



Santa Clara Valley Water District

File No.: 17-0266

Agenda Date: 5/9/2017
Item No.: 5.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Receive and Discuss Updated Information on the Delta Stewardship Council's Delta Plan.

RECOMMENDATION:

Receive and discuss updated information on the Delta Stewardship Council's Delta Plan.

SUMMARY:

This item provides for Board discussion of the Delta Stewardship Council's Delta Plan and proposed principles to guide the District's participation in discussions, negotiations, and messaging regarding the Delta Plan. 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.

The 2009 Delta Reform Act established the Delta Stewardship Council as the overarching organization responsible for producing a sustainable management plan to achieve the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. In May 2013, the Delta Stewardship Council adopted the Delta Plan to satisfy that requirement.

While the Santa Clara Valley Water District (District) fully supports the State's coequal goals, the District's main concern continues to be the potential impact of the Delta Plan on the District's water supply reliability. The District, along with multiple other agencies and organizations, filed legal challenges to the Delta Plan in May 2013. The litigation is currently being appealed; however, the Delta Plan remains in force and the Delta Stewardship Council is now considering updates. District staff have been following the development of these updates and may be submitting comments directly on behalf of the District or through organizations that represent the District such as the State Water Contractors and San Luis & Delta-Mendota Water Authority. The principles put forth in this agenda memo are proposed to provide guidance to staff and help ensure a consistent representation of the District's interests.

BACKGROUND:

The Delta Plan

According to the Delta Stewardship Council, the Delta Plan is California's plan for the Delta. It contains 87 provisions, including 73 recommendations which "*call attention to tasks being done or to be done by others*" and 14 regulatory policies "*that anyone undertaking a significant project in the Delta must meet.*" The 14 regulatory policies were approved by the Office of Administrative Law and the Delta Plan became effective with legally-enforceable regulations on September 1, 2013. The 14 policies are regulations that govern "covered actions" which are defined under Water Code § 85057.5(a) as:

...a plan, program, or project... that meets all of the following conditions:

- 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.*

The Delta Reform Act specifically charged the Delta Stewardship Council with (1) developing quantifiable or otherwise measurable targets associated with achieving the objectives of the Delta Plan; (2) determining, on appeal, if a state or local agency's project within the Delta is consistent with the Delta Plan; and (3) determining, on appeal, whether the Bay Delta Conservation Plan meets statutory criteria for inclusion in the Delta Plan. The Delta Plan is to be revised every five years or sooner as circumstances change.

Litigation

In May of 2013, the District joined the State Water Contractors, Inc., Zone 7 Water Agency, and other State Water Project contractors in a suit against the Delta Stewardship Council, challenging its adoption of the Delta Plan on the grounds that (1) the Delta Plan and regulations exceed the statutory limitations of the Delta Reform Act and (2) the Delta Plan EIR fails to analyze the Delta Plan's environmental impacts under CEQA. Six other lawsuits were also filed by other parties, including various environmental groups, and a number of federal water contractors. All seven lawsuits were consolidated and referred to Sacramento County Superior Court.

In May of 2016, Sacramento County Superior Court rejected the District's and other water contractors' claim that the Delta Stewardship Council exceeded its authority. Nonetheless, the Court invalidated the Delta Plan and directed the Delta Stewardship Council to revise the Delta Plan to provide enforceable "quantified or otherwise measurable targets" that reduce Delta reliance, reduce environmental harm from invasive species, restore more natural flows, increase water supply reliability, and set "flow policies." Furthermore, the Court directed the Delta Stewardship Council to revise the Delta Plan to promote options for water conveyance and storage systems. The Court also

found the CEQA claims moot and will not consider them until after the Delta Plan and its regulations are revised.

Six of the seven cases are currently on appeal before the 2nd District Court of Appeals. In response, the Court of Appeals recently placed the invalidation on hold. The parties have stipulated to a briefing schedule. An appeal hearing is not expected to occur earlier than spring of 2018.

Delta Plan Amendments

On March 16, 2017, the Delta Stewardship Council issued a Notice of Preparation (NOP) for an Environmental Impact Report (EIR) on proposed amendments to the Plan. The proposed amendments and some concerns identified by water agencies include:

1. The Delta Levee Investment and Risk Reduction Strategy amendment. This amendment would promote strategic levee investment for the purpose of reducing risks to people, property, and State interests in the Delta and recommend priorities for State investment in levee operations, maintenance, and improvements in the Delta. This amendment would also update the Delta Plan policy on the Prioritization of State Investment in Delta Levees and Risk Reduction.

