



Santa Clara Valley Water District

File No.: 17-0087

Agenda Date: 3/14/2017

Item No.: 5.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Review and Confirm Proposed Principles Related to California WaterFix.

RECOMMENDATION:

- A. Review and confirm proposed Principles related to the California WaterFix; and
- B. Receive and discuss updated information on the California WaterFix.

SUMMARY:

This item provides for Board discussion of proposed principles to guide the District's participation in discussions, negotiations, and messaging regarding the California WaterFix (CWF). The principles are provided in Attachment 1.

Per Governance Process Policies GP-2.2 and GP-3.2, the Board is charged with producing broad written policies that reflect the Board's values and perspectives.

On May 13, 2008, the Board reviewed and confirmed CEO Interpretations of Board policy related to a long-term Delta solution. The State's approach to long-term Delta solutions has evolved since that time, including a shift from developing the comprehensive conservation strategy originally contemplated by the Bay Delta Conservation Plan to the more focused CWF and California EcoRestore projects. Over the course of this year, staff will be engaged in administrative processes, discussions and negotiations with state and federal agencies, State Water Project (SWP) and federal Central Valley Project (CVP) contractors, and other stakeholders regarding the State's proposed CWF project. Principles are proposed to help ensure a consistent representation of the District's interests.

Staff has drawn from the following sources to develop draft principles:

- 1) Santa Clara Valley Water District Policy Statement before the State Water Resources Control Board on July 21, 2016 (Attachment 2); and
- 2) Board Policy and CEO Interpretations Related to the Imported Water Program (Attachment 3).

3) August 16, 2016 Resolution of the Board of Supervisors of the County of Santa Clara Expressing its interests in the Bay Delta Estuary Planning Process (Attachment 4);

This agenda item also provides an update on the CWF project planning and permitting processes including the status of the following:

- A. Environmental Impact Report/Environmental Impact Statement (EIR/S),
- B. Biological Opinions under the Federal Endangered Species Act
- C. 2081(b) Permit under the California Endangered Species Act
- D. Petition for Change in Point of Diversion from the State Water Resources Control Board
- E. Cost Allocation Discussions and Negotiations
- F. Adaptive Management Program Development
- G. Next Steps and California WaterFix Principles
- H. Project Schedule

BACKGROUND:

Santa Clara County relies on imported water to meet, on average, 55 percent of its water needs, with 40 percent conveyed through the Sacramento-San Joaquin Delta by the SWP and CVP, and 15% diverted upstream of the Delta by the San Francisco Public Utility Commission's Hetch-Hetchy project.

The District's SWP and CVP water supplies, together, are a critical component of the District's water supply portfolio, providing the majority of water supply to the District's three drinking water treatment plants, serving to recharge the county's local groundwater basin to help meet pumping demands while minimizing risk of permanent land subsidence, and protecting local surface and groundwater reserves. The District's SWP and CVP supplies offer additional flexibility in that these supplies may be stored in facilities outside of the county, including the groundwater bank managed by Semitropic Water Storage District (Semitropic bank), for District withdrawal during dry periods. The Semitropic bank has proven to be a valuable resource, providing over 120,000 acre-feet (AF) of critical dry year supply to the county over the past three drought years; however, supplies from the Semitropic bank are conveyed to the District through the Delta, and the reliability of the bank is linked to the reliability of the Delta.

The District's imported water supplies are at risk from several factors including increased salinity intrusion due to climate change and sea level rise, and seismic threats to the fragile Delta levee system. In addition, the Delta ecosystem no longer supports healthy populations of several native fish species which has resulted in increasing regulatory restrictions on SWP and CVP operations to protect fish and water quality. To reduce these risks, the District joined other public water agencies

since 2006 to support the State's planning efforts for the Bay Delta Conservation Plan, and is now evaluating the potential benefits and costs of the CWF consistent with Board Policy and CEO direction (Attachment 4).

The CWF would provide an alternative conveyance pathway for moving water from the north Delta to the existing pumping plants in the South Delta.

