

Central Services
Joan Araujo, Director

Engineering Services
Jim O'Tousa, Director

Roads & Transportation
Anitha Balan, Director

Water & Sanitation
Joseph Pope, Director

Watershed Protection
Glenn Shephard, Director

July 25, 2023

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

Subject: Approve, and Authorize the Director of the Ventura County Watershed Protection District (PWA-WP) to Sign, an Indemnification Agreement Between PWA-WP and the City of San Buenaventura (City) Related to the Multi-Year State Water Project Water Transfer Agreement Between the City and San Geronio Pass Water Agency; Authorize the PWA-WP Director to Extend the Term and Make Limited Amendments to the Indemnification Agreement. All Zones. All Supervisorial Districts.

Recommendations:

1. Approve, and Authorize the PWA-WP Director or designee to sign, an indemnification agreement between PWA-WP and the City related to the multi-year State Water Project (SWP) water transfer agreement between the City and San Geronio Pass Water Agency.
2. Authorize the PWA-WP Director or designee to extend the term of the indemnification agreement, up to two times with each extension for a period not to exceed one year, on the same or more favorable conditions; provided any amendment extending the term of the indemnification agreement is reviewed and approved as to form by the County Counsel's Office.
3. Authorize the PWA-WP Director or designee to approve amendments to the indemnification agreement to make corrections, clarifications, modifications, and/or technical changes; provided any such correction, clarification, modification, and change is consistent with the original purpose of the indemnification agreement, does not result in additional risks or costs to the County, and is reviewed and approved as to form by the County Counsel's Office.

Fiscal/Mandates Impact:

This item has no fiscal impact.



Background:

In 1963, PWA-WP entered an agreement with the State of California (State) to purchase 20,000 acre-feet per year (AFY) of SWP water. In June 1970, PWA-WP assigned its entire SWP allocation to Casitas Mutual Water District (Casitas) in exchange for Casitas' promise to pay all the PWA-WP's past and future costs related to the development and delivery of SWP water. In turn, Casitas assigned 10,000 AFY to the City and 5,000 AFY to United Water Conservation District. Although its SWP allocation has been assigned, PWA-WP remains the primary contracting agency with the State, and thus it is required to approve water transfer agreements made by its assignees, in this case, the City.

On September 20, 2022, your Board adopted Resolution No. 22-150, authorizing the transfer of SWP water allocations from the City to the San Geronio Pass Water Agency (SGPWA) and the PWA-WP Director to sign a three-way agreement with the State (Department of Water Resources) and SGPWA to effectuate the transfer. The transfer agreement between the City and SGPWA allows the City to monetize its SWP entitlement until their SWP Interconnection Project is completed, which will allow the City to access and use its entitlement. Until the SWP Interconnection Project is complete, the City-SGPWA transfer agreement also allows the City to receive water (2,000 AFY) to meet water quality goals and provide replacement water supply for the next 20 years while receiving significant revenue for its SWP allocation.

Discussion:

The multi-year transfer agreement between the City and SGPWA is subject to the terms and conditions of the original 1963 agreement between the State and PWA-WP for the purchase of a SWP water allocation/entitlement. As amended, the original 1963 agreement requires that water transfers be approved by the original SWP contractor, the State, and the transferee. Accordingly, the water transfer between the City and SGPWA needed to be approved by PWA-WP (original contractor) and the Department of Water Resources (the State). On behalf of the State, the Department of Water Resources (DWR) prepared a water transfer agreement template. That three-way agreement template between the State/DWR, PWA-WP, and SGPWA (Three-Party Agreement) makes PWA-WP and SGPWA jointly and severally responsible for any adverse impacts that may result from water deliveries to SGPWA, and it requires PWA-WP and SGPWA to indemnify, defend, and hold harmless DWR from all lawsuits, claims, and liabilities that DWR might incur as a result of approving or providing services under the transfer agreement. Accordingly, although PWA-WP is not a party to, and was not involved in the preparation of, the multi-year transfer agreement between the City and SGPWA, the Three-Party Agreement makes PWA-WP responsible for actions related to water deliveries and indemnifying the State for actions which it will have no control or ability to mitigate.



At the end of 2022, at the request of the City, PWA-WP executed the Three-Party Agreement so that the City and SGPWA could meet deadlines related to SWP deliveries and transfers. However, recognizing that the Three-Party Agreement made PWA-WP liable for activities under a water transfer agreement which neither the County nor PWA-WP was a party, PWA-WP staff requested that the City enter into an agreement with PWA-WP to indemnify it for any liability it might incur under the Three-Party Agreement. The City agreed to enter into the attached Indemnification Agreement to indemnify PWA-WP for its performance under the Three-Party Agreement. Specifically, under the attached Indemnification Agreement, the City will indemnify and defend PWA-WP for (i) for adverse impacts related to water deliveries to SGPWA under the Three-Party Agreement and (ii) any obligation to indemnify the State/DWR under the Three-Party Agreement. The Indemnification Agreement will remain in effect at least until the Three-Party Agreement expires. Accordingly, PWA-WP requests your Board approve, and authorize the PWA-WP Director or designee to sign, the attached indemnification agreement between PWA-WP and the City related to PWA-WP's performance under the Three-Way Agreement to effectuate the multi-year SWP water transfer agreement between the City and SGPWA.

In addition, PWA-WP requests authorization for the PWA-WP Director or designee to extend the term of the indemnification agreement, up to two times with each extension for a period not to exceed one year, on the same or more favorable conditions; provided any amendment extending the term of the indemnification agreement is reviewed and approved as to form by the County Counsel's Office.

Finally, PWA-WP requests authorization for the PWA-WP Director or designee to approve amendments to the indemnification agreement to make corrections, clarifications, modifications, and/or technical changes; provided any such correction, clarification, modification, and/or change is consistent with the original purpose of the indemnification agreement, do not result in additional risks or costs to the County, and is reviewed and approved as to form by the County Counsel's Office.

This item has been reviewed by the County Executive Office, the Auditor-Controller's Office, and County Counsel. If you have any questions concerning this item, please contact Arne Anselm at (805) 654-3942.

Sincerely,



Glenn Shephard, P.E.
Director, Watershed Protection District



Attachments:

Exhibit 1 – Indemnification Agreement between the Ventura County Watershed Protection District and the City of San Buenaventura

Exhibit 2 – Multi-Year Agreement Among the Department of Water Resources of the State of California and Ventura County Watershed Protection District, and San Geronio Pass Water Agency