A key concern noted by the State Water Contractors is that this proposed amendment references erroneous assumptions that areas served by the State Water Project and Central Valley Project have not been paying enough to maintain Delta levees. Delta Plan guidance on levee funding should be based on an appropriate beneficiary-pays principle that includes accurate, quantified, and demonstrated incremental benefits to each beneficiary.

2. An amendment to the Delta Plan promoting options for Delta conveyance, storage and operations. In the 2013 Delta Plan, the Delta Stewardship Council sought to promote these options by recommending the Bay Delta Conservation Plan's completion. This amendment is in response to the Court finding that simply recommending the Bay Delta Conservation Plan's completion does not promote any options, and because the State's current preferred alternative under the Bay Delta Conservation Plan, the California WaterFix, no longer qualifies as a Habitat Conservation Plan/Natural Community Conservation Plan as was contemplated when the Delta Reform Act was enacted, and thus no longer qualifies for automatic inclusion as the Delta Plan's conveyance option.

The proposed amendment encourages the Department of Water Resources and the Bureau of Reclamation to pursue a dual-conveyance solution for the Delta. While the District has not yet decided whether to support the California WaterFix project, the District has previously stated it believes continuing to rely on the existing system of through-Delta conveyance for the County's imported water supplies is not sustainable for water supply or ecosystem health, and the general concept of dual conveyance may help address this concern.

The proposed amendment treats reduced reliance and improved regional self-reliance as two separate goals and places an emphasis on using less water, and not whether a region has made investments to improve regional self-reliance. This is not in keeping with the policy of

the State of California to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Many projects designed to contribute to the State's coequal goals, including the California WaterFix and Sites Reservoir projects, will not be viable if reduced reliance is solely defined by using less water. Water supply agencies often fund these projects based on the understanding that they will be receiving a water supply benefit. If these benefits cannot be fully realized due to a long-term requirement to use less, then the cost of the project may outweigh its benefits.

The amendment also promotes new and expanded storage projects that would allow for greater flexibility to store water during wet periods, for carryover during dry periods.

3. An amendment to the Delta Plan's performance measures. These performance measures are metrics that the Delta Stewardship Council would use to determine the effectiveness of the Delta Plan, and would be used to inform future amendments. Currently performance measures are not regulations on actions in the Delta; however, the Delta Stewardship Council may consider turning them into regulations in response to the Court ruling to provide enforceable "quantified or otherwise measurable targets."

Two of the proposed performance measures may limit the ability of public water agencies, including the District to provide reliable water supply. One is the proposed performance measure related to the Delta Plan's regulatory policy on reduced reliance on the Delta. The Delta Stewardship Council is proposing to set specific targets for each hydrologic region to use less water from the Delta as measured by the total volume of water imported or as the percent of an agency's total water use. Many projects designed to contribute to the State's coequal goals, including the California WaterFix and Sites Reservoir projects, will not be viable if reduced reliance is solely defined by using less water.

The other performance measure of concern is a proposed metric that calls for total exports through State Water Project and Central Valley Project to decrease in dry years and increase in wet years. This metric is incompatible with the amendment that promotes new and expanded storage projects that would allow greater flexibility to store water during wet periods for carryover during dry periods as it would preclude projects that store water upstream of the Delta in wet years for export to areas south of the Delta, including to Santa Clara County, in dry years, such as the Sites Reservoir project.

Public comments on the NOP were due April 17, 2017 and the State Water Contractors submitted three letters (Attachment 1). A letter on the proposed Delta plan amendment regarding a Delta levee investment strategy and a separate letter on the proposed amendment regarding conveyance, storage, and operations were both submitted on March 22, 2017 on behalf of all the State Water Contractor member agencies. Subsequent to these submittals, the State Water Contractors prepared a third letter on April 17, 2017, commenting on the Notice of Preparation for the Delta Plan Draft Program Environmental Impact Report. All three letters are consistent with the District's Board policies and CEO interpretations related to the Imported Water Program (Attachment 2) and the

principles related to the California WaterFix that the Board considered on March 14, 2017 (Attachment 3). The Delta Stewardship Council plans to discuss the amendments at its April 27-28, 2017 meeting, and to release a draft EIR in summer 2017. A decision on whether to adopt the amendments is currently expected sometime in winter of 2017.

District staff anticipates that proposed revisions to the Delta Plan, including those deliberated in the above proceedings, may become increasingly contentious among parties with different interpretations of the Delta Reform Act and other applicable California law. Accordingly, consideration by the Board of policies that will guide staff's response to the actions and potential actions of the Delta Stewardship Council will be helpful in guiding staff's participation and messaging.

