

**SOUTH SWP HYDROPOWER FERC PROJECT NO. P-2426 – COST
SHARING AGREEMENT BY AND BETWEEN THE CITY OF LOS
ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF
WATER AND POWER, AND THE CALIFORNIA DEPARTMENT OF
WATER RESOURCES AS CO-LICENSEES OF THE SOUTH STATE
WATER PROJECT HYDROPOWER PROJECT
(COST SHARING AGREEMENT)**

On March 22, 1978, the Federal Energy Regulatory Commission (FERC) issued a license, License P-2426, to the Los Angeles Department of Water and Power (LADWP) of the City of Los Angeles, a department organized and existing under the charter of the City of Los Angeles, a municipal corporation of the State of California, and the California Department of Water Resources (DWR), as Co-licensees, to operate the South State Water Project Hydropower Project, West Branch (SSWP).

WHEREAS, the SSWP consists of two major hydropower developments, the Warne Power Development and the Castaic Power Development;

WHEREAS, the Warne Power Development is exclusively managed, operated, and maintained by the DWR;

WHEREAS, the Castaic Power Development includes the Pyramid Lake and Dam, Angeles Tunnel, Pyramid Lake Recreation Facilities, Primary Project Roads and Trails, Castaic Transmission Line, and Castaic Power Plant (CPP);

WHEREAS, the Castaic Power Development is managed by LADWP and DWR, under the Contract for Cooperative Development West Branch, California Aqueduct, LADWP Contract No. 10099 (Cooperative Agreement), dated September 1, 1966;

WHEREAS, the existing Cooperative Agreement specifies the arrangement between LADWP and DWR where the DWR uses the CPP as a water conveyance facility and LADWP manages the operation and maintenance of CPP as a pumped storage hydroelectric power plant;

WHEREAS, LADWP manages the operation and maintenance of CPP, located within the Castaic Power Development;

WHEREAS, the current SSWP FERC License P-2426 expires on January 31, 2022;

WHEREAS, pursuant to the FERC relicensing process, the Co-licensees desire to extend the term of the current SSWP FERC License P-2426 for a maximum term of 50 years;

WHEREAS, as a requirement of the new FERC License P-2426, FERC will assess LADWP annual FERC license charges related to the operation of the CPP for the duration of the new FERC License P-2426 (New FERC License P-2426);

WHEREAS, LADWP will be responsible for funding and paying CPP's annual FERC license charges under the New FERC License P-2426;

WHEREAS, as a requirement of the New FERC License P-2426, FERC will assess DWR annual FERC license charges related to the operation of the Warne Power Plant for the duration of the New FERC License P-2426;

WHEREAS, DWR will be responsible for Warne Power Plant's annual FERC license charges under the New FERC License P-2426;

WHEREAS, the Federal Power Act grants a number of federal and state agencies (hereinafter referred to individually as Conditioning Agency and collectively as Conditioning Agencies) the authority and right to review and assure that the New License FERC P-2426 meets specific requirements under their regulatory authority;

WHEREAS, if and when FERC issues the New FERC License P-2426, it will include a series of protection, mitigation, and enhancement (PM&E) measures designed to protect resources against potential impacts, mitigate any new impacts, and enhance resources affected by continued operation of the project;

WHEREAS, the implementation of such Conditioning Agency requirements and PM&E measures, if and when the New FERC License P-2426 is issued, will include the protection of fish habitats, water quality, land restoration, protection of wildlife, preservation of cultural, historical, and archaeological resources, and provision of recreational facilities that directly affect the quality of life and the environment of communities during the term of the New FERC License P-2426;

WHEREAS, the Cost Sharing Agreement is entered into between LADWP and DWR (referred to individually as Party and jointly as Parties);

WHEREAS, while the existing Cooperative Agreement between the Parties addresses the concept of an equitable sharing of costs and benefits related to the SSWP, it does not do so with regard to the new PM&E measures and Conditioning Agency agreements required under the New FERC License P-2426;

WHEREAS, the Cost Sharing Agreement includes allocation of funding from LADWP for CPP's annual FERC license charges;

WHEREAS, the Cost Sharing Agreement includes new expenses associated with the implementation of PM&E measures identified by FERC and Conditioning Agency agreements under the New FERC License P-2426 if and when the new license is issued;

