



## MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Scott Petersen, Water Policy Director

DATE: April 4, 2019

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) Bay-Delta Water Quality Control Plan update, (3) California WaterFix, (4) San Joaquin River Restoration Program, and (5) State Water Resources Control Board Wetlands Policy.

### POLICY ITEMS

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

Reclamation and state and federal resource agencies continue to work on the reinitiation of consultation on long-term operations (“ROC on LTO”). Per the October 19, 2018 Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West<sup>1</sup>, the adjusted timeline for the ROC on LTO includes final biological assessment(s) by January 31, 2019, and final biological opinions by June 15, 2019. On November 21, 2018, the Secretaries of Interior and Commerce named Paul Souza, Regional Director for the Pacific Southwest Region of the U.S. Fish and Wildlife Service, as the Lead Official in charge of managing the Central Valley Project’s compliance with the Presidential Memorandum’s requirements. On January 31, 2019, Reclamation transmitted a final Biological Assessment<sup>2</sup> to U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries, beginning their review of the Biological Assessment and the 135-day requirement to issue Biological Opinions.

As previously indicated, after completion of the Biological Opinions by the resource agencies, Reclamation will begin the environmental compliance process under the National Environmental Policy Act, with an estimated issuance of a final Environmental Impact Statement in November 2019 and the issuance of the final Record of Decision in December 2019. Reclamation has reached out to parties who have standing to become Cooperating Agencies, including the San

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<sup>1</sup> Available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/>.

<sup>2</sup> Available at <https://www.usbr.gov/mp/bdo/lto.html>

Luis & Delta-Mendota Water Authority (“Water Authority”), to participate in the NEPA process. Cooperating Agency status will allow the Water Authority to provide support to Reclamation as the agency completes its NEPA environmental review. The Water Authority has provided the signed MOU to Reclamation and will be participating as a Cooperating Agency. Authority staff will be providing comments to Reclamation on various administrative draft documents through its Cooperating Agency status.

### Bay Delta Water Quality Control Plan Update

As previously discussed, 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>3</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>4</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.

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<sup>3</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>4</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).

The effort has made significant 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>5</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.

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.

The package submitted March 1 is the product of renewed discussions over the first six weeks since Governor Gavin Newsom took office. It includes a project description identifying resources and actions that could be deployed to support environmental and biological objectives and a planning agreement that outlines an implementation approach and terms for the additional work ahead. All Delta tributaries were included as part of the Voluntary Agreement submittal except the Stanislaus and Merced Rivers.

### California WaterFix

**State Water Resources Control Board Change Petition:** On March 1, 2019, the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation's (collectively petitioners) requested<sup>6</sup> that the State Water Resources Control Board issue a ruling to place in abeyance their joint water right change petition (petition) for the California WaterFix Project (WaterFix) and stay the hearing on the petition for 60 days.

The petitioners requested a temporary stay in light of Governor Gavin Newsom's announcement during his February 12, 2019 State of the State address that he supports a single tunnel configuration that builds on the permit and planning work that has already been completed. Petitioners state that the stay will allow DWR enough time to assess how this change will affect existing and any new permit and planning work, including the WaterFix petition process. Petitioners state that they will update the State Water Resources Control Board and service list regarding the status of WaterFix at the end of the 60 days, or earlier if information becomes available sooner.

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<sup>5</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>6</sup> Available at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/2019/20190301\\_dwr\\_temp\\_stay.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2019/20190301_dwr_temp_stay.pdf)

In a March 4, 2019 letter<sup>7</sup>, County of San Joaquin, et al., and Local Agencies of the North Delta (LAND), state that they do not oppose the requested stay or abeyance, provided the prohibition against ex parte communications remains in place.

The SWRCB granted the Petitioners' request for a 60-day stay from March 6, 2019. If petitioners subsequently request a longer stay, or propose to move forward with the current petition instead of withdrawing it and filing a new petition at a future date, the parties will be allowed to brief the merits of such request or proposal.

**Environmental Documentation:** Comments on the Draft Supplemental EIR/EIS were accepted through November 5, 2018. The Supplemental EIR/EIS is expected to be amended after further analysis of a single tunnel alternative.

#### San Joaquin River Restoration Program

The San Joaquin River Restoration Program (SJRRP) is preparing to conduct pre-construction surveys for the first phases of the Mendota Pool Bypass and Reach 2B Improvements Project (Project). While construction activities for this project are not currently anticipated to begin until mid-2019, these pre-construction surveys are required environmental commitments as per the 2016 Record of Decision for the Project and are needed to inform Project planning efforts. The surveys will include pedestrian surveys for special status plant and animal species. Surveys are anticipated to take one day, however, several survey dates are needed during the period of April – July 2019. Surveys will occur on the parcel of land previously owned by Mitigation Lands Trust that has been recently acquired by Reclamation for the Project and at Mowry Bridge. Access for the surveys will occur on public roads and private property with landowner permission.

#### State Water Resources Control Board Wetlands Policy

The State Water Resources Control Board (SWRCB) is proposing a State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures), for inclusion in the forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. The Procedures consist of four major elements: 1) a wetland definition; 2) a framework for determining if a feature that meets the wetland definition is a water of the state; 3) wetland delineation procedures; and 4) procedures for the submittal, review and approval of applications for Water Quality Certifications and Waste Discharge Requirements for dredge or fill activities.

On January 3, 2019, the SWRCB released an initial draft<sup>8</sup> of the wetlands policy, with multiple workshops that followed with stakeholders on January 9, January 22, February 6, with the final

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<sup>7</sup> Available at

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/2019/20190304\\_sjc\\_response.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2019/20190304_sjc_response.pdf)

<sup>8</sup> Available at [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrapp/BDMTG-February5-Dredge\\_or\\_Fill-Procedures-Clean.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/BDMTG-February5-Dredge_or_Fill-Procedures-Clean.pdf)

workshop being held on March 5, 2019. The SWRCB will consider adoption of the wetlands policy on April 2, 2019.