



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: September 12, 2022

RE: Update on Water Policy/Resources Activities

Background

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

Policy Items

Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for

several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, with a fact sheet¹ attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project². In response to this, on March 30, 2022, the SLDMWA submitted a comment letter highlighting actions for Reclamation to consider during preparation of the EIS.

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

² <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

During May 2022, Reclamation issued draft copies of the Knowledge Base Papers for the following management topics and requested supplementary material review and comments, to which the Authority submitted comment letters in June:

1. Spring-run Juvenile Production Estimate- Spring-run Survival Knowledge Base Document, May 2022
2. Steelhead Juvenile Production Estimate-Steelhead Survival Knowledge Base Document, April 2022
3. Old and Middle River Reverse Flow Management – Smelt, Chinook Salmon, and Steelhead Migration and Survival Knowledge Base Document, May 2022
4. Central Valley Tributary Habitat Restoration Effects on Salmonid Growth and Survival Knowledge Based Paper, March 2022
5. Delta Spring Outflow Management Smelt Growth and Survival Knowledge Base Document, May 2022
6. Pulse Flow Effects on Salmonid Survival Knowledge Base Document, May 2022
7. Summer and Fall Habitat Management Actions – Smelt Growth and Survival Knowledge Base Document, May 2022
8. Shasta Cold Water Pool Management – End of September Storage Knowledge Base Document, May 2022

Subsequent to the Knowledge Base Paper review, a Scoping Meeting was held, to which Water Authority staff provided comments, resulting in the release of a Scoping Report³ by Reclamation in June 2022. Currently, Reclamation is working to analyze and prepare Initial Alternatives.

Current Milestones

- September 2022 – Initial Alternatives Report
- December 2022 – Proposed Action and Alternatives
- Early 2023 – Public Draft EIS/Biological Assessment
- February 2024 – Record of Decision

Potential Initial Alternatives

Reclamation has indicated in a September meeting of Interested Parties that the following Alternatives are under consideration for the Initial Alternatives Report:

- No Action
- Six-Agency Alternative
- Potential NRDC, PCFFA, Bay Keeper Alternative
- Potential Water Agency Alternative
- Additional Alternative(s), if necessary

Exploratory Modeling

Concurrent with the development of the EIS and BA, Reclamation is conducting Exploratory Modeling to assist in the development of initial alternatives for the Biological Assessment. Recent discussions have

³ <https://www.usbr.gov/mp/bdo/docs/lto-scoping-report-2022.pdf>

involved updates to the Shasta Operations Analysis, focused on the relationship between reservoir carryover and fish mortality.

Upcoming Coordination

- Reclamation will distribute/post the Initial Alternatives Report (IAR) for Interested Party consideration
- Reclamation does not intend to seek comments nor revise the IAR
- Agencies and Interested Parties may use the IAR to inform formulation of alternatives
- The public draft EIS will be the avenue for comments to Reclamation
- Cooperating agencies will receive an administrative draft of the EIS

State Water Resources Control Board (State Water Board) Activity

Water Unavailability Methodology and Revised Draft Emergency Curtailment Regulation *Background*

On August 3, 2021, the State Water Board adopted an [emergency regulation](#) authorizing the curtailment of diversions when water is determined to be unavailable at a water right holder's or claimant's priority of right. (Cal. Code Regs., tit. 23, §§ 876– 879.2.) The regulation was approved by the Office of Administrative Law and went into effect upon filing with the Secretary of State on August 19, 2021. The emergency regulation remains in effect for up to one year. The State Water Board plans to consider revision and re-adoption of this emergency regulation on July 20, 2022, in advance of the expiration date of the current regulation.

On April 19, 2022, the State Water Board released draft proposed revisions to the emergency regulation and methodology revisions and solicited public input on both in writing by May 19, 2022, and orally at a public workshop on May 12, 2022. Based on those comments, updates to the methodology and draft emergency regulation were developed.

On July 20, 2022, the State Water Resources Control Board (State Water Board) revised and readopted an emergency curtailment and reporting regulation for the Sacramento-San Joaquin Delta (Delta) watershed. The State Water Board has released a [Notice of Proposed Emergency Rulemaking](#)⁴ for the revised and readopted emergency regulation and has submitted the emergency regulation to the Office of Administrative Law (OAL) for review and approval.

The finding of emergency, informative digest, and fiscal impact statement associated with the proposed emergency regulation are available on the [Delta Drought webpage](#).

