



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: May 9, 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. It's unclear what this agency review will analyze, but staff will be engaged.

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.

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

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement 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 during preparation of the EIS.

After the draft EIS is completed, anticipated in 2023, Reclamation will publish a notice of availability (NOA) and request public comments on the draft EIS. After the public comment period ends, Reclamation will then develop the final EIS and anticipates making the final EIS available to the public in 2024. In accordance with 40 CFR 1506.11, Reclamation will not make a decision or issue a Record of Decision (ROD) sooner than 30 days after the final EIS is released. Reclamation anticipates the issuance of a ROD by October 2024.

Separately, Reclamation has initiated stakeholder outreach on modeling efforts and is convening monthly meetings to provide updates to contractors on the status of the consultation.

Reclamation Manual

Documents out for Comment

Draft Policy

- There are currently no Policies out for review.

Draft Directives and Standards

- CMP 11-03 Real Property Disposal (comments by 6/2/2022) *

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.

State Water Resources Control Board (State Water Board) Activity

Documents out for Comment

Draft Proposition 68 Groundwater – Drinking Water Treatment Operations and Maintenance Funding Program Guidelines

Background

Chapter 11.1 of the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 (commonly referred to as Proposition 68 [Prop 68]) gave the State Water Board the authority to administer \$74 million in grant funds for treatment and remediation activities that prevent or reduce the contamination of groundwater that serves as a source of drinking water. \$16 million of the total amount is set-aside for projects serving severely disadvantaged communities (SDACs). The State Water Board adopted Prop 68 Groundwater

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

Treatment and Remediation Grant Program Guidelines (Prop 68 GW Guidelines) on August 20, 2019, to serve as the required project solicitation and evaluation guidelines for the State Water Board's Groundwater Treatment and Remediation Grant Program.

After funding two rounds of projects solicited under the Prop 68 GW Guidelines, approximately \$29.5 million remains uncommitted, of which approximately \$8.5 million is reserved for SDACs. To utilize these remaining funds and to help meet the significant needs of disadvantaged communities (DACs) across California, the State Water Board adopted Resolution No. 2020-0028 (Resolution) on August 18, 2020. The Resolution delegates authority to the Deputy Director of the Division of Financial Assistance (DFA) to award these remaining funds to assist DAC drinking water systems that treat groundwater for direct potable use, without necessarily remediating the aquifer, and waives the Prop 68 GW Guidelines for these projects.

DFA is proposing to implement the Draft Guidelines to distribute the uncommitted \$29.5 million to small DAC drinking water systems. By implementing the Draft Guidelines, DFA can distribute Prop 68 funding to benefit small DACs and SDACs statewide. The Draft Guidelines establish the process and criteria for the administration of the uncommitted Prop 68 Chapter 11.1 funding. If Prop 68 funds are uncommitted at the end of 2022, Resolution 2020-0028 authorizes the Deputy Director of DFA to utilize any funds remaining unencumbered to extend executed funding agreements for the O&M projects funded according to the Prop 68 GW Guidelines, contingent upon budget authority.

Document Availability

The Draft Guidelines are available for public comment at: https://www.waterboards.ca.gov/water_issues/programs/grants_loans/propositions/prop68.html

You may also request a copy of the Draft Guidelines by contacting Groundwater.Funding@waterboards.ca.gov.

After reviewing public comments received before **12:00 noon on Tuesday, May 31, 2022**, or received during the Staff Workshop, the Draft Guidelines will be updated if necessary and will be posted on the July 6, 2022, Board Meeting agenda.

This will occur as part of the regular State Water Board Meeting Agenda process and can be viewed online at: https://www.waterboards.ca.gov/board_info/calendar/#07-2022.

Public Workshop

State Water Board staff will conduct three public workshops on the Draft Guidelines. The workshops will be held on:

Tuesday, May 24, 2022
11:00 a.m. – 12:00 noon
Central Valley Workshop
San Joaquin Conference Room
Central Valley Regional Water Quality Control Board – Fresno Office

1685 E Street
Fresno, CA 93706
In-Person Participation Only

Wednesday, May 25, 2022
11:00 a.m. – 12:00 noon
Southern California Workshop
Division of Drinking Water – Glendale Office
500 North Central Avenue, Suite 500
Glendale, CA 91203
In-Person Participation Only

Friday, May 27, 2022
10:30 a.m. – 12:00 noon
Northern California Workshop
Sierra Hearing Room, Second Floor
Joe Serna Jr. – CalEPA Headquarters
1001 I Street
Sacramento, CA 95814
In-Person and Remote Participation

The workshops will include a presentation about the Draft Guidelines as well as the opportunity for participants to provide oral comments. Any interested person may ask questions or provide input. However, formal written comments should not be submitted during the workshops. A quorum of the State Water Board may be present, but the State Water Board will take no action.

