

## **AGREEMENT IN PRINCIPLE**

March 29, 2021

This Agreement in Principle has been developed from the State Water Contractor Public Water Agencies' offers presented from July 24, 2019 to present, Department of Water Resources' offers presented from July 31, 2019 to present, and information discussed and presented by the technical and legal work groups.

### **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 certain 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.

#### **AIP Objective:**

1. 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.

**AIP Outline:**

- I. Definitions
- II. Objective 1 - Availability of an option to opt out of costs and benefits of Delta Conveyance Facilities of the State Water Project
- III. Objective 2 - Availability of an option to assume, or partially assume, costs and benefits of Delta Conveyance Facilities of the State Water Project
- IV. Objective 3 - Pursuit of State Water Project Delta Conveyance Facilities under the State Water Project Water Supply Contracts
- V. Objective 4 - Delta Conveyance Facility billing
- VI. Objective 5 - Delta Conveyance Facility benefits allocation
- VII. Objective 6 - Affect upon other Water Supply Contract provisions
- VIII. Other Provisions
- IX. Environmental Review Process
- X. Authorized Representative Signatures

I. Definitions

- a. **Clifton Court Forebay** shall mean the existing State Water Project diversion at Clifton Court Forebay facility through its intake located on Old River in the southern Delta and the associated Skinner Fish Facility.
- b. **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 votes of the State of California.
- c. **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 serve the water supply purposes of the State Water Project.
- d. **DCF Benefits** shall mean those water supply and capacity benefits attributable to the DCF including but not limited to: (1) Table A water supplies; (2) Article 21 water supplies; (3) carriage water savings; (4) reliable water supply and use of DCF available capacity in the event of a temporary or permanent physical, regulatory, or contractual disruption of southern Delta diversions; and (5) use of DCF available capacity to move non-project water through the proposed DCF.
- e. **Fair Compensation** shall include but is not limited to capital recovery, operations and maintenance, replacement, and variable charges associated with the use of the DCF capacity.
- f. **State Water Project (SWP)** shall mean the State Water Resources Development System as described in California Water Code section 12931.
- g. **State Water Project Contractor Public Water Agencies (PWAs)** shall include the 29 entities holding State Water Project Water Supply Contracts with the Department of Water Resources.

II. Objective 1 - Availability of an option to opt out of costs and DCF Benefits

- a. This AIP makes available to each PWA an option to opt out of the costs and benefits of the DCF through a contract amendment that establishes a Statement of Charges (SOC) percentage of DCF Benefits based on the percentages in the Delta Conveyance Allocation Factors table to water attributable to the DCF, as described in Section VI of this AIP.
- b. PWAs indicating an intent to opt out of costs and benefits of the DCF shall be described in Section VI(a) of this AIP.
- c. An option to opt out of DCF costs and benefits are limited such that a PWA must opt out of at least a minimum 100% of its Municipal and Industrial Table A or 100% of its Agricultural Table A. This provision doesn't prohibit a PWA from taking more than their Table A share, if available, in the Delta Facilities Allocation Factor table.

- III. Objective 2 - Availability of an option to assume additional costs and benefits of the DCF
  - a. This AIP makes available to each PWA an option to assume additional costs and benefits of the DCF through a contract amendment that establishes additional costs on the SOC in exchange for DCF Benefits based on the percentages in the Delta Conveyance Allocation Factors table to water attributable to the DCF, as described in Section VI of this AIP.
  - b. PWAs indicating an intent to assume DCF costs and benefits shall be described in Section VI(b) of this AIP.
  
- IV. Objective 3 - Pursuit of State Water Project Delta Conveyance Facilities under the State Water Project Water Supply Contracts
  - a. The DCF shall be constructed and operated as an integrated component of the State Water Project, and DWR will continue to operate the State Water Project at its sole discretion.
  - b. The DCF is an authorized component of the State Water Project pursuant to California Water Code sections 11100 et seq. and 12930 et seq.
  - c. Effective Date: A contract amendment pursuant to this AIP shall have an effective date no sooner than the billing transition date set forth in State Water Project Water Supply Contract Amendment known as The Contract Extension Amendment.
  - d. Administration of DCF: DWR will forecast and account for Project Water attributable to the DCF and DWR will determine whether or not that Project Water would not have been available at Clifton Court Forebay. A whitepaper describing the DWR's and the PWAs' current understanding of the approach on forecasting, administration, and accounting is contained in Attachment 1. Attachment 1 will not be incorporated into contract language.
  
