

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA
Board of Directors Meeting
Agenda
August 4, 2014 at 1:30 p.m.

1. Call to Order, Flag Salute and Roll Call

2. Adoption and Adjustment of Agenda

3. Public Comment

Members of the public may address the Board at this time concerning items relating to any matter within the Agency's jurisdiction. To comment on specific agenda items, please complete a speaker's request form and hand it to the board secretary.

4. Consent Calendar:

If any board member requests that an item be removed from the Consent Calendar, it will be removed so that it may be acted upon separately.

- A. Approval of the Minutes of the Regular Board Meeting, July 21, 2014* (Page 2)
- B. Approval of the Minutes of the Finance and Budget Workshop, July 28, 2014* (Page 7)
- C. Approval of the Finance and Budget Workshop Report, July 28, 2014* (Page 9)

5. Reports (Discussion and Possible Action)

- A. General Manager's Report
 - 1. Operations Report
 - 2. Construction Update
 - 3. Drought Update Updates
 - 4. General Agency Updates* (Page 10)
- B. Directors' Reports

6. New Business (Discussion and Possible Action)

- A. Consideration of Resolution No. 2014-05, Resolution of the Board of Directors of the San Gorgonio Pass Water Agency Determining the Amount of Money Needed to Make Annual Payment for the Interest and Principle on General Obligation Bonds for Other Indebtedness Approved by the Voters Prior to July 1, 1978, and/or for Which a Tax Levy is Required Under Article 1, Section 10 of the United States Constitution and Making a Tax Levy Thereof* (Page 18)
- B. Consideration of Fiscal Year 2014-2015 Debt Service Fund Budget* (Page 24)
- C. Consideration of Continuing as Lead Agency for CEQA Purposes for FERC 344 Project and Contracting with Dr. Roy McDonald and Dr. Richard Harris to Provide Consulting Services Therefore* (Page 28)

7. Topics for Future Agendas

8. Announcements

- A. Beaumont Basin Watermaster Meeting, August 6, 2014 at 10:00 a.m.
 - Beaumont Cherry Valley Water District Board Room
- B. Engineering Workshop, August 11, 2014 at 1:30 p.m.
- C. Regular Board Meeting, August 18, 2014 at 1:30 p.m.
- D. Finance and Budget Workshop, August 25, 2014 at 1:30 p.m.

9. Closed Session (1 Item)

- A. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION -
(Government Code Section 54956.9 (d)(4) (one case)

10. Adjournment

Information included in Agenda Packet

(1) Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the Agency's office at 1210 Beaumont Avenue, Beaumont during normal business hours. (2) Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Agency's office, located at 1210 Beaumont Avenue, Beaumont, California 92223, during regular business hours. When practical, these public records will also be made available on the Agency's Internet Web site, accessible at: www.sgpwa.com (3) Any person with a disability who requires accommodation in order to participate in this meeting should telephone the Agency (951 845-2577) at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, California 92223
Minutes of the
Board of Directors Meeting
July 21, 2014

Directors Present: John Jeter, President
 Bill Dickson, Vice President
 Mary Ann Melleby, Treasurer
 Ron Duncan, Director
 Ray Morris, Director
 Ted Haring, Director
 Barbara Voigt, Director

Staff Present: Jeff Davis, General Manager
 Thomas Todd, Finance Manager
 Cheryle Rasmussen, Executive Assistant
 Russ Behrens, Legal Counsel

1. **Call to Order, Flag Salute and Roll Call:** The meeting of the San Gorgonio Pass Water Agency Board of Directors was called to order by Board President John Jeter at 1:30 p.m., July 21, 2014 in the Agency Boardroom at 1210 Beaumont Avenue, Beaumont, California. Director Dickson led the Pledge of Allegiance to the flag. President Jeter requested a roll call.

<u>Roll Call:</u>	Present	Absent	
Director Haring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Director Voigt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Director Morris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Director Morris left the meeting at 2:27 p.m.
Director Melleby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Director Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Director Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
President Jeter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

2. **Adoption and Adjustment of the Agenda:** The agenda was adopted as presented.
3. **Public Comment:** President Jeter requested comments from the public. No members of the public requested to speak at this time.
4. **Consent Calendar:**
 - A. Approval of the Minutes of the Regular Board Meeting, July 7, 2014
 - B. Approval of the Minutes of the Engineering Workshop, July 14, 2014

Director Dickson moved, seconded by Director Melleby, to approve the consent calendar as presented. Director Melleby requested that a revision be made to the Board Meeting Minutes of July 7, 2014 adding to Items 6c and 6d the actual amounts that were approved by the board; Item 6c \$33,126.00 and Item 6d \$6,375.00. Motion carried 7-0.

