

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
SANTA BARBARA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,
AND
SAN LUIS OBISPO COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
FOR
THE DELIVERY OF A PORTION OF
SAN LUIS OBISPO COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT'S
STATE WATER PROJECT ALLOCATED TABLE A WATER

SWPAO #08047

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THIS AGREEMENT is made this _____ day of _____, 2008,
pursuant to the provisions of the California Water Resources Development Bond Act
and other applicable laws of the State of California, among the Department of Water
Resources of the State of California, herein referred to as "DWR," the Santa Barbara
County Flood Control and Water Conservation District, herein referred to as
"SBCFCWCD," and the San Luis Obispo County Flood Control and Water
Conservation District, herein referred to as "SLOCFCWCD." DWR, SBCFCWCD, and
SLOCFCWCD may be referred to individually by name as "Party" or collectively as
"Parties."

RECITALS

- A. DWR and SBCFCWCD have entered into a water supply contract, executed on
February 26, 1963, providing that DWR shall supply certain quantities of water to

- SBCFCWCD, and providing that SBCFCWCD shall make certain payments to DWR, and setting forth the terms and conditions of such payment (hereinafter the "SBCFCWCD Water Supply Contract").
- B. DWR and SLOCFCWCD have entered into a water supply contract, executed February 26, 1963, providing that DWR shall supply certain quantities of water to SLOCFCWCD, and providing that SLOCFCWCD shall make certain payments to DWR, and setting forth the terms and conditions of such payment (hereafter the "SLOCFCWCD Water Supply Contract").
- C. Due to the low initial allocation of Table A water for 2008 as the result of hydrology and the court-imposed restrictions on water exports from the Sacramento-San Joaquin Delta (the Wanger decision), SBCFCWCD intends to proceed with a two-year lease/purchase agreement to acquire excess allocated Table A water from SLOCFCWCD.
- D. SLOCFCWCD and Central Coast Water Authority have entered into an agreement entitled "2008 and 2009 Central Coast Water Reliability Agreement", executed **xxxx.xxx, 2008**. The 2008 and 2009 Central Coast Water Reliability Agreement defines SLOCFCWCD's 2008 and 2009 Central Coast Water Supply Reliability Program, and contains terms and provisions governing the proposed transfer of excess allocated Table A water from SLOCFCWCD to SBCFCWCD.
- E. The 2008 and 2009 Central Coast Water Reliability Agreement calls for SLOCFCWCD's excess allocated water in 2008 and 2009 to be transferred from SLOCFCWCD to SBCFCWCD.
- F. CCWA, on behalf of SBCFCWCD requested DWR's approval for the delivery of a

portion of SLOCFCWCD's approved 2008 and 2009 Table A water to SBCFCWCD.

In a visit to SBCFCWCD, DWR staff agreed that SBCFCWCD has a water emergency condition, and that its water supplies are likely to be severely inadequate in 2008.

- G. For compliance with the California Environmental Quality Act (CEQA), SLOCFCWCD, as a lead agency, prepared an Initial Study/Negative Declaration for the water transfer from SLOCFCWCD to SBCFCWCD in January 2008. SLOCFCWCD filed a Notice of Determination (NOD) with the Office of Planning and Research (OPR) on April 21, 2008 (State Clearinghouse #2008049037). A Notice of Determination was also filed with San Luis Obispo County on February 26, 2008. DWR, as a responsible agency, has reviewed and considered these documents.
- H. On June 4, 2008, Governor Arnold Schwarzenegger signed Executive Order S-06-08 proclaiming a condition of statewide drought, and ordering the Department of Water Resources (DWR) to take immediate action addressing the serious drought conditions and water delivery limitations that currently exist in California, and that can be anticipated in the future. The actions for DWR include facilitating water transfers in 2008 to timely respond to potential emergency water shortages. The Order also strongly encouraged local water agencies to work cooperatively regionally and on the State level to take aggressive, immediate action to prepare for potentially worsening water conditions in 2009.

AGREEMENT

DWR is willing to approve the delivery of a portion of SLOCFCWCD's allocated Table A water to SBCFCWCD, subject to the following terms and conditions:

1. PURPOSE

The purpose of this Agreement is to set forth provisions governing the delivery of a portion of SLOCFCWCD's allocated Table A water to SBCFCWCD in 2008, and possibly in 2009. Pursuant to this Agreement, SLOCFCWCD will transfer up to 5,200 acre-feet of its 2008 allocated Table A water to SBCFCWCD in 2008. The approval for 2009 delivery from SLOCFCWCD to SBCFCWCD is contingent on the final 2008 SWP allocation, the future 2009 SWP allocations, and DWR's future evaluation of all relevant information.

2. TERM

This Agreement shall become effective when executed by all parties. The Agreement shall terminate on December 31, 2009, or after all payments are made under this contract, whichever occurs later.

