

RESOLUTION NO. 119-19

WESTLANDS WATER DISTRICT

A RESOLUTION OF THE BOARD OF DIRECTORS:

AUTHORIZING THE FILING OF NOTICES OF STATUTORY EXEMPTION AND CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR APPROVAL OF AND AUTHORIZATION TO EXECUTE THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE, SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT,

AUTHORIZING APPROVAL, EXECUTION, AND DELIVERY OF THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE, SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT, AND

AUTHORIZING ACTIONS IN FURTHERANCE THEREOF

WHEREAS, the Westlands Water District (District) assigned to the United States, California State Water Resources Control Board (previously California State Water Rights Board) application number 15764 on October 17, 1960, following receipt of a letter, dated September 29, 1960, from the then-Acting Regional Director of the Bureau of Reclamation that provided, "A permanent water supply for your district will, of course, be assured and made available pursuant to a long term contract, renewable in accordance with current provisions of Federal Reclamation law."; and

WHEREAS, the District entered into a contract for water service with the United States on June 5, 1963, Contract No. 14-06-200-495-A (1963 Contract), which provided for the delivery of up to 1,008,000 acre-feet of water diverted through Central Valley Project facilities, the right to which was confirmed under paragraph 4 of the *Barcellos* Judgment and in other contracts between the District and the United States; and

WHEREAS, on June 29, 1965, the Legislature of the State of California enacted the Westlands Water District Merger Law, California Water Code sections 37800, *et seq*, which merged the West Plains Water Storage District into the District; and

WHEREAS, the implementation of the Westlands Water District Merger Law and disputes concerning the United States' obligation to make water available to the expanded District resulted in litigation that was filed against the District and the United States in 1979, *Barcellos and Wolfsen, Inc., et al., v. Westlands Water District, et al.*, No. CV 79-106-EDP, consolidated with *Westlands Water District, et al., v. United States, et al.*, No. CV-81-245-EDP; and

WHEREAS, that litigation was resolved through entry of a judgment on December 30, 1986, which obligated the United States to make available to the District on an annual basis, 1,150,000 acre-feet of CVP water; and

WHEREAS, on September 30, 1997, the District and the United States entered into the Binding Agreement for Early Renewal Between the United States and Westlands Water District, Binding Agreement No. 14-06-200-495A-BA, and the Binding Agreement for Early Renewal Between the United States and Westlands Water District, Binding Agreement No. CV-79-106-EDP-BA, which provide the terms and conditions for the renewal of the 1963 Contract; and

WHEREAS, prior to the expiration of the District's 1963 Contract, the District and the United States entered into Delta Division and San Luis Unit Contract Number 14-06-200-495A-IR1 and subsequently entered into Interim Renewal Contracts 14-06-200-495A-IR2 through 14-06-200-495A-IR6, the last of which is referred to herein as the "Existing Interim Renewal Contract" and establishes the terms and conditions for the delivery of Project Water to the District; 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) (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 [Contractor] 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), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)"; and "(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195)."; 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 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association [Contractor] 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 April 23, 2018, pursuant to WIIN Act, 4011(a)(1), the District requested that United States Bureau of Reclamation initiate the process to convert its water service contract to a repayment contract.

WHEREAS, pursuant to and consistent with the WIIN Act, the United States and the District negotiated terms and conditions that convert the Existing Interim Renewal Contract to a repayment contract, and those terms and conditions are reflected in the attached Converted Contract between the United States and Westlands Water District providing for Project Water Service, San Luis Unit And Delta Division, Facilities Repayment, which is incorporated herein by this reference (Converted Contract); and

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

WHEREAS, the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project and its existing facilities; and

WHEREAS, the United States has determined that the District has fulfilled all of its obligations under the Existing Interim Renewal Contract; and

WHEREAS, the District has demonstrated to the satisfaction of the Contracting Officer that the District has utilized the Project Water supplies available to it for reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to the Converted Contract; and

WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the District as an essential portion of its water supply; and

WHEREAS, the economies of regions within the Project, including the District’s, depend upon the continued availability of water, including water service from the Project; and

WHEREAS, it is imperative to the District and its landowners that the District continue water service to lands within the District for beneficial use, and the District therefore proposes to enter into the Converted Contract; and

WHEREAS, under the Converted Contract, ongoing receipt and delivery of water will continue with no expansion of service and no new facilities constructed because the District will deliver the water received under the Converted Contract: (1) to lands within the District's boundaries for beneficial use and that have been in production, and (2) through existing facilities; and

WHEREAS, the District has reviewed the terms and conditions of the Converted Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution; and

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

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

1. The facts set forth in the recitals above and in the documents referenced therein are true and correct, and the Board so finds and determines.
2. The Converted Contract will not create any effects specified in Title 14 of the California Code of Regulations, Section 15300.2.
3. Executing the Converted Contract is statutorily exempt from compliance with the California Environmental Quality Act as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the Central Valley Project or the amount of water delivered is proposed.
4. Execution of the Converted Contract is exempt from the California Environmental Quality Act based on its record of proceedings showing that the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project 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.
5. Execution of the Converted Contract is categorically exempt from compliance with the California Environmental Quality Act as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it merely provides for continued operation of existing facilities.

6. The District shall prepare and file a Notice of Exemption with the Clerks of Fresno and Kings Counties and the Office of Planning and Research (State Clearinghouse) as provided for in Title 14 of the California Code of Regulations, Section 15062(b), in substantially the forms attached hereto as Exhibit A.

7. The Converted Contract in substantially the form presented to the Board and on file with the Secretary is hereby approved.

8. The President of the District is hereby authorized to execute and deliver the Converted Contract in substantially the form attached hereto, with such additional changes and/or modifications as are approved by the President of the District, its General Manager, and its General Counsel.

9. The District's officers, staff, and consultants are authorized and directed to take all additional actions they deem necessary or appropriate in order to carry out the intent of this resolution.

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

Adopted at a regular meeting of the Board of Directors, at Fresno, California, this 15th day of October, 2019.

AYES: Directors Anderson, Bourdeau, Coelho, Errotabere, Ferguson, Neves, Nunn and Peracchi

NOES: None

ABSENT: Director Enos

Bobbie Ormonde, Secretary