

WESTLANDS WATER DISTRICT BOARD OF DIRECTORS

MEETING OF SEPTEMBER 19, 2017

ITEM 9

SUBJECT:

Review and adoption of Resolution 123-17, A Resolution of the Board of Directors Making Certain Findings of Fact and Adopting a Statement of Overriding Considerations as a Responsible Pursuant to the California Environmental Quality Act and Authorizing the General Manager to Execute, Under Certain Conditions, Agreements Related to Westlands' Participation in the California WaterFix for Which a Final Environmental Impact Report was Prepared and Certified by the California Department of Water Resources.

DISCUSSION

The factors that have most limited Westlands Water District's Central Valley Project ("CVP") over the last two decades are restrictions placed on operations of the W.C. "Bill" Jones Pumping Plant, which have reduced the conveyance of water through the Sacramento – San Joaquin Rivers Delta. These restrictions have been imposed under the federal Endangered Species Act, the Central Valley Project Improvement Act, the Clean Water Act, the Porter-Cologne Water Quality Control Act, and the California Public Trust Doctrine to protect at-risk fish species that inhabit the Delta. The California WaterFix ("CWF") is a proposed project intended to restore the ability of the State Water Project ("SWP") and the CVP to convey water to the projects' pumping plants in the south Delta and to improve fish habitat, particularly in the southern Delta.

The Westlands Water District is being asked to decide whether to participate in the CWF. In preparation for this decision, the District conducted a series of informational meetings to inform the Board and the public of the various elements and process surrounding the CWF. Rather than summarize the presentations that were given, this memo is intended

to highlight the key facts and uncertainties the District Board of Directors may consider when deciding whether to participate in the CWF.

Project Overview

The CWF consists of three new intakes structures located along the Sacramento River that would be used to divert water into two 40-foot diameter tunnels running underneath the Sacramento-San Joaquin Delta through which water would be conveyed to Clifton Court Forebay. From there, the water will be rediverted to either the Banks Pumping Plant or the Tracy Pumping Plant in order to be pumped south of the Delta.

Construction of the CWF facilities and required mitigation¹ are expected to take 15 years. Once construction is complete, DWR and Reclamation will coordinate the operations of the CWF with operations of existing SWP and CVP facilities.

As the CWF will be constructed as part of the SWP, the Department of Water Resources will hold title to the CWF. However, in exchange for capital contributions for the construction of the CWF, CVP contractors that chose to participate in the CWF will receive an interest in the CWF capacity equivalent to the CVP participant's level of participation in the capital costs of the CWF. It is anticipated that CWF capacity and all associated costs will be split between the SWP and the CVP, 55 percent and 45 percent, respectively. Capital costs, which include the construction of the CWF and associated mitigation, are estimated to total \$15.7 billion in 2014 dollars.² The fixed and variable operations and maintenance costs are estimated to cost approximately \$27 million in 2014 dollars annually. For the SWP portion of the CWF, these costs will be allocated to all state water contractors in proportion to their Table A contract amount. For the CVP portion, however, the Bureau of Reclamation has proposed costs will be allocated based on an "opt-in" basis. In other words, the capital costs of the CWF will only be allocated among the CVP contractors that choose to participate.

¹ The Final Environmental Impact Report/Environmental Impact Statement includes commitments to complete certain mitigation measures in order to minimize or eliminate the impact of the Project.

² The mitigation costs can be broken down into capital costs, approximately \$430 million in 2014 dollars, and O&M costs over 25 years, approximately \$370 million in 2014 dollars. For this analysis, all mitigation costs are included in the CWF 'capital' cost estimate.

Reclamation developed this "participation approach" after it determined that the CWF is not required to meet its contractual obligation to exchange or settlement contractors in the Delta Division of the CVP or its statutory obligation to deliver level 2 refuge supplies to managed wetlands in the San Joaquin Valley.³ As a consequence of this decision and the proposed participation approach, individual south-of-Delta contractors that choose to participate in CWF must commit to pay a designated share of CWF capital costs and fixed O&M costs every year, regardless of the water supply.

Biological Opinions

In June 2017, the National Marine Fisheries Service and Fish and Wildlife Service released biological opinions for the CWF under section 7 of the ESA. Both agencies issued non-jeopardy opinions, determining that the CWF is not likely to jeopardize the continued existence of the listed species or destroy or adversely modify designated critical habitat of those species.

Both agencies conducted a mixed programmatic consultation on the construction and operation of the CWF, meaning that some elements of the Proposed Action, including the construction and operation of the CWF, were only analyzed on a programmatic level. The biological opinions will be valid until June 2030, at which time, in order to avoid reconsultation, Reclamation and DWR would need to provide analysis and modeling to the fishery agencies demonstrating that future conditions (for a specified time period) would remain the same as those analyzed in the CWF biological opinions.

