

May 16, 2018

Attention: Imported Water Committee

Adopt Updated Bay-Delta Policy Principles (Action)

Staff recommendation

Adopt the updated Bay-Delta Policy Principles to reflect recent events and developments and to protect the Water Authority's ratepayers' interests.

Alternatives

1. Modify one or more Policy Principles.
2. Do not adopt the updated Delta Policy Principles.

Fiscal Impact

On April 10, the Metropolitan Water District (MWD) voted to fund at least 64.6 percent of the California WaterFix costs. The fiscal impact of WaterFix to the Water Authority is dependent upon a number of factors, including MWD's total WaterFix financial exposure and how it allocates the costs to its rates and charges. If MWD's total WaterFix costs are no more than \$10.8 billion in 2017 dollars, and MWD applies the costs on its current volumetric supply rates, the impact to the Water Authority service area could range from 55 cents to 80 cents per household per month in 2035.¹ If MWD applies the costs on transportation, the household impact could range from \$13.27 to \$21.07. If MWD split the transportation cost between its System Access Rate and Readiness-to-Serve charge, the impact per household will be between those sets of ranges.

Executive Summary

- MWD's April action on WaterFix to fund two tunnels will expose the Water Authority and its ratepayers to significant financial risks and with no supply benefits from the second tunnel.
- The updated Bay-Delta Policy Principles (Attachment 1) include actions to protect the Water Authority, its member agencies, and ratepayers from unfair financial harm, including ensuring WaterFix costs are properly allocated to MWD's supply rates, leaving the Water Authority on equal footing with other MWD member agencies.
- Upon the Board's action, the Water Authority will update the policy positions within its educational materials and will outreach to ratepayers, opinion leaders and elected officials to increase their awareness, and actively engage with DWR and MWD to ensure they apply WaterFix costs properly, on supply.
- Before WaterFix begins construction, and during the time required to acquire permits and time for litigation issues to be resolved, opportunities exist to influence the outcome.

¹ Depending on interest rates assumed, based on the Water Authority's 2035 demand profile under the Interim Demand Forecast Reset, and assumes the implementation of verifiable and additional planned local supplies, and a household using 0.4 acre-feet of Water Authority's supplies per year; household costs will vary depending upon the level of dependency on Water Authority supply and the volume of water purchased. For more information on cost estimates refer to <https://www.sdcwa.org/sites/default/files/2018-04-12%20WaterFix%20Update.pdf>

Previous Board action: Delta Policy Principles adopted in February 2012.

Discussion

Water Authority's Bay-Delta Policy Principles

Because the Sacramento-San Joaquin Bay-Delta is an important water supply source for MWD, and because MWD is a component of the Water Authority's overall water supply portfolio, the Water Authority adopted the Bay-Delta Policy Principles in February 2012 to guide staff in evaluating Bay-Delta initiatives and the Water Authority's advocacy positions. The ultimate objective of the policy principles is to result in a Bay-Delta solution that is comprehensive, cost effective, environmentally sustainable, widely supported by stakeholders, and one that is fair to the Water Authority's ratepayers.

Given MWD's recent action to fund at least 64.6 percent of the WaterFix cost, the Water Authority's Bay-Delta strategy should focus on protecting and ensuring the Water Authority, its member agencies, and ratepayers are not forced to pay unfair, unnecessary, and unwanted WaterFix costs that may inhibit the region's development of local water supplies.

MWD's recent action

Last month, the MWD Board voted to fund 64.6 percent of the WaterFix cost, with a current estimate of \$16.7 billion in 2017 dollars.² This action allows two tunnels to be constructed at the same time. The Board action did not set a cap on the project cost and gave the MWD general manager complete discretion on how much cost MWD may incur and pay, as well as discretion to change MWD's investment policy, among other powers delegated to him. The 64.6 percent included MWD's share of the State Water Project (SWP) cost under a single tunnel "staged approach"³ (31.6 percent, or \$5.2 billion) as well as the unfunded second tunnel for the Central Valley Project (CVP) contractors (33 percent, or \$5.6 billion). This decision was contrary to MWD's staff recommendation, which supported the single tunnel staged approach, limiting MWD's participation at \$5.2 billion. MWD's staff memo showed annual average supply benefits to MWD are identical – between 405,000 acre-feet and 455,000 acre-feet -- for a staged single-tunnel approach or a two-tunnel approach.⁴

While MWD's supply conditions would not improve by MWD doubling its WaterFix obligations to fund the CVP share, MWD Board Chair Randy Record, in a commentary piece published in the Orange County Register,⁵ stated: "*A partial solution would have left our sister project in the Delta, the federal Central Valley Project, behind.*"⁶

² 60.83 percent of the MWD Board supported the action; delegates from the cities of Los Angeles, Santa Monica, San Fernando and the Water Authority opposed the action.

³ In February 2018, after failing to gain financial support from CVP contractors to fund 45 percent of the twin tunnels cost, the Department of Water Resources (DWR) proposed a staged approach to build a single tunnel first to match the WaterFix construction to financial commitment. A single tunnel, staged approach, increased the SWP contractors cost by about 22 percent.

