

A. Approve a Storage Agreement between Cucamonga Valley Water District and Western Municipal Water District to Complete the Chino Basin Water Purchase and Storage Transaction

Agenda Item: 6A

February 5, 2024

TO: THE ENGINEERING, OPERATIONS, AND WATER RESOURCES COMMITTEE

Director Gracie Torres

Director Fauzia Rizvi

FROM: Tim Barr, Deputy General Manager

APPROVE A STORAGE AGREEMENT BETWEEN CUCAMONGA VALLEY WATER DISTRICT AND WESTERN MUNICIPAL WATER DISTRICT TO COMPLETE THE CHINO BASIN WATER PURCHASE AND STORAGE TRANSACTION

RECOMMENDATION:

Staff requests that the Engineering, Operations, and Water Resources Committee recommend the Board of Directors:

1. Authorize the General Manager to execute a Water Storage Agreement between Cucamonga Valley Water District and Western Municipal Water District.

EXECUTIVE SUMMARY:

On April 19, 2023, the Board of Directors granted Western Municipal Water District's General Manager the authority to purchase up to \$20 million in available surplus water for groundwater storage to augment supplies for future dry years. Western Municipal Water District executed a Board-approved water purchase agreement with Inland Empire Utilities Agency in December 2023 for approximately 3,600 acre-feet of imported water and will store it in the Chino Basin through Cucamonga Valley Water District's groundwater storage account. The proposed agreement with Cucamonga Valley Water District is required to facilitate the ownership transfer and storage of the water.

BUDGET IMPACT:

Execution of the agreement has no budget impact. The authorization to purchase available water supplies was approved under the Board of Directors action on April 19, 2023. The General Fund was utilized to purchase the available supplies under the purchase agreement with Inland Empire Utilities Agency, and the purchase will be recorded as an asset (water inventory) until extracted

and sold to either Western Municipal Water District's retail customers, a retailer within the wholesale service area, the participating Santa Ana River Conservation and Conjunctive Use Program agencies, or water agencies in the Chino Basin. At the time of delivery, a purchased water expense would be recorded, and the water inventory reduced accordingly.

DETAIL:

With the 2023 Water Year's extraordinary hydrologic conditions, Western Municipal Water District (Western Water) is pursuing water purchase and storage opportunities for up to \$20 million through fiscal years 2023-2024 and 2024-2025. Participating in wet-year water purchases will increase the water in storage and help enhance local supply resiliency for Western Water and its retail and wholesale customers.

Western Water staff identified an opportunity to partner with the Inland Empire Utilities Agency (IEUA) and Cucamonga Valley Water District (CVWD) to purchase available imported water from IEUA currently stored in the Chino Basin accounted for in a groundwater subaccount of CVWD. Originally, IEUA purchased 3,641.6 acre-feet of water from Metropolitan Water District in the spring of 2016 and the winter of 2017. Over the ensuing years, 44.847 acre-feet have been lost to seepage, leaving a balance of 3,596.753 acre-feet.

Western Water executed a water purchase agreement with IEUA in December 2023, purchased the currently stored water, and seeks to continue to store the water in the Chino Basin through CVWD's groundwater storage account. The proposed water storage agreement (Storage Agreement) with CVWD is required to complete transfer of the water from IEUA to Western Water.

The key terms of the proposed Storage Agreement are summarized below:

CVWD & Western Water Storage Agreement

- **Storage** – Through CVWD's approved storage account in the Chino Basin, CVWD will store 3,596.753 acre-feet of water under Western Water's ownership (Western-Credited Stored Water). The Western-Credited Stored Water is subject to losses normally assessed to Appropriative Pool storage accounts by the Chino Basin Watermaster. Any such losses will be passed through to Western Water by CVWD and assessed to Western Water.
- **Accounting** – Annually, CVWD is responsible for providing Western Water with a written summary of the Western-Credited Stored Water balance which includes prior water balances, water added, losses applied, transfers, and new water balance.

- **Right to Purchase** – Should Western Water elect to sell the Western-Credited Stored Water, CVWD has a right of first purchase of up to 50 percent (50%) of the water that is in storage at the same rate Western Water paid at the time of purchase, plus any associated costs assessed and after counting for any losses.
- **Term** – Initial agreement term through December 31, 2030, with the option for a one-year extension.

The attached Storage Agreement is in draft form; however, no substantive changes are expected. Should modifications become necessary, the document will be re-reviewed by legal counsel. Should legal counsel determine that the changes are substantive in nature, staff will return to a subsequent Board meeting to seek approval of the updated document. If legal counsel determines that the changes are non-substantial, additional Board approval will not be sought by staff.

