



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Frances Mizuno, Special Projects Administrator

DATE: September 17, 2020

RE: Authorization to Make Los Vaqueros Reservoir Expansion Project Activity Agreement Expenditure of up to \$675,774 in FY21 to Fund Amendment No. 2 to the Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning

BACKGROUND

The Water Authority entered into the Contra Costa Water District (CCWD) Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning Agreement dated April 30, 2019 on behalf of the Los Vaqueros Reservoir Expansion Project Activity Agreement members. This agreement was for the purpose of providing for cost-sharing to complete the Final Supplement to the 2010 Final EIS/EIR, release of the Final Feasibility Report in partnership with Reclamation, financial evaluation of the Project for the Local Agency Partners (LAP), development of a long-term governance structure for a likely new Joint Powers Authority (JPA) and conceptual and preliminary design. The total cost under this Cost Share Agreement is \$2,833,036 which was shared equally with all the LAPs. The Water Authority's share was \$354,129 shared equally with four (4) Activity Agreement members. This agreement expired on June 30, 2020. Because the work contemplated under this agreement was not completed by June 30, 2020, on June 22, 2020, the LAPs executed Amendment No. 1 to the Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning to extend the term of the agreement to December 31, 2020.

CCWD has identified additional scope of work and wishes to enter into Amendment No. 2 to the Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning (Amendment No. 2) to fund this work. The total cost of all work is \$17,832,667 with \$6,081,967 funded under Amendment 2 with the balance from State and Federal funding. Individual LAP's costs depends on the number of agencies participating in Amendment No. 2. The Activity Agreement member's cost share is up to \$1,013,661 if there are 6 LAPs and \$868,852 with 7 LAPs. All the Activity Agreement Members have approved the execution of Amendment No. 2 by the Authority for an amount up to \$1,013,661. This amount will be paid over three equal payments of \$337,887 with the first two payments for a total of \$675,774 scheduled to be paid in FY21.

ISSUE FOR DECISION

Whether the Board should authorize the Los Vaqueros Reservoir Expansion Project Activity Agreement expenditure of up to \$675,774 in FY21 to fund the first two payments necessary under Amendment No. 2.

OPTIONS AND RECOMMENDATION

We recommend the Board authorize the expenditure of up to \$675,774 in FY21 to fund the first two payments necessary to fund Amendment No. 2.

ANALYSIS

The Board under the resolution to authorize the execution of the initial Cost Share Agreement also provided authorization to the Executive Director to take subsequent actions appropriate to administrate and implement the Cost Share Agreement. Therefore, no Board action is necessary to authorize the execution of Amendment No. 2. However, since the funds necessary to support Amendment No. 2 was not included in the FY21 Activity Budget, it is necessary to have the Board authorize the additional expenditure of up to \$675,774.

IMPLICATIONS

As this is an Activity Agreement action, there are no impacts to any other Water Authority activity. All Activity Agreement members have received their own Board approval to expend the cost necessary to fund Amendment No. 2. The Authority will invoice each Activity Agreement members their allocated share of the funding required prior to making payment to CCWD.

BUDGET

With Board authorization to expend the up to \$675,774, there will not be any implications to the budget.

**Amendment No. 2 to the
Cost Share Agreement for
Los Vaqueros Reservoir Expansion Project Planning**

The Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning between Contra Costa Water District (CCWD) and Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7); Alameda County Water District (ACWD); Bay Area Water Supply & Conservation Agency (BAWSCA); East Bay Municipal Utility District (EBMUD); Grassland Water District (GWD); San Francisco Public Utilities Commission (SFPUC); San Luis & Delta-Mendota Water Authority (SLDMWA); and Santa Clara Valley Water District (Valley Water) (collectively, “Local Agency Partners”), dated April 30, 2019 and amended on June 22, 2020 (referred to hereafter as the “Agreement”), shall hereby be amended by this Amendment No. 2. The Agreement, together with Amendment No. 1 and this Amendment No. 2, may be referenced hereafter as the “Agreement as amended”.

