At the discretion of the Board of Directors, all items appearing on this agenda, whether or not expressly listed for action may be subject to action by the Board. The order of agenda items is subject to change.

1. CALL TO ORDER/ROLL CALL – (TANTAU)

2. APPROVAL OF THE AGENDA – (TANTAU)

3. PUBLIC COMMENT / PUBLIC PRESENTATIONS – (TANTAU)
   Public comment is welcome at this time on any matter within the jurisdiction of the Board that is not on the agenda. Under the State's open meeting law - the Brown Act - no action may be taken on any item not on the agenda. Public comment on items on the agenda will be allowed at the time the Board considers the item.

4. ACTION ITEMS (2 MINUTES)
   A. Approval of the Minutes –Executive Committee meeting of June 17, 2019.

5. BOARD RECOMMENDATIONS (30 MINUTES)
   A. FY 2020/2021 OM&R Budget Review and Recommendation. (DeFlitch/Willard)
   B. OM&R Methodology – Update on comments received and recommended revisions in response to comments. (DeFlitch/Willard).

6. DISCUSSION/DIRECTION (90 MINUTES)
   A. FY 2020 GM Budget Update. (Philips/Willard)
   B. Update on Subsidence Project Schedule and Financing. (Phillips/DeFlitch/Davis)
   C. Title Transfer – Memorandum Update. (DeFlitch/Bezdek)
   D. Extension of Transfer Agreement with Reclamation for OM&R of Friant-Kern Canal. (Davis/Phillips)
   E. San Joaquin Valley Blueprint Update. (Ewell/Amaral)
   F. Update on Sponsored and Tracked Legislation. (Biering)
CLOSED SESSION ITEMS (60 MINUTES)

7. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
   (Government Code section 54956.9(d)(1))
   NRDC v. Murillo, U.S. District Court, Eastern District of California (Sacramento Division), Case No. 88-cv-01658-JAM-GGH.

8. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
   (Government Code section 54956.9(d)(2))
   Significant Exposure to Litigation: Two potential matters.

9. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION
   (Government Code section 54956.9(d)(4))
   Initiation of Litigation: Two potential cases.

10. RECONVENE INTO OPEN SESSION
    Announce reportable action taken during closed session.

11. ADJOURNMENT

Public Participation Information

Agenda reports and other disclosable public records related to each Open Session agenda item are available on FWA's website under "Calendar" at Friantwater.org and at FWA's main office, 854 N. Harvard Ave., Lindsay, CA 93247, during regular business hours. Under the Americans with Disabilities Act, if you require a disability-related modification or accommodation to participate in this meeting, including auxiliary aides or services, please contact Toni Marie at 559-562-6305 at least 48 hours prior to the meeting.
1. **CALL TO ORDER/ROLL CALL** – Chair Chris Tantau called the meeting to order at 9:00 a.m. Committee members present: Tantau, Camp, Stephens, Loeffler, Kisling, Erickson, Borges; Staff present: DeFlitch, Marie, Bezdek, Biering, Willard, Phillips, Davis, Amaral, Ewell, Hickernell, Garcia, Payne, Stroppini. Others: Morrissey, Muhar, Collup, Wallace, Dalke, Fukuda, Greci, Larsen; Committee Members Absent: None

2. **APPROVAL OF THE AGENDA** – The agenda was approved. (Erickson/Stephens); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none

3. **PUBLIC COMMENT / PUBLIC PRESENTATIONS** – Chairman Tantau extended his appreciation to those who recently traveled to Washington DC on behalf of the Authority.

4. **ACTION ITEMS**
   A. Approval of the Minutes – Executive Committee meeting of May 13, 2019. The minutes were approved. (Loeffler/ Erickson); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none

5. **BOARD RECOMMENDATIONS**
   A. Modification of Stantec Consulting Services, Inc. Professional Services Agreement (PSA) – The Executive Committee reviewed and approved recommending to the Board that the proposed modification to the approved budget for Stantec’s PSA be revised to $12.0M to address the completion of the project designs, the environmental compliance and reporting services; project Feasibility Report and include a contingency amount to accommodate potential scope changes and provide necessary funding to maintain Stantec services through the bidding phase of a construction contract as outlined in the agenda report. (Stephens/Camp); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none

   B. San Joaquin Valley Water Infrastructure Authority (SJVWIA) Joint Power Agreement (JPA) – The Executive Committee reviewed and approved recommending to the Board that the proposed revised/restated JPA be approved and that Friant continue its role on the SJVWIA Board of Directors, subject to staff confirmation that the budget to do so be maintained at a minimum level. (Erickson/Loeffler); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none

   C. FWA Employee Personnel Rules – The Executive Committee reviewed and approved the proposed updated FWA Employee Personnel Rules for Board recommendation after discussion pertaining to Section 3. Call Backs and off Duty Work (2) Call Back with Remote Response as paid as actual time or if that should be a two-hour minimum. Staff would take one final look at the policy and update it as appropriate for the Board’s final acceptance. (Loeffler/Borges); approved unanimously - Ayes – Tantau, Camp, Erickson, Loeffler, Tantau, Kisling, Stephens; Nays – none; Absent – none
6. **DISCUSSION/DIRECTION**

A. Update on Reconsultation – CEO Phillips and DWP Payne gave an update on Reconsultation noting that an analysis by the National Fisheries Service (NFS) had been issued on delta smelt last week and comments were due on Friday, June 14, 2019. All MOA partners, including Friant, were given the opportunity to comment. Friant did write a response to the analysis describing it as flawed and not science based. Friant will continue to work with the various agencies to get a more balanced analyses released before the 2020 deadline.

B. Title Transfer – COO DeFlitch and Special Counsel Bezdek gave an update on title transfer as outlined in the agenda report. They did note that Reclamation instituted a Categorical Exclusion category that would apply to simple/non-complicated transfers of tittle, which Friant would qualify. Staff will continue to refine the benefits of transfer and will continue its work to get a MOA with the Bureau of Reclamation.

C. San Joaquin Valley Blueprint (SJVB) Update – Austin Ewell gave an update on the SJVB as outlined in the agenda report. The 5th meeting of the newly formed organization will be held on June 19th. Funding commitments have been received by several partners and it’s anticipated that a budget will be adopted at the June 19th meeting. Once the budget is in place the organization can begin to accept money through its fundraising efforts.

D. Update on Sponsored and Tracked Legislation – GAC Biering and CEA Amaral went through the agenda report. They provided the status on SB 559 which just passed the Senate Floor and was expected to be heard on July 2, 2019 in the Assembly Water, Parks, and Wildlife Committee. Ms. Biering also reported on the Governor’s Water Resilience Portfolio under Executive Order N-10-19 (as attached to the agenda report) and noted that aspects of the Blue Print may be included in the Plan as it is developed.

E. Update on FY 2020/2021 Budget Formulation – CFO Willard reported that the O&M FY 2020/2021 Budget package is expected to go out tomorrow to all Friant Contractors for discussion at the June 25, 2019 meeting. The FWA O&M Committee will follow the June 25th Board meeting. The Executive and Finance Committee will be able to review the budget at their respective Committee meetings in July. Issuance of the budget will be approved at Friant’s July 25th Board meeting.

F. Update on Sacramento and DC Trips – CEO Phillips reported on the recent Sacramento and DC Trips. Discussions on subsidence and title transfer were held with various legislators and government entities to help with various aspects of each of the projects.

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**CLOSED SESSION ITEMS**

7. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Government Code section 54956.9(d)(1))

NRDC v. Murillo, U.S. District Court, Eastern District of California (Sacramento Division), Case No. 88-cv-01658-JAM-GGH.

8. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: Two potential matters.

9. **CONFERENCE WITH LEGAL COUNSEL-INITIATION OF LITIGATION**

(Government Code section 54956.9(d)(4))

Initiation of Litigation: Two potential cases.
10. **RECONVENE INTO OPEN SESSION**
   There was no reportable action taken during closed session.

11. **ADJOURNMENT**
   The Executive Committee meeting adjourned at 1:42 p.m.
DATE: July 15, 2019
TO: Executive Committee
FROM: Doug DeFlitch, COO; Don Willard, CFO
SUBJECT: FY 2020/2021 O&M Budget Review

SUMMARY:
The Executive Committee will review, discuss and potentially act on the proposed FY 2020 and FY 2021 O&M Budgets. The Budgets have previously been reviewed and discussed at an FKC Contractors Meeting, on June 25, 2019, and at the O&M Committee Meeting on June 27, 2019. There were essentially 3 issues (discussed below) that came out of those meetings.

(A separate link to the entire FY 2020 and FY 2021 Budget Package, as presented to the O&M Committee, is available on the Friant Water Authority website with the packet for Executive Committee Meeting).

DISCUSSION:
1.) At the O&M Committee Meeting it was suggested that the replacement of the Radial Gates at Tule River, $482K in FY 2020, and Dodge Avenue, $532K in FY 2021, be removed from the Budgets until additional evaluations can be done. These adjustments have been made.
2.) Additionally, at both previous meetings there were questions regarding Staff hours in the O&M Budgets for Water Supply Coordination & Monitoring. In the justification for this activity it was indicated in error that, time spent on Re-consultation of the CVP Biological Opinion, Coordinated Operations Agreement with the State of California in the Delta and the Voluntary Settlement Agreement was included in this Budget item. These tasks should not be included in the O&M Budget. Staff was asked to review this item. After review, it was confirmed that there was no Staff time attributed to the tasks in question included in the O&M Budgets.
3.) As a result of discussions at the FKC Contractors meeting, a refinement to the cost estimate of Title Transfer work to be completed in FY 2020 was completed. Cost estimates now included in the budget are solely for work associated with the Friant-Kern Canal.

O&M COMMITTEE ACTION:
The O&M committee approved a motion to forward the proposed FY 2020 & the FY 2021 budgets to the Executive Committee with a recommendation that the Executive Committee accept and submit the budgets to the Board of Directors to approve for public review.
RECOMMENDED ACTION:

The Executive Committee accept the proposed FY 2020 and FY 2021 O&M Budgets as presented and recommend that the Board of Directors accept the budgets and direct Staff to submit them for public review.

SUGGESTED MOTION:

A motion to accept the proposed FY 2020 and FY 2021 O&M Budgets as presented and recommend that the Board of Directors accept the budgets and direct Staff to submit them for public review.

ATTACHMENTS:

Draft FY 2020 and FY 2021 O&M Budget Summaries.
FRIANT WATER AUTHORITY
COMPARATIVE BUDGETED SPENDING BY CATEGORY
FY 2008 THROUGH FY 2021 (Draft)
FRIANT WATER AUTHORITY
ROUTINE O&M
FY 2020 PROPOSED BUDGET vs. FY 2019 BUDGET

2019 Budget $ 7,553
Meetings 129 Increase BoD & Sub-committee.
Outside Svs 94 Increase in HR legal support & staff.
Salaries 155 Increase in staffing.
Travel & Entertainment 8 Increase out-of-town travel time to meetings.
Vehicle & Equipment Service 57 Increase in Spending.
Meter Repair (18) Decrease in SCADA hardware spending.
C & I ESI Equip/Water Measurement (192) Decrease in Measuring & Device spending.
Other 46

2020 Proposed Budget $ 7,832

<table>
<thead>
<tr>
<th>2019 Budget</th>
<th>2020 Proposed Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings</td>
<td>129</td>
</tr>
<tr>
<td>Outside Svs</td>
<td>94</td>
</tr>
<tr>
<td>Salaries</td>
<td>155</td>
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<tr>
<td>Travel &amp; Entertainment</td>
<td>8</td>
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<tr>
<td>Vehicle &amp; Equipment Service</td>
<td>57</td>
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<tr>
<td>Meter Repair</td>
<td>(18)</td>
</tr>
<tr>
<td>C &amp; I ESI Equip/Water Measurement</td>
<td>(192)</td>
</tr>
<tr>
<td>Other</td>
<td>46</td>
</tr>
</tbody>
</table>

in thousand dollars
FRIANT WATER AUTHORITY
MAJOR MAINTENANCE
FY 2020 PROPOSED BUDGET vs. FY 2019 BUDGET

Road Way Chip Seal
Motor & Gear Box Upgrade
150 MP 0.0 to 15.0 - Orange Cove
141 MP 71.29 (Kaweah) & 88.2 (5th Ave.)
$291
FKC Title Transfer: $670
Pump Back: $147
FKC Subsidence: $5,000
GSA Engagement: $120
Water supply coordination & monitoring: $210
Water Quality: $72

Total: $6,219
FRIANT WATER AUTHORITY
ASSET ACQUISITION
FY 2020 PROPOSED BUDGET vs. FY 2019 BUDGET

3/4 Ton Utility Pickup
(2) 1/2 Ton Crew Cab Pickup
1/2 Ton Pickup
2019 Boom Truck added Cost
Off-Road Utility Forklift
Pumps, Yard Equipment & etc.
Barracuda Backup & Protection Plan
Cloud Scale Platform
Network and Computer Equipment

2020 Proposed Budget

$369
$48
$77
$24
$56
$116
$26
$67
$223
$75
$711

Page 5.A.8
## Comparison to FY 2019 Budget

<table>
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<tr>
<th>Budget Category</th>
<th>Hours</th>
<th>Labor $</th>
<th>Overtime Hours</th>
<th>Labor $</th>
<th>Total Labor $</th>
<th>Materials</th>
<th>Total $</th>
<th>FWA Total $</th>
<th>Change (%)</th>
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<tr>
<td><strong>O&amp;M BILLING:</strong></td>
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<td>Maintenance</td>
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<td>1,242</td>
<td>43,123</td>
<td>8,374,497</td>
<td>10,456,130</td>
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<td>835,979</td>
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<td>105,096</td>
<td>1,159,446</td>
<td>2,100,521</td>
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<td>General Admin</td>
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<td>889,184</td>
<td>175</td>
<td>6,792</td>
<td>895,976</td>
<td>1,600,802</td>
<td>665,245</td>
<td>1,744,912</td>
<td>43.09%</td>
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<td><strong>Total Revenues</strong></td>
<td><strong>122,182</strong></td>
<td><strong>3,763,673</strong></td>
<td><strong>3,937</strong></td>
<td><strong>155,011</strong></td>
<td><strong>3,918,684</strong></td>
<td><strong>11,134,744</strong></td>
<td><strong>15,053,429</strong></td>
<td><strong>8,666,917</strong></td>
<td><strong>73.69%</strong></td>
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<td>Less: Interest and misc revenue</td>
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<td><strong>O&amp;M BILLING</strong></td>
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The table above shows the comparison of the proposed budget to the FY 2019 budget. The changes in each category are highlighted to provide a clear view of the proposed revisions.
<table>
<thead>
<tr>
<th>Budget Category</th>
<th>Regular Labor $</th>
<th>Overtime Labor $</th>
<th>Total Labor $</th>
<th>Total Materials</th>
<th>FWA Total $</th>
<th>Change (%)</th>
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<tr>
<td><strong>REGULAR MAINTENANCE</strong></td>
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<td>647</td>
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<td>647</td>
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**SUM w labor 20 of Integrated 20 and 21 budget (leadership added)- Rev. 7-08-2019 (Pre BOD Approval).xlsx**
## Revenue Operations:

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<td>-</td>
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<td>36,067</td>
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**SUM w labor 20 of Integrated 20 and 21 budget (leadership added)- Rev. 7-08-2019 (Pre BOD Approval).xlsx**
## FRIANT WATER AUTHORITY
### PROPOSED BUDGET
#### FISCAL YEAR 2021

### TOTAL ORGANIZATION

#### REVISED: 7/12/2019 13:08

### COMPARISON TO FY 2020 BUDGET

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<tr>
<th>Budget Category</th>
<th>Regular Hours</th>
<th>Regular Labor $</th>
<th>Overtime Hours</th>
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<th>FWA Total $</th>
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<td>136,954</td>
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### O&M BILLING

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### Total Revenues

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<th>FWA Total $</th>
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SUM w labor 21 of Integrated 20 and 21 budget (leadership added)- Rev. 7-08-2019 (Pre BOD Approval).xlsx
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<th>Total Materials</th>
<th>FWA Total $</th>
<th>Change (%)</th>
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</tr>
</tbody>
</table>

**Total Maintenance** 69,022 27,116,180 3,790 136,954 2,253,133 12,657,482 14,910,616 208,634 8,374,497 10,456,130 42.60%
## FRIANT WATER AUTHORITY
### TOTAL ORGANIZATION
#### FISCAL YEAR 2021

<table>
<thead>
<tr>
<th>Budget Category</th>
<th>Regular Hours</th>
<th>Regular Labor $</th>
<th>Overtime Hours</th>
<th>Overtime Labor $</th>
<th>Total Labor $</th>
<th>Total Materials</th>
<th>Total FWA $</th>
<th>COMPARISON TO FY 2020 BUDGET</th>
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<tr>
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<tr>
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<td>2,195</td>
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<td>120</td>
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<td>9,602</td>
<td>1,381</td>
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SUMMARY:

On April 25, 2019 the Board of Directors approved the draft of a revised OM&R Cost Recovery Methodology Policy with the new principles and the revised definition of OM&R that clarifies the inclusion of extraordinary maintenance and replacement costs as reimbursable items. On May 2, 2019 staff sent notice of proposed changes to the OM&R Cost Recovery Methodology Policy to all affected Friant Division Contractors and Reclamation for a 60-day review period. The comments received during that review period are attached and summarized below. Staff supports the inclusion of two of the comments in the final Policy: (1) establishing a cap on annual increases due to extraordinary maintenance or repairs; and (2) implementing the revised Policy starting in the 2019/20 Fiscal Year.

