SWP WATER SUPPLY CONTRACT AMENDMENTS FOR WATER MANAGEMENT AND CALIFORNIA WATERFIX

Meeting Summary and Action Items


Meeting Attendance List

California Department of Water Resources Lead Negotiators
- Vinay Behl, California Department of Water Resources
- John Leahigh, California Department of Water Resources
- Joel Ledesma, California Department of Water Resources
- Dave Paulson, California Department of Water Resources
- Carl Torgersen, California Department of Water Resources
- Molly White, California Department of Water Resources

California Department of Water Resources Staff
- Ted Alvarez, California Department of Water Resources
- Steve Cohen, California Department of Water Resources
- Cathy Crothers, California Department of Water Resources
- Stan Dirks, Orrick, on behalf of the California Department of Water Resources
- Terri Ely (by phone), California Department of Water Resources
- Cassandra Enos, California Department of Water Resources
- Avery Estrada, California Department of Water Resources
- Andrea Glasgow, California Department of Water Resources

- Brian “BG” Heiland, California Department of Water Resources
- Jagruti Maroney, California Department of Water Resources
- Nancy Quan, California Department of Water Resources
- David Sandino (by phone), California Department of Water Resources
- Michelle Silva, California Department of Water Resources
- Lisa Toms, California Department of Water Resources

Public Water Agencies (PWAs) Lead Negotiators
- Steve Arakawa, Metropolitan Water District of Southern California
- Jarnail Chahal (by phone), Alameda County FC&WCD Zone 7
- Kathy Cortner, Mojave Water Agency
- Curtis Creel, Kern County Water Agency
- Jeff Davis, San Gorgonio Pass Water Agency
- Dan Flory, Antelope Valley-East Kern Water Agency
- Mark Gilkey, County of Kings/Empire-West Side Irrigation District/Tulare Lake Basin Water Storage District
- Douglas Headrick (by phone), San Bernardino Valley Municipal Water District
- Dana Jacobson, Santa Clara Valley Water District
- Dirk Marks, Santa Clarita Valley Water Agency
I. Welcome and Introductions

There were roundtable introductions of the negotiation teams and staff. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West (Anna), of Kearns & West, thanked everyone for attending the public negotiation meeting on contract amendments for water management and California WaterFix (CWF). She reviewed the ground rules and outlined the negotiation session agenda. Anna noted that meeting materials are available online at the new website link provided on the agenda. She outlined the process for public comment at the end of the meeting and reminded everyone that any party (i.e., the Department of Water Resources...
(DWR) or the Public Water Agency (PWA) Contractors) can call a caucus at any time. Anna asked if there were additional edits to the June 13th meeting summary. Hearing no objections, the meeting summary was approved as final and will be posted to the DWR document website after the meeting.

III. and IV. Continue Discussion on Talking Points and Agreement in Principle (AIP) (combined discussion)

Anna explained that the group would begin by reviewing the Draft AIP document section by section to test for agreement (document #00105; all page numbers will be in reference to this document). Joel Ledesma (Joel), DWR, and Jeff Davis (Jeff), lead negotiator for the PWAs, agreed to the language in the Draft Proposed Project Objectives and Section 1.1 on Water Transfers (page 1).

Anna asked the group if discussion was needed on Section 1.2 (page 2), Water Exchanges, specifically regarding the PWAs' suggestion that Sections 1.2.1 and 1.2.3 on return ratios and cost compensation be documented in a Notice to Contractors rather than in the Contract amendment language.

Jeff stated that the PWAs were amenable to keeping all the language from Section 1.2 in the Contract, and Joel stated that DWR agreed.

Anna transitioned the group to address Section 1.3 on Transfers and Exchanges (pages 2 to 3). She asked DWR and the PWAs if they approved the language in Sections 1.3.1 through 1.3.3.

Jeff and Joel indicated they both agreed to those sections.

Joel then went back to Section 1.3.2 and requested that the extra language in Section 1.3.2.5 "(is normal correct term?" be stricken from the document (page 3).

