



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: January 6, 2020

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) State Water Resources Control Board Action, including the Bay-Delta Water Quality Control Plan update, (3) San Joaquin River Restoration Program, (4) Revised Delta Conveyance, (5) Delta Stewardship Council, and (6) San Joaquin Valley Water Blueprint.

POLICY ITEMS

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

On August 2, 2016, the U.S. Bureau of Reclamation, the lead federal agency, and the California Department of Water Resources (DWR), the applicant, jointly requested the reinitiation of Endangered Species Act consultation on the coordinated long-term operation of the Central Valley Project (CVP) and State Water Project (SWP). The U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) accepted the reinitiation request on August 3, 2016.

On January 31, 2019, Reclamation transmitted their Biological Assessment. As stated in the BA, the purpose of this action is “...to continue the coordinated long-term operation of the CVP and SWP to maximize water supply delivery and optimize 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.”

The two biological opinions¹² on the coordinated operations of the CVP/SWP were finalized on October 21, 2019. FWS and NOAA Fisheries evaluated the impact of CVP/SWP water operations on imperiled species including Delta smelt, salmonid, green sturgeon, northern resident killer whale and 15 terrestrial species that could be impacted. The proposal includes habitat

¹ https://www.fws.gov/sfbaydelta/cvp-swp/documents/10182019_ROC_BO_final.pdf

² <https://www.fisheries.noaa.gov/webdam/download/98198559>

management measures in the Delta and entrainment management related to water exports in the South Delta.

FWS and NOAA Fisheries documented impacts from the proposed operations and worked with Reclamation to modify their proposed operations to minimize and offset those impacts, in conjunction with DWR. The FWS and NOAA Fisheries have concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their designated critical habitat. However, on November 21, 2019, the California Department of Natural Resources and the California Environmental Protection Agency announced their intent to litigate the federal biological opinions, asserting that the state performed an assessment that the operating rules proposed by federal agencies are not scientifically adequate and fall short of protecting species pursuant to the requirements of the Endangered Species Act and California's interests.

On December 19, 2019, Reclamation continued the environmental compliance process under the National Environmental Policy Act by releasing the final Environmental Impact Statement (EIS)³ and announcing that they will issue the final Record of Decision (ROD) by late January/early February 2020.

Relatedly, the State Water Project (SWP) is undergoing a process to provide legal permitting of its long-term operations consistent with the requirements of the California Endangered Species Act (CESA) in conjunction with the update of the CVP biological opinions. As part of this process, the state released a draft Environmental Impact Report⁴ on November 21, 2019, pursuant to the California Environmental Quality Act, that identifies potential operational changes to protect species and manage the SWP based on real-time conditions in the Delta ecosystem, rather than calendar-based requirements.

The draft EIR assesses impacts of proposed project operations, a "no project" alternative that reflects current operating rules, three alternatives that provide fresh water flows in the spring and summer, and an alternative that uses physical barriers and other deterrents to keep fish away from the SWP pumps.

Concurrent with the environmental review under CEQA, DWR is developing an application for a permit from the California Department of Fish and Wildlife (CDFW) for long-term SWP operations under CESA. CDFW will determine requirements for the permit in the coming months, with a specific focus on mitigating impacts of SWP operations on longfin smelt, Delta smelt, winter-run and spring-run Chinook salmon.

Historically, DWR had relied on federal Biological Opinions to cover the SWP under the federal ESA, with a consistency determination provided by CDFW. Securing a separate permit under

³ https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=39181

⁴ https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/Deliv-42DEIRv1-112119-Volume-I_ay_19.pdf?la=en&hash=FA4DB4BDFE72DFE791F187AE5D796B0BB89177AC

CESA provides flexibility for CDFW to consider amendments to the permit based on better scientific understanding as part of the adaptive management program, without relying on changes to be made to the federal Biological Opinions. It also provides CESA authorization for SWP regardless of any potential changes in federal law.

