



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: July 6, 2020

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) Revised Delta Conveyance, (5) Delta Stewardship Council, and (6) San Joaquin Valley Water Blueprint.

### POLICY ITEMS

#### Reinitiation of Consultation on Long-Term Operations (ROC on LTO)

On August 2, 2016, the U.S. Bureau of Reclamation, the lead federal agency, and the California Department of Water Resources (DWR), the applicant, jointly requested the reinitiation of Endangered Species Act consultation on the coordinated long-term operation of the Central Valley Project (CVP) and State Water Project (SWP). The U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) accepted the reinitiation request on August 3, 2016.

On January 31, 2019, Reclamation transmitted their Biological Assessment. As stated in the BA, the purpose of this action is “...to continue the coordinated long-term operation of the CVP and SWP to maximize water supply delivery and optimize 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.”

The two biological opinions<sup>12</sup> on the coordinated operations of the CVP/SWP were finalized on October 21, 2019. FWS and NOAA Fisheries evaluated the impact of CVP/SWP water operations on imperiled species including Delta smelt, salmonid, green sturgeon, northern resident killer whale and 15 terrestrial species that could be impacted. The proposal includes habitat

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<sup>1</sup> [https://www.fws.gov/sfbaydelta/cvp-swp/documents/10182019\\_ROC\\_BO\\_final.pdf](https://www.fws.gov/sfbaydelta/cvp-swp/documents/10182019_ROC_BO_final.pdf)

<sup>2</sup> <https://www.fisheries.noaa.gov/webdam/download/98198559>

management measures in the Delta and entrainment management related to water exports in the South Delta.

On February 18, 2020, Reclamation completed the environmental review process under the National Environmental Policy Act by signing the Record of Decision, implementing the new biological opinions.

Relatedly, the State Water Project (SWP) has completed a separate permitting process for its long-term operations. As part of this process, the state released a draft Environmental Impact Report<sup>3</sup> on November 21, 2019, pursuant to the California Environmental Quality Act, that identifies potential operational changes to protect species and manage the SWP based on real-time conditions in the Delta ecosystem, rather than calendar-based requirements. DWR's draft EIR was available for public comment through January 6, 2020. The Authority submitted a comment letter highlighting concerns with the document. The final EIR was issued on March 31, 2020.

Concurrent with the environmental review under CEQA, DWR developed and submitted an application for a permit from the California Department of Fish and Wildlife (CDFW) for long-term SWP operations, pursuant to CESA requirements. On March 31, 2020, CDFW released the conditions for issuing an Incidental Take Permit (ITP) for SWP operations that has some differences from the federal biological opinions. The ITP differs from the federal Biological Opinions in some significant ways:

- It vests authority in CDFW to stop operational changes if it determines they will violate CESA standards.
- It provides additional direction on when Delta pumping can be increased during storm events and caps the amount that exports can be increased in those events.
- It includes specific operations for longfin smelt, a protected species under CESA, though not under the ESA, and a commitment to implementing a longfin smelt science plan.

Since the issuance of the ITP, a number of organizations, including the federal government, the Water Authority, some of its member agencies individually, and a number of environmental organizations, have filed litigation alleging various deficiencies with the ITP or the CEQA analysis upon which it was issued.

## Reclamation Directives and Standards

Documents out for Comment

### *Draft Directives and Standards*

- [Facility Security, SLE 03-02 \(comments due 7/22/2020\)](#)

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<sup>3</sup> [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/Deliv-42DEIRv1-112119-Volume-I\\_ay\\_19.pdf?la=en&hash=FA4DB4BDFE72DFE791F187AE5D796B0BB89177AC](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/Deliv-42DEIRv1-112119-Volume-I_ay_19.pdf?la=en&hash=FA4DB4BDFE72DFE791F187AE5D796B0BB89177AC)

## State Water Resources Control Board Activity

Documents out for Comment

N/A

### Bay Delta Water Quality Control Plan Update

The State Water Resources Control Board (“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>4</sup> The 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 Water Board adopted a resolution<sup>5</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 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 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.

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<sup>4</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>5</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).

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>6</sup> to the 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 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.