Bay Delta Water Quality Control Plan Update

Background

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

⁴ Available at <https://www.waterboards.ca.gov/drought/delta/docs/2022/2022-proposed-rulemaking.pdf>

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.⁵ The State Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

Phase 1 Status: The State Water Board adopted a resolution⁶ 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.

Most recently, on July 18, 2022, the State Water Resources Control Board issued a Notice of Preparation (NOP)⁷ and California Environmental Quality Act (CEQA) Scoping Meeting for the Proposed Regulation to Implement Lower San Joaquin River Flows (LSJR) and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan).

The purpose of the NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be include in the draft EIR.

In response to the release of the NOP, the Water Authority and member agencies provided scoping comments⁸.

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

⁵ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

⁶ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

⁷ Available at https://www.waterboards.ca.gov/public_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf

⁸ See Appendix

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.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents⁹ to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach “adequacy”, as defined by the State team.

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board’s update to the Bay-Delta Water Quality Control Plan.

On December 8, the State Water Resources Control Board heard an information item on upcoming actions to update and implement the Water Quality Control Plan for the San Francisco Bay Sacramento San Joaquin Delta.

Schedule

Biological Goals

Past Activities

- January 2019 – Independent Science Advisory Panel: Concepts and Ideas for Developing Biological Goals for the Bay-Delta Plan
- September 2019 – Draft Initial Biological Goals for the LSJR for public comment

Current Activities

- Completion of revisions based on public comment to produce a draft Final Biological Goals Report

Future Activities

- Winter/Spring 2022 – Release draft Final Biological Goals Report
- Winter/Spring 2022 – Public Workshop & comment
- Summer 2022 – Board consideration of adoption

⁹ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)

Spring 2022 – Spring 2023

- Initiate CEQA process
- Draft environmental document and public comment
- Notice of draft regulation
- Final environmental document

Summer 2023

- State Water Board consideration of approval
- Notice of final regulation
- Submission to Office of Administrative Law

Sac/Delta Update: Key Milestones

- Early 2022: expected submittal of proposed voluntary agreement
- Winter – Summer 2022: development of Scientific Basis Report for any voluntary agreement, including public review and comment
- Fall 2022: Draft Staff Report public review and comment
- Winter 2023: Public workshop on Draft Staff Report
- Early Fall 2023: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Late Fall 2023: Board consideration of adoption

Voluntary Agreements

On March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding¹⁰ that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement¹¹ specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU

¹⁰ Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

¹¹ Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>

have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

On June 16, the SLDMWA, Friant Water Authority and Tehama Colusa Canal Authority signed onto the VA MOU.

Racial Equity Plan

After adopting the [Racial Equity Resolution](#), in May, community partners and State Water Board management and staff came together for Visioning and Strategy retreats, as well as a series of Action Planning workshops to inform the development of a draft Racial Equity Action Plan by the State Water Board staff. Additionally, the State Water Board staff held additional workshops throughout California in July to receive additional public input into initial goals for the draft Racial Equity Action Plan. It is anticipated that the draft Racial Equity Action Plan will be released in the third quarter of 2022. The draft Action Plan is expected to set goals for the State Water Board to address racial inequities and identify metrics to measure progress.

Delta Conveyance

Draft Environmental Impact Report

On July 27, the California Department of Water Resources (DWR) released the Draft Environment Impact Report (Draft EIR) for the Delta Conveyance Project.

The release of the Draft EIR gives the public an opportunity to formally weigh in on a proposed infrastructure project. The proposal follows Governor Newsom's direction in 2019 to downsize previous concepts for improving Delta conveyance.

The preliminary design of the proposed project and alternatives outlined in the Draft EIR reflect the work of the Delta Conveyance Design and Construction Authority (DCA), a joint powers authority of local public water agencies participating in the project.

The Draft EIR was prepared by DWR as the lead agency to comply with the requirements of the California Environmental Quality Act by evaluating a range of alternatives to the proposed project and disclosing potential environmental effects of the proposed project and alternatives, and associated mitigation measures for potentially significant impacts. No decisions will be made on whether to approve the project until the conclusion of the environmental review process, after consideration of public comments submitted on the Draft EIR and issuances of a Final EIR. At that time, DWR will determine whether to approve the proposed project an alternative or no project.

The documents are hosted on the Draft EIR website¹² along with accompanying informational materials that provide more information about the proposed project and the public review process, including public hearing details and commenting opportunities. The materials are available for a 90-day public comment period and closes on October 27, 2022.

