

Staff Report

for the Special Administrative Practices Committee Meeting of March 16, 2020

TO: Water and Hydroelectric Operations Committee

FROM: Keane Sommers, P.E., Hydroelectric Manager

DATE: March 13, 2020

SUBJECT: **Sharing of Employees and Equipment with Placer County Water Agency and Yuba County Water Agency**

HYDROELECTRIC

RECOMMENDATION:

Review the Cooperation Agreement Concerning Sharing of Employees and Equipment (Mutual Aid Agreement) entered into by Placer County Water Agency (PCWA) and Yuba County Water Agency (YCWA), and advance a recommendation to the Board of Directors as appropriate.

BACKGROUND:

On August 12, 2014, Placer County Water Agency (PCWA) and Yuba County Water Agency (YCWA) signed a Mutual Aid Agreement allowing them to exchange hydroelectric employees and equipment. The Agreement is in response to the end of their respective partnership agreements with Pacific Gas & Electric Company, and both parties desire to have access to staff, expertise, and equipment that they may not individually possess.

District Legal Counsel reviewed the Mutual Aid Agreement and did not find any fatal flaws. However, they did identify concerns with the indemnification section. Staff believes that the benefits of joining the agreement out-weigh the risks and recommends that the District become a signatory as allowed in Section 2 of the attached agreement.

This item supports Goal Numbers 1 and 2 of the District's Strategic Plan by ensuring adequate resources are available to the District and by collaborating with local and regional agencies.

BUDGETARY IMPACT:

None at this time.

Attachment:

- California Association of Public Power Agencies (CAPPA) Cooperation Agreement Concerning Sharing of Employees and Equipment

**CALIFORNIA ASSOCIATION OF PUBLIC POWER AGENCIES (CAPPA)
COOPERATION AGREEMENT CONCERNING SHARING OF
EMPLOYEES AND EQUIPMENT**

THIS AGREEMENT is entered into this 12 day of August, 2014, by and between the undersigned public agencies, who agree as follows:

1. Recitals. This Agreement is made with reference to the following background recitals:

a. The parties each own, operate, manage, maintain and repair hydroelectric generation, water supply and related facilities (Facilities). The parties each employ qualified personnel and own and operate certain equipment in connection with their ownership, operation, management, maintenance and repair of those Facilities.

b. Each party has limited personnel and equipment to serve its respective service areas and needs. It therefore would be advantageous to, and in the mutual best interests of, the parties and their residents, ratepayers and taxpayers to develop and implement a coordination program to allow for the sharing of personnel and equipment. The parties therefore desire and intend to develop and implement such a program pursuant to the terms of this Agreement.

c. From time to time, one party (the "Borrower") may find it desirable to temporarily borrow and utilize the other party's (the "Lender") personnel or equipment (e.g., construction equipment, vehicles, tools, pumps, and motors) to aid or support Borrower in its operation, management, maintenance or repair of its Facilities. Each party is willing to consider a Borrower's request to borrow and use personnel or equipment on and subject to the terms of this Agreement. The parties contemplate that they each may be a Borrower and Lender from time to time.

2. Parties. The initial parties to this Agreement are Yuba County Water Agency and Placer County Water Agency. Additional local government agencies that own, operate, manage, maintain and repair hydroelectric generation, water supply and related Facilities may become parties to this Agreement by an addendum approved and signed by the joining parties authorized representative and by all then-existing parties authorized representatives. The addendum must list the new party's contact information for purposes of section 9(h).

3. Term. This Agreement shall commence on the above date and continue in effect until terminated as provided in this section. This Agreement may be terminated at any time by either party upon 30-days advance written notice to the other party. After a third or more parties have been added to the Agreement pursuant to section 2, then (a) any party may withdraw from the Agreement at any time upon 30-days advance written notice to the other parties, (b) the Agreement may be terminated by the mutual written approval of all parties, and (c) if all parties except one party withdraw from the Agreement, the Agreement will be deemed terminated. In the event of such a termination or withdrawal, a Lender shall be compensated

for all use of its personnel or equipment provided to a Borrower up to the date of termination or withdrawal based on the applicable approved Request.

