



Santa Clara Valley Water District

File No.: 21-0598

Agenda Date: 6/8/2021
Item No.: 2.9.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt the Resolution Approving the Central Valley Project Repayment Contract, and Authorize District Counsel to File a Validation Action for the Central Valley Project Repayment Contract.

RECOMMENDATION:

- A. Receive information and discuss the proposed Central Valley Project Repayment Contract;
- B. Approve the Central Valley Project Repayment Contract by adopting the Resolution APPROVAL OF CENTRAL VALLEY PROJECT REPAYMENT CONTRACT; and
- C. Authorize District Counsel to file a validation action for the Central Valley Project 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 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's primary CVP water service contract provides Valley Water with a contractual right of up to 152,500 acre-feet of CVP water annually. During critically dry years, a large portion, if not a majority, of Santa Clara County's surface water supplies is derived from this contract. The contract was first executed in 1977 and is set to expire in 2027. Contract conversion under the WIIN Act would replace this contract with a permanent one and eliminate the need to renew upon expiration.

Valley Water has negotiated the conversion of this contract into a repayment contract and is seeking approval from Valley Water's Board to execute the agreement. Execution will help sustain Valley Water's CVP supplies into the future and improve the County's water supply reliability. The

converted CVP Repayment Contract is included with this memorandum as Exhibit A to the attached Resolution (Attachment 1).

Valley Water's CVP Repayment Contract underwent a 60-day public review period, which ended on February 16, 2021. Reclamation has finalized the CVP Repayment Contract after its consideration of comments received during the public review period. The contract requires Valley Water to file a validation action after execution to secure a court decree stating that it is binding among the parties involved. Staff is requesting authorization from the Board for the District Counsel to file such validation action.

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 by 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.

In 2007 Valley Water negotiated a separate repayment contract for its share of San Felipe Division capital costs, which has an outstanding balance of approximately \$200 million. This amount is not subject to prepayment upon execution of the CVP Repayment Contract and instead will be repaid through 2035 according to the schedule included in the previously negotiated repayment contract.

Contract conversion does not increase entitlement to CVP water deliveries. Instead, repayment contracts are still subject to environmental regulations, CVP water shortage provisions, and polices that both exist today and may be put in place in the future. 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 prescribed in the WIIN Act, including specifying terms for 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. After the conclusion of the CVP-wide negotiations, Reclamation held individual negotiations with each of these CVP contractors in the months that followed. Due to the administrative burden placed on Reclamation staff, each of those

negotiations occurred on different timelines.

FINANCIAL IMPACT:

Execution of the CVP Repayment Contract is anticipated to require a payment of approximately \$13.2 million for CVP capital costs. The exact payment may fluctuate slightly from Reclamation's estimate included as Exhibit F of the CVP Repayment Contract because it will be determined by the Constant Maturity Treasury rate on May 1, 2021, which is the effective date of the contract. If approved, staff will make a lump sum payment of this amount upon execution of the CVP Repayment Contract. This expense will be covered using funds specifically encumbered from the FY2018-19 and FY2019-20 Imported Water Program budget project #91131006 and using funds available in the FY2020-21 Imported Water Program budget.

Valley Water will also be obligated to pay to Reclamation all applicable rates and charges associated with the delivery of water pursuant to the CVP Repayment Contract in the future. Valley Water's 2021 CVP water rates range from approximately \$75 to \$100 per acre-foot. 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 the contract and will be covered in the Imported Water Unit budget.

CEQA:

The CVP 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 CVP 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:

Attachment 1: Resolution (with Repayment Contract)

Attachment 2: PowerPoint

UNCLASSIFIED MANAGER:

Vincent Gin, 408-630-2633