RECITALS

WHEREAS, Contra Costa Water District and the Local Agency Partners (collectively, “Parties”) entered into the Agreement dated April 30, 2019, to provide for the cost-sharing of the funding requirements for the planning of the Los Vaqueros Reservoir Expansion Project (“Project”); and

WHEREAS, pursuant to Sections 5 and 17 of the Agreement, the Agreement was amended on June 22, 2020 to extend the term of the Agreement to the earlier of the completion of the work contemplated therein or December 31, 2020, unless the term is modified consistent with Section 17 of the Agreement; and

WHEREAS, on April 30, 2020 CCWD and the City of Brentwood entered into a Memorandum of Understanding (Brentwood/CCWD MOU) regarding the City’s potential service from Los Vaqueros and CCWD is participating in coordination with and on behalf of the City of Brentwood through the Brentwood/CCWD MOU; and

WHEREAS, on April 29, 2019 CCWD and ACWD entered into a letter agreement to procure services to complete the independent review of the proposed usage fees developed by CCWD and EBMUD; and

WHEREAS, ACWD entered into a contract with Bartle Wells Associates to complete the independent review of the proposed usage fees and continues to support the usage fees workgroup as updated proposals are reviewed; and

WHEREAS, on December 30, 2019 Bartle Wells Associates provided the Parties with the final report of the evaluation of the proposed usage fees; and

WHEREAS, on May 13, 2020 CCWD’s Board of Directors approved the Project and certified the Final Supplement to the Final Environmental Impact Statement/ Environmental Impact Report; and

WHEREAS, on May 22, 2020 the Notice of Determination for the Los Vaqueros Reservoir Expansion Project was filed with the State Clearinghouse; and

WHEREAS, the Final Federal Feasibility Report has been completed by the U.S. Department of the Interior Bureau of Reclamation (“Reclamation”) and was submitted to Congress; and

WHEREAS, the 2020 federal budget included \$2.155 million to fund Reclamation’s work to advance pre-construction activities for the Project; and

WHEREAS, a legal workgroup was formed consisting of counsel from each of the Parties; the legal workgroup unanimously selected Joint Powers Authority (JPA) Formation Counsel to draft a Joint Exercise of Powers Agreement for the Project; and

WHEREAS, on May 18, 2020 the first draft of the Joint Exercise of Powers Agreement was provided to the legal workgroup; and

WHEREAS, draft biological assessments were provided to Reclamation to support re-initiation of consultation with U.S. Fish and Wildlife Service and National Marine Fisheries Service under Section 7 of the Endangered Species Act; and

WHEREAS, on May 21, 2020 the Technical Review Board and representatives from the Division of Safety of Dams reviewed the 50% design of the Los Vaqueros dam raise; and

WHEREAS, on May 26, 2016 CCWD entered into a funding agreement with the California Department of Water Resources (DWR) for the Canal Replacement Project and amended that agreement to fund preliminary design evaluations of Pumping Plant No. 1 Replacement; and

WHEREAS, CCWD competitively selected an engineering consultant and entered into a professional services agreement to prepare preliminary design evaluations of Pumping Plant No. 1 Replacement in support of permitting efforts; and

WHEREAS, CCWD and the South Bay Aqueduct Contractors, who currently hold contracts with DWR for supply from the State Water Project and conveyance of these supplies through the South Bay Aqueduct, have initiated discussions with DWR to address potential changes to water rights, Delta operations, and other agreements necessary to implement the Project; and

WHEREAS, the South Bay Aqueduct is currently a critical conveyance facility for the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct would be the primary conveyance facility for providing water supply benefits from the Project to the SFPUC’s Service Areas and to BAWSCA; and

WHEREAS, DWR is conducting a condition assessment of the South Bay Aqueduct in coordination with the South Bay Aqueduct Contractors; and

