



**San Luis & Delta-Mendota Water Authority
Monday, March 1, 2021, 10:00 a.m.**

**Notice of Water Resources Committee Regular Telephonic Meeting and Joint
Water Resources Committee Regular Telephonic Meeting-Special Board
Workshop**

Join Zoom Meeting

<https://us02web.zoom.us/j/86951473201?pwd=OXBYRmFUR2kwUWVZQXVaYnQwSiM3QT09>

Meeting ID: 869 5147 3201

Passcode: 378614

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NOTE: In accordance with the Governor's Executive Order (N-29-20) and the declared State of Emergency as a result of the threat of COVID-19, members of the Water Resources Committee, Board of Directors, and Water Authority staff will be participating in this meeting remotely from multiple locations. This meeting will occur exclusively through ZOOM. If members of the public have any problems using the call-in number during the meeting, please contact the Authority office at 209-826-9696.

NOTE FURTHER: Any member of the public may address the Water Resources Committee/Board concerning any item on the agenda before or during consideration of that item, as appropriate.

Because the notice provides for a telephonic regular meeting of the Water Resources Committee ("WRC") and a joint telephonic regular WRC Meeting/Special Board Workshop, Board Directors/Alternates may discuss items listed on the agenda; however, only WRC Members/Alternates may correct the agenda or vote on action items.

Agenda

1. Call to Order/Roll Call
2. Water Resources Committee to Consider Additions and Corrections to the Agenda for the Water Resources Committee Meeting only, as Authorized by Government Code Section 54950 *et seq.*
3. Opportunity for Public Comment – Any member of the public may address the Water Resources Committee/Board concerning any matter not on the agenda, but within the Committee's or Board's jurisdiction. Public comment is limited to no more than three minutes per person. For good cause, the Chair of the Water Resources Committee may waive this limitation.

ACTION ITEMS

4. **Water Resources Committee to Consider Approval of the February 1, 2021 Meeting Minutes**
5. **Water Resources Committee to Consider Recommendation to Board of Directors to Adopt Staff Recommendation for Positions on Legislation, Petersen**
 - A. H.R. 644 (Calvert), REBUILD Act
 - B. H.R. 737 (Valadao), RENEW WIIN Act
 - C. H.R. 866 (Calvert), FISH Act
 - D. S.B. 559 (Hurtado), Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.
6. **Water Resources Committee to Consider Recommendation to Board of Directors to Ratify Appointment of Federico Barajas to State and Federal Contractors Water Agency Board of Directors, Barajas**
7. **Water Resources Committee to Consider Recommendation to Board of Directors to Adopt Resolution including CEQA Exemption for and Authorizing Execution of Agreement to Purchase Release of Water By and Among the Oakdale Irrigation District, the South San Joaquin Irrigation District, the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources, Mizuno**

REPORT ITEMS

8. Executive Director's Report, Barajas
 - A. March 2021 Board Workshop
 - B. Volta Wastewater Groundwater Wells Update
 - C. May include reports on activities within the Water Resources Committee's jurisdiction related to 1) CVP/SWP water operations; 2) California storage projects; 3) regulation of the CVP/SWP; 4) existing or possible new State and Federal policies; 5) Water Authority activities; 6) COVID-19 response
 9. Update on Water Policy/Resources Activities, Petersen
(May include reports on activities related to 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)
 10. Update on Water Operations and Forecasts, Boardman
 11. Committee Member Reports
 12. Closed Session
- CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of Litigation Pursuant to paragraph (4) of Subdivision (d) of Government Code Section 54956.9 – 3 potential cases
- CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Government Code Section 54956.9 – 2 potential cases
- CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Existing Litigation Pursuant to paragraph (1) of Subdivision (d) of Section 54956.9
- A. Natural Resources Defense Council et al. v. de la Vega et al., U.S. District Court, E.D. Cal., Case No. 1:05-cv-01207-DAD-EPG, 9th Cir. Case No. 21-15163 (2005 DMC Contract Renewals)
 - B. Pacific Coast Federation of Fishermen's Associations, California Sportfishing Protection Alliance, Friends of the River, San Francisco Crab Boat Owners Association, Inc., The Institute for Fisheries Resources, and Felix Smith v. Donald R. Glaser and San Luis & Delta-Mendota Water Authority, U.S. District Court, E.D. Cal., Case No. 2:11-CV-02980-KJM-CKD (PCFFA v Glaser or GBP Citizens Suit)
 - C. SWRCB Water Rights Complaints: Modesto Irrigation District, State Water Contractors, San Luis & Delta-Mendota Water Authority, Interested Persons in SWRCB CDO Enforcement Proceedings

- and/or Petitions for Reconsideration: Pak & Young; Mussi et al. (WR Complaints)
- D. Delta Stewardship Council Cases, Sacramento County Superior Court, Case No. JCCP 4758 (formerly San Luis & Delta-Mendota Water Authority and Westlands Water District v. Delta Stewardship Council, et al., Sacramento County Superior Court, Case No. 34-2013-80001500) (Delta Plan Litigation)
 - E. City of Fresno, et al. v. United States, U.S. Court of Federal Claims, Case No. 1:16-cv-01276-EDK (2014 Friant Breach of Contract)
 - F. Monterey Coastkeeper, et al. v. Central Valley Regional Water Quality Control Board, et al., Third District Court of Appeal Case No. C093513, Sacramento County Superior Court Case No. 34-2018-80002853; Environmental Law Foundation v. State Water Resources Control Board, Third District Court of Appeal Case No. C093513, Sacramento County Superior Court Case No. 34-2018-80002851; Protectores del Agua Subterranea v. State Water Resources Control Board, Third District Court of Appeal Case No. C093513, Sacramento Superior Court Case No. 34-2018-80002852 (Waste Discharge Requirement Cases)
 - G. North Coast Rivers Alliance v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002898; Central Delta Water Agency v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002900; Friends of the River v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002901; California Water Impact Network v. Delta Stewardship Council, Sacramento County Superior Court, Case No. 34-2018-80002904 (Delta Plan Amendment Cases)
 - H. North Coast Rivers Alliance, et al. v. San Luis & Delta-Mendota Water Authority, et al., Merced County Superior Court, Case No. 19CV-04989 (GBP Long-Term Storm Water Management Plan)
 - I. Pacific Coast Federation of Fishermen's Associations, et al. v. Coggins, et al., U.S. District Court, E.D. Cal., Case No. 1:20-cv-00431-DAD-EPG (ROC on LTO BiOps)
 - J. California Natural Resources Agency, et al. v. Coggins, et al., U.S. District Court, E.D. Cal., Case No. 1:20-cv-00426-DAD-EPG (ROC on LTO BiOps)
 - K. CDWR Water Operation Cases, Sacramento County Superior Court, Case No. JCCP 5117 (formerly Tehama-Colusa Canal Authority et al. v. California Department of Water Resources et al., Fresno County Superior Court, Case No. 20CECG01303) (SWP EIR Challenge)
 - L. AquAlliance et al. v. U.S. Bureau of Reclamation, et al., U.S. District Court, E.D. Cal., Case No. 1:20-cv-00878-DAD-EPG (Long-Term Water Transfers EIS/EIR)
 - M. Winnemem Wintu Tribe et al. v. State Water Resources Control Board et al., Merced County Superior Court, Case No. 19CV-04989 (GBP Waste Discharge Requirements)
 - N. SWRCB Administrative Hearing Office: County of San Joaquin Permit to Appropriate Water from the South Fork American River at the Freeport Regional Water Authority Facility on the Sacramento River, Pending Application A029657 (Permit Application Protest)
13. Return to Open Session
 14. Report from Closed Session, if any, Required by Government Code Section 54957.1
 15. Reports Pursuant to Government Code Section 54954.2(a)(3)
 16. ADJOURNMENT

Persons with a disability may request disability-related modification or accommodation by contacting Cheri Worthy or Sandi Ginda at the San Luis & Delta-Mendota Water Authority Office via telephone (209) 826-9696 or email cheri.worthy@sldmwa.org or sandi.ginda@sldmwa.org at least 3 days before a regular meeting or 1 day before a special meeting/workshop.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Section 54950 et seq, and has not been prepared with a view to informing an investment decision in any of the Authority's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of the Authority's bonds, notes or other obligations and investors and potential investors should rely only on information filed by the Authority on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures, maintained on the World Wide Web at <https://emma.msrb.org/>.

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
WATER RESOURCES COMMITTEE REGULAR TELEPHONIC MEETING
AND JOINT WATER RESOURCES COMMITTEE REGULAR
TELEPHONIC MEETING - SPECIAL BOARD WORKSHOP MINUTES
FEBRUARY 1, 2021**

The Telephonic Water Resources Committee and Joint Telephonic Water Resources Committee Regular Meeting and Special Board Workshop of the San Luis & Delta-Mendota Water Authority convened at approximately 10:00 a.m. This meeting was held via teleconference/ZOOM in accordance with the Governor’s Executive Order (N-29-20) and the declared State of Emergency as a result of the threat of COVID-19, with Committee Chair Tom Birmingham presiding.

Water Resources Committee Members Present

Ex-Officio

Cannon Michael

Division 1

Anthea Hansen, Alternate

Division 2

Bill Diedrich, Member - Lon Martin

Division 3

Chris White, Member

Division 4

Vincent Gin, Member - Jeff Cattaneo, Alternate

Division 5

Tom Birmingham, Member

Board of Directors Present

Division 1

Anthea Hansen, Director

Division 2

Bill Diedrich, Director - Lon Martin, Alternate

Division 3

Chris White, Director – Jarrett Martin, Alternate

Cannon Michael, Director

Division 4

Jeff Cattaneo, Director

Sara Singleton, Alternate

Division 5

Tom Birmingham, Director

Authority Representatives Present

Federico Barajas, Executive Director

Pablo Arroyave, Chief Operating Officer

Scott Petersen, Water Policy Director

Rebecca Akroyd, General Counsel

Frances Mizuno, Special Projects Administrator

Stewart Davis, IT Officer

Others Present

Tom Boardman, Westlands Water District

Dana Jacobson, Valley Water

Russ Freeman, Westlands Water District

1. Call to Order

Committee Chair Tom Birmingham called the meeting to order.

2. The Water Resources Committee to Consider Additions or Corrections to the Agenda of Items, as authorized by Government Code Section 54950 et seq.

No additions or corrections.

3. Opportunity for Public Comment

No public comment.

4. Water Resources Committee to Consider Approval of the January 11, 2021 Meeting Minutes.

Chair Tom Birmingham pronounced the January 11, 2021 meeting minutes approved without correction.

5. Executive Director's Report.

A. **SLTP Update** - Special Projects Administrator Frances Mizuno reported that the Authority has been meeting with Reclamation and Western Area Power Administration regarding the three proposals that were received, and the goal is to find an investor to finance 100% of the cost.

Mizuno reported that the goal is make a recommendation to the Board in March. Alternate Member Jeff Cattaneo requested a workshop to discuss various options. Executive Director Federico Barajas agreed to set up a workshop instead of bringing the package to the Board in March.

B. **Jones Pumping Plant Unit Rewind Project Financing** - Chief Operating Officer Pablo Arroyave reported that the financial advisors and bond counsel had an effective strategy for marketing the JPP Bonds alongside the much larger DHCCP refunding debt. Arroyave reported that the end result was three different maturity of bonds 5 year, 10 year, and 25 year. Arroyave reported that the overall result was a true interest cost of 3.31% with an annual debt service of \$452 thousand, which is a total reduction in total debt service of over a million dollars. Arroyave reported that the deal is expected to close and fund February 4, 2021. Committee Chair Tom Birmingham thanked Authority staff and consultants for a job well done.

C. **B.F. Sisk Dam Raise Project** – Executive Director Federico Barajas reported that the Authority has been coordinating with Reclamation on the development of the Biological Assessment that is required in order to initiate the ESA consultation for this project.

