



# MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: July 8, 2024

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 of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

## Policy Items

### Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for

several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis", with a fact sheet<sup>1</sup> attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project<sup>2</sup>. In response to this, on March 30, 2022, the SLDMWA submitted a comment letter highlighting actions for Reclamation to consider during preparation of the EIS.

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

During May 2022, Reclamation issued draft copies of the Knowledge Base Papers for the following management topics and requested supplementary material review and comments, to which the Authority submitted comment letters in June:

1. Spring-run Juvenile Production Estimate- Spring-run Survival Knowledge Base Document, May 2022
2. Steelhead Juvenile Production Estimate-Steelhead Survival Knowledge Base Document, April 2022
3. Old and Middle River Reverse Flow Management – Smelt, Chinook Salmon, and Steelhead Migration and Survival Knowledge Base Document, May 2022
4. Central Valley Tributary Habitat Restoration Effects on Salmonid Growth and Survival Knowledge Based Paper, March 2022
5. Delta Spring Outflow Management Smelt Growth and Survival Knowledge Base Document, May 2022
6. Pulse Flow Effects on Salmonid Survival Knowledge Base Document, May 2022
7. Summer and Fall Habitat Management Actions – Smelt Growth and Survival Knowledge Base Document, May 2022
8. Shasta Cold Water Pool Management – End of September Storage Knowledge Base Document, May 2022

Subsequent to the Knowledge Base Paper review, a Scoping Meeting was held, to which Water Authority staff provided comments, resulting in the release of a Scoping Report<sup>3</sup> by Reclamation in June 2022.

On October 14, 2022, Reclamation released an Initial Alternatives Report (IAR).

On May 16, 2023, Reclamation provided an administrative draft copy of the Proposed Action, titled “State and Federal Cooperating Agency Draft LTO Alternative” to agencies that have executed an MOU with Reclamation on engagement. Authority staff is reviewing the document and provided feedback to Reclamation, in coordination with member agencies and other CVP contractors.

On June 30, 2023, Reclamation released a draft Qualitative Biological Assessment for review by agencies that have executed an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On July 21, 2023, Reclamation released an Administrative Draft Terrestrial Biological Assessment for review by agencies that have an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On September 15, Reclamation released a Draft Environmental Impact Statement for 30-day NEPA Cooperating Agency review. The SLDMWA coordinated review of the document with member agencies

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<sup>3</sup> <https://www.usbr.gov/mp/bdo/docs/lto-scoping-report-2022.pdf>



and technical consultants and submitted both high-level and technical comments on the document<sup>4</sup> on October 16.

On October 10, 2023, Reclamation transmitted an Aquatic species Quantitative Biological Assessment, and on October 18, 2023, Reclamation transmitted a Terrestrial Species Quantitative Biological Assessment to the Services and to consulting agencies pursuant to the WIIN Act.

On April 5, 2024, Reclamation released the 2<sup>nd</sup> Cooperating Agency Draft EIS for a two-week comment period. After review and coordination with member agencies, Authority staff provided a comment letter<sup>5</sup> to Reclamation on the document.

Most recently, in June, Reclamation and U.S. Fish and Wildlife Service held WIIN Act Interested Parties meetings, with the information for the meetings being included in Appendix A to this memo.

Finally, on June 28, 2024, the U.S. Fish and Wildlife Service released their Draft Biological Opinion for public review and comment, with comments due on July 15. Staff will work to coordinate review with interested member agencies.

#### Current Milestones

- Jun 28: Draft LTO FWS Biological Opinion (BiOp) (2-week review)
- Jul 5: Draft LTO Public EIS (45-day review)
- Jul 15: Draft LTO FWS BiOp Comments Due
- Jul 26: Draft LTO NMFS BiOp (2-week review)
- Jul 29: Draft LTO FWS BiOp Peer Review complete
- Aug 12: Draft LTO NMFS BiOp Comments Due
- Aug 20: Draft LTO Public EIS Comments Due
- Aug 30: Draft LTO NMFS BiOp Peer Review Complete
- Sep: Trinity Modeling
- Oct 15: Final LTO FWS BiOp
- Nov 13: Final LTO EIS
- Dec 6: Final LTO NMFS BiOp
- Dec 13: Final LTO Record of Decision
- Early 2025: Trinity Cooperating Agency Draft EIS/Draft Biological Assessment
- Spring 2025: Trinity Public Draft EIS
- Late 2025: Trinity Biological Opinion, Final NEPA and ROD

**Note:** There are also Endangered Species Act consultations on the Trinity River and Klamath River that may have overlap/interactions with the consultation for the CVP/SWP.

