

WORKSHOP MEETING OF THE
BOARD OF DIRECTORS WITH MET DIRECTORS
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
18700 Ward Street, Board Room, Fountain Valley, California
February 1, 2023, 8:30 a.m.

Due to the current state of emergency related to the spread of COVID-19 and pursuant to Government Code Section 54953(e), MWDOC will be holding this Board and Committee meeting by Zoom Webinar and will be available by either computer or telephone audio as follows:

Computer Audio: You can join the Zoom meeting by clicking on the following link:
<https://zoom.us/j/8828665300>

Telephone Audio: (669) 900 9128 fees may apply
(877) 853 5247 Toll-free
Webinar ID: 882 866 5300#

AGENDA

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC PARTICIPATION/COMMENTS

At this time members of the public will be given an opportunity to address the Board concerning items within the subject matter jurisdiction of the Board. Members of the public may also address the Board about a particular Agenda item at the time it is considered by the Board and before action is taken.

The Board requests, but does not require, that members of the public who want to address the Board complete a voluntary "Request to be Heard" form available from the Board Secretary prior to the meeting.

ITEMS RECEIVED TOO LATE TO BE AGENDIZED

Determine need and take action to agendize item(s), which arose subsequent to the posting of the Agenda. (ROLL CALL VOTE: Adoption of this recommendation requires a two-thirds vote of the Board members present or, if less than two-thirds of the Board members are present a unanimous vote.)

ITEMS DISTRIBUTED TO THE BOARD LESS THAN 72 HOURS PRIOR TO MEETING

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection in the lobby of the District's business office located at 18700 Ward Street, Fountain Valley, California 92708, during regular business hours. When practical, these public records will also be made available on the District's Internet Web site, accessible at <http://www.mwdoc.com>.

NEXT RESOLUTION NO. 2134

PRESENTATION/DISCUSSION ITEMS

1. PRESENTATION REGARDING TOPICS AND ISSUES FOR THE UPCOMING MET BOARD RETREAT

Recommendation: Review and discuss the information presented.

2. WATER SUPPLY CONDITIONS AND PLANNING FOR POTENTIAL WATER SUPPLY ALLOCATIONS (FY 2023/24)

Recommendation: Review and discuss the information presented.

3. LEGISLATIVE ACTIVITIES

- a. Federal Legislative Report (NRR)
- b. State Legislative Report (BBK)
- c. Legal and Regulatory Report (Ackerman)
- d. MWDOC Legislative Matrix

Recommendation: Review and discuss the information presented.

4. QUESTIONS OR INPUT ON MET ISSUES FROM THE MEMBER AGENCIES/MET DIRECTOR REPORTS REGARDING MET COMMITTEE PARTICIPATION

Recommendation: Receive input and discuss the information presented.

ACTION ITEMS

5. CONSIDER CONTINUATION OF REMOTE MEETINGS PURSUANT TO AB 361 AND REQUIRED FINDINGS

Recommendation: Vote to continue virtual meetings pursuant to AB 361 for an additional 30 days based on the findings that (1) it has reconsidered the circumstances of the state of emergency for COVID-19, and (2) state and local officials continue to impose or recommend measures to promote social distancing.

INFORMATION ITEMS

6. MET ITEMS CRITICAL TO ORANGE COUNTY (The following items are for informational purposes only – a write up on each item is included in the packet. Discussion is not necessary unless requested by a Director)

- a. MET's Finance and Rate Issues
- b. MET's Integrated Resources Plan Update
- c. MET's Water Supply Condition Update
- d. Water Quality Update
- e. Colorado River Issues
- f. Delta Conveyance Activities and State Water Project Issues

Recommendation: Review and discuss the information presented.

7. METROPOLITAN (MET) BOARD AND COMMITTEE AGENDA DISCUSSION ITEMS

- a. Summary regarding January MET Board Meetings
- b. MET 4-Month Outlook on Upcoming Issues
- c. Review items of significance for MET Board and Committee Agendas

Recommendation: Review and discuss the information presented.

CLOSED SESSION ITEM

8. PUBLIC EMPLOYMENT

Title: Interim General Manager
Government Code Section 54957

ADJOURNMENT

Note: Accommodations for the Disabled. Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning Maribeth Goldsby, District Secretary, at (714) 963-3058, or writing to Municipal Water District of Orange County at P.O. Box 20895, Fountain Valley, CA 92728. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that District staff may discuss appropriate arrangements. Persons requesting a disability-related accommodations should make the request with adequate time before the meeting for the District to provide the requested accommodations.



DISCUSSION ITEM
February 1, 2023

TO: Board of Directors

FROM: Harvey De La Torre, Assistant General Manager

Staff Contact: Melissa Baum-Haley

SUBJECT: PRESENTATION BY MWDOC STAFF REGARDING TOPICS AND ISSUES FOR THE UPCOMING MET BOARD RETREAT

STAFF RECOMMENDATION

Staff recommends the Board of Directors discuss and file this information.

REPORT

The purpose of this Board Memo and presentation is to lay out the key issues that will be addressed at the upcoming Metropolitan Board Visioning Retreat scheduled for February 13 - 14 in Temecula, CA. MWDOC staff and the MWDOC-MET delegation are seeking further engagement through this Joint Board Workshop discussion and feedback.

The retreat is intended to provide direction to Metropolitan staff from the Metropolitan Board of Directors through agreement on a vision and planning framework as Metropolitan and its member agencies pursue a master plan for water and climate resiliency in its Second Century. This effort is meant to build on the previous retreats held in 2019 and 2021. The 2019 white paper *Charting Metropolitan's Second Century*, which was developed as preparatory report by Metropolitan staff is still considered relevant background ([LINK](#)).

The facilitated retreat will generally be focused on climate change and how the Metropolitan is envisioning its future. To set context, Metropolitan staff will begin with presentations overviewing climate impacts and resource planning. This will include:

- Current Climate Conditions and Climate Vulnerabilities
- Review of the Integrated Resources Plan (IRP) Needs Assessment Findings
 - Current Water Supply Conditions:
 - Sierra Snowpack / Bay-Delta

Budgeted (Y/N): N/A	Budgeted amount: None	Core <u>X</u>	Choice <u> </u>
Action item amount: N/A		Line item:	
Fiscal Impact (explain if unbudgeted):			

- Colorado River
 - Storage Supply and Availability
- System/Supply Access and Equal Reliability Commitment

The Metropolitan Board will also engage in facilitated discussion with an emphasis on maximizing value and regional benefits of Metropolitan given the common and unique needs of our region's diverse Member Agencies. The goal of this visioning retreat is to identify targets and timelines for resource planning.

Next Steps

The purpose of this memo is to lay out the key Metropolitan water supply issues and Board activities anticipated for 2023. MWDOC staff is seeking productive dialogue at this Joint Board Workshop. The general feedback received will aide in consensus building within Orange County and the Inland Metropolitan Member Agency Caucus. This will provide an opportunity for engagement amongst the MWDOC-MET Directors with fellow Metropolitan Board members at the upcoming Board retreat.



INFORMATION ITEM

February 1, 2023

TO: Board of Directors

FROM: Harvey De La Torre, Assistant General Manager

Staff Contact: Kevin Hostert

SUBJECT: WATER SUPPLY CONDITIONS AND PLANNING FOR POTENTIAL
WATER SUPPLY ALLOCATIONS (FY 2023/24)

STAFF RECOMMENDATION

Staff recommends the Board of Directors to review and discuss this information.

SUMMARY REPORT

The 2022-23 Water Year (2022-23 WY) officially started on October 1, 2022. Thus far, Northern California accumulated precipitation (8-Station Index) reported **37.3 inches or 150% of normal** as of January 24th. The Northern Sierra Snow Water Equivalent was at **29.9 inches on January 24th**, which is **184% of normal** for that day. Due to historical low precipitation/snowfall from January to March 2022, the Department of Water Resources (DWR) has set the State Water Project (SWP) **initial "Table A" allocation at 5%**. This allocation provides Metropolitan with approximately **95,575 AF in SWP deliveries this water year**. With the current precipitation increases through WY 2023, it is anticipated that the Table A allocation will increase. DWR's SWP Allocation considers several factors including existing storage in SWP, conservation reservoirs, SWP operational regulatory constraints, and the 2023 contractor demands. In additional, Metropolitan received **134,000 AF for Human Health and Safety Supply in CY 2022**.

The Upper Colorado River Basin accumulated precipitation is reporting **13.0 inches or 126% of normal as of January 24th**. On the Colorado River system, snowpack is measured across four states in the Upper Colorado River Basin. The Upper Colorado River Basin Snow Water Equivalent was reporting **14.1 inches as of January 24th**, which is **129% of normal** for that day. Due to the below average precipitation/snowfall in 2020-21 WY, the United States Bureau of Reclamation **declared a shortage at Lake Mead starting January 1st, 2022**. There is and a 100% chance of shortage continuing in 2023.

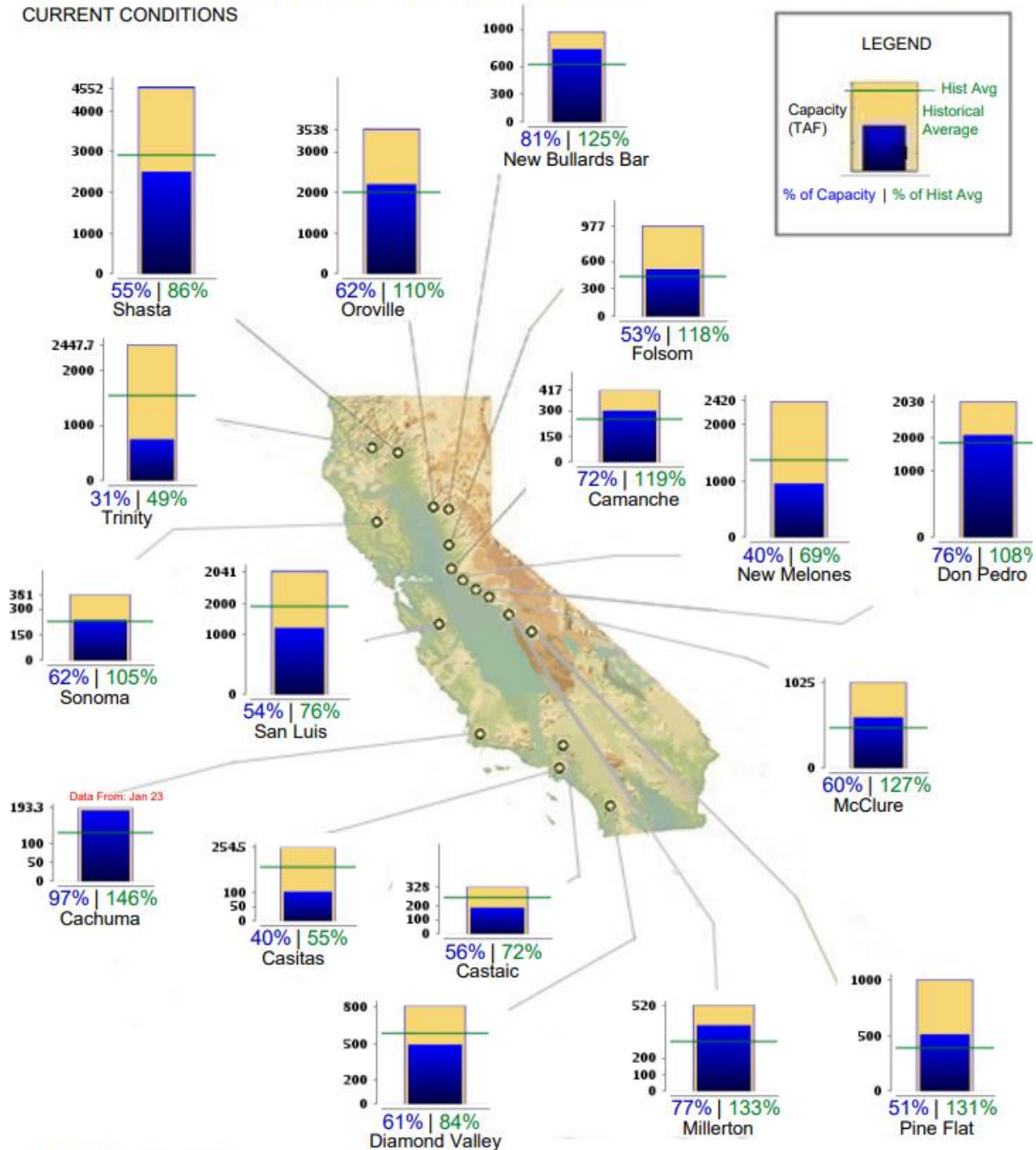
Budgeted (Y/N): N/A	Budgeted amount: N/A	Core _X_	Choice __
Action item amount: N/A	Line item:		
Fiscal Impact (explain if unbudgeted):			

As of January 24th Lake Oroville storage is at **62% of total capacity and 110% of normal**.
 As of January 24th San Luis Reservoir has a current volume of **54% of the reservoir's total capacity and is 76% of normal**.

