



DISCUSSION ITEM

January 6, 2021

TO: Board of Directors
FROM: Robert Hunter, General Manager

Staff Contact: Harvey De La Torre
Melissa Baum-Haley

**SUBJECT: METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
STAFF UPDATE BY DEVEN UPADHYAY REGARDING THE SOUTHERN
NEVADA WATER AUTHORITY PARTNERSHIP, DELTA CONVEYANCE
ACTIVITIES, 2020 INTEGRATED RESOURCES PLAN STATUS, AND
UPCOMING ISSUES FOR 2021**

STAFF RECOMMENDATION

Staff recommends the Board of Directors review and discuss the information presented.

REPORT

At the close of calendar year 2020, the Metropolitan Board made significant progress on a number of key issues. MWD OC staff has invited Deven Upadhyay, Assistant General Manager/Chief Operating Officer for Metropolitan, to provide an update regarding the Southern Nevada Water Authority partnership in the Regional Recycled Water Program (RRWP), Delta Conveyance activities, status of the 2020 Integrated Resources Plan (IRP), and other upcoming issues for 2021.

Southern Nevada Water Authority Partnership in the RRWP

On November 10, the Metropolitan Board voted to begin the environmental planning work on the RRWP, a partnership between Metropolitan and the Los Angeles County Sanitation Districts to reuse water currently sent to the ocean. This project will be one of the largest advanced water treatment plants in the world, with the capability to produce up to 150 million gallons of water per day.

| | | | |
|---|-----------------------|---------------|------------------|
| Budgeted (Y/N): N/A | Budgeted amount: None | Core <u>X</u> | Choice <u> </u> |
| Action item amount: N/A | Line item: | | |
| Fiscal Impact (explain if unbudgeted): | | | |

Then on December 8, in a bold step toward a new kind of collaboration in the Colorado River Basin, the Metropolitan Board approved a partnership with the Southern Nevada Water Authority (See Attachment #1). As part of the approved agreement, the Southern Nevada Water Authority will contribute up to \$6 million for environmental planning of the RRWP.

The Southern Nevada Water Authority and Metropolitan both have a mutual interest in seeking a framework on the Colorado River that recognizes this opportunity for supply augmentation. This coordination feeds into discussions of the Operating Guidelines for the Lower Basin States of the Colorado River, which are set to expire at the end of 2026. Cementing a partnership for coordination on the environmental planning phase activities of the Program at this time will also reinforce the commitment of work together in these important upcoming negotiations along the River.

The funding agreement for environmental planning of the project does not obligate Metropolitan or the Southern Nevada Water Authority to a long-term exchange, nor does it commit either agency to move forward with the program in the future. Any terms of a future exchange agreement or allocation would be developed at a later date through a separate agreement. If the agencies do not enter such a future agreement, Southern Nevada Water Authority's financial contributions to the RRWP's environmental planning would be returned.

Delta Conveyance Authority

On December 8, the Metropolitan's Board of Directors also voted unanimously to fund its share of the environmental planning and pre-construction costs for the Delta Conveyance Project (See Attachment #2). The Metropolitan Board's vote ensures the project's environmental review and planning phase will move forward.

The action calls for Metropolitan to fund 47.2 percent of the \$340.7 million in planning costs estimated over the next four years, amounting to an estimated share of \$160.8 million (over all four years). For calendar years 2021 and 2022, the \$58.9 million for Metropolitan's 47.2 percent share of the planning and preconstruction costs will be funded by the \$50 million incorporated into Metropolitan's Adopted Budget and \$34 million from a Department of Water Resources (DWR) refund from the CA WaterFix program.

The information produced by the environmental review process is essential for Metropolitan's board to make an informed decision on whether to support the project's construction. As proposed, the single-tunnel project would feature two intakes and a capacity of 6,000 cubic feet per-second, though other project alternatives are also being considered as part of the planning process. A draft Environmental Impact Report is expected in mid-2022.

An action to fund planning costs does not commit Metropolitan to participate in the project beyond the planning phase. Any final decision to participate further in the project and incur final design and construction costs would occur following completion and approval of the environmental documentation, and with an action to execute a State Water Project contract amendment, consistent with the Agreements in Principle, which is not anticipated to occur until 2024. Therefore, a final decision point on the level of Metropolitan's participation in the Delta Conveyance Project is expected to occur in the later half of 2024.

2020 IRP Status

The scenario planning method being utilized within the 2020 IRP has allowing for more interaction with the Board and member agencies on the drivers of change, resource mix alternatives, and policy discussions. The areas of policy discussion will include:

- Advancing Metropolitan's role in influencing reliability outcomes in the future.
- Being prepared for increased or decreased dependence on imported water by the region and by member agencies.
- Being prepared for climate change and other uncertainties affecting supply and demand.
- Balancing resource reliability priorities with financial sustainability concerns.

Looking at the preliminary gap analyses for all four scenarios together will reveal important insights to inform the Metropolitan Board what/when policy discussion are needed. The preliminary Gap Analyses are already indicating the following:

- Specific actions that must be taken will vary for each scenario, and we will not know what scenario will unfold in the future.
 - By comparing the resource mix across the scenarios, the Metropolitan Board will be able to recognize common elements for multiple scenarios as well as unique resource elements that might need to be implemented if the future tends toward that specific scenario.
- Both local and imported supplies need protection
 - Maintaining existing supply capabilities is important.
 - Local supplies are essential, therefore ensuring local projects are developed and perform as planned must be considered,
 - Potential loss of imported supplies have significant impacts, suggesting that impacts from climate change and regulatory risks will need to be minimized.
- Regional demands are a big factor under all scenarios
 - Since water use efficiency and behavior have a large impact on the "gap." Planning for reliability with significant uncertainty in water demands, while being financially sustainable must be considered.
 - While lower total demands are easier to manage, it puts stress on financial sustainability. Indicating a need to coordinate with the rate refinement process.
- May need to broaden view of reliability.
 - While previous IRPs considered reliability under "foreseeable hydrologic conditions" the current scenario planning process is looking at reliability under more factors than hydrology (e.g., climate change, regulatory, demographic). This will result in a need to discuss an appropriate reliability goal.

