

San Gorgonio Pass Water Agency

DATE: May 22, 2023

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Emmett Campbell, Senior Water Resources Planner

SUBJECT: **County Line Recharge Basin Project Memorandum of Understanding with San Bernardino Valley Municipal Water District**

RECOMMENDATION

Authorize the General Manager to execute the Memorandum of Understanding (MOU) between the San Gorgonio Pass Water Agency and the San Bernardino Valley Municipal Water District for the County Line Recharge Basin Project.

PREVIOUS DISCUSSIONS

- Board Workshop – August 15, 2022: Discussion on County Line Recharge Basin Project Agreement Roles and Responsibilities
- Board Workshop – April 17, 2023: County Line Recharge Basin Project Update

BACKGROUND

The County Line Recharge Basin Project (Project) is a joint project between San Bernardino Valley Municipal Water District (SBVMWD), and San Gorgonio Pass Water Agency (SGPWA) to design and construct facilities that will convey imported water from the State Water Project to a proposed recharge facility in the City of Calimesa. The water to be recharged in this facility would directly support the Yucaipa Groundwater Sustainability Plan in achieving groundwater sustainability.

As a part of this project, there are roles and responsibilities that each Agency has prescribed to complete. These roles and responsibilities were discussed at the August 15, 2022 F&E Workshop. The proposed MOU formalizes these roles and responsibilities between SBVMWD and SGPWA.

ANALYSIS

The Yucaipa Groundwater Sustainability Agency (GSA) was established to manage the Yucaipa Basin. DWR has designated the Yucaipa Basin as a high-priority basin. The GSA is broken up into multiple management areas, one of which, is the Calimesa Management Area (CMA). The CMA straddles the boundaries of two State Water Contractors, SBVMWD and SGPWA. In order to bolster the water supply for the CMA, a 7-acre parcel was identified near the center of the CMA as a candidate for a future regional recharge facility. SGPWA purchased this property in 2022.

Since this future recharge facility would receive imported water from two State Water Contractors, a regional project was formed with a draft term sheet that was discussed at the August 15, 2022 F&E Workshop. A formal MOU (Attachment 1) was developed based on that draft term sheet to formalize the roles and responsibilities of each Agency to complete this project.

SGPWA would be responsible for the acquisition of the recharge property, preparation of environmental documentation, and design/construction of the recharge facilities for this project. SBVMWD would be responsible for coordinating with DWR for the design and construction of the turnout facilities that would convey water from the EBX to the recharge facility.

SGPWA/SBVMWD staff coordinated on developing the MOU and the respective legal counsels have reviewed the proposed MOU. On May 16, 2023, SBVMWD's Board of Directors approved the Memorandum of Understanding for this project (Attachment 2).

FISCAL IMPACT

No impact.

ACTION

Authorize the General Manager to execute the Memorandum of Understanding (MOU) between the San Geronio Pass Water Agency and the San Bernardino Valley Municipal Water District for the County Line Recharge Basin Project.

ATTACHMENTS

1. Memorandum of Understanding with San Bernardino Valley Municipal Water District for the County Line Recharge Basin Project
2. SBVMWD Staff Report for County Line Recharge Basin Project Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT AND
SAN GORGONIO PASS WATER AGENCY
FOR THE COUNTY LINE RECHARGE BASIN PROJECT**

This Memorandum of Understanding for the County Line Recharge Basin Project (MOU) is entered into and effective this _____ day of _____, 2023 (Effective Date) by and between the San Bernardino Valley Municipal Water District (Valley District) and San Gorgonio Pass Water Agency (Pass Agency). Valley District and Pass Agency are each sometimes referred to herein as a “Party” and collectively are sometimes referred to herein as the “Parties.”

