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MEMO

DATE: November 7, 2023

TO: Implementation Committee

FROM: Darcie Luce, SFEP Staff

RE: Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta

Introduction

Since the first Comprehensive Conservation and Management Plan (1993) and the earliest State of the Estuary reports (2002 and earlier), freshwater flows from the Sierra headwaters to the Golden Gate have been a priority topic for scientific research, policy, and management questions for the San Francisco Estuary Partnership. The 2022 Estuary Blueprint calls for improvements to the timing, amount, and duration of freshwater flows critical to Estuary health ([Action 16: Freshwater Flows](#)). Task 16-1 specifically refers to the Bay-Delta Plan:

Task 16-1 Description:

Update and implement the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta WQCP) with timely and scientifically sound information and keep the public and non-governmental organizations (NGOs), Tribes, and local, state, and federal officials informed.

Milestone:

Completed update and implementation of the Bay-Delta WQCP.

Consistent with past phases of the Bay-Delta WQCP or Bay-Delta Plan update, the San Francisco Estuary Partnership is considering submitting a comment letter to ask for improvements to freshwater flows consistent with the scientific findings of multiple State of the Estuary reports. The staff analysis below, informed by IC input and discussion, will form the basis of the comment letter.

Bay-Delta Plan Background

The State Water Resources Control Board (State Water Board) is updating the *San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan*, also called the Bay-Delta Plan or WQCP. The Bay-Delta Plan identifies the beneficial uses of water to be protected in the Bay-Delta watershed and establishes water quality objectives for those beneficial uses, including flow levels and salinity. The Bay-Delta Plan also includes an implementation program and a monitoring program. The Bay-Delta Plan entails enforceable standards that can impact all water users.

The first Bay-Delta Plan was completed by the State Water Board in 1978 and updated in 1991 and 1995. The State Water Board began its most recent update process in 2008, and that process is still underway. The update process has been divided into separate stages. Updated flow objectives for the lower San Joaquin River and its major tributaries and updated salinity objectives for the southern Delta were approved by the State Water Board in 2018 (see red circle on map below).

Sacramento/Delta Updates

The State Water Board is now updating the water quality (flow and salinity) objectives for the Sacramento River and its tributaries, eastside Delta tributaries, interior Delta flows, and Delta outflows (see green circle on map). In preparation, State Water Board staff have released a staff report analyzing a number of alternative flow objectives similar to the process for the lower San Joaquin River and its tributaries. The public comment period on the staff report is open until December 15, 2023.

While a number of alternatives are analyzed in the report, the following updated objectives are most likely to be proposed:

- 55 percent unimpaired flow from the Sacramento River, its tributaries, and eastside Delta tributaries (adaptively managed in a range of 45-65 percent) into the Delta (called inflows).
- Additional measures, such as the creation of a new fall Delta outflow objective, to ensure that the flow from the Sacramento River and tributaries reach the lower San Francisco Estuary (Suisun Marsh and San Francisco Bay), also called Delta outflows.
- Changes to the management of interior Delta flows, including salinity barriers, and possible further modification in response to the updated lower San Joaquin River objectives.
- Cold water habitat requirements for reservoir operators, to maintain temperatures downstream for cold water habitat.

Voluntary Agreements Program

A coalition of state government agencies and water rights holders have worked together to develop a proposal that would take the place of the updated flow objectives being developed for those participants, including both the already approved lower San Joaquin River objectives and the Sacramento River and tributaries objectives. This proposal contains flow and non-flow strategies aimed at improving ecosystem decline. The voluntary agreements program (VA Program), called *Agreements to Support Healthy Rivers and Landscapes*, is intended to take the place of the Bay-Delta Plan.

The VA Program includes the following elements:

- Additional flows over baseline, ranging from 155,000 acre-feet to 825,000 acre-feet on average.