6. **Update on Water Policy/Resources Activities.**

Water Policy Director Scott Petersen reported that 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 sheet 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. Petersen reported that it’s unclear what this agency review will analyze, but staff will be engaged.

Petersen reported on the Water Blueprint reporting that Phase II of Sunding’s EIA will analyze solution sets being developed with the Technical Committee and others, those solution sets will ultimately be added to the EIA to illustrate reduced economic impacts. Petersen reported that a critical part will be project proponents’ evaluation and development of these activities in coordination with the Blueprint. Petersen reported that these solution sets will ideally have input and support from the coalition of interest groups formally engaging in the SJV Water Collaborative Action. Petersen reported that Stanford University is working in coordination with the Blueprint, Central Valley Community Foundation, Fresno State, NGOs and others are convening to create a collaborative solution to the water issues we face in the SJV. Petersen reported that on December

17, 2020, the Plenary Group of the San Joaquin Valley Water Collaborative Action Program held its second Zoom meeting. Petersen reported that the Plenary Group took several key action steps to move the collaborative forward and discussed several important information items, and unanimously approved an interim governance structure that includes a Plenary Group, Steering Group, and Planning Group.

7. Agenda Item 11: Update on Water Operations and Forecasts

Westlands Water District's Tom Boardman reported that inflows to Shasta were limited to 65 TAF during the recent storms because of low snow elevations. Folsom storage was also low, but snowpack above the reservoir has improved to 76% of average; up by 20% from mid-January. Delta flows have peaked and are declining by about 1,500 cfs per day. Project operators limited pumping increases to a small amount since the storms arrived last week out of concern for increased salinity in the central Delta and increased Sacramento River turbidity that could trigger a delta smelt related export reduction.

Recent and projected CVP San Luis storage was discussed which included three charts. The charts showed how the CVP share of San Luis is refilling slower than expected. Boardman also compared 2021 CVP San Luis operations to 2016 and 2020 and noted similarities and differences.

Boardman briefly explained that DWR's Bulletin 120, to be posted during the 2nd week of February, may show that a Shasta critical year would be triggered in the 90% exceedance forecast, but not triggered in the 50% exceedance forecast. If that occurs, Boardman stated that he expects Reclamation's initial allocation announcement to show 75% for Exchange Contractors and refuges, 50% for urban contractors, zero allocation to ag Service contractors. Boardman added that a 5% ag allocation may be possible if the updated B120 forecast shows higher than expected runoff for northern reservoirs.

8. Agenda Item 12: Committee Member Reports.

No Committee Member Reports.

9. Agenda Item 13: Closed Session

Committee Chair Tom Birmingham adjourned the open session to address the items listed on the Closed Session Agenda at approximately 11:00 a.m. Upon return to open session at approximately 11:15 a.m., General Counsel Rebecca Akroyd reported that there were no reportable actions taken in closed session.

10. **Reports Pursuant to Government Code Section 54954.2**
None.

11. **Adjournment**

The meeting was adjourned at approximately 11:16 a.m.



MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: March 1, 2021

RE: Water Resources Committee to Consider Recommendation to Board of Directors to Adopt Staff Recommendation for Positions on Legislation

Recommendation

Recommend to the Board of Directors to adopt the following positions on federal legislation:

- Adopt a position of “Support” on H.R. 644 (Calvert), REBUILD Act
- Adopt a position of “Support” on H.R. 737 (Valadao), RENEW WIIN Act
- Adopt a position of “Support” on H.R. 866 (Calvert), FISH Act
- Adopt a position of “Support” on S.B. 559 (Hurtado), Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

Summary

H.R. 644 (Calvert) – REBUILD Act

RECOMMENDATION: SUPPORT

OBJECTIVE: Improve Central Valley Project Water Supply for Member Agencies
Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This bill authorizes (1) the assignment to states of federal environmental review responsibilities under relevant federal environmental laws for projects funded by, carried out by, or subject to approval by federal agencies; and (2) states to assume all or part of those responsibilities.

Each responsible federal official who is authorized to assign such responsibility must promulgate regulations that establish requirements relating to information required to be contained in state applications to assume those responsibilities.

An official may approve an application only if (1) public notice requirements have been met, (2) the state has the capability to assume the responsibilities, and (3) the head of the state agency having

primary jurisdiction over the projects enters into a written agreement with an official to assume the responsibilities and to maintain the financial resources necessary to carry them out.

The officials must audit state compliance with federal laws for which responsibilities are assumed. The officials may terminate the responsibilities assigned to states after providing notice to states of any noncompliance and an opportunity to take corrective action.

Status

H.R. 644 was introduced in the House of Representatives on February 1, 2021 and has been referred to the House Natural Resources Committee.

Importance to the Authority

This legislation would extend the National Environmental Policy Act delegation authority granted under the FAAST Act to other state agencies, leading to more streamlined environmental review processes for projects that require both CEQA and NEPA analysis. This streamlined review could expedite project delivery without negatively impacting public information and notice requirements and reduce the costs associated with environmental permitting of project development and delivery.

Pros:

- Joint CEQA/NEPA review by California state agencies could reduce project development costs and expedite project delivery with little to no impact on public information requirements and environmental impacts.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 644 (Calvert), REBUILD Act

Fiscal Impact: Unknown. May result in decreased environmental permitting costs and expedited project delivery timelines for projects that currently require joint CEQA/NEPA review by state and federal agencies by granting authority for a joint analysis by a single agency to be completed.

Business Analysis: Reduce costs associated with project delivery for member agencies.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs associated with water supply, storage or conveyance infrastructure.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from environmental permitting for project delivery.

H.R. 737 (Valadao) – RENEW WIIN Act

RECOMMENDATION: SUPPORT

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies
Improve Water Infrastructure Affecting Authority Member Agencies

Summary

The bill would extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 providing operational flexibility, drought relief, and other benefits to the State of California.

Status

H.R. 737 was introduced in the U.S. House of Representatives on February 2, 2021 and has been referred to the House Natural Resources Committee.). Additional key cosponsors include the 10 Members of the California Republican Congressional delegation.

Importance to the Authority

The bill extends Subtitle J of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, legislation that provides key operational provisions for the Central Valley Project and funding for water storage and conveyance projects, water recycling, desalination, and environmental restoration projects, and authorized the contract conversions and prepayment completed by many Authority member agencies. Importantly, the authorities provided by the WIIN Act expire at the end of this calendar year.

Pros:

- The legislation would extend beneficial provisions of the WIIN Act, including the water storage account funding, water recycling funding, and operations provisions, for 10 years. If enacted, the legislation would provide opportunities to continue to fund Authority and member agency projects, including the restoration of the conveyance capacity of the Delta-Mendota Canal and an expansion of San Luis Reservoir.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 737, Renew WIIN Act.

Fiscal Impact: Unknown. Federal funding provided through WIIN Act authorities could reduce member fees for key Authority projects and additional water supplies provided by operational provisions could increase year-to-year water supply reliability.

Business Analysis: Unknown.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to lower federal funding for projects, reduced allocations or lost water supply resulting from expired authorities.

Business Analysis: SLDMWA may be subject to reduced allocations or lost water supply resulting from expired authorities.

H.R. 866 (Calvert) – To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

RECOMMENDATION: SUPPORT

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies

Summary

This bill gives the Fish and Wildlife Service (FWS) the sole authority to protect endangered or threatened species that are anadromous species (species of fish that spawn in fresh or estuarine waters and that migrate to ocean waters) or catadromous species (species of fish that spawn in ocean waters and migrate to fresh waters). Currently, the FWS shares this authority with the National Marine Fisheries Service.

Status

H.R. 866 was introduced in the House of Representatives on February 5, 2021, and has been referred to the House Natural Resources Committee. Additional key cosponsors include: Tom McClintock (CA-04), Jim Costa (CA-16), David Valadao (CA-21), Devin Nunes (CA-22), and Mike Simpson (ID-02).

Importance to the Authority

This bill would shift Endangered Species Act management for anadromous and catadromous species from NOAA Fisheries to the Fish and Wildlife Service, making a single resource agency responsible for the management of Endangered Species Act compliance for all species impacting water supply reliability through implementation of the Biological Opinions for the Long-Term Operations of the Central Valley Project and State Water Project.

Pros:

- The bill would increase efficiencies of species management efforts and likely reduce conflicting management requirements that arise when multiple agencies have responsible charge over species management efforts, like those experienced in 2016 when FWS was urging releases from Shasta Dam for salinity control

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 866, To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

Fiscal Impact: Unknown. Potentially reduce costs associated with Endangered Species Act program.

Business Analysis: Reduce costs associated with recovery of listed species.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs/water supply impacts due to conflicting species management efforts.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from regulatory requirements.

S.B. 559 (Hurtado) – Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

RECOMMENDATION: SUPPORT

OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury to be administered by the department. The bill would require all moneys deposited in the fund to be expended, upon appropriation by the Legislature, in support of subsidence repair costs, including environmental planning, permitting, design, and construction and necessary road and bridge upgrades required to accommodate capacity improvements. The bill would require the department to expend from the fund, upon appropriation by the Legislature, specified monetary amounts to restore the capacity of 4 specified water conveyance systems, as prescribed, with 2 of those 4 expenditures being in the form of a grant to the Friant Water Authority and to the San Luis and Delta-Mendota Water Authority. The bill would make these provisions inoperative on July 1, 2030, and would repeal the provisions as of January 1, 2031.

Status

S.B. 559 was introduced in the California Senate on February 18, 2021. Additional key coauthors include: Andreas Borgeas, Anna Caballero, Adam Gray, Rudy Salas, and Jim Patterson.

Importance to the Authority

This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury. Funds deposited into the Fund would be used to support subsidence repair costs of up to one-third of the total cost of subsidence repair costs to the Delta-Mendota (DMC), San Luis, and Friant-Kern Canals, and the California Aqueduct. This would provide up to a \$187 million grant to the Water Authority for subsidence mitigation along the DMC and up to \$194 million for repairs along the San Luis Canal.

Pros:

- The bill would provide up to a one-third cost share of state grant funds for capacity restoration of key conveyance for Authority member agencies.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to S.B. 559, Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

Fiscal Impact: Unknown. Reduce costs associated with infrastructure finance.

Business Analysis: Reduce costs associated with infrastructure finance.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs associated with infrastructure development/repair.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from infrastructure construction/repair.

Guidelines for Taking Positions on Legislation

A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

Policy

By Agenda Item 9, dated December 12, 2019, the Board adopted the Fiscal Year 2021 Objectives.

Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff testifies and advocates with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority

staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

117TH CONGRESS
1ST SESSION

H. R. 644

To amend the National Environmental Policy Act of 1969 to authorize assignment to States of Federal agency environmental review responsibilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2021

Mr. CALVERT introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To amend the National Environmental Policy Act of 1969 to authorize assignment to States of Federal agency environmental review responsibilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing Environ-
5 mental Barriers to Unified Infrastructure and Land De-
6 velopment Act of 2021” or the “REBUILD Act”.

1 **SEC. 2. ASSIGNMENT TO STATES OF FEDERAL ENVIRON-**
2 **MENTAL REVIEW RESPONSIBILITIES.**

3 Title I of the National Environmental Policy Act of
4 1969 (42 U.S.C. 4331 et seq.) is amended by adding at
5 the end the following new section:

6 **“SEC. 106. ASSIGNMENT TO STATES OF ENVIRONMENTAL**
7 **REVIEW RESPONSIBILITIES WITH RESPECT**
8 **TO CERTAIN PROJECTS IN THE STATE.**

9 **“(a) ASSUMPTION OF RESPONSIBILITY.—**

10 **“(1) IN GENERAL.—**Subject to the other provi-
11 sions of this section, with the written agreement of
12 the responsible Federal official and a State, which
13 may be in the form of a memorandum of under-
14 standing, the responsible Federal official may assign,
15 and the State may assume, the responsibilities of the
16 responsible Federal official under this Act with re-
17 spect to one or more covered Federal projects of the
18 responsible Federal official within the State.