Anna asked if both parties would accept deleting the extra phrase in Section 1.3.2.5 and Jeff and Carl Torgersen (Carl), DWR, agreed.

Anna moved on to Sections 1.3.3 through 1.3.7 (pages 3 to 4). Jeff approved of this language on behalf of the PWAs.

Anna asked if DWR had anything to add regarding Section 1.3.4 on Water Delivery Priorities (page 4).

Carl stated that DWR intends to bring updated language to the next meeting to clarify and finalize that topic.

Anna asked DWR if they had any additional changes.

Joel confirmed that DWR did not have any additional changes to that section and therefore all language in Sections 1.3.3 through 1.3.7 except for DWR future edits on Water Delivery Priorities was agreed to.

Anna transitioned to Section 1.4, PWA Due Diligence (pages 4 to 5). She asked if both parties agreed to this section.
Both Joel and Jeff approved the language in Section 1.4.

Steve Cohen (Steve C.), DWR, requested that “designated” be changed to “designed” in Section 1.3.5 (page 4).

Anna requested approval from the PWAs regarding this change.

Jeff replied that the PWAs approved.

Anna reiterated that DWR and the PWAs agreed to Section 1.4. She then moved on to Section 1.5, Stored Water/Carryover Water (pages 5 to 6).

Jeff noted that the PWAs have a minor issue to discuss in this Section and that he would need to refer back to the Talking Points document. He explained that the PWAs noticed a conflict between the language in Section E.2.8 in the Talking Points and Notice to Contractors 17-11 from December 2017. Jeff asked Ray Stokes (Ray), Central Coast Water Authority, to discuss this issue.

Ray referenced Section 3 in Attachment A of the Notice to Contractors, and pointed out that if an exchange agreement is executed, it does not say in whose name the water will be carried over in San Luis Reservoir. Ray asked whether it would be the PWA receiving the water or the PWA providing the water. He asked whether it be the receiving agency or the providing agency.

Jeff clarified that the conflict between Section 3 in Attachment A and the Talking Points is due to the fact that the Talking Points only cover exceptional scenarios and do not address under which PWA’s name water would be carried over. He stated that the PWAs would like this issue to be addressed and then incorporate new language into the Talking Points in Section E.5.2 and the AIP language.

Anna asked whether the PWAs had proposed language to address this concern.

Jeff responded that the PWAs did not have this language yet, as they wanted to discuss this concept first and determine if the PWAs would be able to choose under whose name water would be carried over. He stated that the PWAs would come up with proposed language in the next caucus.

Joel requested that the PWAs draft language on this topic.

Anna noted that this updated language would result in edits to both the Talking Points and Draft AIP documents.

She then asked if any additional discussion was required on Section 1.5.

Jeff stated that other than the topic they just discussed, the PWAs are amendable to the language in Section 1.5.
Joel pointed out that Sections 1.5.2.3 and 1.5.2.7 reference Section 5.3.9 which no longer exists. He requested that in both instances the reference to 5.3.9 should be changed to 5.2.8.

Anna asked Jeff if the PWAs approved of this edit.

Jeff replied in the affirmative.

Anna moved to Section II of the Draft AIP document, which addresses cost allocation (pages 6 to 10).

Jeff stated that the PWAs have a couple of comments on Section II. First, Jeff explained that the PWAs view Sections II.6.1 and II.6.2 (page 8) as policy issues rather than contractual issues. He added that the PWAs propose that these two sections be removed from the Draft AIP document and the topic be discussed by the interim Finance Committee or in a different forum.

Carl responded that DWR agrees with the deletion of that language and the concept proposed by the PWAs, but they would want to insert alternate, simplified language. He explained that this language would be a reflection on the responsibility of energy costs in the future. Carl stated that DWR wants to discuss this further in the next caucus.

Jeff added that the PWAs also have things to discuss in caucus and that only a 15 to 20-minute caucus would be needed to develop this new language.