5. Reports:

A. General Manager's Report:

(1) Operations Report: General Manager Davis reported on the following: **(a) SWP Deliveries:** As of July 18th the Agency delivered 369 acre-feet to the Noble Creek Recharge Facility. **(b) SWP** water quality has stabilized. Salinity was up earlier in the summer but has leveled out.

(2) Beaumont Avenue Recharge Facility Pipeline Construction Update: General Manager Davis presented a slide presentation on the construction that has taken place this past week. He informed the Board that construction is moving north from Cherry Valley Boulevard. Beaumont Avenue is projected to be reopened no later than August 1st.

(3) Flume Update: General Manager Davis updated the Board on the Whitewater Flume status, stating that in the last two weeks the following has taken place:

1. A productive meeting took place between the parties involved (Agency, City of Banning and Banning Heights).
2. The FERC Commission meeting that took place on July 23rd did not include decommissioning the flume.
3. City of Banning sent letters to FERC requesting a reevaluation of the Environmental Assessment, to reconsider Banning's license application, and a request to participate in FERC's dispute resolution process.
4. The Agency submitted letters of support.
5. There is now a proposed division of labor among the three participating entities. More information on this topic will be presented at the next board meeting.

General Manager Davis stated that he is concerned that if nothing happens prior to September 2014, that the order to remove the Burnt Canyon Pipeline will take effect. He will be proposing at the next board meeting that the Agency take the lead on the CEQA process for the flume and hold a public scoping meeting in August or early September. This will allow residents of Banning and Banning Heights the opportunity to voice their concerns and/or opinions during a public meeting.

(4) Update on State Water Resources Control Board (SWRCB) Actions: Materials related to this subject were included in the agenda packet. General Manager Davis reviewed with the Board the agenda packet materials, stating that the SWRCB actions are related to the proposed text of the emergency regulations. State Water Contractors are supporting the Emergency Regulation for Statewide Urban Water Conservation which will last for 270 days from the effective date of August 1, 2014. Staff will comply with the regulation referenced on section 13 of page 15 that states the State Water Board encourages all state and local agencies to look for additional opportunities to minimize potable water use in outdoor spaces. Members of the public and Directors Melleby and Duncan provided comments on this item.

(5) General Agency Updates: **1)** General Manager Davis reported that there have been two deaths within the SGPWA family, both Past-Director Dick Larson and former employee Dinah Perry Chavez, passed away on July 5, 2014; the two deaths were not related. Condolences and flowers were sent to both families on behalf of the Agency. **2)** Operations and Maintenance Manager Ken Falls was involved in a vehicle accident in the Agency issued vehicle that is in his possession. Mr. Falls was not seriously hurt

nor was he at fault. A workers' compensation doctor examined Mr. Falls and did not restrict him from any of his work duties. The Agency is covered by workers' compensation insurance in the event that Mr. Falls would have the need to file a claim at a later time. A police report was taken and the driver of the other vehicle provided auto insurance information. The Agency's vehicle suffered body damage; however, it is drivable. At this time it is unknown if the Agency's auto insurance company will have the vehicle fixed or deem it a total loss. **3)** General Manager Davis met with some local church members on Friday, July 18th to discuss the potential of leasing the Agency's board room on Saturdays to hold its weekly worship service, and to also ensure that the board room would meet its needs. The representatives of the church felt that the facility was more than adequate. This item may be on the next board meeting agenda if a letter of request is received.

B. Directors Reports:

(1) Director Melleby reported on the July 11th Beaumont Chamber of Commerce Breakfast meeting and the July 16th YVWD Board meeting. **(2) Director Voigt** reported that she attended the Beaumont Chamber of Commerce Breakfast meeting on July 11th.

