

COPY

**TERM SHEET  
REGARDING REACQUISITION OF TABLE A WATER**

This Term Sheet is entered into by and between the Santa Barbara County Flood Control and Water Conservation District (District) and the Central Coast Water Authority (CCWA) on its behalf and on behalf of the CCWA members who will participate in the acquisition which may include, but not limited to, the City of Guadalupe, the Carpinteria Valley Water District, the Santa Ynez River Water Conservation District, ID 1, the La Cumbre Mutual Water Company, the Montecito Water District, and the City of Santa Maria (Participants).

The purpose of this Term Sheet is to memorialize (i) the preliminary terms discussed among the parties to reacquire 12,214 acre-feet of Table A water (the Project, also referred to as additional Table A water) from the State Water Project (SWP) and (ii) the present intent of the parties in the manner approved by the California Court of Appeal in *Cedar Fair v City of Santa Clara* (2011) 194 Cal.App.4th 1150. The Project shall not proceed unless and until the parties have negotiated, executed and delivered mutually acceptable contractually binding agreements based upon information produced from the California Environmental Quality Act (CEQA) review process and other public review and hearing processes, subject to any applicable governmental approvals.

This Term Sheet is a non-binding statement of intent and does not preclude the possibility that the parties may take actions contrary to the current stated intent of the parties in order to comply with CEQA, state statutes, or other provisions of law. The use of the terms “will” or “shall” or “may” or use of the passive or active voice in any description in this document is meant to be merely descriptive, pending CEQA review and final decisions and negotiations of terms and procedures mentioned herein, and shall not, in any way, change the speculative nature of the description of the Project or terms thereof in this document.

As background the following are a list of some of the previous agreements related to the State Water Project (SWP):

- |                     |  |
|---------------------|--|
| “1963 DWR Contract” | Agreement for delivery of State Water between the California Department of Water Resources (DWR) and DISTRICT, as amended, and also referred to as the SWP Contract. |
| 1980s WSRA          | Water Supply Retention Agreements between DISTRICT and various water purveyors who ultimately formed CCWA  |

1991 WSA                      Water Supply Agreement between CCWA and Project Participants

1991 TFRA                     Transfer of Financial Responsibility Agreement between DISTRICT and CCWA

**1. Parties**

The Santa Barbara County Flood Control and Water Conservation District (District), the Central Coast Water Authority (CCWA), and each CCWA member acquiring the additional Table A water (hereinafter referred to as "Participants") which may include, but are not limited to, the City of Guadalupe, the Carpinteria Valley Water District, the Santa Ynez River Water Conservation District, ID 1, the La Cumbre Mutual Water Company, the Montecito Water District, and the City of Santa Maria, intend to execute an agreement in accordance with this Term Sheet through approval of each party's governing board, as evidenced by a resolution.

**2. Term**

Begins on execution of the agreement and ends on termination or expiration of the 1963 DWR Contract.

**3. Amendment to 1963 DWR Contract**

The District will execute an amendment to the 1963 DWR Contract revising the Table A amount from 45,486 acre-feet per year (AFY) to 57,700 AFY. Form of amendment subject to reasonable approval by the District and CCWA.

**4. Level or Participation for Additional Table A Water**

Level of participation in the acquisition and use of the additional Table A water by CCWA Members is anticipated to be as follows, but may be amended if additional CCWA members join this effort or if listed agencies withdraw:

- City of Santa Maria- \_\_ AFY
- City of Guadalupe- \_\_ AFY
- Carpinteria Valley Water District- \_\_ AFY
- Santa Ynez River Water Conservation District, ID 1- \_\_ AFY
- La Cumbre Mutual Water Company - \_\_ AFY
- Montecito Water District- \_\_ AFY

CCWA and each participating CCWA member agrees to be bound by all the terms and conditions contained in the SWP Contract and SWP Contract amendment with



respect to the rights held by CCWA or the participating CCWA members under or in connection with the SWP Contract and SWP Contract amendment.

**5. One Time Payment of Back Costs by CCWA**

CCWA will pay, from amounts collected by CCWA from participants,:

- A. To DWR: full amount required by DWR to reimburse it for costs incurred by DWR with respect to the additional Table A water.
- B. To District: full amount required by the District to reimburse it for costs incurred by the District with respect to the additional Table A water in the amount of \$\_\_\_\_\_. In lieu of Amendment 9 to the SWP Contract, CCWA may pay this amount in a lump sum to the District.

Timing: After the Amendment to 1963 DWR Contract and the agreement to which this Term Sheet pertains have been adjudged to be valid by a final judgment issued by a court of competent jurisdiction, and the Amendment to the 1963 DWR Contract has been signed.

**6. Payment of Annual Costs by CCWA**

CCWA will pay, when due and from amounts collected by CCWA from the participants, all costs arising from the additional Table A as stated in the annual Statement of Charges from DWR in accordance with Section 2 of the 1991 Transfer of Financial Responsibility Agreement between the District and CCWA.

