

<p><b>COUNTY OF SONOMA AGENDA ITEM SUMMARY REPORT</b></p>	<p><b>Clerk of the Board Use Only</b></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"><b>Meeting Date</b></td> <td style="width:50%;"><b>Held Until</b></td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td><b>Agenda Item No:</b></td> <td><b>Agenda Item No:</b></td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </table>	<b>Meeting Date</b>	<b>Held Until</b>	_____	_____	<b>Agenda Item No:</b>	<b>Agenda Item No:</b>	_____	_____
<b>Meeting Date</b>	<b>Held Until</b>								
_____	_____								
<b>Agenda Item No:</b>	<b>Agenda Item No:</b>								
_____	_____								

<p><b>Department:</b> Sonoma County Water Agency</p>	<p>( ) 4/5 Vote Required</p>
--	------------------------------

<b>Contact:</b> Pam Jeane	<b>Phone:</b> (707) 524-1165	<b>Board Date:</b> 06-16-09	<b>Deadline for Board Action:</b>
------------------------------	---------------------------------	--------------------------------	-----------------------------------

**AGENDA SHORT TITLE:**  
Dry Creek Agricultural Water Users, Inc. Agreements

**REQUESTED BOARD ACTION(S):**  
Resolution approving Settlement Agreement and Mutual Release between the Sonoma County Water Agency and Landowners for Water Rights resolving CEQA litigation related to approval of April 2008, Amended Agreement By and Between the Sonoma County Water Agency and the Dry Creek Agricultural Water Users, Inc.; 2) rescinding approval of April 2008, Amended Agreement; 3) determining that approval of Revised Amended Agreement By and Between the Sonoma County Water Agency and the Dry Creek Agricultural Water Users, Inc., will not have a significant adverse effect on the environment and authorizing filing of a Notice of Exemption; 4) approving and authorizing the Chairman to execute the Revised Amended Agreement; and 5) authorizing and directing the General Manager/Chief Engineer to approve the Dry Creek Agricultural Water Users, Inc.- Member Agreement form and to take such other actions as are required to implement the Agreements.

<b>CURRENT FISCAL YEAR FINANCIAL IMPACT</b>			
<u>EXPENDITURES</u>			<u>ADD'L FUNDS REQUIRING BOARD APPROVAL</u>
<b>Estimated Cost</b>	\$	-0-	<b>Contingencies</b> <span style="float: right;">\$</span>
			(Fund Name: )
<b>Amount Budgeted</b>	\$	-0-	<b>Unanticipated Revenue</b> <span style="float: right;">\$</span>
			(Source: )
<b>Other Avail Approp (Explain below)</b>	\$		<b>Other Transfer(s)</b> <span style="float: right;">\$</span>
			(Source: )
<b>Additional Requested:</b>	\$	-0-	<b>Add'l Funds Requested:</b> <span style="float: right;">\$</span> <span style="float: right;">-0-</span>

**Explanation (if required):**

**Prior Board Action(s):**

04-22-08 Resolution 08-0377 approving Amended Agreement with Dry Creek Agricultural Water Users, Inc., and making other determinations and authorizations related to the Agreement.

11-06-07 Resolution 07-0901 rescinding Resolution 06-0220 in accordance with Superior Court ruling and directing work on amended agreement.

03-14-06 Resolution 06-0220 approving Agreement with Dry Creek Agricultural Water Resources Users, Inc., and making other determinations and authorizations related to the Agreement;

11-09-04 Resolution 04-1088 Board directed General Manager/Chief Engineer complete negotiations with Dry Creek Agricultural Water Users, Inc.

12-07-99 Board approved Tri-Party Agreement with Dry Creek Agricultural Water Users, Inc. and Wagner and Bonsignore Consulting Civil Engineers to facilitate engineering work required to develop agreement with Dry Creek landowners.

**Alternatives - Results of Non-Approval:** Litigation would continue.

**Background:** 1) Revised Amended Agreement; 2) Draft Corporation-Member agreement form; 3) April 2008 Agenda item; 4) Settlement Agreement and Mutual Release; 5) Draft Notice of Exemption, on file with the Clerk

This item proposes minor modifications to the April 2008 Amended Agreement between the Sonoma County Water Agency and the Dry Creek Agricultural Water Users, Inc. (Dry Creek Corporation). The purpose of the Amended Agreement was to avoid litigation of competing claims to water in Dry Creek Valley. The history of negotiations and litigation that resulted in the Amended Agreement is described at length in the April 22, 2008 Agenda item, on file with the Clerk. The Amended Agreement was to be implemented through agreements between the Corporation and its Members (Corporation-Member Agreement), to which the Agency was a third-party beneficiary. The April 22 Agenda item also authorized the General Manager/Chief Engineer to approve the Corporation Member Agreement form.

After the Board approved the April 2008 Amended Agreement, Landowners for Water Rights initiated another lawsuit claiming that the Board's approval violated the provisions of the California Environmental Quality Act (CEQA). Instead of litigating the claim, however, Sonoma County Counsel's Office negotiated minor changes to the Amended Agreement.

Under the terms of the proposed Settlement Agreement and Mutual Release, on file with the Clerk, the Agency will rescind its approval of the April 2008 Amended Agreement and each party will bear its own costs and attorney fees. In addition, the parties agreed to specific changes for the Amended Agreement, to be adopted today. The changes to the Amended Agreement (now named the Revised Amended Agreement) further clarify that neither the Agency nor the Corporation or its Members are obligated to carry out any specific future projects and that neither the Corporation nor its Members have any obligation under the Revised Amended Agreement to accept substitute water supplies, including recycled water supplies. Minor conforming changes to the Corporation-Member Agreement form are needed and that agreement is also on file with the Clerk.

The Revised Amended Agreement provides, as did the Amended Agreement, that it is principally an accommodation of existing claims and exempt from CEQA. A draft Notice of Exemption is on file with the Clerk. The Revised Amended Agreement makes clear that (1) although the Agency and Corporation may evaluate the feasibility of implementing future projects to provide alternative sources of water to Corporation Members, such as recycled water, neither the Agency, the Corporation nor its Members are in any way committed to fund, carry out, approve or take water from such future projects; and (2) any such future projects will be carried out only after completion of appropriate site specific environmental analysis.

**REQUESTED BOARD ACTION(S):**

Resolution approving Settlement Agreement and Mutual Release between the Sonoma County Water Agency and Landowners for Water Rights resolving CEQA litigation related to approval of April 2008 Amended Agreement By and Between the Sonoma County Water Agency and the Dry Creek Agricultural Water Users, Inc.; 2) rescinding approval of April 2008 Amended Agreement; 3) determining that approval of Revised Amended Agreement By and Between the Sonoma County Water Agency and the Dry Creek Agricultural Water Users, Inc., will not have a significant adverse effect on the environment and authorizing filing of a Notice of Exemption; 4) approving and authorizing the Chairman to execute the Revised Amended Agreement; and 5) authorizing and directing the General Manager/Chief Engineer to approve the Dry Creek Agricultural Water Users, Inc.- Member Agreement form and to take such other actions as are required to implement the Agreements.

**Attachments:** Resolution (R1)

**On File With Clerk:** 1) Revised Amended Agreement (1 copy); 2) Draft Corporation-Member agreement form (1 copy); 3) April 2008 Agenda item (1 copy); 4) Settlement Agreement and Mutual Release (4 copies); 5) Draft Notice of Exemption

**CLERK OF THE BOARD USE ONLY**

**Board Action (If other than "Requested")**

**Vote:**