Carlsbad Desalination Project
Agreement with City of Carlsbad, Carlsbad MWD and Carlsbad Housing and Redevelopment Commission

Water Planning Committee
August 25, 2011
July 2010 Term Sheet: Negotiation & Approval Process

- **Conditions precedent to negotiating an Agreement**
  - Poseidon documents equity investor commitment
    - Cash equity required to sell bonds
    - Ensures Water Authority negotiates with the right party at the table
  - Poseidon and Water Authority cancel all Confidentiality Agreements
  - Commitment to terminate existing WPAs and release claims
    - Applies to Poseidon and 9 member agencies with WPAs

- **Conditions precedent to Board consideration of final agreement**
  - Water Authority conduct due diligence
    - Financial, technical, and legal
  - Price of water is finalized with the exception of interest rate of debt
  - All construction and operating agreements signed
  - Draft financing documents finalized and accepted by Water Authority
  - Only marketing Private Activity Bonds remains
Status Of Conditions Precedent For Negotiation of WPA

- Water Authority Board Approved Term Sheet
- Water Authority develop first draft of WPA
- Poseidon/Water Authority cancel all prior Confidentiality Agreements
- Poseidon provides binding equity investor commitment
- Poseidon documents intent to cancel existing WPA
<table>
<thead>
<tr>
<th>Status Of Conditions Precedent For Negotiation of WPA</th>
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<tbody>
<tr>
<td>Member Agencies document intent to cancel existing WPAs</td>
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<tr>
<td>[ ] Carlsbad</td>
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<tr>
<td>✅ Oceanside</td>
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<td>✅ Olivenhain</td>
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<td>✅ Rainbow</td>
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<td>✅ Rincon</td>
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<td>✅ Santa Fe ID</td>
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<td>✅ Vallecitos</td>
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<tr>
<td>✅ Valley Center</td>
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</tbody>
</table>
Water Authority Requirements

- Carlsbad must commit to terminating its WPA with Poseidon for face-to-face negotiations to proceed between Water Authority and Poseidon
  - Release Water Authority from any and all claims

- Carlsbad must waive enforcement of provisions of its Development Agreement with Poseidon as it relates to the Water Authority
  - Water Authority not subject to local land use jurisdiction
Carlsbad Issues of Concern

- Carlsbad provided list of its key concerns
  - Buy local supply from Project and connect to pipeline
  - Obtain 10 years of redevelopment tax increment
  - Obtain coastal land dedications and street and beach access improvements

- Wanted other guarantees
  - Off ramp for local supply purchases
  - Time to make decision on local supply purchase
  - Ability of City to receive tax payments if redevelopment law rescinded
Key Provisions of Agreement

- **Waiver & Release**
  - With Water Authority approval of WPA:
    - Carlsbad releases WA of any and all claims
    - Carlsbad terminates its agreement with Poseidon
    - Carlsbad waives provisions of Development Agreement

- **Purchase by Carlsbad of Local Water**
  - Carlsbad will adhere to guiding principles adopted 6/23/11 and any subsequent revisions or agreements
  - Carlsbad will have the right to purchase up to 10,000 AF
  - Carlsbad will have same protections from price increases as WA in its WPA with Poseidon
Key Provisions of Agreement (cont.)

- **Direct District Connection to Desalination Project**
  - Carlsbad may connect to the pipeline at its own cost

- **Mitigation & Redevelopment Agency Assistance**
  - If Poseidon defaults & WA acquires Plant < 10 years from date of commercial startup:
    - WA makes NO pmts to Carlsbad for lost property tax increment
  - If Poseidon defaults & WA acquires Plant prior to startup
    - WA is NOT responsible for Poseidon’s obligations to Carlsbad for public improvements & land dedications
Key Provisions of Agreement (cont.)

- **Mitigation & Redevelopment Agency Assistance (cont.)**
  - If WA voluntarily acquires Plant < 10 years:
    - WA owes Carlsbad balance of tax increment from date of acquisition to the date 10 years from commercial startup
  - If WA voluntarily acquires Plant prior to commercial startup:
    - WA will ensure public improvements & land dedications occur
  - Under no circumstances will the Water Authority owe Carlsbad payments for lost property tax increment:
    - After the date 10 years from commercial startup
    - If Carlsbad is no longer eligible to receive it under state law
Other Provisions

• **Cure of Default**
  - After Poseidon and all other related parties have failed to cure
    - Carlsbad has 90 days to cure to default
    - Maintain private ownership of project

• **Carlsbad Construction Approvals**
  - Construction standards those imposed on the City itself
  - expedite review and approval
  - Will not impose a permit fee or franchise fee
Process

