



To: Members of the RCRC Board of Directors
From: Mary-Ann Warmerdam, Senior Legislative Advocate
Arthur Wylene, General Counsel
Date: September 14, 2020
Re: Water Issues Update

Summary

This memo provides an update on current issues involving California water policy.

Background

The resources area, including those affecting California's water supply and infrastructure, continues to evolve, even while the coronavirus (COVID-19) dominates the public policy conversation. The State's recently concluded legislative session being no different, where the measures considered and passed made no great changes, but did "nibble around the edges" of larger issues. In addition to COVID-19 and several other dominant matters, the budget challenges have over-shadowed much of the conversation affecting California's water issues.

State Issue Update

General Obligation Bonds to Fund Resource Programs

As noted in previous memos, the Legislature made a number of unsuccessful attempts to develop a "resource-based" bond for the better part of the 2019-2020 Legislative Session. Initially, the focus was on Senate Bill 45 (Allen), followed by Assembly Bill 352 and Assembly Bill 3256, both of which are authored by Assembly Member Eduardo Garcia. While not identical, the proposals were similar in the areas identified for investment, and fell within \$149 million of each other, at approximately \$4 billion. The RCRC Board of Directors adopted a "Support" position on SB 45 in early 2019.

None of these measures nor a couple of less-ambitious proposals, gained much momentum due to the truncated 2020 Legislative Session and there just was not much political appetite for a resource bond measure. Despite this, it is generally accepted that the current versions of SB 45 and AB 3256 will become the "baseline" for future conversations, expected in the 2021-2022 Legislative Session.

Voluntary Agreements

As noted last month, the progress has all but stopped, at least for the moment, on the development of Voluntary Agreements (VA) as an alternative to proposed regulatory

scheme adopted by the State Water Resources Control Board (SWRCB) in December 2018 (See RCRC Board memo of August 2019). The conversation has been complicated with President Trump's signature on the Record of Decision of the federal biological opinions which govern the operations of the state and federal water projects ([along with another Presidential memo](#)), which was promptly followed by the filing of a lawsuit by the State of California the following day. Substantial additional litigation by multiple parties promptly ensued. The conflict creates uncertainty around the VA process, and the focus of the state negotiators is now on opportunities for a settlement agreement to resolve the lawsuits, thereby allowing VA conversations to move forward.

Safe and Affordable Drinking Water Fund

The SWRCB has developed policy to guide the expenditure of the funds provided with the passage of Senate Bill 200, authored by Senator Bill Monning, in July 2019. The fund will provide \$130 million per year to address those water systems that are not able to provide safe and sustainable drinking water to their communities (many of which are located in RCRC member counties). Types of projects contemplated include consolidation with larger systems, providing interim replacement water, planning assistance, as well as underwriting administrative and/or the costs of operation.

The SWRCB refers to this initiative as the [Policy for Developing the Fund Expenditure Plan for the Fund](#). The policy will establish and document the SWRCB's direction on how the Fund Expenditure Plan will be developed. The policy identifies and defines key terms and metrics, describes how proposed remedies will be identified, evaluated, prioritized, and included in the Fund Expenditure Plan, establishes a petition process for consideration of consolidation orders for disadvantaged communities, and includes a public hearing requirement. Adoption of the Fund Expenditure Plan by the SWRCB was considered at the July 7, 2020 meeting. A new Fund Expenditure Plan will be developed and approved by the State Water Board annually.

The SWRCB also released for comments a "Draft Final White Paper Discussion" entitled "Identification of Risk Assessment 2.0 Indicators for Public Water Systems." Comments were due the latter part of August with public feedback on the Draft's list of potential version 2.0 risk indicators being solicited before the indicators are assessed using the Risk Indicator Evaluation Tool. This is another component of SB 200 implementation.

As noted in past updates, the program's implementation included the establishment of an advisory group to provide guidance in the program's development. Originally established in mid-2019, the State Water Board is again accepting applications for the Safe and Affordable Funding for Equity and Resilience (SAFER) Advisory Group. In addition to providing advice on the Expenditure Plan, this group also provides advice other SAFER-related policies. Applications will be accepted through September 30, 2020. There are 10 seats open for the 2020 application period. Applicants will be selected and notified by the Winter of 2020. County resource staff and other interested parties are encouraged to apply. The electronic application form is available on the SAFER Advisory Group website: https://www.waterboards.ca.gov/safer/advisory_group.
Water Resiliency Initiative Portfolio

In July, Governor Newsom [released](#) a final version of the [Water Resilience Portfolio](#), a collaborative effort between the California Natural Resources Agency (CNRA),

California Environmental Protection Agency, and Department of Food and Agriculture, designed to serve as the Newsom Administration's blueprint to move California forward in ensuring the state's long-term water resilience and ecosystem health.

