

October 14, 2020  
Tracy, California

Pursuant to adjournment, September 16, 2020 the Board of Directors of the Banta-Carbona Irrigation District met at 9:00 a.m. at 3514 W. Lehman Road, Tracy California on the above named date.

PRESENT: Directors: Jim McLeod, Keith Robertson, Glenn Robertson, Annette Elissagaray and James M Thoming

OTHERS PRESENT: General Manager David Weisenberger, Secretary Margaret Howe

CONFERENCE LINE: District Counsel Jeanne Zolezzi

ABSENT: None

#### ITEM 1 - MINUTES & TREASURER'S REPORT

Director Annette Elissagaray made a motion to approve the minutes of the September 16, 2020 Board Meeting as presented. Director Keith Robertson seconded the motion and it carried by the following vote; Ayes: Directors James McLeod, Keith Robertson, Glenn Robertson, James M Thoming and Annette Elissagaray; Noes: None; Abstain: None; Absent: None

Secretary Howe presented the Treasurer's report and after review by the Board it was filed.

#### ITEM 2 - MISCELLANEOUS CORRESPONDENCE

Secretary Howe reported the 2021 Mid-Pacific Water Users Conference is scheduled for January 20-22 at the Silver Legacy in Reno. The District received a survey requesting the attendee preference for an in-person, virtual or a combination of both conference. The majority of the Board would prefer an in-person conference.

#### ITEM 3 - MANAGER'S REPORT & DISCUSSION ITEMS.

General Manager Weisenberger reported one of the District's Assistant Water Masters is off on FMLA and a Ditchtender is filling in for him.

District staff is working on the long-crested weir on the lift canal; weed control, both ground and aquatic; installing the sound blankets at pump station #5; and patching the lift canal.

The roof is being replaced on pump station #1.

Pickups have been assigned to individual employees, so they are responsible for maintenance and care of their vehicle.

Arnaudo Construction is working on replacing lift canal lining at new pump station #4.

#### ITEM 4 – DIRECTOR AND STAFF ITEMS

There were no Director or staff items discussed.

#### ITEM 5 - REVIEW CURRENT WATER SUPPLIES AVAILABLE TO THE DISTRICT, REVIEW SCHEDULING OF AVAILABLE WATER SUPPLIES, CONSIDER IF ANY SUPPLIES WILL BE SURPLUS TO DISTRICT DEMANDS IN THIS WATER SEASON. ACTION AS NECESSARY

On May 19, 2020 the Bureau of Reclamation increased the District's allocation for the 2020/2021 water year to 20%. This provides the District with 4,000 acre feet of supplemental CVP Water. The District has transferred the balance of its rescheduled water (360 af) and 2,000 af if its 2020/2021 water year. Staff is planning on carrying over its remaining 2,000 acre feet of CVP into the 2021/2022 water year.

In September the District pumped 2,000 af of surface water under its Warren Act Contract for District use in October, while the canal lining is being replaced.

General Manager Weisenberger reported he has been contacted by San Luis Water District regarding a possible multi-year transfer agreement.

ITEM 6 – REPORT ON PROGRESS OF PROP 1 GRANT CONTRACT DEVELOPMENT TO STUDY, DESIGN, AND PERMIT A HABITAT RESTORATION PROJECT TO INCLUDE BIOTECHNICAL BANK STABILIZATION FOR LONG TERM SUSTAINABILITY OF THE HABITAT RESTORATION AND PROTECTION OF DISTRICT’S DIVERSION POINT. ACTION AS NECESSARY.

General Manager Weisenberger reported the grant contract is being still reviewed by the Delta Conservancy legal department.

ITEM 7 – UPDATE ON SAN JOAQUIN RIVER FISH POPULATION STUDY. ACTION AS NECESSARY.

There was no new information to report.

ITEM 8 – UPDATE ON PP 4 CONSTRUCTION PROGRESS. ACTION AS NECESSARY.

General Manager Weisenberger reported PP4 is basically complete other than a few minor items that need to be completed.

ITEM 9 – REVIEW FOR APPROVAL RESOLUTION APPROVING CONTRACT NO 20-SNR-02373 FOR “ELECTRIC SERVICE BASE RESOURCE BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION AND BANTA-CARBONA IRRIGATION DISTRICT”. ACTION AS NECESSARY.

