



Santa Clara Valley Water District

File No.: 19-0011

Agenda Date: 1/22/2019

Item No.: 5.4.

BOARD AGENDA MEMORANDUM

SUBJECT:

California WaterFix Update.

RECOMMENDATION:

Receive an update on California WaterFix.

SUMMARY:

On May 8, 2018, the District Board approved District participation in the California WaterFix (WaterFix) and directed staff to continue engaging in discussions to further develop agreements and contract amendments to protect the District's investment and to bring those agreements to the Board for consideration prior to execution. Staff has continued engaging in those discussions and has brought certain agreements to the Board for approval. This agenda item provides an update on WaterFix implementation and governance, regulatory proceedings, and various agreements.

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A. Background

This agenda item provides an opportunity for the Board and the public to receive information on the

proposed WaterFix, which 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. WaterFix includes dual tunnels under the Delta that 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.

Because Santa Clara County relies on State Water Project (SWP) and Central Valley Project (CVP) water supplies conveyed through the Delta to meet 40 percent, on average, of its water supply needs, the District has an interest in the development of the WaterFix as a potential cost-effective project that could improve the reliability of the District's imported water supplies.

B. WaterFix Implementation and Governance

B.1 Delta Conveyance Design and Construction Joint Powers Authority (DCA)

On May 8, 2018, the District Board authorized execution of a Joint Powers Agreement forming the Delta Conveyance Design and Construction Joint Powers Authority (DCA) and designated Director Tony Estremera as the District's representative and Director Barbara Keegan as his alternate on the DCA Board of Directors. The DCA Agreement was executed by the District, Metropolitan Water District of Southern California (MWD) and Zone 7 Water Agency on May 14, 2018 and the first meeting of its Board was held on May 17, 2018, with monthly meetings following.

DCA staff and the DCA Board have focused on creating the DCA as an operating entity and continuing the transition of WaterFix planning and design activities from the Department of Water Resources (DWR) to the DCA. Some of the notable actions taken by the DCA Board include:

1. Made Board officer appointments and authorized DCA staff contracts.
2. Appointed Jill Duerig as the Interim Director.
3. Adopted DWR's California Environmental Quality Act (CEQA) findings, statement of overriding considerations, and mitigation monitoring and reporting program for WaterFix.
4. Authorized the Board President to execute the Joint Exercise of Powers Agreement between DWR and the DCA.
5. Passed a resolution to adopt bylaws and administrative policies.
6. Adopted a budget for Fiscal Year 2018/2019 of \$134 million, which was subsequently revised to \$62 million.
7. Authorized the Interim Executive Director to execute a transition services agreement with Hallmark Group.

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8. Passed resolutions to obtain professional services for geotechnical engineering, real estate and survey, mapping, right-of-way, and title services.

The DCA Board agenda materials can be found at the following webpage:

<http://www.dcdca.org/#meetings> <<http://www.dcdca.org/>>

B.2 Delta Conveyance Finance Joint Powers Authority

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. On July 19, 2018, the Finance JPA Board of Directors met for the first time. The Board identified its Chair, Randy Record from Metropolitan Water District, Vice Chair, Gary Kremen from Santa Clara Valley Water District, and Secretary, Jeff Davis from San Geronio Pass Water Agency. As of January 2, 2019, an additional six agencies joined the Finance JPA, bringing the total membership to 11 agencies.

Since July 2018, the Finance JPA Board has held regular meetings. Its notable actions were:

1. Adopted DWR's CEQA findings, statement of overriding considerations, and mitigation monitoring and reporting program for WaterFix.
2. Appointed Brian Thomas as the Executive Director.
3. Approved an agreement with Metropolitan Water District for treasurer/controller requirements.
4. Authorized the Executive Director to submit all documents necessary for the formation of the Authority.
5. Approved submittal of a Letter of Interest (LOI) for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) federal credit program.
6. Adopted a District Fiscal Year 2018-19 operating budget of \$505,000.
7. Adopted bylaws, conflict of interest code, debt management policy, and investment policy.

The Finance JPA Board agenda materials can be found at the following webpage:

<http://www.dcdca.org/#meetings> <<http://www.dcdca.org/>>

C. Regulatory Process Update

C.1 State Water Resources Control Board Change in Point of Diversion Petition

On August 26, 2015, DWR and the U.S. Bureau of Reclamation (Reclamation) submitted a joint

petition to the State Water Resources Control Board (SWRCB) to add three new points of diversion on the Sacramento River to the water rights for the SWP and CVP in support of the WaterFix. A SWRCB order approving the petition will ultimately be required before construction can begin on the project. Approval of the petition is subject to a lengthy quasi-judicial evidentiary hearing process in which the petitioners and protestants provide testimony which is used by the SWRCB in its decision whether to approve the petition and, if so, under what conditions.