The effort began in April 2019 when Governor Newsom issued [Executive Order N-10-19](#) calling for a portfolio of actions to address California's many water challenges. Among those challenges are droughts, floods, extreme weather swings, declining fish populations, over-reliance on groundwater, vulnerable infrastructure, and others. To develop the comprehensive portfolio required by the executive order, the state agencies conducted an inventory and assessment of key aspects of California water, soliciting broad input from tribes, agencies, individuals, groups, and leaders across the state. An interagency working group considered the assessment and input from more than 20 public listening sessions across the state and more than 100 substantive comment letters.

RCRC was involved early-on in the portfolio development process, providing comments ahead of the initial draft release of the Water Resilience Portfolio, along with its partners in the California Forest Watershed Alliance. Following the draft release in January 2020, RCRC was among the over 200 individuals and organizations that helped to inform revisions, including greater emphasis to upper watershed health and cross-border water issues. RCRC's comments on the draft release can be viewed here: https://www.rcrcnet.org/sites/default/files/useruploads/Documents/Barbed_Wire/February_07_2020/Draft_Water_Resilience_Initiative_Portfolio_Comments_Ltr_to_CNRA_0205_2020.pdf.

RCRC continues to monitor and engage with the CNRA who is tasked with leading this effort in its implementation. Although hampered by a lack of available funding, CNRA is marshalling and prioritizing existing funding streams to execute against the following key priorities:

1. Implementing the Safe and Affordable Drinking Water Act of 2019.
2. Supporting local communities to successfully implement the Sustainable Groundwater Management Act of 2014.
3. Achieving voluntary agreements to increase flows and improve conditions for native fish in the Sacramento-San Joaquin Delta and its watersheds.
4. Modernizing the Delta water conveyance system to protect long-term functionality of the State Water Project.
5. Updating regulations to expand water recycling.
6. Accelerating permitting of new smart water storage.
7. Expanding seasonal floodplains for fish and flood benefits.
8. Improving conditions at the Salton Sea.
9. Removing dams from the Klamath River.
10. Better leveraging of information and data to improve water management.

Additional information about the Water Resilience Portfolio Initiative is available here: <https://waterresilience.ca.gov/>.

Sustainable Groundwater Management Act

In September 2014, Governor Brown signed a package of measures collectively referred to as the "Sustainable Groundwater Management Act" (SGMA). These

measures created the framework for local agencies to organize themselves and develop Groundwater Sustainability Plans (GSPs) tailored to the needs of the basins/sub-basins in their region.

To implement their obligations under SGMA, local agencies, including many counties, formed Groundwater Sustainability Agencies (GSAs) and, generally, are focused on developing GSPs to reach “sustainability” of the underlying basins within 20 years. For those basins/sub-basins designated as critically over-drafted, the GSPs were due to the Department of Water Resources (DWR) by January 31, 2020; for basins designated as **high- or medium-priority**, basin plans are due on **January 31, 2022**.

DWR continues to review those plans submitted by the January 31st deadline for “completeness” as it relates to meeting program goals and sustainability targets. To date, DWR has been fairly circumspect in its assessments; however, as noted in earlier memos, while one groundwater plan, involving the Madera subbasin, was initially not accepted because one of the GSAs involved in the subbasin was not a signator to the coordination agreement for the subbasin, that situation has, reportedly, resolved. SGMA mandates that no matter how many plans are submitted for a subbasin, they must be “coordinated” to use the same data, methodology and agree on certain basics, such as water budgets — how much water is coming into the subbasin and how much is being pumped out.

Meanwhile, for those GSAs that are working on plans due to DWR in **January 2022**, the DWR is making technical and facilitation support services available through the Technical Support Services (TSS). TSS is available to provide a variety of tools to GSAs at both regional and statewide scales to build the capacity needed to achieve sustainability. TSS is available to GSAs through our Region Offices or contractors pending funding availability. The 2-page fact sheet on DWR’s technical services can be accessed here: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Assistance-and-Engagement/Files/TSS-Factsheet_ay-19.pdf.

DWR’s Facilitation Support Services is also available to help local agencies work through challenging water management situations. Under SGMA, GSAs shall encourage the active involvement of diverse social, cultural, and economic interests and consider all beneficial uses and users of groundwater when developing and implementing GSPs. In the event GSAs need the help of professional facilitators to foster discussions among diverse water management interests and local agencies can be accessed. (For further information about DWR’s Technical and Facilitation Support Services, visit <https://water.ca.gov/Programs/Groundwater-Management/Assistance-and-Engagement> and scroll down to Technical and Facilitation tabs.)

California Department of Water Resources

In early August, the DWR filed a “validation action” with the Sacramento County Superior Court to establish the validity of DWR’s proposed revenue bonds to finance the planning, design, construction and other capital costs of the proposed Delta Conveyance Project. Although DWR has existing legal authority to finance and construct the proposed project under the Central Valley Project Act, a validation action is necessary to provide the requisite assurance to the financial community for the sale

of the Delta Conveyance Project revenue bonds. The documents filed as part of the validation action can be accessed here: <https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Public-Engagement>. Interested parties will have the opportunity to intervene in the validation action and challenge the validity of the bonds. Given the controversial nature of the Delta Conveyance Project, such intervention by multiple parties is considered likely.

