

**AGREEMENT IN PRINCIPLE DRAFT WORKING DOCUMENT**  
Draft – November 2019  
**COMPREHENSIVE TRACK-CHANGES VERSION**

This working document for an agreement in principle is developed from the State Water Contractor Public Water Agencies' offers presented from July 24, 2019 to present, the Department of Water Resources' offers presented from July 31, 2019 to present, and information discussed and presented by the technical work groups. The content and format of this document are preliminary in nature and subject to modification.

Language in this document is formatted in order to aid the reader in distinguishing new text of DWR's third offer from text derived from prior offers.

- Black ~~STRIKEOUT~~, *ITALICIZED* and **HIGHLIGHTED** text identifies DWR's third offer.
- *Bluelined text* identifies PWAs' fourth offer.
- *Redlined text* identifies DWR's fourth offer.
- *Greenlined and ~~strikeout~~/underlined text* identifies PWA's fifth and updated fifth offer.
- *Redlined and ~~strikeout~~/underlined text* identifies DWR's fifth offer.

**Agreement in Principle for the State Water Project Water Supply Contract Amendment**  
**on a**  
**Delta Conveyance Project**

This Agreement in Principle (**AIP**) is by and between the undersigned State Water Project Public Water Agencies (**PWAs**) and the State of California through the Department of Water Resources (**DWR**) for the purpose of amending the State Water Project Water Supply Contracts.

- I. AIP Objectives
  - A. Develop an agreement between the State Water Project Contractor Public Water Agencies and Department of Water Resources to equitably allocate costs and benefits of a potential Delta Conveyance Facility that preserves operational flexibility such that the Department of Water Resources can manage the State Water Project to meet regulatory requirements, contractual responsibilities, and State Water Project purposes.
  - B. ~~The DCF will provide benefits to the SWP as a whole, including potentially enhanced water supply reliability. The DCF shall be operated to equitably balance the overall improvements with the significant investments being made by the Participating PWAs, while recognizing the significant investments that all PWAs have made and will continue~~

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~~to make. [MOVED VERBATIM FROM SECTION V.A] [MOVED BACK TO SECTION V. THIS IS NOT AN OBJECTIVE OF THE AIP.]~~

II. Definitions

- A. **Delta** shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code on the date of approval of the Bond Act by the voters of the State of California.
- B. **State Water Project (SWP)** shall mean the State Water Resources Development System as described in California Water Code section 12931.
- C. **State Water Project Contractor** or **Public Water Agencies (PWAs)** shall include the 29 entities holding State Water Project Water Supply Contracts with the Department of Water Resources.
- D. **North of Delta Public Water Agencies** shall mean the public water agencies of County of Butte, Plumas County Flood Control and Water Conservation District, City of Yuba City, Solano County Water Agency, and Napa County Flood Control and Water Conservation District.
- E. **Delta Conveyance Facility (DCF)** shall mean those facilities of the State Water Project consisting of a water diversion intake structure, or structures, located on the Sacramento River and connected by facilities to Banks Pumping Plant in the southern Delta with a single tunnel that will, in whole or in part, serve the purposes of this AIP.
- F. **Delta Conveyance Facility Water (DCF Water)** shall mean Project Water diverted at and attributable to the Delta Conveyance Facility.
- G. **Current Year DCF Water** shall mean DCF water diverted between October 1 and September 30 of the following year (based on the water year) and delivered directly or stored in San Luis Reservoir (SLR).
- ~~G-H. **Contracted Proportionate Share (CPS)** shall mean ~~the~~ each PWA's agreed upon level of participation to allocate costs and benefits as specified in section IV ~~proportion of participation for a PWA for DCF Water as specified in section III, including and rights to use available capacity in any Delta Conveyance Facility as specified in section III.V.D of this AIP.~~~~
- ~~H-I. **Clifton Court Forebay Diversion** shall mean the existing diversion at Clifton Court Forebay facility through its intake located on Old River in the southern Delta and the associated Skinner Fish Facility.~~
- ~~H-J. **Banks Pumping Plant** shall mean the existing Banks Pumping Plant facility located near the town of Tracy, CA that pumps water into the existing State Water Project California Aqueduct.~~
- K. **Participating Table A Percentage (PTAP)** shall be that portion of a Partial Participating PWA's Table A that is participating in the DCF.
- L. **Participating PWA** shall mean a PWA with a ~~Contracted Proportionate Share CPS greater than 0zero.~~
- M. **Partial Participating PWA** shall mean ~~a an SWP contractor~~ PWA with a PTAP CPS less than ~~its Table A percentage~~ 100% but greater than zero.