- v. Objective 4 - Delta Conveyance Facility billing
  - a. These costs would be billed to and collected from SWP PWAs consistent with the Delta Facilities Allocation Factor table below through their annual SOC.
  - b. **Delta Conveyance Facilities Charge Components:** All capital and minimum operations, maintenance, power and replacement (OMP&R) costs associated with the DCF are 100% reimbursable and shall be recovered by DWR from PWAs through their annual SOCs consistent with the Delta Facilities Allocation Factor table. These costs shall be allocated to and billed under two new charges as follows:
    - (1) Delta Conveyance Facilities Capital Charge Component.
    - (2) Delta Conveyance Facilities Minimum OMP&R Component.

c. **Delta Conveyance Facilities Capital Charge Component Method of Computation**

1. This computation will recover actual annual debt service created by financing activities (Financing Method) for DCF.
2. Each Financing Method shall provide an annual repayment schedule, which includes all Financing Costs.
3. Financing Costs shall mean the following: Principal of and interest on Revenue Bonds, debt service coverage required by the applicable bond resolution or indenture in relation to such principal and interest, deposits to reserves required by the bond resolution or indenture in relation to such Revenue Bonds, and premiums for insurance or other security obtained in relation to such Revenue Bonds.

d. Financing Method shall be divided into four categories: DCF Capital Costs paid with the proceeds of Revenue Bonds; DCF Capital Costs paid with amounts in the State Water Resources Development System Reinvestment Account; DCF Capital Costs paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and DCF Capital Costs prepaid by the PWAs consistent with the Delta Facilities Allocation table.

e. DCF Capital Charge Component should be allocated to the PWAs in proportion to the Delta Conveyance Facilities Allocation Factors for each calendar year and consistent with the Delta Facilities Allocation Factor table.

f. **Delta Conveyance Facilities Minimum OMP&R Charge Component Method of Computation**

1. Recovery will be estimated and/or actual annual OMP&R costs determined for the DCF each year.
2. DCF Minimum OMP&R Charge Component shall be allocated to the PWAs in proportion to the Delta Conveyance Facilities Allocation Factors for each calendar year.

g. **Delta Conveyance Facilities Energy Charges:** The DCF energy costs are 100% reimbursable by the PWAs and the methodology will be determined by DWR, reviewed in the SWRDS Finance Committee, and approved by the Director.

h. **Redetermination:** These charges shall be subject to redetermination.

i. **Step-up:** PWAs that execute a contract amendment to opt out will not be allocated any portion of a step-up required in the event of a default on a DCF Capital Charge.

j. **Delta Conveyance Facilities Allocation Factors:** Allocation of DCF Charge Components through annual SOC will follow a Delta Conveyance Facility Allocation Factors table. PWAs with a zero allocation factor would not be billed for repayment of costs for construction, operation and maintenance of facilities

associated with DCF, except to the extent there is a permanent transfer of Table A that would increase a PWA to a greater than zero allocation factor through a subsequent contract amendment. The Delta Conveyance Facility Allocation Factor table will be kept and administered by DWR and will reflect the results of any publicly held votes by PWAs. DWR will post the current table on its website. The Delta Conveyance Allocation Factor for the following PWA's will start at zero in the Delta Conveyance Facility Allocation Factors table kept by DWR and may be subsequently adjusted based on any publicly held votes of such PWAs Board of Directors through this administrative process:

City of Yuba City  
County of Butte  
Plumas County FC&WCD  
Napa County FC&WCD  
Solano County Water Agency  
Tulare Lake Basin Water Storage District  
County of Kings  
Oak Flat Water District  
Empire-West Side Irrigation District  
Santa Barbara County FC&WCD  
Littlerock Creek Irrigation District

VI. Objective 5 - Delta Conveyance Facility Benefits Allocation

- a. PWAs that execute a contract amendment to opt out of DCF costs and benefits will agree, within that amendment, to the following:
  - i. Charges as set forth in Section V of this AIP will not appear on its SOC.
  - ii. Forego and waive any contractual rights to the following:
    - a. Right to or delivery of Project Water attributable to the DCF, provided that DWR determines that such water would not have been available for diversion at Clifton Court Forebay. This AIP will not modify the amounts within Table A but will memorialize this limited reduction for DCF Benefits by adding a footnote to the PWA's Table A to reflect their zero allocation for DCF Benefits.
    - b. Any contractual rights to or delivery of Article 21 Interruptible Water prior to the point(s) in time each year DWR determines that a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF in the SWP share of San Luis Reservoir storage will be displaced or evacuated by a quantity of exports equal to the quantity of exports from Clifton Court Forebay that would have been stored in San Luis Reservoir absent the DCF. Provided that, when Article 21 Interruptible Water supply is greater than demand from PWAs with a greater than zero Delta Conveyance Facility Allocation factor, Article 21 Interruptible Water will be made