WHEREAS, the South Bay Aqueduct Contractors have procured a consultant to evaluate potential capacity in the South Bay Aqueduct available for use by BAWSCA and the SFPUC; and

WHEREAS, DWR, as the owner and operator of the South Bay Aqueduct, has the authority to approve the conveyance of non-State Water Project water supplies through the South Bay Aqueduct for use by BAWSCA and the SFPUC; and

WHEREAS, time is of the essence in terms of the completion of both the South Bay Aqueduct condition assessment and capacity study and the development of additional agreements with DWR as necessary in order for the South Bay Aqueduct Contractors, BAWSCA, and the SFPUC to be provided with the necessary information and assurances to further evaluate the benefits and costs of BAWSCA and the SFPUC's participation in the Project; and

WHEREAS, the California Water Commission (CWC) and CCWD have amended the Early Funding Agreement to increase the cap on State reimbursements from \$13.65 million to \$22.95 million; and

WHEREAS, Parties have collectively paid a total of \$2,833,036 to date in addition to in-kind services to support work in the Agreement; and

WHEREAS, the Parties wish to again amend the Agreement to include additional purposes in the Agreement with a detailed supplemental scope of work and budget for activities funded by this Amendment No. 2; to further extend the term of the Agreement to the earlier of (i) the completion of the work contemplated therein, (ii) until this Agreement is superseded by an interim funding agreement expected to be negotiated among the Parties, or (iii) December 31, 2021; to include additional roles and responsibilities for certain Parties to the Agreement; and to amend the cost and payment terms of the Agreement in order to fund additional planning activities necessary to proceed to a final award hearing and secure a final funding award from the CWC ; and

NOW, THEREFORE, the Parties agree that the above recitals are incorporated in and made part of the Agreement, and, pursuant to Section 17 of the Agreement, do hereby amend the Agreement as follows:

1. Section 1 (Purpose)

In addition to purposes a through h, as provided for in the Agreement, the following purposes and additional paragraphs shall be included in the Agreement as amended.

- i) permits, approvals, certifications, and agreements as required by the CWC to proceed to a final award hearing and secure a final funding award;
- j) design of the Los Vaqueros dam to the 90% level and advancement of design work on other Project facilities;
- k) drafting of service agreements; and
- l) drafting of an interim funding agreement.

As of the effective date of Amendment No. 2 to the Agreement, purposes a, b, and f, as provided for in the Agreement, have been achieved and do not require additional funding.

Work to achieve Purposes c, d, e, g, h, i, j, k, and l will be advanced under the Agreement as amended. Work completed by the Consultant Team and CCWD staff to achieve these purposes will be partially funded by this Amendment No. 2 to the Agreement.

A detailed supplemental scope of work and budget for activities funded by this Amendment No.2 are included in Exhibit A-2 and Exhibit B-2, respectively, which are attached hereto and incorporated herein as if fully set forth in this Amendment No. 2 to the Agreement.

2. Section 2 (Roles & Responsibilities)

In addition to the existing roles and responsibilities of the Parties described in the Agreement, the following additional roles and responsibilities for certain Parties shall be included in the Agreement as amended.

