



Agenda Item: 5

Date: February 12, 2010

Subject: Resolution 10-07 Approving the 2010-2011 Water Year Warren Act Contract Between the District and the United States Bureau of Reclamation

Staff Contact: Warren Jung, Manager Engineering Services

Recommended Board Action:

Adopt Resolution No. 10-07 Approving the 2010-2011 Water Year Warren Act Contract between the District and the United States Bureau of Reclamation; Contract No. 10-WC-20-3978 pending non-substantive revisions by legal counsel (Exhibit 1).

Discussion:

The Bureau of Reclamation has prepared a new draft 2010-2011 contract agreement for Conveyance of Non-Project Water for the Board's approval and execution (Exhibit 2). A copy was provided for Legal Counsel's review. The agreement is the Bureau's standard agreement, which Sacramento Suburban Water District (SSWD) predecessor water agency has previously executed since 2000 and which has been approved by the SSWD Board since 2002.

Since a proposed long-term agreement has not yet been approved and executed by the Bureau, and the SSWD present short-term agreement will expire on February 28, 2010, a new short-term agreement is required until the long-term agreement is finalized and executed.

The 2010-2011 contract agreement is similar to the 2009-2010, including the condition that the short-term agreement would terminate should the District's proposed long-term agreement is finalized and completed prior to the end date of the short-term agreement. There is one major difference between the previous agreements. The 2010-2011 agreement is for a two-year period instead of the previous single agreements. There are several additional conditions that have been added to the 2010-2011 agreement. The additions were added to clarify some of the items that were included in the 2009-2010 agreement. The items are:

1. Article 1j. – The Bureau clarified and expanded the allowable use of the water in the definition of Municipal and Irrigation Water use.
2. Article 2 – The term of the agreement was increase from one year to two years.
3. Article 3a. – This was introduce in the 2009-2010 agreement except is modified here to allow SSWD to measure the flow at another location other than the Ralston After Bay.
4. Article 3a.1 – This paragraph defines what SSWD will need to do should it take more water than what was previously scheduled for the monthly periods.
5. Article 3b. – This paragraph was added to allow SSWD to change source water as necessary upon mutual agreement with the Bureau including satisfying the environmental requirements to make that change.

6. Article 11b. – This paragraph was removed as SSWD was not applicable to this requirement; however the Bureau stated that current Urban Water Management Plans can be used to satisfy this requirement. According to the Bureau, SSWD has a plan on file, which would satisfy this requirement.
7. 14e. – This paragraph clarified what is on Exhibits D, minimum water quality standards and Exhibit E, the acceptable labs approved by the Bureau for water quality testing. This paragraph; however is under review by the Bureau to determine if it is applicable to SSWD.
8. 14f. – This paragraph clarifies that SSWD should be compliant with a current Quality Assurance Project Plan for sampling, testing and verifying analytical results if quality testing is required. The sampling would be performed at the Middle Fork Project area. SSWD would most likely contract or request Placer County Water Agency (PCWA) to provide analytical results of the raw water if required. This paragraph is also under review by the Bureau to determine if it is applicable to SSWD.

The purpose of the contract is for conveying non-project water through Bureau facilities into San Juan Water District's (SJWD) Peterson Treatment Plant near Folsom Reservoir. The water will be treated and delivered to SSWD through the SJWD Cooperative Transmission Pipeline and the SSWD's Antelope Transmission Pipeline.

Per Bureau policies a Short Term Agreement has a maximum 10,000-acre feet (AF) limitation. SSWD's contract with PCWA is 12,000 AF for 2010. The Bureau has stated they will raise the limitation to 12,000 AF based on the SSWD's negotiation for a proposed Long Term Warren Act Contract with Reclamation. With SSWD's continued involvement to secure a Long Term Contract and the BON (Basis of Negotiation), the Bureau will raise the limitation to meet the 2010-year total of 12,000 AF.

Executing the agreement is required for SSWD to transport raw water purchased from PCWA through the Bureau facilities at Folsom Reservoir.

Fiscal Impact:

There is a cost of \$500.00 for the Bureau's administrative services. The Bureau's total cost of service for conveyance in this agreement is approximately \$16.29 which is less than the 2009-2010 rate of \$17.71 per acre-foot (AF). Per the agreement, SSWD is required to pay the total amount of the schedule quantity of water as cost of service for conveyance at signing of the contract. Based on the quantity of water per our schedule, the cost is approximately \$195,480.00. This total is based on 12,000 AF.