¹² <https://www.deltaconveyanceproject.com>

Additionally, the Department will hold virtual public hearings on the following dates:

- Tuesday, September 13, 2022, 9:00 a.m. to 11:00 a.m.
- Thursday, September 22, 2022, 12:00 p.m. to 2:00 p.m.
- Wednesday, September 28, 2022, 5:30 p.m. to 7:30 p.m.

U.S. Bureau of Reclamation

Reclamation Manual

Documents out for Comment

Draft Policy

- There are currently no Draft Policies out for review.

Draft Directives and Standards

- There are currently no Draft Directives and Standards out for review.

Draft Facilities Instructions, Standards, and Techniques (FIST)

- There are currently no Facilities Instructions, Standards, and Techniques out for review.

Draft Reclamation Safety and Health Standards (RSHS)

- There are currently no Safety and Health Standards out for review.

Draft Reclamation Design Standards

- There are currently no Design Standards out for review.

Delta Stewardship Council

Delta Levees Investment Strategy

On August 26, the Delta Stewardship Council announced that it is proposing a regulatory amendment to implement the Council's Delta Levees Investment Strategy (DLIS). This amendment would assign a priority of very-high, high, or other to each island or tract located within the legal boundaries of the Sacramento-San Joaquin Delta and Suisun Marsh.

Additionally, under the proposed amendment, the California Department of Water Resources would fund levee improvement projects at very-high priority islands or tracts before funding levee improvement projects at high or other priority islands or tracts. If available funds are sufficient to fully fund levee improvements at the very-high priority islands or tracts, then levee improvements on high priority islands or tracts may be provided, and after those projects have been fully funded, then levee improvement projects at other priority islands or tracts may be funded.

The proposed amendment would also require the DWR to submit an annual report to the Council including information describing Delta levee investments relative to the priorities.

The Council will accept public comments beginning on August 26, 2022, and concluding on October 13, 2022. Electronic comments are preferred and can be sent to oal_amendRRP1@deltacouncil.ca.gov.

Comments will also be heard during a public hearing at the Council's October 27, 2022, meeting. An agenda will be available on the Council's meetings [web page](#) at least ten days before the meeting that confirms the time at which this agenda item will be considered.

Staffing

On September 1, the Stewardship Council announced the promotion of Henry DeBey to be the Deputy Executive Officer for Science. Prior to being promoted to deputy executive officer for science from the Council's collaborative science and peer review unit, Henry held positions at the National Oceanic and Atmospheric Administration, The Pew Charitable Trusts, and the United Nations Food and Agriculture Organization. He has a Master of Science in environmental science from Yale University and a Bachelor of Science in geography and environmental studies from the University of California, Los Angeles. Henry is passionate about science communication and working with diverse stakeholders to tackle science governance challenges.

Water Blueprint for the San Joaquin Valley Activity

Background

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit group of stakeholders, working to better understand our shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley.

Strategic Priorities

The Blueprint's new board of 20 directors developed the following strategic priorities for 2022-2025, deliverables, actions, and timelines. The priorities focus on the following: Advocacy, Groundwater Quality and Disadvantaged Communities, Land Use Changes & Environmental Planning, Outreach & Communications, SGMA Implementation, Water Supply Goals, Governance, Operations & Finance.

The Blueprint Board has also identified quantifiable objectives, timelines for action and systems of accountability.

Mission Statement: *"Unifying the San Joaquin Valley's voice to advance an accessible, reliable solution for a balanced water future for all."*

Vision Statement: *"The Water Blueprint serves as the united voice to champion water resource policies and projects to maximize accessible, affordable, and reliable supplies for sustainable and productive farms and ranches, healthy communities, and thriving ecosystems in the San Joaquin Valley."*

Committees

Technical Committee

The Technical Committee is reviewing the Governor's recently unveiled California's Water Supply Strategy to identify the results of implementation and opportunities to further the Blueprint mission.

Executive/Budget/Personnel

An executive director application and job listing is being circulated to solicit applicants.

Advocacy

The Blueprint participated in invitation only roundtables with DOI Secretary Haaland, Commissioner Touton, Regional Director Conant, CA Secretary Crowfoot, CA Secretary Ross, Director Nemeth and a roundtable with Blueprint Board and USDA Under-Secretary for Rural Development Torres-Small and other department leadership. The Blueprint provided the enclosed flyer to assist with highlighting the Blueprint and its efforts.

