

July 17, 2019

Attention: Imported Water Committee

Bay-Delta Policy Update (Action)

Staff recommendation

Adopt the proposed update to the Water Authority's 2018 Bay-Delta position statement and policy principles to support Governor Newsom's portfolio approach to meet California's water needs, including a single-tunnel Bay-Delta project and integrated multi-benefit solutions.

Alternatives

1. Modify the proposed position statement.
2. Do not adopt the proposed position statement.

Fiscal Impact

The fiscal impact to the Water Authority is a wide range of possible outcomes that depends on: 1) how the single tunnel project is ultimately defined, and 2) how its costs are allocated among state and federal contractors. Further, if the Department of Water Resources (DWR) characterizes the project costs as it historically has done under the existing State Water Contract, the fiscal impact on the Water Authority will not be greater than on other member agencies of the Metropolitan Water District of Southern California (MWD). However, if DWR allows individual contractors to characterize project costs, it is likely that the Water Authority will pay more than any other MWD member agency for the project as a result of MWD's allocation of project costs to transportation, thus uniquely impacting the Water Authority under its Exchange Agreement with MWD.

Executive Summary

- The Water Authority Board updated its 2012 Bay-Delta Policy Principles in 2018 to reflect conditional support for California WaterFix (WaterFix) and to focus its advocacy efforts on the proper allocation of project costs on MWD rates.
- In 2019, Governor Newsom directed the development of a water resilience portfolio approach to water resource management that includes a single tunnel Bay-Delta project.
- The Water Authority has historically supported portfolio planning to solve water management problems, as demonstrated through its successful water supply diversification and its 2013 support of a portfolio approach to address and resolve Bay-Delta challenges.
- With continued implementation of its diversification strategy, the San Diego region has significantly reduced, and will continue to reduce, its reliance on supplies from the Bay-Delta, consistent with state policy.
- The impact of any Bay-Delta project on Water Authority rates will depend in part on the Water Authority's future demand for MWD supply, but more significantly, it will depend on how project costs are allocated.
- Updating its Bay-Delta position will afford the Water Authority the opportunity to actively engage with the Newsom Administration as part of the outreach process established by the Governor's Executive Order N-10-19 and participate in ongoing discussions about project planning and cost allocation.

Background

To address the increased pumping restrictions on Bay-Delta water exports due to the deterioration of the Bay-Delta ecosystem,¹ former Governor Jerry Brown supported implementation of WaterFix, a twin tunnel project that would bypass the Bay-Delta estuary to divert water from Northern California. After failing to gain Central Valley Project contractors' support to pay for their share of the project costs, and at the urging of Governor Brown, last year MWD agreed to increase its financial participation for WaterFix from 25.9 percent—representing the benefit it would receive from the project—to 64.6 percent, so the two tunnels could be constructed at the same time. As an MWD member agency that is directly affected by MWD's imposition of rates, charges, and taxes, the Water Authority has a vital interest in assuring that a fiscally sustainable Bay-Delta solution is reached.

Water Authority's Bay-Delta Policy Principles

In February 2012, the Water Authority Board adopted Delta Policy Principles to guide Water Authority staff in its evaluation of projects and actions related to the Bay-Delta.² These principles focused on supporting the state's co-equal goals of water supply reliability and environmental restoration in the Bay-Delta through the development of local water supplies, a statewide water transfer market, and a cost-effective "right-sized" Bay-Delta solution with costs allocated to stakeholders in proportion to the benefits they receive.

As the two-tunnel WaterFix became the State's preferred Bay-Delta solution, the Water Authority Board and staff sought input from member agencies and other stakeholders over several years. Following the MWD Board's decision to assume financial responsibility for almost two-thirds of the WaterFix costs, last August, the Water Authority Board adopted revised Delta Policy Principles and a position statement to support the design and construction of WaterFix as then-proposed in order to "have a seat at the table" and focus the Water Authority's advocacy position on the proper allocation of project costs to MWD rates.³ The revisions simplified the Water Authority's principles and conditioned the Water Authority's support of WaterFix on the project's cost being properly allocated as *conservation, or supply charges*, as they had historically been characterized under the existing State Water Project (SWP) contract. Additionally, the principles supported independent oversight of the project, access to SWP facilities for water transfers, and continued state ownership and operation of the SWP.

