



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: February 6, 2023

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.

On October 14, 2022, Reclamation released an Initial Alternatives Report (IAR), which Authority staff is reviewing and coordinating with member agencies for potential engagement with Reclamation regarding the alternatives presented in the report. Currently, Reclamation is not anticipating accepting formal comments on the IAR, but instead will be accepting comments on the draft Environmental Impact Statement, which is anticipated to be released in January.

Current Milestones

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

Exploratory Modeling

Concurrent with the development of the EIS and BA, Reclamation is conducting Exploratory Modeling to assist in the development of the Biological Assessment. The status of current modeling includes:

Modeled Variable Components

- Shasta Reservoir Coldwater Pool Management
- Folsom Flow and Temperature Management
- Old and Middle River Flow Management
- Head of Old River Barrier
- Summer and Fall Delta Outflow and Habitat

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

Modeling in Progress

- Spring Pulses and Delta Outflow
- New Melones Stepped Release Plan

Not Modeled

- Tributary Habitat Restoration
- Delta Habitat Restoration
- Georgiana Slough Non-Physical Barrier

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

Longfin Smelt Proposed Rule

On Thursday, October 6, the U.S. Fish and Wildlife Service announced a proposed rulemaking to list the San Francisco Bay-Delta distinct population segment of longfin smelt as an endangered species under the Endangered Species Act (ESA).

Longfin smelt are currently listed as a threatened species under California’s Endangered Species Act, which prohibits unpermitted possession, purchase, sale or take of listed species. However, the state’s definition of take does not include harm, which under the federal ESA can include destruction of habitat.

The Authority joined a letter⁴ with the State Water Contractors pointing out deficiencies in the science used to support the proposed listing of the longfin smelt distinct population segment as endangered and requested a public hearing on the listing status. We are pending a response to that public hearing request.

State Water Resources Control Board (State Water Board) Activity

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 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”).

⁴ Request from Authority staff

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 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

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 Request from Authority staff

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.

Schedule

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

- Summer 2023: Executive Director act on draft COP, compliance methods, and procedures for adaptive implementation
- Fall 2023
 - Scientific Basis Report for Tuolumne River VAs submitted for peer review
 - Draft Staff Report for Bay-Delta Plan amendment for Tuolumne River VA
 - Draft Regulation and Draft EIR in support of a regulation implementing Lower SJR flows and South Delta Salinity
- Winter/Spring 2024
 - Final draft Staff Report for Tuolumne River VA
 - Board workshop and consideration of Tuolumne River VA
 - Final draft EIR and regulation implementing Lower SJR flows and South Delta Salinity
 - Board consideration of regulation implementing Lower SJR flows and South Delta Salinity

Sac/Delta Update: Key Milestones

- Spring 2023: Scientific Basis Report Supplement for Sacramento River/Delta Voluntary Agreements submitted for peer review after addressing public comments
- Spring 2023: Draft Sacramento River/Delta Update Staff Report public review and comment
- Spring/Summer 2023: Public workshop on Draft Staff Report
- Spring/Summer 2024: Response to comments and development of proposed final changes to the Bay-Delta Plan

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

- Summer/Fall 2024: 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 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. Additionally, since that time, in September and November, four more agencies – Contra Costa Water District, San Francisco Public Utilities Commission (SFPUC), Turlock Irrigation District (TID) and Modesto Irrigation District (MID) – have signed onto the VA MOU.

Work continues to develop the working documents associated with execution and implementation of the VA’s and workgroups for participating agencies have been formed, with the recent formation of a VA Science Workgroup to develop the framework of the VA’s proposed Science program.

Delta Conveyance

The Department of Water Resources (DWR) has committed to advancing further environmental planning and permitting activities, as well as public outreach and engagement, in 2023.

To help navigate the various permitting and regulatory compliance processes the project must complete prior to approval and/or implementation, DWR prepared a roadmap¹² that outlines the major processes required for the Delta Conveyance Project.

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/>

¹² Available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP_PlanningProcess_Roadmap_Jan2023_Final.pdf

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 Directive 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.

San Joaquin Valley Water Blueprint

SJV SGMA Coordination Workshop

The Blueprint is helping coordinate and compile a list of attendees for a workshop discussion. There will be a working lunch and discussion most of the afternoon. Agenda and pre-workshop discussion to be provided in coordination with DWR and impending responses on GSPs.

San Joaquin Valley Water Collaborative Action Program (SJWV CAP)

The CAP Plenary Group met on November 22 and approved a revised Term Sheet¹³, which will allow for the CAP to advance to Phase II. Additionally, the Packard Foundation approved a \$750,000 grant to the CAP to advance the Phase 2 project and product development. The Plenary Group approved the development of working groups to advance the Phase 2 Priorities and the CAP Steering Committee is meeting to discuss next steps on how to advance the program, including potential budgets and work product.

¹³ Request from Authority staff