



September 17, 2018

Mr. Tom Fayram
Deputy Public Works Director
Santa Barbara County Flood Control and Water Conservation District
130 East Victoria Street, Suite 200
Santa Barbara, CA 93101-2019

Jack Boysen
Chairman

Richard Shaikewitz
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 Tom:

I am writing to request the Santa Barbara County Flood Control and Water Conservation District (District)'s consideration of the proposed assignment of the State Water Contract from the District, the existing State Water Project contractor, to the Central Coast Water Authority (CCWA), the agency responsible for the delivery of State Water Project (SWP) water to Santa Barbara County.

The proposed assignment requires approval of the Board of Supervisors, acting on behalf of the District, CCWA, and the Department of Water Resources (DWR). As further described in this letter, on October 26, 2017, CCWA's Board approved the proposed assignment by agreeing to accept assignment of the State Water Contract and to release the District from all of its obligations. Thereafter, DWR completed its review and consideration of the proposed assignment and recently confirmed by email that it will approve the proposed assignment as permitted by Article 41 of the State Water Contract following the District's approval. Accordingly, the District's consideration and approval of assignment is now requested.

I. BENEFITS OF THE PROPOSED ASSIGNMENT OF THE STATE WATER CONTRACT

The proposed assignment provides numerous benefits for Santa Barbara County and its residents, including:

1. Aligning State Water Contract decision-making authority with financial and operational responsibility by making CCWA fully and solely responsible for the State Water Contract;
2. Relieving the District (and thus the County) of any potential financial obligations and liability under the State Water Contract;
3. Relieving cities and other communities within the County who do not receive SWP water from any potential financial obligation under the State Water Contract;
4. Improving decision-making at the local level by eliminating duplicative and unnecessary approvals by the District, with no operational or financial responsibility for the State Water Contract on a day-to-day basis;
5. Empowering CCWA, which is financially responsible for the State Water Contract, with the power to make decisions regarding future SWP projects;

255 Industrial Way
Buellton, CA 93427-9565
(805) 688-2292
FAX: (805) 686-4700



6. Providing CCWA members and their ratepayers with direct influence over decision-making for SWP projects; and
7. Increasing local government efficiency, which in turn will increase opportunities for innovations in water planning.

Frequently asked questions about the proposed assignment and CCWA's responses are enclosed as **Attachment A** to this letter.

II. BACKGROUND AND TIMELINE

As you know, the proposed assignment of the State Water Contract is not new – it has been a long time in the making.

The State Water Contract was first executed by the District and DWR in February, 1963 and amended on numerous occasions after that.

In 1978, the County of Santa Barbara sponsored a ballot measure authorizing issuance of bonds to finance construction of an in-county distribution and treatment system for SWP water. The ballot measure was defeated and, following that election, the Board of Supervisors considered whether to terminate the 1963 contract due to lack of local political support for the importation of SWP water made available by the State Water Contract. A number of local cities and water districts urged the Board of Supervisors to retain the water, and to find a way to shift the cost of that water to the local water agencies and their ratepayers. In response, in the mid-1980s, the District executed certain "Water Supply Retention Agreements" with local water agencies (Participants) whereby the Participants agreed to assume the annual costs for 45,486 acre-feet per year of SWP water.

In 1991, after five years of severe drought, public elections were held in 14 local jurisdictions to authorize financing to pay for construction of SWP water distribution and treatment facilities. The ballot measures were approved in 11 of the 14 jurisdictions. In September, 1991, CCWA was formed by eight public agencies – City of Buellton, City of Guadalupe, City of Santa Barbara, City of Santa Maria, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and Santa Ynez River Water Conservation District, Improvement District No. 1 (Members) – all of whom are Participants. The Participants also executed certain "Water Supply Contracts" with the newly formed CCWA, transferring their rights under the Water Supply Retention Agreements to CCWA, in return for water service in an amount equivalent to their rights under the Water Supply Retention Agreements.

In November 1991, the District and CCWA executed the Transfer of Financial Responsibility Agreement (TFRA) by which CCWA agreed to assume all of the District's financial obligations under the State Water Contract. The TRFA expresses

the District's and CCWA's joint interest in securing DWR's approval of assignment of all of the District's rights and obligations under the State Water Contract to CCWA.

The District and CCWA are continuing their efforts to secure from DWR an agreement to release the District from its obligations under the SWP Contract to the extent those obligations have been assumed by CCWA.... A principal purpose of this Agreement is to ensure that the District's financial obligations under the SWP Contract attributable to a CCWA Contractor will be completely and fully assumed and satisfied by CCWA....¹

Since 1991, there have been periodic efforts to secure DWR's approval of assignment of the State Water Contract, as envisioned by TRFA. Prior to 2015, there had been some uncertainty as to whether CCWA, a joint powers authority, could satisfy the requirements of Article 34 of the State Water Contract obligating the contracting party to levy a property tax in the event of its failure to make the required payments to DWR under the contract, and therefore whether the State Water Contract could be assigned to CCWA. That uncertainty was removed in 2015 when Government Code section 6502 was amended to clarify that a joint powers authority like CCWA has all powers common to the contracting parties, including but not limited to the authority to levy a fee, assessment or tax. It is now clear that CCWA is eligible to accept assignment of the State Water Contract. Accordingly, on June 22, 2017, the CCWA Board of Directors voted unanimously to direct its legal and policy staff to pursue assignment of the State Water Contract.

During October and November, 2017, each of CCWA's Members approved the proposed assignment, specifically by amending the 1991 Joint Exercise of Powers Agreement creating CCWA to authorize CCWA to contract with DWR for the delivery of water from the State Water Project and their respective Water Supply Agreements with CCWA to conform to the amendments to the Joint Exercise of Powers Agreement. The First Amendment to the Joint Exercise of Powers Agreement, which became effective on December 12, 2017, is enclosed for your reference as **Attachment B**.

On October 23, 2017, CCWA's Board unanimously adopted Resolution No. 17-04 (enclosed for your reference as **Attachment C**), which (1) approved amendments to each of the Members' Water Supply Agreements, and (2) approved assignment of the State Water Contract from the District to CCWA and authorized me to negotiate an agreement with the District and DWR to effectuate the assignment. CCWA's draft proposed Assignment, Assumption, And Release Agreement to effectuate assignment of the State Water Contract is enclosed as **Attachment D** for your review and consideration.

¹ TRFA, Recitals C and J

Subsequently, DWR staff and legal counsel considered the proposed assignment. By email dated September 17, 2018, the State Water Project Deputy Director of DWR confirmed that DWR will approve assignment of the State Water Contract, as is permitted by Article 41 of the contract. DWR's email is enclosed for your reference as **Attachment E**. Accordingly, CCWA requests that the Board of Supervisors, acting on behalf of the District, consider the proposed assignment at the next available date.

III. COMPLIANCE WITH CEQA

CCWA has determined that CEQA does not apply to the proposed assignment because the transaction will not affect a change in the environment. The transaction will not change the point of delivery, place of use or purpose of use; it will not result in a change in the quantity of water delivered, and no new facilities will be constructed. All terms and conditions of the State Water Contract will remain the same; only CCWA will be substituted for the District. CCWA's Notice of Exemption for the proposed assignment is enclosed as **Attachment F**.

