

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
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**Agenda Number:**  
**Prepared on:**  
**Department Name:** Public Works/Flood Control  
**Department No.:** 054-04-01  
**Agenda Date:** 04/08/03  
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**Estimate Time:** 30 minutes  
**Continued Item:** NO  
**If Yes, date from:**  
**Document Name:** Brdapr8.SWP

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**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 Settlement of "Monterey Amendments" Litigation**

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## Recommendation(s):

That the Board of Directors:

- A. Approve and authorize the Chair to execute the Settlement Agreement;
- B. Approve and authorize the Chair to execute the related contract Amendment 19 to the State Water Project;
- C. Approve and authorize the Chair to execute the Agreement with the State Department of Water Resources to pay a share of the settlement costs. (The District's share of settlement costs is to be borne by the Central Coast Water Authority.); and
- D. Direct staff to provide an update of State Water Project reliability as part of the annual "Ground Water Report" submitted to your Board by the Water Agency.

## 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.

## **Background to the Litigation**

Portions of the original Water Supply Contract (Article 18) provided preferential water delivery rights to Urban Contractors in times of drought and provided for reallocation of water among contractors in the event of a defined permanent water shortage. During the last major drought, a number of significant conflicts regarding these and other provisions were brought to a head.

In 1994, DWR and representatives of the State Water Contractors developed a set of principles, known as the Monterey Agreement, to settle long-term water allocation disputes and to establish other changes to benefit all contractors. The Monterey Agreement Statement of Principles, executed on December 1, 1994, proposed contract revisions to eliminate initial agricultural use cutbacks and specifying that all project water would be allocated in proportion to contract entitlement amounts.

In 1995 CCWA acted as lead agency and prepared a Draft Environmental Impact Report (EIR) on the contract amendments proposed to implement to Monterey Agreement. The CCWA Board of Directors certified the Final EIR in November 1995 and issued findings and mitigation measures. Subsequently, DWR relied on the EIR as a responsible agency and approved the Monterey Amendment to the contract (Santa Barbara FCWCD Amendment # 16, December 1995). Twenty-seven of the twenty-nine contractors (two exceptions were Plumas County and Empire West Side Irrigation District) executed the Monterey Amendment. DWR has been operating the project consistent with the provisions of the Monterey Amendment since 1996.

On December 27, 1995, the Planning and Conservation League (PCL) filed a lawsuit against DWR and CCWA, challenging the adequacy of the Monterey Agreement EIR. An amendment to the petition added the Citizens Planning Association of Santa Barbara (CPA) and Plumas County Flood Control and Water Conservation District as petitioners and included a cause of action that sought to invalidate the Monterey Amendment.

In December 2000, the Third District Court of Appeal ruled that DWR had the statutory duty to serve as lead agency for the EIR. The appellate court further held that the 1995 Monterey Agreement EIR failed to adequately analyze the impacts of deleting Article 18 and directed that a new EIR be prepared.

In March 2001, the parties to the litigation appointed a negotiation team for each side, selected a retired judge as mediator, and commenced a mediation process to try to resolve the issues between the parties without further litigation. In September 2001, the mediator, after assessing the arguments from both sides, issued a "take it or leave it" proposal. The defendants (DWR and the SWC) accepted the proposal but the plaintiffs requested further modifications.

## The Proposed Settlement

Finally in July 2002, to the negotiating teams executed a Statement of Settlement Principals, and in February 2003, the negotiation teams agreed to the final settlement language. In January 2003, DWR issued its Notice of Preparation for a new EIR. The principle terms of the settlement are summarized in Attachment D (included in the Board letter dated March 25, 2003).

CCWA will consider the proposed settlement agreement and at the recommendation of its staff and legal counsel, approval is expected. Pursuant to the November 1991 agreement between the County and CCWA, CCWA is expected to request the District to execute (on their behalf) the proposed settlement agreement, Amendment # 19 and the agreement to pay for the CCWA share of litigation costs. The proposed settlement sets out the basis for resolution of the Monterey Agreement litigation. This resolution includes:

- Permanent transfer of 130,000 acre-feet of agricultural entitlement to urban contractors,
- Legitimization of urban/agricultural ground water banking partnerships,
- Creation of a "Turnback Pool",
- Allocation of all SWP water in proportion to entitlement,
- Permanent retirement of 45,000 acre-feet of agricultural entitlement, and
- Creation of Rate Management Credits for Urban Contractors and a Rate Management Trust Fund for Agricultural Contractors.

This would improve the overall effectiveness of the SWP by:

- Enhancing opportunities for south of the Delta storage (including conjunctive use),
- Creating operational flexibility in existing facilities,
- Providing opportunities for contractors to better manage demand and market transfers,
- Allowing regional partnerships and local investment in system improvements,
- Facilitating CALFED improvements, and
- Returning capital to the contractors previously held by DWR for future improvements to the SWP.

Amendment 19 provides for clarification of definitions in the SWP contract as well as a biannual evaluation of SWP "reliability" under a range of hydrologic conditions. The first such evaluation was completed last fall and a presentation of its results presented locally in early October. In summary, that evaluation indicated that the SWP deliveries are expected to be 75% of entitlement on a long-term (average annual) basis.

The agreement to pay a share of settlement costs establishes a basis for the State to collect revenue to cover costs including agreed-to payments for certain parties to the litigation. Such costs will be borne by CCWA. The terms of the settlement agreement, including payments to various litigants, are summarized in Attachment D (included in Board letter dated March 25, 2003).

