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## Water Forum Agreement Successor Effort II

### WORKING DRAFT TERMS OF REFERENCE

*This Working Draft Terms of Reference was informed by interviews with members of each Water Forum caucus and interested parties. The purpose of the interviews was to assess perspectives on the present and future of the Water Forum and to consider support for a Water Forum successor agreement. The process to negotiate a successor agreement is sometimes referred to as Water Forum II.*

*These Terms of Reference are provided to jump-start Negotiating Steering Committee (NSC) discussions and provide a framework for early deliberations. Where possible, we have proposed language that draws on our interview findings. In other cases, we have used text boxes throughout the document to highlight topics that need group input prior to drafting. In all cases, [we encourage you to consider this a working draft that is put forward for the NSC's collective consideration and revision.](#)*

#### IMPETUS

The Sacramento Water Forum Agreement, negotiated and signed by members in 2000, expires in 2030. In fall 2019, the Consensus Building Institute (CBI), an impartial nonprofit that helps groups collaborate, conducted an assessment on the future direction of the Sacramento Water Forum. CBI's role was to speak with individuals from a range of backgrounds to understand perspectives on the present and future role of the Water Forum and its governance. The assessment found that there is robust support among stakeholders for updating the Water Forum Agreement. In February 2020 the Water Forum Plenary confirmed its commitment to update the Water Forum Agreement and initiate the Water Forum successor effort to negotiate a successor agreement (referred to as Water Forum II). The primary reasons to initiate the successor agreement process include:

- The Water Forum Agreement's 2030 expiration date is only ten years away.
- California's regulatory, statutory and scientific climate has changed significantly in the **xx** years since negotiation of the original Water Forum Agreement. The forging of a new agreement presents the opportunity to ensure the Water Forum remains relevant by addressing the most pressing issues of the next **xx** years.
- Provide an opportunity to rethink the Water Forum's business plan.
- Create an opportunity to reinvigorate a sense of ownership among Water Forum members.
- Clarify needs and goals in the region, including what is and is not desirable and any related guidelines.

#### DIALOGUE PURPOSE [Note: The issue of a Successor Agreement duration is expected to be a topic of ongoing discussion.]

The purpose of the Water Forum II is to negotiate an **xx**-year successor agreement that can guide the Water Forum's efforts well into the future. The negotiating process is structured to foster an inclusive and transparent process that brings together affected parties in a

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collaborative and constructive dialogue. The Negotiating Steering Committee (NSC), with the support of Water Forum staff and the facilitation team, is tasked with guiding the process. (See roles and responsibilities section below.) The intention is to negotiate a successor agreement by late summer 2021, with subsequent adoption by the Plenary in Fall 2021 and ratification by individual Water Forum members in Fall 2021/winter 2022.

Discussion Question: What is the appropriate length for a successor agreement? When might it make sense to determine the agreement length? What other regional planning processes might inform the appropriate length of the agreement and when periodic updates would occur once the agreement's in place?

**CO-EQUAL OBJECTIVES [Note: Below are the Water Forum's existing co-equal objectives. Early in the process, we expect to discuss whether these objectives need to be modified.]**

The Sacramento Water Forum is a diverse group of business and agricultural leaders, citizen groups, environmentalists, water managers, and local governments working together to balance two co-equal objectives:

- to provide a reliable and safe water supply for the Sacramento region's long-term growth and economic health; and
- to preserve the fishery, wildlife, recreational, and aesthetic values of the lower American River.

The Negotiating Steering Committee will be guiding a process to develop a Successor Agreement that sustains and extends the Water Forum's efforts to achieve these two co-equal objectives. As needed, the co-equal objectives will be revisited during WF II negotiation process to ensure they are consistent with any final agreements on geographic scope.

Discussion Question: Is there a need to update the Water Forum's co-equal objectives or do they still serve as a balanced foundation for the Water Forum's work? How might an expansion in the geographic scope relate to the co-equal objectives?

**GEOGRAPHIC SCOPE [Note: The issue of a Successor Agreement geography is expected to be an ongoing discussion.]**

The current Water Forum Agreement has a primary focus on the Lower American River. The Negotiating Steering Committee will be guiding a process to develop a Successor Agreement that continues to have a primary focus on the Lower American River. Topical Working Groups (described in Roles + Responsibilities) will consider the benefits and challenges associated with expanding the current geographic scope to incorporate the mainstem Sacramento River and the Cosumnes River.

