

Central Services
Joan Araujo, Director

Engineering Services
James O'Tousa, Director

Roads & Transportation
Anitha Balan, Director

Water & Sanitation
Joseph Pope, Director

Watershed Protection
Glenn Shephard, Director

December 19, 2023

Board of Supervisors
Ventura County Watershed Protection District
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: Approval of, and Authorization for the Ventura County Watershed Protection District (District) Director to Approve Limited State Water Project (SWP) Transfers; to Approve and Execute Agreements with the California Department of Water Resources to Effectuate Limited SWP Transfers; and to Approve and Execute Indemnification Agreements with the District's Assignees Related to the SWP Transfers; All Watershed Protection District Zones. All Supervisorial Districts.

RECOMMENDATIONS:

1. Approval of, and Authorization for the Ventura County Watershed Protection District (District) director or designee to approve transfers of State Water Project (SWP) allocations between Casitas Municipal Water District, the City of Ventura, and United Water Conservation District, (individually, a "District Assignee" and collectively, the "District Assignees"), and their transferors/transferees, provided (i) transfers are not permanent or long-term (greater than one year) transfers that result in water being delivered outside of Ventura County, (ii) the District Assignees provide the District sufficient documentation or information for the District to confirm that transfers satisfy specified requirements, and (ii) the District's approvals are substantially similar to Exhibit 1 and reviewed and approved as to form by County Counsel.
2. Approval of, and Authorization for the District director or designee to approve and execute agreements with the California Department of Water Resources (DWR) to effectuate transfers of SWP allocations between District Assignees and their transferors/transferees (DWR Agreements), provided (i) your Board or the District director (or designee) has approved the underlying transfers, (ii) the District Assignees execute indemnification agreements pursuant to Recommendation No. 3, (iii) the DWR agreements are substantially similar to Exhibit 2 and are reviewed and approved as to form by County Counsel.



3. Approval of, and Authorization for the District director or designee to approve and execute indemnification agreements with District Assignees related to transfers of SWP allocations to or from them provided (i) your Board or the District director (or designee) has already approved the underlying transfers, (ii) the indemnification agreements are substantially similar to Exhibit 3 and are reviewed and approved as to form by County Counsel.

FISCAL IMPACT/MANDATE:

This item has no fiscal impact.

DISCUSSION:

Executive Summary

The District is party to an agreement with the State of California for the purchase and delivery of 20,000 acre-feet per year (AFY) of State Water Project (SWP) water. Although this allocation has been assigned, the District remains a party to the original State agreement, and thus is responsible for approving transfers of SWP allocations to and from the District's Assignees. Transfers are necessary to move SWP water between willing buyers and willing sellers to address their water supply needs. In order to timely effectuate transfers, the District recommends your Board's approval of, and authorization for the District director (or designee) to approve limited transfers and execute certain agreements necessary to effectuate those transfers and protect the District from liability. Permanent and long-term transfers (greater than one year) for delivery and use of SWP water outside of Ventura County will continue to require your Board's approval.

Background

In 1963, the District (then the Ventura County Flood Control District) entered into an agreement with the State of California for the purchase and delivery of 20,000 AFY of SWP water for delivery and use in Ventura County (Original SWP Agreement). The Original SWP Agreement obligated the District to make annual payments to DWR for the construction of water conveyance infrastructure and facilities, operations and maintenance, and debt service, regardless of the amount of SWP water it received in a given year.

In June 1970, the District assigned its 20,000 AFY SWP allocation to Casitas Municipal Water District (Casitas) in exchange for Casitas' promise to pay all past and future costs incurred by the District under the Original SWP Agreement. This assignment provides that "no assignment or commitment of the water referred to in this contract shall be made by [Casitas] to any agency outside of Ventura County without prior approval of [the District] and [the State of California, Department of Water Resources]." Subsequently,



Casitas assigned or transferred 10,000 AFY and 5,000 AFY of the original 20,000 AFY SWP allocation to the City of Ventura (Ventura City) and United Water Conservation District (United), respectively. Thereafter, United assigned 1,850 AF of its 5,000 AFY SWP allocation to the City of Port Hueneme (Port Hueneme). Accordingly, at this time, Casitas has a 5,000 AFY allocation, Ventura City has a 10,000 AFY, United has a 3,150 AFY allocation, and Port Hueneme has an 1,850 AFY allocation of Table A water.