Water Supply and Operations

It is currently estimated, based on CALSIM modeling, that under existing conditions combined exports for the SWP and CVP average 4.7 million acre-feet annually. These exports result in an average allocation, based on the 70-year hydrology modeled by CALSIM, of 35% - 40% for south-of-Delta CVP agricultural water service contractors, including Westlands. Average exports with CWF are uncertain, but based on CALSIM

³ This determination, which staff understand is based on CALSIM modeling, is suspect. Actual CVP operations in 2014, 2015, and 2016, demonstrated that Reclamation is not able to meet these contractual and statutory obligations under existing regulatory constraints. Moreover, Reclamation's determination that it has no interest in the CWF ignores Reclamation's obligations to south-of-Delta water service contractors.

modeling, it is estimated that the range of average exports will be 3.5 MAF - 5.8 MAF. This broad range is a result of uncertainty concerning the operational criteria that will be imposed under biological opinions for the CWF and flow requirements that will be imposed by the State Water Resources Control Board in connection with the change petition filed by DWR and Reclamation to add points of diversion to their water right permits to allow the diversion or redirection of SWP and CVP water into the CWF.

The Description of the Proposed Action ("Proposed Action") for CWF described south Delta export limits, outlined in Tables 3.3-1 and 3.3-2 described in Appendix A2 of the 2017 NMFS CWF biological opinion, that are in addition to the operational criteria imposed by the 2008 Fish and Wildlife Service Delta smelt biological opinion and the 2009 National Marine Fisheries Service salmonid biological opinion. However, those operational criteria that are in addition to the criteria prescribed by the existing biological opinions were developed as part of a proposed habitat conservation plan for the purpose of contributing to the recovery of listed and nonlisted covered species. Moreover, those criteria were developed when the proposed project would have involved five intakes of 3000 cfs per intake and tunnels with a capacity of 15,000 cfs.

Because the south Delta export limits prescribed by the existing biological opinions were determined to be sufficient to avoid jeopardy or adverse modification of critical habitat of listed species, and no determination has been made that additional south Delta export limits are required to comply with Section 7 of the Endangered Species Act or to mitigate impacts of the CWF, Footnote 29 was added to the project description after development of Tables 3.3-1 and 3.3-2 and was included in the revised Proposed Action in Appendix A2. Footnote 29 states:

The criteria do not fully reflect the complexities of CVP/SWP operation, dynamic hydrology, or spatial and temporal variation in the distribution of aquatic species. As a result, the criteria will be achieved by operating within an initial range of real time operational criteria from January through March and in June. This initial range, including operational triggers, will

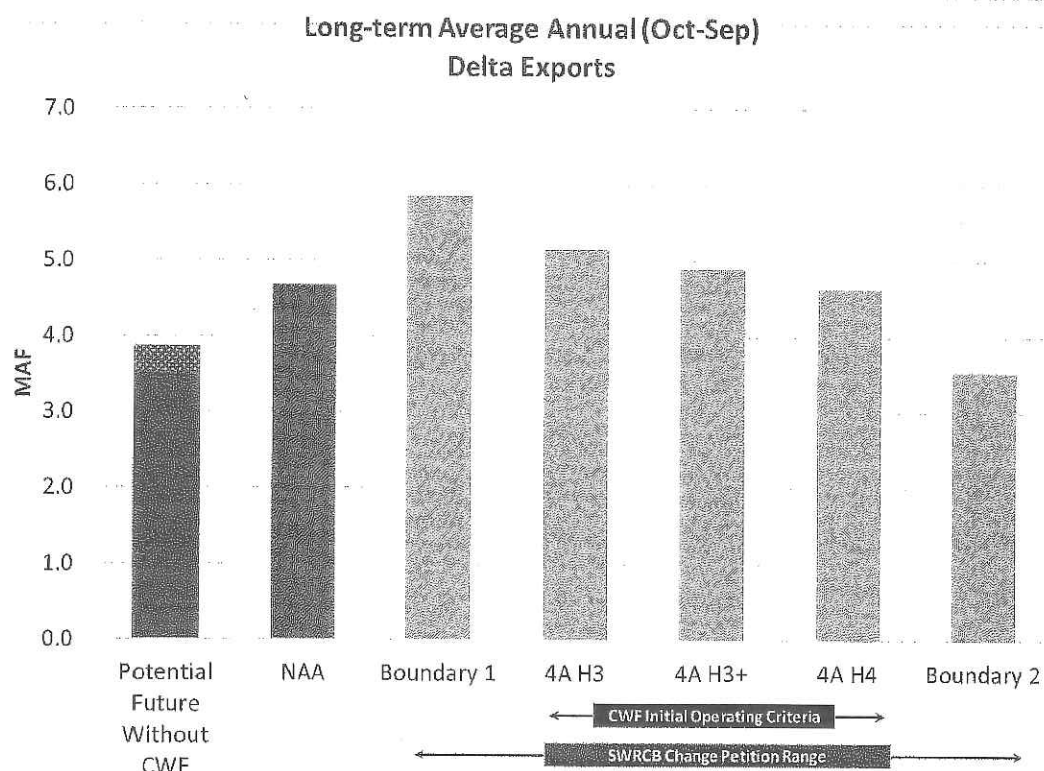
be determined through future discussion, including a starting point of -1250 to -5000 cfs based on a 14-day running average, and will be informed by the Adaptive Management Program, including real time monitoring. Further, the 3-day averaging period may be modified through future discussion. Modifications to the 3-day average period and the range of operating criteria may be needed, in part, because: (1) the water year type is forecasted in February but not finalized until May and (2) 0 cfs, or positive, OMR in wet and above normal years may be attained coincident with unimpaired flows.