⁴ April 10, 2018 MWD Board memo 8-7:

<http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003738353-1.pdf>

⁵ <https://www.ocregister.com/2018/04/28/why-metropolitan-water-district-of-southern-california-invested-in-the-delta-tunnels/>

⁶ Prior to the MWD Board vote, Governor Brown wrote a letter asking MWD to move ahead with both tunnels; it was also widely reported that delegates from MWD and Ventura lobbied heavily for the passage of twin tunnels. Recently, Food and Water Watch and First Amendment Coalition wrote a letter to MWD accusing MWD board members of violating the Brown Act by having multiple serial communications prior to the Board vote.

Financial Exposure

This month, MWD provided an updated Appendix A (a component of MWD's offering statement) for its Board's review.⁷ The draft Appendix A more clearly described MWD's financial exposure to WaterFix and said it will occur in two forms: 1) as an SWP contractor, and 2) "through various forms of additional financial support that Metropolitan will contribute to the project." Upon Department of Water Resources' (DWR) completion of its validation action, MWD will pay DWR its state share of the WaterFix cost similar to how MWD currently pays its SWP charges. Until DWR completes the validation action, the MWD Board authorized three additional forms of financial support for the project: 1) participation in a joint exercise of powers agency (financing JPA) to enable DWR to issue revenue bonds to fund state share of the project cost during DWR's validation action; 2) \$86 million of "gap funding" to allow the project to continue until the financing JPA is formed; and 3) MWD general manager was authorized to negotiate the acquisition of transfers of SWP water supplies in connection with the project,⁸ and to acquire the remaining 33 percent of the unfunded project capacity intended for the CVP contractors from DWR. The entire 33 percent of the unfunded CVP costs – currently at \$5.6 billion -- will be financed through MWD's own debt issuances.

The Appendix A noted that MWD's financial exposure is subject to "material change," and listed a number of risks that could impact the WaterFix cost projection; it further qualified the risk disclosure by saying "[t]he scope and magnitude of, and the extended construction period required for, a project of the nature of the California WaterFix may exacerbate these risks." Lastly, the Appendix A stated that "in the event the project is forestalled from implementation or abandoned prior to completion, expenditures incurred by Metropolitan prior to that time may represent sunk costs."

MWD's assumption of the additional unfunded second tunnel for CVP contractors – more than doubling its costs -- creates a significant and unfair burden for Southern California ratepayers. It calls into question whether MWD's action is a gift of public funds, conforms with Proposition 26 and other applicable laws. It also calls into question MWD's ability to issue additional debt to support its own infrastructure improvements. MWD Act Section 239.2 limits MWD's aggregate revenue bond issuance to MWD's equity at the end of the last fiscal year prior to the issuance of such bonds. MWD currently has about \$2.46 billion in additional debt capacity, less than half of the amount needed to finance the second tunnel.

Cost allocation

MWD's recent cost of service report⁹ asserted that "DWR has not provided an analysis for how it proposes to categorize" the WaterFix costs, but MWD has nonetheless allocated these costs as transportation costs.¹⁰ This is the first time MWD has described how it plans to allocate

⁷ <http://mwdh2o.com/PDFWWACurrentBoardAgendas/05082018%20BOD%208-2%20B-L.pdf>

⁸ The acquisition of transfers from other SWP contractors will be an additional expense and require additional board action.

⁹ Attachment 3, page 58 of 259: <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003738347-1.pdf>

¹⁰ MWD's cost of service report says it plans to "functionalize" WaterFix cost as transportation by applying the costs to the "conveyance and aqueduct function" category, and within that about 50 percent of the capital costs will be recovered through the System Access Rate, with remaining costs recovered through the readiness-to-serve charge. However, the schedules embedded in the COS report do not track the described allocations; because MWD refuses to provide a functional rate model, it is impossible to verify how WaterFix costs are allocated. In a letter
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WaterFix cost in its cost of service report. There is no basis for how MWD has now chosen to allocate WaterFix costs, since Article 1 (f) and (g) to the DWR-MWD supply contract defines those facilities as “project conservation facilities” “to the extent that they serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.”¹¹ DWR Bulletin 132 “*Management of California Water Project*” reports water supply planning, construction, financing, management, and operation activities of the SWP.¹² The construction of additional delta facilities like the peripheral canal (predecessor of WaterFix) has long been defined as “project conservation facilities,” recognizing the costs are supply related; it was first specifically referenced under Delta Facilities in 1965¹³ (See also Table 2 in Appendix B to Bulletin 132-17, *Data and Computations Used to Determine Water Charges*).¹⁴ DWR recovers its costs for “Project Conservation Facilities” in the Delta Water Charge under provisions of Article 22(a) of its contract with MWD. “Project Transportation Facilities” as defined under Article 1(i) are recovered in the Transportation Charge under provisions of Article 23 through 28 of the SWP Contract. MWD applies its SWP costs according to how DWR bills MWD consistent with the SWP contract (i.e., Delta Water Charge to supply rates, and Transportation Charge facilities to transportation-related rates and charges). MWD’s decision to change how the project is defined and treated under its SWP contract singularly impacts the Water Authority, because it is the only agency that uses MWD facilities to wheel water supplies not purchased from MWD. This wheeled water has allowed the Water Authority to substantially reduce its reliance on water imported from the Bay-Delta, consistent with 2009 state legislation.

