



July 29, 2025

VIA E-MAIL

Colin L. Pearce, Seq.
Duane Morris
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
CLPearce@duanemorris.com

Re: Kern County Water Agency – Western Hills Water District

Dear Colin:

Thank you for your letter dated July 14, 2025. Kern County Water Agency (the “Agency”) remains hopeful that a mutually beneficial resolution to this matter can be achieved. However, there are several inaccuracies in your July 14 letter that need to be addressed, as well as the area of disagreement with respect to the possible termination of the 2000 contract (the “Contract”) between the Agency and Western Hills Water District (“WHWD”).

At the outset, it will be helpful to review the terms of the Contract and a summary of pertinent issues follows.

Nature of the Water to which WHWD is Entitled: Under the Contract, the water WHWD is entitled to receive is referred to as “Western Hills Entitlement Water” (see paragraph H in Article 1 - Definitions) and is up to 8,000 acre-feet of water that consists of Agency Local Water that will be exchanged for Agency SWP entitlement water. The Contract does not provide WHWD with any entitlement to Agency SWP water (which the Agency could not provide outside of its jurisdiction); the only water WHWD is entitled to receive under the Contract is the Agency Local Water, as defined in Recital D to the Contract to mean non-SWP water the Agency has banked in the Pioneer Groundwater Banking and Recovery Project.

The Department of Water Resources agreed to deliver the Agency Local Water to WHWD through the Point of Delivery Agreement attached as Exhibit C to the Contract (a copy of that Point of Delivery Agreement is included with this letter, as that agreement is highly relevant to any future deliveries to any person or entity to which the Agreement could be assigned with respect to delivery at any point other than the WHWD turnout). In sum, the up to 8,000 acre-feet of water to which the Contract applies is *not* State Water Project water; rather, it is banked Agency Local Water, to which the restrictions mentioned on page 2 of your July 14 letter do not apply.

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Lagerlof LLP

155 N Lake Avenue, 11th Floor
Pasadena, CA 91101

Lagerlof.com

Email: jciampa@lagerlof.com

T: (626)-793-9400

F: (626)-793-5900



Quantity of Water to be Provided to WHWD: Article 2 of the Contract sets forth the basic terms regarding the water to be provided to WHWD. That article states WHWD has acquired “the right to receive up to 8,000 acre-feet of Agency Local Water per Year.” Article 9 of the Contract, which addresses water shortages, provides the Agency “will make available for delivery to Western Hills each Year that percentage of that Year’s amount shown for that Year in the Entitlement Water Schedule in Article 8 that is equal to the percentage of the Agency SWP Entitlement Water that is allocated to the Agency by DWR that Year.” Thus, the actual amount of water to be delivered to WHWD each year will depend on the Agency’s State Water Project Table A allocation, as Article 2 specifies that the Agency will forego delivery of the amount of its SWP Entitlement Water it exchanges for the Agency Local Water delivered to WHWD.

The parties agreed to a reduced delivery schedule under Article 8, that would ramp up as the development project was phased into construction. That schedule started with 1,200 acre-feet in 2001 and increased over time to the full 8,000 acre-feet by 2013 and the following years.

Payments by WHWD: Section C of Article 4 sets forth the various annual amounts WHWD agreed to pay under the Contract. The first paragraph of Section C is the most significant, as it sets forth WHWD’s agreement “to pay to the Agency an amount equivalent to what Western Hills would otherwise have paid assuming Western Hills had become a State Water Contractor with a maximum annual entitlement of 8,000 acre-feet.” This provision requires WHWD to pay the fixed State Water Project costs for that 8,000 acre-foot entitlement to the Agency Local Water being exchanged for the Agency’s SWP Entitlement Water. The other provisions of Section C set forth other charges WHWD agreed to pay, including variable costs based on actual water delivered and Agency administrative costs related to the Contract.

Termination Issue: The Agency disagrees with WHWD’s position on termination of the Contract. The provision you cite in your July 14 letter with respect to Article 15(C)(3) is taken out of context. That provision states in full: “Certain of the rights and obligations of Western Hills in this Agreement are subject to the provisions of the Turnout Agreement, the Point of Delivery Agreement and the Pioneer Project Participation Agreement. Any action of the Agency to terminate or amend *any of those agreements* in a manner that is adverse to the interests of Western Hills without the prior written consent of Western Hills shall be void and of no force or effect.” That language clearly relates to the exhibit agreements (i.e., “those agreements”) and not to the Contract itself.

California law will imply a right to terminate a contract in the event of a material breach where no termination provision is included in the contract. WHWD’s continued failure to pay for the water that has been delivered over the past approximately five years constitutes such a material breach. The Agency therefore contends it has the right to terminate the Contract due to WHWD’s material payment breach. In any event, as stated in the opening paragraph of this

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letter, the Agency hopes that an acceptable resolution can be reached without this issue having to be judicially determined.

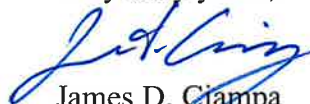
Assignment: The Agency acknowledges the provision in Article 15(I) that allows WHWD to assign the Contract. However, that section further states that the point of delivery of the water to WHWD “shall not be changed nor shall any of the water to be delivered to the Western Hills Turnout be sold, used or otherwise disposed of by Western Hills for use outside of Western Hills’ service area.” The Point of Delivery Agreement with DWR contains similar restrictions. Thus, any effort to assign the Contract or change the point of delivery and area of use of the water provided under the Contract will require amendments to the Contract as well as to the Point of Delivery Agreement. That assignment could also require a proceeding with the State Water Resources Control Board if a change in point of diversion is necessary, as well as CEQA analysis concerning such a change.

With all of that being said, the Agency remains willing to continue to work with WHWD to determine if an economically, logistically and regulatorily feasible solution can be found. In that regard, the Agency believes an in person meeting within the next few weeks could be helpful in ascertaining whether such a solution exists.

Lastly, you requested a full accounting and explanation of the disposition of all water which WHWD was entitled to received under the Contract. A summary document that shows that disposition is included an attachment to the e-mail that transmits this letter. We can set up a video conference in the next few days or early next week to walk you and WHWD through that document to help you understand it. The Agency wholly disagrees with any allegation that it has breached the Contract, as there is no obligation for the Agency to bank any water not used by WHWD and it has not used any SWP water outside of the permissible area of use (once again, the water delivered to WHWD under the Contract is not SWP water).

Please let me know if you would like to set up a remote meeting to review the water summary provided.

Very truly yours,



James D. Ciampa

JDC/cc

Attachments

cc: Board of Directors, Kern County Water Agency (via e-mail)

Ms. Lauren Bauer, Water Resources Manager, Kern County Water Agency (via e-mail)

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Email: jciampa@lagerlof.com

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