[Bay Delta Water Quality Control Plan Update](#)

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”) in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity (“Phase I” or “San Joaquin River Flows and Southern Delta Salinity Plan Amendment”). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows (“Phase II” or “Sacramento/Delta Plan Amendment”).

During the December 12, 2018 Water Board Meeting, the Department of Water Resources (“DWR”) and Department of Fish and Wildlife presented proposed “Voluntary Settlement Agreements” (“VSAs”) on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.³ The State Water

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

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 resolution⁴ to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

Phase 2 Status: In the State Water Board's resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019. As the State Water Board further refines this update, there will be opportunity for public comment.

The effort has made progress since an initial framework was presented to the State Water Board on December 12, 2018.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents⁵ to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, 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. During this presentation, State Water Board staff provided the following updates on various activities:

⁴Available at

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

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

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

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

Relatedly, on March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding⁶ that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement⁷ 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.

Water Blueprint for the San Joaquin Valley Activity

Background

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit with a broad and evolving 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) <https://www.waterblueprintca.com>.

The new board, large group and committees continue to meet and pursue the mission of Blueprint, including outreach, education, technical support and working in collaboration with other stakeholders.

⁶ Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

⁷ 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/>

Mission/Vision: The Blueprint's new board of 20 directors and other Blueprint participants held their first strategic planning session where a draft mission and vision for the San Joaquin Valley Water Blueprint was prepared.

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

Draft Vision Statement being considered: "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."

Strategic Plan: The second Strategic Planning session will be held April 29th, the strategic plan is broken into two areas of focus. The first, centered on the mission, vision, and our collective expectations of the Blueprint. The second session will delve into determining the Blueprint's goals for creating solutions to the problems you have previously identified. For the goals developed, we will identify quantifiable objectives, timelines for action and systems of accountability.

Outreach & Engagement: The Blueprint joined the Southern California Water Coalition and Bay Area Water Coalition on a letter⁸ to Governor Newsom for a collective request on how to "Strengthen statewide drought and flood resilience: \$6.5 billion". The letter includes a description of the Blueprint and priorities like "Regional Resilience \$1.25 billion, Dam Safety/Reservoir Operations \$860 million Prop 1 adjustments \$645 million, Subsidence Repairs \$585 million, Clean Drinking Water \$500 million and Multi-Benefit Land Repurposing \$50 million. The Blueprint will also prepare and transmit a SJV focused request to the Governor as well.

Technical Committee: Committee continues to draft criteria for naming and implementing high priority projects. The Board has engaged MBK for additional evaluation of the Delta flood flows and evaluate the priority allocation of such flows.

Blueprint continues to engage with Central Valley stakeholders regarding opportunities 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.

[San Joaquin Valley Water Collaborative Action Program \(SJWV CAP\)](#)

CAP produced a Phase I Framework with solution set elements recommended, the five CAP Work Groups and working to finalize the necessary language and understanding for evaluating Delta water supplies and land fallowing. Once agreed upon the CAP will look to implement phase II.

By September 2022 , the CAP intends to complete the following:

- An initial list of projects that are consistent with the CAP criteria that can improve water supplies. These projects will be supported by the CAP participants.

⁸ See Appendix

- Review and analysis of updated Delta study by the PPIC.
- Workplan for activities necessary to finish the 2023 comprehensive plan to reach sustainability by 2040.

By September 2023:

- The in-Valley and Delta opportunities assessments.
- Regional action plan for strategic land repurposing
- List of actions and projects that will achieve a water balance by 2040.

