

Memorandum

Date: 12/22/2021

To: Leslie MacNair, Regional Manager, and Inland Deserts Regional Office Files

From: Chris Hayes, Deputy Regional Manager



Subject: **San Jacinto Wildlife Area Recycled Water Agreement December 2021 Amendment**

This memo has been prepared as part of CDFW's review of the San Jacinto wildlife Area Recycled Water Agreement December 2021 Amendment (project) pursuant to CEQA Guidelines section 15061.

Background:

The original 1987 Agreement between the State of California, Department of Fish and Game, and Eastern Municipal Water District (District) for the San Jacinto Wildlife Area Reclaimed Water Supply Project (Agreement) called for delivery of up to 4500 acre feet of water. The December 2021 amendment to the Agreement ensures the Department the same water volume, the same cubic feet per second delivery, ensures the same timing of delivery. The only change is to the recycled water rate during the term of the Agreement shall be per rate code R682 as established by the District's Recycled Water Service Rates effective January 1, 2022. CDFW has completed a Land Management Plan for the SJWA and associated environmental documents. CDFW and EMWD desire to resolve issues related to the Land Management Plan for the SJWA prior to entering into a long-term amendment to the Agreement. All provisions of the Agreement remain in full force and effect and are reaffirmed with this amendment. The review effort pursuant to CEQA Guidelines section 15061 lead staff to conclude the proposed project is an activity that falls within the Class 1 and Class 7 categorical exemptions, and the explanation and evidence supporting that determination is set forth in the proposed NOE and its related attachment.

Exceptions to Use of Categorical Exemptions:

As to the exceptions to the categorical exemptions set forth in CEQA Guidelines section 15300.2, including the prospect of unusual circumstances and related effects, staff was guided by the California Supreme Court's recent decision in *Berkeley Hillside*. With that said, staff does not believe the proposed project poses any unusual circumstance: (a) the project is an activity that falls within both classes of categorical exemptions, as explained in the NOE and its attachment; and (b) staff do not believe the project is unusual compared to activities that fall within the respective classes generally and the same is true with respect to, among other things,

the location, duration, and project-specific setting.

Likewise, even if there is something unusual about the project, and staff does not believe there is, staff is not aware of and does not believe there is anything unusual about the project that might give rise directly or indirectly to any related potentially significant effect. Neither does staff believe there is anything unusual about the project that would contribute to cumulative effects. It is staff's belief that there are no significant impacts associated with this project from unusual circumstances.

CDFW's conclusion that executing this amendment to the Agreement will not result in unusual circumstances, such as CDFW being foreclosed from negotiating a future long term contract with EMWD, is further supported by EMWD's April 2016 Recycled Water Strategic Plan calling for future deliveries to CDFW consistent with the currently contracted for supply. In addition, EMWD assigns a "Priority 1" to San Jacinto Wildlife Area's water supply contract and has committed that any future long term agreement would also be included in this category that contractually guarantees deliveries. (A typical agricultural customer is categorized as Priority 4.) EMWD has also projected recycled water supplies will increase in the future.

The original 1987 Agreement between the State of California, Department of Fish and Game, and Eastern Municipal Water District for the San Jacinto Wildlife Area Reclaimed Water Supply Project (Agreement) called for delivery of up to 4500 acre feet of water. This amendment to the Agreement ensures the Department the same water volume, the same cubic feet per second delivery, ensures the same timing of delivery. All provisions of the Agreement remain in full force and effect and are reaffirmed with this amendment. This amendment will maintain all of the original provisions through February 28, 2022. Therefore, as is the case here, where a project involves ongoing operations or a continuation of past activity, the established levels of use and resulting physical impacts are considered to be part of the environmental baseline and the project does not have a significant effect on the environment. To the extent continuing the contract without altering its terms results indirectly in physical changes to the environment, they are part and parcel of the ongoing activity currently allowed under the existing contract and not some unusual circumstance.

In short, staff does not believe CDFW reliance on the Class 1 and 7 categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines section 15300.2.