3. DWR APPROVAL

- a. DWR approves the delivery of up to 5,200 acre-feet of SLOCFCWCD's 2008 allocated Table A water to SBCFCWCD in 2008 to help mitigate an emergency water shortage in SBCFCWCD.
- b. DWR approves this delivery of SLOCFCWCD's Table A water to SBCFCWCD under this Agreement as a unique, special response to an emergency situation, and not as a precedent for any future agreements.

- c. After executing this Agreement, DWR shall file a Notice of Determination with the State Office of Planning and Research.

4. TABLE A WATER TRANSFER CRITERIA

- a. To determine the amount of water that is available for transfer in each year, SLOCFCWCD will ascertain the Table A amount needed to meet local needs by October 1 of each year and subtract this amount from its full Table A amount of 25,000 acre feet. The remainder shall be determined to be the excess Table A amount and will be used to calculate the actual amount of water made available for transfer. The excess Table A amount will be multiplied by the final percentage allocation by DWR in each year to determine the amount of water available for transfer to SBCFCWCD, provided, however, that the maximum amount allowed for transfer to SBCFCWCD will be thirty-five percent of SLOCFCWCD's full Table A amount.
- b. DWR's approval for the delivery of a portion of SLOCFCWCD's 2009 allocated Table A water to SBCFCWCD is contingent on: (1) the 2009 initial SWP allocation which shall be at thirty-five percent or less on December 1, 2008; and (2) the SWP allocation level after considering the operational studies based on the analysis of a broad range of variables including the April 1, 2009 snow survey results, which shall be at forty percent or less.
- c. The actual transfer quantity for 2009 delivery shall be no more than thirty-five percent of 25,000 acre-feet, or 8,750 acre-feet.

5. USE OF TABLE A WATER

Table A water delivered by DWR to SBCFCWCD under this Agreement shall not be sold, used, or otherwise disposed of outside of SBCFCWCD's service area. If any such water is sold, used, or otherwise disposed of outside of SBCFCWCD's service area, upon notification from DWR, SLOCFCWCD or DWR may seek an injunction or other appropriate remedy to halt any such deliveries and DWR may reclassify deliveries of Table A water to SLOCFCWCD up to the amount that was delivered outside of SBCFCWCD's service area.

6. APPROVAL

The delivery of water pursuant to this Agreement shall be contingent on, and subject to, any necessary approvals, including any SBCFCWCD and SLOCFCWCD board approvals, and shall be governed by the terms and conditions of such approval(s) and any other applicable regulations. SBCFCWCD and SLOCFCWCD shall be responsible for complying with all applicable laws and regulations and for securing any required consents, permits, or orders. SBCFCWCD and SLOCFCWCD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.

7. DELIVERY SCHEDULES

- a. SBCFCWCD shall submit to the State Water Project Analysis Office (SWPAO) for approval (Attn: Chief, Water Deliveries Section, Fax (916) 653-9628) revised monthly water delivery schedules indicating timing and point of delivery of water delivered pursuant to this Agreement, and shall reference this Agreement (#08047).

- b. SBCFCWCD shall submit a weekly schedule to the San Joaquin Field Division Operations Branch (Attn: Chief, Water Operation Section, FAX (661) 858-5501) showing the deliveries to SBCFCWCD. The schedules shall be submitted by 10:00 a.m. Wednesday for the following week (Monday through Sunday) and shall be concurrently faxed to the following:

State Water Project Operations Control Office

Chief, Pre-Scheduling Section, FAX (916) 574-2782

Chief, Operations Scheduling Section, FAX (916) 574-2785

8. DWR APPROVAL OF DELIVERY SCHEDULES

The delivery of SLOCFCWCD's approved Table A water pursuant to this Agreement shall be in accordance with a schedule which has been reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP contractors.

9. WATER DELIVERED FROM SLOCFCWCD TO SBCFCWCD

- a. The water delivered pursuant to this Agreement shall be from SLOCFCWCD's allocation of Table A water in the year the water is delivered to SBCFCWCD, for use within SBCFCWCD's service area.
- b. All water delivery schedules and revisions shall be in accordance with Article 12 of SBCFCWCD's long-term Water Supply Contract with DWR.
- c. In any given year, the sum of deliveries scheduled to SBCFCWCD under this

Agreement, plus additional scheduled SBCFCWCD Table A deliveries, plus deliveries to SBCFCWCD pursuant to any other agreements, shall not exceed the quantities on which the Proportionate Use-of-Facilities factors are based pursuant to SBCFCWCD's long-term Water Supply Contract with DWR, unless DWR determines that deliveries in excess of those quantities will not adversely impact SWP operations, facilities, or other SWP contractors.