4. Request to Borrow and Approval or Disapproval.

a. Any party may request assistance from any other party. If a Borrower desires to borrow and utilize a Lender's employee, personnel, or equipment, then Borrower will prepare and submit a written request for assistance (a "Request") to the desired Lender. The Request must contain the following information: the requested job classification(s) or equipment; purpose and tasks, services or work to be performed (the "Work"); location of the Work; and, duration of the Work.

b. Upon receipt of a Request under subsection (a), the requested Lender will evaluate the Request, its ability to accommodate the Request, and workload, schedule, service, planning and other effects and concerns associated with approving the Request. Assistance will be provided only when Lender determines that its own needs can be met while rendering assistance. This Agreement does not create any duty to respond on the part of any party receiving a Request and a potential Lender shall not be held liable for disapproving a Request or failing to provide assistance.

c. Lender promptly will decide in its sole discretion whether to approve, disapprove or counter propose any changes to the Request and its decision will be sent in writing to Borrower. If Lender approves the Request, then the approval also will indicate the cost to be charged to Borrower for the use of the employee or equipment. Unless otherwise agreed to by Borrower and Lender, the cost to be charged will be based on the following cost principles: for an employee, the cost will be based on Lender's full labor costs, including salary or wages, fringe benefits, overhead, travel and per diem, and direct and indirect costs associated with the employee's share of the workers' compensation insurance; and, for equipment, the cost will be based on a commercially reasonable equipment rental rate. In its approval, Lender also may include other terms and conditions that will apply to the approved Request.

d. If Lender approves the Request, then upon receipt of the approval (and prior to the commencement of the Work) Borrower must confirm in writing to Lender that it accepts the cost and terms of the arrangement as set forth in Lender's approval of the Request.

e. After Lender's approval of a Request, and Borrower's confirmation of the cost and terms, Borrower and Lender shall coordinate the time and manner of delivery of the requested assistance and the lending arrangement and Work will proceed as set forth in the approved Request. The arrangement and Work will continue for the duration indicated in the approved Request. However, Borrower or Lender may terminate the lending arrangement at any time by giving 48-hour advance written notice to the other party. By mutual consent in writing, the parties may modify an approved Request.

5. Borrowing Lender's Employee. This section applies to an approved Request concerning the borrowing and use of a Lender's employee (a "Loaned Employee").

a. General and Special Employer. The parties acknowledge that Lender is the general employer of the Loaned Employee and Borrower is the special employer of the Loaned Employee. The Loaned Employee will work for Borrower during the days or hours or pursuant to the schedule described in the approved Request. The parties recognize that workload requirements involving either Lender or Borrower may require temporary adjustments in the Loaned Employee's work schedule and the parties agree to mutually cooperate to accommodate such requirements.

b. Special Employer Role.

(1) When working for Borrower, the Loaned Employee will be under the supervision and direction of Borrower and Borrower and its management and supervisory employees will determine the precise Work (i.e., particular tasks, services and assignments) that the Loaned Employee will perform under the approved Request. However, the tasks, services and assignments performed by the Loaned Employee must be consistent with the approved Request and within the employee's classification.

(2) Borrower shall be responsible for providing the Loaned Employee with office space, support services, materials, supplies, tools and equipment appropriate to perform the Work. Lender will provide Loaned Employee with any required specialty clothing (e.g., FR clothing, coveralls, etc.).

(3) If the Loaned Employee undertakes any business-related travel or incurs other business-related expenses in connection with the Work for Borrower, then Borrower will be responsible for payment or reimbursement of the Loaned Employee's business-related expenses in accordance with Lender's expense reimbursement policy and procedures.

(4) Borrower will remain responsible for reporting reportable injuries and illnesses on its OSHA 300 log and for other employer workplace incident reporting obligations involving Borrower's workplace, even if the Loaned Employee is the subject of the injury, illness or incident.

c. General Employer Role. The Loaned Employee will remain a full-time regular employee of Lender, will remain on Lender's payroll, will remain subject to Lender's general personnel administration, will continue to receive compensation and benefits solely from Lender, and will remain subject to Lender's personnel policies, rules and regulations. Lender will be responsible for payment of all Loaned Employee salary or wages and related benefits, pension, insurance, taxes and withholdings required under Lender's personnel rules, policies and contracts and applicable federal and state law. Lender will be responsible for keeping and maintaining the personnel file and payroll and other records of the Loaned Employee.

d. Workers' Compensation Insurance.

(1) It is expressly understood that no party shall be responsible to provide workers' compensation insurance to the other party's employees. Each party hereby waives any right of subrogation to the other parties.

