

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



December 9, 2021

Robert L. Kelly  
Vice President, Regulatory Affairs  
Suburban Water Systems  
1325 N. Grand Ave., Ste. 100  
Covina, CA 91724-4044

Dear Mr. Kelly,

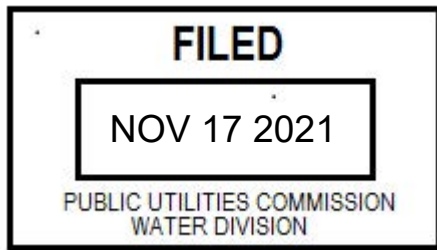
The Water Division of the California Public Utilities Commission has approved Suburban Water Systems' Advice Letter No. 358, filed on November 17, 2021, regarding lease-out of Central Basin water production rights, in compliance with D.21-10-024.

Enclosed is a copy of the advice letter with an effective date of November 17, 2021 for the utility's files.

Please contact Jefferson Hancock at [JHO@cpuc.ca.gov](mailto:JHO@cpuc.ca.gov) or 415-703-3453, if you have any questions.

Thank you.

Enclosures



**Suburban  
Water Systems**

**A SouthWest Water Company**

1325 N. Grand Ave. Ste. 100, Covina, CA 91724-4044  
Phone: 626.543.2500, Fax: 626.331.4848  
www.swwc.com

U-339-W

**VIA EMAIL**

ADVICE LETTER NO. 358-W

November 17, 2021

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Suburban Water Systems (Suburban) submits this Tier 1 Advice Letter to inform the Commission that Suburban proposes to lease out 500 acre feet of Central Basin water production rights to the City of Whittier through June 30, 2022.

This information is provided to the Commission in compliance with Decision (D.) 21-10-024, Decision Approving and Adopting Settlement Agreement, Resolving Remainder of Disputed Issues and Authorizing Suburban Water Systems' General Rate Increases For 2021, 2022, and 2023 which adopted the settlement agreement.

Ordering Paragraph No. 2 of D.21-10-024 states:

*The joint motion (filed on April 14, 2021) for adoption of the Settlement Agreement is granted, and the Settlement Agreement attached to this decision as Appendix A is approved and adopted.*

Appendix A, Revised Settlement Agreement Between Suburban Water Systems and the Public Advocates Office, section J (Water Rights Leases), first bullet point states:

*Suburban will file a Tier 1 Advice Letter with the Commission before leasing its water rights out to other entities.*

A copy of the "Agreement for Lease of Annual Central Basin Water Production Rights" has been included as Attachment B.

**Tier Designation and Effective Date**

This is a Tier 1 filing – the advice letter is a compliance advice letter.

Suburban requests that the advice letter is effective on November 17, 2021, the date of this advice letter is being filed with the Commission.

In compliance with Water Industry Rule 4.3 of General Order 96-B, a copy of this advice letter has been mailed or electronically transmitted to all interested and affected parties as detailed in Attachment A.

**Response or Protest**

Anyone may respond to or protest this advice letter. A response supports the filing and may contain information that proves useful to the Commission in evaluating the advice letter.

A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. These grounds may be based upon the following:

- (1) The utility did not properly serve or give notice of the advice letter; or
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies; or

- (3) The analysis, calculations, or data in the advice letter contain material error or omissions;  
or
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding; or
- (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory (provided that such a protest may not be made where it would require re-litigating a prior order of the Commission).

A protest may not rely on policy objections to an Advice Letter (AL) where the relief requested in the AL follows rules or directions established by statute or Commission order applicable to the utility.

A protest shall provide citations or proofs where available to allow staff to properly consider the protest. DWA must receive a response or protest via email (or postal mail) within 20 days of the date the AL is filed.

The addresses for submitting a response or protest are:

Email Address:  
[Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov)

Mailing Address:  
California Public Utilities Commission  
Division of Water and Audits, 3rd Floor  
505 Van Ness Avenue, San Francisco, CA 94102

On the same date the response or protest is submitted to Water Division, the respondent or protestant shall send a copy by mail (or e-mail) to us, addressed to:  
Suburban Water Systems, Robert L. Kelly, V.P. Regulatory Affairs, 1325 N. Grand Avenue, Suite 100, Covina, CA 91724, FAX (626) 331-4848, or e-mail [bkelly@swwc.com](mailto:bkelly@swwc.com)

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform Water Division, within the 20-day protest period, so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

Replies: The utility shall reply to each protest and may reply to any response. Each reply must be received by Water Division within five business days after the end of the protest period, and shall be served on the same day to the person who filed the protest or response to the AL.

