

STAFF REPORT

To: Coastside County Water District Board of Directors

From: David Dickson, General Manager

Agenda: November 14, 2017

Report

Date: November 7, 2017

Subject: Agreement for Emergency Water Supply between Coastside County Water District and Montara Water and Sanitary District

Recommendation:

None.

Background:

The October 18, 2010 Agreement for Emergency Water Supply between CCWD and Montara Water and Sanitary District ("Agreement", copy attached) defines the terms and conditions under which either District may provide water to the other in the event of an emergency as defined in the Agreement. Director Coverdell has requested that a discussion of the Agreement and its implementation be placed on the agenda.

AGREEMENT FOR EMERGENCY WATER SUPPLY

THIS AGREEMENT is made and entered into as of OCTOBER 18, 2010 by and between **MONTARA WATER AND SANITARY DISTRICT** ("MWSD") and **COASTSIDE COUNTY WATER DISTRICT** ("CCWD"), public agencies located in the County of San Mateo, California.

RECITALS

WHEREAS, CCWD is a county water district established and operating under the County Water District Law (California Water Code §30000 et seq.); and

WHEREAS, MWSD is a sanitary district established and operating under the Sanitary District Act of 1923 (California Health and Safety Code §6400 et seq.), empowered to operate its water system under the County Water District Law pursuant to Health and Safety Code Section 6512.7; and

WHEREAS, CCWD and MWSD are separate and independent special districts that provide water service to different and distinct communities located in the mid-coastside region of San Mateo County, California and nothing in this Agreement is intended to or should be construed as expanding or decreasing the respective rights and responsibilities of either agency to provide water service to the customers within their respective service areas; and

WHEREAS, CCWD and MWSD desire to provide for a mutual temporary, interruptible water supply in the event they, respectively, incur a water shortage emergency;

NOW THEREFORE, the parties hereto agree as follows:

1. Purpose. This Agreement is entered into for the mutual benefit of the parties to provide a temporary, interruptible supply of water for use during a water shortage emergency as hereinafter described. The parties hereby covenant and agree to cooperate and assist each other in providing such water supply in furtherance of the public health, welfare and necessity.

2. Emergency Water Supply. CCWD hereby agrees to provide an Emergency Water Supply to MWSD and MWSD hereby agrees to provide an Emergency Water Supply to CCWD subject to the terms and conditions of this Agreement. For purposes hereof, "Emergency Water Supply" means a

temporary, interruptible supply of water to help alleviate a water shortage emergency when either CCWD or MWSD finds and determines that the ordinary demands and requirements of its water users cannot be satisfied without depleting its water supply to the extent that there would be insufficient water for human consumption, sanitation and fire protection. The water shortage emergency must be caused by either 1) a sudden, unanticipated lack of water supply due to causes beyond the "Requester's" (defined in Paragraph 3) reasonable control, or 2) damage to water system facilities as a result of a "Force Majeure" (defined in Paragraph 15).

Neither CCWD nor MWSD may provide an Emergency Water Supply to the other agency for more than ninety (90) consecutive calendar days in a three hundred sixty-five (365) calendar day period. In unusual and unique circumstances when a water shortage emergency cannot be alleviated within the initial ninety (90) calendar day period, CCWD and MWSD may continue to provide an Emergency Water Supply to the other party for up to an additional ninety (90) consecutive calendar day period for a maximum time of no longer than one hundred eighty (180) consecutive calendar days in any three hundred sixty-five (365) calendar day period.

This Agreement is contingent upon approval of such regulatory agency or agencies that has/have jurisdiction over its subject matter. Neither party shall have any obligation to provide an Emergency Water Supply to the other party until all applicable regulatory and governmental permits and approvals have been obtained.

3. Procedure. In the event one of the parties ("Requester") determines that it has incurred a water shortage emergency that requires an Emergency Water Supply, it shall notify the other party ("Supplier") thereof in writing (except as hereinafter provided) not less than ten (10) calendar days in advance of the date upon which the Requester desires commencement of the Emergency Water Supply. The notification shall include a concise but complete description of the circumstances upon which the request is based. The Supplier shall respond in writing within five (5) calendar days of the date of the Requester's notice stating whether it will, will not or will conditionally provide the Emergency Water Supply.

