



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: April 4, 2022

RE: Update on Water Policy/Resources Activities

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### 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 of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

### POLICY ITEMS

#### [Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project](#)

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to

minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, with a fact sheet<sup>1</sup> attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review. It’s unclear what this agency review will analyze, but staff will be engaged.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project<sup>2</sup>. In response to this, on March 30, 2022, the SLDMWA submitted a letter<sup>3</sup> highlighting a few points for Reclamation to consider during while preparing the EIS.

After the draft EIS is completed, anticipated in 2023, Reclamation will publish a notice of availability (NOA) and request public comments on the draft EIS. After the public comment period ends, Reclamation will then develop the final EIS and anticipates making the final EIS available to the public in 2024. In accordance with 40 CFR 1506.11, Reclamation will not make a decision or issue a Record of Decision (ROD) sooner than 30 days after the final EIS is released. Reclamation anticipates the issuance of a ROD by October 2024.

## Reclamation Manual

### Documents out for Comment

#### *Draft Policy*

- There are currently no Policies out for review.

#### *Draft Directives and Standards*

- On March 18, 2022, Reclamation posted the final version of [PEC 05-03](#), the Reclamation policy on the newly created aging infrastructure account and associated loan program. Recall that the Authority provided comments on a Family Farm Alliance letter sent last fall to Reclamation, outlining concerns with the earlier draft version of PEC 05-03.

It appears to us that Reclamation has taken into account many comments in the final version of the policy with some clarifications to what they meant in the proposed policy verbiage. For some of our members, the main issue was the ability for a project beneficiary, other than the transferred work operator, that is responsible for paying their share of the costs associated with implementing extraordinary maintenance (XM) on a Reclamation facility (transferred or reserved work) to enter into a repayment contract to repay federal funding necessary for the XM work to be completed.

In their final policy, Reclamation has determined that a project beneficiary of a transferred work operator can enter into a third party contract with Reclamation to repay its portion of XM costs to Reclamation under the aging infrastructure account and loan program. This can occur if the transferred work operator doing the XM work agrees to

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

<sup>3</sup> Attached in Appendix.

accept the federal funding provided by Reclamation under the program and the project beneficiary agrees to enter into a repayment agreement to repay the funding to Reclamation. The other option also remains available for the transferred work operator to take out the entire XM loan itself and secure repayment from the project beneficiaries directly.

The only other potential concern was on the term of the loan. Reclamation policy says that up to a 30-year repayment term can be applied for without further information required, but to get a loan repayment between 30 and 50 years will require additional information to prove the need for such a term, including but not limited to an ability to pay analysis. Reasons for a longer term repayment can include strengthening the borrower's reserve account or low crop values affecting the affordability of a quicker repayment. We all concurred that the law did not require this, but that Reclamation made a policy call to require such documentation for greater than 30-year repayment terms.

#### *Draft Facilities Instructions, Standards, and Techniques (FIST)*

- There are currently no Facilities Instructions, Standards, and Techniques out for review.

#### *Draft Reclamation Safety and Health Standards (RSHS)*

- There are currently no Safety and Health Standards out for review.

#### *Draft Reclamation Design Standards*

- There are currently no Design Standards out for review.

### State Water Resources Control Board (State Water Board) Activity

Documents out for Comment

#### *Proposed Administrative Draft on Hexavalent Chromium Maximum Contaminant Level*

##### *Background*

California Health and Safety Code section 116365(a) requires the State Water Board to establish an MCL at a level as close to the public health goal (PHG) as is technologically and economically feasible. The PHG is the concentration of a contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects.

Hexavalent chromium has been detected in numerous drinking water sources in California. In 2011, the Office of Environmental Health Hazard Assessments (OEHHA) established a hexavalent chromium PHG of 0.02 parts per billion (ppb) based on cancer risk. In 2014, the California Department of Public Health established an MCL of 10 ppb (0.010 mg/L) for hexavalent chromium. In 2017, the Superior Court of California, Sacramento County, invalidated that MCL and directed the State Water Board to withdraw the current MCL and establish a new MCL.

As part of the development of the MCL, State Water Board staff have developed a draft proposal, which includes the regulation text, a staff report, and tables with cost estimates and occurrence information. The primary regulatory information contained in these documents is summarized below:

- The proposed hexavalent chromium MCL is 10 ppb.
- The proposed hexavalent chromium detection limit for purposes of reporting (DLR) is 0.05 ppb.

- The proposed compliance schedule based on water system size is as follows:
  - Systems with 10,000 or more service connections will have a 2-year compliance schedule;
  - System with 1,000 to 10,000 service connections will have a 3-year compliance schedule;
  - Systems with less than 1,000 service connections will have 4-year compliance schedule.

The release of preliminary information on hexavalent chromium occurrence and costs of treatment at potential MCLs in advance of the formal rulemaking process will allow for additional public input prior to the development of the proposed regulation.

#### Document Availability

Draft determinations of hexavalent chromium occurrence and estimates of costs, along with the draft regulation text and a summary staff report are available for review on the Division of Drinking Water's Hexavalent Chromium MCL webpage at: [https://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/Regulations.html](https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Regulations.html).

Requests for copies of the administrative draft regulation text, summary staff report, and supporting figures, or other inquiries concerning development of the hexavalent chromium MCL may be directed to:

Melissa Hall, P.E.  
Senior Water Resource Control Engineer  
State Water Resources Control Board, Division of Drinking Water  
1001 I Street, 17th Floor  
Sacramento, CA 95814  
Email: [Melissa.Hall@Waterboards.ca.gov](mailto:Melissa.Hall@Waterboards.ca.gov)

Please identify the correspondence by using the State Water Board identifier, "Comment Letter – Hexavalent Chromium Workshop" in any inquiries or written comments.

#### Public Workshop

The State Water Resources Control Board (State Water Board) will hold two public workshops to present information and solicit public input regarding the proposed administrative draft of the hexavalent chromium maximum contaminant level (MCL). These workshops are not part of the formal rulemaking under the Administrative Procedure Act. The formal rulemaking process for the hexavalent chromium regulations will be begin later this year after receipt and consideration of comments on the administrative draft.

State Water Board staff will conduct two public workshops at the time and place described below. At the workshops, any person may present comments orally or in writing relevant to the subject described in this notice. The workshops will begin with a staff presentation summarizing the proposed administrative draft MCL, followed by an opportunity for public comment. During the comment period, members of the public will be allowed three minutes to provide oral comments, unless additional time is approved.

Tuesday, April 5, 2022 – 5:30 p.m. PDT

Thursday, April 7, 2022 – 9:00 a.m. PDT

Video and Teleconference Participation Only - No Physical Meeting Location

If you would like to watch the workshops without making oral comment, join at <https://video.calepa.ca.gov/>. This link will work for both workshop dates. If you would like to make oral comments during the workshop, join via Zoom using the link below:

- Tuesday, April 5, 2022 (Join at [bit.ly/HexChrome\\_040522](https://bit.ly/HexChrome_040522))
- Thursday, April 7, 2022 (Join at [bit.ly/HexChrome\\_040722](https://bit.ly/HexChrome_040722))

While a quorum of the State Water Board may be present, these workshops are for the public to provide comments. The Board will not take formal action. Additional information regarding State Water Board meetings, hearings, and workshops is available on the Board's website at [https://www.waterboards.ca.gov/board\\_info/calendar/](https://www.waterboards.ca.gov/board_info/calendar/)

#### Submission of Written Comments

Any interested person, or their representative, may submit written comments relevant to the subject described in this notice to the Clerk to the State Water Board. To facilitate timely identification and review of written comments, please use the subject line: "Comment Letter – Hexavalent Chromium Workshop".

The formal procedure for adopting regulation under the Administrative Procedure Act has not yet begun, and these workshops are not part of that process. However, input provided on the proposed administrative draft of the MCL may be used to inform the development of the regulation. In order for those comments to be considered during the development of the formal regulations package, written comments, regardless of the method of transmittal, must be received by the Clerk by 12:00 p.m. noon, Friday, April 29, 2022. Additional opportunities to comment on the administrative draft of the proposed drinking water standard will be available once the formal rulemaking process is initiated later this year.

#### Bay Delta Water Quality Control Plan Update

The State 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.<sup>4</sup> The State 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 State Water Board adopted a resolution<sup>5</sup> 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 State 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 State Water Board further refines this update, there will be opportunity for public comment.

The effort has made 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 documents<sup>6</sup> to the State 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.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach “adequacy”, as defined by the State team.

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<sup>4</sup> Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

<sup>5</sup> Available at [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/rs2018\\_0059.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf).

<sup>6</sup> Available at [http://resources.ca.gov/docs/voluntary-agreements/2019/Complete\\_March\\_1\\_VA\\_Submission\\_to\\_SWRCB.pdf](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.

On December 8, the State Water Resources Control Board heard an information item on upcoming actions to update and implement the Water Quality Control Plan for the San Francisco Bay Sacramento San Joaquin Delta. During this presentation, State Water Board staff provided the following updates on various activities:

### *Biological Goals*

#### *Past Activities*

- January 2019 – Independent Science Advisory Panel: Concepts and Ideas for Developing Biological Goals for the Bay-Delta Plan
- September 2019 – Draft Initial Biological Goals for the LSJR for public comment

#### *Current Activities*

- Completion of revisions based on public comment to produce a draft Final Biological Goals Report

#### *Future Activities*

- Winter/Spring 2022 – Release draft Final Biological Goals Report
- Winter/Spring 2022 – Public Workshop & comment
- Summer 2022 – Board consideration of adoption

### *LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)*

#### *Spring 2022 – Spring 2023*

- Initiate CEQA process
- Draft environmental document and public comment
- Notice of draft regulation
- Final environmental document

#### *Summer 2023*

- State Water Board consideration of approval
- Notice of final regulation
- Submission to Office of Administrative Law

### *Sac/Delta Update: Key Milestones*

- Early 2022: expected submittal of proposed voluntary agreement
- Winter – Summer 2022: development of Scientific Basis Report for any voluntary agreement, including public review and comment
- Fall 2022: Draft Staff Report public review and comment
- Winter 2023: Public workshop on Draft Staff Report
- Early Fall 2023: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Late Fall 2023: Board consideration of adoption