2.1 Contra Costa Water District Responsibilities

- a-l) as described in the Agreement; and
- m) will submit permit applications for construction and operations of Project facilities including but not limited to: Transfer-Bethany Pipeline, Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Neroly Highlift Pump Station, Transfer Facility, Delta-Transfer Pipeline; and
- n) will advance the design of Project facilities including but not limited to Los Vaqueros Dam Raise, Pumping Plant No. 1 Replacement, Transfer-Bethany Pipeline, and Neroly Highlift Pump Station; and
- o) will enter into coordinated operations agreements with Reclamation and DWR; and
- p) will file change petitions as appropriate on water rights held by CCWD, if deemed necessary and appropriate; and
- q) will work cooperatively with DWR and Reclamation to file change petitions as appropriate to modify or amend their water rights if deemed necessary and appropriate in DWR's and Reclamation's sole discretion; and
- r) will execute contracts for administration of public benefits with the California Department of Fish and Wildlife (CDFW) and DWR; and
- s) will enter into a cost share agreement with Reclamation; and
- t) will work cooperatively with the South Bay Aqueduct Contractors to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- u) will work cooperatively with EBMUD to develop and execute a Memorandum of Understanding for the potential provision of water during Project construction; and
- v) will complete an operational risk and reliability assessment; and
- w) will enter into an agreement with the City of Brentwood to continue its participation in the development of the Project; coordinate with Brentwood and seek their timely input, review and feedback as described in this Agreement; and provide for Brentwood's participation in negotiations, meetings, conference calls, webinars, and committees. No other party will object to such participation.

2.2 East Bay Municipal Utility District Responsibilities

- a-k) as described in the Agreement; and
- l) will obtain permits for EBMUD facilities that will be funded in part by the CWC, if, and to the extent, such permits are required by the State as a precondition of disbursement of state construction funding; and
- m) will work cooperatively with CCWD to develop and execute a Memorandum of Understanding setting forth mutually acceptable principles to guide the

anticipated negotiation of a potential subsequent agreement for the potential provision of water to CCWD during Project construction.

2.6 South Bay Aqueduct Contractors Responsibilities

- a-d) as described in the Agreement; and
- e) will work cooperatively with CCWD to secure conveyance agreements with DWR to convey water from the Project through the South Bay Aqueduct; and
- f) will provide to the SFPUC and BAWSCA (1) the results of the South Bay Aqueduct capacity study and (2) the results of the condition assessment of the South Bay Aqueduct once available and approved to share by DWR.

2.8 Joint Responsibilities

- a-b) as described in the Agreement; and
- c) CCWD and all Local Agency Partners will work cooperatively to secure federal funding.

The following Section 2.9 shall be added in its entirety to Section 2 of the Agreement as amended:

2.9. BAWSCA Participation

BAWSCA may participate, in whole or in part, in the development of the Project, either as a Local Agency Partner or via the SFPUC in the event that BAWSCA is no longer a Local Agency Partner. BAWSCA's participation in the development of the Project via the SFPUC may include but is not limited to participation in meetings, conference calls, webinars, and committees. No other Party will object to such participation.

3. Section 3 (Cost & Payment)

Section 3 shall be amended such that the following terms shall, as applicable, supplement and/or supersede the corresponding terms in the Agreement in their entirety.

Funds previously provided under the Agreement have been nearly expended. The payments are intended to provide sufficient funding for advancing the completion of the additional Scope of Work as provided for in Exhibit A-2 and the Budget provided for in Exhibit B-2.

- a) Total costs to fund work hereunder are identified in Exhibit B-2. The CCWD and Local Agency Partners' collective total share of the cost shall not exceed \$6,081,967 ("Total Cost Share").
- b) Notwithstanding anything to the contrary in the Agreement as amended, CCWD and the Local Agency Partners, excluding GWD, shall be responsible for providing the Total Cost Share in accordance with Exhibit B-2. In no event shall any Party's individual share of the Total Cost Share exceed \$1,013,661 if six (6) Parties, excluding GWD, execute Amendment No. 2. Absent a further written amendment to this Agreement pursuant to Section 17, each Party's individual share of the Total Cost Share shall be less than \$1,013,661 if seven (7) or eight (8) Parties, excluding GWD, execute Amendment No. 2, in accordance with Exhibit B-2. Timing and quantity of payment for each Local Agency Partner shall not vary from what is put

forth in Exhibit B-2 unless CCWD and the Local Agency Partners voluntarily agree to modifications pursuant to Sections 3(d)(iii) and 17 of the Agreement. The Total Cost Share described herein is exclusive of any joint defense or litigation cost share amounts which may be determined in a subsequent written agreement entered into pursuant to Section 9 of the Agreement.