19 **“(2) ADDITIONAL RESPONSIBILITY.—**If a State
20 assumes responsibility under paragraph (1) the re-
21 sponsible Federal official may assign to the State,
22 and the State may assume, all or part of the respon-
23 sibilities of the responsible Federal official for envi-
24 ronmental review, consultation, or other action re-
25 quired under any Federal environmental law per-

1 taining to the review or approval of covered projects
2 of the responsible Federal official.

3 “(3) PROCEDURAL AND SUBSTANTIVE RE-
4 QUIREMENTS.—A State shall assume responsibility
5 under this section subject to the same procedural
6 and substantive requirements as would apply if that
7 responsibility were carried out by the responsible
8 Federal official.

9 “(4) FEDERAL RESPONSIBILITY.—Any respon-
10 sibility of the responsible Federal official not explic-
11 itly assumed by the State by written agreement
12 under this section shall remain the responsibility of
13 the responsible Federal official.

14 “(5) NO EFFECT ON AUTHORITY.—Nothing in
15 this section preempts or interferes with any power,
16 jurisdiction, responsibility, or authority of an agen-
17 cy, other than the agency of the responsible Federal
18 official for a covered Federal project, under applica-
19 ble law (including regulations) with respect to the
20 project.

21 “(b) STATE PARTICIPATION.—

22 “(1) APPLICATION.—Not later than 180 days
23 after the date of enactment of this section, each re-
24 sponsible Federal official shall promulgate regula-
25 tions that establish requirements relating to infor-

1 mation required to be contained in any application
2 of a State to assume responsibility under this section
3 with respect to covered Federal projects of the re-
4 sponsible Federal official, including, at a min-
5 imum—

6 “(A) the projects or classes of projects for
7 which the State anticipates exercising the au-
8 thority that may be granted under this section;

9 “(B) verification of the financial resources
10 necessary to carry out the authority that may
11 be assigned under this section; and

12 “(C) evidence of the notice and solicitation
13 of public comment by the State relating to as-
14 sumption of responsibility under this section by
15 the State, including copies of comments re-
16 ceived from that solicitation.

17 “(2) PUBLIC NOTICE.—

18 “(A) IN GENERAL.—Each State that sub-
19 mits an application under this subsection shall
20 give notice of the intent of the State to submit
21 such application not later than 30 days before
22 the date of submission of the application.

23 “(B) METHOD OF NOTICE AND SOLICITA-
24 TION.—The State shall provide notice and so-
25 licit public comment under this paragraph by

1 publishing the complete application of the State
2 in accordance with the appropriate public notice
3 law of the State.

4 “(3) SELECTION CRITERIA.—A responsible Fed-
5 eral official may approve the application of a State
6 under this section only if—

7 “(A) the regulatory requirements under
8 paragraph (2) have been met;

9 “(B) the responsible Federal official deter-
10 mines that the State has the capability, includ-
11 ing financial and personnel, to assume the re-
12 sponsibility; and

13 “(C) the head of the State agency having
14 primary jurisdiction over covered projects with
15 respect to which responsibility would be as-
16 signed to the State pursuant to the application
17 enters into a written agreement with the re-
18 sponsible Federal official described in sub-
19 section (e).

20 “(4) OTHER FEDERAL AGENCY VIEWS.—If a
21 State applies to assume a responsibility of a respon-
22 sible Federal official that would have required the
23 responsible Federal official to consult with another
24 Federal agency, the responsible Federal official shall

1 solicit the views of the Federal agency before ap-
2 proving the application.

3 “(c) WRITTEN AGREEMENT.—A written agreement
4 under this section shall—

5 “(1) be executed by the Governor of the State
6 or the head of the State agency referred to in sub-
7 section (b)(3)(C);

8 “(2) be in such form as the responsible Federal
9 official may prescribe; and

10 “(3) provide that the State—

11 “(A) agrees to assume all or part of the re-
12 sponsibilities of the responsible Federal official
13 described in subsection (a);

14 “(B) expressly consents, on behalf of the
15 State, to accept the jurisdiction of the Federal
16 courts for the compliance, discharge, and en-
17 forcement of any responsibility of the respon-
18 sible Federal official assumed by the State;

19 “(C) certifies that State laws (including
20 regulations) are in effect that—

21 “(i) authorize the State to take the
22 actions necessary to carry out the respon-
23 sibilities being assumed; and

24 “(ii) are comparable to section 552 of
25 title 5, United States Code, including pro-

1 viding that any decision regarding the pub-
2 lic availability of a document under those
3 State laws is reviewable by a court of com-
4 petent jurisdiction; and

5 “(D) agrees to maintain the financial re-
6 sources necessary to carry out the responsibil-
7 ities being assumed.

8 “(d) JURISDICTION.—

9 “(1) IN GENERAL.—The United States district
10 courts shall have exclusive jurisdiction over any civil
11 action against a State for failure to carry out any
12 responsibility of the State under this section.

13 “(2) LEGAL STANDARDS AND REQUIRE-
14 MENTS.—A civil action under paragraph (1) shall be
15 governed by the legal standards and requirements
16 that would apply in such a civil action against the
17 responsible Federal official had the responsible Fed-
18 eral official taken the actions in question.

19 “(3) INTERVENTION.—The responsible Federal
20 official shall have the right to intervene in any ac-
21 tion described in paragraph (1).

22 “(e) EFFECT OF ASSUMPTION OF RESPONSI-
23 BILITY.—A State that assumes responsibility under sub-
24 section (a) shall be solely responsible and solely liable for
25 carrying out, in lieu of the responsible Federal official, the

1 responsibilities assumed under subsection (a), until the
2 termination of such assumption of responsibility.

3 “(f) LIMITATIONS ON AGREEMENTS.—Nothing in
4 this section permits a State to assume any rulemaking au-
5 thority of the responsible Federal official under any Fed-
6 eral law.

7 “(g) AUDITS.—

8 “(1) IN GENERAL.—To ensure compliance by a
9 State with any agreement of the State under sub-
10 section (c) (including compliance by the State with
11 all Federal laws for which responsibility is assumed
12 under subsection (a)), for each State participating in
13 the program under this section, the responsible Fed-
14 eral official shall conduct—

15 “(A) semiannual audits during each of the
16 first 2 years of the effective period of the agree-
17 ment; and

18 “(B) annual audits during each subsequent
19 year of such effective period.

20 “(2) PUBLIC AVAILABILITY AND COMMENT.—

21 “(A) IN GENERAL.—An audit conducted
22 under paragraph (1) shall be provided to the
23 public for comment for a 30-day period.

24 “(B) RESPONSE.—Not later than 60 days
25 after the date on which the period for public

1 comment ends, the responsible Federal official
2 shall respond to public comments received
3 under subparagraph (A).

4 “(h) REPORT TO CONGRESS.—Each responsible Fed-
5 eral official shall submit to Congress an annual report that
6 describes the administration of this section by such offi-
7 cial.

8 “(i) TERMINATION BY RESPONSIBLE FEDERAL OFFI-
9 CIAL.—The responsible Federal official with respect to an
10 agreement with a State under this section may terminate
11 the agreement, and any responsibility or authority of the
12 State under this section with respect to such agreement,
13 if—

14 “(1) the responsible Federal official determines
15 that the State is not adequately carrying out the re-
16 sponsibilities assumed by the State under this sec-
17 tion;

18 “(2) the responsible Federal official provides to
19 the State—

20 “(A) notification of the determination of
21 noncompliance; and

22 “(B) a period of at least 30 days during
23 which to take such corrective action as the re-
24 sponsible Federal official determines is nec-

1 essary to comply with the applicable agreement;
2 and

3 “(3) the State, after the notification and period
4 provided under subparagraph (B), fails to take satis-
5 factory corrective action, as determined by the re-
6 sponsible Federal official.

7 “(j) DEFINITIONS.—In this section:

8 “(1) COVERED FEDERAL PROJECT.—The term
9 ‘covered Federal project’ means—

10 “(A)(i) except as provided in clause (ii)
11 and subparagraph (B), any project that is fund-
12 ed by, carried out by, or subject to approval or
13 disapproval by a responsible official, including
14 any project for which a permit or other author-
15 ization by a responsible Federal official is re-
16 quired; and

17 “(ii) in the case of projects funded, carried
18 out by, or subject to review, approval, or dis-
19 approval by the Secretary of the Army, and ex-
20 cept as provided in subparagraph (B), includes
21 only such projects of the Corps of Engineers;
22 and

23 “(B) the preparation of any statement re-
24 quired by section 102(2)(C).

1 “(2) RESPONSIBLE FEDERAL OFFICIAL.—The
2 term ‘responsible Federal official’ means—
3 “(A) the Secretary of the Interior;
4 “(B) the Secretary of Transportation;
5 “(C) the Administrator of the Environ-
6 mental Protection Agency;
7 “(D) the Secretary of the Army; and
8 “(E) the head of a Federal agency, with
9 respect to the preparation of statements under
10 section 102(2)(C) for major Federal actions (as
11 that term is used in that section) of the agen-
12 cy.”.

○

117TH CONGRESS
1ST SESSION

H. R. 737

To extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 providing operational flexibility, drought relief, and other benefits to the State of California.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2021

Mr. VALADAO (for himself, Mr. MCCARTHY, Mr. CALVERT, Mr. GARCIA of California, Mr. ISSA, Mrs. KIM of California, Mr. LAMALFA, Mr. MCCLINTOCK, Mr. NUNES, Mr. OBERNOLTE, and Mrs. STEEL) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 providing operational flexibility, drought relief, and other benefits to the State of California.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Responsible, No-Cost
5 Extension of Western Water Infrastructure Improvements
6 Act” or the “RENEW WIIN Act”.

1 **SEC. 2. EXTENSION OF AUTHORITY.**

2 Subtitle J of the Water Infrastructure Improvements
3 for the Nation Act (Public Law 114–322) is amended—

4 (1) in section 4007 (43 U.S.C. 390(b) note), in
5 subsection (i), by striking “January 1, 2021” and
6 inserting “January 1, 2031”; and

7 (2) in section 4013 (43 U.S.C. 390(b) note)—

8 (A) in the first sentence, by striking “the
9 date that is 5 years after the date of its enact-
10 ment” and inserting “December 31, 2031”; and

11 (B) in paragraph (1), by striking “10
12 years after the date of its enactment” and in-
13 sserting “on December 31, 2036”.

○

Introduced by Senator Hurtado
(Principal coauthor: Assembly Member Patterson)
(Coauthors: Senators Borgeas and Caballero)
(Coauthors: Assembly Members Gray and Salas)

February 18, 2021

An act to add and repeal Section 140.5 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as introduced, Hurtado. Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

Under existing law, the United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates the State Water Project to supply water to persons and entities in the state. Existing law requires the Friant-Kern Canal to be of such capacity as the department determines necessary to furnish an adequate supply of water for beneficial purposes in the area to be served by the canal.

This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury to be administered by the department. The bill would require all moneys deposited in the fund to be expended, upon appropriation by the Legislature, in support of subsidence repair costs, including environmental planning, permitting, design, and construction and necessary road and bridge upgrades required to accommodate capacity improvements. The bill would require the department to expend from the fund, upon appropriation by the Legislature, specified monetary amounts to restore the capacity of 4 specified water conveyance systems, as prescribed, with 2 of those 4

expenditures being in the form of a grant to the Friant Water Authority and to the San Luis and Delta-Mendota Water Authority. The bill would make these provisions inoperative on July 1, 2030, and would repeal the provisions as of January 1, 2031.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The human right to water is an important state policy enacted
4 in 2013. Climate change may impact the ability of existing water
5 infrastructure to continue to provide safe, affordable, and reliable
6 water.