Governor Newsom's Portfolio Approach

In his February 2019 State of the State address, Governor Newsom announced a change in course for California water management under his administration.⁴ Rather than the twin-tunnel WaterFix, the Governor stated he supports a water resilience portfolio approach to water management that considers multi-benefit solutions and includes a one-tunnel Bay-Delta project. Subsequently, Governor Newsom signed an executive order on April 29, 2019 directing state agencies to prepare a "water resilience

¹ For more information about the Bay-Delta and recent related activities, see the memo *Bay-Delta Flows and Update* starting on page 114 of the Water Authority's March 20 Board packet found here:

https://www.sdcwa.org/sites/default/files/2016-12/Board/2019_Agendas/2019_03_28FormalBoardPacketSEC.pdf

² The 2012 San Diego County Water Authority Delta Policy Principles can be found here:

<https://www.sdcwa.org/sites/default/files/files/news-center/bay-delta-policy-principles-2012.pdf>

³ The August 9, 2018 Bay Delta & WaterFix Project Policy Principles can be found here:

<https://www.sdcwa.org/sites/default/files/08092018%20Final%20Board%20Adopted%20Bay%20Delta%20and%20WaterFix%20Policy%20Principles.pdf>

⁴ See the full text of Governor Newsom's State of the State address, found here: <https://www.gov.ca.gov/2019/02/12/state-of-the-state-address/>

portfolio” that prioritizes “multi-benefit approaches that meet multiple needs at once.”⁵ The California Natural Resources Agency (CNRA), the California Environmental Protection Agency (CalEPA), and the California Department of Food and Agriculture were directed to assess existing water supply, demand, quality, and programs in the state as well as evaluate the expected demand and impacts of climate change in the creation of the portfolio.

Previous Board action: The Board updated its Bay-Delta Policy Principles and adopted a position statement for California WaterFix in August 2018.

Discussion

Portfolio Approach

The Water Authority has a long history supporting and successfully implementing a portfolio approach to water management, including as a method to resolve longstanding issues in the Bay-Delta. After facing severe cutbacks in imported water from MWD during drought conditions from 1990 to 1992, the Water Authority sought to prepare for future shortages by diversifying its water supply portfolio and increasing its control over the cost and reliability of water in the San Diego region. Since that time, the Water Authority and its member agencies have invested approximately \$3.5 billion in local projects to diversify water supply, promote conservation and water use efficiency, improve regional conveyance, and develop emergency storage.

The San Diego region has shifted from being 95 percent dependent to less than one-third dependent on MWD through programs implemented as part of the Quantification Settlement Agreement— including the nation’s largest agriculture-to-urban water conservation and transfer agreement—and the nation’s largest seawater desalination plant (in Carlsbad). Going forward, other local projects such as the City of San Diego’s Pure Water potable reuse program and the East County Advanced Water Purification Project will continue to increase resiliency and reduce demand on Bay-Delta supplies.

At the statewide level, in 2013, the Water Authority expressed support for an analysis of “a smaller conveyance facility with additional, complementary investments in local water supply sources, regional coordination, south of Delta storage, levee improvements, and habitat restoration.”⁶ In doing so, the Water Authority joined the Natural Resources Defense Council and other environmental organizations, along with other water agencies across the state, in the call for a portfolio approach as an option to address issues in the Bay-Delta.

The Water Authority and its member agencies have demonstrated a commitment to integrated planning and local, multi-benefit solutions that positions the region to offer an important perspective and support of the current statewide portfolio planning process.

Regulatory Processes Affecting Bay-Delta Exports

Several regulatory processes affect the quantity of water that can be exported from the Bay-Delta, including the federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), and

⁵ See the full text of Governor Newsom’s Executive Order, found here: <https://www.gov.ca.gov/wp-content/uploads/2019/04/4.29.19-EO-N-10-19-Attested.pdf>

⁶ See January 16, 2013 letter from urban water agencies, including the Water Authority, to the U.S. Department of the Interior and the California Natural Resources Agency, found here: <https://mwdprograms.sdcwa.org/wp-content/uploads/2013-01-16-7-Urban-Agencies-Letter-re-BDCP-public-2.pdf>

the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).

