



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary and Action Items

State Water Project Contract Extension Project

October 16, 2013 1:00 PM – 5:00 PM

Meeting Attendance List

<p><u>California Department of Water Resources</u> <u>Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Carl Torgersen, California Department of Water Resources <p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin, Butte County • Valerie Pryor, Castaic Lake Water Agency • Dan Charlton, Coachella Valley Water District • Mark Krause, Desert Water Agency • Tom Glover, Dudley Ridge Water District • Curtis Creel, Kern County Water Agency • Kathy Cortner, Mojave Water Agency • Steve Arakawa, MWD of Southern California • Phil Miller, Napa County Flood Control and Water District • Jon Pernula, Palmdale Water Agency • Bob Perreault, Plumas County Flood Control & Water Conservation District • Douglas Headrick, San Bernardino Valley Municipal Water District • Jeff Davis, San Geronio Pass Water Agency 	<ul style="list-style-type: none"> • Ray Stokes, Santa Barbara County/Central Coast Water Authority • Lynn Hurley, Santa Clara Valley Water District • David Okita, Solano County Water Agency • Mark Gilkey, Tulare Lake Basin Water Storage District; Kings County <p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich, California Department of Water Resources • Spencer Kenner, California Department of Water Resources • Philip LeCocq, California Department of Water Resources • Chris Martin, California Department of Water Resources • Jeremiah McNeil, California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources • David Sandino, California Department of Water Resources • Lisa Toms, California Department of Water Resources
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<ul style="list-style-type: none"> • Dena Uding, California Department of Water Resources • Pedro Villalobos, California Department of Water Resources <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Robert Cheng, Coachella Valley Water District • Milli Chennel, Kern County Water Agency • Don Marquez, Kern County Water Agency • Amelia Minaberrigarai (by phone), Kern County Water Agency • Jaime Dalida (by phone), MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California • John Schlotterbeck (by phone), MWD of Southern California • Leah Wills (by phone), Plumas County Flood Control and Water Conservation District • Matt Naftaly (by phone), Santa Barbara County Flood & Water Conservation District • Dana Jacobson, Santa Clara Valley Water District • Eric Chapman, State Water Contractors • Terry Erlewine, State Water Contractors • Theresa Lightle, State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc • Steve Wickstrum (by phone), Ventura County Flood Control District <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Erick Cooke, Environmental Science Associates 	<ul style="list-style-type: none"> • Cathy McEfee, Environmental Science Associates • Meredith Parkin (by phone), MWH Global <p><u>Public</u></p> <ul style="list-style-type: none"> • Robert Kunde, Wheeler Ridge-Maricopa Water Storage District • Thomas Rinn (by phone), Waterworks Consulting • Patricia Schifferle (by phone), Planning and Conservation League <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> • Alex Braunstein, Kearns & West • Macie Eng, Kearns & West • Mike Harty, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West reviewed the Meeting Ground Rules emphasizing respect and listening. She also reviewed the process for public comment at the end of the meeting. Anna reviewed that the meetings are identified on the Contract Extension website and email notices are sent. Anna outlined the negotiation session agenda.

Anna then reviewed the October 9th, 2013 negotiation session meeting summary and asked if there were any further edits. The group finalized the October 9 Meeting Summary which will be posted on the website.

III. Objectives Discussion

David Okita, Solano County Water Agency, gave an overview of the SWP Contractors’ Finance Committee presentation, suggesting that it’s important that Contractors state their vision and hear back from DWR. He covered the functions of the Committee, distinguishing between areas where the Committee would provide policy direction/guidance on financial matters versus implementation which is led by DWR, with staff and technical committees providing support.



Valerie Pryor, Castaic Lake Water Agency, stated that SWP Contractors were proposing that the Department partner with the Contractors on SWRDS finance matters to develop guidelines, broad financial policies that will guide operations.

David added that the Director's discretion would be retained on financial policy decisions and also in having the discretion to move funds between the GOA, SRA and SSA. He explained that the Contractors propose that they would receive notification on uses of all 51(e) funds.

