
File No.: 18-0382

Agenda Date: 5/8/2018

Item No.: *2.1

SUPPLEMENTAL BOARD AGENDA MEMORANDUM

SUBJECT:

Update on the California WaterFix, Authorization to Execute Agreements, Designation of District Representative, and Adoption of CEQA Findings

REASON FOR SUPPLEMENTAL MEMORANDUM:

This memorandum is brought at the direction of the Board during the May 2, 2018 special Board meeting. An additional recommendation will be provided as well as clarifying information regarding the environmental benefits of the 9,000 cfs project over a 6,000 cfs project and the steps necessary before the District can execute the Capacity Purchase Option Agreement.

RECOMMENDATION:

- A. Receive an update on the California WaterFix (WaterFix);
- B. Consider the potential environmental effects of the project as discussed in the Lead Agency's Final Environmental Impact Report and adopt the Resolution, MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO AUTHORIZE EXECUTION OF AGREEMENTS RELATING TO DESIGN, CONSTRUCTION, AND FINANCING OF THE CALIFORNIA WATERFIX PROJECT;
- C. Consider the potential costs and benefits of the WaterFix to Santa Clara County and adopt the Resolution, AUTHORIZING SUPPORT OF, AND PARTICIPATION IN, CALIFORNIA WATERFIX;
- D. *Approve the Capacity Interest Option Agreement with Metropolitan Water District of Southern California (Option Agreement) and direct the Chief Executive Officer (CEO) to negotiate the terms and conditions of the Capacity Interest Purchase Agreement (Purchase Agreement), and bring the agreements back to the Board for approval of the Purchase Agreement and execution of the Option Agreement;
- E. Approve and authorize the Board to execute a Joint Powers Agreement Forming the Delta Conveyance Design and Construction Joint Powers Authority (Design and Construction JPA) that is in substantial conformance to the agreement provided in Attachment 2, and designate a District representative and alternate to serve on the Board of Directors of the Design and

Construction JPA for the first two years following formation;

- F. Direct the CEO to negotiate terms and conditions for the District to participate in the WaterFix Financial Arrangements (See section 4.3), including a joint powers authority for financing construction of the WaterFix and bring the necessary agreements to the Board for approval;
- G. Delegate authority to the CEO to negotiate terms and conditions and execute an agreement between the Department of Water Resources and the District for preconstruction capital costs for the WaterFix for a District contribution of up to \$3.5 Million (Gap Funding Agreement);
- H. Direct staff to continue participating in WaterFix discussions to further develop agreements and contract amendments to protect the District's investment; and
- I. Direct staff to evaluate and negotiate long term water transfers, water supply alternatives and storage opportunities related to WaterFix, and bring terms and conditions to Board for consideration.
- J. *Direct staff to conduct a water affordability analysis for future Board discussion.

SUMMARY:

During the Board meeting on May 2, 2018, the Directors discussed their desire for a water affordability analysis. Staff has added a recommendation in response to that discussion.

In response to questions and discussion at that same May 2, 2018 meeting, staff provides the following information to illustrate the benefits provided with a 9,000 cfs project versus a 6,000 cfs project. Staff also provides an updated recommendation regarding the Capacity Interest Option Agreement (Option Agreement) and describes the steps necessary for the District to execute the Option Agreement.

A. Staff Analysis of Environmental Benefits of a 9,000 cfs WaterFix Project versus a Single 6,000 cfs Tunnel Project

Staff's assessment of WaterFix environmental benefits indicates that the State's proposed 9,000 cfs WaterFix project would result in greater benefits to the Delta ecosystem than a single 6,000 cfs tunnel, which was proposed by the State in February as the possible first part of a staged project. Scientists Peter Moyle and James Hobbs from U.C. Davis describe the potential benefits of the WaterFix in their September 2017 article, "Reasons for Optimism About California WaterFix From a Fish Perspective" (Supplemental Attachment 1); specifically regarding the benefits of one tunnel versus two, Moyle and Hobbs write:

"The idea is to build a single tunnel that has just enough capacity to supply urban water needs or function as an emergency conveyance system when large levee failures or severe drought draws seawater into the Delta. This could protect California's urban water supply from catastrophic failure, but from a smelt's perspective, this is just a step above the status quo, because ultimately the pumps in the South Delta will continue to be relied upon for most water exports (the dual conveyance

solution). Cross-Delta movement of water will continue, if somewhat reduced, as will entrainment mortality of native fishes.”

