

# ***San Gorgonio Pass Water Agency***

**DATE:** September 11, 2023

**TO:** Board of Directors

**FROM:** Lance Eckhart, General Manager

**BY:** Emmett Campbell, Senior Water Resources Planner

**SUBJECT: Water Exchange Agreement Between AVEK and SGPWA**

## **RECOMMENDATION**

Staff recommends that the Board of Directors authorize the General Manager to execute the agreement for a One-Time Water Exchange Between Antelope Valley-East Kern Water Agency and San Gorgonio Pass Water Agency.

## **SUMMARY**

2023 has been a very wet year for the State Water Project. Because of this, SGPWA staff anticipates having over 15,000 acre-feet of carryover going into 2024. This presents an opportunity to preserve 2023 excess supply for use in a future year. To preserve some of this water from being reclassified as part of the 2024 Table A allocation, a transfer or exchange will have to be executed with another State Water Contractor who has the capacity to accept additional water this year. One such Contractor is Antelope Valley-East Kern Water Agency (AVEK).

## **BACKGROUND**

SGPWA's water portfolio for 2023 currently sits at around 37,500 acre-feet. This large water portfolio can be attributed to the 100% allocation year and the availability of Article 21 water. To date, SGPWA has received over 5,000 acre-feet of Article 21 water. Staff anticipates delivering over 20,000 acre-feet locally this year, a record-setting amount, and would have over 15,000 acre-feet of carryover going into 2024.

Article 21 is available in years where there is exceptional hydrology. When available, Article 21 presents an opportunity to increase our water supply above our allocated Table A amount for the year. SGPWA received over 5,000 acre-feet of Article 21 in 2023. To take advantage of this additional supply, we must either store available water locally or find a partner who is willing to take this water on our behalf and execute a transfer or an exchange. Since we cannot take all available water locally this year, the need to find a partner would be necessary to preserve the additional supply that Article 21 has provided us in 2023. It would be necessary to execute a transfer and/or exchange agreement whereby SGPWA delivers water to another State Water Contractor, and in exchange, the other State Water Contractor would return a certain amount of water back to SGPWA in a future year. AVEK is one such contractor that has the capacity to execute this type of exchange in 2023.

To retain this additional supply, AVEK, and SGPWA staff have developed an exchange agreement where SGPWA would deliver between 2,500 acre-feet and 4,000 acre-feet of 2023 Table A to AVEK's service area. In exchange, AVEK would return 80% of 2023 delivered water to SGPWA in a future year.

### **FISCAL IMPACT**

The cost of the exchange will be paid in the current fiscal year, from the General Fund Budget (the Green Bucket). Because the primary purpose of the exchange is to store water for future use, the expense would be allocated to the line item 'Purchased Water for Banking (Future Sale), which has a budget of \$2 million. The cost of the agreement includes the cost of delivering the water at the current DWR Variable invoice rate and a local recharge fee. The estimate of total costs range from approximately \$875,000 to approximately \$1,400,000, depending on the delivery point to AVEK and the quantity of water delivered. Revenue derived from the sale of the water when it is returned to the local area, or sold to another entity, will most likely be realized in a future year, and is expected to offset all costs associated with the exchange.

### **ACTION**

Staff recommends that the Board of Directors authorize the General Manager to execute the agreement for a One-Time Water Exchange Between Antelope Valley-East Kern Water Agency and San Gorgonio Pass Water Agency.

### **ATTACHMENT:**

1. One-Time Water Exchange Between Antelope Valley-East Kern Water Agency and San Gorgonio Pass Water Agency
2. AVEK and SGPWA Service Area Map

**AGREEMENT  
FOR A ONE-TIME WATER  
EXCHANGE BETWEEN  
ANTELOPE VALLEY-EAST KERN WATER AGENCY AND  
SAN GORGONIO PASS WATER AGENCY**

This agreement ("Agreement") is made and entered into on September \_\_\_\_\_, 2023 by and between Antelope Valley-East Kern Water Agency ("AVEK") and San Gorgonio Pass Water Agency ("SGPWA"). AVEK and SGPWA are individually referred to herein as "Party" and collectively as "Parties."