CVWD's Board of Directors approved the Storage Agreement on January 23, 2024.

Reason for Action:

An agreement is necessary to transfer ownership of the water purchased from IEUA to Western Water and continue to store it within CVWD's existing Chino Basin storage account.

Solution:

Approve the Storage Agreement.

STRATEGIC PRIORITIES REFERENCE:

This action is in alignment with Western Water's Strategic Priorities of Resource Management and Superior Service.

PROPOSED DATE OF ACTION:

If approved by the Committee, this item is scheduled for consideration by the full Board of Directors at their meeting on February 21, 2024.

LEGAL COUNSEL REVIEW:

Legal counsel has reviewed the Water Storage Agreement between Western Water and CVWD.

Engineering, Operations and Water Resources Committee Meeting

February 5, 2024

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Respectfully submitted by:

Tim Barr, Deputy General Manager

Attachment:

1. Storage Agreement Between Western Municipal Water District and Cucamonga Valley Water District

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DRAFT STORAGE AGREEMENT Between
Western Municipal Water District and
Cucamonga Valley Water District

This Storage Agreement (“Agreement”) is made on _____, 2024, by and between the Cucamonga Valley Water District (“CVWD”) and Western Municipal Water District (“Western Water”). CVWD and Western Water are herein collectively referred to as “the Parties” individually as “the Party”.

RECITALS

WHEREAS, the Chino Groundwater Basin (“Chino Basin”) is one of the largest subsurface storage aquifers in Southern California and has the potential to store large volumes of water for local use during dry periods; and

WHEREAS, a Judgment was entered in San Bernardino County Superior Court in 1978 that adjudicated rights to the groundwater and storage capacity within the Chino Basin and established a physical solution; and

WHEREAS, the Peace I Agreement and Peace II Agreement (together “Peace Agreements”) established further agreement and rules regarding storage; and

WHEREAS, the Peace II Agreement expires on December 31, 2030; and

WHEREAS, CVWD has groundwater pumping rights and storage rights within the Chino Basin; and

WHEREAS, Western Water was established by a vote of the people to be, among other things, the Metropolitan Water District of Southern California (Metropolitan) member agency providing service to retail water agencies, one of which (Jurupa Community Services District) also overlays the Chino Basin; and

WHEREAS, during a period of extreme drought, CVWD’s demands for imported water from Metropolitan were lower than minimum delivery reads on Metropolitan’s meter (Minimum Service Connection Flow), essentially resulting in deliveries of water beyond CVWD’s preference, hereafter referred to as “Minimum Flows Balance Water ”; and

WHEREAS, the Inland Empire Utilities Agency (IEUA) voluntarily agreed to purchase the Surplus Water from Metropolitan during the months of April, May and June of 2016 and January, February and March of 2017, totaling 3,641.600 acre-feet of untreated Tier 1 water; and

WHEREAS, the IEUA and CVWD entered into an agreement (the “IEUA Agreement”) on February 26, 2016, establishing the terms for IEUA’s purchase of Minimum Flows Balance Water, payment

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responsibilities, accounting of the water over time, and use of CVWD's storage account in the Chino Basin to store the water, and the IEUA Agreement was amended once on June 30, 2017, to extend the term to June 30, 2018; and

WHEREAS, within the 60 months allowed under the terms of the amended IEUA Agreement, IEUA determined that it wished to sell the water at a price that fully compensated IEUA for its costs and has worked in good faith to secure a buyer for the water; and

WHEREAS, after offering the Minimum Flows Balance Water for sale to IEUA's retail agencies at cost, Western Water was the only agency offering to purchase the water at IEUA's sale price; and

WHEREAS, IEUA notified Metropolitan of its intention to sell its Minimum Flows Balance Water to Western Water on August 29, 2023, in compliance with Section 4205 of Metropolitan's Administrative Code, and Metropolitan approved the transaction on September 11, 2023, without restrictions, but required notification of the transaction when it occurred so that it can be reported to its Board of Directors; and

WHEREAS, CVWD has faithfully maintained records on the losses associated with the Minimum Flows Balance Water and a total of 3,596.753 acre-feet remains after losses of 44.847 acre-feet are subtracted; and

WHEREAS, the Parties now desire to enter into this Agreement in order for CVWD to maintain the water in storage, now on behalf of Western Water, following Western Water's purchase from IEUA.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION 1: SALE OF STORED WATER FROM IEUA TO WESTERN WATER

A. This Agreement shall not take effect unless and until CVWD and Western Water receives written notification from the IEUA confirming the sale and disposition of the Minimum Flows Balance Water to Western Water, including full execution of a purchase and sale agreement between IEUA and Western Water. The IEUA Board approved sale of the stored water which totals 3,596.753 AF to Western Water in the amount of \$2,572,535.76 on December 20, 2023.