## **Proposed Board Action**

Pursuant to the November 1991 agreement between the District and CCWA, the District is requested to approve the Settlement Agreement and execute three agreements on behalf of CCWA:

- 1) The Settlement Agreement (Attachment A to Board letter dated March 25, 2003),
- 2) Amendment 19 to the District's SWP Contract (Attachment B to Board letter dated March 25, 2003), and
- 3) An agreement with the State (Department of Water Resources) to pay a share of the litigation costs (Attachment C to Board letter dated March 25, 2003).

The responsibility to approve the Contract Amendment on behalf of CCWA remains with your Board; the other agreements are related and necessary to the Amendment. Thus, based on the November 1991 agreement, and since the proposed settlement will not adversely affect the District, staff recommends your Board approve the settlement agreement and authorize the chair to execute the Settlement Agreement, Contract Amendment #19, and the litigation cost agreement.

Since the settlement requires an update of State Water Project reliability, staff suggests reliability estimate information be incorporated in annual "Ground Water Report" submitted to your Board by the Water Agency. The Santa Barbara County Groundwater Report is prepared pursuant to the *Santa Barbara County Comprehensive Plan Conservation Element, Groundwater Resources Section*, which was adopted May 24, 1994, and amended November 8, 1994. This report provides information for land use decisions and thus an update of SWP reliability would be an appropriate addition.

## **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.

## **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 settlement agreement would provide for continuation of "rate management credits" for urban contractors such as the District (and CCWA members). These credits return approximately \$30.5 million per year to urban contractors for resource development and rate moderation. CCWA receives \$3.6 million annually in rate management credits; CCWA's share of the urban contractors' fund is second only to that received by Metropolitan Water District because Coastal Branch facilities were constructed many years after most contractors.

**Special Instructions:**

Direct the Clerk of the Board to return all of the signed documents along with a copy of the minute order to the Flood Control District office, Attn: Christina Lopez. The District will forward these documents to the State for approval.

## Attachment D

### Water Management Provisions

- **Permanent Transfer of 130,000 acre-feet of agricultural entitlement to urban contractors.** This provision shifts water to where it is currently needed within the State. Napa County Flood Control and Water Conservation District, Solano County Water Agency, Alameda County – Zone 7, Castaic Lake Water Agency, Mojave Water Agency and Palmdale Water District have received additional entitlement from the Kern County Water Agency as a result of this provision.
- **Legitimization of urban/agricultural ground water banking partnerships.** This provision facilitates the transfer of excess entitlement during wet years to storage in groundwater banking programs.
- **Transfer of the Kern Water Bank to local control.** This provision moves the management of the Kern Water Bank to local agencies who have invested most heavily in it, stores water from a variety of sources other than the SWP (increasing operational flexibility of the SWP), and allows operation at a local, rather than State, level.
- **Creation of a Turnback Pool.** Since 1995, this provision has inexpensively re-allocated 945,000 acre-feet from contractors with excess allocation to contractors in need.
- **Efficient use of existing facilities.** This provision has allowed contractors to carryover 464,000 acre-feet of water in San Luis Reservoir during the last two years alone. It also allows flexible storage in Castaic Lake and Lake Perris to those contractors able to access those facilities.

### Water Allocation Provisions

- **Allocation of all SWP water in proportion to entitlement.** This provision eliminates initial agricultural cuts during droughts and eliminates initial agricultural priorities to surplus water during wet periods.
- **Permanent retirement of 45,000 acre-feet of agricultural entitlement.** This provision decreases the overall demand on the SWP and proportionately increases the reliability of every contractor's deliveries.
- **Elimination of "Permanent Shortage" Provision in Article 18 of the Water Supply Contract.** This provision was eliminated because, in the revised contract, it becomes moot with elimination of the urban contractors' delivery priority and affects neither the amount of water available nor its allocation to contractors.

### Financial Provisions

- **Creation of Rate Management Credits for Urban Contractors and a Rate Management Trust Fund for Agricultural Contractors.** This provision creates a rate stabilization fund in the amount of \$10 million per year for agricultural contractors, to be utilized during droughts, and returns \$30.5 million per year to urban contractors for resource development and rate moderation. Allocations from the fund are based upon contractors' respective capital investments in the State Water Project. CCWA receives \$3.6 million annually in rate management credits. Because CCWA constructed its facilities many years after most contractors, CCWA's share of the urban contractors' fund is second only to that received by Metropolitan Water District.

## Settlement Provisions

- The following are the major provisions of the proposed settlement agreement:
- Contract terminology revision – The term “Table A amount” will be substituted for the term “Entitlement”.
- DWR will publish periodic water supply availability projections and historic delivery information to the public and to city and county planning agencies.
- DWR will develop guidelines to provide public information and to allow for public participation in proposed permanent transfers of water and certain other contract amendments.
- Petitioners agree to significant limits on their ability to challenge the new EIR.
- Petitioners agree to dismiss the validation cause of action.
- The parties agree that the Kern Water Bank will continue to operate under local control.
- The parties agree to arbitrate the issue of attorney fees payable to petitioners.
- Petitioners will appoint representatives to serve on an EIR advisory committee.
- \$8 million to Plumas to be allocated as follows:
  - \$4 million spread over four years upon execution of the settlement
  - \$4 million spread over four years following successful conclusion of all litigation
- \$5.8 million to plaintiffs to be divided as follows:
  - \$300,000 to plaintiffs towards their EIR advisory committee costs
  - \$1.875 million upon court approval of the settlement agreement
  - \$1.875 million one year after court approval of the settlement agreement
  - \$1.750 million following successful conclusion of all litigation