- 45,000 acres of instream habitat, new spawning and rearing habitat, floodplain habitat and fish food production projects, many of which are already in progress.
- The creation of a Systemwide Governance Committee and a VA Science Committee to implement the program, coordinate science activities, and recommend an adaptive management framework.
- A commitment of over \$2.5 billion in funding to support water purchases, crop idling, a robust science program and construction of new habitat, including dedicated resources to monitor and ensure performance.

The VA Program was developed by a large group of water supply districts and state government agencies and did not involve or include many other stakeholders such as other water supply districts, environmental organizations, underrepresented or environmental justice communities, and Tribes. If accepted by the State Water Board as the program of implementation (or substitute) for the Bay-Delta Plan, it would apply to the participants in the VA Program, while the regular program of implementation developed by the State Board would apply to all other water rights holders.

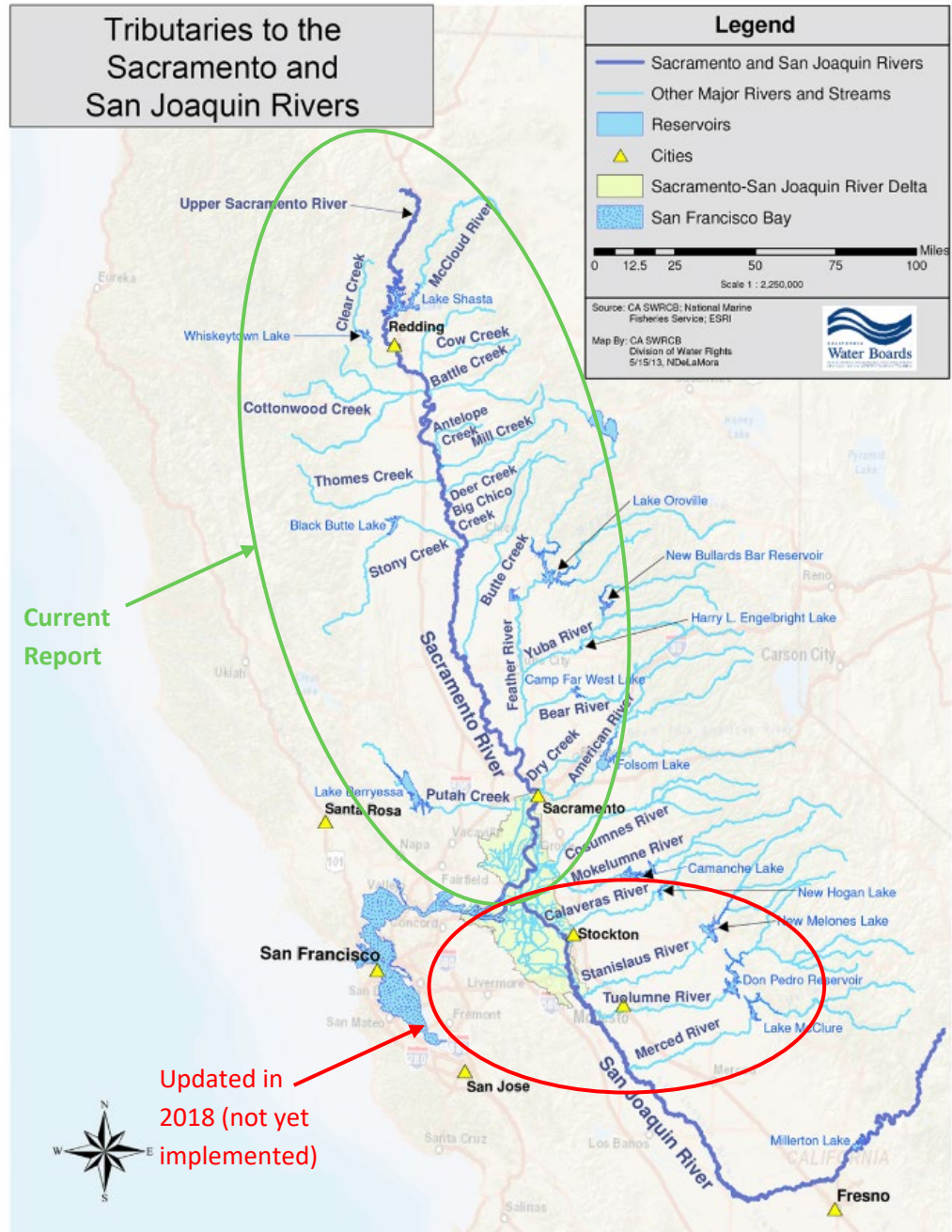
History of SFEP/ABAG Comments

The San Francisco Estuary Partnership submitted three comment letters during the update process for the lower San Joaquin River and its tributaries (2013, 2017, and 2018) before the updated objectives were approved by the State Water Board. The comment letters were consistent in highlighting the following points:

- The scientific findings in the State of the Estuary Report (2011, 2015) continue to point to insufficient freshwater flows as a primary stressor for the San Francisco Estuary ecosystem, contributing significantly to the decline of many native fish species.
- The proposed flow objectives of an adaptively managed range of 30-50% unimpaired flow, with a recommended starting range of 40%, may not adequately protect fish and wildlife and water quality in the lower estuary, lower San Joaquin River, and San Joaquin tributaries.
- The State Water Board has the authority and statutory obligation to ensure that enough water reaches the Delta and Bay--and flows out of the Golden Gate--to reverse the declines of fish and wildlife and protect the beneficial uses of water as required by state and federal law.

In addition, the Association of Bay Area Governments (ABAG) submitted a comment letter in 2015 on the update process. Similarly, this comment letter emphasized that the lower San Joaquin River and tributaries update to the Bay-Delta Plan should:

- Ensure that the management of winter-spring flows in the lower San Joaquin and tributaries follows natural patterns with respect to variations in magnitude, duration, timing, and frequency of freshwater flow (also known as a percent unimpaired flow approach).
- Ensure that no less than 50% of the San Joaquin River's total natural flow reaches the Delta during the critical spring period.



Phases of the Bay-Delta Water Quality Control Plan Update: the green circle roughly delineates the current staff report; the red circle roughly delineates the Phase 1 updates approved by the State Water Resources Control Board in 2018.

SFEP Staff Analysis of the Sacramento/Delta Draft Staff Report

Under the current Bay-Delta requirements, existing regulatory minimum Delta outflows are too low to protect the ecosystem. Currently, average regulatory minimum Delta outflows are only about five million acre-feet, or *less than 20 percent* of average unimpaired outflows (Chapter 5, 2023 Draft Staff Report).

Without additional instream flow protections from the Sacramento River and eastside Delta tributaries, existing flows may be reduced in the future as new storage and diversion facilities are constructed and as population growth continues. These effects are exacerbated by climate change.

The State Water Board's Draft Staff Report proposes an increase in the average unimpaired flows from less than 20 percent to an adaptively managed range of 45-65 percent of average unimpaired flows during the critical spring period. In contrast, the VA Program proposes to add an average of 1.08 percent of additional flows over baseline (averaged across all water year types).

As with the lower San Joaquin River phase of the Bay-Delta Plan update, the State Water Board has conducted years of research into the scientific basis for the recommendations in the Draft Staff Report for the Sacramento River and its tributaries, eastside Delta tributaries, and Delta interior flows and outflows. The scientific basis is in alignment with the findings of the State of the Estuary Report and indicates that halting or reversing the ecological decline of the system requires more substantial improvement to instream flows than those suggested by the VA Program.

For Further Reading

[Sacramento/Delta Update to Bay-Delta Plan: 2023 Draft Staff Report website](#)

[Draft Staff Report in Support of the Sacramento/Delta Update to the Bay-Delta Water Quality Control Plan: Frequently Asked Questions](#)

[Debate over options for California's ailing Delta region reflects deep divisions over water](#): LA Times, 10/8/23 by Ian James

[The Bay-Delta ecosystem is collapsing. California just unveiled rival rescue plans](#): CalMatters, 9/29/23 by Rachel Becker