



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: January 10, 2021

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 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 sheet¹ 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.

¹ <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.

Reclamation Manual

Documents out for Comment

Draft Policy

- There are currently no Policies out for review.

Draft Directives and Standards

- [HRM 04-08 Hiring Process-Merit Promotion \(comments by 1/17/2022\)](#)

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

Notice of Proposed Rulemaking: Urban Water Use Efficiency and Conservation – Water Loss Performance Standards

Background

Water Code section 10608.34 (added by Senate Bill (SB) 555 of 2015) requires the State Water Resources Control Board (State Water Board) to develop and adopt performance standards for water loss for urban retail water suppliers² (URWS or supplier), while considering lifecycle cost accounting. The proposed Water Loss Performance Standards (WLPS or regulation) aim to reduce water loss, reduce the energy and associated greenhouse gas emissions associated with supplying and treating water that is lost to leakage³, and achieve more efficient water use in California. Additionally, section 10608.34 established water loss reporting for URWS; URWS have been required to report their water loss estimates through annual water loss audits since 2017.

On December 4, 2021, the State Water Board released a proposed water loss performance standards regulation for a 45-day public comment period, which closes at 12:00 pm on February 11, 2022.

² “Urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes (Wat. Code, § 10608.12).

³ California has a high energy consumption associated with water supply, accounting for 20% of total electricity use and 30% of total natural gas consumed in the state (PPIC Water Policy Center, 2016).

According to the State Water Board, the proposed regulation is designed to bring water losses to levels that are cost-effective and feasible for each URWS, and the proposed regulation will support each URWS in planning and implementing water loss control in a cost-effective manner. The intent of the proposed regulation is to identify and require each supplier to reduce leakage to the level of a specific volumetric standard that is based on its own unique characteristics and is cost-effective, while providing each supplier the flexibility to choose any effective approach best suited for its system and budget to meet its standard. Cost savings may be passed on to customers, and URWS supplying water to disadvantaged communities that face burdensome upfront costs will have additional time to comply if their standard requires at least a 25% reduction from their baseline.

On February 10, the State Water Board will conduct a public hearing regarding the subject proposed regulation at the time and place noted below. The public hearing will provide a detailed overview of the proposed regulation, overall framework, timeline, and proposed requirements. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice. The public hearing will be preceded by a staff presentation summarizing the proposed regulation, followed by an opportunity for the public to ask questions. While a quorum of the State Water Board may be present, the Board will not take formal action at the public hearing. This hearing is for the public to provide comments on the proposed regulation. The Board will not take formal action at this public meeting. After consideration of all written and oral comments, the Board is expected to consider adoption of the final regulation in the second quarter of 2022.

[*2021 Temporary Urgency Change Petition and Sacramento River Temperature Management Plan Approval and 2022 Temporary Urgency Change Petition*](#)

[Background](#)

[2021 TUCP and draft Order](#)

On May 17, 2021, DWR and Reclamation jointly filed a Temporary Urgency Change Petition (2021 TUCP) to temporarily modify terms and conditions in their water right license and permits for the State Water Project and Central Valley Project that require compliance with certain water quality objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as required by Revised Decision 1641. On June 1, 2021, the State Water Board's Executive Director issued a TUCP Order conditionally approving the requested changes. The State Water Board received five petitions for reconsideration and numerous objections to the 2021 TUCP Order, which are addressed in the draft Order.

On May 28, 2021, Reclamation submitted a Sacramento River Temperature Management Plan (TMP) for water year 2021 pursuant to Water Right Order 90-5. On June 10, 2021, the State Water Board's Executive Director conditionally approved the TMP. The State Water Board received two

petitions for reconsideration of the June 10, 2021 TMP approval, which are also addressed in the draft Order.

The draft Order denies in part and grants in part the petitions for reconsideration. The draft Order determines that approvals of the 2021 TUCP Order and the Sacramento River TMP were appropriate, based on the information available at the time, and therefore the petitions for reconsideration are primarily denied. However, the draft order imposes additional conditions on DWR and Reclamation's water rights in response to substantial issues raised in the petitions to improve future planning for dry conditions.

The draft Order, written comments received regarding the draft Order, and other related information can be accessed from the State Water Board website at https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/.

2022 TUCP

Additionally, on December 1, 2021, the Petitioners (DWR and Reclamation) filed a TUCP (2022 TUCP) with the State Water Board pursuant to California Water Code section 1435 et seq. in order to temporarily change the Petitioners' permit and license terms and conditions for the SWP and CVP that were imposed pursuant to D-1641 and require the Petitioners to meet specified flow and water quality objectives established in the Bay-Delta Water Quality Control Plan. Unless a shorter time period is specified, the changes sought by a TUCP may remain in effect for up to 180 days. An order approving a TUCP may be modified or revoked at the discretion of the State Water Board, and may be renewed.

As described further in the petition, the December 1, 2021 TUCP seeks modifications to D-1641 requirements during the February through April 2022-time period that, if approved, would modify: (1) required Delta outflow levels depending on conditions and forecasts; (2) allowable exports when unmodified D-1641 Delta outflow requirements are not being met; (3) required San Joaquin River flow requirements; and (4) required Delta Cross Channel (DCC) Gate closure requirements. According to the Petitioners, these changes would allow management of reservoir releases on a pattern that conserves upstream storage for fish and wildlife protection and Delta salinity control while providing critical water supply needs. The petition indicates that if sufficient precipitation were to occur to recover upstream storage, then the Petitioners would resume operating consistent with D-1641.

