



Santa Clara Valley Water District

File No.: 18-0412

Agenda Date: 8/14/2018

Item No.: 5.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Update on California WaterFix and Authorization to Execute the Agreement Between the Department of Water Resources and the Santa Clara Valley Water District for the Advance or Contribution of Money to the Department of Water Resources for Preconstruction Planning Costs of the California WaterFix, a Facility of the State Water Project.

RECOMMENDATION:

- A. Receive an update on the California WaterFix; and
- B. Approve and authorize the Chief Executive Officer to execute the Agreement for the Advance or Contribution of Money to the Department of Water Resources for Preconstruction Planning Costs of the California WaterFix, a Facility of the State Water Project, between the Department of Water Resources and the District for preconstruction planning costs for the WaterFix for a District contribution of \$1,092,975.

SUMMARY:

1.0 Update on WaterFix

WaterFix Finance Authority Joint Powers Agreement (Finance JPA)

On July 6, 2018, the District Board approved execution of the WaterFix Finance Authority Joint Powers Agreement (Finance JPA), and Director Kremen was nominated to serve on the Finance JPA Board. The first meeting of the Finance JPA was held on July 19, during which the Finance JPA Board approved submittal of a Letter of Interest (LOI) for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) federal credit program. The due date for submitting the LOI for the 2018 evaluation process is July 31, 2018.

WIFIA is administered by the Environmental Protection Agency (EPA) to provide financial assistance in the form of low interest loans for water infrastructure, including projects such as WaterFix. Congress established the WIFIA program in the Water Resources Reform and Development Act (WRDA) of 2014. The LOI is the first step in applying for a WIFIA loan. It describes the project, the financing needs, the credit worthiness of the borrower, the project plan and schedule, and provides preliminary pro forma financial projections (finance plan). Funding is limited, and financing is awarded on a competitive basis. The Finance JPA is seeking an initial borrowing in the amount of

\$1.6 billion to support the next three years of project expenditures. In addition, the LOI expresses interest in additional amounts up to 49% of the eligible project costs of the project (about \$9.4 billion) and encourages the WIFIA program to consider alternative financing strategies, including a “master contract” to enable the WIFIA program to grant loans in different amounts over time and “self-funding” of the credit fee by the WaterFix project to reduce the need for federal appropriations.

There are no fees associated with submitting a LOI. However, if the WaterFix project is selected by the EPA to proceed with a formal application, the Finance JPA, working with the participating members including the District, would negotiate the terms and conditions associated with the WIFIA loan. This process may take up to a year or longer, depending on the complexity of the loan, the credit structure, and riskiness of the project. The Finance JPA would be responsible for application and credit processing fees during this stage, including funding the credit evaluation by EPA’s WIFIA program. Typically, these fees range from \$350,000 to \$600,000 for most projects and can be financed through debt and/or the WIFIA loan. Staff will provide updates to the Board on the WIFIA application process and any financial impacts to the District in fall 2018 when the EPA is expected to announce their project selection.

Delta Conveyance Design and Construction Joint Powers Authority (DCA)

On July 19, 2018, the Delta Conveyance Design and Construction Joint Powers Authority (DCA) Board met for a second time. The DCA Board adopted a budget for Fiscal Year 2018/2019 of \$133.57 million. Additionally, they moved to execute transition services with Hallmark Group and negotiate the lease of office space, delegated contracting authority to the Executive Director, and adopted a thorough records retention policy.

Supplemental Environmental Impact Report/Environmental Impact Statement (EIR/S)

On July 17, 2018, the Department of Water Resources released a Draft Supplemental EIR/S for public review and comment. The updated environmental analysis covers footprint changes resulting from proposed design modifications that are intended to minimize impacts of the project on local communities and the environment. The public review period closes on September 17, 2018. Staff is still reviewing the supplemental documents. The press release, a brief fact sheet, and environmental documents can be found at the following website:

[<https://www.californiawaterfix.com/resources/draft-supplemental-environmental-impact-report-environmental-impact-statement-eir-eis/>](https://www.californiawaterfix.com/resources/draft-supplemental-environmental-impact-report-environmental-impact-statement-eir-eis/)

Certification of Consistency

Also on July 17, 2018, DWR posted on its website a Certification of Consistency which contains DWR’s detailed findings that the California WaterFix is consistent with the Delta Stewardship Council’s Delta Plan. The public notice and certification can be found at the following website:

[<https://www.californiawaterfix.com/resources/delta-plan-consistency-determination/>](https://www.californiawaterfix.com/resources/delta-plan-consistency-determination/)

After the required 10-day public posting, DWR submitted its certification to the Delta Stewardship Council on July 27, 2018, starting the 30-day appeal period. The Delta Stewardship Council is required to hear all appeals within 60-days of their filing unless all parties agree to an extension, or the Council determines that the issue raised on appeal is not within the Council’s jurisdiction or does not raise an appealable issue. A hearing on appeals is expected around the fourth week in October.