CALIFORNIA MAJOR WATER SUPPLY RESERVOIRS

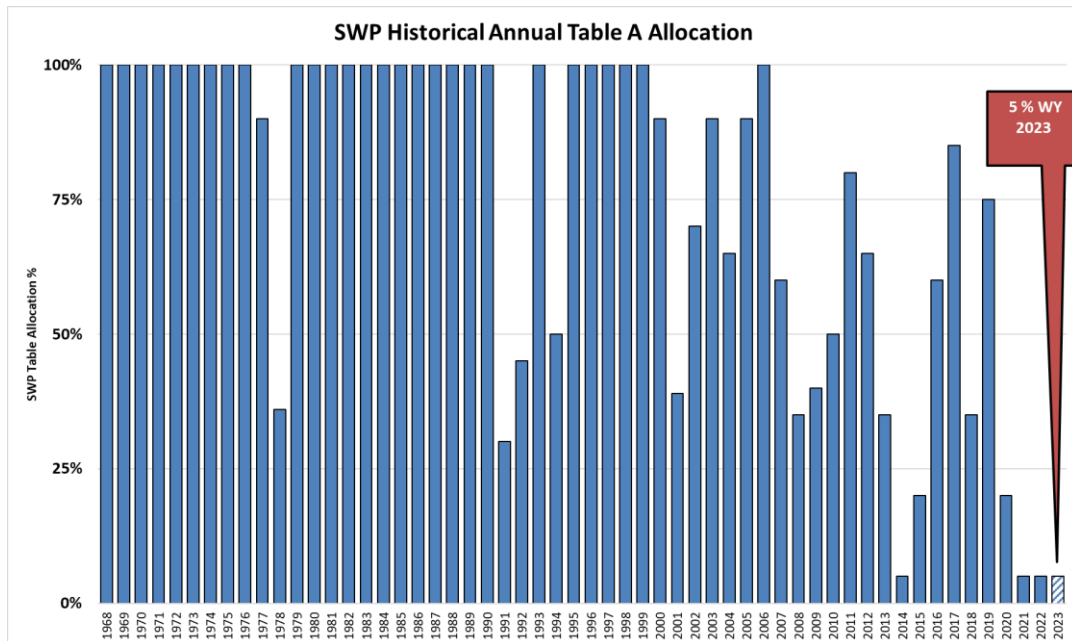
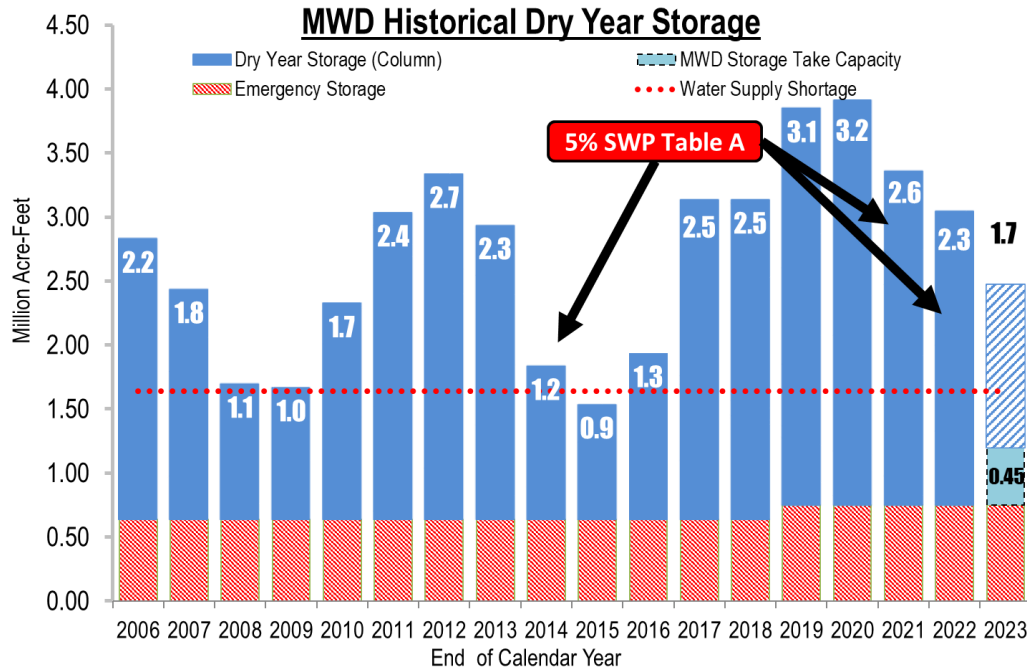
CURRENT CONDITIONS

Midnight - January 24, 2023



With CY 2023 estimated total demands and losses of 1.708 million acre-feet (MAF) and with a 5% SWP Table A Allocation, Metropolitan is projecting that demands will exceed supply levels in Calendar Year (CY) 2023. Based on this, estimated total dry-year storage for Metropolitan at the end of **CY 2023 will go down to approximately 1.72 MAF**.

A projected dry-year storage supply of **1.72 MAF** would still be about 0.72 MAF above where MWD has historically declared a water supply allocation. A large factor in maintaining a high water storage level are lower than expected water demands. We are seeing regional water demands reaching a 38-year low. **With a majority of MWD's water supplies stored in Lake Mead and the uncertainty of another dry year in California there is potential for Water Supply Allocation in CY 2023.**



2023 WSDM Storage Detail

	1/1/2023 Estimated Storage Levels ¹	CY 2023 Take Capacity ²	2023 Total Storage Capacity
WSDM Storage			
Colorado River Aqueduct Delivery System	1,198,000	TBD	1,657,000
Lake Mead ICS	1,198,000	TBD ³	1,657,000
State Water Project System	484,000	96,000	1,879,000
MWD SWP Carryover ⁴	22,000	22,000	350,000
DWCV SWP Carryover ⁴			
MWD Articles 14(b) and 12(e)	0	0	N/A
Castaic and Perris DWR Flex Storage	3,000	3,000	219,000
Arvin Edison Storage Program	120,000	0	350,000
Semitropic Storage Program	163,000	45,000	350,000
Kern Delta Storage Program	130,000	26,000	250,000
Mojave Storage Program	19,000	0	330,000
AVEK Storage Program	27,000	0	30,000
In-Region Supplies and WSDM Actions	699,000	330,000	1,246,000
Diamond Valley Lake	494,000	237,000	810,000
Lake Mathews and Lake Skinner	194,000	82,000	226,000
Conjunctive Use Programs (CUP) ⁵	11,000	11,000	210,000
Other Programs	664,000	25,000	1,181,000
Other Emergency Storage	381,000	0	381,000
DWCV Advanced Delivery Account	283,000	25,000	800,000
Total	3,045,000	451,000	5,963,000
Emergency	750,000	0	750,000
Total WSDM Storage (AF) ⁶	2,295,000	451,000	5,213,000

¹ Preliminary start of year balances, subject to DWR adjustments and USBR final accounting in May 2023.

² Take capacity assumed under a five percent SWP Table A Allocation. Storage program losses included where applicable.

³ Take capacity will be based on planned maintenance activities, current CRA supply estimate, and operational decisions to protect Metropolitan's future CRA diversions. Although capacity is currently available, Metropolitan is planning to limit its take of ICS in 2023.

⁴ Total storage capacity varies year to year based on prior year remaining balance added to current year contractual limits.

⁵ Total of all CUP programs including IEUA/TVMWD (Chino Basin); Long Beach (Central Basin); Long Beach (Lakewood); Foothill (Raymond and Monk Hill); MWDOC (Orange County Basin); Three Valleys (Live Oak); Three Valleys (Upper Claremont); and Western.

⁶ Total WSDM Storage level subject to change based on accounting adjustments.

Due to the evolving water supply conditions, MWDOC staff is working with Metropolitan and MWDOC's member agencies to plan for the implementation of the Water Supply Allocation Plan. MWDOC staff will bring updates of that planning process to the committee and board.

Attachment A: Water Supply Conditions



Water Supply Conditions

Kevin Hostert, Water Resources Analyst
Municipal Water District of Orange County

February 1st 2023

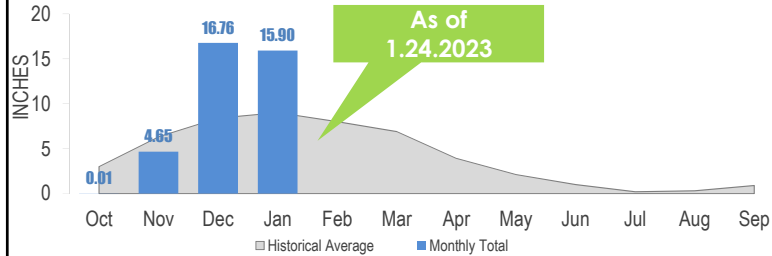


Review of Regional Water Supply Conditions

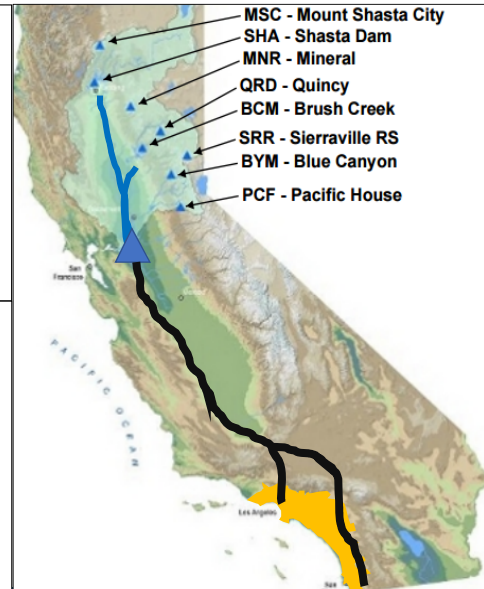
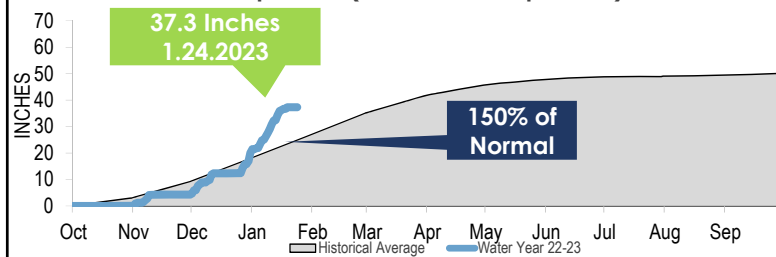
Insight to regional water supply conditions that affect Orange County's water supply

