Central Coast Water Management Options
Overview of Rules and Regulations Affecting Potential Actions

Management of State Water Project water by SWP contractors, such as agencies within San Luis Obispo FCWCD and CCWA, is subject to a variety of formal and informal regulatory constraints. The purpose of this section is to summarize those constraints and provide references for specific language on applicable constraints and more detailed description. While the description here is generally applicable to water management actions involving use of SWP, it is recognized that additional constraints may occasionally apply to specific measures.

Although the focus of this discussion is on managing SWP water, optimizing water supplies for SWP contractors also frequently involves use of water supplies or facilities outside of the SWP. The discussion below addresses the following topics:

- State of California Water Rights
- State Water Project Contracts
- Environmental and Endangered Species Acts
- Groundwater Storage
- Use of Conveyance

I. State of California Water Rights

In general, the rights to use water in the State of California are managed by the State Water Resources Control Board (SWRCB). The State of California holds water in the state in trust. A water right provides an assigned user the right to use some portion of the available water. Water rights that can be demonstrated to have been established prior to 1914 are not subject to SWRCB regulation and allow the water right holder broad discretion on the use and management of the water supplies that they receive. Water rights that were established after 1914 are assigned by the SWRCB based on formal applications for use in specific areas. Within the San Luis Obispo and Santa Barbara Counties study area, water rights to local streams are subject to specific water rights permits by the SWRCB, either directly or as part of a larger project. A landowner that has property adjacent to a waterway may use water for beneficial uses on that property without additional approval from the SWRCB. Such riparian water rights do not apply to other lands, owned by the landowner, that are not contiguous with those lands adjacent to the waterway.

When the SWP was being contemplated, the State of California Department of Water Resources (DWR) obtained permits from the SWRCB to store and divert water for the SWP. While DWR has many contractual constraints on water use by its contractors (which are described below), its use of SWP water remains subject to SWRCB water rights jurisdiction. The practical effects of this continuing oversight are primarily related to the SWP Area of Use, which is defined in the SWP water rights. The SWP Area of Use includes the service area boundaries of all of the SWP Contractors, including San Luis Obispo and Santa Barbara Counties in their entirety as well as the neighboring counties of Kings, Kern and Ventura. The SWP Area of Use can affect a water transfer, exchange or banking program if a

transfer, exchange or banking program partner agency is not located within the defined SWP Area of Use.

Transfers from the Sacramento or San Joaquin valleys are examples where SWP Area of Use could affect a water management action. Any water management action that requires the movement of water through the Sacramento-San Joaquin Delta will necessitate close coordination and cooperation of DWR (which owns and operates the SWP), USBR (which owns and operates the CVP), State Water Contractors, (which performs many important management and facilitation functions for 27 of the 29 SWP contractors), and the San Luis-Delta Mendota Water Agency (which performs the same functions as the State Water Contractors for many CVP contractors). As such, all water transfers involving movement of water through SWP and CVP delta export pumping plants will require extensive preparation and coordination.

II. State Water Project Water Supply Contracts

Because this evaluation is focused on the SWP, there is also an emphasis on specific rules affecting use of SWP water supplies. As long as SWP water supplies are used within the SWP Area of Use, the primary regulations affecting their management are those that are described in the SWP Water Supply Contracts of San Luis Obispo and Santa Barbara Counties. The SWP Water Supply Contracts contain constraints that affect water management actions involving other SWP contractors. These constraints do not necessarily apply to individual subcontractor management within either San Luis Obispo or Santa Barbara Counties. Most subcontractor management actions would need approval by the primary SWP contract holder (either San Luis Obispo County or Santa Barbara County) and would be subject to any conditions that their SWP contractor would require.

