



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. 20 (the Contract Extension Amendment) to the State Water Contract

SUMMARY:

As a condition of executing Amendment No. 20 (the Contract Extension Amendment), the Santa Barbara County Flood Control and Water Conservation District (District) has proposed amendment of the 1991 Transfer of Financial Responsibility Agreement. A copy of the District's January 21, 2021 Agenda Letter and the proposed First Amendment to the Transfer of Financial Responsibility Agreement (First Amendment) are attached to this report.

RECOMMENDED ACTION:

Staff recommends that the Board of Directors:

1. decline to amend the Transfer of Financial Responsibility Agreement as proposed as a condition of the District's execution of Amendment No. 20; 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 amend the Transfer of Financial Responsibility Agreement as a condition of the District's execution of Amendment No. 20, and requesting that the Board of Supervisors direct the District to execute Amendment No. 20 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 January 24, 2019, this Board unanimously approved Amendment No. 20 to the State Water Contract (the Contract Extension Amendment).² Later, on November 3, 2020, CCWA requested that Board of Supervisors, acting in its capacity as the governing board of the District, formally approve assignment of the State Water Contract from the District to CCWA.³ Alternatively, in the event the Board elected not to approve assignment of the State Water Contract, pursuant to the Transfer of Financial Responsibility Agreement, CCWA requested that the District execute Amendment No. 20 to the State Water Contract on behalf of CCWA.

Subsequently, by emails dated December 21, 2020 and January 14, 2021, County Counsel transmitted to CCWA's General Counsel the District's proposed First Amendment as a condition of executing Amendment No. 20. District staff's January 21, 2021 Agenda Letter to the Board of Supervisors recommends that the Board approve and authorize the Public Works Director to execute Amendment No. 20 "contingent upon full approval and execution of the First Amendment."

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

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. 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 it execution of Amendment No. 20 (and also Amendment No. 21).

The majority of the proposed First Amendment simply restates terms already clearly stated in the Transfer of Financial Responsibility Agreement and therefore is unnecessary. Specifically, the proposed First Amendment would amend the term of the Transfer of Financial Responsibility Agreement to provide: "This Agreement shall be in effect for the same term as the SWP Contract, as may be extended or amended" Yet the Transfer of Financial Responsibility already provides: "This Agreement shall be in effect for the same term as the SWP Contract," which term is previously defined as the "Water Supply Contract . . . as it may be amended and supplemented from time to time."

But the proposed First Amendment goes further; it seeks to impose a new obligation on CCWA—that CCWA levy a property tax to satisfy its obligations under the Transfer of Financial Responsibility. In relevant part, the proposed First Amendment provides:

² The benefits of Amendment No. 20, and the risks of not executing Amendment No. 20, are detailed in Staff's prior reports.

³ This Board approved and agreed to accept assignment of the State Water Contract on October 26, 2017. (See Resolution No. 17-04.)

E. Covenant to Raise Funds. CCWA agrees to take all actions authorized under the JPA Agreement, as amended, and the WSAs to raise the funds required to satisfy its obligations to the District under this agreement. Such actions 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, and imposing a tax.

(Emphasis added.) CCWA has no power to levy a property tax, except as the contracting party to the State Water Contract, which it is not presently because the State Water Contract has not been assigned to it. CCWA's Joint Exercise of Powers Agreement, as amended, provides:

Powers. The Authority shall have the power in its own name to do any of the following: To contract with the DWR for delivery of water from the State Water Project, along with all necessary and incidental powers as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract, including, but not limited to, the right to levy a tax or assessment on all properties within the jurisdiction of the Authority not exempt from taxation, as mandated by the California Water Code and the State Water Supply Contract.

(Joint Exercise of Powers Agreement, § 5(P) (emphasis added).) In fact, the State Water Contract requires the District, as the contracting party, not CCWA, to levy a property tax upon all property within the County if it is unable to satisfy its financial obligations.