**RECITALS**

- A. AVEK and SGPWA are State Water Contractors that receive imported water deliveries from the State Water Project ("SWP").
- B. A SWP Water Supply Contract Amendment for Water Management was executed by the Department of Water Resources ("DWR") and SWP contractors to provide flexibility for transfers and exchanges of SWP water within SWP contractor service areas.
- C. SGPWA has available for delivery to AVEK up to 4,000 acre-feet of SGPWA's 2023 SWP Table A water ("2023 SGPWA Water"); and
- D. AVEK and SGPWA desire to enter into an unbalanced exchange ("Exchange") to more effectively manage their water resources. This Exchange will involve SGPWA delivering to AVEK the 2023 SGPWA Water in 2023 for which AVEK will return to SGPWA 80% of the total water delivered out of a future year's Table A allocation; and
- E. AVEK and SGPWA will each take actions to comply with the California Environmental Quality Act ("CEQA") and each party has determined that the Exchange provided for in this Agreement is exempt from ("CEQA") pursuant to Section 15301 of the State Guidelines.

Now, therefore, incorporating the foregoing recitals herein, the parties agree to a one-time, unbalanced Exchange with the following term and conditions:

**1. Term**

The term of this Agreement shall be from September \_\_\_\_\_, 2023 through December 31, 2033. The Exchange shall be completed on or before December 31, 2033. The term shall be subject to early expiration in the event the Exchange is completed prior to December 31, 2033.

**2. Unbalanced Exchange**

For every one (1) acre-foot of 2023 SGPWA Water delivered to AVEK, AVEK shall return 80 percent (0.8) of an acre-foot (1:0.8, "Exchange Quantity Ratio") to SGPWA ("Return Water"); subject to the terms and conditions herein.

### 3. Storage and Conveyance Rights

SGPWA shall use its best efforts and cooperate in good faith with AVEK to convey or cause the conveyance of the 2023 SGPWA Water, which includes the use of SWP conveyance and storage rights associated with the 2023 SGPWA Water. However, the right to storage of the 2023 SGPWA Water in San Luis Reservoir is on a second priority basis as to SGPWA's other water stored in that reservoir.

### 4. Delivery of 2023 SGPWA Water to AVEK

- a. **Exchange amount:** SGPWA shall make available to AVEK no less than 2,500 acre-feet and up to 4,000 acre-feet of the 2023 SGPWA Water.
- b. **Point of delivery:** The point of delivery of the 2023 SGPWA Water to AVEK shall be any AVEK turnout(s) in Reaches 18A, 19, 20A, 20B, and 22A. 22B may be a point of delivery as long as there is no impact to local deliveries to SGPWA's service area.
- c. **Scheduling:** The delivery of the 2023 SGPWA Water to AVEK will be completed prior to December 31, 2023. SGPWA shall make this water available to AVEK from the date of execution of this Agreement through December 31, 2023. A more specific scheduling of the deliveries to AVEK shall be as mutually agreed. The total quantity of the 2023 SGPWA Water delivered to AVEK by December 31, 2023, reflects the final exchange quantity and, with the Exchange Quantity Ratio applied, determines the amount of AVEK Water to be returned to SGPWA as the Return Water.
- d. **Costs:** SGPWA shall pay all costs to deliver, and any other costs or fees associated with the delivery of the 2023 SGPWA Water as may be imposed by DWR. Any such fees are to be paid within 45 days of invoice from DWR. In addition, SGPWA will pay for any costs incurred by AVEK in association with the delivery/wheeling of the 2023 SGPWA Water through facilities/turnouts which are not owned or operated by AVEK and which AVEK has estimated to be at a cost no greater than \$100 per acre-foot. Except in regard to the fees/costs as set forth herein, each Party shall be responsible for their own costs, expenses and fees incurred in performing this Agreement.

### 5. Return of Water to SGPWA

- a. **Return amount:** AVEK shall return to SGPWA, as the Return Water, 80% of the total delivered as the 2023 SGPWA Water. Said amount shall be between 2,000 and 3,200 acre-feet.
- b. **Point of delivery:** The point of delivery to SGPWA of the Return Water shall be Reach 18A of the California Aqueduct within the AVEK service area, or any other point of delivery available to the Parties and mutually agreeable.

