

**Central Coast Water Authority**

**ADMINISTRATIVE RULES FOR THE  
TRANSFER OR EXCHANGE OF WATER**

Adopted April 25, 2024

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## I. INTRODUCTION AND BACKGROUND

The State Water Supply Contract (**SWP Contract**) between the Department of Water Resources (**DWR**) and Santa Barbara County Flood Control and Water Conservation District (**SBCFCWCD**) provides for the purchase and delivery of water from the State Water Project (**SWP**) to Santa Barbara County. In 1991, CCWA assumed responsibility for the SWP Contract. CCWA has contracted with retail water providers and others within its service area (each a **Participant** and collectively, the **Participants**) pursuant to certain agreements for the delivery of water from the SWP (**Project Water**) to them (each a **Water Supply Agreement**).

Amendment No. 21 to the SWP Contract (the **Water Management Amendment**)<sup>1</sup> allows the parties that contract with DWR (the **SWP Contractors**) for delivery of Project Water to transfer and exchange their Project Water with other SWP Contractors and to utilize the SWP for the conveyance of other water supplies (**Nonproject Water**), with DWR's approval and subject to the terms and conditions set forth in the SWP Contract, as amended by the Water Management Amendment. The Water Management Amendment provides CCWA and the Participants with flexibility to manage their water supplies in a changing environment and to improve water supply reliability.

In conjunction with its approval of the Water Management Amendment, the CCWA Board of Directors adopted Resolution No. 21-01, "A Resolution of the Board of Directors of the Central Coast Water Authority Adopting A Right of First Refusal Rule for Any Transfer of State Water Project Water Outside the County of Santa Barbara Pursuant to the SWP Contract, as Amended by Amendment No. 21 (The Water Management Amendment)." Resolution No. 21-01 requires Participants to offer any Project Water the Participant intends to transfer out of Santa Barbara County to a third party first to the other Participants on the same terms and conditions.<sup>2</sup> Accordingly, Resolution No. 21-01 grants all Participants with a right of first refusal (**ROFR**) to purchase Project Water from the other Participants before it is transferred out of Santa Barbara County to a third party.

In past years, CCWA has administered the Supplemental Water Purchase Program (**SWPP**) to assist Participants with the purchase of additional water supplies (**Supplemental Water**) when Project Water is not sufficient to meet Participant needs. Beginning in 2024, CCWA will maintain the SWPP in all years. Participants may opt in to the SWPP at any time and remain in the program from year to year.

In past years, CCWA has administered the Surplus Water Transfer Program (**SWTP**) to assist Participants with the sale of Project Water in excess of their needs (**Surplus Water**) outside the CCWA service area. Beginning in 2024, CCWA will maintain the SWTP in all years. Participants may opt in to the SWTP at any time and remain in the program from year to year.

These Administrative Rules for the Transfer or Exchange of Water (**Transfer Rules**) set forth CCWA's administrative procedures for implementing the Water Management Amendment, specifically transfers

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<sup>1</sup> The Water Management Amendment is attached as **Appendix B**.

<sup>2</sup> Resolution 21-01 provides: "A Participant may transfer all or any portion of its available SWP Water within its boundaries or to another Participant without approval by the Authority. As may be permitted by the SWP Contract, a Participant may transfer all or any portion of its available SWP Water outside the County of Santa Barbara County with the approval of the Authority, which approval shall not be unreasonably withheld, provided that the Authority shall require that any such proposed transfer outside of the County of Santa Barbara shall be subject to a right of first refusal of all Participants on a pro rata basis to take delivery of such SWP Water on the same terms and conditions."

and exchanges involving CCWA and its Participants, whether pursuant to the SWPP or SWTP, or independent of those programs, such as when an individual Participant engages in a transfer or exchange directly with a third party.

CCWA's Water Transfer Procedures adopted by the Board of Directors in March, 1996 (**1996 Water Transfer Procedures**), which addresses other topics not addressed by these Transfer Rules—namely (i) permanent transfers of a Participant's "**Project Allotment**," as that term is defined in each Water Supply Agreement, pursuant to Section 9 of each Water Supply Agreement, (ii) CCWA's transfer of unutilized Project Allotment pursuant to Section 17 of each Water Supply Agreement, and (iii) the use of unused capacity in CCWA facilities by third parties—remains in effect.<sup>3</sup>

## **II. GENERAL**

### **A. Application and Interpretation**

These Transfer Rules apply to: (i) the transfer (purchase or sale) or exchange of Project Water, (ii) the temporary delivery of Project Water to a groundwater storage program or facility for later use within CCWA's service area, and (iii) the transfer and conveyance of Nonproject Water through the SWP for delivery to CCWA's service area—by Participants and as may be permitted by the SWP Contract.

The purpose of these Transfer Rules is to implement the Water Management Amendment. These Transfer Rules are intended to be consistent with all applicable contracts, including all provisions of the SWP Contract and each Participant's Water Supply Agreement, and are not intended to modify the terms and conditions of any contract. In the event of a conflict between these Transfer Rules and any applicable contract, the terms and conditions of the contract shall prevail.

### **B. Prioritize Needs of Participants**

For the purposes of implementing the Water Management Amendment, CCWA will endeavor to meet the needs of its Participants before transferring available Project Water to third parties. Therefore, if any Participant plans to transfer Project Water, either to acquire additional supplies or to sell surplus supplies, CCWA will attempt to meet the needs of the Participants first, before entering into transactions outside the CCWA service area.

### **C. Compliance With All Obligations and Laws**

All CCWA and Participant transfers and exchanges shall be carried out consistent with all applicable requirements and obligations, including but not limited to these Transfer Rules, the SWP Contract, each Participant's Water Supply Agreement, Resolution No. 2021-01, and all applicable laws, including but not limited to the California Environmental Quality Act (CEQA).

### **D. Notices, Forms and Contracts**

The Executive Director may, in his/her discretion, develop standardized notices, forms and contracts as may be necessary or convenient to implement these Transfer Rules. These Transfer Rules refer to several such notices, forms and contracts by title. However, these titles are for convenience only and may change over time without amendment of these Transfer Rules. Further, CCWA retains all discretion to modify the

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<sup>3</sup> The 1996 Transfer Procedures is attached as **Appendix C**.



terms, conditions and other provisions of such notices, forms and contracts in the future as necessary or convenient.<sup>4</sup>

All notices required by these Transfer Rules shall be in writing and shall be transmitted by electronic mail.

### III. TRANSFERS AND EXCHANGES BETWEEN/AMONG PARTICIPANTS

#### A. Project Water Freely Transferrable Within CCWA

Participants may transfer or exchange Project Water between or among themselves. CCWA is not, and will not be, a party to any agreement that may exist involving such transfers and exchanges and is not responsible for any terms or conditions of such agreement.

CCWA approval is not required for any transfer or exchange between or among Participants, but the Participant that intends to sell Project Water (**Participant Seller**) must communicate the terms and conditions of the transfer or exchange to CCWA so that CCWA may account for and implement the transfer or exchange. Unless otherwise agreed by the Participant Seller and the Participant that intends to purchase Project Water (**Participant Buyer**), CCWA staff will take direction from the Participant Seller.

#### B. Procedures for Transfers of Project Water Between or Among Participants

At any time, a Participant may notify CCWA of its intention to buy or sell Project Water to one or more other Participants.<sup>5</sup> CCWA will maintain a record of this information, distribute it to all Participants at least quarterly (every three months), and endeavor to timely process all such requests within CCWA.

The procedure for communicating and directing CCWA to affect a one-time transfer or exchange between or among Participants is as follows:

- The Participant Seller will complete the **Internal Transfer Form**. This form requires the signatures of both the Participant Seller and Participant Buyer as well as the volume of Project Water planned for transfer and the planned date of the transfer. All requests must be submitted to CCWA a reasonable amount of time before the planned date of transfer.
- CCWA staff will verify that the Participant Seller has the volume of water available to complete the transfer. The verification will be completed by at least two CCWA staff members. One staff to process the request and a second staff member for quality control review.
- CCWA staff will update the **Delivery Status Report** to reflect the transfer, complete CCWA's portion of the Water Transfer Form, and will return the completed Internal Transfer Form to the Participant Seller and Participant Buyer. This will serve as confirmation that the transfer is complete.

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<sup>4</sup> The various forms and contracts referenced in these Transfer Rules are listed in **Appendix A**.