### Delta Stewardship Council

In May 2013, the Delta Stewardship Council (Council) adopted the Delta Plan, which anticipated the need for periodic reviews and updates in response to changing circumstances and conditions in the Sacramento-San Joaquin Delta. Five amendments have been made to the management plan to date. An amendment to Chapter 4 (Protect, Restore, and Enhance the Delta Ecosystem) of the Delta Plan (Ecosystem Amendment) is currently under consideration by the Council.

Chapter 4 of the Delta Plan – Protect, Restore, and Enhance the Delta Ecosystem – was originally developed based on the expectation that the Bay Delta Conservation Plan (BDCP) would be incorporated into the Delta Plan. In May 2015, state and federal agencies shifted their approach from the BDCP to a more focused set of mitigation projects. To address this fundamental shift in the planning and implementation of conservation in the Delta, the Council in 2016 began developing an approach to update Chapter 4 (Ecosystem Amendment).

The Council released a Preliminary Draft<sup>7</sup> of the Ecosystem Amendment for public review and comment in November 2019. Based on public comments received, Council staff further revised the November 2019 Preliminary Draft, resulting in the May 2020 Draft<sup>8</sup>. The May 2020 Draft incorporates extensive feedback from the Council, Delta stakeholders, the Delta Independent Science Board, independent scientific peer reviewers, and the public. The Council describes the amendment as creating more natural, functional flows “by requiring projects to be consistent with the State Water Resource Control Board’s Bay Delta Water Quality Control Plan flow objectives.”

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<sup>6</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)

<sup>7</sup> <https://deltacouncil.ca.gov/delta-plan/november-2019-preliminary-public-review-draft-ecosystem-amendment>

<sup>8</sup> <https://deltacouncil.ca.gov/pdf/delta-plan/2020-04-15-draft-ch-04.pdf>

On May 11, 2020, the Delta Stewardship Council issued a Notice of Preparation (NOP)<sup>9</sup> for the Delta Plan Ecosystem Amendment and initiating environmental review in compliance with the California Environmental Quality Act. The scoping period extends to 5:00 pm on Friday, July 10, 2020, and the Water Authority anticipates providing comments to the Council. Staff will coordinate with member agency staff.

### Water Blueprint for the San Joaquin Valley

The Water Blueprint for the San Joaquin Valley (Group) held its Executive Committee meeting on June 16 and the large Group meeting on June 18. Some 70 participants make up the Blueprint large group including Farm Bureaus, Water Authorities, Districts, Growers, Trade Associations, Fresno State, GSAs, Grasslands, BOR and white land interests. A comprehensive and collaborative plan is under development that the San Joaquin Valley (broad coalition) can support and advocate for with a focus on solutions in coordination with key stakeholders.

Annual 2020 invoices have been sent out and the finance committee is following up on payments. The Steering Committee for Phase II is developing a solution set. The Group and the following committees listed below are pursuing the goals of Blueprint, including funding opportunities and working in conjunction with other stakeholders.

**Socio-Economic Impact Analysis (EIA) Phase I completed, Phase II being developed:** A number of presentations and events have been completed while others have been rescheduled. Prior to the shelter in place order the Blueprint group had been implementing a communications plan to highlight the EIA and the impacts under a status quo approach. Phase II of the plan will look at a solution set being developed with the Technical Committee and others.

**Project Status:** Stantec and MBK have been engaged for Planning and Engineering services to support the development, evaluation, and selection of activities that will be pursued with the support of the Blueprint entity, including: Implementation of SGMA in the San Joaquin Valley, Development of a water supply plan to minimize loss of working lands, degradation of groundwater quality, loss or jobs, and other regional economic impacts, Development of an environmental plan to manage land use changes for agricultural lands that unavoidably must come out of production, and Develop safe, clean affordable water supplies for disadvantaged communities.

**DAC/SDAC Drinking Water Feasibility Study:** The objective of the Project is to identify the technical, financial, and institutional feasibility of providing surface water deliveries from the Madera Canal and Friant-Kern Canal to recharge basins, or other types of facilities, to improve drinking water conditions (accessibility, affordability, quality and quantity) for DACs and SDACs located in the Study Area. After a pilot study is implemented, expansion of projects to other areas is anticipated.

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<sup>9</sup> <https://deltacouncil.ca.gov/pdf/delta-plan/2020-05-11-eco-amendment-eir-nop.pdf>