- WA Board consideration of Agreement with Carlsbad
  - Carlsbad staff will recommend approval of agreement
- Carlsbad scheduled to approve at September 13th City Council meeting
- Upon Carlsbad approval final condition precedent to negotiations will be met
- Staff will continue to seek negotiating direction from Board Desalination Advisory Group
Staff recommendation

Approve the proposed agreement regarding memorializing certain understandings and establishing a framework for cooperation regarding a desalination project in the city of Carlsbad, conditioned upon Carlsbad’s approval of the agreement as presented.
San Vicente Dam Raise
Package 3 Roller Compacted Concrete Dam Raise

Engineering & Operations Committee Meeting

August 25, 2011
Construction Packaging

- Package 1 - Test Quarry (Complete)
- **Package 2 - Foundation/Dam Preparation/Marina Fill (Complete)**
- Package 2B - Vegetation and Erosion Control (Complete)
- **Package 3 - Dam Raise (Underway)**
- Package 4 - Bypass Pipeline (In Design)
- Package 5 - Marina Facilities (In Design)
- Package 6 - Habitat Restoration (In Planning)
Marina Access Road
Marina Quarry
Main Dam

Marina
Main Dam Foundation Grouting
Trial Placement
Strength Tests
Saddle Dam RCC Placement
Modifications For Acceptance

- Differing Site Conditions
- Design Modifications
- Outside Agency Requirements
- Inspection/Lab

Total of $298,000
Authorizations For Approval

Moreno Vigilante Intersection: $ 45,000
Drainage Ditches: $ 10,000
Waterline Repair: $ 5,000
Leveling Concrete: $185,000

DSOD Requirements
- Trial Placement: $ 5,000
- Concrete Prep: $100,000

Total Authorization: $350,000
Change Order Percentage

Original Contract Value: $140,586,279

Increases to Date: $ 647,528

New Contract Amount: $141,233,807

Increase: 0.7%
Recommendation

Accept Shimmick/Obayashi Joint Venture Change Orders 5 through 13 for $297,527.70; and authorize the General Manager to execute Change Orders for up to $350,000 to address differing site conditions and outside agency requirements, increasing the contract amount from $140,586,279 to $141,233,806.70.
San Diego Taxpayers Educational Foundation Study
In spring 2011, Taxpayers Education Foundation requested data on Water Authority labor and benefits costs
- Water Authority staff provided significant amount of data and responded to several follow-up inquiries
- CAFRs, deferred comp, retiree benefits, CIP labor, etc…

On Aug. 3, 2011, San Diego Taxpayers Educational Foundation staff sent Executive Summary of study to Water Authority for review and feedback
Majority of Taxpayers’ “Key Findings” and other conclusions were incorrect

- Computational and mathematical miscalculations resulted in errors in more than 80 percent of all data (169 out of 209 data points)
  - In every instance, the errors resulted in the exaggeration of the growth in the Water Authority’s labor costs

- After two specific offers to meet to review and correct the errors, on Aug. 23rd Taxpayers Association staff accepted offer to meet with Water Authority staff
Examples of Taxpayers’ Error

- In calculating the growth in labor costs between FY1999 and FY2009, Taxpayers staff attempted to escalate ‘98–99 dollars to 2010 dollars to account for inflation
  - Rather than inflating the dollars to adjust for inflation, the taxpayers deflated the FY99 dollars, thus exaggerating the difference between the two data points
  - This computational error was repeated throughout the study

- Additional errors (i.e. double counting) also discovered which also exaggerates labor costs & benefits
AB 685: A Different View

AB 685: a seemingly noble goal—universal access to clean, affordable and accessible water.

But:

Californians already have access to safe and relatively affordable water for domestic purposes.
– This is not the Sudan where U.N. Policy might make sense.
– California public health regulation of water is robust.
– Domestic preference well established in existing law.

So what is AB 685 really trying to do?
Is Doing Nothing the Best Option?

