



**County Administrative  
Office  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One  
PETE VANDER POEL  
District Two  
AMY SHUKLIAN  
District Three  
EDDIE VALERO  
District Four  
DENNIS TOWNSEND  
District Five

**AGENDA DATE:** August 18, 2020-REVISED

|   |     |                                     |     |                                     |
|---|-----|-------------------------------------|-----|-------------------------------------|
| Public Hearing Required   | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Scheduled Public Hearing w/Clerk  | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Published Notice Required   | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Advertised Published Notice   | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Meet & Confer Required  | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Electronic file(s) has been sent  | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/>            |
| Budget Transfer (Aud 308) attached  | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Personnel Resolution attached   | Yes | <input type="checkbox"/>            | N/A | <input checked="" type="checkbox"/> |
| Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/>            |
| CONTACT PERSON: Denise England    PHONE: 559-636-5000                                 |     |                                     |     |                                     |

**SUBJECT:** Cutler Orosi Surface Water Project Authority Memorandum of Understanding

**REQUEST(S):**  
That the Board of Supervisors:  
Approve a Memorandum of Understanding with the Cutler Orosi Surface Water Project Joint Powers Authority for participation in the Cutler Orosi Surface Water Project for water supply for communities and residents in the north County.

**SUMMARY:**  
In 2015 your Board approved Resolution No. 2015-0262, authorizing Tulare County Agreement No. 27062, a grant from the California State Water Resources Control Board (SWRCB) Safe Drinking Water State Revolving Fund to conduct community outreach and develop a governance structure by which seven communities in northern Tulare County could work together to secure a reliable, safe water source for their domestic water. Community leaders and representatives from special districts met regularly for over a year to discuss the formation of a Joint Powers Authority which would apply for State funding for a regional water project, from planning (including feasibility and alternatives analyses) through construction. Initially, the communities involved were Sultana Community Services District (CSD), East Orosi CSD, Cutler Public Utilities District (PUD), Orosi PUD, and the County on behalf of Seville and Yettem.

After most of the Joint Powers Agreement was negotiated, there was a split with Cutler PUD and Orosi PUD on one side, and the remaining participants on the other, regarding certain language in the Agreement. Cutler PUD and Orosi PUD determined that they would no longer participate in the group. After consultation

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with the State, it was determined there was still interest from the remaining three parties in going forward, and there was still a possibility of receiving State funding, for at least an alternatives analysis, if a JPA was formed by the three. To that end, on September 26, 2017, your Board adopted Resolution No. 2017-0819, approving Tulare County Agreement No. 28338, forming the Northern Tulare County Regional Water Alliance (NCRWA) between Sultana CSD, East Orosi CSD, and the County.

Since the inception of the NCRWA, Yettem and Seville formed their own special district for domestic water supply, and Sultana CSD is annexing Monson. The newly formed Yettem-Seville CSD wants to participate in the NCRWA and there is a provision by which the County can assign its seat (and rights and obligations) to that District. Staff is in the process of preparing the documentation to facilitate that change. The County will stay on as a non-voting member to support the communities' efforts.

After leaving the JPA negotiations, the Cutler and Orosi PUDs formed the Cutler Orosi Surface Water Project Authority (COSWPA). They executed their Joint Powers Agreement in January 2019 to pursue the same surface water treatment project. The COSWPA drafted a USDA Rural Community funding application for alternatives analysis, environmental work, design and engineering, and construction for the project. COSWPA approached the County via their engineer, Jim Wegley, a year ago to consider participation in the project. The COSWPA asked the County to participate on behalf of Yettem, Seville, East Orosi, and the residents along the project alignment, but outside of any water district. Staff suggested the COSWPA work with the NCRWA to determine interest. However, the COSWPA informed staff they only desired to work with each individual community and board.

The East Orosi CSD has a board of directors that are responsible for the sewer and water system of that district. As such, they have the authority to determine the district's desire and ability to participate in the COSWPA project. Furthermore, there is an active consolidation order for East Orosi CSD and Orosi PUD public water systems. It would not be appropriate for the County to participate on East Orosi CSD's behalf.

There are approximately 44 residents along the alignment that may receive water from a future project. However, these residents could not receive water directly from the County because the County does not have a public water system in that area and the residents are outside of any Zones of Benefit. There is a LAFCo procedure for extraterritorial service agreements, which would allow residents to receive water from a participating district, most likely Orosi or Cutler PUDs. At this time, the Orosi and Cutler PUDs do not wish to take on this responsibility.

The County recently transferred the Yettem-Seville water system to the Yettem-Seville CSD. The Yettem-Seville CSD now has control over their public water system and will begin collecting revenue soon. The Yettem-Seville CSD has expressed their interest in the project, however, they have no money to contribute to

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the cost reimbursement that the COSWPA is requesting. The CSD should be fully functional by late 2020. Because of these financial challenges, it is in the County's interest to participate on behalf of the CSD.