Strategic Plan Alignment:

Water Supply – 1.C. Continue to implement and support demand management strategies that comply with federal, state and regional programs, support Water Forum Agreement goals and efficiently meet the needs of SSWD customers.

The agreement for available use of surface water provides a primary source for SSWD. Use of this water would offset the use of groundwater thus reducing overdraft and promoting conjunctive use.

Exhibit 1

RESOLUTION NO. 10-07

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SACRAMENTO SUBURBAN WATER DISTRICT
APPROVING THE 2010-2011 WATER YEAR WARREN ACT CONTRACT BETWEEN
THE DISTRICT AND THE UNITED STATES BUREAU OF RECLAMATION**

WHEREAS, the United States Bureau of Reclamation is authorized under the Warren Act to convey non-project water through project facilities upon execution of contracts with water suppliers requesting such service;

WHEREAS, the Bureau and the District negotiated and agreed to execute a 2010-2011 Water Year Warren Act Contract, No. 10-WC-20-3978; and

WHEREAS, the United States Bureau of Reclamation desires that the District formally adopts and approves of the Contract to ensure that it complies with applicable federal laws and regulations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Suburban Water District as follows:

1. The Board hereby adopts and approves 2010-2011 Warren Act Contract No. 10-WC-20-3978.
2. The President of the Board of Directors is hereby authorized to execute the Contract.
3. The General Manager and his designees are hereby authorized to implement the terms and conditions of the Contract.

PASSED AND ADOPTED by the Board of Directors of the Sacramento Suburban Water District on the 22nd day of February 2010, by the following vote:

AYES:
NOES:
ABSENT:

By: _____
Thomas Fellenz
President, Board of Directors
Sacramento Suburban Water District

I hereby certify that the foregoing resolution was duly and regularly adopted and passed by the Board of Directors of Sacramento Suburban Water District at a regular meeting hereof held on the 22nd day of February 2010.

(SEAL)

By: _____
Robert S. Roscoe
General Manager/Secretary
Sacramento Suburban Water District

EXHIBIT 2 - DRAFT

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
American River Division, Central Valley Project, California

TEMPORARY CONTRACT BETWEEN THE UNITED STATES
AND
SACRAMENTO SUBURBAN WATER DISTRICT
PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1
1	Definitions.....	2
2	Term of Contract.....	4
3	Introduction, Conveyance, and Delivery of Non-Project Water.....	4
4	Measurement of Non-Project Water	8
5	Operation and Maintenance by Operating Non-Federal Entity.....	9
6	Payments and Adjustments	9
7	Medium for Transmitting Payments	11
8	Excess Capacity	11
9	Acreage Limitation Provisions.....	12
10	Receipt and Distribution of Non-Project Water--Sale, Transfer, or Exchange of Non-Project Water	12
11	Water Conservation	12
12	United States Not Liable	13
13	Opinions and Determinations	13
14	Protection of Water and Air Quality	14
15	Charges for Delinquent Payments.....	16
16	Equal Employment Opportunity	16
17	Certification of Non-Segregated Facilities	17
18	Compliance with Civil Rights Laws and Obligations.....	18
19	General Obligation--Benefits Conditioned Upon Payment	19
20	Books, Records, and Reports	19
21	Contingent upon Appropriation or Allotment of Funds	20

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
22	Assignment Limited--Successors and Assigns Obligated	20
23	Officials Not to Benefit.....	20
24	Changes in Contractor's Organization.....	20
25	Notices	20
26	Incorporation of Exhibits	20
27	Contract Drafting Considerations	21

Signature Page

Exhibit A – Contractor's Boundary Map

Exhibit B – Conveyance Rates

Exhibit C – Source(s) of Contractor's Non-Project Water

4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7 American River Division, Central Valley Project, California

8 CONTRACT BETWEEN THE UNITED STATES
9 AND
10 SACRAMENTO SUBURBAN WATER DISTRICT
11 PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

12 THIS CONTRACT, made this _____ day of _____, 2010,
13 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or
14 supplementary thereto, including the Act of February 21, 1911 (36 Stat. 925), and Section 305
15 of the Reclamation States Emergency Drought Relief Act of 1991, enacted March 5, 1992
16 (106 Stat. 59), all collectively hereinafter referred to as the Federal Reclamation laws,
17 between the UNITED STATES OF AMERICA, hereinafter referred to as the United States,
18 represented by the officer executing this Contract, hereinafter referred to as the Contracting
19 Officer, and SACRAMENTO SUBURBAN WATER DISTRICT, hereinafter referred to as
20 the Contractor;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the
24 Central Valley Project, California, for diversion, storage, carriage, distribution and beneficial
25 use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation,
26 protection and restoration, generation and distribution of electric energy, salinity control,