Drinking Water Feasibility Study

A draft drinking water feasibility study proposal has been prepared by Fresno State/California Water Institute covers 5 counties within the San Joaquin Valley to identify 20 spots that are technically and financially feasible for groundwater recharge that have multiple benefits and specifically DACs with no other options but groundwater. State Contractors and SLDMWA are working with the participants to expand the study area and assist with finding funding. Current sponsors are Fresno State, FWA, Self Help, Sustainable Conservation and Leadership Council and are discussing funding opportunities with Senator Feinstein's office and DWR. Friant Contractors/managers have shared projects they are pursuing and ability to identify tangible and/or direct benefits to drinking water supplies.

San Joaquin Valley Water Collaborative Action Program (SJVV CAP)

The CAP is focused on coming to an agreement on a term sheet with an initial list of desired outcomes and potential solutions to water issues in the San Joaquin Valley. The Plenary group could not come to an agreement on the previous Phase I framework and decision document that was produced and is now focused on trying to come to an agreement on the CAP Term Sheet to move the collaborative effort forward into Phase II. Authority staff is coordinating with member agencies on comments to the draft Term Sheet, which is under discussion.

APPENDIX



Westlands Water District



September 9, 2022

VIA EMAIL

State Water Resources Control Board
Division of Water Rights
Attn: San Joaquin Unit
1001 I Street, 2nd Floor
Sacramento, CA 95814
EMAIL: LSJR-SD-Comments@waterboards.ca.gov

Re: Comment Letter – 2018 Bay-Delta Implementation NOP

Dear Members of the State Water Resources Control Board:

The San Luis & Delta-Mendota Water Authority (“Water Authority”), along with member agency Westlands Water District; the San Joaquin River Exchange Contractors Water Authority; and the Grassland Basin Drainers, a subset of Water Authority member agencies; appreciates the opportunity to comment in response to the Revised Notice of Preparation and California Environmental Quality Act Scoping Meeting (“NOP”) regarding a proposed regulation to implement lower San Joaquin River flows and southern Delta salinity objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (“Bay-Delta Plan”).

The Water Authority is a public agency formed in 1992 as a joint powers authority, and has twenty-seven member agencies. Twenty-five of the Water Authority’s member agencies contract with the United States for the delivery of water from the federal Central Valley Project (“CVP”). Most of the Water Authority’s member agencies depend upon the CVP as the principal source of water they provide to users within their service areas. That water supply serves approximately 1.2 million acres of agricultural lands within areas of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, San Benito, and Santa Clara Counties, a portion of the water supply for over 2 million people, including in urban areas within Santa Clara County referred to as the “Silicon Valley,” and millions of waterfowl that depend upon approximately 135,000 acres of managed wetlands and other critical habitat within the largest contiguous wetland in the western United States. The operations of the CVP are therefore of vital interest and importance to the Water Authority, its member agencies, and the people, farms, businesses, communities, and wildlife refuges they serve.

The Water Authority offers the following comments in response to the NOP.

1. The NOP (1) Inappropriately Assumes the State Water Board Will Prepare a Regulation to Implement Phase 1 Objectives, and (2) Does Not Define the Project Well Enough to Allow for Meaningful Input

The State Water Board should rescind and issue a new notice of preparation for two primary reasons.

First, the NOP includes an unprecedented policy decision that the State Water Board will employ a regulation to assign responsibility for implementation of the lower San Joaquin River flows and southern Delta salinity objectives (NOP, p. 3). This policy decision has significant implications for the entire process and is not based on prior direction from the State Water Board. As such, the assignment of responsibility through the adoption of a regulation is a decision more appropriately made by the State Water Board after allowing for comment by interested parties, and is not one that has been or should be delegated to staff and announced through a NOP.

In prior documents related to Phase 1 of the Water Quality Control Plan update, the State Water Board indicated that it had not yet decided whether it would implement objectives through a water right proceeding or through regulation. (See, e.g., Bay-Delta Plan (Dec. 18, 2018), Program of Implementation, p. 22 [“The State Water Board will exercise its quasi-legislative or adjudicative powers involving water rights and water quality to require implementation of the water quality objectives.... The State Water Board may implement the objectives by conducting water right proceedings, which may include adopting regulations, conducting adjudicative proceedings, or both....”].) This indication of indecision did not provide the public with an adequate opportunity to provide comment on the various mechanisms nor did it allow the State Water Board time and information to adequately consider the implications of the various paths.

