

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 4/19/2016	(3) CONTACT/PHONE Wade Horton, Director of Public Works (805) 781-5291	
(4) SUBJECT Request to 1) approve amendments to five existing Nacimiento Project Water Delivery Entitlement Contracts; and 2) approve two new Nacimiento Project Water Delivery Entitlement Contracts; and 3) approve Addendum No. 3 to the Final Environmental Impact Report for the Nacimiento Water Project; and 4) adopt California Environmental Quality Act (CEQA) findings pursuant to Section 21000 et seq., of the California Public Resources Code. All Districts.			
(5) RECOMMENDED ACTION It is our recommendation that the Board, acting as the Board of Supervisors for the San Luis Obispo County Flood Control and Water Conservation District (District):			
<ol style="list-style-type: none"> 1. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of Paso Robles; and 2. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Templeton Community Services District; and 3. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Atascadero Mutual Water Company; and 4. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of San Luis Obispo; and 5. Approve and authorize the Chairperson to execute the attached Second Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the County of San Luis Obispo, acting on behalf of County Service Area 10, Zone A (Cayucos); and 6. Approve Addendum No. 3 to the Final Environmental Impact Report for the Nacimiento Water Project pursuant to Section 210000 et seq. of the California Public Resources Code (CEQA); and 7. Approve and authorize the Chairperson to execute the attached Nacimiento Project Water Delivery Entitlement Contract between the District and the SMR Mutual Water Company, a California Corporation, and adopt associated CEQA findings pursuant to Section 21000 et seq., of the California Public Resources Code; and 8. Approve and authorize the Chairperson to execute the attached Nacimiento Project Water Delivery Entitlement Contract between the District and Bella Vista MHP LLC, a California Limited Liability Company, and adopt associated CEQA findings pursuant to Section 21000 et seq., of the California Public Resources Code. 			
(6) FUNDING SOURCE(S) SLO flood control & Water Conservation District, Fund 1300000000	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation { } Hearing (Time Est. ____) {X} Board Business (Time Est. <u>25 min</u>)			
(11) EXECUTED DOCUMENTS { } Resolutions {X} Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY {X} N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW David E. Grim			
(18) SUPERVISOR DISTRICT(S) All Districts			

Reference: 16APR19-BB-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works
Wade Horton, Director of Public Works
Mark Hutchinson, Deputy Director of Public Works

DATE: 4/19/2016

SUBJECT: Request to 1) approve amendments to five existing Nacimiento Project Water Delivery Entitlement Contracts; and 2) approve two new Nacimiento Project Water Delivery Entitlement Contracts; and 3) approve Addendum No. 3 to the Final Environmental Impact Report for the Nacimiento Water Project; and 4) adopt California Environmental Quality Act (CEQA) findings pursuant to Section 21000 et seq., of the California Public Resources Code. All Districts.

RECOMMENDATION

It is our recommendation that the Board, acting as the Board of Supervisors for the San Luis Obispo County Flood Control and Water Conservation District (District):

1. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of Paso Robles; and
2. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Templeton Community Services District; and
3. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Atascadero Mutual Water Company; and
4. Approve and authorize the Chairperson to execute the attached Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of San Luis Obispo; and
5. Approve and authorize the Chairperson to execute the attached Second Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the County of San Luis Obispo, acting on behalf of County Service Area 10, Zone A (Cayucos); and

6. Approve Addendum No. 3 to the Final Environmental Impact Report for the Nacimiento Water Project pursuant to Section 210000 et seq. of the California Public Resources Code (CEQA); and
7. Approve and authorize the Chairperson to execute the attached Nacimiento Project Water Delivery Entitlement Contract between the District and the SMR Mutual Water Company, a California Corporation, and adopt associated CEQA findings pursuant to Section 21000 et seq., of the California Public Resources Code; and
8. Approve and authorize the Chairperson to execute the attached Nacimiento Project Water Delivery Entitlement Contract between the District and Bella Vista MHP LLC, a California Limited Liability Company, and adopt associated CEQA findings pursuant to Section 21000 et seq., of the California Public Resources Code.

