



- Board of Directors
Water Planning and Stewardship Committee

2/9/2021 Board Meeting

7-4

Subject

Review and consider the Department of Water Resources' certified Final Environmental Impact Report and take related CEQA actions and approve the State Water Project Contract Amendment for Water Management

Executive Summary

Metropolitan and other Public Water Agencies (PWAs) publicly negotiated an Agreement in Principle (AIP) with the California Department of Water Resource (DWR) for a State Water Project Contract Amendment to provide more flexibility in managing State Water Project (SWP) transfers and exchanges. Legal representatives from DWR and the PWAs have since developed contract amendment language based on the AIP. The proposed amendment would provide improved flexibility for PWAs to utilize water transfers and exchanges to better manage their SWP water supplies in the face of changing hydrology, sea level rise, and changing environmental regulations. The proposed amendment would provide improved flexibility for PWAs to utilize water transfers and exchanges to better manage their SWP water supplies in the face of challenges like climate change, sea level rise, and changing environmental regulations. The proposed amendment is consistent with the Governor's 2020 Water Resilience Portfolio; specifically, Portfolio Action 21 to "ease movement of water across the state by simplifying water transfers" as it relates to facilitating transfers between State Water Project PWAs.

Details

Background

Metropolitan has a long-term contract (SWP Contract) with DWR to participate in the SWP. Under the existing SWP Contract, water transfers are permitted in a limited manner, which constrains the operational flexibility of PWAs to manage their water supplies. While the existing SWP Contract allows for exchanges, it does not articulate the parameters for exchanges. PWAs have relied on DWR's case-by-case application, which results in uncertainty and lost opportunities due to a long review process.

The proposed amendment would provide uniform criteria for all PWAs. The contract amendment does not increase SWP diversions or alter SWP operational criteria. The contract amendment would be effective on the last day of the month after 24 of the 29 PWAs have executed the contract amendment. If at least 24 PWAs have not executed the amendment by February 28, 2021, DWR may decide, in consultation with those PWAs who have executed, whether to allow the amendment to take effect. As of January 25, 2021, 20 PWAs have executed the amendment, and 4 PWAs are scheduled to approve the amendment by February 9, 2021, when Metropolitan's Board will consider this amendment.

Negotiations Process

DWR and the PWAs conducted public contract negotiations to seek greater operational flexibility as hydrology changes and as DWR operates under more constraints. These negotiations developed concepts to supplement and clarify the existing SWP Contracts' water transfer and exchange provisions.

In a December 2017 Notice to Contractors, DWR indicated its desire to supplement and clarify the water management tools through this public process. In June 2018, PWAs and DWR completed an AIP, which included specific principles to accomplish this goal. These principles included adding contract language to include a transparent process for transfers and exchanges. The principles also include amending existing contract

provisions to provide new flexibility for single and multi-year non-permanent water transfers, allowing PWAs to set terms of compensation for transfers and exchanges, and providing for the limited transfer of carryover and Article 21 (interruptible) water.

This amendment (**Attachment 1**) only addresses water management tools related to water transfers and exchanges. It does not include any financial provisions related to potential Delta conveyance facilities. In the last several years, there have been two other negotiations to amend the SWP Contract. Metropolitan's Board approved the Contract Extension Amendment on December 11, 2018 (Board Letter #8-8). That amendment extended Metropolitan's SWP Contract term through 2085 and improved the project's overall financial integrity and management. The Delta Conveyance Facility AIP was completed on April 30, 2020, through public negotiations between DWR and PWAs. The future Delta Conveyance Facility amendment would add terms and conditions applicable to the construction, operation, and maintenance of a new Delta conveyance facility, and will be presented to the Board for consideration once an approved Delta conveyance facility is advanced.

Key Points

The proposed water management tools amendment supplements and clarifies terms of the SWP Contract related to water transfers and exchanges within the SWP service area to improve water management capabilities and options, as summarized below.

Exchanges:

The existing contract provisions currently allow for exchanges but do not provide clarity on parameters or limitations. Over the years, DWR developed administrative procedures for exchanges and applied them on a case-by-case basis. In order to provide certainty and clarity, the proposed amendment confirms criteria for exchanges and defines the maximum compensation allowed. Additionally, it provides exchange ratios that are based on the SWP allocation, allowing higher exchange ratios, up to five to one, for those years with lower SWP allocations. Finally, exchanges can be completed over and up to a ten-year period, with certain exceptions that may allow for additional time to complete the exchange. The defined compensation and exchange ratios will streamline DWR's review of proposed exchanges and provide a consistent platform for the PWAs to manage water.