WHEREAS, FERC may issue the New FERC License P-2426 on or about February 1, 2022, for a possible maximum term of 50 years;

WHEREAS, to coordinate their efforts during the relicensing process for the SSWP facilities, the Parties entered into a Relicensing Process Agreement, dated August 18, 2014, which, among other things, provided for the establishment of an Executive Committee to provide oversight of activities that require consensus decision-making during the relicensing process, outline procedures for joint coordination and decision-making, and establish cost sharing principles relative to the costs of preparing the application for the new FERC license;

WHEREAS, on January 30, 2020, the Parties filed their Final License Application with FERC for the New FERC License P-2426;

WHEREAS, the Parties agree to establish an agreement for an equitable cost sharing of newly imposed expenses associated with PM&E measures that may be required by FERC and Conditioning Agency agreements throughout the term of the New FERC License P-2426 as referenced below, if and when the new license is issued. The exact details and costs of the PM&E measures and Conditioning Agency agreements included in the New FERC License P-2426 are not known at this time;

WHEREAS, LADWP and DWR propose to relicense the SSWP and the Co-licensees do not intend to change the current operation of the SSWP;

WHEREAS, as part of the relicensing process FERC requires the Co-licensees to continue paying for the annual FERC license charges, in addition to any new PM&E measures, and any other requirements that may be imposed by Conditioning Agencies under the New FERC License P-2426, if and when the new license is issued;

WHEREAS, the Cost Sharing Agreement demonstrates that LADWP and DWR are committed to share costs associated with the relicensing process related to ongoing operation of the SSWP, including costs associated with implementing the new PM&E and Conditioning Agency requirements, if and when the new license is issued;

WHEREAS, approval of any new PM&E measures identified by FERC and any other Conditioning Agency requirements is subject to LADWP's and DWR's future acceptance of the New FERC License P-2426; and

WHEREAS, this Cost Sharing Agreement demonstrates the availability of funding to allow FERC to process the relicensing application, however, LADWP and DWR have not and will not commit to any PM&E measures required by FERC and any other requirements that may be imposed by the Conditioning Agencies under the New FERC License P-2426 until after (i) such PM&Es or other requirements are reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), (ii) any additional conditions or changes based on the CEQA review have been imposed, and (iii) all required permits and approvals have been obtained in accordance with applicable laws and regulations.

NOW, THEREFORE, the Parties agree as follows:

1. Cost Allocation for newly imposed PM&Es, if and when the New FERC License P-2426 is issued, within the Scope of the existing Cooperative Agreement:
 - 1.1 The Parties agree that costs associated with the new PM&Es included in the New FERC License P-2426 that are within the scope of the existing Cooperative Agreement shall be shared as set forth in the Cooperative Agreement, independent of this Cost Sharing Agreement.
 - 1.2 If there are any inconsistencies between the Cooperative Agreement and the Cost Sharing Agreement, the Cooperative Agreement will govern.
2. Costs related to newly imposed PM&E measures and Conditioning Agency Agreements related to the Relicensing Effort, if and when FERC issues the New FERC License P-2426, but no later than one year after the Board resolution authorizing this agreement is approved, shall be shared as set forth below:
 - 2.1 If and when FERC issues the New FERC License P-2426, but no later than one year after the Board resolution authorizing this agreement is approved, LADWP's contribution for the new PM&Es and Conditioning Agency agreements costs with the exception of the new PM&E Measure AR1, as set forth in Section 2.3 will be as follows:
 - Consistent with the intent of Section 2.2 of this Cost Sharing Agreement, LADWP shall allocate an equitable cost-sharing amount by providing a monetary payment equal to fifty percent (50%) of the project's new PM&E and Conditioning Agency agreement estimated costs including a 20 percent contingency amount (20% of the Total Cost) for unforeseen costs that may be imposed under the term of the New FERC License P-2426. The following Table outlines the cost sharing of 50-year expenses for new PM&E and Conditioning Agency agreement expenditures estimated at this time.

