



September 22, 2022

VIA E-MAIL

Matthew Young, Water Agency Manager
Santa Barbara County Flood Control and Water Conservation District
130 East Victoria Street, Suite 200
Santa Barbara, CA 93101-2019

Re: Proposed Transfer and Exchange Between Central Coast Water Authority and San Geronio Pass Water Agency

Eric Friedman
Chairman

Jeff Clay
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

Dear Matt:

As you know, DWR has reduced State Water Project allocations to five percent for 2022 as a result of the drought. As a result, earlier this year, the Central Coast Water Authority (CCWA)'s Board of Directors authorized me to reinstate CCWA's Supplemental Water Purchase Program to acquire supplemental imported water supplies if needed to augment CCWA participants' water supplies. Several CCWA participants elected to participate in the program for 2022. Recently, the Carpinteria Valley Water District (Carpinteria VWD) requested that CCWA purchase additional SWP supplies from the San Geronio Pass Water Agency (SGPWA) for delivery to Carpinteria VWD in 2022. The terms of the proposed transfer and exchange are described in the attached Transfer and Exchange Agreement between CCWA and the SGPWA.

Today, at its September 22, 2022 regular meeting, the CCWA Board of Directors approved the proposed transfer and exchange with SGPWA, subject to and contingent upon Carpinteria VWD's own approval and other conditions.

Given the short time available to implement the proposed transfer and exchange in 2022, I am writing to give you advance notice of the proposed transfer and exchange. If Carpinteria VWD approves the proposed transfer and exchange, CCWA will immediately seek DWR's approval. In the event DWR approves the proposed transfer and exchange, DWR will require the Santa Barbara County Flood Control and Water Conservation District, as the contracting party to the State Water Contract, to execute the associated DWR conveyance and approval agreement. Given the need for delivery of this supplemental water supply before December 31, 2022, CCWA will request that the District execute the DWR Agreement immediately upon receipt in accordance with the District's obligations under the Transfer of Financial Responsibility Agreement.

Please contact me if you have any questions or concerns. I will continue to keep you apprised as the required approvals are obtained.

Sincerely,

A handwritten signature in blue ink that reads "Ray A. Stokes".

Ray Stokes
Executive Director

Attachment: Transfer and Exchange Agreement between CCWA and the SGPWA

cc: Robert McDonald, General Manager, Carpinteria Valley Water District

TRANSFER AND EXCHANGE AGREEMENT

This Transfer and Exchange Agreement (“Agreement”) is made and entered into as of September 1, 2022, by and between the SAN GORGONIO PASS WATER AGENCY (“SGPWA”) and the CENTRAL COAST WATER AUTHORITY (“CCWA”). SGPWA and CCWA are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. SGPWA and CCWA are regional water agencies that provide water on a wholesale basis to retail water providers and other public agencies within their respective service areas.

B. SGPWA has a long-term water supply contract (“Water Supply Contract”) with the Department of Water Resources of the State of California (“DWR”) that permits SGPWA to receive water supply, storage and conveyance services from the State Water Project (“SWP”). Pursuant to its Water Supply Contract, SGPWA has a contractual right to the delivery of 17,300 acre-feet (“AF”) per year (“AFY”) of water from the SWP.

C. CCWA is a joint powers agency, the members of which are individual water purveyors located in the County of Santa Barbara. Pursuant to the Transfer of Financial Responsibility Agreement, the Santa Barbara County Flood Control and Water Conservation District (“SBCFCWCD”) transferred to CCWA, and CCWA accepted and assumed, all rights and obligations to the Water Supply Contract between SBCFCWCD and DWR that provides for the delivery of up to 45,486 AF from the SWP to Santa Barbara County. CCWA contracts with its member agencies and other water users (collectively, “CCWA Participants”) for the delivery of SWP to the CCWA Participants.

D. On March 28, 2022, Governor Newsom issued Executive Order N-7-22 in response to ongoing drought conditions in the state. Said Executive Order provides, among other things, that local water suppliers shall move to Level 2 of their Water Shortage Contingency Plans, which require locally-appropriate actions that will conserve water across all sectors. In addition, on August 11, 2022, Governor Newsom issued a strategy document called “California’s Water Supply Strategy, Adapting to a Hotter, Drier Future” which calls for investing in new sources of water supply, accelerating projects and modernizing how the state manages water.