Transfers:

Currently, the only two mechanisms to transfer SWP water are permanent transfers of Table A contract rights to another PWA or single-year transfers (known as the turnback pool). Permanent transfers are not affected by this amendment. The PWAs and DWR recognized that the turnback pool did not provide sufficient incentives for transfers and was rarely used. This amendment eliminates the turnback pool mechanism and adds more desirable new tools for single-year and multi-year non-permanent transfers, which may increase transfer activity.

To implement new transfers, the amendment adds Article 57. This article permits single- or multiple-year transfers. Any transfer must comply with transparency provisions and requires DWR approval. However, the PWAs are free to set the duration and compensation terms.

Other provisions allow for more flexibility in where water can be transferred or exchanged, allow for the transfer of carryover water in San Luis Reservoir, add a dispute resolution process for transfers or exchanges that may impact a non-party PWA, and allow a subset of small contractors to transfer Article 21 water.

Environmental Documentation

In October 2018, DWR circulated a Draft Environmental Impact Report (DEIR) for the contract amendments. The AIP at that time included both cost allocation for the California WaterFix project (CA WaterFix) and the water management provisions. In early 2019, Governor Newsom decided not to move forward with the two-tunnel CA WaterFix proposed project in favor of a one-tunnel project, and DWR rescinded its approvals for CA WaterFix. After this shift, the PWAs and DWR held a public negotiation session and agreed to remove the CA WaterFix cost allocation sections from AIP, but to keep all the water management provisions in the AIP. DWR and the PWA finalized the AIP for water management provisions on May 20, 2019. In February 2020, DWR amended and recirculated the Partially Recirculated DEIR for the State Water Project Supply Contract Amendments for Water Management. In August 2020, DWR certified the Final EIR.

Benefit to Metropolitan

Staff recommends approval of the water management amendment. This amendment provides Metropolitan additional flexibility to manage its SWP supplies more efficiently. For example, Metropolitan would have increased ability to manage carryover storage in San Luis Reservoir and the ability to participate in exchanges with other PWAs to develop mutually beneficial outcomes regarding carryover storage. Additionally, by allowing other PWAs to transfer water more flexibly, it creates new partnership opportunities. Finally, the new provisions provide fair compensation for transfers and exchanges.

Policy

By Minute Item 51425, dated December 11, 2018, the Board reviewed and considered the certified Final EIR, and authorized the General Manager to sign an amendment to Metropolitan's State Water Project contract with the California Department of Water Resources extending the contract term an additional 50 years to terminate December 31, 2085; and making adjustments to the methodology used to calculate the charges for service.

By Minute item 20984, dated November 1, 1960, the Board adopted Resolution 5838 and approved execution of the State Water Project Contract with the Department of Water Resources.

Metropolitan Water District Administrative Code Section 4203: Water Transfer Policy.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

DWR, acting as the Lead Agency, prepared a Draft EIR for Contract Amendments for Water Management and the California WaterFix and circulated it for public review on October 26, 2018. On May 2, 2019, the Director of DWR issued a memo withdrawing approval of California WaterFix. On May 20, 2019, DWR and the SWP Public Water Agencies (PWAs) held a public meeting and negotiated a change to the June 27, 2018 Agreement in Principle (AIP) to remove the objective that would have addressed the cost allocation of California WaterFix because DWR rescinded California WaterFix approvals.

DWR, acting as the Lead Agency, prepared a Partially Recirculated Draft Environmental Impact Report in February 2020 for the amended project description that reflects removal of the AIP provisions regarding cost allocation for the California WaterFix. The Final EIR was certified on August 25, 2020. The Lead Agency also approved a Findings of Fact and a Statement of Overriding Considerations (SOC). A Notice of Determination was filed with the State Clearinghouse on August 28, 2020. Metropolitan, as a Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information in the certified Final EIR and adopt the Lead Agency's findings and SOC prior to approval of the formal terms and conditions of the contract extension amendment. The environmental documentation is included in **Attachment 2**.

CEQA determination for Option #2:

None required

Board Options

Option #1

Review and consider the certified Final EIR and take related CEQA actions, and authorize the General Manager to sign the proposed amendment to Metropolitan's State Water Project contract with the California Department of Water Resources.

Fiscal Impact: The proposed amendment largely does not affect Metropolitan's SWP costs. The amendment does allow for a greater degree of water management through potential exchanges or transfers. Metropolitan could incur costs or receive revenues depending on whether Metropolitan is acting as a buyer or seller in each transaction. The individual negotiated agreements would determine the revenue or cost.

