



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: April 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.

On February 18, 2020, Reclamation completed the environmental review process under the National Environmental Policy Act by signing the Record of Decision, implementing the new biological opinions.

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 Report³ 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.

Concurrent with the environmental review under CEQA, DWR developed and submitted an application for a permit from the California Department of Fish and Wildlife (CDFW) for long-term SWP operations under CESA. On March 31, 2020, CDFW released the conditions for issuing an Incidental Take Permit (ITP) pursuant to CESA for SWP operations that has some differences from the federal biological opinions.

The ITP 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 was 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.

Reclamation Directives and Standards

Documents out for Comment

Draft Directives and Standards

- [Underground Injection Control Program, ENV 15-04 \(comments due 4/27/2020\)](#)

³ 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

- [Emergency Management Program for Water Impoundment Structures, FAC 01-01 \(comments due 4/27/2020\)](#)

State Water Resources Control Board Activity

Documents out for Comment

WHITE PAPER DISCUSSION ON ECONOMIC FEASIBILITY ANALYSIS IN CONSIDERATION OF A HEXAVALENT CHROMIUM MCL

The State Water Resources Control Board (State Water Board) will receive public comments on the White Paper Discussion on Economic Feasibility Analysis in Consideration of a Hexavalent Chromium Maximum Contaminant Level (MCL) (White Paper)

BACKGROUND

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

SUBMISSION OF WRITTEN COMMENTS

Comments on the White Paper will be considered as the State Water Board staff begins development of the regulation package for a primary drinking water standard for hexavalent chromium. The State Water Board will be accepting oral comments during the workshops, and interested persons may send written comments or questions in advance of the workshops, or up until 12:00 noon on April 27, 2020.

"303(d) portion of the 2018 California Integrated Report" or "303(d) list for the North Coast Region" or both

Written comments will be accepted by the State Water Resources Control Board ("State Water Board") on the proposed statewide Clean Water Act section 303(d) list of water quality limited segments [303(d) list] portion of the 2018 California Integrated Report. The proposed statewide list consists of recommendations approved by the Regional Water Quality Control Boards ("Regional Water Boards") for the Lahontan, Colorado River, San Francisco Bay, Los Angeles, and Central Valley regions and the proposed 303(d) list for waterbodies within the North Coast Regional Water Board's region ("North Coast Region"). Written public comment shall be limited to:

1. The specific listing and delisting recommendations made by the Regional Water Boards for the Lahontan, Colorado River, San Francisco Bay, Los Angeles, and Central Valley regions that were timely requested for review, as identified in section 4 of the Draft Staff Report for the 2018 Integrated Report for Clean Water Act Sections 305(b) and 303(d) ("Draft Staff Report"); and

2. The State Water Board’s proposed changes to the delisting recommendations submitted by the Los Angeles Region, as identified in section 4.2 of the Draft Staff Report; and
3. The State Water Board’s proposed 303(d) listing and delisting recommendations pertaining to all waterbodies within the North Coast Region, as identified in section 3 of the Draft Staff Report.

BACKGROUND

Section 303(d) of the Clean Water Act requires each state to identify waters that do not meet, or are not expected to meet by the next listing cycle, applicable water quality standards and to prioritize those waters for total maximum daily load development, unless other corrective action is appropriate (commonly referred to as the “303(d) list”). Section 305(b) of the Clean Water Act requires each state to report on the overall condition of its surface waterbodies (commonly referred to as the “305(b) report”). California combines its 303(d) lists and 305(b) reports into a single “California Integrated Report.” The 303(d) list requires approval by the State Water Board and approval by United States Environmental Protection Agency (“U.S. EPA”). Neither agency takes formal approval action on the 305(b) report, which is an informational document that characterizes the state’s general water quality conditions. Generally, the State Water Board does not solicit comments or respond to comments pertaining to the 305(b) portion of the California Integrated Report.

SUBMISSION OF WRITTEN COMMENTS

The State Water Board will accept written comments on the proposed 303(d) list for the North Coast Region and the 2018 California Integrated Report. Comments must be limited to the categories described in items one through three, as previously described. The State Water Board may refuse to accept any comments that are not limited to the categories described in items one through three. All written comments must be received no later than 12:00 noon on Thursday, April 30, 2020.

[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.⁴ 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 resolution⁵ 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 documents⁶ 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. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach “adequacy”, as defined by the State team.

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:

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

⁵ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

⁶ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

- 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.

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 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.

On January 15, 2020, The Department of Water Resources (DWR) released a [Notice of Preparation \(NOP\)](#) for a proposal to modernize water infrastructure in the Sacramento-San Joaquin Delta, initiating environmental review in compliance with the California Environmental Quality Act (CEQA). The NOP, announcing the preparation of an environmental impact report (EIR) for the proposed Delta Conveyance Project, marks the first step under the CEQA process. The proposed project described in the NOP is a single underground tunnel with two intakes that together have a total diversion capacity of 6,000 cubic feet-per-second (cfs). The NOP notes that there will likely be alternatives identified that evaluate a range of capacities from 3,000 cfs to 7,500 cfs. The NOP signals the start of the scoping process for the EIR and provides an opportunity for members of the public and agencies to provide input on the scope and content of the EIR, including information needs, potential project effects and mitigation measures, and possible alternatives to the proposed project.

The purpose in proposing this project is to develop diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of California’s water deliveries south of the Delta in a cost-effective manner, and consistent with the recently released [draft Water Resilience Portfolio](#).

In response to the COVID-19 pandemic, the public comment period has been extended. Public comments on the NOP are now due on Friday, April 17, 2020 by 5 p.m. and may be submitted via email at DeltaConveyanceScoping@water.ca.gov or mail at Delta Conveyance Scoping Comments, Attn: Renee Rodriguez, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.

Independent from the CEQA process, DWR also intends to seek a court ruling this spring to affirm its authority to issue revenue bonds for a future conveyance facility.

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.

Water Blueprint for the San Joaquin Valley

Engagement with Environmental NGOs

Several members of the Blueprint group took part in a video conference with representatives from some environmental NGO's in late March. Dr. Sunding joined the meeting and provided an overview of his report. The conversation was candid and productive. It came as no surprise that there is still a lot of misunderstanding about the goals of the Blueprint. NGO's highlighted a need to focus on water scarcity instead of results of SGMA implementation to avoid the belief that the Blueprint is intended to repeal or change SGMA.

Water stakeholder convening concept

In response to the meeting with environmental NGOs, the Blueprint group will work closely to develop a venue for further discussions. More details should be upcoming in the coming weeks. Looking to have the state help facilitate the conveying process.