7 (b) The Legislature, recognizing that chronic groundwater
8 overpumping was leading to undesirable impacts such as
9 subsidence, enacted the Sustainable Groundwater Management
10 Act (Part 2.74 (commencing with Section 10720) of Division 6 of
11 the Water Code) in 2015.

12 (c) Subsidence has impacted the ability of state and regional
13 water conveyance infrastructure to reliably deliver water to the
14 San Joaquin Valley and southern California.

15 (d) A significant number of the communities that rely on water
16 delivered by infrastructure of statewide or regional importance are
17 considered disadvantaged or severely disadvantaged.

18 (e) These communities, particularly throughout the San Joaquin
19 Valley, face adverse impacts associated with subsidence and loss
20 of water supply, including loss of job opportunities and job
21 security.

22 (f) Disadvantaged communities, particularly in southern
23 California, face increasing costs to ensure access to high-quality
24 water and to maintain water supply reliability.

25 (g) The Friant-Kern Canal, Delta-Mendota Canal, San Luis
26 Canal, and California Aqueduct are the state's main state and
27 regional water conveyance infrastructure that delivers water for
28 agricultural, municipal, and industrial use, refuge water supplies,
29 and groundwater recharge in the San Joaquin Valley and in
30 southern California.

1 (h) This water is delivered through a series of regional canals
2 and aqueducts that traverse through the San Joaquin Valley for
3 delivery and continue to southern California.

4 (i) At least 5,000,000 people in the state, including
5 approximately 1,250,000 people living in disadvantaged
6 communities, receive water from the Friant-Kern Canal,
7 Delta-Mendota Canal, and San Luis Canal.

8 (j) The State Water Project provides approximately three-fourths
9 of California's disadvantaged communities with some or all of
10 their water supplies.

11 (k) Over 750,000 acres of farmland receive water from the State
12 Water Project and nearly 2,500,000 acres of productive cropland
13 are served water through the Friant-Kern Canal, Delta-Mendota
14 Canal, and San Luis Canal.

15 (l) Climate change has increased the variability of the hydrologic
16 cycle and reduced the availability of surface water supplies to a
17 smaller number of years, which increases the need for conjunctive
18 use of groundwater to manage reductions in surface water supplies.
19 An increase in groundwater pumping has caused significant land
20 subsidence that has affected the ability of regional water
21 conveyance infrastructure to convey water. In some areas, the
22 water conveyance infrastructure has dropped in elevation an
23 average of one inch per month since 2014.

24 (m) The total cost to repair these regional water conveyance
25 structures is approximately \$2,300,000,000 over 10 years.

26 (n) Restoring water conveyance capacity is a necessary step to
27 improving water resilience and to protect critical regional water
28 infrastructure from the impacts of drought and climate change,
29 which will improve the accessibility of safe and reliable drinking
30 water and other beneficial uses of water.

31 (o) The Sustainable Groundwater Management Act (Part 2.74
32 commencing with Section 10720) of Division 6 of the Water
33 Code) will help to protect investments made to restore water
34 conveyance capacity.

35 (p) It is of paramount importance that the primary state and
36 regional water conveyance infrastructure in the state be protected
37 from subsidence, and that conveyance be restored whenever
38 economically, environmentally, and technically feasible.

39 SEC. 2. Section 140.5 is added to the Water Code, to read:

1 140.5. (a) The Canal Conveyance Capacity Restoration Fund
2 is hereby established in the State Treasury. The department shall
3 administer the fund.

4 (b) All moneys deposited in the fund shall be expended, upon
5 appropriation by the Legislature, in support of subsidence repair
6 costs, including environmental planning, permitting, design, and
7 construction and necessary road and bridge upgrades required to
8 accommodate capacity improvements.

9 (c) Moneys expended from the fund for each individual project
10 specified in subdivision (d) shall not exceed one-third of the total
11 cost of each individual project. The total amount expended from
12 the fund for all of the projects specified in subdivision (d) shall
13 not exceed seven hundred eighty-five million dollars
14 (\$785,000,000).

15 (d) The department shall expend from the fund, upon
16 appropriation by the Legislature, all of the following, consistent
17 with subdivision (b):

18 (1) Three hundred eight million dollars (\$308,000,000) for a
19 grant to the Friant Water Authority to restore the capacity of the
20 Friant-Kern Canal.

21 (2) One hundred eighty-seven million dollars (\$187,000,000)
22 for a grant to the San Luis and Delta-Mendota Water Authority to
23 restore the capacity of the Delta-Mendota Canal.

24 (3) One hundred ninety-four million dollars (\$194,000,000) to
25 restore the capacity of the San Luis Field Division of the California
26 Aqueduct.

27 (4) Ninety-six million dollars (\$96,000,000) to restore the
28 capacity of the San Joaquin Division of the California Aqueduct.

29 (e) This section shall become inoperative on July 1, 2030, and,
30 as of January 1, 2031, is repealed.



MEMORANDUM

TO: SLDMWA Water Resources Committee Members, Alternates
SLDMWA Board of Directors, Alternates

FROM: Federico Barajas, Executive Director

DATE: February 24, 2021

RE: Ratification of the Appointment of Federico Barajas to State and Federal
Contractors Water Agency Board of Directors

BACKGROUND

The San Luis & Delta-Mendota Water Authority (SLDMWA) is entitled to fill three Director positions on the State and Federal Contractors Water Agency (SFCWA) Board of Directors. Most recently, Rick Gilmore, Anthea Hansen, and Jon Rubin have filled the three seats, with Hansen and Rubin serving since April 2018. When Rubin was appointed in 2018, he was serving as Interim Executive Director of SLDMWA.

In early 2021, current Executive Director Federico Barajas was reminded that Rubin remained on the SFCWA Board on behalf of SLDMWA. Barajas sought confirmation from the SLDMWA Board Chair and SFCWA representatives Gilmore and Hansen that it would be preferable for SLDMWA's Executive Director to serve on the SFCWA Board. To continue the tradition of having SLDMWA's Executive Director fill one of the three SFCWA Director positions, on February 2, 2021, Barajas then transmitted a letter to SFCWA announcing the replacement of Rubin with Barajas on the SFCWA Board. In the February 2021 SLDMWA Board meeting, the SLDMWA Board requested an opportunity to ratify Barajas's appointment.

ISSUE FOR DECISION

Whether the Water Resources Committee should recommend, and the Board of Directors should approve, ratification of the appointment of Federico Barajas to the SFCWA Board of Directors.

RECOMMENDATION

Staff recommends ratification of the appointment of Federico Barajas to the SFCWA Board of Directors.

ANALYSIS

Article III, Section 2 of the SFCWA bylaws state in relevant part:

. . . . Each Director of the Agency shall be a director, officer, or employee of the appointing member agency (“Member”). For Members that are joint powers agencies, the Directors appointed by those Members may be directors, officers, or employees of the joint powers agency or of any public agency that is a member of that joint powers agency. . . .

Directors and Alternates shall have no fixed term of office, but each shall serve on the Board at the pleasure of the appointing Member and may be replaced at any time by the appointing Member by providing a written notice of replacement to the Secretary of the Agency.

When the Water Authority last appointed Directors to the SFCWA Board, in April 2018, it did so following discussion during a report item in the Water Authority Board meeting. No formal action was taken.

Ratifying Barajas’s appointment will allow the Water Authority Board to confirm that Barajas should replace Rubin on the SFCWA Board. Management staff will ensure that future changes in SFCWA appointment, if any, will occur after formal action.



MEMORANDUM

TO: SLDMWA Water Resources Committee/Board of Directors, Alternates

FROM: Frances Mizuno, Special Projects Administrator

DATE: February 24, 2021

RE: Resolution Including CEQA Exemption for and Authorizing Execution of Agreement to Purchase Release of Water By and Among the Oakdale Irrigation District, South San Joaquin Irrigation District, and San Luis & Delta-Mendota Water Authority, and California Department of Water Resources

BACKGROUND

The Water Authority has previously entered into Agreements for release of water by Oakdale and South San Joaquin Irrigation Districts (OID/SSJID) with the last one in 2018. These agreements allow for OID/SSJID to make available water at Goodwin Dam for release by the Bureau of Reclamation for additional fishery enhancement pulse flow on the Stanislaus River during the April/May period. The Water Authority and the Department of Water Resources (DWR) agree to pay OID/SSJID for the released water. The released water supports additional pumping at the Delta pumps at an inflow to export ratio of 1:1 where 50% of the water is available to DWR at the Banks Pumping Plant and the remaining 50% at Jones Pumping Plant (Jones). The supplemental CVP Water pumped at Jones was made available to Authority members that agree to pay for the water.

In 2021, there may be an opportunity for OID/SSID to make available up to 100,000 acre-feet for an April/May Stanislaus River pulse flow release. Under this proposal, the cost to be paid to OID/SSJID for the release water will be \$250/AF. The release is subject to approval by Reclamation and DWR. The water released would be shared by the Water Authority (50%) and DWR (50%). The Water Authority's share of the release would be made available to all member agencies that participate in the purchase of this water through a Letter Agreement with the Water Authority.

ISSUE FOR DECISION

Whether the Water Resources Committee should recommend, and the Board of Directors should adopt the Resolution including CEQA exemption for and authorizing execution of an Agreement to Purchase Release of Water By and Among the Oakdale Irrigation District, South San Joaquin

Irrigation District, and San Luis & Delta-Mendota Water Authority, and Department of Water Resources.

RECOMMENDATION

Staff recommends adoption of the proposed Resolution.

ANALYSIS

Adopting the Resolution would allow Water Authority members to pursue low cost supplemental water in a year where the CVP water allocation is expected to be very low and is currently at a 55% and 5% allocation for M&I and Ag water service Contractors respectively. If the Resolution is not adopted, the Water Authority would miss out on this opportunity.

Funding the supplemental instream fishery releases and delivery of any supplemental CVP allocation resulting from the Agreement to Water Authority members would have no significant adverse environmental effects. The “project” is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system within established parameters, without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1). Ongoing delivery and receipt of water for M&I and agricultural purposes will continue with no expansion of service and no new facilities constructed because water will be delivered and received for existing beneficial uses through existing facilities.

BUDGET

All costs related to the purchase will be paid by members participating in the purchase and therefore there is no impact to the Water Authority’s budget.