After the Board of Directors reviewed Contract No 20-SNR-02373, Director Glenn Robertson made a motion to approve the contract. Director James M Thoming seconded the motion and it carried by the following vote; Ayes: Directors James McLeod, Keith Robertson, Glenn Robertson, James M Thoming and Annette Elissagaray; Noes: None; Abstain: None; Absent: None

#### **RESOLUTION NO. 2020-05**

#### **RESOLUTION APPROVING A CONTRACT FOR ELECTRIC SERVICE BASE RESOURCE BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION AND BANTA-CARBONA IRRIGATION DISTRICT IRRIGATION DISTRICT**

**WHEREAS**, the United States Department of Energy Western Area Power Administration (“**WAPA**”) has submitted to Banta-Carbona Irrigation District a contract entitled "Contract For Electrical Base Resource" (Contract No. 20-SNR-02373) (“**Contract**”), and

**WHEREAS**, WAPA’s marketing plan provides that starting on January 1, 2025, WAPA will provide 98 percent of available CVP power to its existing customers, and existing customers will have the right to extend 98 percent of their current base resource percentage as provided in the marketing plan.; and

**WHEREAS**, Banta-Carbona Irrigation District desire to purchase a percentage of the base resources consistent with the Marketing Plan

**WHEREAS**, the Board of Directors has decided that it is in the best interests of the District to enter into the Contract;

**BE IT RESOLVED** by the Board of Directors as follows:

1. The facts stated in the recitals above are true and correct and the Board so finds and determines.
2. The President of the Board of the District is hereby authorized and directed to execute the Contract, in substantially the form presented to the Board, subject to such additions, deletions and revisions as the executing officer may approve prior to execution, said execution providing conclusive proof of such approval and subsequently attached hereto as EXHIBIT A.

3. The District's General Manager is hereby authorized and directed to take all additional actions that he deems necessary or appropriate to carry out the intent of this Resolution.

**PASSED AND ADOPTED** this 14th day of October, 2020.

**ITEM 10 – REVIEW FOR APPROVAL RESOLUTION APPROVING THE  
“CONTRACT BETWEEN THE UNITED STATES AND BANTA-  
CARBONA IRRIGATION DISTRICT PROVIDING FOR PROJECT  
WATER SERVICE FROM DELTA DIVISION AND FACILITIES  
REPAYMENT – CONTRACT NO 14-06-200-4305A LTRI-P. ACTION  
AS NECESSARY.**

The Board reviewed and discussed Contract No 14-06-200-4305A LTRI-P and determined it would be in the best interest of the District to make the repayment in one lump-sum payment. Director James M. Thoming made a motion to approve the following resolution and authorize a Director to execute a wire transfer for the amount necessary for the repayment. Director Keith Robertson seconded the motion and it carried by the following vote; Ayes: Directors James McLeod, Keith Robertson, Glenn Robertson, James M Thoming and Annette Elissagaray; Noes: None; Abstain: None; Absent: None

**RESOLUTION NO. 2020-06**

**BANTA-CARBONA IRRIGATION 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  
BANTA-CARBONA IRRIGATION DISTRICT PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION  
AND FACILITIES REPAYMENT,**

**AUTHORIZING APPROVAL, EXECUTION, AND DELIVERY OF THE CONTRACT BETWEEN  
THE UNITED STATES AND BANTA-CARBONA IRRIGATION DISTRICT PROVIDING FOR  
PROJECT WATER SERVICE FROM DELTA FACILITIES  
AND FACILITIES REPAYMENT,**

**AND AUTHORIZING ACTIONS IN FURTHERANCE THEREOF**

WHEREAS, Banta-Carbona Irrigation District (“**District**”) entered into a contract for water service with the United States on February 14, 1969, Contract No. 14-06-200-4305A (“**Original Contract**”), which provided for the delivery of water from the Central Valley Project diverted through Delta Division facilities through February 28, 1995; and

WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act, subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-4305A-IR1 and subsequent Interim Renewal Contracts 14-06-200-4305A-IR2 through 14-06-200-4305A-IR8, which provided for water service to the Contractor from March 1, 1995 through February 28, 2006; and

WHEREAS, the United States and the Contractor entered into a long-term contract identified as Contract No. 14-06-200-4305A-LTR1, hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor following expiration of Contract No. 14-06-200-4305A-IR8; 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, by letter dated March 19, 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; and

