

Proposed Adoption of Revised Resolution Reapproving Final Initial Biological Goals

Tina Cannon Leahy, Attorney IV
Office of Chief Counsel



February 6, 2024

Bay-Delta Plan

- December 12, 2018, the State Water Board adopted amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan)
- The plan amendments updated flow objectives for the protection of fish and wildlife beneficial uses on the Lower San Joaquin River (LSJR flow objectives) and salinity objectives for the protection of agricultural beneficial uses in the Southern Delta and the program of implementation for both (collectively 2018 Plan Amendments)
- When the Board adopted the 2018 Plan Amendments, it also adopted a Substitute Environmental Document (SED) providing the environmental and other analyses in support of the Board's decision, including a full analysis of the potentially significant impacts of the LSJR flow objectives

Bay-Delta Plan Process

- Adoption of new and revised objectives is a first step
- To implement the LSJR Flow objectives, the Board must assign responsibility to water users through a future water quality or water right action
- When the Board assigns responsibility, it must conduct additional environmental review to determine if there are project-specific environmental impacts that were not previously analyzed
- Until the 2018 Plan Amendments are implemented, there are no physical changes to the environment from the Board's action

Revised LSJR Flow Objectives

- The revised LSJR flow objective is comprised of both narrative and numeric components
- The numeric flow objective requires that 40% of unimpaired flow is maintained in the Stanislaus, Tuolumne, and Merced Rivers, February through June, within an adaptive range of 30 percent to 50 percent
- The SED in support of the 2018 Plan Amendments analyzed the potentially significant environmental impacts of requiring 30 percent to 50 percent, inclusive, of unimpaired flows in the LSJR

Final Initial Biological Goals

- When the Board adopted the 2018 Plan Amendments it tasked itself to develop biological goals – which are one measuring stick for assessing progress toward achieving the water quality objectives for LSJR flows
- The biological goals do not mandate that the Board take any action
- The Board will consider the biological goals – and any other appropriate information – to inform adaptive methods, such as moving within the adaptive range
- As stated previously, the potentially significant impacts of moving within the adaptive range were already analyzed in the SED for the 2018 Plan Amendments.
- If the Board uses the biological goals to inform a future change in the Bay-Delta Plan, any such change would require a subsequent plan amendment and its own environmental review

Revised Resolution

- Provides the public with additional clarifying explanation as to why the State Water Board's approval of biological goals is not subject to the California Environmental Quality Act
- Clarifies that the biological goals are categorically exempt from CEQA in addition to not a project
- Does not change the State Water Board's original findings that approval of biological goals is not subject to CEQA
- Does not change the Final Initial Biological Goals approval by the Board in September 2023

Revised Resolution Exemption Language

- Even if approval of the Final Initial Biological Goals were considered a “project” under CEQA, that action would be categorically exempt pursuant to California Code of Regulations, title 14, sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources), 15308 (Actions by Regulatory Agencies for Protection of the Environment), and 15061, subdivision (b)(3).
- There is no reasonable possibility that this action will have a significant effect on the environment due to unusual circumstances (Cal. Code Regs., tit. 14, § 15300.2(c)). The Final Initial Biological Goals do not themselves compel an action. As explained above, if they are used to inform a future action to move within the adaptive range, that action was fully analyzed in the 2018 SED and is already the subject of ongoing litigation. If used to inform a future Bay-Delta Plan update, that action would require its own environmental review.

Notice of the Proposed Action

- Consistent with the State Water Board's Bagley-Keene Open Meeting Act requirements, the Board noticed its agenda 10 days prior to the Board meeting
- Additional courtesy notice highlighting Agenda Item 4 for potentially interested parties, and the opportunity for comment, was sent to the following listservs:
 - Bay-Delta
 - Stanislaus, Tuolumne and Merced Working Group
 - Tribal

Comments Received

The State Water Board received comment letters from the following entities by the February 1 deadline:

- Merced Irrigation District
- Modesto Irrigation District
- San Joaquin Tributaries Authority
(Modesto Irrigation District, Turlock Irrigation District, South San Joaquin Irrigation District, and City and County of San Francisco (CCSF))
- Tuolumne River Parties
(Modesto Irrigation District, Turlock Irrigation District, San Francisco Public Utilities Commission (SFPUC))

Comment Summary

The comments, which are by parties to the litigation on the 2018 Plan Amendments:

- Question making legal assertions in the alternative
- Challenge the adoption of the Final Initial Biological Goals as categorically exempt under CEQA
- Ask that Agenda Item 4 be tabled and for 30 days to provide additional comments
- Attach prior comments on the Final Initial Biological Goals
- Reference and/or attach the record and briefing on the 2018 Plan Amendments litigation and/or other litigation

Purpose of State Water Board's Action

- Further clarifies that the biological goals are not a project within the meaning of CEQA and are categorically exempt
- Supersedes the State Water Board's resolution (2023-0028) adopted in September 2023

Recommendation

- Adopt the proposed resolution reapproving Biological Goals