignment obligating the [DWR] to the local water purveyors or their agency, or giving the local purveyors or their agency any rights to proceed directly against [DWR], or relieving the District of any of its obligations to [DWR] under the water supply contract." The District and CCWA are continuing their efforts to secure from DWR an agreement to release the District from its obligations under the SWP Contract to the extent those obligations have been assumed by CCWA.

D. A number of the entities which entered into a WSRA with the District have agreed to organize themselves into the CCWA, an agency organized under Government Code section 6500 et seq., for the purpose of exercising their rights under their respective WSRA's. Each public entity participating in CCWA has executed a Joint Exercise of Powers Agreement ("JPA Agreement") with CCWA, and is referred to herein as a "CCWA Member."

E. CCWA was formed for the purpose of planning, designing, financing, constructing, and operating the facilities needed to deliver water from the State Water Project to the various entities entitled to receive that water in Santa Barbara County, and to collect funds from each such entity for that entity's share of payments due to the State of California under the SWP Contract. Each entity that will receive that water (hereinafter referred to as a "CCWA Contractor") has executed, or will execute, a Water Supply Agreement (hereinafter "WSA") with CCWA under which the CCWA Contractor assigns its rights under its WSA to CCWA and receives from CCWA an agreement to deliver water on specified terms and conditions.

F. The WSAs entered into by CCWA and the CCWA Contractors contain provisions intended to ensure that the District will be fully and completely reimbursed by the CCWA for all of its costs, liabilities and obligations in connection with the implementation of the SWP Contract as to the CCWA Contractors. These provisions, and their effects, include:

1. 125% Coverage Rate Covenants. Each public agency CCWA Member or Associate Member which sells water to customers must impose rates sufficient to yield revenues (after payment of operation and maintenance expenses) equal to at least 125% of the amounts due for that year under the WSA, including the District's administrative costs, by that Contractor. That obligation is absolute, and is not excused if, for example, a Contractor experiences a loss in revenue due to conservation; if necessary, a Contractor may have to impose a fixed minimum rate on its ratepayers to discharge its obligation to make payments. (WSA, Sec. 20(a)).

2. Cross Guarantees ("Step Up Provisions"). Each Contractor must stand behind the promises of the other Contractors in either the North County or the South Coast. If a Contractor defaults, the other Contractors in the region are obligated to take an increased level of water deliveries and to pay for the additional water, up to a limit of 125% of the payments otherwise made by the stepping-up Contractor. (WSA, Sec. 16(d)).

3. Take or Pay. The Contractors' obligation to make payments is not relieved in the event that water is not delivered to them, irrespective of the reason. (WSA, Sec. 5(d)).

4. Prohibition on Sale of Assets. A Contractor may not sell any portion of its facilities if it would materially impair its ability to comply with the 125% rate covenant. (WSA, Sec. 20(b)).

5. No Competitive Facilities. A Contractor may not build or operate facilities which compete with the SWP facilities, and which might draw off revenues which otherwise would be realized from sale of SWP water. (WSA, Sec. 20(c)).

6. Remedies in Case of Default. The CCWA is authorized to enforce the obligations of the Contractors to make payments through a number of mechanisms. First, in case of default, deliveries to the defaulting Contractor are stopped and the water is sold to another Contractor who wishes to purchase it. Second, if the default persists, the entitlement for the defaulting Contractor can be transferred to another Contractor which would then be obligated to reestablish the income stream to pay the District for its obligation under the SWP Contract and bonded indebtedness. Third, CCWA can bring a lawsuit against the defaulting Contractor to require that payment be made, including a lawsuit requiring that rates be imposed and collected to meet the contractual obligations. (WSA, Sec. 16).

G. On April 10, 1991, the City of Santa Maria gave to all interested parties Notice of Intention to Request Construction of Designated Facilities. This Notice, given pursuant to Article 3 of its WSRAs, commenced a six month period during which other potential State Water Project participants would be required to identify themselves. Each CCWA Contractor has delivered to the interested parties its Response to the Santa Maria Notice of Intention (hereinafter "Response to NOI"), thereby identifying itself as a potential participant in the project.