Actual deliveries of SWP water vary year to year based on water availability. Annually, DWR determines the amount of SWP water available for delivery and then issues notices of estimated deliveries to SWP contractors. Due to drought and dry periods, recent SWP deliveries have been reduced to a percentage of contractors' allocations. Under the Original SWP Agreement, contractors may transfer their allocations to address their water supply needs subject to specified conditions and requirements.

DWR Water Management Amendment

In 2020, DWR released Amendment No. 15 to the Original SWP Agreement, also known as the Water Management Amendment (WMA). The WMA was intended to provide contractors more flexibility to manage their SWP allocations by streamlining previous requirements and procedures specified in the Original SWP Agreement. Among other things, the WMA amended provisions governing transfers of SWP allocations. Under the amended provisions, DWR approves transfers only after the party to the Original SWP Agreement approves the transfer to DWR by making the following findings:

- It has complied with all applicable laws.
- It has provided any required notices to public agencies and the public.
- It has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
- It is informed and believes that the transfer or exchange will not harm other contractors.
- It is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
- It is informed and believes that the transfer or exchange will not affect its ability to make all payments, including payments when due under its Contract for its share of the financing costs of the State's Central Valley Project Revenue Bonds.
- It has considered the potential impacts of the transfer or exchange within its service area.

On February 2, 2021, your Board approved the WMA, and on February 28, 2021, it took effect following its approval by DWR and other SWP contractors. Under the WMA, the District is responsible for approving both (i) transfers of SWP allocations from District



Assignees to other SWP contractors including those that result in the delivery of SWP water outside of Ventura County; and (ii) transfers of SWP allocations from other SWP contractors to District Assignees for delivery of SWP water into Ventura County.

In most cases, the District is not involved in the negotiation of these transfers and does not participate in the delivery of SWP water between District Assignees and their transferors/transferees, and thus the District is not familiar with the terms or impacts of individual transfers. In the past, the District has worked with District Assignees and their transferors/transferees to determine whether proposed transfers satisfied the WMA's requirements prior to approving the transfer to DWR. The District has working relationships with all District Assignees and will continue to rely on those relationships in order to obtain documents and records to confirm the proposed SWP transfers satisfy WMA requirements. However, District Assignees and their transferors/transferees often finalize these transfers with limited time for delivery, which, in most cases, must occur within the calendar year the transfer was negotiated. This reality creates tight schedules for the District's review and your Board's approval of these transfers.

Under the Water Code, the transfer of water or water rights for a period of one year or less are exempt from the requirements of the California Environmental Quality Act (Pub. Res. Code, §21000 et seq.), while permanent transfers and transfers longer than a year in duration are not. (Wat. Code, §§ 1725.5(b), 1729.)

In order to timely effectuate these SWP transfers, the District recommends that your Board's approval of, and authorization for the District director or designee to approve transfers of SWP allocations between District Assignees and their transferors/transferees, provided (i) the transfers are not permanent or long-term (greater than one year) transfers that result in water being delivered outside of Ventura County, (ii) District Assignees provide the District sufficient documentation or information for the District to confirm the transfers satisfy WMA requirements, and (iii) the District's approval is substantially similar to Exhibit 1 and reviewed and approved as to form by County Counsel.

