

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on:
Department Name: Public Works/Flood Control
Department No.: 054-04-01
Agenda Date: 06/15/04
Placement: Administrative
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Continued Item: NO
If Yes, date from:
Document Name: Brdjun15.SWPwaiver

TO: Board of Directors
Santa Barbara County Flood Control and Water Conservation District

FROM: Phillip M. Demery
Public Works Director

STAFF CONTACT: Thomas Fayram, Deputy Public Works Director, Ext. 3436
Robert Almy, Water Agency Manager, Ext. 3542

SUBJECT: **State Water Project and Proposed Use-of-Facilities Waiver**

Recommendation(s):

That the Board of Directors:

Approve and authorize the Chair to execute the proposed "Use-of-Facilities Waiver" pertaining to State Water Contract ARTICLE 56(C)(6) (Attachment A) which would avoid "double billing" for use of State facilities for transportation of water stored outside a contractor's service area.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1. An Efficient Government Able to Respond to the Needs of the Community.

Executive Summary and Discussion:

The Santa Barbara County Flood Control and Water Conservation District (District) originally contracted for a share of the State Water Project (SWP), but has transferred its rights and responsibilities for the project to the Central Coast Water Authority (CCWA) and several CCWA members through Water Supply Retention Agreements (executed in the mid 1980's) and the November 21, 1991 agreement with CCWA. The SWP contract establishes the District and its taxpayers as the ultimate guarantor for financial obligations of the "State" portion of the project. (The distribution facilities south of Casmalia and the water treatment plant, the "local facilities", were financed with bonds issued by CCWA directly.) The State accepts the transfer of obligations and rights but still regards the District as the contractor in case of default by CCWA in making its payments. Since the District remains the contractor for the project, your Board must approve Amendments to the SWP Contract.

Article 56(C)(6) (Attachment A) provides (in part) that:

For any project water stored outside its service area pursuant to this subdivision (c), a contractor shall pay the State the same (including adjustments) for power resources

(including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the contractor pays for the transportation of annual entitlement to the reach of the project transportation facility from which the water is delivered to storage.

The waiver would avoid charging more than is necessary for recovering capital and operations costs in reaches that are used for transportation of water stored outside a specific Contractor's service area when either the delivering or receiving contractor is already paying for capacity in the financial reaches being used. This would result in savings to CCWA and its member agencies if any of the CCWA members use others' project facilities for storage outside the County in the future. CCWA has requested the District execute the attached waiver.

The waiver directs DWR not to apply a Use of Facilities charge for delivering or receiving banking water when the water is transported to or from an area outside the contractor's repayment reaches as long as payment for said facilities are already paid by one of the contractors in the transaction. All SWP contractors are in favor of this waiver but the DWR is requiring all contractors to sign the waiver before it becomes effective. Each of the State Water Contractors has been asked to sign the attached waiver to Article 56 (C)(6) of the Water Supply Contract with DWR.

Article 56 addresses the State's consent to use Project Water outside a contractor's service area. It was part of the Monterey Amendments and is the basis for allowing off site groundwater banking. Article 56 (C)(6) provides for payment to the State for transporting water to another area. During the last two years, the contractors who were active in banking made the case to the State that no additional transportation payments were due if one Contractor was already paying for the financial reach being used.

All the contractors have now informally agreed that if one Contractor was paying for a reach, water could be transported for banking or for exchanges or transfers with another Contractor without additional payments to the State. The result of such an action is that each Contractor pays for its own financial reaches even if it directs water to a downstream reach that it doesn't pay for (as long as the receiving Contractor is paying for that reach). At first, DWR asked for waivers only from the affected parties, but later stated that they wanted all Contractors to relieve them of the liability of not strictly following the Contract.

This waiver is in the District's interest for two reasons. First, CCWA is currently investigating groundwater banking programs in the Central Valley. Montecito Water District and other Project Participants believe banking may play a part in reliability planning. The waiver will help CCWA if it begins to participate in a banking program. Second, the waiver would not increase the risk to the District of default by CCWA or its members.

It should also be noted that the State Water Contractors are beginning to discuss a new series of amendments to the Contract. A clarification of Article 56(C)(6) will be among them.

Proposed Board Action

Pursuant to the November 1991 agreement between the District and CCWA, the District is requested to approve and execute the Waiver on behalf of CCWA.

The responsibility to approve Contract Amendments on behalf of CCWA remains with your Board. Since the proposed settlement will not adversely affect the District, and consistent with the November 1991 agreement, staff recommends your Board approve and authorize the chair to execute the Waiver.

Mandates and Service Levels:

CCWA provides water to several entities in Santa Barbara County including the Cities of Buellton, Guadalupe, Santa Barbara, and Santa Maria; the Goleta, Carpinteria Valley and Montecito Water Districts; Santa Ynez Water Conservation District Improvement District No.1, the Vandenberg Air Force Base, La Cumbre Mutual Water Company, the California Cities Water Company (Orcutt) and two private entities.

The Transfer of Financial Responsibility Agreement of November 1991 provides that the District will approve requested changes to the SWP contract which will not increase liability to the District.

Fiscal and Facilities Impacts:

Since CCWA is responsible for all SWP costs, including costs of the settlement agreement, Board action will have no fiscal impacts on the District.

Approval of the waiver agreement would assure that unnecessary double charges are associated with water banking and other exchanges. This would benefit any local purveyor engaging in banking or exchanges that involve SWP facilities.

Special Instructions:

Direct the Clerk of the Board to return two originals of the signed waiver along with a copy of the minute order to the Flood Control District office, Attn: Christina Lopez.

Use-of-Facilities Waiver

**STATE WATER PROJECT CONTRACTOR'S WAIVER OF ARTICLE 56(C) (6)
OF ITS LONG-TERM WATER SUPPLY CONTRACT, WHICH WAS ADDED BY
THE MONTEREY AMENDMENT**

The Santa Barbara County Flood Control and Water Conservation District hereby waives Article 56(c)(6) of its long-term water supply contract, which was added by the Monterey Amendment, and which provides that: "...contractors not participating in the repayment of a reach shall be required to pay a Use of Facilities charge for use of a reach for the delivery of water to or return of water from interim storage," when the interim storage is within the service area of a State Water Contractor that does participate in repayment of the reach. This waiver shall be effective as of December 13, 1995 and shall terminate when and if Article 56(c) (6) is amended.

SANTA BARBARA COUNTY
WATER AGENCY

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Directors

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVE AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

BY: _____
Deputy

BY: _____
Deputy

Attachment A

From State Water Contract Article 56

56 (C)(6) For any project water stored outside its service area pursuant to this subdivision (c), a contractor shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the contractor pays for the transportation of annual entitlement to the reach of the project transportation facility from which the water is delivered to storage. If annual entitlement is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the contractor shall pay the State the same for power resources (including on-aqueduct, offaqueduct, and any other power) incurred in the transportation of such water calculated from the point of return to the aqueduct to the turn-out in the contractor's service-area. In addition, the contractor shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the contractor's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.