H. The WSRAs provide that the potential participants in the State Water Project will have up to three years to determine the amount of water they wish to contract to receive from the project, and to communicate the size of the project to be constructed to DWR through the District. In their respective Responses to NOI, the CCWA Contractors have agreed to shorten that time for determination to November 1, 1991 in order to expedite the sizing decision and to avoid incurring additional construction costs which would be caused by delay of the project beyond January 1, 1992. In an action taken on October 24, 1991, CCWA approved a resolution extending the date of determination to November 14, 1991. One purpose of this

Agreement is to establish a mechanism to expedite the transmission of decisions, determinations, requests and other documents from CCWA to DWR in order to avoid delay in commencement and completion of the project, and to avoid incurring the aforesaid additional expense.

I. Each WSRA provides, in Article 5(a)(3), that the entities signing the WSRA and the District will enter into "appropriate agreements" under which those entities will assume all additional costs for constructing the Coastal Aqueduct and other facilities to be constructed by the State pursuant to the SWP Contract (hereafter the "Coastal Aqueduct").

J. A principal purpose of this Agreement is to ensure that the District's financial obligations under the SWP Contract attributable to a CCWA Contractor will be completely and fully assumed and satisfied by CCWA, and that the District will be fully and completely reimbursed by the CCWA for all of its costs, liabilities and obligations in connection with implementation of the SWP Contract as to each CCWA Contractor. The terms of this Agreement shall therefore be interpreted in order to achieve that purpose, whenever interpretation is required.

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. Term.

This Agreement shall be in effect for the same term as the SWP Contract pursuant to Articles II and IV thereof, and shall terminate upon the later of termination of the SWP Contract or termination of all liability of the District thereunder.

2. Payments by CCWA to District.

A. **Obligation to Make Payments.** CCWA agrees to pay the District, at the times set forth in subsection B of this Section 2, the amounts required to be paid by the District to the State of California pursuant to the SWP Contract with respect to the rights held by CCWA under or in connection with the SWP Contract and the various WSRAs, plus an amount equal to the District's costs of discharging its duties under the SWP Contract to the extent those costs (including overhead costs) have been actually incurred and are reasonable in amount ("Administrative Costs").

B. **Time for Payments.** Payments required by this Section 2, except for Administrative Costs, shall be made by CCWA to the District no later than thirty (30) days prior to the date such amounts are due to be paid by the District to the State under the SWP Contract. Upon receipt of each such

payment from CCWA, the District shall promptly remit said sums in full to the State. Payments by CCWA to the District for Administrative Costs which have been incurred by the District shall be made within thirty (30) days after CCWA receives a statement for such costs. The District shall provide such detail as CCWA may reasonably request and shall maintain and preserve records sufficient to enable CCWA to conduct periodic audits of Administrative Costs billed to CCWA, and CCWA may undertake such audits in such manner as it may reasonably request.

C. **Interest on Late Payments.** Any funds required to be paid by CCWA to the District pursuant to the terms hereof which remain unpaid after they become due and payable shall accrue interest until the date paid at the higher of the following rates: (i) ten percent (10%) per annum, or (ii) the average interest earned by all funds held by the County of Santa Barbara in the preceding month. At the beginning of each month during which interest is owed hereunder, the interest rate shall be adjusted so that this provision is complied with. CCWA hereby agrees to pay such interest.

D. **SWP Contract Provisions.** CCWA agrees to be bound by all the terms and conditions contained in the SWP Contract with respect to the rights held by CCWA under or in connection with the SWP Contract, the WSRA of each entity which has executed a WSA with CCWA, and the various WSAs. Without limiting the foregoing, CCWA specifically acknowledges that:

(1) **Take or Pay Provision.** The failure or refusal of CCWA, or of any CCWA Contractors, to accept delivery of water delivered through the Coastal Aqueduct and to which it is entitled shall in no way relieve CCWA of its obligation to make payments to the District as provided for in this contract.

