



Santa Clara Valley Water District

File No.: 19-0015

Agenda Date: 1/4/2019
Item No.: 2.5.

BOARD AGENDA MEMORANDUM

SUBJECT:

Update on the State Water Resources Control Board's Amendments to the Bay-Delta Water Quality Control Plan and Agency-Proposed Voluntary Agreements, and Agreements Related to the Operations of the Central Valley Project and State Water Project and the California WaterFix.

RECOMMENDATION:

- A. Receive an update on the State Water Resources Control Board's Amendments to the Bay-Delta Water Quality Control Plan and agency-proposed Voluntary Agreements; and
- B. Receive an update on agreements related to operations of the Central Valley Project and State Water Project, and related to the California WaterFix.

SUMMARY:

On December 12, 2018, the State Water Resources Control Board (SWRCB) approved Resolution No. 2018-0059, that included adopting its staff's proposed Phase 1 amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay Delta Plan), which set flow and water quality objectives for the San Joaquin River and its major salmon bearing tributaries, including the Tuolumne, Stanislaus, and Merced Rivers (Attachment 1). The Phase 1 amendments also revised the southern Delta salinity objective to protect agricultural supply beneficial use in the Delta.

Over the past year, State departments, including the California Department of Water Resources (DWR), and the U.S. Bureau of Reclamation (USBR) engaged in negotiations with water users and other stakeholders to develop voluntary agreements for the anticipated update to the Bay Delta Plan, and to resolve outstanding issues related to operations of the State Water Project (SWP) and Central Valley Project (CVP). These efforts reached a significant milestone on December 12, 2018, with presentation by the State to the SWRCB (which develops the Bay Delta Plan) of a framework for voluntary agreements.

Despite the significant progress made by the State on developing voluntary agreements, the SWRCB adopted the more extensive flow criteria recommended by its staff for the lower San Joaquin River tributaries, but directed its staff to support development of the voluntary agreements for future consideration.

Separately on December 12, DWR and USBR entered into three important agreements --addressing potential WaterFix impacts upon CVP contractors, coordinated operation of the CVP and SWP systems, and implementation of revised Biological Opinions to be developed based on Reinitiation of Consultation (currently underway) under the federal Endangered Species Act.

The SWRCB decision and potential impacts to the District, as well as a summary of the three DWR-USBR agreements are described below.

1.0 SWRCB decision on Phase 1 amendments to the Bay Delta Plan

On December 12, 2018, the SWRCB approved Resolution No. 2018-0059, adopting its staff's proposed Phase 1 amendments to the Bay Delta Plan, which set flow and water quality objectives for the San Joaquin River and its major salmon bearing tributaries, including the Tuolumne, Stanislaus, and Merced Rivers (Attachment 1). The Phase 1 amendments also revised the southern Delta salinity objective to protect agricultural supply beneficial use in the Delta. The SWRCB amended the resolution to direct its staff to assist the California Natural Resources Agency in completing a Delta watershed-wide voluntary agreement by March 1, 2019, and to incorporate the agreement as an alternative for a future comprehensive Bay Delta Plan update that the Board would consider in December, 2019. Should a voluntary agreement be completed by March 1, 2019, the SWRCB believes the 8-month period before it considers that agreement, on or around December 1, 2019, should be sufficient time for completion of any necessary environmental reviews. The SWRCB amendments to the resolution are provided as Attachment 2.

Prior to the SWRCB decision, Chuck Bonham, Director of the California Department of Fish and Wildlife, and Karla Nemeth, Director of the DWR, presented the current status of the State's voluntary agreements. Their presentation covered the agreement framework as well as proposed term sheets for the Delta and the Sacramento, Feather, Yuba, American, Mokelumne, Tuolumne, and San Joaquin Rivers. Their presentation and the Framework Proposal for Voluntary Agreements with proposed term sheets for each tributary is provided as Attachment 3 and includes a description of flow and non-flow measures, habitat restoration and other stressor reduction measures, adaptive management, and funding sources. Additional information on the proposed voluntary agreements can be found at the following website:

[<http://resources.ca.gov/voluntary-agreements/>](http://resources.ca.gov/voluntary-agreements/)

Supporters of the voluntary agreements unsuccessfully requested that the SWRCB delay its decision to adopt SWRCB staff's recommended plan amendments in order to provide additional time to complete the voluntary agreements in 2019. Instead, the SWRCB's decision incorporates Phase 1 amendments that require 30 to 50 percent of unimpaired flow to be maintained in the Tuolumne River, the Merced River, and the Stanislaus River from February to June. This could significantly reduce the supply of water to the San Francisco Public Utilities Commission (SFPUC) and Santa Clara County, unless voluntary agreements including negotiated terms for flows on the Tuolumne River are ultimately adopted by the SWRCB. Adoption of voluntary agreements as a Bay Delta Plan update would require additional review, analysis, and public process.

The unimpaired flow requirements adopted by the SWRCB will not be implemented until Phase 2, otherwise known as the Sacramento/Delta Update to the Bay Delta Plan, is completed and a program of implementation is developed. On July 6, 2018, the SWRCB released a framework for the Phase 2 Sacramento/Delta update that describes changes that will likely be proposed in 2019 through a formal proposal and supporting environmental document. The changes include unimpaired flow requirements for the Sacramento River and its salmon-bearing tributaries that range between 45 and 65 percent, with a starting point of 55 percent.