Recitals

- A. Valley District is a municipal water district, formed for the purpose of planning a long-range water supply for the San Bernardino Valley, importing water into its service area via its State Water Project (SWP) contract, and managing groundwater storage within its boundaries; and
- B. Pass Agency is a regional water agency and SWP contractor that provides water on a wholesale basis to retail water providers and other public agencies within its service area; and
- C. In September 2014, the California Legislature enacted the Sustainable Groundwater Management Act (SGMA), which established a statewide framework for sustainable management of groundwater resources; and
- D. In the Upper Santa Ana River Groundwater Basin, as defined by the California Department of Water Resources (DWR) Bulletin 118, there are a number of groundwater basins including the Yucaipa Basin, which has been designated by DWR as a high-priority basin based primarily on its reliance on groundwater for water supplies; and
- E. The Parties are members of the Yucaipa Basin Groundwater Sustainability Agency (GSA), which has developed a groundwater sustainability plan (GSP) for the Yucaipa Basin in compliance with SGMA; and
- F. Pursuant to the GSP, the Parties have been working with South Mesa Water Company (SMWC) and the City of Calimesa to identify potential regional, multi-benefit groundwater recharge facilities in the Calimesa Management Area (CMA), which is one of the management zones within the Yucaipa Basin; and
- G. The CMA, with an estimated sustainable yield of 4,955 acre-feet of groundwater per year, is generally located in the southern part of the City of Yucaipa and the northern part of the City of Calimesa and is within the service areas of both Valley District and Pass Agency; and

- H. The Parties have identified a 7-acre parcel overlying the CMA, County Line Recharge Basin Site, (see Attachment A) as a potential regional recharge facility location; and
- I. The Parties wish to assign relative responsibilities for the planning, funding, construction, operation, and maintenance of the County Line Recharge Basin Project (Project) facilities to enable the delivery of imported water, whether from the SWP or otherwise, to the recharge facility for groundwater recharge and replenishment activities; and
- J. The Parties understand that a future agreement regarding the operation and maintenance of the Project will be required and desire that such agreement be consistent with this MOU; and
- K. The Parties wish to memorialize their respective understandings and agreements regarding the Project by means of this MOU.

Understandings and Agreements

- 1. *Term.* This MOU shall commence on the Effective Date first written above and shall continue until execution of a mutual agreement for the ongoing operation and maintenance of the Project, unless terminated earlier as provided in this MOU.
- 2. *Project Facilities.* The County Line Recharge Basin Project is a groundwater recharge project overlying the Yucaipa Basin, aimed to increase and improve groundwater supply resources in the region. The Project will consist of the following facilities:
 - a. Turnout Facility
 - b. Repurposed and newly extended pipelines and other appurtenant facilities to convey delivered water from the Turnout to the Recharge Basin Facility
 - c. Recharge Basin Facility
- 3. *Party Responsibilities.*
 - a. *Valley District.*
 - i. *Turnout Facility Design.* Valley District will identify the design and optimization criteria for Turnout Facility off an existing 16-inch turnout nozzle located on DWR's 54-inch diameter East Branch Extension pipeline, at the intersection of Bryant Street and County Line Road, and shall contract for all professional services required to design and construct the Turnout Facility in a professional and workmanlike manner.
 - ii. *Review with DWR.* Valley District will initiate, and coordinate review of design and optimization plans of the Turnout Facility with DWR.
 - iii. *Acquisition of Easements and Rights of Way.* Valley District will acquire all necessary easements and rights of way, as determined by Valley District and approved by DWR, for construction and operation of the Turnout Facility, with assistance from Pass Agency and SMWC as provided in their reasonable discretion. Any such easement or right of way agreements shall address insurance requirements and indemnity as necessary.

- iv. *Bidding.* Valley District will prepare all bid specifications and shall conduct the contract bidding process pursuant to applicable public bidding and prevailing wage requirements for construction of the Turnout Facility.
- v. *Operation and Maintenance.* Valley District will operate and maintain the Turnout Facility in good working condition. In so doing, Valley District will coordinate with Pass Agency and DWR, using best efforts to ensure a sufficient amount of imported SWP water is supplied to the Recharge Basin Facility by the Parties to carry out the purposes of the Project, *provided* that all such flows shall be subject to Valley District's rules and regulations, and shall be implemented subject to Valley District's reasonable operational discretion in the operation of Project facilities.