Not since *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 97 (*Racanelli*) has the State Water Board attempted to assign responsibility for implementation of water quality objectives through a quasi-legislative action. Pursuant to *Racanelli*, the State Water Board has assigned responsibility for implementing water quality objectives after conducting water right proceedings to ensure that the decision on how the State Water Board will assign responsibility is made in a manner consistent with the requirements of due process. *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463 and *Stanford Vina Ranch Irrigation Co. v. State* (2020) 50 Cal.App.5th 976, previously cited by the State Water Board in support of actions to adopt regulations in the waste and unreasonable use/drought context, do not provide support for what the State Water Board is proposing to do in the present context. Neither case involves water quality control planning authority.

Further, even if the State Water Board had authority to assign responsibility through the adoption of a regulation, the decision to proceed in this manner should only be made with adequate notice and only after State Water Board staff and the public have an opportunity to present the advantages and disadvantages of the different approaches. The transparency requested should

not result in material delay. A new notice of preparation could (and should) describe the project – generally, what are the objectives and what are the parameters for implementation – making clear that a decision on the manner for assigning responsibility would be made after State Water Board deliberation.

Second, missing from the NOP may be significant components of the manner in which the State Water Board may “allocate responsibility to water rights holders and claimants for implementing the Bay-Delta Plan LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan.” (NOP, p. 4.) For the San Joaquin River flow objectives, will the State Water Board consider allocation pursuant to water right priority? Will the State Water Board consider minimum storage requirements? And, for the southern Delta salinity objectives, will implementation account for all causes that affect the concentration of salts in the south Delta? Will the State Water Board allocate responsibility for meeting the objectives based on relative contributions to the salt concentration? Without a complete description of the Project, it is not reasonably possible to assess potential environmental issues, reasonable alternatives, and mitigation. When the State Water Board staff issues the new notice of preparation, staff must supplement the description of the Project.

2. In Its Development of Alternatives, the State Water Board Should Consider an Alternative That Minimizes the Use of Flow and Relies on External Efforts That Will Maximize Non-Flow Measures to Protect Beneficial Uses

Lower San Joaquin River Flow Objective¹

The environmental impact report for implementation of the Phase 1 objectives (“EIR”) must consider a reasonable range of alternatives to the proposed implementation of the Phase 1 objectives; the State Water Board has an obligation to consider alternatives that could feasibly attain most of the project objectives and would avoid or substantially lessen significant adverse changes to the physical environment and related social and economic impacts. (Pub. Res. Code § 21002.1; 14 Cal. Code Regs. § 15126.6(a).)

The current approach is “flow-centric.” Flow is only one tool, however, and, as the State Water Board has acknowledged, “resource protection cannot be achieved solely through flows – habitat restoration also is needed. One cannot substitute for the other; both flow improvements and habitat restoration are essential to protecting public trust resources.” (Development of Flow

¹ The use of an unimpaired flow objective is extremely problematic. Implementation of an unimpaired flow approach would have significant negative impacts throughout California in part because it relies upon flow, assuming it, as the “master variable,” will address multiple factors that affect the beneficial use of water for fish and wildlife. Those other factors are not addressed directly.

Criteria for the Sacramento-San Joaquin Delta Ecosystem (SWRCB 2010)², pg. 7; see also Making the Most of Water for the Environmental: A Functional Flows Approach for California’s Rivers (PPIC 2020)³.) A range of alternatives that only addresses flow does not seem like a reasonable range of alternatives. Accordingly, the Water Authority urges the State Water Board to include alternatives that explore low flow and non-flow approaches that rely on non-flow measures occurring, or that will occur, to improve water quality throughout the watershed. Such alternatives should include only the minimum amount of flow needed and utilize, when appropriate, strategic re-managed flows.

Moreover, the program of implementation compels the State Water Board to consider alternatives with low and non-flow approaches paired with actions that implement non-flow measures. The program of implementation states that with respect to the lower San Joaquin River flow objectives, “The State Water Board also recognizes that Recommended Actions, including non-flow measures, such as habitat restoration, *must* also be part of efforts to comprehensively address Delta aquatic ecosystem needs as a whole.” (Bay-Delta Plan (Dec. 18, 2018), Program of Implementation, p. 24, italics added.) Given the import of non-flow measures, the Water Authority believes it is necessary for the State Board to consider alternatives that analyze limited or re-managed flow, coupled with non-flow measures such as, among other actions, increasing the amount of habitat or reducing the number of non-native species.