DISCUSSION:

The comments from Tulare Irrigation District (TID), Arvin Edison Water Storage District (AEWSD), Orange Cove Irrigation District (OCID) and Lindsay-Strathmore Irrigation District (LSID) consist of 4 issues:

1. **Requested upper limitation on the revised methodology** – It’s been requested by 3 of the 4 commenters that an Extraordinary Maintenance Project having a budget requirement greater than 50% of the local annual cost for that year must be brought to the FWA Board of Directors for consideration of a potential alternate cost recovery method(s). However, projects exceeding, whether known beforehand or not, the noted dollar scale that are emergency in nature (immediately damaging or threatening to damage life or property), shall be undertaken immediately regardless of full Board deliberation.

2. **Requested change or justification of the data** – The revised methodology, like the existing methodology, was to be implemented using the Reclamation published delivery information (from Schedule A-13 of their rate setting books). Two districts suggested that Friant Water Authority information of turnout values maybe more appropriate or of higher quality.

3. **Requested reduced time period for smoothing** – the revised methodology, like the existing methodology, uses a 25-year smoothing period to help normalize the range of water supply from the San Joaquin River. One contractor requests a reduced time period for smoothing and would like the revised methodology to consider a 20-year vs 25-year period.
4. **Requested change of starting time until next fiscal year** – The revised methodology was set to retroactively take effect to the beginning of the FY-2019 (September 2019), two contractors request that this new methodology be applied to the upcoming fiscal year, versus retroactively to the current fiscal year.

Staff’s review and recommendation addressing each of the 4 follows.

**#1 Requested upper limitation on the revised methodology** – Staff supports the suggestion of establishing a cap by way of definition of extraordinary OM&R. Such a cap would not preclude the ability to utilize the same methodology for projects or programs above the 50% threshold, but it would require the specific project and proposed cost recovery methodology to be subject to individualized scrutiny before being adopted by the Board of Directors.

**#2 Requested change or justification of the data** – The A-13 numbers were utilized because they are the values accepted by the contract between Reclamation and the Contractor. Head gate value at the turnouts were specifically excluded because they don’t take into consideration all transfer and exchanges. To the extent there are issues with getting A-13 values corrected, staff would recommend working with Friant contractors having issues to address those issues separately and start working with rate setting staff at Reclamation to update the values.

**#3 Requested reduced time period for smoothing** – This specific matter was deliberated and voted on by the Executive Committee and Board of Directors in April. Staff recommends maintaining the previous decision of using a 25-year period of record for average water deliveries.

**#4 Requested change of starting time until next fiscal year** – The revised methodology effects OM&R activities of the Friant-Kern Canal and activities of the San Luis Delta Mendota Water Authority (SLDMWA) Staff recommends that adopting the revised methodology for the FKC OM&R portion makes sense to begin at the start of FY 2020 cycle. However, given the different budget cycle for SLDMWA (March-February) Staff recommends that changes to the methodology be enacted in their current year budget. And adjustments be made retroactively back to March 1, 2019.

**RECOMMENDED ACTION:**

That the Executive Committee concur with the recommendations (above) and direct staff to revise the OM&R Cost Recovery Methodology Policy for Board consideration at the July 2019 meeting. If the changes are adopted, staff proposes that the revised version of the Methodology Policy should not go into effect for 60 days, and send it to all contractors, as that is what the Transfer Agreement requires.

**SUGGESTED MOTION:**

The Executive Committee recommends to the Board of Directors to adopt a revised OM&R Cost Recovery Methodology Policy with the changes suggested.

**BUDGET IMPACT:**

The proposed amendments to the OM&R Cost Recovery Methodology Policy do not directly affect the proposed budget.
ATTACHMENTS:

• Comments from Tulare Irrigation District
• Comments from Arvin-Edison Water Storage District
• Comments from Orange Cove Irrigation District
• Comments from Lindsay-Strathmore Irrigation District
June 10, 2019

Jason Phillips, Chief Executive Officer
Friant Water Authority
854 N. Harvard Avenue
Lindsay, California 93247

Subject: OM&R Cost Recovery Methodology Revisions: FWA and SLDMWA Facilities – Tulare ID Comments

Dear Mr. Phillips:

On behalf of the Tulare Irrigation District (District), we appreciate the opportunity to comment on the OM&R Cost Recovery Methodology Revisions: FWA and SLDMWA Facilities (Revised Methodology) which was submitted to Friant Division Contractors for a 60-day review on May 1, 2019. The District has participated in the ongoing discussions regarding the development of the Revised Methodology over the last several months, but continues to have comments and concerns.

The following are comments submitted by the District for consideration in revising the Revised Methodology as submitted on May 1, 2019:

1. Provisions for Extraordinary Maintenance within the Revised Methodology – During the discussion of the Revised Methodology, the applicability of Extraordinary Maintenance was discussed in relation to the construction fix for the subsided sections of the Friant-Kern Canal (Subsidence Fix). At times the Subsidence Fix was described as an applicable project for the Revised Methodology, and at other times it was described as not. While the District believes it is acceptable to include Extraordinary Maintenance in the Revised Methodology, we think the Revised Methodology should provide a specific definition that limits its applicability. Anything above Extraordinary Maintenance should be discussed and approached as an alternative funding agreement.

The District would like to recommend that Extraordinary Maintenance projects be defined as those projects that are not greater than 50% of the local annual cost share budget (FWA O&M Budget). If a specific project exceeds this threshold, a discussion of funding and alternative cost share should be developed and approved by the FWA Board.

2. Implementation of the Revised Methodology - The District would like to recommend applying the Revised Methodology to the Fiscal Year 2019-20 rather than the current FY 2018-19 to avoid any adjustments for the remainder of the current fiscal year. Because the Friant Contractors have utilized the current FY
2018-19 allocations for their existing budgets, applying the Revised Methodology to the FY 2019-2020 period would not impact any current District fiscal activities.

Again, the Tulare Irrigation District appreciates the opportunity to review and comment on the Revised Methodology and hopes that the comments provided will be incorporated into the final Methodology. If you have any questions or comments, I may be reached at (559) 686-3425 or akf@tulareid.org.

Sincerely,

Aaron Fukuda
General Manager

CC:
Chris Tantau, FWA Chairman
Douglas DeFlitch, FWA COO
Don Willard, FWA CFO
June 28, 2019

Re: Updated O&M Cost Recovery Methodology

Dear Gentlemen:

Arvin-Edison Water Storage District (AEWSD) has reviewed the notice of proposed changes to the OM&R Cost Recovery Methodology emailed by Mr. Don Willard on May 2, 2019. AEWSD understands from Mr. Don Willard the close of the comment period is July 1, 2019. Subsequently, below are the comments from AEWSD.

As noted in the May 1, 2019 memorandum from Jason Phillips, the primary proposed O&M methodology revisions center around the changes that have been brought on as a result of the San Joaquin River Restoration Program (SJRRP). More specifically, the SJRRP has created at least two new designations of water types being both the Recovered Water Account (RWA) supplies and the Unreleased Restoration Flow (URF) supplies. It is important to note that these are not new water supplies on the Friant system, but simply a different designation of existing water contract supplies, which prior to the SJRRP, were classified as either Class 1, Class 2, and/or Section 215 water. AEWSD can support the revision in methodology to 1) shift from Class 1/Class 2 ratios to "actual" deliveries, and 2) include RWA and URF water. AEWSD assumes the revised methodology will also include Recapture & Recirculation water (another SJRRP designation) should those supplies be introduced and conveyed in the Friant-Kern Canal (unless otherwise subject to a Warren Act contract).

However, addressing the impacts of the SJRRP should go beyond inclusion of specific water types and should also include the consideration of a reduced time period for smoothing the delivery record. Recall that the current methodology uses a 25-year smoothing period as a surrogate for annual Class 1/Class 2 deliveries. In other words, it was assumed that the last 25-years is predictive and representative of the foreseeable future, and thus contractors are charged according to their last 25-years of history. While that assumption may have been credible in the past, it does not reflect the SJRRP losses, and subsequently, it penalizes contractors who have lost water to SJRRP by assuming they will still receive pre-SJRRP water supplies. This disparity must be taken into account.
Phillips, DeFlitch  
June 28, 2019  
Page 2

A case in point, Table 5 of Jeff Payne’s “SJRRP Settlement Implications on Smoothing” (April 25, 2019) illustrates that under the current Funded Constrained Framework for restoration, Class 1 contracts will lose approximately 33 TAF/year (4% of their annual yield) when compared to Pre-Settlement operations and Class 2/Other contracts will lose approximately 108 TAF/year, or 22% of their annual yield. None of these impacts going forward are captured in the smoothing period for the nearly 15-years of the 25-year period of pre-SJRRP operations.

AEWSD recommends the FWA Board reduce the smoothing period to the last 20-years. If 25-years is ultimately desired, then FWA can add a year each year until there is a 25-year smoothing period. Under this proposal one-half of the smoothing period (10-years) would represent the reality of SJRRP operations and the remaining one-half will be based pre-SJRRP.

Additionally, note Jason Phillips statement in his April 25, 2019 memorandum to the Board which states:

“An analysis of the record of flows on the FKC were undertaken and it was determined that both the 20-year record and the 25-year record have their merits for comparison purposes. The 20-year comparison does a better job of accurately depicting the recorded ratio of wet years to critical low years (see Table 1).”

FWA should strongly consider a 20-year smoothing period as a 25-year period is too slow to react to changing circumstances such as the SJRRP, FKC subsidence, SGMA demands, and whatever else is on the horizon that will undoubtable change operational/delivery assumptions.

Lastly, we understand that notice must be provided at least 60-days prior to the effective date of any amendment and therefore it seems this methodology should apply for the upcoming year rather than the proposed application of applying it retroactively for the current year as suggested by FWA.

Thank you,

Edwin Camp  
President

cc: Board of Directors  
David A. Nixon, Deputy GM  
Steve Collup, Director of Water Resources  
Scott Kuney, Esq.

Jeevan Muhar  
Engineer-Manager
May 16, 2019

Mr. Jason Phillips  
CEO Friant Water Authority  
jphillips@friantwater.org

Subject: Friant-Kern Canal and Delta-Mendota Canal Conveyance & Pumping Facilities Cost Recovery Methodology Policy for Operation, Maintenance, Repair, and Replacement (OM&R) Costs – 60 Day Comment Period – Orange Cove Irrigation District Comments

Dear Mr. Phillips,

The Orange Cove Irrigation District greatly appreciates the opportunity to comment on the subject policy document (Policy) and be a part of its synthesis. We all understand the time, energy and deliberation that went into its drafting. Notwithstanding those efforts, the Orange Cove Irrigation District has a few comments that it would like you, your staff and the Friant Board of Directors to consider.

Comments/Suggestions:

1. Effectuating the Friant Water Authority’s proposed OM&R Policy should not by default apply to FKC OM&R Project (including Capital and /or Extraordinary Projects) whose total budget requirement exceeds 50% of the local cost share annual budget amount for that year. For local projects with budget requirements of this magnitude, the method of cost recovery shall be brought to the FWA Board of Directors for consideration of a potential alternate cost recovery method(s).

Projects exceeding, whether known beforehand or not, the noted dollar scale that are emergency in nature (immediately damaging or threatening to damage life or property), shall be undertaken immediately regardless of full Board deliberation.

2. Ascribing volumes of water “taken” for each Contractor for the purpose of computing the 25-year average delivery percentages would be mechanically far simpler if it were done on the basis of head-gate deliveries as opposed to the proposed method which I refer to as the “water-controlled” method. We (Orange Cove Irrigation District) are not sure the benefits of using the water-controlled method warrants the increased complexity. Head gate values offers information that is immediately available, verifiable, simple, transparent and furthermore it relies on information originating from a single source (FWA meters).

Under the water-controlled method the combination of potential water transfers among 30 some odd contractors taken two at a time results in more than 400 combinations. Given the amount and complexity of transfer actions among Friant Contractors each and every year, this added complexity will undoubtedly introduce errors in the computation that may be very tedious or impossible to resolve. The time required
may be burdensome and will increase demands on FWA staff and district contention. The *water-controlled* method will rely on head-gate information accuracy in addition to information provided by Reclamation on transfer quantities which must be completely accurate to achieve numerical resolution. Under the *water-controlled* method there will have to be a perfect balance of these two sources of information and the resolution of an imbalance, which we know will be a fact of life, seems to be asking for unnecessary headaches, by many.

Please describe the advantages or rationale for preferring the *water-controlled* method, which demonstrates that those factors tip the scale to its preferential use over the mechanically simpler and arguably more accurate, head-gate value method.

Once again, thank you for considering these comments. The comments included here are not necessarily exhaustive and or final. The District may offer other comments in addition to these comments in writing or at the Friant Board meeting where comments on the Policy are considered. I may be reached at (559) 626-4461 or by email at fmorrissey@orangecoveid.org

Sincerely,

Fergus Morrissey  
Engineer-Manager  
Orange Cove Irrigation District

CC:  
Chris Tantau, FWA Chairman of the Board  
Douglas DeFlitch, FWA COO  
Don Willard, FWA CFO  
OCID Board of Directors
June 11, 2019

Mr. Jason Phillips  
CEO Friant Water Authority  
8050 N. Palm Avenue, Suite 300  
Fresno, CA 93711  
jphillips@friantwater.org

RE: Friant-Kern Canal Cost Recovery Methodology Proposed Policy Revisions (OM&R)  
Lindsay-Strathmore Irrigation District Comments  
Delivered Via: Email

Dear Mr. Phillips:

Lindsay-Strathmore Irrigation District (District) appreciates the efforts of your staff in developing the draft policy update referenced above. The District has been an active participant in the development of the proposed revisions and would like to submit the following comments for consideration.