If you have not received a reply to your protest within 10 business days, contact Suburban Water Systems at (626) 543-2500.

This filing will not cause the withdrawal of service, nor conflict with other schedules or rules.

Sincerely,

/s/Robert L. Kelly

Robert L. Kelly  
Vice President, Regulatory Affairs

**AGREEMENT FOR LEASE OF ANNUAL  
CENTRAL BASIN WATER PRODUCTION RIGHTS**

**THIS AGREEMENT FOR LEASE OF ANNUAL WATER PRODUCTION RIGHTS** ("Agreement") is made as of \_\_\_\_\_ day of October 2021 ("Effective Date") by and between Suburban Water Systems, a California corporation ("Lessor") and the City of Whittier (Lessee). Lessor and Lessee are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties."

**RECITALS**

**WHEREAS**, both Lessor and Lessee are parties in that certain action that adjudicated groundwater rights in the Central and West Basin, pursuant to Judgment dated October 11, 1965, and entered in Los Angeles Superior Court Case No. 786,656 entitled "Central and West Basin Water Replenishment District vs. Charles E. Adams et al." during the period commencing July 1, 2021 and continuing to and including June 30, 2022 (the "Amended Judgment").

**WHEREAS**, Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, a minimum of 500 acre-feet per year of Lessor's Central Basin Allowed Pumping Allocation Production Rights in Fiscal Year 2021-22 (the "Lease Years"); and

**NOW, THEREFORE**, Lessor and Lessee agree to the terms and conditions set forth herein:

**1. Water Rights Leased**

A. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the right to extract 500 acre-feet per year of Lessor's Annual Production Right from the Central Basin in each of the Lease Years (Fiscal Year 2021-22), Lessee agrees to put all amounts of water extracted under this Agreement to reasonable and beneficial use.

B. For purposes of computing the Parties' respective carryover, assessments, and other rights and obligations under the Amended Judgment, Lessee's Annual Production Right under the Amended Judgment shall be increased, and Lessor's Annual Production Right under the Amended Judgment shall be decreased, by the quantity of Annual Production Right Leased per year for each of the Lease Years covered by this Agreement. Except for the rights expressly leased under this Agreement, Lessee shall not acquire any other current or future right, title or interest in any water rights held by Lessor under the Amended Judgment or otherwise held by Lessor now or in the future.

**2. Term and Effective Date**

A. The Term of this Agreement shall commence on the Effective Date and shall remain and continue in effect until June 30, 2022, except as provided in Section 1.B above for purposes of computing the Parties' respective rights and obligations under the Amended Judgment.

B. If the last party to sign this Agreement signs before October 21, 2021, the Effective Date shall be the date the last party signs this Agreement. If the last party to

sign this Agreement signs on or after October 21, 2021, the Effective Date of this Agreement shall be the date upon which an advice letter having been filed by Lessor with the California Public Utilities Commission ("CPUC") notifying the CPUC of this lease is deemed approved.

**3. Compliance with Rules and Regulations, and Other Procedures**

- A. Lessee shall exercise said right and extract the same on behalf of Lessor during the period above specified and put the same to beneficial use and Lessee shall not by the exercise hereunder of said right acquire any right to extract water independent of the rights of the Lessor.
- B. Lessee shall notify the District and the Watermaster that said pumping was done pursuant to this Agreement and provide the Watermaster with a copy of this document.
- C. Lessee shall note, in any recording of water production for the period of agreement that said pumping was done pursuant to this Agreement.
- D. Lessee's Allowed Pumping Allocation shall be increased by the amount hereby leased when computing carryover or allowable over extraction as provided by Part III, Subpart A and B in said Amended Judgment.

