

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD
AND THE
SANTA ANA WATERSHED PROJECT AUTHORITY
REGARDING THE COSTA-MACHADO WATER ACT OF 2000

This Memorandum of Understanding is made and entered into this 3rd day of May, 2000, between the State of California, acting by and through the State Water Resources Control Board (SWRCB) and the Santa Ana Watershed Project Authority (SAWPA).

RECITALS:

- A. On March 7, 2000, the electorate of the State of California approved the Costa-Machado Water Act of 2000 (the Act);
- B. The Act authorizes the issuance and sale of State General Obligation Bonds in the total amount of \$1,970,000,000 and directs the State of California to deposit the proceeds of the bond sale in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund (the Fund);
- C. The Act creates in the Fund the Watershed Protection Account (the Account) and transfers \$468,000,000 from the Fund to the Account;
- D. The Act creates in the Account the Santa Ana River Watershed Subaccount (the Subaccount) and transfers \$235,000,000 from the Account to the Subaccount;
- E. The Act specifies that the money in the Subaccount, upon appropriation by the Legislature to SWRCB, may be used by SWRCB for allocation to SAWPA for various types of projects generally described in the Act that will rehabilitate and improve the Santa Ana River Watershed;
- F. The Act specifies, and SWRCB and SAWPA agree and acknowledge that, the Legislature intended that the expenditure of funds from the Subaccount be made through a broad-based watershed stakeholder process;
- G. The Act specifies, and SWRCB and SAWPA agree and acknowledge, that not more than three percent of the total amount deposited in the Subaccount may be used to pay costs incurred by SWRCB in connection with administration of the Subaccount; and
- H. Consistent with the Act, SWRCB and SAWPA (hereinafter, sometimes referred to collectively as the Parties) enter into this Memorandum of Understanding (MOU) to set forth in general terms the Parties' understanding of the procedures and criteria for the selection of projects to be funded by the Subaccount and the process by which the Parties will assure that the funds allocated from the Subaccount are used properly, in a timely fashion, and in a manner consistent with the Act.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

Project Priority List

1. Subsequent to entering into the MOU, SAWPA shall develop and submit to SWRCB a Project Priority List. Consistent with the Act, the Project Priority List may be used for the following types of projects:
 - a. Basin water banking;
 - b. Contaminant and salt removal through reclamation and desalting;
 - c. Removal of non-native plants and the creation of new open space and wetlands;
 - d. Programs for water conservation and efficiency and storm water capture and management; and
 - e. Planning and implementation of a flood control program to protect agricultural operations and adjacent property, and to assist in the effects of waste discharges to waters of the State.
2. SAWPA shall develop the Project Priority List through a broad-based Santa Ana Watershed stakeholder process that includes consultation with the Santa Ana Regional Water Quality Control Board (SARWQCB);
3. The Project Priority List developed by SAWPA shall include a proposed allocation of funds from the Subaccount to specific projects. SAWPA need not propose to encumber all of the funds in the Subaccount initially, but will strive, except as otherwise provided below, to encumber all such funds within three years after the first Project Priority List is submitted by SAWPA to SWRCB.
4. The Parties agree that SAWPA may amend and resubmit the Project Priority List to SWRCB as often as quarterly each calendar year.

Contract for Program Management and Administration

5. Subsequent to entering into the MOU, the Parties shall enter into a contract that addresses management and administration of the funds in the Subaccount. The contract shall be referred to as "Program Management and Administration Contract."
6. The Program Management and Administration Contract shall address all of, but not be limited to, the following:
 - a. The Program Management and Administration Contract shall designate SAWPA as the Program Manager for all projects to be funded by the Subaccount. The Program Management and Administration Contract shall also address SAWPA's duties as the Program Manager and specifically set forth in detail SAWPA's duties for management of project funding, the amount SAWPA may receive in payment for performing those duties, and the manner in which such payment will be made to SAWPA by SWRCB.
 - b. The Program Management and Administration Contract shall specify in detail the manner in which SAWPA shall apply to SWRCB, and the manner in which SWRCB shall process applications from SAWPA, for funding of individual projects, including funding for

- c. The Program Management and Administration Contract shall address procedures to expedite payments by SWRCB to SAWPA in order to assure SAWPA's ability as the Program Manager to maintain timely cash flow.
7. The Program Management and Administration Contract shall provide that SAWPA, as the Program Manager, shall receive and expend all funds in a fiduciary capacity and in a manner consistent with the Act and other appropriate State law.

Project Funding Contracts

8. Subsequent to entering into the MOU, and consistent with the Program Management Contract, the Parties may enter into contracts to fund individual projects designated in the Project Priority List. The Parties agree that funds allocated by SWRCB to SAWPA from the Subaccount may be used, subject to proper environmental review, to fund projects that will be constructed directly by SAWPA or projects constructed by other entities in the Santa Ana Watershed, provided that, in either case, SWRCB and SAWPA have the fiduciary duty to assure that the funds allocated from the Subaccount are used properly, reported properly, used in a timely fashion, and used in a manner consistent with the Act and other appropriate State law.
9. For any individual projects to be constructed by SAWPA, SAWPA shall enter into a Project Funding Contract with SWRCB. Such contracts shall be consistent with the Program Management and Administration Contract. No such contract between the Parties shall be entered into prior to compliance with the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.).
10. For any individual projects to be constructed by an entity other than SAWPA, SAWPA shall enter into a Project Funding Subcontract with the constructing entity. Each Project Funding Subcontract shall be in a form acceptable to SWRCB. SWRCB shall hold SAWPA responsible for programmatic and administrative aspects of the projects and shall not allocate any funds subject to this paragraph absent SAWPA's established responsibility for these requirements and CEQA compliance.

Other Provisions

11. The Parties agree and acknowledge that the State control agencies, such as the State Treasurer and the State Controller, may charge the Subaccount a fee to cover the costs associated with bond financing to fund the Subaccount.
12. SAWPA shall establish separate and complete accounting records on each project funded from the Subaccount and properly document all significant actions and decisions relative to each project, and shall accurately and completely account for all funds received and expended under each contract and shall certify these facts.
13. SWRCB and/or the SARWQCB shall have the right to review and obtain copies of all SAWPA's records pertaining to the MOU and subsequent contracts.

14. SWRCB's Contract Manager shall be the Executive Director or the Executive Director's designee. SWRCB's Contract Manager shall be the day-to-day representative for administration of this MOU and subsequent contracts and, except as otherwise specifically provided, shall have full authority to act on behalf of the SWRCB. Except as otherwise specifically provided, all communications relative to this MOU and subsequent contracts shall be given to SWRCB's Contract Manager at the following address:

State Water Resources Control Board
Division of Water Quality
901 P Street
P.O. Box 100
Sacramento, CA 95812

15. SAWPA's Contract Manager shall be the General Manager or the General Manager's designee. SAWPA's Contract Manager shall be the day-to-day representative for administration of the MOU and subsequent contracts and, except as otherwise specifically provided, shall have full authority to act on behalf of SAWPA. Except as otherwise specifically provided, all communications relative to this Memorandum of Understanding and subsequent contracts shall be given to SAWPA's Contract Manager at the following address:

Santa Ana Watershed Project Authority
11615 Sterling Avenue
Riverside, CA 92503

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date set forth below.

By _____
State Water Resources Control Board

Date

By _____
Santa Ana Watershed Project Authority

Date