DISCUSSION

Background

In 1959, the San Luis Obispo County Flood Control and Water Conservation District (District) entered into an agreement with the Monterey County Flood Control and Water Conservation District (now the Monterey County Water Resources Agency) to secure rights to 17,500 acre feet¹ of water per year from the Nacimiento Reservoir. The Nacimiento Reservoir has a storage capacity of 377,900 acre feet and, in addition to providing water to the District, serves various other purposes such as flood protection, recreational opportunities and groundwater recharge for the Salinas Valley.

The Cities of San Luis Obispo and Paso Robles, the Templeton Community Services District, the Atascadero Mutual Water Company, and the County on behalf of County Service Area 10, Zone A (CSA 10A) (map attached) are the current Nacimiento Project participants. Of the 15,750 acre feet per year of Nacimiento Reservoir water available to the five existing Nacimiento Project participants (1,750 acre feet is reserved for lakeside users), 9,655 acre feet is subscribed, leaving 6,095 acre feet of unallocated water (termed "Reserve Water" in the Water Delivery Entitlement Contracts).

In 2004, the District certified the Nacimiento Project Final Environmental Impact Report for the Nacimiento Project (FEIR) and entered into like Nacimiento Water Project Delivery Entitlement Contracts with the initial participants (Cities of San Luis Obispo and Paso Robles, Templeton Community Services District and Atascadero Mutual Water Company). In 2006, the District subsequently entered into a Water Delivery Entitlement Contract with CSA 10A.

Current Proposal

Article 29, subdivision (B) of the Water Delivery Entitlement Contracts provides for the permanent purchase of Reserve Water by the existing participants. On October 6, 2015, the City of Paso Robles, City of San Luis Obispo, Atascadero Mutual Water Company, and Templeton Community Services District jointly notified the District that they were exercising their rights under Article 6, subdivision (D) of the Water Delivery Entitlement Contracts to apply to the District and acquire

¹ One acre foot of water contains 325,851 gallons

additional delivery entitlement (jointly the total 6,095 acre feet of Reserve Water) as provided in Article 29 (letter attached).

After receiving the initial participants' October 6, 2015 letter, the District formally notified the other participant (CSA 10A) (in accordance with Article 29) as well as the other entities that were considered for a water entitlement in the 2004 FEIR (EIR Entities) (list attached) of the application. On December 8, 2015 the Board of Supervisors (sitting as the Board of the County, not the District) initiated the process to acquire an additional allocation of Nacimiento Project Water on behalf of County Service Area 10A. Two of the EIR Entities (or their successors in interest), namely the SMR Mutual Water Company (Santa Margarita Ranch) and Bella Vista MHP LLC (successor in interest to the Lewis C. Pollard Family Trust, Cayucos), notified the District of their desire to participate in the purchase of Reserve Water. The initial participants have revised their original request so as to accommodate both the CSA 10A and the EIR Entities participation. Table A below shows the proposed distribution of the 6,095 acre feet of Reserve Water.

TABLE A - Nacimiento Reserve Water Project Participant's Share in Acre Feet of Water Per Year					
Participant	Current Entitlement	Change	New Entitlement	Buy-in-Fee	Distribution of Buy-in-Fee
City of Paso Robles	4,000	2,488	6,488	Existing Participant	\$450,830 credit
City of San Luis Obispo	3,380	2,102	5,482	Existing Participant	\$792,812 credit
Atascadero MWC	2,000	1,244	3,244	Existing Participant	\$377,010 credit
Templeton CSD	250	156	406	Existing Participant	\$30,575 credit
SMR Mutual Water Co.	0	80	80	\$1,458,099	New Participant
CSA 10A	25	15	40	Existing Participant	\$16,739 credit
Bella Vista MHP	0	10	10	\$209,867	New Participant
Total	9,655	6,095	15,750	\$1,667,966	(\$1,667,966)

Amendments to Existing Contracts (Full Allocation)

In accordance with the terms and conditions of Article 29 of the Nacimiento Project Water Delivery Entitlement Contracts, the existing participants have the right to purchase their proportionate share of the Nacimiento Project's unsubscribed Reserve Water (currently a total of 6,095 acre-feet). As indicated above, the existing participants have elected to exercise this right while at the same time permitting SMR Mutual Water Company and Bella Vista MHP LLC to obtain an entitlement to Nacimiento Project Water in the amounts set forth above. With the completion of these Amendments and the new Nacimiento Project Water Delivery Entitlement Contracts, no Reserve Water will remain.

