



January 7, 2016

Chair Peter Adam and Members of the Board of Directors  
Santa Barbara County Flood Control and Water Conservation District  
County of Santa Barbara  
123 E. Anapamu Street  
Santa Barbara, CA 93101

RE: Reacquisition of Relinquished State Water

Dear Chair Adam and Members of the Board of Directors:

As you know, California is in the fourth year of a record-breaking drought which has resulted in the historically low allocations from the State Water Project to each of the 29 State Water Project Contractors. This condition, coupled with continued reductions and restrictions in pumping from the Sacramento-San Joaquin Delta imposed by various regulatory agencies, has placed downward pressure on the annual DWR delivery allocation percentages.

In order to firm up state water delivery reliability, certain Central Coast Water Authority (CCWA) project participants have requested that CCWA pursue the reacquisition of the 12,214 acre-feet (AF) of state water allotment that was "suspended" in 1981.

The 1963 Santa Barbara County water supply contract with DWR specified an allocation of 57,700 AFY. After the unsuccessful bond election of 1978, the Flood Control District surveyed the local cities and water districts to confirm their willingness to pay a portion of the costs of the 1963 contract. That survey resulted in Amendment #9 to the 1963 contract which reduced the allocation from 57,700 AFY to 45,486 AFY, thus "suspending" further payments for the 12,214 AFY difference. In the intervening years, DWR has continued to retain the 12,214 AFY, and in 2007 agreed that it would be available for reacquisition by Santa Barbara County.

The DWR Coastal Branch facilities built in the early 1990's did not include capacity for the "suspended" 12,214 AF. Since there is no capacity downstream of the original State Water project facilities for the suspended water, it will serve as a drought buffer to shore up the underlying 45,486 AF Table A allocation. In other words, the CCWA contractors who participate in reacquiring the suspended Table A amount will receive a higher allocation of State Water in water-short years because of an increase in their overall Table A plus the additional drought buffer.

Similarly, because the Coastal Branch Extension facilities were not sized to include the 12,214 AF of suspended Table A, the costs associated with the suspended water are significantly less than the base Table A allocation of 45,486 AF. CCWA estimates the annual fixed costs of the suspended water to be around \$150/AF, compared to the fixed costs on the base Table A allocation for the South Coast agencies of almost \$1,800/AF.

I have attached as "Attachment 1" a white paper which provides the history of the suspended water and attempts to answer questions which may arise regarding this issue. I have also attached as "Attachment 2" a legal analysis prepared by CCWA's legal counsel. You will also find attached as "Attachment 3" potential questions and responses related to the suspended water reacquisition proposal.

Jack Boysen  
Chairman

Richard Shaikewitz  
Vice Chairman

Ray 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

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



We respectfully request that the Santa Barbara County Flood Control and Water Conservation District submit a letter to the Department of Water Resources requesting that it immediately initiate the process to allocate to Santa Barbara County the 12,214 AF of Table A allotment that was suspended in 1981.

If you have any questions, please call me at (805) 697-5214.

Sincerely,



Ray A. Stokes  
Executive Director

RAS

Attachments: Attachment 1 – *“Reacquisition of the 12,214 AFY State Water Project  
“Table A” Amount”*  
Attachment 2 – Legal Analysis of Reacquisition of Relinquished State  
Water  
Attachment 3 – Questions and Answers Regarding State Water  
Reacquisition Proposal

cc: Scott McGolpin, County of Santa Barbara  
Jack Boysen, City of Santa Maria  
Andrew Carter, City of Guadalupe  
Chris Dahlstrom, Santa Ynez Improvement District, ID#1

## Index of Enclosures

<u>Reference</u>	<u>Document</u>
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Attachment 1 – *“Reacquisition of the 12,214 AFY State Water Project “Table A” Amount”*

Attachment 2 – Legal Analysis of Reacquisition of Relinquished State Water

Exhibit A – 1981 Amendment

Exhibit B – Settlement Agreement

Exhibit C – SB County Letter to DWR

Exhibit D – 2007 Approval

Attachment 3 – Questions and Answers Regarding State Water Reacquisition Proposal

# Attachment 1



## Reacquisition of 12, 214 AFY State Water Project "Table A" Amount

Contact: Ray Stokes  
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This report provides information relating to potential reacquisition by Santa Barbara County area interests of 12,214 AFY<sup>1</sup> of Table A<sup>2</sup> amount of (potential water deliveries from) the California State Water Project. The report includes an initial summary of the history and issues relating to the reacquisition decision.

The report follows the following outline:

- Timeline/History
- Background on Current Table A Amounts
- Ability to Reacquire
- SWP Transportation System Capacity and Ownership
- Potential Benefits of Reacquisition
- Estimated Costs of Suspended Table A Water
- Proposed Steps of Reacquisition

### Timeline/History

February 1963	The Santa Barbara Flood Control and Water Conservation District (FCD) executed a water supply contract with the State Department of Water Resources (DWR) for the delivery of up to 57,700 acre feet of water per year from the State Water Project (SWP).
1979	Bond election for construction of in-County SWP distribution facilities fails.
1979	FCD began to reconsider ongoing financial responsibility for SWP Contract. Distributes questionnaire to all local water agencies and cities to determine quantity of Table A that the County should retain.
1981	FCD and DWR execute Amendment No. 9 reducing the Table A amount from 57,700 AFY to 45,486 AFY.
1982-86	The FCD executes Water Supply Retention Agreements with local water purveyors for a total 45,486 AFY. These agreements obligated the subscribing water agencies to pay the County's costs for maintaining the future water supply.

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<sup>1</sup> AFY – Acre Foot per Year. The volume of one acre of surface area to a depth of one foot. A typical family in Goleta uses about 0.25 acre-feet of water per year.

<sup>2</sup> A water contracting agency's maximum entitlement.

Payments for Table A amount of 12,214 AFY were suspended by DWR under Amendment 9. Repayment to FCD of past charges was provided if the Table A amount was sold or allocated for some other project purpose.

- 1982 The FCD filed a lawsuit against DWR regarding proportionate use factors for Reach 31A. The suit was settled in 1987. Part of the negotiated settlement included DWR granting a one-year option for the FCD to reacquire all or part of the 12,214 AFY relinquished in Amendment 9.
- The option period was extended by DWR several times between 1988 and 2001 at the request of the FCD and, later, the County Water Agency. In 2001, DWR stopped responding to the County's requests for extensions to the option, stating that the annual request was unnecessary.
- May 1991 EIR for Coastal Branch and in-County facilities certified. It discussed a 57,700 AFY alternative for in-County facilities.
- June 1991 Voters in 11 out of 14 Water Supply Retention Agreement purveyor service areas approved funding and constructing local facilities to distribute SWP deliveries.
- August 1991 Central Coast Water Authority (CCWA) formed to manage SWP operations on behalf of coastal branch participants.
- November 1991 County and CCWA execute an agreement transferring certain rights and authorities to CCWA in return for CCWA (and its members) accepting responsibility for all SWP related costs. However state declines to allow a full assignment of the contract to CCWA. As a result, FCD must act on behalf of CCWA in certain SWP contract related actions.
- 2007-09 CCWA acquires concurrence from SWP contractors and DWR that reacquisition of 12,214 AFY of Table A amount may occur. CCWA approaches County to discuss reacquisition process.
- 2009 Due to the extreme downturn in the economy, CCWA postpones reacquisition of the suspended water until a later time when the local economy recovers.
- 2014-2015 CCWA once again requests the ability to reacquire the 12,214 AFY of suspended Table A water for a small sub-set of CCWA project participants including, the City of Santa Maria, City of Guadalupe and the Santa Ynez River Water Conservation District, ID#1 (including the City of Solvang).