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Discussion Question: Is there interest in expanding the geographic area of interest to include the mainstem Sacramento River and / or the Cosumnes River as secondary areas of interest? What might be the benefits or challenges to the Water Forum associated with a geographic expansion? What are the possible outcomes associated with such an expansion?

### APPROACH & OUTCOMES

The Water Forum II effort proposes to use the Seven (7) Elements from the Water Forum's existing agreement as the primary organizing framework for the deliberation of issues. This framework is familiar to Water Forum Participants and facilitates Water Forum II discussions to build off a structure that has proved successful. That said, there are also several overarching issues suggested by individual Water Forum members or caucuses that may inform many or all of the 7 Elements. Some of these overarching issues may also benefit from a standalone consideration (to be specified on an on-going basis). The specific issues to be included in the Water Forum II Successor Agreement will be determined through the negotiations.

Additionally, there is a pre-negotiation phase of the project - Phase 0 - that will define the process and structure for the negotiations. Phase 0 issues include: negotiating representatives, negotiation decision-making rules, discussion ground rules, co-equal objectives, and approach to outreach. These Phase 0 topics are covered in the Terms of Reference.

Topical Working Groups are anticipated to be organized around the 7 Elements. The following questions will help guide deliberations on issues within each element:

- For this element, what's in the existing agreement?
- What are the interests and principles each caucus has related to the work group topic?
- What are the questions each caucus has related to this work group topic?
- What are the linkages between this element and other elements?
- How might any of the overarching issues impact our approach to this element?
- Are there new local, state or federal regulations that address this element? If so, how and what implications might that have on the WF II approach to this element?
- Does the current Water Forum agreement miss any key issues or interests associated with this element?
- What assurances or caveats are needed for this element?

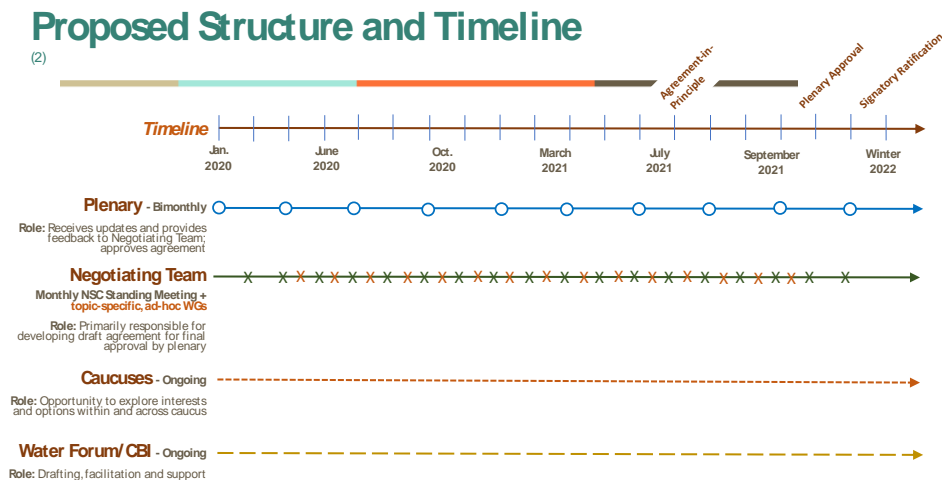
As appropriate, the launching of each Working Group will begin with a general background briefing at the Plenary.

Anticipated outcome/work products to including the following:

- Ongoing: Interim discussion summaries that track emerging areas of agreement, information needs and next steps
- March 2020 – June 2021: Interim agreements for discussion and feedback with each caucus and the Water Forum Plenary
- July 2021: Agreement-in-Principle with only a handful of issues to be refined
- Fall 2021: Formal written Successor Agreement adopted through the Water Forum Plenary’s existing decision-making process
- Fall 2021/Winter 2022: Ratification of Successor Agreement by individual Water Forum members

## PROCESS TIMELINE

The process is expected to begin in March 2020 and conclude by December 2021 (see below).