<sup>5</sup> Pursuant to Section 17 of the Water Supply Agreements, Participants may request that CCWA transfer unutilized Project Allotment to other Participants. In such circumstance, the procedures set forth in Section 17 of the Water Supply Agreements and the 1996 Water Transfer Procedures apply.

#### IV. TRANSFERS AND EXCHANGES WITH PARTIES OUTSIDE CCWA'S SERVICE AREA

The SWP Contract permits various transfers and exchanges, such as: balanced and unbalanced exchanges of Project Water between and among SWP Contractors, transfers (purchases and sales) of Project Water between and among SWP Contractors, the transfer and conveyance of Nonproject Water through the SWP, and the temporary delivery and storage of Project Water in a groundwater storage program, project surface conservation facility or nonproject surface storage facility located outside a SWP Contractor's service area.

##### A. Exchanges

CCWA will process all Participant requests for balanced and unbalanced exchanges in favor of the Participant (i.e., a greater quantity of water will be transferred to the Participant during the term of the transaction) using the same procedures that apply to the purchase of Supplemental Water. (See Section IV.B.)

CCWA will process all Participant requests for unbalanced exchanges in favor of a third party (i.e., a greater quantity of water will be transferred to the third party during the term of the transaction) using the same procedures that apply to the sale of Surplus Water. (See Section IV.C.)

Exchanges do not require compliance with Resolution No. 21-01.

##### B. Supplemental Water Purchases

As described in Section III.B CCWA will maintain and regularly update a schedule of all Participant requests to buy Supplemental Water and to sell Surplus Water. If a Participant elects to purchase Supplemental Water, CCWA will assist in transferring the Supplemental Water, either through the SWPP or directly with the individual Participant, as further described in this Section.

##### 1. CCWA's Supplemental Water Purchase Program

Any Participant that elects to retain CCWA's services in identifying and facilitating the purchase of Supplemental Water (**SWPP Participant**) must first execute a **SWPP Participation Agreement**. SWPP Participants may execute the SWPP Participation Agreement at any time and may remain in the SWPP from year to year. As described in the SWPP Participation Agreement, SWPP Participants share in any costs and liabilities of the program. Generally, SWPP costs are allocated among the SWPP Participants pro-rata on an annual basis.

From time to time, CCWA will make opportunities to purchase Project Water or Nonproject Water available to the SWPP Participants. If a SWPP Participant elects to purchase a particular supply, the SWPP Participant must execute a **Purchase Agreement** with CCWA for that water supply. As described in the Purchase Agreement, any SWPP Participants that execute a Purchase Agreement (**Project Participant(s)**) will share in any costs and liabilities of the particular transaction. CCWA will contract with the third-party seller on behalf of the Project Participant(s).

As described in the Purchase Agreement, the Project Participant agrees to fully indemnify and defend CCWA and all other Participants that are not Project Participants (**Non-Project Participants**) from all liability associated with the transaction.

Project Participants are responsible for compliance with CEQA and Article 57(g) of the SWP Contract.

2. Participant Purchases Outside the Purchase Program

Participants that purchase Supplemental Water supplies outside of the SWPP must execute an **Assistance Agreement** with CCWA.

In this context, the Participant, and not CCWA, will contract directly with the third-party seller for the transfer and delivery of the Supplemental Water. As described in the Assistance Agreement, CCWA will assist the Participant in facilitating the transfer and delivery of the supply, including all communications with DWR, but otherwise will not be responsible for ensuring compliance with the terms and conditions of the transfer. Further, the Participant agrees to fully indemnify and defend CCWA and all other Participants from all liability associated with the transaction.

**C. Surplus Water Transfers**

As described in Section II.B, CCWA will maintain and regularly update a schedule of all Participant requests to buy Supplemental Water and to sell Surplus Water. If a Participant elects to sell Surplus Water, CCWA will assist in transferring the Surplus Water, either through the SWTP or directly with the individual Participant, as further described in this Section.

1. CCWA's Surplus Water Transfer Program

All Participants that wish to retain CCWA's services in identifying and facilitating the sale of Surplus Water must execute a SWTP Participation Agreement. Participants may execute the SWTP Participation Agreement at any time and may remain in the SWTP from year to year. As described in the SWTP Participation Agreement, SWTP Participants share in any costs and liabilities of the program. Generally, SWTP costs are allocated among the SWTP Participants pro-rata on an annual basis.

From time to time, CCWA will make the opportunity to sell Surplus Water available to the SWTP Participants. If a SWTP Participant elects to sell Surplus Water, the SWTP Participant must execute a **Sale Agreement** with CCWA for that supply. As described in the Participation Agreement, any SWTP Participants that execute a Sale Agreement (**Project Participant(s)**) will share in any costs and liabilities of the particular transaction. CCWA will contract with the third-party buyer on behalf of the Project Participant.

As described in the Sale Agreement, the Project Participant agrees to fully indemnify and defend CCWA and all other Participants that are not Project Participants (**Non-Project Participants**) from all liability associated with the transaction.

Project Participants are responsible for compliance with CEQA and Article 57(g) of the SWP Contract.

2. Participant Transfers Outside of Transfer Program

Participants that plan to sell Surplus Water outside of the SWTP must first execute an Assistance Agreement with CCWA.

In this context, the Participant, and not CCWA, will contract directly with the third-party buyer for the transfer and delivery of the Surplus Water. As described in the Assistance Agreement, CCWA will assist

the Participant in facilitating the transfer and delivery of the Surplus Water, including all communications with DWR, but otherwise will not be responsible for ensuring compliance with the terms and conditions of the transfer. Further, the Participant agrees to fully indemnify and defend CCWA and all other Participants from all liability associated with the transaction.

3. Article 56 Carryover Water

Article 56 of the SWP Contract allows SWP Contractors to carryover into storage at San Luis Reservoir a portion of the SWP Contractor's "Table A Amount" that was not delivered in the prior year (**Carryover Water**). Further, the SWP Contract allows SWP Contractors to transfer or exchange a portion, depending on DWR's final water supply allocation, of its Carryover Water.<sup>6</sup>

On or about January 15 of each year, DWR determines each SWP Contractor's maximum amount of Carryover Water. After receipt of DWR's calculation of CCWA's Carryover Water, CCWA will calculate each Participant's pro-rata share of CCWA's Carryover Water based on each Participant's use of Project Water in the prior year and notify the Participants of the amount allocated to them.

Participants may elect to take delivery of any portion of their allocated share of the CCWA Carryover Water and may transfer or exchange up to 50% of their allocated share of the CCWA Carryover Water. By **April 15**, Participants shall give CCWA notice of their election to transfer or exchange any Carryover Water.

If, after April 15, the total amount of Carryover Water requested to be transferred or exchanged by all Participants is less than the amount available for transfer or exchange by CCWA (e.g., less than 50% of CCWA's Carryover Water),<sup>7</sup> CCWA will notify the Participants who requested to transfer a portion of their allocated share of CCWA's Carryover Water of the opportunity to transfer or exchange additional quantities of the Carryover Water allocated to them. By **April 30**, the requesting Participants shall give CCWA notice of their election to transfer or exchange additional quantities of Carryover Water. The requesting Participants will share in the balance of the available transfer capacity (up to 50% of CCWA's Carryover Water) pro-rata based on each Participant's Project Allocation, as provided in each Participant's Water Supply Agreement.

Example:

Assume the CCWA's Carryover Water is 20,000 AF for the year and therefore that CCWA is permitted to transfer or exchange 10,000 AF for the year.

If Participants A, B and C collectively request transfer of 8,000 AF of CCWA's Carryover Water, CCWA will allocate the remaining additional transfer capacity (2,000 AF) to Participants A, B and C pro-rata based on each Participant's Project Allotment.

4. Procedure for Compliance with Resolution No. 21-01

As described in Section I above, the transfer of Project Water for use outside Santa Barbara County is subject to Resolution No. 21-01. Although CCWA will assist the Participant Seller with coordination among

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<sup>6</sup> See Appendix B: Article 56(c).

<sup>7</sup> The SWP Contractor may request from DWR an exception to the 50% limitation. (See Article 56(c)(4)(iii).) If DWR grants an exception, the approved percentage shall apply for purposes of implementing this Section IV.C.3.

the Participants, compliance with Resolution No. 21-01 is the sole responsibility of the Participant Seller. Early and regular communication between the Participant Seller and the other Participants is encouraged.