6. New Business: (Discussion and Possible Action)

A. Public Hearing and Consideration of Ordinance 10 – Water Shortage Ordinance:

A staff report and a copy of Ordinance 10 was included in the agenda packet. President Jeter explained the protocol of the proceedings. President Jeter opened the Public Hearing on Ordinance 10 – Water Shortage Ordinance at 2:13 p.m. President Jeter called upon General Manager Davis for his presentation. General Manager Davis provided an overview of Ordinance 10. Gail Paparian (a resident of Banning), Dr. Blair Ball (a resident of Cherry Valley) and Deborah Franklin (Mayor, City of Banning) provided questions and/or comments. President Jeter closed the Public Hearing at 2:25 p.m. General Manager Davis and Legal Counsel Russ Behrens responded to the questions and comments accordingly. After discussion, Director Melleby moved, seconded by Director Duncan, to adopt Ordinance 10 – Establishing Water Shortage Plan, as presented. Director Voigt moved to amend the motion, seconded by Director Duncan, adding language that states that the ordinance will be reviewed in any drought conditions year. Legal Counsel Behrens recommended that the additional language be placed in Section 6 of the Ordinance 10, adding the clause "This ordinance shall be reviewed by the Board in any water short year as defined herein." He stated that the proposed ordinance defines a water short year as anytime there is more demand than water supply available. President Jeter requested a reading of the motion. General Manager Davis stated that the motion to amend Ordinance 10 is as follow: To add a sentence in Section 6 that states - This ordinance shall be reviewed by the Board in any water short year as defined herein. President Jeter requested a vote on the motion to amend. The motion to amend passed 6-0, with Director Morris absent. President Jeter requested a roll call on adopting Ordinance 10 – Establishing Water Shortage Plan. Ayes: Haring, Voigt, Melleby, Duncan, Dickson and Jeter. Noes: none. Absent: Morris. Motion carried unopposed 6-0, with Director Morris absent.

B. Public Hearing and Consideration of Amendment to 2010 Urban Water Management Plan: A staff report and a copy of the report letter from Kennedy/Jenks Consultants representing updates to the demand section of the SGPWA 2010 UWMP were included in the agenda packet. President Jeter explained the protocol of the proceedings. President Jeter opened the Public Hearing on the Amendment to 2010

Urban Water Management Plan at 2:37 p.m. General Manager Davis provided an overview of the Amendment to the 2010 UWMP. General Manager Davis concluded his report. President Jeter announced that now is the time for public comment. There being no comments from the public, President Jeter closed the Public Hearing at 2:44 p.m. Director Melleby made a motion, seconded by Director Duncan, recommending that the Board adopt the Amendment to the 2010 Urban Water Management Plan. President Jeter requested a roll call. Ayes: Haring, Voigt, Melleby, Duncan, Dickson and Jeter. Noes: none. Absent: Morris. Motion carried unopposed 6-0, with Director Morris absent. General Manager Davis announced that in accordance of the water code, staff will provide a copy of the Amendment to the Department of Water Resources and the California State Library.

C. Consideration of Resolution No. 2014-04, Establishing the Appropriations Limit for Fiscal Year 2014-2015: A staff report and a copy of Resolution No. 2014-04 were included in the agenda packet. General Manager Davis informed the Board that the appropriations limit is a housekeeping item that is done annually, which is required by the California Constitution. The limit is calculated based on a formula, and is not related to the Agency's budget for the year. For this fiscal year, the formula amount is \$49,603,824. The appropriations limit was posted beyond the required length of time of 15 days. Director Dickson made a motion, seconded by Director Voigt, to approve Resolution No. 2014-04 in accordance with California law. President Jeter requested a roll call. Ayes: Haring, Voigt, Melleby, Duncan, Dickson and Jeter. Noes: none. Absent: Morris. Motion carried unopposed 6-0, with Director Morris absent.

D. Consideration of Contract Extension Agreement in Principle: A staff report and a copy of the Draft Agreement in Principle were included in the agenda packet. General Manager Davis stated that this item was discussed extensively at the July 14th Engineering workshop, and that he is prepared to review this item with the Board, if needed. Director Dickson made a motion, seconded by Director Duncan, recommending approval of the Agreement in Principle concerning Extension of SWP Supply Contracts. Director Melleby commented on General Manager Davis' commitment to ensure that the Agency received the best negotiation possible. General Manager Davis acknowledged Director Melleby's comment. He then informed the Board that the Charter for the Finance Committee was included in the agenda packet. President Jeter requested a vote on the motion. Motion carried unopposed 6-0, with Director Morris absent.

E. Consideration of Sponsorship of Santa Ana Watershed Conference: A staff report and materials related to the Santa Ana Watershed Conference were included in the agenda packet. General Manager Davis stated that the Board has sponsored this event in past years, with varying sponsorship amounts. The keynote speaker at this event is a drought expert. After discussion, Director Dickson made a motion, seconded by Director Duncan, recommending the approval of sponsoring the conference for \$1,000. President Jeter requested a vote on the motion. Motion passed 6-0, with Director Morris absent.

7. **Topics for Future Agendas:** No topics for future agendas were requested.

8. **Announcements:** *President Jeter reviewed the following announcements:*

- A. Finance and Budget Workshop, June 28, 2014 at 1:30 p.m.
- B. San Gorgonio Pass Regional Water Alliance – Technical Committee Meeting, Tuesday, July 29, 2014 at 4:00 p.m. – Banning City Hall Conference

Room

- C. San Geronio Pass Regional Water Alliance Meeting
Tuesday, July 29 2014 at 6:00 p.m. – Banning City Council Chambers
- D. Regular Board Meeting, August 4, 2014 at 1:30 p.m.

The meeting adjourned to closed session at 2:57 p.m.

9. Closed Session (1 Item)

A. Public Employee Performance Evaluation (Government Code Section 54957) Title:
General Manager

The meeting reconvened to open session at 3:58 p.m.

President Jeter reported that the board met in closed session and discussed the matter listed. He stated that the Ad Hoc Committee reviewed with the Board the general manager's work and activities performance. After discussion, it was the consensus of the Board to award the general manager with a 3.5% merit increase in salary and a 1.5% cost of living increase. No other action was taken that is reportable under the Brown Act.

10. Adjournment: President Jeter adjourned the meeting at 3:59 p.m.

DRAFT – SUBJECT TO BOARD APPROVAL

Jeffrey W. Davis, Secretary of the Board

cmf

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue
Beaumont, California 92223
Minutes of the
Board Finance and Budget Workshop
July 28, 2014

Directors Present: John Jeter, President
Ron Duncan, Director
Ted Haring, Director
Mary Ann Melleby, Treasurer
Ray Morris, Director
Barbara Voigt, Director

Directors Absent: Bill Dickson, Vice President

Staff and Consultants Present:
Jeff Davis, General Manager
Tom Todd, Jr, Finance Manager

1. **Call to Order, Flag Salute and Roll Call:** The Finance and Budget workshop of the San Gorgonio Pass Water Agency Board of Directors was called to order by President John Jeter at 1:30 p.m., July 28, 2014, in the Agency Conference Room at 1210 Beaumont Avenue, Beaumont, California. President Jeter led the Pledge of Allegiance to the flag. A quorum was present.
2. **Adoption and Adjustment of Agenda:** The agenda was adopted as published.
3. **Public Comment:** No members of the public wished to make any comment at this time.
4. **New Business:**
President Jeter turned the meeting over to Director Barbara Voigt, Chair of the Finance & Budget Committee.
 - A. Ratification of Paid Invoices and Monthly Payroll for the Month of June, 2014 by Reviewing Check History Reports in Detail: After review and discussion, a motion was made by Director Duncan, seconded by Director Morris, to recommend that the Board ratify paid monthly invoices of \$631,495.61 and payroll of \$31,202.83 for the month of June, 2014, for a combined total of \$662,698.44. The motion passed 6 in favor, no opposed, with Director Dickson absent.
 - B. Review and Consideration of Pending Legal Invoices for June, 2014: Finance Manager Tom Todd handed out a revised schedule of pending legal invoices so that an invoice that arrived on July 28, 2014 from the Metropolitan Water District could be included. After review and discussion, a motion was made by Director Duncan, seconded by Director Morris, to recommend that the Board approve

payment of the pending legal invoices for June, 2014. The motion passed 6 in favor, no opposed, with Director Dickson absent.

- C. Review of June, 2014 Bank Reconciliation: After review and discussion, a motion was made by Director Duncan, seconded by Director Melleby, to acknowledge receipt of the Wells Fargo bank reconciliation for June, 2014 as presented. The motion passed 6 in favor, no opposed, with Director Dickson absent.
- D. Review of Budget Report for June, 2014: After a detailed review and discussion, a motion was made by Director Duncan, seconded by Director Melleby, to acknowledge receipt of the Budget Report for June, 2014 as presented. The motion passed 6 in favor, no opposed, with Director Dickson absent.
- E. Review of Proposed Debt Service Fund Budget for FY 2014-15: General Manager Jeff Davis started the discussion by reviewing a chart comparing total Debt Service income and expenses from FY 2008-09 to FY 2013-14. He highlighted various trends, and explained why some of the variances occurred. Next he reviewed the Statement of Charges for CY 2015. Then he reviewed the budget of expenses and income as prepared for FY 2013-14, and then reviewed the proposed budget of expenses and income for FY 2014-15. He concluded the presentation by reviewing projections contained in a spreadsheet that was previously presented to the Board, a copy of which was handed out by Finance Manger Todd, showing that the information he just presented was in line with the projections previously presented to the Board. After further review and discussion, a motion was made by Director Duncan, seconded by Director Melleby, to recommend that the Board approved the proposed Debt Service Fund Budget for FY 2014-15 as presented. The motion passed 6 in favor, no opposed, with Director Dickson absent.
- F. Review Tax Rate Proposal for FY 2014-15: After review and discussion, based on the presentation made by General Manager Davis in item E, a motion was made by Director Melleby, seconded by Director Duncan, to recommend that the Board retain the current tax rate of 18.5 cents per \$100 of assessed valuation for FY 2014-15. The motion passed 6 in favor, no opposed, with Director Dickson absent.

5. Announcements: Director Voigt reviewed the following announcements:

- A. San Gorgonio Pass Regional Water Alliance – Technical Committee Meeting, July 29, 2014 at 4:30 p.m. at Banning City Hall Conference Room.
- B. San Gorgonio Pass Regional Water Alliance, July 29, 2014 at 6:00 p.m. at Banning City Council Chambers.
- C. Regular Board Meeting, August 4, 2014 at 1:30 p.m.

6. Adjournment: The Finance and Budget workshop of the San Gorgonio Pass Water Agency Board of Directors was adjourned at 2:23 p.m.

Draft - Not Approved

Jeffrey W. Davis, Secretary of the Board

Finance and Budget Workshop Report

From Director Barbara Voigt, Chair of the Finance and Budget Committee

The Finance and Budget Workshop was held on July 28, 2014. The following recommendations were made:

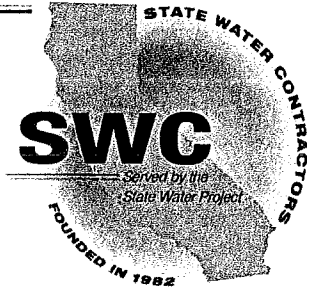
1. The Board ratify payment of Invoices of \$631,495.61 and Payroll of \$31,202.83 as detailed in the Bank Register Report for Accounts Payable and the Bank Register Report for Payroll for June, 2014 for a combined total of \$662,698.44.

2. The Board authorize payment of the following vendor's amounts:

Best, Best & Krieger LLP	\$13,110.28
Metropolitan Water District	7.36

3. The Board acknowledge receipt of the following:
 - A. Wells Fargo bank reconciliation for June, 2014
 - B. Budget Report for June, 2014

July 28, 2014



Bay Delta Conservation Plan Comments
Ryan Wulff, National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Dear Mr. Wulff:

The State Water Contractors (“SWC”), on its own behalf and on behalf of its member agencies¹, provides the following comments on the draft Bay Delta Conservation Plan (“BDCP”) and its draft environmental impact report/environmental impact statement (“DEIR/DEIS”) released on December 13, 2013. In addition, we request copies of all subsequent documents and notices, including the Notice of Determination (“NOD”).

SWC'S INTEREST IN THE STATE WATER PROJECT

As contractors with rights to receive State Water Project (“SWP”) supplies, we appreciate the opportunity to provide comments. Collectively, the SWC member agencies serve water to more than 26 million people—roughly two-thirds of California’s population—over a geographic area that extends from Butte County in the Sacramento Valley, through the San Francisco Bay area and San Joaquin Valley to the California Central Coast and Southern California. The SWC member agencies also serve water to over 750,000 irrigated farmland acres. SWP supplies are critical to California’s economy and ability to manage statewide water supplies.

We are proud to have invested billions of dollars in the last 20 years to improve SWP reliability by using smart planning and implementing water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, new storage, and improved regional coordination. To date, we have also invested over \$100 million in the eight-year BDCP planning and stakeholder effort to secure long-term SWP reliability. The State Water Contractors have been investing in the SWP for more than four decades, and have additionally invested in regional storage and conveyance to allow our service areas to capture water when it is plentiful and reduce demands on imported supplies during dry and critically dry years. These investments will effectively become stranded if water deliveries from the project continue to degrade.

DIRECTORS

Dan Flory
President
Antelope Valley-East Kern
Water Agency

Ray Stokes
Vice President
Central Coast Water
Authority

Douglas Headrick
Secretary-Treasurer
San Bernardino Valley MWD

Stephen Arakawa
Metropolitan Water District
of Southern California

Curtis Creel
Kern County Water Agency

Mark Gilkey
Tulare Lake Basin Water
Storage District

Joan Maher
Santa Clara Valley Water
District

Dan Masnada
Castaic Lake Water Agency

David Okita
Solano County Water Agency

General Manager
Terry Erlewine

¹ Alameda County Flood Control and Water Conservation District Zone 7, Alameda County Water District, Antelope Valley-East Kern Water Agency, Casitas Municipal Water District, Castaic Lake Water Agency, Central Coast Water Authority, City of Yuba City, Coachella Valley Water District, County of Kings, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire-West Side Irrigation District, Kern County Water Agency, Littlerock Creek Irrigation District, Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, San Bernardino Valley Municipal Water District, San Gabriel Valley Municipal Water District, San Geronio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Clara Valley Water District, Solano County Water Agency, and Tulare Lake Basin Water Storage District.