The SWRCB elected to conduct the hearing in two parts. Part 1 of the process focused on potential impacts to other water users and occurred over 53 hearing days held between July 2016 and July 2017. Part 2 of the process focused on the question of whether the project would unreasonably affect fish and wildlife, what appropriate flow criteria should be included in any approval of the petition, and whether the project is in the public interest. The Part 2 hearings began in February of 2018 and were completed in October 2018.

It is unclear if the SWRCB will allow any other evidentiary phases. Several protestants requested that closing briefs be delayed until after a Final Supplemental EIR/S is completed. (That documentation is now being finalized - see below.) Additionally, the hearing officers noted that if changes were made to the Coordinated Operations Agreement (COA), then those changes would have to be brought before the hearing officers. In mid-December DWR provided notice to the SWRCB of the addendum to COA. We are still awaiting the SWRCB to issue a ruling on next steps in the petition process.

C.2 Draft Supplemental Environmental Impact Report/Environmental Impact Statement

On July 17, 2018, DWR published the WaterFix Draft Supplemental EIR/EIS (Supplemental EIR/EIS), in compliance with the CEQA, evaluating proposed refinements to the conveyance facilities. The proposed refinements are designed to reduce the project's footprint and costs and to minimize impacts on environmental resources. On September 21, 2018, Reclamation issued the California WaterFix Draft Supplemental Environmental Impact Report/Environmental Impact Statement for public review under the National Environmental Policy Act (NEPA). Reclamation's EIR/EIS document is the same as the document issued by DWR but with the addition of a transmittal document that relates the proposed changes to the alternatives previously analyzed in the 2016 Final EIR/EIS. Public comment on DWR's and Reclamation's Supplemental EIR/EIS has closed and the agencies are working to finalize the document.

The Draft Supplemental EIR/EIS and transmittal document are available electronically at <http://www.californiawaterfix.com./>>

C.3 Delta Plan Certification of Consistency

On July 27, 2018, DWR provided supporting documentation and detailed findings to the Delta Stewardship Council (Council) to certify that the California WaterFix is consistent with the Council's Delta Plan (Certificate of Consistency). Nine separate appeals on the Certificate of Consistency were filed by 26 entities, including in-Delta public agencies (city, county, water and sanitation), in-Delta interests, a tribal group, and several conservation groups. The District submitted comments in

support of DWR's Certificate of Consistency by the October 15, 2018 deadline. One of the main allegations of the appellants is that the WaterFix is not consistent with the Delta Plan's reduced reliance on the Delta policy. The District's letter focuses on how the District has continued to reduce its reliance on the Delta by investing in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination, consistent with state policy.

The Council held a public hearing on October 24-26, 2018 in West Sacramento to hear statements from DWR, the appellants, the Delta Protection Commission, and any interested parties. And, on November 8, 2018, Council staff issued a draft determination regarding the appeals (draft Determination) stating that substantial evidence does not exist in the record to support DWR's findings that California WaterFix is consistent with the Delta Plan in the following areas: reduced reliance on the Delta, use of the best available science, Delta flow objectives, and land use and siting considerations. Council staff's draft Determination recommended remanding the matter back to the DWR for consideration.

Council staff presented the draft Determination to the Council at a public workshop November 15-16, 2019 and each of the parties and any interested persons were allowed to provide comments. District Director Gary Kremen provided comments in support of DWR. Although no action was taken by the Council during the workshop, prior to public comment, Chair Randy Fiorini recommended that DWR withdraw its certification so they could resume early consultation. Agreeing with several appellants, he stated his belief that DWR filed its certification of consistency prematurely.

On December 7, 2018, DWR withdrew its Certificate of Consistency for the WaterFix and, per DWR's request, the Council dismissed all appeals. District staff anticipates that, at a date yet to be announced, DWR will resubmit an amended Certificate of Consistency.

D. WaterFix Agreements

D.1 Gap Funding Agreement

On August 14, 2018, the Board approved and directed the Chief Executive Officer (CEO) 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 SWP, between the Department of Water Resources and the District for preconstruction planning costs for the WaterFix (Gap Funding Agreement). The Gap Funding Agreement was fully executed on November 6, 2018, with a District contribution of \$1,092,975. The District will make payments in equal monthly installments over a period of twelve (12) months beginning January 1, 2019. These amounts have been included on a revision of the District's Annual DWR Statement of Charges for calendar year 2019 and the first payment has been made.

D.2 No Harm Agreement and Withdrawal of WaterFix Protests

On December 12, 2018, DWR and Reclamation executed the Agreement to Address the Effects of California WaterFix on CVP Operations (No Harm Agreement). The No Harm Agreement 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 Reclamation 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. The No Harm Agreement was entered into by Reclamation and DWR, and no co-signatories are anticipated. A copy of this agreement was provided to the Board in agenda item 2.5 on January 4, 2019.