Anna suggested that the group might want to finish going through the Draft AIP document before caucusing. She reiterated that DWR will draft simpler language for Section II.6. Anna asked Jeff whether the PWAs had any additional edits.

Jeff replied that the PWAs had a few relatively minor edits and asked to come back to them after the caucus.

Anna agreed that the group would discuss these edits after the caucus. She asked if DWR had anything else to add regarding the Cost Allocation Section (II).

Joel replied that DWR did not have anything else to add.

Anna transitioned to Section III, Continuing Future Negotiations (page 10).

Jeff explained that the PWAs agree with DWR that most issues they would continue to discuss during the next year’s negotiations would be financial, but they believe a couple of potential topics may be administrative or operational in nature (i.e., they do not involve construction or moving water around). He suggested they revise the language to say financial and operational and remove “regarding” though he indicated the PWAs were open to other language on this topic.

Joel agreed that they would discuss this issue during the next caucus.

Anna asked if they had anything to add regarding Section IV, Environmental Review Process (pages 10 to 11).
Jeff and Joel both approved the language in Section IV as written.

Both parties called for a caucus at 11:20 AM. The meeting resumed at 12:53 PM.

Anna welcomed all parties back to the meeting and turned the discussion over to Jeff.

Jeff explained that the PWAs discussed the issue of the name in which water would be carried over. Before lunch, they suggested that this should be in Section I.5; however, the PWAs realized Section I.3 would be the more appropriate place for this issue. Jeff proposed the following language be inserted as the new Section I.3.2 (page 2).

Storage of Transfer and Exchange Water in San Luis Reservoir. Exchange and/or Transfer water not fully delivered in the calendar year of the executed storage or conveyance agreement may be stored in San Luis Reservoir in any party's name participating in the agreement.

Anna asked if there were any questions or whether DWR needed to caucus before agreeing to this language.

Joel requested they keep going and DWR would discuss in a short caucus later.

Jeff noted the PWAs had several other edits to make to the Draft AIP document, but all were instances in which the document only needed to be cleaned up. First, he pointed out Section I.5.2.7 (page 6), which needed the insertion of the word year to make grammatical sense. Next, Jeff pointed out that in Section I.5.2.6 (page 6) the word enter needs to be removed. He also suggested the addition of SWP PWAs under Section II.1 (page 6).

Jeff said that the PWAs would like to change the heading on Section II.4 (page 7) to CWF Facilities Capital Charge Component Method of Computation. He added that in Section II.7 (page 8), facilities charge component should be inserted after CWF in the second sentence and at the end of the section, principle 10 should be changed to principle 11 (page 9).

Joel indicated that DWR agreed to all of these changes.

Jeff moved to Section II.14 (page 10) and suggested the insertion of costs are 100% reimbursable and replacing "by DWR" with the word through.

Anna asked DWR for approval, and Joel replied in the affirmative.

Anna moved on to Section III, Continuing Future Negotiations (page 10), and DWR indicated that they still needed to caucus on this topic. She then asked DWR to review their proposed new language for Section II.6 (page 8), CWF Facilities Variable OMP&R Charge Component Method of Computation.

Dave Paulson (Dave), DWR, said DWR prefers to leave this language broad enough to address the cost recovery aspects, but not specific enough to be locked into a particular methodology at this point. He noted it would be 10 to 15 years before the project would be operational, and they would need to retain
some flexibility in this language while they determine the best approach. Dave then reviewed DWR’s proposed language for this section.

**CWF Facilities Variable OM&P Charge Component Method of Computation.** The CWF Facilities Variable OM&P costs are 100% reimbursable and shall be recovered by DWR from the Participating PWAs through their annual Statement of Charges (SOCs). The DWR Director, after consultation with the Participating PWAs, shall determine the methodology to be applied to calculate the CWF Facilities Variable OM&P Charge to the Participating PWAs.