ATTACHMENTS

1. Proposed Resolution
2. Agreement for Release of Water By and Among the Oakdale Irrigation District, the South San Joaquin Irrigation District, the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2021-__

RESOLUTION INCLUDING CEQA EXEMPTION FOR AND AUTHORIZING EXECUTION OF AGREEMENT TO PURCHASE RELEASE OF WATER BY AND AMONG THE OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

WHEREAS, the San Luis & Delta-Mendota Water Authority (“Water Authority”) agricultural water service contractor members received an initial allocation of 5% of their full contractual supply for irrigation and 55% for municipal and industrial (“M&I”) for the 2021 water year, and current projections show that subsequent increases in allocations, if any, will be made later in the season and are expected to be minimal; and

WHEREAS, the Board of Directors of the Water Authority (the “Board”) has considered a draft of that certain Agreement to Purchase Release of Water by and Among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”), the San Luis & Delta-Mendota Water Authority, and the California Department of Water Resources (“DWR”) (“2021 OID-SSJID Agreement”), a copy of which has been presented to the Board, is attached to this Resolution as **Exhibit A**, and is on file with the Secretary hereof; and

WHEREAS, the 2021 OID-SSJID Agreement provides flow in the Stanislaus and lower San Joaquin Rivers that will be in addition to flow that otherwise would occur in the absence of the voluntary sale, which increment of increased flow will be pumped at a 1:1 ratio pursuant to Section 4001(b)(7)(C) of the WIIN Act; and

WHEREAS, the releases resulting from the 2021 OID/SSJID Agreement will be managed, in coordination with fishery and wildlife agencies, during the April-May period to optimize benefits for out-migrating salmonid species; and

WHEREAS, under current conditions such released water is expected to be available for pumping at the State and Federal Delta export facilities on the basis of 50% available to the CVP and 50% available to the State Water Project (“SWP”), subject to any applicable restrictions or limitations imposed by Federal and State agencies with jurisdiction over CVP or SWP operations but contingent upon such agencies allowing for a 1:1 export ratio during the April-May period; and

WHEREAS, Reclamation expects to make the CVP share of water captured at the Delta facilities from the OID-SSJID releases available as supplemental allocation to CVP agricultural and M&I contractors that are members of the Water Authority based upon each such CVP contractor’s election to participate and agreement to accept the terms upon which the supplemental allocation will be made available by Reclamation, including payment of a premium to the Water Authority in the amount of \$250/acre foot for each acre foot released under the 2021 OID-SSJID Agreement; and

WHEREAS, execution and implementation of the 2021 OID-SSJID Agreement is in the public interest of the Water Authority because it will help meet CVP obligations under the Water Quality Control Plan, improve the water supply available to its Members and because availability of the Supplemental Allocation south of the Delta will generate additional revenues to assist the Water Authority in implementing its obligation to operate and maintain the Delta-Mendota Canal and related facilities required by its Agreement with Reclamation during a year of severely reduced water allocation and budget constraints related to such reductions; and

WHEREAS, the Water Authority has determined that its execution and performance of the 2021 OID-SSJID Agreement, including funding the supplemental instream fishery releases and delivering to its Members any supplemental CVP allocation (collectively, the “Project”) resulting from the 2021 OID-SSJID Agreement will have no significant adverse environmental effects; and

WHEREAS, the Project is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system within established parameters, without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1). Ongoing delivery and receipt of water for M&I and agricultural purposes will continue with no expansion of service and no new facilities constructed because water will be delivered and received for existing beneficial uses through existing facilities.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Executive Director and the Chief Operating Officer are hereby authorized and directed to execute the 2021 OID-SSJID Agreement substantially in the form presented to the Board and on file with the Secretary hereof, subject to such additions, deletions and other revisions as the Executive Director shall approve prior to execution.

Section 3. The Executive Director, Chief Operating Officer, and any Water Authority employees, consultants, or agents directed by the Executive Director or Chief Operating Officer hereby are further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary or convenient for completing and implementing the 2021 OID-SSJID Agreement as authorized by this Resolution.

PASSED, APPROVED AND ADOPTED this 4th day of March, 2021, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Federico Barajas, Secretary

.....
I hereby certify that the foregoing Resolution No. 2021- was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 4th day of March, 2021.

Federico Barajas, Secretary

**AGREEMENT FOR RELEASE OF WATER BY AND AMONG THE
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES**
SWPAO # _____

This Agreement is entered into this ____ day of _____, 2021, by and among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”) (collectively, the “Districts”), the San Luis & Delta-Mendota Water Authority (“SLDMWA”), and the Department of Water Resources (“DWR”) of the State of California.

RECITALS

WHEREAS, DWR owns, operates, and maintains water collection, storage, conveyance, and delivery facilities, including but not limited to the State Water Project (“SWP”), and delivers water to 29 water service contractors located throughout California; and

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, SLDMWA is a California joint power authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and

WHEREAS, SLDMWA is comprised of 27 member agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito, and Santa Clara Counties; and

WHEREAS, 24 of SLDMWA’s 27 member agencies receive water from the federal Central Valley Project (“CVP”) under water service, exchange/settlement, or refuge contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River, and various post-1914 appropriative rights to store water from the Stanislaus River in various reservoirs; and

WHEREAS, DWR’s current forecast for the San Joaquin Valley Water Supply Index is _____ with runoff, precipitation, and snowpack _____; and

WHEREAS, CVP agricultural water service contractors South-of-Delta have received an allocation of _____ and the State Water Project Contractors (“SWPC”) have received an allocation of _____;

NOW, THEREFORE, the Districts, SLDMWA, and DWR, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:

(a) “Parties” means the Districts, SLDMWA, and DWR.

(b) “Delivery” means the Districts’ water made available to the United States Bureau of Reclamation (“USBR”) at Goodwin Dam in April and May of 2021. USBR will then release the water at Goodwin Dam on the schedule developed pursuant to Paragraph 14 of this Agreement. This definition is intended to include the grammatical variations of the term “delivery” including “deliver” and “delivered,” where such term is used in reference to water.

(c) “Base flow” means flows released by USBR from Goodwin Dam necessary to meet terms, conditions, or other regulatory requirements applicable to operations of Central Valley Project facilities on the Stanislaus River.

2. **TERM:** This Agreement shall become effective upon execution by all Parties and shall terminate on December 31, 2021 or upon final payment by SLDMWA and DWR of all costs attributable to this Agreement, whichever occurs later.

3. **WATER AVAILABLE FOR PURCHASE:** Pursuant to this Agreement:

(a) Upon request by USBR and DWR, the Districts agree to make up to 100,000 acre-feet of water available at Goodwin Dam from April 1 to May 31 of 2021 pursuant to Section 4001(b)(7) of the Water Infrastructure Improvements for the Nation Act, Pub. Law 114-322 (130 Stat. 1852-53). No water shall be released under this Agreement, and DWR and SLDMWA shall not be obligated to pay for any flows released, unless the release of water, as provided under this Agreement the contacts for DWR and SLDMWA listed in Paragraph 23 have approved both the release and Delivery.

(b) The water made available for Delivery will be released by USBR in accordance with the requirements set forth in Paragraph 14. The water released will be made available to USBR and DWR and will be shared equally, 50/50, pursuant to a separate operations agreement between DWR and USBR.

(c) If either USBR or DWR cannot pump its share of the released water, then the other may pump the additional water for the benefit of its contractors provided that it is willing to pay for the additional water and provided the Party pumping the additional water has obtained prior written agreement from the other Party that the pumping will not adversely impact the non-pumping Party’s operations.

4. COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:

(a) The Districts, in making the water available as described in Paragraph 3, shall comply with all applicable laws and regulations, including but not limited to the California Environmental Quality Act (“CEQA”), National Environmental Policy Act (“NEPA”), California Endangered Species Act, and Federal Endangered Species Act. The Districts shall secure any required consent, permits, reports, and orders, and shall provide DWR and USBR with copies prior to Delivery under this Agreement.

(b) The Districts and SLDMWA are entering into this Agreement based on the determination of the Districts and of SLDMWA, as described below, that the Delivery is categorically exempt from CEQA because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations, section 15301 (“CEQA Guidelines § 15301”), subsection (i), and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to CEQA Guidelines § 15301.

(c) The Districts shall be responsible for obtaining any approval from any relevant government entities that the Districts determine in their discretion is necessary for providing the Delivery. The Districts shall email to DWR and USBR any submissions related to this Agreement that the Districts make with any government entity.

(d) SLDMWA has determined the Delivery is categorically exempt from CEQA because it will result in the provision of supplemental instream fishery flows pursuant to CEQA Guidelines § 15301, subsection (i), and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to CEQA Guidelines § 15301.

(e) Upon execution by all Parties of this Agreement, DWR will file a Notice of Exemption based on CEQA Guidelines § 15301 for operation of an existing facility with the State Clearinghouse.

(f) If any of the Parties is required to pay a fine or civil penalty for any of its actions related to this Agreement, then that Party alone shall be responsible for paying the fine or penalty.

5. PURCHASE PRICE: SLDMWA and DWR agree to pay to the Districts Two hundred and fifty dollars (\$250) per acre-foot for up to 100,000 acre-feet of water delivered.

6. WATER QUALITY: The Districts make no warranty or representations as to the quality or fitness for use of the Delivery.

7. WATER MEASUREMENT AND DELIVERY: DWR and SLDMWA shall pay the Districts to provide up to 100,000 acre-feet to USBR in Goodwin Dam. The payment shall be based on the actual flows released by USBR from Goodwin Dam in excess of the Base Flow. For the purposes of this Agreement, the flow volume for which Districts will be paid in accordance with Paragraph 5 will be measured as the Goodwin releases exceeding the Base Flow. Through concurrence with the National Marine Fisheries Service (“NMFS”), the timing of the releases may be shifted. A Delivery that is released from Goodwin Dam shall be measured on a daily basis by USBR at the Goodwin Gauge and confirmed by USBR and DWR. The Districts and SLDMWA acknowledge that USBR shall be responsible for determining the flow and schedule of the Delivery and that DWR shall be responsible for verifying the flow and schedule of the Delivery.

8. WATER INFRASTRUCTURE FOR IMPROVEMENTS TO THE NATION ACT (“WIIN ACT”): One purpose of this sale is to assist USBR in meeting the 31-day April through May flow objectives in the 2006 State Water Resources Control Board’s Water Quality Control Plan for the Bay-Delta, as required by section 4001, subsection (b)(7) of the WIIN Act. This sale will result in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, under WIIN Act Section 4001, subsection (b)(7)(C). It is the Parties’ expectation that, pursuant to WIIN Act section 4001, subsection (b)(7), the water made available will be subject to an inflow to export ratio of 1:1. (See Paragraph 13).

9. PAYMENT:

(a) The Districts shall invoice SLDMWA and DWR fifty percent (50%) each of the cost for the Delivery for up to a total of 100,000 acre-feet provided at the price identified in Paragraph 5 above, after USBR and DWR have confirmed the amount of water released by USBR from Goodwin Dam in accordance with Paragraph 7.

(b) SLDMWA shall remit payment within sixty (60) days of receipt of the invoice.

(c) The Districts shall submit: (1) an original of each invoice to the DWR contact listed in Paragraph 22 (Notices), and (2) a copy of each invoice to the DWR Accounting Office, Contracts Payable Unit, P.O. Box 94236, Sacramento, California, 94236-0001. DWR shall pay undisputed invoices within forty-five (45) days of the date such invoices are received by the State Water Project Analysis Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with section 927).

10. INTEREST: SLDMWA shall pay the Districts interest at an annual interest rate of ten (10) percent on any charges that remain unpaid sixty (60) days beyond the due date. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

11. DISTRICTS' LIMITING CONDITIONS: The Districts' obligation to make available the quantity of water specified in Paragraph 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:

- (a) The terms and conditions of their water rights as they currently exist;
- (b) The 1988 Agreement and Stipulation with USBR;
- (c) The Tulloch Enhancement Agreement with PG&E, as it now exists and as modified from time to time;
- (d) The Goodwin Agreement, as it now exists and as modified from time to time;
- (e) The terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing, including but not limited to those licenses held for Tulloch and Goodwin Dams;
- (f) The rights of landowners, within the boundaries of OID or SSJID, to the beneficial use of their respective District's water as relates to the delivery of water purchased pursuant to this Agreement;
- (g) Applicable federal and state laws now in existence, and as modified from time to time, which may affect the Districts' rights or obligations; and
- (h) The rights of the cities of Lathrop, Manteca, Escalon, and Tracy pursuant to each city's Water Supply Development Agreement with SSJID.

The conditions described in (a)-(h), inclusive, above, are collectively referred to as the Districts' Limiting Conditions. Nothing in this Agreement shall be construed so as to contradict, conflict with, or otherwise be contrary to the provisions of any of the Districts' Limiting Conditions; and in the event of any conflict between any of the Districts' Limiting Conditions and this Agreement, the Districts' Limiting Condition(s) shall control, and Districts shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for SLDMWA and DWR, that may be required to ensure compliance with any of the Districts' Limiting Conditions.

12. USBR LIMITING CONDITION: The obligations of Districts to deliver water to USBR at Goodwin Dam under this Agreement, and of SLDMWA and DWR to pay for such Delivery, are at all times subject to the USBR's concurrence with this Agreement and for the use of USBR's facilities as may be necessary for the Districts to make the Delivery. If the Districts do not obtain this approval from USBR, this Agreement shall automatically terminate and SLDMWA and DWR shall only be liable for the quantity of water Districts released pursuant to Paragraph 7 and will have no further obligations under this Agreement.