- c. **Scheduling:** The delivery of the Return Water to SGPWA will be completed by December 31, 2033. AVEK shall make the Return Water available to SGPWA on an as-available basis at SGPWA's request, in any future year in which the SWP allocation is 30% or greater through the end of the term of this Agreement. A more specific scheduling of the deliveries of the Return Water shall be as mutually agreed. Notwithstanding the foregoing, if there is any Return Water which remains to be delivered following 2033, the term of this Agreement shall be automatically extended for a 5-year period beginning January 1, 2033 and ending December 31, 2038 ("Extended Term"). During each year of the Extended Term, AVEK shall deliver Return Water in an amount equal to at least 20% of the balance which remains after 2033. Any balance remaining during 2038 shall be completely delivered on or before December 31, 2038.
- d. **Costs:** SGPWA shall pay all costs imposed by DWR to acquire the Return Water and deliver it to SGPWA from the point of delivery described in Section 5b. SGPWA is responsible for the cost to deliver the water from that point on. Any fees imposed by DWR are to be paid within 45 days of invoice from DWR.

## 6. Miscellaneous Provisions

- a. **Approvals and Further Performance:** Parties will cooperate with, and assist one another, in any approvals which are necessary to effect the delivery of the 2023 SGPWA Water and the future delivery of the Return Water, as may be imposed by DWR. In the event the Parties cannot timely obtain the necessary approvals to deliver the 2023 SGPWA Water in 2023, this Agreement shall become null and void and the Parties shall have no further obligations hereunder. In addition, each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
- b. **Other Costs:** This Agreement identifies the total costs of the Exchange. Neither Party will be responsible for any costs other than those identified herein. For example, and not by way of limitation, each Party shall be responsible for its own legal and consulting costs incurred in the preparation, review and implementation of this Agreement. The Parties acknowledge that it may be necessary for them to sign an additional agreement to be prepared by DWR to address changes in the points of delivery and other issues related to operation of the SWP.
- c. **Liability:** Neither Party hereunder shall be liable to the other Party, nor subject to claim or damage of any nature whatsoever for the control, handling, use, disposal, or distribution of water supplied to the other Party after such water has been delivered to the other Party or their designee.
- d. **Time:** Time is of the essence of this Agreement.
- e. **Force Majeure:** All obligations of the Parties shall be suspended so long as, and to the extent that, the performance of any obligation is hindered, interrupted, or prevented by an earthquake, fire, flood, or other act of God, or by a drowning, strike, order of a court or governmental agency, or by any other event or cause beyond the control of the Parties. Upon the cessation of any such event, both Parties shall become obligated to resume performance

of their respective obligations under this Agreement. Notwithstanding the occurrence of any event described in this paragraph, the Parties shall, at all times, diligently undertake all reasonable efforts to perform the obligations contained in this Agreement.

- f. Amendments:** This Agreement may be supplemented, amended, or modified only by the agreement of the Parties. No supplement, amendment or modification will be binding unless it is in writing and signed by both Parties.
- g. Enforceability/ Waiver:** In the event that any term or condition of this Agreement is determined to be invalid, illegal, or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding on the Parties. Unless otherwise agreed in writing, the failure of any Party to require the performance by any other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.
- h. Retention of Water Rights:** This Agreement shall not be construed as a conveyance, abandonment or waiver of any right which is held or owned by either Party to use the water that is exchanged hereunder.
- i. No Third-Party Rights:** This Agreement is made solely for the benefit of the Parties. No other person or entity may have or acquire any right by virtue of this Agreement. To the extent a third party initiates a claim to challenge the Exchange or any aspect of the transaction, each Party (“indemnitor”) shall indemnify, defend, and hold harmless the other Party (“Indemnitee”) from and against any liability which may arise from such a claim due to the acts or omissions of the Indemnitor.
- j. Beneficial Use of Water:** Pursuant to California Water Code sections 475 and 1244, and as otherwise provided by law, the exchange and use of water pursuant to this Agreement shall not constitute evidence of the availability of surplus water or the lack of beneficial use of the water subject to this Agreement.
- k. Attorney's Fees:** In the event of any legal action or proceeding arising from or related in any way to the breach, enforcement or interpretation of this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney's fees and court costs in such amounts as shall be allowed by the court.
- l. Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.
- m. Ambiguities:** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon the attribution to such Party as the source of the language in question. The Parties agree that California Civil Code section 1654 shall not apply to the interpretation of this Agreement.

**n. Integration:** This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

**o. Due Authority:** Each person signing this Agreement represents that he/she has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party for which he/she is signing.

In witness whereof, the parties hereto have caused this Agreement to be executed the day and year first above written.

San Geronio Pass Water Agency

Antelope Valley-East Kern Water Agency

\_\_\_\_\_  
Lance Eckhart, General Manager

\_\_\_\_\_  
Matthew Knudson, General Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

