



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: July 1, 2019

RE: Update on Water Policy/Resources Activities

BACKGROUND

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations (“ROC on LTO”), (2) Bay-Delta Water Quality Control Plan update, and (3) California WaterFix.

POLICY ITEMS

Reinitiation of Consultation on Long-Term Operations (ROC on LTO)

Reclamation and state and federal resource agencies continue to work on the reinitiation of consultation on long-term operations (“ROC on LTO”). Per the October 19, 2018 Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West¹, the timeline for the ROC on LTO includes final biological assessment(s) by January 31, 2019, and final biological opinions by June 15, 2019. On November 21, 2018, the Secretaries of Interior and Commerce named Paul Souza, Regional Director for the Pacific Southwest Region of the U.S. Fish and Wildlife Service, as the Lead Official in charge of managing the Central Valley Project’s compliance with the Presidential Memorandum’s requirements. On January 31, 2019, Reclamation transmitted a final Biological Assessment² to the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration Marine Fisheries Service (NMFS), beginning their review of the Biological Assessment and the 135-day timeline in the Presidential Memo to issue Biological Opinions. Peer review and agency review of the first Administrative draft of the Biological Opinions have been completed, identifying issues that require coordination between the two Biological Opinions. Recently, Reclamation indicated that there will be a delay in the issuance of the Biological Opinions to resolve these internal coordination issues.

While the Biological Opinions are being completed by the resource agencies, Reclamation will continue the environmental compliance process under the National Environmental Policy Act,

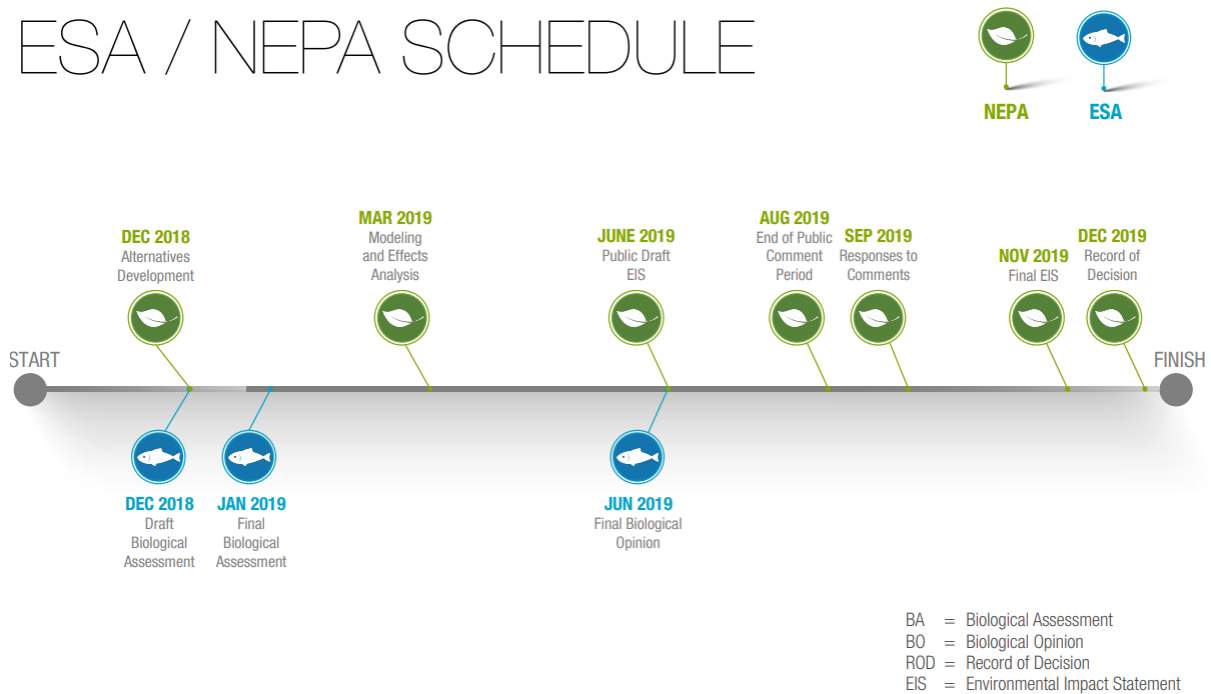
¹ Available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/>.