(2) **Delivery Shortages.** The failure of the State to deliver all water required to be delivered under the SWP Contract shall in no way relieve CCWA of its obligation to make payments to the District pursuant to this agreement.

(3) **Liability for Shortages.** Neither the District nor the County of Santa Barbara, nor any of their officers, agents or employees, shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to the CCWA or the Contractors under this Agreement caused by non-availability of water to the District under the State Water Supply contract or caused by drought, operation of area of origin statutes, or any other cause beyond its control.

E. **Covenant to Raise Funds.** CCWA agrees to take all actions authorized under the JPA Agreement and the WSAs to raise the funds required to satisfy its obligations to the District under this agreement. Such action shall include, but not be limited to, enforcement by CCWA of any provisions of WSAs requiring that CCWA Contractors increase their payments to CCWA in order to assure that a failure to pay CCWA by a defaulting CCWA Contractor does not impair CCWA's ability to make payments to the District hereunder.

F. **WSA Amendments; District's Rights.** CCWA shall not agree to any amendment or rescission of Section 5, 16, 20(a), (b) and (c), 22 and 23(c) of a WSA without prior approval of the District, which approval shall (i) not be unreasonably withheld, and (ii) be deemed given unless the District's objection and specific reason therefor is made in writing to CCWA within thirty days after District is notified of the proposed amendment. Additionally, CCWA shall not amend or rescind any other provision of a WSA if doing so would materially adversely effect the District's interest in receiving payments or enforcing its rights under this agreement, unless the District has approved the amendment, which approval cannot be unreasonably withheld.

G. **Priority of Payments.** CCWA agrees that all obligations to the District under this agreement shall be payable prior to CCWA's obligation to make payments with respect to bonds, notes, or other obligations issued by CCWA to finance the Mission Hills and Santa Ynez Extensions and water treatment facilities, and any other capital improvements. CCWA further agrees to include a provision so stating in the appropriate documents relating to any such financing transactions, including bond trust indentures. CCWA will not pledge or assign to any third party any payments due to CCWA from any CCWA Contractor, including any trustee for CCWA bonds, unless such pledge or assignment is consistent with the District's priority of payment under this paragraph.

3. Default; Remedies.

A. **Against CCWA.** In the event of default or a failure by CCWA to make any payments provided for hereunder, CCWA acknowledges that the District may specifically enforce the obligations of this agreement by either an action for damages or equitable proceedings, or both, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys fees and costs. The use of any remedy specified herein for the enforcement of this agreement is not exclusive, and shall not deprive the party using that remedy of, or limit the application of, any other remedy provided by law.

B. **Against WSA Contractors.** CCWA expressly warrants that each WSA was intended to benefit the District, and that the District is an intended beneficiary of each such WSA. Accordingly, to the extent CCWA does not make any or all of the payments to the District as required hereunder, and to the extent that the failure of CCWA to make such payments is caused by the failure of any Contractor to fulfill any obligations of payment to CCWA, the District shall have the right, as a third party beneficiary, to enforce the obligation of the WSA of individual defaulting Contractors to make payments in any legal or equitable action which it deems appropriate. The District shall have an identical right of enforcement in the event that (i) it reasonably determines that a default by a Contractor is likely to cause a default by CCWA of its obligations to the district within the Fiscal Year, as defined in the WSA, and (ii) it has provided to CCWA at least thirty (30) days notice of its intention to undertake such enforcement action.

The District's rights hereunder shall include the right to bring an action to enforce its rights hereunder against a defaulting Contractor in the name of the CCWA in the event a court of competent jurisdiction holds that the District is not entitled to enforce its rights in its own name hereunder.

The District shall exercise its rights hereunder in good faith, and CCWA shall provide all reasonable assistance to the District with respect to any action brought hereunder. The remedies specified in this paragraph are in addition to any other remedies the District may have against the defaulting contractor or against CCWA.

4. CCWA Records

CCWA agrees that all of its records will be available for inspection and copying on request by the District. District agrees to promptly deliver to CCWA a true and correct copy of each invoice, bill, correspondence, directive or other document received by District with respect to the SWP Contract, whether from DWR or otherwise.