Implementation of the criteria adopted in Phase 1 and Phase 2 of the Bay Delta Plan update would take place through Phase 3 in which the SWRCB will use its adjudicative authority to assign responsibility to water rights holders for meeting the updated plan requirements. The SWRCB will determine specific implementation procedures on a date yet to be announced.

Attachment 4 provides District staff's agenda memo that was presented to the Board on August 28, 2018, which provides an overview of the Bay Delta Water Quality Control Plan and phased review update.

1.1 Potential impacts to the District from adoption of Phase 1 amendments

The District described potential impacts from adoption of the Phase 1 amendments in a letter to the SWRCB dated July 27, 2018, which is included as Attachment 5. If the SWRCB ultimately does not move from its staff unimpaired flow recommendations for the Tuolumne River, SFPUC predicts a doubling of water-short years, with shortages increasing from between 10 and 20 percent to between 40 to 54 percent under a 40 percent unimpaired flow allocation; these shortages could increase under higher unimpaired flow conditions. This in turn could reduce the amount of SFPUC supplies available to cities within Santa Clara County by an additional 21 to 78 percent during a repeat of the 1987 to 1992 drought, depending upon the level of unimpaired flow imposed on the Tuolumne in any given year and depending on how SFPUC and its wholesale customers agree to share the limited yield. Such a reduction in SFPUC supplies could result in greater District supplies called for by these impacted cities to meet demands. Average annual impacts to Santa Clara County could be an increase in the frequency of shortage years of between 5 and 15 percent, with an average shortage magnitude increase of up to 14,000 acre-feet. In addition, recent staff analysis indicates that the reduction in SFPUC supplies may increase the magnitude of water shortage contingency plan actions during a long-term drought by 10 to 20 percent.

2.0 Update on Coordinated Operations and the California WaterFix

On December 12, 2018, DWR and USBR executed three agreements related to the coordinated operations of SWP and CVP and the California WaterFix (WaterFix). DWR also submitted a letter to several water agencies communicating its expectation that these agencies withdraw all protests related to WaterFix and refrain from any future challenge to regulatory processes or litigation on the WaterFix. These documents are described below.

1. Addendum to Coordinated Operations Agreement - The Addendum to the Coordinated Operations Agreement (COA) of the CVP and SWP (Attachment 6) amends the original 1986 coordinated operations agreement by revising the respective obligations of DWR and USBR for meeting Delta regulatory standards and updates the sharing of export capacity from SWP and CVP facilities, as well as modifying the agreement review and revisions process. District staff's assessment is that the Addendum would reduce the District's annual average SWP supplies by roughly 5,000 acre-feet, but increase the District CVP supplies by a comparable amount while potentially increasing CVP public health and safety supplies during critically dry years.
2. Memorandum of Agreement for Implementation of the Biological Opinions - The Memorandum of Agreement (MOA) for the Implementation of the 2008 and 2009 Biological Opinions for the Coordinated Operations of the Central Valley Project and State Water Project (Attachment 7) identifies funding for both the joint and individual requirements for DWR and USBR as set forth in the Biological Opinions for the long-term coordinated operations of the SWP and CVP. It also establishes procedures for cooperation and collaboration between the two projects, as well as to prioritize activities to satisfy the requirements of the Biological Opinions. This MOA will likely facilitate implementation of required actions to protect fish and restore habitat in the Delta, which would both improve the Delta environment and improve water supply reliability.
3. Agreement to Address the Effects of California WaterFix on Central Valley Project Operations (No Harm Agreement) - The Agreement to Address the Effects of the California WaterFix on CVP Operations (Attachment 8) requires that DWR avoid, mitigate, or offset any CVP water supply reduction resulting directly from WaterFix operations if the WaterFix is not fully integrated into operations of the CVP. The Agreement also requires USBR to maintain its participation in the WaterFix change petition process pending before the SWRCB until a draft order is issued, or the SWRCB has announced an intention to issue a final order.
4. Letter to Protestants - DWR issued a letter (Attachment 9) to several water agencies and stakeholder groups communicating its expectation that, in light of the agreements described in paragraphs 1-3 above, these entities would withdraw all existing protests and refrain from any future litigation or challenges to regulatory processes related to the WaterFix.

Staff will continue to participate in agency discussions regarding the Bay Delta Plan and implementation of the three agreements described above, and will continue to consider impacts, and make recommendations for Board action should those anticipated impacts be unacceptable to the District.

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:

- Attachment 1: SWRCB Resolution No. 2018-0059
- Attachment 2: SWRCB Resolution No. 2018-0059 Amendments
- Attachment 3: Framework Proposal for Voluntary Agreements
- Attachment 4: 082818 SCVWD Board Agenda Item 2.7
- Attachment 5: 072718 SCVWD Comment Letter to SWRCB
- Attachment 6: Addendum to COA
- Attachment 7: MOA for Implementation of Biological Opinions
- Attachment 8: No Harm Agreement
- Attachment 9: 121218 DWR Letter to Protestants
- Attachment 10: PowerPoint

UNCLASSIFIED MANAGER:

Garth Hall, 408-630-2750