

San Gorgonio Pass Water Agency

DATE: April 11, 2022
TO: Board of Directors
FROM: Lance Eckhart, General Manager
BY: Lance Eckhart, General Manager
SUBJECT: AGREEMENT TO PROVIDE GAP FUNDING TO THE CABAZON WATER DISTRICT RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS

RECOMMENDATION

Authorize the General Manager to enter into an Agreement with the Cabazon Water District to provide gap funding support to utilize Proposition 68 and Proposition 1 grants.

PREVIOUS CONSIDERATION

- February 14, 2022: The Board directed staff to develop a gap funding agreement with the Cabazon Water District (District) to assist in utilizing awarded grant funding.
- March 14, 2022: The Board reviewed a draft gap funding agreement with the District to assist in utilizing awarded grant funding.

BACKGROUND, ANALYSIS

Please refer to the attached February 14, 2022 staff report regarding providing gap funding to the District to assist with grant funding implementation. The February 14, 2022 report discusses the background, analysis, and fiscal impact estimates for a potential gap funding agreement (Agreement).

At the February 14, 2022 Board meeting, the Board directed Staff to prepare an Agreement between the Agency and the District. On March 14, 2022, a draft Agreement was brought to the Board for consideration. The Board instructed Staff to work with District staff to make any necessary changes to the Agreement and bring back a final Agreement. Agency and District staff have finalized the Agreement. On March 20, 2022, staff from the City of Banning, the Agency, and the District, along with the District's engineering consultant, met to discuss the Agreement logistics, respective duties, reporting schedule, record keeping, and other related matters. A copy of the final Agreement with the District is attached.

FISCAL IMPACT

Please refer to the detailed comments in the attached February 14 staff report. In summary, the Agency has sufficient reserves to supply the gap funding needs of an additional cash flow requirement, estimated to average \$500,000, for the expected short duration of the projects.

ACTION

Authorize the General Manager to enter into the Agreement to provide gap funding to the Cabazon Water District related to approved Proposition 68 and Proposition 1 grants.

ATTACHMENTS

- February 14, 2022 Staff report on a potential gap funding agreement
- Agreement for providing gap funding to the Cabazon Water District related to approved Proposition 68 and Proposition 1 grants.

San Gorgonio Pass Water Agency

DATE: February 14, 2022

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: DISCUSSION OF A POTENTIAL AGREEMENT WITH THE CABAZON WATER DISTRICT TO ASSIST WITH THE UTILIZATION OF AUTHORIZED GRANT FUNDING – INFORMATION ONLY

RECOMMENDATION

Staff plans to brief the Board on the status of discussions and the potential for an agreement with the Cabazon Water District to provide Proposition 68 and Proposition 1 grant program gap funding. Staff would like to receive direction from the Board to develop an agreement for consideration at a future Board meeting.

BACKGROUND

The City of Banning (City) acts as the regional administrator of the area's Integrated Regional Water Management Plan ([IRWMP](#)). The IRWMP is a collaborative planning document that helps align regional resources and attract grant funds. City staff informed Agency staff that the Cabazon Water District (District) had participated in the IRWMP process and had been successful in receiving IRWMP grant funds through the Department of Water Resources (DWR) as well as a separate grant through the State Water Resources Control Board (SWRCB). City staff explained that although Cabazon had been approved for two separate grants and was ready to execute the work, cash flow to fund the work between reimbursement cycles was a challenge. District staff was contacted and the cash flow challenges of utilizing authorized grant funds were confirmed.

Funding reimbursement cycles can be protracted resulting in the grant recipient having to utilize reserves to fund work and then wait for reimbursement from the state. For smaller water systems located in Disadvantaged Communities such as the District, reserves may be inadequate to initiate grant-funded work due to cash flow timing. Work on both grants is scheduled for early 2022 compounding the cash flow issues for the District. Due to the risk of having inadequate reserves to fund the work, the District was contemplating not being able to perform the work and return one or both grants due to cash flow concerns. A brief summary of each grant is as follows:

Well Improvements Project - Test well, well refurbishment design & I-10 transmission line design.