b. *Pass Agency.*

- i. *Recharge Basin Facility Design.* Pass Agency will identify the design and optimization criteria for the Recharge Basin Facility, and shall contract for all professional services required to design and construct the Recharge Basin Facility in a professional and workmanlike manner.
- ii. *Property Acquisition.* Pass Agency has acquired the property necessary for the construction and operation of the Recharge Basin Facility. Pass Agency will coordinate with the Riverside County Flood Control and Water Conservation District (RCFCWCD) for the possible expansion of the recharge area by incorporating the RCFCWCD's basin on County Line Road.
- iii. *Repurposed Pipeline.* Pass Agency will coordinate with SMWC to repurpose the existing 14-inch pipeline along County Line Road to convey water to the Recharge Basin Facility.
- iv. *Pipeline Extension.* Pass Agency will design and construct the pipeline on Fourth Street from the repurposed pipeline to the Recharge Basin Facility. In addition, Pass Agency will design and construct the connection piping from the outlet of the weir box structure to the existing repurposed pipeline in County Line Road as appropriate.
- v. *Acquisition of Easements and Rights of Way.* Pass Agency will ensure it has acquired all necessary easements and rights of way for construction and operation of the Recharge Basin Facility, with potential coordination with RCFCWCD. Any additional easement or right of way agreements shall address insurance requirements and indemnity as necessary.
- vi. *Bidding.* Pass Agency will prepare all bid specifications and shall conduct the contract bidding process pursuant to applicable public bidding and prevailing wage requirements for construction of the Recharge Basin Facility.
- vii. *Operation and Maintenance.* Pass Agency will operate and maintain the Recharge Basin Facility in coordination with Valley District. Pass Agency will operate and maintain the pipelines connecting to the Turnout Facility and Recharge Basin Facility.

4. *Water Resources Management.*

- a. The Parties will coordinate all recharge activities with each other to protect and enhance the sustainable yield within the CMA in the Yucaipa Basin as detailed in the Yucaipa Groundwater Sustainability Plan. Specifically, the Parties will: (1) collaborate to identify additional opportunities to increase the sustainable yield in the Yucaipa Basin by engaging in cooperative joint development of new water supply projects or conservation programs in the region; and (2) cooperate with each other to document the water resource management benefits accrued by establishing and implementing the Project described in this MOU.
- b. The Parties will use their water rights, including contract rights to State Water Project water, to meet the needs of the Project and preserve the sustainable yield of the Yucaipa Basin, consistent with reasonable and prudent management of their entire portfolios of water resources. The Parties may also explore the potential for incorporating supplemental water supplies into the Project, including stormwater capture, and water from the Santa Ana River and its tributaries. If additional water rights or changes to existing water rights are required, then the parties will coordinate on requesting and obtaining such rights or changes. Each Party shall refrain from contesting any water rights claimed or held by the other Party at any time during the term of this MOU, so long as such water rights are exercised in the manner described in this paragraph.
- c. The Parties will not export native water from the Yucaipa Basin, or recharge water on behalf of agencies located outside the Yucaipa Basin in a manner that conflicts with or hinders the Project described in this MOU or outlined in the Yucaipa Groundwater Sustainability Plan.

5. *Project Funding.*

- a. *Grant Funding.* The Parties anticipate that grant funding opportunities through the Sustainable Groundwater Management Grant Program for SGMA will cover the overall cost of the Project. Valley District will be responsible for identifying grant opportunities to fund the Project and will conduct grant administration activities, if successful. In the event the above-mentioned grant opportunities are not successful in whole or in part, Pass Agency may elect, in its discretion, to pursue grant opportunities as well.
- b. *Allocation of Funds and Costs.* The Parties agree to divide any grant funds received on a proportional basis relative to their proportional and respective costs for the Project. Each Party shall be responsible to cover its proportional local match obligation and, in the event that grant funding is either not available or does not cover the entire cost of the Project, each Party shall be responsible for its own respective Project costs.

6. *CEQA and Permitting.*

- a. Pass Agency will be responsible for obtaining all federal, state, and local permits and approvals that may be required to construct the Project, including preparation of the environmental documentation required by the California Environmental Quality Act (CEQA) for the entire Project (i.e., Turnout Facility, Recharge Basin Facility, repurposed and new pipelines, and other associated appurtenances), in coordination with Valley District, the City of Calimesa, and SMWC.