APPENDIX

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Josh Palmer, P.E., Point Source Permitting Section
California Regional Water Quality Control Board - Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

VIA EMAIL

May 5, 2022

Dear Mr. Palmer,

The North Valley Regional Recycled Water Program (NVRWP) is a model partnership between urban and agricultural water users in the Central Valley of California. The NVRWP benefits the Cities of Turlock, Modesto, and Ceres by providing for a beneficial use of recycled water generated by these communities and, as referenced in the Tentative Draft Waste Discharge Requirements for the Program (NPDES CAA0085316), benefits farmers in the Del Puerto Water District (DPWD or District) service area along with South-of-Delta wildlife refuges by providing for a resilient and sustainable source of water for food production and wildlife habitat. The Program came online during the end of the last drought and has become the basis of a sustainable water supply to the District as our state struggles with the recent drought and the future with respect to a changing climate.

California law and policy calls for reducing reliance on the Sacramento-San Joaquin Delta in meeting future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed has been directed to improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination between local and regional agencies. The NVRWP has been a key component of the solution to our region's water supply and reliability problem, as it provides a new source of water for agricultural customers in the Del Puerto Water District (DPWD), whose supplies have been severely impacted by drought and regulatory requirements which have reduced the District's contractual allocations under its contract with the United States Bureau of Reclamation for supplies from the Central Valley Project (CVP). If it were not for the NVRWP, the District would not have survived the CVP allocation of 0% in four of the last seven years. The regional financial impacts to our farmers and the surrounding disadvantaged communities cannot be understated.

In addition to supporting Modesto and Turlock's requested changes to the tentative order, the District would like to provide specific feedback on the following three items:

- **Section VI.C.2.c – Far-Field Dilution Study** – The scope of this requested study is not well defined in the tentative order and does not provide specific objectives that would equip the District to understand the purpose, the cost, nor the commitment of labor time. Note the NVRWP partners previously prepared the *"Antidegradation Analysis for Proposed Recycled Water Discharge to the*

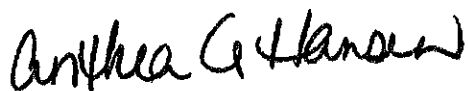
Delta-Mendota Canal" (Larry Walker Associated, July 2015), which included near and far-field analysis. It's unclear to us what needs to be updated or restudied from that report.

- **Section VI.C.2.c – Constituents of Emerging Concern (CEC) Study** – The scope of this requested study is not well defined in the tentative order and appears to be repetitive of existing sampling programs already being undertaken by the Delta Regional Monitoring group. Additionally, the study appears premature given that the draft statewide CEC monitoring recommendations have not been widely reviewed or finalized.
- **Attachment E, X.D.4 Table E-11 - DPWD Reporting Requirements** –The District reports conveyance of NVRWWP supply into the DMC as well as diversions from all turnouts licensed to DPWD along the canal to the San Luis & Delta-Mendota Water Authority and the United States Bureau of Reclamation on a monthly basis. If necessary, this information can be reported to Modesto and Turlock for submission to the Regional Board on an annual basis, but a greater understanding of why the information is being requested would be appreciated so as to develop a more sensible dataset than what has been suggested. Specifically, the Draft Permit requests a map of all diversion points used by DPWD in the calendar year, the total volume of water diverted by DPWD on a monthly basis, and the total volume of NVRWWP supply discharged into the DMC on a monthly basis. Because DPWD's diversion points are both upstream and downstream of the NVRWWP outfall, and because there are multiple diversions licensed to other agencies along the DMC, how the submission of the data as requested would provide meaningful information is questionable, at best. Additionally, NVRWWP supplies are made available by DPWD to CVPIA designated South-of-Delta wildlife refuges as part of the NVRWWP. To generate a water balance, if that is indeed the intent of this requirement, information regarding the timing of deliveries to the wildlife refuges should also be accounted for, which involves additional coordination by the District and the USBR Refuge Water Supply Program. To reiterate, the District is not opposed to providing additional information, however the information as requested appears to be an added cost to the District that would have no technical value.

In addition to the items noted above, the District would note that it was not invited as an interested party to comment on the tentative order, notwithstanding its status as a Program beneficiary as clearly stated in the Tentative Draft. Additionally, the District was not previously required to provide documentation under the prior permit. Given the requirements now being proposed for the District, it seems logical that our agency should be included as permit negotiations move forward. Please also keep us informed of any proposed late revisions to the permit, and see that we are added to the notification list of interested parties for any future actions on this or any other future permit affecting the NVRWWP.

Thank you for the opportunity to provide these comments. If you have any questions or concerns, please do not hesitate to contact me at (209) 892-4470.

Sincerely,



Anthea G. Hansen

General Manager