1. Language should be added to the proposed OM&R Policy that puts a cap on Extraordinary and/or Capital Replacement projects whose total budget requirements exceeds 50% of the current year local cost share annual budget. Project budgets in excess of this amount should be presented to the FWA Board of Directors to consider alternate funding mechanisms or cost recovery formulas, particularly when projects that could be considered Capital Replacement are proposed.

2. After a more thorough and detailed review of the A-13 Irrigation and M&I Water Delivery Spreadsheets which the proposed OM&R Policy will use to calculate the 25-year historical water each contractor is “in control of” several discrepancies were found with the District’s information. Out of seven years the District reviewed thoroughly, only one year was correct. In 2017 for example, there is an overstatement of water for the District which translated to an approximate 0.45% increase in the percentage of Class 1 that the District is responsible for in that year. As you are aware, any miscalculation for an individual contractor affects all contractors. Currently, FWA staff levels
would not allow for the time required to verify or make any adjustments to the A-13 deliveries, and LSID is not advocating adding additional staff.

The District proposes that alternate methods be further evaluated or discussed prior to making a final decision on this item. Head gate deliveries to each Contractor totaled by the Bureau Contract Water Year, or Contract Performance based on Friant Class 1 & Class 2 allocations only might be an appropriate replacement method to reduce the inaccuracies that is apparent in utilizing the A-13 Schedule of Deliveries. LSID recognizes that utilizing head gate deliveries will undoubtedly redistribute costs differently and further discussion would likely be needed to decide how to handle Warren Act or other deliveries which currently already pay a separate conveyance charge.

One other alternative method to consider would be to remove the non-Friant Conveyance component from the current calculation method for the historical 25-year period and then utilize head gate deliveries on a yearly basis moving forward to smooth the transition to the new method.

Thank you in advance for considering LSID’s comments. If you have any questions or would like to discuss further, I may be reached at (559) 562-2581 or by email at cwallace@lsid.org

Sincerely,

Craig N. Wallace
General Manager

CC: via email.
Chris Tantau, FWA Chairman of the Board
Douglas DeFlitch, FWA COO
Don Willard, FWA CFO
LSID Board of Directors
Agenda Report

DATE:       July 15, 2019
TO:         Executive Committee
FROM:       Jason Phillips, CO; Don Willard, CFO
SUBJECT:    FY 2020 Draft GM Budget

SUMMARY:
Staff has developed a draft of the General Member Budget needs for FY 2020. This draft is presented in a new format based on Task or Activity for the Water Policy and the Outreach and Engagement sections while the General Membership Administration & Direct Expenses are shown by type as they have been reflected in previous years.

The current FY 2020 Draft GM Budget, at $2,060,500, reflects a decrease of $567K from FY 2019, at $2,627,500. This 21.6% decrease is the result of several items.

- A few Tasks will see expenditure reductions due to completion of the activity or the receipt of support from other sources. The Friant Sustainability Plan, SJV Blueprint and the ASO Program are examples of these.
- Shifting priorities for certain consultant expenses and Staff time by activity has resulted in some reductions to the GM Membership Budget. The following are examples; the pursuit of FKC Subsidence Funding, FKC Title Transfer activities, and Water Supply Coordination and Monitoring.

RECOMMENDED ACTION:
Discussion item only, no action necessary.

ATTACHMENTS:
Draft FY 2020 General Member Budget.
## Water Policy

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### Total Water Policy: $372,500

## Outreach and Engagement - General Implementation

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### Total Outreach and Engagement: $231,500.25
### General Membership Administration & Direct Expenses

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#### Counsel
- General Counsel - Burke Williams: $10,000
- Special Counsel - Burke Williams: $50,000
- Total Counsel: $60,000

#### Staff
- Leadership: $736,000.00
- Other Staff (intern/temp)...

#### Membership Fees, Dues & Contributions
- CDTFA - State Water Resources Control Board: $52,000
- Family Farm Alliance: $9,000
- CVPWA dues: $44,000
- SJV Blueprint: $15,000
- Temperance Flat Reservoir Authority: $35,000
- Total Membership Fees, Dues & Contributions: $155,000

#### Other Supplies & Services
- Travel Expenses - (Airfare, Charters, Ground Transportation, etc.): $60,000
- Hotel: $35,000
- Meals: $35,000
- Mileage: $27,500
- Other Expenses: $15,000
- Total Other Supplies & Services: $172,500

#### Special Meeting Expenses - (Board Retreat & Annual Meeting)
- $40,000

#### Admin Allocation
- $210,000

#### Direct Expenses
- Rent: $62,500
- Office Expenses: $7,500
- Office Supplies: $7,500
- Conference Calls & Internet: $5,500
- Total Direct Expenses: $83,000

#### Total General Membership Budget
- $2,060,500
DATE: July 15, 2019
TO: Executive Committee
FROM: Douglas DeFlitch, COO, John Bezdek, Special Counsel
SUBJECT: Title Transfer

CURRENT STATUS:
The Board directed staff to explore a Memorandum of Agreement (MOA) with Reclamation Title Transfer. Prior to drafting this Agreement, staff and special counsel met with Reclamation’s South-Central California Area Office (SCCAO) earlier this year to flesh out some potential post-title transfer governance issues, including a potential change in the point of diversion for contractors on the Friant-Kern and Madera Canals. We have delivered a letter requesting further clarification from Reclamation on these issues as they may be considered significant for contractor consideration. We are awaiting official notice that Reclamation will consider of our licensing approach.

DISCUSSION:
Staff continues to work on several fronts relative to title transfer. These include the development of a memorandum to the Board of Directors by the end of July that would provide confirmation from BOR on the estimated non-project water capacity revenues that would go to FWA, an agreement on our assumptions that the Friant-Kern Canal would be eligible to the Categorical Exemption, and that transfer could occur at the Secretary of the Interior’s discretion. It would also provide resolution of post transfer points of diversion, and the time/dollars necessary from FWA to complete activities of the transfer. Furthermore, the memorandum would look at case studies on the canal to determine what activities or special occurrences could have gone worse/better with and without title transfer in the past 15 years.

Staff along with Chairman Tantau met with Dennis Keller last week to discuss the points raised in his memorandum of May 4, 2018 on Title Transfer. The meeting included a robust exchange of thoughts and views regarding specific aspects of Title Transfer. While we do not want to speak for Mr. Keller, our sense is that both parties walked away with a better appreciation of the others’ views. Staff also agrees that many of the items raised by Mr. Keller should be addressed as the process continues. There was a commitment for follow-up and engagement, and all agreed that a workshop for all the Friant Districts would be a positive. Staff is expecting to schedule that workshop in September, to help drive at a decision to spend resources to expeditiously pursue a transfer.

Relative to transfer of title to the Friant-Kern Canal some key questions that need to be discussed include:

- What entity will be holding title once the process is complete, and who will they be holding the asset on behalf of?
- What administration or procedures need to be put in place to replace the USBR as holder of title? (i.e. how will things like prorate work, or new turnouts, or water quality control?)
• How would a dispute be handles between contractors, or between the title holder and a contractor?

Answers to these bullets will inform staff on resourcing necessary to achieve the goal of transfer by the end of 2020. Likewise, answers to these bullets will help staff gage the amounts of time necessary and outreach needed to individual districts involved.
DATE: July 15, 2019

TO: Executive Committee

FROM: Jason Phillips, CEO; Donald M. Davis, General Counsel

SUBJECT: FKC Transfer Agreement

SUMMARY:

The agreement (Transfer Agreement) with the Bureau of Reclamation transferring operations, maintenance and repair responsibility for the Friant-Kern Canal to the Friant Water Authority expires on March 1, 2023. The Transfer Agreement contemplates that FWA and Reclamation will initiate negotiations regarding the terms and conditions for an extension of the Agreement in the final year of the term, but does not preclude earlier negotiations. According to the financial consultants (PMF) assisting with developing a self-financing plan for the Subsidence Correction Project, FWA’s borrowing capacity is directly tied to its ability to secure reimbursement from Friant contractors that utilize the FKC under the Transfer Agreement. In short, the term of any long-term financing must, at minimum, correspond to the term of the Transfer Agreement. Staff is seeking approval to initiate negotiations with Reclamation on the terms and conditions of an extension of the Transfer Agreement for a minimum period of 30 years.

Reclamation recently approved a similar request from the San Luis Delta & Mendota Water Authority (SLDMWA) to initiate negotiations regarding an extension of its transfer agreement for the Delta-Mendota Canal (DMC) facilities, which expires at the same time as FWA’s Transfer Agreement. Like FWA, SLDMWA is seeking long-term financing for capital improvements to its facilities. Because the two transfer agreements are very similar, it is anticipated that FWA and SLDMWA will coordinate in their respective negotiations to ensure consistent provisions and treatment as the non-federal operating entities for these vital Central Valley Project facilities.

A draft letter to Regional Director Conant is attached for the Committee’s consideration.

RECOMMENDED ACTION:

That the Executive Committee recommend that the Board of Directors approve the transmittal of a request to the Bureau of Reclamation to promptly initiate negotiations on a long-term extension (minimum of 30 years) of the Transfer Agreement for the Friant-Kern Canal and related facilities.

SUGGESTED MOTION:

A motion to approve the recommended action.

ATTACHMENTS:

Draft letter to Reclamation
July __, 2019

Via U.S. Mail & Email

Mr. Ernest Conant
Regional Director, Mid-Pacific Region
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Renewal of Agreement to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant-Kern Canal and Associated Works (Contract No. 8-07-20-X0356)

Dear Mr. Conant:

The Friant Water Authority (Friant) requests the initiation of early negotiations with the Bureau of Reclamation (Reclamation) to renew the referenced agreement (Transfer Agreement) on mutually acceptable terms for a minimum period of 30 years, with a desired goal to complete such negotiations and execute all required documentation by no later than February 1, 2020.

As your office is well aware from the excellent support and coordination Friant has received from Reclamation to date, Friant is seeking to implement a project to correct the subsidence impacts to a large segment of the Friant-Kern Canal (FKC). Friant is in the process of developing a self-financing plan for this project, and our financial consultants have advised that Friant will need to demonstrate a long-term ability to secure funding through cost recovery imposed on Friant contractors that utilize the FKC. As Friant’s ability to recover such costs is directly tied to the Transfer Agreement, the term of the Transfer Agreement must be extended, and the proposed renewal term of a minimum of 30-years will allow for the issuance of long-term debt of a similar duration.

Friant respectfully requests that Reclamation provide a letter of intent to Friant at your earliest convenience stating Reclamation’s willingness to immediately initiate negotiations with Friant on the renewal of the Transfer Agreement with a mutually desired goal to have an executed renewed Transfer Agreement in place by February 1, 2020.
On behalf of Friant, thank you for your consideration of this request and for your continued support and cooperation.

Sincerely,

Jason Phillips, CEO

e: Richard Woodley, USBR  
  Michael Jackson, USBR  
  Friant Board of Directors
SUMMARY:

The Water Blueprint for the San Joaquin Valley (Group) will hold its sixth meeting on July 17th. The Group continues to gain momentum and representative. Representatives include directors of Farm Bureaus, Water Authorities, Districts, Growers, Trade Associations, Refuges, Fresno State, GSAs and white land interests. The Group is continuing to develop a supportable plan that the SJV (broad coalition) can advocate for and that focuses on solutions in coordination with key stakeholders. The Group is working with state representatives to include the Blueprint into the Governor’s Water Resiliency Plan. The Group has a working draft Brochure for use and circulation to stakeholders, elected and the Governor’s Administration. It is an ongoing effort to succinctly summarize and provide common goals and messaging for the Water Blueprint.

The Group has established 4 committees and those committees continue to meet and pursue its goals. The 4 committees are working on the following matters:

1) Regional Representation & Technical Support: A BOR Water Smart Grant application has been prepared and submitted on behalf of the Group. The Group is pursuing a socioeconomic study with technical experts and is finalizing the scope. The Group is also pursuing additional technical funding sources including DWR. Possible regional chairs have been identified and contacted.

2) Engagement and Outreach (i.e. Disadvantaged Communities, Environmental Organizations & Urbans). The committee continues to meet with organizations and entities to educate them and pursue their engagement in the Blueprint. Committee has conducted 2 tours are scheduled with several eNGOs. They are also continuing to meet with disadvantage community representatives.

3) Funding, Finance & Governance: Partners have begun sending in contributions and are continuing to meet with their organizations to request monetary contributions of up to $15,000 to cover efforts and estimated budget. A tally of contributions received is being assembled. A 501c3 & 501c4 have been established for Advocacy and Education. Officers and Directors have been identified and will be installed.

4) Advocacy & Public Relations: The Committee will continue to work with key stakeholders and the administration to fold the Water Blueprint into The governor’s Water Resiliency Plan (WRP). The WRP is expected to have a policy paper out in October and additional milestones by the end of this calendar year. The committee continues to meet with key leaders and advocate for use and pursuit of the Blueprint by the Governor.
RECOMMENDED ACTION:

There is no recommended action at this time. The Board gave initial direction to pursue this collective effort and report back on its status.

SUGGESTED MOTION: (A MOTION TO (APPROVE/ADOPT/AUTHORIZE, ETC.)

There is no motion at this time.

BACKGROUND:

The Blueprint concept was first discussed by the Board of Directors during their 2018 Board Retreat in late November and at the December 2018 meeting the Board directed FWA staff and consultants to scope out the potential collaborative effort and develop a plan to include the SJV. Since that time the following activities have occurred:

• Extensive outreach to a broad collation of stakeholders and others to be potential partners.

• Meetings in January, March, April, May and June with DACs, eNGOs, water districts, commodities groups, growers, ACWA, Governor’s Administration, Reclamation, DWR and other SJV stakeholders to develop the Blueprint, obtain initial support, and identify additional potential partners.

• Group meeting was held on June 19th with the addition of key partners where a general budget was agreed to and partners committed to seek funding. Committee meetings will continue. Blueprint will be finalizing formation activities and opening a bank account to deposit funding. Continue strategy to address and succeed on the goals identified.

DISCUSSION:

The Board will be presented with the status, approach and strategy that the Group identifies, which includes funding and beginning the socioeconomic report.

BUDGET IMPACT:

None

ATTACHMENTS:

None
DATE: July 15, 2019

TO: Executive Committee

FROM Johnny Amaral, Chief of External Affairs
Alex Biering, Government Affairs and Communications Manager

SUBJECT: External Affairs Update

1. SUMMARY:
   Update on State and Federal legislation and communications activities.

2. RECOMMENDED ACTION:
   None; informational only.

3. SUGGESTED MOTION:
   None; informational only.

4. DISCUSSION:
   • Status of FWA-sponsored bills (SB 487 and SB 559), including progress with coalition support, media outreach, and hearings.
   • Review of tracked legislation.

