

San Geronio Pass Water Agency

DATE: September 13, 2021

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: ADOPT RESOLUTION NO. 2021-15 TO APPROVE AN AGREEMENT FOR THE RECEIPT OF 2021 STATE WATER PROJECT TABLE A WATER FROM THE CITY OF VENTURA

RECOMMENDATION

Staff recommends the Board of Directors adopt Resolution No. 2021-15 authorizing the General Manager to execute an Agreement For The Transfer Of 2021 State Water Project Table A Water and authorizing the General Manager to take any and all actions to receive Table A water from the City of Ventura.

PREVIOUS CONSIDERATION

- March to June 2021: The General Manager, with direction from the Board, engaged in negotiations with representatives from the City of Ventura regarding a potential 2021 transfer agreement for the current water year.

BACKGROUND

Retailer water delivery requests for 2021 from the Agency total approximately 12,920 acre-feet. The current Table A allocation for State Water Project (“SWP”) water for the year is 5%. Not all of the local, imported water requests for 2021 can be met by utilizing current Table A availability, Nickel water, carry-over water in San Luis Reservoir, and other water in the Agency’s portfolio.

Since 2018, the Board has directed staff to negotiate with Ventura to determine if the Agency could receive additional SWP supplies which could be applied toward retailer delivery requests and possibly to acquire water for delivery to the Agency’s recharge facility that would be put in the Agency’s storage account in the Beaumont Basin. Since initiated in 2018, a goal of the transfer/exchange program with Ventura was to also work toward a long-term agreement that would provide the Agency with access to additional Table A water.

Currently, Ventura does not have the ability to take delivery of their SWP water. They have recently begun a process to construct infrastructure that will enable them to do so. The estimated timeline for Ventura to design and construct a connection to the State Water Project is likely several years out.

ANALYSIS

The terms of the agreement negotiated with Ventura are as follows. The Agency would pay \$300,000 towards Ventura's SWP fixed costs in exchange for receipt of Ventura's Table A allocation for 2021. Ventura has a Table A contract amount of 10,000 acre-feet. With a 2021 Table A allocation for SWP contractors of 5%, Ventura's Table A allocation would be 500 acre-feet. This transfer would utilize new DWR rules associated with the recent SWP 2021 contract amendments (aka Water Management Tools).

The transfer and receipt of Ventura's Table A water ("Transfer") is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Water Code Section 1729 and State CEQA Guidelines Section 15282(u), which exempt temporary changes in the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights as set forth in Water Code section 1725 et seq. The Transfer is also exempt under State CEQA Guidelines Section 15061(b)(3) because it can be seen that there is no possibility that the activity may have a significant effect on the environment. As a result, it is within the authority of the General Manager to file the applicable CEQA Notice Of Exemption.

FISCAL IMPACT

The Debt Service Fund will be utilized to fund the Ventura transfer. The approved Fiscal Year 2020-21 Debt Service Budget includes \$300,000 for water transfers with Ventura.

ACTION

Motion to adopt Resolution No. 2021-15 authorizing the General Manager to execute an Agreement For The Transfer Of 2021 State Water Project Table A Water and to take any and all actions to receive Table A water from the City of Ventura.

ATTACHMENTS

Resolution No. 2021-15 Approving The Receipt Of City of Ventura's 2021 State Water Project Table A Water Supply

Agreement For The Transfer Of 2021 State Water Project Table A Water

RESOLUTION NO. 2021-15

A RESOLUTION OF THE SAN GORGONIO PASS WATER AGENCY APPROVING AN AGREEMENT FOR THE TRANSFER OF STATE WATER PROJECT TABLE A WATER AND AUTHORIZING THE GENERAL MANAGER TO TAKE ANY AND ALL ACTIONS TO RECEIVE TABLE A WATER FROM THE CITY OF VENTURA

WHEREAS, the San Gorgonio Pass Water Agency (“Agency”) is a wholesale water agency formed under the San Gorgonio Pass Water Agency Law set forth in Water Code Appendix 101 (“Act”); and

