



## STATE WATER PROJECT CONTRACT EXTENSION PROJECT

### **Draft Meeting Summary and Action Items**

State Water Project Contract Extension Project

October 9, 2013 10:00 AM – 3:00 PM

### **Draft Meeting Attendance List**

<p><u>California Department of Water Resources</u>  <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, 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 Negotiators</u></p> <ul style="list-style-type: none"> <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, 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>• Steve Arakawa, MWD of Southern California</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> <li>• Douglas Headrick, San Bernardino Valley Municipal Water District</li> <li>• Ray Stokes, Santa Barbara County/Central</li> </ul>	<ul style="list-style-type: none"> <li>• Coast Water Authority</li> <li>• Lynn Hurley, Santa Clara Valley Water District</li> <li>• Steve Wickstrum (by phone), Ventura County Flood Control District</li> </ul> <p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> <li>• Ted Alvarez, 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>• Nancy Quan, California Department of Water Resources</li> <li>• Dave Paulson, California Department of Water Resources</li> <li>• David Sandino, California Department of Water Resources</li> <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>
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<p><u>State Water Project Contractors and SWC, Inc.</u></p> <ul style="list-style-type: none"> <li>• Bruce Alpert, (by phone), Butte County</li> <li>• Jim Beck, Kern County Water Agency District</li> <li>• Jeff Davis, San Geronio Pass Water Agency</li> <li>• David Okita, Solano County Water Agency</li> <li>• Jaime Dalida, MWD of Southern California</li> <li>• John Schlotterbeck (by phone), MWD of Southern California</li> <li>• David Reukema, MWD of Southern California</li> <li>• Leah Wills (by phone), Plumas County Flood Control and 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>• Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District</li> <li>• Josh Nelson, Best, Best &amp; Krieger LLP/Crestline Lake Water Agency</li> <li>• Don Marquez, Kern County Water Agency</li> </ul>	<ul style="list-style-type: none"> <li>• Milli Chennell, Kern County Water Agency</li> <li>• Amelia Minaberrigarai (by phone), Kern County Water Agency</li> <li>• Ted Page, Kern County Water Agency</li> </ul> <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> <li>• Tom Berliner, Duane Morris LLP</li> <li>• Erick Cooke (by phone), Environmental Science Associates</li> <li>• Meredith Parkin (by phone), MWH Global</li> <li>• Cathy McEfee (by phone), Environmental Science Associates</li> </ul> <p><u>Public</u></p> <ul style="list-style-type: none"> <li>• Anton Favorini-Csorba, Legislative Analyst Office</li> <li>• Doug Montague, Montague, DeRose and Associates</li> <li>• Thomas Rinn (by phone), Waterworks Consulting</li> <li>• Patricia Schifferele, Planning Conservation League</li> </ul> <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> <li>• Alex Braunstein, Kearns &amp; West</li> <li>• Mike Harty, Kearns &amp; West</li> <li>• Kelsey Rugani, 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 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 action list from the October 2, 2013 negotiation session and asked if there were any further edits to the meeting summary. The group finalized the October 2 Meeting Summary which will be posted on the website.

### III. Objectives Discussion

Carl Torgersen, Department of Water Resources, suggested that the Contractors put together a written Counter Offer to increase understanding on their current position. It would be helpful in identifying where the Contractors think there is agreement, like on Objective 3, and where there is still disagreement.

Perla Netto-Brown, Department of Water Resources, stated that there was some confusion between re-bill, revised bill and supplemental bill at the previous negotiation meeting. She shared a PowerPoint and clarified that in their latest proposal on revised billing, it states that DWR shall have the ability to issue revised Contractor billings up to 10% of the Contractors' current Statement of Charges for that calendar year in the event of a significant cash flow shortage caused by an emergency or crisis, where the GOA does not have sufficient funds available or where use of the GOA would deplete the fund and put the SWRDS at financial risk. This would be in lieu of supplemental billing, which is limited to not exceed rate management credits.

The Department would notify and collaborate with the Contractors prior to sending out the revised billings, similar to the energy crisis in the early 2000's. In that situation, the Contractors' were sent two, what the Department called "adjusted billings" that equaled \$105.9 million dollars, approximately 16% of the total amount billed in 2000 (\$659 million). The GOA, at that time, was approximately \$25 million. She explained that revised billing is completely different, separate and apart from re-bill discussed under Objective 3.