Business Analysis: The water management amendment provides flexibility for Metropolitan to balance SWP supply needs and costs by providing tools to transfer or exchange water with other PWAs. This flexibility allows for greater rate stability through efficient supply/demand management and encourages partnerships with other PWAs to most effectively manage SWP supplies.

Option #2

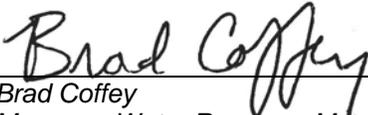
Do not adopt the CEQA determination and do not approve the State Water Project Contract Amendment.

Fiscal Impact: There are no fiscal impacts under Option #2.

Business Analysis: Metropolitan would continue to participate in the SWP under the existing contract provisions.

Staff Recommendation

Option # 1

	1/26/2021
_____ Brad Coffey Manager, Water Resource Management	Date

	1/28/2021
_____ Jeffrey Krontlinger General Manager	Date

Attachment 1 – Amendment No. 30 (The Water Management Amendment) to Water Supply Contract Between The State of California Department of Water Resources and The Metropolitan Water District of Southern California

Attachment 2 – Final Environmental Impact Report

Ref# wrm12677906

STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 30 (THE WATER MANAGEMENT AMENDMENT)
TO WATER SUPPLY CONTRACT
BETWEEN
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

THIS AMENDMENT to the Water Supply Contract is made this _____ day of _____, 20____ pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State," and The Metropolitan Water District of Southern California, herein referred to as the "District."

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RECITALS

- A. The State and the District entered into and subsequently amended a water supply contract (the “contract”), dated November 4, 1960, providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and
- B. The State and the District, in an effort to manage water supplies in a changing environment, explored non-structural solutions to provide greater flexibility in managing State Water Project (SWP) water supplies; and
- C. The State and the District, in an effort to support the achievement of the coequal goals for the Delta set forth in the Delta Reform Act, sought solutions to develop water supply management practices to enhance flexibility and reliability of SWP water supplies while the District is also demonstrating its commitment to expand its water supply portfolio by investing in local water supplies; and
- D. The State and the District, in response to the Governor’s Water Resiliency Portfolio, wish to maintain and diversify water supplies while protecting and enhancing natural systems without changing the way in which the SWP operates; and
- E. The State and the District sought to create a programmatic solution through transfers or exchanges of SWP water supplies that encourages regional approaches among water users sharing watersheds and strengthening partnerships with local water agencies, irrigation districts, and other stakeholders; and
- F. The State and the District, in an effort to comply with the Open and Transparent Water Data Platform Act (Assembly Bill 1755), sought means to create greater transparency in water transfers and exchanges; and
- G. The State, the District and representatives of certain other SWP Contractors have negotiated and agreed upon a document (dated May 20, 2019), the subject of which is “ Draft Agreement in Principle for the SWP Water Supply Contract Amendment for Water Management” (the “Agreement in Principle”); and
- H. The Agreement in Principle describes that the SWP Water Supply Contract Amendment for Water Management “supplements and clarifies terms of the SWP water supply contract that will provide greater water management regarding transfers and exchanges of SWP water within the SWP service area”; the principles agreed to achieve this without relying upon increased SWP diversions or changing the way in which the SWP operates, and are consistent with all applicable contract and regulatory requirements; and

- I. The State, the District and those Contractors intending to be subject to the contract amendments contemplated by the Agreement in Principle subsequently prepared an amendment to their respective Contracts to implement the provisions of the Agreement in Principle, and such amendment was named the “SWP Water Supply Contract Amendment for Water Management”; and
- J. The State and the District desire to implement continued service through the contract and under the terms and conditions of this “SWP Water Supply Contract Amendment for Water Management”;

NOW, THEREFORE, IT IS MUTUALLY AGREED that the following changes and additions are hereby made to the District's water supply contract with that State:

AMENDED CONTRACT TEXT

ARTICLE 1 IS AMENDED TO ADD THE FOLLOWING DEFINITIONS, PROVIDED THAT IF THIS WATER MANAGEMENT AMENDMENT TAKES EFFECT BEFORE THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT, THE ADDITIONS HEREIN SHALL CONTINUE IN EFFECT AFTER THE CONTRACT EXTENSION AMENDMENT TAKES EFFECT NOTWITHSTANDING THE CONTRACT EXTENSION AMENDMENT'S DELETION AND REPLACEMENT OF ARTICLE 1 IN ITS ENTIRETY:

1. Definitions

- (au) **"Article 56 Carryover Water"** shall mean water that the District elects to store under Article 56 in project surface conservation facilities for delivery in a subsequent year or years.

