



Legal and Claims Committee

Update on the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Phase 1, State Water Board Cases, Sacramento County Superior Court Case No. JCCP 5013, and Phase 2

Item 7a

June 10, 2024

Item # 7a

Introduction

Subject

Update on litigation challenging the 2018 Phase 1 update to the Bay-Delta Water Quality Control Plan

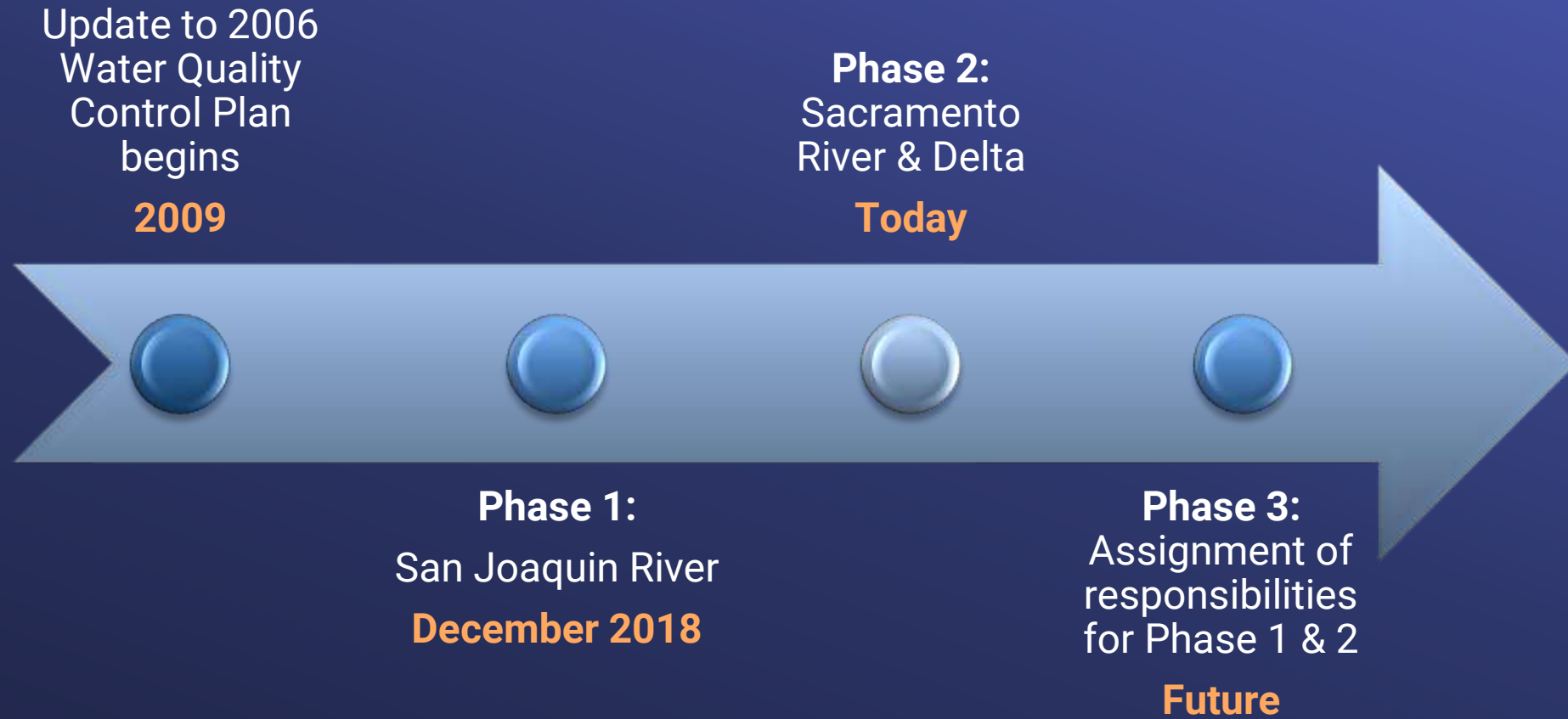
Purpose

Update on Metropolitan's intervention through the State Water Contractors to protect investment in SWP supplies and implications for future projects

Next Steps

Regular updates in GC reports and committee

State Board update to the Water Quality Control Plan



Background



2018 Update to WQCP (Phase1)

- Water Board revised WQCP to add new flow objective on Lower San Joaquin River and three of its tributaries, and amended salinity objectives in the southern Delta

Phase 1 Legal Challenges

- Collectively, twelve petitioners had 116 claims
- Administrative record was over 770,000 pages
- Merits briefing totaled approx. 1500 pages
- There were 11 days of hearing

Eleven Cases

Water Board Defendant



- Westlands Water District
- Merced Irrigation District
- City of Modesto
- Modesto Irrigation District
- North Coast Rivers Alliance
- California Farm Bureau Federation
- United States of America
- San Francisco Bay Keeper
- Stockton East Water District
- South Delta Water Agency
- San Joaquin Tributaries Authority
- Intervenor - State Water Contractors

* Only lead petitioner listed

Causes of Action



- CEQA
- Public Trust Doctrine
- Porter-Cologne Act
- California Constitution, Art. 10, § 2 (Waste and Unreasonable Use)

Summary of Legal Requirements

CEQA

Requires consideration of environmental impacts and, where appropriate, adoption of mitigation

Public Trust Doctrine

Requires protection of public trust resources whenever feasible and consideration of the public interest

Porter Cologne Act

Requires balancing of all beneficial uses / reasonable protection

California Constitution, Art. 10 Sec. 2

Prohibits waste and unreasonable use of water

State Water Contractors' Intervention

Responded to Petitions Filed by NCRA, Bay Keeper and Delta Water Agencies

Why SWC responded to these petitions?

These Petitioners made allegations related to State Water Project

Example of statements regarding the State Water Project

“The SED...[obfuscates] the State Board’s duty to require the State Water Project and Central Valley Project to follow the law....”

“It is widely understood that the SWP and CVP are a primary cause of the deteriorating populations of Delta related species.”

State Water Contractors' Intervention

Arguments Focused on Southern Delta Salinity Objectives

Revised Agricultural Salinity Standard

- South Delta salinity objective 1.0 dS/m (electrical conductivity) all year*
- Applies standard to river-reaches rather than specific compliance points

Basis for Revision

Expert report concluded:

“all of the models presented in this report predicted that the water quality standard could be increased to as high as 0.9 to 1.1 dS/m and all of the crops normally grown in the South Delta would be protected.”

* Excluding Vernalis standard

Unimpaired
Hydrograph and
Salinity
Standards
Upheld



Implications of Ruling on Pending WQCP Update, Phase 2 (Sacramento River and Delta watershed)

- Court showed deference to the State Water Board
- Court relied on general description and programmatic analysis for approval
- Anticipate further litigation as responsibility for implementation is determined and implementation detail provided

Next Steps

Phase1

- Several Petitioners have filed appeals.
- Implementation regulation and/or administrative hearing pending

Phase2

- Summer/Fall 2024: Release of draft Sacramento/Delta updates to Bay-Delta Plan (including Program of Implementation language) for public review and comment and workshop
- First Quarter 2025: Release for public review Final Draft Staff Report
- Second Quarter 2025: Board meeting to consider adoption of Phase 2 updates to the WQCP and Final Staff Report