WHEREAS, the Agency entered into a contract with the California Department of Water Resources (“DWR”) in 1962 for a Table A amount of water capacity in the California State Water Project (“SWP”) which is currently 17,300 acre feet per year to bring supplemental water to the Agency’s service area; and

WHEREAS, sections of the Act provide the Agency with a number of powers including, but not limited to, the following: to acquire water supplies for the benefit of the Agency (Section 15(e); to make contracts to do all acts necessary for the full exercise of its powers (Section 15(o); and to acquire, control, distribute, store, and spread water for beneficial uses of the Agency (Section 15(q); and

WHEREAS, on March 23, 2021, in light of developing drought conditions throughout California, DWR notified SWP contractors, including the Agency, that SWP deliveries would be reduced to five percent (5%) of each SWP contractor’s annual allocation for the upcoming water year. Under a 5% allocation, the Agency does not believe it would be able to fill all of the requests for water deliveries it has received from retail water providers; and

WHEREAS, in order to acquire additional supplies to be applied toward filling retail delivery requests, the Agency has negotiated an agreement with the City of Ventura to acquire the City’s SWP allocation for the upcoming water year. The City of Ventura has a Table A contract amount of 10,000 acre-feet. With a 2021 Table A allocation for SWP contractors of 5%, Ventura’s Table A allocation would be 500 acre-feet; and

WHEREAS, the Agency Board of Directors (“Board”) desires to adopt this Resolution in order to authorize the General Manager to execute an Agreement For The Transfer Of 2021 State Water Project Table A Water and to take any and all actions to receive Table A water from the City of Ventura under said agreement; and

WHEREAS, in accordance with the California Environmental Quality Act (“CEQA”) and State CEQA Guidelines, Agency Staff has determined that the transfer and receipt of Ventura’s Table A water (“Transfer”) is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to Water Code Section 1729 and State CEQA Guidelines Section 15282(u), which exempt temporary changes in the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights as set forth in Water Code section 1725 et seq. The Transfer is also exempt under State CEQA Guidelines Section 15061(b)(3) because it can be seen that there is no possibility that the activity may have a significant effect on the environment. As a result, it is

within the authority of the General Manager to file the applicable CEQA Notice Of Exemption.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN GORGONIO PASS WATER AGENCY AS FOLLOWS:

1. Incorporation Of Recitals All of the foregoing Recitals are true and correct based on current information and the Board so finds and determines. The Recitals set forth above are incorporated herein and made an operative part of this Resolution.

2. Approval Of Transfer And Transfer Agreement The Board hereby approves the Transfer and approves entering into that certain Agreement For The Transfer Of 2021 State Water Project Table A Water (“Transfer Agreement”) by and between the Agency and the City of Ventura. The Transfer Agreement is attached hereto as Exhibit “A” and incorporated herein by reference.

3. Authority Of The General Manager The Board hereby authorizes the General Manager to execute the Transfer Agreement and to take any and all actions necessary to receive Table A water from the City of Ventura under the Transfer Agreement including, but not limited to, development and execution of any agreements and documentation required under the Transfer Agreement and/or required by DWR and/or required for CEQA compliance as described in the Recitals. The General Manager is also hereby authorized and directed to take all actions necessary to effectuate and implement this Resolution.

4. Compliance With SWP Contract As may be required under the Agency’s SWP Contract or as may be required by DWR, the Board makes the following findings in accordance with Article 57(g) of the Agency’s SWP contract:

- (a) The Agency has complied with all applicable law;
- (b) The Agency has provided any required notices to public agencies and the public;
- (c) The relevant terms of the Transfer have been provided by the General Manager to all SWP contractors and to the Water Transfers Committee of the State Water Contractors Association;
- (d) The Agency is informed and believes that the Transfer will not harm other contractors;
- (e) The Agency is informed and believes that the Transfer will not adversely impact SWP operations;
- (f) The Agency is informed and believes that the Transfer will not affect the Agency’s ability to make all payments, including payments when due under its SWP contract for its share of the financing costs of the State’s Central Valley Project Revenue Bonds; and
- (g) The Agency has considered the potential impacts of the Transfer within its service area and has determined that the Transfer would be beneficial.