## ROLES & RESPONSIBILITIES

As noted above, the process is intended to foster steady progress while ensuring robust participation by potential signatories in a transparent, inclusive and credible process. To meet these goals, the process for drafting a Successor Agreement incorporates the following elements:

- **Negotiating Steering Committee (NSC).** Comprises a subset of the Water Forum caucuses, whose primary and alternate representatives have been selected by the respective caucuses. It is responsible for guiding the process to coordinate the development of a draft agreement in order to ensure consistency, weigh the balance of the package, and refer draft language to the caucuses and to the Plenary for final approval. The NSC has standing monthly meetings and coordinates the agreement negotiating process and formation of topic-specific ad-hoc working groups. The NSC is responsible for composing a final Successor Agreement for consideration by the Plenary. All NSC meetings are open to observer participation. Alternates participate as observers unless serving in the absence of primary NSC representatives. To foster effective and

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efficient meetings, observer comments will be solicited during structured times clearly defined on meeting agendas.

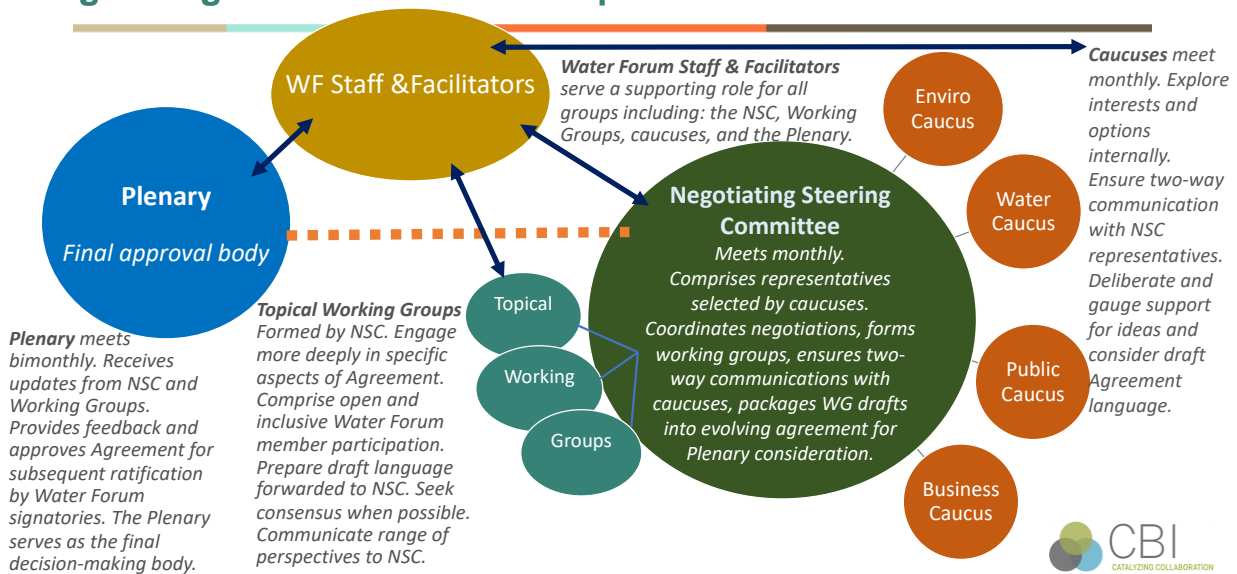
- **Ad-hoc Working Groups.** Provide an opportunity for current Water Forum members (and potential signatories) to engage more deeply on specific aspects of a Successor Agreement (e.g., groundwater management, dry year principles, etc.). Formed by the NSC on an as-needed basis, Working Groups are intended to be inclusive and open to the participation of Water Forum members. Working Groups prepare draft language that is then forwarded to the NSC for consideration in a draft Successor Agreement package. Working Groups will highlight areas of agreement and any divergent views when communicating with the NSC about their deliberations. This process enables the NSC to refer any issues to the caucuses and ultimately the Plenary, as needed.
- **Caucuses.** Explore interests and options within the Environmental, Water and Public caucuses, and deliberate on, gauge support, and provide feedback for ideas and topics under discussion to the NSC and at the Plenary. Primary and alternate representatives on the NSC serve an important role in maintaining two-way communication between the NSC and the caucuses. (The Business Caucus has asked to receive frequent updates on the process and committed to engage, as needed.)
- **Plenary.** Meets bi-monthly; receives updates from the NSC and working groups, provides feedback and approves Successor Agreement for subsequent ratification by each Water Forum signatory. The Plenary serves as the final decision-making body.
- **Water Forum Staff.** Participates in meetings to foster continuity, provide staffing support and access technical resources, as needed.
- **Facilitators.** Work with Water Forum staff to design meetings, provide meeting materials, facilitate and mediate discussions, document agreements, action items, and next steps. The facilitator and Water Forum staff serve a supporting role for all groups, including: the NSC, Working Groups, caucuses and the Plenary.
- **Technical Expertise.** As needed, Water Forum will work with its current consultants to provide technical support for Water Forum II deliberations.
- **New Participants (vis-à-vis geography).** New potential signatories may be important to include in the discussion dependent on the geographic scope of the Successor Agreement and potential signatory interest.