Because the SWP Contract permits multi-year transfers and exchanges, a Participant Seller may elect to enter into a long-term contract that includes one or more transfers and/or exchanges over multiple years. In this circumstance, Resolution No. 21-01 applies to the entire transaction, not to each transfer and/or exchange that is performed as part of the multi-year transaction. Accordingly, the Participants' ROFR occurs only once—at the time the multi-year transaction is first proposed.

The Resolution No. 21-01 applies only to a Participant's transfer of Project Water to a third party for use outside of Santa Barbara County. It does not apply to exchanges or to the temporary delivery of Project Water to a groundwater storage program or facility outside of Santa Barbara County for later use within CCWA's service area.

a. *Participant Seller to Give Notice of Sale Terms and Set Deadlines*

Upon execution of a letter of intent, term sheet, or other document that memorializes the key terms and conditions of a transfer of Project Water from a Participant Seller to a third-party buyer—i.e., quantity, price and duration (**Sale Terms**), the Participant Seller shall promptly provide all of the following to all other Participants: (i) notice of the proposed transfer of Project Water (**Notice of Transfer**), (ii) the Sale Terms, (iii) the Participant Seller's contact information, and (iv) the deadline by which any Participant must give notice of its preliminary intention to exercise its ROFR pursuant to Resolution No. 21-01, which deadline shall be **at least 10 days** from the date the Participant Seller delivers the Notice of Transfer to all other Participants.

If no Participant gives notice of its intention to exercise its ROFR, all Participants shall be deemed to have waived their ROFR and the Participant Seller may continue to process the transaction with a third party.

Notwithstanding the foregoing, if at any time the Sale Terms change materially, the Participant Seller shall comply with Resolution No. 21-01 and give notice of the new Sale Terms to all Participants in the same manner as provided in this Section.

b. *Exercise of ROFR*

If a Participant Buyer gives notice of its intention to exercise its ROFR pursuant to Section IV.C.4.a, it must deliver its *binding commitment* to the Sale Terms in writing to the Participant Seller's contact person(s) within **45 days of the Notice of Transfer**, or such other period to which the Participant Seller and Participant Buyer may agree. The Participant Seller and the Participant Buyer will work expeditiously to execute any desired contracts between them and comply with the procedures in Section III.

Unless otherwise agreed to in writing by the Participant Seller and Participant Buyer, if the Participant Buyer fails to deliver its binding commitment to the Sale Terms, as provided in this Section, the Participant Buyer shall be deemed to have waived its ROFR and the Participant Seller may continue to process the transaction with a third party.

**D. Temporary Delivery to a Storage Program or Facility Outside Santa Barbara County**

The SWP Contract permits the storing of Project Water in a groundwater storage program, project surface conservation facilities and in nonproject surface storage facilities located outside a SWP's service area for later use by the SWP Contractor within its service area.

CCWA will process the temporary transfer and delivery of Project Water to out-of-county storage projects or facilities in the same manner as Participant transfers outside of CCWA's SWTP. (See Section IV.C.2.)

Resolution No. 21-01 does not apply to these transactions, so long as the water temporarily stored outside of Santa Barbara County is later used within CCWA's service area.

1. Article 21 Interruptible Water

Pursuant to Article 21 of the SWP Contract, each year DWR makes available and allocates among the SWP Contractors interruptible water (**Interruptible Water**). Generally, Interruptible Water is not available for transfer or exchange, unless the acquiring SWP Contractor can demonstrate a special need for the water. In the event a Participant has a special need for the purchase of water, CCWA will assist the Participant as part of the SWPP.

However, Interruptible Water may be delivered to an alternate point of delivery temporarily, for example to a non-SWP water bank outside of Santa Barbara County. SWP Contractors may take delivery of Interruptible Water and simultaneously re-direct some portion of the Interruptible Water to another point of delivery.

DWR determines the estimated Interruptible Water available for delivery to each SWP Contractor on a weekly basis, and Interruptible Water must be taken in "real-time" by the receiving SWP Contractor. When Interruptible Water is available to CCWA, CCWA will promptly notify the Participants of their right to take delivery of their allocated share of the Interruptible Water and the deadline for any Participant to elect to take the available supply. A Participant's failure to notify CCWA of its election to take Interruptible Water forfeits the Participant's right to Interruptible Water.

If a Participant elects to take delivery of its allocated share of CCWA's Interruptible Water in a different location other than the CCWA facilities, it may do so, but only if all required approvals providing for the Participant's delivery to the alternate point of delivery and temporary storage have been obtained and all associated contracts have been executed in advance of the availability of Interruptible Water. Participants that elect to re-direct some portion of their allocated share of Interruptible Water to another point of delivery shall provide CCWA's Executive Director with copies of all required approvals and associated contracts.

Resolution No. 21-01 does not apply to the delivery of Interruptible Water because transfer of Interruptible Water out of Santa Barbara County is not permitted.

**E. SBCFCWCD Execution of DWR Agreements**

As the contracting party to the SWP Contract with DWR for Santa Barbara County, DWR requires SBCFCWCD's execution of all agreements with DWR required to administer any transfer or exchange involving Project Water or that utilizes the SWP for conveyance of Nonproject Water (each a **DWR Agreement**).

On behalf of Project Participants, CCWA will endeavor to secure SBCFCWCD's execution of any DWR Agreement.

**V. DELIVERY OF WATER TO CCWA SERVICE AREA**

**A. Delivery of Purchased Water**

The procedure for the delivery of water purchased by any Participant (see Section IV.D), whether Project Water or Nonproject Water, is the same as for the delivery of each Participant's Project Allotment.<sup>8</sup>

**B. Return of Project Water**

The procedure for Participants to request the return of Project Water that is stored outside CCWA's service area (see Section IV) or the delivery of Project Water exchanged with a party outside CCWA's service area (see Section IV.A) is as follows:

- So that CCWA may account for all water conveyed through CCWA facilities, Participants shall notify CCWA of all requests for the return of Project Water.
- If CCWA is the contracting party to a water storage program or exchange transaction, and a Participant requests the return of Project Water, CCWA will initiate the request to return Project Water. If other Participants also have rights in/to the same water storage program or exchange transaction, CCWA will advise all such Participants of the request to return water and set a deadline for all such Participants to add their request to return water at the same time.
- CCWA will facilitate all communications with third parties and DWR and schedule all deliveries.

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<sup>8</sup> See Water Supply Agreement, § 4.

**APPENDIX A**

**List of Standard Notices, Forms and Contracts**

**NOTE:** The forms and contracts listed here are for convenience only. The titles and contents of these documents may change at any time and without amendment of the Transfer Rules.

**Standard Forms:**

1. Delivery Status Report
2. Internal Transfer Form

**Standard Contracts:**

1. Assistance Agreement — CCWA and a Participant
2. DWR Agreement — DWR, SBCFCWCD and another SWP Contractor
3. Purchase Agreement — CCWA and a Participant
4. Sale Agreement — CCWA and a Participant
5. SWPP Participation Agreement — CCWA and all SWPP Participants
6. SWTP Participation Agreement — CCWA and all SWTP Participants



**APPENDIX B**

**The Water Management Amendment**

STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 21 (THE WATER MANAGEMENT AMENDMENT)  
TO WATER SUPPLY CONTRACT  
BETWEEN  
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AND  
SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT

THIS AMENDMENT to the Water Supply Contract is made this 22nd day of April, 2021 pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State," and Santa Barbara County Flood Control and Water Conservation District, herein referred to as the "Agency."