Dave reviewed the changes DWR proposed, explaining that they removed the “R” (replacement) and the first sentence, then modified the remainder of Section II.6 with the intention of keeping the language broad so they would not be locked into a specific methodology now and could instead flesh it out in time. He noted that DWR also proposed removing the rest of Section II.6 (II.6.1 and II.6.2).

Anna asked if there were any comments from the PWAs regarding DWR’s suggested edits.

Jeff pointed out that before lunch the PWAs suggested that this be referred to the Financial Committee. He observed that DWR had apparently thought that through and instead recommended a different process, namely that the DWR Director makes the final decision. Jeff explained that the PWAs would like to understand why DWR opted for this process rather than going through the State Water Resources Development System (SWRDS) Finance Committee.

Carl responded that he did not see a significant difference. He explained that the Committee was structured such that an issue is brought to the Committee, the Committee recommends an action to the DWR Director, and the DWR Director has the final say. Carl added that DWR is not alluding to the Finance Committee in text as they currently have an interim Finance Committee, but that the results are the same.

Jeff stated that the PWAs cannot commit to that at this point. He added that this is not a significant problem, but that they would like to have some time to discuss it later today in caucus.

Dave said that he also wanted to propose an additional edit in Section II.3 (which introduces the CWF Facilities Capital Charge Component and Minimum OMP&R Component; page 7), as it deals with the same issues they have been discussing with regards to Section II.6 (page 8). He explained that DWR would like to put a third Facilities Charge Component, CWF Facilities Variable OM&P Component, back into this section, similar to previous language from the Talking Points.

Jeff asked whether DWR was removing the “R” from OMP&R.

Dave replied in the affirmative and explained that the “R” remains in the minimum component, but not in the variable component.

Jeff asked if DWR intends to keep the language referring to “OMP&R” in the main paragraph of Section II.3.

Dave replied that DWR might add “variable” to that language.
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DWR suggested adding “variable” to the second sentence of Section 11.3.

The PWAs called for a caucus at 1:15 PM. The meeting resumed at 1:57 PM.

Jeff presented a counter proposal from the PWAs on Sections 11.3 and 11.6 (pages 7 and 8, respectively). The PWAs requested to delete the third component from Section 11.3 and edit Section 11.6 to read as follows.

**CWF Facilities Variable OM&P Method of Computation:** For any project water delivered by the CWF Facilities, PWAs shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conservation and transportation of such water as if such project water were Table A water.

Jeff explained that this offer was in exchange for completely removing the language related to further negotiations (Section III, page 10). He noted that in the event that DWR does not accept this language, the PWAs will withdraw their offer regarding future negotiations.

Anna asked if a caucus was necessary at this point.

Curtis Creel (Curtis), Kern County Water Agency, clarified that this language might look familiar because it is in Article 55 regarding not moving non-project water. He explained that in 1994, DWR and the Contractors had a discussion on how to address the use of energy across the whole system. The PWAs proposed that the resources and methodology be applied in the same way for CWF.

Anna noted that DWR edited the language in Section 11.3 (page 7) and that the PWAs propose removing that edit as well as the third charge component. She asked if this was correct and whether the PWAs meant to revert back to the original language.

Curtis and Kathy Cortner (Kathy), Mojave Water Agency, replied in the affirmative.

Dave stated that part of DWR’s intent with their proposed edits in these sections was that they did not think that they would reach a resolution on methodology in the short term. He observed that it appears that rather than leaving the language open, the PWAs wish to close the language. He asked whether this was the PWAs’ intention.

Curtis replied that it was clear from the language that DWR proposed that The Department had an obvious predetermined intention regarding the direction they would take these charges.

Dave responded that DWR’s intent was to leave the language open. He asked that if there are specific areas that suggest otherwise, DWR is happy to clarify and discuss.

Curtis stated that it was unfortunate that the language was very specific and narrow in where it was heading. He explained that the PWAs believe that their proposed language is consistent with what
currently exists in the Contract. Curtis emphasized that when trying to address energy costs, DWR should be looking at the melded rate.