- b. Valley District will be responsible for providing written confirmation to DWR that all required permits, approvals, and CEQA compliance for the entire Project have been obtained.
 - c. Pass Agency will be responsible for all costs to obtain permits and approvals and any necessary CEQA review, and shall bear litigation costs in the event the Project is challenged under CEQA. Notwithstanding the foregoing, Valley District will be responsible for costs relating to its coordination obligations with DWR.
 - d. The Parties are not committing to the Project in the proposed or any alternative configuration at this time. Pending completion of any necessary review under CEQA, the Project remains subject to the Parties' full exercise of discretion as potential lead or responsible agencies, to consider environmental impacts, approve or disapprove the Project, and to require the Project to undertake mitigation measures or alternatives as may be necessary.
 - e. The Parties further acknowledge and agree that any modifications to the Project resulting from their compliance with CEQA and other regulatory requirements may necessitate amendments to this MOU in a mutually acceptable manner.
7. *Books and Records.* Each Party shall have access to and the right to examine the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this MOU. Each Party shall retain all such books, documents, papers or other records to facilitate such review in accordance with that Party's record retention policy. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.
8. *Disputes.* The Parties shall make good faith efforts to resolve disputes or disagreements arising from this MOU through a meet and confer process. If a dispute or disagreement arises, the Parties shall meet and confer within ten (10) calendar days of receiving written notification from the other Party describing the dispute and shall thereafter schedule and participate in further meetings, if appropriate, in an effort to resolve the dispute or disagreement.
9. *Early Termination.*
- a. *Termination for Cause.* If the Parties are unable to resolve a dispute after reasonable meet and confer in accordance with provisions of Paragraph 8 above, either Party may terminate this MOU upon sixty (60) days' written notice for cause. Should this MOU be terminated under this paragraph, then the Parties shall each bear their respective costs at the time of termination, subject to the right of both Parties to seek any remedies entitled to it under law.
 - b. *Termination by Mutual Agreement.* This MOU shall be terminated if both Parties agree in writing to terminate for any reason.
10. *General Provisions.*

- a. *Non-Exclusive Agreement.* Nothing in this MOU shall prevent either Party from working cooperatively with other individuals, public agencies, or private organizations to improve groundwater recharge within that Party's respective jurisdiction.
- b. *Authority.* Each signatory of this MOU represents that he/she is authorized to execute this MOU on behalf of the Party for which he/she signs. Each Party represents that it has legal authority to enter into this MOU and to perform all obligations under the Agreement.
- c. *Jurisdiction and Venue.* This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of Riverside, California.
- d. *Construction and Interpretation.* This MOU may not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings are for ease of reference only and shall not be used in constructing or interpreting this MOU.
- e. *Entire Agreement.* This MOU contains the entire understanding between the Parties relating to the rights created herein. All prior or contemporaneous drafts, agreements, understandings, representations, statements, oral or written, are merged into this MOU and shall be of no further force or effect.
- f. *Amendment.* The Parties will negotiate amendments, including but not limited to expansion of the scope of activities, to this MOU in good faith and will not unreasonably withhold consent. No amendment to this MOU will be effective unless it is in writing and is signed by each of the Parties to this MOU.
- g. *Attorneys' Fees and Costs.* Regardless of whether it is the prevailing party in any litigation or other action to enforce or interpret this MOU, each Party shall bear its own attorneys' fees, costs of suit, and other necessary disbursements.
- h. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this MOU, in compliance with all applicable laws, rules, regulations, and ordinances.
- i. *Force Majeure.* The failure of either party to perform any obligation otherwise due solely as a result of (a) governmental action, laws, orders, regulations, directions or requests, or (b) as a result of events, such as war, acts of public enemies, strikes or other labor disturbances, fires, floods, acts of God or any causes of like kind beyond the reasonable control of such party and not otherwise contemplated in this MOU (collectively referred to as "Force Majeure"), is excused for so long as such Force Majeure exists or until the parties agree to terminate this MOU.
- j. *Third Party Beneficiaries.* This MOU shall not create any right or interest in any non-party or in any member of the public as a third-party beneficiary.
- k. *Severability.* Should any article, section, subsection, subdivisions, sentence, clause, phrase, or provision of this MOU be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this MOU shall remain in full force and effect during the term of this MOU.

