



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

**Draft Meeting Summary and Action Items**

State Water Project Contract Extension Project

October 23, 2013 10:00 AM – 3:00 PM

**Draft Meeting Attendance List**

<p><u>California Department of Water Resources</u></p> <p><u>Lead Negotiators</u></p> <ul style="list-style-type: none"> <li>• Steve Cohen, California Department of Water Resources</li> <li>• Rob Cooke, California Department of Water Resources</li> <li>• Perla Netto-Brown (by phone), California Department of Water Resources</li> <li>• Vera Sandronsky, California Department of Water Resources</li> <li>• Carl Torgersen, California Department of Water Resources</li> <li>• Ralph Torres, California Department of Water Resources</li> </ul> <p><u>State Water Project Contractor Lead</u></p> <p><u>Negotiators</u></p> <ul style="list-style-type: none"> <li>• Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7</li> <li>• Dan Flory, Antelope Valley – East Kern Water Agency</li> <li>• Paul Gosselin, Butte County</li> <li>• Valerie Pryor, Castaic Lake Water Agency</li> <li>• Mark Krause (by phone), Desert Water Agency</li> <li>• Tom Glover, Dudley Ridge Water District</li> <li>• Curtis Creel, Kern County Water Agency</li> <li>• Kathy Cortner, Mojave Water Agency</li> <li>• Deven Upadhyay, MWD of Southern California</li> <li>• Jon Pernula (by phone), Palmdale Water Agency</li> <li>• Bob Perreault, Plumas County Flood Control &amp; Water Conservation District</li> </ul>	<ul style="list-style-type: none"> <li>• Jeff Davis, San Geronio Pass Water Agency</li> <li>• Ray Stokes, Santa Barbara County/ Central Coast Water Authority</li> <li>• Lynn Hurley, Santa Clara Valley Water District</li> <li>• David Okita, Solano County Water Agency</li> <li>• Mark Gilkey (by phone), Tulare Lake Basin Water Storage District; Kings County</li> </ul> <p><u>California Department of Water Resources</u></p> <p><u>Staff</u></p> <ul style="list-style-type: none"> <li>• Ted Alvarez, California Department of Water Resources</li> <li>• Cathy Crothers, California Department of Water Resources</li> <li>• Terri Ely, California Department of Water Resources</li> <li>• Avery Estrada, California Department of Water Resources</li> <li>• Scott Jercich, California Department of Water Resources</li> <li>• Spencer Kenner, California Department of Water Resources</li> <li>• Kathie Kishaba, California Department of Water Resources</li> <li>• Philip LeCocq, California Department of Water Resources</li> <li>• Chris Martin, California Department of Water Resources</li> <li>• Jeremiah McNeil, California Department of Water Resources</li> <li>• Mehdi Mizani, California Department of Water Resources</li> <li>• Dave Paulson, California Department of Water Resources</li> <li>• Nancy Quan, California Department of Water Resources</li> </ul>
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<ul style="list-style-type: none"> <li>• Lisa Toms, California Department of Water Resources</li> <li>• Dena Uding, California Department of Water Resources</li> <li>• Pedro Villalobos, California Department of Water Resources</li> </ul> <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> <li>• Tom Berliner, Consultant</li> <li>• Erick Cooke, Environmental Science Associates (by phone)</li> <li>• Barbara McDonnell, MWH Global (by phone)</li> <li>• Cathy McEfee, Environmental Science Associates (by phone)</li> </ul> <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> <li>• Josh Nelson, Best, Best &amp; Krieger LLP/Crestline-Lake Arrowhead Water Agency</li> <li>• Bruce Alpert, Butte County (by phone)</li> <li>• Dan Masnada (by phone), Castaic Lake Water Agency</li> <li>• Robert Cheng, Coachella Valley Water District</li> <li>• Don Marquez, Kern County Water Agency</li> <li>• Jaime Dalida, MWD of Southern California</li> <li>• Kevin Donhoff, MWD of Southern California</li> <li>• David Reukema, MWD of Southern California</li> <li>• John Schlotterbeck (by phone), MWD of Southern California</li> <li>• Leah Wills (by phone), Plumas County Flood Control and Water Conservation District</li> </ul>	<ul style="list-style-type: none"> <li>• Matt Naftaly (by phone), Santa Barbara County Flood &amp; Water Conservation District</li> <li>• Dana Jacobson, Santa Clara Valley Water District</li> <li>• Eric Chapman, State Water Contractors, Inc.</li> <li>• Theresa Lightle, State Water Contractors, Inc.</li> <li>• Stan Powell, State Water Contractors, Inc.</li> <li>• Julie Ramsay, State Water Contractors, Inc.</li> <li>• Steve Wickstrum (by phone), Ventura County Flood Control District</li> </ul> <p><u>Public</u></p> <ul style="list-style-type: none"> <li>• Heather Cohen</li> <li>• Toni Cohen</li> <li>• Dan McDaniel (by phone), Central Delta Water Agency</li> <li>• Doug Montague, Montague, DeRose and Associates</li> <li>• Thomas Rinn (by phone), Waterworks Consulting</li> <li>• Patricia Schifferle (in person and then by phone), Planning and Conservation League</li> </ul> <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> <li>• Alex Braunstein, Kearns &amp; West</li> <li>• Charlotte Chorneau, Kearns &amp; West</li> <li>• Mike Harty, Kearns &amp; West</li> <li>• Anna West, Kearns &amp; West</li> </ul>
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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, Kearns & 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 16<sup>th</sup>, 2013 negotiation session summary and asked if there were any further edits to the meeting summary. The group finalized the October 16 Meeting Summary which will be posted on the website.

DWR and SWP Contractors exchanged documents that they had prepared for the Negotiation session, including DWR's Tentative Offer and SWP Contractor's proposal on the roles and responsibilities of the Finance Committee. Copies were distributed at the meeting and posted to the Contract Extension Website.

### III. Objectives Discussion

Carl Torgersen, DWR, reviewed the Department's Tentative Offer on Reserves and Flow of funds. DWR has included a cap on the GOA modeled after the Monterey Amendment with a five year limit based on historical changes. O&M costs don't include power costs, and there is no adjustment to the SSA until 2036. DWR's Offer included flexibility on the flow of funds, though repayment would come from appropriate sources, i.e., Contractors would only pay for water supply. Additionally, DWR had changed the "revised bill" terminology to "emergency bill," in an effort to clarify.

DWR and SWP Contractor took a caucus to review each others' documents.

David Okita stated that SWP Contractors have several questions. First, on the definition of emergency and crisis, how does DWR define these terms? Steve Cohen responded that the use of the word emergency is defined in the same way it is used in the Monterey Amendment, so DWR thought there would be a common understanding of this term. Carl added that a threat to DWR's ability to deliver available water, is what was intended, offering the example of a canal break as an emergency.

David Okita, Solano County Water Agency, asked for background on DWR's proposal of a 35 percent limit on adjustments to the GOA within a five year period. Steve Cohen said that DWR reviewed 20 years of O&M charges not including power, and it averages 7.5 percent a year increase in O&M charges. He clarified that based on this the Department came up with a cap slightly lower than the average increase in O&M. Ray Stokes asked if there would be an automatic increase in the GOA based on increased O&M. Steve Cohen said that it would be a cap with a review every five years and based on the percent change in O&M changes the cap could be adjusted, up to a 35 percent increase.

David Okita asked for clarification on DWR's SSA proposal and why the Department qualified its proposal with the statement that it "is expected that these costs would be for non-water supply purposes and not for costs chargeable to the water contractors (emphasis added)."

Steve Cohen said that earlier on the negotiations DWR had discussed examples of costs without a revenue source, the qualification in the tentative offer accounts for that possibility going forward. However, the primary use here is for non-water supply purposes. He stated that DWR doesn't know for certain that there will be system revenues going forward, citing the examples of unallocated Table A and Jibboom Street, where the Department lacked a revenue source.

Ray Stokes stated that he thought these examples are related to suspended costs and would come out of the SSA, is that DWR's understanding? Steve Cohen answered yes, post-2035.

David Okita asked how the consultation described in the tentative offer on the SSA would take place. Steve Cohen stated that there are examples in the current contracts where the Department sends out materials for the five-year review. Carl commented that clarifying how consultation could occur would need to be discussed as the amendment is developed.

David commented that the tentative offer states that in 2036 the cap is eliminated, and asked for clarification on the intent. Steve Cohen responded that prior to 2035 the Department has the Monterey Amendment and other funds available, but after 2035, especially if the Contract Amendments do not include a backstop, it's the Department's risk and it's up to the Department to operate these accounts. The Department believes that there is no need for caps post 2035. Post-2035 the Contractors should be comfortable with DWR having higher amounts in these accounts rather than lesser amounts.

