

The 2022-23 Budget:

State Water Resources Control Board— Bay-Delta Plan Update

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Summary. In this post, we discuss the State Water Resources Control Board’s (SWRCB’s) efforts to update the water quality control plan for the Sacramento-San Joaquin Bay-Delta and its source rivers. Updating the water quality objectives for the Bay-Delta watershed is long overdue and should be a high priority for the state to complete, particularly given rapid population declines in native fish species that depend on the Bay-Delta ecosystem. The Governor proposes redirecting \$1.4 million in ongoing General Fund that is currently being used for contract consultant services to instead establish and support five new permanent positions at SWRCB to work on updating the plan. While we believe the proposal is reasonable and recommend its adoption, we also recommend the Legislature engage with the administration regarding its time line for updating the plan and whether additional actions can be taken to help expedite this process.

Background

SWRCB Regulates Bay-Delta and Its Source Rivers Through Water Quality Control Plan.

Pursuant to the state Porter-Cologne Water Quality Control Act and federal Clean Water Act, SWRCB regulates water quality for the waters of the state, including its rivers and streams. As a component of implementing these responsibilities, in 1978 the board adopted a water quality control plan for the Sacramento-San Joaquin Bay-Delta, known as the Bay-Delta Plan. This plan establishes water quality objectives—such as flow requirements—that are intended to protect “beneficial uses” in the Bay-Delta and its source rivers. Specified beneficial uses include fish and wildlife, agriculture, and municipal and industrial water uses. The plan also includes programs of implementation to achieve the stated objectives, including monitoring and compliance actions.

Board in Process of Updating Bay-Delta Water Quality Control Plan. Given changing conditions and water uses over the past four decades, SWRCB has occasionally made updates to the Bay-Delta Plan. While the overall plan received some updates in 2006, the last major update was in 1995. SWRCB has been in the process of developing new updates to the plan since 2009. In 2018, the board adopted Phase I of these new updates, which includes new water quality flow objectives for the lower San Joaquin River and its tributaries (the Stanislaus, Tuolumne, and Merced Rivers), as well as updated salinity objectives for the South Delta. Specifically, to improve conditions for fish and wildlife, the new flow standards call for 40 percent of unimpaired flow in the rivers. The required flows can be adjusted within a range of 30 percent to 50 percent between February and June depending on other actions and conditions in the fisheries. (According to SWRCB, current unimpaired flows in these rivers range from 21 percent to 40 percent on average, but can run as low as 6 percent in dry or drought years, and average 10 percent to 20 percent during certain times of the year that are critical for migrating fish.) The board is now developing a program of implementation for these new standards.

SWRCB is still in the process of working on Phase 2 of its plan updates, which will include new water quality objectives and a program of implementation for the Sacramento River, its major tributaries, and the Bay-Delta estuary itself. The board states that it hopes to adopt new flow standards in fall 2023, with development of the implementation plan to follow. Because implementing these new standards will necessitate adjustments to water rights, SWRCB is still weighing options for how it will incorporate those changes once it has approved the new flow objectives, including potentially through adopting new regulations or through adjudicative water rights proceedings.

SWRCB Currently Spends \$9.1 Million Annually on Updating Plan. Currently, SWRCB receives \$9.1 million in ongoing funding it dedicates towards updating and beginning to implement changes to the Bay-Delta Plan, including \$7.5 million from the General Fund and \$1.6 million from the Water Rights Fund. Of this funding, \$4.1 million supports 17 existing SWRCB staff—including two in the Office of Chief Counsel—and \$5 million is used for contracted consultant services, such as to develop environmental documents and conduct scientific and economic modeling and analyses.

Bay-Delta’s Native Species Experiencing Rapid Declines. As stated in the Phase 1 plan update, “native fish species that migrate through and inhabit the Delta have experienced dramatic population declines in recent years, bringing some species to the brink of extinction.” For example, the plan highlights that the San Joaquin River basin experienced an 85 percent net loss in returning adult fall-run Chinook salmon from 1985 to 2017. Trends are similarly bleak in the Sacramento River, where recent drought conditions have precipitously exacerbated escalating declines for winter-run Chinook salmon. Moreover, the Delta Smelt, a fish endemic to California that only occurs in the Bay-Delta and which used to be the most abundant fish in the estuary—once numbering in the millions—has not been observed in the wild at all for the past four years. Such trends are not solely related to existing flow requirements, and have been exacerbated by loss of habitat, impediments to fish passage such as dams and weirs, water diversion systems including pumps, recurring drought conditions, and warming temperatures. However, SWRCB has the responsibility to adopt and enforce water quality objectives that help protect fish and wildlife given that is one of the statutory beneficial uses in the Bay-Delta.