Conclusion

To protect and ensure the Water Authority, its member agencies, and ratepayers are not forced to pay unfair, unnecessary, and unwanted WaterFix costs that may inhibit the region’s development of local supplies, staff recommends the Board adopt the proposed updated policy principles. If adopted, the updated policy principles will afford the Water Authority opportunities to engage the local business groups, community and opinion leaders, legislators, and the MWD community to support the Water Authority’s objectives.

dated April 4, 2014, MWD acknowledged that its COS schedules were unclear and said it would update the schedule descriptions.

¹¹ The California Water Resources Development Bond Act, known as the Burns-Porter Bond Act, approved by California voters in November 1960, is codified in Water Code sections 12930 - 12944. Water Code section 12934 defines state water facilities, which are referenced in MWD’s SWP contract and then further defined in Article 1 of the contract as either “project conservation facilities” or “project transportation facilities.”

¹² Bulletin 132, Management of the California State Water Project (example: <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Bulletin-132/Bulletin-132-Files/Bulletin-132-2016.pdf?la=en&hash=B31972696AA1CBBDB32B973891E0FD47942D6C3C>), is an annual series reporting SWP water supply planning, construction, finance, management, and operations. It presents significant events and issues that affected SWP management and operations for each calendar year. It also discusses water supply and delivery, Delta resources and environmental issues, local assistance programs, power resources, recreation, and SWP financial analysis.

¹³ <http://wdl.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-65.pdf>

¹⁴ Appendix B (https://www.water.ca.gov/LegacyFiles/swpao/docs/bulletins/bulletin132_appendix_b/B132-17-Appendix_B.pdf) contains the data and computations used to determine each contractor’s annual water charges.

Imported Water Committee

May 16, 2018

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Attachment 1: Updated Bay-Delta Policy Principles

Attachment 2: Article 1(f), (g) and Article 22 of MWD's SWP contract with DWR

REDLINE
San Diego County Water Authority
Delta Policy Principles
(Updated May 2018)

The San Diego County Water Authority Board of Directors supports a Bay-Delta solution that will meet the co-equal goals: -is comprehensive, cost effective, environmentally sustainable, and widely supported by stakeholders; and provides San Diego County with a reliable, high-quality supply of affordable, imported water, conditioned upon proper allocation of costs, and consistent with the Water Authority's Urban Water Management Plan and Regional Facilities Optimization and Master Plan. The adopted policy principles will guide staff in evaluating projects and actions concerning the Bay-Delta.

Water Supply Reliability

- ~~Continue to~~ Support the co-equal goals of water supply reliability and environmental restoration embodied in the 2009 Bay-Delta bill package, including the stated policy to reduce reliance on the Bay-Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency.
- Support deliberative processes that are designed to ensure a meaningful dialogue with all stakeholders ~~in order~~ to reduce future conflicts and challenges to implementation of a Bay-Delta solution.
- Provide regulatory certainty and predictable supplies to help meet California's water needs in the long-term.
- Encourage a Bay-Delta solution that acknowledges, integrates, and supports the development of water resources at the local level including water use efficiency, seawater and brackish water desalination, groundwater storage and conjunctive use, and recycled water, including direct and indirect potable reuse.
- Improve the ability of water-users to divert water from the Bay-Delta during wet periods, ~~when so long as the~~ impacts on fish and ecosystem are lower minimized and water quality is higher.
- Encourage the development of a statewide water transfer market that will improve water management.
- Support improved coordination of Central Valley Project and State Water Project (SWP) operations.

Ecosystem Restoration

- Restore the Bay-Delta ecosystem through consensus-based, scientifically sound, and adaptively managed projects and programs, consistent with the requirements established under the state Natural Community Conservation Plan and the federal Habitat Conservation Plan, taking into account all factors that have degraded Bay-Delta habitat and wildlife.
- Work with all stakeholders to ensure a meaningful dialogue and that ecosystem restoration issues are addressed in an open and transparent process.

Finance and Funding

- Encourage and support a Bay-Delta solution and facilities that are cost-effective when compared with other water supply development options for meeting Southern California's water needs.