**4. Payment**

A. Lessee shall pay to Lessor the sum of Sixty-Two thousand, Five hundred dollars and no cents (\$62,500) for 500 acre-feet per year of Lessor's Annual Central Basin Production Right in each of the Lease Years (Fiscal Year 2021-22) at a rate of one hundred twenty-five dollars and no cents (\$125.00) per acre-foot (the "Payment"). The Payment by Lessor under this Agreement shall be made upon the receipt of the invoice from Lessor.

**5. Payment of Assessments**

In addition to the payment set forth in Section 4 above, Lessee shall pay assessments levied on the pumping of said ground water by the Water Replenishment District of Southern California.

**6. Water Quality**

Lessor makes no warranties or representations, and assumes no liabilities, obligations or responsibilities of whatever nature to Lessee or any other person or entity with respect to the quality of any water extracted for any purpose by Lessee under this Agreement.

## **7. Indemnification**

A. Lessee assumes the sole risk for the exercise of any and all rights conferred on it by this Agreement. Lessee agrees and does hereby indemnify, defend, save, and hold harmless Lessor, and its elected and appointed officials, officers, agents, employees, consultants and attorneys (collectively, "Indemnified Parties") as follows:

1. From and against any and all losses, damage, liability, actions, claims, costs, and expenses from damage, of any nature, including, but not limited to, bodily injury, occupational disease, death, person injury, property damages, reasonable attorneys' fees and court costs (hereafter "Loss"), relating to or arising out of the exercise of any rights conferred hereunder on Lessee; provided, however, that Lessee's obligations under this Section 7 shall not apply to any Loss as defined herein arising out of or resulting in any manner from the negligent act or acts of any of the Indemnified Parties as defined herein; and

2. From and against any and all costs, expenses, or charges which may accrue to any persons furnishing or supplying work, services, materials, equipment or supplies to Lessee in connection with its performance of or rights under this Agreement.

B. In the event that Lessee or Lessor are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct by Lessee or any of Lessee's elected or appointed officials, officers, agents, employees, consultants or attorneys, or by an alleged dangerous condition of property created by Lessee, Lessee shall not be relieved of its indemnity obligation to Lessor by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the Indemnified Parties.

## **8. Breach and Termination**

In the event of any material breach of this Agreement by either Party, the Party alleging the breach shall notify the other Party in writing of said breach, and the Party alleged to be in breach shall have thirty (30) days from its receipt of such written notice in which to cure said breach. If the alleged breach is not cured within the timeframe specified by this Section 8, the Party alleging breach shall be entitled to any and all remedies which may be available to it at law or in equity, including but not limited to termination or specific performance of this Agreement.

## **9. Notices**

Any notice which either Party may give to the other Party under this Agreement must be in writing and may be given either by (A) personal service; (B) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or (C) mailing in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Party as set forth below or at such other address as the Party may later designate by the notice procedure herein provided or (D) electronic mail.

To Lessee: City of Whittier

Attention: Kyle Cason Director of Public Works  
(WUA)  
13230 Penn Street  
Whittier, CA 90602-1772  
Tel. 562-567-9511  
Email: kcason@cityofwhittier.org

To Lessor:

Suburban Water Systems  
Attention: Craig D. Gott, P.E., President  
1325 N. Grand Avenue, Suite 100  
Covina, CA 91724-4044  
Tel. 626-543-2554  
Email: Cgott@swwc.com  
Email: Legal@swwc.com

With a copy to:

SouthWest Water Company  
c/o Suburban Water Systems  
Attention: General Counsel  
1325 N. Grand Avenue, Suite 100  
Covina, CA 91724-4044  
Tel. 626-542-2500

**10. Assignment**

Neither Party shall assign, let or sublet the whole or any part of its interest in this Agreement without the prior written consent of the other Party.

**11. No Third Party Beneficiaries**

This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, public entity, or other form of organization or association of any kind that is not a party to this Agreement.

**12. Attorneys' Fees**

In the event of any action between the Parties hereto seeking enforcement or interpretation of any of the provisions of this Agreement, the prevailing Party in such

action shall be entitled to an award, in addition to any damages, for its reasonable costs and expenses, including without limitation, actual costs and attorneys' fees, consultants' fees and experts' fees, as ordered by the trier of fact.