The NSC will track the effectiveness of the above approach and, as needed and in discussion with each caucus, consider process changes to ensure the negotiations remain balanced, inclusive, well informed and effective.

**The below figure depicts the negotiating structure and roles and responsibilities for the WFII effort.**

# Water Forum II Successor Agreement

## Negotiating Structure + Roles & Responsibilities



### DECISION-MAKING

Consistent with current Water Forum decision-making protocols, participants will strive to reach full consensus on issues under discussion. To the extent full consensus is not possible, decisions regarding issues under discussion will follow rules outlined in the current Water Forum Agreement (75% approval by each caucus). One of the Water Forum’s existing informal decision-making practices considers consensus unanimous support as well as when participants choose to step aside to allow a decision to move forward. This “I can live with it” definition of consensus has come to foster comity among participants. These rules will apply to the NSC, whose recommendations would be brought to caucuses and the Plenary using the Water Forum’s existing decision-making process. In the Working Groups, participants will strive to reach consensus. To the extent that is not possible, Working Groups would report the status of discussions (areas of agreement and divergent views) to the NSC, which would then refer discussions and proposed successor agreement language to the caucuses and Plenary, as needed.

### PARTICIPATION GROUNDRULES

- **Active, focused participation.** Every participant is responsible for communicating his/her expertise and interests on the issues under consideration. Voicing these perspectives is essential to enable meaningful dialogue. Everyone will participate; no one will dominate. Everyone will help stay on track.
- **Respectful interaction.** Participants will respect each other’s personal integrity, values and legitimacy of interests.

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- **Integration and creative thinking.** Participants will strive to be open-minded and integrate ideas, perspectives and interests put forward by others. Disagreements will be regarded as problems to be solved rather than battles to be won. Participants will attempt to reframe contentious issues and offer creative solutions to enable constructive dialogue.
  - **Mutual gains approach.** Participants will work to satisfy not only their own interests but also those of other participants. Participants are encouraged to be clear about their own interests and to recognize the important distinction between underlying interests and fixed positions.

### INFORMATION SHARING & JOINT FACT-FINDING

Participants are encouraged to share all relevant information from their organizations that can support the WF II deliberations. To the extent there are additional information gaps, as possible, the group will draw on Water Forum staff and consultants to address these information needs. Facilitators will prepare discussion summaries for Negotiating Steering Committee meetings and Topic-Specific Working Group meeting. To aid information sharing, these meeting summaries will be available to any interested Water Forum member.

### APPROACH TO OUTREACH

As part of the Water Forum's existing public engagement activities, it will likely be necessary to share the progress of the Water Forum II process. Water Forum staff will consult with the NSC on the general approach, content, and level of detail that will be shared with the public on this topic.

### CONTACT WITH MEDIA & NON-PARTICIPANTS

- **Communication Protocols.** To foster a productive and collaborative atmosphere, participants agree to the following protocols:
  - Participants are encouraged to brief and share all relevant information with internal staff and governing bodies who will have a role in supporting or approving any agreement.
  - At the same time, parties will refrain from discussing details of the ongoing negotiation with the media or entities not party to the Water Forum II deliberations. In particular, participants will not present the view of others, characterize ideas or proposals still under consideration, or prejudice outcomes. Participants recognize that premature efforts to “negotiate through the press” or other avenues can undermine the success of a collaborative effort.
- **Media Contacts.** Participants contacted by the media are encouraged to direct these inquiries to the Executive Director of the Water Forum. As appropriate, Water Forum staff may work with participants to develop “talking points” for the media, Board member briefings, and /or others.