The Metropolitan Board's focused policy discussions are expected to begin in January 2021, starting with establishing a guiding principle on a reliability goal.

**Attachments: 1) Southern Nevada Water Authority partnership in the RRWP
Metropolitan Board Letter (12/8/2020)**

**2) Delta Conveyance Project Environmental Funding Metropolitan
Board Letter (12/8/2020)**



- Board of Directors

12/8/2020 Board Meeting

Revised 8-1

Subject

Authorize General Manager to enter into an agreement with Southern Nevada Water Authority to support the development of the Regional Recycled Water Program; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Staff recommends executing an agreement with the Southern Nevada Water Authority (SNWA) to accept up to \$6 million in financial support for these activities.

Details

Background

Southern Nevada Water Authority and Metropolitan have a long history of working collaboratively to improve water supply reliability from the Colorado River. Over the last two decades, as Lake Mead levels declined, the two agencies worked together to develop programs that benefitted both agencies and the Colorado River as a whole, including building a new regulating reservoir near the All-American Canal, funding conservation programs for the benefit of the Colorado River system, and developing conservation projects in Mexico. SNWA assisted Metropolitan in the development of the Colorado River Drought Contingency Plan by committing up to 300,000 acre-feet of the potential contributions to Lake Mead that could be required of Metropolitan. Finally, during the peak of the historic California drought in 2015, Nevada provided 150,000 acre-feet of water to Metropolitan to help keep the Colorado River Aqueduct full when Metropolitan's instate supplies were at all-time low amounts. That water will be returned to Nevada when needed in a future year.

SNWA has expressed an interest in exploring options to further its partnership with Metropolitan. In March of 2020, as was reported to the Board, SNWA and Metropolitan signed a non-binding letter of intent (LOI) to explore a potential partnership to jointly fund the Regional Recycled Water Program (Program) and receive water supply benefits from it. However, the LOI did not contain any firm commitments, nor did it lay out the details about how such a partnership would work and what it would entail. Accordingly, during the upcoming negotiations to develop new guidelines for the Colorado River, both agencies would like to develop a path forward to facilitate a potential interstate participation in the Program. To help advance this proposed partnership in the Program, SNWA is interested in funding a portion of the environmental costs of the Program.

Framework for Potential Exchanges in Support of the Program

Staff sees an opportunity for potential exchanges with agencies that wish to partner in the Program. Board members have noted that while the Program provides significant regional benefits, it also comes at a unit-cost (\$ per acre-foot cost) that is significantly higher than Metropolitan's previous investments. The environmental phase planning effort is also being done at a time in which Metropolitan is experiencing low demands and has record high water storage levels. These exchange partnerships could serve to significantly reduce the net cost exposure Metropolitan would face in carrying out the Program, while enhancing Metropolitan's dry-year reliability and resilience to catastrophic events.

A set of general guidelines can be helpful for considering potential future Program exchanges. Staff offers the following guidelines for Board feedback.

Enhanced Reliability

Recent history, previous modeling analysis, and work currently underway through the Integrated Resources Plan (IRP) Update indicates that Metropolitan does not face water reliability issues in normal or wet year conditions. In fact, Metropolitan is likely to have surplus water available for storage in these year-types. As a result, any supply reliability issues appear to be confined to significant multiple dry-year sequences and catastrophic event scenarios. This circumstance has been shown through analysis done in the 2010 and 2015 IRP Updates and is likely to be emphasized again in the 2020/21 IRP Update. As such, Metropolitan will only consider Program exchanges that enhance dry-year reliability or resilience under catastrophic events after the Program is complete. Exchanges that negatively impact these factors will not be considered.

This guideline would likely focus on arrangements that allow Program water to be exchanged in normal or wet years while maintaining full access to imported supplies in dry-conditions or catastrophic events, in addition to the water produced by the Program. This approach ensures net reliability improvements for the region.

Regional Provider

Metropolitan is developing the Program for the benefit of all member agencies. Funding provided by outside participants can reduce the net cost burden on Metropolitan's member agencies. As such, staff will focus on potential Program exchanges with agencies outside of Metropolitan's service area.

Metropolitan would consider Program exchange concepts with agencies on both the Colorado River or State Water Project (SWP) systems. Any potential Program exchanges on the SWP system would have a further requirement of preserving or enhancing the reliability of the SWP-exclusive regions in Metropolitan's system. Program exchanges that reduce the availability of SWP supplies to these exclusive areas in times of need would not be considered.

Full Cost Recovery

Any potential exchanges should achieve full cost-recovery on a per acre-foot basis. Metropolitan does not intend to consider partnerships that seek exchanges at a subsidized rate.

These general guidelines would be used by staff as a basis for any future Program exchange proposals that would be brought for Board discussion or consideration. While the guidelines listed above can help bound the discussions on potential Program exchanges, substantive development of agreements, and Board discussions on specific exchanges are premature at this time. Significant analysis will be done through the environmental planning phase of the Program to help inform these discussions over the next couple of years.

Proposed SNWA Agreement

While it is not time to consider a specific Program exchange agreement, SNWA is interested in assisting Metropolitan with completing the due diligence necessary to understand the Program parameters and costs. This information would inform decisions by both parties about a potential future Program exchange. SNWA proposes to financially support the environmental planning phase activities for the Program through a funding agreement. The agreement was mutually drafted by both parties and approved by SNWA's Board of Directors on November 19 (**Attachment 1**). During the environmental planning phase of the Program, SNWA would provide direct cost contribution in the lesser amount of either \$6 million or 24 percent of Metropolitan's costs. The contribution from SNWA would reimburse Metropolitan to directly offset the environmental planning phase costs by the same amount.