SECTION 2: STORED WATER CREDITS

- A. Following Western Water's successful purchase of the Minimum Flows Balance Water contemplated by Section 1 of this Agreement, CVWD shall store and account for, an equivalent volume of Chino Basin groundwater to Western Water within CVWD's existing Excess Carryover Storage Account ("Western-Credited Stored Water").
- B. Western-Credited Stored Water shall be subject to losses normally assessed to Appropriative Pool storage accounts by Watermaster and any such losses shall be passed through to Western Water by CVWD and assessed to Western Water.

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- C. Western Water shall be responsible for any incurred fees/assessments attributable to the volume of water stored under this Agreement. Any such fees/assessments will be passed through to Western Water by CVWD.
- D. CVWD shall provide Western Water with a written summary of the Western-Credited Stored Water balance (which shall include, at a minimum, prior water balance, water added, losses applied, transfers in/out and new water balance) within 30-days of the approved annual Chino Basin Watermaster Assessment package.
- E. During the term of this Agreement, should Western Water elect to sell the Western-Credited Stored Water, CVWD shall have a right of first refusal to purchase up to fifty percent (50%) of the water from Western Water at the same rate Western Water paid at the time of purchase, plus any associated costs assessed and after accounting for any losses. Should CVWD decline to purchase the water using its right of first refusal, Western Water may offer the Western-Credited Stored Water to other third-party buyers. If such an offer to a third-party buyer is made and is denied by the third party, CVWD may request to purchase the stored water at the identical price and terms under which Western Water is offering the stored water to the third-party buyer. The purchase of the Western-Credited Stored Water shall be at CVWD's sole discretion.
- F. In the event that Western Water desires to transfer all or any portion of its Western-Credited Stored Water to another party and CVWD elects not to exercise the right of first purchase per Section 2.E., Western Water shall notify CVWD in writing of the requested transfer no less than 30-days prior to the proposed transfer being filed with Watermaster. Thereafter, CVWD shall, in good faith, file the necessary paperwork required by Watermaster within 30-days of receiving a written request from Western Water; provided, however, that Western Water shall cooperate in supplying CVWD with all necessary data and information that may be needed to complete the Watermaster paperwork, and provided further that CVWD shall have no responsibility, liability, duty to defend, or any other obligation in relation to the Watermaster consideration, potential third-party protest, or any other factors that are out of CVWD's control affecting any proposed transfer by Western Water. Western Water shall be solely responsible for any and all costs and expenses related to a transfer.
- G. The Parties shall confer at least 90 days prior to any termination or expiration of this Agreement. Within 90 days prior to any termination or expiration of this Agreement, CVWD shall notify Western Water of the balance of Western-Credited Stored Water, which shall remain Western Water's asset, subject to Watermaster's requirements. Subject to Watermaster approval, Western Water may request transfer of any remaining balance of Western-Credited Stored Water into Western Water's dedicated Chino Basin water storage account or request transfer of the water to another Chino Basin party. Western Water shall make good faith efforts to ensure that all Western-Credited Stored Water is removed from the CVWD storage account at least 30 days prior to any termination or expiration of this Agreement. In the event any Western-Credited Stored Water remains in the CVWD storage account within 29 days or less of the termination or expiration date, the Parties shall meet and confer again in good faith to develop a mutually agreeable plan for the disposition of said water.

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If the Parties cannot reach agreement through the meet and confer process, the Dispute Resolution provisions of this Agreement shall be applied.

SECTION 3 – EFFECTIVE DATE

This Agreement shall not take effect unless and until both of the following have occurred: (1) Western Water receives written notification from the IEUA confirming the sale and disposition of the Minimum Flows Balance Water to Western Water, including full execution of a purchase and sale agreement between IEUA and Western Water; and (2) both parties to this Agreement have executed this Agreement. This Agreement shall expire on December 31, 2030, unless a one-year extension is entered by written amendment to this Agreement executed by both Parties.

SECTION 4 – MUTUAL INDEMNIFICATION

Each Party agrees to protect, defend, indemnify, and hold harmless the other Party and its officers, directors, agents, employees, volunteers, attorneys, consultants, and subcontractors from any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons and damage to property, occurring as a result of its own or its respective officers, directors, agents, employees, volunteers, attorneys, consultants, or subcontractor's wrongful or negligent acts or omissions in performing or failing to perform this Agreement. Each Party shall be responsible only to the extent of its negligence. Each Party further agrees to investigate, handle, respond to, and provide defense for any such claims, demands or suit required hereunder at its sole expense. The respective obligations of the parties pursuant to this Section shall survive the termination or expiration of this Agreement.