Cost Sharing of Newly Imposed Expenses under the New FERC License P-2426 (Implementation of PM&Es and Conditioning Agency Agreement, if and when the New FERC License P-2426 is issued)						
List of Required Expenses		Cost Share		Estimated Total Amount over 50 Years (\$)	DWR's 50% Estimated Cost Share Amount over 50 Years (\$)	LADWP's 50% Estimated Cost Share Amount over 50 Years (\$)
Designation	Description	LADWP's Share	DWR's Share			
PM&E Measures	Implement an Erosion and Sediment Control Plan (GS1)	50%	50%	\$300,000	\$150,000	\$150,000
	Implement Pyramid Lake Water Surface Elevation Restrictions (WR1)	50%	50%	\$50,000	\$25,000	\$25,000
	Implement a Hazardous Materials Management Plan (WR2)	50%	50%	\$50,000	\$25,000	\$25,000
	Implement Pyramid Lake Fish Stocking Measure (AR2)	50%	50%	\$23,622,000	\$11,811,000	\$11,811,000
	Implement an Integrated Vegetation Management Plan (TR1)	50%	50%	\$1,528,000	\$764,000	\$764,000
	Sensitive Aquatic and Terrestrial Wildlife Management Plan (TR2)	50%	50%	\$2,472,000	\$1,236,000	\$1,236,000
	Implement a Fire Prevention and Response Plan (LU1)	50%	50%	\$750,000	\$375,000	\$375,000
	Implement a Project Safety Plan (LU2)	50%	50%	\$50,000	\$25,000	\$25,000
	Implement a Visual Resources Management Plan (VR1)	50%	50%	\$3,761,000	\$1,880,500	\$1,880,500
	Implement a Historic Properties Management Plan (CR1)	50%	50%	\$6,313,000	\$3,156,500	\$3,156,500
	Implement a Recreation Management Plan (RR1)	50%	50%	\$25,210,000	\$12,605,000	\$12,605,000
Conditioning Agency Agreement	New 401 Certification Water Quality Conditions (CA State Water Resources Control Board)	50%	50%	\$1,792,000	\$896,000	\$896,000
	Recreation Agreement (United States Forest Service)	50%	50%	\$6,000,000	\$3,000,000	\$3,000,000
Total Cost				\$71,898,000	\$35,949,000	\$35,949,000
Contingency Amount (20% of Total Cost)				\$14,379,600	\$7,189,800	\$7,189,800
Not-to-Exceed Expenditure Amount (50-year)				\$86,277,600	\$43,138,800	\$43,138,800

2.2 If and when FERC issues the New FERC License P-2426, but no later than one year after the Board resolution authorizing this agreement is approved, DWR's contribution for the new PM&Es and Conditioning Agency agreements costs with the exception of the new PM&E Measure AR1, as set forth in Section 2.3 will be as follows:

- Consistent with the intent of Section 2.1 of this Cost Sharing Agreement, DWR shall allocate an equitable cost-sharing amount by providing a monetary payment equal to fifty percent (50%) of the project's new PM&E and Conditioning Agency agreements estimated costs including a 20 percent contingency amount for unforeseen costs that may be imposed under the term of the New FERC License P-2426. The Table above outlines the cost sharing

of 50-year expenses for the new PM&E and Conditioning Agency agreement expenditures estimated at this time.

2.3 If and when FERC issues the New FERC License P-2426, DWR's contribution for the new PM&E Condition AR1 – Implement Flow Releases into Pyramid Reach:

- DWR will be responsible for 100% of the monetary costs related to the Project's new PM&E Measure AR1 – Implement Flow Releases into Pyramid Reach.

3. Additional PM&E requirement and Conditioning Agency Agreement costs that exceed the estimated "Not-to-Exceed Expenditure Amount" and not covered by the Cooperative Agreement:

3.1 As of the date of execution of this Cost Sharing Agreement the Parties cannot ascertain with certainty the extent and nature of the PM&Es and Conditioning Agency agreements that may be included in the New FERC License P-2426. If actual implementation costs exceed the currently anticipated costs such that LADWP's and DWR's cost-share amounts including the estimated contingency no longer meet the intent of an equitable cost-share identified in the Table above, the Parties shall amend the Cost Sharing Agreement and seek approval by the Water and Power Board of Commissioners, LA City Council, and DWR.