Water Quality Certification

Hydroelectric power projects licensed by the Federal Energy Regulatory Commission (FERC) are required to periodically renew their licenses. As part of the “relicensing” process, the project must obtain a water quality certification (under Section 401 of the Clean Water Act) from the applicable state regulatory agency – which for California is the SWRCB. Under federal law, such certifications must be issued “within a reasonable period of time... not exceed[ing] one year.”

The Nevada Irrigation District is in the process of relicensing the Yuba-Bear Project, and submitted a request for water quality certification to SWRCB in 2012. SWRCB did not issue a certification within one year, and instead induced the District to withdraw and refile its request each year between 2013 and 2018 in order to allow SWRCB time to complete CEQA review for the proposed certification. In 2019, the District declined to refile its request, and instead petitioned FERC to determine that SWRCB had waived issuance of water quality certification by failing to issue a certification within one year as required. FERC agreed, and concluded that SWRCB “has waived its water quality certification authority under section 401 of the Clean Water Act with respect to the relicensing of NID’s Yuba-Bear Hydroelectric Project.” Both SWRCB and several environmental organizations have challenged this decision in the Ninth Circuit Court of Appeals, which remains pending.

This case is being closely watched in the water community, as it has significant implications for the interaction between SWRCB’s water quality certification authority (which is applicable to a range of federal actions) and the CEQA process (which is often difficult to complete within one year for significant projects).

Federal Update

Water Resources Development Act - On July 29th, the House of Representatives overwhelmingly passed the *Water Resources Development Act (WRDA) of 2020* ([H.R. 7575](#)) by voice vote under a procedural set of rules that disallowed most amendments. Ahead of the vote, the [Congressional Budget Office released a report](#) calculating that the measure would cost the federal government \$673 million in the first decade. However, the measure only authorizes projects, meaning each project would still then need to win a share of the Army Corps of Engineers’ modest \$6 billion in annual appropriations to actually break ground. While lawmakers have said they are committed to completing WRDA bills every other year, some anticipate that if Democrats sweep the November General Elections they may look to wrap the measure into a major infrastructure stimulus package next year.

The WRDA Section by Section:

(<https://transportation.house.gov/imo/media/doc/WRDA%202020%20Section%20by%20Section%20Final.pdf>)

The WRDA Fact Sheet:

(https://transportation.house.gov/imo/media/doc/WRDA%202020%20Fact%20Sheet_FI_NAL-2.pdf)

The WRDA Bill Text:

(https://transportation.house.gov/imo/media/doc/WRDA20_01_xml.pdf)

A detailed interactive map of authorized projects and studies:

(<https://www.google.com/maps/d/viewer?mid=1TQcqNZt-UACcv7n5SmDuN2CoNR2KsGnt>)

On July 15th, President Trump unveiled final changes to the National Environmental Policy Act (NEPA) — the law that requires agencies to conduct detailed environmental reviews for major projects. The President and industry groups have contended that NEPA has been used by environmentalists to sideline pipelines, highways, and other infrastructure projects. The changes will shorten the timelines for conducting environmental reviews, reduce the need to consider the effects of climate change, and offer a broader scope to the types of projects that can be excluded from NEPA reviews altogether, such as those that receive little federal funding.

Snow Water Supply Forecasting Program - On August 14th, Senator Dianne Feinstein, Senator Kamala Harris and Representative Josh Harder (D-Stanislaus) introduced the *Snow Water Supply Forecasting Program Authorization Act* ([HR.8041](#) & [S.4530](#)) to establish an airborne snow observatory and measurement program within the Department of the Interior (DOI). Without accurate readings, water managers could be forced to unnecessarily release water from reservoirs or use it for groundwater pumping, resulting in millions of dollars in financial losses. This bill would replace the NASA program with a new program at the DOI to improve the understanding, management and deployment of snowpack measurement technologies used for seasonal water forecasting. It would also provide a total of \$15 million in funding for fiscal years 2022 to 2026.

Border Water Quality Restoration and Protection Act - On August 7th, Representative Juan Vargas (D-San Diego), along with Representatives Susan Davis (D-San Diego), Scott Peters (D-La Jolla), Raul Ruiz (D-Palm Desert), and Mike Levin (D-Vista), introduced the *Border Water Quality Restoration and Protection Act of 2020* ([HR. 7991](#)), a companion bill to Senator Dianne Feinstein's [legislation](#) introduced on July 29th. The legislation will address pollution along the U.S.-Mexico border and help improve the water quality of the Tijuana River and New River in the Imperial County area. The bill will designate the Environmental Protection Agency as the lead agency to coordinate all federal, state, and local agencies to plan and construct infrastructure projects to help combat pollution along the border.

Staff Recommendation

Information only. RCRC staff will continue to engage in these policy areas as necessary to ensure the concerns of RCRC member counties are addressed.