Northern California Accumulated Precipitation WY 2023

Monthly Precipitation (8 Station Precip Index)

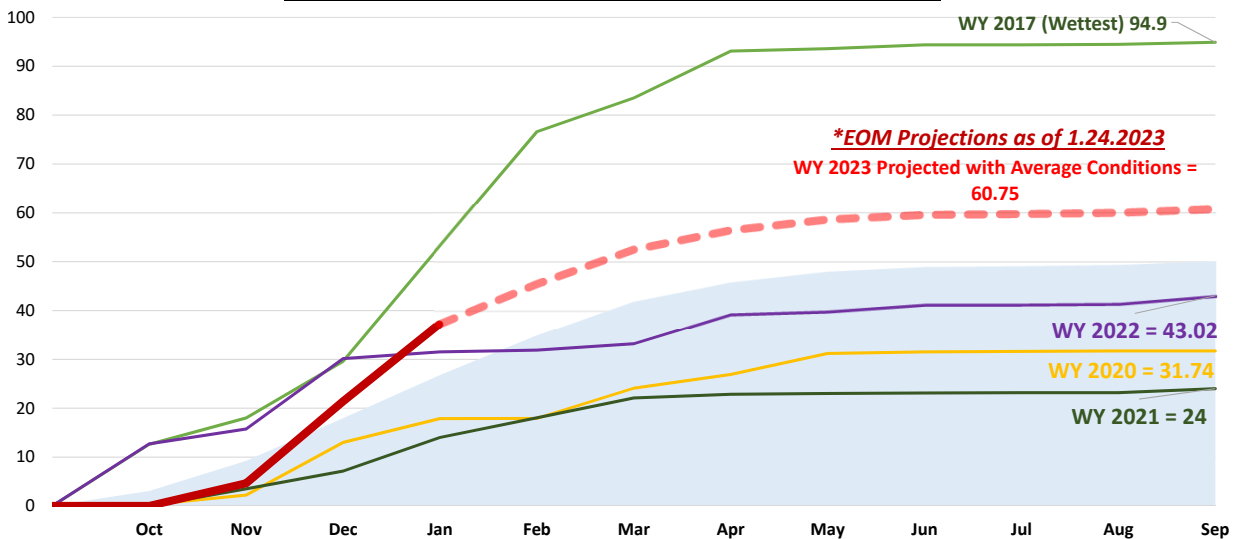


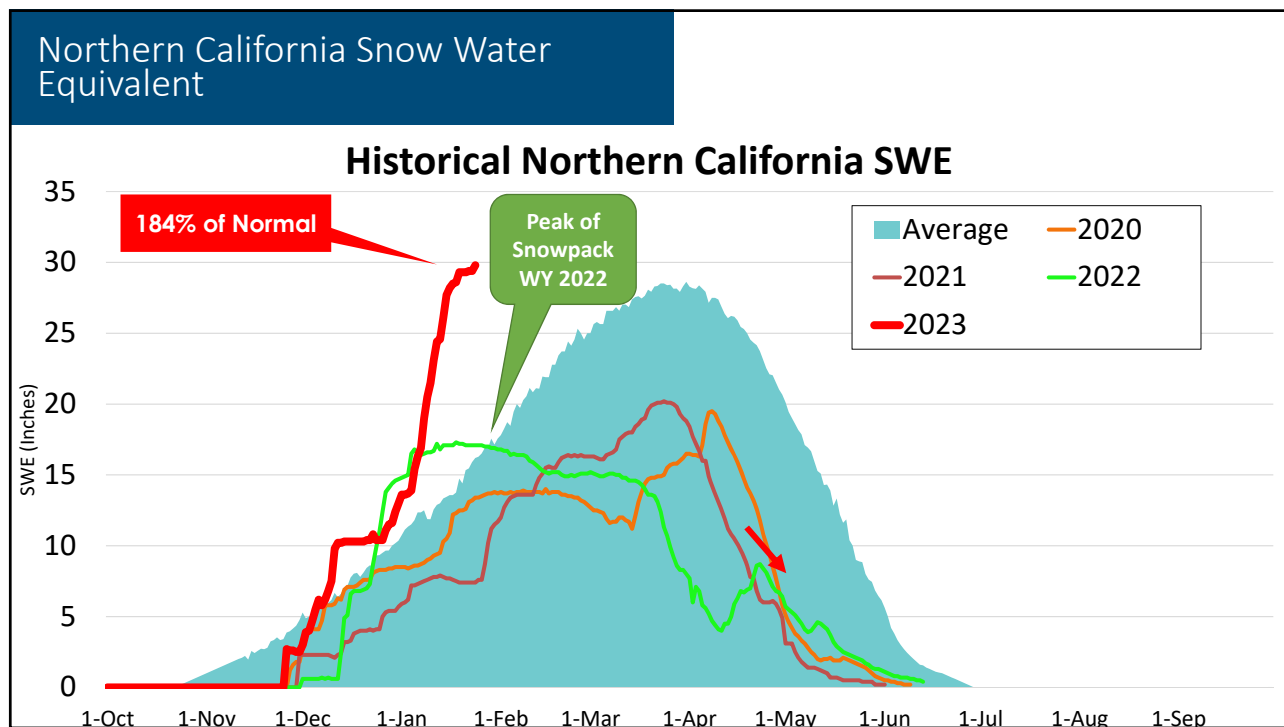
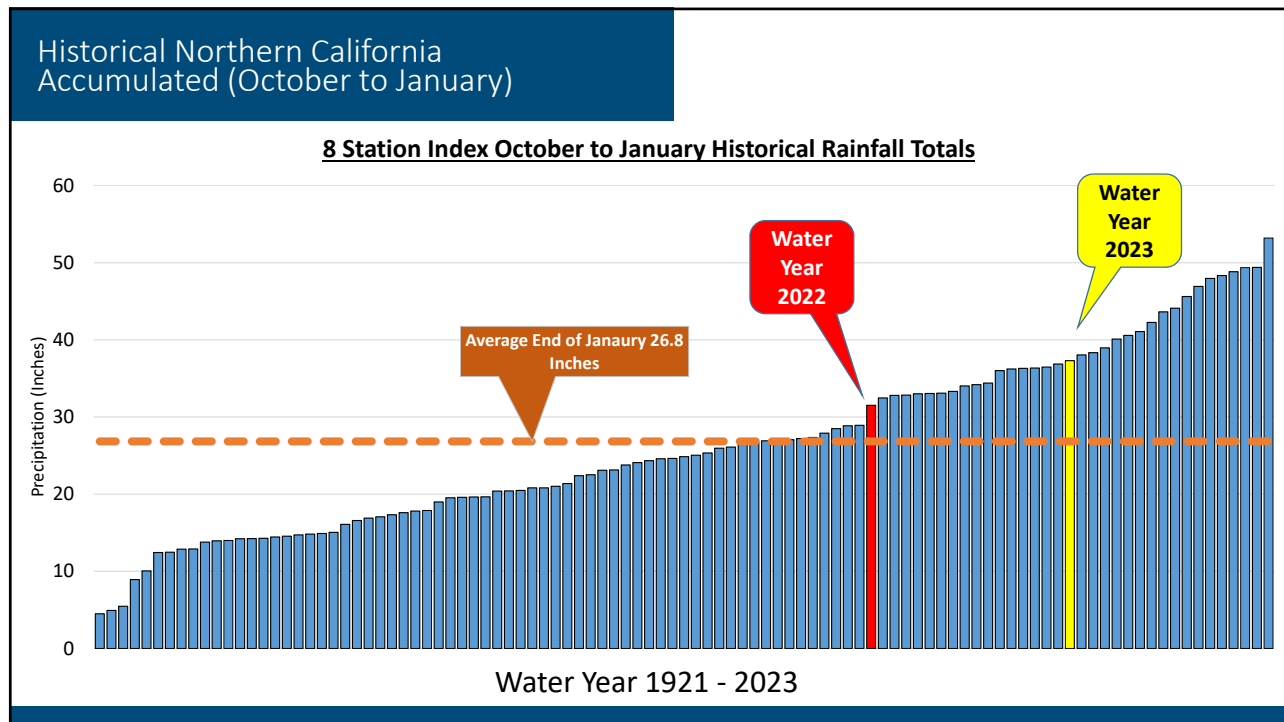
Accumulated Precipitation (8-Station Precip Index)



