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DIST

January 29, 2021

Eric Friedman
Chairman

Ed Andrisek
Vice Chairman

Ray A. 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

Honorable Bob Nelson, Chair and
Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: February 2, 2021 Agenda Item No. 3 (File No. 21-00088): Santa Barbara Flood Control and Water Conservation District's Proposed Conditions of Approval of Amendment No. 21 (the Water Management Amendment) to the State Water Contract

Dear Chair Nelson and Members of the Board of Supervisors:

By letter dated October 28, 2020, Ray Stokes, Executive Director of the Central Coast Water Authority (CCWA), requested that the Santa Barbara County Flood Control and Water Conservation District (District) execute Amendment No. 21 (the Water Management Amendment) to the State Water Contract on behalf of CCWA. This matter, together with your consideration of Amendment No. 20 (the Contract Extension Amendment), is on your February 2, 2021 agenda for your consideration. District staff's Agenda Letter for this matter recommends that the Board, acting in its capacity as the governing board of the District, approve and authorize the Public Works Director to "negotiate a revenue sharing and water sales agreement with CCWA as a contingency for approval of Amendment No. 21," and "to return to the Board with both the revenue sharing and water sales agreement and Amendment No. 21 for approval." To date, CCWA has not received any proposed "revenue sharing and water sales agreement."

At our January 28, 2021 meeting, the CCWA's Board of Directors considered the District staff's proposed condition and proposed revenue sharing concept, to the extent it is understood, and authorized me to send this letter.

As a preliminary matter, while CCWA appreciates your prompt consideration of Amendment No. 21, especially in light of the urgent timing of this matter,¹ CCWA requests that you continue your consideration of this matter until **March 2, 2021** to permit our respective staff sufficient time to discuss District staff's proposed conditions, and any other concerns the District may have. As detailed in my prior correspondence, this matter is of vital importance to CCWA's participants, the cities and water districts that provide retail water service within the County, and to the nearly 85 percent County residents who pay for the delivery of State Water Project water to supplement our local county supplies when needed. For this reason, CCWA supports a reasonable delay in

¹ Amendment No. 21 is anticipated to become effective on January 31, 2021. Thereafter, the District, on behalf of CCWA, will have 60 to execute the Amendment to ensure participation.

the Board's consideration of Amendment No. 21 to ensure that both parties have the opportunity to better understand, and if possible, address each other's concerns.

Further, in hopes of advancing those discussions and ultimately the District's execution of Amendment No. 21 without conditions, CCWA is also providing you its concerns with the District staff's recommended approach.

First, the District does not have authority to impose conditions on its execution of Amendment No. 21. At the time the Transfer of Financial Responsibility Agreement was executed, the State Water Contract had already been amended 14 times, and future additional amendments were fully anticipated. The District and CCWA expressly agreed that the District's financial obligations under the State Water Contract, as that contract had been amended, "and as it may be amended and supplemented from time to time" in the future, would be completely and fully assumed and satisfied by CCWA.² Accordingly, Amendment No. 21, which supplements the State Water Contract by creating new water management tools and enhanced flexibility to respond to changes in hydrology and increasing constraints on the operation of the State Water Project, among other things, is squarely within the scope of the Transfer of Financial Responsibility Agreement.

Second, to the extent CCWA understands the "revenue sharing" concept, CCWA objects to any fee on transfers permitted by the Water Management Amendment. Such a fee would be passed directly on to the CCWA participant that proposes the transfer, and in turn on to the participant's ratepayers, making the cost of State Water Project water even more expensive for the ratepayers and/or negating any potential financial benefits of the sale in the first place. For example, in a year in which a CCWA participant has determined that it has adequate supplies to meet its customers' needs, and that it can better manage the overall costs of its water supply portfolio by transferring a portion of its supply to a third party, the District's fee could make the proposed transfer infeasible, in which case the excess water supply would be wasted if CCWA and/or the participant does not have sufficient storage capacity. Moreover, it is unclear how such a fee could be levied on a proposed transfer legally, how it would be calculated without unfairly penalizing CCWA participants that endeavor to maximize the beneficial use of their water supplies, and for what lawful purpose it could be used. District staff's Agenda Letter suggests that some form of "reimbursement" of the District is required. However, prior to the transfer of all financial obligations of the State Water Contract to CCWA and its participants, the County's *property owners*, more than 85 percent of whom are also the ratepayers, invested in retaining the right to State Water; the District did not.

