

DEPARTMENT OF WATER RESOURCES

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November 25, 2024

Deven Upadhyay
Interim General Manager
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Email: DUpadhyay@mwdh2o.com

Re: Continued Delta Conveyance Project Planning Funding

Dear Mr. Upadhyay:

Thank you for your letter of October 24, 2024, and for your agency's thoughtful and clear approach to information gathering in advance of your board's important consideration of ongoing funding of the permitting and engineering design work for the Delta Conveyance Project.

As the climate continues to change, and precipitation patterns evolve, the urgency of our collective attention to modernizing backbone infrastructure is evident. We appreciate and value our ongoing partnership in taking prudent and necessary steps to protect the vital water supplies provided by the State Water Project.

1. Securing Key Permits and Certifications

Governor Newsom has made clear his expectation that the process to obtain key permits and certifications be complete by the end of his second term and he is 100% committed to providing his support toward this end. Our schedule reflects this expectation, and we are laser-focused on completing key permits and preparing the project for future implementation on this timeline.

There were important lessons learned following our experiences during California WaterFix and we have improved our approach accordingly. We have a very clear understanding of the steps required to approve the project and enable its implementation, including completing key regulatory processes with the State Water Resources Control Board, state and federal fishery agencies, and the Delta Stewardship Council.

Our team has engaged with early and ongoing consultation with these regulatory agencies. We understand the value of working closely to ensure a shared understanding of information needed for submittal and shared schedule expectations. We have advanced numerous settlements with several agencies prior to the end of the protest period and, as a part of the water rights process, continue to have settlement discussions with all protestants. We are currently

seeking Delta Plan Consistency compliance to advance geotechnical investigations and continue to work with the Delta Stewardship Council on early consultation for the larger Delta Conveyance Project. We expect an Incidental Take Permit from the California Department of Fish and Wildlife before the end of the year. And we expect federal biological opinions on operations through the Long-Term Operations process before the end of the year. The biological opinions on construction will be separate and completed in early 2025.

Collaboration with MWD has been instrumental in helping to advance permitting activities and shaping our approach to compliance. We greatly appreciate your team's contributions and expertise. Our staffs' collective expertise in permit compliance is a strong guard against challenges that can and do occur during any regulatory process. These challenges are anticipated and expected and are built into our schedule and planning. DWR, working with your staff, has and will continue to respond to any new issues quickly and move the project forward.

While not anticipated, if substantial issues arise during permitting in the next few years, there will be an opportunity to pause funding and resolve issues. If MWD and other participating water agencies choose not to fund the capital construction costs, any unspent planning funds earmarked for this project will be returned. DWR completed a similar effort associated with California WaterFix and returned unspent money at the close of that process.

2. Demonstrating Proportional and Complete Planning Funding

We confirm unequivocally that no State Water Contractor participating in the Delta Conveyance Project is or will be expected to increase their established proportionate share of planning or implementation funds, unless contractors identify an interest in increasing their participation.

3. Providing a Plan to Fund and Finance Delta Conveyance Project Implementation

It is correct that there is currently a 12% gap in planning funds and we have been working diligently to identify creative ways to address all the participating agencies' needs. These potential solutions will in no way involve any agency being asked or expected to cover another participating agency's established proportionate share of the planning or implementation funds.

There are potential solutions however that are promising and we will take the needed steps to fully investigate these ideas with you, your staff, and other participating water agencies. Two such ideas are:

- Explore the potential to expand the pool of beneficiaries, including the facilitation of more efficient trades and transfers of the DCP benefits.

- Explore the potential to help remedy profound needs across the state for more secure and reliable water supplies, particularly areas of the Central Valley that are facing groundwater challenges and limited access to drinking water. These regions could potentially benefit from an expanded beneficiary opportunity.

Additionally, if there are water years that an agency's supplies are more than their local needs, they may choose to transfer excess SWP water supplies and associated costs, consistent with water law and existing water supply contracts. This flexibility will allow agencies to preserve water supplies for local needs and to transfer those excess supplies—and costs—to other parts of the state, and potentially to convert DCP water supply benefits into a source of revenue.

Lastly for this section, you've raised some interest in the Validation Case process. To be very clear, and to correct some lingering misunderstanding, the ruling from the Sacramento County Superior Court in no way prohibits the use of bond financing for the Delta Conveyance Project. While the Sacramento County Superior Court concluded that the bond resolutions were too broad the court did not conclude that DWR does not have the authority to build the project it approved in December 2023 or to issue revenue bonds to pay for it. The validation action, including appeals, was built into the schedule. DWR and the joint appellants, including MWD, are pursuing an appeal in California's Third District Court of Appeal. If the Validation Case experiences unexpected setbacks, there is an opportunity to pause funding to address those setbacks.

4. Resolving Protest Items Related to Metropolitan's Statement of Charges

Please refer to the letter on this matter dated October 29, 2024. Working with your team, we have made significant progress to resolve these protest items. While the protest resolution effort is ongoing and our understanding of the exact amount owed to MWD differs, we do acknowledge that it will be at least \$75 million, which as the letter states, includes other one-time credits for Metropolitan's share of the debt service reserve fund related to the Devil Canyon Powerplant and its share of the Replacement Account Fund credit. DWR is prepared to issue that amount to MWD while the rest of the protest issues are resolved.

5. Improving Near-Term State Water Project Reliability

The 2023 Delivery Capability Report makes clear the challenges faced by the State Water Project due to climate change, sea level rise, changing precipitation patterns and important regulatory constraints. DWR is working diligently to adapt to these challenges, and to address them with efficiency.

DWR is pursuing multiple actions to ameliorate the impacts of climate change on the SWP in the near future. DWR recently received an updated Incidental Take Permit on the Long-Term Operations of the SWP; the new permit has an

improved focus on adaptive management to address changing climate and biological conditions. Near-term subsidence projects along the California Aqueduct will enable the SWP to regain capacity to move water in wetter years. Additionally, DWR has started work on multiple efforts that will help protect SWP reliability, including Forecast Informed Reservoir Operations, improvements to Delta salinity barriers, SWP water contract extensions and water management tools.

These strategies notwithstanding, additional strategy development will be needed and DWR is already working on additional options involving groundwater recharge partnerships and Feather River forest management that can provide important drought protections.

DWR will publish its first Climate Adaptation Strategy in early 2025 that will evaluate several adaptation strategies and help guide executive decision-making about the needs and capabilities of the SWP.

It is clear there is a need to enhance the management of the SWP, including operations, maintenance, nature-based solutions and structural measures. The hydrology of the 21st century is not expected to be extraordinarily dry, rather the precipitation we get will come in fewer more intense bursts and will run off earlier. We are working aggressively to identify and standardize maintenance efficiencies to ensure we can capture these bursts and make investments that allow SWP to take advantage of opportunities that come with these changes. We appreciate your staff's contributions to these strategies and will continue to work collaboratively toward feasible solutions.

Your board has asked important questions. We greatly appreciate the opportunity to provide this information and hope it has provided not only clarity but also confidence in the path forward.

Sincerely,



Karla Nemeth
Director

cc: Jennifer Pierre, GM of the State Water Contractors