DWR originally developed the SWP contracts in the 1960s to provide highly reliable supplies that would be available in all years, subject to defined minimal reductions during dry years. The original SWP water supply contract provided limited guidance on external water management actions, being either silent on the topic or providing very high level, general guidance. The need for such water management tools was not anticipated in the original 1960s era contracts because of the intended reliable water supply that would be provided. Due to delays in developing new SWP water supplies since the 1960s, SWP contractors needed additional flexibility to manage SWP water supplies they receive to meet their needs. Today, individual SWP contractors manage water supplies within their own service area without needing approvals from DWR. However, water management actions outside of a SWP contractor's own service area require approval from DWR. In response to the increased need for local water management of SWP supplies, amendments to the SWP contracts have been enacted over the years. These amendments have formalized typical DWR processes or agreements between DWR and SWP contractors collectively on proposed activities.

As discussed below, the manner in which a contract amendment controls a water management action varies considerably. In many cases, the contract amendment provides only a general indication that an action can be taken, leaving DWR with considerable discretion in how it implements a potential action. In other cases, contract amendments specify conditions that apply to an action and DWR has less leeway

in interpreting how an action can be approved. The SWP contractual or administrative policies apply to the following water management actions[1]:

- Transfers
- Exchanges
- Storage
- Conveyance

i. **Transfers –** Transfers are defined as the sale of SWP water either temporarily or permanently to another SWP contractor. The sale of SWP water to a user outside of the SWP contractors has not happened due to challenges and costs involved in completing these kinds of transfers[2] and transfer of SWP water to users outside of the SWP are not described here.

SWP water transfers are segregated into three categories that are subject to different constraints – permanent, multi-year and single year.

- Permanent – A permanent water transfer involves the assignment of part or all of one SWP contractor's SWP Table A amounts to another SWP contractor. Table A of each SWP contractor's contract specifies its share of the costs, water supplies and use of SWP facilities. Article 41 in the SWP Water Supply Contracts provides that an SWP contractor may assign their rights to another agency only with the approval of DWR. A SWP contractor may sell a portion of their Table A to another contractor permanently, with the buyer water agencies becoming responsible for future costs of their SWP supplies and receiving future water supply amounts. A permanent assignment, or water transfer, will require environmental documentation, such as CEQA. [3] (Reference: SWP Water Supply Contract Article 41)
- Multi-Year – Multi-year transfers would be an ongoing agreement for an agency to purchase SWP supplies from another SWP contractor over a series of years. DWR's authority for such transfers is contained in general language in Article 7 and Article 15. While some permanent transfers and single year transfers have been subject to specific SWP contract language since 1996[4], no specific guidelines have been developed for multi-year SWP transfers. Due, in part, to uncertainty about the approval process for multi-year transfers, these types of transfers were only implemented in extreme drought circumstances (e.g., 2008-09, 2013-14) among SWP contractors. (Reference: SWP Water Supply Contract Articles 7, 15 and 56(d))

[1] All actions require some level of CEQA disclosure.

[2] Such a transfer would have to address the need for a possible water rights change in place of use. It would also need to be approved by DWR under broad authorities (such as Article 15) and is not provided for in the SWP Water Supply Contracts.

[3] Article 53, added in 1996, required that agricultural SWP contractors offer the permanent transfer of at least 130,000 acre-feet to urban SWP contractors, with the agricultural contractors having a first right of refusal for transfers offered under this provision. The 130,000-acre-foot requirement was satisfied in 2010 and would not apply to any future transfers.

[4] A package of SWP water supply contract amendments, including Articles 52, 53, 54, 55 and 56, implemented in 1996 was successfully challenged for lack of adequate CEQA documentation. DWR ultimately agreed to revisions to the environmental documentation and recertified the environmental documentation for the revised amendments in 2010.

- Single Year – Since 1996, single year transfers have been prohibited by the SWP Water Supply Contract outside of the "Turnback Pool". Article 56 provided for a process for DWR to establish "Turnback Pool" for those contractors that do not have need for their water in a single year to transfer that water to other contractors. The pricing and allocation are explicitly identified in Article 56 and have limited flexibility in how they are applied; due to the low prices established in Article 56, there has been limited value for SWP contractors to transfer water supply through the Turnback Pool, and it has not been an effective water management tool in recent years.