Carl requested that the PWAs point to where DWR's proposed language is "predetermined."

Curtis replied that there were two places in which this was the case. The first is in Section II.3 (page 7), which established and defined the component, and the second is in Section II.6 (page 8) where DWR specified "Participating PWAs."

Anna asked whether this was referring to DWR's addition of the third variable in Section II.3.

Curtis replied in the affirmative.

Dave noted that the idea of participating PWAs was already in the Draft AIP language and asked if this was what the PWAs were referencing.

Ray pointed out that by creating this third cost component, it is only allocated to the participating PWAs, whereas the melded rate applies to all PWAs. He asked if this made sense to DWR.

Carl replied in the affirmative.

Anna suggested that they could use the melded rate or another rate to be determined in the future.

Ray clarified that this was where the PWAs came to the conclusion that DWR's language suggested a predetermined outcome.

Carl asserted that DWR's intent was to insert some sort of placeholder language that stated these energy costs for the operation of CWF would be covered in the future. The second piece was that the interim Finance Committee could be used to make a decision on which way these costs should be billed because this is a policy issue. He emphasized that this was DWR's intent, not that they had predetermined a methodology.

DWR called for a caucus at 2:09 PM. The meeting resumed at 2:48 PM.

Joel introducing new proposed language for Section II.6 (page 8):

**CWF Facilities Energy Charges** — The CWF energy charges are 100% reimbursable by the PWAs and the methodology will be determined by the interim SWRDS Finance Committee.

Anna asked whether the rest of Section II.6 would be removed.

Carl stated that the proposal would ideally follow the process agreed upon by the previous Contract negotiation. This process would require a white paper be submitted to the Finance Committee and then the managers from DWR and the PWAs who made up the Committee would attempt to reach consensus. Carl explained that the details of the Committee, such as the number of managers on the
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Committee, were a policy issue that could be determined later and did not need to be part of the AIP language.

Anna asked if the PWAs accepted DWR's new proposal on Section II.6.

Jeff said that DWR's proposal seemed agreeable, but that the PWAs would need to caucus.

Kathy requested clarification on whether the rest of Section II.6 would be deleted, and if Section II.3 (page 7) would go back to the original language. The group confirmed that Sections II.6.1 and II.6.2 would be removed and Section II.3 would go back to its original language.

Carl stated that DWR has concerns about the language the PWAs' inserted as the new Section I.3.2 (Storage of Transfer and Exchange Water in San Luis Reservoir; page 2). He explained that DWR believes that I.3.2.7 (page) would cover this type of scenario and that the language inserted by the PWAs is too broad. Carl emphasized that DWR would be willing to consider any scenarios covered by the PWA's inserted language as an exception under Section I.3.2.7, but the PWA's language is too broad as is.

Ray pointed out that there is a disconnect between the Notice to Contractors and the existing language. He noted that the existing language allows PWAs to carry over water, but does not specify in whose name.

Carl noted that as he understood it, the current default is that if an exchange is in progress, once the water is delivered, the water would be under the receiver's name. Until it is delivered it is under the seller's name. He suggested that in transfers, the same protocol would apply: until the water is received it would still be under the transferrer's name. Carl explained that the language in Section I.3.2.7 would allow a PWA to request that it be put under a different name and DWR likely would not have an issue approving that unless it impacted another PWA Contractor (i.e., cause another PWA’s water to spill if the name of the PWA holding the carryover water was changed, when if the name of the holder was left as the default, it would not).

Ray asked for clarification using an example – if in a calendar year a PWA received only 4,000 acre-feet (af) of a 5,000 af transfer, would the remaining 1,000 af be considered as an exception under Section I.3.2.7. He noted that the language in the Notice to Contractors is not that specific and wondered whether this was consistent with past practices.

Dave reiterated that this will be a brand-new world, but that he believes that this is consistent with the way exchanges and landowner transfers work to date.