5. BUDGET IMPACT:
   None.

6. ATTACHMENTS:
   Bill Tracker (updated 7/11/19); Committee analysis for AB 658 (dated 7/9/19); Committee analysis of SB 1 (dated 7/9/19); Summary of S. 1932.
# Legislative Tracker

**FRIANT WATER AUTHORITY**

**June 11, 2019**

## State Bills

<table>
<thead>
<tr>
<th>Bill</th>
<th>Title (Author) &amp; Date</th>
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<th>Positions</th>
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</thead>
<tbody>
<tr>
<td>AB 134</td>
<td>Safe Drinking Water Restoration (Bloom) – 5/20/19 version</td>
<td>Would, by July 1 of each year, would require the State Water Resources Control Board to adopt an assessment of need for state financial assistance to provide safe drinking water that identifies failed water systems throughout the state. Would require the assessment of need to prioritize the systems with the most urgent need for state financial assistance in light of specified factors. Would require each regional engineer to arrange for a prescribed comprehensive assessment of each failed water system in the region of the drinking water regional office to be completed within 2 years of the board identifying the failed water system in the assessment of need.</td>
<td></td>
<td>NYC</td>
<td>Watch</td>
<td>Passed Assembly Floor; in Senate Environmental Quality and Natural Resources and Water committees.</td>
</tr>
<tr>
<td>AB 217</td>
<td>Tax conformity (Burke) – 6/13/19 version</td>
<td>Would make some portions of California’s income tax system consistent with federal income tax laws, including as related to the earned income tax credit (EITC).</td>
<td>PRO: Business, labor OPP: None</td>
<td>NYC</td>
<td>NYC</td>
<td>Passed on Assembly Floor on 6/20. Amended from original language, so no longer tracked.</td>
</tr>
<tr>
<td>AB 382</td>
<td>Integrated regional water management plans: grant funding: upper watershed health (Mathis) – 2/5/19 version</td>
<td>Current law provides that an integrated regional water management plan is eligible for funding allocated specifically for implementation of integrated regional water management. Current law requires certain state agencies to include in any set of criteria used to select projects and programs for funding, a criterion that provides a preference for regional projects or programs. This bill would require the department to include in any criteria used to select a project or program for grant funding authorized on or after January 1, 2020 a criterion that provides a preference for a regional water management group undertaking a project improving upper watershed health upstream and outside of the defined geographical area covered by the group’s plan.</td>
<td></td>
<td>NYC</td>
<td>NYC</td>
<td>Two-year bill; can be acted on again in January 2020.</td>
</tr>
</tbody>
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1 Updates since the last version are included in **bold text**.
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<tr>
<td>AB 417</td>
<td>Agriculture and Rural Prosperity Act – (Arambula) – 5/17/19 version</td>
<td>The bill would authorize the Secretary of Food and Agriculture to carry out various activities to support rural communities and further the development of rural agricultural economies in California, including, among other things, consulting with government agencies and members of the public and private sectors to identify opportunities and partnerships to further the development of rural agricultural economies, and disseminating information on the department’s internet website. Most recent amendment removed requirement to produce an economic study on the effects of SGMA.</td>
<td>PRO: Commodities groups, Ag Council, NCWA, RCDs, RCRC.</td>
<td>NYC</td>
<td>Watch</td>
<td>In Appropriations suspense file.</td>
</tr>
<tr>
<td>AB 441</td>
<td>Water: underground storage (Eggman) – 3/27/19 version</td>
<td>This bill would revise the beneficial use doctrine for water rights to additionally provide that certain uses of groundwater storage constitute beneficial use. These include protection of water quality and recovery of groundwater levels. It also removes the forfeiture period of a water right (5 years) for water being beneficially used, or being held in storage, for a later use.</td>
<td>PRO: CFBF OPP: None (but SWP users are opposing)</td>
<td>NYC</td>
<td>Watch</td>
<td>Two-year bill; can be acted on again in January 2020.</td>
</tr>
<tr>
<td>AB 637</td>
<td>State Water Resources Control Board: regional water quality control boards: severely disadvantaged communities: drinking water supplies (Gray) – 4/11/2019 version</td>
<td>Would require the State Water Resources Control Board, before taking an action that significantly impacts drinking water, to use existing information to identify impacted disadvantaged communities and to seek to reduce impacts to those communities to the greatest extent practicable. The bill would also require the board to ensure that disadvantaged communities are provided an opportunity to participate in the public process for a decision that significantly impacts drinking water by holding a public hearing in or near an impacted community. Bill is part of a larger water package introduced by Mr. Gray that also includes AB 636 and AB 638.</td>
<td>PRO: Stanislaus County</td>
<td>NYC</td>
<td>Watch</td>
<td>Two-year bill; can be acted on again in January 2020.</td>
</tr>
<tr>
<td>AB 638</td>
<td>Department of Water Resources: water storage capacity (Gray) – 6/11/19 version</td>
<td>Current law requires the Department of Water Resources to update every 5 years the plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state, which is known as The California Water Plan. This bill would require the department, on or before January 1, 2021, with updates every 5 years thereafter, to identify storage facilities vulnerable to climate change and the mitigation strategies for anticipated impacts. Recent amendments extend the horizon for reporting out (from 2 to 5 years), defined “below-ground storage” to be consistent with the definition under SGMA, and authorized DWR to provide grants to mitigate for the impacts of climate change on surface storage.</td>
<td>NYC</td>
<td>Watch</td>
<td>Passed Senate Natural Resources and Water Committee on 7/9; referred to Appropriations.</td>
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<tr>
<td>AB 658</td>
<td>Water rights: water management (Arambula) – 7/5/19 version</td>
<td>Would authorize a groundwater sustainability agency or local agency to apply for, and the State Water Resources Control Board to issue, a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin, as specified.</td>
<td>PRO: California Farm Bureau Federation, Metropolitan Water District of Southern California, Valley Ag Water Coalition, California Association of Professional Scientists, Groundwater Resources Association of California</td>
<td>NYC</td>
<td>Support</td>
<td>Passed Senate Natural Resources and Water Committee on 7/9; referred to Appropriations.</td>
</tr>
<tr>
<td>ACA 3</td>
<td>Clean Water for All Act (Mathis) – 3/20/19 version</td>
<td>Would require, commencing with the 2021–22 fiscal year, not less than 2% of specified state revenues to be set apart for the payment of principal and interest on bonds authorized pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014; and for water supply, delivery, and quality projects administered by DWR, and water quality projects administered by the SWRCB, as provided. Funds would be continuously appropriated and distributed as follows: 5% to pay down Prop. 1; 57% to be disbursed by DWR for water supply, delivery, and quality projects, including for conveyance, recharge, subsidence abatement, and storage; 38% to the SWRCB for water quality projects. DWR would be required to give priority to projects that address deferred maintenance; the SWRCB couldn’t use the funding to address water quality enforcement actions.</td>
<td>PRO: San Gabriel Valley Water Authority, Howard Jarvis Taxpayers Association, Friant Water Authority</td>
<td>Support</td>
<td>Watch</td>
<td>Failed passage in Water, Parks &amp; Wildlife on 4/30; reconsideration granted.</td>
</tr>
<tr>
<td>SB 1</td>
<td>California Environmental, Public Health, and Workers Defense Act of 2019 (Atkins) – 7/1/19 version</td>
<td>Establishes specified minimum federal environmental, public health, and labor standards as state baselines in the event the Congress or President repeals or weakens corresponding federal standards, and prohibits the corresponding California standards from falling below those baselines. In the event that new federal standards fall below the baseline, this bill allows private citizens to enforce state standards under specific circumstances (not including endangered or threatened species). It sunsets in 2025, corresponding with the end of a theoretical second term for President Trump.</td>
<td>PRO: Enviro NGOs OPP: Commodities groups, ACWA, growers’ groups, Cal Chamber, local chambers of commerce, Cal BIA, realtors, water agencies</td>
<td>Oppose Unless Amended*</td>
<td>Oppose Unless Amended</td>
<td>Passed Env. Safety and Toxic Materials, Natural Resources, and Judiciary committees; referred to Appropriations.</td>
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***see bill analysis for full list***
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<td>SB 19</td>
<td>Water resources: stream gages (Dodd) – 6/11/19 version</td>
<td>Would require the Department of Water Resources and the State Water Resources Control Board, upon an appropriation of funds by the Legislature, to develop a plan to deploy a network of stream gages that includes a determination of funding needs and opportunities for modernizing and reactivating existing gages and deploying new gages, as specified. The bill would require the department and the board, in consultation with the Department of Fish and Wildlife, the Department of Conservation, the Central Valley Flood Protection Board, interested stakeholders, and, to the extent they wish to consult, local agencies, to develop the plan to address significant gaps in information necessary for water management and the conservation of freshwater species.</td>
<td>PRO: Environmental and conservation NGOs, NCWA, ACWA, MWD, SCVWD, CMUA, RCRC, groundwater groups</td>
<td>NYC</td>
<td>Support</td>
<td>Passed Assembly Water, Parks, and Wildlife Committee; referred to Appropriations Committee</td>
</tr>
<tr>
<td>SB 45</td>
<td>Wildfire, Drought, and Flood Protection Bond Act of 2020 (Allen) – 4/4/19 version</td>
<td>Would enact the Wildfire, Drought, and Flood Protection Bond Act of 2020, which, if approved by the voters, would authorize the issuance of bonds in an unspecified amount pursuant to the State General Obligation Bond Law to finance projects to restore fire damaged areas, reduce wildfire risk, create healthy forest and watersheds, reduce climate impacts on urban areas and vulnerable populations, protect water supply and water quality, protect rivers, lakes, and streams, reduce flood risk, protect fish and wildlife from climate impacts, improve climate resilience of agricultural lands, and protect coastal lands and resources. Bond total is $4.3 B and funding categories focus heavily on watersheds, forests, and climate resiliency.</td>
<td>PRO: Enviro NGOs, conservation groups, EJ groups</td>
<td>NYC</td>
<td>Favor</td>
<td>In Senate Appropriations.</td>
</tr>
<tr>
<td>SB 62</td>
<td>Endangered species: accidental take associated with routine and ongoing agricultural activities: state safe harbor agreements (Dodd) – 4/3/19 version</td>
<td>Would extend for five years an exemption under the California Endangered Species Act for “accidental take” of listed species that occurs on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities. The current exemption expires January 1, 2020. Any take would need to be reported to DFW within 10 days.</td>
<td>PRO: Cal Chamber of Commerce, CFBF, CCM, Defenders of Wildlife, Western Growers, Ag Council, other commodities groups OPP: None.</td>
<td>Support</td>
<td>Favor</td>
<td>On Senate Floor consent calendar.</td>
</tr>
<tr>
<td>SB 200</td>
<td>Safe and Affordable Drinking Water Fund (Monning) – 7/3/2019 version</td>
<td>Would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are available, upon appropriation by the Legislature, to the State Water Resources Control Board to provide a stable source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.</td>
<td>PRO: Conservation groups, moderate enviro NGOs, EJ groups, healthcare advocates, labor OPP: San Diego County Water Authority</td>
<td>NYC</td>
<td>Favor</td>
<td>Passed on Senate Floor on 7/8; enrolled and awaiting Governor’s signature.</td>
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<td>SB 487</td>
<td>Department of Water Resources: aerial snow survey (Caballero) – 6/11/19 version</td>
<td>Would require the Department of Water Resources’ California snow survey program to conduct aerial surveys of the snowpack in the Trinity Alps and Sierra Nevada Mountains, including hydrologic areas that drain or supply water to certain major reservoirs and lakes. The bill would require the department to collect the aerial survey data up to 10 times per year in each hydrologic area and to summarize and make publicly available the data obtained and digital products used to produce runoff forecasts, as specified. Amended to remove continuous appropriation, leaving policy in place but requiring funding in the budget. Also amended for technical clarifications.</td>
<td>PRO: Association of California Water Agencies, Friant Water Authority, Arvin-Edison Water Storage District, Modesto Irrigation District, Northern California Water Association, California Municipal Utilities Association, Mammoth Community Water District, Kings River Water Association, Turlock Irrigation District, San Francisco Public Utilities Commission, Tulare Irrigation District, South Valley Water Association, Kaweah-Delta Water Conservation District, Kern-Tulare Water District, Lindsay-Strathmore Irrigation District, San Diego County Water Authority</td>
<td>Sponsor</td>
<td>Favor</td>
<td>Passed Assembly Water, Parks and Wildlife on 7/2; referred to Appropriations.</td>
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<td>SB 559</td>
<td>Department of Water Resources: Friant-Kern Canal conveyance restoration (Hurtado) – 7/3/19 version</td>
<td>Would appropriate $400 million from the General Fund for actions to restore conveyance capacity on the Friant-Kern Canal. Amended to remove appropriation, leaving policy in place but requiring funding in the budget. Also amended to require cost-share, establish California Water Commission as disbursing agency, and require public briefings.</td>
<td>PRO: Association of California Water Agencies, Western Growers Association, Arvin-Edison Water Storage District, Friant Water Authority, Tulare County, Tulare County Farm Bureau, Kern County, Kern County Hispanic Chamber of Commerce, Pixley Irrigation District, Tea Pot Dome Water, District, South Valley Water Association, Fresno County Kern-Tulare Water District, Fresno Farm Bureau, Lower Tule River Irrigation District, Shafter-Wasco Irrigation District OPP: Sierra Club California</td>
<td>Sponsor</td>
<td>Favor</td>
<td>Passed Assembly Water, Parks, and Wildlife on 7/2; referred to Appropriations.</td>
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<tr>
<td>S. 47</td>
<td>Natural Resources Management Act (Murkowski and Cantwell) – 1/8/19 version</td>
<td>Addresses multiple Title VIII, “Water and Power,” includes the Reclamation title transfer provisions negotiated with the House during last Congress.</td>
<td></td>
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<td></td>
<td>Signed by the President on 3/12.</td>
</tr>
<tr>
<td>S. 1932</td>
<td>Drought Resiliency and Water Supply Infrastructure Act (Feinstein) – 6/20/19 version</td>
<td>Extends WIIN Act funding for five years, including $670 million for surface and groundwater storage projects, and supporting conveyance; $100 million for water recycling; and $60 million for desalination projects. Creates a low-interest loan program for new water projects. Authorizes $100 million for habitat/environmental projects. Cosponsored by Gardner, McSally, Sinema.</td>
<td></td>
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<td>Referred to the Committee on Energy and Natural Resources</td>
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</table>
BACKGROUND AND EXISTING LAW

1) The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented.

2) Limits the right to water or to the use of water to that amount of water that may be reasonably required for the beneficial use to be served.
   a) Provides for the reversion of water rights to which a person is entitled when the person fails to beneficially use the water for a period of 5 years.
   b) Provides that the storing of water underground, including the diversion of streams and the flowing of water on lands necessary to the accomplishment of the storage, constitutes a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made.

3) Establishes that the State Water Resources Control Board (board) administers a water rights program pursuant to which the board grants permits and licenses to appropriate water.
   a) Allows a person who has an urgent need to divert and use water to apply for, and the board to issue, a temporary permit, as prescribed.
   b) Requires an applicant to pay an application fee and a permit fee, if a temporary permit is issued, both computed as specified.

4) The Sustainable Groundwater Management Act (SGMA), requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources (DWR) that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan (GSP), coordinated GSPs, or approved alternative plans by January 31, 2020.
   a) Requires all other groundwater basins designated as high- or medium-priority basins to be managed under a GSP, coordinated GSP, or approved alternative plan by January 31, 2022, except as specified.
   b) Requires a GSP to be developed and implemented to meet the sustainability goal, established as prescribed in SGMA.
5) Allows a permittee or licensee who has an urgent need to change a point of
diversion, place of use, or purpose of use to petition for, and the board to issue, a
temporary change order, subject to certain restrictions.