WHEREAS, pursuant to and consistent with the WIIN Act, the United States and the District negotiated terms and conditions that convert the Original Contract to a repayment contract, and those terms and conditions are reflected in the Converted Contract between the United States and Banta-Carbona Irrigation District providing for Project Water Service from Delta Facilities and Facilities Repayment, attached hereto as **EXHIBIT A (“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 Original 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 and customers 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 existing beneficial use and to lands 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, as to Central Valley Project operations, 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 Clerk of San Joaquin County and the Office of Planning and Research (State Clearinghouse) as provided for in Title 14 of the California Code of Regulations, Section 15062(b).
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 Tracy, California, this 14th day of October, 2020.

AYES: James McLeod, Keith Robertson, Glenn Robertson, James M Thoming and Annette Elissagaray

NOES: None

ABSENT: None

**ITEM 11 - CLOSED SESSION:**

- 1) **CONFERENCE WITH LEGAL COUNSEL on EXISTING LITIGATION**  
PURSUANT to Subdivision (a) of Section 54956.9 of the Government Code
  - A. Banta-Carbona Irrigation District v. California State Water Resources Control Board, et al, Case No. 2015-1-CV-285182 in Santa Clara County Superior Court, Dept 1. This case originated in San Joaquin County as Case No. 39-2015- 00326421-CU-WM-STK
  - B. Natural Resources Defense Council v. Sally Jewell, U.S., Department of the Interior Case No. 1:05-cv-01207 LJO-GSA
- 2) **CONFERENCE WITH REAL PROPERTY NEGOTIATIONS**
  - A. Property: Consider financing distribution facilities and long term water service to ground inside and outside of District boundaries.  
Agency negotiator: David Weisenberger and District Counsel Jeanne Zolezzi  
Negotiating parties: Various landowners in T.3.S R.6.E, SECTIONS 9, 10, 14, 15, AND 16.

The Board returned to open session with no announcement.

**ITEM 12 – UPDATE ON PIPELINE CONSTRUCTION FOR YAMASAKI FARMS AND TO PROVIDE FINANCIAL ASSISTANCE FOR PIPELINE AND PUMP STATION TO SERVE IN-DISTRICT PARCELS #255-120-10 AND 255-270-16 AS WELL AS OTHER PARCELS OUTSIDE OF THE DISTRICT’S BOUNDARIES. ACTION AS NECESSARY**

General Manager Weisenberger reported the estimated cost for the 36” pipeline in Phase #1 of the project is \$460,000. The District also needs to work on needed easements in the construction area.

**ITEM 13 – UPDATE ON DISTRIBUTION OF DRAFT INSIDE AND OUTSIDE DISTRICT WATER SERVICE AGREEMENT FOR EAST SIDE GROUND. ACTION AS NECESSARY.**

No action was taken on this item.

**ITEM 14 - UPDATE ON THE PREPARATION OF THE TRACY SUB-BASIN GROUNDWATER SUSTAINABILITY PLAN (GSP). ACTION AS NECESSARY**

The next technical meeting will be held Thursday, October 15, 2020.

**ITEM 15 – CONSIDER REQUEST BY SCOTT BEDFORD FOR A LAND EXCHANGE AND AN EASEMENT ON VERNALIS ROAD IN T.3.S. R.6.E. SECTION 29. ACTION AS NECESSARY.**

The Board of Directors reviewed the request by Scott Bedford for a land exchange and an easement of Vernalis Rd. Director James M Thoming made a motion to approve a nontaxable 1031 exchange agreement and Scott Bedford to pay all cost associated with the exchange. Director Glenn Robertson seconded the motion and it carried by the following vote; Ayes: Directors James McLeod, Keith Robertson, Glenn Robertson, James M Thoming and Annette Elissagaray; Noes: None; Abstain: None; Absent: None

**ITEM 16 - APPROVAL OF WARRANTS**

Director Keith Robertson moved that the October 2020 Warrants in the amount of \$572,384.72 be approved for payment. Director James M Thoming seconded the motion and it carried by the following vote; Ayes: Directors James McLeod, Annette Elissagaray, Keith Robertson, Glenn Robertson and James M. Thoming; Noes: None; Abstain: None; Absent: None

The meeting was then adjourned to Wednesday, November 11, 2020 at 9:00 a.m.

Respectfully,

Margaret G. Howe