• Why should the SDCWA Board be concerned?
  – State agencies must now “implement” the policy rather than just “consider” it. **Huge difference.**
  – Potential to upset long established water rights
    • Exactly what the bill sponsor advocates. See handout
    • Could be used to prohibit water transfers. See handout
  – Potential to require establishment of “life line” water rates--causing budget shortfalls and discriminatory treatment of ratepayers.
  – Injects huge uncertainty into virtually every legal dispute concerning water.
AB 685: Alternative Approach

- **Recommended Alternative Board Action:**
  - Do not take formal *oppose* position on AB 685
  - Draft “Letter of Concern” outlining concerns raised by ACWA, public agencies and the military.
  - Seek amendments in Letter of Concern and in follow on contacts with Legislature/Governor that:
    - Clarify AB 685 does not change existing water rights
    - Clarify public agencies are not required to discriminate between ratepayers (e.g., no required “life line” rate).
    - Require state agencies to “consider” rather than “implement” the new policy (revert to original text).
Bill Recommendations

Legislation, Conservation & Outreach Committee

August 25, 2011
HR 2664 (Napolitano) - Support

- Continues funding for desalination research through 2016
- Has funded 38 projects in California since 1996
- Authorizes $2 million per year
- Recommend Support
SB 931 (Vargas) - Oppose

- Prohibits public agencies from hiring consultants or attorneys to advise them on how to circumvent labor laws
- Unenforceable except through litigation
- Intended for higher education, but broad enough to include all public agencies
- Recommend Oppose
AB 685 (Eng) – No Position

- Establishes “human right” to clean, safe, affordable water as a state policy
- Requires state agencies to “implement” policy in their actions
- Does not expand any obligation of the state to provide water or expend additional resources, except to implement the policy
AB 685 (Eng) – No Position

- Does not create or impose any additional duties or responsibilities on any public water system
- Water rights in California are acquired through beneficial use of water
- Existing law states that domestic use is the highest priority in the event of shortage
- Recommend No Position
Seek Amendment to AB 685

[On page 2, replaces lines 7–13 with the following:]

(a) On and after January 1, 2012, all relevant state agencies, including the department, the board, the California regional water quality control boards, and the State Department of Public Health, shall implement consider this policy upon revising existing, and Upon adopting or establishing new, policies, regulations, and grant Criteria. provided that nothing in this section shall authorize the state board to alter its existing policies, regulations and practices relating to the granting, administration, enforcement and statutory adjudication of water rights.
Agenda

- Review social media and digital communication goals
- Review social media tools in use
- Discuss communication trends
- Present new mobile application
Social Media/Digital Communications Goals

- Maintain leadership position as trusted source for regional water info
- Enhance accessibility/transparency
- Build relationships that enhance public support for programs/policies
- Improve efficiency/speed of communications
Communication Trends

- Change is constant
- Getting news, information via mobile phone is going mainstream
- Growing need to enhance our ability to reach, educate ratepayers
- Augmenting our communication tools with mobile news “app”
The Mobile News “App”

- Users receive Water Authority news, Board info via smartphones
- Available for free
- Top three smartphone platforms
  - iPhone, Blackberry, and Android
App Content

- New content to be created weekly
  - News releases
  - Video/multimedia
  - Board agendas/documents
- Content “pulled” to app from Water Authority website
  - Most recent = more prominent
  - Icons alert users to new content
Schedule

August:
- Final testing
- Content creation

September:
- Approval from app marketplaces
- Official launch
- Marketing and promotion of app
Mobile App Demonstration
Presentation Outline

- Historic view of the Delta
- Present day activities
  - Inter-relation of Bay-Delta process
  - Bay Delta Conveyance Plan
  - Delta Stewardship Council – Delta Plan
- Next steps
Bay–Delta: Historic View

- In 1930s, first State Water Plan envisioned exporting water from Delta
- By 1940s, federal Central Valley Project began exporting water
- By 1960s, California voters authorized construction of State Water Project; SWP began delivery of water in 1970s
- In 1982, referendum to complete Peripheral Canal – to convey SWP around the Delta – was rejected
Bay–Delta: Historic View (Cont.)

- CVP & SWP exports, along with other stressors, placed pressure on Delta that led to decline of important Delta fish species
  - Winter-run Chinook salmon listed as an endangered species in 1989
  - Delta smelt listed as a threatened species in 1993
- In 1994, CVP Improvement Act dedicated a portion of the federal water supply to the environment
- In June 1994, state and federal officials signed Framework Agreement to set principles to coordinate development of water quality standards to protect estuary, operations of SWP and CVP, and a long-term solution for the Delta;
- Bay-Delta Accord signed in December 1994 delineating management responsibilities
Bay–Delta: Historic View (Cont.)