For these reasons, it is Staff's conclusion that no amendment to the Transfer of Financial Responsibility Agreement is required, appropriate or feasible.

To date, 20 of the 29 State Water Contractors have executed the amendment. To ensure CCWA's participation in the amendment, the District should execute Amendment No. 20 as soon as possible.

ATTACHMENTS:

1. District's January 26, 2021 Agenda Letter
2. District's proposed First Amendment to 1991 Transfer of Financial Responsibility Agreement
3. Draft proposed letter from CCWA Board Chair to County Board of Supervisors



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

FIRST AMENDMENT TO TRANSFER OF FINANCIAL RESPONSIBILITY AGREEMENT

THE TRANSFER OF FINANCIAL RESPONSIBILITY AGREEMENT (hereinafter TFRA) between the Santa Barbara County Flood Control and Water Conservation District, a political subdivision of the State of California (hereafter District), and the Central Coast Water Authority, a joint powers agency (hereafter CCWA), is hereby amended as follows:

RECITALS

WHEREAS, the District and the California Department of Water Resources (DWR) entered into a Water Supply Contract (SWP Contract) for the State Water Project (SWP) in 1963;

WHEREAS, based on the SWP Contract, the District and CCWA entered into the Transfer of Financial Responsibility Agreement (TFRA) to provide for the continued delivery of State Water Project water to CCWA on the terms and conditions of the WSC;

WHEREAS, the SWP Contract currently expires on February 26, 2038, and DWR has proposed an amendment, Amendment 20, to the SWP Contract to extend the term to December 31, 2085 or the period ending with the latest maturity date of any SWP bond;

WHEREAS, CCWA supports Amendment 20 and has requested the District execute Amendment 20 to the SWP Contract with DWR; and

WHEREAS, this First Amendment to the Agreement seeks to extend the Agreement to match the term of the SWP Contract, as extended, and clarify that CCWA remains responsible for compliance with terms of the SWP Contract, as may be amended, for the extended term and shall continue to indemnify the District as provided in the TFRA for the extended term.

NOW, THEREFORE, it is hereby mutually agreed by the parties as follows:

A. Paragraph 1 of the TFRA is amended to read as follows:

1. Term. This Agreement shall be in effect for the same term as the SWP Contract, as may be extended or amended, 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.

B. Paragraph 2, E of the TFRA is amended to read as follows:

- E. Covenant to Raise Funds. CCWA agrees to take all actions authorized under the JPA Agreement, as amended, and the WSAs to raise the funds required to satisfy its obligations to the District under this agreement. Such actions 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, and imposing a tax.

C. In all other respects, the TFRA remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the TFRA to be effective on the date executed by DISTRICT.

ATTEST:

By: _____

CENTRAL COAST WATER AUTHORITY:

By: _____
Chair, Board of Directors

Date _____

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT:

By: _____

Date _____

APPROVED AS TO FORM:
Ray Aromatorio, ARM, AIC
Risk Program Administrator

By: _____

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

By: _____
Deputy

APPROVED AS TO ACCOUNTING FORM:
Betsy Schaffer, CPA
Auditor-Controller

By: _____
Deputy



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. 20 (the Contract Extension
Amendment) to the State Water Contract

Dear Chair Hart and Members of the Board of Supervisors:

As you recall, on November 3, 2020, on behalf of the Central Coast Water Authority (CCWA), I wrote to request that the Santa Barbara County Board of Supervisors (Board), acting in its capacity as the governing board of the Santa Barbara County Flood Control and Water Conservation District (District), formally approve assignment of the State Water Contract from the District to CCWA. Alternatively, in the event the Board elected not to approve assignment of the State Water Contract, pursuant to the Transfer of Financial Responsibility Agreement, I requested that the Board authorize the District to execute Amendment No. 20 (the Contract Extension Amendment) to the State Water Contract on behalf of CCWA.