E. As of the date of this Agreement, DWR has approved an allocation of water from the SWP to CCWA of 5% of the “Table A Amount,” as that term is defined by the State Water Contract, for calendar year 2022. CCWA’s allocation for 2022 is not sufficient to satisfy the projected demand of CCWA’s Participants for imported water in 2022. Accordingly, CCWA, on behalf of one of its Participants, the Carpinteria Valley Water District, would like to acquire additional water supplies in 2022.

F. SGPWA has water available to it in 2022 and has agreed to transfer up to 400 AF of its SWP supply (“Transfer Water”) to CCWA in 2022, subject to the terms and conditions hereinafter set forth herein (“Transfer”). In exchange, CCWA has agreed to return two AF for each AF of Transfer Water delivered to CCWA in 2022 (or up to 800 AF) (“Exchange Water”)

to SGPWA prior to December 31, 2032, subject to the terms and conditions hereinafter set forth herein (“Exchange”).

G. The Parties’ respective Water Supply Contracts allow for the transfer and exchange of SWP water under certain conditions and subject to DWR approval.

H. The Parties wish to enter into this Agreement to address water supply needs for this current year and to set forth the terms and conditions for the return of said water supply. The Parties desire to work collaboratively to provide for the efficient use of water supplies, in areas of the state where said supplies are needed, in light of ongoing drought conditions.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. Term. This Agreement shall become effective upon execution by all Parties (the “Effective Date”) and shall terminate on December 31, 2032, or upon satisfaction of the Parties’ respective obligations pursuant to this Agreement, whichever is sooner.

2. Transfer of SGPWA Water in 2022. SGPWA shall transfer up to 400 AF of Transfer Water to CCWA at the Point of Delivery, as defined in Paragraph 4, prior to December 31, 2022.

3. CCWA’s Return of Exchange Water

(a) Amount and Source of Exchange Water. For each AF of Transfer Water delivered to CCWA in 2022, CCWA shall return two AF of Exchange Water to SGPWA at the Point of Delivery by December 31, 2032. The source of the Exchange Water shall be determined in CCWA’s sole discretion.

(b) Meet and Confer as to Scheduling and Sources. On or before February 1 of each year during the Term, the Parties will meet and confer to determine the schedule for return of Exchange Water and the sources of the Exchange Water. It is acknowledged that the intent of the Parties is to work together to return the outstanding Exchange Water as quickly as practicable. The following shall be taken into account while making decisions on scheduling and sources:

(i) Unless otherwise agreed by the Parties, as provided in this Paragraph 3, CCWA will return a minimum quantity of Exchange Water that is equivalent to 10 percent of the quantity of Transfer Water delivered to CCWA (or up to 80 AFY) for each year during the term of this Agreement until all Exchange Water is returned.

(ii) Upon mutual consent of the Parties in any year during the Term, the Exchange Water may be returned at a rate greater than 10 percent.

(iii) As may be determined in SGPWA’s reasonable discretion, SGPWA’s obligation to accept delivery of Exchange Water may be suspended in any year when SGPWA

has limited space to store water in the San Luis Reservoir or during very high SWP water allocation years.

(iv) As may be determined in CCWA's reasonable discretion, CCWA's obligation to return Exchange Water may be suspended during a period when DWR's allocation is less than 10%.

(c) Potential Reduction of Exchange Water. Upon mutual consent, the Parties may agree to reduce the balance of the Exchange Water through a future water exchange or financial arrangement that is acceptable in each Party's sole discretion.

(d) Balance of Exchange Water as of December 31, 2032. If any Exchange Water is still due and owing as of December 31, 2032, then the Term may be extended for two additional years by either Party upon the prior written notice to the other Party in order to complete said deliveries during that extended term.