## Background on Current Table A Amounts

The 1963 State Water Contract, in its current form, includes a "Table A" that provides for 45,486 AFY for Santa Barbara County. The various Water Supply Agreements between CCWA and its Project Participants divides this Table A Amount into the following three parts:

- A. Project Allotments (total: 39,078 AFY). Each Project Participant has a "Project Allotment" in a specified amount. For example, Santa Maria has a Project Allotment of 16,200 AFY. This amount is explicitly stated in Santa Maria's Water Supply Agreement with CCWA. The Project

Participant has certain contractual rights as to its Project Allotment, including (i) the right to transfer it to another Project Participant without CCWA approval, (ii) the right to transfer it to a non-Participant in the county with CCWA approval (which may not be unreasonably withheld), and (iii) the right to transfer it outside the County with CCWA approval and subject to a right of first refusal by existing Project Participants.

- B. Additional Allotment (total: 2,500 AFY). Goleta Water District holds Additional Allotment of 2,500 AFY which it acquired by contract from Golden State Water Company in the early 1990's. This is in addition to its Project Allotment of 4,500 AFY. In essence, this Additional Allotment is a "drought buffer" for Goleta's exclusive use. The term drought buffer is used to describe an allotment that is held in excess of the Project Allotments and serves the purpose of enhancing the year to year reliability of the Project Allotment.
- C. Drought Buffer (total: 3,908 AFY). CCWA holds 3908 AFY of Table A water as a drought buffer for the benefit of all Project Participants. By Board policy, this drought buffer has been made available to all Project Participants on a pro-rata basis. This amount is not subject to any contract with the Project Participants, and therefore no Project Participant has the contractual right to transfer its share of the "drought buffer" to anyone else.

The state water distribution and treatment system constructed by CCWA in the 1990's was sized to deliver the total of the Project Allotments (39,078 AFY), with allowance for delivery interruptions due to annual maintenance. For this reason, the Project Participants understand that they will not receive in any year an amount of water greater than their Project Allotment, unless another Project Participant voluntarily accepts a shortfall.

The "drought buffer" concept is intended to increase the amount of water delivered in any year in which the State Water Project is unable to deliver 100% of Project Allotments. This is why the drought buffer water is considered to be a reliability-enhancement strategy.

## Ability to Reacquire

In 2007 and 2008, CCWA discussed reacquisition of 12,214 AFY "Table A" amount (right to request delivery from the SWP) with the other State Water Contractors and DWR. Both the Contractors and DWR approved moving forward with this reacquisition. Since both the original Water Supply Contract and Amendment 9 were signed by the FCD, however, the request for reacquisition must come from the FCD. In addition, formal amendment of the SWP contract to modify Table A (adding the 12,214 AFY) would require FCD action. Since this would be a discretionary action (by DWR, CCWA and the FCD), compliance with the California Environmental Quality Act (CEQA) is required.

The reacquisition of 12,214 AFY would be accomplished by a very simple revision to Table A: "45,486 AFY" would be replaced with "57,700 AFY." At the same time, there would be **no change** to the agreements between CCWA and the Project Participants. There would be **no change** in the total Project Allotment of 39,078. There would be **no change** in the size of the delivery and treatment facilities. There would be **no change** in the "Additional Allotment" of 2,500 AFY held by Goleta.

The only change would be an increase in the "drought buffer" amount by 12,214 AFY, from 3908 AFY to 16,122 AFY. The net result is an increase in project reliability.

Currently, three CCWA project participants have requested some or all of the 12,214 AF of suspended water: The City of Santa Maria, City of Guadalupe and the Santa Ynez River Water Conservation District, Improvement District #1, which also includes a portion to be allocated to the City of Solvang.

## SWP Transportation System Capacity and Ownership

Design of Coastal Branch: The Coastal Branch was constructed in two phases. The first, phase, through Reach 31A, included capacity for 57,700 AFY of FCD annual deliveries. These original “Coastal Branch Phase I” facilities are located directly off the main stem of the California Aqueduct near Kettleman City in Kings County, referred to as Reach 31A and were constructed in the early years of the State Water Project to serve Berrenda Mesa Water District, and ultimately San Luis Obispo and Santa Barbara Counties when the additional facilities were built to bring State Water into each County. Below Reach 31A, including the Polonio Pass water treatment plant, the design capacity was 45,486, the amount of Table A entitlement originally held by CCWA and its members. Due to its conservative design, the Coastal Branch below Reach 31A appears to have roughly 10% operational capacity above its nominal design. This may provide operational flexibility to transport some of the additional 12,214 AFY during years of full deliveries.

Ownership of Coastal Branch: The Coastal Branch is financed (and owned by) DWR through the tank farm in the Casmalia hills. The rest of the delivery system, including the Polonio Pass Treatment Plant and the system from Casmalia to Lake Cachuma, was financed and is owned by CCWA and its members. The capital costs of the various elements of the system were financed by bonds issued by either CCWA or DWR. Interest payments on those bonds is a significant element of the systems annual cost.

Operation of SWP system: CCWA operates the entire Coastal Branch, Phase II, including the Polonio Pass Treatment Plant. Several times each year leading up to each water year the state announces projected system-wide deliveries and each contractor provides a requested delivery schedule. Actual deliveries are made based on actual system capabilities and water availability. Storage facilities located south of the Delta are used to regulate the system, improve reliability and manage the cost of pumping.

Delivery Constraints: SWP operations are constrained by three basic factors: system design, availability of water in project source areas, and environmental protection constraints. The SWP system design is generally **limited to deliver the annual Table A** amount to each contractor at their designated turnout with factors such as downtime for Operations and Maintenance (O&M) and operational constraints known at the time of design factored in. Deliveries are also limited by **availability of water** in the project source areas, particularly the nature and timing of runoff in the Feather River watershed. In particular the timing and amount of snowmelt affects the total supply available to the project in any given year due in part to storage limitations and **pumping constraints to protect environmental resources**. Because the volume, timing and nature of pumping water from the Sacramento River on the north side of the delta to the pumping plant on the south affects hydrology and habitat of endangered species, operations of the SWP are constrained at certain times of the year.

These constraints in effect set operational "windows" during which the SWP can move water, but also times when no or greatly curtailed operations occur. These constraints affect both water available in any given year, and limit SWP ability to deliver peak daily and total annual volumes. Numerical simulation (models) of the SWP and related water supply systems have been developed to evaluate the effects of existing (and potential future) constraints on SWP deliveries. DWR regularly updates their models and provides that information to the public. The latest reliability estimate is available at: <http://baydeltaoffice.water.ca.gov/swpreliability/>. The available information indicates that the SWP can supply between 6 and 90% of existing Table A amount to its contractors under the range of conditions assumed for the analysis. The long term average SWP annual delivery capability is considered to be 58% (DWR 2015 Delivery Capability Report). Since CCWA and Goleta Water District have acquired Table A

amount in excess of their direct needs, (a so called drought buffer), the average annual delivery capability to CCWA members is estimated to be approximately 75% or greater.

## Potential Benefits of Reacquisition

A number of potential benefits may be realized by reacquisition of SWP Table A amount. Existing SWP supplies were developed in the early 1990s to address water supply and water quality improvement needs identified in the 1970s and 1980s. SWP supplies are available to most urban and suburban areas in the County.

The actual benefits of any additional supplies would depend on specific management decisions in relationship to other supplies. The potential benefits are listed below.

- Supplemental supply: The region has fully developed most local water supplies, Additional SWP supplies, depending on their management, may address potential supply shortages in certain local areas.
- Dependability: SWP deliveries are subject to reduction due to shortages of supply in the watersheds of origin and constraints in operation of transportation facilities, (i.e. the Sacramento-San Joaquin Delta.). In addition, deliveries may be suspended due to required maintenance or natural disaster. Thus SWP supplies are not generally relied upon as a sole source of supply. Additional Table A amount may be used to augment requests in periods when full deliveries will not occur.
- Water quality: SWP deliveries replace high TDS groundwater for some purveyors, reducing treatment costs and improving the quality of return flows.
- Drought protection: Additional SWP allocation during dry periods may "firm up" actual deliveries and thus lessen drought related measures imposed on retail water customers. This firming up, or drought buffer, allows additional deliveries (based on unallocated Table A amounts) to be requested of DWR to make up for projected shortages in any given year.
- Value: Estimated value of reacquired water under various use scenarios can be developed using one or more methodologies. The "value" of supplemental water may be estimated several ways including:
  - comparison to other supplemental supply alternatives such as desalination,
  - comparison to water acquired by substituting for an existing use (such as agriculture), and
  - comparison to greater water efficiency.

Each of these methods of evaluation may have its shortcomings, but if taken together, they allow the "value" of the reacquisition to be placed in a reasonable context.

## Estimated Costs of Suspended Table A Water

As was discussed earlier in this report, the SWP facilities that existed prior to the successful vote to bring State Water into Santa Barbara County in 1991, included capacity for the full 57,700 AFY of Santa Barbara County Table A. These original “Coastal Branch Phase I” facilities are located directly off the main stem of the California Aqueduct near Kettleman City in Kings County, referred to as Reach 31A and were constructed in the early years of the State Water Project to serve Berrenda Mesa Water District, and ultimately San Luis Obispo and Santa Barbara Counties when the additional facilities were built to bring State Water into each County.

DWR allocates capital and operations and maintenance costs proportionally based on where each State Water Project Contractor takes water from the State Water Project facilities.

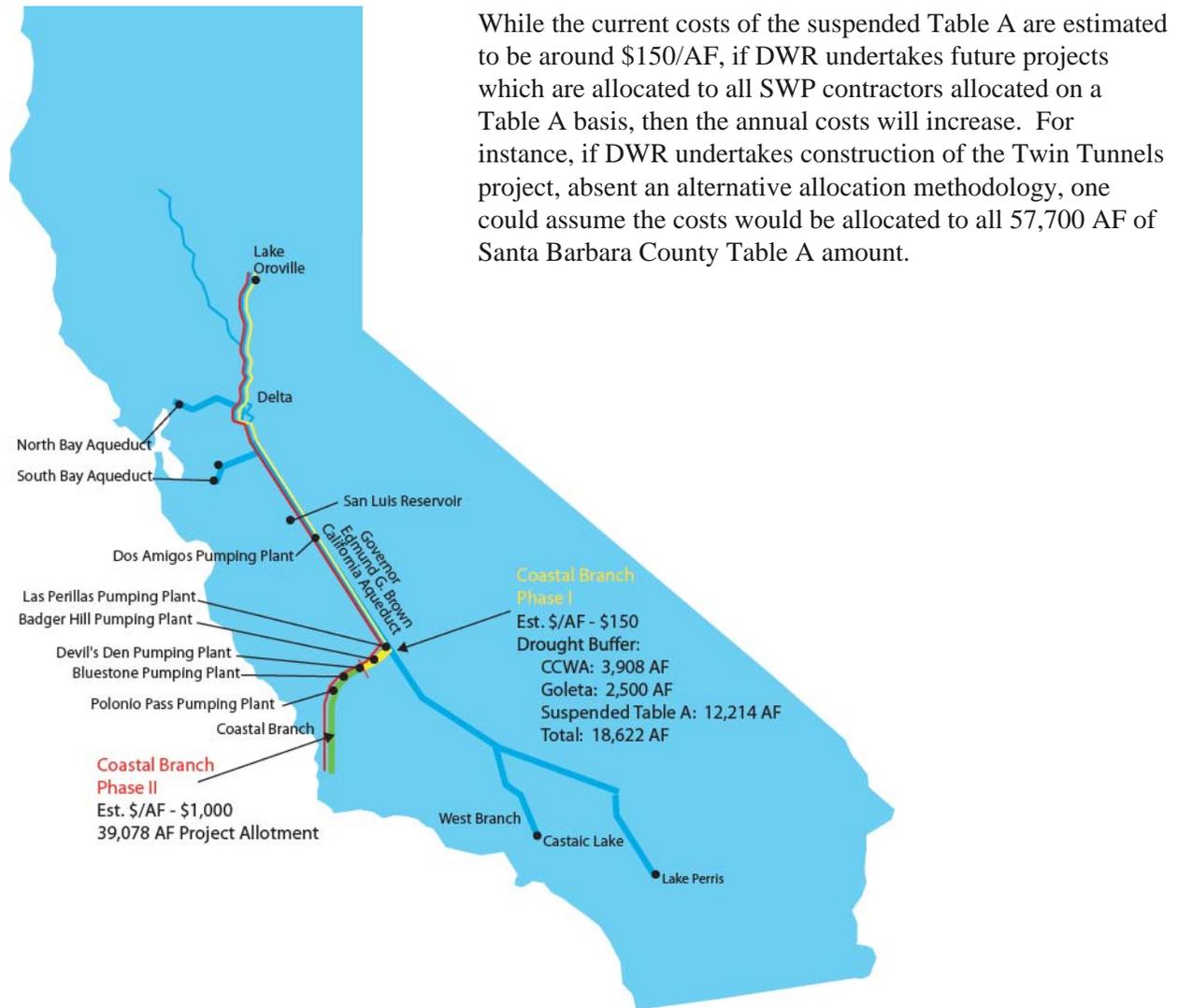
After the 1991 vote to authorize bonds to construct facilities to deliver State Water through Santa Barbara County, DWR and CCWA began the process to construct the facilities to extend the then-existing Coastal Branch Phase I facilities. The Phase II facilities were NOT designed to include the additional 12,214 AF of suspended Table A water, or the currently existing Goleta Water District drought buffer of 2,500 AF or the CCWA 3,908 AF of drought buffer. Therefore, DWR only allocates costs for three different drought buffers totaling 18,622 AF from Lake Oroville (Reach 1) through Reach 31A, (the Coastal Branch Phase I). These costs are estimated to be around \$150 per acre-foot (fixed costs only).

The costs allocated by DWR to the facilities that include the Coastal Branch Phase II include costs from Lake Oroville (Reach 1) through Reach 38 at Vandenberg Air Force Base, which includes all the newly constructed facilities to bring State Water into Santa Barbara County. These DWR costs are currently around \$1,000 per acre-foot.

The following table shows the current estimate of costs for each type of water discussed above:

	Acre-Feet	<i>Dollars per acre-foot</i>			Estimated Total Annual Costs (2015 Charges)
		Estimated DWR Costs Lake Oroville to Coastal Branch Phase I (Rch 31a)	Estimated DWR Costs CB Phase I through CB Phase II (Rch 38)	Estimated Total DWR Costs Through CB Phase II	
Project Allotment	39,078	\$ 150	\$ 850	\$ 1,000	\$ 39,078,000
CCWA Drought Buffer	3,908	\$ 150	-	\$ 150	586,200
Goleta WD Drought Buffer	2,500	\$ 150	-	\$ 150	375,000
Suspended Table A Drought Buffer	12,214	\$ 150	-	\$ 150	1,832,100
<b>TOTAL:</b>	<b>57,700</b>				<b>\$ 41,871,300</b>

The following graphic shows the same information in relation to the entire State Water Project:



While the current costs of the suspended Table A are estimated to be around \$150/AF, if DWR undertakes future projects which are allocated to all SWP contractors allocated on a Table A basis, then the annual costs will increase. For instance, if DWR undertakes construction of the Twin Tunnels project, absent an alternative allocation methodology, one could assume the costs would be allocated to all 57,700 AF of Santa Barbara County Table A amount.

### Proposed Steps of Reacquisition

- The FCD and CCWA create and sign an agreement to go through a process relating to reacquisition of the 12,214 AFY of Table A amount from DWR.
- CCWA and its members create the mechanism to fund the reacquisition process.
- The FCD and CCWA consult with DWR to initiate the process and prepare a project description and initiate the CEQA process to evaluate potential impacts to the human and natural environment.
- County certifies CEQA document after appropriate public process.
- County and DWR execute amendment.
- County and CCWA execute agreement regarding reacquisition.

# Attachment 2

# Memorandum

Steven A. Amerikaner  
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**DATE:** December 23, 2015  
**TO:** Ray Stokes, Central Coast Water Authority  
**FROM:** Steven A. Amerikaner, General Counsel  
**RE:** Reacquisition of Relinquished State Water

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The Central Coast Water Authority (“CCWA”) proposes to reacquire 12,214 acre/feet per year (“AFY”) of Table A water that was suspended through Amendment 9 to the 1963 Water Supply Contract. CCWA intends to submit a letter to the Santa Barbara County Flood Control and Water Conservation District (“District”) to request its support and assistance with the reacquisition. (CCWA and District are collectively referred to herein as the “County.”) This memo provides a summary of the County’s contractual rights to reacquire such water from the California Department of Water Resources (“DWR”).

## I. BACKGROUND INFORMATION

On February 26, 1963, DWR and the District entered into a water supply contract which obligated DWR to supply 57,700 AFY of State Water Project (“SWP”) water to the District (“1963 Contract”). In 1981, the parties entered into an amendment to the 1963 Contract (the “1981 Amendment,” a copy of which is attached hereto as **Exhibit A**), by which the amount of water subject to the agreement was reduced by 12,214 AFY (“Relinquished Entitlement”), for a total of 45,486 AFY. Soon thereafter, litigation ensued between DWR and the District on an unrelated issue, and a Settlement and a Compromise Agreement was entered on March 12, 1987 (“Settlement Agreement,” a copy of which is attached hereto as **Exhibit B**). The Settlement Agreement included a provision granting the District the right to reacquire the Relinquished Entitlement for a period of one year (“Option to Reacquire”).

Between 1988 and 2000, the County submitted annual written requests to extend the Option to Reacquire, and each request was granted in writing by DWR. In 2001, a DWR staff member orally notified District staff that it was no longer necessary to submit written requests to extend the option period—DWR would automatically extend the option period each year without a written request (“2001 Oral Modification”). In 2007, the County sent a letter to DWR stating that it was exercising its Option to Reacquire the Relinquished Entitlement pursuant to the Settlement Agreement, the 1988-2000 written extensions, and the 2001 Oral Modification. (A copy of the County’s letter is attached hereto as **Exhibit C**.) DWR responded with a letter formally approving the County’s reacquisition request (the “2007 Approval,” a copy of which is attached hereto as **Exhibit D**).

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## II. THE COUNTY MAINTAINS A CONTRACTUAL RIGHT TO REACQUIRE THE RELINQUISHED ENTITLEMENT

### A. *The 2001 Oral Modification Constituted an Enforceable Modification of the Settlement Agreement*

Pursuant to Paragraph 8 of the Settlement Agreement, DWR granted the County a one-year option to reacquire any amount of the Relinquished Entitlement, up to a total of 12,214 AFY. By the terms of the Settlement Agreement, this option expired in March of 1988. However, each year between 1988 and 2000, the parties entered into one-year extensions of such option. In 2001, the County ceased submitting written requests for extensions in reliance on the 2001 Oral Modification, by which a DWR staff member agreed that the option would be automatically extended every year for successive one-year periods. This 2001 Oral Modification was a valid and binding modification of the Settlement Agreement which resulted in an automatic, annual extension of the Option to Reacquire.

An oral modification of a written agreement is enforceable if: (1) such oral modification is made by a person with the appropriate authority to amend the agreement or if the modification is subsequently ratified by the principal; and (2) the oral agreement is either fully executed by both parties or supported by new consideration.<sup>1</sup> (Civ. Code, § 1698.) The 2001 Oral Modification is a valid and enforceable oral modification of the written Settlement Agreement because: (1) the modification was ratified by DWR; and (2) promissory estoppel against DWR satisfies the consideration requirement.

#### 1. The 2001 Oral Agreement was Ratified by DWR

Generally, under California law, an oral modification is enforceable only if it is made by a person with actual, ostensible, or apparent authority. (*Blanton v. Womancar* (1985) 38 Cal.3d 396, 406.) Here, there are numerous facts which demonstrate that the DWR staff member who entered into the 2001 Oral Modification, Mr. Dave Knock, had appropriate authority. Mr. Knock was a long-time DWR staff member who was intelligent, knowledgeable, and well-respected. Given his longevity with DWR and his extensive familiarity with DWR procedures, it was reasonable to assume that he had followed proper internal protocols or had obtained permission to waive the requirement.