Subsequently, by emails dated December 21, 2020 and January 14, 2021, County Counsel transmitted to CCWA's General Counsel the District's proposed First Amendment to the 1991 Transfer of Financial Responsibility Agreement (First Amendment) as a condition of the District's execution of the Contract Extension Amendment. District staff's January 21, 2021 Agenda Letter to you recommends that the Board approve and authorize the Public Works Director to execute Amendment No. 20 "contingent upon full approval and execution of the First Amendment."

CCWA objects to the District's imposition of conditions on its execution of Amendment No. 20 and CCWA declines to execute the proposed First Amendment.

By seeking to impose conditions on its execution of Amendment No. 20, 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. 20, irreparably harm and damage CCWA and its participants, and impair CCWA's and its participants' rights under their respective agreements with the District.

First, the District has no authority to impose conditions on its execution of Amendment No. 20. 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. Accordingly, Amendment No. 20 is squarely within the scope of the Transfer of Financial Responsibility Agreement.

Second, the District's proposed First Amendment is both unnecessary and infeasible. The District's proposed First Amendment seeks to amend the term of the Transfer of Financial Responsibility Agreement by adding the following underlined phrase:

Term. This Agreement shall be in effect for the same term as the SWP Contract, as may be extended or amended, 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.

Given that the term "SWP Contract" is already defined as the State Water Contract, "as it may be amended and supplemented from time to time," it is clear that the Transfer of Financial Responsibility Agreement has the same term as the State Water Contract, whatever that may be.¹ Therefore, the District's proposed amendment to the term is redundant and unnecessary.

But the proposed First Amendment goes further; it also seeks to impose a new obligation on CCWA—that CCWA levy a property tax to satisfy its obligations under the Transfer of Financial Responsibility. In relevant part, the proposed First Amendment provides:

E. Covenant to Raise Funds. CCWA agrees to take all actions authorized under the JPA Agreement, as amended, and the WSAs to raise the funds required to satisfy its obligations to the District under this agreement. Such actions 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, and imposing a tax.

(Emphasis added.) CCWA has no power to levy a property tax, except as the contracting party to the State Water Contract, which it is not presently. CCWA's Joint Exercise of Powers Agreement, as amended, provides:

Powers. The Authority shall have the power in its own name to do any of the following: To contract with the DWR for delivery of water from the State Water Project, along with all necessary and incidental powers as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract, including, but not limited to, the right to levy a tax or assessment on all properties within the jurisdiction of the Authority not

¹ Transfer of Financial Responsibility Agreement, REcita A; see also § 1.

exempt from taxation, as mandated by the California Water Code and the State Water Supply Contract.

(Joint Exercise of Powers Agreement, § 5(P) (emphasis added).) Accordingly, CCWA cannot accept the District's proposed conditions. Moreover, the State Water Contract requires the District, as the contracting party, to levy a property tax upon all property within the County if it is unable to satisfy its financial obligations.² If the District wishes to be relieved of this obligation, it should assign the State Water Contract to CCWA.³ For these reasons, The District's proposed First Amendment is neither required nor feasible.

Lastly, the District's failure to execute Amendment No. 20 will result in significant financial harm to CCWA and its participants. For example, Amendment No. 20 increases the maximum "rate management credits" allowable under the State Water Contract. As the third highest payor, CCWA's share of the increase is projected to be approximately \$520,000 per year, or roughly \$7.8 million between 2020 and 2035. But if Amendment No. 20 is not executed, CCWA will not be entitled to these credits.

On behalf of CCWA, I urge the Board to authorize the District to execute Amendment No. 20 (the Contract Extension Amendment) on February 2, 2021 **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
Ariston Julian, 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

² State Water Contract, Article 34.

³ In 1991, the District expressed its intention to work with CCWA to obtain DWR's approval of a full assignment of the State Water Contract from the District to CCWA. In 2017, CCWA's Board of Directors *unanimously* agreed to accept assignment of the State Water Contract and to release the District from all liability for it. And in 2018, CCWA secured DWR's approval for assignment. Yet to date, the Board has refused to consider the matter.