ARTICLES 21 and 56 ARE DELETED IN THEIR ENTIRETY AND REPLACED WITH THE FOLLOWING TEXT:

21. Interruptible Water Service

(a) Allocation of Interruptible Water

Each year from water sources available to the project, the State shall make available and allocate interruptible water to contractors in accordance with the procedure in Article 18(a). Allocations of interruptible water in any one year may not be carried over for delivery in a subsequent year, nor shall the delivery of interruptible water in any year impact the District's approved deliveries of Annual Table A Amount or the District's allocation of water for the next year. Deliveries of interruptible water in excess of the District's Annual Table A Amount may be made if the deliveries do not adversely affect the State's delivery of Annual Table A Amount to other contractors or adversely affect project operations. Any amounts of water owed to the District as of the date of this amendment pursuant to former Article 12(d), any contract provisions or letter agreements relating to wet weather water, and any Article 14(b) balances accumulated prior to 1995, are canceled. The State shall hereafter use its best efforts, in a manner that causes no adverse impacts upon other contractors or the project, to avoid adverse economic impacts due to the District's inability to take water during wet weather.

(b) Notice and Process for Obtaining Interruptible Water

The State shall periodically prepare and publish a notice to contractors describing the availability of interruptible water under this Article. To obtain a supply of interruptible water, including a supply from a transfer of interruptible water, the District shall execute a further agreement with the State. The State will timely process such requests for scheduling the delivery of the interruptible water.

(c) Rates

For any interruptible water delivered pursuant to this Article, the District shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were Table A Amount water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if interruptible water were not scheduled for or delivered to the District. Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.

(d) Transfers of Interruptible Water

- (1) Tulare Lake Basin Water Storage District, Empire West-Side Irrigation District, Oak Flat Water District, and County of Kings may transfer to other contractors a portion of interruptible water allocated to them under subdivision (a) when the State determines that interruptible water is available.
- (2) The State may approve the transfer of a portion of interruptible water allocated under subdivision (a) to contractors other than those listed in (d)(1) if the contractor acquiring the water can demonstrate a special need for the transfer of interruptible water.
- (3) The contractors participating in the transfer shall determine the cost compensation for the transfers of interruptible water.

The transfers of interruptible water shall be consistent with Articles 56(d) and 57.

56. Use and Storage of Project Water Outside of Service Area and Article 56 Carryover Water

(a) State Consent to Use of Project Water Outside of Service Area

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District storing Project Water in a groundwater storage program, project surface conservation facilities and in nonproject surface storage facilities located outside its service area for later use by the District within its service area and to the District transferring or exchanging Project Water outside its service area consistent with agreements executed under this contract.

(b) Groundwater Storage Programs

The District shall cooperate with other contractors in the development and establishment of groundwater storage programs. The District may elect to store Project Water in a groundwater storage program outside its service area for later use within its service area. There shall be no limit on the amount of Project Water the District can store outside its service area during any year in a then existing and operational groundwater storage program.

(1) Transfers of Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.

In accordance with applicable water rights law and the terms of this Article, the District may transfer any Annual Table A Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area to another contractor for use in that contractor's service area. These transfers must comply with the requirements of Articles 56(c)(4)(i)-(v), (6) and (7), and Article 57. The District will include these transfers in its preliminary water delivery schedule required in Article 12(a).

(2) Exchanges of any Annual Table A Amount stored in a groundwater storage program outside a contractor's service area.

In accordance with applicable water rights law and the terms of this Article, the District may exchange any Annual Table A

Amount stored on or after the effective date of the Water Management Amendment in a groundwater storage program outside its service area with another contractor for use in that contractor's service area. These exchanges must comply with the requirements in Article 56(c)(4)(i)-(v). The District shall include these exchanges in its preliminary water delivery schedule pursuant to Article 12(a).

(c) Article 56 Carryover Water and Transfers or Exchanges of Article 56 Carryover Water

- (1) In accordance with any applicable water rights laws, the District may elect to use Article 56 Carryover Water within its service area, or transfer or exchange Article 56 Carryover Water to another contractor for use in that contractor's service area in accordance with the provisions of subdivision (c)(4) of this Article. The District shall submit to the State a preliminary water delivery schedule on or before October 1 of each year pursuant to Article 12(a), the quantity of water it wishes to store as Article 56 Carryover Water in the next succeeding year, and the quantity of Article 56 Carryover Water it wishes to transfer or exchange with another contractor in the next succeeding year. The amount of Project Water the District can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the District's service area each year shall be limited to the lesser of the percent of the District's Annual Table A Amount shown in column 2 or the acre-feet shown in column 3 of the following table, depending on the State's final Table A water supply allocation percentage as shown in column 1. For the purpose of determining the amount of Project Water the District can store, the final water supply allocation percentage shown in column 1 of the table below shall apply to the District. However, there shall be no limit to storage in nonproject facilities in a year in which the State's final water supply allocation percentage is one hundred percent. These limits shall not apply to water stored pursuant to Articles 12(e) and 14(b).