Critically, however, even if Mr. Knock did not have the proper authority to bind DWR, the 2001 Oral Modification is enforceable against DWR because it ratified such modification. (Civ. Code, § 2307 [“An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.”] A purported agent’s act may be ratified expressly or by implication based on conduct of the principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is “inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.” (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73-74.) If a principal ratifies an act performed by

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<sup>1</sup> The statute of frauds must also be satisfied if the agreement, as modified, falls within its provisions. (Civ. Code, § 1698.) Here, the statute of frauds does not apply to the agreement as modified. Pursuant to Civil Code section 1624, an agreement that by its terms is not to be performed within one year is required under the statute of frauds to be in writing. Courts have held that an agreement which automatically renews each year does not fall within the statute of frauds because it can be performed within one year. (*Daigler v. Mitchell* (1942) 39 N.Y.S.2d 465, 469 [“Here, the contract of rental sued upon by the plaintiff was automatically renewed each year until the defendant should move from premises 397 Parker Avenue, Buffalo, New York, at which time the contract would be cancelled. Therefore, the Statute of Frauds does not apply to it.”] [cited with approval when discussing the California statute of frauds by *Hopper v. Lennen & Mitchell, Inc.* (9<sup>th</sup> Cir. 1944) 146 F.2d 364].) Accordingly, the statute of frauds does not apply to the 2001 Oral Modification because performance can occur in one year.

a purported agent, the ratification will relate back to the time of the agent's act and the act will be treated as if it had been approved originally. (*Ibid.*)

There is persuasive evidence indicating that DWR ratified Mr. Knock's actions. On several occasions after 2001, the parties jointly discussed and exchanged correspondence relating to the County's desire to reacquire the Relinquished Entitlement pursuant to its option. At no time did the County indicate that it believed the 2001 Oral Modification was made without authority or unenforceable. Indeed, on October 2, 2007, the County sent a letter to DWR requesting that pursuant to the Settlement Agreement, the 1988-2000 written extensions, and the 2001 Oral Modification, DWR approve the County's request to reacquire the Relinquished Entitlement. On October 26, 2007, DWR responded with a letter formally approving CCWA's reacquisition request. DWR's approval constitutes a ratification of the 2001 Oral Modification.

2. DWR is Bound by the 2001 Oral Modification Under the Doctrine of Promissory Estoppel

An oral modification to a written contract is binding and enforceable to the extent that such oral modification is executed by the parties or supported by new consideration. California courts have clearly held that the consideration requirement may be satisfied through promissory estoppel. (See, e.g., *Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 697 [explaining that promissory estoppel is "a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced."].) Promissory estoppel was developed to establish "rough justice when a party lacking contractual protection relies on another's promise to its detriment." (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 249.) In our view, this doctrine fits the facts summarized above.

Specifically, the doctrine of promissory estoppel applies to validate an oral modification when the following conditions exist: (1) the promisor makes a promise that the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee; (2) the promisor reasonably induces such action or forbearance; (3) the promisor's breach of the promise was a substantial factor in causing injury to the promisee; and (4) injustice can be avoided only by enforcement of the promise. (*Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 697.)

The 2001 Oral Modification reasonably induced the County to (i) refrain from immediately exercising its Option to Reacquire the Relinquished Entitlement and (ii) cease submitting written requests for extension. DWR should have expected the modification would cause such actions because that was its exact purpose. If DWR now claims that its 2001 promise was not a valid modification of the Settlement Agreement, the shift of position would cause a grave injustice and substantial injury to the County, which could only be avoided by judicial enforcement of the promise. Water is a unique, scarce, and highly valuable resource. There is no other available water for the County and, if DWR's promise is not enforced, the County would lose its ability to acquire necessary water. The interests of justice therefore clearly require that the doctrine apply, and DWR should be estopped from claiming that the 2001 Oral Modification is unenforceable.

B. *The County Validly Exercised the Option Created by the 2001 Oral Modification*

As previously detailed, the 2001 Oral Modification created a binding and enforceable option agreement. A party may exercise an option by simply providing notice to the other party, which transforms the unilateral option contract into a valid and binding bilateral contract. (3-11 Corbin on Contracts, § 11.8.) In 2007, the County validly exercised its option under the 2001 Oral Modification by sending a letter to DWR and requesting that pursuant to the Settlement Agreement, the 1988-2000 written extensions, and

the 2001 Oral Modification, DWR reallocate the Relinquished Entitlement to the County. DWR responded with a letter formally approving the County's reacquisition request. As a result, an enforceable bilateral contract was created.

Neither the 2001 Oral Modification nor the 2007 Approval contained a contract termination date or a completion date for the reacquisition. Accordingly, since an enforceable contract exists for the reacquisition, the parties have a reasonable time period to finish the reacquisition process and satisfy the terms of the agreement. (Civ. Code, § 1657.)

C. *The 2007 Approval Created a Valid and Enforceable Contract Independent of and Separate from the 2001 Oral Modification and Resulting Option*

The County can also enforce the separate and independent contract that was created between the County and DWR by the 2007 Approval. In 2007, the County submitted a valid offer to DWR by requesting that DWR reallocate the Relinquished Entitlement to the County in exchange for the costs detailed in the Settlement Agreement. DWR accepted the County's offer by responding with a letter formally approving the County's reacquisition request. Specifically, DWR wrote, "DWR approves the request that you submitted on behalf of SBFCWCD to reacquire 12,214 acre-feet of suspended water. . . DWR estimates that SBFCWCD will be required to pay about \$17.7 million to reacquire this Table A water." This exchange created an enforceable contract, supported by adequate consideration, which is separate and distinct from the contractual rights created under the 2001 Option to Reacquire.

D. *The County Still Holds an Option to Reacquire Under the 2001 Oral Modification, Which it May Exercise at Any Time*

Alternatively, even if the County's 2007 exercise of its option has lapsed due to the passage of time, the Option continues to exist and, thus, the County may exercise its Option to Reacquire at any time. Through the 2001 Oral Modification and subsequent 2007 Approval, DWR agreed that it would automatically extend DWR's one-year Option to Reacquire every year without written request. There was no time limit on the option and automatic extension, and the 2001 Oral Modification contained no forfeiture provisions. Accordingly, the option has been renewed every year since 1988. Thus the County may elect to exercise its Option to Reacquire now, and such exercise would create a binding bilateral contract that would be enforceable against DWR.

### **III. CONCLUSION**

As the foregoing demonstrates, the County holds a contractual right to reacquire the Relinquished Entitlement from DWR.

Attachments (4)

# EXHIBIT A

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

---

AMENDMENT NO. 9 TO WATER SUPPLY CONTRACT  
BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES AND  
SANTA BARBARA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

THIS CONTRACT, is made this 31<sup>st</sup> day of August, 1981, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State", and Santa Barbara County Flood Control and Water Conservation District, herein referred to as the "Agency".

WHEREAS, the State and the Agency have entered into and subsequently amended a water supply contract providing that the State will supply certain quantities of water to the Agency, and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payment; and

WHEREAS, the State and the Agency desire to make certain changes and additions to such contract, while otherwise continuing the contract in full force and effect.

NOW, THEREFORE, it is mutually agreed that the following changes and additions are hereby made to the Agency's water supply contract with the State:

1. Subdivision (c) of Article 12 of the contract is amended to read as follows:

(c) Limit on Rate of Delivery to Agency

In no event shall the State be obligated to deliver water to the Agency through all delivery structures at a total combined instantaneous rate of flow exceeding 63 cubic feet per second, except as this rate of flow may be revised by amendment of this article after submission to the State of the Agency's requests with respect to maximum flow capacities to be provided in said delivery structures, pursuant to Article 10.