Perla Netto Brown, DWR, asked if SWP Contractors' were proposing a new position in the finance reporting performance area. Valerie responded that the Contractors were presenting a conceptual chart not an organizational chart, but she affirmed that the Contractors intent is to have a lead, single point of contact on financial matters associated with SWRDS. Curtis Creel, Kern County Water Agency, added that the proposed single point of contact is a high level person who coordinates with all the different parts of the organization. A key concept here is one point of accountability, someone who is the gatekeeper who understands how and why things are working, understanding the budget and potential variances. Steve Arakawa added that the idea was that when there are variances within SWRDS, the Committee would be notified. Carl Torgersen, DWR, cautioned that there are limitations with the existing organizational structure and any proposed changes. This leads back to the work plan and the larger topic of SWRDS structure, as well as the issue of authority over the SWP, which is also related to accountability.

Anna West, Kearns & West, asked if there is agreement that the financial lead has both accountability and authority for SWRDS financial management. Perla stated that DWR agrees with the concept, but the Department needs to work with the Contractors on how to get there.

Perla noted that the presentation made reference to improvements of existing SWRDS policies, and asked the Contractors to explain any current deficiencies that the Contractors thought should be addressed.

Valerie clarified that the list of topics are examples, and that Contractors assume that over 40-75 years some polices will need to be revised, though we're not suggesting there is necessarily a current need for revisions. David Okita noted that the Committee, as proposed, has very limited approval authority; it would largely make recommendations to the Director, except in key areas. Perla asked if members of this Committee need a strong financial background. Curtis responded that some members of the Committee would need a strong financial background, though others would have policy-level expertise. He added that the expectation is that staff with the relevant expertise would be making recommendations up to the Committee.

David added that the Contractors don't have a specific proposal on the members of the Committee and how it's structured, and therefore, at this point, it would be more productive to focus on the Committee function. Carl asked why there was still a need for caps and approval over caps if the money could be moved between the proposed accounts at the discretion of the Director.

Ray Stokes, Central Coast Water Agency, clarified differences between DWR and SWP Contractors on the flow of funds. DWR's vision was Rate Management Credits, then the Director's discretion of 51(e) revenues, then the three funds (GOA, SSA, SRA). The SWP Contractors have the view that 100 percent of 51(e) revenues go into one of the three accounts. He explained that having the caps provides additional visibility on the transfers between funds.

Caps establish some limit and if transfers are made, it gives the Contractors and the Committee the ability to look forward and develop a response.

Steve Arakawa added that it was important to have documentation, notification, and approval on how the funds are setup and utilized. He added that with the discretion to move money between accounts, the caps are not hard caps, but provide guidance for going forward. The caps are a mechanism to provide a check on whether something is out of balance or not going as planned.

Carl responded that Department is ok with documentation and visibility, but not comfortable with the need for approval of the caps. He added that DWR is already developing a position to manage these accounts that would report to the Deputy Director. Steve Cohen suggested that if all of the 51(e) revenues go into these funds and the Director doesn't have discretion for other system purposes, he doesn't see how this proposal is useful to the Department.

Ray stated that with the proposed accounts there are three uses for these funds, and to his knowledge there are no other projects that the Director would come up with that would not fit in these three accounts. If it's a water supply project it can be funded through the GOA/SRA, if it's a non-water supply project it can be funded from the SSA, with the ability to move funds from the SRA to the SSA, if needed. In this way, there is a funding source for all potential uses. By using these three funds the Contractors are notified and aware of the uses of the funds as transfers are made. David Okita added that all SWRDS-eligible projects would be covered by one of these funds.

Steve Cohen suggested that there is very remote possibility that the Director will use 51(e) revenues in advance of funding the GOA, the SSA, and SRA; he explained that the Department would like the flexibility to do so. We don't know what 51(e) revenue purposes will come up in the future.

Carl stated that investments in the SRA are not necessarily liquid. He affirmed Steve Cohen's point that the possibility is remote that the Director would use all of the funds prior to funding the three accounts. David Okita stated that the Contractors are willing to give the Department full discretion, but they are asking for a little structure in return. Ray added that on the flow of funds, he was gathering from DWR's comments that they are effectively proposing two SSAs. Steve Cohen responded that the existing Monterey Amendment would allow the Director to spend the money right away, and the Department is maintaining that authority.