5. Effective Date The President of the Board shall sign this Resolution and the Secretary of the Board shall attest thereto, and this Resolution shall be in full force and effect immediately upon adoption.

6. Severability If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

ADOPTED AND APPROVED this 13th day of September, 2021.

President, Board of Directors
San Geronio Pass Water Agency

ATTEST:

Secretary, Board of Directors
San Geronio Pass Water Agency

EXHIBIT "A"

Agreement For the Transfer Of 2021 State Water Project Table A Water

AGREEMENT
between
SAN GORGONIO PASS WATER AGENCY
and the
CITY OF SAN BUENAVENTURA
FOR THE TRANSFER OF
2021 STATE WATER PROJECT TABLE A WATER

This Agreement is made by and between the City of San Buenaventura, a California Charter Law Municipal Corporation (“Ventura”), and San Gorgonio Pass Water Agency, a special act agency formed under Water Code Uncodified Acts, Act 1100 (“SGPWA”).

BACKGROUND AND PURPOSE

1. Ventura holds rights to ten thousand (10,000) acre-feet of a twenty thousand (20,000) acre-foot Table A allocation of State Water Project water (“Table A Water”), initially held by the Ventura County Watershed Protection District (“VCWPD”) but assigned to Casitas for all authorities and responsibilities (*see* Exhibits A and B hereto).
2. Of the 20,000 acre-foot Table A Water allocation set forth in Paragraph 1 above, Ventura’s State Water Project Table A allocation is ten thousand (10,000) acre-feet per calendar year (“Ventura Table A Water”), Casitas’ State Water Project Table A allocation is five thousand (5,000) acre-feet per calendar year (“Casitas Table A Water”), and United Water Conservation District holds the remaining State Water Project Table A allocation of five thousand (5,000) acre-feet per calendar year.
3. Ventura does not plan to take direct delivery of its Table A Water for 2021.
4. As of March 23, 2021, the Department of Water Resources (“DWR”) has allocated five percent (5%) of each State Water Project Contractor’s Table A amount for delivery in 2021.
5. SGPWA would like to take delivery of Ventura Table A Water in 2021 in the final amounts of the allocations as shall be determined by DWR for 2021.
6. SGPWA is willing to compensate Ventura for Ventura 2021 Table A Water as set forth in this Agreement.
7. Ventura is willing for SGPWA to take delivery of its allocations as shall be determined by DWR for 2021.

8. It is the expressed intent of the parties to negotiate a long-term exchange or transfer agreement, separate from this Agreement, when the applicable amendments or modification are made to State Water Project Contracts, and/or rules and regulations of the State Water Project, which may permit such exchanges and transfers. A long-term exchange could be utilized until such time as Ventura can take direct delivery of State Water. It is hereby acknowledged and agreed that nothing in this Agreement shall be deemed to be a binding agreement to enter into a long-term exchange or transfer agreement and each party reserves the right to decide whether or not to enter into such an agreement in their sole discretion.

TERMS AND CONDITIONS

1. Payment to Ventura. SGPWA agrees to pay to Ventura \$600 per acre foot of State Water Project water delivered. Payment amount is subject to DWR approval and contingent on the final DWR State Water Project Allocations.
2. DWR Approval. DWR's written approval of this Agreement, including the terms and conditions herein, is necessary to effectuate this transfer. DWR's approval shall be provided in the form of an agreement among the entities as determined by DWR. It is anticipated that said agreement would be among DWR, Ventura County Watershed Protection District, and SGPWA. In the event DWR does not approve this Agreement and/or the Table A Water subject to this Agreement is not permitted to be transferred as contemplated in this Agreement, Ventura will refund to SGPWA a payment equal to the amounts described in Terms and Conditions Paragraphs 1 and 2 above. Said payment shall be made within thirty (30) days from the date of any such disapproval by DWR.
3. Deliveries to SGPWA. Upon receipt of payment from SGPWA equal to the amount described in Terms and Conditions Paragraphs 1 and 2 above, Ventura will request that DWR deliver to SGPWA, in calendar year 2021, Ventura's entire 2021 Table A Water allocation from the State Water Project. Ventura shall request that DWR cause said deliveries to be made at a location and according to a delivery schedule requested by SGPWA and approved by DWR. The Table A Water will be delivered to SGPWA from the State Water Project through facilities already in existence when the Table A Water is delivered, such that it will not be necessary to construct additional facilities in order to affect delivery of the Table A Water pursuant to this Agreement. SGPWA will be responsible for payment of all variable and other such charges imposed by DWR and calculated as a function of the quantity of Ventura Table A Water actually delivered to SGPWA pursuant to this Agreement. The amounts and due dates for such charges are