**13. Binding Effect and Governing Law**

This Agreement is intended to be and shall be binding upon and enforceable against each of the Parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law principles.

**14. Waiver**

Any waiver of the provisions of this Agreement by the Party entitled to the benefits thereof as to any instance must be in writing and shall in no event be deemed a waiver of the same provision with respect to any other instance or a waiver of any other provision of this Agreement.

**15. Entire Agreement and Amendments**

This Agreement, together with the Watermaster Forms to be filed in accordance with Section 3.A above, constitute the entire agreement between the Parties with respect to the subject matter hereof. All prior agreements with respect to the subject matter hereof, whether verbal or written, are hereby superseded in their entirety by this Agreement and the Watermaster Form and are of no further force or effect. Amendments to this Agreement or the Watermaster Form shall be effective only if in writing and signed by the authorized representatives of the respective Parties.

**16. Counterparts**

This Agreement may be executed in counterparts by the Parties and shall become effective and binding upon the Parties at such time as all of the signatories hereto have executed the original or a counterpart of this Agreement. All counterparts so executed shall constitute one and the same Agreement, binding upon each of the Parties hereto, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Facsimile and electronic copies of signatures shall be binding for all purposes.

**17. Authority**

In signing below, each Party represents and warrants to the other Party that each is a duly organized or constituted entity, with all requisite power to carry out its obligations under this Agreement, and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action(s) of the elected or other governing body of such Party, and that the person executing this Agreement on behalf of a Party is authorized to bind that Party to this Agreement for all purposes.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF WHITTIER


By: \_\_\_\_\_

  
Brian Saeki  
CITY MANAGER

ATTEST:

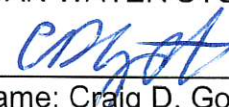
  
Rigoberto Garcia  
CITY CLERK

APPROVED AS TO FORM:

 for  
Richard D. Jones  
CITY ATTORNEY

SUBURBAN WATER SYSTEMS

By: \_\_\_\_\_

  
Name: Craig D. Gott, P.E.  
Title: President

## WATER RIGHT LICENSE AND AGREEMENT

### (Central Basin)

For a valuable consideration, Suburban Water Systems (Licensor) hereby grants to City of Whittier (Licensee): a license to extract 500 acre-feet of Licensor's Allowed Pumping Allocation allocated to Licensor (or predecessors in interest) under and pursuant to Judgment dated October 11, 1965, and entered in Los Angeles Superior Court Case No. 786,656 entitled "Central and West Basin Water Replenishment District vs. Charles E. Adams, et al." during the period commencing July 1, 20 21 and continuing to and including June 30, 20 22.

Said License is granted subject to the following conditions:

1. Licensee shall exercise said right and extract the same on behalf of Licensor during the period above specified and put the same to beneficial use and Licensee shall not by the exercise hereunder of said right acquire any right to extract water independent of the rights of Licensor.
2. Licensee shall pay assessments levied on the pumping of said ground waters by the Water Replenishment District of Southern California (District).
3. Licensee shall notify the District that said pumping was done pursuant to this license and provide the District with a copy of this signed document.
4. Licensee shall note, in any recording of water production for the period of agreement that said pumping was done pursuant to this license.
5. Licensee's Allowed Pumping Allocation shall, with flex (shall, with flex)(shall not, without flex) be increased by the amount hereby leased when computing carryover or allowable overextraction as provided by Part III, Subpart A and B in said Judgment.

Suburban Water Systems warrants that it has 500 acre-feet of Allowed Pumping Allocation and that it has not pumped and will not pump or permit or license any other person to pump any part of said 500 acre-feet during the period of July 1, 20 21 through June 30, 20 22.

This lease may signed by the parties by facsimile, electronic or digital signature, and such signature shall be deemed valid and binding on the party signing this lease in that manner.

Dated : 11/4/21

Licensor : Suburban Water Systems

Licensee : City of Whittier

Signed By : CRAIG GOTT  
Title : President

Signed By : Kyle Cason  
Title : Director of Public Works  
Digitally signed by  
Kyle Cason  
Date: 2021.10.07  
15:20:30 -07'00'