2. Table A attached to the contract is hereby replaced by the following Table A Amended:

TABLE A AMENDED

<u>Year</u>	<u>Total Annual Amount in Acre-feet</u>
1980	946
1981	1,813
1982	3,626
1983	5,439
1984	8,198
1985	13,638
1986	18,210
1987	22,704
1988	28,222
1989	36,342
1990 and each succeeding year thereafter for the term of this contract as a maximum entitlement	45,486

3. Subdivision (h) of Article 45 of the contract is amended to read:

(h) Notwithstanding the provisions of Article 29(a), the Agency shall commence payment of the capital cost and the minimum operation, maintenance, power and replacement components of the Delta Water Charge according to the schedule in Table A Amended of the contract in the year 1980.

4. Subdivision (j) is added to Article 45 as follows:

(j) The Agency's Delta Water Charges and Transportation Charges shall be recalculated effective with the first payments made by the Agency under this contract to reflect the reductions in annual and maximum entitlements made by this amendment.

For the purposes of this subdivision, Agency's overpayment amount without interest through 1981 is determined to be \$1,461,629.

The amount to be reimbursed to the Agency shall include the overpayment amount or a portion of the overpayment amount plus interest compounded annually from the date of the Agency's first payment to January 1, 1983, or January 1 of the year following the year in which the capacity has been partially or fully reallocated to another project purpose or to another contractor or contractors, at the project interest rate used for the statements of charges for 1983 or for the year in which the credit is to commence, whichever is later.

If the reallocation is only for a portion of the capacity, then the reimbursement shall be for a corresponding proportionate share of the overpayment. The State will not reallocate either entitlement or capacity without either reallocating the amount to be reimbursed to the Agency to another project purpose or obtaining a contract or contracts providing for repayment of that amount. The State shall make all reasonable efforts to obtain an expeditious reallocation of the capacity.

The amount of the reimbursement shall be credited against the Agency's future payments beginning January 1, 1984, or January 1 of the year following reallocation of the capacity, whichever is later, in ten annual credits with interest from the appropriate year, computed annually at the project interest rate for each year. The portion of the reimbursement to be credited each year shall be determined by multiplying the reimbursement by the factors from the following table, to which said interest shall be added.

<u>Year</u>	<u>Multiplying Factor</u>
1	.0804
2	.0843
3	.0883
4	.0925
5	.0968
6	.1014
7	.1063
8	.1113
9	.1166
10	.1221

IN WITNESS THEREOF, the parties hereto have executed this contract amendment on the date first above written.

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

By *P. Turner*  
Chief Counsel  
Department of Water Resources

By *Harold G. Burt*  
Director

APPROVED AS TO FORM

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

KENNETH L. NELSON  
COUNTY COUNSEL

By *K. Nelson 9-2-81*

By *[Signature]*  
Chairman, Board of Directors

Date: 9-2-81

ATTEST:

HOWARD C. MENZEL  
COUNTY CLERK-RECORDER

By *[Signature]*  
Deputy Clerk-Recorder

(SEAL)

# EXHIBIT B

1 JOHN K. VAN DE KAMP, Attorney General  
 of the State of California  
 2 ROBERT H. CONNETT  
 Assistant Attorney General  
 3 CLIFFORD T. LEE  
 Deputy Attorney General  
 4 6000 State Building  
 350 McAllister Street  
 5 San Francisco, CA 94102  
 Telephone: (415) 557-2627

(ENDORSED)

FILED

MAR 12 1987

FRANCIS M. COONEY, COUNTY CLERK  
 By Julie Rodewald  
 DEPUTY CLERK

6 Attorneys for Defendant, Cross-Complainant,  
 7 Cross-Defendant State of California

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

10

11 COORDINATION PROCEEDING )	
SPECIAL TITLE (RULE 1550(b)) )	
12 )	
13 CALIFORNIA AQUEDUCT CASES )	JUDICIAL COUNCIL COORDINATION
)	PROCEEDING NO. 1879
14 )	
Included actions: )	
15 )	
SAN LUIS OBISPO COUNTY FLOOD )	SANTA BARBARA SUPERIOR
16 CONTROL AND WATER CONSERVATION )	COURT NO. 142 195
DIST. v. STATE OF CALIFORNIA, )	
17 acting by and through the )	
DEPARTMENT OF WATER RESOURCES )	
18 )	
19 SANTA BARBARA COUNTY FLOOD )	STIPULATION FOR SETTLEMENT
AND WATER CONSERVATION DIST. v. )	<u>AND COMPROMISE AND ORDER</u>
20 STATE OF CALIFORNIA, acting by )	
and through the DEPARTMENT OF )	
21 WATER RESOURCES )	
22 )	

23 SETTLEMENT AND COMPROMISE AGREEMENT

24 This Settlement and Compromise Agreement is made  
 25 this 10 day of March, 1987, by and among  
 26 the Department of Water Resources of the State of California  
 27 (Department), Santa Barbara County Flood Control and Water

1.

1 Conservation District (Santa Barbara), Kern County Water Agency  
2 (Kern), and Berrenda Mesa Water District (Berrenda Mesa).

3 Recitals

4 A. The Department, Santa Barbara, Kern and Berrenda  
5 Mesa are presently engaged in litigation now pending in Superior  
6 Court, Santa Barbara County No. 142195, and Judicial Council  
7 Coordination Proceeding No. 1879.

8 B. In light of the uncertainties regarding the outcome  
9 of the suit, the unique facts involved in the action, the desire  
10 of all the parties to avoid the expense of further litigation,  
11 and the economic and legal consequences of adverse decisions,  
12 the parties desire to settle and terminate the litigation.

13 C. The parties intend that the terms of this settlement  
14 shall only affect Reach 31A, the Coastal Stub of the California  
15 Aqueduct.

16 Terms of Agreement

17 In consideration of the recitals and mutual promises  
18 and agreements contained in this settlement agreement, the  
19 parties agree as follows:

20 1. The Department shall credit \$260,000 to the Santa  
21 Barbara Transportation Charge in 1987.

22 2. Kern will pay the Department \$17,400 by no later  
23 than January 30 of each year for a five year period commencing  
24 in 1987.

25 3. Nothing in this agreement shall apply to surplus  
26 water deliveries.

27 / /

1           4. Kern and the Department agree to execute and  
2 implement Amendment No. 19 to the water supply contract between  
3 Kern and the Department as attached hereto as Exhibit A.

4           5. Santa Barbara agrees to dismiss with prejudice any  
5 and all claims pending in the following cases:

6           a. Santa Barbara County Superior Court No. 142195.

7           b. Judicial Council Coordination Proceeding  
8 No. 1879.

9           6. The Department will allocate State Water Project  
10 Capital and Minimum OMP&R costs of the Transportation Charge for  
11 Reach 31A pursuant to the proportionate use-of-facilities method  
12 in Article 24(b) of the Water Supply Contract with Santa Barbara.  
13 Unless otherwise amended, the entitlement factor used in the  
14 allocation of capital and minimum operation, maintenance, power  
15 and replacement costs to Kern for Reach 31A shall be based on  
16 105,100 acre-feet of entitlement deliveries for Kern out of a  
17 total of 200,500 acre-feet of entitlement deliveries to all  
18 contractors from or through this reach.

19           7. The Department will apply for the water rights  
20 necessary for the Cachuma Enlargement local project; provided  
21 that any costs to the Department in excess of \$7,000 will be  
22 deducted from any financial contribution made by the Department  
23 for such enlargement and provided further that up to \$7000 of all  
24 costs associated with this item will be considered a cost of the  
25 feasibility study if Santa Barbara decides to proceed with  
26 construction of the project as a SWP local project. Otherwise

27 //

1 if the project is not constructed as a SWP local project, all  
2 the costs associated with this item will be considered costs of  
3 the feasibility study.

