

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

**Draft Agreement in Principle for the SWP Water Supply Contract Amendment
for
Water Management and California WaterFix**

This straw proposal for a draft Agreement in Principle (AIP) is from the Consolidated Talking Points as of May 30, 2018 from the contract amendment negotiations. Many provisions are under discussion and the workgroup will update the Draft AIP after future public negotiations. [Format used in this document is preliminary and is subject to revision.]

DRAFT Proposed Project Objectives

The California Department of Water Resources and the PWAs have agreed to the following proposed project objectives for amending the SWP water supply contract:

- 1) Supplement and clarify terms of the SWP water supply contract that will provide greater water management regarding transfers and exchanges of SWP water within the SWP service area;
- 2) Provide a fair and equitable approach for cost allocation of California WaterFix facilities to maintain the SWP financial integrity.

**I. PRINCIPLES TO ACHIEVE DRAFT PROPOSED OBJECTIVE FOR WATER
MANAGEMENT TOOLS AND ACTIONS****1. Water Transfers.**

- 1.1. **Terms of a Transfer Agreement:** The PWAs shall determine duration and compensation for all transfers; this includes allowing single, Transfer Packages and multi-year transfers to be as long as the remainder of the term of the contract.
- 1.2. **Transfer Package Definition:** A Transfer Package is comprised of two or more transfer agreements between the same PWAs. If a transfer package is presented to DWR for approval, DWR shall consider each proposed transfer within the package at the same time and shall apply the transfer criteria listed below in the review of each transfer. DWR shall not reclassify a Transfer Package or Transfer as an exchange.

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

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Doc # 00115

- 1.3. All contract language in Article 56(d) and language related to the Turnback Pool shall be removed.

2. Water Exchanges.

- 2.1 Article 56(f) will be revised to include language permitting consideration of hydrology under a bona fide exchange and will include the following criteria for return ratios:

For SWP allocations $\geq 50\%$, return ratio is up to 2: 1

For SWP allocations > 25 and $< 50\%$, return ratio is up to 3: 1

For SWP allocations $>15\%$ and $\leq 25\%$, return ratio is up to 4: 1

For SWP allocations $\leq 15\%$, return ratio is up to 5:1

- 2.2. The PWAs shall use the applicable return ratio using the SWP allocation at the time the exchange transaction is executed between the PWAs.
- 2.3. Notice to Contractors 17-11 Attachment A, Section A, Bona Fide Exchanges, Item 4 Cost compensation reads as follows: Maximum cost compensation for a bona fide exchange may not exceed the exchanging PWAs combined conservation facilities, transportation facilities, and CWF facilities' fixed charges (capital and minimum charges including capital surcharges). The allocation percentage in the denominator of the compensation calculation will be set by the SWP allocation which has incorporated the May 1 monthly Bulletin 120 runoff forecasts. If exchanges are requested prior to the allocation identified above, DWR will provide timely approval with the obligation of the PWAs to meet the requirement of the maximum compensation – if the compensation exceeds the maximum, the PWAs will re-visit the agreement and adjust the compensation. If a cost adjustment is made, the PWA must notify DWR.

3. Transfers and Exchanges, including Transfers and Exchanges using Carryover Water in San Luis Reservoir (SLR).

- 3.1. **Buyers and Sellers in Same Year.** PWAs may be both buyers and sellers in the same year and enter into multiple transfers and/or exchanges in the same year.
- 3.2. Basic Criteria Required for Proposed Transfers and Exchanges.
 - 3.2.1 Transfers and exchanges must be transparent.
 - 3.2.2 Transfers and exchanges must not harm non-participating PWAs.

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

- 3.2.3 Transfers and exchanges must not create significant adverse impacts in a PWA service area.
- 3.2.4 Transfers and exchanges shall comply with all applicable laws and regulations.
- 3.2.5 Transfers and exchanges shall be scheduled only if they do not impact normal SWP operations.
- 3.2.6 Transfers and exchanges shall not impact the financial integrity of the SWP.
- 3.2.7 A PWA may petition the Director for an exception in the following cases. In each case, the PWA must provide explanatory information to the Director.
 - A transfer or exchange does not meet the basic criteria, but the PWA feels that there is compelling need to proceed with the transfer or exchange.
 - A PWA that has received water in a transfer or exchange cannot deliver all of the water from the transaction in the same calendar year, and wishes to carry over the water in its name.

The Director shall have discretion to approve exceptions.

3.3. **Dispute Resolution Process, Prior to Executing an Agreement.** PWAs and DWR shall comply with the following process to resolve disputes if a PWA that is not participating in the transfer or exchange claims that the proposed transfer and/or exchange has a significant adverse impact.

