

SANTA ANA RIVER - MILL CREEK COOPERATIVE WATER PROJECT
MINUTES OF THE 136th MEETING OF THE MANAGEMENT COMMITTEE

June 21, 2023

The 136th Meeting of the Management Committee was called to order by acting Chairperson David Cosgrove at 2:07 p.m. via Zoom and in-person at the Conservation District.

Attendees:

Betsy Miller	San Bernardino Valley WCD
David B. Knight	Lugonia Water Company
John Harris	City of Redlands
Athena Laroche	San Bernardino Valley WCD
Katelyn Scholte	San Bernardino Valley WCD
Dave Cosgrove	San Bernardino Valley WCD
Robert Stewart	San Bernardino Valley WCD
Wen Huang	San Bernardino Valley MWD
Mike Plinski	San Bernardino Valley MWD
Sam Fuller	Bear Valley Mutual Water Company
Charlotte Van Eck	Bear Valley Mutual Water Company
Laine Carlson	Water Systems Consulting
Jennifer Ares	Yucaipa Valley Water District
Rocky Welborn	East Valley Water District

APPROVAL OF MINUTES OF 135rd MEETING ON SEPTEMBER 7, 2022

It was moved by Betsy Miller and seconded by Dave Knight to approve the minutes of the 135th Meeting held on September 7, 2022. The motion carried with those present voting in the affirmative.

AGREEMENT UPDATE

Ms. Carlson reviewed the PowerPoint presentation. She provided a recap of the process that began in October 2019. There have been seven workshops conducted and nine drafts of agreement revisions since that time. In September of 2022, the parties agreed to complete legal review on the final agreement draft. During the review process, two parties requested a withdrawal from the agreement. The options for discussion today are: 1) Approve withdrawal requests and continue agreement update with remaining parties; 2) Continue agreement update with all original parties; 3) Cease update efforts and leave the original agreement in place with all or remaining parties; or 4) Rescind original agreement.

Ms. Carlson reviewed the key principles of the Final Draft Agreement:

- The Exchange Plan has been simplified to provide a framework for how exchanges would work/benefit the parties with the intent to streamline future exchanges without restricting actions by the parties.
- The terms of individual exchanges will be agreed upon among the parties involved in an exchange via separate agreement and are not dictated by the Exchange Plan.
- Parties' planning to conduct an exchange will notify the other parties via email in the interest of maintaining communication and collaboration.
- Many participants expressed the position the Management Committee and Project Manager roles are no longer needed under the simplified agreement structure, so they have been eliminated.
- Dispute resolution would be specified in the separate agreements or handled among affected parties; the Exchange Plan does not provide a forum or process for dispute resolution.
- Continued preparation of Daily Flow Reports to document flows has value to the parties, with costs shared equally among the participating parties.

Key concerns raised on final draft agreement markup:

- Inclusion of recycled water as a potential exchange source – clarify language on limitations of the use of recycled water or delete recycled water as a source.
- Removal of condemnation prohibition – a request was made to retain the condemnation prohibition from the original agreement.
- Withdrawal from agreement – clarify that parties must provide advance written notice to other parties.
- General concern re the feasibility of reconciling this revised agreement with all the other regional water management agreements currently in place between various parties – specific concerns and potential resolutions not yet identified.

Mr. Cosgrove reviewed the condemnation prohibition, stating that it is effectively an agreement not to exercise eminent domain on other member parties. He noted that there is a question as to the enforceability of that clause, based on *City of Glendale vs. Superior Court*, 18 Cal.App.4th 1768 and cases following it, to the effect that eminent domain is an inherent power of the government and cannot be contracted away.

Mr. Cosgrove also summarized the potential uncertainties from the status quo, and retaining the original agreement:

- Continued uncertainty on the applicability of all or portions the agreement
- Agreement structure is not currently being observed as originally conceived
- Agreement specifies that the MC shall hold regular meetings; MC has been inactive
- Original agreement creates an encumbrance on title, imposing a lien and covenant that runs with the member parties' water rights
- Impairment on water rights transfers
- "No condemnation" clause scope and enforceability

Ms. Carlson reviewed the original agreement management structure compared to the current draft amended agreement.

AGREEMENT WITHDRAWAL REQUESTS

Ms. Carlson noted that Section 13 of the 1977 Santa Ana River-Mill Creek (Redlands) Cooperative Water Project Agreement states: “No party shall be entitled to withdraw from this Agreement without the written consent of all other parties.” She indicated that two parties requested to withdraw from this agreement: East Valley Water District and the City of Redlands. Section 18 of the original agreement states: “This agreement may be amended at any time by written agreement signed by all of the Parties.” Ms. Carlson said that the update process will cease with the original agreement remaining in place unless all parties agree on a revision.

