

SANTA ANA RIVER - MILL CREEK COOPERATIVE WATER PROJECT  
MINUTES OF THE 134<sup>th</sup> MEETING OF THE MANAGEMENT COMMITTEE

June 29, 2022

The 134<sup>th</sup> Meeting of the Management Committee was called to order by Chairperson George Hanson at 10:06 a.m. via Zoom and in-person at the Conservation District.

Members Present

Betsy Miller	San Bernardino Valley WCD
George Hanson	Bear Valley Mutual Water Company
David B. Knight	Lugonia Water Company
John Harris	City of Redlands

Guests

Daniel Cozad	San Bernardino Valley WCD
Athena Laroche	San Bernardino Valley WCD
Katelyn Scholte	San Bernardino Valley WCD
Dave Cosgrove	San Bernardino Valley WCD
Jazmin Serrato	San Bernardino Valley WCD
Robert Stewart	San Bernardino Valley WCD
Wen Huang	San Bernardino Valley MWD
Bob Tincher	San Bernardino Valley MWD
T. Milford Harrison	San Bernardino Valley MWD
Sam Fuller	Bear Valley Mutual Water Company
Robert Martin	Bear Valley Mutual Water Company
Jeffery Szytel	Water Systems Consulting
Laine Carlson	Water Systems Consulting
Joe Zoba	Yucaipa Valley Water District
Madeline Blua	Yucaipa Valley Water District
Jennifer Ares	Yucaipa Valley Water District

APPROVAL OF MINUTES OF 133<sup>rd</sup> MEETING ON SEPTEMBER 23, 2021

**It was moved by Betsy Miller and seconded by Dave Knight to approve the minutes of the 133<sup>rd</sup> Meeting held on September 23, 2021. The motion carried with those present voting in the affirmative.**

EXCHANGE PLAN UPDATE/EXPANSION-WSC

Mr. Harris asked for additional information that supports why this agreement is necessary, and expressed his opinion stating that this agreement seems like a duplication of efforts. He asked if

the Groundwater Council (GC) or Basin Technical Advisory Commission (BTAC) would be a better platform to discuss exchanges, issues and grievances. Mr. Cozad and Mr. Tinchler provided the history of the agreement, and brief discussion ensued.

Mr. Cosgrove indicated that through various discussions at previous workshops it was the consensus of the working group that there was some viability for this agreement, and that the agreement be established as more of a Memorandum of Understanding (MOU). Mr. Cosgrove explained he took the highly structured original agreement, and based on feedback from the working group, drafted an Amendment to the agreement that was structured to be less of a pooled resource management agreement, and more of an administrative (record keeping) role for the Management Committee ("Committee") and the Conservation District as the Project Manager.

Mr. Cosgrove elaborated that the amended redrafted agreement would allow for the Committee to be a forum where any grievances related to exchanges could be addressed among entities. He explained his reading of the original Exchange Plan Agreement seemed to establish a "water rights pooling" arrangement, with a centralized authority, the Management Committee, overseeing member exchanges. He also noted that recent discussions seemed to favor a more decentralized structure, with parties effectively in charge of their own exchanges, and any centralized organization serving primarily an accounting function. The member group discussed that the Daily Flow Report (DFR) remains valuable and would like for this reporting to continue. The DFR is currently completed by Conservation District field staff and is funded by San Bernardino Valley MWD, at a cost of \$30,000 annually.

Mr. Harris asked what the repercussions would be for a Committee member that declines to sign the agreement. Mr. Cosgrove indicated that he does not believe there would be any adverse effect and that the agreement would remain in effect with those members that opted to sign it. Mr. Harris said that the current draft agreement seems to be a broad MOU and he is struggling to see the purpose of the agreement. Mr. Cozad observed that we can choose to take action to terminate the old agreement, or we can take action to modify the agreement. The initial choice of the Committee was to amend the original agreement.

Mr. Tinchler summarized the Committee's previous discussions. He spoke on the benefit of having a framework structure agreement put into place that basically serves as a template for member agencies to utilize for exchanges. He indicated that the majority of the Committee had questions on the continuing viability of a project manager due to the seemingly restrictive nature of the previous construct under the original Exchange Plan Agreement. Mr. Tinchler indicated that the first step was agreeing that exchanges are beneficial and that we agree to perform exchanges when it is warranted. He said that the next step was the amended agreement that lines out what each party to an exchange receives.

Mr. Cosgrove reviewed potential issues that could arise from not having an agreement in place including uneven exchanges, exchanges that failed to achieve maximum beneficial uses, deferred credits and accounting for same, etc. Another potential issue that may arise is that if an entity does not maintain their facilities that are vital to other entities' operations in order for them to

receive water, what procedural avenues would be available for rectifying this situation. Mr. Cosgrove indicated that the GC may be an alternative to serve as this platform, but that has to be discussed with the GC directly.