In addition to the benefits described in the guidelines above, partnering with SNWA also presents an important opportunity for coordination on the Colorado River. SNWA and Metropolitan would have a mutual interest in seeking a framework on the Colorado River that recognizes this opportunity for supply augmentation. This feeds into discussions of the Operating Guidelines for the Lower Basin of the Colorado River, which are set to expire at the end of 2026. Cementing a partnership for coordination on the environmental planning phase activities of the Program at this time will also reinforce the commitment to work together in these important upcoming negotiations on the Colorado River.

The proposed agreement does not obligate Metropolitan or SNWA to an exchange in the future. Metropolitan will carefully consider all factors before surrendering any portion of its Colorado River supply. Climate change and deepening drought may mean Southern California will need all its available water resources in the future to meet our long-term demands. Staff recommends proceeding with this partnership without any obligations related to a long-term exchange. Under the proposed agreement, either SNWA or Metropolitan can decide not to proceed in the future. In this circumstance, Metropolitan would return SNWA's contribution with no interest charged. As information is developed through the environmental planning phase of the Program, staff would return to the Board with a full analysis of the benefits and risks of any Program exchange.

Additional Interest

In addition to SNWA, some other agencies have indicated an interest in discussing similar arrangements. These discussions are preliminary and would be informed by feedback the Board may provide on this action item. Agencies that have expressed interest so far include: Central Arizona Project/Arizona Department of Water Resources (Colorado River), Coachella Valley Water District (Colorado River and State Water Contractor), Desert Water Agency (State Water Contractor), and San Gabriel Valley Municipal Water District (State Water Contractor).

Summary

This action authorizes a funding agreement with the Southern Nevada Water Authority that provides no risk to both parties. This agreement only deals with funding for the environmental planning phase of the Program and does not commit Metropolitan to complete the Program, nor does it commit either agency to a future Program exchange. If Metropolitan or SNWA choose not to proceed, Metropolitan will return the funds SNWA provided to Metropolitan without any interest. The SNWA Board has voted to authorize proceeding with the agreement.

Policy

Metropolitan Water District Administrative Code Section 8121: General Authority of the General Manager to enter Contracts

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative or maintenance activities (Section 15378(b)(2) of the State CEQA Guidelines). The proposed action also is not defined as a project under CEQA because it involves other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Additionally, the proposed action is exempt from the provisions of CEQA and the State CEQA Guidelines because it consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded (Section 15306 of the State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the proposed activity is not subject to CEQA (Section 15061(b) (3) of the State CEQA Guidelines).

CEQA determination for Option #2 and #3:

None required

Board Options

Option #1

Authorize an agreement with Southern Nevada Water Authority to support the development of the Regional Recycled Water Program.

Fiscal Impact: Up to \$6 million will be reimbursed to Metropolitan by Southern Nevada Water Authority for expenditures on planning phase activities to develop the Regional Recycled Water Program.

Business Analysis: This option would provide substantial financial support to advance the development of significant water reuse in Southern California and would augment regional supplies for Metropolitan's entire service area to deal with droughts, climate change, and seismic risks.

Option #2

Defer consideration of agreement until completion of the 2020 Integrated Resources Plan.

Fiscal Impact: Up to \$6 million of Metropolitan funding would be required without reimbursement from Southern Nevada Water Authority.

Business Analysis: Deferring agreement execution would hinder Metropolitan's efforts to develop working partnerships on the Colorado River and do reputational harm to Metropolitan as a desirable partner on water projects.

Option #3

Do not authorize an agreement with Southern Nevada Water Authority to support the development of the Regional Recycled Water Program.

Fiscal Impact: Up to \$6 million of Metropolitan funding would be required without reimbursement from Southern Nevada Water Authority.

Business Analysis: Under this option, Metropolitan would receive no financial contribution from SNWA to advance the Regional Recycled Water Program.

Staff Recommendation

Option #1



Brad Coffey
Water Resource Management Group
Manager

12/3/2020

Date



Jeffrey Kightlinger
General Manager

12/3/2020

Date

Attachment 1 – Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program

Ref# wrm12681366

**AGREEMENT TO CONTRIBUTE FUNDS FOR ENVIRONMENTAL PLANNING PHASE SERVICES
RELATED TO THE REGIONAL RECYCLED WATER PROGRAM**

This FUNDING AGREEMENT (“Agreement”) is made by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”) and the SOUTHERN NEVADA WATER AUTHORITY (“SNWA”), who may be referred to individually as “Party” or collectively as “Parties.”

BACKGROUND

- A. SNWA is a Nevada joint powers authority and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to Nevada Revised Statutes § 277.180, inclusive. Metropolitan is a water district established under the California Metropolitan Water District Act, codified in Section 109-1 et seq., of the Appendix to the West’s Annotated California Water Code, for the purpose of serving water to southern California. SNWA currently operates a water recycling program in Southern Nevada and is recognized as a global leader in water recycling technology. The Parties have collaborated on previous projects and agreements involving water supplies and continue to seek new strategies to help maximize the availability of limited water supplies.
- B. Metropolitan and the County Sanitation District No. 2 of Los Angeles County (“Sanitation District”) are working together to develop a Regional Recycled Water Program (“Program”). As currently envisioned, the Program will produce and is planned to deliver up to 150 million gallons per day, or approximately 168,000 acre-feet per year, of purified water from a new advanced water treatment facility located at the Sanitation District’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). The Program also includes a new conveyance system that would deliver water to groundwater basins within Metropolitan’s service area for indirect potable reuse and potentially to two Metropolitan treatment plants for direct potable reuse. It is anticipated that the Program will be constructed in a phased approach so that the eventual ultimate capacity of the program can take into account the availability of water at the JWPCP and the anticipated demands of Metropolitan’s member agencies both for the purposes of groundwater replenishment and direct potable reuse through raw water augmentation.
- C. On or about March 12, 2020, the Parties signed a non-binding Letter of Intent which laid the foundation for a cooperative working relationship between the Parties in the development of the Program, including the anticipation that SNWA would provide resources to assist with the planning, design, and construction of the Program in exchange for receiving water made available by the Program in the future. The Parties intend to explore entering into a future Development Agreement to further define the responsibilities of the Parties in the development of Program.
- E. In order to evaluate the Program, Metropolitan intends to conduct an environmental review along with the Sanitation District. Metropolitan’s approved budget for the environmental review is \$30 million. The actual costs to complete the environmental review will be tracked and may differ from the originally budgeted amount. The Parties intend through this Agreement for SNWA to contribute funds to Metropolitan for Metropolitan’s use in conducting the environmental review.

TERMS

1. SNWA will provide to Metropolitan the lesser of either \$6 million or 24 percent of Metropolitan's costs for conducting analyses, investigations, evaluations, studies, and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively "Environmental Planning Phase Services"). These Environmental Planning Phase Services include environmental evaluation, engineering and other technical support, and public outreach, and will conform to and comply with the requirements of the California Environmental Quality Act and any other applicable environmental requirements, permitting processes and laws.
2. Metropolitan shall provide an accounting and invoice SNWA on a quarterly basis for 24 percent of the costs incurred by Metropolitan for Environmental Planning Phase Services, up to a maximum cumulative amount of \$6 million. SNWA shall have the right to review and confirm that the invoice conforms to the terms of this Agreement, and if so approved, SNWA shall pay the invoice within 30 days of receipt.
3. This Agreement does not: obligate Metropolitan to approve or develop the Program; obligate Metropolitan to make water available to SNWA through exchange or other mechanism; obligate SNWA to agree to such exchange; allocate any Program water to SNWA; or set any precedent for the terms of any such allocation. Such terms may be provided for in a separate Development Agreement between the Parties.
4. If Metropolitan does not approve or develop the Program or if Metropolitan or SNWA determine to not enter into a separate Development Agreement to allocate Program water to SNWA, then Metropolitan will return the funds that SNWA provided to Metropolitan under this Agreement, without any interest.
5. If the Parties enter into a separate Development Agreement which allocates Program water to SNWA, the Development Agreement will credit SNWA with the funds provided by SNWA under this Agreement.
6. Metropolitan and SNWA will also explore whether certain in-kind services could be provided by SNWA in support of the Environmental Planning Phase Services.
7. This Agreement is effective as of the date the last Party executes the Agreement and will terminate on December 31, 2035, provided that the Parties may agree to extend the term of this Agreement.
8. This Agreement is not intended by the Parties to create any right in or benefit to Parties other than SNWA and Metropolitan. This Agreement does not create any third-party beneficiary rights or causes of action.
9. The failure of either Party to enforce at any time, or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or of the rights of such Party to enforce each and every such provision.

10. Any notice under this Agreement must be in writing and addressed as follows:

The Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attn: Deven Upadhyay
Assistant General Manager/Chief Operating Officer
With a courtesy copy by email to DUpadhyay@mwdh2o.com

Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, NV 89153
Attn: General Manager
With a courtesy copy by email to greg.walch@lvvwd.com

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Either Party may change the address listed in this section by providing five days' notice to the other Party.

The Parties may sign this Agreement in duplicate originals.

**SOUTHERN NEVADA
WATER AUTHORITY**

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By: _____
John J. Entsminger
General Manager

By: _____
Jeffrey Kightlinger
General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APROVED AS TO FORM:

By: Brent Gunson *for* _____
Gregory J. Walch
General Counsel

By: _____
Marcia L. Scully
General Counsel



- Board of Directors
Bay-Delta Committee

12/8/2020 Board Meeting

7-4

Subject

Authorize execution of a Funding Agreement with the California Department of Water Resources, commit funds for Metropolitan's share of the Delta Conveyance Project planning and pre-construction costs, and authorize execution of an amendment to the Joint Powers Agreement for Delta Conveyance Design and Construction Authority; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Consistent with Executive Order N-10-19, in early 2019 the state announced a new single tunnel project, which was notably included as part of the Governor's 2020 Water Resilience Portfolio. In 2019, the California Department of Water Resources (DWR) initiated planning and environmental review for a single tunnel Delta Conveyance Project (DCP) to protect the future reliability of State Water Project (SWP) supplies.

Board action is sought to execute a funding agreement and commit funds needed to support the state's planning process for a single tunnel DCP; and to execute an amendment to the existing Delta Conveyance Design and Construction Authority formation agreement to address the governance structure.

Details

Background

In February 2019, in his State of the State address, Governor Newsom announced support for a single tunnel DCP. Consistent with the Governor's direction, in May 2019, DWR began planning for a single tunnel project.

In July 2019, DWR began public negotiations with the SWP public water agencies (PWAs) to agree upon a framework, referred to as an Agreement in Principle (AIP), to amend the SWP contracts to allocate costs and benefits for a potential one tunnel project. The Parties' goals were to allocate DCP costs and benefits and to preserve existing SWP contract rights to protect PWAs not participating in the DCP. A decision by each participating PWA to approve a contract amendment consistent with the AIP would not occur until after the DCP environmental review is complete. Staff anticipates that a decision to approve the project would likely occur in 2024. However, it is DWR's intent that PWAs would provide advanced funding for planning costs in the same percentage as their participation in the DCP. **Attachment 1** is a letter from DWR Director Karla Nemeth describing DWR's expectation.

In January 2020, DWR released a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act for the DCP. The United States Army Corps of Engineers (USACE) is the lead agency for National Environmental Policy Act environmental review and issued a Notice of Intent to develop an Environmental Impact Statement (EIS). The EIS scoping period closed on October 20, 2020, and the USACE received about 90 comment letters and emails. **Attachment 2** illustrates DWR's schedule with milestones.

Over the last several months, staff has provided information on preliminary costs and potential DCP benefits, a funding agreement with DWR for planning and pre-construction costs, and amendments to the Delta Conveyance Design and Construction Authority (DCA) Joint Powers Authority formation agreement.

Delta Conveyance Project – Increased Investment, Increased Reliability

The DCP is an infrastructure reliability project. Key project objectives included in the NOP are climate change resiliency and seismic resiliency. As with any major rehabilitation and reliability project, it is essential that the investment sustains and provides benefits for the life of the project. Project benefits will be proportionate to the investment of each State Water Project contractor. With a larger share, benefits will be greater to the participant. Those who do not participate in the project would not enjoy the associated benefits. In addition, the Metropolitan recommended participation of up to 60.2 percent ensures the environmental planning phase for DCP will continue fully funded by PWAs (option 1). Benefits can be illustrated by a major seismic event example:

Example: If an earthquake were to cause a temporary outage in the south Delta, only participants would have the ability to move project water through the DCP facilities in proportion to their participation level. Non-participants would not be permitted to use the DCP. The AIP is clear that those who opt out forgo any right “...to use available DCF¹ conveyance capacity to convey project water in the event that pumping directly from the south Delta is prevented or impaired by a physical, regulatory or contractual disruption, including but not limited to sea level rise, seismic events, flooding, or other uncontrollable event.” (AIP section IV.a.ii.e)²

This example illustrates how increased participation would equate to increased benefit. If Metropolitan were to invest in 60.2 percent of the DCP, it would receive 60.2 percent of the benefits. This means that in a situation where the south Delta facilities are not available, Metropolitan would have significant ability to move its allocation of SWP water. Beyond a seismic event, future reliability is critical to Metropolitan’s SWP supplies, as these supplies are nearly one-third of Metropolitan’s water supply portfolio. The DCP would provide the region with future resilience to climate change (flashy winter storms and sea level rise), improved water quality, reduction of carriage water losses across the Delta, and operational flexibility to respond to hydrologic conditions for decades to come.

Project Cost Assessment/Preliminary Project Benefits

The preliminary cost information generated by the DCA estimates the project would cost \$15.9 billion (2020 dollars). Preliminary project benefits were also estimated with existing information and assumptions. The primary project benefits were compared to future conditions consistent with the Notice of Preparation objectives of climate resiliency, seismic resiliency, water supply reliability, and operational resiliency. The range of potential DCP benefits include preservation, or protection, of existing water supplies ranging from 100 thousand acre-feet per year to 1 million acre-feet per year. Both preliminary cost information and preliminary project benefits will be further refined as the DCP planning proceeds and a decision to participate in the DCP nears. Additional refined information in these areas is anticipated when the public draft EIR is completed.

The DCP is a re-investment of the State Water Project, as was the California WaterFix (CWF). While analysis for unit costs are currently not available for DCP, the CWF did complete unit cost analysis, which can serve as a general reference.³ The CWF capital costs were estimated at \$16.7 billion (2017 dollars), Metropolitan’s capital costs were estimated at \$10.8 billion (64.6 percent share), and the average unit cost increase for water was estimated at \$303 per acre-foot^{4,5} In a 2018 board presentation, CWF was also compared to alternative water

¹ The AIP referred to the Delta Conveyance Facility (“DCF”). DCF and DCP are interchangeable and refer to the same project

² Under the existing contract, in times of shortage, DWR retains its authority under article 18(a) to reallocate to meet minimum water demands for “domestic supply, fire protection, or sanitation.” in this scenario these water demands would be minimal.

³ CWF was an approved project with several key permits approved, providing defined operations criteria. A cost analysis was completed based on the approved permits and operations, as a result project unit cost estimates could be developed.

⁴ When project CWF was to be fully operational in 2033 (Year 15) (July 10, 2018 Metropolitan board letter)

⁵ Based on Metropolitan’s 2017/18 Budget of 1.70 MAF (July 10, 2018 Metropolitan board letter)

supplies ranging from \$844 to \$1,487 per acre-foot for CWF, while other supplies, such as desalination, recycled water and distributed household stormwater capture were between \$1,859 to \$5,414 per acre-foot.⁶

The DCP planning phase (2021-2024) would include completing key information such as preliminary engineering, operations criteria, land acquisition, and permitting. This information will help formulate a cost-benefit analysis for the project.

Funding Agreement

DWR is requesting that PWAs enter into a new funding agreement for their participation of costs needed for preliminary design, environmental planning, and other pre-construction activities to assist in the environmental process. Estimated funding of \$340.7 million is needed for four calendar years (2021 through 2024) of which \$124.9 million is for calendar years 2021 and 2022. These funds would support DWR's environmental planning and permitting work as well as DCA preliminary engineering work needed to inform DWR's environmental analysis (**Attachment 3**).

The recommended participation level for Metropolitan is up to 60.2 percent for two calendar years, 2021 and 2022 (option 1). The participation level is composed of three elements. The first element is Metropolitan's SWP contract Table A amount of roughly 46 percent. The second element includes Metropolitan's proportionate share of North of Delta PWA's not participating in the project, increasing Metropolitan's total participation level to roughly 47.2 percent. Finally, an additional percentage share from Kern County Water Agency's agricultural Table A allocation of 13.0 percent, bringing Metropolitan's recommended participation level to up to 60.2 percent (option1) or up to \$75.2 million.

Option 1 for Metropolitan would equate to a participation level of up to 60.2 percent. Option 2 for Metropolitan would be at a participation level of 47.2 percent which is equivalent to Metropolitan's share of Table A amount and Metropolitan's proportionate share of North of Delta PWA's not participating in the project. Based on payment schedule obligations noted above, and an up to 60.2 percent funding share, Metropolitan's commitment of funds needed would be \$75.2 million for calendar years 2021 and 2022. The Metropolitan adopted budget currently includes \$50 million for the DCP expenditures with \$25 million in each of fiscal years 2020/21 and 2021/22. The estimated unfunded balance of \$25.2 million can be funded by the \$34 million California WaterFix refund received from DWR in 2019. Currently, the CWF refund is in a segregated fund and is not part of the unrestricted reserves. Option 2 participation level of 47.2 percent would require \$58.9 million for calendar years 2021 and 2022.

Other participating PWA's have also taken on additional shares in order to offset the non-participant PWAs. Participating PWA's shares are, on average, approximately one-fifth above their Table A share of the SWP. To date, some other participating PWA's have approved their participation level at approximately twice their Table A share. Participating PWA's continue to complete board votes and determine participation levels through the end of November and early December, therefore latest information on participation will be provided during the December Bay-Delta Committee Meeting and December Board Meeting presentations. As a result, the participating agencies actions may slightly reduce the option 1 participation amount for Metropolitan.

An action to fund planning and pre-construction costs is indicative of the level of participation in the DCP after DWR certifies the Final EIR for the project. Any final decision to participate in the project, and incur final design and construction costs, would occur following completion and approval of the environmental documentation, and with an action to execute a SWP contract amendment, consistent with the AIP, which is not anticipated to occur until 2024. Thus, approving option 1 or 2, does not commit Metropolitan to participating in the DCP itself, and it does not commit Metropolitan to any given level of participation.

DCA Governance and Amendment

DCA's current board includes the following seats: Metropolitan (SWP), Metropolitan (Non-SWP capacity), Kern County Water Agency (Kern), Santa Clara Valley Water District (Santa Clara), and a SWP Contractor (selected

⁶ April 10, 2018 Board presentation, item 8-7, slide 9, water supply costs per acre foot

by otherwise non-represented SWP PWAs). In the existing structure, two additional directors are added if there is Central Valley Project (CVP) participation, bringing the board seats to seven. This structure was negotiated for California WaterFix, which contemplated CVP participation.

To address the changed level of participation in the DCP, an amendment to the DCA JPA has been developed to align the board composition and voting procedures with PWA's respective financial commitments. Attached to this letter is a summary of key changes to the DCA JPA (**Attachment 4**). Under the current proposal, the DCA board would have seven members, all SWP PWAs, to better reflect project participation. The new seven-member board would include one seat each for the following: Metropolitan, Kern, Santa Clara, Class 3/5/7 contractors, and Class 2 Contractors, and two seats for Class 8 contractors. **Attachment 5** provides a list of PWAs who are current, or anticipated, project participants and composition of the new governing DCA board.

Additionally, updated voting provisions are proposed to reflect the proposed DCA governance. Most actions would be decided by a majority vote, with each DCA director having one vote. However, in order to account for each PWA's financial investment, following an initial vote by the DCA board, a reconsideration provision would be allowed on certain financial decisions. To overturn an original board vote, the reconsideration vote would be based on contracted proportionate share, which is the level of investment represented by each board seat, except for Class 8, for which the contracted proportionate share will be divided equally between the two Class 8 board seats. For the reconsideration vote to pass and overturn the initial vote, it would require support of at least 70 percent of the contracted proportionate share.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 45753, dated May 11, 2004 the Board adopted refined Bay-Delta finance and cost allocation policy principles for communication with the California Bay-Delta Authority and interested parties, as set forth in the letter signed by the Chief Executive Officer on April 20, 2004.

By Minute Item 46637, dated April 11, 2006, the Board adopted policy principles regarding long-term actions for the Sacramento-San Joaquin River Delta as described in the revised letter signed by the General Manager on April 4, 2006.

By Minute Item 47135, dated June 12, 2007, the Board adopted a proposed Delta Action Plan. Subsequent to adoption of the Delta Action Plan, a Board of Directors Retreat was held on April 13-14, 2007 where the Board discussed a framework directing Metropolitan staff actions related to Delta issues. The framework comprises of three major time-based components: A Short-Term Action Plan, a Mid-Term Action Plan and a Long-Term Action Plan.

By Minute Item 47232, dated September 11, 2007, the Board adopted criteria for support of conveyance options in Implementation of a Long-term Delta Improvement Plan. These criteria are as follows: provide water supply reliability, improve export water quality, allow flexible pumping operations in a dynamic fishery environment, enhance delta ecosystem, reduce seismic risks and reduce climate change risks.

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative or maintenance activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Furthermore, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the proposed activity is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). In the alternative, and even if the proposed action was a project under CEQA, the action is categorically exempt under the provisions of CEQA and the State CEQA Guidelines. The overall activities involve carrying out future studies and environmental analyses for proposed projects that consist of basic data

collection and resource evaluation activities, which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. Accordingly, the proposed action qualifies for a Class 6 Categorical Exemption (Section 15306 of the State CEQA Guidelines).

CEQA determination for Option #3:

None required.

Board Options

Option #1

Authorize the General Manager to Execute the following Agreements having terms as described in this board letter:

- a. Funding Agreement for recommended share of up to 60.2 percent for planning and pre-construction costs for Delta Conveyance Project.
- b. Joint Powers Agreement Amendment for the Delta Conveyance Design and Construction Joint Powers Authority.

Fiscal Impact: Costs of \$75.2 million for Metropolitan's up to 60.2 percent share of the planning and pre-construction costs can be funded by the \$50 million incorporated into Metropolitan's Adopted Budget and \$34 million DWR refund.

Business Analysis: This option would achieve the goal to ensure reliability of SWP supplies, to advance the DCP to establish dependable and stable long-term average SWP supplies. This option also advances the Delta Conveyance Criteria adopted by the Board in 2007.

Option #2

Authorize the General Manager to Execute the following Agreements having terms as described in this board letter:

- a. Funding Agreement for recommended share of 47.2 percent for planning and pre-construction costs for Delta Conveyance Project
- b. Joint Powers Agreement Amendment for the Delta Conveyance Design and Construction Joint Powers Authority

Fiscal Impact: Costs of \$58.9 million for Metropolitan's 47.2 percent share of the planning and pre-construction costs can be funded by the \$50 million incorporated into Metropolitan's Adopted Budget and \$34 million DWR refund.