PROPOSED LAW

This bill would:

1) State that it is the intent of the Legislature in enacting this measure to encourage
groundwater recharge projects during times of high-flow events by creating a
temporary five-year permit and a temporary five-year change order administered by
the State Water Resources Control Board.

Further state that this measure is not intended to limit any other permitting of an
appropriation of water for any authorized beneficial use under other provisions of
law.

2) Authorize a groundwater sustainability agency (GSA) or local agency to apply for,
and the board to issue, a conditional temporary permit for diversion of surface water
to underground storage for beneficial use that advances the sustainability goal of a
groundwater basin, as specified.

3) Authorize a GSA or local agency that is a water rights permittee or a licensee to
petition for, and the board to issue, a conditional temporary change order that
authorizes the diversion of surface water to underground storage for beneficial use
that advances the sustainability goal of a groundwater basin, as specified.

4) Require the board, before issuing a conditional temporary permit or a conditional
temporary change order under this Act, to make the following findings based upon a
preponderance of the evidence:
   a) The proposed diversion is to underground storage for beneficial use that
      advances the sustainability goal of a groundwater basin.
   b) The water may be diverted and used without injury to any lawful user of water.
   c) The water may be diverted and used without:
      i) Unreasonable effects on fish, wildlife, or other instream beneficial uses; or
      ii) Significant adverse effects on ability to meet water quality objectives.
   d) The proposed diversion and use are in the public interest, including findings to
      support permit conditions imposed to ensure that the water is diverted and used
      in the public interest.

5) Establish that a conditional temporary permit or a conditional temporary change
order issued under this Act:
   a) Does not create a vested right, even of a temporary nature.
   b) Is subject, at all times, to modification or revocation at the discretion of the board,
      after the permittee has adequate notice and an adequate opportunity to be heard
      concerning any proposed modification or revocation.
c) Automatically expires five years after the authorization takes effect, unless an earlier date is specified or the temporary permit is revoked, and shall be junior in priority to any subsequent appropriation not subject to this Act. The five-year period is a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.

6) Authorize the board to renew a permit issued under this Act if the board, in its judgment, concludes that the applicant has exercised due diligence in applying for a permit under current law, other than that provided by this Act.

7) Exclude from the authorization for conditional temporary permits and conditional temporary change orders under this Act to:

a) Diversions within the groundwater basins in the Upper Los Angeles River Area or

b) Diversions within any groundwater basin or portion of a groundwater basin in Inyo County managed pursuant to the terms of the stipulated judgment in City of Los Angeles v. Board of Supervisors of the County of Inyo, et al.

8) Require the board, by December 31, 2024, to post on their internet website a report concerning the effectiveness of the temporary permitting and change petition provisions enacted by this bill. The report would be required to describe, at a minimum:

a) The number of temporary permits and temporary change orders issued by the board pursuant to the procedures established by this Act.

b) The volume of diversions to groundwater storage authorized under temporary permits and change orders issued by the board pursuant to the procedures established by this Act.

c) The distribution across the state of the temporary permits and change orders issued by the board pursuant to the procedures established by this Act, including, without limitation, the issuance of such permits and orders for groundwater storage in critically overdrafted groundwater basins identified under SGMA.

ARGUMENTS IN SUPPORT

According to the author, “California recently faced one of the worst droughts in its history, of which effects continue to be felt throughout the State. Climatologists predict that more frequent and severe droughts will occur. The best way to minimize damage during periods of drought is to prepare and capture water in times of high flows. Droughts combined with the Sustainable Groundwater Management Act (SGMA) are going to vastly change the landscape of our farming and urban communities if we do not adequately prepare. AB 658 looks to create a process of temporary permits in law and deems that groundwater recharge is a beneficial use under these new 5 year temporary permits.”

ARGUMENTS IN OPPOSITION: None received
COMMENTS

Fills A Gap In Water Rights Permits. The board has authority under the water code to issue temporary water right permits or approve temporary changes in points of diversion or places of use for up to 180 days. It also has the authority to issue permanent water rights permits or changes in point of diversion or places of use. But, it doesn’t have the authority to issue such permits on an interim basis. This bill is intended to fill that gap.

Who Might Use This Authority? The temporary permits and changes authorized by this bill would probably not be useful to someone who sees that developing atmospheric river events might create an opportunity to divert anticipated high flows onto a dormant orchard for purposes of groundwater recharge. The processing time for the temporary permits and changes authorized by this bill would make that challenging. However, it may be useful to a GSA that wants to establish one or more groundwater recharge projects either as test projects with options to make permanent or as a bridging permit while it works to develop permanent rights or changes to rights.

Without Significant Adverse Effect. Environmental Defense Fund (EDF), in taking a support if amended position, raised issues with language in §1433.1(b)(3) (page 6, line 22) and similar language in §1443.1(b)(4) (page 12, line 35). Specifically, they objected to the requirement that before the board approves a temporary permit or change, that the board must find the water may be diverted and used “without significant adverse effect on the ability to meet water quality objectives.” EDF asserts that it introduces a new standard in water rights that is not found elsewhere in the water rights portion of the Water Code. Further, they assert that that language is not necessary as §1433.1(b)(2)(ii) already provides sufficient protection: it prevents the board from approving the diversion unless the “[u]nregulated flow in the source waterbody will be sufficient below the proposed point of diversion to meet instream flow requirements and water quality objectives.” (emphasis added)

A series of e-mail exchanges suggests Westlands Water Agency has a different perspective. For consistency with other language in the bill, their request is to change the phrase to read “without significant adverse effect on the ability to meet water quality objectives.”

Staff has yet another suggestion. It might make sense to remove the entire phrase from that paragraph, thereby leaving the paragraph focused solely fish, wildlife, or other instream beneficial uses, and instead amending §1433.1(b)(2) to read:

(2) The water may be diverted and used without injury to any lawful user of water including the ability to meet water quality objectives. This finding may be satisfied by demonstrating both of the following:

There has been insufficient time to vet this last suggestion with all the interested parties. However, as this appears to be the only remaining controversy with the bill, it seems likely that the author will be able to resolve it before this bill would be heard in the Senate Appropriations Committee, presuming this committee decides to pass the bill.
Consistency With GSPs Or Approved Alternative Plans. It might make sense to require that diversion to underground storage be consistent with GSPs or approved alternative plans. Such plans would have gone through a local vetting process, among other things, and consistency with such plans would likely reduce the number of objections to the temporary permits or changes. (See amendment 1)

Technical Amendment. The bill should also be amended to include the SGMA definition of “basin,” where basin is defined as a basin or subbasin. (See amendment 2)

Related bills: AB 2649 (Arambula, 2018) – Would have authorized the board to issue temporary permits for to divert water to underground storage or recharge during for high-precipitation events, and further provides that such a an authorized diversion of water is a diversion of water for beneficial use if the diverted water is put to beneficial use. Was gut & amended in the final days of session to become a bill regarding State Water Project contracts.

SUGGESTED AMENDMENTS

AMENDMENT 1
On page 6, after line 31, insert “(5) If there is an adopted groundwater sustainability plan, an interim plan, or an alternative under Section 10733.6 for the basin, the proposed diversion to underground storage is consistent with that plan or alternative.”

On page 13, after line 8, insert “(5) If there is an adopted groundwater sustainability plan, an interim plan, or an alternative under Section 10733.6 for the basin, the proposed diversion to underground storage is consistent with that plan or alternative.”

AMENDMENT 2
On page 5, line 18, insert “(1) ‘Basin’ has the same meaning as defined in Section 10721.”

On page 11, line 33, insert “(1) ‘Basin’ has the same meaning as defined in Section 10721.”

SUPPORT
California Association of Professional Scientists
California Farm Bureau Federation
Groundwater Resources Association
Metropolitan Water District of Southern California
Valley Ag Water Coalition

OPPOSITION
None Received

-- END --
Date of Hearing: July 9, 2019

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1 (Atkins) – As Amended July 1, 2019

SENATE VOTE: 28-10

SUBJECT: CALIFORNIA ENVIRONMENTAL, PUBLIC HEALTH, AND WORKERS DEFENSE ACT OF 2019

KEY ISSUES:

1) TO ENSURE THAT CLEAN AIR, CLEAN WATER, ENDANGERED SPECIES, AND WORKER SAFETY STANDARDS THAT HAVE BEEN IN PLACE FOR AS LONG AS 50 YEARS ARE NOT ROLLED BACK AS A RESULT OF THE CURRENT FEDERAL ADMINISTRATION, SHOULD MINIMUM STATE BASELINES FOR ENVIRONMENTAL, PUBLIC HEALTH, AND LABOR STANDARDS BE ADOPTED?

2) TO PRESERVE, PROTECT, AND ENHANCE THE ENVIRONMENT AND NATURAL RESOURCES IN CALIFORNIA, SHOULD THE PUBLIC BE ABLE TO ENFORCE BASELINE ENVIRONMENTAL STANDARDS THROUGH A CITIZEN SUIT PROVISION—SIMILAR TO ONES FOUND UNDER CURRENT FEDERAL ENVIRONMENTAL LAW—SO THAT THERE IS NO BACKSLIDING OF CALIFORNIA LAWS AND ENVIRONMENTAL PROTECTIONS?

SYNOPSIS

For decades the State of California has been a national leader in environmental stewardship and protecting the dignity and safety of workers. Despite California’s efforts, the current federal administration is making it clear that it disagrees with California’s values and is making every effort to undermine existing federal policies to protect the environment and workplace health, wage, and safety rules. However, thanks to the foresight of prior federal administrations, the state is not without recourse. By enacting many regulatory schemes that recognize cooperative federalism, California is able to step up to protect the environment and workers when the federal government tries to step back and undermine these policies. To that end, this bill sets a minimum baseline for environmental, public health, and labor standards based on existing federal standards and requires specified state agencies to review any federal actions to determine if the action adopts a rule that is less protective than the existing baseline. If such action would bring the standard below the established baseline, this bill empowers the state to step-up and restore critical environmental and worker protections. Additionally, this bill seeks to maintain several citizen lawsuit provisions that currently are in federal law should the current administration seek to undermines these provisions.

This bill is supported by a large and diverse coalition of environmental and labor organizations who argue that California must continue to set an example for the nation and protect critical environmental and workplace safety laws. They note that the current administration in Washington poses a threat to California’s values and support this bill as a means of protecting California’s values and way-of-life. This measure is opposed by a broad coalition of business interests, local governments, and water agencies. While these organizations note their
agreement with the premise of this measure, they express their opposition to several provisions of the bill, especially provisions related to the California Endangered Species Act and its application to certain water conveyance projects. This bill is similar to SB 49 (de Leon, 2017) that passed this Committee before ultimately being held on the Assembly Floor.

SUMMARY: Establishes a minimum baseline for environmental, public health, and labor standards based on existing federal standards and requires specified state agencies to review any federal action in those areas to determine if the action adopts a rule that is less protective than the existing baseline; and provides that if federal action results in the law being less protective than the existing standard, the state agency may adopt the baseline as a regulation under California law. Specifically, this bill:

1) Defines “federal baseline standards” as the federal standards in effect as of January 19, 2017, that were not otherwise permanently enjoined by a federal court as of that date.

2) Defines “federal standards” as federal laws or federal regulations implementing the federal Clean Air Act, the federal Safe Drinking Water Act and Federal Water Pollution Control Act, the federal Endangered Species Act, the federal Fair Labor Standards Act of 1938, Occupational Safety and Health Act of 1970, and Federal Coal Mine Health and Safety Act of 1969, as applicable.


4) Requires the California Air Resources Board to regularly assess, and at least quarterly publish on its website and to the California Regulatory Notice Register, a list of changes made to the federal standards that may impact California and provide an assessment on whether a change made to the federal standards is less protective of public health and safety, the environment, natural resources, or worker health and safety than the baseline federal standards.

5) Provides that if the California Air Resources Board determines that a change to the federal standards is less protective of public health and safety, the environment, natural resources, or worker health and safety than the baseline federal standards, the Board shall consider whether it should adopt the baseline standard as a regulation in order to ensure that the state’s protections are at least as stringent as the baseline federal standards.

6) Provides the list, assessment, and consideration of the California Air Resources Board must be posted on its internet website and open to public comment for at least 30 days prior to any vote to adopt a measure.

7) Provides that if the California State Air Resources Board adopts a measure it may do so by either adopting emergency regulations, or by promulgating or amending a state policy, plan, or regulation. Provides that any promulgation of or amendment to a state policy, plan, or regulation is deemed to be a change without regulatory effect.

8) Provides that if a citizen suit authorized pursuant to the Clean Air Act is amended to substantially restrict, condition, abridge, or repeal the ability to file such a suit, including
limiting the awarding of attorney’s fees, a suit may be brought pursuant to 9) to enforce the baseline federal standards, state standards enacted pursuant to the federal Clean Air Act.

9) Provides that an action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted as a measure pursuant to 7) if citizen suit enforcement of the newly adopted standard is no longer available under federal law. Provides that an action may be brought by that person so long as notice is properly provided to the Attorney General, a district attorney, a city attorney, county counsel, counsel of the California Air Resources Board, counsel of an air district, or a prosecutor, as specified.

10) Requires the State Water Resources Control Board to regularly assess, and at least quarterly publish on its website and to the California Regulatory Notice Register, a list of changes made to the federal standards that may impact California and provide an assessment on whether a change made to the federal standards is less protective of public health and safety, the environment, natural resources, or worker health and safety than the baseline federal standards.

11) Provides that if the State Water Resources Control Board determines that a change to the federal standards is less protective of public health and safety, the environment, natural resources, or worker health and safety than the baseline federal standards, the Board shall consider whether it should adopt the baseline standard as a regulation in order to ensure that the state’s protections are at least as stringent as the baseline federal standards.

12) Provides the list, assessment, and consideration of the State Water Resources Control Board must be posted on its internet website and open to public comment for at least 30 days prior to any vote to adopt a measure.

13) Provides that if the State Water Resources Control Board adopts a measure it may do so by either adopting emergency regulations, or by promulgating or amending a state policy, plan, or regulation. Provides that any promulgation of or amendment to a state policy, plan, or regulation is deemed to be a change without regulatory effect.

14) Provides that if a citizen suit authorized pursuant to the Clean Water Act or Safe Drinking Water Act is amended to substantially restrict, condition, abridge, or repeal the ability to file such a suit, including limiting the awarding of attorney’s fees, a suit may be brought pursuant to 15) to enforce the baseline federal standards, state standards enacted in accordance with existing state law, or otherwise available under federal law.

15) Provides that an action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted as a measure pursuant to 13) if citizen suit enforcement of the newly adopted standard is no longer available under federal law. Provides that an action may be brought by that person so long as notice is properly provided to the Attorney General, a district attorney, a city attorney, county counsel, counsel of the State Water Resources Control Board, counsel of a regional board, or a prosecutor, as specified.

16) Provides that in order to prevent backsliding as a result of any change to the baseline federal standards, the Fish and Game Commission shall determine whether to list, in accordance with 17), a species, subspecies, or distinct population segment under the California Endangered Species Act in the event either of the following occurs:
a) The federal delisting of the species, subspecies, or distinct population segment that is eligible for protection under the California Endangered Species Act and that is listed as endangered or threatened pursuant to the federal Endangered Species Act of 1973; or

b) A change in the legally protected status of the species, subspecies, or distinct population segment, including through a change in listing from endangered to threatened, the adoption of a rule pursuant to specified provisions the federal Endangered Species Act of 1973, or any amendment to the federal baseline standard.