- 3.3.1 Any claim to a significant adverse impact may only be made after the submittal of a term sheet to DWR and before DWR approves a transfer/exchange agreement.
- 3.3.2 In the event that any dispute can't be resolved among the PWAs, DWR will convene a group including DWR (the Chiefs of SWPAO, Legal, and Operations or their designees) and the PWA parties involved (PWA representatives to be chosen by each PWA party). Any PWA claiming an adverse impact must submit written documentation to support this claim and identify a proposed solution. This documentation must be provided 2 weeks in

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

advance of a meeting of the group that includes SWPAO, Legal, Operations and the involved PWA representatives.

- 3.3.3 If this group can't resolve the dispute, the issue will be taken to the Director of DWR.
- 3.3.4 The Director's decision will be the final.
- 3.4. **Water Delivery Priorities:** Exchange and transfer water shall be scheduled in accordance with Article 12 (f) priorities retaining the associated priority level. The transfer water will not have the protection of Article 14(b) and the delivery cannot impact any other PWAs.
- 3.5 Although DWR will not be a party to any transfer or exchange agreement between the PWA's, DWR and the PWAs shall enter into an agreement to address DWR's role in effectuating the transfer or exchange. Such agreement shall include certain standardized provisions designed to protect SWP operations, finances and liability, along with other provisions tailored to the particular transaction or as otherwise agreed among DWR and the PWAs.
- 3.6 **Timely Processing.** DWR will timely process requests to be incorporated into the schedule to deliver water that given year.
- 3.7 **Shortages:** In regards to shortages, DWR retains authority as set forth in Article 18(a).
- 3.8 **Article 21.**
 - 3.8.1 Tulare Lake Basin Water Storage District, Empire Westside Irrigation District, Oak Flat Water District, and Kings County may transfer a portion of their Article 21 water to another PWA.
 - 3.8.2 The Director, in his or her discretion, may approve the transfer of a portion of other PWA's allocation of Article 21 water to another PWA where there is a special need for the transfer. The Department will prepare criteria to be applied for the review of a PWA request to transfer Article 21 water. This will not impact the Department's process for allocating Article 21 water.
- 4. **PWA Due Diligence.**
 - 4.1 Each PWA participating in an exchange or transfer shall confirm the following in a resolution or other appropriate document approving the transfer or

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

exchange, including the use of stored water/carryover water, if applicable, provided to DWR as follows:

- 4.1.1 That the PWA has complied with all applicable laws for this transfer/exchange and shall specify the notices that were provided to the public agencies and the public regarding the proposed transfer or exchange.
 - 4.1.2. That the relevant terms of the transfer/exchange have been provided to all State Water Project PWAs and the SWC Water Transfer Committee;
 - 4.1.3. That the PWA is informed and believes that this transfer/exchange will not harm other SWP PWAs, or impact SWP operations.
 - 4.1.4. That the PWA is informed and believes that the transfer/exchange will not affect its ability to make all payments, including payments for its share of the financing costs of DWR's Central Valley Project Revenue Bonds, when due, under its water supply contract.
 - 4.1.5. That the PWA has considered the potential impacts of the transfer/exchange within the PWA's service area.
- 4.2. Add language to the contract that requires PWAs parties to an exchange or transfer to publicly post and provide information to non-party PWAs. The PWAs and DWR agree that DWR will send a Notice to Contractors to outline the following process related to transparency for transfers and exchanges:

At the time the PWA parties submit the Contract Information Form to DWR, they will provide the Contract Information Form to the non-party PWAs. During the time period beginning with the PWA parties submitting the Contract Information Form to DWR and the time before there is a final agreement with DWR for storage or conveyance, the PWA parties will publicly post information regarding the transfer or exchange. If applicable, the PWA parties will request the State Water Contractor Board to support the water transfer. If the State Water Contractor board votes to support the transfer or exchange, the General Manager will send a letter of support to DWR and to the non-party PWAs. Once a storage or conveyance agreement is completed it will be provided to the non-party PWAs.

- 4.3. If requested by the DWR Director with respect to any confirmation of Basic Criteria for Transfers, Exchanges and Carryover Water, the PWA shall

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

cooperate with DWR in providing DWR with information supporting the basis for the confirmation or basic criteria.

5. **Stored Water/Carryover Water.**

5.1. **Store and Transfer SWP Water in the Same Year.** Modify Article 56(c)(4) and any other applicable sections to allow PWAs to store and transfer Table A water in the same year and modify Article 56(c) and any other applicable sections to allow a PWA to transfer Table A water to another PWA's service area. DWR will continue to coordinate through the PWAs under the existing SWP contracts.

5.2 **Carryover Water Program:** Carryover Water Program shall require transfers and/or exchanges of carryover water in years of need, as confirmed by the receiving PWA, to meet the following criteria:

5.2.1 Carryover water available for transfer or exchange in this amendment is defined only as stored water described in Article 56(c)(1) and 56(c)(2) and not 12(e).