Northern California Accumulated Compared to Last 5 Water Years

8 Station Index all Time Month by Month Cumulative Totals

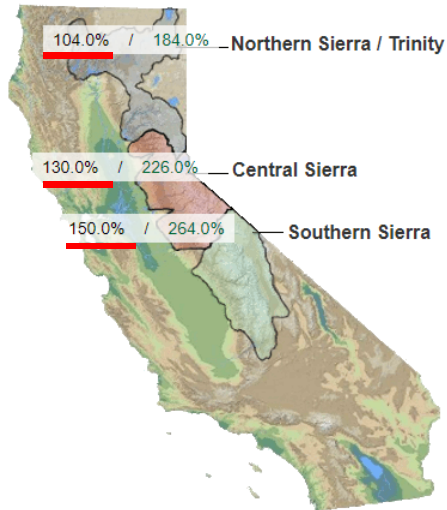




Northern California Snow Water Equivalent

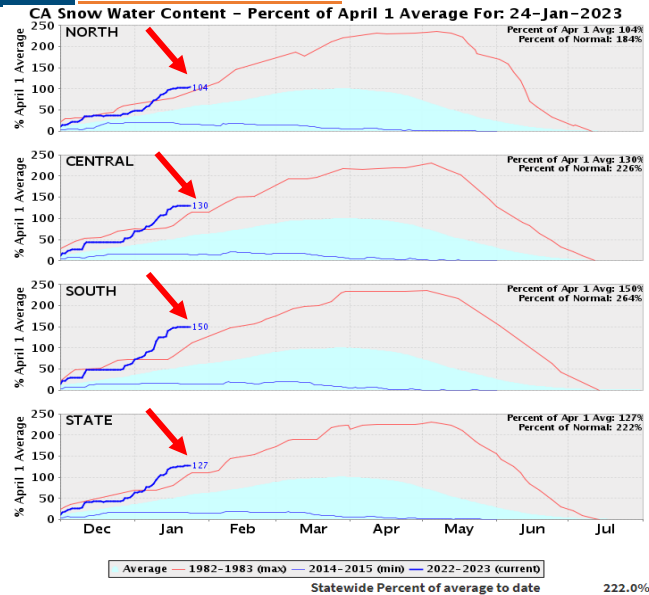
Data For: **24-Jan-2023**

% Apr 1 Avg. / % Normal for this Date



***All Regions are above the Aprils 1st Peak**

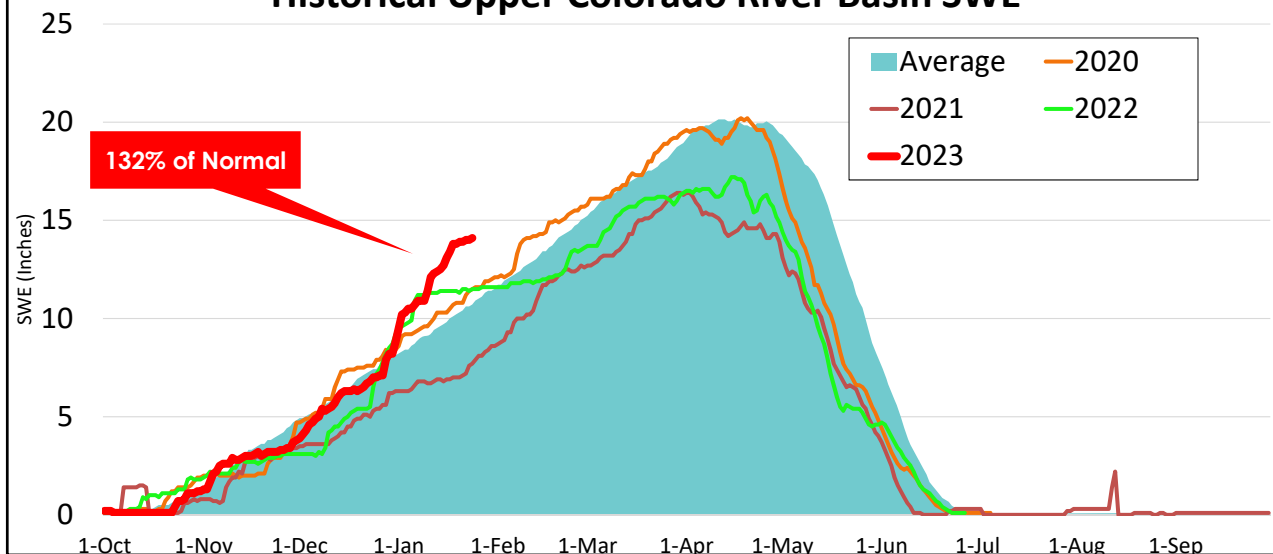
***All Regions are trending above the historical MAX in WY 1982-83**



Upper Colorado River Basin Snow Water Equivalent



Historical Upper Colorado River Basin SWE

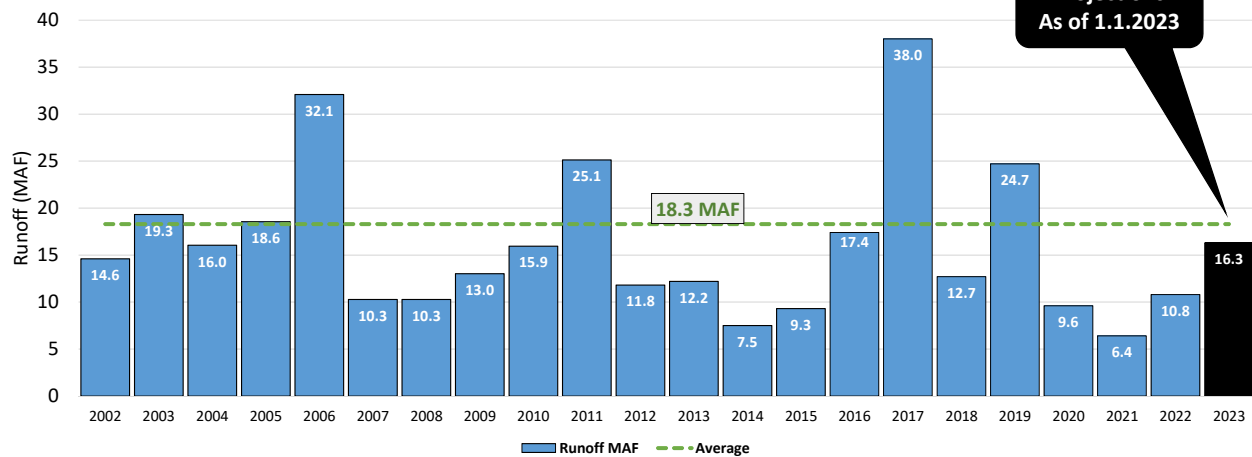


Northern California Projections Runoff as of 1.1.2023

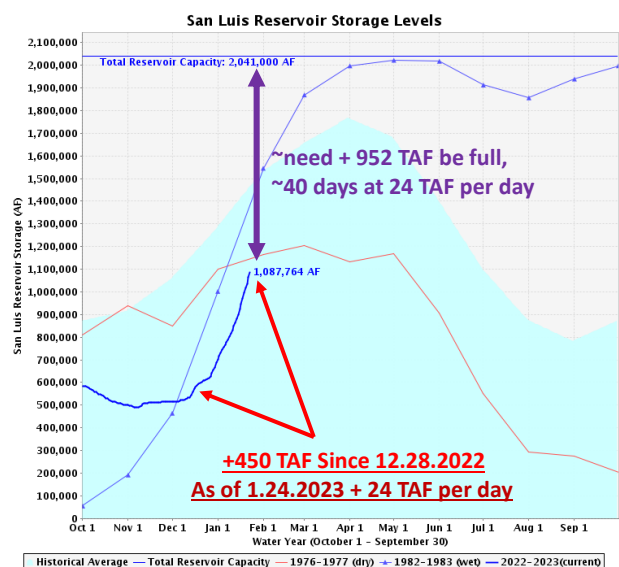
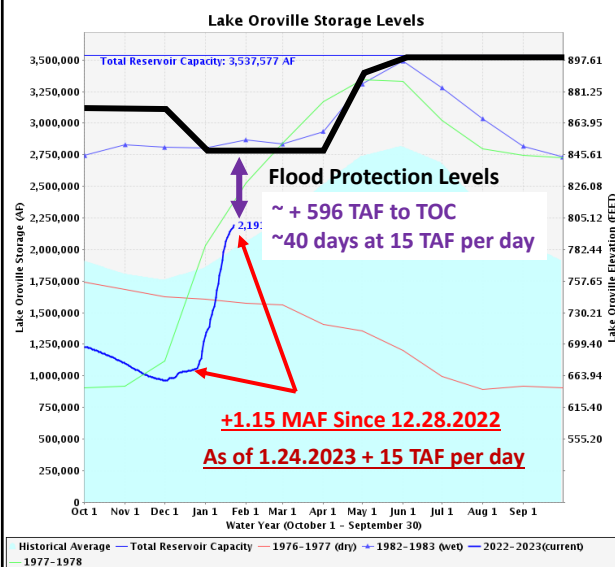


Percent of Likelihood	100%	90%	75%	50%	25%	10%
Runoff MAF	8.4	10.5	12.7	16.3	21.5	26.6

4 River Index Historical Runoff



Lake Oroville Storage and San Luis Storage



Delta Operations



EXECUTIVE OPERATIONS SUMMARY ON 1/23/2023

This summary, State Water Project informational data, and data for previous 30 days can also be found at:
<https://water.ca.gov/Programs/State-Water-Project/Operations-and-Maintenance/Operations-and-Delta-Status>

SCHEDULED EXPORTS FOR TODAY

Clifton Court Inflow = 9,500 cfs
 Jones Pumping Plant = 4,100 cfs

Combine Diversion = 13,600 cfs

Diversion Capacity = 15,500 cfs

ESTIMATED DELTA HYDROLOGY

Total Delta Inflow ~ 93,904 cfs
 Sacramento River = 61,721 cfs
 San Joaquin River = 20,770 cfs

Difference = -1,900 cfs

High South Delta SJR Flows

RESERVOIR RELEASES

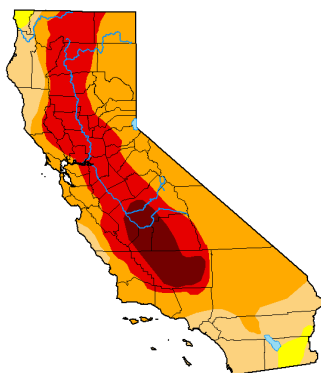
(Shasta) Keswick = 3,550 cfs
 (Folsom) Nimbus = 10,000 cfs
 Oroville = 950 cfs

Combine Releases = 14,500 cfs

California Drought Monitor

December 27, 2022

U.S. Drought Monitor California



December 27, 2022
 (Released Thursday, Dec. 29, 2022)
 Valid 7 a.m. EST

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	0.00	100.00	97.94	80.56	35.50	7.16
Last Week	0.00	100.00	97.94	80.56	35.50	7.16
3 Months Ago	0.00	100.00	99.76	94.01	40.91	16.57
Start of Calendar Year	0.00	100.00	99.30	67.62	16.60	0.84
Start of Water Year	0.00	100.00	99.76	94.01	40.91	16.57
One Year Ago	0.00	100.00	100.00	86.28	32.93	0.84

Intensity:
 None
 D0 Abnormally Dry
 D1 Moderate Drought
 D2 Severe Drought
 D3 Extreme Drought
 D4 Exceptional Drought

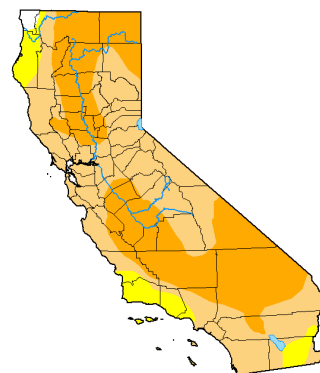
The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:
 Richard Heim
 NCEI/NOAA



January 17, 2023

U.S. Drought Monitor California



January 17, 2023
 (Released Thursday, Jan. 19, 2023)
 Valid 7 a.m. EST

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	0.64	99.36	92.12	42.84	0.00	0.00
Last Week	0.00	100.00	95.38	46.00	0.32	0.00
3 Months Ago	0.00	100.00	99.77	91.83	40.91	16.57
Start of Calendar Year	0.00	100.00	97.83	71.14	27.10	0.00
Start of Water Year	0.00	100.00	99.76	94.01	40.91	16.57
One Year Ago	0.00	100.00	99.25	66.39	1.39	0.00

Intensity:
 None
 D0 Abnormally Dry
 D1 Moderate Drought
 D2 Severe Drought
 D3 Extreme Drought
 D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