Reclamation and the public water agencies involved in the discussions regarding the applicability of the additional criteria listed in Tables 3.3-1 and 3.3-2 understand Footnote 29 of Appendix A2 to mean that the Proposed Action on which Reclamation and DWR consulted assumes that when the CWF becomes operational, the initial range of operational triggers for south Delta operations will be those prescribed by the existing 2008 and 2009 biological opinions, absent a subsequent determination that, based on the best scientific and commercial data available, more restrictive or additional criteria for south Delta operations are required to avoid jeopardy or adverse modification of critical habitat for a listed species. Further, until the new north of Delta diversions facilities are completed and become operational, the CVP and SWP are expected to continue to operate consistent with the current existing biological opinions.

In addition, the Proposed Action describes spring outflow criteria that maintain the March–May average delta outflow that would occur under the operational criteria described in the 2008 USFWS BiOp and 2009 NMFS BiOp for existing facilities. These criteria were included in the Proposed Action to comply with the requirements of California Fish & Game Code section 2081 for the protection of longfin smelt, a species listed under the California Endangered Species Act, but not the federal Endangered Species Act. The non-jeopardy/no adverse modification determinations made in the NMFS 2017 CWF

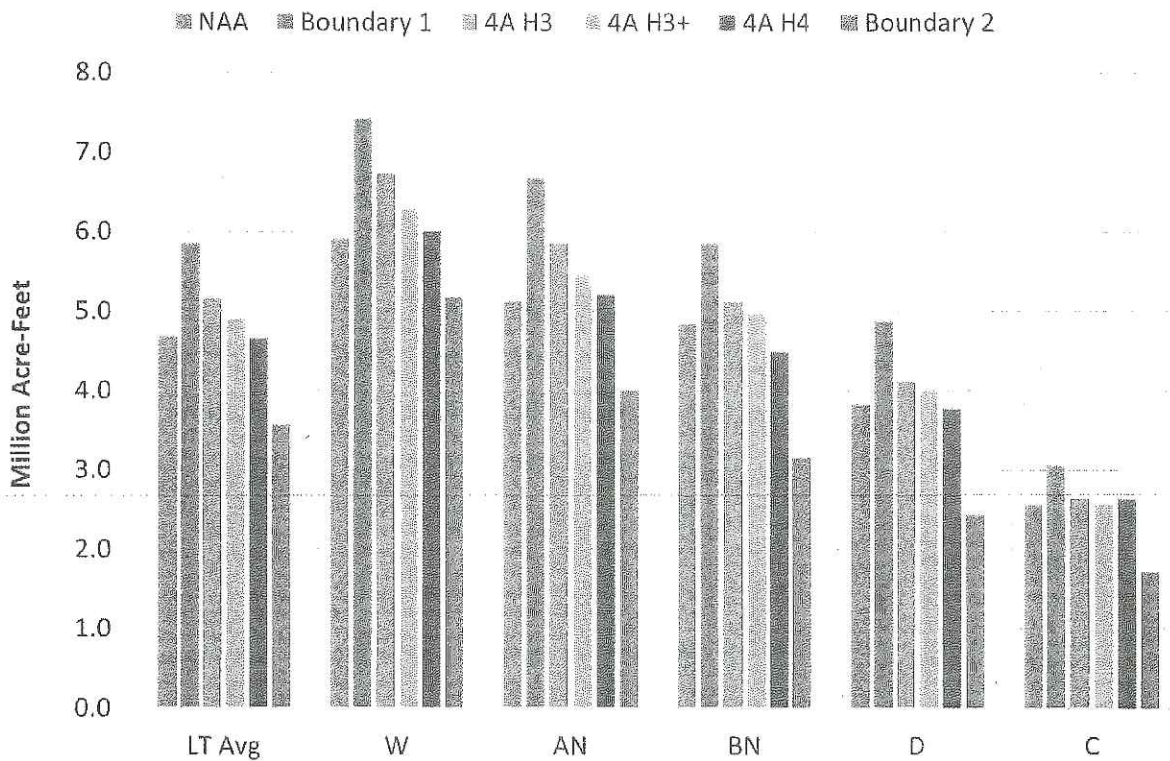
biological opinion and the FWS 2017 CWF biological opinion are not dependent on inclusion of the spring outflow criteria described in the Proposed Action.

During the ongoing water right proceedings before the SWRCB to obtain a change in the points of diversion for CWF, DWR presented an analysis of potential operating criteria for the CWF. The average total exports and the average total exports by water year type for the SWP and CVP under each set of operational criteria are depicted in the following bar charts. Boundary 1 and 2 defined the range of scenarios presented to the SWRCB, with Boundary 1 containing the least restrictive criteria and Boundary 2 consisting of the most restrictive. As stated above, the modeling of these different scenarios, which differ from one-another based on operational criteria that are imposed, indicated that, on average, the CWF could produce anywhere from 3.5 MAF to 5.8 MAF each year. Results of modeling analyses that include the south Delta export limits outlined in Tables 3.3-1 and 3.3-2 of the Proposed Action and are in addition to Delta export limits in the existing biological opinions are referred to as 4A H3+.



Average Annual Delta Exports

Water Year Classification: SAC 40-30-30



Based on these analyses and the understanding that when the CWF becomes operational south Delta export limits will be those imposed by the existing biological opinion, staff projects that the average combined exports of the SWP and CVP with the CWF will approximate Boundary 1 (5.6 – 5.8 MAF). Moreover, the increase in exports with the CWF, when compared to existing conditions, will be approximately 1 MAF in all years except Critical years, when the increase is projected to be approximately 400,000 AF. These projections are uncertain, however, because the ongoing re-initiation of consultation on long-term operations of the CVP and SWP may result in additional constraints on south

Delta exports and the SWRCB may in the ongoing CWF water right proceedings impose outflow criteria that dramatically reduce the yield of CWF.

Financing

During the series of special Board of Directors meetings, financial analysts presented several financing scenarios for the CWF. Each scenario demonstrated the per acre-foot cost of water for participants in CWF depends on the rate at which money is borrowed, the term of the financing, whether interest is capitalized while the project is constructed, and whether the capital costs of the project are spread over all water delivered south of the Delta or only over the incremental water supply produced as a result of CWF.

According to the financial analysis provided by Goldman Sachs, the annual debt service on a 50-year tax exempt bond, at 5% interest, without capitalized interest, would be approximately \$990 million, based on a cost estimate of \$15.7 billion. If this annual debt service is spread over the average incremental water supply of approximately 1 MAF, the annual capital cost would be \$990 per acre-foot. Conversely, if this annual debt payment is spread over the entire south-of-Delta water supply of 5.7 MAF, the annual cost would be \$173 per acre-foot.⁴

If interest on the debt service is fully capitalized while the project is constructed, on a 50 year tax exempt bond, at 5%, the annual debt service, when payment begins, would be \$1.839 billion, which amounts to \$1839 per acre-foot if spread over the average incremental water supply or \$322 per acre-foot if spread over all south-of-Delta deliveries.⁵

There are two federal loan programs, the Water Infrastructure Finance and Innovation Act (WIFIA) and Water Infrastructure Loan Act (WILA), that could reduce the annual debt service, both during and after construction. However, these programs would require

⁴ In July, Goldman Sachs presented an analysis based on average combined exports of 4.898 MAF. This projection was based water supply comparisons between 4A H3+ to current conditions as well as to potential future conditions in which additional restrictions limit operations of the SWP and CVP. If the per acre-foot cost were based on this projection of combined exports, the average annual cost would be \$202 per acre-foot.

⁵ In the event only the CVP share of the CWF were financed with a fully capitalized interest tax exempt bond, the resulting annual per acre-foot cost would be remain the same.

congressional action on authorization of appropriations, and it is staff's view that a decision to participate in CWF should be made without reliance on these programs.

DWR has stated that the portion of capital and O&M costs of the CWF attributable to the SWP will be recovered through its rates and charges for the delivery of Table A water and will be spread over all south-of-Delta SWP deliveries. Under the Participation Approach being developed by Reclamation, the capital and O&M costs of the projects will be borne only by those contractors who "opt in," meaning the cost would only be spread over the incremental water supply.