- Require the total cost of any ~~Bay-Bay~~-Delta solution be identified before financing and funding decisions are made. The total cost must include the cost of facilities, mitigation, and required or negotiated ecosystem restoration.
- Allocate costs of the Bay-Delta solution to stakeholders in proportion to benefits they receive and in a manner that retains the existing definition of the costs as “project conservation facilities,” in accordance with Metropolitan Water District’s (MWD) SWP contract with the Department of Water Resources (DWR) under Article 1(f) and (g) and as reflected in recent years Table 2 of DWR’s Appendix B to Bulletin 132, and for which payment of such costs are recovered in the Delta Water Charge under Article 22 (a), other than excepting north of the Bay-Delta SWP contractors.
- Seek and support independent financial analyses of Bay-Delta solution including the ability of all parties to pay their proportional costs.
- ~~Require a firm commitment and funding stream by all parties to pay for the fixed costs associated with the proportional benefits they will receive from a ~~Bay-Bay~~-Delta solution, through take or pay contracts or legal equivalent.~~
- ~~Condition financial support on provisions allowing access to any water conveyance or storage facilities that are included in the Bay-Delta solution.~~
- Support the use of public funds to support specific projects and actions with identified costs that protect and restore the environment and provide broad-based public benefits.
- Oppose water user fees to fund ecosystem restoration and other public purpose, non-water-supply improvements in the ~~Bay~~-Delta that benefit the public at large.

Equity and Transparency

- Oppose actions by DWR and/or MWD to categorize California WaterFix (WaterFix) in any manner other than as “project conservation facilities” as defined in Article 1(f) and (g) of MWD’s SWP contract with DWR and as reflected in recent year in Table 2 of DWR’s Appendix B to Bulletin 132, Data and Computation Used to Determine Water Charges, or allocating any of the costs of WaterFix in any manner inconsistent with Article 22(a) Delta Water Charge of the current MWD SWP Contract, other than excepting north of the Bay-Delta SWP contractors.
- Oppose any amendments to MWD’s SWP contract that change the categorization of WaterFix type of projects from a supply cost to a transportation cost.
- Oppose any MWD action that applies WaterFix costs to its transportation-related rates and charges.
- Oppose MWD actions to fund Central Valley Project or other SWP shares of WaterFix costs, other than excepting north of Bay-Delta SWP contractors.
- Encourage and support DWR and MWD to provide regular updates on WaterFix’s implementation progress, including expenditure tracking, construction progress, project participants’ contributions, among other things.

Facilities

- Require independent technical analysis of proposed key elements of the Bay-Delta solution, including forecasting future urban and agricultural demands and size and cost of any proposed conveyance facility, to ensure the solution realistically matches statewide needs.
- Support “right-sized” facilities to match firm commitments to pay for the ~~Bay-Bay~~-Delta solution.

- Allow access to all SWP facilities to facilitate water transfers.

Governance

- Support continued state ownership and operation of the SWP as a public resource.
- Support improved efficiency and transparency of all SWP operations.
- Oppose any transfer of operational control of the SWP or any of its facilities to MWD, the State Water Project Contractors, Central Valley Project Contractors, the State and Federal Contractors Water Agency, any entity comprised of MWD or other water project contractors (including joint powers agencies or authorities), or any other special interest group.

A. INTRODUCTORY PROVISIONS

1. Definitions. When used in this contract, the following terms shall have the meanings hereinafter set forth:

(a) **“Bond Act”** shall mean the California Water Resources Development Bond Act, comprising Chapter 8, commencing at Section 12930, of Part 6 of Division 6 of the Water Code, as enacted in Chapter 1762 of the Statutes of 1959.

(b) **“System”** shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code.

(c) **“Delta”** shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code on the date of approval of the Bond Act by the voters of the State of California.

(d)¹ **“Contractor”** shall mean any entity that has executed, or is an assignee of, a contract of the type published in Department of Water Resources Bulletin No. 141 dated November 1965, with the State for a dependable supply of water made available by the System, except such water as is made available by the facilities specified in Section 12934(d)(6) of the Water Code.

(e)² **“Project facilities”** shall mean those facilities of the system which will, in whole or in part, serve the purposes of this contract by conserving water and making it available for use in and above the Delta and for export from the Delta and from such additional facilities as are defined in Article 1(h)(2) herein, and by conveying water to the District. Said project facilities shall consist specifically of “project conservation facilities” and “project transportation facilities”, as hereinafter defined.

(f) **“Project conservation facilities”** shall mean such project facilities as are presently included, or as may be added in the future, under (g) and (h) below.

(g) **“Initial project conservation facilities”** shall mean the following project facilities specified in Section 12934(d) of the Water Code:

- (1) All those facilities specified in subparagraph (1) thereof.
- (2) Those facilities specified in subparagraph (3) thereof to the extent that they serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.
- (3) A reservoir near Los Banos in Merced County as specified in subparagraph (2) thereof.
- (4) The reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to a reservoir near Los Banos in Merced County,

¹ Amended: Amendment 25
² Amended: Amendment 18

to the extent required for water conservation through conveyance of water diverted from the Delta to offstream storage in said reservoir as determined by the State.

- (5) Those facilities specified in subparagraph (5) thereof which are incidental to the facilities included under (1), (2), (3), and (4) above.
- (6) Those facilities specified in subparagraph (7) thereof which are necessary and appurtenant to the facilities included under (1), (2), (3), (4), and (5) above.