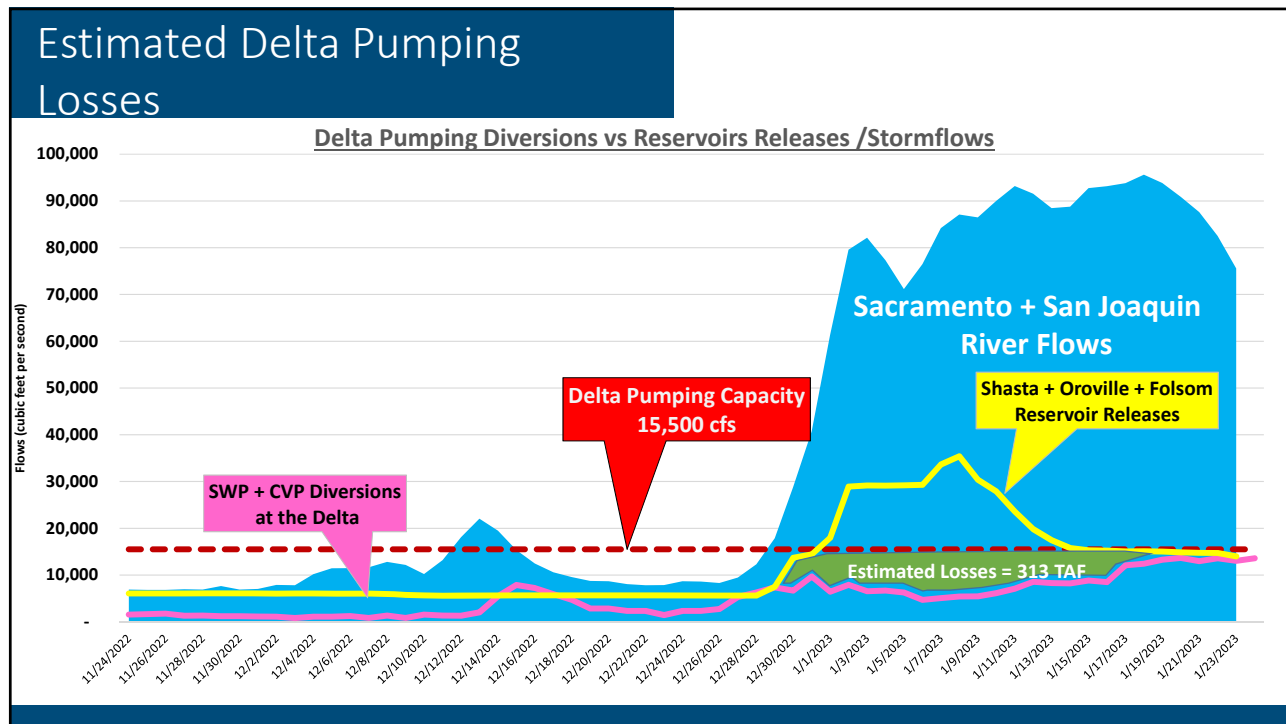
Author:
 Deborah Bathke
 National Drought Mitigation Center



Water Supply Conclusions

- The new water year officially started October 1st, 2022. As of mid January Northern California precipitation is well above average and snowfall is well above average.
- Accumulated Precipitation in Northern California the last three years was extremely low.
- Key State/Federal Reservoirs Levels are beginning to rebound from years of below average precipitation.
- Snowpack for the Colorado River is above average.
- Unfortunately the Colorado River System is still in shortage and is projected to be in shortage for the next 5 years.







NATURAL RESOURCE RESULTS

To: Board of Directors, *Municipal Water District of Orange County*

From: Natural Resource Results

RE: Monthly Board Report – February 2023

Paradox Valley

We have recently learned from the Salinity Control Forum that the well pumping during the six-month testing (at 65% of the prior injection rate) ended in early December. Reclamation then began a 21-day recovery test which also recently ended. Reclamation is now reviewing the test data and once it is reviewed, they will issue a decision document. We believe that the decision document will recommend recommencement of injection operations again at about 65% of prior injection rates for an indefinite period. Prior to the 2019 earthquake they were injecting at about 100,000 tons per year.

WOTUS

On January 18th, the EPA and the Army Corps of Engineers (Corps) noticed a final rule in the Federal Register revising the definition of “Waters of the United States” (WOTUS) under the Clean Water Act. This is the 2nd step in a two-step dance that the Biden Administration has taken to rewrite the definition (the 1st step was to revoke the “Navigable Waters Protection Rule” established by the Trump Administration).

While we are still reviewing the Rule notice in detail, it appears to largely codify practices and policies of the pre-2015 *Rapanos* era WOTUS guidance. The Rule establishes a category for adjacent wetlands as wetlands next to, abutting, or near other jurisdictional waters (usually within a few hundred feet) that meet the relatively permanent or significant nexus standard tests. This definition of adjacent wetlands to include those that are “near” but not necessarily abutting jurisdictional waters aligns with the interpretation of most SCOTUS Justices that we heard during *Sackett* oral arguments.

However, most Justices also expressed skepticism over the appropriateness of the significant nexus test, which we could see overturned or substantially modified in the forthcoming *Sackett* decision. Depending on the scope of that decision, we’ll likely see the agencies amend or issue a new WOTUS Rule in accordance with SCOTUS’ direction. Please see the attached E&E article for further analysis on the adjacent wetlands definition.

The Rule will go into effect on March 20th.

WATER For California Act

Congressman Valadao has reintroduced his bill, the WATER for California Act (H.R. 215) and the bill is cosponsored by the entire California Republican delegation. The bill would:

- Require the Bureau of Reclamation to operate the CVP in accordance with the 2019 biological opinions unless changes are agreed to as a part of the voluntary agreement process
- Prevent reconsultation on the biological opinion unless certain criteria are met
- Override state law to allow for Shasta raise to move forward
- Retroactively fund WIIN Act funding request for the Shasta raise that were not approved by Congress
- Reauthorize the storage account from the WIIN Act
- Deem CVPIA complete

We expect that the bill will have a hearing in the House Natural Resources Committee sometime in late February, followed by a markup in March and potentially onto the House floor in late-spring or early summer. While the bill likely has the votes to pass the House, it is not going anywhere in the Democratic Senate.

Biden WOTUS rule revives decades-old protections

By Ariel Wittenberg , Hannah Northey

12/30/2022 10:00 AM EST

The Biden administration today finalized its definition of which wetlands and waterways are protected by the Clean Water Act.

The rule from EPA and the Army Corps of Engineers largely revives a definition of “waters of the United States,” or WOTUS, coined during the Reagan-era, updated to accommodate limits the Supreme Court has placed on federal jurisdiction during the intervening 36 years.

The latest definition is an effort by the Biden administration to find a “durable” solution for protecting wetlands and streams — an issue that has been hotly debated since the Clean Water Act’s passage in 1972. Through the years, the question has triggered regulatory back-and-forth, intense lobbying, and legal and political brawls among developers and agricultural and environmental groups.

EPA water chief Radhika Fox said the rule’s link to regulations dating back to the 1980s would be familiar to those seeking Clean Water Act permits.

“It’s grounded in our longstanding authority provided by Congress, and we really learned from the 45 years of implementation as we developed this final rule so [it] balances the needs for clean water protections with the needs of all water users,” she said in an interview. “I think we found that middle ground and that place with this rule.”

Still, water policy observers and advocates anticipate a legal backlash from farmers, developers and businesses that will argue the regulation is inconsistent with the Clean Water Act.

In the weeds

The new rule would give federal protection to large waterways, like interstate rivers and streams and wetlands that are adjacent to them.

Wetlands would be considered adjacent if they are connected to those larger waterways with “relatively permanent” surface water connections, or if they have a “significant” hydrologic or ecological “nexus” to those protected tributaries.

Those terms are rooted in a 2006 Supreme Court case, *Rapanos v. United States*, which splintered the justices 4-1-4 and resulted in two competing tests to determine if property is beholden to Clean Water Act permitting requirements.

The “significant nexus” test, penned by Justice Anthony Kennedy in his concurrence, is more expansive and has been largely adopted by federal courts. That hasn’t stopped conservatives from arguing that federal jurisdiction should be limited to the more restrictive surface water connection approach from the late Justice Antonin Scalia.

The new regulation also appears to answer a question that plagued the high court more recently in *Sackett v. EPA*.

During oral arguments this fall, the justices floated the idea of whether a new test is needed to best identify federally protected waters ([Greenwire](#), Oct. 4).

“Is there another test that could be more precise and less open-ended than the adjacency test or the significant nexus test that you use?” Justice Sonia Sotomayor asked at the time.

Other colleagues asked whether EPA could put a distance-based limit on when wetlands would no longer be considered adjacent or affect water quality.

The final rule does not include any distance requirements for adjacent wetlands to be protected by the Clean Water Act, but explains that protected wetlands must be “reasonably close such that the wetland can modulate water quantity or quality” in another protected waterway.

The Biden administration decided against setting distance limits in the rule, it says, because wetlands’ effects on downstream waters “depends on regional variations in climate, landscape and geomorphology.”

“While bright-line rules, (for example, wetlands that are more than a specific number of feet from a jurisdictional water are not ‘adjacent’) are easiest to understand and implement, convenience is not the only goal the agencies must consider in administering the Clean Water Act,” the rule states.

It explains that “a more nuanced approach is required” because a wetland’s impact on larger waterways can vary by region and climate.

For example, the rule says, wetlands in the arid West, where rainfall is lower and evaporation rates are higher, might need to be much closer to larger waterways in order to be considered “adjacent” than wetlands located in areas with flat topography, large floodplains and higher annual rainfall.

Still, the rule says, “The agencies can state based on nearly 45 years of implementation of this definition that in a substantial number of cases, adjacent wetlands abut (touch) a jurisdictional water.”

“And, on the whole, nationwide, adjacent wetlands are within a few hundred feet from jurisdictional waters,” it says.

[A fact sheet accompanying the rule](#) says “parts of the Florida Everglades” could be considered adjacent wetlands, though it does not specify which areas.

Parts of the east Everglades have been at the center of federal wetlands fights for decades, though Fox clarified that the fact sheet only lists waters that are “likely to be jurisdictional.”

“We are not saying if they are jurisdictional or not,” Fox said.

Biden v. Trump and Obama

The Biden administration’s decision against placing distance limits on which wetlands are federally protected marks a change from both prior administrations.

Though the Obama and Trump administrations vastly differed on how expansive federal jurisdiction over wetlands should be, each wrote regulations they hoped would make the question of Clean Water Act protections easily predictable on the ground, with Trump administration officials even promising that farmers would be able to look at a wetland on their property and instinctively know whether it was federally regulated.

The new rule would protect more wetlands and streams than the regulation finalized by the Trump administration, which followed the Scalia test in *Rapanos*. That Navigable Waters Protection Rule only regulated wetlands and streams with relatively permanent surface water connections, excluding at least 18 percent of streams and a whopping 51 percent of wetlands nationwide from Clean Water Act protections ([Greenwire](#), Dec. 11, 2018).

The Biden regulation likely protects fewer wetlands than the Obama administration’s 2015 regulation, which sought to draw “bright lines” of federal jurisdiction. The Clean Water Rule protected any wetlands that were located within the 100-year floodplain or 4,000 feet of a navigable water or tributary, and opened the door for “isolated wetlands” not near larger wetlands to be included.

Under the Obama rule, such isolated wetlands, like prairie potholes, western vernal pools, Carolina Delmarva bays, Texas coastal prairie wetlands and pocosins were to be considered for federal protection on a case-by-case basis but also as a system, meaning regulators would assess the importance of an individual pothole on its own and as part of a broader ecosystem in combination with other potholes in the watershed ([Greenwire](#), Dec. 12, 2018).

The degree to which such isolated wetlands would be protected under the Biden rule is not clear, but [the fact sheet accompanying the final Biden rule](#) suggests that each wetland would be evaluated individually, not as part of a broader ecosystem as the Obama rule did.

The document says “additional waters” that do not meet the definition of adjacent wetlands or tributaries “are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard.”

Asked about such isolated wetlands, Fox said the new rule does not include a specific category for considering their jurisdiction as the Obama-era rule did.

“It does include a practicable and reasonable approach for some prairie potholes and isolated wetlands to be in jurisdiction when there is that connection back to a larger navigable water,” she said.

As with both the Obama and Trump definitions of WOTUS, the final rule makes clear that ditches without relatively permanent flows of water, waste treatment systems, and artificial lakes or ponds are not subject to federal permitting rules.



To:	MWDOC
From:	Syrus Devers, Best Best & Krieger
Date:	February 1st, 2023
Re:	State Legislative Report

Legislative Report

Bill Introductions: The bill introduction deadline for new bills is February 17th, and the majority of new bills will be introduced in the last week. Nonetheless, several bills have been introduced that concern the water industry.