Jeff Davis, San Geronio Pass Water Agency, referenced one of the first negotiation sessions where the Department stated that they needed \$150 million in reserves for emergencies. He asked if the GOA is increased to \$150 million, why are revised billings needed? Perla answered that revised bills would not be used on a regular basis and used only in very severe situations. The \$150 million GOA would be used first and if the Department depletes those funds and if there are no other funds available, then DWR would look into revised billing. Similar to the energy crisis, DWR was already \$150 million in the hole when they began discussing the situation with the Contractors. Jeff Davis followed-up and suggested that the funds with which the Director has discretion should be used first before thinking about revised billing.

Curtis Creel, Kern County Water Agency, stated that Perla's presentation did not address the issues raised at the last negotiation session regarding the Contractors' approval of a revised bill. Perla responded that the Department would notify the Contractors before issuing the revised billings. Curtis responded that notifying is not strong enough. Paul Gosselin, Butte County, added that by providing the Contractors with approval would bring Contractors in as partners and have buy-in from Contractors. If the emergency impacts the Contractors' ability to serve their constituents they will want to partner with the Department strengthening the crisis management response.

Carl stated that the Department has no problem agreeing to a collaborative process in dealing with emergencies. However, DWR cannot provide the Contractors' with an approval role that impacts the Director's authority established in the Burns-Porter Act.

The Contractors asked for a caucus.

Upon return from the caucus, David Okita, Solano County Water Agency, outlined the Contractors' three "must-haves" for the Contract Amendment:

1. Backstop Issue: non-starter for the Contractors.
2. Rate Management Credits and Flow of Funds: increasing the rate management credits to \$48 million through 2035. The priority of funds could be as follows: GOA, SSA, SRA. The SSA is not reimbursable by the Contractors.
3. DWR-SWP Contractors Finance Committee and Revised Billing Authority: Approval over the Charter and the Workplan are a good start. Due to the flow of funds flexibility, the Contractors believe that revised billing is not needed, but the Contractors' would like to have approval in emergency situations where it might be considered. David noted that in the Monterey Settlement Agreement, the Contractors' were able to structure the programs and processes without impacting the Director's approval authority. The Contractors' would like to see something similar memorialized in this Contract Extension process. The Contractors recognize the Director's discretion over flow of funds, but want Contractors to have approval over revised billing which would be a rare occurrence.

Carl responded by sharing that if DWR feels a certain level of comfort with the availability of funds between the GOA, SSA and SRA, there may be flexibility on the backstop. Regarding the flow of funds, Carl acknowledged concurrence on the Director's discretion. Steve Cohen clarified that the Department's proposal enumerates the purposes of the different accounts. Deven Upadhyay said that this issue is important to note since each fund will have specific purposes agreed upon by DWR and the Contractors. In the Contractors' tentative proposal after the \$48 million is paid in rate management credits, the Director has a number of tools (the GOA, SSA and SRA) to manage during emergencies. With the Finance Committee an ongoing discussion with DWR is institutionalized so the Contractors can be aware of changes in SWRDS finances. Steve Cohen described that DWR designed revised billing conditions so that it is a narrow safety valve for the Department and it includes limitations on how much they can bill. There is a currently a similar revised billing item in the Monterey Settlement Contract Amendment.

Steve Cohen stated that the purpose for outlining this account structure was to establish legitimate uses of 51(e) revenues and ensuring a revenue stream post 2035 for non-water supply purposes. More flexibility amongst the GOA, SSA and SRA during an emergency could be the safety valve DWR is looking for. Deven responded that providing DWR with a safety valve is the same logic behind the backstop issue. When reviewing the flow of funds, revised billing would only be considered in a dire situation and, therefore, asking the Finance Committee for approval on revised bills will occur very infrequently. He believes that there is already a lot of flexibility for the Department within the Contractors' most recent Counter Proposal.

Steve suggested that revised billing occurs in the calendar year of the emergency, not two years later. Deven responded that increased billings within the same calendar year could be quite disruptive to the Contractors since rates for that year would have already been established.

Deven asked for clarification: line 26 of the Department's Counter Proposal says that SSA funds can replenish the GOA in the event that cash-flow deficiencies and/or emergencies result from non-chargeable purposes, but later in the proposal, it says that the Director will use his

discretion to move SRA funds to the SSA. Carl clarified that line 26 refers to non-chargeable purposes only.