- c) The SFPUC's payments as a Local Agency Partner under the Agreement as amended, are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter and the budget decisions of its Mayor and Board of Supervisors. No SFPUC funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The SFPUC's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The SFPUC, its employees and officers are not authorized to request services that are beyond the scope of those expressly described herein, unless a written amendment is approved as required by law. As to the SFPUC only, this Section 3(c) controls against any conflicting provision of the Agreement as amended.
- d) CCWD and the Local Agency Partners will split the Total Cost Share equally over four payments. CCWD will invoice each of the Local Agency Partners, and itself, for their individual shares of the Total Cost Share detailed in Exhibit B-2.
 - (i) Four invoices are anticipated according to the schedule below:
 - 1. Upon execution
 - 2. November 1, 2020
 - 3. March 1, 2021
 - 4. July 1, 2021
 - (ii) Payment from the Local Agency Partners shall be remitted within thirty (30) days after invoice submittal.
 - (iii) Funds contributed by the Local Agency Partners shall be committed by CCWD and expended only for work required to further the purposes of this Agreement.
 - (iv) If a sufficient number of Parties withdraw from the Agreement or fail to execute Amendment No. 2 before the second, third, or fourth invoice such that the Local Agency Partners' individual cost shares change substantially, or the individual cost shares approach or exceed the maximum financial responsibility for each Party (determined herein as \$1,013,661), each remaining Local Agency Partner, at its sole discretion consistent with Section 3(b) of this Agreement, shall determine whether to withdraw from

the Agreement. CCWD and the Local Agency Partners who do not choose to withdraw will work together to develop an amendment that substantially conforms to this Agreement. If no mutually agreeable amendment can be developed, the remaining Parties will terminate this Agreement.

- (v) If a new Local Agency Partner is added, consistent with Section 12 of this Agreement, each subsequent invoice for each Local Agency Partner will be adjusted to reflect the cost share of the new partner and the total number of Local Agency Partners. The adjustments contemplated herein shall reflect any “catch-up” contribution required of the newly added Local Agency Partner in addition to the contributions to be made on a prospective basis. “Catch-up” contributions shall be calculated based on the then total value of the of the Local Agency Partners’ individual monetary shares paid pursuant to the Agreement as amended prior to the date of the new member’s signing of the Agreement.
- (vi) If funds remain after work under this Agreement is completed, each Local Agency Partner will determine whether its pro-rata share of the remaining funds shall be returned or contributed to future work consistent with Section 7 of this Agreement. Each Local Agency Partner shall advise CCWD of its determination within sixty (60) days of receiving notice from CCWD of the completion of the work, or the remaining funds shall automatically be contributed towards future work.
- (vii) In-kind services may include labor costs and overhead costs for staff who are providing in-kind services for Project activities under this Agreement, including but not limited to data collection, document review, communications, stakeholder outreach, management of third-party consultant contracts, and attending Project meetings. In-kind services will contribute toward the non-State funding match required by the Early Funding Agreement, as it may be amended from time to time. In-kind services, pursuant to Section 2.7(d) of this Agreement, are contributed at the discretion of each Local Agency Partner with no minimum or maximum in-kind contribution limits.

5. Section 5 (Term)

Shall be amended such that the following term shall modify the corresponding term in the Agreement in its entirety:

The Agreement as amended shall terminate on the earliest occurring of the following events: (i) completion of the work contemplated herein; (ii) the effective date of an interim funding agreement which is negotiated between the Parties and intended as a successor to the Agreement as amended; or, (iii) on December 31, 2021, unless the Term is further modified consistent with Section 17 of this Agreement.