Funding: Proposition 68, State Revolving Fund

Grant Agency: State Water Resources Control Board (SWRCB)

Grant Amount: \$499,000, 100% grant-funded.

Project Manager: Krieger & Stewart, Inc.

Timeline: 12-months but flexible

Status: Ready to bid

Isolation Valve Improvement Project – Installation of 105 valves

Funding: Proposition 1, Integrated Regional Water Management

Grant Agency: California Department of Water Resources (DWR)

Grant Amount: \$1,230,000, 100% grant-funded.

Project Manager: Krieger & Stewart, Inc.

Timeline: 16 to 18-months but flexible

Status: Ready to bid

Work associated with both of these grants will help modernize the District's system. Importantly, this work helps the District avoid system water losses and better defines future production and supply management. A more managed and resilient water system in the area is important for future planning efforts. Future recharge in the area was recently identified as a potential Agency management action and was included as part of the recently adopted [San Geronio Pass Groundwater Sustainability Plan](#). If the aforementioned grant-funded work was not conducted and the grant monies were returned to the funding entities, this could reflect poorly on future area grant opportunities and makes investment in the region difficult (e.g. construction of recharge facilities) if currently planned work cannot be implemented on a local scale, even if fully funded.

ANALYSIS

Agency staff contacted the grant administrators from the DWR and SWRCB in late December and early January to discuss options to utilize awarded grant funding. Both entities expressed the challenges of working with small water districts located in Disadvantaged Communities. Both of the grant administrators had indicated that “gap funding” by regional entities has become a common and often necessary component for smaller water systems to utilize state funding. Some of the industry trends with regard to providing support for underserved and disadvantaged water systems are well documented in:

[Water Education Foundation: Solving Water Challenges in Disadvantaged Communities](#)

A handbook to understanding the issues in California and Best Practices for Engagement

[Community Water Systems Alliance](#)

Case Studies: Regional Agency Assistance for Small Water Systems

Both DWR and the SWRCB were supportive of a regional entity assisting grant implementation for smaller systems within their service areas that find it hard to utilize available funding due to resource constraints. The funding entities acknowledged to staff that similar regional agency support is becoming more commonplace across the state and often considered a critical element in getting designated grant funds to Disadvantaged Communities. DWR and SWRCB grant administrators offered to expedite reimbursements if possible and be flexible with grant timelines.

Staff has been working with the District's engineering consultant Krieger & Stewart to try to estimate a reasonable amount of gap funding needed between reimbursement cycles. Work associated with both grants is expected to range from an average of approximately \$300,000 per quarter to a high of approximately \$500,000 for one quarter. Grant reimbursements can be as fast as 90-days (~one quarter) but can take up to 6-months (~two quarters). Work associated with both grants is expected to take approximately a little over a year.

An agreement between the Agency and the District would be appropriate to define roles, responsibilities, and expectations between the District and the Agency. Such an agreement would also document the public purpose and interests of the Agency being served by engaging in such a transaction.

During the gap funding period, staff intends to work closely with the District, their consultant, and the funding entities to keep reimbursement cycles as efficient as possible. An Agency ad-hoc committee may also be designated to get regular updates on the status of the District's grant(s).

FISCAL IMPACT

The fiscal impact would be related to the advancement of funds and the use of Agency resources to process the loan and obtain repayment. The Agency has available reserves to provide gap funding to assist with grant implementation. Some staff time will need to be allocated to this program but it is not considered material. Gap funding will be fairly short duration and staff is not recommending any compensation or interest income at this time for ease of administration of the program. A maximum gap funding amount is not expected to exceed \$800,000 and should average less than \$500,000 between reimbursement cycles.

ACTION

This is an informational item only and no binding Board action is being requested. Staff would like Board direction to work with local stakeholders and Agency counsel to proceed with discussions which could lead to the consideration of an agreement in the future.