IV. RESPONSE TO MEMORANDUM FROM CALIFORNIA WATER IMPACT NETWORK (C-WIN)

We have reviewed the April 3, 2018 letter from the California Water Impact Network (C-WIN) and attached undated memorandum from Roger Moore (C-WIN Memo) raising concerns about the proposed assignment, specifically that the assignment would not relieve the District (and thus the County) from future potential liability under the State Water Contract. CCWA's General Counsel has responded to each of the assertions made in the C-WIN Memo. See **Attachment G**. Importantly, C-WIN's assertions are not supported – the proposed assignment fully relieves the District (and thus the County) of all liability under the State Water Contract. In fact, this is one of the major benefits of the proposed assignment.

V. NEXT STEPS

I would like to set a date for our respective agencies to meet and discuss the proposed assignment and any questions or concerns you may have, and to finalize a draft Assignment, Assumption, And Release Agreement for consideration by the Board of Supervisors on behalf of the District. It has now been more than a year since my Board directed me to pursue assignment of the State Water Contract, as was initially envisioned by the District and CCWA in 1991. For this reason, I am eager to set a date as your earliest convenience.

I look forward to working with you on this important project for Santa Barbara County and its residents.

Most sincerely,



Ray Stokes
Executive Director

Attachments:

- A. Frequently Asked Questions re. Assignment of the State Water Contract
- B. First Amendment to the Joint Exercise of Powers Agreement Creating the Central Coast Water Authority
- C. CCWA Resolution No. 17-04 (without exhibits)²
- D. DRAFT Assignment, Assumption, and Release Agreement
- E. Correspondence from DWR confirming DWR will approve the proposed assignment
- F. CCWA Notice of Exemption re. Assignment of State Water Contract
- G. Brownstein Hyatt Farber Schreck Response to Comments from C-WIN

cc: Karla Nemeth, DWR Director
Joel Ledesma, DWR State Water Project Deputy Director
CCWA Board of Directors
Shad Springer, City of Santa Maria
Cruz Ramos, City of Guadalupe
Rose Hess, City of Buellton
Chris Dahlstrom, Santa Ynez Improvement District, ID#1
John McInnes, Goleta Water District
Rebecca Bjork, City of Santa Barbara
Nick Turner, Montecito Water District
Bob McDonald, Carpinteria Valley Water District
Stephanie Hastings, Brownstein Hyatt Farber Schreck
Michael Ghizzoni, County Counsel, County of Santa Barbara

² The exhibits to Resolution No. 17-04 are voluminous. They include amendments to the Water Supply Agreements for each of CCWA's Members. If you require copies of these amendments, I am happy to provide them to you under separate cover.

Assignment of the Santa Barbara State Water Project Contract

FREQUENTLY ASKED QUESTIONS

1. How is imported water delivered to Santa Barbara County?

The California State Water Project (SWP) is a water storage and delivery system of reservoirs, aqueducts, powerplants and pumping plants. Its main purpose is to store water and distribute it throughout California. The Coastal Branch of the SWP delivers SWP water to Santa Barbara and San Luis Obispo Counties. Twenty-nine public agencies, including the Santa Barbara County Flood Control and Water Conservation District (District), contract with the State of California for the delivery of SWP water to them for agricultural and urban uses. The SWP and Coastal Branch infrastructure may also be used for the transportation and delivery of other imported water supplies (non-SWP water) to Santa Barbara County as well.

2. What is the *SWP Contract* and who are the parties to it?

The contract under which water from SWP is delivered to Santa Barbara County was first executed in February, 1963 and has been amended 19 times (*SWP Contract*). The parties to the *SWP Contract* are the State of California Department of Water Resources (DWR) and the District. DWR operates and maintains the SWP. The District provides flood protection and conservation of storm, flood and surface waters within Santa Barbara County. The Board of Supervisors of Santa Barbara County acts as the Board of Directors of the District.

The *SWP Contract* provides for delivery of up to 45,486 acre-feet per year (afy) of water from the SWP, with the quantity actually delivered to Santa Barbara County in any given year dependent on the total quantity of water available and allocated to the SWP contractors during that year.

3. What is the Central Coast Water Authority (CCWA)?

CCWA is a joint powers authority created in 1991 by the *Joint Exercise of Powers Agreement* to construct, manage and operate Santa Barbara County's local facilities for the distribution and treatment of SWP water. CCWA owns and operates a water treatment plant and pipeline that delivers SWP water to Santa Barbara County.¹

CCWA is composed of eight members, all of which are public agencies, all of which provide retail water service to customers living and working within Santa Barbara County. CCWA's members are: the City of Santa Maria, the City of Santa Barbara, the City of Guadalupe, the City of Buellton, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District, Improvement District No. 1.

¹ CCWA also delivers SWP water to San Luis Obispo County.

On November 12, 1991, the District and CCWA entered into the *Transfer of Financial Responsibility Agreement* whereby CCWA assumed full responsibility for nearly all of the District's obligations pursuant to the *SWP Contract*. As a result, CCWA makes all payments to DWR for all SWP charges and is responsible for the delivery of SWP water within Santa Barbara County.

4. Who receives SWP water in Santa Barbara County?

CCWA delivers SWP water to its members and other local contractors, which in turn deliver retail water service to the majority of people living and working in Santa Barbara County. However, some communities and unincorporated areas, including the City of Lompoc, Casmalia, Cuyama, Mission Hills, and Vandenberg Village, do not contract with CCWA for SWP water and therefore do not receive SWP water.

5. Who pays for SWP water in Santa Barbara County?

Ratepayers – the customers of each of the public agencies and other entities that contract with CCWA for the delivery of SWP water.

6. May the *SWP Contract* be assigned?

Yes. Article 41 of the District's *SWP Contract* permits assignment with the approval of DWR upon such terms and conditions as DWR may impose. If assignment is permitted, the assignee is bound to all of the provisions of the *SWP Contract*.

7. What is the purpose of assignment of the *SWP Contract* from the District to CCWA?

Assignment would align decision-making authority with financial responsibility. Under the current arrangement, CCWA bears nearly all of the financial responsibility for the *SWP Contract*, but has limited decision-making authority. For example, the decision of whether to pursue extension of the *SWP Contract* beyond its 2038 expiration date is currently in the hands of DWR and the County; CCWA has no role, despite the fact that it is financially responsible for the delivery of all SWP water within Santa Barbara County.

8. Is CCWA eligible to contract with DWR for the delivery of SWP water?

Yes. Each of CCWA's eight member agencies is a "state agency" within the meaning of the authorizing legislation for the SWP and therefore may contract directly with DWR for the delivery of SWP water. CCWA is also a "state agency" and may exercise any power common to its members, including the power to contract with DWR directly for the delivery of SWP water.²

² See Wat. Code §§ 11102, 11625, and 11626,

9. What approvals are required to permit assignment?

The District must agree to assign the *SWP Contract* to CCWA, CCWA must agree to assume the District's obligations, and DWR must agree to release the District from its obligations pursuant to the *SWP Contract*. The proposed *Assignment, Assumption, and Release Agreement* has been prepared for this purpose. Additionally, each of CCWA's members must agree to amend the *Joint Exercise of Powers Agreement* to authorize CCWA to contract with DWR and agree to amendment of their individual *Water Supply Agreement* to acknowledge CCWA's right to levy a tax or assessment, if required by Article 34 of the *SWP Contract*. The following approvals will be sought:

1. Each CCWA member considers approval of: (a) *Amendment of the Joint Exercise of Powers Agreement*, and (b) *Amendment of the member's Water Supply Agreement*
2. CCWA considers approval of the *Assignment, Assumption, and Release Agreement*
3. District considers approval of the *Assignment, Assumption, and Release Agreement*
4. DWR considers approval of the *Assignment, Assumption, and Release Agreement*

10. Why is assignment sought now?

Assignment of the *SWP Contract* has been contemplated since at least 1991. The 1991 Transfer of Financial Responsibility between the District and CCWA declared the parties' intention to "continu[e] their efforts to secure from DWR an agreement to release the District from its obligations under the *SWP Contract* to the extent those obligations have been assumed by CCWA."³

Since 1991, there have been periodic efforts by CCWA to seek assignment of the *SWP Contract*, as envisioned by the *Transfer of Financial Responsibility Agreement*. Prior to 2015, there had been some uncertainty as to whether CCWA, a joint powers authority, could satisfy certain terms and conditions of the *SWP Contract* and therefore whether the *SWP Contract* could be assigned to CCWA.⁴ That uncertainty was removed when Government Code section 6502 was amended in 2015 to clarify that a joint powers authority has all powers common to the contracting parties, including but not limited to the authority to levy a fee, assessment or tax.