Ray suggested that the SWP Contractors' proposal includes the Department's maintaining Director's discretion; it's simply that the projects would be paid out of these funds. Kathy Cortner, Mojave Water Agency, added that increases in the GOA impact the Contractors, because the GOA is for billable costs to the Contractors. Therefore, increasing the GOA amount increases the amount SWP Contractors will be billed the following year. Perla responded, acknowledging that anything DWR spends out the GOA is billable within two years (not one). She also noted that the Director may need the money prior to knowing whether the project is billable to the Contractors or not. Therefore, it's difficult to fund from these accounts if you don't know who it's billable to. She explained it as a form of interim financing. The SRA would not be usable without knowing the loan terms.

Steve Arakawa suggested there is a meeting of the minds on revenues to fund SSA category items post-2035, and that was the spirit of the proposal. We're trying to provide the structure that will enhance the positions of both DWR and SWP Contractors. Does it overly-limit DWR to provide some structure for management of the funds? Perla responded that DWR and SWP Contractor do have a mutual goal and structure is beneficial, however, we still need the Director's discretion, because there are rules that need to be followed when you issue debt. The Department may need to pay for something in advance of having all of the details of debt funding worked out.

Steve Arakawa asked if this interim financing would it occur in a way that would affect the Department's ability to fund the SSA. Perla responded that she didn't know the future, or if there will be an emergency that requires the Director's discretion over these funds, but if it does, it could get to the point that it would trigger the need for a revised bill.

Curtis asked if the Director put \$3 in the SRA, and then a cost comes up so the Director can move funds into the SSA and if a customer is identified the funds can be recouped is DWR concerned about how to get the money back? Perla responded that the SRA has been defined for a certain purpose, so if money is taken out and used for another purpose, it would violate the terms of the SRA. Ray commented that the Director has the ability to move funds between the three accounts, the money can move to the SSA and it changes the purpose.

Carl stated that DWR understands the Contractors proposal on flow of funds and the need for visibility. DWR does not know what things are going to be like in the future so DWR does not want to be absolute about it. Additionally, the uses of the GOA are specific, so it's difficult to imagine a large increase that everyone wouldn't be aware of.

Kathy suggested that the proposed caps help guide what you need and when you need it, and when those change it gives some indication that something has fundamentally changed. Having this discussion go the SWRDS Finance Committee would be fruitful. She acknowledged that the proposed accounts are initially funded through 51(e) revenues, and therefore the impact on SWP Contractors, immediate or otherwise, is uncertain.

Ray stated that DWR and SWP Contractors have tried to ensure a revenue stream for non-reimbursable costs. However, if the Director can take out the money before it's invested, you run the risk of drawing down the principal before it generates interest. It's unlikely that DWR would utilize all revenues, but obviously there's some potential that it might happen. Carl responded that this scenario is very unlikely.

Steve Cohen commented that when he first saw the slides, he was concerned that the Contractor's were asking for more of a role than Carl had been talking about. David has clarified that Contractors are envisioning that they would be provided with some additional information and, in some cases, would make recommendations. David offered that in the Contractor's vision DWR establishes the policies and the Finance Committee assists in formulating the policies. The Contractors are looking for the feedback and reporting loop as shown on the slide.

Reviewing the Contractor's tentative offer, Carl asked to confirm that after the \$48 million in rate management credits, there would be no historical or owed rate management. Ray affirmed that this is what the Contractors propose. David Okita suggested that the offer by SWP

Contractors makes funds available, but also there are reporting requirements. Kathy added that it was important to clarify that the Contractors are suggesting that the money is borrowed from funds, but ultimately returned to the funds. DWR agreed.

Steve Cohen stated that increasing rate management to \$48 million a year, for an estimated 20 years through 2035, would be a very significant item for the Department. He indicated that one area that would need to be addressed if DWR is going to consider a rate management increase, would be for the Contractors to waive and release certain claims they have retained the right to sue on in the Tolling and Waiver Agreements signed in 2007, along with certain other claims and protest items that have arisen since then.

Ray responded that the reason for the \$7.5 M increase in Rate Management Credits is that the agreements set in the Davis Dolwig deal increased costs to some Contractors. Ray stated that DWR and SWP Contractors agreed during the Davis-Dolwig deal that the additional \$7.5 Million would be put in the Contract, and that's why the Contractors have asked for it here.

DWR and SWP Contractors went to caucus.