Furthermore, the Contracts provide that the existing participants' right to Reserve Water is not discretionary on the part of the District, provided that the existing participants enter a contract that has terms no more favorable than any other participants, and pay their fair share of the related costs. All of the existing participants have agreed to these terms. Therefore, the Board's actions with respect to the recommendations 1-5 above (amendments to existing participants' contracts) is to confirm that the two provisional requirements (equal terms and fair share costs) are indeed complied with.

Implications for Future Water Management

The 1959 Agreement with Monterey County provides that Nacimiento water may be used anywhere within San Luis Obispo County. At the same time, the unallocated Reserve water has been viewed as one of several potential sources of supply for the Paso Robles groundwater basin. The proposed full allocation of the Nacimiento Water Project does not change the amount of water available for use in the Paso Robles basin or any other part of San Luis Obispo County.

The existing Nacimiento participants already have first rights to all of the Reserve water via contract provisions that grant the “right of first refusal” should any new participant seek to gain a water delivery entitlement from the project. The actual effect of the participants’ full allocation proposal is to remove an existing contractual requirement that requires any new participant to pay for all of the associated capital costs (costs which to date have been shared amongst the existing participants and the District). Once full allocation is achieved water can be sold on either a permanent or temporary basis at then existing market prices. Given that the reserve water has been available since the initial Water Delivery Entitlement contracts were signed in 2004 (operations began in 2011) it is evident that the required capital cost component has made delivery of Nacimiento water to Paso Robles basin interests financially infeasible. Therefore, full allocation has the potential to make movement of water into the Paso Robles basin more feasible than it currently is.

Full allocation of the Nacimiento Water Project by existing participants will have no negative impacts on the recharge or water quality of the Paso Robles basin. Recharge of the Paso Robles basin from the Nacimiento Reservoir occurs as a result of the downstream releases managed by the Monterey County Water Resources Agency. Recharge occurs when the Nacimiento River flows over the Paso Robles basin downstream of the dam; full allocation will have no effect on the timing or volume of those releases. Downstream releases are made based on existing environmental and water supply requirements in Monterey County, none of which are altered by full allocation. Also, the majority of groundwater recharge from the Nacimiento River into the Paso Robles basin occurs in southern Monterey County. As noted above, full allocation may result in beneficial impacts to groundwater volumes in the Paso Robles basin because any water committed to urban uses in the upper Salinas valley directly offsets groundwater pumping in the Paso Robles basin. At the same time, return flows from wastewater treatment can contribute substantial “new” water to the basin.

CEQA Requirements

As noted above, the existing project participants have held the contractual rights to request all of the reserve water in the project since 2004. Consequently, the District does not have the discretion to deny the proposal from the existing participants (subject to the two provisional requirements of equal terms and fair share costs). CEQA section 21080 provides that CEQA applies to the discretionary actions of public agencies that might result in an effect on the environment. Since amending the Water Delivery Entitlement contracts of the existing project participants is not discretionary, CEQA does not apply to those actions. Therefore, the Addendum to the FEIR focuses on the actions that are discretionary, namely, the addition to two new participants: the SMR Mutual Water Company (Santa Margarita Ranch) and Bella Vista MHP LLC in Cayucos.