On June 9, 2020 your Board directed staff to pursue a Memorandum of Understanding with the COSWPA for the residents along the pipeline and Yetterm-Seville CSD for following activities: 1) USDA application cost share; and 2) Purchase of Property Option cost share for the Cutler Orosi Surface Water Project.

The COSWPA provided a Memorandum of Understanding (MOU). Based on Yettem-Seville and the undistricted residents' water needs, the cost share is 6.59%. Broken out further, the Yettem-Seville CSD needs 4.37% and the 44 residents need 2.2% of the total water supplied for the project. This cost-share applies to cost of the application to USDA. The COSWPA has indicated that this cost is anticipated to be \$100,000 and some of the work has already been completed and paid by the existing COSWPA members. Thus, the County's share would be approximately \$7,000 for the application.

The COSWPA indicated the application costs will most likely be reimbursable under the USDA funding agreement, if awarded. This would mean the County's contribution would be refunded once the grant is received. The MOU allows for the purchase of an option on property identified for the future plant. The County's share of the purchase option is approximately \$1,100 plus 6.59% of the negotiated deposit. This cost may also be reimbursable under the USDA funding agreement. The MOU allows the signatories to work up to a USDA funding agreement. Once a funding agreement is awarded, a new MOU or JPA needs to be negotiated and executed to move forward with land purchase and further project development.

**FISCAL IMPACT/FINANCING:**

There is approximately an \$8,100 plus 6.59% of the negotiated deposit net County cost to participate in the MOU. The costs are budgeted in the FY 2020-21 012 Miscellaneous Administration budget.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's Strategic Plan includes an initiative to provide for the safety and security of the public, which includes the goal of providing an adequate and safe water supply.

**ADMINISTRATIVE SIGN-OFF:**

Denise England  
Denise England  
Water Resources Director

cc: County Administrative Office

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Attachments: MOU

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF CUTLER OROSI                    )  
SURFACE WATER PROJECT                        ) Resolution No. \_\_\_\_\_  
AUTHORITY MEMORANDUM OF                    ) Agreement No. \_\_\_\_\_  
UNDERSTANDING                                    )

UPON MOTION OF SUPERVISOR \_\_\_\_\_,        SECONDED        BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

Approved a Memorandum of Understanding with the Cutler Orosi Surface Water Project Joint Powers Authority for participation in the Cutler Orosi Surface Water Project for water supply for communities and residents in the north County.

**Memorandum of Understanding  
Water Supply Feasibility**

This Memorandum of Understanding (“MOU”) is made and entered into effective \_\_\_\_\_, (the “Effective Date”) by and among the Cutler-Orosi Surface Water Plant Authority (“COSWPA”), a joint powers agency, and the County of Tulare, (“Tulare County”) collectively referred to herein as the “Parties.”

**Recitals**

- A. The Parties have concerns over water quality and water supply. The Parties are interested in developing a surface water supply to be used solely or in conjunction with existing groundwater wells to create a stable and potable water supply.
- B. The COSWPA was formed between the Cutler Public Utility District “CPUD” and the Orosi Public Utility District “OPUD” to seek grant funding to construct and operate a surface water treatment plant.
- C. By this MOU, the COSWPA and Tulare County are stating their joint interest and intent to participate in the planning for the construction and operation of such a plant.

NOW THEREFORE, the Parties agree as follows:

- 1. Funding. The Parties agree that they will share the preliminary costs as specified in this MOU based on the following proposed division:

COSWPA – 93.41%

Tulare County – 6.59% - Representing estimated capacity for the unincorporated communities of Yettem, Seville (4.39%), and potential users along the planned pipeline routes (2.2%) that would be able to receive treated surface water.

This cost allocation may be modified by separate amendment signed by both parties. The cost allocation is based on the approximate estimate of water each represented community would receive from the surface water treatment plant and the amount of water that would be reserved for use by Tulare County residents in areas adjacent to supply lines that could receive treated surface water.

All costs spent under this MOU shall be tracked by the Parties. Costs may be advanced by one Party on behalf of another Party by separate agreement. However, Parties will be responsible for reimbursing their respective share of all costs incurred.

Parties agree that interest will not be charged on the amounts owed but that they will make best efforts to reimburse the amounts owed as soon as possible.

Prior to adding additional parties, the Parties shall be required to agree in writing to the revised amount of costs owed. Cost responsibilities include amounts that will be incurred

moving forward and allocations of amounts previously spent that shall be considered an advanced cost and that will be subject to reimbursement from the additional parties.