A benefit of the Participation Approach is that the water supply benefits of the CWF will inure only to those contractors that "opt in" and the incremental water supply attributable to CWF will not be available for other CVP purposes. Under this scenario, if Westlands were to obtain 40% of the CWF, the District's average allocation would increase by approximately 35%. (The District's average allocation would increase from 35 – 40% to 70 – 75%.) If Reclamation were to determine that the capital and O&M costs, and the resulting incremental water supply, of the CWF were to be shared by all south-of-Delta CVP purposes, the District's average allocation would increase to approximately 65%.⁶

Other Policy Considerations

Other considerations that may affect the decision to participate in the CWF are carriage water losses, transfer capacity, and the Sustainable Groundwater Management Act.

Presently, water conveyed through the Delta results in a carriage water loss of approximately 20 – 30%. The CWF would eliminate this loss, which would have a positive effect on the "through the meter cost" of transfer water obtained from north-of-Delta agencies. In addition, the existence of the CWF would improve the opportunity to obtain transfer water from north-of-Delta sources and potentially expand the transfer window

⁶ These average allocations differ from those presented by Terry Erlewine and Allison Febbo on August 29, 2017. They projected a current average allocation of 24%, which is based on a ten-year average for the period from 2007 – 2017. District staff's projection is based on modeling results over the hydrologic period. With CWF, Mr. Erlewine and Ms. Febbo projected an average allocation for Westlands of 52%, which assumed future conditions and the application of those additional regulatory restrictions described in the Proposed Action. For the reasons outlined above, District staff's projection with CWF does not include application of those additional criteria.

beyond the July through September period. The August 29, 2017 presentation by Terry Erlewine and Allison Febbo estimated that the mean increase in transfer capacity with CWF is approximately 915,000 acre-feet. In a dry year, the increase in transfer capacity with CWF would be approximately 1.135 MAF. The analysis presented by Mr. Erlewine and Ms. Febbo demonstrates the restored water supply and increased transfer capacity resulting from the CWF would aid Westlands' compliance with SGMA.

California Environmental Quality Act

Through the agreements listed below, the Westlands Board of Directors is considering whether, and to what extent, to participate in the CWF. Acting as lead agency, DWR has certified a Final Environmental Impact Report ("EIR") on July 21, 2017, for Alternative 4A (the "Project"). DWR also approved the Project, and in so doing, adopted Findings of Fact under CEQA, including Statements of Overriding Considerations for the Project's significant and unavoidable impacts, rejected project alternatives, and adopted a Mitigation Monitoring and Reporting Program.

On July 21, 2017, DWR, acting as the lead agency under CEQA, filed a Notice of Determination ("NOD") with the Governor's Office of Planning and Research.

While several actions have been filed since DWR certified the Final EIR and approved the Project, alleging that the Final EIR does not comply with CEQA, no injunction or similar remedy has been granted.

Westlands is listed in the Final EIR as a responsible agency. As such, and pursuant to Public Resources Code section 21167.3(b), the Westlands Board shall assume that the Final EIR complies with CEQA pending any final determination of the legal actions filed and determine whether or not to approve the proposed action.

A summary of the Project impacts, including environmental impacts associated with Westlands' participation in CWF, are provided in the Executive Summary from the Final EIR, and attached to this document. Furthermore, DWR's Findings of Facts and Statement of Overriding Considerations are attached as Exhibit A, and the Mitigation Monitoring and Reporting Program is attached as Exhibit B.

SUMMARY OF ANTICIPATED CWF AGREEMENTS

Various term sheets and agreements are being developed for the CWF. Although, few of these term sheets or agreements are final, brief summaries of the following agreements are provided below: Master Agreement; Participation Approach Letter; Gap Funding Agreement; Integration Agreement; Adaptive Management Program Agreement; Agreement on the Implementation of the CWF Biological Opinions; DWR-Construction JPA Agreement; Construction JPA Formation Agreement; Financing JPA Formation Agreement; Security Agreement; and Amendments to the CVP Participant's Water Service Repayment Contract.

Master Agreement Term Sheet (not final)

1. Parties:
 - a. DWR
 - b. CVP contractors that elect to participate in CWF
2. Basic Provisions
 - a. Provides that the CVP contractors participating in the CWF facilities will contribute a specified percentage of all capital costs and fixed O&M, in exchange for an interest in the capacity of the CWF, proportional to their financial contribution, which will be a capitalized asset.
 - b. DWR covenants to construct and complete CWF and to operate the CWF in accordance with the Master Agreement, the Integration Agreement, and Implementation Agreement, subject to receipt of funds and force majeure.
 - c. DWR will coordinate with Reclamation on the operations of the CWF to maximize water supply moved south of the delta and to move CVP water through the CWF for the benefit of the CVP Participants

Participation Approach Letter (not final)

1. Letter
 - a. From Reclamation
 - b. To CVP Contractors
2. Basic Provisions:
 - a. Reclamation will enable and support CVP Participants' full utilization of their interest in CWF capacity as well as supporting the use of the tunnels to benefit listed fish species.
 - b. CVP participants will be obligated to contribute a proportionate share of CWF capital costs in exchange for a proportionate share of capacity in CWF facilities and a proportionate share of the additional supply produced by the CWF.

- c. CWF Water will be allocated only to the CVP Participants and will not be available for other Project purposes.
- d. All CVP participants and non-participants will receive a CVP allocation based on the water supply that would have been available without the operation of CWF.
- e. All CVP water moved through the CWF will incur variable O&M costs. Because the CWF provides incidental benefits to the environment and water quality, these variable O&M costs will be recovered in a manner consistent with the recovery of O&M costs for existing Delta Division facilities used to supply south-of-Delta Project purposes.

Gap Funding Agreement Term Sheet

- 1. Parties/Membership:
 - a. DWR
 - b. SWPCA
 - c. CVP Participant (Westlands)
 - d. CVP Participant (SCVWD)
- 2. Basic Provisions:
 - a. Provides that SWPCA, Westlands and SCVWD will provide additional funding for continued pre-construction activities for the period from January 1, 2018 until the first CWF bond issue; the additional funding and prior contractor funding for planning costs and in-kind contributions to be reimbursed by the first bond issue. Each entity will be responsible for contributing a proportionate share of the approximately \$138 million interim financing costs.
 - i. This agreement assumes that if additional CVP contractors participate in the CWF, WWD will enter into an agreement with those contractors for the reimbursement of the interim financing.

Integration Agreement Term Sheet (not final)

- 1. Parties
 - a. DWR
 - b. Reclamation
- 2. Basic Provisions:
 - a. Provide a framework for the detailed operations plan.
 - b. DWR and Reclamation will coordinate on the operations of the CWF to maximize water supply moved south of the delta and to move CVP water for the benefit of the CVP Participants

- c. CWF water will be calculated based on the incremental net improvement in water supply diversions to the CVP and SWP afforded by the CWF as compared with water supply diversions possible without the CWF
- d. Non-participating CVP contractors will be insulated from regulatory requirements imposed exclusively to mitigate for the impacts caused by CWF operation

Adaptive Management Program Agreement

1. Parties:
 - a. DWR
 - b. CDFW
 - c. Various SWP and CVP water agencies
 - d. Reclamation
 - e. USFWS
 - f. NMFS
2. Basic Provisions:
 - a. Confirms the Parties' commitment to implementation of an Adaptive Management Program for the California Water Fix, clarifies the provisions related to Adaptive Management expressed in related documents and the processes the Parties intend to follow, and delineates responsibilities among the Parties in implementing the Adaptive Management Program
 - b. Establishes an "Interagency Implementation Coordination Group" (IICG) with primary responsibility for coordination and implementation of the Adaptive Management Program.

CWF BiOps Implementation Agreement Term Sheet (not final)

1. Parties
 - a. DWR
 - b. Reclamation
 - c. Certain SWP and CVP water agencies
2. Basic Provisions:
 - a. To identify the roles and responsibilities of the Parties to ensure compliance with the CWF BiOps

DWR-Construction JPA Agreement Term Sheet

1. Parties:
 - a. DWR
 - b. Delta Conveyance Design-Construction Joint Powers Authority (DCA)
2. Basic Provisions:

- a. Provides that the Design-Construction Authority (DCA) will design and construct the conveyance project for DWR in accordance with the specifications.

Construction JPA Agreement

1. Parties:
 - a. Individual participating CVP and SWP contractors that elect to become member agencies
2. Basic Provisions:
 - a. The purpose of this Agreement is to establish a public entity separate and apart from its Members to undertake those activities required to complete the design and construction of the Conveyance Project.

Financing JPA Agreement

1. Parties/Membership:
 - a. Individual participating CVP and SWP contractors that elect to become member agencies
2. Basic Provisions:
 - a. Creates Delta Conveyance Finance Authority (DCFA), a new public entity separate from its members with the single purpose of financing the design and construction of the conveyance project.