27 navigation and other beneficial uses, of waters of the Sacramento River, the American River,
28 the Trinity River, and the San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the Contractor asserts a right to a Non-Project Water
30 supply for M&I purposes through its interest in the Middle Fork Project water rights of Placer
31 County Water Agency and has requested the United States convey said Non-Project Water
32 through Excess Capacity in Folsom Reservoir and associated facilities, features of the
33 American River Division, Central Valley Project; and

34 [3rd] WHEREAS, the United States is willing to convey said Non-Project
35 Water to the Contractor through Excess Capacity in said Project Facilities in accordance with
36 the terms and conditions hereinafter stated; and

37 NOW, THEREFORE, in consideration of the covenants herein contained, the
38 parties agree as follows:

39 DEFINITIONS

40 1. When used herein unless otherwise distinctly expressed, or manifestly
41 incompatible with the intent of the parties as expressed in this Contract, the term:

42 (a) "Calendar Year" shall mean the period January 1 through December 31,
43 both dates inclusive;

44 (b) "Contracting Officer" shall mean the Secretary of the Interior's duly
45 authorized representative acting pursuant to this Contract or applicable Reclamation
46 law or regulation;

47 (c) "Contractor's Boundaries" shall mean the geographic area within which
48 the Contractor is authorized to serve Non-Project Water as set forth on Exhibit A,

49 which may be modified in accordance with Article 24, without amendment of this
50 Contract;

51 (d) Omitted;

52 (e) "Excess Capacity" shall mean capacity in the Project Facilities in
53 excess of that needed to meet the Project's authorized purposes, as determined solely
54 by the Contracting Officer, which may be made available to convey and deliver

55 Non-Project Water;

56 (f) Omitted;

57 (g) Omitted;

58 (h) Omitted;

59 (i) Omitted;

60 (j) "Municipal and Industrial Water" or "M&I Water" shall mean

61 Non-Project Water that is made available for purposes other than the commercial
62 production of agricultural crops or livestock, including domestic use incidental thereto.

63 M&I Water shall include water for human use and purposes such as the watering of
64 landscaping or pasture for animals (e.g. horses) which are kept for personal enjoyment
65 or water delivered to landholdings operated in units of less than 5 acres;

66 (k) "Non-Project Water" shall mean water acquired by or available to the
67 Contractor from the source(s) identified in Exhibit C that has not been appropriated by
68 the United States;

69 (l) Omitted;

70 (m) "Project" shall mean the Central Valley Project, owned by the
71 United States and managed by the Department of the Interior, Bureau of Reclamation;

72 (n) "Project Facilities" shall mean Folsom Dam, Reservoir, Pumping Plant,
73 and associated facilities, constructed as features of the American River Division,
74 Central Valley Project;

75 (o) "Rates" shall mean the amount to be paid to the United States by the
76 Contractor, as set forth in Exhibit B, for the use of Excess Capacity in the Project
77 Facilities made available pursuant to this Contract;

78 (p) "RRA" shall mean the Reclamation Reform Act of October 12, 1982
79 (96 Stat. 1263), as amended;

80 (q) "Secretary" shall mean the Secretary of the Interior, a duly appointed
81 successor, or an authorized representative acting pursuant to any authority of the
82 Secretary and through any agency of the Department of the Interior; and

83 (r) "Year" shall mean the period from and including March 1 of the
84 Calendar Year through the last day of February of the following Calendar Year.

85 TERM OF CONTRACT

86 2. This Contract shall become effective on the date hereinabove written and shall
87 remain in effect through February 29, 2012: *Provided*, That upon written notice to the
88 Contractor, this Contract may be terminated by the Contracting Officer at an earlier date, if the
89 Contracting Officer determines that the Contractor has not been complying with one or more
90 terms or conditions of this Contract or upon execution of Contractor's Long Term Warren Act
91 Contract No. 05-WC-20-3279.

92 INTRODUCTION, CONVEYANCE, AND DELIVERY OF
93 OF NON-PROJECT WATER

94 3. (a) During the term of this Contract, the Contractor may introduce up to
95 12,000 acre-feet of Non-Project Water into the Project Facilities at Folsom Reservoir which

96 introduced Non-Project water shall be measured by the Contractor at Ralston Afterbay or
97 other location(s) mutually agreed to in writing by the Contracting Officer. The United States
98 shall convey the Non-Project Water through Excess Capacity in the Project Facilities for
99 delivery to the Contractor at the Folsom Pumping Plant or other location(s) mutually agreed to
100 in writing by the Contracting Officer and the Contractor, in accordance with an approved
101 schedule submitted by the Contractor pursuant to subdivision (c) of this Article: *Provided*,
102 That the quantity of Non-Project Water to be delivered to the Contractor from Project
103 Facilities shall not exceed the quantity of Non-Project Water previously introduced into the
104 Project Facilities by the Contractor at said point(s) of introduction, less five percent for
105 conveyance losses.