Currently, the SWP and CVP pumps are in an area in the southern Delta that is subject to tidal flows. Operation of the SWP and CVP pumps often cause the reverse flows to be significantly stronger than the positive, downstream flows towards San Francisco Bay. Many believe that this increase in reverse flows confuses migrating fish like salmon and steelhead, and draws smaller, poorer swimming fish like Delta Smelt, toward the pumps and into the south Delta where habitat conditions are less hospitable.

In addition, because of the location of the existing pumps in the tidal portion of the Delta where the rivers naturally ebb and flow, they cannot be effectively screened to prevent fish from becoming pulled into them. The CWF would include installation of state-of-the-art fish screens on the new intakes.

The water diverted through the new intakes would be delivered to the existing pumps in the southern Delta. Total exports would be limited to the existing capacity of those pumps. Total average annual exports are not anticipated to be greater than current levels.

The location of the proposed CWF intakes in the north Delta, where water quality is better and intakes are farther away from the Bay, would enable selection of river water that has not mixed with ocean water, as occurs to a limited degree today in the south Delta and is expected to occur increasingly in the future with sea level rise. In addition, the proposed CWF tunnels would be designed to withstand seismic events. Having an alternative conveyance pathway is expected to increase the operational flexibility of the State and federal projects to address future risks and reduce impacts on protected fish species.

On July 12, 2016, staff presented an updated preliminary CWF business case to the Board, based on information available at that time. The analysis estimated a range of potential District costs and water supply benefits of the project relative to other potential District investment options. Since that time, progress has been made on the District's Water Supply Master Plan, which is evaluating combinations of various water supply projects to meet the District's future water supply needs. An update on the plan was provided to the Board on January 31, 2017.

CALIFORNIA WATERFIX UPDATE

The State is working to complete the environmental documentation and secure permits for the CWF project, as well as develop an adaptive management approach to guide future refinements to regulations. State and federal agencies, along with public water agencies, are also discussing various options for sharing costs. Key efforts are briefly summarized below.

A. Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

On December 22, 2016, the California Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) released the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Bay Delta Conservation Plan which identified the CWF as the preferred alternative. If the District considers whether to fund a portion of the project cost, such approval would be considered a discretionary authority placing the District in the role of a CEQA responsible agency. As a responsible agency, the District would be required to consider the environmental effects before deciding whether or how to approve the project, to make findings with respect to each significant impact and adopt a statement of overriding considerations, if needed, and to file a Notice of Determination with the county clerks in the counties in which the project is located. Reclamation and DWR plan to issue their Record of Decision and Notice of Determination, respectively, in March 2017. Staff will prepare any necessary findings and statement of overriding considerations and provide them to the Board for its considerations and adoption when making a decision on the project later this summer. The Final EIR/EIS can be downloaded from the following website:

<http://baydeltaconservationplan.com/FinalEIREIS.aspx>.

B. Biological Opinions under the Federal Endangered Species Act

On July 29, 2016, DWR and Reclamation requested formal consultation by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act. During the consultation, the fish and wildlife agencies conduct their own assessment of potential impacts on listed species and develop Biological Opinions as to whether the project is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. NMFS and USFWS released partial drafts of their analyses in mid-December 2016 for review by an independent panel of scientists. The partial drafts only included analyses of potential impacts of the separate project components, and did not roll up the potential benefits and impacts into opinions on the entire proposed project. Final Biological Opinions are expected in March 2017. The partial draft analyses can be downloaded from the following website:

[<http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/WaterFixReviewBiOp.html>](http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/WaterFixReviewBiOp.html)

C. 2081(b) Permit under the California Endangered Species Act

DWR submitted an Incidental Take Permit application to California Department of Fish and Wildlife (CDFW) on October 5, 2016. CDFW is reviewing the application materials to assess potential impacts on the state-listed Longfin Smelt under Fish and Game Code sections 2081(b) and (c) of the California Endangered Species Act. The application materials were also reviewed by an independent panel of scientists who issued a draft report in January 2017. A final report from the independent panel is expected in mid-February and a 2081(b) permit is expected in March of 2017. The draft

science panel review and application materials can be downloaded from the following website:

[<http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/CaliforniaWaterFixBiopReviewPhase2A.html>](http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/CaliforniaWaterFixBiopReviewPhase2A.html)

D. Petition for Change in Point of Diversion from the State Water Resources Control Board

In order to divert water from the Sacramento River at the CWF proposed intakes, DWR and Reclamation must obtain a change in their water rights permits from the State Water Resources Control Board (State Water Board). DWR and Reclamation submitted a petition for change in their point of diversion on August 26, 2015, which launched a lengthy and complex review process by the State Water Board. The State Water Board is conducting the evidentiary hearing in two parts, with the first part focused on effects of the project on legal users of water and the second part addressing effects of the project on fish and wildlife, including appropriate Delta flow criteria. Part 1 of the State Water Board hearing began on July 26, 2016. The parties have completed their cases in chief and the next stage of Part 1 is for the State Water Board to receive and hear rebuttal testimony and exhibits. Rebuttal for Part 1 of the hearing is scheduled to commence on April 25, 2017, and continue, if needed, until August 10, 2017.

Part 2 of the hearing, addressing project impacts on fish and wildlife, is estimated to begin in June 2017, after DWR and Reclamation complete their environmental review of the project under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), and obtain approvals under the California and federal Endangered Species Acts. The State Water Board is not expected to issue a decision until sometime in 2018.

E. Adaptive Management Program Development

DWR, Reclamation, NMFS, USFWS and CDFW (collectively, "5-Agencies") continue to develop and refine an adaptive management program for the CWF that will evaluate the latest science and monitoring data and potentially adjust regulatory criteria accordingly. A draft framework was submitted to the independent panel of scientists for review with the 2081(b) permit application. The framework and draft panel review can be downloaded from the following website:

[<http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/CaliforniaWaterFixBiopReviewPhase2A.html>](http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/CaliforniaWaterFixBiopReviewPhase2A.html)

F. Cost Allocation Discussions and Negotiations

The portion of the cost of the CWF to be borne by the District will depend in part on negotiations to determine how the costs for the project will be shared among the SWP and CVP contractors. Discussions are ongoing. Several options have been considered, including (1) opt-out proposals, in which costs are initially allocated to all contractors but contractors would be allowed to opt out and receive reimbursement for their share of costs by transferring their share of any incremental water supply benefit the project may provide, and (2) opt-in proposals, in which contractors have a choice

as to whether or not to participate in the project.

Alternatives are still being defined, and associated issues are being explored. It will likely be several months before a full proposal is finalized.

G. Next Steps and Proposed District California WaterFix Principles

In the coming months, numerous agreements will be negotiated between state and federal agencies and potential participating water agencies that will address the following issues:

1. Allocation of water supplies between the SWP and CVP and amongst participating water agencies
2. Allocation of CWF project costs
3. Project planning, design and construction oversight
4. Project planning, design and construction management
5. Project funding and financing
6. Adaptive management structure and funding

The District has not yet made a decision on whether or not to participate in the CWF. The final form of the above agreements will influence whether the costs, benefits, and assurances support a Board decision to participate (and at what level). The principles in Attachment 1 may provide guidance to staff who participate in these discussions and negotiations.

To guide District staff in achieving desirable outcomes that would present the best possible case for the Board's consideration as to whether the District should participate in the CWF, the CEO will complete negotiations and execute a single-source agreement with a consultant that has expertise negotiating agreements involving multiple public agency participation in multi-billion dollar projects.

H. Project Schedule

The project schedule is provided as Attachment 5.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action is a ministerial action and thus is not subject to the requirements of CEQA.

ATTACHMENTS:

Attachment 01: Draft California WaterFix Principles
Attachment 02: SCVWD Policy Statement to State Water Board
Attachment 03: Board Policy and CEO Interpretations
Attachment 04: Board of Supervisors Resolution
Attachment 05: Board Communication Schedule
Attachment 06: PowerPoint
*Handout 5.1-A, Sierra Club Comments

UNCLASSIFIED MANAGER:

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