Southern Delta Salinity Objective

As explained above, the State Water Board has an obligation to consider a range of alternatives. With respect to the southern Delta Salinity Objective, the State Water Board must consider alternatives that account for the multiple factors that influence salinity concentrations in the southern Delta. Such factors include: San Joaquin River inflow; tidal action; diversions of water by the SWP, CVP, and local water users; municipal and agricultural return flows; and channel capacity.

The State Water Board should ensure the Bay-Delta Plan conforms to the State policy that the activities and factors that may affect water quality “shall be regulated to attain the highest water quality which is *reasonable, considering all demands being made and to be made on those waters* and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Water Code, § 13000, italics added.)

² Available at

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf.

³ Available at <https://www.ppic.org/wp-content/uploads/making-the-most-of-water-for-the-environment-a-functional-flows-approach-for-californias-rivers.pdf>.

3. The EIR Must Include an Appropriate Baseline

Lower San Joaquin River Flow Objective

The EIR should incorporate an appropriate baseline of existing environmental conditions that accurately accounts for the existing altered Bay-Delta ecosystem. An appropriate baseline is crucial for an accurate assessment of the potential effects or benefits of the lower San Joaquin River flow objective approach given such alterations to the ecosystem (for example, spring-run Chinook and steelhead can no longer access a large portion of their historical habitat, which is located above existing reservoirs, and fall-run Chinook in the San Joaquin River inhabit only a small portion of their historical habitat).

Southern Delta Salinity Objective

The EIR must include an appropriate baseline of environmental conditions which reflects existing conditions. Important reductions in the salt load have been made over the last 20 years or so. (See, e.g., California Regional Water Quality Control Board Central Valley Region Order R5-2019-0077.) In addition, a number of regulatory programs and orders for salinity management are currently being implemented by the Central Valley Regional Water Quality Control Board. These include the CV-SALTS and Irrigated Lands Regulatory Programs (ILRP), the Total Maximum Daily Loads (TMDL) for salinity in the lower San Joaquin River, and recent orders including the 2019 Waste Discharge Requirements (WDR's) for the Grassland Bypass Project. Many such programs and orders have been incorporated into the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Central Valley Basin Plan). The SWRCB should ensure that the proposed implementation of salinity objectives in the Bay-Delta Plan is consistent with the implementation of salinity objectives in the Central Valley Basin Plan.

An accurate and complete description of the salinity conditions will ensure the environmental analysis is proper, but also will provide information that should assist the State Water Board in deciding how it will allocate responsibility for implementing the southern Delta salinity objectives.

4. The EIR Must Analyze Impacts on Communities South of the Delta

The NOP correctly indicates the areas of potential environmental effects includes "areas receiving water exported from the LSJR and Bay-Delta." The CVP service areas are a critical component of the environment potentially affected by implementation of the lower San Joaquin River flow objectives and southern Delta salinity objectives. The quantity of CVP water available to communities and lands south of the Delta directly affect the people who live and work in this region. As reflected by the last 30 plus years, when CVP water is limited, those people suffer, manifested in many ways, including:

- A. Operations and maintenance costs will increase for communities throughout the CVP service area, as reducing the amount of water using the various facilities increases the O&M costs for those that do receive water.

- B. Reductions in surface water supply decrease the amount of groundwater recharge, thereby increasing the concentration of subsurface water quality impairments that could impact drinking water quality and reliability.
- C. Reduced employee hours, lost wages and jobs, loss of tax revenue to fund municipal services such as fire and police protection, and the resulting reduction in staffing at the local government level, thereby contributing to family disruption and dislocation;
- D. Adverse impacts to local schools from the relocation of farming-dependent families, lost school revenues, and additional social costs for schools, food shortages and increased demand for public services such as food banks, and an increased incidence of crime;
- E. Loss of crops, including the destruction of permanent crops, which increases the amount of fallowed land that diminishes air quality due to dust and particulate matter;
- F. Increased groundwater pumping, resulting in decreased irrigation water quality and impacts to crops from increased soil salinity, groundwater overdraft resulting in land subsidence and associated impacts to infrastructure, increased energy usage and associated environmental impacts related to increased pumping, and depletion of groundwater reserves; and
- G. Loss of water supply for wildlife refuges south of the Delta served by the CVP, with adverse effects on migratory birds and other sensitive wildlife.