The Council has 60 days from the hearing to make its decision to either deny the appeal or remand the matter back to DWR for reconsideration. A decision on the appeals is expected by the end of 2018.

2.0 Agreement for the Advance or Contribution of Money to the Department of Water Resources by Certain State Water Contractors for Preconstruction Planning Costs of the California WaterFix, a Facility of the State Water Project (Gap Funding Agreement)

On May 8, 2018, the Board directed the Chief Executive Officer (CEO) to negotiate terms and conditions for an agreement between DWR and the District for preconstruction costs for the WaterFix, including a District contribution of up to \$3.5 million, and to bring the agreement to the Board for consideration prior to execution by the CEO. The Gap Funding Agreement is provided as Attachment 1 for Board consideration.

As described to the Board on May 2, 2018, WaterFix revenue bonds are not expected to be issued until approximately mid-2019. In the interim, DWR anticipates meeting a funding gap of \$133.57 million with contributions from project participants through Gap Funding Agreements and from DWR funds. The funds will be used to support preconstruction work, including study, review, staffing, planning, engineering, and design. Exhibit A (Attachment 2) in the Agreement shows DWR's 2018/2019 WaterFix Budget Spending Plan which may be amended by DWR at any time with notice to the District and other Contractors. Funds collected under this Agreement will be used to pay invoices from the DCA in accordance with the Agreement, notably Exhibit A. DWR's financial liability to pay the invoices will be limited to the amount of money collected under the Agreement and, by January 31, 2020, DWR will annually prepare a contributions and expenditures report.

The District's share of gap funding will be \$1,092,975. Payments will be made in equal monthly installments over a period of twelve (12) months beginning January 1, 2019 and the amounts will be included on a revision of the District's Annual DWR Statement of Charges for calendar year 2019. If WaterFix bond funds are received before all 12 monthly payments have been made, the District's obligations to make the remaining monthly payments may be terminated.

It is anticipated that gap funding will be reimbursed or credited upon issuance of the first series of bonds. 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.

Staff recommends that the Board approve and authorize the CEO to execute the Gap Funding Agreement between the Department of Water Resources and the District for preconstruction planning costs for the WaterFix for a District contribution of \$1,092,975.

2.1 Other Important Agreements

Staff anticipates bringing several other important agreements and amendments to the Board in the

future. These include:

- Installment purchase agreement that would obligate the District to purchase a certain percentage of DWR-issued bonds in order to facilitate financing the WaterFix; and
- Several additional financing agreements related to charges, crediting, and bond issuance; and
- An amendment to the State Water Project (SWP) contract for improved water management and WaterFix cost allocation.
- An amendment to the District's Central Valley Project (CVP) water service agreement to provide for conveyance of the District's CVP supplies through the WaterFix.

3.0. Next Steps

Staff will continue to coordinate with DWR, the U.S. Bureau of Reclamation, and other SWP and CVP contractors to develop additional needed agreements and will bring these items to the Board for consideration upon completion of negotiations.

FINANCIAL IMPACT:

The cost associated with the Gap Funding Agreement is \$1,092,975. Funds are available in the adopted fiscal year 2019 budget Imported Water Program #91131004 to cover these costs.

CEQA:

On May 8, 2018, the Board adopted Resolution 18-23 Making Responsible Agency Findings Pursuant to the California Environmental Quality Act to Authorize Execution of Agreements Relating to Design, Construction, and Financing of the California Waterfix Project (Attachment 3). The District has since filed a Notice of Determination (Attachment 5) pursuant to CEQA.

ATTACHMENTS:

Attachment 1:	Gap Funding Agreement
Attachment 2:	Gap Funding Agreement - Exhibit A
Attachment 3:	SCVWD Resolution 18-23, CEQA
Attachment 4:	SCVWD Resolution 18-24, WaterFix Participation
Attachment 5:	Notice of Determination
Attachment 6:	PowerPoint

UNCLASSIFIED MANAGER:

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