



# Santa Clara Valley Water District

**File No.:** 20-0547

**Agenda Date:** 6/23/2020

**Item No.:** \*5.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Receive an Update on the Central Valley Project Contract Conversion Process Under the Water Infrastructure Improvements for the Nation Act; \*Adopt a Resolution Approving Mercy Spring Repayment Contract and Authorizing the Chief Executive Officer or her Designee to Execute it; and Approve and Authorize the District Counsel to File a Validation Action for the Mercy Springs Repayment Contract.

### **RECOMMENDATION:**

- A. Receive an update on the Central Valley Project contract conversion process under the Water Infrastructure Improvements for the Nation Act;
- B. \*Adopt the resolution APPROVAL OF MERCY SPRINGS REPAYMENT CONTRACT and authorize the Chief Executive Officer or her designee to execute the Mercy Springs Repayment Contract; and
- C. Approve and authorize District Counsel to file a validation action for the Mercy Springs Repayment Contract.

### **SUMMARY:**

On December 16, 2016, Congress passed the Water Infrastructure Improvements for the Nation Act (WIIN Act). Section 4011 of the WIIN Act allows for Central Valley Project (CVP) contractors to request conversion of their water service contracts into repayment contracts. Contract conversion requires contractors to accelerate payment of their share of CVP capital costs associated with CVP water received under the contract. Once the water service contract is converted, the WIIN Act provides that the repayment contract will continue so long as applicable contract charges are paid by the contractor. Therefore, the repayment contract will not require future renewals. In addition, the WIIN Act earmarks the accelerated payments of outstanding CVP capital costs from converted repayment contracts to an account that will be used by the United States Bureau of Reclamation (Reclamation) to partially fund development of additional water storage projects, some of which may benefit Santa Clara Valley Water District (Valley Water).

Valley Water currently has two CVP water service contracts eligible for conversion. The first is our primary CVP water service contract, which provides Valley Water with a contractual right of up to 152,500 acre-feet annually (CVP Water Service Contract). This contract was executed in 1977 and is set to expire in 2027. Staff is currently in negotiations with Reclamation to convert the CVP Water Service Contract into a repayment contract under the WIIN Act. Negotiations are expected to be

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completed in late 2020. Staff does not recommend any action with regards to the CVP Water Service Contract at this time.

The second CVP water service contract that is eligible for conversion under the WIIN Act is a contract for CVP water that was originally allocated to Mercy Springs Water District but was assigned to Valley Water and Westlands Water District (Westlands) in 1999. Staff, with the assistance of the District Counsel's office, negotiated terms to convert this water service contract into a repayment contract in late November 2019 (Mercy Springs Repayment Contract). Although the Chief Executive Officer has the authority to execute this agreement pursuant to Board Governance Policy EL-5.1.6, Board approval is being requested to establish a clear connection to the statutorily defined timelines associated with the court validation process described below. The Mercy Springs Repayment Contract is included as Attachment 1 to this agenda memo.

After execution of the Mercy Springs Repayment Contract, the contract requires Valley Water and Westlands to file a validation action to secure a court decree stating that the Mercy Springs Repayment Contract is binding among the parties involved. Staff is requesting authorization from the Board for the District Counsel to file such validation action. A similar validation action will be required for Valley Water's CVP Water Service Contract when negotiations are complete and that repayment contract is executed.

## **BACKGROUND**

Reclamation Law provides for two basic types of contracts: water service contracts and repayment contracts. They are often distinguished by their term, and by the schedule in which construction costs must be repaid to the federal government. Water service contracts typically have terms that last for several decades, and the allocated construction costs are paid incrementally through annual water rates. Unlike water service contracts, repayment contracts do not expire, and costs are normally paid through equal installments over a defined schedule.

Contract conversion under the WIIN Act involves a negotiation process open to the public. The prepayment of capital costs under the WIIN Act is accelerated and paid either as a lump sum or within three years of executing the repayment contract. While conversion has always been available to CVP contractors, revenues generated for accelerated payment of the capital costs for contract conversion under the WIIN Act will now be held in a special account to be used to fund additional storage projects.

Contract conversion does not increase entitlement to CVP water deliveries. Instead, repayment contracts are still subject to the same CVP contract shortage provisions and policies that exist today. Reclamation will adhere to its existing process for determining water allocations based on annual hydrologic conditions and requirements to support environmental and water quality protections in the Delta and its tributaries.