1. Final Water Supply Allocation Percentage	2. Maximum Percentage of District's Annual Table A Amount That Can Be Stored	3. Maximum Acre-Feet That Can Be Stored
50% or less	25%	100,000
51%	26%	104,000
52%	27%	108,000
53%	28%	112,000
54%	29%	116,000
55%	30%	120,000
56%	31%	124,000
57%	32%	128,000
58%	33%	132,000
59%	34%	136,000
60%	35%	140,000
61%	36%	144,000
62%	37%	148,000
63%	38%	152,000
64%	39%	156,000
65%	40%	160,000
66%	41%	164,000
67%	42%	168,000
68%	43%	172,000
69%	44%	176,000
70%	45%	180,000
71%	46%	184,000
72%	47%	188,000
73%	48%	192,000
74%	49%	196,000
75% or more	50%	200,000

- (2) Storage capacity in project surface conservation facilities at any time in excess of that needed for project operations shall be made available to requesting contractors for storage of project and Nonproject Water. If such storage requests exceed the available storage capacity, the available capacity shall be allocated among contractors requesting storage in proportion to their Annual Table A Amounts for that year. The District may store water in excess of its allocated share of capacity as long as capacity is available for such storage.
- (3) If the State determines that a reallocation of excess storage capacity is needed as a result of project operations or because of the exercise of a contractor's storage right, the available capacity shall be reallocated among contractors requesting storage in proportion to their respective Annual

Table A Amounts for that year. If such reallocation results in the need to displace water from the storage balance for any contractor or noncontractor, the water to be displaced shall be displaced in the following order of priority:

First, water, if any, stored for noncontractors;

Second, water stored for a contractor that previously was in excess of that contractor's allocation of storage capacity; and

Third, water stored for a contractor that previously was within that contractor's allocated storage capacity.

The State shall determine whether water stored in a project surface water conservation facility is subject to displacement and give as much notice as feasible of a potential displacement. If the District transfers or exchanges Article 56 Carryover Water pursuant to this subdivision to another contractor for storage in such facility, the State shall recalculate the amount of water that is subject to potential displacement for both contractors participating in the transfer or exchange. The State's recalculation shall be made pursuant to subdivision (4) of this Article.

(4) Transfers or Exchanges of Article 56 Carryover Water

The District may transfer or exchange its Article 56 Carryover Water as provided in this subdivision under a transfer or an exchange agreement with another contractor. Water stored pursuant to Articles 12(e) and 14(b) and Nonproject Water shall not be transferred or exchanged. Transfers or exchanges of Article 56 Carryover Water under this subdivision shall comply with subdivision (f) of this Article and Article 57 as applicable, which shall constitute the exclusive means to transfer or exchange Article 56 Carryover Water.

On or around January 15 of each year, the State shall determine the maximum amount of Article 56 Carryover Water as of January 1 that will be available for transfers or exchanges during that year. The State's determination shall be consistent with subdivisions (c)(1) and (c)(2) of this Article.

The State shall timely process requests for transfers or exchanges of Article 56 Carryover Water by participating contractors. After execution of the transfer or exchange agreement between the State and the contractors participating in the transfer or exchange, the State shall recalculate each contractor's storage amounts for the contractors participating in the transfer or exchange. The State's recalculation shall result in an increase by an amount of water within the storage amounts for the contractor receiving the water and a decrease by the same amount of water for the contractor transferring or exchanging water. The State's recalculation shall be based on the criteria set forth in the State's transfer or exchange agreement with the participating contractors. The State's calculations shall also apply when a contractor uses Article 56 Carryover Water to complete an exchange.