Security Agreement Term Sheet (not final)

1. Parties:
 - a. DWR
 - b. Delta Conveyance Financing Joint Powers Agency and each of its members
2. Basic Provisions:
 - a. DWR would agree that, upon the occurrence of an Initial Invalidation Event, DWR and the Delta Conveyance Finance JPA (the "Finance JPA") would use their best efforts promptly to transfer to the Finance JPA such rights, permissions and interests in property, real and personal, as may be necessary and sufficient enable the CWF Rights Transferee to continue the construction of the CWF Project.
 - b. The parties shall use best efforts to cause the introduction of Fixing Legislation promptly after an Initial Invalidation Event. If Fixing Legislation becomes effective during the period between an Initial Invalidation Event and a Final Invalidation Event, then DWR shall have the right to terminate the transfer.
 - c. The Financing JPA Agreement will provide which of its members holds interests in the CWF Project and will be allocated to its members in

accordance with the percentages of its or their bond obligations for the CWF Project.

Amendments to the CVP Participant's Water Service Repayment Contract (not started)

1. Parties:
 - a. Reclamation
 - b. CVP contractors that elect to participate in CWF
2. Basic Provisions:
 - a. CWF Water is available only for allocation to CVP Participant, in proportion to the Participant's share of CWF capacity, and is not available for other Project purposes.
 - b. Reclamation will coordinate with DWR on the operations of the CWF to maximize water supply moved south of the delta and to move CVP water through the CWF for the benefit of the CVP Participants
 - c. Add the north intake of the CWF as a point of delivery in Participants contracts

RECOMMENDATION

In the June 2000, "California's Water Future: a Framework for Action," former Governor Gray Davis and former Secretary of the Interior Bruce Babbitt stated "Water for south-of-Delta CVP agricultural water service contractors, who have been disproportionately affected by regulatory actions in recent years, will be increased by 15 percent (or greater) of contract totals to approximately 65 to 70 percent in normal water years." The Framework for Action document then identified a number of actions that would be taken to achieve these improved water supplies, including improved conveyance, but these actions were not taken. As a consequence, water supplies for south-of-Delta CVP agricultural water service contractors continued to decline as more regulatory restrictions were imposed.

CWF is intended to serve multiple purposes, including the improvement of habitat conditions for listed fish species in the Delta. CWF also has the great potential to correct the disproportionate effect on water supplies for south-of-Delta CVP agricultural water service contractors described by Governor Davis and Secretary Babbitt. However, financing proposals that would impose the capital and O&M costs of CWF only on CVP contractors that choose to participate only exacerbate the disproportionate effect of regulatory actions; these proposals would impose on those contractors that were

disproportionately affected the entire cost of restoring the delivery capacity of the CVP. And these proposals simply are not feasible. Although CWF is, without question, vital to the continued economic prosperity of California, a business case for a project that would increase the capital costs of irrigation water by \$990 per acre-foot cannot be made.

For these reasons, if the Board of Directors determines to participate in CWF, that decision should be subject three conditions:

1. That Reclamation agree that the capital and O&M costs of the CWF will be recovered through rates imposed on all CVP water delivered south of the Delta by the Reclamation for all project purposes, in a manner consistent with its "postage stamp" rate setting methodology; and,
2. That the SWRCB not impose in the CWF water right proceedings any term or condition that, in the judgment of the Board, unreasonably reduces the delivery capability of the CWF.

In addition, it is recommended that the Board adopt of Resolution 123-17, A Resolution of the Board of Directors Making Certain Findings of Fact and Adopting a Statement of Overriding Considerations as a Responsible Pursuant to the California Environmental Quality Act and Authorizing the General Manager to Execute, Under Certain Conditions, Agreements Related to Westlands' Participation in the California WaterFix for Which a Final Environmental Impact Report was Prepared and Certified by the California Department of Water Resources and authorize the general manager or his designee to execute on behalf of Westlands Water District agreements to participate in the California WaterFix and to take the steps necessary to implement this action on behalf of the District, including:

- a. Agreements to provide, subject to reimbursement, up to \$55.2 million for funding CWF design and related activities for the period from January 1, 2018 through December 31, 2018; and,
- b. Agreements with DWR to pay the District's proportionate share of the costs of the environmental review, planning, design, construction, and mitigation, including

property tax or assessment mitigation, required for the construction, operation, and maintenance of CWF.

DRAFT

RESOLUTION NO. 123-17

WESTLANDS WATER DISTRICT

**A RESOLUTION OF THE BOARD OF DIRECTORS
MAKING CERTAIN FINDINGS OF FACT AND ADOPTING A STATEMENT OF
OVERRIDING CONSIDERATIONS AS A RESPONSIBLE AGENCY PURSUANT TO
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AUTHORIZING THE
GENERAL MANAGER TO EXECUTE, UNDER CERTAIN CONDITIONS,
AGREEMENTS RELATED TO WESTLANDS' PARTICIPATION IN THE CALIFORNIA
WATERFIX FOR WHICH A FINAL ENVIRONMENTAL IMPACT REPORT WAS
PREPARED AND CERTIFIED BY THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

