

DRAFT---TERM SHEET FOR REVISED DESIGN AND CONSTRUCTION OFFICE

1. Legal Status

- a. DWR (via DCO) will be responsible for the design and construction of CM1 or the Preferred Alternative
- b. DCO shall be a separate enterprise operating within division or section of DWR as described herein
- c. DCO shall sunset after completion of construction
- d. Contracts and other legal actions shall be signed under DWR's name
- e. Public Works, equipment, and service procurements shall be conducted in accordance with State Contracting Act, the special procurement exemptions granted to DWR by statute and other procedures currently used by DWR. Such procedures shall nonetheless be conducted by the DCO under the direction of the Program Director

2. Staffing

- a. Personnel shall be made up of the most qualified individuals with world class expertise relative to their duties from DWR, Public Water Agencies and private industry
- b. All lead personnel shall be 100 percent dedicated to the DCO (no split assignments) unless otherwise requested or directed by the Program Director
- c. All personnel shall be housed in a physically separate, discrete office section and/or building unless otherwise requested or directed by the Program Director
- d. All personnel shall be under the management of the Program Director; provided that DWR will assign to the Program Advisory Group (see 5.d. below) a career executive appointee to implement decisions pertaining to DWR personnel

3. Joint Powers Authority

- a. Public Water Agencies will form a joint powers authority to fulfill recommendation advise and consent role for design and construction
- b. DWR is not a member of the JPA, to ensure DWR independence
- c. A representative from DWR and members of the JPA shall form a Project Management Board to provide project oversight
- d. Project Management Board shall hold meetings to hear reports from Program Director, who will be contractually required to report to Project Management Board

4. Reporting and Decision Making Structure

- a. A Program Director will be retained to manage design and construction
- b. Program Director will be selected by DWR Director with the concurrence of the JPA and will not be replaced without concurrence of the JPA
- c. Program Director will report to Project Management Board
- d. The Project Management Board shall make recommendations to DWR Director
- e. The DWR Director will ~~then approve or disapprove~~ review the recommendations made by the Project Management Board, and will meet and confer with the JPA if he or she

~~determines; provided, that the DWR Director may disapprove~~ a recommendation ~~only upon a finding that the recommendation~~ is inconsistent with the project purposes or DWR's mandatory legal duty.

~~e.f.~~ The DWR Director will only disapprove a recommendation of the Project Management Board after meeting and conferring with the JPA

~~f.g.~~ Any aActions that would materially affect the budget, schedule, or delivery capability of the project requires the consent of the JPA; material shall mean actions that would cumulatively have a \$10M or a 5% increase (whichever is less) for a budgeted item, actions that would cumulatively add a 60 days ~~to increase in~~ the project schedule, or any change in water delivery capability (address concept of cumulative increases to budget and schedule)

5. Conduct of Design & Construction Work

- a. Design and construction will be performed and/or managed by DCO personnel
- b. The McKinsey Compendium shall guide management and organizational decisions by the DCO to the extent it is not in conflict with any agreement between the DWR and the JPA regarding the DCO, in which case the agreement shall control
- c. Program Director will have authority to make all staffing decisions
- d. A Program Advisory Group consisting of DWR and Public Water Agencies staff will be created to advise the Program Director on day-to-day engineering questions and the resolution of technical issues that arise

6. Implementation/Legal Documents to Implement Precepts

- a. Responsibilities and authorities of Program Director will be prescribed by an agreement among DWR, JPA, and Program Director
- ~~a.b.~~ Agreement between DWR and JPA will include a Project Description (exhibit attached as an example), material changes to the Project Description will be submitted to the Project Management Board
- c. Agreement between DWR and JPA will prescribe role, responsibilities, and authorities of the Project Management Board and the DCO
- d. Agreement between DWR and JPA shall provide that action to be based upon the opinion, judgment, approval, review, or determination of either party shall not be intended and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable