



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: September 13, 2021

RE: Update on Water Policy/Resources Activities

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### BACKGROUND

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations (“ROC on LTO”), (2) State Water Resources Control Board Action, including the Bay-Delta Water Quality Control Plan update, (3) San Joaquin River Restoration Program, (4) 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 sheet<sup>1</sup> 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 Manual

Documents out for Comment

### *Draft Policy*

- [PEC P-16 Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970 \(comments by 9/13/2021\)](#)

### *Draft Directives and Standards*

- [SLE 03-02 Facility Security \(comments by 9/27/2021\)](#)

### *Draft Facilities Instructions, Standards, and Techniques (FIST)*

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

### *Draft Reclamation Safety and Health Standards (RSHS)*

- [RSHS 38 Safety and Occupational Health Program Evaluations \(comments by 9/13/2021\)](#)
- [RSHS 36 Asbestos \(comments by 9/13/2021\)](#)

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

- [RSHS 29 Marine and Diving Operations \(comments by 9/27/2021\)](#)
- [RSHS 44 Life Safety Code Program \(comments by 9/27/2021\)](#)

#### *Draft Reclamation Design Standards*

- There are currently no Design Standards out for review.

#### State Water Resources Control Board (State Water Board) Activity

##### Documents out for Comment

- There are currently no documents out for comment.

#### Emergency Regulation: Sacramento-San Joaquin Delta Watershed

##### *Background*

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

To ensure protection of water needed for health, safety, and the environment, the May 10, 2021 Proclamation directs the State Water Board to consider adoption of an emergency regulation to curtail water diversions in the Delta watershed when water is not available at water right holders' priority of right and to protect releases of previously stored water.

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

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

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

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

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

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

Since the hard copy Order was printed and mailed, the list of curtailed rights and claims of right has been updated to reflect the current output of the Water Unavailability Methodology (Methodology) for the Delta Watershed. The following priorities of water rights and claims remain curtailed for the remainder of **August 2021**:

1. All post-1914 appropriative water rights in the Delta watershed, including the Sacramento River and San Joaquin River watersheds and the Legal Delta;
2. All pre-1914 appropriative water right claims in the San Joaquin River watershed that are outside of the Legal Delta;
3. All pre-1914 appropriative water right claims in the Sacramento River watershed and in the Legal Delta with a priority date of 1883 or later;
5. All riparian water right claims in the Calaveras River subwatershed that are outside of the Legal Delta; and
6. Pre-1914 appropriative water right claims on the following Sacramento River tributaries:
  - a. Claims in the Bear River subwatershed with a priority date of 1849 or later,
  - b. Claims in the Yuba River subwatershed with a priority date of 1852 or later,
  - c. Claims in the Putah Creek subwatershed with a priority date of 1851 or later,
  - d. Claims in the Cache Creek subwatershed with a priority date of 1856 or later, and
  - e. Claims in the Stony Creek subwatershed with a priority date of 1864 or later.

The following priorities of water rights and claims remain curtailed for the month of **September 2021**, unless and until the State Water Board advises that this determination has been updated:

1. All post-1914 appropriative water rights in the San Joaquin River watershed;
2. All pre-1914 appropriative water right claims in the San Joaquin River watershed;

3. All riparian water right claims in the American River subwatershed upstream of Folsom Reservoir;
4. All riparian water right claims in the Calaveras River subwatershed that are outside of the Legal Delta;
5. A subset of Central Valley Project and State Water Project water rights in the Sacramento River watershed and in the Legal Delta; and
6. Pre-1914 claims and post-1914 appropriative rights on the following Sacramento River tributaries:
  - a. Rights and claims in the Bear River subwatershed with a priority date of 1853 or later,
  - b. Rights and claims in the Yuba River subwatershed with a priority date of 1908 or later,
  - c. Rights and claims in the Putah Creek subwatershed with a priority date of 1923 or later,
  - d. Rights and claims in the Cache Creek subwatershed with a priority date of 1857 or later, and
  - e. Rights and claims in the Stony Creek subwatershed with a priority date of 1963 or later.

For all water rights and claims, the Order requires a one-time completion of an online Compliance Certification Form. For water rights and claims with an annual diversion amount of 5,000 acre-feet or greater, the Order also requires enhanced monthly reporting of water diversion and use. Both the certification and the enhanced reporting must be completed by the date indicated in the Order, using the forms accessible on the Board's website.

For more information on the requirements of the Order, see the generic orders posted on the [Delta Watershed Drought webpage](#):

- [Order issued to smaller diverters](#) (annual use/right under 5,000 acre-feet)
- [Order issued to larger diverters](#) (annual use/right of 5,000 acre-feet or greater)

Weekly updates regarding the curtailment status of rights and claims within the Delta watershed will be issued through the [Delta Drought email list](#) and posted to the [Delta Watershed Drought webpage](#). Updates will not be sent via mail. To receive future notices of new or changed curtailment orders and the bases for curtailment decisions, make sure you are subscribed to the Delta Drought email list or frequently check the Delta Watershed Drought webpage.