SECTION 5 – OBSERVING LAWS AND ORDINANCES

The Parties shall at all times observe and comply with all applicable laws, ordinances, regulations, requirements, orders and decrees affecting their respective performance under this Agreement, and a Party's failure to comply with applicable laws, ordinances, regulations, requirements, orders or decrees may constitute a breach of this Agreement and entitle the non-breaching Party to remedies as provided in this Agreement.

SECTION 6 – DISPUTE RESOLUTION

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The Parties shall seek to resolve any dispute concerning the interpretation or implementation of this Agreement, including but not limited to an alleged breach of this Agreement, through good faith negotiation, involving, as and when appropriate, the general manager or chief executive officer of each of the Parties. A Party alleging a breach of this Agreement or other dispute arising under this Agreement shall send written notice with a reasonably detailed description of the alleged breach or other dispute to the other Party. The Party receiving the notice of the alleged breach or other dispute shall have thirty (30) calendar days to cure any such alleged breach or dispute to the satisfaction of the Party alleging the breach or other dispute. Any alleged breach or other dispute that remains unresolved sixty (60) days after the initial written notice of alleged breach or other dispute is delivered shall be submitted to a single arbitrator with substantial experience in the matter or matters in dispute and conducted in accordance with Judicial Arbitration and Mediation Services (JAMS). The JAMS arbitrator shall apply the JAMS rules of arbitration, which shall govern any arbitration. If the Parties cannot agree on a single arbitrator within ten (10) days of the written election to submit the matter to arbitration, any Party may request JAMS to appoint a single, neutral arbitrator. The Parties shall use their reasonable best efforts to have the arbitration proceedings concluded within ninety (90) business days of selection of the arbitrator.

SECTION 7 – NOTICE

Written notices to be given to any Party pursuant to Section 6 or Section 8 of this Agreement must be given by personal delivery or by registered or certified mail addressed and delivered as set forth below. Other correspondence and invoices may be sent by first class mail, or by electronic mail, addressed and delivered as set forth below:

Cucamonga Valley Water District
10440 Ashford Street
Rancho Cucamonga, CA 91730
Attention: John Bosler
E-mail: johnb@cvwdwater.com

Western Municipal Water District
14205 Meridian Parkway
Riverside, CA 92518
Attention: Craig Miller
E-mail: CMiller@wmwd.com

SECTION 8 – TERMINATION FOR CONVENIENCE

In addition to other rights set forth in this Agreement, each Party reserves and has the right to immediately suspend, cancel or terminate this Agreement at any time upon ninety (90) days written notice to the other Party. In the event of such termination, the terminating Party shall pay the other Party any and all amounts owed for all authorized costs or any obligations hereunder up to the date of such termination. Any water remaining in a storage account at the time of termination shall be disposed of in accordance with the provisions of Section 2(E) of this Agreement.

SECTION 9 – REPRESENTATION OF AUTHORITY

Each Party represents to the other that it has the authority to enter into this Agreement and that the individual signing this Agreement on behalf of their respective Party has the authority to execute this Agreement and to bind their respective Party to the terms and conditions of this Agreement.

SECTION 10 – GOVERNING LAW

This Agreement shall be governed by and constructed in accordance with the laws of the State of California in the County of San Bernardino.

SECTION 11 – INCORPORATION OF RECITALS

The Recitals set forth above are incorporated herein and made a part of this Agreement between CVWD and Western Water.

SECTION 12 – ENTIRE AGREEMENT: NO THIRD-PARTY BENEFICIARIES

This Agreement is intended by the Parties as a complete and exclusive statement of the terms of their agreement and it supersedes all prior agreements, written or oral, as to the subject matter of this Agreement. This Agreement may be modified only upon the mutual written agreement of the Parties hereto. No third-party beneficiary is intended or created by the execution of this Agreement.

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SECTION 13 – ATTORNEY FEES AND COSTS

In any proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing Party, in addition to costs, shall be entitled to recover its reasonable attorney’s fees.

SECTION 14 – COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall constitute an original, and which taken together shall constitute one and the same Agreement. Verifiable facsimile and electronic execution copies of this Agreement shall constitute original counterparts or copies of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective duly authorized officers. The effective date of this Agreement shall be the in accordance with the terms of this Agreement.

CUCAMONGA VALLEY WATER DISTRICT

Approved as to Form:

By: _____

By: _____

Date: _____

WESTERN MUNICIPAL WATER DISTRICT

Approved as to Form:

By: _____

By: _____

Date: _____