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~~N. Non-Participating PWA shall mean an PWA SWP contractor with a Contracted Proportionate Share CPS of Zero or that portion of a Partial Participating PWA's Table A that is not participating in the DCF.~~

~~J.—~~

~~K. Participating PWA shall mean an SWP contractor with a Contracted Proportionate Share CPS greater than Zero or that portion of a Partial Participating PWA's Table A that is participating in the DCF. [MOVED UP TO L]~~

~~L. Non-Participant PWA Storage shall mean a PWA's pro-rata proportionate share of available storage in San Luis Reservoir multiplied by the calculation of 100% less the PTAP sum of its Table A percentage less its CPS, not to be less than zero.~~

~~M. A. Non-Participating PWA shall mean an SWP contractor with a Contracted Proportionate Share CPS of Zero or that portion of a Partial Participating PWA's Table A that is not participating in the DCF. [MOVED UP TO N]~~

~~N. P. Non-project water shall have the meaning as defined in the State Water Project Water Supply Contracts.~~

~~Q. DCF Available Capacity means capacity in the DCF that is in excess of State Water Project purposes and available to move non-project water, given physical and regulatory constraints, as determined by DWR.~~

~~R. Project Supply shall mean water supply available for current year Table A allocation.~~

~~Q. S.~~

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III. Cost Allocation, Charges, and Participation Framework [PWA Second Offer Section II.]

A. Proposed Framework [CHARGES MOVED TO A NEW STANDALONE SECTION]

The PWAs propose an "Opt-In" approach where each "Participating PWA" opts to participate in a DCF at a level in proportion to its ~~Contracted Proportionate Share~~ CPS. ~~A PWAs Contracted Proportionate Share CPS shall be the proportion of~~ at least its Agricultural or M&I Table A amount of its contract.

The five North of Delta Public Water Agencies will not directly benefit from and will not participate in any DCF and will be excluded from payment of capital, operations, maintenance, power, and, replacement costs for any DCF.

B. Delta Conveyance Project Capacity: [TBD]~~The potential Delta Conveyance Project, if pursued and approved, would consist of new Delta water conveyance facilities of the State Water Project to be owned and operated by DWR that would convey water from the Sacramento River north of the Delta through a single main tunnel directly to the existing SWP Banks pumping plant, and potentially, Central Valley Project (CVP) Jones pumping plant located in the south Delta. The capacity of the SWP share of a potential Delta Conveyance Project assumed for this AIP is \_\_\_\_\_ cubic feet per second. The capacity of the SWP share of a potential Delta Conveyance Project assumed for this AIP is 6000 \_\_\_\_\_ cubic feet per second.~~

C. General principles for charges associated with any DCF are that capital costs and fixed Operations, Maintenance, Power and Replacement (OMP&R) costs of any DCF will be

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billed to and collected from each of the PWAs through the annual Statements of Charges consistent with each PWA's CPS in any DCF. Variable costs of conveying water through any DCF will be equitably allocated as described in detail in this section.  
[MOVED VERBATIM FROM SECTION V.B; SUBSECTIONS HERE MOVED FROM V.B.2]