³ Transfer of Financial Responsibility Agreement, Recital C.

⁴ Specifically, it was uncertain whether CCWA could, if necessary, satisfy the requirements of Article 34 of the *SWP Contract* obligating the contracting party to levy a property tax or assessment in the event of the contracting party's failure to make the required payments to DWR under the *SWP Contract*.

11. Will assignment modify the terms or conditions of the existing *SWP Contract*?

No. Assignment of the *SWP Contract* from the District to CCWA will result in a substitution of CCWA for the District as the contracting party for the *SWP Contract*. In all other respects, the *SWP Contract* will remain the same.

12. Will assignment change the way SWP water is delivered to Santa Barbara County?

No. The facilities used to deliver SWP to customers within Santa Barbara County will be the same.

13. Will assignment change the customers who receive SWP water in Santa Barbara County?

No. The area in which SWP water will be delivered will be the same. CCWA's service area will remain the same.

14. Will assignment change the way SWP water is paid for in Santa Barbara County?

No. CCWA will continue to pass all SWP costs on to its members. As a result, ratepayers will continue to be responsible for all costs of SWP water in Santa Barbara County.

15. If the *SWP Contract* is assigned, does CCWA intend to levy a tax or assessment to pay for any portion of SWP water delivered to Santa Barbara County?

No.

16. Is compliance with the California Environmental Quality Act required?

No. Assignment of the *SWP Contract* is exempt from CEQA because the transaction will not affect a change in the environment. The transaction will not change the point of delivery, place of use or purpose of use; it will not result in a change in the quantity of water delivered, and no new facilities will be constructed. All terms and conditions of the *SWP Contract* will remain the same; only CCWA will be substituted for the District.

A transaction involving the assignment of identical rights and obligations from one public agency (the District) to another (CCWA) does not qualify as a "project" within the scope of CEQA.⁵ Additionally, even if the assignment is considered a "project," the transaction would

⁵ CEQA Guidelines § 15378(b)(5); see also CEQA Guidelines section 15378(b)(4) (the creation of a government funding mechanism or other fiscal activity that does not involve a commitment to a specific project that may result in a potentially significant environmental impact is not a project under CEQA) and Section 15378(b)(5) (an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment is not a project under CEQA).

qualify for several categorical exemptions from the requirements of CEQA: (1) CEQA Guidelines, section 15320, Class 20, applicable to government changes in organization; (2) the common sense exemption of CEQA Guidelines, section 15061(b)(3).

17. Why is amendment of the Joint Exercise of Powers Agreement required?

Government Code section 6502 requires that any power to be exercised jointly by members of a joint powers agency must be specified in the authorizing joint powers agreement. The 1991 *Joint Exercise of Powers Agreement* does not expressly authorize CCWA to contract with DWR for the delivery of SWP water and therefore must be amended for this purpose.

18. Why is amendment of each CCWA member's Water Supply Agreement with CCWA required?

Following its creation, CCWA entered into *Water Supply Agreements* with each of its eight member agencies and other parties who had contracted with the District for the delivery of SWP water (the "local contractors").⁶ Each member's *Water Supply Agreement* sets forth the terms and conditions of CCWA's delivery of SWP water to the member, including certain obligations of the member in the event of the member's failure to make any payment under the agreement. Concurrent with amendment of the *Joint Exercise of Powers Agreement*, each *Water Supply Agreement* should also be amended to reflect the new powers provided for in the amendment of the *Joint Exercise of Powers Agreement*.

15953950

⁶ Between 1985 and 1988, the District entered into 19 separate agreements with local contractors. Each agreement assigned a portion of the District's SWP Table A entitlement under the *SWP Contract* to a local contractor. In return, each local contractor agreed to pay the District for the local contractor's pro rata share of all costs and expenses associated with the delivery of that water. The purpose of these agreements was to shift responsibility for payment under the *SWP Contract* from the County taxpayers to the individual local contractors and their customers – e.g., the water users.

FIRST AMENDMENT
to the
JOINT EXERCISE OF POWERS AGREEMENT
Creating the
CENTRAL COAST WATER AUTHORITY

This First Amendment (the “**Amendment**”) to the Joint Exercise of Powers Agreement Creating the Central Coast Water Authority (the “**Authority**”), dated August 31, 1991 (the “**Joint Exercise of Powers Agreement**”), is made effective December 12, 2017 by and between the parties on the attached Exhibit A (each, a “**Party**” and collectively, the “**Parties**”). Unless otherwise provided herein, all defined terms used in this Amendment shall have the same meaning as set forth in the Joint Exercise of Powers Agreement.

RECITALS

A. The Parties to this Amendment are all signatories to the Joint Exercise of Power Agreement or successors in interest. Carpinteria Valley Water District is the successor in interest to the Carpinteria County Water District.

B. The Parties desire to amend the Joint Exercise of Powers Agreement to expressly authorize the Authority to take certain actions necessary and convenient to assume all of the Santa Barbara County Flood Control and Water Conservation District’s (the “**District**”) rights, interest in, and obligations under the Water Supply Contract with the State of California Department of Water Resources (the “**DWR**”) concerning the delivery of water from the State Water Project (the “**State Water Supply Contract**”).

AGREEMENT

1. Section 5 of the Joint Exercise of Powers Agreement is amended to include a new subsection “p” as follows:
 - p. To contract with the DWR for delivery of water from the State Water Project, along with all necessary and incidental powers as may be required by the Authority to carry out the Authority’s rights and obligations under the State Water Supply Contract, including, but not limited to, the right to levy a tax or assessment on all properties within the jurisdiction of the Authority not exempt from taxation, as mandated by the California Water Code and the State Water Supply Contract.
2. Except as modified above, the Joint Exercise of Powers Agreement shall continue in full force and effect. In the event of a conflict between this Amendment and the Water Supply Agreement, the terms and conditions of this Amendment shall control in all respects.
3. The individuals executing this Amendment represent and warrant that they have the authority to enter into this Amendment and to perform all acts required by this Amendment, and that the consent, approval, or execution of or by any third party is not required to legally bind either Party to the terms and conditions of this Amendment.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the day and year first above-written.

CITY OF BUELLTON

DATE: 9-28-17

By: Holly Sierra
Mayor

ATTEST:
Linda Reid
City Clerk

APPROVED AS TO FORM:

By: Stephen M'Em

CARPINTERIA VALLEY WATER DISTRICT

DATE: _____

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

CITY OF GUADALUPE

DATE: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the day and year first above-written.