DWR's draft proposal differs from the federal Biological Opinions in some ways:

- It vests authority in CDFW to stop operational changes if it determines they will violate CESA standards.
- It includes alternatives that provide a block of environmental water that can be used to offset pumping impacts in the Delta, with adjustments made over time as new information is learned.
- It provides additional direction on when Delta pumping can be increased during storm events and caps the amount that exports can be increased in those events.
- It includes specific protections for longfin smelt, a protected species under CESA, though not under the ESA, and a commitment to implementing a longfin smelt science plan.

DWR's draft EIR will be available for public comment through January 6, 2020. The Authority submitted a comment letter highlighting concerns with the document. DWR anticipates completing a final document in early 2020, with a permit from CDFW expected to follow.

State Water Resources Control Board Activity

Documents out for Comment

2/10 by 12:00 pm; Written Comments on Toxicity Appendices J and K

The State Water Board is developing the proposed Toxicity Provisions to establish numeric water quality objectives for both acute and chronic toxicity, and a program of implementation to protect aquatic life beneficial uses. The public comment period for the Toxicity Provisions ran from October 19, 2018 through December 22, 2018.

Subsequently, additional information regarding laboratory performance of the chronic *Ceriodaphnia dubia* reproduction toxicity test became available. A new appendix examines the available data. The appendix is titled Draft Appendix J. Evaluating Laboratory Performance with the Chronic *Ceriodaphnia dubia* Reproduction Toxicity Test and includes a summary of peer-reviewed, published results regarding California laboratory performance while conducting chronic toxicity tests using *Ceriodaphnia dubia*. This appendix also includes analyses conducted by State Water Board staff evaluating recent laboratory performance data, whole effluent toxicity test results, and probability projections based on laboratory performance. In addition, after the close of the 2018 public comment period, State Water Board staff surveyed laboratories accredited by the Environmental Laboratory Accreditation Program to conduct chronic toxicity tests for California's National Pollutant Discharge Elimination System (NPDES) permitted dischargers. A second new appendix titled Draft Appendix K. Survey of Laboratory Toxicity Testing Logistical Capacities includes the questions and summary responses from surveyed laboratories regarding the capability of laboratories to initiate routine

monitoring tests and median monthly effluent limitation (MMEL) compliance tests within the same calendar month, when required. The survey also examined potential costs to dischargers for unscheduled tests or other laboratory services.

Bay Delta Water Quality Control Plan Update

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.⁵ 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 resolution⁶ 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.

⁵ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

⁶ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents⁷ 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.

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.

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. Key remaining issues/dates are identified below:

- The State Team has released a package of the modeling and analysis they have done to-date, including hydrologic modeling in CalSim and SacWAM, analysis of the VA habitat outcomes in the tributaries completed by FlowWest, and results from RMA's Delta habitat modeling. In conjunction with the release of this package, a webinar outlining the modeling of flows and habitat of baseline conditions, VA assets and unimpaired flow proposal will be put on in order to provide technical input into the modeling effort needed to assist in adequacy determination. Given the amount of data and technical analysis required for the new SacWAM model, the Authority has joined other contractors in requesting a 30-day extension to issue comments on the modeling effort.
- Over the past months, the State Team and the VA Parties have worked on a set of documents outlining implementation criteria and biological and environmental targets (collectively, "BETs") for the VA. These include a BET framework document, a template for tributary BETs, individual BET documents for each tributary, a Delta BET document, and a Systemwide BET document. Development of these documents continues and a report on their development is anticipated in advance of the next plenary meeting on December 17.
- *The Legal Work Group* has drafted and continues to revise a VA Master Agreement and a Government Code Agreement.
- *The VA Plenary* is scheduled to meet on January 14 to discuss work performed by the working groups since November.

Delta Conveyance

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

⁷ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

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.

[Water Blueprint for the San Joaquin Valley](#)

In October, the Water Blueprint for the San Joaquin Valley held initial scoping meetings for the 8-County socioeconomic impact report being undertaken by Dr. David Sunding. Additionally, the Executive Committee has selected Tal Eslick of Eslick Government Affairs as the Project Manager. The Socioeconomic Impact Report has been completed and will be provided to the Board when it's final.