AGREEMENT FOR PROVIDING GAP FUNDING TO CABAZON
RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS

This AGREEMENT FOR PROVIDING GAP FUNDING TO CABAZON RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS (“**Agreement**”) is made and entered into as of April 11, 2022, by and between the SAN GORGONIO PASS WATER AGENCY, a public agency formed under the San Gorgonio Pass Water Agency Law set forth in Act 1100 of the Water Code Uncodified Acts (“**SGPWA**”) and the CABAZON WATER DISTRICT, a public agency organized and operating under the County Water District Law, Water Code section 30000 *et seq.* (“**CABAZON**”). SGPWA and CABAZON are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. CABAZON and SGPWA are member agencies of the San Gorgonio Pass Groundwater Sustainability Agency (“**GSA**”)—the agency charged with managing groundwater resources in the San Gorgonio Pass Subbasin (“**Basin**”)—and are within the San Gorgonio Pass Integrated Regional Water Management Plan (“**IRWMP**”). The IRWMP provides a pathway for local agencies and stakeholders to collaboratively identify and implement water management solutions that provide multiple integrated benefits to stakeholders and communities within the IRWMP region.

B. SGPWA and CABAZON participated in the preparation of, and have each adopted the Basin Groundwater Sustainability Plan (“**GSP**”), which is administered by the GSA, and have participated in the development of the IRWMP, which is administered by the City of Banning (“**City**”).

C. CABAZON succeeded in securing two separate grants (collectively, the “**Grant(s)**”) fully funding two projects it had submitted pursuant to the IRWMP: (i) a \$499,000 Proposition 68 grant agreement with the State Water Resources Control Board (“**State Board**”) for groundwater well improvements (referred to in State Board’s records as Agreement No.

CWRCB0000000000D190203400), a copy of which is attached hereto as **Exhibit “A”**; and (ii) a \$1,228,985 Proposition 1 grant agreement with the California Department of Water Resources (“**DWR**”) for the installation of 105 isolation valves (referred to in DWR’s records as Agreement No. 4600013806), a copy of which is attached hereto as **Exhibit “B”**. The groundwater well improvement project and isolation valve improvement project (together, the “**Projects**”) are ready to bid and must be completed within 12 months and 18 months, respectively, with possible extensions subject to approval by the grant-awarding agency.

D. The implementation of the Projects will help reduce water losses, which help meet the regional water management and Basin recharge objectives of the GSP and IRWMP, and benefit the public by improving water supply in the Basin.

E. The DWR grant is distributed quarterly through the City as the disbursement administrator, and the State Board grant is disbursed quarterly to CABAZON, each in the form of reimbursement for eligible Projects costs. Disbursements under the Grant agreements involve lengthy warrant procedures, ranging from 90 to 180 days (“**Reimbursement Cycle**”), which necessitate that CABAZON advances its own funds to pay its contractors while awaiting reimbursement. As a small water system servicing disadvantaged communities, CABAZON would likely have difficulty advancing the necessary sums and may risk losing the Grants as contractors require a much shorter invoice payment turnaround time in order to undertake the Projects.

F. CABAZON estimates the need to advance up to \$800,000 per Reimbursement Cycle to cover Projects costs, and desires to enter into a gap funding agreement with SGPWA to avoid loss of the Grants and potential abandonment of the Projects.

G. SGPWA agrees to enter into a gap funding agreement with CABAZON because the Projects provide a benefit to the public by improving the Basin’s water supplies and help meet the objectives of the GSP and IRWMP in which SGPWA participates.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into the Agreement and made a part thereof by this reference.

2. **Purpose.** The Purpose of this Agreement is to establish: (i) the manner, terms and conditions pursuant to which SGPWA will advance certain funds to CABAZON; and (ii) the purposes for which CABAZON may use the funds so advanced.

3. **Effective Date.** The Effective Date of this Agreement shall be April 11, 2022.

4. **Term of Agreement.** Unless otherwise extended or earlier terminated, the term of this Agreement shall commence on the Effective Date and shall end on the date that is the earlier to occur of: (i) the date that CABAZON repays the Advanced Funds (defined below) to SGPWA in full as required under this Agreement; and (ii) June 30, 2024 (“**Term**”). This Agreement may be terminated by either Party upon a 90-days’ notice to the other Party, at which time all Advanced Funds received by CABAZON and not yet repaid to SGPWA shall become due and payable to SGPWA in accordance with Section 8 below.