- available to all PWAs based on Table A percentage.
- c. Any contractual rights to or delivery of Article 21 Interruptible Water attributable to the DCF after a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF has been evacuated or displaced by the exports from Clifton Court Forebay that would have been stored in San Luis Reservoir absent DCF. Provided that, when Article 21 Interruptible Water supply is greater than demand from PWAs with a greater than zero Delta Conveyance Facility Allocation Factor, Article 21 Interruptible Water will be made available to all PWAs based on Table A percentage.
  - d. Right to use DCF conveyance capacity unused by DWR for SWP purposes to convey non-project water, except as provided in subsection h.
  - e. Right to use available DCF conveyance capacity to convey Project Water in the event that pumping directly from the south Delta is prevented or impaired by a physical, regulatory or contractual disruption, including but not limited to sea level rise, seismic events, flooding, or other uncontrollable event.
  - f. Right to carriage water savings that DWR determines are realized during its operation of any DCF for purposes of conveying Project Water.
  - g. Right to any credit from Fair Compensation collected by DWR for use of available DCF conveyance capacity.
  - h. Rights to use of the DCF, unless a subsequent contract with DWR is entered that provides for payment of Fair Compensation associated with such use.
- iii. For the North of Delta PWAs, DWR will not change the current administrative process for determining the availability of Article 21 due to the DCF. This process will be documented in the Article 21 administration that is distributed via a Notice to Contractors.
- b. PWAs that execute a contract amendment to assume costs and benefits of the DCF will agree, within that amendment, to the following:
    - i. Charges will appear on the SOC as set forth in the table in the percentages shown in Section V of this AIP.
    - ii. DCF Benefits in proportion to the percentage table in Section V of this AIP, including but not limited to:
      - a. Delivery of Table A amounts diverted at and conveyed through the DCF. This AIP will not modify the amounts within Table A but will memorialize this DCF Benefits by amending the PWA's Table A with a footnote. The footnote will recognize each PWA's DCF Benefits

consistent with the Delta Conveyance Facilities Allocation Factors.

- b. Article 21 Interruptible Water attributable to DCF.
  - c. Available DCF conveyance capacity unused by DWR for SWP purposes, to convey non-project water for ultimate use within that PWA's service area.
  - d. Carriage water savings that DWR determines are realized during its operation of any DCF for purposes of conveying Project Water.
  - e. Available DCF conveyance capacity to convey Project Water in the event that pumping in the south Delta is prevented or impaired by a physical, regulatory or contractual disruption, including but not limited to sea level rise, seismic events, flooding, or other uncontrollable event.
  - f. A credit from Fair Compensation collected by DWR for use of available DCF conveyance capacity.
- c. Nothing in this AIP changes Article 18(a) in the existing State Water Project Water Supply Contracts.

VII. Objective 6 - Affect Upon Other Water Supply Contract Provisions

- a. Unless specifically stated in this AIP and incorporated into a subsequent contract amendment, there are no changes to the PWAs' rights and obligations under the existing State Water Project Water Supply Contracts.
- b. Transfers and exchanges are not intended to be modified under this AIP and shall be subject to the provisions of the then existing State Water Project Water Supply Contracts.

VIII. Other Provisions

- a. Clifton Court Forebay Diversion Priority: In the event that DWR uses its discretion to move Project Water through the DCF that could have been moved through Clifton Court Forebay Intake, PWAs with a greater than zero Delta Conveyance Facilities Allocation Factor will be given a first priority of available capacity, as determined by DWR, based on their percentage in section V to move up to that same amount of non-project water at Clifton Court Forebay Intake.

IX. Environmental Review Process

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.

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.

## **Attachment 1: Final White Paper**

### **I. Background**

This white paper describes current understanding of how the Department of Water Resources (DWR) would account for and administer the Delta Conveyance Facility (DCF) Benefits. DWR will include information regarding the accounting and administration of water attributable to DCF in relevant Notice(s) to State Water Project Contractors consistent with prior practice. No legally binding obligations are created by this white paper. This white paper may be updated from time to time by DWR, in consultation with the Public Water Agencies (PWAs), in response to factors including, but not limited to, changes in laws, regulations or permits applicable to DWR and/or the State Water Project (SWP). Capitalized terms not defined herein shall have the meanings ascribed to them in the DCF Agreement in Principle (AIP).

