

**File No.:** 19-0243

**Agenda Date:** 2/26/2019

**Item No.:** \*7.1.

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## SUPPLEMENTAL BOARD AGENDA MEMORANDUM

### SUBJECT:

Recommended Positions on State Legislation: Senate Bill (SB) 19 (Dodd) Water Resources: Stream Gages; ACA 1 (Aguiar-Curry) Local Government Financing of Affordable Housing and Public Infrastructure: Voter Approval; \* SB 204 (Dodd) State Water Project: Contracts; and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

### REASON FOR SUPPLEMENTAL MEMORANDUM:

This supplemental Board agenda memorandum conveys additional information received after the initial agenda item was released, regarding SB 204 (Dodd) State Water Project: Contracts, consistent with Executive Limitations Policy EL-7-10-5.

### RECOMMENDATION:

- A. Adopt a position of "Support" on: SB 19 (Dodd) Water Resources: Stream Gages.
- B. Adopt a position of "Support" on: ACA 1 (Aguiar-Curry) Local Government Financing of Affordable Housing and Public Infrastructure: Voter Approval.
- C. \* Adopt a position of "Oppose Unless Amended" on: SB 204 (Dodd) State Water Project: Contracts.

### SUMMARY:

**\* SB 204 (Dodd) State Water Project: Contracts**

**Position Recommendation: Oppose Unless Amended**

**Priority: 2**

Senate Bill 204 (SB 204) was introduced by Senator Bill Dodd for the 2019-2020 Session of the California Legislature. SB 204, if passed by both houses of the Legislature and signed by the Governor, would replace existing law (Section 147.5 of the California Water Code) that requires the Legislature's Joint Legislative Budget Committee (JLBC) to hold a public hearing at least 60 days prior to the final approval of the renewal or extension of a long-term water supply contract between the California Department of Water Resources (DWR) and a State Water Project (SWP) contractor.

This bill would instead do the following.

- A. Require DWR to provide at least ten days' notice to the JLBC and relevant policy and fiscal committees of the Legislature before holding public sessions to negotiate any potential

- amendment of a long-term water supply contract.
- B. Require DWR, at least 60 days prior to final approval of a long-term water supply contract amendment, to submit to the JLBC and relevant policy and fiscal committees of the Legislature, the terms and conditions of the proposed amendment and a list of specified supporting documents.
  - C. Prohibit DWR from approving a long-term water supply contract for 90 days after the first hearing by a committee of the Legislature to review the proposed amendment, if such a hearing is held.
  - D. Require the Delta Conveyance Design and Construction Joint Powers Authority (DCA), at least 60 days prior to finalizing any contract for the planning, design, or construction of the California WaterFix (WaterFix), to submit information regarding the terms and conditions of the proposed contract.
  - E. If the JLBC or relevant policy and fiscal committees hold a hearing to review a contract of the DCA, the bill would prohibit the DCA from approving the contract for 90 days after the first hearing by a committee to review the proposed contract. The bill does not specify how the DCA would proceed should no committee of the Legislature hold a hearing.

Under the bill, efficient contracting by the DCA would be substantially compromised because it would require contractors to keep pricing in bids viable for a minimum of 150 days, and likely much longer. To account for the uncertainty, bidders may inflate the contract price, thereby unnecessarily increasing the cost of the project. On May 10, 2018, DWR submitted a contract extension to the JLBC pursuant to the current law. The JLBC, after scheduling and canceling the hearing twice, finally held the public hearing required by law on September 11, 2018, four months after DWR's initial request. Because this bill does not require that a public hearing be held promptly following the submittal of a contract for the planning, design, or construction of the WaterFix, and because it requires that a contract not proceed until 90 days after the first hearing by a committee of the Legislature, contracting by the DCA could be significantly delayed or even suspended indefinitely.

### *Importance to Valley Water*

The WaterFix is intended to help restore the health of the Delta ecosystem and to ensure the long-term reliability of water supplies conveyed through the Delta. The project, planned to include two tunnels under the Delta, would provide an alternative conveyance pathway for moving water from the north Delta to the existing pumping plants in the south Delta. The location of the WaterFix intakes in the north Delta would reduce risks to water supplies from increasing salinity due to projected sea level rise and other climate change effects, and allow improved flow patterns in the south Delta to protect fish.

On February 12, 2019, in his State of the State Address, Governor Gavin Newsom stated his support for a one-tunnel approach to the WaterFix, and work to refine the project is now beginning. The Valley Water Board has advocated for a right-sized project, and the Board Chair issued a statement pledging to work with the Newsom Administration.

The need to secure the conveyance of water through the Delta from the threats of sea level rise, levee failure, and regulatory uncertainties due to the environmental impacts of the

existing conveyance, is well documented by scientific evidence compiled over the last decade. Because Santa Clara County relies on SWP and Central Valley Project (CVP) water supplies conveyed through the Delta to meet 40 percent, on average, of its water supply needs, Valley Water has an interest in the development of the WaterFix as a potential cost-effective project that could improve the reliability of Valley Water's imported supplies.

After extensive consideration and public participation in numerous hearings on the subject, on May 8, 2018, the Valley Water Board approved the agency's participation in the WaterFix out of concern for the future of the Delta and the need to ensure the long-term reliability of the County's water supply. SB 204 would further delay the implementation of the WaterFix and increase the final cost of the project, endangering reliability and affordability of the water supply for Santa Clara County and for tens of millions of other Californians.

Valley Water's 2019 Legislative Guiding Principles, adopted by the Board on October 23, 2018, under the title *Water Supply and Drought* in item number 1 state: *Support legislative, administrative or other efforts that protect and/or advance the District's interests in the California WaterFix, including efforts to ensure financially prudent project delivery.* In item number 4, under that same title, the Legislative Guiding Principles state: *Oppose measures that reduce the reliability or quality of the District's imported water supplies.*

Staff recommends that the Board adopt a position of "Oppose Unless Amended" on SB 204, and that staff be directed to concurrently convey that Valley Water is not opposed to transparency for the WaterFix. Further, Valley Water will continue to oppose SB 204, unless Senator Dodd amends the bill to remove provisions of delay and to focus on the timely and efficient implementation of enhanced transparency.

### *Pros*

- May provide enhanced transparency for SWP contracting through review by committees of the Legislature and by requiring specified summary information about potential amendments to long-term water supply contracts between DWR and SWP contractors.

### *Cons*

- Enacts an open-ended public hearing process that would delay, or suspend indefinitely, contracting by the DCA for the planning, design, or construction of the WaterFix.
- Would complicate the competitive bidding process, likely resulting in higher costs due to increased uncertainty for bidders.
- Endangers the reliability and affordability of the imported water supply for Santa Clara County and for tens of millions of other Californians.

## **FINANCIAL IMPACT:**

There is no financial impact associated with this item.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

None.

**UNCLASSIFIED MANAGER:**

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