DWR Agreements to Effectuate SWP Transfers

Although the District approves SWP allocation transfers to DWR, DWR must also approve these transfers because it is a party to the Original SWP Agreement. DWR's approval is usually memorialized in a three-way agreement between DWR, the District, and the transferee (DWR Agreement), which may be one of the District Assignees (Casitas, Ventura City, United, or Port Hueneme) or a transferee of one of the District Assignees, depending on whether the SWP allocation is being transferred by or to a District Assignee.

On September 20, 2022, your Board approved and authorized the District director to sign a long-term SWP transfer between Ventura City and San Geronio Pass Water Agency (San Geronio), which included the District director's execution of a three-way DWR Agreement between DWR, the District, and San Geronio. The District anticipates DWR



will require similar DWR Agreements to be executed with the District for the approval of future SWP transfers under the WMA.

For timely execution of future SWP transfers, the District recommends that your Board's approval of, and authorization for the District director or designee to approve and execute DWR Agreements to effectuate transfers of SWP allocations between District Assignees and their transferors/transferees, provided (i) your Board or the District director (or designee) has approved the underlying transfers to DWR, (ii) the District Assignees execute indemnification agreements pursuant to Recommendation No. 3 (discussed below), and (iii) the DWR Agreements are substantially similar to Exhibit 2 and are reviewed and approved as to form by County Counsel.

Indemnification Agreements Related to Execution of DWR Agreements

As explained above, the District remains a party to the Original DWR Agreement, and must approve SWP transfers to DWR and execute DWR Agreements to complete these transfers. The DWR Agreement for the long-term transfer of Ventura City's SWP allocation to San Geronio included provisions that (i) made the District jointly and severally responsible for any adverse impacts resulting from the Ventura City-San Geronio transfer and (ii) requires the District to indemnify, defend, and hold harmless DWR from all lawsuits, claims, liabilities that DWR might incur as a result of approving or providing services related to the Ventura City-San Geronio transfer. The District anticipates similar provisions being included in DWR Agreements required to effectuate future SWP transfers involving District Assignees.

In most cases, the District is not involved in the negotiation of SWP transfers and does not participate in the actual delivery of water between District Assignees and their transferors/transferees. Nonetheless, the District anticipates that DWR will require the District to execute a DWR Agreement that make it responsible and to indemnify DWR for the transfer. This was the case for the long-term transfer of Ventura City's SWP allocation to San Geronio. In that case, because of the joint and several responsibility and indemnity obligation imposed on the District by the DWR Agreement, the District requested Ventura City execute an agreement to indemnify the District for any liability or obligation it might incur under the DWR Agreement.

In order to protect the District from liability, the District recommends that your Board's approval of, and authorization for the District director or designee to approve and execute indemnification agreements with District Assignees related to the District's execution of DWR Agreements to effectuate SWP transfers between District Assignees and their transferors/transferees, provided (i) your Board or the District director (or designee) has already approved the underlying transfers to DWR and (ii) the indemnification agreements are substantially similar to Exhibit 3 and are reviewed and approved as to form by County Counsel.



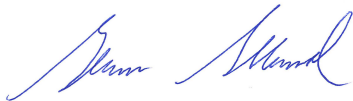
Strategic Plan:

This item contributes to your Board's 2024-2027 strategic priority to invest in *Reliable Infrastructure and Sustainability*. The water imported to Ventura County through future agreements will augment both agricultural and municipal supplies and potentially increase instream flows for the natural environment. These efforts will support the County's goal to preserve our agricultural land and natural environment while ensuring housing availability for all residents.

This item has been reviewed by the County Executive Office, the Auditor-Controller's Office, and County Counsel.

If you have questions regarding this item, please call Arne Anselm at (805) 654-3942 or the undersigned at (805) 654-2040.

Sincerely,



Glenn Shephard, P.E.
Director
Watershed Protection District

Attachments:

- Exhibit 1 – District SWP Allocation Transfer Approval Letter TEMPLATE
- Exhibit 2 – DWR SWP Transfer Agreement EXAMPLE
- Exhibit 3 – SWP Transfer Indemnification Agreement EXAMPLE