Transfers and exchanges of Article 56 Carryover Water shall meet all of the following criteria:

- (i) Transfers or exchanges of Article 56 Carryover Water are limited to a single-year. Project Water returned as part of an exchange under subdivision (c)(4) may be returned over multiple years.
- (ii) The District may transfer or exchange an amount up to fifty percent (50%) of its Article 56 Carryover Water to another contractor for use in that contractor's service area.
- (iii) Subject to approval of the State, the District may transfer or exchange an amount greater than 50% of its Article 56 Carryover Water to another contractor for use in that contractor's service area. The District seeking to transfer or exchange greater than 50% of its Article 56 Carryover Water shall submit a written request to the State for approval. The District making such a request shall demonstrate to the State how it will continue to meet its critical water needs in the current year of the transfer or exchange and in the following year.

- (iv) The contractor receiving the water transferred or exchanged under subdivisions (4)(i) or (ii) above shall confirm in writing to the State its need for the water that year and shall take delivery of the water transferred or exchanged in the same year.
 - (v) Subject to the approval of the State, the District may seek an exception to the requirements of subdivisions (4)(i), (ii), and (iii) above. The District seeking an exception shall submit a written request to the State demonstrating to the State the need for 1) using project surface conservation facilities as the transfer or exchange point for Article 56 Carryover Water if the receiving contractor cannot take delivery of the transfer or exchange water in that same year, 2) using project surface conservation facilities for the transfer or exchange of one contractor's Article 56 Carryover Water to another contractor to reduce the risk of the water being displaced, or 3) for some other need.
- (5) The restrictions on storage of Project Water outside the District's service area provided for in this subdivision (c), shall not apply to storage in any project off-stream storage facilities constructed south of the Delta after the date of the Monterey Amendment.
- (6) For any Project Water stored outside its service area pursuant to subdivisions (b) and (c), the District shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the District pays for the transportation of Annual Table A Amount to the reach of the project transportation facility from which the water is delivered to storage. If Table A Amount is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the District shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of

return to the aqueduct to the turn-out in the District's service area. In addition, the District shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the District's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

- (7) If the District elects to store Project Water in a nonproject facility within the service area of another contractor it shall execute a contract with that other contractor prior to storing such water which shall be in conformity with this Article and will include at least provisions concerning the point of delivery and the time and method for transporting such water.

(d) Non-Permanent Water Transfers of Project Water

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District transferring Project Water outside its service area in accordance with the following:

- (1) The participating contractors shall determine the duration and compensation for all water transfers, including single-year transfers, Transfer Packages and multi-year transfers.
- (2) The duration of a multi-year transfer shall be determined by the participating contractors to the transfer, but the term of the transfer agreement shall not extend beyond the term of the Contract with the earliest term.
- (3) A Transfer Package shall be comprised of two or more water transfer agreements between the same contractors. The State shall consider each proposed water transfer within the package at the same time and shall apply the transfer criteria pursuant to Article 57 in the review and approval of each transfer. The State shall not consider a Transfer Package as an exchange.

(e) Continuance of Article 12(e) Carry-over Provisions

The provisions of this Article are in addition to the provisions of Article 12(e), and nothing in this Article shall be construed to modify or amend the provisions of Article 12(e). Any contractor electing to transfer or exchange Project Water during any year in accordance with the provisions of subdivision (c) of this Article, shall not be precluded from using the provisions of Article 12(e) for carrying over water from the last three months of that year into the first three months of the succeeding year.

(f) Bona Fide Exchanges Permitted

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District exchanging Project Water outside its service area consistent with this Article. Nothing in this Article shall prevent the District from entering into bona fide exchanges of Project Water for use outside the District's service area with other parties for Project Water or Nonproject Water if the State consents to the use of the Project Water outside the District's service area. Also, nothing in this Article shall prevent the District from continuing those exchange or sale arrangements entered into prior to September 1, 1995. Nothing in this Article shall prevent the District from continuing those exchange or sale arrangements entered into prior to the effective date of this Amendment which had previously received any required State approvals. The State recognizes that the hydrology in any given year is an important factor in exchanges. A "bona fide exchange" shall mean an exchange of water involving the District and another party where the primary consideration for one party furnishing water to another party is the return of a substantially similar amount of water, after giving due consideration to the hydrology, the length of time during which the water will be returned, and reasonable payment for costs incurred. In addition, the State shall consider reasonable deductions based on expected storage or transportation losses that may be made from water delivered. The State may also consider any other nonfinancial conditions of the return. A "bona fide exchange" shall not involve a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether a proposed exchange of water constitutes a "bona fide exchange" within the meaning of this paragraph and not a disguised sale.

Exchanges of Project Water

Exchanges of Project Water shall be consistent with Article 57. In addition, the State shall apply the following criteria to its review of each exchange of Project Water as set forth below:

(1) **Exchange Ratio**

Exchange ratio shall mean the amount of water delivered from a contractor's project supply in a year to another contractor compared to the amount of water returned to the first contractor in a subsequent year by the other contractor. All exchanges shall be subject to the applicable exchange ratio in this Article as determined by the allocation of available supply for the Annual Table A Amount at the time the exchange transaction between the contractors is executed.