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## RECITALS

- A. The State and the Agency entered into and subsequently amended a water supply contract (the “contract”), dated February 26, 1963, providing that the State shall supply certain quantities of water to the Agency and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and
- B. The State and the Agency, in an effort to manage water supplies in a changing environment, explored non-structural solutions to provide greater flexibility in managing State Water Project (SWP) water supplies; and
- C. The State and the Agency, in an effort to support the achievement of the coequal goals for the Delta set forth in the Delta Reform Act, sought solutions to develop water supply management practices to enhance flexibility and reliability of SWP water supplies while the Agency is also demonstrating its commitment to expand its water supply portfolio by investing in local water supplies; and
- D. The State and the Agency, in response to the Governor’s Water Resiliency Portfolio, wish to maintain and diversify water supplies while protecting and enhancing natural systems without changing the way in which the SWP operates; and
- E. The State and the Agency sought to create a programmatic solution through transfers or exchanges of SWP water supplies that encourages regional approaches among water users sharing watersheds and strengthening partnerships with local water agencies, irrigation districts, and other stakeholders; and
- F. The State and the Agency, in an effort to comply with the Open and Transparent Water Data Platform Act (Assembly Bill 1755), sought means to create greater transparency in water transfers and exchanges; and
- G. The State, the Agency and representatives of certain other SWP Contractors have negotiated and agreed upon a document (dated May 20, 2019), the subject of which is “ Draft Agreement in Principle for the SWP Water Supply Contract Amendment for Water Management” (the “Agreement in Principle”); and
- H. The Agreement in Principle describes that the SWP Water Supply Contract Amendment for Water Management “supplements and clarifies terms of the SWP water supply contract that will provide greater water management regarding transfers and exchanges of SWP water within the SWP service area”; the principles agreed to achieve this without relying upon increased SWP diversions or changing the way in which the SWP operates, and are consistent with all applicable contract and regulatory requirements; and

- I. The State, the Agency and those Contractors intending to be subject to the contract amendments contemplated by the Agreement in Principle subsequently prepared an amendment to their respective Contracts to implement the provisions of the Agreement in Principle, and such amendment was named the "SWP Water Supply Contract Amendment for Water Management"; and
- J. The State and the Agency desire to implement continued service through the contract and under the terms and conditions of this "SWP Water Supply Contract Amendment for Water Management";

**NOW, THEREFORE, IT IS MUTUALLY AGREED** that the following changes and additions are hereby made to the Agency's water supply contract with that State:

**AMENDED CONTRACT TEXT**

**ARTICLE 1 IS AMENDED TO ADD THE FOLLOWING DEFINITIONS, PROVIDED THAT IF THIS WATER MANAGEMENT AMENDMENT TAKES EFFECT BEFORE THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT, THE ADDITIONS HEREIN SHALL CONTINUE IN EFFECT AFTER THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT NOTWITHSTANDING THE CONTRACT EXTENSION AMENDMENT'S DELETION AND REPLACEMENT OF ARTICLE 1 IN ITS ENTIRETY:**

**1. Definitions**

- (au) **"Article 56 Carryover Water"** shall mean water that the Agency elects to store under Article 56 in project surface conservation facilities for delivery in a subsequent year or years.

**ARTICLES 21 and 56 ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING TEXT:**

**21. Interruptible Water Service**

**(a) Allocation of Interruptible Water**

Each year from water sources available to the project, the State shall make available and allocate interruptible water to contractors in accordance with the procedure in Article 18(a). Allocations of interruptible water in any one year may not be carried over for delivery in a subsequent year, nor shall the delivery of interruptible water in any year impact the Agency's approved deliveries of Annual Table A Amount or the Agency's allocation of water for the next year. Deliveries of interruptible water in excess of the Agency's Annual Table A Amount may be made if the deliveries do not adversely affect the State's delivery of Annual Table A Amount to other contractors or adversely affect project operations. Any amounts of water owed to the Agency as of the date of this amendment pursuant to former Article 12(d), any contract provisions or letter agreements relating to wet weather water, and any Article 14(b) balances accumulated prior to 1995, are canceled. The State shall hereafter use its best efforts, in a manner that causes no adverse impacts upon other contractors or the project, to avoid adverse economic impacts due to the Agency's inability to take water during wet weather.

**(b) Notice and Process for Obtaining Interruptible Water**

The State shall periodically prepare and publish a notice to contractors describing the availability of interruptible water under this Article. To obtain a supply of interruptible water, including a supply from a transfer of interruptible water, the Agency shall execute a further agreement with the State. The State will timely process such requests for scheduling the delivery of the interruptible water.

**(c) Rates**

For any interruptible water delivered pursuant to this Article, the Agency shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were Table A Amount water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if interruptible water were not scheduled for or delivered to the Agency. Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.

**(d) Transfers of Interruptible Water**

- (1) Tulare Lake Basin Water Storage District, Empire West-Side Irrigation District, Oak Flat Water District, and County of Kings may transfer to other contractors a portion of interruptible water allocated to them under subdivision (a) when the State determines that interruptible water is available.
- (2) The State may approve the transfer of a portion of interruptible water allocated under subdivision (a) to contractors other than those listed in (d)(1) if the contractor acquiring the water can demonstrate a special need for the transfer of interruptible water.
- (3) The contractors participating in the transfer shall determine the cost compensation for the transfers of interruptible water.



The transfers of interruptible water shall be consistent with Articles 56(d) and 57.

**56. Use and Storage of Project Water Outside of Service Area and Article 56 Carryover Water**

**(a) State Consent to Use of Project Water Outside of Service Area**

Notwithstanding the provisions of Article 15(a), the State hereby consents to the Agency storing Project Water in a groundwater storage program, project surface conservation facilities and in nonproject surface storage facilities located outside its service area for later use by the Agency within its service area and to the Agency transferring or exchanging Project Water outside its service area consistent with agreements executed under this contract.

**(b) Groundwater Storage Programs**

The Agency shall cooperate with other contractors in the development and establishment of groundwater storage programs. The Agency may elect to store Project Water in a groundwater storage program outside its service area for later use within its service area. There shall be no limit on the amount of Project Water the Agency can store outside its service area during any year in a then existing and operational groundwater storage program.

**(1) Transfers of Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.**

In accordance with applicable water rights law and the terms of this Article, the Agency may transfer any Annual Table A Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area to another contractor for use in that contractor's service area. These transfers must comply with the requirements of Articles 56(c)(4)(i)-(v), (6) and (7), and Article 57. The Agency will include these transfers in its preliminary water delivery schedule required in Article 12(a).

**(2) Exchanges of any Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.**



In accordance with applicable water rights law and the terms of this Article, the Agency may exchange any Annual Table A Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area with another contractor for use in that contractor's service area. These exchanges must comply with the requirements in Article 56(c)(4)(i)-(v). The Agency shall include these exchanges in its preliminary water delivery schedule pursuant to Article 12(a).

**(c) Article 56 Carryover Water and Transfers or Exchanges of Article 56 Carryover Water**

- (1) In accordance with any applicable water rights laws, the Agency may elect to use Article 56 Carryover Water within its service area, or transfer or exchange Article 56 Carryover Water to another contractor for use in that contractor's service area in accordance with the provisions of subdivision (c)(4) of this Article. The Agency shall submit to the State a preliminary water delivery schedule on or before October 1 of each year pursuant to Article 12(a), the quantity of water it wishes to store as Article 56 Carryover Water in the next succeeding year, and the quantity of Article 56 Carryover Water it wishes to transfer or exchange with another contractor in the next succeeding year. The amount of Project Water the Agency can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the Agency's service area each year shall be limited to the lesser of the percent of the Agency's Annual Table A Amount shown in column 2 or the acre-feet shown in column 3 of the following table, depending on the State's final Table A water supply allocation percentage as shown in column 1. For the purpose of determining the amount of Project Water the Agency can store, the final water supply allocation percentage shown in column 1 of the table below shall apply to the Agency. However, there shall be no limit to storage in nonproject facilities in a year in which the State's final water supply allocation percentage is one hundred percent. These limits shall not apply to water stored pursuant to Articles 12(e) and 14(b).

1. Final Water Supply Allocation Percentage	2. Maximum Percentage of Agency's Annual Table A Amount That Can Be Stored	3. Maximum Acre-Foot That Can Be Stored
50% or less	25%	100,000
51%	26%	104,000
52%	27%	108,000
53%	28%	112,000
54%	29%	116,000
55%	30%	120,000
56%	31%	124,000
57%	32%	128,000
58%	33%	132,000
59%	34%	136,000
60%	35%	140,000
61%	36%	144,000
62%	37%	148,000
63%	38%	152,000
64%	39%	156,000
65%	40%	160,000
66%	41%	164,000
67%	42%	168,000
68%	43%	172,000
69%	44%	176,000
70%	45%	180,000
71%	46%	184,000
72%	47%	188,000
73%	48%	192,000
74%	49%	196,000
75% or more	50%	200,000

- (2) Storage capacity in project surface conservation facilities at any time in excess of that needed for project operations shall be made available to requesting contractors for storage of project and Nonproject Water. If such storage requests exceed the available storage capacity, the available capacity shall be allocated among contractors requesting storage in proportion to their Annual Table A Amounts for that year. The Agency may store water in excess of its allocated share of capacity as long as capacity is available for such storage.
- (3) If the State determines that a reallocation of excess storage capacity is needed as a result of project operations or because of the exercise of a contractor's storage right, the available capacity shall be reallocated among contractors requesting storage in proportion to their respective Annual

Table A Amounts for that year. If such reallocation results in the need to displace water from the storage balance for any contractor or noncontractor, the water to be displaced shall be displaced in the following order of priority:

First, water, if any, stored for noncontractors;

Second, water stored for a contractor that previously was in excess of that contractor's allocation of storage capacity; and

Third, water stored for a contractor that previously was within that contractor's allocated storage capacity.