1. DCF Fixed Charge Components

- a. All fixed capital and minimum OMP&R costs associated with any DCF will be 100% reimbursable and recoverable by DWR from PWAs through a separately stated line item in the annual Statement of Charges referencing a separate DCF invoice. All such costs will be charged in proportion to each PWA's Contracted Proportionate Share in any DCF. These costs shall be allocated to and billed under two new charges as follows:
    - i. DCF Capital Charge Component
    - ii. DCF Minimum OMP&R Component
  - b. Use of any DCF by or on behalf of a Participating PWA to convey that PWA's non-project water, including and transfers and exchanges under V.D.2C, shall not result in additional DCF Fixed Charges.
  - c. DCF Capital Charge Component is comprised of four categories
    - i. Charges to recover the annual Financing Costs of Water Systems Facility Revenue Bonds, the proceeds of which are used to pay DCF Capital Costs.
    - ii. Charges pursuant to proposed Article 61(b)(5) of the SWP Water Supply Contracts to recover DCF Capital Costs paid with amounts in the State Water Resources Development System Reinvestment Account.
    - iii. Charges to recover on a current basis DCF Capital Costs paid annually for assets that will have a short economic useful life or will not have a substantial cost.
    - iv. Charges to allocate appropriately, if necessary, DCF Capital Costs prepaid or otherwise advanced. To the extent legally and otherwise feasible, DWR will use Revenue Bond proceeds to reimburse DCF Capital Costs advanced by DWR, PWAs, or others prior to the commencement of construction and will include the financing costs of such revenue bonds in DCF Capital Charges.
  - d. DCF Minimum OMP&R Charge Component: Charges under this component will recover the estimated and/or actual annual fixed OMP&R costs of any DCF.
2. DCF Variable OMP&R Charges: Charges under this component will recover the DCF estimated and/or actual annual variable OMP&R costs of any DCF. needed to pump water through this facility, which are dependent and vary with amounts of water pumped.

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a. ~~The DCF power costs are 100% reimbursable by the Participating PWAs unless recovered as variable costs for Non-Participants use specified in section V.D.~~

~~a-b. [TBD] Joint DWR/PWA Technical Committee: The DCF power costs are 100% reimbursable by the PWAs. Five years prior to after commencing construction on the DCF being placed into service, at the Joint DWR/PWA Technical Committee will convene and, prior to operation of the DCF, develop and submit to the SWRDS Finance Committee for review and for the Director's approval or further development a recommended cost allocation and recovery methodology for the DCF Pumping Plant(s). Methodology shall reflect a charge in dollars per acre-feet, returning to DWR the total DCF Variable OMP&R costs.~~

3. Power Costs Incurred During Construction: Per the DWR capitalization policy, any power costs (for example, power supply, grid connections, transmission) incurred to construct any DCF shall be capitalized during Construction Work in Progress, as used in DWR's financial statements, and costs are 100% reimbursable recovered through the DCF Capital Charge Component.

4. Charge Redetermination: All DCF charges shall be subject to redetermination.

~~D. For all non-Participating PWAs use of the DCF, DWR will apply a fair compensation charge which will include, but not limited to, capital, operations, maintenance, replacement, and variable charges. These charges will be credited back to the Participating PWAs in proportion to their CPS. [REPHRASED PARAGRAPH FROM THE END OF SECTION V—see third offer page 9] [MOVED BACK TO SECTION V AND LANGUAGE RESTORED TO ORIGINAL TO CAPTURE POTENTIAL USE BY NON-SWP AGENCIES.]~~

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IV. Public Water Agencies Proportionate Share  
A. ~~Participation Levels~~ Contracted Proportionate Share

Public Water Agency (PWA) <del>PWA</del>	Participation LevelContracted Proportionate Share (%)
Alameda County Flood Control and Water Conservation District Zone 7	
Alameda County Water District	
Antelope Valley-East Kern Water Agency	
City of Yuba City	0
Coachella Valley Water District	
County of Butte	0
County of Kings- Government Center	
Crestline-Lake Arrowhead Water Agency	
Desert Water Agency	
Dudley Ridge Water District	
Empire West Side Irrigation District	
Kern County Water Agency	
Littlerock Creek Irrigation District	
Metropolitan Water District of Southern California	
Mojave Water Agency	
Napa County Flood Control and Water Conservation District	0
Oak Flat Water District	
Palmdale Water District	
Plumas County Flood Control and Water Conservation District	0
San Bernardino Valley Municipal Water District	
San Gabriel Valley Municipal Water District	
San Geronio Pass Water Agency	
San Luis Obispo County Flood Control and Water Conservation District	
Santa Barbara County Flood Control and Water Conservation District	
Santa Clara Valley Water District	
Santa Clarita Valley Water Agency	
Solano County Water Agency	0
Tulare Lake Basin Water Storage District	0
Ventura County Watershed Protection District	
<b>Total:</b>	<b>100</b>

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B. Alternative Framework

For purposes of CEQA analysis, the PWAs may propose that an alternative cost allocation be included in the AIP and evaluated in the EIR.

V. Accounting and Administration of Operations Related to the Delta Conveyance Facility

A. Integration into the State Water Project Generally

1. DWR will continue to operate the SWP, including any DCF, at its sole discretion, considering all applicable regulatory and contractual requirements and restrictions, and coordinate with PWAs in a timely manner that is transparent and timely.