Divergence between state and federal regulations could disproportionately impact SWP contractors, increasing costs and reducing available supplies. Last October, President Trump called for an expedited timeline for updated biological opinions for the coordinated operation of the Central Valley Project (CVP) and SWP under Section 7 of the ESA, with a deadline of June 15, 2019.⁷ The Bureau of Reclamation (Bureau) released its biological assessment in February, and if incorporated into biological opinions after review by various federal agencies and the public, it would have the effect of relaxing environmental regulations to maximize water supply and delivery. On July 11, the Bureau released a draft Environmental Impact Statement required by the National Environmental Policy Act to analyze the potential effects of coordinated operations of the CVP and SWP, including the actions listed in the biological assessment. Though generally supported by CVP contractors, critics argue that an expedited timeline may undermine the integrity of the scientific review and be detrimental to threatened species. State agencies are already taking steps intended to prevent potential environmental degradation, including Senate Bill 1 (Atkins), which would ensure that certain federal environmental protections in existence prior to President Trump taking office are not weakened and would be enforceable under state law, including requiring CVP contractors to follow CESA. Additionally, DWR has sought a new incidental take permit to be in place by December 31, 2019 for SWP long-term operations that does not rely on the federal ESA consultation process.⁸ This new permit would provide authorization for SWP operations under CESA, protecting listed species regardless of whether there are changes to federal law.

The State Water Resources Control Board (State Board) is in the process of updating the Bay-Delta Plan, which could require significant increases in the amount of water to be left in the San Joaquin and Sacramento Rivers, which may reduce the amount of water available for export.⁹ Since 2018, DWR and the California Department of Fish and Wildlife (CDFW) have been developing a framework proposal for voluntary agreements (VAs) with water agencies and non-governmental conservation organizations to update and implement the goals of the Bay-Delta Plan without relying solely on regulation of unimpaired flows. These VAs are intended to last 15 years and would consider conditions in each individual watershed to adopt appropriate flow and non-flow measures to accomplish the objectives set out in the Bay-Delta Plan without “a lengthy administrative process and the inevitable ensuing lawsuits.”¹⁰ Several state and federal agencies are reviewing framework submitted in March 2019 and are expected to be able to recommend VAs for consideration by the State Board by October 15, 2019, at which point the State Board would complete further scientific peer review (complete by Spring 2020). The State Board will also need to complete environmental review of the updated Bay-Delta Plan and VAs

⁷ See the full text of the presidential memorandum, found here: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/>

⁸ Historically, DWR has sought a consistency determination from the California Department of Fish and Wildlife finding that SWP operations under parameters of the federal biological opinions comply with CESA. See <https://water.ca.gov/-/media/DWR-Website/Web-Pages/News/Public-Notices/Files/NOP-for-LTO-EIR-signed-19Apr2019.pdf?la=en&hash=78C0BEF67E47C5FD40DA5371446C103E298FD805>

⁹ The State Board released updated flow requirements for the San Joaquin River in December 2018, which are estimated to result in a 14 percent reduction in surface water supply for river users. The update is grounded on the premise that maintaining freshwater flows preserves healthy salinity levels and dilute other pollutants in the Bay-Delta.

¹⁰ See November 6, 2018 letter from then-Governor Brown and then-Lieutenant Governor Newsom to the State Board, found here: <http://www.norcalwater.org/wp-content/uploads/BrownNewsomLetter.nov2018.pdf>

pursuant to the California Environmental Quality Act (CEQA), with completion planned in 2021, and implementation immediately thereafter.¹¹ Recently, the Newsom Administration included \$70 million in the 2019-2020 State Budget for actions outlined in the agreements. While the VAs could provide a valuable science-based alternative to the current flow requirements, negotiations around the details for these VAs should ensure that costs and benefits are shared fairly between CVP and SWP users.

Costs of Bay-Delta Facilities for the Water Authority

Governor Newsom's rejection of the two-tunnel WaterFix leaves many details of an alternative Bay-Delta project to be determined. The allocation of project costs remains a crucial concern to the Water Authority. Both the twin-tunnel WaterFix and a single-tunnel project are intended to stabilize the SWP's ability to export water. Functionally, they are no different than the Peripheral Canal, a proposal which the voters rejected in the 1980s.¹² DWR has always characterized the Peripheral Canal as a "conservation" facility,¹³ the costs of which would be recovered through "conservation," or supply charges.¹⁴

During DWR and SWP contractors' 2018 negotiations to amend supply contracts to include WaterFix cost allocation among contractors, the two parties reached an Agreement in Principle (AIP). Rather than continuing to designate WaterFix as a "conservation" facility, WaterFix could, at the discretion of individual contractors, be designated as "conservation and/or transportation" in the proposed AIP. No explanation was provided for this change. It is not apparent that any contractor or sub-contractor other than the Water Authority would be impacted by this provision, due to the Water Authority's Exchange Agreement with MWD to wheel its independent Colorado River water. As a result of Governor Newsom's executive order, all WaterFix references, including its definition, were removed from the AIP in May 2019.