The State shall determine whether water stored in a project surface water conservation facility is subject to displacement and give as much notice as feasible of a potential displacement. If the Agency transfers or exchanges Article 56 Carryover Water pursuant to this subdivision to another contractor for storage in such facility, the State shall recalculate the amount of water that is subject to potential displacement for both contractors participating in the transfer or exchange. The State's recalculation shall be made pursuant to subdivision (4) of this Article.

**(4) Transfers or Exchanges of Article 56 Carryover Water**

The Agency may transfer or exchange its Article 56 Carryover Water as provided in this subdivision under a transfer or an exchange agreement with another contractor. Water stored pursuant to Articles 12(e) and 14(b) and Nonproject Water shall not be transferred or exchanged. Transfers or exchanges of Article 56 Carryover Water under this subdivision shall comply with subdivision (f) of this Article and Article 57 as applicable, which shall constitute the exclusive means to transfer or exchange Article 56 Carryover Water.

On or around January 15 of each year, the State shall determine the maximum amount of Article 56 Carryover Water as of January 1 that will be available for transfers or exchanges during that year. The State's determination shall be consistent with subdivisions (c)(1) and (c)(2) of this Article.

The State shall timely process requests for transfers or exchanges of Article 56 Carryover Water by participating contractors. After execution of the transfer or exchange agreement between the State and the contractors participating in the transfer or exchange, the State shall recalculate each contractor's storage amounts for the contractors participating in the transfer or exchange. The State's recalculation shall result in an increase by an amount of water within the storage amounts for the contractor receiving the water and a decrease by the same amount of water for the contractor transferring or exchanging water. The State's recalculation shall be based on the criteria set forth in the State's transfer or exchange agreement with the participating contractors. The State's calculations shall also apply when a contractor uses Article 56 Carryover Water to complete an exchange.

Transfers and exchanges of Article 56 Carryover Water shall meet all of the following criteria:

- (i) Transfers or exchanges of Article 56 Carryover Water are limited to a single-year. Project Water returned as part of an exchange under subdivision (c)(4) may be returned over multiple years.
- (ii) The Agency may transfer or exchange an amount up to fifty percent (50%) of its Article 56 Carryover Water to another contractor for use in that contractor's service area.
- (iii) Subject to approval of the State, the Agency may transfer or exchange an amount greater than 50% of its Article 56 Carryover Water to another contractor for use in that contractor's service area. The Agency seeking to transfer or exchange greater than 50% of its Article 56 Carryover Water shall submit a written request to the State for approval. The Agency making such a request shall demonstrate to the State how it will continue to meet its critical water needs in the current year of the transfer or exchange and in the following year.

- (iv) The contractor receiving the water transferred or exchanged under subdivisions (4)(i) or (ii) above shall confirm in writing to the State its need for the water that year and shall take delivery of the water transferred or exchanged in the same year.
  - (v) Subject to the approval of the State, the Agency may seek an exception to the requirements of subdivisions (4)(i), (ii), and (iii) above. The Agency seeking an exception shall submit a written request to the State demonstrating to the State the need for 1) using project surface conservation facilities as the transfer or exchange point for Article 56 Carryover Water if the receiving contractor cannot take delivery of the transfer or exchange water in that same year, 2) using project surface conservation facilities for the transfer or exchange of one contractor's Article 56 Carryover Water to another contractor to reduce the risk of the water being displaced, or 3) for some other need.
- (5) The restrictions on storage of Project Water outside the Agency's service area provided for in this subdivision (c), shall not apply to storage in any project off-stream storage facilities constructed south of the Delta after the date of the Monterey Amendment.
- (6) For any Project Water stored outside its service area pursuant to subdivisions (b) and (c), the Agency shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the Agency pays for the transportation of Annual Table A Amount to the reach of the project transportation facility from which the water is delivered to storage. If Table A Amount is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the Agency shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of



return to the aqueduct to the turn-out in the Agency's service area. In addition, the Agency shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the Agency's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

- (7) If the Agency elects to store Project Water in a nonproject facility within the service area of another contractor it shall execute a contract with that other contractor prior to storing such water which shall be in conformity with this Article and will include at least provisions concerning the point of delivery and the time and method for transporting such water.

**(d) Non-Permanent Water Transfers of Project Water**

Notwithstanding the provisions of Article 15(a), the State hereby consents to the Agency transferring Project Water outside its service area in accordance with the following:

- (1) The participating contractors shall determine the duration and compensation for all water transfers, including single-year transfers, Transfer Packages and multi-year transfers.
- (2) The duration of a multi-year transfer shall be determined by the participating contractors to the transfer, but the term of the transfer agreement shall not extend beyond the term of the Contract with the earliest term.
- (3) A Transfer Package shall be comprised of two or more water transfer agreements between the same contractors. The State shall consider each proposed water transfer within the package at the same time and shall apply the transfer criteria pursuant to Article 57 in the review and approval of each transfer. The State shall not consider a Transfer Package as an exchange.

**(e) Continuance of Article 12(e) Carry-over Provisions**

The provisions of this Article are in addition to the provisions of Article 12(e), and nothing in this Article shall be construed to modify or amend the provisions of Article 12(e). Any contractor electing to transfer or exchange Project Water during any year in accordance with the provisions of subdivision (c) of this Article, shall not be precluded from using the provisions of Article 12(e) for carrying over water from the last three months of that year into the first three months of the succeeding year.

**(f) Bona Fide Exchanges Permitted**

Notwithstanding the provisions of Article 15(a), the State hereby consents to the Agency exchanging Project Water outside its service area consistent with this Article. Nothing in this Article shall prevent the Agency from entering into bona fide exchanges of Project Water for use outside the Agency's service area with other parties for Project Water or Nonproject Water if the State consents to the use of the Project Water outside the Agency's service area. Also, nothing in this Article shall prevent the Agency from continuing those exchange or sale arrangements entered into prior to September 1, 1995. Nothing in this Article shall prevent the Agency from continuing those exchange or sale arrangements entered into prior to the effective date of this Amendment which had previously received any required State approvals. The State recognizes that the hydrology in any given year is an important factor in exchanges. A "bona fide exchange" shall mean an exchange of water involving the Agency and another party where the primary consideration for one party furnishing water to another party is the return of a substantially similar amount of water, after giving due consideration to the hydrology, the length of time during which the water will be returned, and reasonable payment for costs incurred. In addition, the State shall consider reasonable deductions based on expected storage or transportation losses that may be made from water delivered. The State may also consider any other nonfinancial conditions of the return. A "bona fide exchange" shall not involve a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether a proposed exchange of water constitutes a "bona fide exchange" within the meaning of this paragraph and not a disguised sale.

**Exchanges of Project Water**

Exchanges of Project Water shall be consistent with Article 57. In addition, the State shall apply the following criteria to its review of each exchange of Project Water as set forth below:

(1) **Exchange Ratio**

Exchange ratio shall mean the amount of water delivered from a contractor's project supply in a year to another contractor compared to the amount of water returned to the first contractor in a subsequent year by the other contractor. All exchanges shall be subject to the applicable exchange ratio in this Article as determined by the allocation of available supply for the Annual Table A Amount at the time the exchange transaction between the contractors is executed.

- (a) For allocations greater than or equal to 50%, the exchange ratio shall be no greater than 2 to 1.
- (b) For allocations greater than 25% and less than 50%, the exchange ratio shall be no greater than 3 to 1.
- (c) For allocations greater than 15% and less than or equal to 25%, the exchange ratio shall be no greater than 4 to 1.
- (d) For allocations less than or equal to 15%, the exchange ratio shall be no greater than 5 to 1.