(h)³ “Additional project conservation facilities” shall mean the following facilities and programs which will serve the purpose of preventing any reduction in the minimum project yield as hereinafter defined:

- (1) Those project facilities specified in Section 12938 of the Water Code;
 - (2) Those facilities and programs described in (A), (B), (C), (D), and (E) below which, in the State’s determination, are engineeringly feasible and capable of producing project water which is economically competitive with alternative new water supply sources, provided that, in the State’s determination, the construction and operation of such facilities and programs will not interfere with the requested deliveries of annual entitlement to any contractor other than the sponsoring contractor, and will not result in any greater annual charges to any contractor other than the sponsoring contractor than would have occurred with the construction at the same time of alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The following facilities and programs shall hereinafter be referred to as “Local Projects”:
- (A) On-stream and off-stream surface storage reservoirs not provided for in Section 12938 of the Water Code, that will produce project water for the System for a period of time agreed to by the sponsoring contractor;
 - (B) Ground water storage facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;
 - (C) Waste water reclamation facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;
 - (D) Water and facilities for delivering water purchased by the State for the System for a period of time agreed to by the sponsoring contractor; provided that the economic test specified herein shall be applied to the cost of these facilities together with the cost of the purchased water; and
 - (E) Future water conservation programs and facilities that will reduce demands by the sponsoring contractor for project water from the System for a period of time agreed to by the sponsoring contractor and will thereby have the effect of increasing project water available in the Delta for distribution.

3 Amended: Amendment 18

(3) Whether a Local Project described in (2) above shall be considered economically competitive shall be determined by the State by comparing, in an engineering and economic analysis, such Local Project with alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The analysis for such alternative new water supply sources shall use the average cost per acre-foot of yield in the latest studies made for such sources by the State and shall compare those facilities with the proposed Local Project using commonly accepted engineering economics. In the case of a Local Project to be funded in part by the State as part of the System and in part from other sources, the economic analysis specified herein shall be applied only to the portion to be funded by the State as part of the System.

(4) The Local Projects in (2) above shall not be constructed or implemented unless or until:

(A) The sponsoring contractor signs a written agreement with the State which:

- (i) Contains the sponsoring contractor's approval of such facility or program.
- (ii) Specifies the yield and the period of time during which the water from the Local Project shall constitute project water; and
- (iii) Specifies the disposition of such Local Project or of the yield from such Local Project upon the expiration of such period of time; and

(B) All contractors within whose boundaries any portion of such Local Project is located, and who are not sponsoring contractors for such Local Project give their written approval of such Local Project.

(5) "Sponsoring contractor" as used in this Article 1(h) shall mean the contractor or contractors who either will receive the yield from facilities described in 2(A), (B), (C), or (D) above, or agree to reduce demands for project water from the System pursuant to 2(E) above.

(6) In the event of a shortage in water supply within the meaning of Article 18(a), the determination of whether to count, in whole or in part, the yield from facilities described in 2(A), (B), (C), or (D) above, or the reduced demand from future conservation programs described in 2(E) above in the allocation of deficiencies among contractors will be based on a project-by-project evaluation taking into consideration such factors as any limitation on the use of the water from such facilities and whether the sponsoring contractor has access to project water from the Delta as an alternate to such facilities.

(i)⁴ **“Project transportation facilities”** shall mean the following project facilities:

(1) All those facilities specified in subparagraph (2) of Section 12934(d) of the Water Code except: The reservoir near Los Banos in Merced County; the reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to the reservoir near Los Banos in Merced County, to the extent required for water conservation as determined by the State; the North Bay Aqueduct extending to a terminal reservoir in Marin County; the South Bay Aqueduct extending to terminal reservoirs in the Counties of Alameda and Santa Clara; the Pacheco Pass Tunnel Aqueduct extending from a reservoir near Los Banos in Merced County to a terminus in Pacheco Creek in Santa Clara County; and the Coastal Aqueduct beginning on the San Joaquin Valley-Southern California Aqueduct in the vicinity of Avenal, Kings County, and extending to a terminus at the Santa Maria River.

(2) Facilities for the generation and transmission of electrical energy of the following types:

(A) Hydroelectric generating and transmission facilities, whose operation is dependent on the transportation of project water, or on releases to channels downstream of project facilities defined under (1) above. Such facilities shall be called “project aqueduct power recovery plants.”

(B) All other generating and associated transmission facilities, except those dependent on water from project conservation facilities, for the generation of power. These facilities shall be called “off-aqueduct power facilities” and shall consist of the State’s interest in the Reid-Gardner and any other generating and associated transmission facilities, constructed or financed in whole or in part by the State, which are economically competitive with alternative power supply sources as determined by the State.

(3) Those facilities specified in subparagraph (7) of Section 12934(d) of the Water Code which are necessary and appurtenant to the facilities included under (1) and (2) above.

(j) **“East Branch Aqueduct”** shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Perris, Riverside County.