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<sup>4</sup> Request from Authority staff.

<sup>5</sup> Request from Authority staff.

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## State Water Resources Control Board (State Water Board) Activity

### Bay Delta Water Quality Control Plan Update

#### *Background*

The State 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>6</sup> The State 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 State Water Board adopted a resolution<sup>7</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.

Most recently, on July 18, 2022, the State Water Resources Control Board issued a Notice of Preparation (NOP)<sup>8</sup> and California Environmental Quality Act (CEQA) Scoping Meeting for the Proposed Regulation to Implement Lower San Joaquin River Flows (LSJR) and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan).

The purpose of the NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be included in the draft EIR.

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<sup>6</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>7</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).

<sup>8</sup> Available at [https://www.waterboards.ca.gov/public\\_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf](https://www.waterboards.ca.gov/public_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf)

In response to the release of the NOP, the Water Authority and member agencies provided scoping comments<sup>9</sup>.

**Phase 2 Status:** In the State 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.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>10</sup> to the State 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.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach "adequacy", as defined by the State team.

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.

On September 28, The State Water Resources Control Board released a draft Staff Report in support of possible updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) that are focused on the Sacramento River watershed, Delta, and Delta eastside tributaries (Sacramento/Delta).

The draft Staff Report includes scientific information and environmental and economic evaluations to support possible Sacramento/Delta updates to the Bay-Delta Plan. The report assesses a range of alternatives for updating the Sacramento/Delta portions of the Bay-Delta Plan, including: an alternative based on a 2018 Framework document identifying a 55% of unimpaired flow level (within an adaptive range from 45-65%) from Sacramento/Delta tributaries and associated Delta outflows; and a proposed voluntary agreements alternative that includes voluntary water contributions and physical habitat restoration on major tributaries to the Delta and in the Delta. In addition, based on input from California

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<sup>9</sup> Request from Authority staff

<sup>10</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)



Native American tribes, the draft Staff Report identifies the proposed addition of tribal and subsistence fishing beneficial uses to the Bay-Delta Plan.

The draft Staff Report is available for review on the [Board's website](#). The Authority coordinated and submitted comments with member agencies<sup>11</sup>.

### *Schedule*

#### *LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)*

- Winter 2024/Spring 2025
  - Final draft Staff Report for Tuolumne River VA
  - Board workshop and consideration of Tuolumne River VA
  - Final draft EIR and regulation implementing Lower SJR flows and South Delta Salinity
  - Board consideration of regulation implementing Lower SJR flows and South Delta Salinity

### *Sac/Delta Update: Key Milestones*

- Summer 2024: Development of Draft Program of Implementation
- Winter 2024: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Spring 2025: Board consideration of adoption

### *Voluntary Agreements*

On March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding<sup>12</sup> that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement<sup>13</sup> specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU

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<sup>11</sup> Request from Authority staff.

<sup>12</sup> Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

<sup>13</sup> Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>

have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

On June 16, the SLDMWA, Friant Water Authority and Tehama Colusa Canal Authority signed onto the VA MOU. Additionally, since that time, in September and November, four more agencies – Contra Costa Water District, San Francisco Public Utilities Commission (SFPUC), Turlock Irrigation District (TID) and Modesto Irrigation District (MID) – have signed onto the VA MOU.

Work continues to develop the working documents associated with execution and implementation of the VA's and workgroups for participating agencies have been formed. A number of documents continue to be developed, including a global agreement, implementing agreements for each tributary, enforcement agreements, an updated Science Plan, and governance plan.

On April 24-26, the State Water Resources Control Board held a three-day workshop on the Agreements, with sessions focused on many of the more developed plans and details of the program.

### Delta Conveyance Project

Petition for Change of Point of Diversion and Rediversion for the Delta Conveyance Project  
On February 22, 2024, the State Water Resources Control Board (Board) received a Petition for Change from the Department of Water Resources (DWR) to add two new points of diversion (POD) and rediversion (PORD) to the water right permits associated with the State Water Project. Specifically, the petition seeks to change Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively). The proposed new PODs/PORDs would consist of screened intakes 2.3 miles apart located on the lower Sacramento River between Freeport and Sutter Slough. The proposed new intakes are part of the Delta Conveyance Project, which would allow DWR to divert water from the northern Sacramento-San Joaquin Delta Estuary (Delta) and convey the water through a tunnel to existing water distribution facilities in the southern Delta.

This petition is available on the DWR website at: [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/Revised DCP CPOD Petition Package 2024.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/Revised_DCP_CPOD_Petition_Package_2024.pdf)

Protests against the change petition must have been filed by May 13, 2024, with a copy provided to the petitioner. SLDMWA entered into a Settlement Agreement<sup>14</sup> with DWR on the project.