5.2.2 Carryover water may only be exchanged or used in single-year transfers.

5.2.3 The PWA purchasing the carryover water must take delivery, in its service areas, unless an exemption is granted under 5.2.8.

5.2.4 A PWA may transfer or exchange up to 50% of its carryover water.

5.2.5 A PWA may transfer/exchange greater than 50% of its carryover water, if the PWA demonstrate that the transfer or exchange of carryover water will not prevent it from meeting critical water needs in the current year or the following year and obtain approval by DWR Director.

5.2.6 All transfer and exchange of carryover water are subject to section 4.2.

5.2.7 The PWA receiving the water must confirm that the PWA has a need for that water for use within its service area during the current year unless an exception is granted under 5.2.8.

5.2.8 A PWA may request an exception for the following, but not limited to, from the DWR Director:

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

- 5.2.8.1 For any exceptions to the criteria listed above;
- 5.2.8.2 Requests for the transfer and exchange of stored (or carryover) water prior to this water being displaced; and
- 5.2.8.3 Using San Luis Reservoir as the transfer/exchange point.

II. PRINCIPLES TO ACHIEVE OBJECTIVE FOR CWF COST ALLOCATION

1. These costs would be billed to and collected from SWP PWAs participating in the SWP portion of CWF (Participating PWAs), except those SWP PWAs situated north of the Delta (Non-Participating PWAs), through their annual Statement of Charges (SOC).
2. **CWF Facilities Definition:** CWF Facilities shall mean those facilities that are constructed to convey water from the north Delta to the south Delta through facilities as described in the California Water Fix Final EIR/EIS SCH #2008032062. In general, CWF Facilities will divert water from the Sacramento River through three intakes on the east bank of the Sacramento River, through pipelines and tunnels to the south Delta, to new forebay located northwest of the existing Clifton Court Forebay, and finally to connections with the California Aqueduct north of the Jones and Banks pumping plants.
3. **CWF Facilities Charge Components:** The purpose of the CWF Facilities is water conservation and/or transportation. Accordingly, all capital and minimum operations, maintenance, power and replacement (OMP&R) costs associated with the CWF Facilities are 100% reimbursable and shall be recovered by the DWR from Participating PWAs through their annual SOC. These costs shall be allocated to and billed under two new charges as follows:
 - (1) CWF Facilities Capital Charge Component
 - (2) CWF Facilities Minimum OMP&R Component
4. **CWF Facilities Capital Charge Component Method of Computation**
 - 4.1 This computation will recover actual annual debt service created by financing activities (Financing Method) for CWF Facilities.
 - 4.2 Each Financing Method shall provide an annual repayment schedule, which includes all Financing Costs.
 - 4.3 Financing Costs shall mean the following:
 - 4.3.1 Principal of and interest on Revenue Bonds,

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

- 4.3.2 Debt service coverage required by the applicable bond resolution or indenture in relation to such principal and interest,
- 4.3.3 Deposits to reserves required by the bond resolution or indenture in relation to such Revenue Bonds, and
- 4.3.4 Premiums for insurance or other security obtained in relation to such Revenue Bonds.
- 4.4 Financing Method shall be divided into four categories:
 - 4.4.1 CWF Facilities Capital Costs paid with the proceeds of Water System Facility Revenue Bonds,
 - 4.4.2 CWF Facilities Capital Costs paid with amounts in the State Water Resources Development System Reinvestment Account,
 - 4.4.3 CWF Facilities Capital Costs paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and
 - 4.4.4 CWF Facilities Capital Costs prepaid by the Participating PWAs.
- 4.5 CWF Facilities Capital Charge Component should be allocated to the Participating PWAs in proportion to the CWF Facilities Allocation Factors for each calendar year.
- 5. CWF Facilities Minimum OMP&R Charge Component Method of Computation**
 - 5.1 Recovery will be estimated and/or actual annual OMP&R costs determined for the CWF Facilities each year.
 - 5.2 CWF Facilities Minimum OMP&R Charge Component shall be allocated to the Participating PWAs in proportion to the CWF Facilities Allocation Factors for each calendar year.
- 6. CWF Facilities Energy Charges** – The CWF energy costs are 100% reimbursable by the PWAs and the methodology will be determined by the interim SWRDS Finance Committee.
- 7. CWF Facilities Allocation Factors** – The following table is a preliminary allocation of CWF Facilities participation percentages for the Non-Participating

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

PWAs and the Participating PWAs. Only Participating PWAs would be billed for CWF Facilities Charge Components through their annual SOC, using the CWF Facility Allocation Factors described in the table. Non-Participating PWAs would not be billed for repayment of costs for construction, operation and maintenance of facilities associated with CWF, except to the extent there is a permanent transfer of Table A from a Participating PWA to a Non-Participating PWA as set forth in principle 11.