CITY OF BUELLTON

DATE: _____

By: _____
Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

By: _____

CARPINTERIA VALLEY WATER DISTRICT


DATE: November 3, 2017

By: 
Polly Holcombe, President

ATTEST:


Ursula Santana, Secretary

APPROVED AS TO FORM:


J. Roger Myers, Myers, Widders, Gibson, Jones & Feingold, L.L.P.

CITY OF GUADALUPE

DATE: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

DATE: _____

CITY OF BUELLTON

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____

DATE: _____

CARPINTERIA COUNTY WATER DISTRICT

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

DATE: _____

CITY OF GUADALUPE

By: John Ryzaldo
Mayor 10/30/17

ATTEST:

Joice E. Raguz
City Clerk

APPROVED AS TO FORM:

Philip F. Sinco
CITY ATTORNEY

DATE: _____

GOLETA WATER DISTRICT

By: _____
President

GOLETA WATER DISTRICT

DATE: 10/31/17

By: Richard M. Mayfield
President

ATTEST:
[Signature]
Secretary

APPROVED AS TO FORM:

[Signature]

MONTECITO WATER DISTRICT

DATE: _____

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

CITY OF SANTA BARBARA

DATE: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

GOLETA WATER DISTRICT

DATE: _____

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

MONTECITO WATER DISTRICT

DATE: 10-24-17


By: 
Richard Shaikewitz, President

ATTEST:



Nick Turner, Secretary

APPROVED AS TO FORM:



Robert Cohen, Counsel

CITY OF SANTA BARBARA

DATE: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

GOLETA WATER DISTRICT

DATE: _____

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

MONTECITO WATER DISTRICT

DATE: _____

By: _____
President

ATTEST:

Secretary

APPROVED AS TO FORM:

CITY OF SANTA BARBARA

DATE: 12-12-2017


By: 
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



CITY OF SANTA MARIA

DATE: 10/20/2017

By: *Alicia M. Palino*

ATTEST: *[Signature]*
Chief Deputy City Clerk



APPROVED AS TO FORM: *[Signature]*
City Attorney

**SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT #1**

DATE: _____

By: _____
President

ATTEST: _____
Secretary

APPROVED AS TO FORM: _____

DATE: _____

CITY OF SANTA MARIA

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

DATE: 10.24.2017

SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO.1

By: Kevin Walsh
President

ATTEST:

Mary Martone
Secretary to the Board

APPROVED AS TO FORM:

My M. Kates
BROWNSTEIN HYATT FARBER SCHACK, LLP

EXHIBIT A

Schedule of Parties

Carpinteria Valley Water District
City of Buellton
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

RESOLUTION NO. 17-04

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE CENTRAL COAST WATER AUTHORITY APPROVING
AMENDMENTS OF THE WATER SUPPLY AGREEMENTS BETWEEN
THE AUTHORITY AND ITS MEMBERS AND
APPROVING THE ASSIGNMENT, ASSUMPTION, AND RELEASE
AGREEMENT BETWEEN THE AUTHORITY, THE COUNTY OF SANTA
BARBARA FLOOD CONTROL AND WATER CONSERVATION
DISTRICT AND THE DEPARTMENT OF WATER RESOURCES**

WHEREAS, in 1963, following the voters' 1960 approval of the California Water Resources Development Bond Act, the Santa Barbara County Flood Control and Water Conservation District (District) and the Department of Water Resources (DWR), acting on behalf of the State of California, executed that certain agreement dated February 26, 1963 for the supply of State Water Project (SWP) water to Santa Barbara County (State Water Supply Contract); and

WHEREAS, beginning in 1982, the District entered into a series of "Water Supply Retention Agreements" with various cities, water districts, and other retailers and end users of water in Santa Barbara County (Participant(s)) for the purpose of shifting responsibility for the costs associated with the State Water Supply Contract from the District to the Participants; and

WHEREAS, in 1991, eight (8) public agencies that provide retail water supply service within Santa Barbara County (Members), all of whom were and are Participants, formed the Central Coast Water Authority as a Joint Powers Agency pursuant to Government Code section 6500 *et seq.* by that certain Joint Exercise of Powers Agreement dated August 1, 1991 (Authority); and

WHEREAS, thereafter, the Authority entered into a series of "Water Supply Agreements" with each Member. The Water Supply Agreements assigned each Member's contractual rights to SWP water, acquired pursuant to the Member's Water Supply Retention Agreement, to the Authority in return for the Authority's delivery of SWP water to the Member; and

WHEREAS, on November 12, 1991, the District and the Authority entered into the Transfer of Financial Responsibility Agreement whereby the Authority assumed full responsibility for all of the District's obligations pursuant to the State Water Supply Contract, which agreement also contemplates a future assignment of the State Water Supply Contract to the Authority; and

WHEREAS, the Authority now desires to assume all of the District's rights and obligations under the State Water Supply Contract and DWR has indicated its willingness to consider releasing the District and assigning the State Water Supply Contract to the Authority; and

WHEREAS, Article 34 of the State Water Supply Contract provides that if in any year the District fails or is unable to raise sufficient funds by other means to make the

payments required by the State Water Supply Contract, the Board of Supervisors of the County of Santa Barbara, as the governing body of the District, shall levy upon all property in the District's jurisdiction not exempt from taxation, a tax or assessment sufficient to provide for all payments under the State Water Supply Contract then due or to become due within that year; and

WHEREAS, in order to approve assignment of the State Water Supply Contract, DWR requires assurance that the Authority is authorized and empowered to contract with DWR, including but not limited to fulfilling the requirements of Article 34 of the State Water Supply Contract; and

WHEREAS, pursuant to Government Code section 6502, if authorized by its legislative or other governing bodies, a Joint Powers Authority may jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, so long as such power is expressly stated in the joint powers agreement; and

WHEREAS, all of the Authority's Members possess the power to levy a tax or assessment upon property not exempt from taxation within their respective jurisdictions; and

WHEREAS, it is in the public interest for the Authority to accept assignment of the State Water Supply Contract to permit the Authority to contract directly with DWR and to relieve the District of all responsibility for the State Water Supply Contract, as was intended in 1991 at the time the Authority was created; and

WHEREAS, each and all of the Members desire to authorize the Authority to contract with DWR directly; and

WHEREAS, the Authority has determined that amendment of the Joint Exercise of Powers Agreement and each Member's Water Supply Agreement is necessary and appropriate to authorize the Authority to contract with DWR directly; and

WHEREAS, the governing body of each Member has or will consider approval of: (1) amendment of the Joint Exercise of Powers Agreement authorizing the Authority to contract with DWR directly, along with all necessary and incidental powers as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract, including, but not limited to, the right to levy a tax or assessment on all property within the jurisdiction of the Authority not exempt from taxation; and (2) amendment of the Member's Water Supply Agreement with the Authority acknowledging and agreeing to the Authority's right to levy a tax or assessment on all property within the jurisdiction of the Authority not exempt from taxation, as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1.

The above recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2.

The Board of Directors approves amendments to the Water Supply Agreements between the Authority and each of its Members (collectively, the Amendments), whereby each Member acknowledges and agrees to the Authority's right to levy a tax or assessment on all property within the jurisdiction of the Authority not exempt from taxation, as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract, and authorizes the Chair of the Board to execute each of the Amendments. The Amendments are listed below and attached hereto as **Exhibit A**.

