

August 14, 2018

Via hand delivery

TO: Santa Clara Valley Water District Board Members

FROM: Alan and Meg Giberson
Los Gatos, CA



RE: Item 5.1, Water Utility Enterprise Item (WaterFix update), file # 18-0412; Exhibit B missing, please reschedule item

We appreciate the opportunity to review materials that staff has put together for the Santa Clara Valley Water District (SCVWD) Board's and the public's review. Unfortunately, **Exhibit B is missing** from the materials published for today's hearing on **Item 5.1, Water Utility Enterprise**, pertaining to a WaterFix update and the District's plan to advance and/or contribute money to the Department of Water Resources for State Water Project (SWP) funding.

As the Board knows, a supermajority of county voters was willing to pay to "expand[] the use of recycled water for irrigation and industrial uses" and to pay to "expand[] systems that allow us to capture more storm water for reuse." (EMC / SCVWD phone survey dated April 2017)

As the Board also knows, less than half of its voting public was willing to "invest[] in storage and conveyance improvements to maintain the level of imported water from the Sacramento-San Joaquin [Delta]". (*Id.*) This makes missing item Exhibit B—which deals with some of the large amounts of money SCVWD wants to spend on WaterFix (CWF) to import water from the Delta—all the more important to today's hearing.

This missing item supposedly

sets forth shares of the preconstruction planning activity costs shown on Exhibit A opposite the names of certain Contractors, including the undersigned Contractor, which will be made by each such Contractor upon its approval and execution of an agreement similar to this Agreement;

and

Contractor desires to, and is authorized to, advance or contribute a share of preconstruction planning activity costs in the amount specified for the undersigned Contractor on Exhibit B hereto..."

and

sets forth an additional advance or contribution to be made by the Department for the purposes set forth in this Agreement,

Exhibit B is of critical interest to the public, and should be made available for public review—importantly with the requisite 72-hour notice—before it is voted on by the SCVWD Board.

Where water agencies like SCVWD—and thus their rate-paying public—are or will be on the hook for the large sums of money, it is important for agency directors to consider their public's wishes and concerns.

If Item 5.1 is approved today, SCVWD will risk a minimum of \$546,488 (six months' payments towards the GAP \$1,092,975 proposed in other exhibits). Even if WaterFix bond funds are received before all 12 months of payments are made, there appears to be no certainty that SCVWD will not need to continue to make payments—the District's obligations "may" be terminated according to the Board memo, but do not have to be ended. As the memo notes:

There is a **chance that funds will not be reimbursed or credited if DWR determines** that such reimbursement or credit is not consistent with applicable law, judicial rulings, or contractual obligations of DWR, or if the terms of the future agreements to accomplish the reimbursement or credit are not acceptable to DWR. **If the WaterFix does not proceed to construction, no reimbursements of gap funding will occur except for any remaining unspent funds** after payment of all applicable invoices.

[All emphasis added]

Future agreements continue the uncertainty for which the WaterFix project has become well known. These agreements further affect the monetary uncertainties of CWF, as they will:

- obligate the District to purchase a certain percentage of DWR-issued bonds
- involve additional financing agreements
- involve WaterFix cost allocation (per amendment to SWP contract).

Attachment 4, Resolution #18-24 itself admits CWF "could only potentially protect the District's water supply reliability", acknowledging uncertainty regarding water amounts, as it predicates both future water delivery and monetary contributions on unsubstantiated claims for CWF.

Further, Attachment 1 "Agreement" states, "a State Agency may advance or contribute funds to DWR for SWP purposes pursuant to Water Code section 11135." It is not so clear, however, that Code section 11135 refers to the SWP, as it falls within a part of the Code added in 1943 referring to the Central Valley Project (CVP) ("Part 3. Central Valley Project" of Division 6). As we all know, SWP (state) and CVP (federal) are not the same projects.

Given the reluctance of the county's voting public to pay for improvements to water delivery relating to imported water from the Sacramento-San Joaquin Delta (*see supra*), it is difficult to understand the SCVWD Board's eagerness to bind its customers to these numerous and costly WaterFix unknowns. As our previous submissions have detailed at some length (*see, e.g.* our 12-page May 1, 2018 submission) CWF costs may soar wildly beyond the ~\$17 billion range proposed. Thus, it is not clear that "local water use efficiency and conservation, recycled water and groundwater management are essential but cannot cost-effectively replace imported water." (Attachment 4, p. 1 of 4)