Before turning to them, it may help to review what a “spot bill” refers to. A spot bill is any bill that does not contain the substantive language on the subject it purports to address. There are different levels of spot bills ranging from those that literally change a comma and do nothing to telegraph their intent, to those that fully describe what the bill will be used for in the future but contain no statutory language. Typically, BB&K and MWDOC staff do not bring spot bills to the attention of MWDOC, but we do when the author of a spot bill is in leadership or has history with the subject.

With that preamble, here are a few bills to watch:

AB 30 (Ward): Atmospheric river research. Research into atmospheric river weather patterns is not just another study bill. Better forecasting models can allow for more usable storage space in reservoirs. It is possible that the author will be surprised by the level of interest in the bill. (Senator Hurtado has also introduced a spot bill, SB 66, on the same issue.)

SB 3 (Dodd): Senator Dodd signaled early on that he intends to continue advocating for a statewide Low Income Rate Assistance (LIRA) bill. His bill on the same subject, SB 222, from last year passed the Legislature over the opposition of ACWA only to be vetoed by Gov. Newsom. The veto, however, was unrelated to ACWA’s opposition. ACWA opposed the bill due to objections over the administrative burdens the bill would impose on water agencies. Newsom’s veto was due to a lack of an identified funding mechanism. The concern is that Dodd will attempt to fund a statewide LIRA program with a tax on water. The bill is a spot bill for now and will be reviewed once substantive language is added.

SB 23 (Caballero): Senator Caballero chairs the influential Governance and Finance Committee and she will be a major figure in water policy in 2023. SB 23 is a spot bill at this time, but the goal of this bill is to cut some of the red tape that slows development of new water infrastructure.

Talk on the Street:

In addition to the introduced bills, another potentially significant legislative proposal being developed would establish, in statute, specific statewide targets and actionable goals for substantial increases in new water supplies for the state. The legislation is intended to provide a statewide focus on the need for new water supply development and would direct the Administration and state agencies to implement measures and incentives to ensure new supplies are brought on-line within designated periods. Bill language is currently being developed by the California Municipal Utilities Association (CMUA) through a “strike team” of its members and their legislative advocates, including MWDOC and other agencies the region and throughout the state. The CMUA board has approved being a sponsor of the bill and CMUA is seeking other potential co-sponsors. Senator Caballero (D-Salinas) has agreed to be an author of the legislation. Advocacy and education strategies are also being developed by CMUA and will be supported by the “Solve the Water Crisis” outreach effort, which MWDOC joined last year in June. BB&K recently attended a meeting in Sacramento of general managers, legislative staff, and legislative advocates of agencies involved in the proposal with CMUA and will give an update on the efforts of the group and MWDOC’s involvement during the Workshop.

The Budget:

By now, most have heard that the State Budget introduced by Newsom on January 10th seeks to close a \$22.5 billion deficit in the budget. Cuts were made to popular natural resource related budgets, but natural resources and climate change programs did better than most other areas.

Looking at a specific program in natural resources, Newsom cut \$40 million from \$210 million allocated to the water recycling for potable reuse over three years beginning in 2021. Of course, no one in the water industry is happy about it, but \$170 million is still a sizable program. Even better, Newsom did not make cuts to the \$315 million budgeted in 2021 over three years for all other types of recycling projects; \$215 was allocated last year and this year’s budget included the remaining \$100 million.¹

Keep in mind that this is merely the opening salvo in a running battle between the Governor and the Legislature over the Budget. The sharp knives come in May when the May Revise comes out and replaces the assumptions that go into the Budget with actual tax returns. The Board may recall the first year of the pandemic when near budget collapse was initially predicted, but the May Revise disclosed higher than expected capital gains tax receipts. And Newsom does not appear to expect a recession in California; his Budget refrained from tapping the state’s reserve account. In other words, Newsom is

¹ Credit to WateReuse for tracking down these numbers.



viewing the economy of California as normal despite the deficit. Of course, more to follow and BB&K will keep MWDOC apprised of the progress.

Legal and Regulatory

February 1, 2023

1. **Tribes & Colorado River:** At the recent Colorado River Water Users Association meeting in Las Vegas, tribal leaders were demanding various things including a seat at the table for upcoming negotiations regarding the future of the Colorado River. The Navajo Nation, Ute Tribe and other regional tribes were seeking to establish their senior water rights and guaranteed amounts of allocation. Their total claim could be as much as 25% of all Colorado River supply. The Colorado River Compact signed in 1922 did not have tribal participation. The Tribes claim that was a mistake which must be rectified now. They claim they were first users and therefore entitled to senior rights. They also state that they have not had the resources or infrastructure to use any of the water. They do have some rights for water use but the exact amount is unquantified. 40% of Navajo members do not have access to water for everyday use. Some must transport water for daily needs. The Tribes lawyer stated that “some people in the West are going to have to get by with using less, or even no water, from the Colorado River.” This will be a continuing battle.
2. **Old Earth Water:** While all good wine drinkers appreciate and seek old wine, all of us should really enjoy earth water. A recent study has determined that some of the water on earth is 4.5 billion years old. All young solar systems have plenty of water. All solar systems, including ours, start as a molecular cloud. The main ingredients of the cloud are hydrogen, helium, oxygen, and carbon. These elements combine around dust particle and form water ice. That water is of two types, regular water, and heavy water (Containing deuterium). These clouds which exist at -250 degrees F go through stages on the way to becoming a planet like Earth. The ratio of regular water to heavy water changes during this process. The conclusion is that part of the water on the Earth today came from these clouds 4.5 billion years ago. This is also true of other planets, comets, and asteroids in our universe.
3. **Zombie Pipeline Dead?:** San Diego County Water Authority has for many years threatened to build their own pipeline from the Colorado River directly to San Diego. The project cost is around \$5 billion and would take them out of their reliance on MWD for water. Also, it would get them out of the constant litigation effort with MWD. MWD is still San Diegos cheapest water supply. Their projections were that in 25 years their pipeline would produce water cheaper than MWD. Opponents in San Diego said that should not be dependent on a single source. Also, San Diego is hopeful that current negotiations with MWD will produce a beneficial result of the extended litigation. This is the sixth attempt by San Diego to consider the pipeline. A spokesman for the District said the effort is “pencils down.”
4. **Oceans Eat CO₂:** Oceans currently absorb about 25% of CO₂ released into the air. When this happens, the molecules cause acidification which has a negative impact of marine environment. The University of Edinburgh and the University of Hamburg has been studying way of increasing the absorption ratio for the oceans without

the negative acidification features. They have developed a method to recreate a naturally occurring event. Using common materials, limestone, and water, they have created a hydrated carbonate mineral known as ikaite. Ikaite when exposed to seawater dissolves CO₂ and creates a compound that neutralizes acidity. The ikaite must be dropped in water that is 59 degrees or cooler. This limits its use to Europe, Russia, Australia, South America, and South Africa. The total cost of implementation is being calculated. The good news is the raw materials are cheap and plentiful. Other environmental consequences are also being studied.

5. **NASA's SWOT:** Last month, NASA launched a rocket from Vandenberg with the Surface Water and Ocean Topography (SWOT) satellite. It will orbit 553 miles above Earth and can survey between the North Pole and South Pole every 21 days. This will be the first satellite to measure volume and movement of practically all the surface water of the entire globe-oceans, rivers, lakes, and streams. It can see through clouds and measure height of flood water. It will give us information on countries that now refuse to share such data. The total cost is \$1.2 billion and will run for three years. It can measure both fresh and ocean water and combines oceanography and hydrology disciplines. The brain of SWOT is the Ka-band Radar Interferometer. It sends out radio waves and measures the energy and time of each response. SWOT also gives us access to parts of the world that are too remote to gather data. It can also give more accurate measurements of coast and tide lines. NASA intends to check SWOT's data with human measurements in various parts of the world.
6. **Ocean Dead Zones:** Ocean dead zones (oxygen minimum zones OMZ) are parts of the ocean with reduced oxygen levels which won't support most marine life. These areas are important to the health of the oceans. They are usually deep, with lack of sunlight and regular oxygen sources cannot reach. OMZ control the movement of food in the ocean's food chain. North Carolina State University has studied OMZ from the Pliocene age, 2.6 to 5.3 million years ago. The study looked at fossilized plankton (Globorotaloides Hexagonus) which are only found in low oxygen areas. Interestingly enough, the planets temperature at that time was 2-3 degrees warmer than today. The movement of these OMZ over time tells where creatures at the top of the food chain, like fish etc., will end up. It also impacts CO₂ absorption which have previously discussed.
7. **Dam Storage:** The UN has studied storage capacity of our 50,000 dams worldwide. They concluded that by 2050, that capacity will be reduced by 25%. The main drivers are sediment buildup, disruption of existing water flow, and changes in weather patterns. This in turn impacts water storage and delivery, hydroelectric generation, flood conditions and destruction of habitat areas.
8. **Recent Storms Normal:** Climate scientists for the most part agree that our recent barrage of rain and snow is not the result of global warming. Instead, it is part of California's climate history going back hundreds of years. This study done by Scripps Institute of Oceanography traces our drought to major storm history, our given topography and concludes this one is not nearly as big as events we have experienced before. Media hype is telling a very different story than actual history. We have had far greater water drops in 1956 and 1938 and similar ones in 1964, 1969, 1982, 1986, 1995 and 2005. Even the 2017 drop which took out part of Oroville Dam created more concern and lots of damage. They also noted that our most recent storm is nothing to the major and lengthy storms of last century. Another California characteristic is that snow and rain drops in California generally remain in California. This is unlike other states and areas of the world.

9. **Groundwater Threat:** The recent heavy rain and higher tides are causing flood risks in the Bay Area. Groundwater comes in two types: aquifers which are usually hundreds of feet deep and water that is soaked in by the topsoil. Current readings show that many areas in the Bay Area are in danger of being flood zones. Tides and swells from the ocean and bay are pushing against the landmass. That landmass is already saturated such that the groundwater is inches from the ground level and at the same level and breaking the surface. The fresh water tends to rise on top of the denser salt water. This groundwater issue has not been considered in the sea level rise discussions, but it is being evaluated quickly after the last set of storms. This problem can cause damage to utility lines, foundations, and other buried infrastructure. All these were built assuming dry soil.
10. **OCWD in PPIC:** Last week's Public Policy Institute of California (PPIC) publication featured Jason Dadakis, executive director of water quality and technical resources for OCWD. He was interviewed for an update on PFAS. PFAS covers a wide range of manmade chemicals used in many of our everyday products including some uses necessary for our safety. He discussed the State legislation which is presently advisory standards only but is generally being enforced by most water utilities. There is presently no Federal standard but there may be by year end. While PFAS issues in most products has been stopped there are still issues with cleanup costs, who pays and what to do with those products (primarily fire prevention) that we still use.