2. Grant Funding and Reimbursement. Parties hereby state that it is the intention of the Parties to apply for and obtain grant funding for the construction of the surface water treatment plant, and to apply for and obtain grant funding to reimburse preliminary project costs incurred under this MOU. Parties agree that any eligible grant funding received shall be used to reduce the total amount incurred prior to dividing the applicable share of costs according to the cost share percentages stated in this MOU.

3. Term and Termination of MOU

a. The term of this MOU shall commence on the Effective Date and continue until terminated by a party or for thirty years as allowed under Public Utilities Code section 16885.

b. Each Party reserves the right to terminate this MOU upon sixty (60) days written notice to other party. The obligation to pay or reimburse for agreed-upon costs incurred under this MOU will survive the termination of this MOU and Parties agree to complete such reimbursement within five (5) years from the date of termination.

c. The agree that this MOU does not include the costs of construction, operation, or maintenance of a surface water treatment plant. Parties acknowledge that this MOU is intended to terminate prior to the commitment to fund construction of a surface water treatment plant, so that the Parties will have the opportunity to review the preliminary cost estimates of operating and maintaining the surface water treatment plant before being committed to additional costs. Should any or all Parties agree to jointly move forward with the construction, operation, and maintenance of a surface water treatment then that would be memorialized in a separate agreement, such as a Joint Powers Agreement, between the Parties and any other participating agencies. If no agreement can be reached involving all Parties, then COSWPA or any other Party may move forward with the surface water plant independently or with other participating agencies.

d. Parties agree that if a scheduling conflict occurs concerning the time to finalize any grant application that the COSWPA may decide whether to pursue the grant application, and such application would not be binding on another Participating Agency without that agency's separate approval.

4. Meetings. Any joint meetings of Parties shall be subject to the requirements of the Ralph M. Brown Act and all other California laws regarding open meetings and public records.

5. Costs Subject to Division. Under this MOU the Parties agree to divide the following types of costs based on the applicable cost share percentages listed above:

- a. Environmental review of potential site locations.
- b. Engineering review, including preparation of a preliminary engineering study of the proposed surface water treatment plant, this also includes geotechnical review of potential site locations.
- c. Preliminary discussions with property owner(s) – costs of right of way consultant, including costs to review title, appraisal costs, negotiations over a right of entry and site locations for the plant with the owner of land where site is currently being considered, may also include costs to negotiate an option to purchase the land.
- d. Costs to prepare and submit grant or loan applications for the surface water treatment plant.

This would include costs incurred prior to the Effective Date of this MOU.

Parties agree that prior to paying a negotiated amount for an option to purchase land that they would meet to discuss potential ownership and cost responsibility of purchase option if the grant application for construction has not been submitted and the membership of the JPA has not been modified to specifically address the ownership and operation of the plant by the additional communities participating in the grant application.

The costs to form and operate the COSWPA would not be included under this MOU.

6. Data, Studies, and Related Information. Parties agree to provide all data, studies, and related information for the construction of the surface water treatment and to provide such documents upon request between the Parties. All documents prepared or data gathered during the project shall belong equally and shall be shared between the Parties.

7. Notices. All notices relative to this MOU shall be given in writing and shall be personally served or sent by first class mail and be effective upon personal service or by depositing such notice in the United States mail. The Parties shall be addressed as follows, or at any other address as later designated by a Party:

COSWPA:                      Cutler-Orosi Surface Water Plant Authority  
    Attn: Dennis Keller, Board Secretary  
    P.O. Box 911  
    Visalia, CA 93279

Tulare County:              County of Tulare  
    Attn: Denise England  
    2800 W. Burrel Avenue  
    Visalia, CA 93291

Any party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Participating Agencies in the manner provided for in this Paragraph.



9. Entire MOU. This MOU sets forth the entire agreement among the Participating Agencies and supersedes all other oral or written representations. This MOU may be modified only in a writing approved by all Parties. All exhibits and recitals to this MOU are herein incorporated by this reference

10. No Joint Powers Agreement. No Party or employee of any Party is an agent or employee of any other Participating Agency for any purpose and is not entitled to any of the benefits provided by a Party to its employees. This MOU shall not be construed as forming a partnership or any of other association or separate joint powers agency among the Parties or a separate special district.

11. Dispute Resolution. If a dispute arises between the Parties, then they agree to meet and confer in an attempt to resolve the matter. If no resolution is reached, then parties agree to seek non-binding mediation of the dispute. If resolution is still not reached, then parties may seek formal arbitration or have the matter heard by a court of appropriate jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement to be effective as of the date all parties have executed this agreement.

**Cutler-Orosi Surface Water Plant Authority**

\_\_\_\_\_  
Board President

Dated \_\_\_\_\_

**County of Tulare**

\_\_\_\_\_  
Chairman. Board of Supervisors

Dated \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Tulare County Counsel

Dated \_\_\_\_\_