

RELEASE, ASSUMPTION AND INDEMNIFICATION AGREEMENT

THIS RELEASE, ASSUMPTION AND INDEMNIFICATION AGREEMENT (the "Agreement") made as of \_\_\_\_\_, 2014, by and between Santa Barbara County Flood Control and Water Conservation District (the "District") and the Central Coast Water Authority ( "CCWA") (each, a "Party" and collectively, the "Parties"), with reference to the following facts and intentions.

## RECITALS:

**[TO BE REVISED FOLLOWING RECEIPT OF DRAFT CONVEYANCE AGREEMENT]**

- A. The District has a long-term water supply contract with the Department of Water Resources of the State of California ("DWR") ("Water Supply Contract") that permits the District to receive water supply, storage and conveyance services from the State Water Project ("SWP"), subject to DWR's approval.
- B. CCWA is a joint powers agency, members of which are individual water purveyors located in the County of Santa Barbara. In 1991, the District and CCWA entered into the Transfer of Financial Responsibility Agreement ("TFRA"), which, among other things, obligates CCWA to pay for all Water Supply Contract related costs.
- C. In light of water supply shortages that have reduced the availability of SWP water to CCWA in 2014, CCWA desires to supplement its water supplies in 2014 by exchanging SWP water with Mojave Water Agency ("MWA"), a regional wholesale water provider serving portions of San Bernardino County. Like the District, the MWA is a party to its own Water Supply Contract with DWR. The terms and conditions of the proposed exchange between CCWA and MWA are described in an agreement between the DWR, the District and MWA ("Exchange Agreement"), a copy of which is attached to this Agreement as Exhibit A.
- D. CCWA has requested that the District enter into the Exchange Agreement with MWA and DWR, it being the intent of the Parties that the District's rights and obligations under the Exchange Agreement are entered into "on behalf of CCWA."
- E. The Parties desire to enter into this Agreement to set forth the rights, responsibilities and obligations of the Parties as it relates to the Exchange Agreement.

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 \_\_\_\_\_, 2014, the effective date of the Exchange Agreement, the District does hereby assign, transfer, and set over to CCWA, without recourse and without representation or warranty of any kind, all of the District's right, title and interest in, to and under the Exchange Agreement and all liabilities and obligations of the District arising from or under the Exchange Agreement.
2. **Assumption.** Effective as of \_\_\_\_\_, 2014, the effective date of the Exchange Agreement, CCWA accepts such assignment without recourse and without representation or warranty of any kind, and assumes all of the liabilities and obligations of the District arising from or under the Exchange Agreement, 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 Exchange Agreement. CCWA agrees to be bound by said Exchange Agreement to the same extent as if it had been an original party to said instruments and accepts and agrees to perform all of the obligations of the District therein.
3. **Indemnification and Release.** CCWA 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 be imposed on, incurred by or asserted against the District by CCWA, any of its affiliates or any third party, based on, resulting from, in any way relating to, in connection with or arising out of the Exchange Agreement.
4. **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.
5. **Waiver.** Any waiver or failure to declare a breach as a result of the violation of any term 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.



6. **Counterparts.** The Parties may execute this Agreement in counterpart. The Parties agree to accept facsimile or PDF signatures as original signatures.
7. **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.
8. **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 mails, postage prepaid, or electronic mail followed by written notice sent by U.S. mails and addressed to the Parties as follows:

Santa Barbara County Flood Control and Water Conservation District  
Matt Naftaly, Water Agency Manager  
130 East Victoria Street, Suite 200  
Santa Barbara, CA 93101-2019  
Tel: (805) 568-3542  
[mnaftal@cosbpw.net](mailto:mnaftal@cosbpw.net)

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

9. **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.
10. **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.

**DISTRICT**

SANTA BARBARA COUNTY FLOOD  
CONTROL AND WATER CONSERVATION  
DISTRICT

\_\_\_\_\_  
Director of Public Works

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

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

**CCWA**

CENTRAL COAST WATER AUTHORITY

\_\_\_\_\_  
Executive Director

**APPROVED AS TO FORM:**

Brownstein Hyatt Farber Schreck, LLP

By: \_\_\_\_\_  
Stephanie Hastings, Esq.