

October 17, 2019

**MEMORANDUM**

**TO:** GENERAL MANAGER AND BOARD OF DIRECTORS  
OF DESERT WATER AGENCY

**FROM:** BEST BEST & KRIEGER LLP

**RE:** OCTOBER 17, 2019 MEETING OF THE BOARD OF DIRECTORS OF THE  
STATE WATER CONTRACTORS

The October 17, 2019 meeting of the Board of Directors of the State Water Contractors (SWC), was conducted at the Tsakopoulos Library Galleria in downtown Sacramento.

1. Closed Session. The meeting began with a lengthy closed session to discuss litigation matters and administrative proceedings before the State Water Resources Control Board. Those matters will not be disclosed in this memo, as they involve confidential communications during closed session.

2. Water Supply Objective Update. Alison Febbo of the State Water Contractors provided a report on the progress in addressing Water Supply Objectives for Fiscal Year 2019-2020. The Priority One Objectives identified at the beginning of the year included work on the Delta Conveyance Facility, a Water Supply Contract Amendment to address SWP water management issues, reconsultation of the biological opinions for long term SWP operations, and proceedings before the State Water Resources Control Board.

Following decertification of the EIR that had been prepared for CalWaterFix, and the Governor's decision to change the concept from a dual tunnel facility to a single tunnel facility, the Contractors spent the summer and fall of 2019 in negotiations with DWR on an agreement in principle to construct and operate the new project, now called the Delta Conveyance Facility. The SWP Contractors have been caucusing to develop their proposals to DWR, and those discussions continue. Among other things, the Contractors themselves must reach agreement about participation in the Delta Conveyance Facility, and in some cases the level of participation, since some of the Contractors are electing to "opt-out" of the project in whole or in part. For that to occur it will be necessary for participating Contractors to agree regarding the allocation of

those costs and additional benefits for those participants that wish to pick up portions of that capacity. The new EIR for the new project cannot be developed until the project itself is defined with sufficient clarity, and until the Contractors and DWR can complete their negotiation of an agreement in principle for the redefined project. The parties are attempting to define the project as quickly as possible, so that the environmental work on the new project can be commenced. The EIR will support progress on other related activities, such as the petition before the State Water Resources Control Board to change the point of diversion for the delivery of water into the new facility, the preparation of new biological opinions required for the new project, and possibly consistency determinations for the new project, as well.

Between 2014 and 2018, the Contractors had negotiated a proposed agreement in principle to amend the Water Supply Contract to provide the Contractors with greater water management tools. Those negotiations resulted in a draft EIR assessing the CalWaterFix cost allocation, as well as the proposed management tools. With the abandonment of the CalWaterFix Project and replacement with the new Delta Conveyance Facility Project, a new draft EIR needed to be prepared for the Contract amendment for new water management tools, and it is currently in circulation. The Contractors anticipate that the final EIR for the proposed water management contract amendment will be certified in January of 2020.

The United States Fish and Wildlife Service required reconsultation on the biological opinions issued for long term operation of the Central Valley Project and the State Water Project. Reconsultation was already underway when the President issued a memorandum on October 10, 2018, requiring progress to reach certain milestones by identified dates. The memorandum required the biological assessment to be completed by January 31, 2019, and the final biological opinions to be issued within 135 days after that (in June of 2019). However, the fish agencies were not able to meet those deadlines, and thus the preparation of the new biological opinions was delayed. The new biological opinions are expected to be released any time now. Meanwhile, the State of California had decided that it will require new “stand alone” permits for compliance with the California Endangered Species Act. Those permits will be issued separately, and they will not seek consistency with the Federal permits. The State Department of Fish and Wildlife did not want to be tied to the biological opinions being prepared under the

Federal Endangered Species Act. The Contractors are doing what they can to encourage conditions to be similar for both, to the extent possible.

With respect to the State Water Resources Control Board activities, the State Board adopted a Bay-Delta Plan update on December 12, 2018. The Phase II framework for the plan had been released in July 2018. Since then the Contractors have been working on desired voluntary supplement agreements to resolve all environmental and Delta flow requirement issues, so that the issues will not have to be argued before the State Board. The State team will present its recommendations in 2019.

3. Water Operations Update. Alison Febbo of the State Water Contractors also provided a recap of water operations last year. She reported that the year was classified as “wet” but short of the wettest years on record. Precipitation levels were significantly higher than average in the Northern California region, the San Joaquin region, and also the Southern California region. Snow pack levels followed a similar pattern. Although storage in Lake Oroville started out low, because of the work that was being performed on the spillway, the lake began to fill much more rapidly than anticipated. The precipitation also quickly raised storage levels in Lake Shasta and Lake Folsom. Due to large diversions from the Delta into the San Luis Reservoir, the carry over water then in storage at San Luis was entirely spilled by the end of March. This was largely due to the greater than average flows in the San Joaquin River. These conditions resulted in a final SWP allocation of 75% for the year.

4. Board Action Items. The SWC Board took action to authorize three expenditures, as follows: First, the Board authorized an expenditure of \$31,350 for the Contractors to enter into an agreement with Josh Korman from Ecometric to continue participation in meetings to develop the winter run salmon life cycle model, to renew model components as they are developed, and to communicate outcomes to the Contractors. The Board also authorized the SWC to enter into an agreement with United States Geological Survey in the amount of \$688,770 for data collection under backwater (high tide) conditions from the Feather River and the Sutter Bypass, and also authorizing staff to exceed the 20% cap on overhead expenditures. Finally, the Board also authorized the SWC fund up to \$77,250 for development of a SWP water operation analysis tool by a consulting firm by the name of Jacobs. This authorization

represented 50% of the anticipated costs, with Metropolitan Water District funding the other 50% cost share, for a total expenditure of \$154,500.

5. Water Operations Report. Molly White of DWR provided an update regarding current SWP water operations. She reported that DWR is still performing ongoing work on the spillway at Oroville, to complete a “comprehensive assessment.” As a result, during the period that this work continues, there will be an enhanced flood control pool left available in the lake, with more freeboard made available early in the year. The objective here is to avoid a potential spill from the emergency spillway, if at all possible. Molly reported that the weather predictions are for dry conditions over the next 30-90 days. Releases from Lake Oroville were at 2,450 cubic feet per second into the Feather River, which constituted maximum releases. She stated that this rate of release would be reduced later, however. As of the date of the meeting, storage in Lake Oroville was at 2.1 million acre feet, and the State’s share of storage in the San Luis Reservoir was at 730,000 acre feet. Although all carry over water was spilled from the San Luis Reservoir in March, she reported that the Contractors would be adding more carry over water from unused allocations this year.

6. General Manager’s Report. General Manager Jennifer Pierre reported that the “Fisheries Strong” video prepared for the State Water Contractors was finally completed and was available, at an investment of \$10,000 and intensive investment of time by SWC staff. She reported that the Tule Red Habitat Restoration Project has been completed and placed in operation, creating 420 acres of habitat restoration for the Delta Smelt. This is a portion of the 8,000 acre restoration commitment by DWR. The Yolo Project will be much larger, and she stated that this project is currently in progress.

MICHAEL T. RIDDELL