



# Board Agenda Item 36

DATE: October 19, 2021

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director  
Department of Public Works and Planning

SUBJECT: Approve Conversion of Interim Water Supply Agreement No. 4-06-200-8292A-IR18, with United States Bureau of Reclamation, to a Permanent Water Supply Contract Under the National WIIN Act, and the Execution of a Water Conveyance Contract with the California Department of Water Resources

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a Resolution adopting findings and authorizing the execution by the Director of the Department of Public Works and Planning, subject to review and approval by County Counsel and the Auditor-Controller/Treasurer-Tax Collector of a “Long-Term Conveyance Contract among the Department of Water Resources of the State of California” and the United States of America, for the conveyance of 3,000 acre feet per year of Central Valley Project water through the Cross Valley Canal, and authorize the Director of the Department of Public Works and Planning, subject to review and approval by County Counsel and the Auditor-Controller/Treasurer-Tax Collector, to sign the final contract.**
- 2. Approve and authorize the Chairman to execute a Resolution adopting findings and authorizing the execution by the Director of the Department of Public Works and Planning, subject to review and approval by County Counsel and the Auditor-Controller/Treasurer-Tax Collector of a “Contract Between the United States and the County of Fresno Providing for Project Water Service and Facilities Repayment” to provide a permanent supply of water to County Service Area No. 34 and its current and future zones, including zone A (Brighton Crest), zone C (Bella Vista), zone D (Renaissance at Bella Vista), zone F (The Vistas), and zone G (Granville), and authorize the Director of the Department of Public Works and Planning, subject to review and approval by County Counsel and the Auditor-Controller/Treasurer-Tax Collector, to sign the final contract.**
- 3. Ratify and approve specified prior actions of the Director of the Department of Public Works and Planning as follows: the “Fresno County Service Area No. 34 Notice of Intent to Request a Conversion of the long-term water conveyance and service agreement” under the Water Infrastructure Improvements for the Nation Act, submitted on April 26, 2018 to the United States Bureau of Reclamation (USBR), and the concurrence submitted on June 29, 2021, for the USBR to proceed to a 60-day public comment period for the form of the proposed agreement.**

Approval of the first recommended action approves and authorizes the execution of a Resolution adopting the findings and approving the form of the permanent water service and facilities contract between the California Department of Water Resources (DWR), the United States Bureau of Reclamation (USBR), and the County of Fresno, and authorizing the Director of the Department of Public Works and Planning to sign

the final contract. Approval of the second recommended action approves and authorizes the execution of a Resolution adopting the findings and approving the form of the Long-Term Conveyance Contract among the Department of Water Resources of the State of California and the United States of America, and authorizing the Director of the Department of Public Works and Planning to sign the final water conveyance contract with the USBR to allow up to 3,000 acre-feet (AF) per water year of water received by the County under its agreement with USBR to be conveyed from the Delta through the California Aqueduct (which is part of the State Water Project) to the Cross Valley Canal (CVC). Approval of the third recommended action ratifies and approves the specified prior actions of the Director of the Department of Public Works and Planning (Director) in connection with the recommended agreements. This item pertains to locations in District 5.

ALTERNATIVE ACTION(S):

No viable alternative has been found. If the recommended actions are not approved, County Service Area (CSA 34) will have no access to surface water and therefore will not be able to provide water service to residential and commercial developments in CSA 34 until such time as an alternative water supply is found. The County could request a new long-term water conveyance agreement with USBR for up to 40 years, but the County would be responsible for the financial costs associated with such an agreement, including environmental review. Also, the County would not realize two financial benefits that it will receive through the Water Infrastructure Improvements for the Nation (WIIN) Act conversion. First, the County would not receive a reduced rate for water, as it would have under the proposed permanent agreement. Second, the County would not receive the discount on the CVC Contractors proportional construction costs of the CVC. Additionally, Arvin-Edison Water Storage District (AEWSD) receives Central Valley Project (CVP) water through a water transfer agreement with the County. If the DWR conveyance agreement is not executed, the County would not be able to meet our obligation to transfer water to AEWSD and therefore would potentially be in breach of contract. As a result, the County could lose its contractual right to use Millerton Lake water for CSA 34.

FISCAL IMPACT:

There is no Net County Cost with the recommended actions. All costs for administering the contracts associated with the County's CVP water allocation are budgeted in Department of Public Works and Planning (Department) - CSA 34, Org 9174 (Millerton New Town) and all costs for CSA 34 are paid by service fees and special benefit assessments.

DISCUSSION:

In 1975, the County entered into a three-party CVP Agreement with USBR and DWR for water supply from USBR and water conveyance by DWR, to provide for the delivery of 3,000 AF per water year of CVP water from the Delta, through the California Aqueduct, to the CVC. By separate agreement, AEWSD has agreed to accept delivery of the County's CVP water in exchange for allowing the County to use 1,520 AF per water year of water from Millerton Lake to serve development in CSA 34. Under that separate agreement AEWSD pays the fees to USBR for the County's CVP water that is delivered to the CVC. The County's 1975 agreement with USBR was set to expire at the end of 1995.

In 1992, Congress passed the Central Valley Project Improvement Act (CVPIA) which addresses, among other things, renewal of the CVP water contracts, including the one three-party agreement that the County entered with USBR and DWR in 1975. By the CVPIA, Congress provided that long-term agreements such as the County's 1975 water service agreement with USBR, may be renewed for successive 25-year periods, but only after certain Federal environmental review is completed. While the environmental review and negotiation of long-term renewals was pending, the CVPIA provided for interim renewal contracts for successive two-year periods. On December 12, 1995, the Board approved the first three-party interim renewal contract. Since that time, the Board has approved further three-party interim renewal contracts for periods not exceeding two years. Your Board most recently approved a three-party interim renewal contract on February 28, 2020, which extended the contract period through February 28, 2022.

In 2016, Congress passed the WIIN Act. The WIIN Act affected negotiations with USBR for the use of the County's allocation of CVP water. Specifically, the WIIN Act provided for the conversion of water service contract, including the County's contract with USBR that is subject to interim renewals as described above, into "repayment contracts." Under a repayment contract, the party contracting for CVP water, such as the County, agrees to repay, either in a lump sum or by accelerated repayment, its share of the remaining construction costs for the CVP, as required by the Reclamation Reform Act of 1982, together with ongoing rates and fees for the delivery of water. In order to convert the three-party Interim Water Supply Agreement No. 4-06-200-8292A-IR18 to a permanent water supply contract through the WIIN Act, the conveyance and water service portion of the agreement must be removed. A separate long-term water conveyance and service contract with DWR must be executed to complete the conversion. A copy of the final form of the conveyance contract is attached as Exhibit A to the first recommended Resolution.

Under the WIIN Act, upon the request of a contractor for CVP water, such as the County, the Secretary of the Interior "shall convert any water service contract" into a permanent repayment agreement. On April 26, 2018, the Director sent, by letter to the USBR Area Manager for the Mid-Pacific Region, a notice of intent to request the County's interim renewal contract to a permanent repayment agreement. A copy of the notice of intent is attached as Exhibit A.

On June 14, 2021, USBR presented the final form of the permanent repayment contract to the County and requested concurrence no later than June 29, 2021, to proceed to a 60-day public comment period for the repayment contract, as required by the WIIN Act. On June 29, 2021, the Director provided the requested concurrence. A copy of the final form of the repayment contract is attached as Exhibit A to the second recommended Resolution. This contract is a form agreement that will be the basis for contracts with all CVP Contractors. After the form of the contract is approved by your Board, the County specific information will be inserted and reviewed and approved by County Counsel and the Auditor's Office prior to staff taking the agreement to the Director for signature and execution.

Under the permanent repayment agreement, the County is obligated to pay either a lump sum of \$122,777, which is due 60-days from the effective date of the contract, or four installments of \$31,570, totaling \$126,281, within three years for its share of the remaining construction costs for the CVP. The Department intends to pay the lump sum. A copy of the final Fresno County repayment obligation is attached as Exhibit C to the permanent repayment agreement. The source of funds for the payment is CSA 34, which is the area to be served and benefitted by the contract.

The permanent repayment agreement will provide a firm water supply that will not terminate and will allow for the delivery of a secured water source for CSA 34 and its existing and future zones, including CSA 34A (Brighton Crest), CSA 34C (Bella Vista), CSA 34D Renaissance at Bella Vista), CSA 34F (The Vistas) and CSA 34G (Granville).

The current form of the permanent repayment agreement has highlighted sections that still need dates and contractor specific information to be added. The Department expects that USBR will add the information required prior to the execution of the contract.

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare an environmental impact statement for certain Federal actions. The USBR is preparing a NEPA Environmental Assessment for the long-term water conveyance agreement. USBR's determination is limited to Federal review under NEPA. The NEPA environmental assessment is in the last stages of review and comment period and is expected to be certified prior to the execution of the long-term conveyance agreement.

The USBR asserts that no Federal environmental review under NEPA is needed for the WIIN Act repayment contract.

Lower Tule Irrigation District, as Lead Agency, prepared an Environmental Impact Report (EIR) pursuant to

the California Environmental Quality Act (CEQA) on behalf of all Cross Valley Canal Contractors, of which the County of Fresno is one, to provide CEQA compliance for the execution of long-term water conveyance agreement. The EIR was certified and Resolution No. 2021-9-1 was executed on September 1, 2021 (attached as Exhibit B and C, consecutively).

The Director will not sign the long-term water conveyance contract until after the CEQA EIR is certified by the Lower Tule Irrigation District.

The permanent repayment agreement requires that, after the agreement is executed, the County is required to obtain a final decree of validation from court of competent jurisdiction in the State of California, confirming the proceedings on the part of the County for the authorization of the execution of the permanent repayment agreement. The second recommended Resolution authorizes and directs the Director and County Counsel to take all such actions as are necessary to obtain that final decree of validation.

REFERENCE MATERIAL:

BAI #56, February 25, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A  
Exhibit B  
Exhibit C  
On file with Clerk - Resolution (Conveyance Contract)  
On file with Clerk - Resolution (Permanent Repayment Contract)

CAO ANALYST:

Ron Alexander