



- Board of Directors
Bay-Delta Committee

12/8/2020 Board Meeting

7-4

Subject

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

Executive Summary

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

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

Details

Background

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

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

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

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

Delta Conveyance Project – Increased Investment, Increased Reliability

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

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

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

Project Cost Assessment/Preliminary Project Benefits

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

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

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

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

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

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

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

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

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

Funding Agreement

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

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

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

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

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

DCA Governance and Amendment

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

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

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

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

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

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

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

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

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

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

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

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

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

CEQA determination for Option #3:

None required.

Board Options

Option #1

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

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

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

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

Option #2

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

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

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

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

Option #3

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

Fiscal Impact: None

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

Option #4

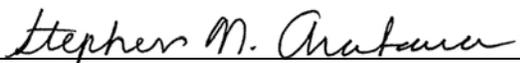
Do not consider the environmental documentation and do not authorize additional activities related to DCP at this time.

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

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

Staff Recommendation

Option # 2

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

 11/25/2020
 Jeffrey Kightlinger Date
 General Manager

Attachment 1 – DWR Letter dated October 23, 2020

Attachment 2 – DWR's Planning Schedule for DCP

Attachment 3 – Summary of Key Terms of Funding Agreement

Attachment 4 - Summary of Key Changes to DCA JPA

Attachment 5 – Proposed DCA Board Seats by Contractor Class

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STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, *Governor***DEPARTMENT OF WATER RESOURCES**1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

October 23, 2020

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

Dear Ms. Pierre:

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

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

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

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

The Department looks forward to board action by your members.

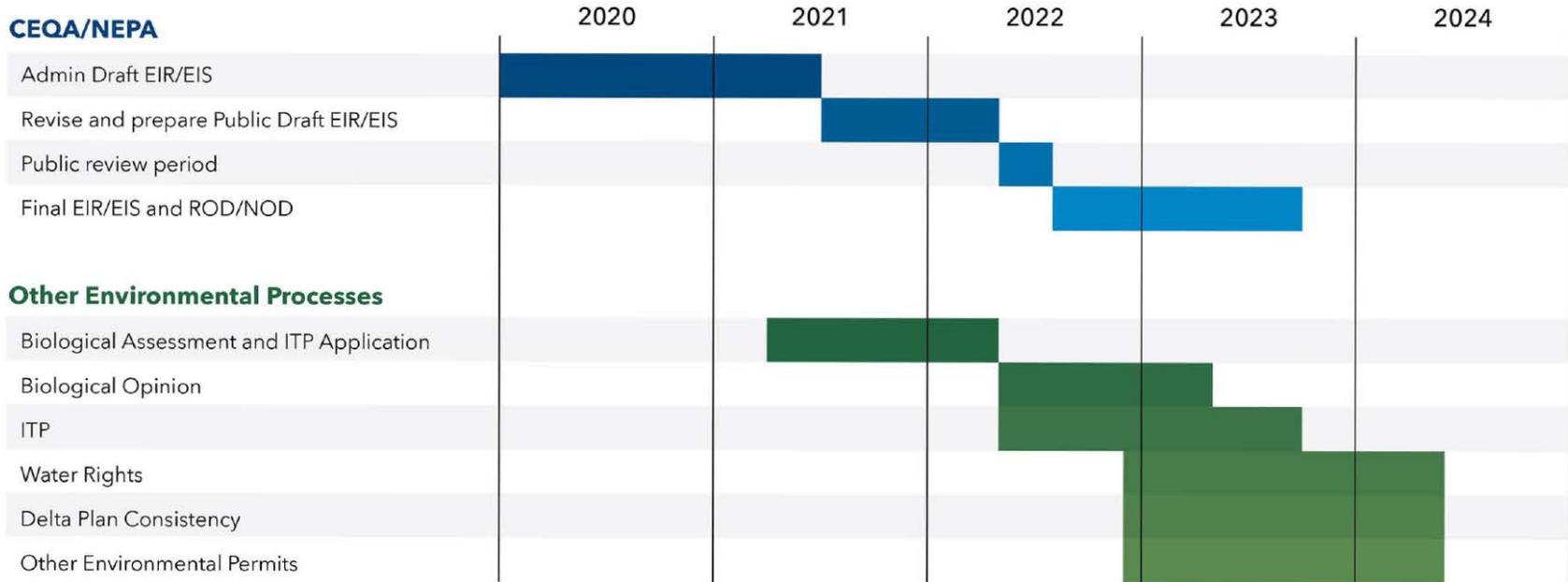
Sincerely,

Handwritten signature of Karla A. Nemeth in cursive.

Karla A. Nemeth
Directorcc: Steve Arakawa – MWD
Tom McCarthy – KCWA

DWR's Planning Schedule for DCP

Delta Conveyance Project Schedule



Summary of Funding Agreement for Delta Conveyance Planning Costs

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

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

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

Key Terms:

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

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

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

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

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

- **Definitions.** Two definitions were added, and one was updated.
 - Classes were defined for contractors by region. This definition is important because it identifies, where applicable, what DCA Board Director represents what class or classes.
 - A new definition of Contracted Proportionate share was added. This definition is integral to voting and is defined as “the percentage of Conveyance Project costs and benefits that a Member has contracted for under a Long-Term Water Supply Contract with DWR, or the percentage of Conveyance Project planning funding that a Member has contracted with DWR to fund.”
 - The definition of Conveyance Project was amended to be consistent with the single tunnel Delta Conveyance Project.

- **Membership (section 5.2).** Allows additional members to be added to the DCA with a majority vote. As currently adopted, new members require a super majority vote.

- **Board of Directors (section 6.1).** This section was changed to allow for more State Water Project Public Water Agencies investing in the project to be represented on the board. The total board will remain at seven members, consistent with original up to seven-member board structure.
 - Metropolitan, Kern County Water Agency and Santa Clara Valley Water District retained their original seats
 - The CVP seat held by Metropolitan was eliminated
 - Two director seats were added for Class 8 (East Branch contractors)
 - One seat was added for Class 2 (North Bay Aqueduct contractors except Santa Clara Valley Water District)
 - One seat was added to represent Class 3,5, and 7.
 - Provisions were added for those Director seats which represent multiple agencies (not applicable to Metropolitan)

- **Board Officers (section 6.3).** The rotating schedule in the original formation document would be removed and Board officers would be selected by the DCA Board.

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

- Stand Up Costs (section 12.2). Agencies that originally contributed stand up costs will be refunded their proportionate share within 30 days of the new Agreement becoming effective.

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

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