SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

Meeting Date : December 1, 2016

SUBJECT: REVIEW OF AND COMMENTS ON THE SONOMA COUNTY WATER AGENCY FISH FLOW PROJECT

RECOMMENDED ACTION: Receive a presentation from General Manager Steve Mack regarding his review of the Sonoma County EIR on its proposal to change Water Rights Decision 1610 with changes proposed by the Fish Flow Project, 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 (EIR) on the Fish Habitat Flows and Water Rights Project, also called the Fish Flow Project. This EIR 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.

Based on the schedule released when the EIR was made publicly available, comments on the draft EIR had to be in by October 17, 2016. On September 13, 2016, SCWA made a public presentation of the draft EIR at the Board of Supervisors meeting. I and many others commented that we needed more time to review the document. The Supervisors heard that plea and the comment period was extended to February 14 with a public hearing in Guerneville at the Vet's Hall on November 17.

My estimate is that approximately 100 people (maybe more) attended the Guerneville public hearing with approximately 30 people giving comments, including me and

Director Robb-Wilder. My comments included water rights, SCWA's request for 75,000 AFY diversion and the Hydrologic Index:

- Water Rights: The Fish Flow Project petition makes the statement that it harms no existing water rights. I told you last month that SCWA staff had told us that in their opinion SSWD has no right to divert water when the River is in critical drought stage (not clear where we would stand in their opinion with their new HI). The Fish Flow Project adds a diversion point in Monte Rio for the Occidental Community Services District and the Urban Water Management Plan states that additional water would be diverted to Marin County so SSWD is being harmed by this project and if SCWA represents all of us this should be fixed.

- 75,000 AFY Diversion: I commented that the requested 75,000 AFY diversion is an illusory number - SCWA hasn't come near that amount to date (D1610 gave them until 1999 to perfect that amount) and that without a massive population increase State requirements on water conservation will not allow the contractors to SCWA come close to that number. The EIR should honestly discuss this issue and provide alternatives to a 75,000 AFY diversion amount.

- Hydrologic Index: It's a good idea but the HI is given as a fait accompli and the EIR should discuss alternatives.

I have not been able to get an appropriate draft comment letter completed for this packet. I wish to talk about these issues at this meeting and get a draft to Rich Holmer for his review prior to the January meeting. Discussion points:

As I commented at the public hearing, I think the 75,000 AFY is an illusory number, but what is the appropriate amount? Issues:

- SCWA diverted approximately 41,000 in 2015 but that was a year that the State was requiring everyone to reduce water use because of the Statewide drought. The baseline for the EIR is approximately 55,000 but that is based on higher per capita usage in the 2000's (just like our UWMP gpcd target is).
- There will be growth in the service areas of the SCWA contractors and others served water by SCWA but how much - everyone estimates high on this because they don't want to be short (for example, the District has a license for 1137 AFY but current diversions are in the 700 AFY range; the difference is that we actually diverted 1137 in one year; SCWA has not come close to 75,000).
- D1610 gave SCWA until 1999 to perfect the original 75,000 AFY and that's long past. SCWA wants to extend the completion date to 2040. SSWD has perfected its license use of 1137 AFY and we currently divert around 700 AFY. Why should our current use be junior to SCWA's future projected use regardless of the amount?
- The modeling does not reduce SCWA diversions except when Lake Sonoma drops below a certain critical elevation which happens once in the modeling period (1977, I believe). In actual practice we all reduce diversions at the hint of a drought, thus the maximum diversion should be reduced during the period when

the HI is below optimum (schedules 4 and 5, I think). That would free up more water for downstream.

- I believe the lower flows downstream of Hacienda that are lower than what was negotiated for the BO are there because of the need for the modeling to deliver 75,000 AFY, but if there was a lower target diversion, more water would be available for downstream.
- The modeling is based on 75,000 AFY but since I believe that will never happen and if it does happen it won't be until 2040 according to the latest SCWA UWMP, what happens to the excess water in the system? Excess in the sense that there is 20,000-30,000 AFY not being diverted in actuality. It has to go down the river at some time. This summer, for example the flow was above 125 cfs most of the summer (just a dip in July). The EIR should discuss this.