(k) **“West Branch Aqueduct”** shall mean that portion of the San Joaquin Valley-Southern California Aqueduct specified in Section 12934(d)(2) of the Water Code extending from the South Portal of the Tehachapi Tunnels to a terminus in the vicinity of Newhall, Los Angeles County.

(l) **“Project water”** shall mean water made available for delivery to the contractors by the project conservation facilities and the transportation facilities included in the System.

⁴ Amended: Amendment 18

(m)⁵ Minimum Project Yield

“Minimum project yield” shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project’s capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

(n)⁶ Annual Table A Amount

“Annual Table A Amount” shall mean the amount of project water set forth in Table A of this contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the District will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term “annual entitlement” appears elsewhere in this contract, it shall mean “Annual Table A Amount.” The State agrees that in future amendments to this and other contractor’s contracts, in lieu of the term “annual entitlement,” the term “Annual Table A Amount” will be used and will have the same meaning as “annual entitlement” wherever that term is used.

(o)⁷ Maximum Annual Table A Amount

“Maximum annual entitlement” shall mean the maximum annual amounts set forth in Table A of this contract, and where the term “maximum annual entitlement” appears elsewhere in this contract it shall mean “Maximum Annual Table A Amounts.”

5 Amended: Amendment 1, 25, 28

6 Amended: Amendment No. 26

7 Amended: Amendment No. 26

(p) **“Supplemental conservation facilities”** shall mean those facilities provided for in Section 12938 of the Water Code which will serve the purpose of supplying water in addition to the minimum project yield and for meeting local needs.

(q) **“Supplemental water”** shall mean water made available by supplemental conservation facilities, in excess of the minimum project yield.

(r) **“Year”** shall mean the 12-month period from January 1 through December 31, both dates inclusive.

(s) **“Year of initial water delivery”** shall mean the year when project water will first be available for delivery to a contractor pursuant to its contract with the State.

(t)⁸ **“Project interest rate”** shall mean the weighted average interest rate on bonds, advances, or loans listed in this section to the extent the proceeds of any such bonds, advances, or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities (except off-aqueduct power facilities; water system facilities; advances for delivery structures, measuring devices and excess capacity; and East Branch Enlargement Facilities). The project interest rate shall be calculated as a decimal fraction to five places by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total of the products of the various principal amounts and the respective terms in years of all such amounts. The bonds, advances, or loans used in calculating the project interest rate shall be:

- (1) General obligation bonds issued by the State under the Bond Act, except that any premium received on the sale of these bonds shall not be included in the calculation of the project interest rate,
- (2) Revenue bonds issued by the State under the Central Valley Project Act after May 1, 1969,
- (3) Bonds issued by the State under any other authority granted by the Legislature or the voters,
- (4) Bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,
- (5) Funds advanced by any contractor without the actual incurring of bonded debt therefor, for which the net interest cost and terms shall be those which would have resulted if the contractor had sold bonds for the purpose of funding the advance, as determined by the State,
- (6) Funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Surplus Money Investment Fund of such Treasury invested in securities, and

⁸ Amended: Amendment No. 9, 18, 19, 20

- (7) Any other financing capability available in the Treasury of the State of California at whatever interest rate and other financing costs are provided in the law authorizing such borrowing. However, the use of other financing from the State Treasury is intended to involve only short term borrowing at interest rates and other financing costs no greater than those charged to other State agencies during the same period until such time as the Department can sell bonds and reimburse the source of the short term borrowing from the proceeds of the bond sale.

(u) **“Capital costs”** shall mean all costs incurred subsequent to authorization of a facility for construction by the Legislature or by administrative action pursuant to Section 11290 of the Water Code and to the Bond Act, including those so incurred prior to the beginning of the project repayment period as herein defined and any accrued unpaid interest charges thereon at the rates specified herein, which are properly chargeable to the construction of and the furnishing of equipment for the facilities of the System, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights-of-way, and relocation work, all as shown upon the official records of the Department of Water Resources.

(v) **“Project revenues”** shall mean revenues derived from the service of project water to contractors and others, and from the sale or other disposal of electrical energy generated in connection with operation of project facilities.

(w)⁹ **“Project repayment period”** shall mean that period of years commencing on January 1, 1961, and extending until December 31, 2035; provided, that whenever construction of any project facilities is financed by a bond issue with maturity dates later than December 31, 2035, whether the bonds are issued pursuant to the Bond Act or other authority, repayment of the costs of such facilities shall be extended to end on the date of the latest maturities of the bonds with which construction of such facilities is financed.

(x) **“Municipal use”** shall mean all those uses of water common to the municipal water supply of a city, town, or other similar population group, including uses for domestic purposes, uses for the purposes of commerce, trade or industry, and any other use incidental thereto for any beneficial purpose.

(y) **“Manufacturing use”** shall mean any use of water primarily in the production of finished goods for market.

(z) **“Agricultural use”** shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stock-watering purposes.

(aa) **“Subject to approval by the State”** shall mean subject to the determination and judgment of the State as to acceptability.