4. Dispute Resolution. Upon issuance of the New FERC License P-2426, if a dispute arises regarding contributions to the PM&Es and Conditioning Agency agreements for the SSWP, the Parties will negotiate in good faith to resolve the dispute. Prior to declaring an impasse, the State Water Project Director of DWR and Senior Assistant General Manager for Power System of LADWP shall meet and confer to attempt to resolve the dispute. If the dispute remains unresolved, the Parties may resort to arbitration, litigation, or some other dispute resolution procedure in accordance with the law. Arbitration may be binding upon mutual consent of the Parties.

5. Indemnification. To the extent allowed by law, LADWP shall indemnify and hold DWR harmless from any liability or claim of liability for damages or injury to any person or property solely and proximately caused by any negligent or wrongful act or omission of LADWP, its agents, representatives, employees and contractors of any tier occurring in the performance of this Agreement, or harm caused by failure to meet a FERC or other regulatory deadline.

To the extent allowed by law, DWR shall indemnify and hold LADWP harmless from any liability or claim of liability for damages or injury to any person or property solely and proximately caused by any negligent or wrongful act or omission of DWR, its agents, representatives, employees and contractors of any tier occurring in the performance of this Agreement, or harm caused by failure to meet a FERC or other regulatory deadline.

6. Audit. The Parties agree that either Party or the designated representative of either Party shall have the right to review and to copy any financial records, supporting documentation, estimates, invoices, contracts, change orders, contract amendments, and other evidence pertaining to expenditures and billings related to cost elements subject to this Cost Sharing Agreement to verify compliance with the terms of the Cost Sharing Agreement and to permit adequate evaluation of expenditures and billings submitted requesting payments or reimbursements. The Parties agree to maintain such financial and contractual records for possible audit for a minimum of five (5) years and allow an auditor(s) access to such records. Further, both Parties agree to include a similar right of either Party to audit such financial records and review any goods/material or consulting contracts/subcontracts related to cost elements subject to this Cost Sharing Agreement. To the extent that the examination of records reveals inaccurate or incomplete data, the data shall be considered defective; if the review or audit indicates either Party has been underpaid or overpaid under a previous payment or reimbursement application, such underpayment or overpayment, shall be reconciled and cured immediately consistent with the provisions of this Cost Sharing Agreement. Nothing in this Cost Sharing Agreement is intended to diminish or otherwise affect the authority of either Party or any third party to implement its respective statutory functions.

7. Miscellaneous Provisions.

- 7.1. This Cost Sharing Agreement shall be governed and construed under the laws of the State of California.
- 7.2. Any modifications to this Cost Sharing Agreement must be in writing and signed by both Parties.
- 7.3. The titles for the Articles of this Cost Sharing Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Cost Sharing Agreement or the intentions of the Parties. This Cost Sharing Agreement has been jointly drafted by the Parties and therefore shall be construed according to its plain meaning and not for or against either Party.
- 7.4. This Cost Sharing Agreement may be signed in counterparts and shall become effective upon signature by both Parties.
- 7.5. The Parties agree that this Cost Sharing Agreement is wholly independent of the Cooperative Agreement and is not intended to be construed as an amendment or addition to the Cooperative Agreement. The Parties further agree that the cost sharing allocations set forth in this Cost Sharing Agreement shall not be a basis for renegotiating or amending the cost allocations set forth in the Cooperative Agreement.

(Signatures appear on the next page. The rest of this page is intentionally left blank.)

IN WITNESS THEREOF, the Parties, through their duly authorized representatives, have caused this Agreement to be executed as of the date of the last signature.

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Approved as to form and legality:

Thomas Gibson
Thomas Gibson
General Counsel

Date: 3/7/2022

Ted Craddock
Ted Craddock
Deputy Director

Date: 3/7/2022

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES
BY BOARD OF WATER AND POWER COMMISSIONERS

Approved as to form and legality:

Syndi Driscoll
Deputy City Attorney of the Los
Angeles City Attorney's Office

Date: _____

Martin L. Adams
General Manager and Chief Engineer

Date: _____

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

MAR 08 2022
BY Syndi Driscoll
SYNDI DRISCOLL
DEPUTY CITY ATTORNEY

Chante L. Mitchell
Board Secretary