Ray Stokes asked if DWR is envisioning that these accounts are established immediately after the amendment is signed. Steve Cohen said yes, with the GOA as the highest priority. He clarified that the SSA and SRA are meant to replace the loss of 51(e) revenues, so these accounts may not be funded as quickly.

Ray clarified that pre-2035, DWR wouldn't necessarily fund the SSA and SRA, and, therefore, most of the mechanics of how these funds would work is a post-2035 issue. Steve Cohen replied, yes, though DWR would need to get funds in the SRA to generate interest for the SSA in advance of 2035.

Ray clarified that pre-2035 the flow of funds functions through the existing authority that the Director has under the Monterey Agreement, so that DWR can utilize the 51(e) revenues after the GOA is funded to fund non-reimbursable costs. However, post-2035 the caps are not necessary on these accounts because DWR could transfer funds between accounts and maintain the Director's discretion.

Steve Cohen then responded that the uses of the three funds, aside from the caps, will still apply all the way through to the end of the contract, so DWR will have limitations on what they can be used for – the purpose and limits will be there. He stated that the Department would absolutely retain the Director's discretion, and he suggested that the reimbursable account is critical to the Department, especially without the backstop.

Carl Torgersen stated that the intent of DWR's proposal is that GOA funding would be a top priority, although the Director has discretion to fund something else if the need arises. Ray Stokes responded that his understanding is that the Director has the discretion to fund the GOA or not, and the two other accounts or not. These accounts don't diminish the Director's discretion to use 51(e) revenues.

Steve Cohen responded that if DWR were to accept additional rate management credits up to \$48 million, it's unclear why the Department would then accept a flow of funds proposal that impinges on the Director's discretion.

Ray Stokes asked to clarify the relationship between the Capital Facilities Account and the SSA pre- and post-2035. DWR's Tentative Offer reads that the Department is putting \$60 million in the SSA, in addition to the Capital Facilities Account. Carl explained that Perla Netto-Brown will address this at the next meeting.

Steve Cohen responded that DWR could not predict what the judgment of the Director will be, regarding the uses of 51(e) revenues.

Noting that the elimination of the 2(b) backstop was referenced in the Department's Tentative Offer, Ray Stokes asked if the backstop is a negotiation point, or would language on the backstop be included in the contract.

Steve Cohen responded that if the Department could get a high degree of confidence on the flow of funds, as described in the Department's Tentative Offer, then the 2(b) backstop would simply go away.

Ray Stokes noted that SWP Contractors had offered SRA interest earnings as an alternative to backstopping non-reimbursable costs to the Contractors. How does DWR get the high degree of confidence that would allow for elimination of the backstop? Steve Cohen offered the clarification that the primary source of revenue for the SSA is investment income from SRA, and that the Department's Tentative Offer is expanded to also include funds that haven't been put in the SRA so it is not just interest earnings that fund the SRA.

Deven Upadhyay, MWD of Southern California, asked to clarify the Department's proposal on the flow of funds. DWR states the Director will retain discretion of SWRDS purposes, is this discretion exercised through the three proposed accounts or outside of them?

Steve Cohen replied that this discretion could be exercised outside of the accounts. DWR views the accounts as one thing that will capture 51(e) revenues and there will be other funds available. Deven clarified that there are expenditures that the Department could incur that don't go through these accounts as currently structured. Steve responded yes, he thought that was correct.

David Okita asked for clarification on the Department's proposal on rate management credits, and why there are items listed in this part of the Offer that are not directly related to rate management. Steve Cohen stated that the Department feels it's appropriate to wipe the slate clean on disputes related to how the Department has spent money for non-water supply purposes.

Ray Stokes asked how this part of the Offer would work if there are Contractors who don't sign the contract amendment. Steve Cohen replied that they would settle with signed Contractors.

Ray asked if the Department was offering \$48 Million in rate management credits as a package deal with the two additional items included in the Department's Tentative Offer.

Steve Cohen highlighted these items as necessary to be addressed before DWR would consider a permanent increase in rate management, however the Department would also need to review the complete package, once it's in place.

Curtis Creel, Kern County Water Agency, suggested that the language on the Finance Committee in DWR's Tentative Offer is pretty broad. Steve Cohen responded that it was a summary from DWR's perspective and DWR envisions the Committee as primarily making recommendations and serving as a forum for discussion of policy-level issues.

David Okita noted that under emergency billing, DWR has proposed a 10 percent cap. What if the emergency costs were in excess of that, say as high as 15 percent? Carl Torgersen suggested that DWR would need to do what was done in 2001 which is to discuss a solution with the Contractors.