(2) **Cost Compensation**

The State shall determine the maximum cost compensation calculation using the following formula:

The numerator shall be the exchanging contractor's conservation minimum and capital and transportation minimum and capital charges, including capital surcharges. DWR will set the denominator using the State Water Project allocation which incorporates the May 1 monthly Bulletin 120 runoff forecast.

If the Agency submits a request for approval of an exchange prior to May 1, the State shall provide timely approval with the obligation of the contractors to meet the requirement of the maximum compensation. If the maximum compensation is exceeded because the agreement between the



contractors is executed prior to the State Water Project allocation as defined in (c)(2) above, the contractors will revisit the agreement between the two contractors and make any necessary adjustments to the compensation. If the contractors make any adjustments to the compensation, they shall notify the State.

**(3) Period During Which the Water May Be Returned:**

The period for the water to be returned shall not be greater than 10 years and shall not go beyond the expiration date of this Contract. If the return of the exchange water cannot be completed within 10 years, the State may approve a request for an extension of time.

**(g) Other Transfers**

Nothing in this Article shall modify or amend the provisions of Articles 15(a), 18(a) or Article 41, except as expressly provided for in subdivisions (c) and (d) of this Article and in subdivision (d) of Article 21.

## NEW CONTRACT ARTICLES

### ARTICLE 57 IS ADDED TO THE CONTRACT AS A NEW ARTICLE AS FOLLOWS:

#### 57. Provisions Applicable to Both Transfers and Exchanges of Project Water

- (a) Nothing in this Article modifies or limits Article 18 (a).
- (b) Transfers and exchanges shall not have the protection of Article 14(b).
- (c) The Agency may be both a buyer and seller in the same year and enter into multiple transfers and exchanges within the same year.
- (d) Subject to the State's review and approval, all transfers and exchanges shall satisfy the following criteria:
  - (1) Transfers and exchanges shall comply with all applicable laws and regulations.
  - (2) Transfers and exchanges shall not impact the financial integrity of the State Water Project. Transfers and exchange agreements shall include provisions to cover all costs to the State for the movement of water such as power costs and use of facility charge.
  - (3) Transfers and exchanges shall be transparent, including compliance with subdivisions (g) and (h) of this Article.
  - (4) Transfers and exchanges shall not harm other contractors not participating in the transfer or exchange.
  - (5) Transfers and exchanges shall not create significant adverse impacts to the service area of each contractor participating in the transfer or exchange.
  - (6) Transfers and exchanges shall not adversely impact State Water Project operations.
- (e) The Agency may petition the State and the State shall have discretion to approve an exception to the criteria set forth in subdivision (d) in the following cases:
  - (1) When a transfer or an exchange does not meet the criteria, but the Agency has determined that there is a compelling need to proceed with the transfer or exchange.

- (2) When the Agency has received water in a transfer or an exchange and cannot take all of the water identified in the transaction in the same year, the Agency may request to store its water consistent with Article 56(c), including in San Luis Reservoir.
- (f) The State will timely process such requests for scheduling the delivery of the transferred or exchanged water. Contractors participating in a transfer or an exchange shall submit the request in a timely manner.
- (g) The Agency shall, for each transfer or exchange it participates in, confirm to the State in a resolution or other appropriate document approving the transfer or exchange, including use of Article 56(c) stored water, that:
  - (1) The Agency has complied with all applicable laws.
  - (2) The Agency has provided any required notices to public agencies and the public.
  - (3) The Agency has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
  - (4) The Agency is informed and believes that the transfer or exchange will not harm other contractors.
  - (5) The Agency is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
  - (6) The Agency is informed and believes that the transfer or exchange will not affect its ability to make all payments, including payments when due under its Contract for its share of the financing costs of the State's Central Valley Project Revenue Bonds.
  - (7) The Agency has considered the potential impacts of the transfer or exchange within its service area.
- (h) **Dispute Resolution Process Prior to Executing an Agreement**

The State and the contractors shall comply with the following process to resolve disputes if a contractor that is not participating in the transfer or exchange claims that the proposed transfer and/or exchange has a significant adverse impact.

  - (1) Any claim to a significant adverse impact may only be made after the Agency has submitted the relevant terms pursuant to Article

57(g)(3) and before the State approves a transfer or an exchange agreement.

- (2) In the event that any dispute cannot be resolved among the contractors, the State will convene a group including the Department's Chief of the State Water Project Analysis Office, the Department's Chief Counsel and the Department's Chief of the Division of Operations or their designees and the contractors involved. The contractor's representatives shall be chosen by each contractor. Any contractor claiming a significant adverse impact must submit written documentation to support this claim and identify a proposed solution. This documentation must be provided 2 weeks in advance of a meeting of the group that includes the representatives identified in this paragraph.
- (3) If this group cannot resolve the dispute, the issue will be taken to the Director of the Department of Water Resources and that decision will be final.

**WATER MANAGEMENT AMENDMENT IMPLEMENTING  
AND ADMINISTRATIVE PROVISIONS**

**IT IS FURTHER MUTUALLY AGREED** that the following provisions, which shall not be part of the Water Supply Contract text, shall be a part of this Amendment and be binding on the Parties.

**1. EFFECTIVE DATE OF WATER MANAGEMENT AMENDMENT**

- (a) The Water Management Amendment shall take effect (“Water Management Amendment effective date”) on the last day of the calendar month in which the State and 24 or more contractors have executed the Water Management Amendment, unless a final judgment by a court of competent jurisdiction has been entered that the Water Management Amendment is invalid or unenforceable or a final order has been entered that enjoins the implementation of the Water Management Amendment.
- (b) If any part of the Water Management Amendment of any contractor is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, the Water Management Amendments of all contractors shall be of no force and effect unless the State and 24 or more contractors agree any the remaining provisions of the contract may remain in full force and effect.
- (c) If 24 or more contractors have not executed the Water Management Amendment by February 28, 2021 then within 30 days the State, after consultation with the contractors that have executed the amendment, shall make a determination whether to waive the requirement of subdivision (a) of this effective date provision. The State shall promptly notify all contractors of the State’s determination. If the State determines, pursuant to this Article to allow the Water Management Amendment to take effect, it shall take effect only as to those consenting contractors.
- (d) If any contractor has not executed the Water Management Amendment within sixty (60) days after its effective date pursuant to subdivisions (a) through (c) of this effective date provision, this Amendment shall not take effect as to such contractor unless the contractor and the State, in its discretion, thereafter execute such contractor’s Water Management Amendment, in which case the Water Management Amendment effective date for purposes of that contractor’s Amendment shall be as agreed upon by the State and contractor, and shall replace the effective date identified in subdivision (a) for that contractor.

**2. ADMINISTRATION OF CONTRACTS WITHOUT WATER MANAGEMENT AMENDMENT**

The State shall administer the water supply contracts of any contractors that do not execute the Water Management Amendment in a manner that is consistent with the contractual rights of such contractors. These contractors' rights are not anticipated to be affected adversely or benefited by the Water Management Amendments.

**3. OTHER CONTRACT PROVISIONS**

Except as amended by this Amendment, all provisions of the contract shall be and remain the same and in full force and effect, provided, however, that any reference to the definition of a term in Article 1, shall be deemed to be a reference to the definition of that term, notwithstanding that the definition has been re-lettered within Article 1. In preparing a consolidated contract, the parties agree to update all such references to reflect the definitions' lettering within Article 1.

**4. DocuSign**

The Parties agree to accept electronic signatures generated using DocuSign as original signatures.



IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date first above written.

Approved as to Legal Form and Sufficiency:

*Spencer Kenner* \_\_\_\_\_ <sup>kd</sup>  
City Counselor  
Department of Water Resources

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

*[Signature]* \_\_\_\_\_  
Director

4/22/2021  
Date

Michael G. Ghizzoni  
County Counsel  
Approved as to Form:  
*Johannah Hartley* \_\_\_\_\_  
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~~General Counsel~~ Deputy  
Santa Barbara County Flood Control  
and Water Conservation District

SANTA BARBARA COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT  
DocuSigned by:  
*Scott McGolpin* \_\_\_\_\_  
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~~General Manager~~  
Scott D. McGolpin, Public Works Director  
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Date

**APPENDIX C**

**1996 Water Transfer Procedures**



**CENTRAL COAST WATER AUTHORITY**

**WATER TRANSFER PROCEDURES**

**March 1996**

**Preamble:** The following Procedures are intended to implement Sections 9 and 17 of the Water Supply Agreements between CCWA and its Project Participants. There is no intent to alter any of the substantive or procedural rights or obligations of the parties to the Water Supply Agreements. The Procedures specify CCWA staff's responsibilities under those sections.<sup>1</sup>

**1. Authority.**

The following procedures which relate to transfer of Project Allotment are authorized by, and implement, certain provisions of the Water Supply Agreements (WSAs) between CCWA and its Project Participants.