- l. *Counterparts.* This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- m. *Waiver.* No waiver by either Party of any provision of this MOU shall be deemed a waiver of any other provision of this MOU or of any subsequent breach by the other Party of the same provision.
- n. *Successors and Assigns.* This MOU shall inure to the benefit of and be binding upon the successors and assigns of the Parties.
- o. *Notices.* All notices, requests, demands, or other communications required or permitted under this MOU shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mail, registered or certified, with first class postage fully prepaid, addresses as follows:

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

General Manager
 San Bernardino Valley Municipal Water District
 380 East Vanderbilt Way
 San Bernardino, CA 92408
 Telephone: (909) 387-9200
 Facsimile: (909) 387-9247

SAN GORGONIO PASS WATER AGENCY

General Manager
 San Gorgonio Pass Water Agency
 1210 Beaumont Avenue
 Beaumont, CA 92223
 Telephone: (951) 845-2577
 Facsimile: (951) 845-0281

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding by their duly authorized representatives as of the Effective Date indicated on the first page of this MOU.

SAN BERNARDINO VALLEY MUNICIPAL
 WATER DISTRICT

SAN GORGONIO PASS WATER AGENCY

By: _____

By: _____

Dated: _____

Dated: _____

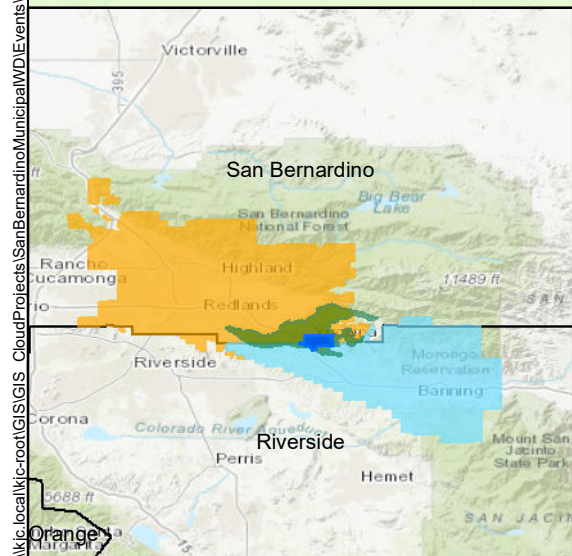
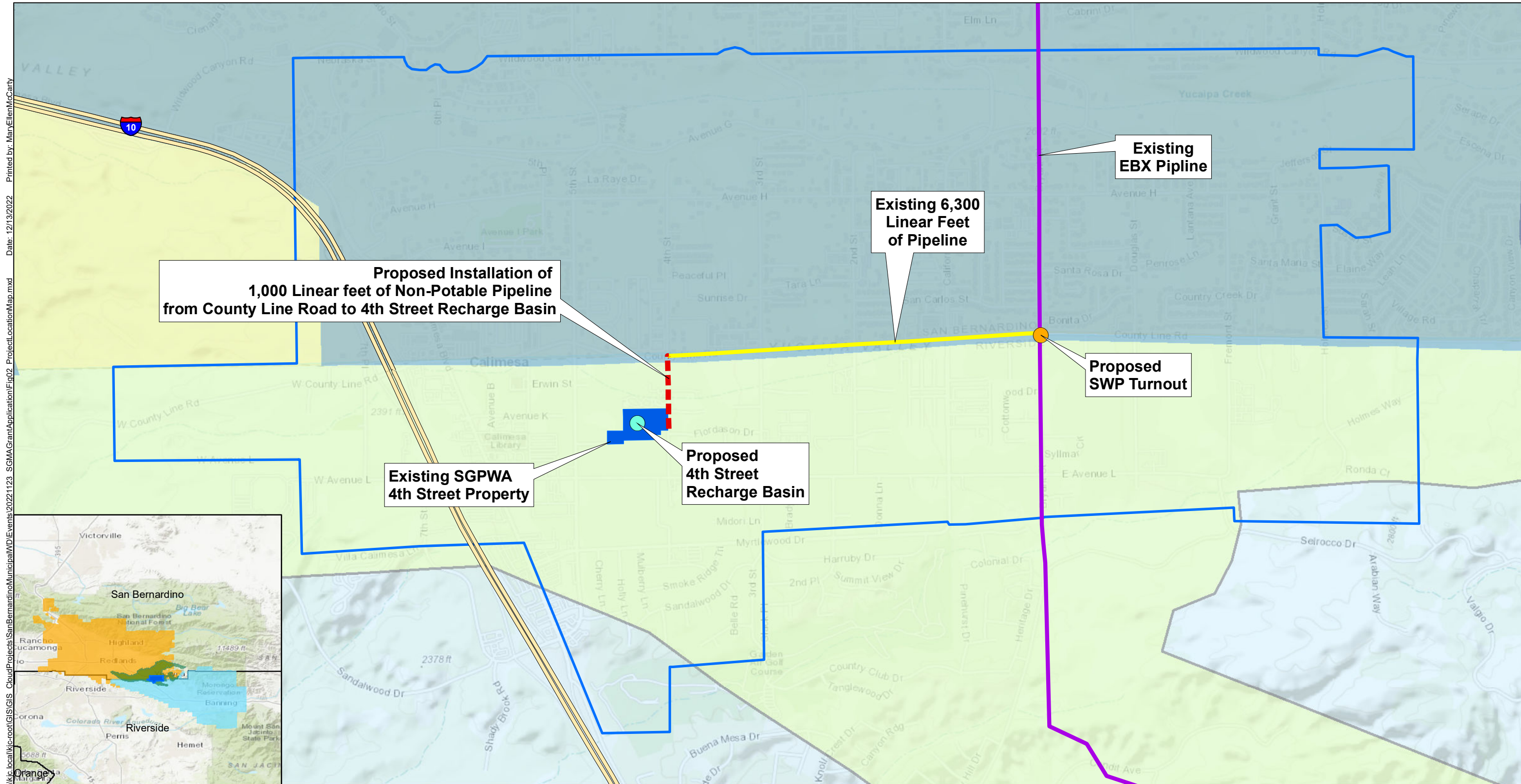
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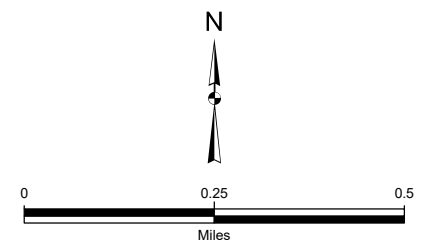
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ATTACHMENT A