1. First Amendment to the Water Supply Agreement between the Authority and the City of Buellton;
2. Third Amendment to the Water Supply Agreement between the Authority and the City of Guadalupe;
3. Second Amendment to the Water Supply Agreement between the Authority and the City of Santa Barbara;
4. Third Amendment to the Water Supply Agreement between the Authority and the City of Santa Maria;
5. First Amendment to the Water Supply Agreement between the Authority and the Carpinteria Valley Water District;
6. First Amendment to the Water Supply Agreement between the Authority and the Goleta Water District;
7. Third Amendment to the Water Supply Agreement between the Authority and the Montecito Water District; and
8. Second Amendment to the Water Supply Agreement between the Authority and the Santa Ynez River Water Conservation District, Improvement District No. 1.

SECTION 3.

Subject to the Authority's receipt of each Member's approval and execution of both (1) the First Amendment to the Joint Exercise of Powers Agreement creating the Central Coast Water Authority, attached hereto as **Exhibit B**; and (2) amendment of the Member's Water Supply Agreement with the Authority (see Exhibit A), the Board of Directors agrees to accept assignment of the State Water Supply Contract and authorizes the Chair of the Board to execute the Assignment, Assumption, and Release Agreement attached hereto as **Exhibit C**. The Board of Directors further authorizes the Executive Director of the Authority to negotiate and make such non-substantive amendments to the Assignment, Assumption, and Release Agreement as may be required to obtain the approval of the District and DWR, subject to the approval of the Chair of the Board.

SECTION 4.

This resolution shall constitute complete and final authority for the Authority to execute and deliver the agreements set forth in Section 3 (1) and (2).


I certify that the foregoing Resolution No. 17-04 was adopted by the Board of Directors of the Central Coast Water Authority at a meeting held October 26, 2017.



Jack Boysen, Chairman

[Seal]

Attest:



Elizabeth Watkins
Secretary to the Board of
Directors

	VOTING PERCENTAGE	AYE	NAY	ABSTAIN	ABSENT
City of Buellton	2.21%	<u>X</u>	_____	_____	_____
Carpinteria Valley Water District	7.64%	<u>X</u>	_____	_____	_____
Goleta Water District	17.20%	<u>X</u>	_____	_____	_____
City of Guadalupe	1.15%	_____	_____	_____	<u>X</u>
Montecito Water District	9.50%	<u>X</u>	_____	_____	_____
City of Santa Barbara	11.47%	_____	_____	_____	<u>X</u>
City of Santa Maria	43.19%	<u>X</u>	_____	_____	_____
Santa Ynez River Water Conservation District, Improvement District No. 1	7.64%	<u>X</u>	_____	_____	_____

ASSIGNMENT, ASSUMPTION, AND RELEASE AGREEMENT

This **ASSIGNMENT, ASSUMPTION, AND RELEASE AGREEMENT** (the “**Agreement**”) made as of _____, 2017 (the “**Effective Date**”) by and between Santa Barbara County Flood Control and Water Conservation District (the “**District**”), the Central Coast Water Authority (“**Authority**”), and the California Department of Water Resources (the “**DWR**”) (each, a “**Party**” and collectively, the “**Parties**”), with reference to the following facts and intentions.

RECITALS

A. As of February 23, 1963, the District entered into a Water Supply Contract with the DWR with respect to the delivery to Santa Barbara County of 57,700 acre feet per year of water (the “**Allocation**”) from the State Water Project (the “**State Water Supply Contract**”). Said quantity of water is set forth in “**Table A**” to the State Water Supply Contract.

B. On various dates between 1983 and 1986, the District entered into a series of agreements, each called a “**Water Supply Retention Agreement**,” with various cities, water districts, and other retailers and end users of water (the “**Participant(s)**”). Under each Water Supply Retention Agreement, the District assigned a specified portion of the Allocation held by the District under the State Water Supply Contract to the Participant.

C. In August 1991, the Authority was formed by eight public agencies, each of whom was a Participant. The Authority entered into a series of agreements, each called a “**Water Supply Agreement**,” with each of the Participants. Each of the Water Supply Agreements included a provision that the rights held by each Participant under its Water Supply Retention Agreement was assigned to the Authority.

G. On November 12, 1991, the Authority and the District entered into a “**Transfer of Financial Responsibility Agreement**” under which the Authority agreed, *inter alia*, to accept responsibility for all financial obligations of the District under the State Water Supply Contract.

H. In August 1997, the Authority completed construction and permanently fixed the size and delivery capability of the transportation and treatment system by which water under the State Water Supply Contract would be delivered to various retailers and end users in Santa Barbara County (the “**Coastal Branch**”).

J. Since the formation of the Authority and in connection with the Authority’s ownership and operation of the Coastal Branch, it has been the intention of the Authority and the District that the Authority would receive all rights and assume all of the District’s obligations under the State Water Supply Contract. The Parties desire to enter into this Agreement to effectuate such assignment, assumption, and release.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Agreement by this reference, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Assignment.** Effective as of the Effective Date of this Agreement, the District does hereby assign, transfer, and set over to the Authority, without recourse and without representation or warranty of any kind, all of the District's rights, title, and interest in, to, and under the State Water Supply Contract (including, but not limited to, the District's rights to delivery of the Allocation), along with all liabilities and obligations of the District arising from or under the State Water Supply Contract, except for the right to reimbursement set forth in Article 45(j) of the State Water Supply Contract. This assignment is absolute and presently effective.
2. **Assumption.** Effective as of the Effective Date of this Agreement, the Authority accepts such assignment without recourse and without representation or warranty of any kind, and assumes all of the District's liabilities and obligations arising from or under the State Water Supply Contract, including any and all obligations to make payments, indemnifications or reimbursements thereunder, and agrees to be bound by and to keep, perform and observe the terms, covenants and conditions of the District under the State Water Supply Contract. The Authority agrees to be bound by said State Water Supply Contract to the same extent as if it had been an original party to said instrument and accepts and agrees to perform all of the District's obligations therein.
3. **Authority Indemnification and Release.** The Authority hereby releases and forever acquits, discharges and holds harmless and shall indemnify the District from and against any and all liabilities (at law or in equity), obligations, liens, claims, orders, rulings, losses, damages, assessments, fines, penalties, injuries, demands, actions, judgments, suits, costs, expenses, or disbursements of any kind (including attorneys' fees and costs) which may at any time on or after the Effective Date be imposed on, incurred by, or asserted against the District by any third party, based on, resulting from, in any way relating to, in connection with, or arising out of the State Water Supply Contract, except to the extent caused by the District's gross negligence or willful misconduct.
4. **DWR Consent and Release.** DWR hereby consents to the assignment, transfer, and assumption described herein, and releases the District from all liabilities and obligations arising from or under the State Water Supply Contract. DWR shall hold the Authority responsible for all liabilities and obligations of the District arising from or under the State Water Supply Contract to the same extent as if it had been an original party to said instrument.
5. **Governing Law and Jurisdiction.** The validity and interpretation of this Agreement shall be governed by the laws of the State of California. Any litigation regarding this

Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

6. **Waiver.** Any waiver or failure to declare a breach as a result of the violation of any term or condition of this Agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel or waiver by any Party to that term or condition.
7. **Counterparts.** The Parties may execute this Agreement in counterpart. The Parties agree to accept facsimile or PDF signatures as original signatures.
8. **Authorization.** Each signatory represents and warrants that he or she has the appropriate authorization to enter into this Agreement on behalf of the Party for whom he or she signs.
9. **Other Agreements.**
 - a. Upon the Effective Date of this Agreement, the Transfer of Financial Responsibility Agreement shall automatically terminate and this Agreement shall supersede all provisions of the Transfer of Financial Responsibility Agreement.
 - b. Effective as of the Effective Date of this Agreement, the District does hereby assign, transfer, and set over to the Authority, without recourse and without representation or warranty of any kind, all of the District's rights, title, and interest in, to and under all the existing Water Supply Retention Agreements, along with all liabilities and obligations of the District arising from or under the Water Supply Retention Agreements. The Authority accepts such assignment without recourse and without representation or warranty of any kind, and assumes all of the District's liabilities and obligations arising from or under the Water Supply Retention Agreements, including any and all obligations to make payments, indemnifications, or reimbursements thereunder, and agrees to be bound by and to keep, perform, and observe the terms, covenants, and conditions of the District under the Water Supply Retention Agreements. The Authority agrees to be bound by the Water Supply Retention Agreements to the same extent as if it had been an original party to said instruments and accepts and agrees to perform all of the District's obligations therein.
 - c. The Authority hereby releases and forever acquits, discharges, and holds harmless and shall indemnify the District from and against any and all liabilities (at law or in equity), obligations, liens, claims, orders, rulings, losses, damages, assessments, fines, penalties, injuries, demands, actions, judgments, suits, costs, expenses, or disbursements of any kind (including attorneys' fees and costs), which may at any time on or after the Effective

Date be imposed on, incurred by or asserted against the District by any third party, based on, resulting from, in any way relating to, in connection with, or arising out of the Water Supply Retention Agreements, except to the extent caused by the District's gross negligence or willful misconduct.

10. **Notices.** All communications or notices in connection with this Agreement shall be in writing and either hand-delivered or sent by U.S. first class mail, postage prepaid, or electronic mail followed by written notice sent by U.S. mail and addressed to the Parties as follows:

Santa Barbara County Flood Control and Water Conservation District
Fray Crease, Water Agency Manager
130 East Victoria Street, Suite 200
Santa Barbara, CA 93101-2019
Tel: (805) 568-3542
fcrease@cosbpw.net

Central Coast Water Authority
Ray Stokes, Executive Director
255 Industrial Way
Buellton, CA 93427-9565
Tel: (805) 697-5214
ras@ccwa.com

California Department of Water Resources
[ADD CONTACT]

10. **Construction and Interpretation.** The Parties agree and acknowledge that the terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. The Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted, or in favor of the party receiving a particular benefit under this Agreement.
11. **Entire Agreement and Amendment.** This Agreement is the entire understanding of the Parties in respect of the subject matter hereof. There are no other promises, representations, agreements or warranties by any of the Parties. This Agreement may only be amended by a writing signed by all of the Parties. Each Party waives its right to assert that this Agreement was affected by oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**SANTA BARBARA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT**

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

Director of Public Works

By: _____
Deputy County Counsel

CENTRAL COAST WATER AUTHORITY

APPROVED AS TO FORM:

Brownstein Hyatt Farber Schreck, LLP

Ray Stokes, Executive Director

By: _____
Stephanie Osler Hastings, Esq.

**CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

APPROVED AS TO FORM:

By: _____

Ray Stokes

From: Ledesma, Joel@DWR <Joel.Ledesma@water.ca.gov>
Sent: Monday, September 17, 2018 10:44 AM
To: Tfayram@cosbpw.net
Cc: Ray Stokes; Villalobos, Pedro@DWR
Subject: Water Supply Contract Assignment

Good Morning Tom,

As we discussed on August 1, 2018 with DWR Director Karla Nemeth, DWR is willing to accept full assignment of the Santa Barbara County Flood Control and Water Conservation District's long term State Water supply contract to the Central Coast Water Authority, subject to prior compliance with environmental and other laws and subject the District's approval. I look forward to receiving in the near future the District's proposal of such an assignment.

Sincerely,
Joel Ledesma, SWP Deputy Director

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Notice of Exemption

To: Office of Planning and
Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

From: Central Coast Water Authority
225 Industrial Way
Buellton, CA 93427

County Clerk of the Board
County of Santa Barbara
105 E. Anapamu St.
Santa Barbara, CA 93101

Department of Water
Resources
P.O. Box 942836
Sacramento, CA 94236

2018 JAN -3 AM 11:33
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Project Title: Assignment of State Water Project (SWP) contract (SWP Contract) from the Santa Barbara County Flood Control and Water Conservation District (District) to the Central Coast Water Authority (CCWA)

Project Location: The SWP includes facilities located throughout the State of California. The SWP is owned and operated by the State of California's Department of Water Resources (DWR), headquartered in Sacramento, California. The District is a dependent special district within Santa Barbara County (County) whose boundaries coincide with the County's boundary. The County Board of Supervisors acts as the Board of Directors of the District. CCWA is a joint powers agency formed to construct, own, and operate certain facilities needed to treat, convey, and deliver SWP water to its member agencies, which include the cities of Buellton, Guadalupe, Santa Barbara, and Santa Maria, the Carpinteria Valley Water District, as successor in interest to the Carpinteria County Water District, the Goleta Water District, Montecito Water District, and the Santa Ynez River Water Conservation District, Improvement District No. 1 (individually, a Member, and collectively, the Members), all of which are located in the County. CCWA's service area is coextensive with the service area boundaries of its members, and accordingly the Project is located entirely within the County of Santa Barbara.

Description of Nature, Purpose and Beneficiaries of Project: In 1963, the District entered into the SWP Contract with DWR for the delivery of SWP water to the County. In exchange for such service, the District agreed to repay all associated SWP capital and operating costs. On August 31, 1991, CCWA's Members entered into the Joint Exercise of Powers Agreement creating CCWA. Thereafter, CCWA entered into a "Water Supply Agreement" with each Member and other retail agencies and end users (Participant(s)) providing for CCWA's delivery of SWP to each Participant in return for each Participant's payment of all associated costs (Water Supply Agreement). On November 12, 1991, the District and CCWA entered into a Transfer of Financial Responsibility Agreement (TFRA) under which the District assigned its financial obligations under the SWP Contract to CCWA, but the District remained a party to the SWP Contract. For the past 26 years, CCWA has assumed full responsibility for performance of the SWP Contract pursuant to the TFRA.

Notice of Exemption

The parties now propose to release the District from all obligations under the SWP Contract and assign the SWP Contract to CCWA. In order to accomplish this, DWR, the District, and CCWA will agree to the assignment, including the District's relinquishment of all rights and obligations under the SWP Contract, CCWA's assumption of all rights and obligations under the SWP Contract, and DWR's release of the District and approval of the assignment pursuant to Article 41 of the SWP Contract. As necessary to authorize CCWA to agree to the assignment, the following approvals will also occur: (1) the Members will each agree to amend the Joint Exercise of Powers Agreement to authorize CCWA to contract with DWR for the delivery of SWP water to the County; and (2) each Member and CCWA will agree to amend the Member's Water Supply Agreement to conform to the above-referenced amendment of the Joint Exercise of Powers Agreement.

Name of Public Agencies Approving Project: CCWA, the District, and DWR. As described above, certain underlying approvals will also be required by each of the Members.

Name of Persons or Agencies Carrying Out Project: CCWA, the District, and DWR. As described above, certain underlying approvals will also be required by each of the Members.