On June 20, the State Board noticed a pre-hearing conference for **August 13** at 9 a.m. The notice indicates that additional info re the process for interested persons to participate in the hearing will be included in the notice of hearing to be issued by the Administrative Hearing Office (AHO) in late July 2024. In the deadlines section of the document, it looks like pre-hearing conference NOIs will be due **August 6**, but the NOI to participate in the pre-hearing conference is not required to participate in the hearing itself – the notice states that the deadline for submitting the NOI to participate in the hearing will be included in a later notice of public hearing.

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<sup>14</sup> Request from Authority staff.



## U.S. Bureau of Reclamation

### Reclamation Manual

#### *Documents out for Comment*

##### *Draft Policy*

- IRM P03 Reclamation Information Management and Technology (IMT) Portfolio Management (comments due 07/08/24)

##### *Draft Directives and Standards*

- ACM 01-01 Requirements for Award and Administration of Financial Assistance Agreements (Grants and Cooperative Agreements) (comments due 08/09/24)
- IRM 03-01 Reclamation Information Management and Technology (IMT) Investment Management Framework (comments due 07/14/24)
- SLE 04-03 Protection Services (comments due 07/27/24)

##### *Draft Facilities Instructions, Standards, and Techniques (FIST)*

- There are currently no Instructions, Standards, and Techniques out for review.

##### *Draft Reclamation Safety and Health Standards (RSHS)*

- There are currently no Safety and Health Standards out for review.

##### *Draft Reclamation Design Standards*

- There are currently no Design Standards out for review.

## San Joaquin Valley Water Blueprint

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit group of stakeholders, working to better understand our shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley.

**Blueprint's strategic priorities for 2022-2025:** Advocacy, Groundwater Quality and Disadvantaged Communities, Land Use Changes & Environmental Planning, Outreach & Communications, SGMA Implementation, Water Supply Goals, Governance, Operations & Finance.

**Mission Statement:** *"Unifying the San Joaquin Valley's voice to advance an accessible, reliable solution for a balanced water future for all."*

## Committees

### *Executive/Budget/Personnel*

Blueprint contribution requests have been circulated and Board members will be following up with participants.

## Activities

### *Farmer to Farmer Summit – Third Session*

The farmer-to-farmer delegates have been reengaged to further regional communication and will be participating in additional water solution facilitation, with a focus on Levee Maintenance & Enhancement projects and the South Delta Gates Project (permanent operable gates). Summit delegates and organizers are interested in an independent and sustainable funding effort moving forward.

*Unified Water Plan for the San Joaquin Valley*

The Water Blueprint for the San Joaquin Valley Education Fund and the California Water Institute - Research and Education Division are working together to develop a Unified Water Plan for the San Joaquin Valley. This two-year project will culminate in the publication of a report to be submitted to Congress.

*CVP and SWP Water Supply Restrictions Strategic Plan<sup>15</sup>*

The Hallmark Group was tasked by the Water Blueprint for the San Joaquin Valley to develop and implement a strategic plan for the primary objective of protecting the operational flexibility restored by 2019 Biological Opinions and 2020 Record of Decision for Coordinated Long-Term Operations of the Central Valley Project and State Water Project, which restored approximately 300,000 acre-feet to the average south-of-Delta delivery capability of the Projects, and to expand operational flexibility for the CVP and SWP. As part of its work plan, Hallmark developed an outline of a strategic plan related to engagement with agencies that impact operations of the CVP/SWP and associated water supply. The outline is organized into four principal topics: (1) objectives; (2) obstacles to achieving objectives; (3) means of overcoming obstacles; and (4) time frame.

The Blueprint Board considered the Strategic Plan and adopted it, with one Director abstaining.

San Joaquin Valley Water Collaborative Action Program (SJVW CAP)

Background

The CAP Plenary Group adopted work groups to implement the CAP Term Sheet<sup>16</sup>, adopted on November 22, 2022. During Phase II, Work Groups are continuing to meet and discuss priorities and drafting various documents for their respective areas: Safe Drinking Water; Sustainable Water Supplies; Ecosystem Health; Land Use, Demand Reduction and Land Repurposing; Implementation.

The Plenary group met on June 25 to continue discussion about the development the "One Water" component of the Central Valley Community Foundation's Jobs First Initiative<sup>17</sup>, which has been renamed to Sierra San Joaquin Jobs (S2J2).

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<sup>15</sup> Request from Authority staff

<sup>16</sup> Request from Authority staff

<sup>17</sup> Request from Authority staff