5. **Maximum Advanced Funds.** The maximum amount that may be requested by CABAZON and advanced by SGPWA (“**Advanced Funds**”) during the Term of this Agreement shall not exceed **Eight Hundred Thousand Dollars (\$800,000.00)**. Once the maximum amount of Advanced Funds is reached, SGPWA shall have no obligation to advance any further funds to CABAZON.

6. **Payment Procedures to CABAZON.** CABAZON will submit to SGPWA a copy of the invoice or invoices, and accompanying backup documentation, that CABAZON has submitted or intends to submit to DWR or State Board, as the case may be, and for which CABAZON is requesting Advanced Funds from SGPWA (“**Invoices**”). Subject to availability of funds as determined in SGPWA’s reasonable discretion and the limitations set forth in Section 5 above, and provided CABAZON is not otherwise in breach of any term of this Agreement, SGPWA will issue payment to CABAZON in the amounts so requested within 30 days of receiving the Invoices.

7. **Use of Advanced Funds.** CABAZON shall use the Advanced Funds solely to pay Projects costs that are eligible for reimbursement under the terms of the Grant agreements referenced in Recital C, and for no other purpose.

8. **Repayment of Advanced Funds to SGPWA.** The Parties agree as follows:

a. CABAZON shall repay to SGPWA the Advanced Funds, in increments, within 45 days of CABAZON's receipt of Grant amounts from a Reimbursement Cycle or as other general funds become available, whichever occurs first, until the Advanced Funds are repaid to SGPWA in full; provided, however, that Advanced Funds not spent by CABAZON at the time the Projects are complete shall become immediately due and payable to SGPWA.

b. CABAZON's obligation to repay the Advanced Funds in full to SGPWA is not limited or extinguished by reason of the failure of DWR or State Board to distribute the Grants to CABAZON. If necessary, the Parties shall negotiate in good faith a reasonable repayment schedule pursuant to which CABAZON will repay to SGPWA the Advanced Funds for which CABAZON expected but did not receive Grant disbursements from DWR or State Board.

c. CABAZON's obligation to repay the Advanced Funds to SGPWA under this Agreement shall survive the expiration or earlier termination of this Agreement.

9. **Indemnification.** CABAZON shall indemnify and hold and save SGPWA, its officers, agents and employees free and harmless from any and all liabilities for any liens, claims and damages that may arise out of or in any way related to this Agreement and the Projects, including without limitation any liens, claims and damages (including attorneys' fees) arising from or in any way related to planning, design, construction, maintenance and operation of the Projects and any breach of this Agreement. The indemnification obligation under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **No Partnership, Joint Venture or Agency Relation.** Nothing in this Agreement shall be construed to render SGPWA in any way or for any purpose a partner or joint venturer of CABAZON, nor shall this Agreement be construed to authorize either Party to act as agent for the other.

11. **Insurance.** CABAZON shall name SGPWA, SGPWA's officers, employees and agents as additional insureds on all insurance policies procured for the Projects.

12. **Entire Agreement; Amendment.** This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be modified or amended except in a writing signed by both Parties.

13. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

14. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at the address noted on the signature page, or such other address as a Party notifies the other in writing.

15. **Headings; Section References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

16. **Severability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

17. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. CABAZON shall not have the right to assign its rights under this Agreement except with the prior written consent of SGPWA, which consent may be withheld at SGPWA's sole discretion.

18. **Attorneys' Fees.** In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

19. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the county of Riverside, California, and consent to the jurisdiction thereof.

20. **Counterparts.** Counterpart execution of this Agreement is hereby authorized, including electronic transmission of pdf or similar format, and each counterpart of this Agreement so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

21. **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof.

22. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights or benefit upon, nor obligate any Party to any person or entity other than the Parties.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

CABAZON:

SGPWA:

CABAZON WATER DISTRICT

SAN GORGONIO PASS WATER
AGENCY

By: _____

By: _____

Name: _____

Name: Lance E. Eckhart

Title: _____

Title: General Manager

Address: _____

Address: 1210 Beaumont Ave
Beaumont, CA 92223

Fax: _____

Fax: 951-845-0281

Phone: _____

Phone: 951-845-2577

EXHIBIT "A"
STATE BOARD GRANT AGREEMENT

EXHIBIT "B"
DWR GRANT AGREEMENT