MWDOC Workshop

Bill Matrix

Prepared by Best Best & Krieger, January 24th, 2023

A. Priority Support/Oppose

Measure	Author	Topic	Status	Location	Calendar	Brief Summary	Position	Priority	Notes 1
AB 249	Holden D	Water: schoolsites: lead testing: conservation.	1/19/2023-From printer. May be heard in committee February 18.	1/18/2023-A. PRINT		Would require a community water system that serves a schoolsite with a building constructed before January 1, 2010, to test for lead in the potable water system of the schoolsite before January 1, 2027. The bill would require the community water system to report its findings to the applicable school or local educational agency, as specified. The bill would require the local educational agency or school, if the lead level exceeds a specified level at a schoolsite, to notify the parents and guardians of the pupils who attend the schoolsite or preschool. The bill would require the local educational agency or school to take immediate steps to make inoperable and shut down from use all fountains and faucets where the excess lead levels may exist. The bill would also require that the local educational agency or school work with the schoolsites under its jurisdiction to ensure that a potable source of drinking water is provided for pupils, as specified. The bill would require a community water system to prepare a sampling plan for each schoolsite where lead sampling is required under these provisions.	Out for Analysis	A. Priority Support/Oppose	

B. Watch

Measure	Author	Topic	Status	Location	Calendar	Brief Summary	Position	Priority	Notes 1
AB 30	Ward D	Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program.	12/6/2022-From printer. May be heard in committee January 5.	12/5/2022-A. PRINT		Current law establishes the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program in the Department of Water Resources. Current law requires the department, upon an	Watch	B. Watch	

						<p>appropriation for purposes of the program, to research climate forecasting and the causes and impacts that climate change has on atmospheric rivers, to operate reservoirs in a manner that improves flood protection, and to reoperate flood control and water storage facilities to capture water generated by atmospheric rivers. This bill would rename that program the Atmospheric Rivers Research and Forecast Improvement Program: Enabling Climate Adaptation Through Forecast-Informed Reservoir Operations and Hazard Resiliency (AR/FIRO) Program. The bill would require the department to research, develop, and implement new observations, prediction models, novel forecasting methods, and tailored decision support systems to improve predictions of atmospheric rivers and their impacts on water supply, flooding, post-wildfire debris flows, and environmental conditions.</p>			
AB 62	Mathis R	Statewide water storage: expansion.	1/4/2023- Read first time.	12/6/2022- A. PRINT		<p>Would establish a statewide goal to increase above- and below-ground water storage capacity by a total of 3,700,000 acre-feet by the year 2030 and a total of 4,000,000 acre-feet by the year 2040. The bill would require the State Water Resources Control Board, in consultation with the Department of Water Resources, to design and implement measures to increase statewide water storage to achieve the statewide goal. The bill would require the state board, beginning July 1, 2027, and on or before July 1 every 2 years thereafter until January 1, 2043, in consultation with the department, to prepare and submit a report to the Legislature on the progress made in designing and implementing measures to achieve the statewide goal.</p>	Watch	B. Watch	
AB 66	Mathis R	Natural Resources Agency: water storage projects: permit	1/4/2023- Read first time.	12/6/2022- A. PRINT		<p>Current law establishes the Natural Resources Agency, composed of departments, boards, conservancies, and commissions responsible for the restoration, protection, and management of the state's</p>		B. Watch	

		approval.				natural and cultural resources. Current law establishes in the agency the Department of Water Resources, which manages and undertakes planning with regard to water resources in the state. This bill would require the agency, and each department, board, conservancy, and commission within the agency, to approve the necessary permits for specified projects within 180 days from receiving a permit application, and would deem those permits approved if approval does not occur within this time period.			
ACA 2	Alanis R	Public resources: Water and Wildfire Resiliency Act of 2023.	12/6/2022-From printer. May be heard in committee January 5.	12/5/2022-A. PRINT		Would establish the Water and Wildfire Resiliency Fund within the State Treasury, and would require the Treasurer to annually transfer an amount equal to 3% of all state revenues that may be appropriated as described from the General Fund to the Water and Wildfire Resiliency Fund. The measure would require the moneys in the fund to be appropriated by the Legislature and would require that 50% of the moneys in the fund be used for water projects, as specified, and that the other 50% of the moneys in the fund be used for forest maintenance and health projects, as specified.	Out for Analysis	B. Watch	
SB 3	Dodd D	Discontinuation of residential water service: community water system.	1/18/2023-Referred to Com. on E., U. & C.	1/18/2023-S. E. U., & C.		The Water Shutoff Protection Act prohibits an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, from discontinuing residential service for nonpayment, as specified, and requires specified procedures before it can discontinue residential service for nonpayment. Current law defines a community water system as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. This bill would expand the scope of the Water Shutoff Protection Act by requiring that it instead apply to a community water system, defined to have the same meaning as existing law. The bill would require a community water system that supplies water to 200 service	Out for Analysis	B. Watch	

						connections or fewer to comply with the act's provisions on and after August 1, 2024.			
SB 57	Gonzalez D	Utilities: extreme weather events.	1/18/2023-Referred to Com. on RLS.	12/16/2022-S. RLS.		Would state the intent of the Legislature to enact future legislation to prohibit shutting off utility service during extreme weather events.	Watch	B. Watch	
SB 66	Hurtado D	Water: predictive models and data collection.	1/18/2023-Referred to Com. on RLS.	1/5/2023-S. RLS.		Current law requires the Department of Water Resources, as part of updating The California Water Plan every five years, to conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs. This bill would state the intent of the Legislature to ensure that reliable predictive models and data collection systems are used to properly forecast and allocate surface water.	Watch	B. Watch	
SB 69	Cortese D	California Environmental Quality Act: judicial and administrative proceedings : limitations.	1/18/2023-Referred to Coms. on E.Q. and JUD.	1/18/2023-S. E.Q.		The California Environmental Quality Act (CEQA) requires a state agency or a local agency that approves or determines to carry out a project subject to CEQA to file a notice of determination with the Office of Planning and Research or the county clerk of each county in which the project will be located, as provided. CEQA authorizes a state agency or a local agency that determines that a project is not subject to CEQA to file a notice of exemption with the office or the county clerk of each county in which the project will be located, as provided. If a person has made a written request to a public agency for a copy of a notice of determination or notice of exemption for a project before the date on which the public agency approves or determines to carry out the project, CEQA requires the public agency, no later than 5 days from the date of the public agency's action, to deposit a copy of the written notice addressed to that person in the United States mail, first-class postage prepaid. CEQA provides that the date upon which the notice is mailed does not affect the limitations periods applicable to specified actions or proceedings to attack,	Watch	B. Watch	

						review, set aside, void, or annul specified acts or decisions of a public agency on the grounds of noncompliance with CEQA. The bill would require a public agency to provide both the notice and any subsequent amended, corrected, or revised notice, as specified, in response to a written request for the notice, regardless of the delivery method. By requiring a local agency to provide a copy of any subsequent amended, corrected, or revised notice, along with the notice, the bill would impose a state-mandated local program.			
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C. Spot Bill

Measure	Author	Topic	Status	Location	Calendar	Brief Summary	Position	Priority	Notes 1
SB 23	Caballero D	Water supply and flood risk reduction projects: expedited permitting.	1/18/2023-Referred to Com. on RLS.	12/5/2022-S. RLS.		The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the state, including, among other things, overseeing the issuance and enforcement of public water system permits, as provided. Current law authorizes specified works of improvement for the control, conservation, and utilization of destructive flood waters and the reclamation and protection of lands that are susceptible to overflow by flood waters. This bill would express the intent of the Legislature to enact subsequent legislation to expedite the regulatory permitting process for water supply and flood risk reduction projects, as provided.	Watch	C. Spot Bill	

Total Measures: 10

Total Tracking Forms: 10



ACTION ITEM
February 1, 2023

TO: Board of Directors

FROM: Joe Byrne, General Counsel

SUBJECT: CONSIDER CONTINUATION OF REMOTE MEETINGS PURSUANT TO AB 361
AND REQUIRED FINDINGS

STAFF RECOMMENDATION

That the Board of Directors vote to continue virtual meetings pursuant to AB 361 for an additional 30 days based on the findings that (1) it has reconsidered the circumstances of the state of emergency for COVID-19, and (2) state and local officials continue to impose or recommend measures to promote social distancing.

COMMITTEE RECOMMENDATION

This item was not presented to a Committee.

SUMMARY

AB 361 allows the Board during declared emergencies to hold remote Board meetings without having to comply with certain provisions of the Brown Act, the most significant of which are the provisions that requires public access to every location where a member of the Board is participating remotely and the listing of that remote location on the agenda.

At the October 4, 2021 Board meeting, pursuant to AB 361, the Board of Directors adopted Resolution No. 2115 and authorized the Board to continue to have remote meetings based upon the continued state of emergency for COVID-19 and the finding that state and local officials have imposed or recommended measures to promote social distancing. At the past several meetings, including the January 18, 2023 Board meeting, the Board voted to continue such remote meetings for additional 30 day periods. As previously indicated, if the Board wishes to continue to hold remote meetings pursuant to AB 361, and assuming a state of emergency still is in place, it must make similar findings within every 30 days. The current 30 day extension is effective until February 18, 2023.

At the time this report was prepared, there is a continued state of emergency for COVID-19 and state and local officials continue to recommend measures to promote social distancing. This item is on the Agenda for the Board to consider whether to continue remote meetings

Budgeted (Y/N): N/A	Budgeted amount: N/A	Core <u> X </u>	Choice <u> </u>
Action item amount:		Line item:	
Fiscal Impact (explain if unbudgeted):			

pursuant to AB 361 for an additional 30 days and to make the appropriate findings.

If the Board does not take action to extend the AB 361 authorization to hold remote meetings, then Board meetings held after January 21, 2023 will have to comply with the normal Brown Act requirements (pre-COVID-19). Again, the most significant of these requirements is that if a member of the Board would like to participate from a teleconference (or remote/virtual) location, (1) the address of every location where a Board member participates remotely from must be posted on the agenda and (2) the location must be made open to the public to attend. Regarding the virtual participation of the public, there are no specific posting or public access requirements and if the District provides a hybrid option, the public may continue to participate remotely.

Lastly, the Governor has announced that he intends to terminate the emergency order in place regarding COVID-19 at the end of February 2023. While this is not a guarantee, assuming he does that, all meetings held starting on March 1, 2023 will be held pursuant to the regular requirements of the Brown Act described above and AB 361 will no longer be an option for the Board.

However, the Legislature adopted AB 2449 during the last session and it went into effect on January 1, 2023. AB 2449 amended certain provisions of the Brown Act to allow Directors to participate remotely without having to post the agenda at their remote location and not having to allow public access at the remote location. However, a Director has limited circumstances in order to participate remotely, these are: (1) for just cause, defined as caregiving, contagious illness, physical or mental disability, and travel on District business (may be used no more than 2 times per year); and (2) emergency circumstances, defined as a physical or family emergency that prevents a member from attending (requires Board approval and may not be used for three consecutive months or more than 20% of regular Board meetings). Legal counsel will provide a summary of this new law at a later time.



DISCUSSION ITEM

February 1, 2022

TO: Board of Directors

**FROM: Harvey De La Torre,
Assistant General Manager**

Staff Contact: Melissa Baum-Haley

**SUBJECT: METROPOLITAN WATER DISTRICT (MET) ITEMS CRITICAL TO ORANGE
COUNTY**

STAFF RECOMMENDATION

Staff recommends the Board of Directors to review and discuss this information.

DETAILED REPORT

This report provides a brief update on the current status of the following key MET issues that may affect Orange County:

- a. MET's Finance and Rate Issues
- b. MET's Integrated Resources Plan Update
- c. Water Supply Condition Update
- d. Water Quality Update
- e. Colorado River Issues
- f. Delta Conveyance Activities and State Water Project Issues

ISSUE BRIEF #A

SUBJECT: MET Finance and Rate Issues

RECENT ACTIVITY

Water Transactions in November 2022 (for water delivered in September 2022) totaled 135.0 thousand acre-feet (TAF), which was 11.4 TAF lower than the budget of 146.4 TAF and translate to \$126.6 million in receipts for November 2022, which were \$11.8 million lower than budget of \$138.4 million.