**7. Costs**

CCWA will pay for any and all costs for the process to acquire this additional water and the acquisition of the additional Table A water.

**8. Indemnification of District by CCWA**

CCWA will indemnify, defend, and hold harmless the District against any liability arising from the additional 12,214 AFY of Table A water acquired pursuant to the amendment to the 1963 DWR Contract on behalf of the Participants.

**9. Participating Purveyor Covenants**

A. Indemnification.

- (i) Each Participant will, pro rata, indemnify, defend and hold harmless

the District from and against any liability arising from the amount of additional Table A water acquired by each Participant.

(ii) In addition to any other indemnification provided under any of the other prior agreements related to the SWP, each Participant confirms that they indemnify the District for their total SWP allocation including current and additional Table A water.

- B. No Effect on Voting Rights. The agreement shall not have any effect on the voting rights of the CCWA Board of Directors and Operating Committee.
- C. Use of Water. Any water received as a result of this additional Table A water is for use within Santa Barbara County by the participants or as exchanged with other CCWA members within Santa Barbara County. In addition, this water may be used as payment for prior water exchanges or for use by any other CCWA Member within the District.
- D. CCWA will enter into separate agreements with each of the Participants who will be part of this program.

**10. Special Provisions Applicable to City of Santa Maria.**

- A. Deposit. City of Santa Maria will maintain on deposit with CCWA a fund in the amount of 2 years of payments (or an amount no less than \$\_\_\_ [note- to be determined in the final agreement based on the City's level of participation in Section 4]) to be used in the event of a payment default by the City of Santa Maria with respect to the additional Table A water.
- B. Excess Water. City of Santa Maria agrees to make any excess water available to other CCWA members, at no profit, prior to its transfer to any other person or entity. "Excess water" shall be defined as water that exceeds the needs of the City's customers and the City's need to place adequate State Water in storage outside of the County to meet projected water needs of the City's customers for a period of eighteen (18) months beyond October 1<sup>st</sup>.

**11. Reserve Fund**

CCWA will establish and maintain a fund in the amount of 2 years of payments to be made by the City Santa Maria to CCWA to be used in the event of a payment default by the City of Santa Maria with respect to the additional Table A water.



If the District determines that DWR did not receive from CCWA, or its Participant(s), sufficient funds to pay the costs of the reacquired Table A water in any year, after the exhaustion of the reserve fund and all other remedies to the extent that District is not financially exposed during CCWA's exhausting of remedies, in the District's sole discretion, the additional Table A water may revert permanently to the District who may relinquish the water to DWR.

**12. Effective Date**

The agreement will become effective after validation by the Court.

**13. CEQA Compliance**

CCWA will complete compliance with CEQA, including defending any litigation resulting therefrom, and will indemnify District against all costs thereof.

In order to comply with CEQA and give the public opportunity to participate in the CEQA process, the District and CCWA, on its behalf and on behalf of the Participants, retains the discretion to (i) modify the transaction, create and enter into documents and modify the Project as necessary to comply with CEQA, (ii) identify and select other feasible alternatives to avoid significant environmental impacts, if any, (iii) balance the benefit of the Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the Project. No legal obligations will exist until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes.

**14. Effect of Signatures.**

By signing below, the parties evidence their general agreement with the provisions of this Term Sheet and agree to use this Term Sheet as the framework for the negotiations of the definitive agreement. Any agreements resulting from negotiations will become effective only if considered and approved by the necessary parties following conduct of all legally required review procedures, including any necessary CEQA process. This paragraph remains a statement of general intent and does not create a legal or contractual obligation for any party to enter into any agreement described or contemplated in this Term Sheet.

**In Witness Whereof**, the parties executed this Term Sheet, as of \_\_\_\_\_, 2016:

CENTRAL COAST WATER AUTHORITY

By \_\_\_\_\_  
Ray Stokes, Executive Director

SANTA BARBARA COUNTY FLOOD  
CONTROL AND WATER CONSERVATION  
DISTRICT

By \_\_\_\_\_  
Chair, Board of Directors

ATTEST:  
MONA MIYASATO,  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD and ex officio  
Clerk of the Santa Barbara County Flood  
Control and Water Conservation District

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI,  
COUNTY COUNSEL

By \_\_\_\_\_  
Deputy County Counsel

APPROVED AS TO FORM:  
RAY AROMATORIO, ARM, AIC  
RISK MANAGEMENT MANAGER

By \_\_\_\_\_

APPROVED AS TO FORM:  
THEODORE FALLATI,  
AUDITOR CONTROLLER

By \_\_\_\_\_  
Deputy

RECOMMENDED:  
SCOTT D. MCGOLPIN  
PUBLIC WORKS DIRECTOR

By \_\_\_\_\_