



**Contra  
Costa  
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: December 8, 2015

Subject: California WaterFix Change Petition to Water Rights Application with the State Water Resources Control Board

### **RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Conservation and Development Director, or designee, to take the following actions on behalf of the County and Contra Costa County Water Agency:

1. File a protest with the California State Water Resources Control Board (SWRCB) against the Department of Water Resources and U.S. Bureau of Reclamation's joint change petition related to the California WaterFix project, and take related actions; and
2. Participate in related SWRCB proceedings.

### **FISCAL IMPACT:**

No impact to the General Fund. The estimated cost of \$50,000 to file the protest and participate in the protest proceedings, including costs for Water Agency staff and consultant and County Counsel, will be paid with Contra Costa Water Agency funds. This estimated cost may be covered within the current Water Agency budget by dedicating existing resources to this task.

### **BACKGROUND:**

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **12/08/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Mary N. Piepho, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 8, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Ryan Hernandez  
(925)674-7824

cc:

On August 25, 2015, the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) jointly submitted a Petition to the State Water Resources Control Board (SWRCB) for a change to the DWR and Reclamation water rights. The Petition requests that the SWRCB authorize the addition of three additional

## BACKGROUND: (CONT'D)

points of diversion to the water rights for both the State Water Project (SWP) and Central Valley Project (CVP) to allow construction of the key Delta conveyance components of the California WaterFix project.

Planning for the WaterFix proposed project began in 2006 as part of the Bay Delta Conservation Plan (BDCP) program. The BDCP initially intended to provide net benefits to key fish species by reducing exports from the south Delta, minimizing reverse flows in the south and central Delta, and by restoring more than 100,000 acres of ecosystem habitat in the Delta. Another goal of the BDCP was to increase water supply reliability for the export water contractors in southern California, including greater water supply and water quality security in the event of a large earthquake in the Delta region.

Nearly ten years later, the Delta ecosystem continues to decline and the current drought has highlighted significant problems with groundwater management and subsidence in the San Joaquin Valley and the lack of dry year supplies. Continuing subsidence of lands within the Delta, increasing seismic risks and Delta levee vulnerabilities, and rising sea levels caused by global climate change, will further exacerbate these problems.

In 2009, the California legislature passed the Delta Reform Act, which set new State policy of achieving the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. (California Public Resources Code Section 29702(a)). Inherent in the coequal goals are the additional objectives of improving water quality in the Delta and protecting the Delta as an evolving place.

In November 2013, DWR and Reclamation released a BDCP Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). Contra Costa County submitted a lengthy comment letter outlining in detail why the Draft EIR/EIS was inadequate and failed to achieve either of the coequal goals. The County's letter requested that additional alternatives involving new storage and demand reduction actions be studied that could achieve the coequal goals.

In January 2014, the key state agencies responsible for water management and regulation in California released the California Water Action Plan that laid out a portfolio of actions to achieve the coequal goals: water conservation, regional self-reliance, protect and restore important ecosystems, expand water storage capacity and improve groundwater management, etc.

In April 2015, it was announced that the State and federal agencies will no longer be pursuing the BDCP, but would be separately pursuing a WaterFix conveyance-only project and a separate EcoRestore project to complete only 30,000 acres of ecosystem restoration (most of which was already required by the state and federal project biological opinions and is long overdue).

In July 2015, DWR and Reclamation released the BDCP/California WaterFix Partially Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) with three new alternatives that no longer incorporated habitat restoration actions. This document, prepared in haste, was even more inadequate, and even failed to include any modeling of the new alternatives, or any corrected modeling of the flawed analyses in the November 2013 BDCP Draft EIR/EIS. On October 30, 2015, Contra Costa County submitted another detailed comment letter pointing out the inadequacies of the proposed project and the environmental documents.

Unfortunately, the proposed WaterFix conveyance-only project fails to help restore and sustain key fish species or the Delta ecosystem, significantly degrades water quality in the Delta, actually increases rather than decreases exports during the driest periods when the Delta ecosystem is most vulnerable, and fails to produce any new usable water or increase long-term water supply reliability for California.

The water rights Petition filed by DWR and Reclamation in August is inadequate and is based on flawed and incomplete environmental documents that fail to disclose to the public or decision makers the exact operating criteria for the project or the major problems the project will cause for other water users, the Delta ecosystem and water quality in the Delta. On October 20, 2015, before the comment period on the WaterFix RDEIR/SDEIS had closed, the SWRCB released a Notice for the water rights Petition, and a water rights hearing. To protest this Petition and to participate in the water rights hearing process, the Department, on behalf of the County and Water Agency, will need to file a water rights protest and submit a Notice of Intent to appear on January 5, 2016. A pre-hearing conference will be held on January 28, 2016. Copies of witnesses' proposed testimony, witness qualifications, and exhibits for Part 1 of the hearing need to be submitted by March 1, 2016; however, the County would likely only participate in Part 2 of the hearing, which will not take place until after a WaterFix Final EIR/EIS is completed.

Grounds for Filing Protest: The County would protest the WaterFix water rights petition based on allegations that the proposed change: (a) would have an adverse environmental impact; (b) would not best conserve the public interest or public trust uses; and (c) would be contrary to law. The WaterFix project would also cause injury to legal users of water from the Bay-Delta system, and other users are entitled to file a protest under this category.

The WaterFix project would harm the Bay-Delta environment to the detriment of key fish species, and urban, agricultural and recreational water users in the Delta. Proceeding with a conveyance-only project intended only to benefit the export water contractors south of the Delta is not in the public interest. The State and federal administrations should instead develop a project that implements a portfolio of actions, consistent with the 2014 California Water Action Plan, and actually contributes to achieving the coequal goals. The WaterFix project is contrary to the California Environmental Quality Act statutes because it fails to avoid or mitigate significant adverse environmental impacts, and fails to comply with the 2009 Delta Reform Act and the coequal goal requirements.

For these reasons, DCD staff recommends that the Board of Supervisors approve the recommended actions.

**CONSEQUENCE OF NEGATIVE ACTION:**

If the Department is unable to file a protest, then the County and Water Agency will not be able to participate in the SWRCB proceedings, and will not be able to challenge any final decision of the SWRCB.