(2) Lender shall procure and maintain for the duration of the approved Request workers' compensation insurance or self-insurance covering the Loaned Employee in accordance with the requirements of California law. In accordance with Labor Code section 3602(d), the parties intend that this obligation constitute a valid and enforceable agreement by which Lender agrees to obtain, and shall obtain, workers' compensation coverage for the Loaned Employee provided to Borrower under an approved Request. Borrower therefore will not be subject to civil, criminal or other penalties for failure to provide workers' compensation coverage or tort liability in the event of an injury to or illness of the Loaned Employee suffered in the course of providing Work under an approved Request.

(3) In accordance with Insurance Code section 11663, and because the Loaned Employee remains on Lender's payroll, Lender acknowledges that its workers' compensation insurer or self-insurer will be liable for the entire cost of workers' compensation benefits payable on account of an illness or injury occurring in the course of and arising out of the general and special employment of the Loaned Employee under an approved Request. The parties acknowledge that a fair share of the workers' compensation premium costs attributable to the Loaned Employee will be included in the costs to be paid by Borrower to Lender under an approved Request.

(4) If a Loaned Employee suffers a work-related injury or illness when working for Borrower, then Borrower must immediately inform Lender in order for Lender to be able to timely provide the workers' compensation claim form (DWC 1) to the Loaned Employee. Lender will be responsible for providing the claim form, receiving and processing any claim from the Loaned Employee, arranging for medical treatment and the provision of other workers' compensation benefits, and instructing the Loaned Employee that under this Agreement the Lender and its insurer remain liable for any workers' compensation benefits even though the injury or illness occurred when working for Borrower.

e. Indemnification. In accordance with Government Code section 895.4, the following indemnity provisions apply when a Borrower borrows a Loaned Employee from a Lender.

(1) Borrower shall indemnify, defend, protect and hold harmless Lender, and its officers, employees and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of (i) a breach of Borrower's obligations under this Agreement, (ii) an act or omission of the Loaned Employee in performing Work for Borrower under an approved Request, except for the following: (a) where caused by the sole negligence or willful misconduct of Loaned Employee; (b) for an injury to or illness of the Loaned Employee suffered in the course of providing Work under an approved Request that is covered by Lender's workers' compensation insurance; or (c) as otherwise provided or limited by law.

(2) Lender shall indemnify, defend, protect and hold harmless Borrower, and its officers, employees and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of a breach of Lender's obligations under section 5, subsections (c) and (d) of this Agreement, except where caused by the sole negligence or willful misconduct of Borrower or as otherwise provided or limited by law.

6. Borrowing Lender's Equipment. This section applies to an approved Request concerning the borrowing and use of a Lender's equipment.

a. General. Lender will provide the loaned equipment to, Borrower during the days or hours or pursuant to the schedule described in the approved Request.

b. Equipment. The Request for any loan of equipment will include appropriate rental rates and other terms as the parties shall agree upon. Lender will make arrangements with Borrower for the delivery of loaned equipment. Borrower will use the equipment for the Work described in the approved Request. Borrower will be responsible for the use, operation, care and maintenance of the equipment while in its possession. Borrower will supply all fuel and lubrication for the loaned equipment during its use of the equipment. Borrower will pay all costs related to the transportation, handling, loading and unloading of the loaned equipment. At the option of Lender, loaned equipment may be loaned with an employee of Lender to operate the equipment, in which case the Lender employee will be considered a Loaned Employee under section 5.

c. Indemnification. In accordance with Government Code section 895.4, the following indemnity provision applies when a Borrower borrows equipment from a Lender: Borrower shall indemnify, defend, protect and hold harmless Lender, and its officers, employees and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of (i) a breach of Borrower's obligations under this Agreement, or (ii) the use of loaned equipment under an approved Request, except where caused by the sole negligence or willful misconduct of Lender or as otherwise provided or limited by law. If loaned equipment is damaged or destroyed while in the custody or use of Borrower, Borrower will pay or reimburse Lender for the cost of repairing the damaged equipment or, if damaged beyond repair, the cost of replacing the equipment with like equipment.

7. Payment.

a. When a Lender provides assistance under an approved Request, Borrower shall pay to Lender the costs and other amounts as described in the approved Request. If payment is based on the number of hours actually worked by a Loaned Employee; Borrower shall keep and maintain a daily time report showing the hours worked. At the end of each month during the duration of an approved Request and upon completion of the Work, Borrower shall prepare and submit to Lender a statement showing the payment due (and including, if applicable the

hours worked) for the period along with payment for that period. For any Work provided under this Agreement, Borrower shall make payment only to Lender and, except as provided by section 5(b)(3) regarding expense reimbursement, a Borrower shall not directly pay any money to a Loaned Employee.

b. The cost paid to Lender is intended to cover all of its costs and expenses related to lending the Loaned Employee, independent contractor or equipment to Borrower, including all payroll, benefits, workers' compensation, contract, and related direct and indirect costs. The cost to be paid by Borrower under the approved Request shall be the sole and exclusive consideration paid to Lender for the arrangement under that approved Request.