  For SWP contractors that sign the 2020 Water Management Amendment, the Turnback Pool was eliminated as the sole way to allow single year transfers among SWP contractors and there is provision for single year sales of water on terms that are negotiated by SWP contractors.[5] Article 57, which is revised in the 2020 Water Management Amendment, provides that DWR will approve one-year transfers subject to general provisions that the financial integrity of the SWP is maintained, that the transfer is transparent, that other SWP contractors are not adversely impacted and that no significant adverse impacts are created in the participating contractors' service areas. (Reference: SWP Water Supply Contract Article 57)

III. **Exchanges** – An exchange is defined in this report as an ongoing agreement for one agency to provide water to another agency in exchange for the future return of some portion of the amount exchanged. An exchange will typically involve delivery of unneeded water in a wet year by an agency in exchange for return of some smaller portion of the exchanged water in a dry year. Monetary payments may also be involved in addition to the actual exchange to reflect different values of water in different year types as well as to address additional costs or avoided costs that occur.

The 2020 Water Management Amendment updates pre-existing SWP guidance on exchanges, which were defined as bona-fide exchanges in prior SWP contracts. The current SWP contract language provides for specified exchange ratios based on SWP allocation levels as follow:

- SWP allocation less than or equal to 15% - 5:1 specified exchange ratio
- SWP allocation greater than 15% and less than or equal to 25% – 4:1 specified exchange ratio
- SWP allocation greater than 25% and less than 50% – 3:1 specified exchange ratio
- SWP allocation greater than or equal to 50% – 2:1 specified exchange ratio

The current exchange provisions also include caps on exchange costs that are related to an agency's overall SWP contract charges to DWR. The SWP contract does not require payment of charges for

[5] Between 1996 when Article 56 was implemented and 2020 when the 2020 Amendment was added, single year transfers were limited to the Turnback Pool Program. The Turnback Pool Program was a limited means for a SWP contractor to sell unneeded Table A allocations at a defined price. The Turnback Pool Program provided that a SWP contractor could sell into two Pools at relatively low prices defined as half of the Delta Water Charge (for Pool A sales by February 15) or for a quarter of the Delta Water Charge (for Pool B sales by March 15). Because of increasing SWP contractor demands and the low prescribed price for Turnback Pool sales, it has had limited participation since the early 2000s.

exchange programs that use SWP facilities that a contractor already pays for, which is a condition of storage programs (as discussed below).

Over time, there has been a realization that exchanges almost always include an implied element of storage that can make them appear indistinguishable externally from a storage (or banking) program. (Reference: SWP Water Supply Contract Article 56(f))

ii. **Storage** – While SWP contractors have always been able to store water within their own service areas, either in surface reservoirs or groundwater, the original SWP contract did not provide for storage outside of a contractor's service area. With Article 56 (added in the SWP contract amendments of 1996), individual SWP contractors were allowed to store unused Table A amounts in either unused space of SWP facilities or in storage facilities within other SWP contractors' service area.

Storage of unused SWP Table A amounts in SWP facilities is subject to availability of that space and can be reclassified as SWP project water ("spilled") in the event that SWP supplies become available that require use of the storage. Under Article 56, SWP contractors can schedule water to be carried over on a long-term basis into subsequent years when their annual water supply requests are made. Contractors may also carry over some of their allocated Table A for delivery in January through March of the following year if there is sufficient storage space in SWP facilities.

Article 56 also specifies rules limiting the amount of scheduled carryover water by a SWP contractor. The scheduled carryover water is allocated by DWR and made available in San Luis Reservoir at the end of a calendar year. Any carryover water amounts can be retained in storage in San Luis Reservoir as long as the SWP does not need the storage, which can extend for multiple years. In the event that wet conditions occur and the SWP can fill San Luis Reservoir, a contractor is required to use their carryover water on relatively short notice or it will be converted to SWP water. There is no specific cost for storing water in SWP facilities, so this provision is very attractive to many SWP contractors.

