



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: May 11, 2020

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 (“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 opinions<sup>12</sup> 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

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<sup>1</sup> [https://www.fws.gov/sfbaydelta/cvp-swp/documents/10182019\\_ROC\\_BO\\_final.pdf](https://www.fws.gov/sfbaydelta/cvp-swp/documents/10182019_ROC_BO_final.pdf)

<sup>2</sup> <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 Report<sup>3</sup> 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*

- [Concessions Management by the Bureau of Reclamation, LND 04-01 \(comments due 5/17/2020\)](#)

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<sup>3</sup> [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](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)

- [Concessions Management by Non-Federal Partners, LND 04-02 \(comments due 5/17/2020\)](#)
- [Underground Storage Tank System Management, ENV 15-05 \(comments due 5/24/2020\)](#)
- [National Aviation Management Plan \(NAMP\) \(comments due 5/30/2020\)](#)
- [Use Authorizations, LND 08-01 \(comments due 6/1/2020\)](#)
- [Private Exclusive Recreational and Residential Use, LND 08-04 \(comments due 6/1/2020\)](#)

## 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 and 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 May 15, 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.<sup>4</sup> 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 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 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 documents<sup>6</sup> 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.

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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.

### [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 Delta Conveyance Project scoping period concluded on Friday, April 17, after a 93-day comment period during which the public and agencies, including the Water Authority, had an opportunity to provide input on the scope and content of the CEQA review, including the potential environmental impacts of a proposed single tunnel conveyance project and range of alternatives that will be analyzed in the EIR. DWR is now in the process of reviewing all comments submitted during the scoping process and will publish a scoping report this summer that summarizes the information received during scoping. DWR will utilize the scoping comments in developing the range of alternatives to be evaluated in detail in the Draft Environmental Impact Report (EIR) and the scope of the environmental impact analysis. Publication of the Draft EIR is expected in early 2021.

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.

### [Upcoming Activities – May 2020](#)

#### [DCA Monthly Board Meeting](#)

The next DCA Board monthly meeting is scheduled for May 21 at 2:00pm and will take place virtually. Meeting materials and information on how to participate remotely will be posted on the DCA website when available.

### *Delta Conveyance Finance Authority Monthly Board Meeting*

The next Delta Conveyance Finance Authority monthly meeting is scheduled for May 21 at 11:00am and will take place virtually. Meeting materials and information on how to participate remotely will be posted on the DCA website when available.

### *Delta Stakeholder Engagement Committee Meeting*

The next SEC meeting is scheduled for May 27 at 3:00pm and will take place virtually. Meeting materials and information on how to participate remotely will be posted on the DCA website when available.

### Water Blueprint for the San Joaquin Valley

The Blueprint Group elected to cancel the April Blueprint Large Group meeting. However, the Blueprint executive board was able to meet. A brief update can be found below:

#### Outreach

The Blueprint group continues to engage with NGOs, including environmental interests and disadvantaged community groups. CSU Fresno recently secured grant funding that will be used to support stakeholder convening and the development of an engagement process related to water in the San Joaquin Valley. The Blueprint group is supportive of this effort and hope to help facilitate the process. The Blueprint group has also started discussions with state representatives about their involvement.

#### Finance

2020 invoices were distributed last month, special thanks to those who have provided 2020 support for the Blueprint effort. The Blueprint group recognizes the current challenges organizations are facing and will be following up about payments.

#### Communications

The communications and executive committees are reviewing copy for our full website. The Communications Committee will continue to refine the design elements of the website and plan to launch the redesigned website at the appropriate time. Please feel free to take a look at the current website at <https://waterblueprintca.com/>.

#### Policy

The Blueprint group Executive and Advocacy Subcommittee members continue to engage with the San Joaquin Valley delegation on various aspects of water policy. COVID-19 is understandably dominating most discussions.

#### Technical

The technical committee continues their engineering and modeling work related to water balance efforts and project development. This work will inform the second phase of Dr. Sunding's economic report.