Business Analysis: If the DCP planning is not fully funded by participating PWAs, the DCP schedule and planning would not advance as planned. If an alternative funding source could be identified in the amount needed to fully fund the planning phase, then the Delta Conveyance Project could advance to establish a dependable and stable long-term average state water project supplies on the current DWR planning schedule. Metropolitan would then be able to advance the Delta Conveyance Criteria adopted by the Board in 2007, however would not maximize benefits at the higher participation share denoted in option 1. In addition, Metropolitan contracted proportionate share for the DCA would be lower, therefore, Metropolitan weighted vote for reconsideration voting would be lower.

Option #3

Defer consideration of Funding Agreement and Joint Powers Agreement Amendment until completion of the 2020 Integrated Resources Plan.

Fiscal Impact: None

Business Analysis: Deferring agreement execution would slow Metropolitan's planning efforts to understand how a Delta Conveyance Facility would improve State Water Project operations and would do damage to Metropolitan's relationships with the other State Water Contractors. Deferral would also be inconsistent with recent Board actions to approve other Local Resource Program projects and to fund environmental review of the Regional Recycled Water Program.

Option #4

Do not consider the environmental documentation and do not authorize additional activities related to DCP at this time.

Fiscal Impact: Delay or deferment in investing in DCP planning may result in DWR planning schedule impacts and increased planning expenditures to Metropolitan and participating PWAs. Not advancing the DCP would require developing additional water resource solutions to address anticipated degradation in SWP supply reliability as a consequence of sea-level rise and other anticipated climate change impacts, that may be significantly more expensive and result in much higher cost for households in the Metropolitan service area

Business Analysis: This option would forego an opportunity to implement the Board's direction to stabilize SWP water supplies and ensure completion of DCP.

Staff Recommendation

Option # 2

 11/24/2020
Stephen N. Arakawa
Manager, Bay-Delta Initiatives
Date

 11/25/2020
Jeffrey Kightlinger
General Manager
Date

Attachment 1 – DWR Letter dated October 23, 2020

Attachment 2 – DWR's Planning Schedule for DCP

Attachment 3 – Summary of Key Terms of Funding Agreement

Attachment 4 - Summary of Key Changes to DCA JPA

Attachment 5 – Proposed DCA Board Seats by Contractor Class

Ref# eo12675564

DocuSign Envelope ID: A87D43E9-13A1-414E-9D9D-6A8977B6BF95

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



October 23, 2020

Jennifer Pierre
General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, CA 95814

Dear Ms. Pierre:

We are encouraged that many of your members are interested in participating in the Delta Conveyance Project and will be considering their contribution to further planning activities to advance the development of the project. As these potential participants bring action items before their boards this fall relative to project planning and funding, we are requesting that they include two important items for board consideration.

1. An indication of likely participation percentage as described in the public negotiation process of the Agreement in Principle (AIP)
2. Authorization for funding consistent with these participation levels

Providing the likely participation percentage and associated funding authorization will not only advance the necessary planning work in 2021 and beyond but will also provide the ability to take the next steps in completing the AIP.

As a reminder of the discussions at the public negotiations, a Public Water Agency may choose to participate at a percentage equal to or greater than its percentage of State Water Project Table A, or alternatively choose not to participate in the Delta Conveyance contract amendment. In either case, the PWA will have a participation percentage recorded in the AIP.

The Department looks forward to board action by your members.

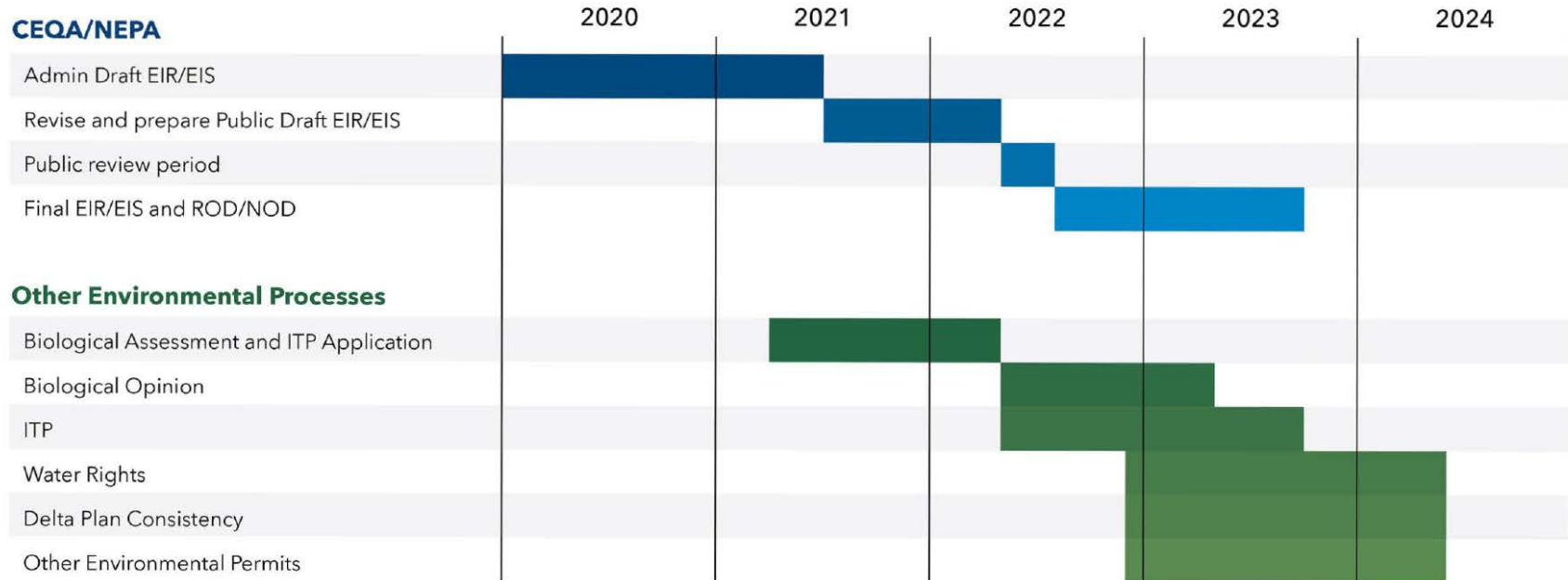
Sincerely,

A handwritten signature in cursive script that reads "Karla Nemeth".