13. SLDMWA and DWR LIMITING CONDITIONS: The obligations of SLDMWA and DWR to pay for Delivery is subject to DWR and USBR having capacity at Banks Pumping Plant and/or Jones Pumping Plant to pump the additional SWP or CVP water and pursuant to section 4001 of the WIIN Act, which allows for a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1 (“1:1 Ratio”). If DWR and USBR are unable to pump additional SWP or CVP water made available at Banks Pumping Plant or Jones Pumping Plant, the Parties may attempt to reschedule the Delivery within the April 1 – May 31 period, or in the alternative, any Party may elect to terminate this Agreement by providing notice to the other Parties consistent with Paragraph 22, or the Parties can meet and agree to a new release and diversion rate for the released water. If this Agreement is terminated, SLDMWA and DWR shall only be obligated to pay Districts for the quantity of water Districts released pursuant to Paragraph 7 prior to the Agreement terminating.

14. DELIVERY:

(a) Consistent with this Agreement and specifically Paragraph 7, the Districts will make the Delivery available at Goodwin Dam on a schedule developed in consultation with the Districts, USBR, DWR, and NMFS. The delivery of the water by the Districts will occur only after USBR, DWR, the Districts, and SLDMWA meet and receive assurances from USBR and DWR that the water to be released will be diverted at the 1:1 Ratio. If the water to be released cannot be diverted at the 1:1 Ratio, then pursuant to Paragraph 13 or 22, the Parties can reschedule the water or meet and confer to determine what water will be released, diverted and paid for, or terminate this Agreement. The two goals of the Delivery are to assist USBR in the April-May Pulse Flow period, and to have additional SWP and CVP water made available at Banks Pumping Plant and Jones Pumping Plant as a result of the Delivery.

(b) No subsequent changes to the schedule, regulatory conditions, or other intervening matters, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts, or diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle, or South Forks of the Stanislaus River, or any action, legislation, ruling, or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts, shall release the Parties from their obligations under this Agreement, except as further specified in Paragraph 15.

15. WATER SUPPLY REDUCTIONS: The Districts may reduce the Delivery for any of the following reasons: the Districts’ Limiting Conditions arise; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River; and any action, legislation, ruling or determination adverse to the Districts affecting the

Agreement and beyond the reasonable control of the Districts. Districts shall make good faith efforts to avoid such reductions, but SLDMWA and DWR agree that Districts shall not be liable for reductions of supply in this Agreement due to the above-stated causes. SLDMWA and DWR shall have no obligation to pay for water not delivered because of a reduction caused by factors listed in this Paragraph.

16. APPROVALS AND COSTS: SLDMWA and DWR are solely responsible for any payment for Delivery after the USBR release of Delivery from Goodwin Dam. This Paragraph survives termination or expiration of this Agreement.

17. LITIGATION COSTS: Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of Districts' water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Delivery. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Paragraph survives termination or expiration of this Agreement.

18. EXPENSES: Districts shall be responsible for all expenses, including but not limited to legal, environmental, or engineering consultants' fees, expenses incurred to obtain any and all necessary approvals and to satisfy all environmental requirements, including CEQA and/or NEPA, required to effectuate the Agreement, and expenses incurred to defend against any litigation challenging the Agreement or the approvals, water rights, or environmental reviews associated with the Agreement. This Paragraph survives termination of this Agreement.

19. COOPERATION: To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other Parties in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

20. WAIVER OF RIGHTS: Any waiver, at any time, by any Party of its rights with respect to a breach, default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default, or matter with respect to this Agreement.

21. ASSIGNMENT: No party may assign its rights or obligations under this Agreement, in whole or in part, without prior written consent of all Parties hereto. Any attempted assignment of this Agreement, in whole or in part, without the prior written consent of all Parties hereto is void.

22. TERMINATION: Any party may elect to terminate this Agreement upon notice to the Parties by electronic mail consistent with Paragraph 23. That party providing the termination shall provide the other parties with the specific grounds on which it wishes to terminate the agreement. Termination of this Agreement is effective immediately upon actual electronic mail receipt of notice by the Parties.

23. NOTICES: All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by Districts and SLDMWA and DWR by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be hand-delivered or mailed by United States first-class postage prepaid, or delivered by electronic mail followed by written notice sent by U.S. mail, and addressed as follows:

OAKDALE IRRIGATION DISTRICT

Steve Knell, General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361
Email: srknell@oakdaleirrigation.com
Phone: (209) 847-0341

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Peter Rietkerk, General Manager
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336
Email: prietkerk@ssjid.com
Phone: (209) 249-4645

SAN LUIS & DELTA- MENDOTA WATER AUTHORITY

Federico Barajas, Executive Director
P.O. Box 2157
Los Banos, CA 95635
Email: Federico.barajas@sldmwa.org
Phone: (209) 826-9696

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Anna Fock, Chief, State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Email: anna.fock@water.ca.gov
Phone: (916) 653-0190

John Leahigh, Water Operations Executive Manager
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Email: john.leahigh@water.ca.gov
Phone: (916) 650-2447

Notice shall be deemed given by operation of any of the following, whichever occurs earliest:

(a) Two (2) calendar days following mailing via regular or certified mail, return receipt requested,

(b) One (1) business day after deposit with any one-day delivery service assuring “next day” delivery,

(c) Upon actual receipt of notice, or

(d) Upon transmission, if by facsimile.

The Parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

24. APPROVALS: Where the terms of this Agreement provide for action to be based upon a judgment, approval, review, or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

25. DISPUTE RESOLUTION: In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and authorized representatives from the Districts and SLDMWA shall endeavor to resolve the dispute by meeting within thirty (30) days after the request of a Party to resolve the dispute. If the dispute remains unresolved after such meeting, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of said consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

26. OTHER AGREEMENTS: Nothing contained within this Agreement restricts the ability of the Districts to provide water services and sales to others as authorized by law which do not unreasonably interfere with Districts’ obligations under this Agreement.

27. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the Districts, SLDMWA, and DWR, and supersedes any oral agreement, statement, or promise between them relating to the subject matter of the Agreement. Any amendment of this Agreement, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

28. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the

execution and delivery between each of the Parties of at least one full set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

29. SIGNATURE CLAUSE:

(a) The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

(b) If required by internal governing rules of OID, SSJID, or SLDMWA, that Party, as appropriate, shall deliver to DWR a copy of its Board of Directors resolution and/or other documentation authorizing that Party to enter into this Agreement.

30. GENERAL INTERPRETATION: The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Federico Barajas, Executive Director

Date: _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Ted Craddock, Deputy Director, State Water Project

Date: _____

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date: _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Peter Rietkerk, General Manager

Date: _____



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: February 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.

Reclamation Directives and Standards

Documents out for Comment

There are currently no draft documents out for review.

State Water Resources Control Board (State Water Board) Activity

Documents out for Comment

State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State”

Background

On April 2, 2019, the State Water Board adopted the “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” (Procedures). On January 26, 2021, the Superior Court in *San Joaquin Tributaries Authority v. California State Water Resources Control Board* issued a judgment and writ “enjoining the State Water Board from applying, via the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays [and Estuaries], the ‘State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State’ adopted by the State Water Board on April 2, 2019, to waters other than those for which water quality standards are required by the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.)” The Superior Court’s decision upheld the adoption of the Procedures as part of the (1) California Ocean Plan and (2) Inland Surface Waters and Enclosed Bays and Estuaries Water Quality Control Plan (ISWEBE Plan) for “waters of the United States”

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

as defined by the Clean Water Act. The Superior Court rejected the other challenges to the Procedures that were raised by the petitioner. In response to the Superior Court's decision, State Water Board staff has ceased efforts to prepare an item for public notice and comment and Board consideration to incorporate the Procedures into the ISWEBE Plan for non-federal waters.

The Superior Court decision addresses only the scope of the State Water Board's authority to adopt water quality control plans under Water Code section 13170. It does not restrict the State Water Board's authority to regulate the discharge of dredged or fill material to all waters of the state pursuant to the Board's other regulatory tools, including its authority to adopt state policy for water quality control under Water Code section 13140. Accordingly, the Superior Court's decision did not impair the Water Boards' authority to regulate discharges of dredged or fill material to all waters of the state, including waters of the state that are not also waters of the United States, except to the extent that such regulation is via a water quality control plan.

In Resolution No. 2019-0015, which adopted the Procedures, the State Water Board referred to its authority to adopt state policies for water quality control pursuant to Water Code section 13140, in addition to its authority to adopt water quality control plans pursuant to Water Code section 13170. Therefore, State Water Board staff is preparing an item for public notice and comment for Board consideration at the April 6, 2021 meeting to confirm that its April 2, 2019 action relied, in part, on Water Code section 13140 and that the Procedures are therefore effective for all waters of the state as a state policy for water quality control. The State Water Board will also consider giving direction to staff as to how to appropriately incorporate the Procedures into the ISWEBE Plan to regulate waters of the United States. Because the substantive provisions of the Procedures were subject to two written comment periods and numerous opportunities for public participation, the State Water Board will not be reconsidering the substantive provisions of the Procedures. The State Water Board's action will confirm whether the Procedures should continue to be applied to non-federal waters as a state policy for water quality control. Because the State Water Board referred to Water Code section 13140 when it adopted the Procedures, staff will continue to apply the Procedures as a state policy applicable to all waters of the state, but not via the ISWEBE Plan, pending State Water Board direction on April 6, 2021.

[Submission of Comments](#)

The State Water Board will accept both written and oral comments on only the proposed resolution (attached, "Exhibit A") and whether the Procedures are in effect as state policy for water quality control. Written comments or evidence that are unrelated to the proposed resolution, including comments regarding the substantive provisions of the Procedures, will not be accepted. Written comments must be received no later than 12:00 p.m. (noon) on Monday, March 8, 2021. The State Water Board will not accept any additional written comments after the written comment deadline.

Recommendations for an Effective Water Rights Response to Climate Change

On February 4, 2021, the Division of Water Rights (Division) released a report on climate change. The report outlines staff recommendations to make water availability analysis more robust, and actions to support an effective water rights response to climate change within the existing water rights framework in California. The report and related material are available on the Division's climate change webpage²

State Board staff is identifying data needs and recommendations to incorporate climate change into water rights permitting policies, procedures, and methodologies. The report makes several recommendations, some of which may introduce uncertainty into the water permitting process. Staff is working with other water users to draft and submit a comment letter and will coordinate with member agencies on the effort.

Submission of Comments

The Division invites the public and other stakeholders to provide input on the report by March 10, 2021. Please email questions and comments to Jelena Hartman at jelena.hartman@waterboards.ca.gov.

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.³ 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.

² https://www.waterboards.ca.gov/waterrights/water_issues/programs/climate_change/

³ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

Phase 1 Status: The State Water Board adopted a resolution⁴ 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.

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 documents⁵ 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, significant 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.

⁴Available at

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

⁵ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

California Water Commission Activity

The California Water Commission is accepting screening information for water storage projects that provide [Proposition 1, Chapter 8](#) public benefits in the [Water Storage Investment Program](#). This process does not involve any immediate funding. If the Commission finds a project is feasible, the project would be included in a pool of projects for the Commission's consideration if funding becomes available. The Commission would also need to decide to proceed with a rulemaking process and another solicitation in the future before a full project application could be submitted and reviewed.

Any project submitted through the screening process needs a finding of feasibility by the Commission no later than the December 2021 regularly scheduled Commission meeting. It is recommended and encouraged that project proponents submit screening proposals to Commission staff no later than October 22, 2021.

Information needed for the screening process includes, at a minimum, the statutory requirements found in Water Code 79757:

- Completed feasibility studies and draft environmental documentation made available for public review;
- Information that describes how the project will advance the long-term objectives of restoring ecological health and improve water management for beneficial uses of the Delta; and
- Commitments for at least 75% of the nonpublic benefit cost share of the project.