set forth by DWR in DWR's statement of charges, invoices or other applicable documentation.

4. Places of Use. The water delivered to SGPWA in 2021 pursuant to this Agreement shall be used entirely within SGPWA's service area.
5. California Environmental Quality Act (CEQA). SGPWA agrees to do California Environmental Quality Act ("CEQA") compliance for SGPWA's service area and for SGPWA's performance of this Agreement. Ventura shall complete CEQA compliance for its respective service area and for performance of this Agreement.
6. Transaction Costs. Ventura and SGPWA shall each be responsible for its own legal and consulting costs incurred in the preparation, review, and implementation of this Agreement. Ventura and SGPWA acknowledge that it will also be necessary for them to sign an additional agreement to be prepared by DWR to address changes in points of delivery and other issues related to operation of the State Water Project. Ventura and SGPWA each agrees to cooperate with DWR and with each other in the preparation, review, and execution of that agreement with DWR, and with the processing of such other approvals as may be necessary to effect the transfer described herein.
7. Costs of Defense. In the event of any legal action by a third party to challenge this Agreement and/or the transfer described herein, Ventura and SGPWA agree to cooperate in the defense thereof and to share equally in the costs of such defense, utilizing counsel mutually acceptable to the parties.
8. Force Majeure. In the event that an unavoidable event renders the performance of this Agreement impossible or infeasible, the parties hereto shall be excused from the performance thereof, with a corresponding refund or adjustment of the payments required herein as may be necessary to achieve financial equity as between the parties for that portion of the Agreement that cannot be performed; provided, however, that Ventura and SGPWA shall first coordinate with DWR to determine whether alternate performance may be possible pursuant to an alternate schedule for completion of performance.
9. Authority and Representations. The undersigned representatives of Ventura and SGPWA hereby represent that he or she is authorized to execute the Agreement for the party on whose behalf this Agreement is executed. Ventura hereby represents and warrants that they have all rights and authorities to perform this Agreement including, for example and not by way of limitation, the contractual rights as described in Background and Purpose Paragraphs 1 and 2. SGPWA hereby represents and warrants that it has all rights and authorities to perform this Agreement.

10. Execution of Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other Parties hereto are in the physical possession of the Party or Parties seeking enforcement thereof.

11. Notice. All notices given or required to be given pursuant to this Agreement shall be in writing provided by first-class mail, postage prepaid, to the following addresses:

San Geronio Pass Water Agency
1210 Beaumont Avenue
Beaumont, CA 92223
Attn: Lance Eckhart, General Manager

City of San Buenaventura
501 Poli Street
Ventura, CA 93001
Attn: Alex D. McIntyre, City Manager

12. Alteration. No alteration change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all Parties hereto.

13. Entire Agreement. This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, it being the intent of the Parties that none shall be bound by any terms, conditions, or representations not written here.

[Signatures follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

SAN GORGONIO PASS WATER AGENCY

By: _____
Lance Eckhart, General Manager

Date: _____

CITY OF SAN BUENAVENTURA

By: _____
Alex D. McIntyre, City Manager

Date: _____

APPROVED AS TO FORM

Gregory G. Diaz, City Attorney

By: Miles P. Hogan
Miles P. Hogan, Assistant City Attorney II

Date: 8/2/2021