Valley Water staff (including attorneys from the District Counsel's office), along with a majority of CVP contractors, participated in public negotiations with Reclamation on specific contract language that will be applicable to all CVP contractors electing to execute repayment contracts. The contract language was limited to authorizations proscribed in the WIIN Act, including specifying terms for

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prepayment of contractors' CVP capital costs and the continuation of the repayment contract so long as applicable charges and rates are paid. Over 75 CVP contractors are seeking to convert their water service contracts into repayment contracts under the WIIN Act. Reclamation will hold individual negotiations with each of those CVP contractors in the coming months. Due to the administrative burden placed on Reclamation staff each of those negotiations will occur on a different timeline.

### **Mercy Springs Partial Assignment**

On May 14, 1999, Valley Water executed the Agreement for Partial Assignment of Water Service Contract (Partial Assignment Contract) with Mercy Springs Water District (Mercy Springs), Pajaro Valley Water Management District (Pajaro Valley), Westlands Water District (Westlands), and the U.S. Bureau of Reclamation (Reclamation). That contract transferred a portion, up to 6,260 acre-feet annually, of Mercy Springs' Central Valley Project (CVP) contractual water supply to Valley Water, Pajaro Valley, and Westlands. In exchange, Valley Water, Pajaro Valley, and Westlands agreed to assume all of Mercy Springs' rights and obligations associated with the transferred CVP contractual water supply.

The mechanism for sharing the CVP contractual water supply among Valley Water, Westlands and Pajaro is described in a separate agreement associated with the assignment. Under this contract, Valley Water receives 25 percent of the assigned Mercy Springs water supply, while Westlands receives the remaining 75 percent. Pajaro Valley's entitlement to Mercy Springs water was conditioned on building conveyance facilities necessary to receive it in its service area. Pajaro Valley never constructed those conveyance facilities and on July 26, 2019 it sent a letter to Reclamation stating that it would not exercise the option to take delivery of any of Mercy Springs water, thus withdrawing its interest in the Mercy Springs Partial Assignment Contract. Valley Water and Westlands will now have exclusive rights to share amongst themselves the assigned Mercy Springs water.

The long-term renewal of the Mercy Springs Partial Assignment Contract and many other CVP contracts has been delayed due to challenges to the reconsultation process on biological opinions for Reclamation's Operating Criteria and Plan. As a result, the Mercy Springs Partial Assignment Contract has been renewed in a series of two-year Interim Renewal Contracts, providing contractual continuity during the negotiations for the eventual execution of a long-term renewal. The current two-year Mercy Springs Interim Renewal Contract will expire on February 28, 2022. The interim contract will terminate once the Mercy Springs Partial Assignment Contract is converted into the Mercy Springs Repayment Contract under the WIIN Act.

Negotiations on the Mercy Springs Repayment Contract were completed and underwent a 60-day public review period, which ended on February 19, 2020. Reclamation has finalized the Mercy Springs Repayment Contract after its consideration of comments received during the public review period.

### **FINANCIAL IMPACT:**

Execution of the Mercy Springs Repayment Contract is anticipated to require a payment of approximately \$84,733 for capital costs. Staff will make a lump sum payment of this amount upon

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execution of the Mercy Springs Repayment Contract. There are sufficient funds in the Imported Water Unit budget project #91131006 to cover this expense.

Valley Water will also be obligated to pay to Reclamation all applicable rates and charges associated with the delivery of water pursuant to the Mercy Springs Repayment Contract in the future. After payoff of the capital costs through contract conversion, these charges are anticipated to range from \$50 to \$75 per acre-foot for all water delivered under that contract.

**CEQA:**

The Mercy Springs Repayment Contract is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of CEQA Guidelines, which exempts the operation of existing public structures involving negligible or no expansion beyond existing use. The Mercy Springs Repayment Contract is also exempt under the common sense exemption pursuant to CEQA Section 15061(b)(3), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Valley Water staff will file a Notice of Exemption with the Clerk of the County of Santa Clara in compliance with CEQA.

**ATTACHMENTS:**

- \*Original Board Agenda Memo
- \*Original Attachment 1: Mercy Springs Repayment Contract
- \*Original Attachment 2: Resolution
- \*Original Attachment 3: PowerPoint
- \*Supplemental Board Agenda Memo
- \*Supplemental Attachment 1: Revised Resolution
- \*Handout 5.2-A, M. Giberson

**UNCLASSIFIED MANAGER:**

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