In recent years, SWP deliveries have been repeatedly interrupted and reduced due to operational conflicts with threatened and endangered Delta species. Additionally, the SWP risks complete failure given the vulnerability of the Delta levee system to catastrophic earthquake and flood events. Such an event could threaten water supplies for Southern California, the Bay Area, the Central Coast and the Central Valley for several years. These risks are unacceptable, and conditions are expected to worsen with climate change unless steps are taken now to mitigate these concerns. The proposed BDCP has been developed as provided for in both state and federal endangered species protection laws. Alternative No. 4 of the Draft BDCP DEIR/DEIS is the most promising plan developed to date to solve environmental challenges and resolve decades of conflicts between agricultural, urban and environmental water uses with a comprehensive solution that supports California's co-equal goals of a reliable water supply and a restored Delta ecosystem to benefit all water users.

SWC SUPPORT FOR BDCP PREFERRED ALTERNATIVE

SWC strongly supports the CEQA BDCP Preferred Alternative No. 4 with the expectation that the state and federal governments will move steadily forward with its adoption by issuing the NOD and Record of Decision ("ROD") by the end of this year, and by implementing the Alternative No. 4 in accordance with the BDCP schedule.

We support Alternative No. 4's proposed twin-tunnel conveyance system that would isolate and protect drinking water supplies in the event of catastrophic levee failure and help restore natural Delta flow patterns to benefit native species, as well as implementing habitat restoration, water quality and predator control measures set forth in the BDCP. We also support the Alternative No. 4's recognition that changing conditions in the Delta will require ongoing scientific review and monitoring so the plan can effectively adapt over time to emerging science and the evolving ecosystem. The draft plan additionally provides an important framework to address a range of operational outcomes and levels of certainty necessary for a final plan to merit investment by participating public water agencies and by the state and federal governments.

The BDCP process has been transparent and open to the public. Over the last eight years, the BDCP was developed with input from state and federal agencies and independent scientists with more than 600 public meetings and stakeholder briefings. All the documents, over 3,000, are posted online in a commitment to public access and government transparency. Although not required by law, in 2011, a working draft BDCP was released. Next, in 2012 and 2013, administrative drafts of the BDCP and DEIR/EIS were released for additional public and agency comment. Public input was used to significantly revise the proposed project to further minimize environmental impacts before the public draft BDCP and DEIR/DEIS were released for comment on December 13, 2013.

Numerous economic studies conducted for the BDCP demonstrate the financial benefits in securing a reliable water supply from the SWP for the state, as well as the potential hardships caused by inaction and a deteriorating existing water delivery system. Alternative No. 4's improved water supply reliability, according to a study by the University of California at Berkeley's David Sunding, will protect more than a million jobs throughout California. Without the BDCP, the statewide economic hardship caused by the prolonged loss of SWP water supply due to a seismic event could result in more than \$40 billion in economic damage statewide. BDCP offers the potential for economic benefits by protecting the state's most important water supply from natural disasters, climate change and further environmental restrictions.

In addition to the economic studies supporting Alternative No. 4, in the 2009 Legislature enacted the Delta Reform Act, which recognizes BDCP's central role in achieving the coequal goals of reliable water supplies from the Delta and Delta ecosystem restoration, and the Governor's recently released California Water Action Plan promotes increasing self-reliance through several measures, including providing a more reliable water supply that protects export supplies from catastrophic outages from earthquakes, major floods and rising sea levels. The Delta Reform Act and the California Water Action Plan highlight the BDCP's importance to the State to improve operational flexibility, protect water supplies and water quality, and restore the Delta ecosystem within a stable regulatory framework. The California Water Action Plan also states that as the Delta ecosystem improves in response to BDCP's implementing conservation measures, water operations will become more reliable, offering more secure water supplies. Beyond these laudable goals, the BDCP aims to restore export water supplies to levels that were realized before the 2008-2009 biological opinions.

CONCLUSION

The proposed BDCP Alternative No. 4 is the most comprehensive effort ever undertaken to address the chronic water challenges facing the state and federal water projects in a manner that protects the Delta environment. Delay is no longer a possibility. It is now time for the state and federal governments to approve and implement the BDCP, which was envisioned as part of the 2009 legislation in order to improve supply reliability and ecosystem function.

Key decisions remain relating to specifics on cost allocations, operations, outflow range, financing and other issues. However, the current Alternative No. 4 draft details a workable solution to the challenges facing the Delta and California's water resources. The SWC believes that implementation of Alternative No. 4 is a key part of improvements in water supply, along with new local resource developments and other longer-term federal/multi-state supply and conservation projects, that will be necessary if we are to secure and improve water supplies and economic future for California's growing population.