~~2. The DCF will provide benefits to the SWP as a whole, including potentially enhanced water supply reliability. The DCF shall be operated to equitably balance the overall improvements with the significant investments being made by the Participating PWAs, while recognizing the significant investments that all PWAs have made and will continue to make. [MOVED UP IN DOCUMENT TO SECTION I]~~  
2. The DCF will provide benefits to the SWP as a whole, including potentially enhanced water supply reliability. The DCF shall be operated to equitably balance the overall improvements with the significant investments being made by the Participating PWAs, while recognizing the significant investments that all PWAs have made and will continue to make. [MOVED BACK FROM SECTION I]

3. After any use by DWR for conveyance of Table A water or DCF Water, and to the extent DWR determines capacity is available, use of DCF is available to each PWA as specified in section V.D of this AIP. ~~in proportion to its Contracted Proportionate Share in any DCF.~~

4. DWR forecasting and planning processes will incorporate any DCF.

- a. DWR will continue to produce Table A allocation forecasts.
- b. DWR will provide DCF Water forecasts on a timeframe similar to the Table A allocation forecasts, or more frequently where SWP operations and hydrological conditions warrant.

5. DWR operational scheduling and accounting processes will incorporate any DCF and will distinguish between Table A water (that which can be delivered absent the DCF) and DCF Water (additional water diverted at and attributable to any DCF).

6. Article 21 Administration: TBD

- a. Except as provided below, Article 21 will be offered and administered by DWR following the existing process.
- b. Article 21 may be made available once that volume of Current Year DCF Water stored in SLR is displaced with Project Supply.
- c. When SLR would have physically filled absent any Current Year DCF Water stored in SLR, Article 21 will be made available to all PWAs.

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~~a-d.~~

~~b. Article 21 availability for South of Delta PWAs will be determined by DWR using the DCF accounting and administration process and as further described below:~~

- ~~i. DWR will track and account for current year DCF water, meaning DCF water stored in San Luis Reservoir on or after January 1.~~
- ~~ii. Article 21 water will be made available when DWR determines through the accounting process that San Luis reservoir would have filled absent current year DCF water volume.~~

**7. Operational ~~Conflicts~~ Constraints and Priorities**

- a. Article 12(f) of the ~~State Water Project~~ SWP Water Supply Contracts will be assessed and, if necessary, modified to specifically establish ~~the an~~ equitable priority for conveyance of water ~~as outlined below through Clifton Court Forebay, Banks Pumping Plant, the existing SWP facilities, any DCF.~~
- b. **Clifton Court Forebay Diversion Intake Priority:** ~~In the event that DWR uses its discretion to move Table A water Project Supply through the DCF, participants will be given a first priority of available capacity to move up to that same amount of non-project water at Clifton Court Forebay Intake. Except as provided here, there shall be no other changes to the use and operation of Clifton Court Forebay Intake.~~
- c. **Banks Pumping Plant Priority:** ~~TBD In Diversions for Project Supply shall have the highest priority. In the event that DWR uses its discretion to move Table A water through the DCF, participants will be given a first priority to move that same amount of non-project water at Banks Pumping Plant. Except as provide here, there shall be no other changes to the use and operation of Banks Pumping Plant.~~
- d. **San Luis Reservoir ~~priority~~ Storage Limits:** ~~TBD~~
  - i. Participating PWAs can store DCF water in San Luis Reservoir as provided in Article 56(c)(2) for later delivery subject to spill.
  - ii. San Luis Spill and Availability of DCF Water to Non-Participants ~~Participating PWAs~~
    - a) San Luis spill will remain consistent with Article 56(c) (3) except as described below.
    - b) At the point that DWR determines that the SWP share of San Luis Reservoir will be physically full and when all non-SWP-Contractor storage has been evacuated or spilled as provided in Article 56(c)(3), spill shall be DCF Water and up to 50 percent of the water within each of the PWAs' Non-Participant Storage shall

