

DATE: July 15, 2015
TO: WSAC
From: Rosemary Menard
SUBJECT: Sample Agreements – Background and Examples

Note: This information was provided to the Agreement Development Subcommittee for their July 10, 2015 meeting. I've changed the date and to whom the memo is directed, but otherwise its content has not been changed.

Good Morning Everyone – I'm providing a lot of information here, and I certainly don't expect everyone to have fully considered it by tomorrow's meeting, but I did want to start putting some information related to contingent agreements in front of you and for us to begin talking about the form and content of various kinds of agreements.

For background reading, here's a short article from the Harvard Business Review on Contingent Agreements: Betting on the Future: The Virtues of Contingent Contracts
<http://hbr.org/1999/09/betting-on-the-future-the-virtues-of-contingent-contracts>

As you might expect given the source, this article is heavily focused on using contingent agreements in business and business related contractual arrangements. Please don't be put off by that. The examples used are about different kinds of risks and uncertainties and provides useful perspective about how contingent agreements can be used to address these matters, all of which is relevant to the situation we are facing.

I've also been able to find a variety of example agreements that provide real examples of different approaches to creating, and structuring agreements. Again, we're just at the beginning of our discussion on this topic but I'd like us to at least briefly talk about these agreements at our meeting tomorrow and think about what and how we'd like to share information about agreements with the rest of the WSAC at the July meeting. For each agreement I've listed below, I've specified what I think it is an example of, and as needed provide specific points in the document for you to look at that illustrates the example. Some examples are fairly short and straight-forward, others are more layered and nuanced or detailed. If you take a look at these examples, you will certainly get a flavor for the various approaches that have been used.

For convenience, I've uploaded the agreements I've referenced below to a shared folder on my Google Drive. You can find it here: [Google Drive Sample Agreement Folder](#). I've also inserted links below to the original documents where it is easy to locate them so that you can access them as well. In addition, I've

also provided a link to more general information where it is relevant and where having that information might provide you with additional context.

1. Borrego Water Coalition Recommendations on the Groundwater Sustainability Plan being developed by the Borrego Water District (and presumably others):

<http://www.borregospringschamber.com/bwc/documents/2014/BWC%20Policy%20Recs%20FINAL%2011-06-14.pdf>

 - Example of: Policy Recommendations with phased in reduction in water production to improve groundwater sustainability and specific incremental performance targets
 - Additional Information: <http://www.borregospringschamber.com/bwc/index.htm>

2. (American River) Water Forum – Section 5.F Assurances and Caveats among the agreeing parties http://www.waterforum.org/PDF/SEC_5.PDF (Section F for the first Purveyor, the Carmichael Water District, starts at the bottom of page 6 of the pdf found at this link; other similar sections follow for each water district involved in the agreement).
 - Example of: Specific provisions among parties to the agreement that relate to the operations and facilities for each water district. The bases for these agreements is the commitments made by the water utilities related to the 7 elements of the overall agreement in exchange for support by other parties for the ongoing operations and development of the water systems, including, where applicable, development of additional supplies.
 - Additional Information: <http://www.waterforum.org/>

3. Clackamas River Hydro Relicensing Settlement Agreement/Agreement in Principle – Fish Passage Provisions with performance based phased in of fish passage measures (See Clackamas documents in [Google Docs Shared File -- Sample Agreements](#))
 - Example of: Performance Benchmarks used in determining additional actions (in this case, additional measures to improve/enhance the success of fish passage at a hydroelectric dam facility).
 - Specifically see the Fish and Aquatics section on Page 2-17 of the Clackamas FERC Settlement Agreement document and examples of the contingent provisions implementing downstream fish passage measures.