Separately on December 12, 2018, DWR issued a letter to several water agencies and stakeholder groups communicating its expectation that, in light of the agreement above and other agreements related to the coordinated operations of the CVP and SWP executed between DWR and Reclamation on December 12, these entities would withdraw all existing protests and refrain from any future litigation or challenges to regulatory processes related to the WaterFix. The DWR letter was provided to the Board in agenda item 2.5 on January 4, 2019.

D.3 Central Valley Project Option Agreement

Since Metropolitan Water District of Southern California's (MWD) April 10 decision to fund an additional 33 percent of the Waterfix (beyond its share of the project allocated as a SWP contractor), District staff explored opportunities to protect the District's CVP supplies by negotiating an option agreement with MWD. The proposed option agreement, reviewed by the Board at its May 2 and May 8, 2018 meetings, once executed, would provide the District up to three years to secure necessary agreements and approvals with Reclamation to support a 200 cubic feet per second investment in WaterFix, with the possibility to extend the option term for another two years. The District would pay a lump sum amount of \$10 million over three years following execution, of which \$5 million would be credited to the purchase of capacity interest, to preserve the option to purchase a capacity interest in the project for its CVP supplies. The District could exercise this option if and when it determines there are sufficient assurances that it would realize the water supply benefits of its CVP participation. This approach limits the financial risk to the District if Reclamation support is not secured.

Discussions with MWD on finalizing the option agreement are currently on hold while DWR and MWD negotiate a separate agreement (provisionally referred to as the "Master Agreement") that will define the terms and conditions under which MWD secures and funds the 33 percent portion of the WaterFix.

D.4 Transfer of WaterFix Benefits and Obligations

Modeling analysis performed for WaterFix indicates that the District, if it participates in the project as a CVP contractor, may receive roughly 25,000 acre-feet per year of CVP supply as WaterFix yield. However, because of the lack of a currently viable CVP participation approach and limited interest from other CVP contractors to participate in the WaterFix, the District's ability to realize this benefit is uncertain. More specifically, there is uncertainty as to whether the District can successfully secure necessary operating agreements and contracts with Reclamation. An alternative approach to accomplish further WaterFix benefits is to secure long-term transfers from other SWP contractors. Transfer supplies may be available from SWP contractors that have expressed an interest in

reducing their cost (and associated share of yield) of participating in the WaterFix through DWR's overarching approach of allocating shares to all south-of-Delta SWP contractors in proportion to their current ("Table A") contractual rights in the SWP.

On May 8, 2018 the District Board directed staff to identify opportunities and negotiate potential transfer arrangements and additional storage opportunities to be brought to the Board for discussion in the future. Independently or paired, additional new water supplies and/or storage would help mitigate the uncertainty associated with securing the District's CVP supplies. District staff is continuing to evaluate potential long-term transfers and storage concepts with interested parties.

D.5 State Water Project Contract Amendment for WaterFix

On June 27, 2018, DWR and the SWP Contractors (Contractors) concluded public negotiations that resulted in the completion of the Draft Agreement in Principle for the SWP Contract Amendment for Water Management and California WaterFix (Draft AIP). *The Draft AIP is separate and distinct from the State Water Project Contract Extension Amendment, approved by the Board on December 12, 2018, for extension of the term of the existing SWP contract.* The Draft AIP was provided to the Board in agenda item 2.3 on December 12, 2018. It outlines the terms of agreement between DWR and the Contractors, including 1) to modify provisions of the SWP Water Supply Contracts to allow greater water management regarding transfers and exchanges of SWP water supply within the SWP service area, and 2) to provide a fair and equitable approach to allocate costs of the California WaterFix.

The Draft AIP was used to develop the project description for DWR's CEQA analysis of the amendment and will form the basis for contract amendment language. On October 26, 2018, DWR, as the Lead Agency under the CEQA, released a Draft Environmental Impact Report (Draft EIR) for the SWP Water Supply Contract Amendments for Water Management and California WaterFix. DWR is currently developing its timeline for this process, which is anticipated to be completed within one year.

The Draft EIR is available electronically at the following website:

<https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Amendment>

District staff participated in the contract amendment negotiations, and process for development of the Draft AIP, and intends to bring the contract amendment to the Board for review and potential approval after completion of DWR's CEQA process.

E. Next Steps

In accordance with Board direction on May 8, 2018, District staff will:

- continue to participate in WaterFix discussions to further develop the best and most responsible agreements and contract amendments to protect the District's investments;
- continue to evaluate and negotiate long-term water transfers, water supply alternatives and storage opportunities and bring terms and conditions to the Board for consideration; and
- return to the Board if major conditions change from Board approved actions, or as needed to

update the Board on key issues.

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 the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: PowerPoint

*Handout 5.3-A, D. Des Jardin

UNCLASSIFIED MANAGER:

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