4. Point of Delivery

(a) Both Parties have access to water supplies and conveyance capacity in the California Aqueduct and San Luis Reservoir facilities which are part of the SWP. For accounting and operational purposes, it is hereby acknowledged that the Transfer and Exchange to be made under this Agreement will be made in the San Luis Reservoir which shall be deemed to be the Point of Delivery.

(b) Neither Party is making any representation or warranty concerning the quality of the water transferred and exchanged under this Agreement at the Point of Delivery.

5. Cooperation

(a) The Parties will take the necessary actions to fulfill their respective obligations, including but not limited to coordinating with DWR to obtain DWR's approval and to facilitate the delivery of the Transfer Water and the Exchange Water to the Point of Delivery.

(b) Within 10 days after the Effective Date, SGPWA will submit a request to DWR that DWR deliver the Transfer Water to CCWA pursuant to the delivery schedule as agreed upon by the Parties. SGPWA will coordinate with DWR to confirm the quantity of Transfer available for delivery to CCWA in 2022.

(c) CCWA shall be responsible for coordinating approvals from DWR for the delivery of the Transfer Water to CCWA and for subsequent delivery to one or more of CCWA's Participants. CCWA shall be responsible for obtaining SBCFCWCD's execution of the DWR Approval Agreement.

(d) The Parties will cooperate as follows:

(i) Coordination with DWR for processing and obtaining DWR approvals necessary for the approval and implementation of this Agreement.

(ii) Coordination with DWR for delivery of the Transfer Water and Exchange Water.

(iii) SGPWA, in coordination with CCWA, will submit the water delivery schedule to DWR for delivery of the Transfer Water.

(iv) CCWA, in coordination with SGPWA, will submit water delivery schedules to DWR for deliveries of the Exchange Water.

6. Payment and Reconciliation

(a) For each AF of Transfer Water delivered to the Point of Delivery, CCWA shall pay \$1500 to SGPWA.

(b) Within seven days of the date the DWR Agreement is fully executed, CCWA shall submit a one-time payment to SGPWA in the amount of six hundred thousand dollars (\$600,000.00) (“One-Time Payment”), which payment assumes that 400 AF of Transfer Water will be delivered to CCWA on or before December 31, 2022.

(c) In the event that less than 400 AF of Transfer Water is delivered to CCWA on or before December 31, 2022, within 30 days of the delivery of any Transfer Water to the Point of Delivery, SGPWA shall refund to CCWA any overpayment for Transfer Water not delivered.

7. Costs and Expenses

(a) CCWA will be responsible for the following costs and expenses:

(i) Costs and expenses in connection with taking delivery of the Transfer Water at the Point of Delivery.

(ii) Costs and expenses in connection with delivery of the Exchange Water to the Point of Delivery.

(iii) DWR Variable charges for conveying the Transfer Water from the Point of Delivery to CCWA’s service area.

(iv) CCWA’s internal and transaction costs in connection CCWA’s activities under this Agreement including, but not limited to, costs for review and processing of required agreements, environmental documents, and other transaction costs.

(b) SGPWA will be responsible for the following costs and expenses:

(i) Costs and expenses in connection with delivering the Transfer Water to the Point of Delivery.

(ii) Costs and expenses in connection with taking delivery of the Exchange Water at the Point of Delivery.

(iii) SGPWA shall be responsible for the DWR Variable Charges for conveying the Exchange Water from the Point of Delivery to SGPWA's service area.

(iv) SGPWA's internal and transaction costs in connection SGPWA's activities under this Agreement including, but not limited to, costs for review and processing of required agreements, environmental documents, and other transaction costs.

8. Approvals and Requirements. The Transfer and Exchange provided for in this Agreement shall be subject to satisfaction of all applicable approvals and requirements and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. Each Party is responsible for satisfying their respective requirements, as applicable, including but not limited to the following:

(a) complying with Article 57(g) of each Party's respective Water Supply Contract;

(b) obtaining all permits, consents, entitlements, and approvals necessary to perform this Agreement; and

(c) fully and completely complying with the California Environmental Quality Act ("CEQA"). The lead agency for the purposes of CEQA will be SGPWA. The Parties shall cooperate with each other and DWR in determining and completing any environmental reviews associated with the activities under this Agreement. To the extent required, the Parties shall share equally the costs for a consultant, if needed, to prepare environmental documents.

