



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: November 1, 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 (“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) Delta Conveyance, (5) Delta Stewardship Council, and (6) Water Blueprint for the San Joaquin Valley.

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

- [PEC 10-05 Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works \(Federal Construction\) \(comments by 11/15/2021\)](#)
- [PEC 10-06 Reclamation Standard Water-Related Contract Articles, Standard Article 6: Operation and Maintenance of Project Works \(Federally Assisted Construction\) \(comments by 11/15/2021\)](#)
- [BGT 02-02 Reimbursability and Recharacterization of Project and Program Costs \(comments by 11/19/2021\)](#)
- [PEC 05-03 Extended Repayment of Extraordinary Maintenance Costs \(comments by 11/15/2021\)](#)
- [CMP 11-01 Title Transfer for Reclamation Project Facilities \(comments by 11/1/2021\)](#)

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)

- [RSHS 42 Collateral Duty Safety Representatives \(CDSR\) \(comments by 11/22/2021\)](#)

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

- There are currently no documents out for comment.

Emergency Regulation: Sacramento-San Joaquin Delta Watershed

Background

On May 10, 2021, Governor Newsom issued a Proclamation of a State of Emergency due to drought in 41 counties, including those in the Delta watershed. On July 8, 2021, the Governor issued an expanded Proclamation of a State of Emergency for 9 additional counties and called upon Californians to voluntarily reduce their water use by 15 percent compared to the same period in 2020.

To ensure protection of water needed for health, safety, and the environment, the May 10, 2021 Proclamation directs the State Water Board to consider adoption of an emergency regulation to

curtail water diversions in the Delta watershed when water is not available at water right holders' priority of right and to protect releases of previously stored water.

On June 15, 2021, the State Water Board sent Notices of Water Unavailability to all water right holders in the Delta watershed, alerting all post-1914 appropriative water right holders that the Board had determined, based on the best information available to the Board, that water was not available to serve their priorities. The June 15 notice also warned all pre-1914 appropriative and riparian water right claimants in the Delta watershed of impending water unavailability based on worsening drought conditions and the resulting likelihood of consideration of an emergency regulation to curtail water use throughout the Delta watershed.

On July 8, 2021, the San Luis & Delta-Mendota Water Authority, Friant Water Authority, Tehama Colusa Canal Authority, and the State Water Contractors sent a letter to State Water Board Chairman Joaquin Esquivel expressing a need for action to protect stored water and to reduce unauthorized diversions of water in the Delta, in order to protect authorized beneficial uses of water.

On July 29, 2021, the San Luis & Delta-Mendota Water Authority sent a letter to State Water Board Chairman Joaquin Esquivel expressing support for protecting stored water, the need to ensure due process in the protection of appropriately exercised water rights, and the need to consider a number of comments expressed by water users related to the Water Unavailability Methodology.

The draft emergency regulation was considered by the State Water Board at its August 3, 2021 meeting and adopted, then submitted to the Office of Administrative Law.

On August 20, 2021, the State Water Resources Control Board (State Water Board) mailed initial orders imposing water right curtailment and reporting requirements on all water right holders and claimants in the Delta watershed (linked below).

The August 20 order (Order) identifies the priorities of water rights and claims of right that are curtailed for the remainder of August and for the month of September. The Delta Watershed Curtailment Status List (Curtailment Status List) on the [Delta Watershed Drought webpage](#) reflects the water rights and claims that are currently curtailed, including those that are currently required to curtail for the month of September even if not required to curtail for the month of August. This list will be updated on a weekly basis or more frequently if there are precipitation events that warrant suspension of curtailments.

Over the last week, the SWRCB notified water right permit and license holders within the Sacramento San Joaquin Delta watershed and Standard Water Right Term 91 (Term 91) and other interested parties that curtailments are no longer in effect due to a lack of supplemental project

water (SPW) releases by the Department of Water Resources and U.S. Bureau of Reclamation (Projects) at this time. If the Projects are required to resume consistent SPW releases and the Sacramento-San Joaquin River Delta (Delta) remains in balanced conditions, the State Water Resources Control Board (State Water Board) will resume Term 91 curtailments.

Please monitor your email and the State Water Board's drought website for further updates on Term 91 or other curtailments. Term 91 and other curtailments may be re-imposed in the near future if hydrologic conditions degrade.

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.² 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 resolution³ 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

² Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

³ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

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 documents⁴ 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.

[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>.

⁴ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

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.

Governance: A nominating committee has been established to identify up to 15 directors for the 501c3 to better reflect its current participants, contributors, and its approach of a “coalition of the willing” while allowing for a streamlined review and action process. The committee is looking to fill the following categories: Local Government, Water Agency, At-Large, White Area & Agriculture.

Outreach & Engagement: The Blueprint Community Advisory Committee will be having its first meeting on October 27th. The tentative agenda is 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 is being updated. Continue working with CSBA (School Boards Association) and Tribal interests. Creating a contact list of local elected officials, including special districts and county supervisors. This contact list is the basis for a newsletter sent to community leaders throughout our region.

Technical Committee: ESA is developing a regulatory and permitting path forward for the Blueprint. 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 has been set up 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 if any.

SJV Water Collaborative Action Program (SJVWCAP): Stanford University, working in coordination with the Blueprint, Central Valley Community Foundation, Fresno State, NGOs and 60+ stakeholders from water agencies, agricultural interests, local government, drinking water advocates and environmental interests have drafted an inter-caucus Problem Statement and Solution Sets for the Plenary Group to review and adopt. A fundamental part of the solution set is a focus on a two phased approach to identify an amount of water and its sources to aid in recharging the Valley as well as a total amount of acres for potential fallowing as well as a timeframe for identifying agreeable ways of doing so.

DAC Drinking Water Feasibility Study – FKC: Participants include FWA, FSU, Self Help, Sustainable Conservation and Leadership Council 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.