Governor’s Proposal

Redirects \$1.4 Million in Existing Funding From Contracts to New Staff. The Governor proposes redirecting \$1.4 million from the \$5 million in ongoing General Fund that is currently being used for contract consultant services to instead establish and support five new permanent positions

at SWRCB. These positions would help with plan implementation and monitoring activities, including potential regulatory actions. The proposed approach would retain \$3.6 million for contracted activities and would be cost-neutral for the state.

Assessment

Reasonable to Increase SWRCB Staffing Levels to Accomplish New Tasks. We find the Governor’s proposal to increase SWRCB’s staffing capacity for the next steps of developing and implementing Bay-Delta Plan updates to be reasonable. Implementing the new water quality objectives for the San Joaquin River and developing new standards for the Sacramento River-Delta portion of the plan represents increased workload for the board. Moreover, the upcoming tasks—such as advising on implementation decisions, developing regulatory actions, conducting enforcement, and overseeing ongoing monitoring—would benefit from consistent and continuing internal staff expertise; contracted consultants would not be appropriate entities to conduct such activities.

Swift Adoption and Implementation of Plan Updates Is Important. Updating the water quality objectives for the Delta watershed is long overdue and should be a high priority for the state to complete. As noted, the last major update was nearly 30 years ago. Water uses, ecosystem conditions, and the statewide population that depends on water that passes through the Bay-Delta all have changed significantly since then, producing a critical need for an updated operating framework. Additionally, the impacts of climate change—including higher average temperatures, more frequent and prolonged droughts, more wet and warm atmospheric river storms, and rising sea levels encroaching into the San Francisco Bay and Delta estuary—already are beginning to affect conditions in the Bay-Delta and its source rivers, and will increasingly do so in the coming years. These changes will render the existing water quality objectives even more outdated. The current standards and regulatory framework have not been sufficient to protect fish and wildlife in the watershed. If current trends continue, the state is poised to lose some of its native species

to extinction. Moreover, the prolonged process of waiting for new water quality standards to be specified and implemented creates uncertainty for water users and thereby complicates their planning and operational decisions.

Additional Oversight and Legislative Action Might Help Expedite Plan Adoption and Implementation. While the Governor’s budget proposal to add five new positions is reasonable and relatively modest, the Legislature could take this as an opportunity to engage with the administration and consider broader issues related to the Bay-Delta Plan update. In particular, given the prolonged time line for and importance of updating the plan, the Legislature may want to consider whether it could take steps to help expedite SWRCB’s progress. Such steps could include providing additional funding, further increasing staffing levels, or adopting statutory guidance or deadlines.

Recommendations

Adopt Governor’s Proposal to Redirect Existing Funding to Support Five New Staff. We recommend the Legislature adopt the Governor’s proposal to redirect \$1.4 million in existing General Fund from contracted consultants to instead fund five new SWRCB positions. The board would benefit from additional in-house expertise to address upcoming workload associated with implementing Phase 1 and developing, adopting, and implementing Phase 2 of the Bay-Delta Plan.

Explore Whether Additional Steps Are Needed to Expedite Progress. We also recommend that the Legislature engage with the administration regarding its time line for updating the plan and whether additional actions can be taken to help expedite this process. For example, the Legislature could ask SWRCB to respond to questions in spring budget hearings, policy committee oversight hearings, or through meetings with staff or board members. Key questions for the Legislature to discuss with the administration include:

- ***What Is the Board’s Time Line for Achieving Improved Outcomes in the Bay-Delta?*** Are there actions that can be taken to expedite this time line?
- ***What Barriers Have Impeded Adoption and Implementation of Plan Updates?*** Why have the plan updates taken so long to adopt and implement? What is the board doing to address these barriers? Are there steps the Legislature can take to help address existing or anticipated future obstacles?
- ***Would Additional Resources Help Expedite Progress?*** Would supplemental funding for staff and/or consulting contracts help achieve plan milestones more quickly?
- ***What Interim Steps Can Be Taken to Improve Outcomes?*** What actions are being undertaken to improve conditions for at-risk native fish species while the state waits for plan updates to be adopted and implemented?

LAO PUBLICATIONS

This post was prepared by Rachel Ehlers and reviewed by Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.