WHEREAS, the Board is considering an agreement or agreements, hereinafter referred to as the "proposed action," related to Westlands Water District's participation in the project known as the California WaterFix (alternative 4a), hereinafter referred to as the "Project"; and

WHEREAS, the California Department of Water Resources ("DWR"), acting as lead agency under the California Environmental Quality Act ("CEQA"), certified a Final Environmental Impact Report ("Final EIR") for the Project on July 21, 2017 (State Clearinghouse No. 2008032062) and approved the Project, and in so doing, adopted Findings of Fact under CEQA, including a Statement of Overriding Considerations for the Project's significant and unavoidable impacts, rejected project alternatives, and adopted a Mitigation Monitoring and Reporting Program; and

WHEREAS, on July 21, 2017, DWR, acting as lead agency under CEQA, filed a Notice of Determination ("NOD") with the Governor's Office of Planning and Research; and

WHEREAS, in the several weeks since DWR's certification of the Final EIR and approval of the Project, legal actions alleging that the Final EIR does not comply with CEQA have been filed but no injunction or similar relief has been granted; and

WHEREAS, pursuant to Public Resources Code section 21167.3(b), the Board, as a responsible agency under CEQA as contemplated in the Final EIR, must assume that the Final EIR complies with CEQA pending final determination of the legal actions; and

WHEREAS, the Board, acting as a responsible agency under CEQA, has considered the Final EIR and its evaluation of Project impacts, including environmental impacts associated with the District's proposed action related to its conditional participation in the Project; and

WHEREAS, the Board, acting as a responsible agency under CEQA, has considered DWR's Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

Section 1. As the decision-making body for the District, and in the District's role as a responsible agency under CEQA, the Board has considered the information contained in the Final EIR for the Project, DWR's Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan ("MMRP"). Based on this consideration, the Board finds that, as to the potential environmental impacts of the Project that are within the Board's powers and authorities to approve as a responsible agency, the Final EIR contains an accurate reporting of the potential impacts of the District's proposed action, specifically including authorizing the General Manager to execute, under certain conditions, agreements related to the District's participation in the Project. DWR's Findings of Fact and Statement of Overriding Considerations are attached hereto as Exhibit A, and DWR's MMRP is attached hereto as Exhibit B. Exhibits A and B are incorporated by this reference as if fully set forth herein.

Section 2. In its role as a responsible agency under CEQA, the Board finds that there are no feasible alternatives to the proposed Project that would avoid or substantially lessen the Project's environmental impacts as they relate to the District's proposed

action. The Board further finds that there are no additional feasible mitigation measures within the Board's authority that would eliminate or reduce any potentially significant impacts to a less-than-significant level. The Board has considered the MMRP adopted by DWR and finds that implementation of the MMRP will ensure that impacts of the proposed action are mitigated to the extent feasible. The Board further finds that, pursuant to CEQA Guidelines sections 15096(g)(2) and 15096(h), the Statement of Overriding Considerations adopted by DWR for the Project is supported by substantial evidence, that each Overriding Consideration outweighs the Project's potentially significant impacts, and that, in light of this, the significant and unavoidable impacts are acceptable. As such, the Board concurs with the Findings of Fact and the Statement of Overriding Considerations made by DWR, attached hereto as Exhibit A, and incorporates them herein pursuant to CEQA Guidelines sections 15091 and 15096(h).

Section 3. Pursuant to Public Resources Code section 21081.6, the Board, acting as a responsible agency under CEQA, hereby adopts, pursuant to CEQA Guidelines sections 15091 and 15096(h), DWR's MMRP attached to this Resolution as Exhibit B as a condition of approval of the proposed action authorizing the General Manager to execute, under certain conditions, agreements related to the District's participation in the Project.

Section 4. Pursuant to Public Resources Code section 21002.1(d), the Board, acting as a responsible agency under CEQA, has considered the Final EIR prepared by DWR and pursuant to Public Resources Code section 21167.3(b) assumes that the Final EIR adequately discloses and analyzes the effects of those activities involved in the Project which the Board is required by law to consider and approve or disapprove. In addition, pursuant to CEQA Guidelines section 15082, DWR consulted with the District regarding the Project; the Board has determined that none of the conditions set forth in CEQA Guidelines section 15052 has occurred, and a shift in lead agency designation is not appropriate.

Section 5. The Board directs staff to file a Notice of Determination ("NOD") pursuant to Public Resources Code section 21152 and CEQA Guidelines section 15096(i) within five (5) working days of adoption of this Resolution.

Section 6. The General Manager or his designee is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the actions approved herein.

Adopted at a regular meeting of the Board of Directors at Fresno, California, this 19th day of September, 2017.

AYES:

NOES:

ABSENT:

Bobbie Ormonde, Secretary