David Okida stated that Contractors have gone a long way to accommodate the Director's retaining his authority. The Contractors would like a reaction from DWR on the Contractors latest proposal. Carl stated that the Department has gotten clarification on Rate Management Credits, and on the language in Item #3 where the language is confusing. He asked for clarification on revised billing and supplemental billing. Steve Cohen asked to clarify whether the supplemental billing provision would be eliminated immediately or after 2035. Ray responded that the Contractors were proposing to eliminate supplemental billing with the effective date of the contract amendment, and that pre- and post-2035 the Department would issue a revised bill, with approval by the Contractors. Steve Cohen suggested that approval is a sticking point with the Department, and added that under the current proposal, revised billing is only triggered under certain circumstances and is only up to a certain amount. Kathy Cortner suggested that if you don't have the restrictions, there a tendency to supplemental bill whether you need it or not.

Carl acknowledged that the revised billing proposal by the Contractors is an existing practice. The difference is that under current practice the Contractors are consulted on revised bills, but it's not currently in the Contract. Curtis stated that the Contractor's proposal is to eliminate supplemental billing, and to have revised billing with Contractor approval, by the affected Contractors.

Mike Harty, Kearns & West, offered that a revised bill would happen in the context of having the Finance Committee, and a revised bill would only occur when the three accounts are exhausted. It's important to consider the context for this. Ray stated that the Department would have sufficient cash with 51(e) revenues unless the Director spends all of the funds.

Carl stated that he believed that DWR and SWP Contractors are close on these proposals, and suggested that DWR will come back with a Counter-Offer on Rate Management Credits and flow of funds in a similar one-page format. There are two real points of disagreement. One point of disagreement is the Director's discretion on the accounts. The Department would like to have liquidity, and it could be that four accounts rather three accounts are needed. When considering

the SRA, it could be defined as a combination of investments and cash, which is something that could be discussed. DWR also needs to consider the concept of approval.

Steve Arakawa raised the issue of assurances of funds in the GOA, SRA, SSA. He suggested that the Department, in preparing the next offer, consider assurances the Department can provide to assure that these funds will be funded.

Curtis asked what part of the proposal is causing the concern in terms of approval. Steve Cohen stated that approval of caps on the funds is one part, but the Department will come back with a comprehensive proposal.

Carl stated that the Department would consider these concepts, but open-ended approval goes against the Burns-Porter concept of the Director's authority which is very difficult. Approvals of the charter and workplan are okay as they are one-time approvals, but other approvals are extremely difficult. If there are prescriptive measures that can be put into place for adjusting the caps that are approved jointly ahead of time, that works much better for DWR.

On the Finance Committee, Carl stated that the Department agrees that the Committee looks at high-level issues, with initial work focused on the charter, and oversight of the workplan. However, DWR is unclear on what the Committee would do with ongoing activities. Vera suggested the Contractors provide more narrative on what the Committee would be doing, or have a smaller group look at the committee concept.

Carl suggested that after Contract Extension, a smaller group will develop the charter for the Finance Committee. David stated that the Contractors want a better understanding of where the Department stands on the Committee and what would be incorporated in the contract amendments. The workplan wouldn't be incorporated, but the Contractors suggest that the charter would be in contract amendments.

The State Water Contractors and the Department took a Caucus.

Valerie stated that on a conceptual level for the Committee the Contractors are envisioning having a meaningful ongoing dialogue with the Department. This would include monitoring and reporting on a high-level.

Carl responded, that he agreed with it being on a high level, it appears as though DWR and Contractors are in agreement on the Committee. However, he tested that there could be multiple programs, including a \$10 M program that overspent by 50 percent. Carl envisions that this is taken up by a technical group, not the Finance Committee; it's too small.

Curtis responded that he thought Carl was correct; variances in reporting are worked out at the technical level, before it gets reported. That's what has been called monitoring. Major items to go to the Committee may be part of the guidelines developed by the Committee, on the size of project or dollar amount of variance that is reported to the Finance Committee.

Curtis added that Carl was giving examples of program and project budget, however, in looking at the SWP as a utility, SWP Contractors are thinking about the SWP as an enterprise (referring to the Scope of Work Plan).

Carl stated that the Committee would look at the criteria that the Department uses for determining the value of given project for the State Water Project. We're not talking about here's the list of projects, can you approve them, we're talking about looking at the process for evaluating projects.