8. Ownership of Documents. Every report, study, spreadsheet, plan, blueprint, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, computer data file, computer software and any other document or thing prepared by a Loaned Employee under an approved Request will be the property of Borrower and subject to its document retention, management and other applicable policies and regulations.

9. General Provisions.

a. Non-applicability to Public Works Construction Projects. This Agreement and the obligations created hereunder do not extend to the lending of the services of any employee, or the use of any equipment, for the construction of any public work of improvement in violation of California Public Contract Code section 1771, the California Labor Code or any other statutory provision specifically applying to public works construction projects or contractor's license requirements under the California Business and Professions Code or regulations of the Contractors State License Board. This Agreement is not intended to allow either party to avoid compliance with any competitive bidding statute, prevailing wage law or other California statute otherwise applicable to such public works construction projects as such party may undertake.

b. Non-liability of Nonparticipant Party. In the event of any liability, loss, claim, demand or lawsuit arising out of the rendering of assistance through an approved Request under this Agreement, the Lender and Borrower participating in the approved Request agree to indemnify and hold harmless each and every other party (if any) to this Agreement whose only involvement in the transaction or occurrence that is the subject of the liability, loss, claim, demand or lawsuit is the fact that it is a party to this Agreement.

c. State Audit. In accordance with Government Code section 8546.7, the parties acknowledge that this Agreement, and performance and payments under it, may be subject to examination and audit by the State Auditor General for three years following final payment under the Agreement.

d. Entire Agreement. This writing represents the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning requests for assistance, and supersedes all prior oral and/or written negotiations,

representations or contracts. This Agreement may be amended only by a subsequent written contract approved and executed by all parties.

e. No Waiver of Rights. Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Borrower to Lender shall be considered or construed to be a waiver of any breach or default.

f. Severability. If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.

g. No Third Party Beneficiaries. This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

h. Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by facsimile transmission with delivery to the other party confirmed by a successful delivery confirmation receipt if the document also is sent within two days by prepaid, first class U.S. mail, or (d) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt. Such notices, etc. shall be addressed as follows (please print):

NAME / TITLE OF AUTHORIZED REPRESENTATIVE			
COMPANY NAME			
MAILING ADDRESS			
PHYSICAL ADDRESS			
PHONE/FAX/E-MAIL			

Notice given as above will be deemed given (a) when delivered in person in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) upon receipt of the facsimile machine successful delivery confirmation, or (d) on the date of delivery as shown on the overnight courier service receipt. Any party may change its contact information by notifying the other party(ies) of the change in the manner provided above. Requests for assistance and responses under section 4 may be provided and sent via e-mail to the above e-mail addresses.

IN WITNESS THEREOF, the parties hereby agree to the terms and conditions of this Agreement as written below:

Yuba County Water Agency

By: *Curt Aikens*
Curt Aikens
General Manager

Placer County Water Agency

By: *David A. Breninger*
~~David A. Breninger~~
Acting General Manager
Ernest L. Mausch

SAMPLE (for future signatories)

**ADDENDUM TO CALIFORNIA ASSOCIATION OF PUBLIC POWER AGENCIES
COOPERATION AGREEMENT CONCERNING SHARING
OF EMPLOYEES AND EQUIPMENT**

IN WITNESS THEREOF, the undersigned party hereby agrees to the terms and conditions of the California Association of Public Power Agencies (CAPPA) Cooperation Agreement Concerning Sharing of Employees and Equipment, initially approved between Yuba County Water Agency and Placer County Water Agency, dated ____, ____.

(Public Agency Name)

By: _____ Dated: _____
Name
Authorized Representative

The current signatories to the above noted Agreement hereby approve the addition of **(Public Agency Name)** as a party to this Agreement, as written below:

Placer County Water Agency

By: _____ Dated: _____
David Breninger
Authorized Representative

Yuba County Water Agency

By: _____ Dated: _____
Curt Aikens
Authorized Representative

Please provide your company's contact information as noted on page 7, section 9(h) of this Agreement.