- Bay-Delta Accord gave rise to CALFED Bay-Delta Program, a comprehensive water management and ecosystem restoration program
  - CALFED brought together 25 state and federal agencies to coordinate and implement the actions set forth in the CALFED Record of Decision, signed in 2000
  - CALFED promised a balanced 30-year approach
  - CALFED also promised emphasis on funding and guiding sound scientific research of the Delta and its many issues
Several significant legal challenges in process affect CALFED and the Delta

In December 2007, per the ROD, an evaluation of the preferred alternative – through-Delta Conveyance – was completed

- Concluded through-Delta conveyance as the sole method of moving water to export system was not meeting the CALFED objectives
- CALFED agencies agreed that alternative conveyance mechanisms should be explored
Efforts to establish the Delta Vision process and a Bay-Delta Conservation Plan are based on work done through CALFED

- Delta Vision created by Executive Order of then-Governor Arnold Schwarzenegger on September 17, 2006
- Bay Delta Conservation Plan is a collaborative effort to develop a plan to meet co-equal goals of restoring Delta ecosystem and restoring reliable water supply

In 2009, the Delta Stewardship Council emerged as a result of State legislation known as the Sacramento-San Joaquin delta Reform Act; mandated to develop a Delta Plan to advance co-equal goals

- Mandated to develop a “Delta Plan” to advance the co-equal goals of ecosystem restoration and water supply reliability
Water Authority supports a “Delta Fix”

- Worked on persuading Legislature to pass 2009 Delta bill package, including Water Bond to cover state’s share of BDCP costs
  - Water Bond delayed from 2010 to November 2012
- Has expressed concerned with affordability of Delta fix and lack of firm financial commitment by MWD member agencies to pay for the fix
Where are we today? Water Cost* of A Broken Delta
2008-2010 Biological Opinion Impacts

- 2008 impact = 670,000 acre-ft ( ~$201 million)
- 2009 impact = 619,000 acre-ft ( ~$186 million)
- 2010 impact = 1,043,000 acre-ft ( ~$313 million)

Smelt Bio Op = 20-33% cut annually
Salmon Bio Op = additional 10% cut

* State Water Project & Central Valley Project

Slide data provided by MWD
Inter‐relation of Bay Delta Processes

Delta Vision Strategic Plan (2008)

SB X 7–1 (Delta Reform Act)

State Water Resources Control Board (Operating Flow Criteria)

Natural Resources Agency

Bay Delta Conservation Plan

Delta Stewardship Council

Delta Conservancy (Ecosystem Restoration Program)

Delta Plan

Delta Protection Commission (Economic Sustainability Plan)
Bay Delta Conservation Plan (BDCP)

- Purpose is to develop a long-term, science-based set of actions that will restore the Delta’s ecosystem and restore a reliable water supply
  - Multi-species approach to endangered species protection
  - Includes habitat conservation, conveyance improvements and other stressors control
  - Provides regulatory assurance

- Led by Natural Resources Agency with collaboration with DWR, USBR, state and federal fishery agencies, water contractors and others

- DWR leads development of Delta Habitat Conservation and Conveyance Program (DHCCP)
  - Environmental analysis, preliminary engineering designs, geotechnical studies and other feasibility evaluation for conveyance
Dual Conveyance

North Delta Diversion – primary diversion point

North Delta Diversion, used in conjunction with the existing South Delta Diversion, to maintain water quality, and minimize impacts to fish.

South Delta Diversion, operates on its own when the North Delta Diversion is non-operational during periods for maintenance or repair.
## Conveyance Improvements

### Footprint

<table>
<thead>
<tr>
<th>Land Acquisition</th>
<th>West Canal</th>
<th>Central Tunnel</th>
<th>East Canal</th>
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<tbody>
<tr>
<td>Footprint</td>
<td>18,643 ac.</td>
<td>6,525 ac.</td>
<td>18,065 ac.</td>
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<tr>
<td>Subsurface Easement</td>
<td>920 ac.</td>
<td>1,945 ac.</td>
<td>506 ac.</td>
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<tr>
<td>Land (Residential &amp; Commercial)</td>
<td>194 ac.</td>
<td>26 ac.</td>
<td>224 ac.</td>
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<td>Utilities</td>
<td>300 conflicts</td>
<td>70 conflicts</td>
<td>150 conflicts</td>
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<td>Transp. (Crossings)</td>
<td>20 Roads</td>
<td>0</td>
<td>18 Roads</td>
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<tr>
<td>Navigation (Siphons)</td>
<td>12 water courses</td>
<td>0</td>
<td>8 water courses</td>
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*Temporary right-of-way for construction is included*
Delta Conveyance
Water Supply (SWP & CVP)

Remaining Issues under Discussion
- Old & Middle River Flows (160,000 AF)
- Fall Outflow (X2) experiment (100-300,000 AF)

MWD Slide
North Delta Diversion Capacity

Avg. SWP-CVP Exports (AF)

South Delta Exports

North Delta Exports

0 M
1 M
2 M
3 M
4 M
5 M
6 M
7 M

Pre-Court (D-1641)
Existing (Bio Opinion)
3,000 cfs
9,000 cfs
15,000 cfs

6.0
4.9
1.7
3.8
4.5

Preliminary Subject to Revision

MWD slide
New Delta Conveyance
Tunnel – Estimated Capital Costs

Costs based on Dec 2010 DHCCP estimate (in billions)