5. Agreement to Expedite Action; Delegation of Responsibility.

The District agrees to promptly transmit to DWR all communications, directions, requests and other documents from CCWA upon receipt of a letter from CCWA requesting such action. The District further agrees to designate an appropriate official for this purpose.

6. Representation at State Water Contractors' Meetings.

In recognition of the fact that CCWA is comprised of entities which have been assigned District's rights under the SWP Contract, District authorizes CCWA to participate in lieu of the District in proceedings of the State Water Contractors, a non-profit mutual benefit corporation comprised of public agencies which have contracted with DWR for deliveries of State Water Project water. However, the District may attend any such meetings as it determines appropriate, and the CCWA shall provide the District, upon request, with copies of any documents and with any significant information received as a result of CCWA's participation.

7. Indemnification and Defense

CCWA shall indemnify and hold harmless the District and the County of Santa Barbara and their agents, officers, and employees from any and all active and passive liability, claims, suits, actions, damages, expenses, and/or causes of action, including jurisdictional and/or other disputes between public or private entities, and including the costs of defending against or investigating any of the foregoing, arising after the date of this Agreement out of (i) CCWA's rights under the various WSAs executed by the CCWA Contractors, (ii) the assignment of certain rights by the CCWA Contractors to CCWA, and (iii) CCWA's exercise or pursuit of the rights assigned it; and (iv) the carrying out of obligations relating to those rights under the SWP Contract by the District or CCWA pursuant to this Agreement, and shall further indemnify and hold harmless District from and against all costs, attorney fees, expenses, and liabilities incurred as a result of the assignment or exercise of such rights; provided, however, CCWA shall not be liable for the negligent acts of the District, its agents, officers or employees. In addition, CCWA shall, at the request of the District or the County of Santa Barbara, provide representation to District and the County of Santa Barbara and their agents, officers and employees against any such liability, claims, suits, actions, damages and/or causes of action. If, pursuant to the foregoing provisions, CCWA assumes the defense of any claim or other charge against the District or the County of Santa Barbara, CCWA shall employ counsel approved by District and the County of Santa Barbara, which approval shall not be unreasonably withheld, and CCWA shall not settle any such claim or other matter without the prior written consent of District and the County of Santa Barbara.

8. Insurance

CCWA agrees to add the District as an additional insured to any business interruption or casualty insurance policies it obtains pursuant to Section 21 of the WSAs.

9. Integration of All Agreements. CCWA and the District agree to use their best efforts to negotiate, as early as practical, a single integrated agreement incorporating all elements of this agreement, the WSRAs, and other agreements which may exist between the parties.

10. Standard Provisions.

A. Procedures and Notices. Any notice which is required to be given by one party to the other under this agreement shall be considered delivered when it has been deposited, with first class postage prepaid, in the United States mail addressed as follows:

To the District:

Chairman, Board of Directors
Santa Barbara County Flood Control and
Water Conservation District
123 East Anapamu Street
Santa Barbara, CA 93101

To CCWA:

Chairman, Board of Directors
Central Coast Water Authority
3301 Laurel Canyon Road
Santa Barbara, CA 93105

B. Binding on Successors and Assigns.

This agreement shall be binding on the successors and assigns of the parties.

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C. Inconsistency with WSRAs. In the event of any conflict or inconsistency between this agreement and a WSRA with any CCWA Contractor or with any WSA, the provisions of this agreement shall control.

IN WITNESS WHEREOF, THIS AGREEMENT IS MADE AS OF THE DATE FIRST ABOVE WRITTEN.

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Thomas A. Lopez

Chairman, Board of Directors

Attest:

Robert Cohen

Secretary

CENTRAL COAST WATER AUTHORITY

Leotis Pennell

Chairman, Board of Directors

Attest:

Ran Signor

Secretary

APPROVED AS TO FORM:

DAVID NAWI
COUNTY COUNSEL

By:

Manjula Banhatt