9. Conditions Precedent. This Agreement is subject to each and all the following conditions precedent:

(a) DWR's written approval of the Transfer and Exchange. SGPWA and CCWA anticipate that DWR's approval will be provided in the form of a Change in Point of Delivery Agreement ("DWR Approval Agreement"). In the event of a conflict between the terms of this Agreement and the DWR Approval Agreement, the terms of the DWR Approval Agreement shall govern.

(b) SBCFCWCD's execution of the DWR Approval Agreement, on behalf of CCWA.

10. Termination.

(a) This Agreement may be terminated in accordance with the following:

(i) Default. In the event a Party fails to perform any of its obligations under this Agreement ("Defaulting Party"), the other Party ("Non Defaulting Party") may demand in writing that the Defaulting Party cure such non-performance. The Defaulting Party shall have 90 days after receipt of such demand to cure the default. In the event the Defaulting Party fails to cure the default within the 90 period, the Non Defaulting Party may take any and all actions in law or in equity which may be available to enforce this Agreement.

(ii) Mutual consent. This Agreement may be terminated at any time by mutual written consent of both Parties.

(iii) Insufficient SWP Allocations. SGPWA may elect, in its sole and absolute discretion, to terminate this Agreement if SWP allocations issued by the DWR fall below 5% for calendar year 2022.

(iv) Failure of One or More Conditions Precedent. In the event any condition precedent to this Agreement has not been satisfied by December 1, 2022, due to circumstances outside of the responsibility or control of the Parties, as applicable, the Parties will meet and confer to discuss whether to amend, suspend, or terminate this Agreement. If mutual agreement is not reached on or before December 15, 2022, then either Party may terminate this Agreement.

(b) Return of One-Time Payment. In the event this Agreement is terminated prior to delivery of the Transfer Water to CCWA, SGPWA shall return the One-Time Payment within 30 days of the date of termination.

11. Force Majeure. The respective obligations of each party shall be suspended while it is prevented from complying by acts of God, war, riots, civil insurrection, acts of civil or military authority, fires, floods, earthquakes, labor accidents or incidents, rules and regulations of any governmental agency (other than the Parties themselves), or other cause of the same or other character any of which are beyond the reasonable control of either Party (collectively, “Force Majeure”). In the event of a suspension due to the Force Majeure, the Party whose obligations are suspended shall promptly notify the other Party in writing of such suspension and the cause and estimated duration of such suspension.

12. Defense. In the event of any legal action by a third party to challenge this Agreement and/or the Transfer and/or Exchange described herein, the Parties agree to cooperate in the defense thereof and to share equally in the costs of such defense, utilizing counsel mutually acceptable to the parties.

13. Power and Authority to Execute and Perform this Agreement. Each Party has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained for entering into this Agreement.

14. General Provisions

(a) Remedies Not Exclusive. Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

(b) Subject to Applicable Law. The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing public agencies as they now exist and as they may be amended or codified by the Legislature of the State of California.

(c) Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be amended except in writing signed by both Parties.

(d) No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

(e) Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered in person, by email, or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one day after being emailed or deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

(f) Headings; Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

(g) Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

(h) Binding Effect on Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns.

(i) Attorneys' Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

(j) Governing Law and Venue. This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the County of San Bernardino, California, and consent to the jurisdiction thereof.

(k) Counterparts; Delivery by Email; Electronic Signatures. The Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CENTRAL COAST WATER AUTHORITY SAN GORGONIO PASS WATER AGENCY

Date: _____

Date: _____

By: _____

By: _____

Ray Stokes
Executive Director

Lance Eckhart, PG, CHG
General Manager/Chief Hydrogeologist

Central Coast Water Authority
255 Industrial Way
Buellton, CA 93427
Attn: Ray Stokes, Executive Director
Email: RAS@ccwa.com

San Gorgonio Pass Water Agency
1210 Beaumont Ave.
Beaumont, CA 92223
Attn: Lance Eckhart, General Manager
Email: LEckhart@sgpwa.com