Hydrologic Index: As noted above the HI is a fait acompli in the EIR and alternatives are not given. One alternative that was discussed in a USGS paper on HI alternatives was having different HI's for the upper and lower River - the upper based on Lake Mendocino and the lower based on Lake Sonoma. That makes hydrologic sense because flows in the lower River are not much more related to storage in Lake Mendocino than they are to Lake Pillsbury (the basis of the current HI which is getting changed). I think the reason is staff concerns about a double standard and confusion in the watershed - the upper River would be in critical schedules more than the lower River.

I have resubmitted the District's protest to SCWA's petition. It was sent to the State Board on November 10 and hand delivered to SCWA that same day. A copy of the protest is attached.

I believe these issues should be resolved in county, not before the State Board. I hope my comments were heard at the public hearing on November 17 but I have not heard anything back from SCWA. If we don't hear anything soon, perhaps we should be contacting SCWA to find out whether they would want to resolve this locally.

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterboards.ca.gov/waterrights

PROTEST– PETITION

This form may also be used for objections

PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE OR TRANSFER ON

APPLICATION 12919A, 15736, 15737 AND 19351 PERMIT 12947A, 12949, 12950, AND 16596 LICENSE _

OF Sonoma County Water Agency (SCWA)

I (We) have carefully read the notice (state name): Sweetwater Springs Water District

Address, email address and phone number of protestant or authorized agent: PO Box 48, Guerneville, CA 95446, smack@sweetwatersprings.com, (707) 869-4000

Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):

- the proposed action will not be within the State Water Resources Control Board's jurisdiction ☐
- not best serve the public interest ☒
- be contrary to law ☐
- have an adverse environmental impact ☒

State facts which support the foregoing allegations
The petition for change asks for flow changes that are experimental and is not broad enough to adequately address the changes needed with Decision 1610 (D1610). Many changes have happend in the watershed since D1610 was ordered and a complete review and accompanying analysis of D1610 is needed, not just the few changes requested in this petition. The changes requested were developed through the Biological Opinion (BO) process without participation by other affected parties and interests and harms many of those parties and interests.

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)
Continue the D1610 flow levels until completion of expanded review and analysis of D1610 can recommend flow levels that take into account the revised flows negotiated through the BO process, the reduced diversion from the Eel River, reviews Hydrologic Index alternatives and other changes in the watershed, and which review includes all interested parties in the Russian River watershed. Once this has happened, prepare an Environmental Impact Report that allows the State Board to make the necessary decisions (the recently released draft EIR does not do this).

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: The petition for change is not broad enough to adequately address the changes that may be needed with Decision 1610 (D1610). The minimum flows requested are lower than those required by the Biological Opinion and may harm other water users, including Sweetwater Springs Water District. The requested diversion amount of 75,000 AFY is much higher than current diversions by SCWA and will likely never be attained; allowing a 41 year extension to perfect use is not reasonable. D1610 established minimum flows which respected water rights of other parties along the River. This petition changes those minimum flows without respecting other water rights and those water rights must be respected.

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative or riparian right): **Pre 1914 water right and license**

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).
Pre 1914 Water Rights, SOD 009054 and 009055, License 13791, 1,137 AFY

Where is your diversion point located? **SE** ¼ of **NE** ¼ of Section 29 , T 8N , R10W, MD B&M

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? _____

The extent of present and past use of water by protestant or his predecessors in interest is as follows:

a. Source **Russian River**
b. Approximate date first use made Pre 1914, License priority November 17, 1975
c. Amount used (list units) 1,137 AFY
d. Diversion season all year continously
e. Purpose(s) of use Municipal

Under what conditions may this protest be disregarded and dismissed?
Continue the D1610 flow levels until completion of expanded review and analysis of D1610 can recommend flow levels that take into account the revised flows negotiated through the BO process, the reduced diversion from the Eel River, and other changes in the watershed, and which review includes all water rights holders in the watershed and includes guarantees that new minimum flow regime does not harm them. Once this has happened, prepare an Environmental Impact Report that allows the State Board to make the necessary decisions (the recently released draft EIR does not do this).

All protests must be signed by the protestant or authorized representative:

Signed: _____ Date: 11-10-2016

All protests must be served on the petitioner. Provide the date served and method of service used: Hand delivered on November 10, 2016