Some of the economic and societal impacts above have been analyzed in recent studies published by Dr. David Sunding⁴ and Dr. Michael Shires⁵, which indicate that socioeconomically disadvantaged communities in the San Joaquin Valley disproportionately bear the burden of reduced surface water deliveries. Given the Board’s commitment to racial equity, as advanced by the adoption of the State Water Board’s Racial Equity Resolution No. 2021-0050, it would be appropriate to analyze, identify, and disclose these impacts in the EIR in not only a singular socioeconomic lens, but also to disclose the effects of these outcomes through the lens of racial equity.

In addition, there may be specific impacts from implementation of the lower San Joaquin River flow objective that require analysis, such as carryover storage imposed on water projects on the Stanislaus, Tuolumne, and Merced Rivers (including impacts to release programs, transfers, and exchanges), and the effect of any loss of water supply on farms and communities (including increased land fallowing and reduced employment, land value, crop production, air quality, urban

⁴ Sunding, David. “Blueprint Economic Impact Analysis: Phase One Results”. Roland-Host, David, University of California, Berkeley, February 15, 2020, https://waterblueprintca.com/wp-content/uploads/2021/09/Blueprint.EIA_.PhaseOne.2.28-v41.pdf

⁵ Shires, Michael A. “The Economic Impact of the Westlands Water District on the Local and Regional Economy: 2022 Update”. March 16, 2022, <https://wwd.ca.gov/wp-content/uploads/2022/03/economic-impact-report-2022-update.pdf>

water supply, etc.), and effects on the environment (including reduced refuge deliveries affecting Pacific Flyway, increased pumping in groundwater basins that may receive significantly less imported water, reduced hydropower generation, etc.). The EIR should consider the effect of changes in available surface water on groundwater.

Further, the EIR cannot ignore Phase 2 of the Bay-Delta Plan update. The EIR must consider the effects of implementation of the lower San Joaquin River flow and southern Delta salinity objectives in the context of potential updates or supplements to the remainder of the Bay-Delta Plan water quality objectives.

5. In Its Assessment of Potential Environmental Impacts, the State Water Board Should Not Rely on the 2018 SED

Finally, the NOP states that “the State Water Board anticipates that the EIR will tier from the SED supporting the 2018 update to the Bay-Delta Plan and provide the analysis to support a State Water Board decision regarding adoption of regulations that allocate responsibility for implementing the LSJR flow and southern Delta salinity components of the Bay-Delta Plan.” (NOP, p. 5.) However, the 2018 SED is the subject of litigation from multiple challenges for failure to comply with CEQA in the pending *State Water Board Cases*, Judicial Council Coordinated Proceeding No. 5013. Challengers have identified inadequate analysis as one of the many deficiencies of the 2018 SED. The key concerns raised in the litigation regarding the analysis in the 2018 SED include:

- A. The 2018 SED fails to evaluate the significant or potentially significant impacts of the Phase 1 Plan Amendments on water supply and improperly defers evaluation of impacts of the Phase 1 Amendments, including impacts during dry and successive dry years, impacts resulting from later revisions to flow requirements, and the reasonably foreseeable impacts of less water supply for other beneficial uses.
- B. The 2018 SED does not compare the Phase 1 Plan Amendments to an accurate baseline of existing conditions, including, but not limited to, current flow requirements.
- C. The 2018 SED project description is not accurate or complete; nor is it stable, but rather is subject to change because, in part, it does not define parameters or describe the range of possible flow patterns the Executive Director may order in the future; it does not adequately articulate the biological goals or performance criteria such actions are intended to meet.

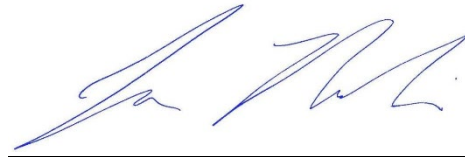
Given these and other deficiencies in the 2018 SED, the EIR should not rely on the 2018 SED and should instead provide an independent analysis of environmental impacts.

The Water Authority appreciates this opportunity to submit these comments. If you have any questions regarding these comments, please contact any of the signatories to this letter.

Sincerely,



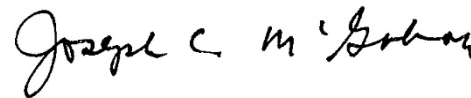
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