⁹ Amended: Amendment 17

(bb) **“Area of origin statutes”** shall mean Sections 10505 and 11460 through 11463 of the Water Code as now existing or hereafter amended.

(cc)¹⁰ **“Water system revenue bonds”** shall mean revenue bonds or revenue bond anticipation notes issued by the State under the Central Valley Project Act after January 1, 1987 for water system facilities identified in Article 1(hh).

<(dd) No such subarticle exists.>

<(ee) No such subarticle exists.>

<(ff) No such subarticle exists.>

<(gg) No such subarticle exists.>

(hh)¹¹ **“Water System Facilities”** shall mean the following facilities to the extent that they are financed with water system revenue bonds or to the extent that other financing of such facilities is reimbursed with proceeds from water system revenue bonds:

- (1) The North Bay Aqueduct,
- (2) The Coastal Branch Aqueduct,
- (3) Delta Facilities, including Suisun Marsh facilities, to serve the purposes of water conservation in the Delta, water supply in the Delta, transfer of water across the Delta, and mitigation of the environmental effects of project facilities, and to the extent presently authorized as project purposes, recreation and fish and wildlife enhancement,
- (4) Local projects as defined in Article 1(h)(2) designed to develop no more than 25,000 acre-feet of project yield from each project,
- (5) Land acquisition prior to December 31, 1995, for the Kern Fan Element of the Kern Water Bank,
- (6) Additional pumps at the Banks Delta Pumping Plant,
- (7) The transmission line from Midway to Wheeler Ridge Pumping Plant,
- (8) Repairs, additions, and betterments to conservation or transportation facilities existing as of January 1, 1987, and to all other facilities described in this subarticle (hh) except for item (5),
- (9) A project facilities corporation yard, and
- (10) A project facilities operation center.

(ii)¹² **“Carry-over Entitlement Water”** shall mean water from a contractor’s annual entitlement for a respective year which is made available for delivery by the State in the next year pursuant to Article 12(e).

¹⁰ Added: Amendment 20
¹¹ Added: Amendments 20, 25

(jj)¹³ **“Interruptible water”** shall mean project water available as determined by the State that is not needed for fulfilling contractors’ annual entitlement deliveries as set forth in their water delivery schedules furnished pursuant to Article 12 or for meeting project operational requirements, including storage goals for the current or following years.

(kk)¹⁴ **“Nonproject water”** shall mean water made available for delivery to contractors that is not project water as defined in Article 1(I).

(ll)¹⁵ **“Monterey Amendments”** shall mean this amendment and substantially similar amendments to other contractors’ water supply contracts that include, among other provisions, the addition of Articles 51 through 56.

2.¹⁶ **Term of Contract.** This contract shall become effective on the date first above written and shall remain in effect for the longest of the following:

1. The project repayment period
2. 75 years
3. The period ending with the latest maturity date of any bond issue used to finance the construction costs of project facilities.

3. **Validation.** Within one (1) year after the effective date of this contract, the District shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment, the State shall make all reasonable efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, the District shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

4.¹⁷ **Option for Continued Service.** By written notice to the State at least six (6) months prior to the expiration of the term of this contract, the District may elect to receive continued service after expiration of said term under the following conditions unless otherwise agreed to:

- (1) Service of water in annual amounts up to and including the District’s maximum annual entitlement hereunder.
- (2) Service of water at no greater cost to the District than would have been the case had this contract continued in effect.
- (3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder.

12 Added: Amendment 22

13 Added: Amendment 25

14 Added: Amendment 25

15 Added: Amendment 25

16 Amended: Amendment 17

17 Amended: Amendment 25

C. PAYMENT PROVISIONS

22. Delta Water Charge.

(a) **<Payment of Reimbursable Costs of Project Conservation Facilities>** The payments to be made by each contractor for project water shall include an annual charge designated as the Delta Water Charge. This charge, together with the total revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities, shall return to the State during the project repayment period all costs of the project conservation facilities incurred during the project repayment period, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article. Wherever reference is made, in connection with the computation or determination of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State.

(b)³⁸ **<Delta Water Rate Until 1970; Components of Rate Thereafter>** For each contractor receiving project water in any year through December 31, 1969, the Delta Water Charge shall be the product of \$3.50 and the contractor's annual entitlement to project water for the respective year. For each contractor receiving project water in the year 1970, the Delta Water Charge shall be the product of \$6.65 and the contractor's annual entitlement to project water for that year. The \$6.65 rate for the year 1970 shall consist of a capital cost component of \$5.04 and a minimum operation, maintenance, power and replacement component of \$1.61. For each contractor receiving project water in the year 1971, the Delta Water Charge shall be the product of \$7.24 and the contractor's annual entitlement to project water for that year. The \$7.24 rate for the year 1971 shall consist of a capital cost component of \$5.44 and a minimum operation, maintenance, power and replacement component of \$1.80. After December 31, 1971, the Delta Water Charge shall consist and be the sum of the following components as these are computed in accordance with subdivisions (c) and (d) of this article: a capital cost component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(c) **<Computation of the Components of the Delta Water Rate>** The capital cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water Charge, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the project repayment period, respectively, the following categories of