8. Section 10 (Early Funding Agreement)

Section 10 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Early funding, in the amount of \$13.65 million, which is equal to fifty percent of the estimated total planning and permitting costs, was approved by the California Water Commission on July 24, 2018. The Early Funding Agreement was amended on July 24, 2020 to increase the total funding available from the California Water Commission from \$13.65 million to \$22.95 million. The Amendment to the Early Funding Agreement, which is attached hereto in Exhibit E-2, requires a fifty percent (50%) funding match from non-State entities ("Non-Program Cost Share"). The Local Agency Partners hereby agree to cooperate in good faith with CCWD to reasonably assist CCWD in its compliance with the Early Funding Agreement. Without limiting the generality of the foregoing, each Local Agency Partner agrees to provide information and access to records in all forms as may be necessary to facilitate CCWD's compliance with all reporting and audit requirements of the Early Funding Agreement, including but not limited to information necessary to adequately document the Non-Program Cost Share.

9. Section 11 (Federal Funding)

Section 11 shall be amended such that the following term shall supersede and replace the corresponding term in the Agreement in its entirety:

Federal appropriations in Federal Fiscal Year 2020 allocated \$2.155 million to Reclamation to complete pre-construction activities for the Project. Reclamation recommended \$7.845 million for the Project in Federal Fiscal Year 2021. With support from the Local Agency Partners, CCWD is seeking a total of \$223 million in federal funding for design, pre-construction, and construction activities through the Water Infrastructure Improvements for the Nation (WIIN) Act or other federal legislation. If federal funding for the Project is appropriated by Congress, Reclamation would receive the requested funding and the funds would support Reclamation's staff and consultant team and the federal permitting process. Reclamation and the CCWD may enter into a funding agreement that would provide funding to CCWD for staff and consultants to complete design and pre-construction activities. Some portion of the federal funds may be directly applied to the scope of work contained in Exhibit A-2. The federal funds could be credited towards any Non-Program Cost Share as required in the Early Funding Agreement as described in Section 10 of this Agreement.

Effective date of Amendment No. 2.

Amendment No. 2, including the financial contribution provisions herein, shall be effective as to CCWD and each Local Agency Partner as of the date of signature by CCWD and each subsequent Local Agency Partner signatory.

Except as amended by this Amendment No. 2, the Agreement as previously amended shall continue in full force and effect. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute Amendment No. 2.

Robert Shaver, General Manager
Alameda County Water District

Date

Nicole Sandkulla, CEO / General Manager
Bay Area Water Supply and Conservation Agency

Date

Stephen J. Welch, General Manager
Contra Costa Water District

Date

Clifford C. Chan, General Manager
East Bay Municipal Utility District

Date

Ric Ortega, General Manager
Grassland Water District

Date

Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Date

Approved as to Form
Deputy City Attorney San Francisco

Date

Federico Barajas, Executive Director
San Luis & Delta-Mendota Water Authority

Date

Rick Callender, Chief Executive Officer
Santa Clara Valley Water District

Date

Valerie Pryor, General Manager
Zone 7 Water Agency

Date

Projected Total Costs for Term Covered by Amendment No. 2 to Multi-party Agreement (July 2020 - December 2021)

	Amount
Total Projected Costs	\$17,832,667
less Reclamation Cost	-\$2,155,000
less CCWD in-kind services (portion)	-\$441,000
less partner in-kind services	-\$980,000
less projected carryover of unspent funds from original MPA	-\$150,000
less projected CWC Invoice payments	-\$8,024,700
Total	\$6,081,967

Projected Individual Agency Costs for Multi-party Agreement

Equal Share Per Agency	Total for Each LAP	Invoice #1 Sep 2020	Invoice #2 Nov 2020	Invoice #3 March 2021	Invoice #4 July 2021
8	\$760,246	\$190,061	\$190,061	\$190,061	\$190,061
7	\$868,852	\$217,213	\$217,213	\$217,213	\$217,213
6	\$1,013,661	\$253,415	\$253,415	\$253,415	\$253,415