### **II. Draft Delta Conveyance Accounting and Administration Concepts**

The DCF will be integrated into the State Water Project and operated to provide maximum flexibility to meet water supply, regulatory requirements and contractual obligations. There are some PWAs that may opt out of the DCF Benefits and charges. For this reason, it will be necessary to account for DCF Benefits. DCF Benefits are described in the AIP and are “those water supply and capacity benefits attributable to the DCF including but not limited to: (1) Table A water supplies; (2) Article 21 water supplies; (3) carriage water savings; (4) reliable water supply and use of DCF available capacity in the event of a temporary or permanent physical, regulatory, or contractual disruption of southern Delta diversions; and (5) use of DCF available capacity to move non-Project Water through the proposed DCF.” To account for DCF Benefits, DWR will need to determine the amount of water attributable to the DCF. DWR will primarily use two tools: 1) **forecasting** Project Water attributable to the DCF for the coming year; and, 2) **accounting** for Project Water attributable to the DCF in a timely manner. Both are described below.

**A. Forecasting-** DWR will forecast, as shown below, to quantify the amount of Project Water attributable to DCF.

1. DWR anticipates that it will provide three water supply allocation forecasts:
  - a. North of Delta allocation that includes water attributable to the south Delta diversions (similar to current practice).
  - b. South of Delta allocation that includes water attributable to the south Delta diversions (similar to current practice).
  - c. Allocation of water attributable to the DCF.
2. The allocation forecasts will continue to be updated monthly and each forecast will include updated information on hydrology including runoff projections, SWP storage conditions, PWA demands, regulatory requirements, and actual exports attributable to the south Delta diversions and the DCF.

3. DWR will continue to include in the allocation forecasts any potential DCF capacity available for conveyance of non-Project Water.
4. Seasonal Forecast: Should conditions warrant additional forecasts, (i.e. wet hydrological conditions and/or DWR determines that San Luis Reservoir is likely to fill) DWR will provide more frequent forecasts on one or more of the following:
  - a. San Luis Reservoir fill projection.
  - b. Potential Article 21 availability.

**B. Accounting**

1. DWR will continue to create operational schedules for the south Delta and the DCF which will include any operational constraints and in accordance with applicable regulatory requirements and contractual obligations in order to account for water attributable to the DCF.
2. DWR will reconcile water exports attributable to DCF and the south Delta facilities in a timely manner.
3. If there is a difference in the amount of water conveyed through the south Delta facilities between the planned operations and actual operations there will be a determination about the cause of any identified differences. If the difference is due to a physical, regulatory, or contractual disruption of south Delta diversions or other south Delta restrictions, then water conveyed through the DCF will be considered water attributable to DCF. If the difference is the result of DWR's discretionary decision to convey Table A water through the DCF instead of south Delta, no charge/credit will occur. However, DWR will estimate the carriage water savings associated with the discretionary use of DCF and carriage water savings will be considered water attributable to DCF.
4. Carriage water savings that DWR determines are realized by conveying Project Water through the DCF that would have otherwise been moved through the south Delta facilities, will be credited to Participants. PWAs with a zero Delta Conveyance Allocation Factor that make arrangements with DWR to pay for use of available capacity in the DCF for non-Project Water may be credited carriage water savings associated with this use.
5. Available DCF capacity, as determined by DWR, to convey transfers and exchanges of Project Water between PWAs with a Delta Conveyance Facility Allocation Factor of zero and PWAs with a greater than zero Delta Conveyance Facility Allocation Factor is interpreted as capacity in the DCF attributed to the PWAs with a greater than zero Delta Conveyance Facility Allocation Factor and no additional capital or minimum operations, maintenance, power and replacement (OMP&R) charges for use of DCF capacity will apply notwithstanding any PWA's interpretation of existing contract language to the contrary. Nothing in this provision shall be construed as altering any party's position regarding the application for use of facility charges in other contexts.

