



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: August 14, 2018

Subject: Consider Filing an Administrative Appeal with the Delta Stewardship Council

RECOMMENDATION(S):

1) APPROVE and AUTHORIZE the Director of Conservation and Development, or designee, to file, on behalf of the County and the Contra Costa County Water Agency, an administrative appeal with the Delta Stewardship Council to challenge a determination by the California Department of Water Resources that the California WaterFix Project is consistent with the Delta Plan, and authorize the execution of related legal services contracts and a joint appeal agreement.

2) APPROVE and AUTHORIZE the County Counsel, or designee, to execute, on behalf of the County and the Contra Costa County Water Agency, a joint appeal agreement, a contract for legal services with The Freeman Firm, and a contract for legal services with the Soluri Meserve law firm, all effective July 1, 2018, in connection with the administrative appeal.

FISCAL IMPACT:

The County and Water Agency will be jointly responsible for a proportional share of fees and costs charged by The Freeman Firm and the Soluri Meserve law firm to represent the co-appellants in this administrative appeal. It is estimated that bringing the appeal will cost

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **08/14/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: Candace Andersen, District II
Supervisor
Diane Burgis, District III
Supervisor
Karen Mitchoff, District IV
Supervisor
Federal D. Glover, District V
Supervisor

ABSENT: John Gioia, District I
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: August 14, 2018

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

By: June McHuen, Deputy

Contact: Ryan Hernandez,
925-674-7824

cc:

the County and Water Agency approximately \$15,000, which includes outside counsel and County Counsel costs, staff costs, and consultant costs. These estimated costs may be covered within the current Water Agency budget.

BACKGROUND:

On July 27, 2018, the California Department of Water Resources (“DWR”) submitted a written certification of consistency for the California WaterFix Project, determining that the project is consistent with the Delta Stewardship Council’s (“Council”) Delta Plan. The filing of the certification of consistency began a 30-day period within which the County (or any person or entity) may file an administrative appeal with the Council to challenge DWR’s certification of consistency.

Under state law, a state agency’s action in the Delta must be consistent with the Delta Plan if the action is a “covered action” that, among other things, will have a significant impact on restoring the Delta ecosystem or ensuring a reliable water supply. (Wat. Code, § 85857.5, subd. (a)(4).) A “covered action” includes exporting or diverting water from the Delta. If a state agency will undertake a covered action, it must certify that its action is consistent with the Delta Plan. (Wat. Code, § 85225.)

County and Water Agency staff and consultants believe the California WaterFix Project is inconsistent with the Delta Plan, and, as a result of that inconsistency, the project will have a significant adverse impact on restoring the Delta ecosystem and ensuring a reliable water supply for California. (Wat. Code, § 85225.10, subd. (a).) County and Water Agency staff and consultants have determined that the California WaterFix Project is inconsistent with the Delta Plan in the following ways:

- The California WaterFix fails to reduce reliance on the Delta through improved regional water self-reliance;
- The WaterFix fails to consistently capture more water during wet periods (“Big Gulp”) and relies on increasing exports well above existing levels during dry periods when the Delta ecosystem is most vulnerable; and
- The California WaterFix fails to provide adequate mitigation measures to eliminate the project's significant adverse impacts to water quality in the Delta and the ecosystem.

The County and Water Agency will join San Joaquin County, and possibly other Delta counties, to file the appeal. The counties will be represented by The Freeman Firm and the Soluri Meserve law firm. A joint appeal agreement will authorize the counties to share privileged appeal-related communications and documents. The legal services contracts will require the law firms to divide their fees and costs proportionally among the parties joining in the appeal.

CONSEQUENCE OF NEGATIVE ACTION:

If the Department is unable to file an appeal, then the County and Water Agency will not be able to participate in the Delta Stewardship Council's proceedings, and will not be able to challenge any final decision of the Council.