³⁸ Amended: Amendments 9, 10

the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article: (1) capital costs; (2) operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractors; and (3) operation, maintenance, power, and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractors: Provided, That each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities. Each component of the Delta Water Charge shall be computed on the basis of a rate which, when charged during the project repayment period for each acre-foot of the sum of the yearly totals of annual entitlements of all contractors, will be sufficient, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the project repayment period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$\frac{(c_1 - r_1)(1+i)^{-1} + (c_2 - r_2)(1+i)^{-2} + \dots + (c_n - r_n)(1+i)^{-n}}{e_1(1+i)^{-1} + e_2(1+i)^{-2} + \dots + e_n(1+i)^{-n}}$$

Where:

- i = The project interest rate.
- c = The total costs included in the respective category of costs and incurred for the respective year of the project repayment period.
- r = That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category and incurred for the respective year of the project repayment period.

1, 2, and n
appearing
below

- c and r = The respective year of the project repayment period during which costs are included in the respective category, n being the last year of the project repayment period.
- e = With respect to the capital cost and minimum operation, maintenance, power, and replacement components, the total of annual entitlements to project water of all contractors for the respective year of the project repayment period.
- e = With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of project water delivered to all contractors for the respective year of the expired portion of the project repayment period, together with the total of annual entitlements to project water of all contractors for the respective year of the unexpired portion of the project repayment period.

1, 2, and n
appearing

below

e = The respective year of the project repayment period in which the annual entitlements or project water deliveries occur, n being the last year of the project repayment period.

n used

as an

exponent = The number of years in the project repayment period.

(d) <Application of Component Rates> The capital cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge shall be the product of the appropriate rate computed under subdivision (c) of this article, and the contractor's annual entitlement to project water for the respective year. The variable operation, maintenance, power, and replacement component of the charge shall be the product of the appropriate rate computed under subdivision (c) of this article and the number of acre-feet of project water delivered to the contractor during the respective year: Provided, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, said variable component during such period shall be the product of said rate per acre-foot and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(e)³⁹ <Allocations to Project Purposes> Prior to the time that additional project conservation facilities or supplemental conservation facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those initial project conservation facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following project facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Delta Pumping Plant), the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: Provided, That all of the actual and projected costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities shall be allocated to the purpose of water conservation in, above, and below the Delta: Provided further, That allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.

Commencing in the year in which the State first awards a major construction contract for construction of a major feature of additional project conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of additional project conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all

39 Amended: Amendment 11

projected costs of such feature of the additional project conservation facilities: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State: Provided further, That all costs of additional project conservation facilities incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are incurred.

(f) <Yearly Recomputation of Rates After 1970> The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (d) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (c) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivisions (c) and (d) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project conservation facilities described in subdivision (e) of this article, annual entitlements, deliveries of project water, project interest rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining said rates for all preceding years, and actual costs incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(g)⁴⁰ <Supplemental Conservation Facilities> Upon the construction of the supplemental conservation facilities, the Delta Water Charge shall be paid by all contractors for supplemental water, as well as by contractors for project water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities and supplemental conservation facilities, shall return to the State, in addition to those costs of the project conservation facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (e) of this article, all costs of such supplemental conservation facilities, including capital, operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any supplemental conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of supplemental conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations

40 Amended: Amendment 11

made pursuant to subdivision (e) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in said subdivision (e), of all projected costs of such feature of the supplemental conservation facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the annual entitlements to water under all contracts for supplemental water. If the repayment period of any bonds sold to construct supplemental conservation facilities or the repayment period under any agreement with a federal agency for repayment of the costs of supplemental conservation facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(h)⁴¹ <Local Project as Additional Conservation Facility>

The determination of the rate for water under the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (c), (d) and (e) above, for all additional project conservation facilities as defined in Article 1(h) hereinabove. In the event a Local Project as defined in Article 1(h)(2) will, pursuant to written agreement between the State and the sponsoring contractor, be considered and treated as an additional project conservation facility for less than the estimated life of the facility, the rate under the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an additional project conservation facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the Delta Water Charge unless and until the written agreement required by Article 1(h) has been entered into.

(i)⁴² <Project Water Purchased by State> In calculating the rate for project water to be paid by each contractor for the Delta Water Charge under subdivisions (c), (d) and (e) above, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as project water.

(j)⁴³ <Recovery of Water System Revenue Bond Financing Costs> Notwithstanding provisions of Article 22(a) through (i), the capital cost component and the minimum OMP&R component of the Delta Water Charge shall include an annual charge to recover the District's share of the conservation portion of the water system revenue bond financing costs. Charges to the District for these costs shall be calculated in accordance with provisions in Article 50 of this contract. Charges for the conservation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

41 Amended: Amendment 18

42 Amended: Amendment 18

43 Added: Amendments 20, 25