



MEMORANDUM

TO: SLDMWA Finance & Administration Committee, Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer
Joyce Machado, Director of Finance

DATE: September 13, 2021

RE: Staff Recommendation for Allocation of Settlement Payment

BACKGROUND

On August 6, 2021, a \$1,047,804.99 wire transfer was made by Panoche Water District to the Water Authority pursuant to a Settlement Agreement and Limited Release. Staff proposes to allocate the settlement payment in accordance with relevant guidance documents, as discussed below.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend, and the Board of Directors should adopt, staff's recommendation for allocation of the settlement payment.

RECOMMENDATION

Staff recommends adoption of its recommendation for allocation of the settlement payment, including the following: \$952,317 to be refunded/credited¹ as surplus; \$26,711 to be treated as miscellaneous revenue in FY21; and \$68,776.99 to be treated as miscellaneous revenue in current fiscal year.

ANALYSIS

The settlement payment includes dollar amounts associated with four components: (1) OM&R costs incurred between January 1, 2009 and April 30, 2015, (2) associated interest calculated through August 5, 2021, (3) actual Water Authority costs incurred prior to FY22 (cost of sealing diversion sites), and (4) actual staff/attorney time costs in FY22.

The Water Authority's Transfer Agreement discusses the Water Authority's ability to adopt cost recovery methodology, and notes that Reclamation has approved the Water Authority's existing cost recovery methodology. The referenced cost recovery methodology is documented in the First Amended and Restated Memorandum of Understanding between Friant Water Users Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and

¹ The refund/credit would not accrue to Panoche Water District.

Payment of Operation, Maintenance & Replacement Costs for Water Delivered through Certain Central Valley Project Facilities (Friant MOU) and SLDMWA OM&R Cost Recovery Plan. These two documents include provisions that address how the Water Authority should treat both “surplus” funds and “miscellaneous revenues.” As explained below, some components of the settlement payment constitute surplus and other components miscellaneous revenues.

OM&R Costs Component: Staff proposes to treat the amount received as surplus, and refund or credit those that overpaid in the associated water years (WY 2009 - WY2019) according to actual deliveries in each of those years. Under the SLDMWA OM&R Cost Recovery Plan, “[i]n the event payments made by or on account of a SLDM Contractor exceed costs allocated to that SLDM Contractor (surplus), the SLDMWA will refund the amount of the surplus to the payee or the payee may direct the SLDMWA to apply such surplus to amounts otherwise due under this ... Plan.”

Interest Component: Staff proposes to treat interest calculated through Water Year 2019 as surplus for each of the associated water years (WY2009 – WY2019), and refund or credit those that overpaid in those water years according to actual deliveries. For the interest received that is associated with Water Year 2020 (\$8,945) and Water Year 2021 (\$8,974), staff proposes to treat these amounts as miscellaneous revenue in those respective open fiscal years (true-ups are yet to be completed).

Miscellaneous revenues are addressed in the Water Authority’s Friant MOU, in Section III.A.4:

It is anticipated that the SLDMWA may from time to time realize miscellaneous revenues from sources directly related to the OM&R Program, including without limitation revenues from (i) rebates from vendors of products and/or services used in the OM&R Program, (ii) the sale of used equipment originally acquired for use in the OM&R Program, and (iii) amounts collected from third parties for whom the SLDMWA performs contract services using employees, equipment and/or materials otherwise used in the OM&R Program. All such miscellaneous revenues will be retained by the SLDMWA and utilized to support the continued OM&R Program.

Actual Costs Component: The settlement payment includes payment for actual costs incurred prior to the current fiscal year. Staff proposes to treat this portion of the payment as miscellaneous revenue in FY21. In addition, the portion of the payment that is assigned to actual costs incurred during the current fiscal year (staff/outside counsel time) would be treated as miscellaneous revenue in FY22. This FY21 and FY22 miscellaneous revenue would be captured as a separate step in the WY20 and WY21 final accountings true-up process.