Prior to 2007, when new Endangered Species Act (ESA)-related Delta pumping restrictions began, San Luis Reservoir would very frequently fill and SWP contractors were forced to manage their carryover or allow it to convert to the current year SWP water supply, effectively losing it for their use. Since 2007, the restrictions on SWP pumping in the Delta have greatly reduced the occurrence of filling San Luis Reservoir, thus allowing SWP contractors to increase reliance on that carryover storage.

While storage in SWP facilities is a convenient and low-cost option, SWP contractors have no control over when their water may be at risk of spilling. However, another important provision of Article 56 is the ability for SWP contractors to store some or all of their carryover in storage programs outside of the SWP. These external storage programs typically involve use of other SWP contractors' groundwater basins. The costs for this access and constraints on its use are subject to mutual agreement between a SWP contractor and

the water agency offering the banking arrangement. The Semitropic Water Bank, operated by Semitropic Water Storage District (a member agency of the Kern County Water Agency) was an early implementer of this kind of program. More recently, other agencies within Kern County and in other SWP service areas, have developed similar programs or are in the process of developing such programs.

The SWP Water Supply Contract Article 56 defines constraints on a SWP contractor's involvement in an external storage program, primarily addressing issues related to maintaining cost equity on the SWP for use of facilities. The most significant terms of an external storage program, however, are subject to mutual agreement with the SWP contractor and the storage agency, and are not regulated by DWR. (Reference: SWP Water Supply Contract Article 56)

iii. **Conveyance** – SWP contractors have contractual access to the use of SWP facilities (including the California Aqueduct) to deliver non-SWP water through SWP facilities. This access is subject to specified charges and the delivery priorities identified in Article 12(f). The priorities in Article 12(f) specify that various types of SWP water (e.g., Table A and Article 21 Water) have the highest priority. Non-project water, such as water transfers purchased by individual SWP contractors from non-SWP sources, have lower priorities and can only be delivered after all SWP water is delivered. Use of SWP facilities is subject to actual pumping costs determined by DWR and can also be subject to a calculated "use of facilities charge" for SWP features that a contractor does not pay for.

DWR's Division of Operations and Maintenance operates the California Aqueduct to maximize flexibility for overall SWP purposes[6]. These purposes include using conveyance and storage capability along the Aqueduct to minimize energy costs to all SWP contractors; however, avoiding loss of SWP water is a higher priority than energy costs. Non-SWP operations, such as transfers and exchanges, ride on top of the normal SWP operations. As a result, scheduling for water transfers and exchanges requires close coordination with DWR operators and can be challenging to schedule.

IV. Environmental Permits

Actions, such as water management activities, that could potentially affect the environment are subject to the regular kind of environmental permitting needed by any project. These requirements will almost always include the California Environmental Quality Act (CEQA), which may involve DWR as a responsible agency. Actions affecting federal facilities (such as Cachuma Reservoir) or involving federal permits (such as Clean Water Act permits) will typically require evaluation of environmental impacts under the National Environmental Protection Act (NEPA). A general overview of CEQA and NEPA requirements is provided below, and other potential State and Federal permitting requirements are summarized later in this discussion.

[6] There is additional discussion of DWR's management of conveyance in the Chapter on Conveyance Capability of this report.

CEQA review begins with review of the proposed water management activity and evaluation of whether it qualifies as a project under CEQA. Some routine operational activities will be considered categorically exempt. A categorical exempt activity may not require additional analysis and can proceed with release of a Notice of Exemption. Activities with the potential for significant impacts to the environment will require preparation of an Initial Study, which is followed by a decision on the level of significance of environmental impacts. Projects with a low level of environmental impacts can proceed after preparation and public release of a Negative Declaration, with provisions for specified public review. Projects with higher levels of environmental impacts require preparation of an Environmental Impacts Report (EIR) with more comprehensive documentation of potential impacts. The EIR will need public release providing an opportunity for public comment. Ultimately, after closure of public review periods for either a Negative Declaration or an EIR, an agency can approve the document with a Record of Decision and proceed with the action.