17) Requires the Fish and Game Commission to list the affected species, subspecies, or distinct population segment identified in 16), no later than the conclusion of its second regularly scheduled meeting or within three months, whichever is shorter, after the occurrence of the event described in 16) unless either the Fish and Game Commission determines that listing the species, subspecies, or distinct population segment is not warranted because it does not meet the criteria provided by existing law for listing a species or the Department of Fish and Wildlife recommends that the species, subspecies, or distinct population segment undergo the regular listing process.

18) Provides that a decision by the Fish and Game Commission to list a species, subspecies, or distinct population segment without following the regular listing process becomes effective immediately, the Fish and Game Commission shall add that species, subspecies, or distinct population segment to the list of endangered or threatened species, and the addition of that species, subspecies, or distinct population segment to the list shall be deemed to be a change without regulatory effect.

19) Provides that provisions of the California Endangered Species Act are measures “relating to the control, appropriation, use, or distribution of water” within the meaning of the federal Reclamation Act of 1902 and shall apply to the United States Bureau of Reclamation’s operation of the federal Central Valley Project.

20) Requires the Occupational Safety and Health Standards Board and the Department of Industrial Relations to regularly assess, and at least quarterly publish on its website and to the California Regulatory Notice Register, a list of changes made to the federal standards that may impact California and provide an assessment on whether a change made to the federal standards is less protective of worker health and safety than the baseline federal standards.

21) Provides that if the Occupational Safety and Health Standards Board or the Department of Industrial Relations determines that a change to the federal standards is less protective of public health and safety, the environment, natural resources, or worker health and safety than the baseline federal standards, the Board or Department shall consider whether it should adopt the baseline standard as a regulation in order to ensure that the state’s protections are at least as stringent as the baseline federal standards.

22) Provides the list, assessment, and consideration of the Occupational Safety and Health Standards Board and the Department of Industrial Relations must be posted on the internet website and open to public comment for at least 30 days prior to any vote to adopt a measure.

23) Provides that if the Occupational Safety and Health Standards Board and the Department of Industrial Relations adopts a measure it may do so by either adopting emergency regulations, or promulgating or amending a state policy, plan, or regulation. Provides that any
promulgation of amendment to a state policy, plan, or regulation is deemed to be a change without regulatory effect.

24) Makes findings and declarations.

25) Provides that the emergency regulations adopted by a state agency under this title shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised or repealed by the state agency, or January 20, 2025, whichever comes first, as long as the emergency regulations adopt the baseline federal standard without substantial modification.

26) Provides that the provisions proposed in this bill become inoperative on January 20, 2025, and, as of January 1, 2026, are repealed.

EXISTING LAW:

1) Establishes the federal Clean Air Act to regulate air emissions from stationary and mobile sources through the establishment of National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants. (42 U.S.C. Section 7401 et seq.)

2) Establishes the federal Clean Water Act to regulate discharge of pollutants into the waters of the United States and regulate quality standards for surface waters. (33 U.S.C. Section 1344 et seq.)

3) Establishes the federal Safe Drinking Water Act to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards, as provided. (42 U.S.C. Section 300f et seq.)

4) Establishes the federal Endangered Species Act of 1973 to protect and recover imperiled species and the ecosystems upon which they depend, as provided. (16 U.S.C. Section 1531 et seq.)

5) Requires, pursuant to the federal Fair Labor Standards Act, the payment of minimum wage and overtime to workers and prohibits the use of child labor. (29 U.S.C. Section 201 et seq.)

6) Establishes, pursuant to the federal Occupational Safety and Health Act of 1970, standards and provides for the safety of workers on job sites. (30 U.S.C. Section 651 et seq.)

7) Provides, pursuant to the federal Coal Mine Health and Safety Act of 1969, minimum health and safety standards for workers at coal mines and a corresponding inspection regime. (30 U.S.C. Section 801 et seq.)

8) Provides, pursuant to the federal Clean Air Act, individual citizens the ability to enforce the laws by bringing suits in court as specified. (42 U.S.C. Section 7604.)

9) Provides, pursuant to the federal Clean Water Act, individual citizens the ability to enforce the laws by bringing suits in court as specified. (33 U.S.C. Section 1365.)

10) Provides, pursuant to the federal Endangered Species Act, individual citizens the ability to enforce the laws by bringing suits in court as specified. (16 U.S.C. Section 1540.)
11) Provides, pursuant to the federal Safe Drinking Water Act, individual citizens the ability to enforce the laws by bringing suits in court as specified. (42 U.S.C. Section 300j-8.)

12) Provides, as a part of the federal Reclamation Act of 1902, that nothing in the federal act is to be construed as affecting or interfering with the laws of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation. (43 U.S.C. Section 372.)

13) Establishes, pursuant to the California Global Warming Solutions Act of 2006, a comprehensive regulatory program to reduce greenhouse gas emissions from all sources throughout California. (Health and Safety Code Section 42500 et seq.)

14) Establishes the Porter-Cologne Water Quality Control Act and regulates the discharge of pollutants into the waters of the state. (Water Code Section 13000 et seq.)

15) Establishes the California Safe Drinking Water Act and sets standards for drinking water and regulates drinking water systems. (Health and Safety Code Section 116270 et seq.)

16) Establishes the California Endangered Species Act and requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and generally prohibits the taking of those species. (Fish and Game Code Section 2050 et seq.)

17) Allows a court to award attorneys’ fees to a successful party in any action which has resulted in the enforcement of an important right affecting the public interest under the following circumstances:
   a) A significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons;
   b) The necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate; and
   c) Such fees should not in the interest of justice be paid out of the recovery, if any. (Code of Civil Procedure Section 1021.5.)

18) Provides that in an action involving a public entity, attorneys’ fees applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed as provided. (Ibid.)

19) Provides that costs or any portion of claimed costs shall be determined by the court in its discretion in a case other than a limited civil case, as provided, where the prevailing party recovers a judgment that could have been rendered in a limited civil case. (Code of Civil Procedure Section 1033 (a).)

20) Provides items of allowable costs that may be awarded to a prevailing party, which may include fees of expert witnesses ordered by the court. (Code of Civil Procedure Section 1033.5.)

21) Provides that a state agency may add to, revise, or delete text published in the California Code of Regulations without complying with the rulemaking process specified in the
Administrative Procedure Act only if the changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulation provision. Such additions, revisions, or deletions are considered a change without regulatory effect. (1 C.C.R. Section 100.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** The current federal administration has made little secret of its intention to undermine or rollback as many existing federal regulations related to protection of the environmental, public health, and worker rights as possible. The federal government’s actions are diametrically opposed to California’s ongoing efforts to combat global warming, protect endangered species, and recognize and support the dignity of work. Accordingly, in the face of potentially calamitous rollbacks of federal law, this bill would, generally, require specified state agencies to review any federal action to change existing law in these areas and, if such an action presents a rollback in the protections afforded under those laws, decide if enacting the existing federal standard as a regulation in California is appropriate. In support of this measure to protect the progress made in California, the author states:

California’s geographic, population, and economic size make its impact global in nature. The state’s vast size has also brought an enormous impact on the environment. California has long struggled with some of the most polluted air in the country, discharge of pollution into our water and soil has led to contamination that has degraded the environment and public health.

Over 40 years ago, the federal clean air, clean water, safe drinking water, endangered species, and worker protection acts were all adopted on a bipartisan basis in the 1970’s.

Over the past 3 years, the President and Congress have weakened, eviscerated, and rolled back hundreds of these environmental and worker protections.

SB 1 simply ensures those federal standards stay in place to protect everyday Californians -- even if the federal government rolls them back.

**Existing law provides for overlapping state and federal protections.** This bill implicates several federal laws, and associated regulations, that are at risk of rollback by the federal administration. Many of these laws were designed to provide for overlapping state and federal governance in order to best protect public health, workers, and the environment under the notion of cooperative federalism. At a minimum, the federal laws implicated by this measure recognized that many states were likely to have, or adopt, overlapping regulatory schemes.

The scheme of overlapping state and federal regulation provides both dangers and benefits to California during the term of the current administration. In many cases, California has simply relied on federal standards to protect workers and the environment. When the federal standards are sufficient, there is little risk for the state to defer to its federal partners to protect the general welfare. However, when an administration seeks to undermine federal law, the state’s reliance on the federal government becomes more perilous. However, thanks to the overlapping regulatory structure provided by many of the federal statutes implicated by this bill, the state is able to step in and protect workers and the environment in the wake of federal retreat.
A brief primer on the relevant federal laws. As noted above, this bill involves state actions that would occur in the event changes at the federal level weaken seven existing federal laws, and the regulations, opinions, and decisions designed to implement those laws. Accordingly below is a brief summary of the history and intent of those federal statutes:

**The Clean Air Act.** The federal Clean Air Act governs air pollution emitted from both mobile and stationary sources. The Act was originally adopted in 1975 and established the National Ambient Air Quality Standards. These standards, along with state implementation plans, were designed to bring pollution levels down within specified timelines. When the majority of states failed to meet the original deadlines, the Act was amended in 1977 and again in 1990 to establish new compliance dates. In California the California Air Resources Board has primary authority for enforcing mobile source pollutants, while local air quality management districts regulate stationary source pollution.

**The Clean Water Act.** The federal Water Pollution Control Act of 1948 was the first national law to regulate water pollution. The modern iteration of federal anti-pollution law was enacted in 1972 when Congress amended the Water Pollution Control Act into the Clean Water Act. The federal Clean Water Act establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the federal Clean Water Act, the United States Environmental Protection Agency has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The federal Clean Water Act made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water. In California, the State Water Resources Control Board has delegated authority to enforce the National Pollutant Discharge Elimination System.

**The Safe Drinking Water Act.** The federal Safe Drinking Water Act was adopted by Congress in 1974 to protect public health against toxins in the water supply. The United States Environmental Protection Agency oversees the Act at the federal level and national health-based standards for drinking water to protect against both naturally-occurring and anthropogenic contaminants that may be found in drinking water. The national standards address a range of contaminants from agricultural run-off including pesticides and animal waste, to underground injection control protocols governing the oil and gas industry, to naturally occurring heavy metals and other toxic substances. The federal Safe Drinking Water Act provides a framework for coordination between the federal government, states, and local water agencies. In California the state has been granted primacy by the United States Environmental Protection Agency and several state agencies have delegated authority to implement and enforce various aspects of the law.

**The Endangered Species Act.** The Federal Endangered Species Act broadly seeks to protect species in the United States and governs import of endangered species in accordance with international treaties. The Act is administered by the United States Fish and Wildlife Service and the National Marine Fisheries Service. Of relevance to this bill the Act provides that species of plants and animals may be listed as either endangered or threatened. "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the
foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened. In addition to the regulations that implement the law, the Endangered Species Act permits federal agencies to publish biological opinions that utilize scientific evidence to opine as to how government actions, and projects, may impact endangered species. These opinions then serve as scientific basis for agency actions including the issuance of species take permits.

**The Fair Labor Standards Act of 1938.** Originally proposed at the height of the Great Depression and enacted in 1938, the Act provides for the eight hour workday, forty-hour workweek, minimum wage, and the provision of time-and-a-half overtime pay for workers. Additionally, the Act dramatically limited the use of child labor. The Act has been amended numerous times since the 1930’s to reflect increases in the minimum wage and attempts to ameliorate the gender wage gap.

**The Occupational Safety and Health Act.** Originally enacted in 1970, the federal Occupational Health and Safety Act establishes minimum safety and health standards for a variety of occupations and associated exposures to harmful toxins. The Act also established the federal Occupational Safety and Health Administration. The Act sets standards for a range of topics including asbestos, fall protection, cotton dust, trenching, machine guarding, benzene, lead and bloodborne pathogens. The Act requires employers to provide employees with a workplace that is free of serious hazards and requires employers to strive to eliminate hazards rather than simply mitigate their impact.

**Coal Mine Health and Safety Act of 1969.** The Act provided for the creation of the Mine Safety and Health Administration. That administration’s powers, and many provisions of the Act, generally mirror the Occupational Safety and Health Act as adopted to the mining industry.

**This bill.** Seeking to prevent a backsliding of the federal regulatory structure as it existed prior to the current federal administrative taking office, this bill establishes a minimum baseline for environmental, public health, and labor standards. The baseline is set as the federal standard that existed prior to the current federal administration assuming office. The bill provides that the California Air Resources Board, the State Water Resources Control Board, the Fish and Game Commission, the Department of Industrial Relations, and the Occupational Safety and Health Standards Board must review applicable standards every quarter to determine if federal action has resulted in a federal standard falling below the baseline. In the event that a federal action results in a federal regulation falling below the baseline, the bill enables the above mentioned agencies to enact the federal baseline as a regulation on an expedited basis. Additionally, because many of the above mentioned statutes contain so-called “citizen suit” provisions, whereby the public may step in and file a lawsuit to enforce the law, this bill provides that for certain federal statutes, should a federal citizen suit provision be substantially restricted, conditioned, abridged, or repealed, such a suit may be brought under California law.

In the context of the Endangered Species Act, the bill freezes certain permit conditions and biological opinions as they were in the prior administration. Further, the bill applies various provisions of the California Endangered Species Act to the Central Valley Project water conveyance system operated by the federal Bureau of Reclamation. Finally, this bill provides that the statutes and regulations adopted pursuant to this bill are to remain in effect until January
20, 2025, which happens to be the absolute late date in which the federal administration could be in office under current provisions of the United States Constitution.

**State authority to adopt former federal regulations.** As noted, the federal laws implicated by this bill, by design, envisioned a role for the state to play in furthering the policy goals of the federal government. Nonetheless, should the state attempt to take an action that conflicts with federal authority, Article VI of the Constitution and a lengthy body of case law provide that the state law would be preempted. The Supreme Court noted, “Under the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” (*Gade v. National Solid Waste Management Association* (1992) 505 U.S. 88, 108.)

This bill provides a framework for state agencies to adopt former federal standards in the event that the current administration weakens the federal law and thereby leaves a void in the regulatory framework. Because many of these frameworks envisioned a role for the state, statutory authority for such actions is already present in the federal law. For example, the Safe Drinking Water Act states, “[n]othing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.” (42 U.S.C. Section 300g-3(e).) Most of the other statutes involved in the bill contain similar provisions. (*See, e.g. 33 U.S.C. Section 1370, Clean Water Act; 29 U.S.C. Section 218(a), Fair Labor Standards Act; 30 U.S.C. Section 955, Federal Coal Mine Health and Safety Act; 29 U.S.C. Section 653(b)(4); Occupational Health and Safety Act.*) Given that the regulatory process provided by this bill would only occur in the event that the federal government weakened its standards, the state would be free to step up and occupy the regulatory space previously held by the federal government.