The Supplier shall have sole discretion to determine whether it shall provide the Emergency Water Supply and, if so, under what conditions; provided, that no such condition shall be contrary to, or conflict with, the provisions of this Agreement. If the Supplier agrees to provide the Emergency Water Supply and the Requester agrees to such conditions, if any, required by the Supplier, the parties shall confer regarding, and cooperate in implementing, such matters as location of system connection(s), commencement of service, estimated volume and duration of service, anticipated interruptions of service, obtaining requisite regulatory permits or other entitlements, if any, and other logistical aspects in order to effectuate delivery of the Emergency Water Supply as expeditiously and economically as reasonably feasible. Notwithstanding the above notification procedure, in the event of a serious unanticipated water shortage emergency that imminently threatens the public health, welfare and safety of the Requester's water system users and the Supplier determines that it is able and willing to respond to such emergency, the parties may waive the ten-day notification requirement hereof and proceed, at the Supplier's discretion aforesaid, to effectuate the Emergency Water Supply in the most expeditious manner feasible.

4. Compensation. The Requester shall compensate the Supplier for the Emergency Water Supply based on the volume of water consumed charged at the Supplier's rate or rates for its non-residential users, current at the time the Emergency Water Supply is provided. Payment shall be made on a monthly basis within thirty (30) days of the date of billing.

5. Costs. All costs incurred by the Supplier in providing the Emergency Water Supply shall be borne by the Requester. Undisputed costs shall be due and payable within 30 days of the date of the Supplier's invoice therefor, which shall briefly describe each of the itemized costs. Any disputes regarding costs shall be resolved through the dispute resolution procedure described in paragraph 16.

6. Term. The Term of this Agreement is one year from the date first hereinabove written ("Term"); provided, that the Term shall be renewed automatically for successive one-year Terms, subject to termination set forth in Paragraph 7.

7. Termination. Either party may terminate this Agreement at any time during the Term or any renewed Term by giving the other party written notice thereof not less than ninety (90) days prior to the effective date of termination, which date shall be included in the notice; provided, that if the date of termination is not included in the notice, it shall be deemed to be ninety (90) days from the date of the notice.

8. Hold Harmless; Indemnification. CCWD shall defend, hold harmless and indemnify MWSD, its governing board, officers, employees, agents and consultants from any and all claims, lawsuits, causes of action and liability of any nature or kind for injuries to persons or damage to property arising from the negligent, intentional or wrongful acts or omissions of CCWD, its governing board officers, employees, agents or consultants in the performance or failure to perform any of its or their obligations, express or implied, under this Agreement.

MWSD shall defend, hold harmless and indemnify CCWD, its governing board, officers, employees, agents and consultants from any and all claims, lawsuits, causes of action and liability of any nature or kind for injuries to persons or damage to property arising from the negligent, intentional or wrongful acts or omissions of MWSD, its governing board, officers, employees, agents or consultants in the performance or failure to perform any of its or their obligations, express or implied, under this Agreement.

The duty to indemnify shall include the duty to defend as set forth in Civil Code Section 2778. In the event of the concurrent negligence of the parties, their respective governing boards, officers, employees, agents or consultants in the performance or failure to perform any of its or their respective obligations under this Agreement, then the liability for any and all claims, lawsuits, causes of action and liability of any nature or kind for injuries to persons or damage to property arising out of such concurrent negligence shall be apportioned under California's theory of comparative negligence as presently established, or as may be hereafter modified.

9. Insurance. Each party covenants and warrants to the other that, upon the commencement of the Term and so long as this Agreement is in effect, it is and shall be insured or self-insured in an amount of not less than Three Million

Dollars (\$3,000,000) for each occurrence giving rise to personal injury or property damage liability for which they respectively may be held responsible. Each party shall furnish to the other a Certificate of Insurance and a copy of the declaration page of its insurance policy or documentation of self-insurance satisfactory to the receiving party that evidences the coverage required hereunder and an endorsement or other acknowledgment satisfactory to the receiving party that provides that said party shall be given not less than ten (10) days' prior written notice of any intended cancellation, reduction or change in coverage of such insurance or self-insurance.

10. Limited Responsibility; Release. The Emergency Water Supply delivered by the Supplier to the point of connection of its water system with that of the Requester (i.e. to the point on the Supplier's water system where a temporary meter is installed to measure the Emergency Water Supply) shall comply with the water quality standards established for potable water. The Requester shall be solely responsible for the quality of the Emergency Water Supply from said point of connection and for such other potable water, irrespective of its source, that is provided to the Requester's customers.