MWD Slide
Preliminary Subject to Revision
New Delta Conveyance
Total Annual Costs

Costs based on Dec 2010 DHCCP estimate (in millions)

MWD Slide
Preliminary Subject to Revision
# Preliminary Estimated Conveyance Costs & Allocations Assumptions

<table>
<thead>
<tr>
<th>Conveyance</th>
<th>Total Program *</th>
<th>Funding Source</th>
<th>MWD Share Assumption**</th>
<th>Water Authority Share Assumption</th>
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<tbody>
<tr>
<td>Capital</td>
<td>~$12.7 billion</td>
<td>Water Exporters</td>
<td>~$3 billion</td>
<td>~$750 million</td>
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<td>O&amp;M (Annual)</td>
<td>~$18 million/yr</td>
<td>Water Exporters</td>
<td>~$4 million/yr</td>
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<td>Energy (Annual)</td>
<td>~$55 million/yr</td>
<td>Water Exporters</td>
<td>~$12 million/yr</td>
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<td>Other Costs</td>
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<tr>
<td>Eco-Restoration &amp; Other Stressors</td>
<td>~$3.6 billion</td>
<td>Fed/State/Water Exporters/Other</td>
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- Cost is based on midpoint estimates
- Based on MWD assumptions
Status of BDCP

- In November 2010, BDCP working draft released
- In May 2011, National Research Council released its review of the draft
- Lack of progress of effects analysis a concern to many contractors
- This month, state and federal agencies agreed to a completion schedule
  - March 2012: Effects analysis
  - June 2012: Draft EIR/EIS & Draft BDCP
- MWD board authorized MOA amendment this month integrating program management & funding mechanism for BDCP & DHCCP
Delta Stewardship Council

- Created under Sacramento-San Joaquin Delta Reform Act of 2009
- Independent state agency with 7 members statewide with diverse backgrounds
- Mandated to develop a comprehensive “Delta Plan” to advance the co-equal goals of ecosystem restoration and water supply reliability
  - Required to adopt legally enforceable Delta Plan to achieve co-equal goals by January 1, 2012
- Serves as appellate body determining whether actions and programs in Delta are consistent with Delta Plan
Delta Plan

- Delta Plan will define policies, strategies, and actions to guide state and local agencies in planning, programs and projects related to Delta
  - Live with means; diversify and augment local and regional supplies; complete BDCP; conservation, technology, recycling, stormwater, local storage, groundwater remediation, interregional planning, desalination and more

- Draft Staff Plans have been made available

- This June, Water Authority joined in ACWA coalition letter requesting consideration of alternative Delta Plan
  - Concerned with drafts given DSC more regulatory role than authorized
Delta Stewardship Council Status

- 5\textsuperscript{th} draft Delta Plan released, draft EIR expected later this month
- Various alternatives, including those presented by other organizations, will be part of review process
- Develop specific financing options
- Submit Delta Plan to the Office of Administrative Law
- Complete final plan and present it to the legislature by January 2012
- Begin near-term actions
Near-Term Bay Delta Process Schedule

2010  2011  2012  2013

**BDCP**
- Working Draft BDCP
- Admin. Draft BDCP
- Final BDCP
- Public Draft BDCP
- ROD/NOD
- Draft EIR/EIS
- Final EIR/EIS

**Delta Plan**
- 4th Draft Delta Plan
- Final Draft Delta Plan
- 5th Draft Delta Plan
- Final Delta Plan and EIR
- Implementation Delta Plan
Other Planning and Research Activities

- State Water Resources Control Board ensures adequate flows move through Delta
  - Developed Delta Flow Criteria

- Sacramento-San Joaquin Delta Conservancy implements ecosystem restoration activities

- Delta Protection Commission develops an Economic Sustainability Plan for inclusion in the Delta Plan
Next Steps

- Board workshops to gain Delta interest perspectives

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<tr>
<td>Agricultural water district stakeholder (Jason Peltier, Westlands)</td>
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<td>Environmental stakeholder (Cynthia Koehler, EDF)</td>
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<td>In-Delta region (Mary N. Piepho, Contra Costa County Supervisor)</td>
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<td>State and Federal Water Contractors Authority (Byron Buck)</td>
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<td>Delta Stewardship Council</td>
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<td>State Water Resources Control Board</td>
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<tr>
<td>Delta Protection Commission (Mike Machado)</td>
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- Staff recommendation in January