SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. V-E**

FROM: Steve Mack, General Manager

Meeting Date : June 1, 2017

SUBJECT: THE SONOMA COUNTY WATER AGENCY FISH FLOW PROJECT DEIR AND DISTRICT WATER RIGHTS

RECOMMENDED ACTION: Receive a presentation from General Manager Steve Mack regarding the Sonoma County Water Agency draft Environmental Impact Report (DEIR) on its proposal to change Water Rights Decision 1610 and how that could affect District Water Rights and its ability to provide water supply, and provide direction to staff.

FISCAL IMPACT: none

DISCUSSION:

In mid August 2016, the Sonoma County Water Agency (SCWA) released the long-awaited draft Environmental Impact Report (DEIR) on the Fish Habitat Flows and Water Rights Project, also called the Fish Flow Project. This DEIR is the environmental document for their proposed changes to Water Rights Decision 1610 which governs how releases from the dams that regulate the Russian River are made and sets a range of required minimum flows at various points in the River. It appears that SCWA wants to achieve two major actions from the proposed changes to Decision 1610:

- Make permanent the flow changes ordered by the Biological Opinion for endangered salmonid species in the Russian River (BO), and

- Change the Decision 1610 hydrologic index so that 1) it is based on Lake Mendocino instead of Lake Pillsbury, has more (from 3 currently to 5) conditions on which to base releases, 3) takes account of the reduced inflows from the Eel River, and 4) has more flexibility seasonally, going from seasonal decisions to monthly decisions.

At the March meeting the Board approved a comment letter on the DEIR and that was sent on March 6, 2017. Other related actions include:

- Press release shared with Mary Callahan of the Press Democrat. She received the information but has produced any related story that I have seen.
- Letter sent to Supervisor Gore requesting a meeting to discuss this matter and giving background.

- The State Board and North Coast Regional Board provided comments on the DEIR. It's a big document; this is the link: http://www.rrwpc.org/rrwpc/wp-content/uploads/2017/03/2017.03.10-FINAL_SCWA_DEIR_Comment-Letter.pdf. The cover letter to the comments states that the State Board change of petition process will take years because of the volume of protests, and it is the responsibility of SCWA to make a good faith effort to resolve any protests.

The District's major issue with the Fish Flow DEIR is that the project could impact the District's ability to provide water to its customers and this is not discussed in the DEIR. SCWA staff have told District staff that they believe the District does not have the right to divert water when the River is in a critically dry condition under current D1610 rules because all water passing the Hacienda Bridge would be project water - their project water. This was first expressed in October 2016 in a meeting on SCWA comments on the District's Urban Water Management Plan. That opinion (and that's all it is) was reinforced in a phone call with SCWA General Manager Grant Davis and SCWA Deputy General Manager Pamela Jeane on March 6, 2017, who suggested that the District consider entering into an emergency water contract with SCWA, similar to what the City of Healdsburg has done.

The Fish Flow Project could affect District Water Rights from several perspectives:

- D1610 allows SCWA to divert 75,000 AFY, SCWA currently diverts approximately 50,000 AFY per year; the maximum annual diversion for SCWA has been 65,000 AFY, the Fish Flow reaffirms the 75,000 AFY amount, SCWA may have been tardy in renewing their original permits for the 75,000 AFY. What is SCWA's real allowable amount of diversion? That's a decision for the State Board and it should have been discussed in the DEIR.

- The Fish Flow Project adds diversions to the City of Windsor and the Occidental Community Services District. The Occidental diversion is of interest to us because it is downstream of our Guerneville diversions and across the River from our Monte Rio diversions and, according to the SCWA theory of Russian River water rights, would be senior to our existing water right. This should be discussed in the DEIR.

- SCWA claims to need 75,000 AFY diversions but that is not discussed in the DEIR. Current State law is requiring urban water suppliers to reduce water use - the DEIR needs to discuss how keeping a 75,000 AFY diversion that it has never achieved is compatible with State direction.

- SCWA staff believe the District has no right to divert water when the River is critically dry under the current D1610 rules. The project proposes to change the Hydrologic Index but does not discuss how this change would affect the District's ability to divert water with the proposed Index. Which stage would affect the District, for example.

This opinion on the District's water rights by SCWA staff is just that - an opinion. SCWA does not determine water rights. The California State Water Resources Control Board is in charge of the State's water rights system, considers itself a quasi-judicial body requiring due process, and its decisions, which frequently take years of process, are frequently litigated at various stages of the process. The District has a strong water rights position:

- The District has a license for 1137 AFY. We've gone through the entire process and our priority date for that license is November 17,1975. SCWA has permits - an earlier stage of the process - and apparently they did not request a renewal when the permit deadline (1999) was reached. I believe the SCWA permit priority date is in 1968 - earlier than the District's.

- The District claims pre-1914 water rights. 1914 is important because that is when the State's permitting system was authorized and water uses before then are 'grandfathered' - they don't need a permit. Many long-term water users have both permits and claim pre-1914 rights (if they can make the case). The District has a good claim - there were many small water companies diverting from the River or from River tributaries prior to 1914 and the District is the successor to those smaller companies. Typically pre 1914 water rights are not quantified outside of litigation.

- The SCWA water right may be 1968 (or some other date prior to 1975) but its total claimed right of 75,000 AFY has never been diverted in any year, and the amounts that have been diverted have changed amongst the contractors.

- Area of origin. SCWA is diverting a portion of its water out of the Russian River watershed. There legal support for keeping in-basin diverters whole, regardless of date priority, when diverting out of basin.

- D1610 in basin 10,000 AF reservation. D1610 states that there's 10,000 AF reserved for other in basin diversions. The District probably has some of that reservation; how that relates to critically dry stages is not discussed in D1610; should be discussed in the DEIR.

- Unimpaired flow. SCWA staff claim that all water passing the Hacienda Bridge is project water (releases from Lake Sonoma), however an analysis by the USGS provided SCWA with their estimate of unimpaired flow in the summer of 1977, the driest year on record, and it shows unimpaired flow passing the Hacienda Bridge.

- Local tributaries as a source. Much of the water the District diverts is from local, downstream sources as evidenced by the need to provide iron and manganese treatment for our supplied water.

- Russian River aquifer. The Russian River is underlain by a huge aquifer which is a large underground river and which is the reason we need a permit/license, instead of just pumping water from a well like Cal Water does in the Armstrong

Woods area. Even if the surface water is 'project' water, during a dry period the District's diversions could be described as coming from the underground river.

- District diversions are far downstream from SCWA's lowermost point of control, Hacienda Bridge. District diversions have no impact on SCWA's regulatory minimum flow requirements.

- The District has a licensed municipal water supply. It's difficult to believe due process would allow that water supply to be turned off.

- And probably others

The solution to our concerns are still best done in county. The EIR and water rights petitions processes will take a long time. We should continue to take opportunities to talk to our elected officials to get our concerns addressed.