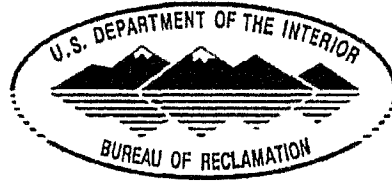
We urge the state and federal governments to quickly resolve the remaining issues to provide assurances that the BDCP will achieve California's coequal goals of water supply reliability and ecosystem restoration in a cost-effective manner and move forward with Alternative No. 4.

If you have any questions please do not hesitate to contact me at (916) 447-7357 ext. 203.

Sincerely,



Terry Erlewine,
General Manager



July 23, 2014

Via E-mail

Ms. Barbara L. Evoy, Deputy Director
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
bevoy@waterboards.ca.gov

Dear Ms. Evoy:

The California Department of Water Resources and United States Bureau of Reclamation ("Project Agencies") submit this letter to request the State Water Resources Control Board ("State Water Board") through the Deputy Director use the authority granted to her under the recently adopted Emergency Regulations, Title 23 to the California Code of Regulations, section 879(c), and order south and central Delta diverters claiming riparian and pre-1914 water rights to provide the State Water Board with information that (1) supports the basis of any asserted right or rights, and (2) reflects the quantity of water diverted and expected to be diverted. The Project Agencies acknowledge that, notwithstanding the general information contained herein and the information already in the State Water Board's possession, consideration of our objections to diversions of water beyond a valid water right would be further informed by information obtained from south and central Delta diverters regarding their asserted rights and actual water use. The Water Agencies submit that absent information to the contrary water stored and released by the State Water Project and the Central Valley Project ("Water Projects") and water acquired by the Project Agencies' contractors through transfer and exchange agreements is likely being diverted by south and/or central Delta diverters asserting riparian and pre-1914 water rights.

Diversions by riparian and pre-1914 water rights holder in the south and central Delta contribute to additional loss of stored water due to depletions and further complicate water

management in this extremely dry year. Where water quality standards are controlling Water Project operations, any diversion of stored water by these diverters results in additional releases of stored water or reductions in Project deliveries, and requires a trade-off in the protection of beneficial uses.

It has long been recognized that there is uncertainty as to the basis for and extent of the riparian and pre-1914 water rights being asserted in the south and central Delta. This uncertainty was recognized in the final report of the Governor's Commission to Review California Water Rights Law, which identified riparian rights statewide as one of the three sources of uncertainty in California water law because riparian water rights are unrecorded and generally unquantifiable based on existing information. (*Governor's Commission to Review California Water Rights Law, Final Report (1978)*, pg. 17.) In 2009, the legislature responded to the need for better information regarding riparian and pre-1914 water rights by adding Water Code section 5100 *et seq.*, requiring statements of diversion from each person who diverts water. Unfortunately, irrespective of these efforts by the legislature and State Water Board, the information obtained from many water users does not enable the State Water Board and the Delta Watermaster¹ to effectively administer the water rights system.²

When acted upon, the additional information required pursuant to the authority granted under the emergency regulations is critical to informing the State Water Board about the nature and extent of the water rights, use, water classification and priority. Based upon the information provided below indicating potential unlawful diversions of stored water by users claiming riparian or pre-1914 appropriative water rights, the State Water Board may request the south and central Delta water diverters to identify each right claimed, the basis for each right, and the rate and quantity of water being diverted pursuant to each right on a monthly basis.

I. Legal Background

California water law states that riparian and appropriative water rights are limited to the natural flow of a river or stream. *Bloss v. Rahilly* (1938) 16 Cal.2d 70, 76; California Water Code sections 1201-2. Additionally, the State Water Board has found that southern Delta riparian right holders have no right, in any year, to natural flow from the Sacramento River. D-1641, pg. 31-33; SWRCB Order WR 89-8, pg. 22-23. These rights of south Delta riparian water users only extend to their correlative share of natural flow in the San Joaquin River. *Id.* Therefore, the

¹ Water Code section 85230 *et seq.* provides for the appointment of a Delta Watermaster tasked with monitoring and enforcement.

² Attached are 20 selected Statement of Diversions. Each contains the same claims to water use, the same year of first use and the same source and a claim that direct measurement using a device is not locally cost effective. The information provided is characteristic of the quality of many statements of diversion.

southern Delta riparian and appropriative rights holders have no right to natural or abandoned flows from the Sacramento River.