Relatedly, on March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding<sup>7</sup> that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement<sup>8</sup> specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

CalEPA issued a second announcement on the agreement with the Sacramento River Settlement Contractors (SRSCs). In that agreement, state and federal agencies, and the SRSCs, have developed an approach to a proposed temperature management plan to be submitted by the Bureau of Reclamation to the State Water Resources Control Board for approval. This approach seeks to maintain winter-run Chinook salmon habitat for the longest period possible and creates a target for an average water release schedule of 4,500 cubic feet per second from Keswick Dam below Lake Shasta and a target for Wilkins Slough on the Sacramento River of more than 3,000 cubic feet per second. Given this, Shasta would have a projected end of September storage greater than a million acre-feet.

## Delta Conveyance

### 2022 Public Engagement Outlook

The upcoming year will mark an important milestone in the proposed Delta Conveyance Project planning process with the anticipated release of the Draft Environmental Impact Report (EIR) for public review and comment in mid-2022. To outline the public outreach and engagement activities planned for 2022, the Department of Water Resources (DWR) has put together [a plan](#) that details these actions intended to improve public access to information and participation in the public review process. Read more about the plan [here](#).

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<sup>7</sup> Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

<sup>8</sup> Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>

### NEW Informational Webinars Materials Now Available

As follow-up to the four informational webinars held between July and September 2021 to provide background information related to preparation of the Draft EIR for the proposed Delta Conveyance Project, DWR has prepared and published digital articles highlighting the information provided during each webinar:

- NEW: [Operations of the State Water Project and Delta Conveyance](#)
- NEW: [Climate Change](#)
- NEW: [Environmental Justice](#)
- [Fisheries](#) (*published in November 2021*)

As a reminder, all other information and resources from the webinars, including the presentations (in English and Spanish), videos (in English and Spanish) and a comprehensive [Frequently Asked Questions document](#) can be found on the [project website](#).

### Water Blueprint for the San Joaquin Valley Activity

#### Background

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit with a broad and evolving group of stakeholders, working to better understand shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley. The Blueprint has engaged with stakeholders to try and ensure that everyone has safe, reliable, and affordable access to water for drinking, supporting their farms and communities and a thriving ecology.

The SJV faces significant impacts to its long-term economic, social, and environmental health if nothing is done to address water scarcity, as highlighted in Phase I of Dr. David Sunding's Economic Impact Assessment (EIA) <https://www.waterblueprintca.com>.

The board, large group and committees continue to meet and pursue the mission of Blueprint, including outreach, technical support and working in collaboration with other stakeholders.

**Mission/Vision:** The Blueprint's new board of 20 directors and other Blueprint participants held a strategic planning session to create an updated mission and vision for the San Joaquin Valley Water Blueprint. This aligns with the goals of creating a comprehensive plan that, if implemented among partners, would result in a long-term water balance in the San Joaquin Valley in a way that minimizes land retirement of agricultural lands and allows the region's economy to thrive under future conditions. It is to be developed in collaboration with key interest groups, public agencies, and elected officials so that all stakeholders could advocate for a single Blueprint. This valley-wide plan would focus on three categories: 1) New/improved regional infrastructure recommendations for both short (less than 10 years) and long (10+ years) term; 2) Approach for capturing water in the Delta; and 3) Partnering on land repurposing efforts (including a recommendation on total amount and timing).

**Strategic Plan:** An initial Strategic Planning session was on March 21st, the strategic plan was broken into two areas of focus. The first, centers on the mission, vision, and our collective expectations of the Blueprint. The second session will delve into determining the Blueprint's goals for creating solutions to the problems previously identified. For the goals developed, we will identify quantifiable objectives, timelines for action and systems of accountability.

**Technical Committee:** Committee is drafting criteria for naming and implementing high priority projects. This effort is being discussed to dovetail with the CAP process underway. The Board has engaged MBK for additional evaluation of the Delta flood flows and evaluate the priority allocation of such flows.

Blueprint continues to engage with Central Valley stakeholders regarding opportunities to construct infrastructure, balanced approach to water resources, low interest loans for farmers unable to farm and focus on inter-regional conveyance and habitat restoration.

#### [San Joaquin Valley Water Collaborative Action Program \(SJWV CAP\)](#)

CAP produced a Phase I Framework with solution set elements recommended, the five CAP Work Groups and working to finalize the necessary language and understanding for evaluating Delta water supplies and land fallowing. Once agreed upon the CAP will look to implement phase II.

By September 2022 , the CAP intends to complete the following:

- An initial list of projects that are consistent with the CAP criteria that can improve water supplies. These projects will be supported by the CAP participants.
- Review and analysis of updated Delta study by the PPIC.
- Workplan for activities necessary to finish the 2023 comprehensive plan to reach sustainability by 2040.

By September 2023:

- The in-Valley and Delta opportunities assessments.
- Regional action plan for strategic land repurposing
- List of actions and projects that will achieve a water balance by 2040.

# APPENDIX