Lastly, failure to participate in Amendment No. 21 by March 31, 2021 could have immediate adverse impacts on CCWA's participants. Despite this week's rain, water year 2020-21 is anticipated to be a critically dry year, much like 2014 when some of CCWA's participants experienced severe water supply shortages. It is CCWA staff's belief that when the Water Management Amendment becomes effective on January 31, 2021, most State Water Contractors will prefer to negotiate one-way transfers (sales), as opposed to exchanges which require a return of a portion of the water exchanged and are limited in the amount of money the exchanging Contractor may receive. If the transfer provisions included in the Water Management Amendment are not available to

² Transfer of Financial Responsibility Agreement, Recitals A and J.

CCWA, its participants may not be able to get access to supplemental water supplies when they need them.

On behalf of CCWA, thank you in advance for your consideration of this important matter. We look forward to working with the District to ensure the timely execution of Amendment No. 21 (the Water Management Amendment). If you have any questions or require any additional information, please let me know.

Respectfully,



Eric Friedman, Chair of the Board of Directors

cc: CCWA Board of Directors
Ed Andrisek, Vice Chair, City of Buellton
Farfalla Borah, Goleta Water District
Jeff Clay, Santa Ynez River Water Conservation District, ID #1
Shirley Johnson, Carpinteria Valley Water District
Julian Ariston, City of Guadalupe
Etta Waterfield, City of Santa Maria
Floyd Wicks, Montecito Water District
CCWA Operating Committee
Mike Alvarado, La Cumbre Mutual Water Company
Paeter Garcia, Santa Ynez River Water Conservation District, ID #1
Rose Hess, City of Buellton
Robert McDonald, Carpinteria Valley Water District
John McInnes, Goleta Water District
Pernell Rush, Vandenberg AFB 30 CES/CEOEO 1028
Shad Springer, City of Santa Maria
Shannon Sweeney, City of Guadalupe
Cathy Taylor, City of Santa Barbara
Nick Turner, Montecito Water District
Matt van der Linden, City of Solvang
Mona Miyasato, County Executive Officer, Santa Barbara County
Matt Young, Water Agency Manager, Santa Barbara County FC&WCD
Tom Fayram, Water Resources Deputy Director, Santa Barbara County Public Works Dept.
Johannah Hartley, Deputy County Counsel, Santa Barbara County



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County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: February 2, 2021 Agenda Item No. 3 (File No. 21-00088): Santa Barbara Flood Control and Water Conservation District's Proposed Conditions of Approval of Amendment No. 20 (the Contract Extension Amendment) to the State Water Contract

Dear Chair Nelson and Members of the Board of Supervisors:

As you recall, on November 3, 2020, on behalf of the Central Coast Water Authority (CCWA), I requested that the Santa Barbara County Board of Supervisors (Board), acting in its capacity as the governing board of the Santa Barbara County Flood Control and Water Conservation District (District), authorize the District to execute Amendment No. 20 (the Contract Extension Amendment) to the State Water Contract on behalf of CCWA. This matter is on your February 2, 2021 agenda for your consideration. District staff's Agenda Letter for this matter recommends that the Board approve and authorize the Public Works Director to execute Amendment No. 20, *contingent upon* full approval and execution of the District staff's proposed First Amendment to the Transfer of Financial Responsibility Agreement (First Amendment).

At our January 28, 2021 meeting, the CCWA's Board of Directors considered the District staff's proposed condition and First Amendment and authorized me to send this letter.

As a preliminary matter, while CCWA appreciates your prompt consideration of Amendment No. 20, CCWA requests that you continue your consideration of this matter until **March 2, 2021** to permit our respective staff sufficient time to discuss District staff's proposed condition and the First Amendment in particular, and any other concerns the District may have. As detailed in my prior correspondence, this matter is of vital importance to CCWA's participants, the cities and water districts that provide retail water service within the County, and to the nearly 85 percent of County residents who pay for the delivery of State Water Project water to supplement our local county supplies when needed.¹ For this reason, CCWA supports a reasonable delay in the Board's consideration of Amendment No. 20 to ensure that both parties have the opportunity to better understand, and if possible, address each other's concerns.