#### [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.<sup>2</sup> 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 resolution<sup>3</sup> to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

**Phase 2 Status:** In the 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 progress since an initial framework was presented to the State Water Board on December 12, 2018.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>4</sup> to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish

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

<sup>3</sup> Available at [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/rs2018\\_0059.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf).

<sup>4</sup> Available at [http://resources.ca.gov/docs/voluntary-agreements/2019/Complete\\_March\\_1\\_VA\\_Submission\\_to\\_SWRCB.pdf](http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf)

through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

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

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

### Water Blueprint for the San Joaquin Valley Activity

#### Background

The Water Blueprint for the San Joaquin Valley<sup>5</sup> (Blueprint) is a broad group of stakeholders, working to better understand shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley. The Blueprint has engaged with stakeholders to try and ensure that everyone has safe, reliable and affordable access to water for drinking, supporting their farms and communities and a thriving ecology.

The SJV faces significant impacts to its long-term economic, social, and environmental health if nothing is done to address water scarcity, as highlighted in Phase I of Dr. David Sunding’s Economic Impact Assessment (EIA).

The Large Group and committees are pursuing the goals of Blueprint, including outreach, technical support and working in conjunction with other stakeholders.

**2021 Strategy & Focus:** The Blueprint is discussing the overall focus for 2021, its organizational structure, role with sub basins, project pursuits, fundraising and work with the San Joaquin Valley Water Collaborative Action Partnership (SJVW CAP).

**Governance:** The Blueprint has hired a new project management team to replace Vista Consulting, Providence Strategic Consulting as of August. It is updating its governance structure to better reflect its current participants, contributors, and its approach of a “coalition of the willing” while allowing for a streamlined review and action process. Exploring the expansion of the number of directors to the 501c3 to include adequate representation of the Central Valley.

**Outreach & Engagement:** SJV Blueprint has hired Crocker Knoll LLC to engage with local community stakeholders in coordination with GSAs and other organizations about the SJV

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<sup>5</sup> <https://www.waterblueprintca.com>

Blueprint. Currently they are creating a contact list of local elected officials, including special districts and county supervisors. Working with California School Boards Association and California League of Cities to obtain and include their lists. This contact list will be the basis for a newsletter sent to community leaders throughout our region. Paul Boyer, Farmersville Mayor and recently retired from Self Help, has agreed to help/participate with the Advisory Committee.

**Technical Committee:** ESA has been hired to develop a regulatory and permitting path forward for the Blueprint. This detailed plan will list all permits needed, the approvals, the reports, and documents essential to prepare and obtain from the Federal and/or State Agencies for the solution sets provided. Blueprint continues to engage with the Water Commission to inform them of its progress and has submitted a comment letter that highlighted State grants to construct infrastructure, balanced approach to water resources, low interest loans for farmers unable to farm and focus on inter-regional conveyance and habitat restoration. The technical committee is working with sub basins (recently Madera and Tulare) and respective working groups on solution sets to be added to the EIA to illustrate reduced economic impacts. A critical part will be project proponents 'evaluation and development of these activities in coordination with the Blueprint. These solution sets will ideally have input and support from the coalition of interest groups formally engaging in the SJV Collaborative Action Program.

A working dinner has been set up with Board Members from Madera I.D. and Chowchilla W.D., participants of the Blueprint and White Area representatives to review the status of the technical work and next steps if any.

**SJV Water Collaborative Action Program (SJWVWCAP):** Stanford University working in coordination with the Blueprint, Central Valley Community Foundation, Fresno State, NGOs and 60+ stakeholders are drafting a mutual convening to create a collaborative solution to the water issues we face in the SJV. The Planning group has set up 5 working groups to draft an inter-caucus Problem Statement and Solution Sets.

**DAC Drinking Water Feasibility Study – FKC:** A funding application was prepared with participants FWA, FSU, Self Help, Sustainable Conservation and Leadership Council to study a five-county area within the Millerton Place of Use boundary related to surface water supply, recharge and drinking water supplies. DWR met with FWA in July and have indicated funding on approx. \$49,000 for the study. The project sponsors are looking at a more narrowly focused study to begin with for 1 or 2 counties.

**Bureau of Reclamation:** The Water Blueprint was not selected by Reclamation for the 2021 WaterSmart Water Management Options Pilot (WMOP) Program. A debrief with BOR took place and BOR indicated a new program for Basin Studies is being unveiled and that the Blueprint would be a good candidate. Reclamation's Sacramento Office has committed to participating in the Blueprint.