The only statute that may present preemption issues is the Clean Air Act. The powers that the Act gives to states to adopt additional standards varies according to the source of the pollutant. As to fixed-point sources of air pollution, states retain the authority to set their own standards, so long as those standards are not less stringent than the federal law. (42 U.S.C. Section 7416.) By contrast, states are generally preempted from setting their own standards as to moving sources of air pollution. (42 U.S.C. Section 7543 (a).) California’s Clean Cars program, and associated exemptions from the Clean Air Act permitting the state to set its own emission standards, are currently the subject of intense debate between the state and federal government. Additionally, states are unable to regulate non-road vehicles, particularly airplanes. Furthermore, unlike the other statutes involved in this bill, California’s clean air rules are overseen at both the state and local level. The California Air Resources Board has authority to regulate mobile pollution sources (i.e. vehicles), while the regional air quality districts regulate stationary pollution sources. This bill would vest all authority to establish federal baseline rules in the California Air Resources Board. Despite the existing delineation of authority, given the need for uniformity in adoption of the former federal rules, the California Air Resources Board appears to be the appropriate authority to carry out the regulatory duties specified in this bill.

**Citizen lawsuits and delegated authority.** All of the environmentally focused federal laws implicated by this bill contain provisions authorizing a so-called “citizen suit,” whereby a citizen can step into the place of a government regulator to enforce the law. (Safe Drinking Act (42 U.S. Code § 300j–8); Clean Water Act (33 U.S.C. Sec 1365); Clean Air Act (42 U.S.C. § 7604); and Endangered Species Act (16 U.S.C. § 1540 (g).) After significant negotiations between the
stakeholders supporting and opposing this measure, a compromise was recently reached regarding the citizen suit provisions. This compromise is reflected in the current in-print version of this measure. As originally drafted this bill would have permitted the state agencies charged with implementing this bill to authorize state-level citizen suits should the federal suit provisions be undermined, utilizing the agencies’ authority under either state or federal law. These provisions may have provided citizen suit authority to enforce state environmental laws where none previously existed. Accordingly, the compromise proposal authorizes a state-based citizen suit to seek enforcement of federal laws should the citizen suit provisions in those laws be undermined, but does not create a new tool for enforcing existing state laws.

The compromise also appears to solve issues related to the state’s delegated authority and the citizen suit provisions. As noted above, some state agencies operate under agreements with the federal government to carry out federal law. For example, the National Pollutant Discharge Elimination System is enforced by the State Water Resources Control Board under delegated authority from the federal government. Had the Board been required to adopt the citizen suit via its delegated authority, the door would have been opened for the current administration to seek to revoke such a delegation. This bill now automatically triggers the new state-level cause of action without agency action. Thus, as a result of the compromise, the risk of losing delegated authority would seem to be diminished.

The citizen suit provisions reflect most existing state laws authorizing non-governmental enforcement of environmental laws. In viewing the origins of the citizen suit provisions in federal environmental laws, legal scholars have noted, “Congress knew that despite the cooperative federalist regulatory scheme, government would never be fully able to enforce the law. Congress knew that effective enforcement of environmental law would require government to have, as two scholars have described it, the ‘friendship of the people.’” (Reisinger, Dougherty, & Moser, Environmental Enforcement and the Limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick Up the Slack? 20 Duke Envtl. L. & Policy 9-10 (2010).) Although California has not adopted similar provisions in the environmental laws implicated by this bill, the state has provided private rights of action for other environmental laws. For example, the Safe Drinking and Toxic Enforcement Act of 1986, better known as Proposition 65, authorizes citizens to stand-in for the government and file lawsuits. That Act recognizes that government authorities should be afforded an opportunity to enforce the law prior to a citizen commencing suit. Accordingly, that Act requires plaintiffs to notify certain government law enforcement officials prior to commencing a citizen lawsuit.

Recognizing the government’s role in enforcing environmental laws, this bill appears to be modeled on many of the notice requirements provided in the Safe Drinking and Toxic Enforcement Act of 1986. This bill requires that a 60-day notice be provided to the Attorney General and the counsel for applicable state agency, a district attorney, county counsel, counsel of the local agency, and prosecutor, prior to the commencement of a lawsuit. This bill provides that independent citizens are only authorized to pursue their claims if the government does not act. This provision appears wholly appropriate in light of the existing legal framework.

The Administrative Procedure Act and the public’s right to participate in governmental decisions. California’s Administrative Procedure Act is designed to enhance transparency and the public’s ability to participate in government. Accordingly, most regulations enacted by a state agency are subject to a formal rulemaking process. The process requires a proposed regulation to be published to the California Regulatory Notice Register and be subject to a 45-
day public comment period. Before a regulation can be formally adopted, the agency must respond to the comments received from the public. (https://oal.ca.gov/rulemaking_process/.) Recognizing that a 45-day timeline may be too lengthy in the event of an emergency, the Administrative Procedure Act also provides for emergency rulemaking that may be utilized by an agency to avoid serious harm to the public peace, health, safety, or general welfare, or if a statute deems a situation to be an emergency. (Government Code Section 11342.545.) Emergency regulations, however, are only permitted to remain in effect on a temporary basis until the emergency has subsided, or permanent regulations are adopted. The emergency rulemaking process provides the public with five days to comment on the proposed regulation; however, the agency is not required to respond to those comments. (Title 1, C.C.R. Section 55.)

At the core of this bill is an extensive legislative directive for state agencies to conduct, or at a minimum consider, rulemaking. However, unlike regular rulemaking in which an agency can commence the process at any time, this bill necessitates state action only after the federal government acts. Accordingly, this bill provides a modified process for agency rulemaking. First, this bill requires an agency to publish to the California Regulatory Notice Register a list of all changes to relevant federal standards that may impact California, and the agency’s assessment of whether that change lessened the prior standard. That assessment must be online for at least 30 days prior to any additional agency action, and the agency must receive comment from the public regarding the assessment. If an agency chooses to initiate a rulemaking, the agency may then proceed in utilizing the emergency regulation process, or by promulgating or amending a state policy, plan, or regulation. Under existing law, promulgating or amending a state policy, plan, or regulation without proceeding through the formal rulemaking process would be considered an unlawful underground regulation. This bill, however, deems such actions to be a change without regulatory effect, thereby permitting the agency to bypass the rulemaking process entirely.

By permitting a state agency to bypass the formal rulemaking process, this bill would significantly limit the public’s ability to engage with state agencies on the adoptions of regulations pursuant to this bill. The proponents of this bill note that the bill provides for 30 days of comment on the agency’s list and associated assessment of the federal action, however, there is no formal requirement that agencies solicit comment on the regulations themselves. It should be noted, as well, that there is little on-point case law to provide guidance as to whether the Legislature can preemptively deem the adoption of a prior federal standard in the California Code of Regulations to be a change without regulatory effect without impermissibly delegating legislative authority to a state agency. Under California law, the Legislature may not confer upon an administrative agency unrestricted authority to make fundamental policy decisions. (People v. Wright (1982) 30 Cal.3d 705, 712.) However, “after declaring the legislative goals and establishing a yardstick guiding the administrator, it may authorize the administrator to adopt rules and regulations to promote the purposes of the legislation and to carry it into effect.” (Ibid.)

By providing that the state agency may only utilize the streamlined regulatory process when adopting the baseline federal standards without substantial modification, this bill appears to provide a sufficient “yardstick” to the administrative agency. However, given that the regulations passed by the state agencies are critical to carrying out the intent of the bill, the author may wish to clarify these provisions to better mirror existing state laws. As this bill progresses, the author and proponents of this bill may accomplish this clarity through one of two ways. First, an amendment could be taken to substitute the language deeming certain actions to be changes without regulatory effect with a full Administrative Procedure Act exemption. Such
an exemption is well within the authority of the Legislature. Secondly, to ensure the public may participate in the process, the author and proponents may also choose to simply utilize the emergency regulation process and amend out the second method for promulgating regulations. As noted above, the Legislature is well within its authority to deem any situation to be an emergency, thereby permitting an agency to proceed with emergency rulemaking without the need to make any finding of that nature. In fact, this bill already makes such a finding and provides the timelines for which the regulations would remain in effect, thereby preserving the emergency regulations in law beyond the timeline traditionally provided to emergency regulations.

The Endangered Species Act and California’s water conveyance systems. After the stakeholders supporting and opposing this measure reached agreement regarding the citizen suit provisions of the bill, the most contentious issue remaining involves the interplay between the state and federal endangered species acts and the state and federal water projects. Both endangered species and water conveyance are well outside the boundaries of this Committee’s traditional jurisdiction, therefore, this Committee is not proposing any amendments to address the issues raised by the stakeholders. Nonetheless, the topic presents significant issues regarding federalism and the state’s ability to impose conditions on a federal project, and thus will be analyzed in more detail below.

Unlike the provisions of this bill related to air, water, and labor law standards, the provisions of this bill related to the Endangered Species Act go beyond simply the statute and implementing regulations. For the purposes of the Endangered Species Act, this bill sets the baseline standard to also include any incidental take permits, incidental take statements, or biological opinions in effect as of January 19, 2017. The bill additionally calls upon the California Fish and Game Commission to consider listing species as endangered under the California Endangered Species Act should they be delisted from the federal act. As noted above, a biological opinion is issued any time a project may impact an endangered species. The opinion then serves as the scientific foundation for take permits issued to projects and other operational parameters necessary to protect species and their habitat. One such project subject to biological opinions is the Central Valley Project, the federally operated water conveyance project in California that provides critical water resources to, among others, California’s agricultural industry in the Central Valley. After years of litigation regarding the impact of the Central Valley Project, and the state-run California State Water Project, on fish and other species that rely on habitat in the Sacramento-San Joaquin River Delta, the state and federal government and water users are embarking on a series of voluntary agreements to restore habitat and protect the Delta. These voluntary agreements are based on the scientific evidence provided in the biological opinions and are designed to evolve as scientific understanding of the Delta and California’s river ecosystems evolve.

This bill proposes to freeze these biological opinions. Opponents to this bill, including agricultural interests and some of California’s largest urban water districts, argue that freezing biological opinions as they stood in January 2017, undermines evolving science and makes protecting the Delta difficult. They note that new biological opinions are being drafted related to California’s water projects to reflect new science. The proponents of this measure, however, note that the current federal administration has a long track record of ignoring science in favor of politically motivated decision making, especially as it relates to environmental protections. (Lisa Friedman, *E.P.A. Announces a New Rule. One Likely Effect: Less Science in Policymaking.* NY Times (Apr. 24, 2018).) Accordingly, in keeping with this bill’s goals of preventing the current
federal administration from undermining environmental policy, preserving existing biological opinions appears warranted, in light of the fact that there is no guarantee the current United States Fish and Wildlife Service will be permitted to utilize proper science when updating the biological opinions.

Beyond seeking to preserve existing biological opinions, permits, and empowering the Fish and Game Commission to protected species under California law that were previously protected by federal law, this bill also deems provisions of the California Endangered Species Act to be measures “relating to the control, appropriation, use, or distribution of water” within the meaning of the Reclamation Act of 1902, and applies the California Endangered Species Act to the United States Bureau of Reclamation’s operation of the federal Central Valley Project. The opponents of this measure fear that this an unlawful state encroachment into federal affairs and that such encroachment will derail the cooperative efforts to maintain voluntary agreements to protect the Delta as the parties may have to litigate the impacts of this bill. The proponents contend that the state is well within its authority under federal law to dictate conditions on federal water projects.

The state’s ability to dictate conditions to the federal Central Valley Project turns on an interpretation of Section 8 of the Reclamation Act of 1902 which provides, in part, that, “nothing in the Act relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder…shall proceed in conformity with such laws.” (43 U.S.C 372.) The Reclamation Act was enacted at a time when the federal government was highly deferential to evolving state water laws and envisioned cooperative federalism to be critical to western irrigation projects. Representative of the sentiment of the time, then-President Theodore Roosevelt, while discussing western water law, stated, “the distribution of the water, the division of the streams among irrigators, should be left to the settlers themselves in conformity with state laws and without interference in those law.” (H.R Doc. No. 1, 57th Congress, 1st Session, XXVII (1901).)

The federal government and the State of California have litigated the provisions of Section 8 several times, particularly debating the meaning of the term “control” in the statute. In upholding the State Water Resources Board’s ability to condition permits on the construction of the reservoirs necessary to supply the Central Valley Project, the Supreme Court noted that the Bureau of Reclamation’s guidance to the Project has stated, “reclamation law recognizes state water law and rights thereunder,” and that, “Congress [has] consistently reaffirmed that the Secretary should follow state law in all respects not directly inconsistent with [federal] directives.” (California v. United States 438 U.S. 645, 676, 678.) Building on that seminal case, the courts have also upheld state fish and wildlife regulations in relation to federal water projects holding that “absent displacement by another federal statute, Section 8 requires the Bureau of Reclamation to comply,” with state laws. (Natural Resources Defense Council v. Patterson (2004) 333 F.Supp 2d 906, 914.) However, when a separate federal statutes provides for what is considered a, “broad and paramount federal regulatory role,” Section 8 of the Reclamation Act does not necessarily preserve state control in relation to protecting fish and other endangered species. (California v. Federal Energy Regulatory Commission et al. (1990) 495 U.S. 490, 499.)

As it related to the Central Valley Project, both the federal Endangered Species Act and the 1992 Central Valley Project Improvement Act (43 Pub. Law. 102-575 Section 3401 et seq.) play a role in the determination of whether or not the state may impose its own endangered species law onto
the project. Of note to this bill Section 3406 of the Central Valley Project Improvement Act states:

The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. 1531 et seq., and all decisions of the California State Water Resources Control Board establishing conditions on the applicable licenses and permits for the project. (43 Pub. Law. 102-575 Section 3406.)

It should be noted that this statutory language cites the federal Endangered Species Act and the State Water Resources Control Board’s authority regarding water rights. However, the statute does not cite the California Endangered Species Act. Accordingly, it is unclear whether or not federal Endangered Species Act specifically governs the project and fully occupies the regulatory space. Courts generally permit states to carve out stricter endangered species regulations than the federal government (see, e.g. Palladio, Inc. v. Diamond (1970) 321 F.Supp. 630, and Cresenzi Bird Importers, Inc. v. State of New York (S.D.N.Y.1987) 658 F.Supp. 1441), however, it is less clear if the state can dictate those regulations to the federal government itself. If a court were to deem the federal Endangered Species Act to be sufficiently “broad and paramount” in protecting species as it relates to the Central Valley Project, following the Supreme Court’s holding in California v. Federal Energy Regulatory Commission, those provisions of this bill would be preempted. However, the proponents of this bill point to a 2008 memorandum from the United States Bureau of Reclamation recognizing the need to protect the longfin smelt, a species listed under the California Endangered Species Act. They contend that this memo, in addition to prior court decisions applying state fish and wildlife laws to the federal project, demonstrates that this bill is a permissible exercise of state authority under Section 8 of the Reclamation Act of 1902.

Needless to say, the existing case law is varied on the subject, and thanks to voluntary cooperation regarding Delta restoration, no case has directly opined on the applicability of the California Endangered Species Act to the federal Central Valley Project. As this bill has progressed through the Legislature, the stakeholders supporting and opposing this bill have already reached agreement on several highly technical, and controversial, aspects of this bill. Given the ambiguity of the existing law, the importance of the ecological health of the Sacramento-San Joaquin River Delta, and the significant implications of the bill on the future of the voluntary agreements for California’s water conveyance system, it would likely behoove all stakeholders to the bill to continue to negotiate these provisions as this bill advances beyond this Committee.