The characterization of WaterFix or any replacement Bay-Delta facilities costs as transportation would misrepresent the project's purpose of protecting and stabilizing Bay-Delta supplies. Moreover, it would uniquely and disproportionately disadvantage Water Authority ratepayers in comparison to other MWD member agencies. While the courts have ruled that a portion of SWP costs can be applied on MWD's transportation rates, it does not follow that MWD can impose the costs for a new SWP facility, designed to stabilize and maintain supplies, on its transportation rates.

In court proceedings, MWD asserted that it has complete discretion over how to allocate costs, and that it is not subject to Proposition 26 or cost-of-service requirements. Based on a cost analysis the Water

¹¹ For more details, see the memo to VA Plenary Participants regarding Voluntary Agreements Progress Report, found here: https://norcalwater.org/wp-content/uploads/Progressreport.july2019.pdf?mc_cid=deac32eb8b&mc_eid=61ca8704c9

¹² First proposed in 1965, the Peripheral Canal was a facility that would divert water from the Sacramento River upstream of the Bay-Delta and transport it around the Bay-Delta to the south and west. From its inception, the project faced opposition from various groups due to concerns about cost, water quality, and effects on the Bay-Delta ecosystem. When it was presented on the ballot in 1982, voters rejected the measure.

¹³ See page B-14 of Appendix B to DWR's Bulletin 132-18, found here: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Bulletin-132/Bulletin-132/Files/B132-18-Appendix_B.pdf?la=en&hash=1AA9C200F469900677C29B25BE349011190F4B28

¹⁴ Included in the contract definition of "project conservation facilities" are facilities that "serve the purposes of water conservation in the Delta, water supply in the Delta, and *transfer of water across the Delta*" [emphasis added]. See page 2 of the SWP contract, found here: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Metropolitan-Water-District-of-Southern-California/Files/MWDSC-CC.pdf?la=en&hash=258106CFC1A925644E23845D44167AE5974CBA22>

Authority performed, WaterFix cost impacts to a typical household in the Water Authority service area would range from less than \$1 to more than \$20 per month, depending on whether MWD allocates the costs on supply or transportation, respectively.¹⁵ With a smaller Bay-Delta project, it is assumed that the cost impact would be reduced; however, the magnitude of the difference in impacts between the allocation of the project's costs on supply and transportation remains significant.

Recent State Activity

In April 2019, DWR withdrew proposed permitting applications for WaterFix. As plans for a smaller Bay-Delta project integrated with other local solutions are underway at the state level, it is important to update the Water Authority's official position so that it can directly engage with the Newsom Administration to help develop elements of the portfolio plan and advocate for the proper cost allocation of Bay-Delta facilities.

Staff recommends that the Board modify its 2018 position to support the Governor's executive order and water resilience portfolio approach and communicate to the Newsom Administration its concerns about how costs of the Bay-Delta project may be allocated. Adopting an official position in line with the Governor's vision would enable the Water Authority to actively support this effort and share its experience and success in creating a diverse regional supply portfolio in San Diego County.

Proposed Position Statement

Staff recommends the Board adopt the following updated statement:

The Water Authority Board of Directors supports Governor Newsom's Executive Order N-10-19, directing preparation of a water resilience portfolio approach that meets the needs of California's communities, economy, and environment through the 21st century, including consideration of multi-benefit approaches that meet multiple needs at once, and a single-tunnel Bay-Delta project. Further, the Board directs staff to inform the Newsom Administration that its support for a single-tunnel Bay-Delta project is expressly conditioned upon the project costs being characterized by the Department of Water Resources (DWR) as conservation, or supply charges, as similar facilities historically have been defined in the Metropolitan Water District of Southern California's State Water Project contract with DWR.

Recommendation

Adopt the proposed update to the Water Authority's 2018 position statement and corresponding update to the Bay-Delta policy principles (attached).

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Reviewed by: Glenn Farrel, Government Relations Manager
Amy Chen, Director of MWD Program

Approved by: Dan Denham, Assistant General Manager

Attachment 1 – Updated Bay-Delta & Project Policy Principles

Attachment 2 – Updated Bay-Delta & Project Policy Principles showing revisions to Bay Delta & WaterFix Project Policy Principles

¹⁵ Amounts are in 2018 dollars and based on financing interest rates of 4% and 8%, and a single-family household of four using an average of 0.4 acre-feet of imported water per year.