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- not be subject to spill until the point that 1) DWR determines through the accounting process that San Luis Reservoir would have filled absent current year DCF water, 2) the volume of current year DCF water in San Luis Reservoir at the point DWR determines San Luis Reservoir will be physically full has been evacuated or spilled, or 3) San Luis Reservoir reaches its highest elevation for the year, whichever occurs earliest. ~~{TBD}~~
- c) Until the point that ~~that~~ 1) DWR determines through the accounting process that San Luis Reservoir would have filled absent current year DCF water, 2) the volume of current year DCF water in San Luis Reservoir at the point DWR determines San Luis Reservoir has been evacuated or spilled, or 3) San Luis Reservoir reaches its highest elevation for the year, whichever occurs earliest, DCF water exceeding a Participating PWA's demands shall be made available as direct deliveries as follows ~~{TBD}~~:
1. First, to other Participating PWAs. If demands exceed the available DCF water, it shall be allocated in proportion to the Participating PWAs' CPS. Direct deliveries up to [four] times a Participating PWA's CPS of DCF water in a month shall be charged as DCF Variable as defined in Section III.C.2. Any direct deliveries of more than [four] times a Participating PWA's CPS of DCF water in a month shall be charged as DCF Variable plus DCF Minimum as defined in Section III.C.1.d.
  2. Second, to Non-Participating PWAs as DCF Variable, at a total amount not to exceed the volume of current year water spilled. If demands exceed the available DCF water, it shall be allocated in proportion to the Non-Participating PWAs' Table A Amounts.
- d) At any time that acquisition at the variable rate DCF Variable Charge is not available, ~~non-~~Non-Participating PWAs may acquire DCF water that exceeds Participating PWA demands for DCF water at fair compensation as defined in section D below. If demands exceed the available DCF water, it shall be

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allocated in proportion to the Non-Participating PWAs' Table A Amounts.

e) Charges collected under this Section at the DCF Minimum and as fair compensation shall be credited back to the Participating PWAs according to their CPS.

iii. DCF Water Remaining in Storage at Year's End.

a) Additions to San Luis Storage

1. DCF Water may be added to a Participating PWA's Storage in San Luis under Article 56(c)(1)
2. ~~Adjust column 1~~ The Final Water Supply Allocation in column 1 of the table in Article 56(c)(1) shall be calculated to include DCF water made available in a calendar year as follows:

$$\text{Final Water Allocation} = \text{Table A Water Supply Allocation} + \text{CPS} * (\text{Total DCF Water Delivery} / \text{Total Participation Table A})$$

b) If there is available storage space in San Luis after additions to Storage, DCF Water above the limitation in Article 56(c)(1) shall ~~TBD~~ be accounted for as:

1. 50 percent of the water will remain in the Participating PWAs' name, will be subject to spill after any water stored for noncontractors pursuant to Article 56(c)(3) has been evacuated or spilled, and must be delivered within the calendar year.
2. 50 percent shall be designated as "current year" DCF water subject to the same accounting and administration of operations provisions applicable to DCF water as provided in this Section V.

iv. Spill Rate:

a) ~~The spill rate will follow the current process; that is, equal to the volume of water needed for SWP project storage for (1) export at Clifton Court Forebay intake; and, 2) storage in San Luis reservoir to support the current year's Table A allocation.~~

~~e. Other existing SWP facilities priority: TBD~~

B. Water Accounting ~~and Charges~~

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~~General principles for accounting and charges associated with any DCF are that capital costs and fixed Operations, Maintenance, Power and Replacement (OMP&R) costs of any DCF will be billed to and collected from each of the PWAs through the annual Statements of Charges consistent with each PWA's Contracted Proportionate Share in any DCF. Variable costs of conveying water through any DCF will be equitably allocated as described in detail in this section. [MOVED UP TO SECTION III.C]~~

~~1. Water Accounting~~

~~2. DWR will implement a timely accounting process to determine water supply benefits associated with any DCF.~~

~~a. An accounting process shall consist of validating the operational scheduling processes with actual deliveries in order that DCF Water is benefitting Participating PWAs consistent with their respective Contracted Proportionate Share CPS.~~

~~3. Carriage water savings that DWR determines are realized during its operation of any DCF for purposes of conveying Table A water will be credited to Participating PWAs consistent with their respective Contracted Proportionate Share CPS in any DCF.~~

~~4. DCF Water and the rights to use available capacity in any DCF as specified in section V.D of this AIP will be allocated to Participating PWAs consistent with their respective Contracted Proportionate Share CPS in any DCF.~~