4 8. The Department will grant Santa Barbara a one-year  
5 option to reacquire any amount of entitlement, up to the entire  
6 12,214 AFY entitlement which Santa Barbara relinquished under  
7 Amendment No. 9 dated August 31, 1981. The cost of the  
8 reacquired entitlement to Santa Barbara would be as follows:

9 a. There would be a pro-rata reduction in the  
10 amount of credit, including interest, which is due to Santa  
11 Barbara under Amendment No. 9. For example, if Santa Barbara  
12 reacquired 75 percent of its relinquished entitlement, the credit,  
13 including interests, would be reduced by 75 percent.

14 b. Santa Barbara would make a pro-rata lump sum  
15 payment, on the date of reacquisition, of the "suspended charges"  
16 attributable to the reacquired entitlement, plus interest at the  
17 Project Interest Rate. For example, if Santa Barbara reacquired  
18 75 percent of the relinquished entitlement, it would make a lump  
19 sum payment of 75 percent of the suspended charges, plus interest  
20 at the Project Interest Rate.

21 9. The Department, Santa Barbara, Kern, and Berrenda  
22 Mesa each represent and warrant to each other that this settle-  
23 ment agreement has been duly and validly authorized, approved  
24 and executed, and that, in accordance with its terms, this  
25 settlement agreement is binding on each of the parties hereto  
26 and their respective successors and assigns.

27 //

1           10. Nothing in this stipulated agreement is intended  
2 to require the parties to submit to any court, or seek agreement  
3 of any court for, any future amendments to the water supply  
4 contracts between the parties.

5 Dated: 3-10-87

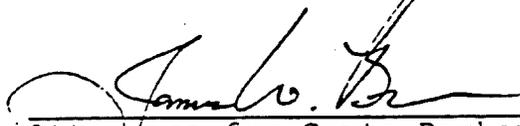
JOHN K. VAN DE KAMP, Attorney General  
ROBERT CONNETT, Assistant Attorney General  
CLIFFORD T. LEE, Deputy Attorney General



Attorneys for State of California  
Department of Water Resources

10 Dated: 1-22-87

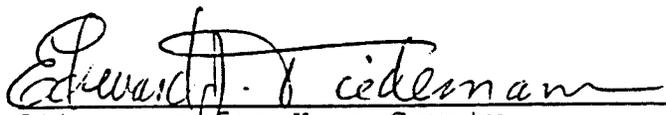
MULLEN, MCCAUGHERY & HENSEL  
JAMES BROWN



Attorneys for Santa Barbara County  
Flood Control and Water  
Conservation District

15 Dated: 2-2-87

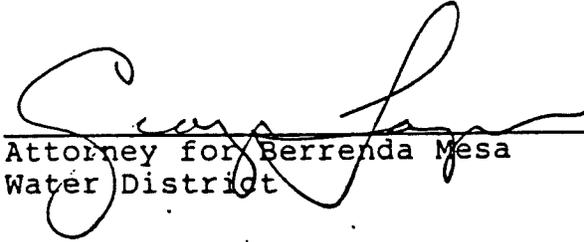
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
EDWARD TIEDEMANN



Attorneys for Kern County  
Water Agency

20 Dated: 2-4-87

GEORGE G. LOGAN



Attorney for Berrenda Mesa  
Water District

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ORDER

In light of the settlement and compromise between the parties to this action, it is hereby ordered that:

1. The parties shall comply with the terms of the above settlement and compromise agreement and any violation of said agreement shall be deemed a violation of this order.

2. All parties will file requests for dismissal of any and all claims with the appropriate courts within 15 days of the date of this order.

Dated: MAR 12 1987

/s/ WARREN C. CONKLIN

Coordination Trial Judge

# EXHIBIT C

October 2, 2007



Mr. Robert Cooke  
Chief, State Water Project Analysis Office  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

Subject: Central Coast Water Authority Reacquisition of Suspended Table A Amount

Dear Rob:

Leo Trujillo  
Chairman

Fred Lemere  
Vice Chairman

William J. Brennan  
Executive Director

Hatch & Parent  
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

As we have discussed on several occasions, the Central Coast Water Authority (CCWA) wishes to reacquire 12,214 acre-feet of water that was suspended by DWR under Amendment 9 of our contract. The water was suspended at the request of the Santa Barbara Flood Control and Water Conservation District (FCD) in 1981. At that time, Santa Barbara county water agencies desired to preserve rights to only 45,486 acre-feet of the FCD's original 57,700 acre-feet Table A Amount. DWR agreed to suspend the remaining 12,214 acre-feet and set terms for its sale and/or reacquisition in Amendment 9.

The following year, the FCD filed a lawsuit against DWR regarding proportionate use factors for Reach 31A. The suit was settled in 1987. Part of the negotiated settlement included DWR granting a one-year option for the FCD to reacquire all or part of the 12,214 acre-feet relinquished by Amendment 9. The right to reacquire the water was extended by DWR several times between 1988 and 2001. In 2001, DWR stopped responding to FCD requests for extensions to the option. At the time, DWR staff stated that the annual request was unnecessary.

Recently, several CCWA Project Participants have expressed an interest in reacquiring this Table A Amount. Even though full additional deliveries may be difficult during some very high allocation years due to CCWA Treatment Plant and Coastal Branch Phase II pipeline capacity constraints, the reacquisition makes sense because more water will be delivered in low allocation years resulting in an increase in the current level of SWP reliability. Additionally, CCWA is currently exploring options for storing water outside the CCWA service delivery area for delivery during times of shortage.

CCWA and the FCD would like to work with your staff and DWR legal staff to establish the cost, requirements and procedures necessary to restore our Table A Amount to its original quantity. Please contact me as soon as possible at (805) 688-2292 extension 215 or [wjb@ccwa.com](mailto:wjb@ccwa.com) so that we may begin this process.

Sincerely,

A handwritten signature in black ink, appearing to read "WJ Brennan".

William J. Brennan  
Executive Director

WJB

cc: Norm Hill, DWR Legal  
Craig Trombly, DWR SWPAO

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



# EXHIBIT D

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



OCT 26 2007

William J. Brennan, Executive Director  
Central Coast Water Authority  
255 Industrial Way  
Buellton, California 93427-9565

Dear Mr. Brennan:

This is in response to your letter to Robert B. Cooke of the State Water Project Analysis Office requesting that the Department of Water Resources (DWR) allow Central Coast Water Authority (CCWA), on behalf of Santa Barbara Flood Control and Water Conservation District (SBFCWCD), to reacquire 12,214 acre-feet of Table A water that DWR suspended in 1986 under Amendment No. 9 to SBFCWCD's long term water supply contract.

DWR approves the request that you submitted on behalf of SBFCWCD to reacquire 12,214 acre-feet of suspended water. Before we can restore this Table A amount, SBFCWCD or CCWA will need to prepare an Environmental Impact Report to comply with the California Environmental Quality Act. Further, you should obtain a response to your May 30, 2007, letter to the State Water Contractors, Inc.