Non-Participating PWA	CWF Facilities Allocation Factors
City of Yuba City	exempt
County of Butte	exempt
Plumas County FC&WCD	exempt
Napa County FC&WCD	exempt
Solano County Water Agency	exempt
Participating PWA	CWF Facilities Allocation Factors
Alameda County FC&WCD, Zone 7	1.9875%
Alameda County Water District	1.0355%
Santa Clara Valley Water District	2.4654%
Dudley Ridge Water District	1.0194%
Empire-West Side Irrigation District	0.0740%
Kern County Water Agency-Total	24.2278%
County of Kings	0.2294%
Oak Flat Water District	0.1405%
Tulare Lake Basin Water Storage District	2.1565%
San Luis Obispo County FC&WCD	0.6163%
Santa Barbara County FC&WCD	1.1214%
Antelope Valley-East Kern Water Agency	3.5709%
Santa Clarita Valley Water Agency	2.3470%
Coachella Valley Water District	3.4108%
Crestline-Lake Arrowhead Water Agency	0.1430%
Desert Water Agency	1.3744%
Littlerock Creek Irrigation District	0.0567%
Mojave Water Agency	2.2139%
Palmdale Water District	0.5251%
San Bernardino Valley Municipal Water District	2.5295%
San Gabriel Valley Municipal Water District	0.7100%
San Geronio Pass Water Agency	0.4265%
The Metropolitan Water District of Southern California	47.1253%
Ventura County Watershed Protection District	0.4931%
Total	100.000%

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

Draft 3 – June 27, 2018

Doc # 00115

8. **Repayment Schedule Table** – The amount to be paid by the Participating PWAs for each year under the CWF Facilities Capital and Minimum OMP&R charge Components shall be set forth in a Repayment Schedule Table.
9. **Charge Redetermination** – The CWF Facilities Capital and Minimum OMP&R Charge Components shall be subject to Charge Redetermination.
10. **Annual Statement of Charges** – The CWF Facilities Capital and Minimum OMP&R Charge Components shall be included in a separate invoice that is included in the annual SOC and shall be subject to the time and method of payment for Capital and Minimum OMP&R Components.
11. **Permanent Transfer of Contract Rights** – Any permanent transfer of Table A contract rights of a Participating PWA shall be accompanied by a pro-rata transfer of that PWAs rights and responsibilities with respect to CWF.
12. **CWF Facilities Use Of Facilities Charge** – If a Non-Participating PWA transfers allocated Table A to a Participating PWA, then no fee will be charged to the PWAs involved in the transaction. Other transactions may result in a fee sufficient to cover all (1) capital, (2) minimum operations, maintenance, power and replacement (OMP&R) costs, and (3) variable OMP&R costs, associated with this usage.
13. **Water Delivery Principles** – Participating PWAs moving water in excess of their CWF Facilities Allocation Factor shall schedule deliveries in a manner that does not harm other participating PWAs and shall be subject to the delivery priorities set forth in Article 12(f) of the Contract.
14. **Power Cost Incurred During Construction**: Per the DWR capitalization policy, any power costs (for example, power supply, grid connections, transmission) incurred to construct the CWF facilities shall be capitalized during Construction Work in Progress, as used in DWR's financial statements, and costs are 100% reimbursable recovered through the CWF Facilities Capital Charge Component.

III. ENVIRONMENTAL REVIEW PROCESS

1. DWR and the PWAs agree that this AIP is intended to be used during the environmental review process for the California Environmental Quality Act (CEQA), to define the proposed project description for the purposes of CEQA, and to permit the next steps of the SWP water supply contract amendment process, including scoping and the preparation of the EIR. The AIP principles are not final contract language and do not represent a contractual commitment by either DWR or the PWAs to approve any proposed project or to sign contract

DRAFT WORKING DOCUMENT FOR PUBLIC DISCUSSION

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Doc # 00115

amendments. By concurring with the AIP, DWR and the PWAs express their intent to move forward with the CEQA process with DWR as lead agency and the PWAs as responsible agencies, and ultimately develop a proposed project consisting of contractual amendments consistent with the AIP principles and prepare the EIR for consideration by DWR and the PWAs.

2. At the end of the CEQA process and in compliance with CEQA, DWR and the PWAs will each individually evaluate the EIR and contract amendments, exercise their independent judgment, and determine whether or not to certify the EIR, approve the proposed project and sign the contract amendments or to approve an alternative project. Consequently, even though DWR and the PWAs have agreed to the AIP for the purposes described in the preceding paragraphs, DWR and each PWA retain their full discretion under CEQA to consider and adopt mitigation measures and alternatives, including the alternative of not going forward with the proposed project.