Additional information about the project and how it aligns with the Program's regulations may be submitted. If a project proponent wishes to understand the feasibility components of the Program, the [Regulations](#) and the [Technical Reference](#) are instructive.

If the Commission moves forward with additional regulations and a second solicitation, only projects successful in the screening process would be eligible to apply.

Delta Conveyance

The purpose of the Delta conveyance project is to make the State Water Project more reliable by enabling it to operate in a more fish-friendly way with the added point of diversion, but also over the long-term, to protect the State Water Project against earthquakes, sea level rise, and the extreme storm events that are anticipated with climate change.

Scoping Summary Report Addendum Published

DWR recently published an addendum to the Scoping Summary Report for the Delta Conveyance Project, originally published in July 2020. It provides a summary of comments received after the official close of the California Environmental Quality Act (CEQA) scoping period on April 17, 2020 through December 14, 2020. Consistent with the contents of the original Scoping Summary Report, the Addendum includes the comments DWR continued to receive after scoping that

pertain to the alternatives considered and the scope of analysis in the Environmental Impact Report (EIR). The Scoping Summary Report Addendum can be accessed on the Delta Conveyance Environmental Planning page on DWR's website.

[DWR Approves Modifications to Soil Investigations Project](#)

Consistent with the need to evaluate the alternatives in the Delta Conveyance Project EIR, DWR has approved modifications to the soil investigations that were originally approved in July of 2020. Before considering the approval of the modifications, DWR prepared an addendum to the Final Initial Study/Mitigated Negative Declaration (IS/MND) for the soil investigations in the Sacramento-San Joaquin Delta (Delta). DWR considered both the Final IS/MND that was adopted in July 2020 and the Addendum prior to approving the project modifications. The approved modified soil investigation activities, as evaluated in the Addendum, include the removal and replacement of geotechnical investigation sites not previously evaluated in the Final IS/MND. DWR has determined and documented that these changes will not result in any new potentially significant impacts and no subsequent EIR or negative declaration is required. To access a copy of the Addendum and associated Notice of Determination, visit the Delta Conveyance Environmental Planning page on DWR's website.

EXHIBIT A

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2021-

CONFIRMATION THAT THE “STATE WETLAND DEFINITION AND PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIAL TO WATERS OF THE STATE” ARE IN EFFECT AS STATE POLICY FOR WATER QUALITY CONTROL

WHEREAS:

1. On April 2, 2019, the State Water Resources Control Board (State Water Board) adopted [Resolution No. 2019-0015](#) adopting the “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” and approving and adopting the accompanying Substitute Environmental Document, which was prepared in accordance with the regulatory provisions applicable to the State Water Board’s California Environmental Quality Act certified regulatory programs, California Code of Regulations, title 23, sections 3775 through 3781.
2. On May 1, 2019, the San Joaquin Tributaries Authority (SJTA) filed a petition for writ of mandate in Sacramento superior court. On May 20, 2019, SJTA filed an amended petition. One of SJTA’s claims was that “[t]o the extent the Procedures regulate waters of the state not covered by the Clean Water Act (i.e., waters of the state that are not waters of the United States) through a statewide water quality control plan, the Board has exceeded its authority under Water Code section 13170 because these waters are not waters for which water quality standards are required under the Clean Water Act.” (Amended Pet., ¶ 56.)
3. On January 26, 2021, the Superior Court in *San Joaquin Tributaries Authority v. California State Water Resources Control Board* issued a judgment and writ “enjoining the State Water Board from applying, via the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays [and Estuaries], the ‘State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State’ [(“Procedures”)] adopted by the State Water Board on April 2, 2019, to waters other than those for which water quality standards are required by the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.)” The Superior Court’s decision upheld the adoption of the Procedures as part of the (1) California Ocean Plan and (2) Inland Surface Waters and Enclosed Bays and Estuaries Water Quality Control Plan (ISWEBE Plan) for “waters of the United States” as defined by the Clean Water Act. The Superior Court rejected the other challenges to the Procedures that were raised by the petitioner. In response to the Superior Court’s decision, State Water Board staff has ceased efforts to prepare an item for public notice and comment and Board consideration to incorporate the Procedures into the ISWEBE Plan for non-federal waters.

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4. The Superior Court decision addresses only the scope of the State Water Board's authority to adopt water quality control plans under Water Code section 13170. It does not restrict the State Water Board's authority to regulate the discharge of dredged or fill material to all waters of the state pursuant to the Board's other regulatory tools, including its authority to adopt state policy for water quality control under Water Code section 13140. Accordingly, the Superior Court's decision did not impair the Water Boards' authority to regulate discharges of dredged or fill material to all waters of the state, including waters of the state that are not also waters of the United States, except to the extent that such regulation is via the ISWEBE Plan. The court found inclusion in the California Ocean Plan separately authorized under Water Code section 13170.2.
5. In Resolution No. 2019-0015, which adopted the Procedures, the State Water Board referred to its authority to adopt state policies for water quality control pursuant to Water Code section 13140, in addition to its authority to adopt water quality control plans pursuant to Water Code section 13170. The purpose of this Resolution is for the State Water Board to provide clarification regarding Resolution No. 2019-0015 by confirming that its April 2, 2019 action relied, in part, on Water Code section 13140 and that the Procedures are therefore effective for all waters of the state as state policy for water quality control. In the alternative, this Resolution is for the State Water Board to adopt the Procedures as state policy for water quality control.

The State Water Board's Authority to Adopt State Policies for Water Quality Control under Water Code section 13140

6. The State Water Board is authorized to adopt state policy for water quality control. (Water Code § 13140.) The components of state policy for water quality control include all or any of the following: (1) water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of recycled water, (2) water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities, and (3) other principles and guidelines deemed essential by the State Water Board for water quality control. (Wat. Code, § 13142.)
7. State policy for water quality control may supersede conflicting provisions in regional water quality control plans where the State Water Board determines it is appropriate. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1460.)
8. The permissible contents of water quality control plans pursuant to Water Code section 13170 overlap with the permissible contents of policies for water quality control pursuant to Water Code section 13140. In some cases, the State Water Board acts under the authority of both Water Code sections 13170 and 13140.

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9. Pursuant to Water Code, section 13146, “State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.” This section applies to the Regional Water Boards. (*Cf. State Water Resources Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 730 [interpreting analogous language in Water Code section 13247 as applying to the State Water Board].)

The State Water Board’s April 2, 2019 Adoption of the Procedures

10. In 2008, the State Water Board resolved that, “The State Water Board will take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy to protect wetlands and riparian areas (Policy) that is watershed-based.” ([Resolution No. 2008-0026](#))
11. An informal, preliminary draft entitled “Water Quality Control Policy for Wetland Area Protection and Dredge and Fill Permitting” was released in March 2012.
12. The Procedures were first released for public comment and a Board hearing in 2016. The notice described “Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Formerly Known as the Wetlands Policy).”
13. The staff report stated, “the decision was made to convert the policy into a plan amendment to both the existing Water Quality Control Plan for Ocean Waters and forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries of California. . . . In addition, by adopting the Procedures as amendments to water quality control plans, they will automatically supersede any conflicting provisions in the Regional Water Quality Control Boards’ (Regional Water Boards) water quality control plans and will apply to the State and Regional Water Boards (collectively, Water Boards).” (Staff Report, p.1.) [citations omitted]
14. The State Water Board did not receive any comments specifically regarding the scope of the Water Board’s authority under Water Code section 13170 or 13140 or whether the Procedures would continue to be a freestanding policy.
15. The Procedures were released for a second public comment period and Board hearing in 2017. The 2017 draft of the Procedures also stated that the Procedures would be included in the Ocean Plan and the ISWEBE. Again, the State Water Board did not receive any comments specifically regarding the scope of the Water Board’s authority under Water Code section 13170 or 13140 or whether the Procedures would continue to be a freestanding policy.

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16. In developing, considering, and adopting the Procedures, the State Water Board complied with the applicable procedural requirements applicable to actions taken under both Water Code sections 13140 and 13170 and provided additional public participation opportunities to afford the public with a reasonable opportunity to participate in the consideration of the Procedures. The State Water Board held hearings on July 19, 2016 and September 6, 2017 after appropriate notice. (Wat. Code, § 13147.)
17. During the formulation of the Procedures, the State Water Board consulted with concerned federal, state, and local agencies. (Wat. Code, § 13144.)
18. The State Water Board notified all the affected Regional Water Boards and afforded them an opportunity to submit recommendations. (Wat. Code, § 13147.)
19. The State Water Board intended for the Procedures to apply to all waters of the state, including waters of the state that are not also waters of the United States. For example, the introduction states an intent to bring uniformity to Water Boards' regulation of discharges of dredged or fill material to all waters of the state. (Procedures, page 1, lines 30-31.) The jurisdictional framework also refers to the broad scope of waters of the state as including all waters of the United States. (*Id.* at page 2, line 40.) The application procedures also apply to "all applications of discharges of dredged or fill material to waters of the state." (*Id.* at page 4, lines 105-107.) The desire to apply the same regulatory process to federal and non-federal waters is well-documented in the accompanying staff report.
20. The staff report analyzed the potential environmental impacts of applying the Procedures to all waters of the state.
21. In the response to comments submitted on the July 21, 2017 draft, the State Water Board stated "The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California." (Response to 2017 comments, pp. 24, 54, 361.)
22. On April 2, 2019, the State Water Board adopted Resolution 2019-0015 adopting the "State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" and approving and adopting the accompanying Substitute Environmental Document, which was prepared in accordance with the Provisions applicable to the State Water Board's certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779. Resolution 2019-0015 stated that "The State Water Board is authorized to adopt a state policy for water quality control. (Water Code § 13140.)"

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23. Although a specific citation was inadvertently omitted from Resolution 2019-0015, the State Water Board was authorized by Water Code section 13170.2 to incorporate the Procedures into the water quality control plan for Ocean Waters.
24. Footnote 1 of the Procedures states that “These Procedures will be incorporated into the Water Quality Control Plans for (1) Inland Surface Waters Enclosed Bays and Estuaries and (2) Ocean Waters of California. Because the Procedures will already have been adopted, future incorporation of the Procedures, as adopted, into the water quality control plans will be considered non-substantive amendments.”
25. The Office of Administrative Law (OAL) approved the Procedures on August 28, 2019. The Procedures went into effect nine months afterward, on May 28, 2020.
26. The State Water Resources Control Board issued a Notice of Decision on August 30, 2019.

The Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California

27. On December 1, 2020, the State Water Board established the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan) as a single planning document to contain all the water quality control plan provisions adopted by the State Water Board relating to inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, including waters of the United States and all other surface waters of the state. The State Water Board’s resolution stated an intention for the ISWEBE Plan to also be used by the State Water Board in the future on a case-by-case basis to include state policies for water quality control.
28. As a result of the judgment and writ issued on January 26, 2021 described in Finding 3, the State Water Board staff has ceased efforts to prepare an item for public notice and comment and Board consideration to incorporate the Procedures into the ISWEBE Plan for non-federal waters.

Notice of and Comment on Adoption of this Resolution

29. The adoption of this resolution is not subject to CEQA because there is no effect on the environment. The regulations applicable to the State Water Board’s certified exempt regulatory programs set forth in California Code of Regulations, title 23, Chapter 27 are not applicable because Chapter 27 “does not apply if the board determines that the activity is not subject to CEQA.” (Cal. Code of Regs., tit. 23, § 3720(b).)