~~5. DCF Fixed Charge Components [MOVED UP TO SECTION III.C]~~

~~a. All fixed capital and minimum OMP&R costs associated with any DCF will be 100% reimbursable and recoverable by DWR from PWAs through a separately stated line item in the annual Statement of Charges referencing a separate DCF invoice. All such costs will be charged in proportion to each PWA's Contracted Proportionate Share in any DCF. These costs shall be allocated to and billed under two new charges as follows:~~

~~i. DCF Capital Charge Component~~

~~ii. DCF Minimum OMP&R Component~~

~~b. Use of any DCF by or on behalf of a Participating PWA to convey that PWA's non-project water, including under V.D.2, within that PWA's Contracted Proportionate Share shall not result in additional DCF Fixed Charges.~~

~~c. DCF Capital Charge Component is comprised of four categories~~

~~i. Charges to recover the annual Financing Costs of Water Systems Facility Revenue Bonds, the proceeds of which are used to pay DCF Capital Costs.~~

~~ii. Charges pursuant to Article 61(b)(5) of the SWP Water Supply Contracts to recover DCF Capital Costs paid with amounts in the~~

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~~State Water Resources Development System Reinvestment Account:~~

- ~~iii. Charges to recover on a current basis DCF Capital Costs paid annually for assets that will have a short economic useful life or will not have a substantial cost.~~
- ~~iv. Charges to allocate appropriately, if necessary, DCF Capital Costs prepaid or otherwise advanced. To the extent legally and otherwise feasible, DWR will use Revenue Bond proceeds to reimburse DCF Capital Costs advanced by DWR, PWAs, or others prior to the commencement of construction and will include the financing costs of such revenue bonds in DCF Capital Charges.~~
- ~~d. DCF Minimum OMP&R Charge Component: Charges under this component will recover the estimated and/or actual annual fixed OMP&R costs of any DCF.~~

~~6. DCF Variable OMP&R Charges: Charges under this component will recover the estimated and/or actual annual variable OMP&R costs of any DCF. [MOVED UP TO SECTION III.C]~~

~~a. [TBD]~~

~~7. Power Costs Incurred During Construction: Per the DWR capitalization policy, any power costs (for example, power supply, grid connections, transmission) incurred to construct any DCF shall be capitalized during Construction Work in Progress, as used in DWR's financial statements, and costs are 100% reimbursable recovered through the DCF Capital Charge Component. [MOVED UP TO SECTION III.C]~~

~~8. Charge Redetermination: All DCF charges shall be subject to redetermination. [MOVED UP TO SECTION III.C]~~

C. Transfers or exchanges of DCF Water

*1. Transfers and exchanges are not intended to be modified under this AIP, and involving the DCF or of DCF Water shall be subject to the provisions of the then existing State Water Project Water Supply Contracts addressing transfers and exchanges. Where the State Water Project Water Supply Contracts state that transfers and exchanges "shall not impact the financial integrity of the SWP" this includes but is not limited to negatively impacting the credit rating of any revenue bonds. Participating PWAs can transfer or exchange their DCF Water to both other Participating PWAs and Non-Participating PWAs. Non-permanent transfers would be negotiated between Contractor parties and Participating PWAs will remain ultimately responsible to DWR for payment of capital and O&M costs.*

*However, the State Water Project Water Supply Contract Water Management Tools amendment (WMT Amendment) is not complete at this time. In the event*

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*the WMT Amendment provisions related to transfers and exchanges are not executed and effective, the following transfer and exchange provisions shall be included within any contract amendment resulting from this AIP:*

- a. Transfers or exchanges involving DCF Water or the use of any DCF to convey water shall be subject to the approval of DWR to ensure, among other things, that such transfers or exchanges do not impair the credit ratings of any outstanding Revenue Bonds, DWR's ability to operate and maintain the SWP, or DWR's ability to meet regulatory requirements.
- b. Transfers or exchanges involving DCF Water or the use of any DCF to convey water shall include terms stating that the transferring or exchanging party remains responsible for payment of DCF Fixed Charge Components and DCF Variable OMP&R Charges. Any compensation between the parties for a transfer or exchange shall be as agreed between the transferring or exchanging parties.
- c. *Subject to the State's review and approval, all transfers and exchanges shall satisfy the following criteria:*
- d. *Transfers and exchanges shall comply with all applicable laws and regulations.*
- e. *Transfers and exchanges shall not impact the financial integrity of the SWP, which includes but is not limited to the credit rating of any revenue bonds. Transfer and exchange agreements shall include provisions to cover all costs to the State for the movement of water such as power costs and use of facility costs.*
- f. *Transfers and exchanges shall be transparent.*
- g. *Transfers and exchanges shall not harm other contractors not participating in the transfer or exchange.*
- h. *Transfers and exchanges shall not create significant adverse impacts to the service area of each contractor participating in the transfer or exchange.*
- i. *Transfers and exchanges shall not adversely impact SWP operations.*