- (a) For allocations greater than or equal to 50%, the exchange ratio shall be no greater than 2 to 1.
- (b) For allocations greater than 25% and less than 50%, the exchange ratio shall be no greater than 3 to 1.
- (c) For allocations greater than 15% and less than or equal to 25%, the exchange ratio shall be no greater than 4 to 1.
- (d) For allocations less than or equal to 15%, the exchange ratio shall be no greater than 5 to 1.

(2) **Cost Compensation**

The State shall determine the maximum cost compensation calculation using the following formula:

The numerator shall be the exchanging contractor's conservation minimum and capital and transportation minimum and capital charges, including capital surcharges. DWR will set the denominator using the State Water Project allocation which incorporates the May 1 monthly Bulletin 120 runoff forecast.

If the District submits a request for approval of an exchange prior to May 1, the State shall provide timely approval with the obligation of the contractors to meet the requirement of the maximum compensation. If the maximum compensation is exceeded because the agreement between the

contractors is executed prior to the State Water Project allocation as defined in (c)(2) above, the contractors will revisit the agreement between the two contractors and make any necessary adjustments to the compensation. If the contractors make any adjustments to the compensation, they shall notify the State.

(3) Period During Which the Water May Be Returned:

The period for the water to be returned shall not be greater than 10 years and shall not go beyond the expiration date of this Contract. If the return of the exchange water cannot be completed within 10 years, the State may approve a request for an extension of time.

(g) Other Transfers

Nothing in this Article shall modify or amend the provisions of Articles 15(a), 18(a) or Article 41, except as expressly provided for in subdivisions (c) and (d) of this Article and in subdivision (d) of Article 21.

NEW CONTRACT ARTICLES

ARTICLE 57 IS ADDED TO THE CONTRACT AS A NEW ARTICLE AS FOLLOWS:

57. Provisions Applicable to Both Transfers and Exchanges of Project Water

- (a) Nothing in this Article modifies or limits Article 18 (a).
- (b) Transfers and exchanges shall not have the protection of Article 14(b).
- (c) The District may be both a buyer and seller in the same year and enter into multiple transfers and exchanges within the same year.
- (d) Subject to the State's review and approval, all transfers and exchanges shall satisfy the following criteria:
 - (1) Transfers and exchanges shall comply with all applicable laws and regulations.
 - (2) Transfers and exchanges shall not impact the financial integrity of the State Water Project, Transfers 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 charge.
 - (3) Transfers and exchanges shall be transparent, including compliance with subdivisions (g) and (h) of this Article.
 - (4) Transfers and exchanges shall not harm other contractors not participating in the transfer or exchange.
 - (5) Transfers and exchanges shall not create significant adverse impacts to the service area of each contractor participating in the transfer or exchange.
 - (6) Transfers and exchanges shall not adversely impact State Water Project operations.
- (e) The District may petition the State and the State shall have discretion to approve an exception to the criteria set forth in subdivision (d) in the following cases:
 - (1) When a transfer or an exchange does not meet the criteria, but the District has determined that there is a compelling need to proceed with the transfer or exchange.

- (2) When the District has received water in a transfer or an exchange and cannot take all of the water identified in the transaction in the same year, the District may request to store its water consistent with Article 56(c), including in San Luis Reservoir.
- (f) The State will timely process such requests for scheduling the delivery of the transferred or exchanged water. Contractors participating in a transfer or an exchange shall submit the request in a timely manner.
- (g) The District shall, for each transfer or exchange it participates in, confirm to the State in a resolution or other appropriate document approving the transfer or exchange, including use of Article 56(c) stored water, that:
- (1) The District has complied with all applicable laws.
 - (2) The District has provided any required notices to public agencies and the public.
 - (3) The District has provided the relevant terms to all contractors and to the Water Transfers Committee of the State Water Contractors Association.
 - (4) The District is informed and believes that the transfer or exchange will not harm other contractors.
 - (5) The District is informed and believes that the transfer or exchange will not adversely impact State Water Project operations.
 - (6) The District is informed and believes that the transfer or exchange will not affect its ability to make all payments, including payments when due under its Contract for its share of the financing costs of the State's Central Valley Project Revenue Bonds.
 - (7) The District has considered the potential impacts of the transfer or exchange within its service area.
- (h) **Dispute Resolution Process Prior to Executing an Agreement**

The State and the contractors shall comply with the following process to resolve disputes if a contractor that is not participating in the transfer or exchange claims that the proposed transfer and/or exchange has a significant adverse impact.