The current federal administration is not the first to contest California’s progressive policies. The present administration is not the first to attack California’s progressive policies, and while many people may express that the current administration is the best in history at exaggerating its accomplishments, the administration has shown a remarkable inability to properly use the tools of the regulatory state. A recent study by the Sabin Center for Climate Change Law at Columbia University notes that the current administration has yet to win a major court challenge to any of its attempts to undo Obama-era environmental regulations. (Dena Adler, U.S. Climate Change Litigation in the Age of Trump: Year Two, Columbia Law School- Sabin Center for Climate Change Law (June 2019) available at: http://columbiaclimatelaw.com/) In fact, the administration’s inability to adhere to basic principles of administrative law and procedure resulted in a recent rebuke from the Supreme Court and the denial of the administration’s attempt
to place a question regarding immigration status on the 2020 Census.  (*Department of Commerce v. New York, (U.S. Jun. 27, 2019).*) No. 18-966.)

Despite the administration’s numerous failures in court, it continues to threaten California’s existing policies and future priorities. Accordingly, this bill is certainly justified. However, the bill provides an existing sunset date that appears directly aimed at the present administration. As noted, this is not the first time a Presidential administration has tried to undermine environmental and worker protections. After the Bush Administration rolled back a provision of the Clean Air Act called “new source review,” which was a set of rules that required industrial facilities like refineries and power plants to install modern pollution control equipment, the Legislature enacted SB 288 (Sher, Chap. 476, Stats. of 2003) which prohibited air quality management districts from amending or revising its new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002. In fact, many provisions of this bill can trace their origins to that legislation. However, despite that bill, the Legislature is again confronting an attack on California policy. In order to ensure that the Legislature is not forced to enact future legislation should another, perhaps more effective, administration again take aim at California’s policies, the author may wish to eliminate the sunset date provided in this bill. Nonetheless, California and its forward thinking policies face a critical threat from the federal government. This bill is a worthy measure to ensure that California’s environmental and labor goals are not undermined.

**ARGUMENTS IN SUPPORT:** This bill is supported by an expansive coalition of environmental and labor organizations. The support coalition states:

While California has long been a leader in protecting our natural resources, many of our environmental protections are built on a foundation of federal standards. Similarly, when it comes to enforcement of worker safety, we rely on a patchwork of state and federal rules to protect workers from catastrophic injuries. SB 1 is designed to strengthen that foundation by incorporating into state law existing federal protections for clean air, clean water, endangered species, worker safety, and safe drinking water when federal standards dip below certain baseline protections.

SB 1 adopts common-sense measures to allow California to continue on a path to economic and environmental sustainability – and reject the false choice that economic progress must come at the expense of public health, the vitality of our natural surroundings, and a healthy environment for all. For these reasons, we strongly support SB 1.

**ARGUMENTS IN OPPOSITION:** This measure is opposed by a large coalition of business, agricultural and water interests as well as some local governments. The coalition states:

SB 1 threatens to undermine current state efforts to utilize science-based decision making to manage and provide reliable water supplies for California and protect, restore, and enhance the ecosystems of the Bay-Delta and its tributaries. As drafted, the bill handcuffs the California Department of Fish and Wildlife from being able to apply new science, new adaptive management practices and or consider new on the ground conditions when issuing Biological Opinions (BiOps), Incidental Take Permits or Incidental Take Statements pursuant to the Endangered Species Act by effectively freezing all permits to the January 19, 2017 date certain. In many cases, these permits rely on decades old science and now outdated on the ground conditions.
SB 1’s rigid approach to water management is counterproductive to the historic suite of integrated actions under the voluntary plan envisioned by the Brown and Newsom administrations. Voluntary agreements are essential to advancing a comprehensive approach of flow and non-flow measures to provide reliable water supplies for all of California. SB 1 prevents their full implementation by preventing the Department of Fish and Wildlife from allowing any changes to the BiOps or incidental take permits that may be included in the voluntary agreements.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

- 350 Bay Area Action
- 350 Sacramento
- 350 South Bay Los Angeles
- American Sportfishing Association
- Audubon California
- AZUL
- Breast Cancer Prevention Partners
- California Association of Local Conservation Corps
- California Association of Professional Scientists
- California Catholic Conference
- California Coastal Protection Network
- California Coastkeeper Alliance
- California Environmental Justice Alliance
- California Interfaith Power & Light
- California Labor Federation, AFL-CIO
- California League of Conservation Voters
- California Professional Firefighters
- California ReLEAF
- California State Association of Electrical Workers
- California State Parks Foundation
- California State Pipe Trades Council
- Californians Against Waste
- Central Valley Air Quality Coalition
- Clean Water Action
- Coachella Valley Waterkeeper
- Coalition for Clean Air
- Community Action to Fight Asthma
- Defenders of Wildlife
- East Bay Municipal Utility District
- Environment California
- Environmental Defense Center
- Environmental Defense Fund
- Environmental Water Caucus
- Environmental Working Group
- Eric Garcetti, Mayor of Los Angeles
- Fossil Free California
Friends Committee on Legislation of California
Heal the Bay
Health Officers Association of California
Humboldt Baykeeper
Latino Outdoors
League of Women Voters of California
Los Angeles Waterkeeper
Midpeninsula Regional Open Space District
Mono Lake Committee
Monterey Bay Aquarium
Monterey Coastkeeper
Natural Resources Defense Council
Nextgen California
Orange County Coastkeeper
Planning and Conservation League
Protect American River Canyons
Restore The Delta
Russian Riverkeeper
San Diego 350
San Diego Coastkeeper
Santa Barbara Channelkeeper
Save Our Shores
Save The Bay
Seventh Generation Advisors
Sierra Club California
South Coast Air Quality Management District
State Building & Construction Trades Council of California
Surfrider Foundation
The 5 Gyres Institute
The Nature Conservancy
The Otter Project
The Trust for Public Land
UDW/AFSCME Local 3930
Voices for Progress
Western States Council Sheet Metal, Air, Rail and Transportation
Wildcoast
Yuba River Waterkeeper
Zero Waste USA

**Opposition**

African American Farmers of California
Almond Alliance of California
American Coatings Association
American Pistachio Growers
Antelope Valley East Kern Water Agency
Association of California Water Agencies
Auto Care Association
Bizfed Central Valley
Brea Area Chamber of Commerce
Byron-Bethany Irrigation District
Building Owners and Managers Association
California Agricultural Aircraft Association
California Association of Relators
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Citrus Mutual
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Forestry Association
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Producers
California Manufacturers and Technology Association
California Metals Coalition
California Paint Council
California Poultry Federation
California Restaurant Association
Camarillo Chamber of Commerce
CAWA – Representing the Automotive Parts Industry
Central Coast Water Authority
Chemical Industry Council of California
Coachella Valley Water District
Construction Employers Association
Desert Water Agency
Dudley Ridge Water District
El Dorado County Chamber of Commerce
El Dorado Irrigation District
Elk Grove Chamber of Commerce
Family Business Association of California
Far West Equipment Dealers Association
Folsom Chamber of Commerce
Forest Landowners of California
Fresno; County of
Friant Water Authority
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Household and Commercial Products Association
International Council of Shopping Centers
Kern; County of
Kern County Water Agency
Kern County Hispanic Chamber of Commerce
Kings; County of
Madera; County of
Merced; County of
Mojave Water Agency
Murrieta Wildomar Chamber of Commerce
NAIOP of California
National Federation of Independent Business
Nisei Farmers League
Northern California Water Association
North of the River Chamber of Commerce
Oxnard Chamber of Commerce
Palmdale Water District
Rancho Cordova Chamber of Commerce
Regional Water Authority
Roseville Chamber of Commerce
Rowland Water District
San Bernardino Valley Municipal Water District
San Gabriel Valley Municipal Water District
San Joaquin; County of
San Joaquin River Exchange Contractors Water Authority
San Luis Delta-Mendota Water Authority
Santa Clarita Valley Water Agency
Santa Maria Valley Chamber of Commerce
Stanislaus; County of
State Water Contractors, Inc.
Southwest California Legislative Council
The Metropolitan Water District of Southern California
Torrance Chamber of Commerce
Tulare; County of
Tulare Chamber of Commerce
United Ag
United Water Conservation District
Valley Ag Water Coalition
Valley Industry and Commerce Association
Walnut Valley Water District
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plant Health Association
Western States Petroleum Association
Western Wood Preservers Institute
Westlands Water District

Oppose Unless Amended

Association of California Cities- Orange County
City of Compton- Water Department
Cucamonga Valley Water District
El Monte/South El Monte Chamber of Commerce
Foothill Municipal Water District
Glendora Chamber of Commerce
Greater West Covina Business Association
Inland Empire Utilities Agency
La Verne Chamber of Commerce
Los Angeles Area Chamber of Commerce
Orange County Business Council
North Orange County Chamber of Commerce
Santa Clara Valley Water District
The Metropolitan Water District of Southern California
Regional Chamber of Commerce San Gabriel Valley
San Gabriel Valley Economic Partnership
San Joaquin River Exchange Contractors Water Authority
Southern California Water Coalition
Three Valleys Municipal Water District
Western Municipal Water District

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334
July 12, 2019

Mr. Jared Blumenfeld
Secretary for Environmental Protection
California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812-2815

Mr. Wade Crowfoot
Secretary, California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Secretaries Blumenfeld and Crowfoot,

The above water agencies, who comprise the majority of the participants in the Voluntary Agreements process to update the State Water Resources Control Board’s Bay-Delta Water Quality Control Plan, are very concerned about the current Endangered Species Act (ESA) provisions in Senate Bill 1 (Atkins). In our view, these provisions, if not amended, would undermine our collective efforts to participate in and help advance the Voluntary Agreements, leading to further declines in fish and wildlife and water supply reliability throughout California.
While we understand the stated intent of the bill, the onerous provisions of the ESA section will undermine our progress on Voluntary Agreements, and most importantly, the ongoing efforts to improve conditions for fish and wildlife while providing reliable water supplies for cities, rural communities, and farms throughout California. As such, we encourage you and the Administration to work with the bill’s author to amend this section.

While SB 1 proposes to maintain the status quo of regulatory protections for the environment, natural resources, and public health, it fails to recognize that in the case of the Bay-Delta watershed (which includes all of the Sacramento and San Joaquin basins), the regulatory status quo is based on decades-old science. Our agencies have worked tirelessly to voluntarily conduct research, pilot projects, numerous enhancements for fish and wildlife, and other activities to support a paradigm shift in how we manage water resources for multiple uses, including for people and the environment. As you know, our hope is that we can finally start to manage our water resources in a manner that is responsive to actual conditions, including climate change and its associated whiplash events, and to emerging information as research helps us to better understand how to adjust activities to protect fish and use water more efficiently.

Despite the existing provision that the bill “does not affect the process by which voluntary agreements are entered into,” the current ESA provisions in SB 1 run counter to our efforts on the Voluntary Agreements and they point California backwards. As an example, SB 1 seeks to treat 10-year old biological opinions as a protective standard, regardless of the current understanding or information and science that will continue to emerge. It circumvents our robust regulatory processes, which are on the verge of expanding the ability to implement true adaptive management.

If SB 1 is enacted with the currently drafted ESA provisions, it would send a signal that adaptive management, and adjustments over time to incorporate our collective learning, are unnecessary. If true, there is no sense in implementing the Voluntary Agreements which are predicated on the ability to test hypotheses, make adjustments over time, and work collaboratively to achieve the best outcomes possible with our collective resources. Additionally, it would create confusion and conflict between federal and state agencies and water agencies over state regulations that would be required to replace baseline federal standards that may be changed or eliminated. It would create a situation under which the Central Valley Project (CVP) and State Water Project (SWP) would arguably be operating under two different sets of permitting regimes, which would create unnecessary conflict in water management decision making and risk causing operational disruption in the Delta. The net result is that it would make implementation of future Voluntary Agreements virtually impossible.

We appreciated the Governor’s call in the State of the State address that “our collective effort must be to cross the finish line on real agreements to save the Sacramento-San Joaquin Bay-Delta. We must get this done for the resiliency of our mighty rivers, for the stability of our agricultural sector, and for the millions of people that depend upon this water every day.” We also appreciate the Administration’s continued high-level engagement on the Voluntary Agreements which are the best chance for timely, science-based adaptive management that can change the current trajectory for many threatened and endangered species.
Now is the time for all of us to work together and move forward to implement the Voluntary Agreements in a progressive and innovative manner. To do this, we encourage you to work with the author’s office to amend the ESA section by striking the provision relating to biological opinions and incidental take permits, as well as striking the provision that attempts to apply the California Endangered Species Act to the Central Valley Project. Failure to resolve these issues will force Governor Newsom into an unnecessary choice between upending the Voluntary Agreements and the best chance for species recovery in the Delta and its tributaries, or failing to uphold other environmental, public health, and worker protections for the people of California. That’s a choice no Governor should have to make.

The amendments described above will allow the state to respond to changes in the status of threatened and endangered species, and will enable SB 1 to achieve its goal to protect California’s environment from any future rollbacks in federal standards. The future of California water and species recovery in the Delta and its tributaries depend on the Administration, the Legislature, and water and environmental stakeholders finding a path that will allow the Voluntary Agreements to achieve the promise of a fresh approach to water management in California.

We look forward to working with you in this vitally important effort.

cc: Christine Hironaka, Deputy Cabinet Secretary, Office of Governor Newsom
    Sonya Logman, Deputy Cabinet Secretary, Office of Governor Newsom
    Rachel Wagoner, Deputy Legislative Secretary, Office of Governor Newsom
    Bill Lyons, Agriculture Liaison, Office of Governor Newsom
Summary of “Drought Resiliency and Water Supply Infrastructure Act”

- Expands and updates Bureau of Reclamation funding authorizations in the Water Infrastructure Improvements for the Nation (WIIN) Act (Public Law 114-322).

- **Authorizes the following funding** (all at the fiscal year 2019 level extended over 5 years):
  - $670 million for surface and groundwater storage projects, and supporting conveyance
  - $100 million for water recycling projects
  - $60 million for desalination projects

- **Creates a new loan program at 30-year Treasury rates (currently about 2.6%) for water supply projects** known as the Reclamation Infrastructure Finance and Innovation Act (RIFIA):
  - The $150 million authorized funding level would make available $8 to $12 billion in lending authority for the low-interest loans
  - The loans would use existing criteria under the successful WIFIA program (the Water Infrastructure Finance and Innovation Act)
  - The Bureau of Reclamation would recommend which projects should receive funding and EPA would administer the loans, per an agreement they are required to complete by October 2019 under existing law

- **Authorizes $140 million for restoration and environmental compliance projects**, including forest, meadow and watershed restoration projects with water benefits and projects to help restore threatened and endangered species affected by Bureau of Reclamation water projects.

- **Provides a fiscally realistic way for Reclamation to assist with drought resiliency projects.**
  - Given federal budgets, the federal government can no longer pay up front the full cost of western water projects under the traditional Bureau of Reclamation model.
  - At much lower federal cost, the bill facilitates water supply projects by combining
    - grants for up to 50% of the cost of federally-owned projects and up to 25% of the cost of state and local-led projects, with
    - loans at the 30-year Treasury rate (currently about 2.6%) to help water districts afford their cost-share for state, local, and tribal projects. Repayment can be deferred until 5 years after substantial completion of the project, and the loans’ duration is 35 years.

- Because Congressional authorization for each individual project typically adds many years to the already lengthy process for project approval, allows Congress to approve funding for each project more expeditiously through the existing appropriations process.

- The bill also includes two offsets:
  - It extends the existing WIIN Act provisions allowing water districts to prepay their outstanding capital debts and convert to indefinite length water supply contracts.
  - It sets up a process to deauthorize inactive water recycling project authorizations.