**D. Use Outside of Contracted Proportionate Shares DCF Available Capacity**

1. Absent a party holding a Contracted Proportionate Share of the DCF or a transfer or exchange agreement with a PWA holding a Contracted Proportionate Share of the DCF any use of the DCF approved by DWR will be conditioned upon appropriate payment of DCF Fixed Charge Components and the DCF Variable OPM&R Charge Component. Payments made will be credited against the charges assessed to all PWAs holding a Contracted Proportionate Share in the DCF.
2. For all potential non-participant capacity use, DWR will determine and notify work with Participating PWAs to determine: 1) if there is excess DCF Available Capacity; and, 2) to ensure that fair compensation is paid for that use

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~~of capacity. For all potential non-participant capacity use, DWR will form a workgroup prior to operating the DCF that will work with Participating PWAs to determine: 1) if there is DCF Available Capacity, and, 2) will to ensure that fair compensation is paid for that use of capacity. [ORIGINAL LANGUAGE CONCEPTS RESTORED]~~

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3. When there is unused DCF Available Capacity in the DCF, a Participating PWA shall have the ~~unrestricted right~~ first priority to use ~~utilize~~ its Contracted Proportionate Share CPS ~~own designated share of capacity~~ on a first priority basis.

4. To the extent there is ~~at any time~~ remaining unused Available Capacity available, it shall be allocated among the Participating PWAs on a second priority basis. If the requests to use such unused capacity exceed the amount available, ~~that unused capacity~~ shall be allocated in proportion to ~~among those~~ requesting Participating PWAs' ~~within their CPS~~ in proportion to their respective level of participation.

5. If unused capacity is available after all ~~Participant~~ Participating PWA requests, it shall be offered to ~~SWP non-participants~~ Non-Participating PWAs on a third priority basis subject to execution of a contract with DWR.

~~6. Any remaining unused capacity shall be available to any person on a fourth priority basis subject to execution of a contract with DWR under Water Code 1810. Any remaining unused capacity shall be available to any person on a fourth priority basis subject to execution of a contract with DWR under Water Code 1810. [ORIGINAL LANGUAGE RESTORED.]~~

~~1. Fair compensation will include but is not limited to fixed and variable capital recovery, operations, and maintenance, and replacement charges associated with the use of the Delta Conveyance capacity. All fair compensation fees collected for use of capacity would be credited back to the participants in proportion to their Contracted Proportionate Share. [MOVED UP AND REPHRASED IN SECTION III.D] Fair compensation will include but is not limited to fixed and variable capital recovery, operations, and maintenance, and replacement charges associated with the use of the Delta Conveyance capacity. All fair compensation fees collected for use of capacity would be credited back to the participants Participating PWAs in proportion to their CPS. [ORIGINAL LANGUAGE RESTORED.]~~

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VI. Fair compensation will include but is not limited to fixed and variable capital recovery, operations, and maintenance, and replacement, and variable charges associated with the use of the Delta Conveyance capacity. All fair compensation fees collected for use of capacity would be credited back to the participants Participating PWAs in proportion to their CPS. [ORIGINAL LANGUAGE RESTORED.]

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The content and format of this document are preliminary in nature and subject to modification.

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VII. Dispute Resolution Process Prior to Execution of a Delta Conveyance Contract Amendment

~~VIII. Additional Contents of an Agreement in Principle [PWA Second Offer Section IV.]  
Discussions and negotiations with DWR may result in an AIP that will establish key terms for a proposed contract amendment or other necessary agreement.  
• Project description~~

IX. Relation to an Environmental Review Process

- A. 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 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.
- B. At the end of the CEQA process and in compliance with CEQA, DWR and the PWAs will each individually evaluate the EIR and Contract Amendment, exercise their independent judgment, and determine whether or not to certify the EIR, approve the proposed project and sign the contract amendment 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.

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