Additional detail is provided below:

1. A larger capacity project creates a more East-West estuarine-like gradient of habitat by reducing the pull of water through existing channels to the south-Delta pumping plants. Currently, the fishery agencies reduce State Water Project (SWP) and Central Valley Project (CVP) pumping from the Delta to minimize the reversal of river flows in order to lessen the risk that fish will be entrained at the south Delta pumps. The 9,000 cfs project reduces these flow reversals significantly, resulting in average net positive flows (i.e., more natural East to West flows) in the system. A 6,000 cfs project provides less benefit because its smaller size results in more water being diverted at the south Delta instead of through the tunnel, resulting in greater reverse flows than a 9,000 cfs project.
2. A larger facility means more of the SWP and CVP exports can be diverted through more fish friendly intakes in the north Delta. These intakes will be fitted with state-of-the-art fish screens. The screen size, as well as the velocity of the water moving through and past the screens, are designed to be protective of even the weak swimming delta smelt. They will be located outside the key habitat for both longfin and delta smelt, and salmon and steelhead should be able to swim past without being entrained. With a 9,000 cfs capacity project, more than half of Santa Clara County's imported water supplies will be through these more fish friendly diversions, compared to 42% with a 6,000 cfs facility

These benefits are summarized in the table below:

Project Description	Staged Project - 1 st Stage 6,000 cfs	Full Build Out - 9, 000 cfs
New Intakes	2 Intakes, 3,000 cfs each	3 Intakes, 3,000 cfs each
Tunnels	One 40-foot diameter, 30 miles long	Two 40-foot diameter, 30 miles long
Fish friendly diversions	42%	52%
Average reverse river flows	About -400 cfs	About +50 cfs

B. Process to Execute the Capacity Interest Option Agreement (Option Agreement)

At the May 2, 2018 Board Meeting several questions were posed regarding whether the District would be required to pay the option fee even though there are several important agreements that have not been developed yet. The below provides additional information on the Option Agreement and the steps necessary before it can and should be executed.

As described before, the Option Agreement is intended to provide the District with more time to work

with the U.S. Bureau of Reclamation (Reclamation) and other agencies to develop the necessary agreements, amendments and approvals that would provide the requisite certainty that the District's Central Valley Project (CVP) water supplies would be moved through the WaterFix and that the District would benefit from doing so.

According to the Option Agreement, the District is to pay a total of \$10 million ("Option Fee") to MWD for the right to purchase up to 200 cubic feet per second (cfs) of capacity in the WaterFix. Five (5) million dollars of the total Option Fee will be applied to the purchase of the capacity interest. The District has three years to exercise the right to purchase (the "Option") with the ability to request two more years if necessary. If the District decides not to exercise its Option, then MWD will keep the Option Fee. If, however, the District decides to exercise its Option, then the District will execute a Capacity Interest Purchase Agreement ("Purchase Agreement") with MWD. The Purchase Agreement will set forth the terms and conditions governing the District's purchase of up to 200 cfs of capacity, including the rights the District will have to utilize the capacity. As noted at the May 2nd meeting, the Purchase Agreement still has to be negotiated between the District and MWD.

In addition, another important agreement contemplated by the Option Agreement still needs to be developed and executed. This agreement is, at this time, referred to as the Master Agreement. The Master Agreement will be an agreement between the Department of Water Resources (DWR), MWD and possibly a financial joint powers agency. The Master Agreement will set forth the terms and conditions between DWR and MWD for MWD's funding of the unsubscribed portion of the WaterFix (roughly 33% of the total project). The Agreement will detail the contractual rights DWR, as owner of the WaterFix, will provide to MWD to use the capacity, establish fees for others to use the capacity and to sell portions of the capacity to other entities. Since the Master Agreement will establish the contractual rights that MWD will in turn sell to the District, having a final, executed Master Agreement is critical to understanding what the District would ultimately purchase. As such, the District would not execute the Option Agreement until the Master Agreement is executed between DWR and MWD, and is attached to the Option Agreement as Exhibit A.

Likewise, the Purchase Agreement, which would detail MWD's transfer to the District rights to use a certain capacity in the WaterFix in consideration for the District funding the full costs of that capacity, will need to be negotiated and in final form before the District would be in a position to execute the Option Agreement. While the Purchase Agreement would not be executed until the District decided to exercise its Option, it is necessary to the Option Agreement as it will detail what the District would be purchasing and the terms of that purchase.

Importantly, the Purchase Agreement will be brought to the Board for approval before the Option Agreement is executed.

In sum, there are two agreements that must be negotiated, finalized and brought back to the Board before the Option Agreement is executed. First, the Master Agreement between DWR and MWD must be negotiated and executed. This agreement will set forth the terms and conditions of the capacity MWD will purchase and its ability to resell a portion of that capacity to the District. Second, a Purchase Agreement must be negotiated between the MWD and District to a form acceptable to both parties. Although this Purchase Agreement will not be executed prior to execution of the Option

Agreement, it will contain important terms regarding the District's right to purchase capacity from MWD. It is critical that the District understands these terms prior to executing an Option Agreement.

Once the Master Agreement is executed between DWR and MWD, and the MWD and District Purchase Agreement is negotiated in its final form, these two agreements will be brought to the Board before the Option Agreement is executed by the District.

While it is uncertain at this time, it is expected that the Master Agreement and the Purchase Agreement will not be finalized and returned to the Board for several months.

FINANCIAL IMPACT:

No changes to the financial impact previously reported.

CEQA:

No changes to the CEQA information previously reported.

ATTACHMENTS:

Supplemental Attachment 1: Moyle-Hobb Article

UNCLASSIFIED MANAGER:

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