



## Board Summary Report

**To:** Board of Directors  
**From:** Lanae Raymond, WQ Program & Special Projects Program Manager  
**Date:** August 19, 2010  
**Re:** ACWWA-SEMSWA Transfer IGA  
**Board Meeting Date:** August 25, 2010

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### **Purpose and Recommendation**

The Arapahoe County Water and Wastewater Authority (ACWWA) Board has approved the Transfer Intergovernmental Agreement (TIGA) (attached) that outlines the assignment of their Stormwater Quality Municipal Separate Storm Sewer System (MS4) Permit to SEMSWA, the transfer of drainage properties, and the assignment of the System Development Fee (SDF) Reimbursement Agreements by ACWWA to SEMSWA and the assumption by SEMSWA of the obligations of ACWWA contained in those Agreements. The purpose of this Board Summary Report is to request approval of the Transfer IGA that has been jointly prepared by SEMSW and ACWWA. It is recommended that the Board sign the TIGA authorizing the assignment of the MS4 Permit, the transfer of properties, and the assignment of the SDF Reimbursement Agreements to SEMSWA.

### **Background**

As a condition of the 2006 SEMSWA formation IGA (Formation IGA), SEMSWA *"shall promptly accept, and may not reject or deny, the assignment or transfer of any NPDES Stormwater Permit held by any party and shall accept the conveyance of such Party of any interest in land or drainage improvements associated with such NPDES MS4 Stormwater Permit necessary for the accomplishment of the Authority's purposes"* (IGA Section II, *Transfer of Permits and Assets to Authority*). The ACCWA Board approved the MS4 Permit transfer at their August 11, 2010 Board Meeting, and will be formally requesting transfer of the MS4 Permit responsibilities to SEMSWA. There are several documentation requirements that accompany the transfer request for both the Permit and associated property, and examples exist from previous Special District Permit transfers to accomplish the steps in the transfer process.

Additionally, the Formation IGA contemplates the assignment of drainage-related contracts, and further identifies special provisions concerning the assignment of System Development Fee (SDF) Reimbursement Agreements, as follows:

*"...a Party may offer to assign, and the Authority may accept assignment of, a contract associated with past, current, or future construction of stormwater facilities which involves the periodic or scheduled payment or reimbursement of funds derived from SDFs for payment of the costs of such stormwater facilities (a "SDF Reimbursement Agreement") (IGA Section III (4)(a)).*

As of June 21, 2010, the ACWWA SDF Reimbursement Agreement obligation is \$2,105,418.07. ACWWA records indicate that of the \$4,450,995.88 total amount owed to reimburse development-paid construction of basin improvements, ACWWA payments towards those obligations have totaled \$2,345,577.81. ACWWA's SDFs collected-to-date have totaled \$3,014,157.63. There are 8 active SDF Reimbursement Agreements in the ACCWA Service Area, each with unique terms of payment, including minimum annual payments, maximum annual payments, and varying SDF percentages. The minimum annual payment for all SDF Reimbursement Agreements is \$121,543.00.

## Discussion

As a condition precedent to SEMSWA accepting ACWWA's MS4 Permit, ACWWA will submit a written offer to transfer the permit and their interests in land or drainage improvements in their Service Area, including their MS4 Program Description submitted to the State in June 2008 and any authorized changes subsequent to that submittal. ACWWA at SEMSWA's expense will provide to SEMSWA legal descriptions and other necessary documentation to facilitate transfer of properties and improvements. It is anticipated that the written submissions will be completed in time for a formal assignment of the MS4 Permit responsibilities, as they pertain to stormwater, to SEMSWA's existing MS4 Permit by December 31, 2010. SEMSWA Water Quality Program staff have been assisting ACWWA in activities necessary to meet their permit obligations since SEMSWA formation, and have been assisting in the preparation of their Annual Report since 2008. Staff has prepared a draft Standard Operating Procedure (SOP) document for Program 6, Good Housekeeping/Pollution Prevention per the TIGA, and will begin the process with ACWWA to finalize the document. Staff will be preparing a Transfer Letter to the State which will clarify the Program Description responsibilities that SEMSWA is assigning to their existing Permit, including the removal of non-stormwater components and submittal of the SOP.

An analysis of the SDF Reimbursement Agreement payment schedule has indicated that a minimum of \$121,543.00 will need to be paid annually, starting in 2011. This amount can be included in the 2011 budget that is being prepared now. An analysis of payment options other than the minimum can be prepared and discussed at the Board's request. Additionally, SEMSWA may begin the collection of SDFs in the ACWWA Service Area drainage basins.

## Alternative

Per the Formation IGA, the transfer of MS4 Permits and the assignment of stormwater permit responsibilities are a requirement upon request of the IGA entities. Additionally the Formation IGA contemplates that SEMSWA will accept conveyance of interest in land and drainage improvements associated with the ability to meet the requirements of the transferred MS4 Permit responsibilities.

The Board may choose not to accept assignment of an SDF Reimbursement Agreement.

## Fiscal Impacts

The fiscal impacts for the ACWWA Program Description requirements of the MS4 Permit are limited to those items specific to ACWWA, including SEMSWA staff time to 1) prepare/review SOP documents specific to their municipal operations, 2) assist in reporting and elimination of illicit connections detected by ACWWA, as part of Program 3, Illicit Discharge, Detection and Elimination (IDDE), and 3) train ACWWA staff on Program 3 and Program 6 procedures.

Additionally, there will be a cost to SEMSWA for ACWWA and its consultants to assist SEMSWA in SEMSWA's preparation of legal descriptions and other necessary documentation to facilitate the transfer of properties.

The direct fiscal impact from assuming the responsibility for payments of SDF Reimbursement Agreements will be \$121,543.00 in funds set aside in the budget for 2011, and funds set aside for this minimum payment in subsequent budget years. Additional revenue may be realized with the collection of SDFs in the ACWWA Service Area drainage basins when development occurs.

## Concurrence

Discussions with the SEMSWA Budget Committee at their regularly scheduled meeting on August 12, 2010 indicate concurrence with the transfer of the ACWWA MS4 Permit.