Exempt Status: Title 14, CCR, Chapter 3, Article 5, Section 15061(b)(3); Article 19, Section 15320 (Changes in Organization of Local Agencies); and Article 19, Section 15301(b) (Existing Public Facilities).

Reasons Why Project is Exempt: For the reasons stated below, this project is determined to be exempt per CEQA Guidelines section 15061(b)(3) which provides that a public agency may determine an activity to be exempt based upon the general rule that CEQA applies only to projects that have a potential for causing a significant effect on the environment. (See also CEQA Guidelines section 15378(b)(4) (project does not include the creation of a government funding mechanism or other fiscal activity that does not involve a commitment to a specific project that may result in a potentially significant environmental impact is not a project under CEQA) and section 15378(b)(5) (project does not include an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment is not a project under CEQA).) Further, this project is exempt under CEQA Guidelines section 15320 categorical exemption (Class 20, Changes in Organization of Local Agencies), and CEQA Guidelines section 15061(b)(3) (the "common sense" exemption).

1. For the past 26 years, CCWA has assumed full responsibility for performance of the SWP Contract pursuant to the TFRA. CCWA has paid all of the costs charged to the District under the SWP Contract.
2. The project is simply an assignment of rights under the SWP Contract from the District to CCWA that will formalize the existing circumstances, rights, and obligations of the parties. In other words, it constitutes a change in organization with no corresponding physical environmental effects.
3. The proposed approvals will result in a substitution of CCWA for the District as the contracting party for the SWP Contract. In all other respects, the SWP Contract will remain the same. The area in which SWP water will be delivered will be the same; CCWA's service area will remain the same. The scope of contract rights and obligations to DWR under the

SWP Contract will be identical. The facilities used to deliver SWP water to the County will be identical. The transaction will not affect a change in the environment.

4. There is no causal link between the action – assignment of rights – and any environmental impacts. The character of the supply, method of delivery, the place of use, and the population served would remain the same. There is no reasonable argument that the assignment will have a significant impact on the environment, either directly or indirectly.
5. Amendment of the Joint Exercise of Powers Agreement and each Member's Water Supply Agreement, as necessary to perfect assignment, does not dictate how funds will be spent, or narrow options or alternatives available to the parties.
6. The assignment to CCWA will be similar to that included in CEQA Guidelines section 15320(a), which exempts the establishment of a subsidiary district (with the same powers).

Agency Contact: Ray Stokes, CCWA

Area 805-688-2292

Code/Telephone:

Signature: 
Title: CCWA, Executive Director

Date: 1-2-18

Date received for filing at OPR: _____

Memorandum

Stephanie Osler Hastings
Attorney at Law
805.882.1415 tel
805.965.4333 fax
shastings@bhfs.com

DATE: August 1, 2018

TO: Ray Stokes, Central Coast Water Authority

FROM: Brownstein Hyatt Farber Schreck, General Counsel to the Central Coast Water Authority

RE: Responses to Undated Memorandum from Roger Moore on behalf of C-WIN re Assignment of the State Water Contract CCWA

This memorandum sets forth our responses to the “legal and practical” assertions made in the undated memorandum of Roger Moore on behalf of the California Water Impact Network (C-WIN) regarding the proposed assignment of the State Water Project Contract (C-WIN Memo). All page references are to the C-WIN Memo.

I. THE PROPOSED ASSIGNMENT OF THE STATE WATER CONTRACT WILL RELEASE THE DISTRICT FROM ALL LIABILITY UNDER THE STATE WATER CONTRACT

C-WIN Assertion: The Central Coast Water Authority (CCWA) is fully responsible for the costs of the State Water Contract. The Santa Barbara County Flood Control and Water Conservation District (District), as the contracting party, retains contingent liability in the event of a CCWA default. (p. 3)

CCWA Response:

Agreed. Since 1991, CCWA has been fully responsible for all costs associated with the State Water Contract. However, in the unlikely event CCWA defaults in its payments to the Department of Water Resources (DWR), the State Water Contract would require the District, as the contracting party, to levy a tax or assessment on all property owners within Santa Barbara County, *even* property owners who do not receive State Water Project water.

C-WIN Assertion: Assignment of the State Water Contract will not shield the County from contingent liability. (p. 3)

CCWA Response:

False. Assignment of a contract releases the assignor (in this case, the District) from all liability, contingent or otherwise and the assignee (CCWA) assumes all liability. The proposed assignment agreement makes clear that both CCWA and DWR release the District from all obligations under the State Water Contract. Accordingly, the proposed assignment will not only “reduce” (p. 3) the County’s liability, it will eliminate it entirely.

C-WIN Assertion: CCWA incorrectly assumes that AB 2170 authorizes CCWA to impose fees, taxes, and assessments. That amendment did not alter the powers of joint powers authorities; rather, it was merely a declaration of existing law. (p. 3-4)

CCWA Response:

False. CCWA agrees that AB 2170 amended the Joint Exercise of Powers Act to clarify Government Code section 6502. As amended by AB 2170, Government Code section 6502 now provides that a joint powers authority, may jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment or tax, so long as those powers are specified in the joint powers agreement.

Prior to 2014, there was some uncertainty as to whether a joint powers authority could exercise the power to levy a tax or assessment, if common to its members. That uncertainty was removed by AB 2170. Accordingly, it is now clear that a joint powers authority may exercise the power to levy a tax or assessment, so long as that power is specified in its joint powers agreement. On December 12, 2017, CCWA’s members amended the Joint Exercise of Powers Agreement creating CCWA to expressly authorize CCWA to exercise their common powers to contract with DWR for the delivery of State Water Project water, “including, but not limited to, the right to levy a tax or assessment on all properties within the jurisdiction of the Authority not exempt from taxation, as mandated by the California Water Code and the State Water Supply Contract.” (See also further response below.)

C-WIN’s lengthy discussion of excerpts of the legislative history of AB 2170 (pp. 4-5) is irrelevant to the analysis of whether CCWA is a proper party to the State Water Contract, whether the contract may be assigned, or whether the District, as the assignor, would retain any liability for the contract.

C-WIN Assertion: AB 2170 is silent about the manner in which local agencies must jointly seek approval for taxes, fees or assessment. (p. 5)

CCWA Response:

True, but irrelevant and misleading. AB 2170 amended Government Code section 6502, which authorizes public agencies to jointly exercise those powers common to them; it does not prescribe the manner for doing so. Rather, CCWA’s Joint Exercise of Powers Agreement specifies the procedures by which CCWA’s members may exercise their common powers, including the power to contract with DWR, and if required, to levy a tax or assessment.

C-WIN Assertion: CCWA does not have the power to levy a tax or assessment because this power is not common to its members. CCWA holds water delivery contracts with four cities, four water districts, a mutual water company, three private entities and the federal government. (pp. 5-6)

CCWA Response:

False. CCWA's members include eight public agencies: the City of Santa Maria, the City of Santa Barbara, the City of Guadalupe, the City of Buellton, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District and the Santa Ynez River Water Conservation District, Improvement District No. 1. Each of these eight public agencies has the power to levy a tax or assessment within its jurisdiction, therefore the power to levy a tax or assessment is common to them all.

As noted above, on December 12, 2017, CCWA's members amended the Joint Exercise of Powers Agreement creating CCWA to expressly authorize CCWA to levy a tax or assessment on all properties within the jurisdiction of the Authority not exempt from taxation. Thus, CCWA has the power to levy a tax or assessment on all property owners within its boundaries. CCWA's boundaries are coextensive with the boundaries of its members.