Jeff explained that he interpreted the language in Section I.3.2.7 as being rather strict with regard to which situations can be taken to the Director. He understood this section as addressing only proposed transfers or exchanges that did not meet the basic criteria. Jeff observed that the language does not state if this section can be used to address other issues, such as who owns water if it is not delivered in a given year. He suggested that if this scenario is meant to be covered by this exceptions section, perhaps the language should be broader.
Carl replied that he thought Jeff was probably correct. He pointed out the exception language in Section 1.5.2.8 (page 6), observing that it was broader. Carl suggested that something similar to Section 1.5.2.8 could be drafted for Section 1.3.2.7.

Jeff responded that the PWAs will come back with that language.

Ray asked why DWR was reluctant to agree to the proposed language proposed by the PWAs, and the water would be carried over either way.

Dave replied that there are a couple of reasons for DWR’s reluctance. He explained that DWR thinks that there are probably multiple additional scenarios that are not covered under the existing outline and thus they want to keep the language broad. He noted that DWR also wants to make sure that the water can be tracked and accounted for. Dave concluded the overarching idea for DWR is that it was important for anything outside these parameters to be decided by the Director on a case-by-case basis.

Kathy added that she thought it seemed easier to track when a transfer occurs, reassigning the water from one PWA to another altogether, rather than a little bit at a time on a monthly basis. She asked why it is simpler to track a little bit at a time rather than lumping the transferred water together.

Dave replied that this is consistent with the accounting process that is currently being used. DWR accounts for water bit by bit, as it is moved.

Kathy said that Dave answered her question as to the current process in place; but she is still trying to understand why one is easier than the other.

*The PWAs called for a caucus at 3:04 PM. The meeting resumed at 3:22 PM.*

Jeff confirmed that the PWAs accepted DWR’s proposed language on the Energy Charge and the accompanying process that Carl has described (Section 11.6; page 8). He also stated that the PWAs were willing to drop the language on the Storage of Transfer and Exchange Water in San Luis Reservoir (proposed new Section 1.3.2 on page 2) and next week they will suggest alternate language for Section 1.3.2.7 (page 3) to allow for the scenario described in the stricken language on ownership of carryover water to be considered as an exception.

Anna confirmed that the new Section 1.3.2 would be deleted from the Draft AIP document.

Jeff noted that the PWAs would prefer to carry the future negotiation language through to the next week and that the PWAs are not prepared to remove that language at this time.

Anna asked if DWR had any additional comments.

Joel replied that they did not.
V. Next Steps

Anna noted that there will be another meeting next week on Wednesday, June 27, 2018. She reminded the group that she will not be in attendance; however, Nora DeCuir (Nora), Kearns & West, will facilitate in her place. She confirmed that the topics for discussion at the next meeting would include continued review of the Draft AIP document, new language from the PWAs for Section I.3.2.7, future negotiations, and any other topics that might arise during the upcoming week.

Carl stated that DWR will also come back with new language on Water Delivery Priorities (Section I.3.4; page 4).

Anna confirmed Section I.3.4 would also be included in the agenda for next week.

Jeff asked if the meeting could start at 9:30 AM instead of 10:00 AM.

Joel agreed and said that the group should plan for a long day.

Anna confirmed that the group agreed to meet at the Courtyard Marriott (same venue) next week on Wednesday, June 27th from 9:30 AM to 5:00 PM.

VI. Public Comment

There were no public comments.

VII. Adjourn

The meeting was adjourned at 3:27 PM.

Action List

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<tr>
<th>Action Items</th>
<th>Responsibility (Due Date)</th>
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<tbody>
<tr>
<td>1) Post June 13th Meeting Summary and updated Draft AIP document online.</td>
<td>DWR (6/20)</td>
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<tr>
<td>3) PWAs to prepare revised language on Exceptions (I.3.2.7).</td>
<td>PWAs (6/27)</td>
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<tr>
<td>4) DWR to prepare revised language on Water Delivery Priorities (I.3.4).</td>
<td>DWR (by 6/27)</td>
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