¹ For example, Amendment No. 20 increases the maximum "rate management credits" allowable under the State Water Contract. As the third highest payor, CCWA's share of the increase is projected to be approximately \$520,000 per year, or roughly \$7.8 million between 2020 and 2035. But if Amendment No. 20 is not executed, CCWA will not be entitled to these credits.

Further, in hopes of advancing those discussions and ultimately the District's execution of Amendment No. 20 without conditions, CCWA is also providing you its concerns with the District staff's recommended approach.

First, CCWA objects to the District's imposition of any conditions on the District's execution of Amendment No. 20. The District does not have the authority to impose conditions on its execution of Amendment No. 20. At the time the Transfer of Financial Responsibility Agreement was executed, the State Water Contract had already been amended 14 times, and future additional amendments were fully anticipated. The District and CCWA expressly agreed that the District's financial obligations under the State Water Contract, as that contract had been amended, "and as it may be amended and supplemented from time to time" in the future, would be completely and fully assumed and satisfied by CCWA. Accordingly, Amendment No. 20 is squarely within the scope of the Transfer of Financial Responsibility Agreement.

Second, the District's proposed First Amendment is infeasible.² The proposed First Amendment seeks to impose a new obligation on CCWA—that CCWA levy a property tax to satisfy its obligations under the Transfer of Financial Responsibility. In relevant part, the proposed First Amendment provides:

E. Covenant to Raise Funds. CCWA agrees to take all actions authorized under the JPA Agreement, as amended, and the WSAs to raise the funds required to satisfy its obligations to the District under this agreement. Such actions shall include, but not be limited to, enforcement by CCWA of any provisions of WSAs requiring that CCWA Contractors increase their payments to CCWA in order to assure that a failure to pay CCWA by a defaulting CCWA Contractor does not impair CCWA's ability to make payments to the District hereunder, and imposing a tax.

(Emphasis added.) CCWA does not have the power to levy a property tax, except as the contracting party to the State Water Contract, which it is not presently.³ Moreover,

² Although a minor point, the District's proposed First Amendment is also unnecessary. It proposes to amend the Transfer of Financial Responsibility Agreement to clarify that the term of the Transfer of Financial Responsibility Agreement is the same as the State Water Contract. However, no clarification is required—it is undisputed that Transfer of Financial Responsibility Agreement has the same term as the State Water Contract, whatever it may be. (See Transfer of Financial Responsibility Agreement, Recital A; see also § 1.)

³ CCWA's Joint Exercise of Powers Agreement, as amended, provides:

Powers. The Authority shall have the power in its own name to do any of the following: . . . To contract with the DWR for delivery of water from the State Water Project, along with all necessary and incidental powers as may be required by the Authority to carry out the Authority's rights and obligations under the State Water Supply Contract, including, but not limited to, the right to levy a tax or assessment on all properties within the jurisdiction of the Authority not exempt from taxation, as mandated by the California Water Code and the State Water Supply Contract.

(Joint Exercise of Powers Agreement, § 5(P) (emphasis added).)

the State Water Contract requires the District, as the contracting party, to levy a property tax upon all property within the County if required by the State Water Contract.⁴

On behalf of CCWA, thank you in advance for your consideration of this important matter. We look forward to working with the District to ensure the timely execution of Amendment No. 20. If you have any questions or require any additional information, please let me know.

Respectfully,



Eric Friedman, Chair of the Board of Directors

cc: CCWA Board of Directors
Ed Andrisek, Vice Chair, City of Buellton
Farfalla Borah, Goleta Water District
Jeff Clay, Santa Ynez River Water Conservation District, ID #1
Shirley Johnson, Carpinteria Valley Water District
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Tom Fayram, Water Resources Deputy Director, Santa Barbara County Public Works Dept.
Johannah Hartley, Deputy County Counsel, Santa Barbara County

⁴ If the District wishes to be relieved of this obligation, it should assign the State Water Contract to CCWA. In 1991, the District expressed its intention to work with CCWA to obtain DWR's approval of a full assignment of the State Water Contract from the District to CCWA. In 2017, CCWA's Board of Directors *unanimously* agreed to accept assignment of the State Water Contract and to release the District from all liability for it. And in 2018, CCWA secured DWR's approval for assignment.