The State Water Resources Control Board (State Water Board or Board) accepted written public comments until noon on January 7, 20 on (1) the draft Order Denying in Part and Granting in Part Petitions for Reconsideration of the Executive Director's June 1, 2021 Order Conditionally Approving a Petition for Temporary Urgency Changes to License and Permit Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions; and the Executive Director's June 10, 2021 Sacramento River Temperature Management Plan Approval

Pursuant to Order 90-5 (draft Order), and (2) the 2022 TUCP. The public comment period closed on January 7, 2022, and the Water Authority submitted a comment letter.

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.⁴ 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 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 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.

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>.

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

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 documents⁶ 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.

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 will hear an information item on upcoming actions to update and implement the Water Quality Control Plan for the San Francisco Bay Sacramento San Joaquin Delta.

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

[Background](#)

The Water Blueprint for the San Joaquin Valley (Blueprint) is 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 Large Group and committees continue to meet and pursue the mission of Blueprint, including outreach, technical support and working in collaboration with other stakeholders.

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

Governance: A nominating committee was formed and presented a slate of Directors to the Executive Committee and Plenary Group to expand the 501c(3) Board to 23 members, with representatives from the following groups: Agriculture Organizations, Water Agencies, White Lands, Local Government, and At Large. A total of 23 Directors were recommended, with 2 slots remaining open for a representative from the northern portion of the San Joaquin Valley and a representative from refuge/environmental interests. Board members have been approved and the new Board will be seated at the inaugural meeting on Tuesday, January 18.

Agriculture: Casey Creamer, CA Citrus Mutual
Ian Lemay, CA Fresh Fruit Association
Geoff Vanden Heuvel, Dairy

Water Agencies: Scott Petersen, San Luis & Delta-Mendota Water Authority
Jason Phillips, Friant Water
Steve Chedester, SJ River Exchange Contractors Water Authority
Vacant (State Water Contractor)

White Lands: Johnny Gailey, Delta View Water Association
Jack Rice, Western Resource Strategies
Deanna Jackson, Tri-County Water Authority

Govt: Augustine Ramirez, Fresno County
Stephanie Anagnoson, Madera County
Paul Boyer, Farmersville

At-Large: Sarah Woolf, Water Wise
Eddie Ocampo, Self-Help Enterprises
Austin Ewell, Ewell Group
Christina Beckstead, Madera County Farm Bureau
Vince Lucchesi, Patterson Irrigation District
Kassy Chauhan, Fresno Irrigation District
Vacant (north Valley or westside)
Vacant (refuge)

Committee Chairs: Scott Hamilton, Ag Economist (Technical Committee)
Mike Wade, CA Farm Water Coalition (Communications Committee)

Outreach & Engagement: The Community Advisory Committee had its first meeting on October 27th it included an introduction of participants, overview of the Water Blueprint for the San Joaquin Valley and drought Planning for 2022. The Blueprint's first community newsletter is being circulated and the website has been updated.

Technical Committee: It was recommended that the Committee consider and focus on the team of folks that are at the table for the San Joaquin Valley Water Collaborative Action Plan and have established the Phase 1 Report while moving towards Phase 2. Noted this is a major step when looking at trying to balance land retirement with identifying new water sources. Requested that the approach with ESA to develop a regulatory and permitting path forward for the Blueprint look to potentially include the CAP. This detailed plan will list all permits needed, the approvals, the reports, and documents essential to prepare and obtain from the Federal and/or State Agencies for the solution sets provided. 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.

A dinner was held with Board Members from Madera I.D. and Chowchilla W.D., participants of the Blueprint and White Area representatives to review the status of the technical work and next steps.

DAC Drinking Water Feasibility Study – FKC: Participants include Friant Water Authority, Fresno State University, Self Help Enterprises, Sustainable Conservation and Leadership Council for Justice and Accountability are looking to study Tulare County related to surface water supply, recharge and drinking water supplies. DWR is making available approx. \$49,500 for this study.

Fresno State in coordination with the other participants will be creating a more specific scope tailored to Tulare to provide to DWR to review and fund.

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

On November 23rd the CAP Plenary (60+) Group met and reviewed the Phase 1 Action Plan framework earlier endorsed by the Planning Group (20+ representing the 5 caucuses) in form. The CAP Work Group Co-Chairs and members prepared the framework over the past 2 months. I know how busy you all are, and I am deeply grateful that CAP participants found the time to develop a powerful Phase 1 Action Plan Framework. The Framework provides the solution set elements recommended by the five CAP Work Groups to accomplish the desired outcomes to resolve those problem areas. Adoption of the Framework by the Plenary Group and its participants would:

- Create a path for CAP participants to work together and greatly increase the pace of assuring all Valley residents have access to safe, reliable, and affordable drinking water.
- Place equal emphasis on demand reduction and supply augmentation to eliminate long-term overdraft and transition the Valley from unsustainable to sustainable water resources management.
- Establish one of the largest initiatives in the country to restore riparian, floodplain, upland, and on-farm habitats.

The Planning Group unanimously approved the Framework at its November 16, 2021, meeting and along with the CAP Management Team and recommended approval by the Plenary Group, which approved the Framework.

Based on the specifics in the Framework and numerous comments received during the past month, the Management Team has developed a draft final CAP Phase 1 Action Plan document which has been distributed to Plenary Group members for a review period. This document was circulated to Water Authority Board Members, Water Resources Committee Members, and General Managers for comment last week for comment. The CAP Management team is requesting that organizations indicate support for the Phase 1 Action Plan by January 14.