The following procedures which relate to wheeling of water through CCWA conveyance facilities are authorized by various provisions of California law, including California Water Code section 1810 *et seq.*

**2. Scope.**

The following procedures govern CCWA's handling of requests to CCWA for:

- a. Approval of a Project Allotment sale pursuant to WSA Section 9.
- b. Transfer of unutilized Project Allotment pursuant to WSA Section 17.
- c. The use of unused capacity in CCWA owned facilities to convey water.

Section 9 of the Water Supply Agreement authorizes Project Allotment sales by Project Participants and requires that certain sales or other dispositions of Project Allotment are subject to the approval of CCWA, which approval shall not be unreasonably withheld. Section 17 is alternative to Section 9, at the option of the Project Participants, and provides for CCWA assistance in transfers of unutilized Project Allotment.

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<sup>1</sup> The terms used in this document, unless otherwise defined herein, shall have the meaning set forth in the WSA. "Unutilized Project Allotment," as it appears in Section 17 of the WSAs, means Project Allotment which (a) has not been either (i) delivered to the Project Participant's turnout, or (ii) placed in storage by CCWA, at the request of the Project Participant, at a location outside of the Project Participant's boundaries, and (b) is excess to the Project Participant's needs in the coming year.

**3. List of Prospective Purchasers.**

CCWA will maintain a list of prospective sellers and purchasers of Project Allotment. A person or entity may be added to the list by submitting to CCWA a written request which includes the amount of Project Allotment sought to be sold or acquired, and such other information as CCWA shall request, accompanied by a processing fee in an amount sufficient to reimburse CCWA for its actual costs of processing the request. The processing fee shall be in accordance with a fee schedule adopted by the Board of Directors.

**4. Securing CCWA Approval of Project Allotment Sale Under Section 9.**

**a. Requirement.** Under WSA Section 9, CCWA approval must be secured, and shall not be unreasonably withheld, for any Project Allotment sale or other disposition except (i) within the Project Participant's boundaries, or (ii) to a Project Participant.

**b. Request.** A Project Participant may seek such approval from CCWA by submitting a written request therefor, accompanied by such information as CCWA shall require and a processing fee in an amount sufficient to reimburse CCWA for its actual costs of processing the request. The processing fee shall be in accordance with a fee schedule adopted by the Board of Directors. At a minimum, the request shall disclose the name of the prospective purchaser of the Project Allotment, the quantity of water subject to the sale, the price proposed to be paid therefor, the proposed delivery schedule, and the terms and conditions of the sale.

**c. Proposed Sale Outside County.**

**(i) Notice.** If the request proposes a sale or other disposition outside of Santa Barbara County, upon receipt thereof CCWA shall send a copy of the request to each Project Participant accompanied by a notice of the Project Participants' right of first refusal to acquire the Project Allotment. The notice shall set a deadline by which each Project Participant is to exercise that right of first refusal by submission to CCWA of a written notice of exercise, or that right will be deemed waived. The deadline shall be not less than thirty (30) days from the date the notice is given to each Project Participant.

**(ii) Response to Notice.** In the event that no Project Participant exercises its right of first refusal by submitting to CCWA a written notice of exercise prior to the deadline, the proposed sale shall be submitted to the CCWA Board for its consideration. In the event that one or more Project Participants exercises the right of first refusal, CCWA shall provide to the Project Participant which submitted the request for approval a written copy of each such notice of exercise. The interested Project Participants shall thereafter make arrangements among themselves to complete the transaction.

**(iii) DWR Approval.** Any transfer of Project Allotment outside of Santa

Barbara County will be subject to the provisions of the Water Supply Contract between the Santa Barbara County Flood Control and Water Conservation District and the State Department of Water Resources (DWR). Article 15(a) of this contract requires that such transfers be approved by DWR.

**d. Proposed Sale Inside County.** If the request proposes a sale or other disposition to a person or entity inside Santa Barbara County (which person or entity is not a Project Participant), CCWA shall present said request to the CCWA Board of Directors at its next regularly scheduled meeting.

**5. Transfers of Unutilized Project Allotment Under Section 17.**

**a. CCWA Responsibility.** Under Section 17, CCWA has certain responsibilities in the event that a Project Participant requests that CCWA transfer unutilized Project Allotment.

**b. Request.** A Project Participant may submit to CCWA a written request for CCWA assistance in a transfer of unutilized Project Allotment, accompanied by such information as CCWA shall require and a processing fee in an amount sufficient to reimburse CCWA for its actual costs of processing the request. The processing fee shall be in accordance with a fee schedule approved by the Board of Directors. At a minimum, the request shall disclose the quantity of water subject to the sale, the proposed offering price therefor (which shall be sufficient to recover the Project Participant's Fixed Project Costs, Fixed O&M Costs, Variable O&M Costs and any other reasonable identifiable costs therefor, referred to hereinafter as the "Full Cost Recovery Price"), the proposed delivery schedule, and the terms and conditions of the sale. CCWA shall have authority to set a deadline each year by which any such request shall be submitted, in order to ensure that all such transfers are considered at the same time and to minimize the CCWA staff resources required to handle such requests. A Project Participant shall have the option of instructing CCWA that it is willing to accept an amount less than its Full Cost Recovery Price.

**c. Aggregation of Requests; Notice to Project Participants.** CCWA shall aggregate all requests under WSA Section 17, shall establish a single price at which any purchaser may acquire all or a portion of the Project Allotment offered, and shall provide written notice of said requests and the offering price to all Project Participants, the Department of Water Resources, the Santa Barbara County Water Agency, and such other persons or entities who have requested such notice. The notice shall state a deadline by which responses to the notice are to be received, not less than thirty (30) days from the date notice is given, and shall state that Project Participants have a right of first refusal to take delivery of the offered Project Allotment.

**d. Adjustments to Offering Price.** The WSA requires that CCWA utilize its "best efforts" in assisting Project Participants in transferring Project Allotment and, accordingly, CCWA shall have the authority to adjust the offering price for water it is offering for transfer in order to maximize (i) the quantity of water transferred, and (ii) the

revenue to be derived therefrom. CCWA shall consult with the Project Participants involved in a transaction prior to adjusting the offering price and, in any event, shall not reduce the offering price below the level set by the Project Participant without the Project Participant's prior written approval.

**e. Response to Notice.** In the event that one or more Project Participants exercises the right of first refusal, CCWA shall provide to each Project Participant which submitted the request a written copy of each such notice of exercise. The interested Project Participants shall directly negotiate the terms and conditions of the transaction and shall advise CCWA thereof. CCWA shall assist, as requested, in the completion of those terms and conditions.

**f. Where Available Project Allotment Exceeds Requests to Acquire.** In the event that CCWA has been asked to assist in the transfer of unutilized Project Allotment which exceeds the quantities set forth in responses to the notice given under Subsection above, CCWA shall transfer unutilized Project Allotment on a pro rata basis based upon the respective quantities of water offered by the various Project Participants who have submitted transfer requests.

**g. Where Available Project Allotment is Exceeded by Requests to Acquire.** In the event that CCWA receives requests to acquire unutilized Project Allotment which exceeds the quantities offered for transfer, CCWA shall transfer unutilized Project Allotment on a pro rata basis based on the respective requests to acquire.

**h. Distribution of Revenues from Transfer.** Revenues derived from a sale of Project Allotment hereunder shall be distributed to the Project Participants as follows:

(i) Each Project Participant who has offered Project Allotment for sale shall receive an amount equal to the quantity of that Project Participant's Project Allotment transferred multiplied by the Full Cost Recovery Price for that Project Participant, or such lower price stated by the Project Participant pursuant to Subsection b of this Section 65, as said price may have been adjusted pursuant to Subsection d of this Section 65.