DISTRICT'S CALIFORNIA WATERFIX PRINCIPLES RELEVANT TO DELTA PLAN AMENDMENTS

On March 14, 2017, the Board reviewed and provided feedback to staff on a set of principles that, while focusing on the District's approach for evaluating the California WaterFix, was broadly framed to address a comprehensive Delta solution (see Attachment 3: District's California WaterFix Principles(Principles)). These Principles are proposed to also provide guidance to staff in evaluation of the Delta Stewardship Council's Delta Plan and to ensure a consistent representation of the District's interests. The following Principles are particularly relevant in guiding staff's review of the proposed Delta Plan amendments:

1(b). The District's desired outcome is a cost-effective, comprehensive and reliable long-term solution for the Delta that meets the water supply, water supply reliability, and water quality needs of Santa Clara County, while balancing other beneficial uses and providing a sustainable Delta ecosystem.

The District has long been committed to sustained reliable water supplies as well as environmental stewardship. To this end, staff recommends the following:

- The Delta Plan should promote conveyance, storage and operations that improve flexibility to maximize benefits for water supplies and the Delta ecosystem.
- Increased flexibility is needed in storing supplies that have a nexus to the Delta, especially considering the expected effects of climate change.

1(c). The Delta solution should achieve the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, all in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

This principle is consistent with the District's commitment to sustained reliable water supplies as well as environmental stewardship. We will continue to encourage the Delta Stewardship Council to support strategies and develop performance measures that meet both objectives.

1(e). Governance structures and operating agreements related to the long-term Delta solution must provide the ability to protect the value of the District's imported water assets, including water supply and banking contracts.

This principle speaks to the obligation of the District to protect its ability to make decisions and take management actions needed to protect the long-term water supply reliability of Santa Clara County. Specifically related to the Delta Plan, successful local projects outside the Delta that proactively advance local water supply reliability and environmental sustainability should not be subject to review by the Delta Stewardship Council. Staff recommends the following:

- The Delta Plan should not exceed the authority given to the Delta Stewardship Council under the 2009 Delta Reform Act.
- Local water agencies should have sole discretion over local water management decisions, subject to applicable laws and regulations.

1(g). Continuing to rely on the existing system of through-Delta conveyance for the County's imported water supplies is not sustainable. Many factors affect species' health in the Delta, and the Delta is also threatened by continuing land subsidence, seismic risk, and effects of climate change.

The Delta Stewardship Council's Delta Plan *conveyance, storage and operations* amendment encourages the Department of Water Resources and the Bureau of Reclamation to pursue a dual-conveyance solution for the Delta. While the District has not yet decided whether to support the California WaterFix project, the District has previously stated it believes continuing to rely on the existing system of through-Delta conveyance for the County's imported water supplies is not sustainable for water supply or ecosystem health, and the general concept of dual conveyance may help address this concern.

2(c). Any participation in the [California WaterFix] would be part of a comprehensive plan that includes sustainable approaches for improved water supply, water quality, and reliability through increased regional self-sufficiency. Methods include increased conservation, water use efficiency, recycling and reuse, conjunctive use of groundwater, and other approaches to contribute to reducing reliance on the Delta, including the Bay Area Regional Reliability (BARR) effort.

The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. This policy is consistent with the District's 2012 Water Supply Master Plan, adopted by the Board in October 2012. The plan's strategy for achieving long-term water supply reliability in Santa Clara County through 2035 is to

secure and optimize the use of existing supplies and infrastructure and to meet future increases in demand with water recycling and conservation. When implemented, the strategy would reduce reliance on water imported through the Delta from about 40% to 30% of the total county water supply. With respect to the specific Delta Plan amendments, staff recommends the following:

- The Delta Stewardship Council clarify that the definition of *reduced reliance* expressly includes improved regional self-reliance.

4(b) The District favors a flexible approach to cost allocation that maximizes the opportunity for discretionary allocations of cost based on incremental benefits.

This principle supports the concept that cost allocation and funding approaches should be based on appropriate beneficiary-pays principles that includes accurate, quantified, and demonstrated incremental benefits to each beneficiary. As such, staff recommends the following:

- The Delta Plan should promote cost allocation and funding approaches that fairly distribute costs to all beneficiaries.

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: SWC Comment Letters
Attachment 2: Board Policy and CEO Interpretations
Attachment 3: SCVWD California WaterFix Principles
Attachment 4: PowerPoint

UNCLASSIFIED MANAGER:

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