106 (a.1.) In the event the quantity of water delivered to the Contractor exceeds the
107 quantity of Non-Project water authorized pursuant to subdivision (a) of this Article, the
108 Contractor shall immediately take all reasonable actions to make available a like amount of
109 water, plus conveyance loss, into the Project Facilities for use by the United States for Project
110 purposes. The provisions of this subdivision are not exclusive and shall not bind the United
111 States from exercising any other remedy, including the early termination of this Contract
112 pursuant to Article 2 of this Contract.

113 (b) Exhibit C may be modified or replaced by mutual agreement of the Contractor
114 and the Contracting Officer to reflect changes to the source(s) of Non-Project without
115 amendment of this Contract: *Provided, however*, That no such modification or replacement
116 shall be approved by the Contracting Officer absent all appropriate environmental
117 documentation, including but not limited to documents prepared pursuant to the National

118 Environmental Policy Act of 1969 (NEPA) and the Endangered Species Act of 1973 (ESA),
119 as amended.

120 (c) All Non-Project Water conveyed and delivered to the Contractor
121 pursuant to this Contract shall be used for M&I purposes.

122 (d) Prior to the introduction of Non-Project Water into the Project
123 Facilities, the Contractor shall submit a schedule to the Contracting Officer showing the
124 quantities of Non-Project Water to be introduced into the Project Facilities, and the desired
125 time or times for delivery of said Non-Project Water: *Provided*, That the Contractor is not
126 required to initially schedule delivery of the maximum quantity of Non-Project Water for
127 which the Contractor desires conveyance during the term of this Contract. The initial
128 schedule and any revision(s) thereof shall be in a form acceptable to the Contracting Officer
129 and shall be submitted at such times and in such manner as determined by the Contracting
130 Officer. The Contractor shall not introduce Non-Project Water into the Project Facilities
131 unless and until the schedule and any revision(s) thereof have been approved by the
132 Contracting Officer.

133 (e) All Non-Project Water remaining in the Project Facilities after 30 days
134 from the date of introduction or upon expiration or termination of this Contract shall be
135 deemed to be unused water donated to the United States for Project purposes. Further, all
136 Non-Project Water made available for delivery to the Contractor from the Project Facilities
137 and not accepted by the Contractor shall be deemed to be unused water donated to the
138 United States for Project purposes.

139 (f) Unless otherwise agreed to in writing by the Contracting Officer, the
140 Non-Project Water shall be introduced into and delivered to the Contractor through existing

141 Project Facilities. If temporary inflow or delivery facilities are required to effectuate the
142 introduction of Non-Project Water into the Project Facilities or the delivery of the Non-Project
143 Water to the Contractor from the Project Facilities, the Contractor shall, at its own cost and
144 expense obtain all necessary rights-of-way for such facilities, including the appropriate
145 right-of-use agreement(s) or other authorizations issued by the United States for any such
146 facilities located on right-of-way for existing Project Facilities. The Contractor, at its own
147 cost and expense, shall be responsible for providing, installing, operating, maintaining,
148 repairing, and replacing said inflow and delivery facilities. The Contractor hereby grants to
149 the Contracting Officer access to all temporary inflow and delivery facilities installed by the
150 Contractor.

151 (g) The introduction, conveyance, and delivery of Non-Project Water
152 pursuant to this Contract will not be supported with Project-use energy. If electrical power is
153 required to pump the Non-Project Water into, through or from the Project Facilities, the
154 Contractor shall be responsible for the acquisition and payment of all electrical power and
155 associated transmission service charges.

156 (h) The Contractor shall have no rights to any benefits from increased
157 power generation that may result from the conveyance of the Non-Project Water through
158 excess capacity in the Project Facilities authorized pursuant to this Contract.

159 (i) The introduction of Non-Project Water into the Project Facilities by the
160 Contractor shall be conditioned upon compliance by the Contractor with the environmental
161 measures described in the environmental documentation prepared in connection with the
162 execution of this Contract and with the terms of the applicable operations procedures
163 approved by the Contracting Officer.