Legend

- Proposed 4th Street Recharge Basin
- Existing SGPWA 4th Street Property
- Yucaipa Subbasin
- Yucaipa Valley Water District
- San Gorgonio Pass Water Agency
- Existing 6,300 Linear Feet of Pipeline
- South Mesa Water Co
- San Bernardino Valley Municipal Water District
- Existing EBX Pipline
- Proposed 1000 Linear Feet of Pipeline



COUNTY LINE RECHARGE BASIN AND TURNOUT PROJECT



DATE: May 16, 2023

TO: Board of Directors

FROM: Leo Ferrando, Assistant Chief Engineer
Wen Huang, Chief Operating Officer/Assistant General Manager

SUBJECT: Consider a Memorandum of Understanding, a Payment Agreement, and a Notice of Determination for the County Line Recharge Basin Turnout Project

Staff Recommendations

1. Consider a Memorandum of Understanding (MOU) with San Gorgonio Pass Water Agency (Pass Agency) and a Payment Agreement up to \$126,500 with South Mesa Water Company (SMWC) for the County Line Recharge Basin Turnout Project (Project), subject to non-substantive changes approved by CEO/General Manager and District Counsel; and
2. File the Notice of Determination to adopt the environmental analysis for the Phase I Turnout Project work in the 2022 Addendum to an existing City of Calimesa's Initial Study/Mitigated Negative Declaration (IS/MND).

Summary

In support of the need for recharge in the Calimesa Management Area (CMA), a 7-acre parcel near the center of Calimesa has been identified as the most feasible site for a future regional recharge facility. Given the regional nature of the facility, Staff recommends that the Board of Directors consider partnering with the Pass Agency to implement the Project in accordance with the attached MOU (Attachment No. 1), which was developed based on the draft term sheet that was approved by the Board of Directors on September 20, 2022.