Mr. Harris said that he feels that this is an obsolete agreement. He stated that the agreement has not been executed the way it was envisioned. The City of Redlands does not oppose the substance of the agreement, but also does not believe it is necessary. He said that he questions the validity of the need for all parties to agree before a party can withdrawal from the agreement. He asked the remaining parties why they would want parties to remain if they do not want to. Mr. Welborn of East Valley Water District (EVWD) echoed Mr. Harris’s concerns. He said that the water exchange notification process can be worked out absent a formal agreement. Ms. Miller asked for feedback from those wishing for the agreement to remain. Mr. Huang with San Bernardino Valley (SBV) asked how the withdrawal from Redlands and EVWD affects water rights, and how much water is available. Mr. Fuller said that he was involved with the Exchange Plan when it was operational and detailed the ownership of flows within Mill Creek. He said that on Santa Ana River the prior rights companies are owners of the first 88 CFS flowing in the river, and if Southern California Edison (SCE) was functional, the water could be distributed to many agencies through existing infrastructure. He provided historical background on the initial need for the Exchange Plan. Mr. Fuller said that he believes that the agreement offers benefits to local water supply for all who want to participate. He noted a theoretical example of loss of State Water Project (SWP) flows following an earthquake and described the application of the Exchange Plan to support emergency use and maintain water supplies. Mr. Harris said that agencies can work directly with one another to plan and execute agreements outside of the Exchange Plan. Mr. Huang said that many of the parties are part of a consortium discussing the SCE divestiture and suggested that, in the absence of time constraints, the parties defer making their decision until additional information is available on the divestiture. Ms. Carlson asked if the final draft version of the agreement could accomplish the goals Mr. Huang referenced. Mr. Huang spoke in support of the amended agreement.

Mr. Cosgrove said that there is little risk of delaying approval of the amended agreement; however, there is a competing interest due to the parties presently asking to withdraw. Mr. Cosgrove asked if EVWD and Redlands want their withdrawal requests approved first. Mr. Harris said that the Redlands request was submitted six months ago, and believes that the twelve-month waiting period is no longer in place under the amended agreement. Ms. Carlson highlighted the revision to the withdrawal clause in the proposed amended agreement, noting that the language requiring approval of all parties for withdrawal has been removed.

It was moved by John Harris and seconded by Rocky Welborn to approve the City of Redlands withdrawal request to withdrawal from the 1977 Santa Ana River-Mill Creek Cooperative Water Project Agreement. The request was denied for lack of unanimous consent, by the following vote:

Lugonia Water Company: No
Bear Valley Mutual Water Company: Abstain
San Bernardino Valley Municipal Water District: Yes
Yucaipa Valley Water District: Abstain
San Bernardino Valley Water Conservation District: Yes
City of Redlands: Yes
Redlands Water Company: Absent
East Valley Water District: Yes
North Fork Water Company: Yes
Crafton Water Company: Absent

Mr. Fuller said that he believes that the withdrawal request must be made by written consent from all parties' Boards. Mr. Cosgrove noted his understanding that the votes of the parties' representatives at a Management Committee meeting such as this consistent with the original agreement, but that the minutes would reflect any procedural objection to the manner in which the vote was taken, and if a party so desired, it could follow up with written detail on the grounds for objection, and the Management Committee could then decide how further to proceed. .

It was moved by Rocky Welborn and seconded by John harris to approve the East Valley Water District withdrawal request to withdrawal from the 1977 Santa Ana River-Mill Creek Cooperative Water Project Agreement. The request is denied for lack of unanimous consent, by the following vote: .

Lugonia Water Company: Abstain
Bear Valley Mutual Water Company: No
San Bernardino Valley Municipal Water District: Yes
Yucaipa Valley Water District: Abstain
San Bernardino Valley Water Conservation District: Yes
City of Redlands: Yes
Redlands Water Company: Absent
East Valley Water District: Yes
North Fork Water Company: Yes
Crafton Water Company: Absent

Mr. Cosgrove asked if all parties wished to continue the agreement update process, rescind the original agreement, or place actions on hold until additional information is received on the SCE divestiture. Mr. Harris expressed his frustration and asked what was to be accomplished by continuing the meeting. Mr. Cosgrove said that the Conservation District is seeking direction on whether to continue with the update process, noting that the Water Systems Consulting contract is completed, and additional funding will be needed if the process is to continue. Ms. Ares

agreed that the withdrawal process is frustrating. Discussion ensued on the agreement. Mr. Harris said that Redlands would support option three to continue the agreement update if there was a clear path to leave the agreement upon adoption of the amendment. Ms. Miller spoke in support of option three in order to provide clarity and closure, noting that the Conservation District was trying to accommodate the desires of the group, rather than advocate for a specific position on what to do with the original agreement. She said that the Conservation District supports cooperation, mutual aid, and interagency benefits. Ms. Miller said that the Conservation District will support the agreement update process if all parties are interested. The Conservation District funded WSC's work for this meeting because the funds collected to support this work have been expended.