Carl Torgersen offered his reactions to the Finance Committee proposal by the Contractors, stating that what the Contractors had proposed is a lot more than what the Department had envisioned. The Department's view is that the Committee would have a role in the work plan and monitoring implementation, and as we move beyond the work plan, the Department looked at the Committee having an advisory role, making recommendations to the Director. This proposal uses words like ratify, approval, oversight, amounting to a lot more than what the Department has envisioned.

David Okita stated that the Committee would make recommendations to the Director and the only approval would be for the work plan. Curtis Creel added that the Committee would help the Department establish and ratify financial policy. Steve Cohen responded that it isn't the way it looked to us, it looked like the Committee, and not the Department, was ratifying items. Mike Harty, Kearns & West, offered the example of last bullet on page 2 where ratify is used. The Department and SWP Contractors agreed that use of the word ratify wasn't necessary.

Steve Cohen stated that DWR envisioned a forum where Contractors would say what they would like to see, information they would like to have, but the Committee would not be providing oversight.

Curtis Creel asked what if the Contractors removed the word oversight?

Anna West, suggested that there are two issues being discussed, there is the issue of the committee's role, where words like oversight and ratify are causing a concern or misunderstanding, and then the issue of the content. She asked if DWR has reaction to the content on the Contractors' proposal on the Finance Committee.

Carl Torgersen responded that on the Chief Financial Manager and the proposed organizational review, DWR sees the Contractor's proposal as somewhat inverted. DWR would want to complete the organizational review first, and the plan is to complete this review by the end of the year. The project manager develops the work plan and a result will be a single point of contact for finance.

Curtis asked if DWR had questions on the bullets that detail committee responsibilities. Steve Cohen stated that DWR would get back to the Contractors with additional feedback on the responsibilities; the Department got sidetracked on the language in the proposal.

Curtis asked if DWR had additional questions on the responsibilities listed in the Contractor's proposal. Carl Torgersen suggested that "financial policy guidelines" needed to be defined. Curtis Creel offered that in Attachment 1, SWP Contractors gives examples of specific financial policy guidelines topics. These examples are shared to help provide definition and additional detail.

Regarding the Committee review of variances, Carl asked if the Contractors meant variance in costs or variance from guidelines? Curtis responded that it could be both. Carl suggested that rather than using the word variance, perhaps one could just say deviation in policy.

Curtis asked for a reaction from the Department on the proposal from the Contractors that the responsibilities of the Finance Committee included "Recommending initiatives and monitoring progress of the Financial Management Improvement and Enhancement Work Plan." Carl stated that he would agree with this point, this is the genesis of the Committee from the Department's perspective, provided that the word monitoring does not mean approval. Steve Cohen commented that, to the extent we reach agreement, this level of detail would go in the charter or an MOU, not the Contract.

David Okita responded that the Contractors expect key points to be the contract, establishing the Committee, for example. Steve Cohen suggested that the issue is what level of detail is in the Contract. Right now the Department has establishing the Committee and providing recommendations to the Director as items that would both go in the Contract.

Carl Torgersen recalled that the Department had proposed that this Committee would be high level and would not get into the numbers. Looking at the Contractors proposal, he is concerned that the Contractors proposal would veer into numbers and approvals; the Department needs to discuss what language they would be comfortable with.

Mike Harty asked DWR and SWP Contractors what their views were on the role of the Finance Committee after the initial implementation of the five year work plan. Carl responded that after the five year workplan elements are established, the Committee would meet as needed, at the request of the Department or the Contractors.

Curtis offered that in the view of the Contractors, monthly meetings would be replaced by regular meetings. He suggested that there is a tendency to develop guidelines and procedures and set them aside. There should be periodic review because conditions change. For example, one may have constraints today, due to law, which may not exist down the road.

Carl said that the Department and SWP Contractors don't necessarily disagree, and he wasn't saying the Committee goes away. One possibility would be to have an annual meeting after the work plan is complete, adding that he didn't see a need to meet on a more regular basis unless something changes.

Curtis gave the example of the CalFED Ops group which meets on a periodic basis, and there is a lot of activity that occurs under this umbrella. He suggested that the Committee doesn't need to meet on a regular basis, but asked whether the Department envisions the technical work is done under the purview of the Committee? Will workgroups be formed that would be under the direction of this Committee.

Carl responded that he wouldn't necessarily characterize it that way. As we move forward, we will look at Committee structure. Dispute resolution at the policy level might go up to the Committee. For financial variances and overages, he doesn't see the Committee addressing these types of issues; it would be somewhere else.