Upon taking delivery of the Emergency Water Supply the Requester shall be deemed to release, and hereby does release, the Supplier from any and all liability of any nature or kind arising out of, or pertaining to, the quality of water provided to the Requester's customers, except to the extent that the Emergency Water Supply does not comply with the requirements of the first sentence of the immediately preceding paragraph. Additionally, each party releases and discharges the other party from any and all liability of any nature or kind arising out of, or pertaining to, a decision by either party not to provide an Emergency Water Supply.

The foregoing release is a general release and the parties shall be deemed to, and do hereby, waive the provisions of Civil Code Section 1542 which provides as follows:

“§1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of

executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

11. Status. The parties hereto are independent contractors and the officers, employees, agents and consultants of one shall not be deemed to be officers, employees or agents of the other in the performance of their respective duties and obligations hereunder. Furthermore, under no circumstances shall either party be deemed to be a retail user or customer of the other party by entering into this Agreement or by receiving an Emergency Water Supply.

12. Successors. This Agreement and the duties and obligations hereunder shall be binding upon, and the benefits hereof shall inure to, the successors and assigns of CCWD and MWSD, respectively.

13. Non-assignability. This Agreement and the obligations, duties and rights hereunder shall not be assigned by one party without the prior written consent of the other party, which consent shall not unreasonably be withheld.

14. Notices. Notices required or convenient for performance hereunder shall be in writing, unless otherwise specified in writing, and shall be delivered personally, deposited with the United States Postal Service, first-class postage prepaid in an envelope addressed as follows, or by facsimile as follows:

To CCWD: General Manager
Coastside County Water District
766 Main Street
Half Moon Bay, CA 94019

By facsimile: (650) 726-5245

To MWSD: General Manager
Montara Water and Sanitary District
8888 Cabrillo Highway
P.O. Box 370131
Montara, CA 94037

By facsimile: (650) 728-8556

15. Force Majeure. The performance of the parties' obligations and duties hereunder shall be excused by reason, and for the duration, of Force Majeure. "Force Majeure" as used herein means fire, flood, earthquake, or other natural calamity, or acts of God, governmental action or inaction not caused by the party

claiming excuse of performance, labor strike, slowdown or other labor action, except for strikes, slowdowns or labor actions by employees of a party hereto, civil unrest, acts of terrorism or other cause beyond the control of the party claiming excuse of performance. Upon the cessation of the Force Majeure, the party whose performance was excused thereby shall commence and diligently pursue to completion the obligation or duty excused.

16. Dispute Resolution. In the event a dispute arises between the Parties regarding the interpretation of this Agreement or their performance or failure to perform their respective duties and obligations hereunder, the party claiming a dispute shall give written notice thereof to the other party expressly describing the matter disputed. The parties shall meet and confer within thirty (30) days of the date of the notice and attempt to resolve the dispute informally. If they are unable to resolve the dispute by the informal meeting, the dispute shall be submitted to mediation with a mediator selected by agreement of the parties or by striking names from a list of mediators provided by the San Francisco, California, Office of the American Arbitration Association. Costs of mediation shall be divided equally. If the dispute is not resolved by mediation or by another form of Alternative Dispute Resolution upon which the parties may agree, the parties may pursue such legal or equitable remedies as they may choose.

17. Paragraph Headings. Paragraph headings herein are for convenience of reference and shall not be deemed to modify or amend the provisions of the paragraphs headed thereby.

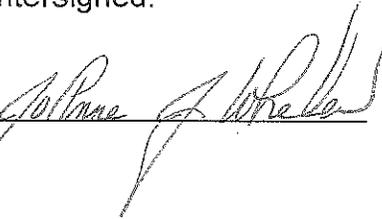
18. Prior Agreement; Integration. That certain agreement entitled, "Agreement for Temporary, Interruptible, Supplemental Water Supply," dated as of the 15th day of August 2001 by and between Citizens Utility Company of California, predecessor in interest of MWSD, and Coastside County Water District has expired and shall have no further force and effect from and after the date hereof. This Agreement comprises the entire agreement between the parties and supersedes and replaces all prior oral and written agreements, notes, memoranda, or other communications between the parties pertaining to the subject matter hereof.

IN WITNESS WHEREOF the parties have signed this Agreement as of the date first hereinabove written.

**Coastside County Water District
("CCWD")**

By: 
General Manager

Countersigned:

By: 

**Montara Water and Sanitary District
("MWSD")**

By: 
General Manager

Countersigned:

By: 
District Secretary