Karla A. Nemeth
Director

cc: Steve Arakawa – MWD
Tom McCarthy – KCWA

DWR's Planning Schedule for DCP

Delta Conveyance Project Schedule

Summary of Funding Agreement for Delta Conveyance Planning Costs

Parties: The California Department of Water Resources and The Metropolitan Water District of Southern California.¹

Term: The Agreement is drafted to include a two-year term but can be extended without amendment for additional time if appropriate board authorization exists

Purpose: To provide funding for planning and pre-construction costs associated with the Delta Conveyance Project.

Key Terms:

- Provide Metropolitan's percentage of Delta Conveyance Project planning and pre-construction costs for two years as approved by the Board;
- Metropolitan would provide these funds on a schedule agreed to by the Parties;
- Funding can be spent on payment of DCA invoices submitted to DWR on or after the October 1, 2020, for the work performed or costs incurred by DCA, or for Delta Conveyance Project planning work performed by DWR through the Delta Conveyance Office ("DCO");
- Funding cannot be spent on activities described in the Mitigated Negative Declaration for Soil Investigations for Data Collection in the Delta adopted by DWR on July 9, 2020;
- Funding would be reimbursed to Metropolitan at the time there is an approved project and DWR issues the first bonds for the project; and
- Any unspent funds contributed under the Agreement would be returned to Metropolitan.

Summary: These Agreement terms are substantially similar to previous funding agreements between Metropolitan and DWR. Importantly, the reimbursement of planning costs after an approved project will provide Metropolitan with certainty that the planning costs will be reallocated to all project participants consistent with their ultimate participation percentage in the project. To the extent the DCP is not approved, the advanced funds would not be recovered.

¹ DWR will be entering into separate agreements with each PWA with substantially similar terms.

Summary of Key Changes to the Delta Conveyance Design and Construction Authority Formation Agreement

The Delta Conveyance Design and Construction Authority (DCA) was negotiated for California WaterFix. The participation in a new single tunnel Delta Conveyance Project is different. For that reason, the members and Public Water Agencies that are contemplating membership, negotiated changes to address the governance and voting procedures, as well as minor clean up edits. The key substantive amendments are summarized below.

- **Definitions.** Two definitions were added, and one was updated.
 - Classes were defined for contractors by region. This definition is important because it identifies, where applicable, what DCA Board Director represents what class or classes.
 - A new definition of Contracted Proportionate share was added. This definition is integral to voting and is defined as “the percentage of Conveyance Project costs and benefits that a Member has contracted for under a Long-Term Water Supply Contract with DWR, or the percentage of Conveyance Project planning funding that a Member has contracted with DWR to fund.”
 - The definition of Conveyance Project was amended to be consistent with the single tunnel Delta Conveyance Project.
- **Membership (section 5.2).** Allows additional members to be added to the DCA with a majority vote. As currently adopted, new members require a super majority vote.
- **Board of Directors (section 6.1).** This section was changed to allow for more State Water Project Public Water Agencies investing in the project to be represented on the board. The total board will remain at seven members, consistent with original up to seven-member board structure.
 - Metropolitan, Kern County Water Agency and Santa Clara Valley Water District retained their original seats
 - The CVP seat held by Metropolitan was eliminated
 - Two director seats were added for Class 8 (East Branch contractors)
 - One seat was added for Class 2 (North Bay Aqueduct contractors except Santa Clara Valley Water District)
 - One seat was added to represent Class 3,5, and 7.
 - Provisions were added for those Director seats which represent multiple agencies (not applicable to Metropolitan)
- **Board Officers (section 6.3).** The rotating schedule in the original formation document would be removed and Board officers would be selected by the DCA Board.

- Director Voting (section 8.2). The original categories requiring a super majority were removed. All actions by the DCA board can be approved by majority vote of the board with the following added provision:
 - However, any Director may request a reconsideration, at the same meeting the action is taken, for four categories of votes, including: (1) Budget and Expenses; (2) Approval and modification of the annual budget; (3) Construction contracts over \$10 million; and (4) Service contracts that exceed \$1 million over the life of the contract. The reconsideration vote would be based on the Contracted Proportionate Share (see definition above) and must occur not before 14 days or later than 30 days of the original action.
- Stand Up Costs (section 12.2). Agencies that originally contributed stand up costs will be refunded their proportionate share within 30 days of the new Agreement becoming effective.

Table 1: Current and anticipated PWA's for proposed DCA Board Seats (by Contractor Class)

| Class Contractor(s) | Number of Board Seats | State Water Contractors |
|----------------------------|------------------------------|--|
| Class 6 | 1 | Metropolitan Water District of Southern California |
| Class 4 | 1 | Kern County Water Agency |
| Class 2 | 1 | Santa Clara Valley Water District |
| Class 2 | 1 | Alameda Flood Control & Water Conservation (Zone 7) Alameda County Water District (ACWD) |
| Class 3/5/7 | 1 | Dudley Ridge Water District (Class 3) San Luis Obispo County Flood Control & Water Conservation District (Class 5) Casitas Municipal Water District (Class 7) Santa Clarita Valley Water Agency (Class 7) |
| Class 8 Contractors | 2 | Antelope Valley – East Kern Water Agency Coachella Valley Water District Crestline – Lake Arrowhead Water Agency Desert Water Agency Mojave Water Agency Palmdale Water District San Bernardino Valley Municipal Water District San Gabriel Valley Municipal Water District San Geronimo Pass Water Agency |