Nor are in-Delta riparian and appropriators permitted to divert the Projects stored or purchased water conveyed through channels in the Delta. *Phelps v. State Water Resources Control Board* (2008) 157 Cal.App.4th 89, 111; See also *El Dorado Irrigation Dist. V. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 962. Southern Delta appropriators, absent purchasing other water, are only entitled to excess natural flow and abandoned water. *United States v. SWRCB* (1986) 182 Cal.App.3d, 82, 116 [citing *Meridian, Ltd v. San Francisco* (1939) 13 Cal.2d 424, 455; *Phoenix Water Co. v. Fletcher* (1863)23 Cal. 481, 487]; Water Code § 1202.³ The Project Agencies and their contractors have not abandoned their stored or water transfer water, as they are putting it to beneficial use in meeting regulatory requirements and for delivery to the water contractors.

Some south and central Delta water users appeared to also be seeking to expand California Water Law by asserting rights to water from the "Delta Pool."⁴ The "Delta Pool" concept is that by virtue of the geography in the Delta water from many sources, including the Sacramento River, San Joaquin River, and the Pacific Ocean, mix and becomes a new source of appropriable water. The State Water Board explicitly rejected the idea that water users in the south and central Delta have rights to divert under a "Delta Pool" concept. (See Order WR 2011-0005, pg. 37; Order 2004-0004, pg. 15.)

II. Previous Source Water Analysis

The State Water Board, in recognition that water users in the south Delta only have a right to water from the San Joaquin River, made findings on the availability of San Joaquin River water in the southern Delta. Specifically, in D-1641, the Board concluded:

1. On average, insufficient water is available to supply the southern Delta in Below Normal, Dry and Critical Dry years in August, September and October.
2. On average, sufficient water is available in September only in Wet Years.
3. Insufficient water is available in July during 16 percent of years, in August during 56 percent of years, in September during 78 percent of years, and in October during 70 percent of years. (D-1641, pg. 33).

³ Pre-1914 appropriators in the south and central Delta could potentially divert this foreign water, but only if the foreign water is in excess of the Water Projects' needs. *Stevinson WaterDistrict v. Roduner* (1950) 36 Cal.2d 264; SWRCB Order WR 89-8; California Water Code section 1203.

⁴ During the recent State Water Board proceedings, south Delta diverters claimed a right to divert ocean water. See Order WR 2011-0005, pg. 37; June 30, 2014, letter submitted by South Delta Water Agency to the State Water Board. However, in California, a riparian or appropriative right cannot be established or defined by availability and diversion of ocean water. More importantly, none of the Statements of Diversions filed in the South and Central Delta state ocean water as a source.

The State Water Board summarized those conclusions by stating: riparian [and pre-1914 appropriative] rights to the water of the San Joaquin River are inadequate to meet the agricultural demands in the southern Delta in some months of many years. D-1641, pg. 33. We believe that similar conditions exist in some or all areas of the central Delta.

III. Current Source Water Information Available

To date in July, actual flow in the San Joaquin River flow at Vernalis has only averaged about 250 cfs. Calculated natural flow in San Joaquin River tributaries is an estimated average of 887 cfs to date in July. The southern Delta diversion requirement identified for July in D-1641 (Page 32) is 1,400 cfs and for August is 1,334 cfs. Current and projected flows at Vernalis, as well as natural inflow on upstream San Joaquin River tributaries, are both considerably less than half of the southern Delta diversion requirement. This shortage in water supply from natural flow on the lower San Joaquin River indicates that water is being diverted from other sources, presumably the Projects' stored water or water contracted through transfer and/or exchange agreements, neither of which is available to southern Delta diverters.

Additional irrigation demands by some members of Central Delta Water Agency also rely substantially on San Joaquin River flows. These diversions exacerbate the supply shortage already existing in southern Delta channels and likely result in further diversion from stored water.

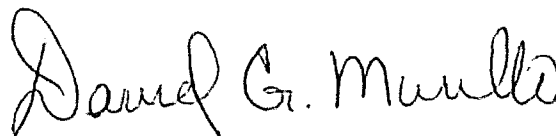
Under Water Year 2014 hydrologic conditions in particular, when water users in the south and central Delta divert water in excess of that available under their asserted water rights, they divert stored water and/or water purchased through transfer or exchange agreements. Without additional information that the State Water Board has the authority under the emergency regulations to require, the Project Agencies and their water contractors are presumably injured by diversions in the Delta. Therefore the Project Agencies respectfully request that the State Water Board exercise its statutory authority and obtain information from these Delta water users to support their assumed right to water or require curtailment as unauthorized diversions.

Thank you in advance for your consideration.

Sincerely,



Mark Cowin
Director
California Department of Water Resources



David G. Murillo
Regional Director
Bureau of Reclamation

Attachments

**cc: Felicia Marcus, Chair, State Water Resources Control Board
Tom Howard, Executive Director, State Water Resources Control Board**