Laine Carlson, with Water Systems Consulting (WSC), presented a PowerPoint overview of Workshop 4. She provided the summary of progress to date and noted that the Committee is currently on the fifth markup of the agreement based on feedback from the past four Committee workshops held. The original agreement Exchange Plan management structure included: Exchange Plan Agreement, Management Committee, Rules and Regulations, Project Manager, Deliveries & Exchanges, Parties' Local & Import Water, Delivery Request, Designated Parties' Facilities and Designated New Facilities. The Proposed Exchange Plan Management Structure includes: Exchange Plan Agreement, Separate Part Agreements, Deliveries & Exchanges Among Parties, Specific Water Supplies, Time and Place of Deliveries, Specific Facilities, Compensation, Project Manager, Notices DFR Data Disputes and Management Committee. In the proposed agreement the project manager would record deliveries and exchanges among parties, continue to prepare DFR and address data disputes and notify the Committee of these. Throughout discussions here today, it seems that we need to identify if a Committee is desired.

Mr. Cosgrove suggested that the GC or BTAC could be a forum to discuss disputes, and the Committee could possibly remain specifically for exchanges. Mr. Cozad said that BTAC does not have any governance currently to serve as this type of forum and the GC does have governance but not all of the entities are represented. The working group represents all of the current surface water rights holders and operators involved. The GC will need to ask the parties that are not currently represented if they want to be added to the GC. Mr. Cozad said that it would be beneficial to have a forum for dispute resolution to be handled. Discussion ensued.

Ms. Carlson asked for additional feedback from members in the room and on Zoom on either keeping the Committee or utilizing the other forums. Mr. Tinchler spoke against the Committee having any authoritative role but was supportive of it being more of an informational role if it were to remain. Mr. Cosgrove indicated that it would be beneficial to terminate the original agreement, that terminates potential legal confusion from the original Exchange Plan Agreement vestiges, if the working group is going to move forward with dissolving the Committee. Mr. Tinchler reviewed the history of the power agreements and indicated that three levels are no longer done so he does not believe that we need it. Ms. Miller stated that there is a reimbursement component related to the DFR, covered under the Exchange Plan. The District is currently reimbursed a flat rate which does not fully reimburse the District for the costs it incurs relative to the preparation of the DFR. Mr. Cozad said that some of the locations the Conservation District monitors included in the DFR are not related to our operations; there are other potential options to cover these costs outside of the Exchange Plan.

Discussion ensued on whether or not to keep the project manager role. Mr. Tinchler said that there is value in having an agreement that is supportive of exchanges. Ms. Carlson said that she has utilized the DFR for other agencies she has worked with. It was the consensus of the working group that the DFR remain in place due to its usefulness. Ms. Miller stated that there could be possible backlash towards the GC for inserting themselves in a dispute that they are not

a party to that cannot be resolved. Ms. Carlson said that it is possible to keep the agreement and its intent of the Exchange Plan without having any additional roles. Mr. Cozad said that also as part of the project manager role, the Conservation District moves water for member agencies.

Ms. Miller asked if exchange information was publicly available. Mr. Cosgrove said that it could be made available through a public records request. He said that as a water rights holder an entity may want information on exchanges that occur, and that is where the Committee could be useful. Mr. Cozad said that the notification component served as an extra layer of transparency. Mr. Tincher suggested that BTAC serve as the notifying agency of exchanges. He said that each entity tracks their own exchanges and that a report on those exchanges can be requested at any time.

After lengthy discussion, it was the consensus of the working group to disband the Committee and the project manager role, and explore the possibility of other, already existing cooperative groups serve as a platform for disputes and reporting. Mr. Cosgrove and Ms. Carlson will collaborate to make the revisions to the agreement that will make it more of an MOU and a policy statement, and will eliminate the Committee and project manager. There will need to be discussions with BTAC and the GC to see if the responsibilities previously performed by the Committee can be assumed by them. Mr. Fuller said that language from the Emergency Response Network of the Inland Empire (ERNIE) can be used as well to draft agreement amongst members. Mr. Zoba spoke in support of having a base form of agreement on exchanges. He stated that having predetermined rules are useful in setting a baseline for how we would coordinate among agencies.

#### NEXT STEPS

Ms. Carlson reviewed the proposed timeline and said that any additional comments should be provided to Mr. Cosgrove and WSC. Mr. Cosgrove and Ms. Carlson were tasked with revising the Exchange Plan Agreement to pare it down consistent with the working group discussions, and circulate it in advance of one additional meeting of the working group. The next meeting will be held September 7 at 10:00 a.m.

#### ADJOURNMENT

There being no further business, the meeting was adjourned at 12:11 p.m.

Respectfully submitted,



George Hanson, Chairperson