10. SWP ALLOCATION

Water delivered to SBCFCWCD pursuant to this Agreement shall not be considered by DWR in the determination of approved annual Table A deliveries to or allocation of other SWP water to SBCFCWCD under Article 18 of SBCFCWCD's long-term Water Supply Contract with DWR.

11. WATER DELIVERY RECORDS

DWR will maintain records documenting the delivery of SLOCFCWCD's approved Table A water to SBCFCWCD pursuant to this Agreement. SLOCFCWCD and SBCFCWCD shall certify to the State Water Project Analysis Office (Attn: Chief, Water Contracts Branch, Fax (916) 653-9628) by January 31st of each year the amount of water that is delivered to SBCFCWCD for the previous calendar year under this agreement.

12. CHARGES

- a. SBCFCWCD shall pay to DWR the charges associated with the delivery of SLOCFCWCD's approved Table A water from the Delta to the point of delivery at SBCFCWCD's turnout in Reaches 35, 37, and 38 of the California

Aqueduct. SBCFCWCD shall pay all the variable operation, maintenance, power, and replacement components of the Transportation Charge and the Off-Aqueduct Power Facilities Charge in effect for the year in which the water is delivered to SBCFCWCD.

- b. In addition to the charges identified above, SBCFCWCD agrees to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR, as a result of activities pursuant to this Agreement.
- c. Charges and Payment terms in this Agreement shall be in accordance with SBCFCWCD's Water Supply Contract in its current form and as amended in the future.

13. ARTICLE 56(D) WAIVER

- a) SLOCFCWCD shall not participate in the Turnback Pool under Article 56(d) of its Water Supply Contract with DWR in the years when water is delivered to SBCFCWCD pursuant to this Agreement. SLOCFCWCD hereby agrees to explicitly waive any rights under Article 56(d) of its Water Supply Contract.
- b) SBCFCWCD shall not sell water in the Turnback Pool under Article 56(d) of its Water Supply Contract with DWR in the years when water is delivered to SBCFCWCD pursuant to this Agreement. SBCFCWCD hereby waives its rights to file any claims under Article 56(d) of the SBCFCWCD Water Supply Contract against DWR or any other SWP contractors who participate in the Turnback Pool under Article 56(d) of their respective Water Supply Contract with DWR in the years when water is delivered to SBCFCWCD pursuant to

this Agreement.

14. LIABILITY

- a. Responsibility for water delivered pursuant to this Agreement shall be governed by Article 13 of SBCFCWCD's Water Supply Contract, with responsibilities for liabilities under the terms of that article shifting from DWR to SBCFCWCD when the water passes through SBCFCWCD's turnout.
- b. In the event that any claim of liability against DWR, its Directors, officers, or employees, jointly or severally, arises out of this agreement, SBCFCWCD and SLOCFCWCD shall be jointly and severally responsible to defend, indemnify, and hold DWR and any of its Directors, officers, and employees harmless from any such claim.
- c. SBCFCWCD and SLOCFCWCD shall be jointly and severally responsible for any identified adverse impacts that may result from deliveries under this Agreement, as determined by DWR.

15. NO MODIFICATION OF WATER SUPPLY CONTRACTS

This Agreement shall not be interpreted to modify the terms or conditions of SBCFCWCD's Water Supply Contract, as amended, or SLOCFCWCD's Water Supply Contract, as amended. Unless expressly provided herein, the terms and conditions of SBCFCWCD's and SLOCFCWCD's Water Supply Contracts, including, but not limited to, Article 18(f) and future amendments, apply to this Agreement.

16. CLAIMS DISPUTE

In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR, the water resources planning manager of SBCFCWCD, and the public works director of SLOCFCWCD shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

17. ASSIGNMENT OF AGREEMENT

Without the written consent of DWR, SBCFCWCD and SLOCFCWCD, this Agreement shall not be assignable by SBCFCWCD or SLOCFCWCD in whole or in part.

18. MODIFICATION OF AGREEMENT

No modification of the terms of this Agreement shall be valid unless made in writing and signed by the Parties to this Agreement.

19. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

20. DETERMINATIONS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

21. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

22. COUNTERPARTS

This Agreement may be executed in counterpart. The parties agree to accept facsimile or electronically scanned signatures as original signatures. The agreement shall take effect as soon as all parties have signed. Immediately after execution, SBCFCWCD and SLOCFCWCD shall transmit a copy of the executed Agreement by facsimile or electronic file to Robert B. Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 or cooke@water.ca.gov, and to each other at:

SBCFCWCD: (805) 568-3434 or ramly@co.santa-barbara.ca.us

SLOCFCWCD: (805) 781-1229 or pogren@co.slo.ca.us

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to legal form
and sufficiency

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
DEPARTMENT OF WATER RESOURCES

Director

Date

Date

SANTA BARBARA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

SAN LUIS OBISPO COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

Name

Name

Title

Title

Date

Date