(ii) In the event there are revenues in excess of the amounts distributed pursuant to the foregoing sentence ("Excess Revenues"), such Excess Revenues shall be distributed to the Project Participants who have participated in the sale of Project Allotment on a pro rata basis using the amounts distributed pursuant to subparagraph (i) above as the pro ration basis.

## **6. Unused CCWA Capacity; Requests to Convey Water**

**a. Request.** Any person or entity seeking to transfer water may submit to CCWA a request to convey said water through CCWA-owned conveyance facilities pursuant to California Water Code section 1810 including all provisions relating to water quality. The request shall include the facilities to be used, the quantity of water to be conveyed,

the dates of the conveyance, and such other information as CCWA may require. The request shall be accompanied by a processing fee in an amount sufficient to reimburse CCWA for its actual costs of processing the request, which shall be in accordance with a fee schedule adopted by the CCWA Board of Directors.

**b. Determinations by CCWA.** As soon as reasonably feasible after receipt of a request to convey water through CCWA-owned conveyance facilities, the CCWA Board of Directors shall determine (i) the amount and availability of unused capacity, (ii) the terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term of use, priorities and fair compensation, and (iii) the manner in which revenues derived from use of said capacity shall be divided among the Project Participants. The division of revenues derived from the use of said capacity among the Project Participants shall, as far as practicable, be based on the following principles: First, revenues shall be distributed only to Project Participants who contributed to the construction of each reach used for the conveyance, and who are not using all of the capacity in each said reach allocated to them. Second, each Participant's share of the revenues derived from use of a reach shall be calculated by dividing the unused capacity allocated to that Participant by the total unused capacity in said reach.

**7. CEQA Compliance.** Each Project Participant submitting a request to CCWA pursuant to WSA Section 9 or Section 17 shall be considered the Lead Agency with respect to compliance with the California Environmental Quality Act (CEQA), and CCWA shall be considered a Responsible Agency thereunder. Each such Project Participant shall be responsible for ensuring compliance with CEQA in connection with any such request.

Each person or entity submitting a request to CCWA to convey water pursuant to Water Code section 1810 *et seq.* shall be considered the Lead Agency with respect to compliance with the California Environmental Quality Act (CEQA), and CCWA shall be considered a Responsible Agency thereunder. Each such requesting party shall be responsible for ensuring compliance with CEQA in connection with any such request.

The processing fee paid by a Project Participant under Sections 5,b or 6,b shall include an amount sufficient to reimburse CCWA for any costs it incurs in serving as a Responsible Agency hereunder.

**8. Indemnification.** All agreements for the sale or transfer of Project Allotment, or for the use of CCWA facilities to transfer water, shall provide that the CCWA and all other Project Participants not a party to the sale, transfer or conveyance shall be held harmless, indemnified and defended from and against any and all claims of whatever nature arising from the proposed sale, transfer or conveyance.

Appendices:

- A Water Supply Agreement Contract Provisions (Section 9, 17, 18a).
- B California Water Code Section 1810 *et seq.*

## Appendix A

### Water Supply Agreement Contract Provisions

Section 9. Sale or Other Disposition of Project Allotment by Contractor.

The Contractor may sell or otherwise dispose of all of any portion of its Project Allotment within its boundaries or to another Project Participant without approval by the Authority. The Contractor may otherwise sell or dispose of all or any portion of its Project Allotment, with the approval of the Authority which approval shall not be unreasonably withheld, provided that the Authority shall require that such a sale or other disposition outside of Santa Barbara County shall be subject to a right of first refusal of all Project Participants on a pro rata basis to take delivery of such Project Allotment on the same terms and conditions. This Section shall be an alternative to, and shall not be limited to, Section 17 hereof.

Section 17. Unutilized Project Allotment.

When the Contractor has a Project Allotment that exceeds that Contractor's needs or demands in any one Year, the Authority shall, if requested by the Contractor to do so, transfer unutilized Project Allotment in the following manner:

(a) The Authority shall use its best efforts to transfer such unutilized Project Allotment at a cost at least equal to the Contractor's Fixed Project Cost, Fixed O&M Cost, Variable O&M Costs, and any other reasonable identifiable costs therefor with respect to such unutilized Project Allotment and credit such payments received therefor to the Contractor; provided that if the Authority has received requests from Project Participants to transfer more State Water Project water than can be transferred, the Authority shall transfer unutilized State Water Project water on a pro rata basis based upon such requesting Project Participants' Project Allotments.

(b) Other Project Participants shall have a right of first refusal to take delivery of the Contractor unutilized Project Allotment, at the costs set forth in subsection (a) of this Section.

In the event the Authority is unable to transfer unutilized Project Allotment, the provisions of Section 5 hereof shall apply. To the extent that the Authority is unable to transfer the Contractor's unutilized Project Allotment to other Project Participants, the Authority may make such unutilized Project Allotment available to other water purveyors within Santa Barbara County: provided that the Contractor shall not be relieved of any of its obligations hereunder as a result of such water being made available to other water purveyors.

This Section shall be an alternative to, and shall not be limited by, Section 9 hereof, and shall in no way affect the rights of the Contractor to sell or otherwise dispose of its Project Allocation in accordance with Section 9 hereof.

Section 18. Transfers, Sales and Assignments of Project Allotment.

(a) Transfer of Project Allotment. The Contractor has rights to make transfers, sales, assignments or exchanges (collectively "transfers") of its Project Allotment only as expressly provided in this Agreement.

# Appendix B

## Chapter 11

### JOINT USE AND DEVELOPMENT

Article	Section
4. Joint Use of Capacity in Water Conveyance Facilities .....	1810

#### Article 4

##### JOINT USE OF CAPACITY IN WATER CONVEYANCE FACILITIES

Section	Section
1810. Unused capacity; right of person or public agency with long-term water service contract to use; water treatment; emergency use.	1812. Determination of amount and availability of unused capacity; terms and conditions for use.
1811. Definitions.	1813. Findings by public agency.
	1814. Application of article.

*Article 4 was added by Stats.1986, c. 918, § 2.*

#### § 1810. Unused capacity; right of person or public agency with long-term water service contract to use; water treatment; emergency use

Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is of substantially the same quality as the water in the facility.

(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.

(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.

(Added by Stats.1986, c. 918, § 2.)

#### Historical and Statutory Notes

##### 1986 Legislation.

Section 1 of Stats.1986, c. 918 provides:

"The Legislature hereby finds and declares as follows:

"(a) There has been a severe downturn in the state's agricultural economy which has made it difficult for many farmers to meet their financial obligations to the state or, regional or local public agencies for water facilities already in place.

"(b) In addition, many agricultural operations and public agencies experiencing financial difficulties or facing default may desire to sell, lease, or exchange water as a means of obtaining financial relief or augmenting their income.

"(c) Since the sale, lease, or exchange of conserved water does not result in the forfeiture of an appropriate right to water, the marketing of water may provide finan-

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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cial relief or supplemental income during periods of economic hardship.

"(d) It is the policy of the state to facilitate the voluntary sale, lease, or exchange of water or water rights in order to promote efficient use.

"(e) The sales, leases, or exchanges of water are to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy of the area from which the water is being transferred."

#### Law Review Commentaries

Institutional perspectives on water policy and markets.  
Barton H. Thompson, Jr., 81 Cal.L.Rev. 671 (1993).

#### § 1811. Definitions

As used in this article, the following terms shall have the following meanings:

(a) "Bona fide transferor" means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water which may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.

(b) "Emergency" means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.

(c) "Fair compensation" means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.

(d) "Replacement costs" mean the reasonable portion of costs associated with material acquisition for the correction of unrepairable wear or other deterioration of conveyance facility parts which have an anticipated life which is less than the conveyance facility repayment period and which costs are attributable to the proposed use.

(e) "Unused capacity" means space that is available within the operational limits of the conveyance system and which the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

(Added by Stats.1986, c. 918, § 2.)

#### Library References

Words and Phrases (Perm.Ed.)

#### § 1812. Determination of amount and availability of unused capacity; terms and conditions for use

The state, regional, or local public agency owning the water conveyance facility shall in a timely manner determine the following:

(a) The amount and availability of unused capacity.

(b) The terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term or use, priorities, and fair compensation.

(Added by Stats.1986, c. 918, § 2.)

#### § 1813. Findings by public agency

In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

(Added by Stats.1986, c. 918, § 2.)

#### § 1814. Application of article

This article shall apply to only 70 percent of the unused capacity.

(Added by Stats.1986, c. 918, § 2.)