CCWA will also need to provide documentation that the reacquisition of 12,214 acre-feet of Table A water will be put to beneficial use in light of the limitations on local capacity for water delivery.

As shown on the attached table, DWR estimates that SBFCWCD will be required to pay about \$17.7 million to reacquire this Table A water.

DWR staff are available to assist you with processing this request. If you have any questions or need additional information, you may contact Mr. Cooke at (916) 653-5945.

Sincerely,

A handwritten signature in black ink, appearing to read "Raphael A. Torres".

Raphael A. Torres  
Deputy Director

Attachment

cc: Terry Erlewine  
General Manager  
State Water Contractors  
1121 L Street, Suite 1050  
Sacramento, California 95814

RECEIVED

OCT 31 2007



# Attachment 3

## QUESTIONS AND ANSWERS REGARDING STATE WATER REACQUISITION PROPOSAL

Prepared by: Ray Stokes, Executive Director, CCWA  
December 2015

### **1. Can the suspended water be transferred to other entities inside the County?**

No. The “suspended water” (reacquired 12,214 AFY Table A amount) would result from an amendment to the 1963 contract that would revise "Table A" to replace "45,486 AFY" with "57,700 AFY." Since the Coastal Branch and related facilities were sized to deliver a maximum of 45,486 AFY, the only contractors who can make use of the “suspended water” would be those who already hold a Table A allotment through a contract with CCWA. Thus, the suspended water would be no different than the “drought buffer” currently held by CCWA

### **2. Can it be sold outside the County?**

Table A water can only be transferred outside SB County with DWR approval, and DWR has stated that the reacquired suspended water may not be sold outside of Santa Barbara County. We are still in discussions with DWR on this matter.

### **3. What does the reacquisition do to the voting structure in CCWA?**

The proposed reacquisition amendment to the 1963 State Water Contract -- standing alone -- will have no impact on voting rights on the CCWA Board of Directors.

Voting rights are governed by the Joint Powers Agreement, which provides for a "Voting Percentage" for each Board Member. The "Voting Percentage" corresponds to the Member's "Project Allotment" divided by the sum of all "Project Allotments." As noted above, each Member's "Project Allotment" is defined by that Member's Water Supply Agreement with CCWA. The “drought buffer” is not considered to be part of a Member’s “Project Allotment.”

### **4. How is it assured that the water is used only for enhanced reliability?**

As noted above, the proposed contract amendment does not result in any enlargement of any delivery or treatment facilities, which were originally sized to deliver 39,078 afy of water. Thus, this additional "Table A water" is no different than the allotment currently held by CCWA and its members for “drought buffer” purposes.

### **5. How will the financial protections afforded to the District by the TRFA be extended to the District through reacquisition?**

The 1991 Transfer of Financial Responsibility Agreement (TFRA) requires CCWA to discharge all of the County's obligations under the 1963 State Water Contract. The TFRA (in Recital A)

contemplated later amendments to the 1963 Contract such as this reacquisition:

“A. On February 26, 1963, the District and the State of California Department of Water Resources (hereinafter "DWR") or "State") entered into an agreement entitled "Water Supply Contract" regarding the District's participation in the State Water Project. That agreement, as amended to the date hereof, and as it may be amended and supplemented from time to time, is referred to herein as the "SWP Contract.” (Emphasis added.)

Thus, under the TFRA, CCWA will continue to be bound to discharge the County's financial duties under this proposed amendment to the 1963 Agreement. Additionally, the Water Supply Agreements between CCWA and its Members require each project participant in the region to step up and pay any costs associated with the default of a project participant, which offers a significant additional layer of protection for the County.

**6. Who is getting what amounts and what is the estimated additional annual costs based on the allocation?**

CCWA extended an offer to all 13 CCWA project participants to participate in the reacquisition of the 12,214 AF suspended Table A water. Only three project participants expressed an interest.

The following table shows the amount that each of the three project participants requested and a preliminary allocation of the full 12,214 AF, plus an estimate of the additional annual costs based on \$150/AF (the allocation methodology has NOT been finalized yet among the interested participants).

Project Participant	Amount		Estimated
	Requested (AF)	Percentage	Annual Costs (\$150/AF)
City of Santa Maria	10,814	89%	\$ 1,622,100
City of Guadalupe	600	5%	90,000
Santa Ynez Imp. District, ID#1	500	4%	75,000
Santa Ynez Imp. District, ID#1 (Solvang)	300	2%	45,000
<b>TOTAL:</b>	<b>12,214</b>	<b>100%</b>	<b>\$ 1,832,100</b>

**7. What happens to the 12,214AF if/when Twin Tunnels / Alt conveyance project is built and State Water deliveries are close to 100%?**

The construction of additional facilities in Northern California will not change the character or use of the additional Table A water. As noted above, the facilities built from the California Aqueduct to Lake Cachuma were designed to deliver 39,078 AFY. The "drought buffer" that has been acquired in the past -- and the additional "drought buffer" that will be secured by this reacquisition of relinquished Table A -- does not change that simple physical fact. CCWA and its project participants continue to look for opportunities to bank water during wet years in order to further increase overall reliability during dry periods.

**8. What is the total cost to reacquire the suspended water and how will these costs be allocated and funded?**

It is anticipated that each of the three CCWA project participants listed above will obtain its own funding for its share of the costs to reacquire the water. We have requested an update of the total amount payable to DWR to reacquire the water, but have not yet received a final response. We are estimating the reacquisition cost to be between \$25 and \$30 million.

Project Participant	Amount Requested (AF)	Percentage	Estimated Past Costs Due to DWR
City of Santa Maria	10,814	89%	\$ 26,561,323
City of Guadalupe	600	5%	1,473,719
Santa Ynez Imp. District, ID#1	500	4%	1,228,099
Santa Ynez Imp. District, ID#1 (Solvang)	300	2%	736,859
<b>TOTAL:</b>	<b>12,214</b>	<b>100%</b>	<b>\$ 30,000,000</b>

**9. How will this drought buffer work with the other drought buffers?**

This drought buffer will be treated exactly the same as the existing CCWA drought buffer. The new drought buffer will be owned by CCWA and those who opt in will be responsible for a defined portion of the costs and will receive the same portion of the benefits.

**10. How is Santa Maria selling State water to Nipomo and how does this reacquisition play a part?**

Santa Maria is not selling any portion of its State water to the Nipomo CSD. Instead, it is selling a portion of its blended water, and is doing so by court order. The water transferred to Nipomo is not considered to be “state water” or “ground water” or water from any other source, because it has been blended and has lost its identity. The reacquired water and drought buffer program will not impact the Nipomo sale; although it may increase the proportion of state water thus improve the quality of the water in Santa Maria’s distribution system as well as the ground water basin.

**11. Does the County have a role in approving transfers within or outside the County? Why or why not?**

Procedures for local transfers are set forth in the Water Supply Agreements between CCWA and the project participants. Thus the County has no role in approving CCWA water transfers within the County.

There has never been a transfer of State water outside Santa Barbara County, although the Water Supply Agreements contemplate that possibility. Before a water transfer outside the County can take place, it must first be offered to the other CCWA project participants under the same terms and conditions. Additionally, the Water Supply Contract stipulates that DWR must also agree to the transfer.