Mr. Huang asked Mr. Cosgrove to confirm whether a vote must be unanimous and if Board consent is required, noting that additional meetings may not be useful if all parties are not in attendance. Mr. Cosgrove said that the Conservation District has dedicated our efforts to incorporating comments into the draft the agreement and is not invested in a particular outcome. He noted the original agreement was silent on procedures for handling the request of a withdrawing party, but this meeting is one of the Management Committee, and it seemed reasonable that this was the forum for such a vote. He requested that in the event a party believed a different procedure was required, it communicate this through its legal representatives, and the Management Committee could reconvene to consider the validity of the processing of the withdrawal requests to date, and to be sure all have adequate legal opportunity to review this process. Ms. Miller asked if the action taken today stands. Mr. Cosgrove indicated that it does unless challenged. He said that upon reconvening the group, the first order of business could be to review any procedural objections to how the withdrawal requests were handled. The second agenda item at the next meeting could be whether to continue with the update process, and – if so – decide on a funding mechanism. Ms. Miller said that we should reconvene after there is additional information available from the consortium. San Bernardino Valley estimated it will take three months. Ms. Carlson asked Mutual for feedback on the agreement update. Mutual said that there is room for improvement on the amendment and deferred to their legal team for specific comments. There was no objection to moving forward in this manner. The group agreed to a tentatively scheduled meeting in three months' time.

DAILY FLOW REPORT

Ms. Carlson said that current costs of the preparation of the Daily Flow Report (DFR) are estimated at \$40,000 annually. It was noted that previously San Bernardino Valley was paying this cost. There has been discussion on whether the DFR is still needed, and how it will be funded in the future. Ms. Miller said that the cost share to keep the DFR in place is estimated at \$5,000 per agency for the remaining parties to the agreement; as inflation goes up, it may increase slightly. She asked for feedback from parties. Mr. Huang asked how SBV conveys data to the Conservation District noting that they are in the process of using new data collection software. Ms. Scholte said that the Conservation District's access to SBV's data has decreased with the implementation of the new SCADA system. She said that the Parshall Flume data was not consistent for the past year and a half with manually collected field data. Ms. Scholte noted that the USGS gauges have experienced similar issues. The data collected using various digital methods do not include all reading locations. Mr. Huang asked if there is any sensitive data. Ms.

Scholte said that the DFR is currently emailed to all parties requesting the data and posted on the District's website. Mr. Cosgrove said that the cost is primarily for field staff time. Mr. Plinski asked if the data could be digitized to minimize long-term costs. Ms. Scholte said that equipment could be installed to automate readings but there are concerns with the remoteness of certain areas and manual data collection is used as a cross check for the automated, digital systems. Ms. Carlson asked if EVWD is still interested in keeping the DFR in place. Mr. Welborn spoke in the affirmative. Ms. Scholte said that this data is used to calculate the credit for EVWD and Redlands under the Groundwater Council. Ms. Miller asked the parties for feedback on an option where the Conservation District would continue to bill for the DFR sites that are not required for the Conservation District's operation, or if it should stop data collection. Mr. Fuller reviewed the data collection points required under the judgment. Ms. Scholte said that the data points not covered under the judgment are primarily on Mill Creek and at additional delivery points.

The following vote occurred related to keeping the DFR and all those parties voting yes agreed to the indexed Exchange Plan MC Minutes cost share of \$4,500 annually.

Lugonia Water Company: Abstain
Bear Valley Mutual Water Company: Yes
San Bernardino Valley Municipal Water District: Yes
Yucaipa Valley Water District: Yes
San Bernardino Valley Water Conservation District: Yes
City of Redlands: Absent
Redlands Water Company: Yes (Sam Fuller voted on their behalf and will report back to their Board)
East Valley Water District: Yes
North Fork Water Company: Yes
Crafton Water Company: Absent

NEXT STEPS

Ms. Miller will send out a doodle poll with a meeting to occur tentatively in three months.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:50 p.m.

Respectfully submitted,


David Cosgrove, Acting Chairperson