The Addendum also addresses the environmental effects that could result from County Service Area

10A in Cayucos increasing its allocation by 15 acre feet. This discretionary decision, which results in CEQA applying to the action, is on the part of the Board of Supervisors acting as the County (not the District). Sitting as the District on the other side of the contract the Board does not have the discretion to deny the Cayucos proposal. This situation is much like that of the other existing participants, each of which has made their own discretionary decision to exercise their pre-existing contractual rights. Consequently, each has included CEQA compliance in their decision making processes.

The Addendum to the FEIR was prepared and noticed to the public in January, 2016 (CEQA does not require an Addendum to a FEIR to be circulated for public comment; this action is optional on the part of the District). The Addendum, comments and responses to comments, and the associated CEQA Findings are attached.

OTHER AGENCY INVOLVEMENT/IMPACT

The existing participants include the Cities of Paso Robles and San Luis Obispo, the Atascadero Mutual Water Company, the Templeton Community Services District and the County on behalf of CSA 10A. Each of the existing participants is aware of the requested actions, concurs with them and has executed the Amendment. The SMR Mutual Water Company and Bella Vista MHP LLC also concur with the requested actions and have each executed a Nacimiento Project Water Delivery Entitlement Contract.

The Nacimiento Project Commission, created to provide management oversight of the Project and to advise the Board of Supervisors on matters pertaining to the Nacimiento Water Project, has received regular reports and updates on the full allocation process.

County Counsel has reviewed each Amendment and both new Nacimiento Project Water Delivery Entitlement Contracts for legal form and effect.

FINANCIAL CONSIDERATIONS

Full allocation will eliminate the District's contractual obligation to allocate a portion of ad valorem taxes to Nacimiento Project costs (such taxes are to be allocated to reduce Reserved Capacity Construction Costs) pursuant to Article 17, subdivision (B)(5) of the Water Delivery Entitlement Contracts. Note that this approximate \$1.2 M annual obligation to the participants has been reduced by approximately \$600,000 annually by a recent bond refinancing. The City of Paso Robles, Atascadero Mutual Water Company, Templeton Community Services District, and City of San Luis Obispo will assume the associated costs. CSA 10A, SMR Mutual Water Company, and Bella Vista MHP LLC have paid their share of capital costs in full and therefore do not have ongoing debt obligations.

As required by Article 29, subdivision (B), the two new participants have paid a Purchase of Reserve Water Delivery Entitlement and Reserve Capacity Fee (buy in fee) that will be credited back to the existing participants². The buy in fee that will be credited to the existing participants is \$1,667,966 (allocated as shown in column 5 of Table A above).

² The existing participants are also required to pay such a fee pursuant to Article 29, subdivision (B). However, because they are all purchasing an amount of Reserve Water equal to their proportionate share, the cost and reimbursement are equivalent.

RESULTS

Approval of this item will fully allocate the Nacimiento Water Project to the seven participants listed in Table A above. As discussed above, this action will provide for an equitable process to annually move 6,095 acre feet of currently unallocated water from the Nacimiento Reserve to communities, agriculturalists, and groundwater basins in San Luis Obispo County, thereby ensuring a sustainable, healthy, and well governed community.

ATTACHMENTS

1. Vicinity Map
2. 2004 Nacimiento Environmental Impact Report Participant List
3. Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of Paso Robles
4. Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Templeton Community Services District
5. Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the Atascadero Mutual Water Company
6. Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the City of San Luis Obispo
7. Second Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract between the District and the County of San Luis Obispo, acting on behalf of County Service Area 10, Zone A (Cayucos)
8. Addendum No. 3 to the Final Environmental Impact Report for the Nacimiento Water Project
9. CEQA Findings for the Nacimiento Project Water Delivery Entitlement Contract between the District and the SMR Mutual Water Company
10. Nacimiento Project Water Delivery Entitlement Contract between the District and the SMR Mutual Water Company, a California Corporation
11. CEQA Findings for the Nacimiento Project Water Delivery Entitlement Contract between the District and Bella Vista MHP LLC
12. Nacimiento Project Water Delivery Entitlement Contract between the District and Bella Vista MHP LLC, a California Limited Liability Company

File: CF23.190

Reference: 16APR19-BB-1

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