Carl suggested on the Finance Committee, that the Department has proposed discrete, one-time SWRDS financial actions that both the Department and the Contractors will have to mutually agree. Carl suggested calling the Committee the DWR- State Water Project Contractors Finance Committee which will oversee financial processes, tools and reporting for the State Water Project. Ray asked if the Committee will review policy level issues. Carl said that would depend on the Committee's charter. Carl clarified that the Committee will not approve projects or budgets, but some of the reporting, tools and financial processes may include policy level issues. Ray said that he envisioned disputes or broad policy level decisions could come to the Committee from the technical committees.

Carl envisions the Committee overseeing the creation of the financial office and the workplan. He also would like to incorporate the Committee into DWR's existing framework.

#### IV. Objectives Discussion Continued

Ray illustrated what the Contractors are proposing regarding the flow of funds. Under normal circumstances, 51(e) revenues would be allocated to the following subsequent priorities, in this order: the GOA, SSA, SRA. The Director will have discretion over moving money among these funds. If the costs incurred are for water supply purposes, the Contractors can replenish both the GOA and the SRA. Since the SSA is established for non-water supply projects, the Contractors cannot replenish the SSA, but the interest from the SRA can replenish the SSA. The Contractors structured the flow of funds this way so that the Department will have a consistent revenue stream for those costs that are currently paid for by 51(e) revenues.

Ray reaffirmed that the Contractors proposal is to have the Department reimburse the Contractors for \$48 million in Rate Management Credits; the reimbursement would occur before funds are allocated into the GOA, SSA, and SRA. Steve Cohen stated that DWR needs to consider the increase in Rate Management Credits.

Regarding the backstop, Carl shared that the reason behind it was to provide DWR with certainty in case of emergencies. Curtis shared that the backstop is an absolute non-starter for the Contractors because their most recent proposal addresses DWR's funding needs. Steve Cohen asked if there is fungibility between the GOA, SSA and SRA accounts and are caps still needed on the funds. He suggested that if the caps were removed a larger amount of money would be available to move around. Carl suggested that if caps are eliminated it then eliminates the need for approvals which would bring the Department and Contractors closer together.

The Contractors took a caucus.

David Okita suggested that the Contractors ability to agree with what is being discussed depends on the Finance Committee. The Contractors will need to discuss their tentative proposal on rate management credits and flow of funds further and will write a written proposal prior to the next negotiation session on October 16<sup>th</sup>. They will also put together a presentation on the authority and scope of the DWR- SWP Contractors Finance Committee, including defining

policy level issues. Carl stated things are looking promising on reaching agreement on issues discussed today, including the backstop, but he agrees that it does depend on being successful next week on the Finance Committee.

On the DWR-SWP Contractor Finance Committee, Curtis shared that the Contractors are not comfortable with memorializing all aspects of the Finance Committee outside of the contract. He was under the impression that the Charter would be in the contract and that an MOU is non-binding. From the Contractors' perspective, some elements of the Committee will need to be memorialized within the Contract Extension process in some way. Carl added that he does not think milestones should be included in the contract, but more discussion and clarity is needed on this subject. Carl suggested that the Contractors' presentation on the Committee include identifying which elements should be in the Contract Amendments and which can be in the Charter or MOU.

A last question Carl asked concerned the Contractors proposal to increase the rate management amount to \$48 million. Carl asked whether that would eliminate any Contractor requests for additional rate management credits in the future. Ray agreed that there would be no requests for additional rate management credits.

V. Next Steps

Anna reviewed the Contract Extension Process through October. The group agreed to extend the time for the next meeting, scheduled for October 16th, from 10:00am to 5:00pm (could adjourn earlier depending on meeting progress) at the Resources Building, Room 1131.

VI. Public Comment

There were no requests to provide public comment.

VII. Adjourn

The meeting was adjourned.

<b>Action Items</b>		<b>Responsibility   Due Date</b>
1.	October 2 Negotiation Session Meeting Summary to be finalized and posted on the website.	K&W   ASAP
2.	SWP Contractors to prepare a one-page summary of their Tentative Rate Management Credits and Flow of Funds proposal.	SWP Contractors   ASAP
3.	SWP Contractors to prepare a presentation on the authority and scope of the DWR-SWP Contractor Finance Committee.	SWP Contractors   10/16
4.	October 9 Negotiation Session Meeting Summary to be prepared.	K&W   ASAP