The fact that CCWA contracts with third parties for the delivery of State Water Project water to them is irrelevant to the analysis of whether CCWA may assume the State Water Contract. In addition to its Members, CCWA contracts with four private entities (Golden State Water Company, La Cumbre Mutual Water Company, Morehart Land Co. and Raytheon Systems Co) and the federal government (Vandenberg Air Force Base). But none of these parties are signatories to the Joint Exercise of Powers Agreement creating CCWA.

C-WIN Assertion: CCWA's powers, jurisdiction, governance and public accountability are not commensurate with the County's powers and therefore "it remains to be seen how, or whether, CCWA contractors with limits to their own jurisdiction can assign powers robust enough to offer more protection against defaults than the existing contracts' step-up and default remedy provisions." (p. 5-8)

CCWA Response:

False, confused, irrelevant and misleading. It is undisputed that the State Water Contract requires contracting parties to have the power to levy a tax or assessment. As described above, CCWA has this power. All of CCWA's members: (i) are public agencies, (ii) have the power to levy a tax or assessment, and (iii) have agreed to jointly exercise their common power to contract with DWR, including if required their common power to levy a tax or assessment.

CCWA's jurisdiction is not the same as the District's. This fact provides an important benefit to assignment of the State Water Contract from the District to CCWA. In the highly unlikely event of a default that requires CCWA to levy a tax or assessment, only those property owners within the boundaries of CCWA will be taxed and County property owners who do not receive State Water Project water will not be taxed. As noted above, CCWA's boundaries are coextensive with the boundaries of its members.

C-WIN's lengthy discussion of excerpts of the legislative history of the laws governing the State Water Project (pp. 6-7) is irrelevant to the analysis of whether the State Water Contract may be assigned to CCWA or whether CCWA is authorized to levy a tax or assessment if required by the State Water Contract.

C-WIN's suggestion that CCWA's members are somehow limited in their ability to shield the District from contingent liability is confused. The proposed assignment would substitute CCWA for the District as the signatory and responsible party for the State Water Contract. As the assignee, the

District will have no liability whatsoever for the State Water Contract. Further, no amendments are proposed to the State Water Contract or any other contract relating to the delivery of State Water Project water to Santa Barbara County. The provisions of the existing Water Supply Agreements between CCWA and its members and other contracting parties will continue to safeguard against default by CCWA.¹

C-WIN Assertion: If CCWA levies a tax or assessment, constitutional voting requirements may arise. (p. 8)

CCWA Response:

False. Assuming the circumstances arise that require CCWA to levy a tax or assessment (i.e., default under the State Water Contract), CCWA, as the assignee of the District, will stand in the shoes of the District in all respects. Since CCWA will assume no different or new obligations than the District already has – no amendment of the State Water Contract is proposed – the proposed assignment will simply continue prior obligations. The State Water Contract, which was signed by the District in 1963, includes the right to assign the contract if DWR agrees.²

Moreover, in the highly unlikely event that CCWA, as the assignee of the District, defaults under the State Water Contract such that CCWA is required to levy a tax or assessment to raise sufficient funds to cure the default, and CCWA levies such tax or assessment, and a court determines that CCWA's levy of such tax or assessment fails to comply with the law, in any respect, the District, having been released from the State Water Contract entirely, cannot be required to levy a tax or assessment. In contrast, it is the *status quo* that would require the District, as the contracting party, to levy a tax or assessment upon all property within the County not exempt from taxation in the event of a default by CCWA.

C-WIN Assertion: The District's Water Supply Retention Agreements require a popular vote for any revenue bond financing. (p. 8-9)

CCWA Response:

Irrelevant and confused. The Water Supply Retention Agreements are unaffected by, and not related to, the proposed assignment. Further, the proposed assignment does not include issuance of revenue bonds.

¹ It should be noted that CCWA's contracts with its members and other project participants include numerous safety mechanisms to guard against any default, including the so called "step-up" provisions that require other contracting parties to assume the obligations of any defaulting contracting party.

² In fact, every State Water Contract executed by DWR since the inception of the State Water Project has included the right to assign the contract with DWR approval.

II. THE PROPOSED ASSIGNMENT MAKES NO CHANGES TO THE MANNER BY WHICH STATE WATER PROJECT WATER IS DELIVERED TO SANTA BARBARA COUNTY OR THE WATER IS PAID FOR

C-WIN Assertion: The proposed assignment would produce defective governance. Specifically, assignment of the State Water Contract to CCWA will allow the City of Santa Maria to dominate decision-making regarding the State Water Contract. (p. 9)

CCWA Response:

False. For 27 years, since the District transferred financial and operational responsibility for the State Water Contract to CCWA, CCWA has expertly managed it. The proposed assignment does not alter the governance or accountability of CCWA in any way. Other than the substitution of CCWA for the District, the proposed assignment makes no changes to the manner or method by which State Water Project water will be delivered to Santa Barbara County or is paid for. It also makes no changes to the governance or day-to-day operation of CCWA. CCWA will continue to act at the direction of and for the benefit of its members. For example, it will continue to pass all costs of the State Water Contract on to its members in proportion to their respective interests. As such, the City of Santa Maria will continue to pay the largest share of all State Water Project costs. For all intents and purposes, the proposed assignment, if approved by all parties, will be invisible to Santa Barbara County residents and businesses.

III. THE PROPOSED ASSIGNMENT ALIGNS DECISION-MAKING FOR THE STATE WATER CONTRACT WITH FINANCIAL RESPONSIBILITY, AS WAS ORIGINALLY INTENDED BY BOTH THE DISTRICT AND CCWA IN 1991

C-WIN Assertion: Assignment would prejudice County residents. The assignment will also weaken the County's voice in addressing the proposed extension of the State Water Contract and the proposed Delta Tunnels. (pp. 9-11)

CCWA Response:

False and misleading. Assignment will have two important benefits. First, it will relieve the District, and thus the County, from all potential liability for the State Water Contract. As a result, in the unlikely event of a default by CCWA, property owners outside the boundaries of CCWA – parties who do not receive State Water Project water – would not be assessed. Second, assignment would align decision-making authority with financial responsibility. Under the current arrangement, CCWA bears all of the financial responsibility for the State Water Contract, but CCWA has limited decision-making authority. Assignment of the State Water Contract would ensure that CCWA, its Members and its Members' ratepayers, who fund 100% of the costs of State Water Project water, have a direct voice in all decisions affecting the State Water Contract, including but not limited to any potential future amendments to the State Water Contract.

IV. THE PROPOSED ASSIGNMENT IS EXEMPT FROM CEQA

C-WIN Assertion: Assigning the County's contractor role to CCWA would likely involve CEQA review. (p. 11)

CCWA Response:

False. CEQA does not apply to the proposed assignment because the transaction will not affect a change in the environment. The transaction will not change the point of delivery, place of use or purpose of use; it will not result in a change in the quantity of water delivered, and no new facilities will be constructed. All terms and conditions of the State Water Contract will remain the same; only CCWA will be substituted for the District.

A transaction involving the assignment of identical rights and obligations from one public agency (the District) to another (CCWA) does not qualify as a "project" within the scope of CEQA. Additionally, even if the assignment is considered a "project," the transaction would qualify for several exemptions from the requirements of CEQA. CCWA has thoroughly analyzed the proposed assignment and determined with certainty that there is no possibility that the assignment will have a significant effect on the environment.