**San Diego County Water Authority
Bay-Delta & Project Policy Principles
Adopted by the Board of Directors July 25, 2019**

1. On April 29, 2019, Governor Newsom signed Executive Order N-10-19, directing the preparation of a water resilience portfolio approach that meets the needs of California's communities, economy, and environment through the 21st century, including consideration of multi-benefit approaches that meet multiple needs at once, and a single-tunnel Bay-Delta project.
2. The Water Authority Board of Directors supports Governor Newsom's Executive Order N-10-19 and directs staff to inform the Newsom Administration that its support for a single-tunnel Bay-Delta project is expressly conditioned upon the project costs being characterized by the Department of Water Resources (DWR) as conservation, or supply charges, as similar facilities historically have been defined in the Metropolitan Water District of Southern California's (MWD) State Water Project (SWP) contract with DWR.
 - As reflected in Table 2 of DWR's Appendix B to Bulletin 132-17, Data and Computation Used to Determine Water Charges, and for which costs are recovered in Article 22(a) of Delta Water Charge of MWD's SWP Contract; allow for the exemption of north-of-Delta SWP contractors.
3. Support establishment of an independent and transparent oversight function to monitor and provide regular updates on project implementation progress, including expenditure tracking, construction progress, project participants' contributions, and all other relevant activities and developments.
4. Continue to support the co-equal goals of water supply reliability and environmental restoration embodied in the 2009 Delta bill package.
5. Improve the ability of water-users to divert water from the Delta during wet periods, when impacts on fish and the ecosystem are lower and water quality is higher.
6. Encourage the development of a statewide water transfer market that will improve water management and allow more efficient use of available resources.
7. Allow access to all SWP facilities, including project facilities, to facilitate water transfers.
8. Support improved coordination of Central Valley Project and SWP operations and implementation of voluntary agreements that are fair to users of both projects and do not unfairly shift costs to SWP contractors.
9. Support continued state ownership and operation of the SWP, including project facilities, as a public resource.

San Diego County Water Authority
Bay-Delta & ~~WaterFix~~ Project Policy Principles
Adopted by the Board of Directors ~~August 9, 2018~~ July 25, 2019

1. On April 29, 2019, Governor Newsom signed Executive Order N-10-19, directing the preparation of a water resilience portfolio approach that meets the needs of California's communities, economy, and environment through the 21st century, including consideration of multi-benefit approaches that meet multiple needs at once, and a single-tunnel Bay-Delta project.
- 1.2. The Water Authority Board of Directors supports ~~the WaterFix project, as currently proposed,~~ Governor Newsom's Executive Order N-10-19 and directs staff to inform the Newsom Administration that its support for a single-tunnel Bay-Delta project is expressly conditioned upon the ~~Metropolitan Water District (MWD) properly allocating the costs of the project~~ project costs being characterized by the Department of Water Resources (DWR) as conservation, or supply charges, as similar facilities historically have been defined in ~~MWD's the Metropolitan Water District of Southern California's (MWD) State Water Project (SWP) contract with DWR.~~
 - As reflected in Table 2 of DWR's Appendix B to Bulletin 132-17, Data and Computation Used to Determine Water Charges, and for which costs are recovered in Article 22(a) of Delta Water Charge of ~~the current~~ MWD's SWP Contract; allow for the exemption of north-of-Delta SWP contractors.
- 2.3. Support establishment of an independent and transparent oversight function to monitor and provide regular updates on ~~WaterFix~~ project implementation progress, including expenditure tracking, construction progress, project participants' contributions, and all other relevant activities and developments.
- 3.4. Continue to support the co-equal goals of water supply reliability and environmental restoration embodied in the 2009 Delta bill package.
- 4.5. Improve the ability of water-users to divert water from the Delta during wet periods, when impacts on fish and the ecosystem are lower and water quality is higher.
- 5.6. Encourage the development of a statewide water transfer market that will improve water management and allow more efficient use of available resources.
- 6.7. Allow access to all SWP facilities, including ~~WaterFix project~~ facilities, to facilitate water transfers.
- 7.8. Support improved coordination of Central Valley Project and ~~State Water Project (SWP)~~ SWP operations and implementation of voluntary agreements that are fair to users of both projects and do not unfairly shift costs to SWP contractors.
- 8.9. Support continued state ownership and operation of the SWP, including ~~WaterFix project~~ facilities, as a public resource.