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30. Even if this action is subject to CEQA, the State Water Board has already complied with the regulations applicable to its certified exempt regulatory programs. The State Water Board approved the Substitute Environmental Document in Resolution No. 2019-0015. In the Substitute Environmental Document, which was prepared in accordance with the Provisions applicable to the State Water Board's CEQA certified regulatory programs, California Code of Regulations, title 23, sections 3775 through 3781, that accompanied the Procedures, the State Water Board considered the effects to the environment that would result from applying the Procedures to all waters of the state.
31. In developing, considering, and adopting this resolution, the State Water Board complied with the applicable procedural requirements applicable to actions taken under Water Code section 13140.
32. The State Water Board held a written comment period regarding adoption of this resolution from February 5, 2021, through March 8, 2021.
33. The State Water Board noticed an April 6, 2021 hearing regarding adoption of this resolution in accordance with Water Code, section 13147. The State Water Board received oral comments at the April 6, 2021 hearing.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Confirms that because its April 2, 2019 action relied, in part, on Water Code section 13140, the Procedures were also intended to act as state policy for water quality control for all waters of the state. Accordingly, the Procedures should continue to be applied to non-federal waters as state policy for water quality control, but not via the ISWEBE.
2. Finds that, if a court determines that the State Water Board's April 2, 2019 action was not sufficient to adopt state policy for water quality control for all waters of the state, this resolution expressly adopts the Procedures as state policy for water quality control for all waters of the state, and accordingly the Procedures operate as state policy for water quality control for all waters of the state from at least the date of this resolution.
3. Determines that it is appropriate for the Procedures, as state policy for water quality control, to supersede any conflicting provisions in regional water quality control plans because one of the primary objectives of the Procedures was to establish procedures for regulation of discharges of dredged or fill material to all waters of the state, including those outside of federal jurisdiction. Superseding is also necessary to establish a uniform regulatory approach for all waters of the state and to strengthen regulatory effectiveness and improve consistency across all Water Boards. Because Water Code, section 13146 requires State offices, departments, and boards, which

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includes Regional Water Boards, to comply with state policy for water quality control, superseding any conflicting provisions in regional water quality control plans will improve clarity regarding the Procedures' applicability.

4. Determines that any statements regarding inclusion of the Procedures in a water quality control plan in the Procedures, staff report, and response to comments do not preclude the Procedures from also acting as state policy for water quality control.
5. Approves and adopts the following revisions to the documents adopted on April 2, 2019 and authorizes the Executive Director or designee to revise the documents adopted on April 2, 2019 accordingly:
 - a. Revise the cover page of the Procedures to state, "State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" and "[For Inclusion in the Water Quality Control Plan for Ocean Waters of California and the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries for Waters of the United States]."
 - b. Revise footnote 1 of the Procedures to state, "NOTE: These Procedures will be incorporated into the Water Quality Control Plans for (1) Inland Surface Waters Enclosed Bays and Estuaries **for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto** and (2) Ocean Waters of California. ~~Because the Procedures will already have been adopted, f~~uture incorporation of the Procedures, as adopted, into the water quality control plans will be considered non-substantive amendments. At that time, formatting and other organizational edits necessary for incorporation into the water quality control plans will be addressed.]"
 - c. Revise the brackets on page 1, lines 31-21 of the Procedures to reflect that the effective date of the Procedures was May 28, 2020.
 - d. Revise page 2 of the Staff Report, from "the decision was made to convert the policy into a plan amendment" to state, "the decision was made to also adopt the Procedures as a plan amendment."
 - e. Revise all references in the Procedures and Staff Report to the incorporation of the Procedures into the ISWEBE Plan to limit the incorporation to waters of the United States, and add that "and the Procedures are also adopted as state policy for water quality control."
6. Authorizes the Executive Director or designee to submit this resolution, the Procedures and Staff Report as revised in accordance with paragraph 5, and the administrative record to OAL for review and approval of inclusion in

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California Code of Regulations, tit. 23, Division 3, Chapter 22 and to U.S. EPA for informational purposes.

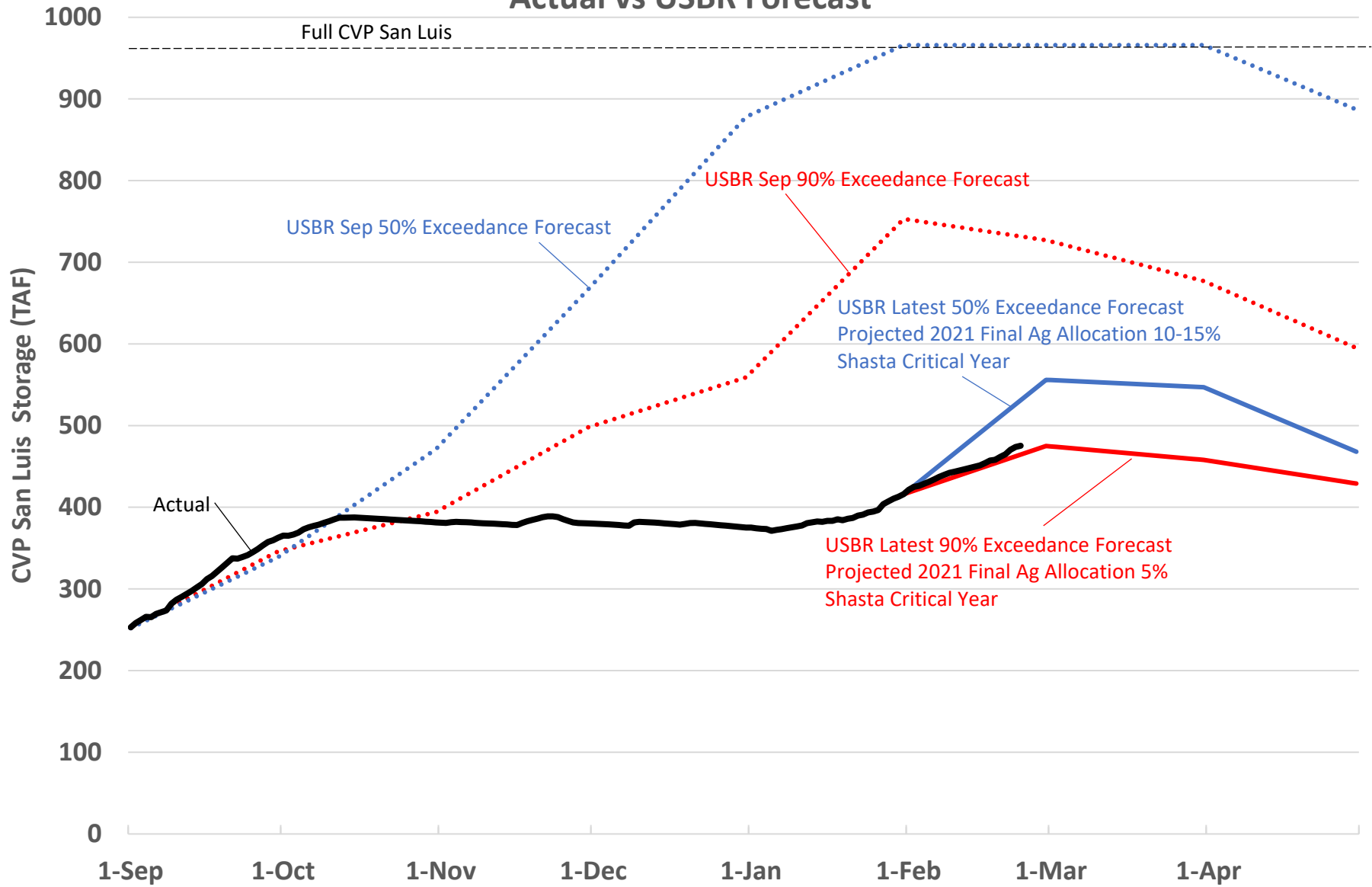
7. Authorizes the Executive Director or designee to make minor, non-substantive modifications to the language of the Procedures and the supporting documentation if State Water Board staff or OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.
8. Directs staff to propose any appropriate incorporation of the Procedures into the ISWEBE Plan to regulate waters of the United States at a future meeting of the State Water Board.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 6, 2021.

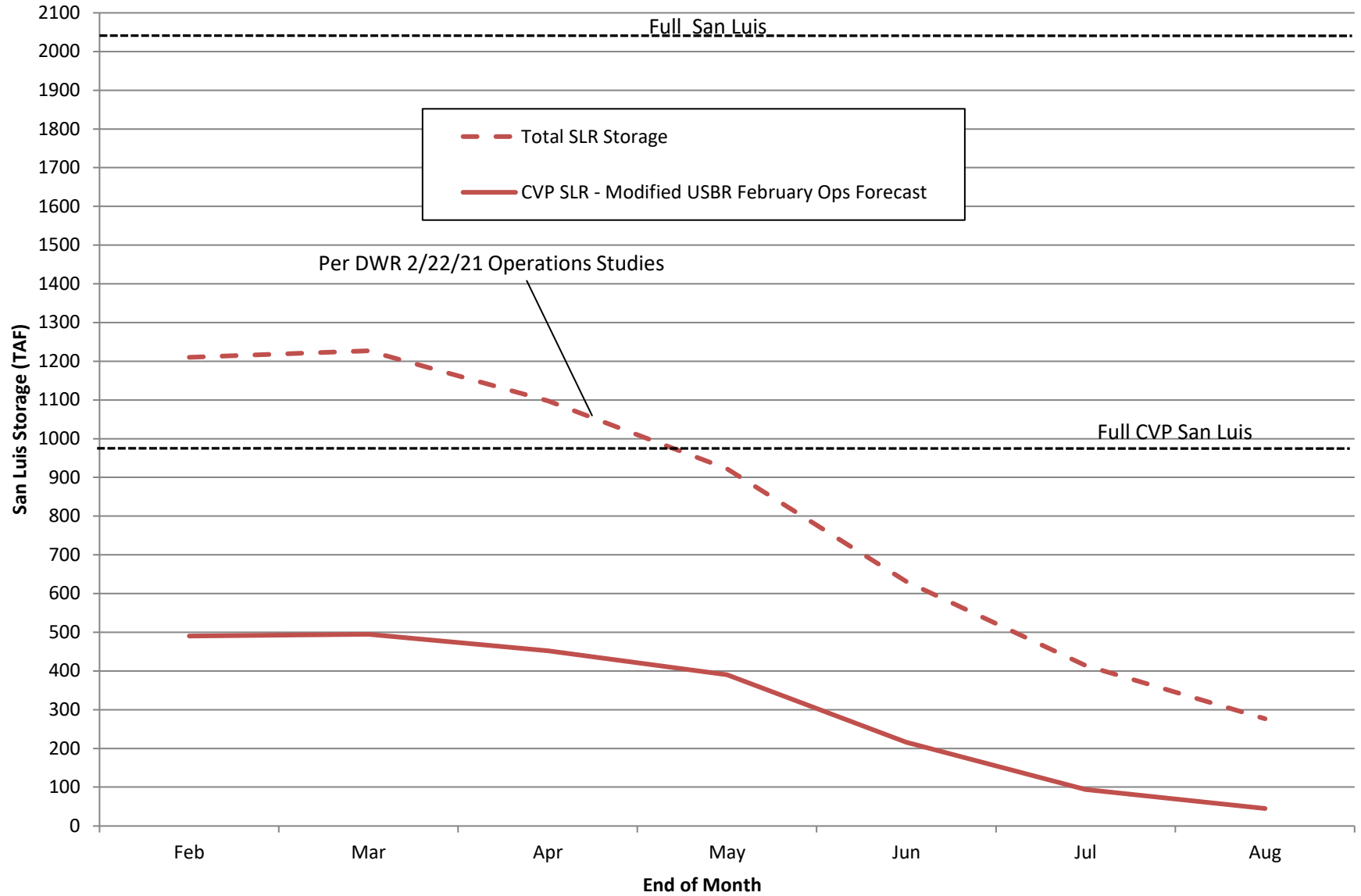
Jeanine Townsend
Clerk to the Board

CVP San Luis Storage Actual vs USBR Forecast



2020-21 San Luis Storage Projection

90% Exceedance Hydrology



2020-21 San Luis Storage Projection

50% Exceedance Hydrology

