

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
FEBRUARY 6, 2024**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION REAPPROVING THE FINAL INITIAL BIOLOGICAL GOALS FOR LOWER SAN JOAQUIN RIVER FLOW OBJECTIVES.

DISCUSSION

On December 12, 2018, the State Water Board adopted an update to the Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary (Bay-Delta Plan) revising flow objectives for the protection of fish and wildlife beneficial uses on the Lower San Joaquin River (LSJR) and salinity objectives for the protection of agricultural beneficial uses in the Southern Delta (2018 update). At the same meeting, the State Water Board adopted a Substitute Environmental Document (SED) fully analyzing the potentially significant impacts of the 2018 update. Following adoption, twelve cases were filed in multiple different courts challenging, among other claims, the sufficiency of the revised objectives under the Porter-Cologne Water Quality Control Act (Porter-Cologne) (Wat. Code, § 13000 et seq.) and sufficiency of the SED environmental analysis in accordance with the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.). Those cases are coordinated in Sacramento Superior Court under the name “State Water Board Cases.” Following six months of merits briefing totaling well over 1,500 pages, and eleven days of oral argument, the court took the State Water Board Cases under submission on October 24, 2023. The court was scheduled to issue an opinion on or before January 22, 2024; however, due to the complexity of the case, on January 18, 2024, the court extended the deadline for issuing an opinion to on or before April 17, 2024.

As part of the 2018 update, the State Water Board committed to develop and consider approval of biological goals for the LSJR. The biological goals are quantitative metrics that the State Water Board will use to assess if the actions it is taking under the Bay-Delta Plan, and in coordination with State agencies and other entities to implement the Plan, are making sufficient progress towards the Plan’s objectives of achieving and maintaining the natural production of viable native fish and aquatic species populations. The 2018 update also required the State Water Board to establish a Stanislaus, Tuolumne, and Merced Working Group (STM Working Group) as a forum for facilitating coordination among the State Water Board and interested water agencies and other stakeholders with expertise in LSJR issues. On September 6, 2023, following an extensive public process spanning multiple years, and substantive revisions and changes based on public input from the STM Working Group and other interested persons, the State Water Board adopted Resolution No. 2023-0028 approving the Draft Final Initial Biological Goals.

In October of 2023, Modesto Irrigation District, Merced Irrigation District, and San Joaquin Tributaries Authority (collectively “Petitioners”) – who are also petitioners in the State Water Board Cases – filed writs of mandate in Fresno Superior Court claiming that the State Water Board’s approval of the biological goals was an unlawful amendment of the 2018 Bay-Delta Plan in violation of Porter-Cologne and CEQA and an underground regulation in violation of the California Administrative Procedure Act. Petitioners also claim that approval of the biological goals is arbitrary, capricious, and lacking in evidentiary support. Petitioners seek to vacate both [Resolution No. 2023-0028](#) approving the biological goals and the Final Initial Biological Goals themselves, as well as compel the State Water Board to remediate alleged Porter-Cologne and CEQA violations.

As the State Water Board stated in Resolution No. 2023-0028, the Final Initial Biological Goals are not regulatory but are metrics to assess fall-run Chinook salmon populations. Because the Final Initial Biological Goals do not require any specific regulatory action, such as an increase or decrease in unimpaired flows, they do not have the potential to result in either a direct or indirect physical change in the environment. To the extent the Final Initial Biological Goals, together with any other relevant information, are used to inform a future State Water Board decision to move within the adaptive range, the 2018 SED analyzed any potentially significant impacts from the Board requiring unimpaired flows in the range of 30 to 50 percent. Resolution No. 2023-0028 approving the biological goals focused on the substance of the biological goals and their role in the Bay-Delta Plan process; however, the proposed revised resolution reapproving the Draft Initial Biological Goals provides greater clarity regarding the relationship of the biological goals to the 2018 Bay-Delta Plan and its prior environmental analysis, and why adoption of the biological goals does not require additional environmental analysis (i.e. is either not a CEQA project or is otherwise exempt). There are no proposed revisions to the Final Initial Biological Goals themselves.

POLICY ISSUE

Should the State Water Board adopt the proposed revised resolution reapproving the Final Initial Biological Goals?

FISCAL IMPACT

None. The biological goals are not regulatory. They will be used to inform the adaptive methods, evaluate the effectiveness of the Bay-Delta Plan's program of implementation, the San Joaquin River Monitoring and Evaluation Program, and future changes to the Bay-Delta Plan.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The Office of Chief Counsel recommends that the State Water Board adopt the proposed revised resolution reapproving the Final Initial Biological Goals.