Curtis asked to clarify if the existing committee structure would stay in place. Carl responded that the current committee structure should be reviewed for functionality. He said that he was trying to convey that the Committee would not be a budget or audit finance committee, but a policy committee, and once those policies are in place, it would meet less frequently, on a 6-month or 12-month basis.

Ray Stokes stated that SWP Contractors had envisioned the Committee at a policy level as well. Current technical work would still go on, though the Committee would have an oversight role regarding possible billing adjustments, providing recommendations to the Director. For example, decisions regarding whether to utilize the GOA or transferring funds from one fund to another the Finance Committee would address. The Director would still make final decisions, but the Committee would have input. He stated that this is a policy-level discussion that is lacking at this point.

Carl responded that this as an area is beyond the Department's comfort level. He gave the example of repair of Thermalito. He asked if costs go beyond a certain level, would it go to the Committee? He said the Department doesn't see this happening.

Deven Upadhyay stated that there's value in including in the contract having this financial policy dialogue. In the case of Thermalito, DWR invited the Contractors to provide input, the Director has the final decision, but the Contractors have the ability to provide input. He suggested that formalizing this process where the Department approaches the Contractors for input is helpful. This is something Contractors don't have in the contract now, the opportunity to express affirmative or a dissenting input. It's not the intent of the Committee to go into operational decision making and weigh in on that, it's an opportunity to provide input.

Carl said that DWR agrees with the opportunity to discuss items with the Contractors, but there appears to be lack of alignment on what items go to the Committee.

Jeff Davis, San Geronio Pass Water Agency, stated that the Contractors like the idea of being proactive; if there are things that are going to make the statements of charges go up, we would want to talk to the Department about this in advance. If there is another AB 1234 that would increase energy costs, or there are union contracts, or other things that would impact Contractor costs, Contractors would like to pro-actively discuss this with DWR.

DWR and SWP Contractors adjourned for lunch.

#### IV. Objectives Discussion Continued

Carl Torgersen, offered an observation that fundamentally, on the high-level role of the Committee, we're in agreement on high-level recommendations on financial policy. When you start drilling down, you start seeing differences in what that means. One possibility is an

assessment of current committees, outside of this negotiation, using a parallel effort that would assess where we are today. Secondly, the Department and SWP Contractors could agree to establish this Committee and then use the charter process to define the responsibilities of the Committee. Lastly, Carl stated that he had heard from David Okita that the Contractors want binding language in the AIPs on the Committee. Could the Contractors propose language that would be in the Contract? It is assumed that it would be more pared down than the current proposal from the Contractors, but seeing the specific language the Contractors propose for Contract Amendments would be helpful. Curtis affirmed that the Contractors will do this.

David Okita asked if the Department envisions the charter would be in the Contract. Steve Cohen suggested that the Committee and its function would be in the contract, with limited language, and then there would be a charter, not attached to the contract amendment. He suggested that the Department and Contractors could be working on a charter simultaneously with finalizing the contract amendment, so there is a sense of what the charter looks like by the time the contract amendment is being finalized.

David asked what if the Contractors have a problem with the charter at the time the contract amendment is being finalized? Curtis Creel said that he is still struggling with what the Committee looks like, its role and conduct. He suggested that DWR and SWP Contractors should have enough detail on the Committee so that, down the road, we can look at the contract and understand the role and function of the Committee. Steve stated that DWR doesn't feel that level of detail belongs in the Contract and suggested that those issues can be clarified in the charter.

Curtis stated that the Department has been very clear in the past and the contract is an instruction set for conducting the business of the State Water Project. The Committee is foundational to what DWR and SWP Contractors are negotiating.

#### V. Next Steps

Anna reviewed agreed to actions listed below.

#### VI. Public Comment

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

#### VII. Adjourn

The meeting was adjourned.

Action Items		Responsibility   Due Date
1.	October 16 Negotiation Session Meeting Summary to be finalized and posted on the website.	K&W   ASAP
2.	DWR to have additional discussion on the Flow of Funds.	DWR   11/14
3.	SWP Contractors to prepare a brief document on proposed contract language on the Finance	SWP Contractors   11/14

	Committee.	
4.	DWR to clarify proposal on the Capital Facilities Account	Perla Netto Brown   11/14
5.	October 23 Negotiation Session Meeting Summary to be prepared.	K&W   ASAP
6.	K&W to distribute Doodle Poll for December meetings	K&W   ASAP