- (1) Any claim to a significant adverse impact may only be made after the District has submitted the relevant terms pursuant to Article

57(g)(3) and before the State approves a transfer or an exchange agreement.

- (2) In the event that any dispute cannot be resolved among the contractors, the State will convene a group including the Department's Chief of the State Water Project Analysis Office, the Department's Chief Counsel and the Department's Chief of the Division of Operations or their designees and the contractors involved. The contractor's representatives shall be chosen by each contractor. Any contractor claiming a significant adverse impact must submit written documentation to support this claim and identify a proposed solution. This documentation must be provided 2 weeks in advance of a meeting of the group that includes the representatives identified in this paragraph.
- (3) If this group cannot resolve the dispute, the issue will be taken to the Director of the Department of Water Resources and that decision will be final.

WATER MANAGEMENT AMENDMENT IMPLEMENTING AND ADMINISTRATIVE PROVISIONS

IT IS FURTHER MUTUALLY AGREED that the following provisions, which shall not be part of the Water Supply Contract text, shall be a part of this Amendment and be binding on the Parties.

1. EFFECTIVE DATE OF WATER MANAGEMENT AMENDMENT

- (a) The Water Management Amendment shall take effect (“Water Management Amendment effective date”) on the last day of the calendar month in which the State and 24 or more contractors have executed the Water Management Amendment, unless a final judgment by a court of competent jurisdiction has been entered that the Water Management Amendment is invalid or unenforceable or a final order has been entered that enjoins the implementation of the Water Management Amendment.
- (b) If any part of the Water Management Amendment of any contractor is determined by a court of competent jurisdiction in a final judgment or order to be invalid or unenforceable, the Water Management Amendments of all contractors shall be of no force and effect unless the State and 24 or more contractors agree any the remaining provisions of the contract may remain in full force and effect.
- (c) If 24 or more contractors have not executed the Water Management Amendment by February 28, 2021 then within 30 days the State, after consultation with the contractors that have executed the amendment, shall make a determination whether to waive the requirement of subdivision (a) of this effective date provision. The State shall promptly notify all contractors of the State’s determination. If the State determines, pursuant to this Article to allow the Water Management Amendment to take effect, it shall take effect only as to those consenting contractors.
- (d) If any contractor has not executed the Water Management Amendment within sixty (60) days after its effective date pursuant to subdivisions (a) through (c) of this effective date provision, this Amendment shall not take effect as to such contractor unless the contractor and the State, in its discretion, thereafter execute such contractor’s Water Management Amendment, in which case the Water Management Amendment effective date for purposes of that contractor’s Amendment shall be as agreed upon by the State and contractor, and shall replace the effective date identified in subdivision (a) for that contractor.

2. ADMINISTRATION OF CONTRACTS WITHOUT WATER MANAGEMENT AMENDMENT

The State shall administer the water supply contracts of any contractors that do not execute the Water Management Amendment in a manner that is consistent with the contractual rights of such contractors. These contractors' rights are not anticipated to be affected adversely or benefited by the Water Management Amendments.

3. OTHER CONTRACT PROVISIONS

Except as amended by this Amendment, all provisions of the contract shall be and remain the same and in full force and effect, provided, however, that any reference to the definition of a term in Article 1, shall be deemed to be a reference to the definition of that term, notwithstanding that the definition has been re-lettered within Article 1. In preparing a consolidated contract, the parties agree to update all such references to reflect the definitions' lettering within Article 1.

4. DocuSign

The Parties agree to accept electronic signatures generated using DocuSign as original signatures.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date first above written.

Approved as to Legal Form
and Sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
Department of Water Resources

Director

Date

Approved as to Form:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

General Counsel
The Metropolitan Water District of
Southern California

General Manager

Date



*THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA*
700 N. Alameda Street, Los Angeles, California 90012

2/9/2021 Board Meeting

Board Letter # 7-4

Review and consider the Department of Water Resources' certified Final Environmental Impact Report and take related CEQA actions and approve the State Water Project Contract Amendment for Water Management

Attachment 2 – EIR Documentation

The CEQA documentation attachments are not included

You may review this documents by clicking on this link:

[BOD 7-4 B-L Att. No. 2](#)

OR

By contacting Metropolitan's Board Executive Secretary at: (213) 217-6291
or via email at DL-BoardSupportTeam@mwdh2o.com