The NEPA process has many similarities to the CEQA process and NEPA documentation will frequently be prepared in coordination with CEQA as joint documents. Activities identified as projects under NEPA would be triggered by the need for federal approvals. Projects will initially be evaluated with an Environmental Assessment, identifying the potential for environmental impacts. Projects with a low potential for environmental impacts can be approved by preparation of a Finding of No Significant Impacts (FONSI). Based on the Environmental Assessment, projects with a higher potential for environmental impacts will require preparation of an Environmental Impacts Statement (EIS). After public release of the EIS, an opportunity for public review, and any modification based on comments, the project may ultimately be considered for implementation which is documented by a Notice of Determination.

In addition to the normal CEQA and NEPA evaluations, water management activities may be subject to permitting for the following processes. Note that this list is not comprehensive and there may be other permits or regulations requiring compliance for specific activities.

- Federal Endangered Species Act (FESA) – Activities that could involve impacts to federally listed endangered species may require permits from NOAA Fisheries or the U.S. Fish and Wildlife Service. Effects on streambeds in the Central Coast will sometimes involve habitat used by steelhead trout and may require FESA permits. Land based activities affecting critical habitat for specifies such as the San Joaquin Kit Fox may also require ESA permits.
- California Endangered Species Act (CESA) – CESA has separate permitting that is similar to the FESA. For the Central Coast area, CESA listed endangered species are likely to have similar identified ranges and permitting requirements. The CESA and FESA processes may be closely coordinated.
- Delta Plan – The Delta Stewardship Council adopted the Delta Plan in 2013, which identifies requirements meant to avoid adverse impacts to the Sacramento-San Joaquin Delta. Some water management activities to the SWP could have effects traced back to the Delta and need to conform to the Delta Plan. The Delta Stewardship Council will consider projects for consistency with the Delta Plan and make a determination on whether the project is consistent.

V. Groundwater Basins

Storage of SWP water in groundwater basins will typically involve compliance with local groundwater storage constraints including adjudications, ordinances, groundwater sustainability plans (GSPs) or less formal local agreements. Within the Central Coast area, the Santa Maria River Valley Basin has been adjudicated and use of the basin is subject to court supervised management. San Luis Obispo County implemented a permit requirement in 2014 for any groundwater exports from basins within the county. In addition to local regulatory agreements, there are usually local operation agreements that provide oversight on the operation and management of groundwater storage programs to ensure that no third-party impacts occur. With or without any such local agreements, in-basin users retain their ability to legally challenge programs, including groundwater banking program, that could adversely their groundwater use. Such legal challenges could lead to court ordered adjudications, which have frequently taken many years, or decades to complete.

With the passage of the Sustainable Groundwater Management Act (SGMA) in 2014, groundwater sustainability agencies (GSA) have been authorized with broad authorities to protect local beneficial uses that depend on groundwater. Under SGMA, beneficial uses of groundwater, including agricultural and municipal groundwater pumping, as well as environmental purposes such as groundwater dependent ecosystems, must be protected from significant and unreasonable impacts to sustainability indicators such as declining water levels, degraded water quality and land subsidence. SGMA provides GSAs with the authority to manage groundwater banking programs as part of their GSPs. Within the Central Coast area, the Paso Robles Basin completed a GSP in January 2020. The Paso Robles GSP does not identify any particular projects in their GSP related to banking and recommends that San Luis Obispo's existing groundwater export ordinance should be enforced and retained. Many other Central Coast groundwater basins are in the process of preparing their GSPs which are due in January 2022. Any groundwater banking in these other basins will ultimately require consideration of any related provisions in the future GSPs. While GSPs have the authority to implement groundwater banking programs, any water recharged in a GSA may be subject to legal challenge by a non-participant in the absence of an adjudication of the groundwater basin.

Banking of groundwater outside of the Central Coast area in areas like the San Joaquin Valley is often subject to local agreements. As the San Joaquin Valley includes predominantly high and medium priority groundwater basins, these basins generally have GSPs that have been implemented as of January 2020. These GSPs will often include provisions related to groundwater banking by outside parties that may formalize preexisting arrangements. Any constraints on banking arrangements outside of the Central Coast will be identified in the project descriptions for specific banking proposals included in the water management alternatives.