Curtis offered that this dialog should be understood in the context of the Finance Committee's recommendation function, not approval. The Committee would not be looking at Project X and whether or not the Department should do it. For example, the Committee would consider policies in place for the operating budget of the utility. Contractors need to look forward to how SWP costs will affect them going forward; it's important to be able to get back to the Contractor's policy makers and say they have input/recommendations in this process that is going to impact their bills going forward.

Kathy Cortner suggested that the budget policy is an example to consider. For instance, the Committee could choose to set a policy of not exceeding a budget by more than 15 percent. If the proposed budget is greater than 15 percent then work needs to be curtailed or adjustments would need approvals.

Carl offered that he doesn't think the Department's there on that example. DWR is there regarding the process, however, that example would go to the technical level. Kathy asked if that kind of information would be disclosed to the Committee. Curtis stated that technical work would occur within the structure underneath the Committee, and if that is what Carl is saying, he concurs. There would be necessary notification to the management level reporting back on those processes.

Carl responded maybe. He stated that the processes we're discussing come out of this Committee as recommendations; however, he is concerned about what gets reported to the Committee. DWR has no problem with transparency, though reporting may take place elsewhere.

Perla added that in the example of the Capital Improvement Plan, her understanding is that Contractors want to be able to anticipate what's coming down the line. Kathy responded yes, but the Contractors also want to provide input. For example, she shared the East Branch Extension project where costs increased by 30 percent in a short period of time. The Contractors would like to provide input on these types of cost increases.

Carl suggested that DWR and the SWP Contractors should look at the existing committee structure, and how communication happens not only within DWR, but internal to, and amongst, the Contractors. Kathy suggested that there is needed dialog that isn't happening in any of the existing committees. Curtis offered that monitoring and technical committee level exchange in the slide is a responsibility of both the Contractors and DWR; getting the right information to managers.

Valerie gave examples where joint responsibility between the Contractors and DWR would be desirable, if, for instance, for SWP financing there was a policy to consider swaps it would make sense for the Contractors to have weighed in and signed off. Perla responded that DWR understands that Contractor input would be useful in that example. She added that DWR has

limitations in how debt service is setup based on requirements from the treasurer's office, control agencies, and other relevant State entities. Valerie confirmed that the Contractors expect that meeting legal requirements and state policies is assumed.

Carl stated that he is hearing agreement on the Committee, and that the responsibilities and deliverables are a joint effort. He cited the Risk Oversight Committee as a historical example that DWR and the Contractors could build from. Efficiencies can be found on both sides.

Steve Arakawa stated that his hope with the Finance Committee is that it is a shared responsibility, and that the Committee weighs in on what are the important issues where the committee reports out. Carl stated that one of DWR's goals is to streamline the reporting process, and he could see the Committee having a role in making recommendations on these improvements.

Perla asked Curtis to clarify his earlier comments. She said that she heard dollars and percentages for projects, but also heard wanting information on individual impacts for Contractors, which is very, very detailed. Where does Curtis see this level of detail occurring? Curtis suggested that this detailed analysis happens at the monitoring and technical workgroup level.

Carl offered that the solutions developed here might lead to significant changes in the existing committee structure. The evaluation process needs to occur to determine what makes the most sense. Ray asked if DWR still sees the value in the existing committees. Carl responded absolutely, but that evaluating the structure is useful for both DWR and SWP Contractors to identify improvements and efficiencies.

IV. Next Steps

There was a discussion on next steps. The Department will prepare a Counter-Proposal in a one-page format to the Contractors offer on Rate Management Credits, flow of funds, etc. The Contractors will create a brief document sharing more examples of policy topics the Finance Committee will review. These documents will likely be available the day of our next Negotiation Meeting which is scheduled to occur on Wednesday, October 23rd, from 10 am to 5 pm in Room 1131 in the Resources Building.

V. Public Comment

Anna asked if anyone wanted to provide public comment. No one volunteered.

VI. Adjourn

The meeting was adjourned.

Action Items		Responsibility Due Date
1.	October 9 Negotiation Session Meeting Summary to be finalized and posted on the website.	K&W ASAP
2.	DWR to prepare a one-page Counter-Proposal on	DWR 10/23

	Rate Management Credits and Flow of Funds.	
3.	SWP Contractors to prepare a brief document on Finance Committee policy topics.	SWP Contractors 10/23
4.	October 16 Negotiation Session Meeting Summary to be prepared.	K&W ASAP