

RESOLUTION NO. 96-20

**BEFORE THE BOARD OF DIRECTORS OF THE
PACHECO WATER DISTRICT**

A RESOLUTION TO

**AUTHORIZE THE APPROVAL, EXECUTION AND DELIVERY OF THE CONTRACT
BETWEEN THE UNITED STATES AND PACHECO WATER DISTRICT PROVIDING
FOR PROJECT WATER SERVICE SAN LUIS UNIT AND DELTA DIVISION AND
FACILITIES REPAYMENT AND FILING OF A NOTICE OF STATUTORY
EXEMPTION AND CATEGORICAL EXEMPTIONS FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT FOR SAID CONTRACT**

WHEREAS, the Pacheco Water District (“District”) entered into Contract No. 7-07-20-W0005, as amended (“Original Contract”) with the United States which provided the District with water from the federal Central Valley Project (“CVP”) and more particularly from the Delta Division and San Luis Unit of the CVP (“Project Water”) from March 24, 1977 to February 2, 1986; and

WHEREAS, the United States and the District entered into a long-term contract identified as Contract No. 06-07-20-W0469, as amended, which provided for continued Project Water service to the District following expiration of the Original Contract and which is still in place currently (the “Existing Contract”); and

WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (the “WIIN Act”); and

WHEREAS, Section 4011(a)(1) of the WIIN Act provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association [such as the District] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions”; and

WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196) (“1939 Act”), to be converted under this section shall be converted to repayment contracts under section 9(d) of that [1939] Act”; and

WHEREAS, Section 4011(a)(4)(C) provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [such as the District], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’ association and their landowners as provided under State law”; and

WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section”; and

WHEREAS, on or about May 29, 2019, pursuant to Section 4011(a)(1) of the WIIN Act, the District requested that the United States, through the United States Bureau of Reclamation (“Reclamation”), initiate the process to convert its Existing Contract, which was executed under Section 9(e) of the 1939 Act, to a repayment contract under Section 9(d) of the 1939 Act; and

WHEREAS, pursuant to and consistent with the WIIN Act, Reclamation and the District negotiated terms and conditions that amend and convert the Existing Contract to a repayment contract, and those terms and conditions are reflected in the attached water service contract between the United States and Pacheco Water District Providing for Project Water Service San Luis Unit and Delta Division and Facilities Repayment, Contract No. 6-07-20-W0469-P (the “Conversion Contract”), a copy of which is incorporated herein by this reference as Exhibit “A”; and

WHEREAS, the Conversion Contract also reflects the current standard terms and conditions required by the Reclamation Manual; and

WHEREAS, the Conversion Contract continues Project Water service to the District in the same amounts as the Existing Contract, and within certain established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; and

WHEREAS, Project Water made available under the Conversion Contract will be diverted through the same CVP San Luis Unit and Delta Division facilities as the water provided under the Original Contract and the Existing Contract; and

WHEREAS, the District has fully utilized, for reasonable and beneficial use, all water provided under the Existing Contract by receiving and delivering such water to lands within the District’s boundaries for irrigation purposes, or putting such water to beneficial use through conservation and transfer in accordance with California law and expects to fully utilize, for reasonable and beneficial use, the quantity of Project Water to be made available to it pursuant to the Conversion Contract; and

WHEREAS, the District has relied on water obtained from the CVP for more than 40 years; therefore, it is imperative to the District and its landowners that the District continue to deliver the same quantity of water service to its lands through a contract with the United States pursuant to Reclamation Law and more particularly the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96 Stat. 1262); and

WHEREAS, the District maintains in its records copies of contracts, water delivery reports, crop information and other data supporting these factual findings; and

WHEREAS, Reclamation initiated a public comment period for the Conversion Contract, which period ended on October 6, 2020, during which two comments were received for the District's Conversion Contract; and

WHEREAS, Reclamation has reviewed all public comments and has approved the Conversion Contract for execution by the District; and

WHEREAS, the District has reviewed the terms and conditions of the Conversion Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution, and therefore proposes to enter into the Conversion Contract; and

WHEREAS, pursuant to the Ralph M. Brown Act (Gov. Code §§ 54950, et seq.), the District timely posted its agenda packet for this special meeting held telephonically on December 23, 2020, pursuant to Executive Order N-29-20, at least 24 hours prior to said meeting on the District's website, indicating that the District's Board of Directors would be considering approval of and authorization for execution of the Conversion Contract.

NOW, THEREFORE, it is hereby resolved by the Board of Directors of the Pacheco Water District that:

1. The above Recitals are true and correct, and this Board so finds and determines.
2. To the extent that the Conversion Contract may involve a change in rates, tolls, fares, or other charges necessary to repay the capital costs for the CVP facilities, the Conversion Contract is statutorily exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15273 and Public Resources Code Section 21080, subdivision (b)(8).
3. Execution of the Conversion Contract is categorically exempt from compliance with CEQA as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it provides for the continued operation of existing facilities with no expansion of the District's current water use or infrastructure.
4. Executing the Conversion Contract is also subject to the "common sense" categorical exemption from CEQA as provided in Title 14 of the California Code of Regulations Section 15061, subd. (b)(3) because it merely contemplates water delivery in the same nature and scope as prior contracts, which have been in place for over 40 years, and therefore will not result in any further significant effects on the environment.
5. The Conversion Contract will not create any effects or impacts specified in Title 14 of the California Code of Regulations, Section 15300.2.
6. Execution of the Conversion Contract is exempt from CEQA based on its record of proceedings showing that the Conversion Contract continues water service to the District in the

same amounts as the Existing Contract, within established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; it involves no increase in existing service; and no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.

7. The District shall prepare and file a Notice of Exemption with the Fresno and Merced County Clerks and the California Office of Planning and Research as provided for in Title 14 of the California Code of Regulations, Sections §§ 15062(c)(2) and (e), in substantially the form attached hereto as Exhibit “B”.

8. The Conversion Contract, as finalized by Reclamation, presented to the Board and on file with the Secretary hereof, is hereby approved. The District’s Board President is hereby authorized to execute and deliver the Conversion Contract in the form attached hereto as Exhibit “A.”

9. The District’s officers, staff, and consultants are hereby authorized and directed to take all additional actions they deem necessary or appropriate to carry out the intent of this resolution and to ensure continued water service to the District and its water users.

10. A certified copy of this resolution shall be prepared and transmitted by the District’s Secretary to the United States Bureau of Reclamation.

PASSED AND ADOPTED this 28th day of December, 2020, by the following vote to

wit:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

**CERTIFICATE OF SECRETARY
OF
Pacheco WATER DISTRICT,
A California Water District**

I, Chase Hurley, do hereby certify that I am the duly authorized and appointed Secretary of the Pacheco Water District, a California Water District (the “District”); that the following is a true and correct copy of that certain resolution duly and unanimously adopted and approved by the Board of Directors of the District on the 28th day of December, 2020; and that said resolution has not been modified or rescinded and remains in full force and effect as the date hereof:

IN WITNESS WHEREOF, I have executed this Certificate on this 28th day of December, 2020.

Chase Hurley
Secretary of Pacheco Water District

EXHIBIT "A"
CONVERSION CONTRACT

EXHIBIT "B"
NOTICE OF EXEMPTION