² Available at <https://www.usbr.gov/mp/bdo/lto.html>

with an estimated issuance of a final Environmental Impact Statement in November 2019 and the issuance of the final Record of Decision in December 2019. Reclamation has reached out to parties who have standing to become Cooperating Agencies, including the San Luis & Delta-Mendota Water Authority (“Water Authority”), to participate in the NEPA process. Cooperating Agency status will allow the Water Authority to provide support to Reclamation as the agency completes its NEPA environmental review. The Water Authority has provided the signed MOU to Reclamation and is participating as a Cooperating Agency. Authority staff has been and will continue to provide comments to Reclamation on various administrative draft documents through its Cooperating Agency status. Upcoming important milestone dates include:

- July: Issuance of Final Biological Opinions
- July – August 15: Public Draft Environmental Impact Statement Public Comment Period
- July 22 – 26: Public Meetings on EIS Draft
- November 29: Release of Final EIS

ESA / NEPA SCHEDULE



Additionally, on May 28, 2019, the Authority signed onto a letter (attached) commenting on the CEQA Notice of Preparation of the Long-Term Operations for the State Water Project, stating that coordinated operations between the CVP and SWP indicate that DWR should work closely with Reclamation in the development of the EIR for long-term operations of the State Water Project.

Bay Delta Water Quality Control Plan Update

As previously discussed, the State Water Resources Control Board (“Water Board”) is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”) in two phases (Plan amendments).

The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity (“Phase I” or “San Joaquin River Flows and Southern Delta Salinity Plan Amendment”). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows (“Phase II” or “Sacramento/Delta Plan Amendment”).

During the December 12, 2018 Water Board Meeting, the Department of Water Resources (“DWR”) and Department of Fish and Wildlife presented proposed “Voluntary Settlement Agreements” (“VSAs”) on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.³ The Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

Phase 1 Status: The Water Board adopted a resolution⁴ to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

Phase 2 Status: In the Water Board’s resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019. As the Water Board further refines this update, there will be opportunity for public comment.

The effort has made significant progress since an initial framework was presented to the State Water Board on December 12, 2018.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents⁵ to the Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

³ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

⁴ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

⁵ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan.

The package submitted March 1 is the product of renewed discussions over the first six weeks since Governor Gavin Newsom took office. It includes a project description identifying resources and actions that could be deployed to support environmental and biological objectives and a planning agreement that outlines an implementation approach and terms for the additional work ahead. All Delta tributaries were included as part of the Voluntary Agreement submittal except the Stanislaus and Merced Rivers.

Since the March 1 submittal, significant work has taken place to develop the package into a form that is able to be analyzed by State Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review.

California WaterFix

On May 2, 2019, the California Department of Water Resources announced that it has withdrawn the project approval of WaterFix and rescinded the accompanying NOD filed pursuant to CEQA. DWR will begin a renewed environmental review and planning process for a smaller, single tunnel project. In addition, DWR and Reclamation submitted the attached letter to the State Water Board notifying the Board that they were withdrawing both the change petition and the application for Section 401 certification for WaterFix.

What happens next with regard to Delta conveyance remains to be seen, but this development certainly has implications for (1) pending litigation challenging the WaterFix BiOps, DWR's financing of WaterFix, and the "No Harm" or "Hold Harmless" agreement, and (2) financial contributions to the planning of WaterFix.

On May 31, 2019, Reclamation hosted a meeting of CVP contractors to discuss federal participation in what is now known as the "Large Scale Delta Conveyance Project". There are multiple options for federal participation in this revised, single-tunnel project, and Reclamation intends to hold CVP workshops to explore options on how Reclamation will interact with this revised project description. At this point, DWR will be the lead for the California environmental permitting process and CEQA scoping meetings are anticipated to begin in the fall.

Delta Stewardship Council

On Tuesday, June 25, the Delta Stewardship Council sent a notice that it is seeking to fill six upcoming vacancies on the Delta Independent Science Board (ISB)⁶.

⁶ https://deltacouncil.ca.gov/sites/default/files/2019/06/DISB%20recruitment%202020.FINAL_.pdf

Background

The Delta Reform Act of 2009 created both the Delta Stewardship Council (Council) and the Delta Independent Science Board (Delta ISB). The Delta ISB is charged with reviewing all scientific research, monitoring, and assessment programs that support adaptive management of the Delta. The Delta ISB also conducts reviews of specific documents or programs as requested by the Council and other agencies. Past reviews, on topics such as water quality, levee hazards, adaptive management of restoration, and flows for Delta fish, can be found on the Delta ISB website reports page, along with information on current Delta ISB members.

The Delta ISB meets monthly – typically six in-person meetings per year in Sacramento or the Delta and teleconferences in alternating months. The term of office for Delta ISB members is up to five years, and a member may serve two terms. Delta ISB members are paid part-time for their work and are reimbursed for travel expenses to attend board meetings.