Additionally, Staff recommends that the Board of Directors consider a Payment Agreement (Attachment No. 2) with SMWC to reimburse SMWC for all associated costs for constructing a pipeline within the County Line Road right-of-way (ROW) as part of the overall Turnout facility to facilitate delivery of SWP water for recharge. The value of the Payment Agreement includes \$115,000 based on the actual bid item for the pipeline, plus a 10% contingency cost, or up to \$126,500.

Background

The Yucaipa Groundwater Sustainability Agency (GSA), of which San Bernardino Valley is a member, acting as the GSA for the Yucaipa Subbasin, developed a Groundwater Sustainability Plan (GSP) in compliance with the 2014 Sustainable Groundwater Management Act (SGMA) and DWR GSP regulations. DWR has designated the Yucaipa Subbasin as a high-priority basin based primarily on its reliance on groundwater for water supply. However, this Subbasin is not in a state of critical overdraft. The CMA straddles two State Water Contractors' service areas, San Bernardino Valley and Pass Agency, and is part of the Yucaipa Subbasin, which has an estimated sustainable yield of 4,955 acre-feet per year. In order to bolster the CMA's groundwater supply in the future and maintain enough replenishment in the CMA, a 7-acre parcel near the center of the CMA has been identified as the most feasible site for a future regional recharge facility.

Given the regional nature of the facility, on September 20, 2022, the Board of Directors approved a draft Term Sheet to partner with Pass Agency for the development of the Project and directed Staff to move forward with the Project. The attached MOU was developed based on the approved terms, which generally identified that San Bernardino Valley, on behalf of the Yucaipa GSA, will be responsible for the design and construction of a new SWP turnout facility for the Project and take the lead on identifying any potential grant opportunities. At the same time, SGPWA will be responsible for the acquisition of the property, preparation of environmental documentation, and design and construction of the recharge facilities for the Project.

Since then, Staff has been working with the Department of Water Resources (DWR) to construct and operate a new, permanent turnout along the East Branch Extension Pipeline (EBX, Reach 2) in the City of Calimesa. DWR will review the new turnout request in two phases to construct the turnout portion within the City's street right-of-way as part of Phase I. This will be followed by Phase II, where San Bernardino Valley will construct the Turnout Facilities and connect to the pipeline along County Line Road for conveying water into the recharge basin.

As part of the County Line Road Improvement Project, SMWC will construct two (2) new 16" pipelines up County Line Road. Staff believes that incorporating the Phase I portion of the project into SMWC's Project will be more efficient and cost-effective by having one contractor perform the work. This will also help streamline City's permit process, traffic control, and paving operations. In order to facilitate this arrangement, the Payment Agreement with SMWC was developed for consideration by the Board of Directors for San Bernardino Valley to reimburse SMWC the actual construction costs, based on the bid price of \$115,000 plus a ten percent (10%) contingency, or up to \$126,500. Additionally, in support of the proposed work, Staff recommends that the Board of Directors direct Staff to file a Notice of Determination (Attachment No. 3) to adopt the environmental

analysis for the DWR Phase I Turnout Project work in the 2022 Addendum to an existing Initial Study/Mitigated Negative Declaration (IS/MND) that was previously done for the City of Calimesa's (City) County Line Transportation Corridor Project in 2019.

Given a high-priority basin status, it is anticipated that the estimated cost of up to \$126,500 for the pipeline will be eligible for grant funding through the Sustainable Groundwater Management Grant Program Sustainable Groundwater Management Act administered by DWR. However, if the grant funding does not cover the entire cost, San Bernardino Valley and the Pass Agency agree to divide the grant proportionally based on their respective costs for the Project.

District Strategic Plan Application

This Project showcases San Bernardino Valley's desire to work collaboratively to provide a reliable, resilient, and sustainable water supply that contributes to a healthy watershed for future generations in the Yucaipa Subbasin.

Fiscal Impact

The value of the Payment Agreement with SMWC for the Phase I facilities of up to \$126,500 will be included in the FY23-24 General Fund Budget for consideration by the Board of Directors.

Attachments:

- 1) Memorandum of Understanding with San Geronio Pass Water Agency
- 2) Draft Payment Agreement with South Mesa Water Company
- 3) Notice of Determination