6. **Article 21 attributable to DCF for South of Delta PWAs:** As set forth in the AIP, PWAs opting out of the DCF will influence the administration of water made available pursuant to Article 21. To determine the quantity of Article 21 water that PWAs with a zero Delta Conveyance Facilities Allocation Factor will initially forego and the quantity of Article 21 water those PWAs with a Delta Conveyance Facilities Allocation Factor greater than zero will receive, it is necessary to determine the amount of water attributable to the DCF in the San Luis Reservoir at Point A. Determining this water quantity will provide the basis upon which DWR can administer the DCF Benefits contained in the contract amendment that results from the AIP.

a. Process (See Table 1):

- i. **Point A:** The point at which DWR determines Article 21 water attributable to DCF will be available. DWR will determine volume of Project Water for Table A attributable to the DCF in San Luis Reservoir.
- ii. DWR will work with PWAs to develop an accounting methodology that considers exports attributed to DCF, exports from south Delta facilities, deliveries to PWAs, San Luis Reservoir fill point and the PWAs DCF allocation factors to determine the volume of Project Water for Table A in San Luis Reservoir attributable to DCF at Point A.
- iii. **Point B:** The point at which DWR determines Article 21 water would have been made available absent Project Water for Table A attributable to DCF in San Luis Reservoir, and/or DWR determines through the accounting process that San Luis Reservoir would have filled absent current year Project Water attributable to DCF. This point is reached when a volume of water equal to the volume of current year Project Water for Table A in San Luis Reservoir attributable to DCF at Point A has been displaced or evacuated by the quantity that would have been exported from Clifton Court Forebay and stored in San Luis Reservoir absent the DCF.

b. Deliveries of Article 21 water attributable to DCF Between Point A and Point B:

- i. PWAs may submit Article 21 requests to DWR prior to point A. DWR will satisfy those requests according to the following priority:
  1. PWAs up to their Delta Conveyance Facility Allocation Factor;
  2. All PWAs based on Table A percentage. Only Variable and DCF Energy charges will apply for those PWAs with a greater than zero Delta Conveyance Facility Allocation Factor. For those PWAs with a zero Delta Conveyance Facility Allocation Factor, Article 21 water will be made available at the following charges:
    - a. the Variable and DCF Energy charges for the amount up to Article 56(c)(1) and Article 56(c)(2) water spilled within the

PWAs proportionate share of San Luis Reservoir storage at Point A;

b. Fair Compensation for any additional amounts.

c. Deliveries of Article 21 water attributable to DCF After Point B:

i. PWAs may submit requests to DWR. DWR will satisfy those requests according to the following priority:

1. PWAs' proportion based upon the Delta Conveyance Facility Allocation Factors;
2. All PWAs based on Table A percentage. Only Variable and DCF Energy charges will apply for those PWAs with a greater than zero Delta Conveyance Allocation Factor. For those PWAs with a zero Delta Conveyance Facility Allocation Factor, this water will be provided at Fair Compensation.

TABLE 1: Article 21 Interruptible Water Attributable to the Delta Conveyance Facilities		
PWA	Point A - Point B	At/After Point B
<u>FIRST PRIORITY:</u> PWAs participating in DCF (PWAs with a greater than zero DCF Allocation Factor %)	<ul style="list-style-type: none"> <li>• Quantity (AF): Up to DCF Allocation Factor %</li> <li>• Charge (\$): Variable and DCF Energy Charges</li> </ul>	<ul style="list-style-type: none"> <li>• Quantity (AF): Up to DCF Allocation Factor %</li> <li>• Charge (\$): Variable and DCF Energy Charges</li> </ul>
<u>SECOND PRIORITY:</u> All PWAs	<ul style="list-style-type: none"> <li>• Quantity (AF): Based on Table A %</li> <li>• Charge to DCF Participant (\$): Variable and DCF Energy Charges</li> <li>• Charge to DCF Non-Participant for AF &lt;= to spilled carryover water (\$): Variable and DCF Energy Charges</li> <li>• Charge to DCF Non-Participant for AF &gt; spilled carryover water (\$): Fair Compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Quantity (AF): Based on Table A %</li> <li>• Charge to DCF Participant (\$): Variable and DCF Energy Charges</li> <li>• Charge to DCF Non-Participant (\$): Fair Compensation</li> </ul>

**C. Collaborative Development of Administrative Procedures**

As a subset to the Water Operations Committee, a DCF workgroup will be created similar to the current San Luis Reservoir Workgroup. This group will meet and confer as needed, and may discuss items such as forecasting, operations, accounting, and administration of the DCF. Members may include representatives from DWR (SWPAO and OCO) and PWAs and will report back to the PWA Water Operations Committee.