Year-to-date water transactions through November 2022 (for water delivered in May 2022 through September 2022) were 736.6 TAF, which was 18.2 TAF higher than the budget of 718.4 TAF. Year-to-date water receipts through November 2022 were \$688.4 million, which was \$8.8 million lower than the budget of \$697.2 million.

As of November 30, 2022, Metropolitan's investment portfolio balance was \$1.3 billion.

ISSUE BRIEF #B

SUBJECT: MET Integrated Resources Plan Update

RECENT ACTIVITY

To provide member agency access to an equivalent level of water supply reliability through necessary adaptive implementation of the IRP findings:

- Metropolitan staff regularly met with State Water Project-dependent agencies to develop volumetric limits for SWP Table A, Human Health & Safety, and Water Surplus & Drought Management (WSDM) supplies. Metropolitan staff also is developing a board resolution to prepare the region for a potential Water Supply Allocation for FY2023–24.
- Bids for construction of the Wadsworth Pumping Plant Bypass were opened on December 13, 2022. Board award of the contract is scheduled for January 2023.
- The Colorado River Basin States agreed in December to work together to develop a seven-state consensus alternative that can be included in the Bureau of Reclamation's Supplemental Environmental Impact Statement (SEIS) for the 2007 Interim Guidelines. We are working with partner agencies in California and the Basin States to attempt to develop an acceptable alternative, which needs to be provided by the end of January 2023 to have time to include it as an alternative in the SEIS.

To advance the long-term reliability and resilience of the region's water sources through a One Water approach that recognizes the interconnected nature of imported and local supplies, meets both community and ecosystem needs, and adapts to a changing climate:

- SRI is engaging a consultant to help facilitate the development of a district-wide SRI Strategy that will include Guiding Principles, Goals and Key Performance Metrics that integrate Metropolitan efforts on sustainability, resilience, and innovation. This will include Engineering's efforts on its Infrastructure Resilience Plan and the Seismic Resilience Plan, both of which are underway. Engineering is continuing to assess the potential for ENVISION certification in two capital projects and is exploring test installations to allow for use of a greater percentage of reclaimed asphalt in paving projects.
- Metropolitan staff reported to the Board this month on Climate Action progress to green our energy portfolio, transition to zero emission vehicles, and build renewable energy; they also launched a public-facing dashboard tracking Metropolitan's greenhouse gas emissions and reported to the Board on a quarterly science update related to Bay-Delta issues. The public comment period for the Delta Conveyance Project EIR is complete, and the USACE Draft EIS is now out for comment until mid-February.
- The Board approved the use of the \$80-million state grant to help expedite the Pure Water project, including the hiring of a select number of staff. An RFP for early-start pipeline design was advertised this month and the Program Manager procurement is nearly complete.

ISSUE BRIEF #C

SUBJECT: MET's Supply Condition Update

RECENT ACTIVITY

Please refer to stand-alone Water Supply Conditions item.

ISSUE BRIEF #D**SUBJECT: MET's Water Quality Update****RECENT ACTIVITY**

Water System Operations

Metropolitan member agency water deliveries were 108,900 acre-feet (AF) for December with an average of 3,513 AF per day, which was 84 AF per day lower than in November. Treated water deliveries increased by 1,600 AF from November for a total of 48,800 AF, or 45 percent of total deliveries for the month. The Colorado River Aqueduct (CRA) transitioned from an eight to a seven-pump flow in mid-December, with a total of 101,000 AF pumped in December. This change in operations was to address significant increases in CRA power costs due to extraordinarily high natural gas prices and their impact on the power market. The transition to seven-pump flow was estimated to save about \$200,000 per day in power costs but only reduced the end-of-year storage at Lake Mathews by about 5,500 AF. Lake Mathews storage would remain over 90 percent full going into the CRA shutdown in February 2023.

Water Treatment and Distribution

The State Water Project target blend entering the Weymouth and Diemer plants and Lake Skinner was zero percent in December 2022.

Flow-weighted running annual averages for total dissolved solids from September 2021 through August 2022 for Metropolitan's treatment plants capable of receiving a blend of supplies from the State Water Project and the Colorado River Aqueduct were 599, 596, and 593 mg/L for the Weymouth, Diemer, and Skinner plants, respectively. Turbidity levels in Jensen plant influent increased significantly, up to 25 nephelometric turbidity units (NTU), in mid-December following recent storm events in the Castaic Lake watershed. The Jensen plant treatment processes were optimized to manage the increased source water turbidity. The plant performed well and met all operational and regulatory compliance standards.

Since 2005, ozone has been used as a primary disinfectant for conventional treatment at the Jensen plant. The plant has a total of five generators used in this process. A \$2.26M capital project to replace ozone power supply units at the Jensen plant is underway. Two of the generators have been removed from service for cleaning and refurbishment. New power supply units for the generators are also being installed, consistent with current industry standards with more readily available parts for service and maintenance. This work is scheduled for completion in December 2023.

Future Legislation and Regulation

On November 17, the California Air Resources Board (CARB) amended its In-Use Off Road Diesel-Fueled Fleets Regulation that affects all of Metropolitan's off-road diesel engines with 25 horsepower or more (e.g., construction equipment). Beginning January 1, 2024, the regulation mandates the phase-out of older Tier 0–2 engines, bans adding Tier 3 and Tier 4 engines, requires the use of specified renewable diesel, and requires affected entities to hire only compliant fleets. The regulation also allows flexibility when adding zero-emission vehicles to its fleet. Metropolitan staff are working on a transitioning towards a near-zero or zero-emission fleet as part of Metropolitan's Climate Action Plan. Metropolitan staff will continue to monitor for further updates to the regulation.

On December 7, the State Water Resources Control Board extended the emergency regulation on Prohibited Wasteful Water Uses Emergency Regulation for Water Conservation to January 2024. The emergency regulation prohibits visible landscape irrigation runoff, washing a car without a shut-off nozzle, washing down hardscapes, and watering within 48 hours after a rainstorm. Metropolitan facilities have been notified of these regulations to ensure compliance.

On December 13, Metropolitan staff attended a virtual meeting of the National Drinking Water Advisory Council Microbial/Disinfection Byproducts (MDBP) Rules Revision Working Group, which was formed to provide the U.S. Environmental Protection Agency with advice and recommendations on key issues related to potential revisions to MDBP regulations. Key topics discussed by the working group include disinfectant residual levels, opportunistic pathogens, regulated and unregulated disinfection byproducts, consecutive drinking water systems, drinking water distribution systems, finished water storage, precursor removal and treatment, source water considerations, sanitary surveys, and water safety plans. Participation in such forums ensures that Metropolitan is properly informed and positioned to address revised and new regulations.

On December 15, the California Public Utilities Commission unanimously voted to approve the Net Energy Metering (NEM) 3.0 Proposed Decision. NEM is a program that credits a solar customer's electric bill for surplus energy sent back to the grid. The NEM 2.0 standard will sunset in mid-April 2023. Solar systems installed before NEM 3.0 becomes effective will be grandfathered under NEM 2.0 for 15 years. Metropolitan staff will track the roll-out of NEM 3.0 and its impacts on Metropolitan's existing and future solar projects.

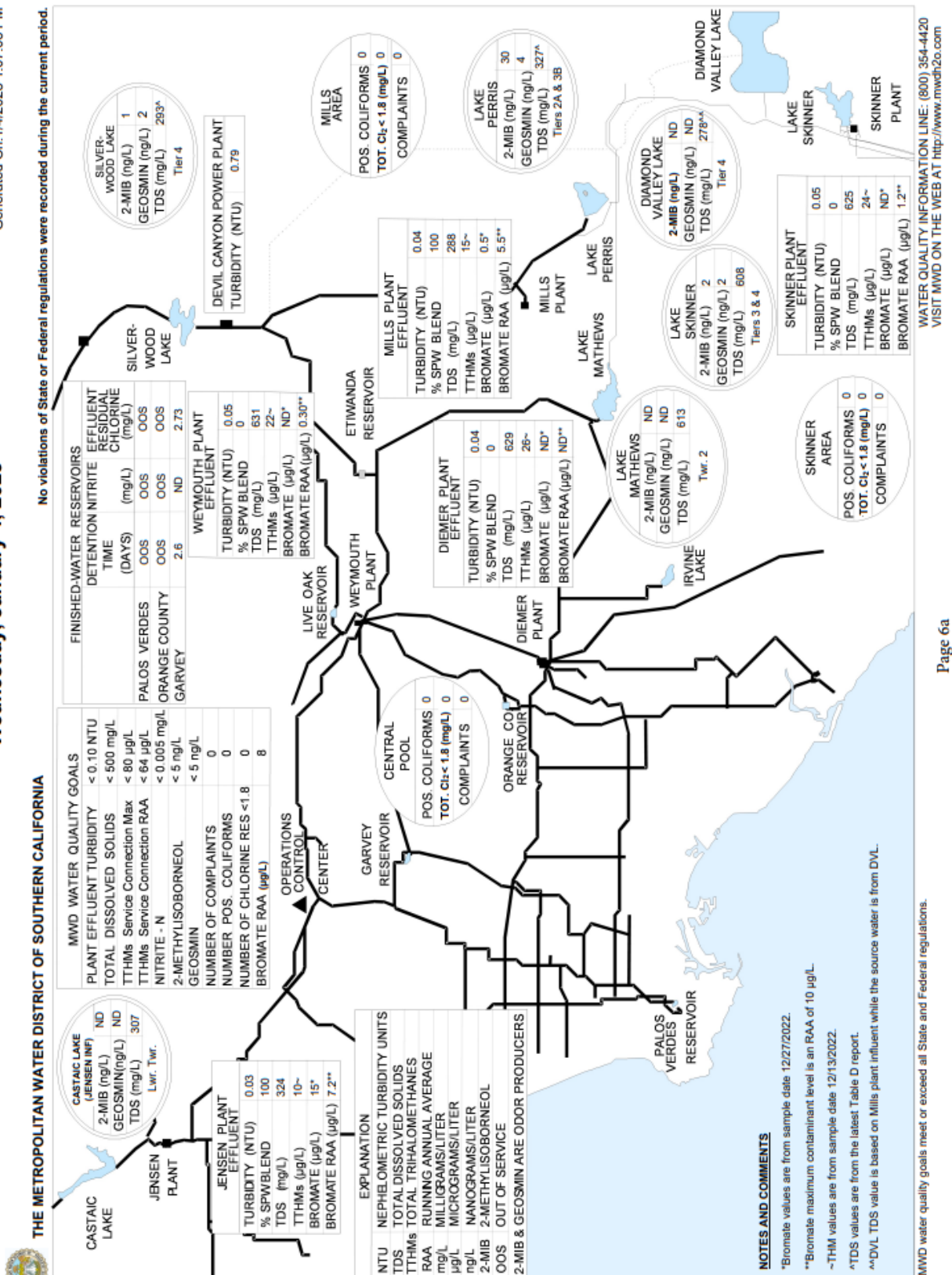
On December 15, the California Division of Occupational Safety and Health adopted a Permanent COVID-19 Standard. The permanent standard replaces the emergency temporary standard. The new permanent COVID-19 standard is effective between January 2023 and January 2025. The less stringent permanent standard simplifies notification requirements, testing of close contacts, removes exclusion pay, and aligns with California Department of Public Health definitions such as "Close Contact." Metropolitan staff will adjust certain existing COVID-19 protocols to comply with the latest

permanent standard.

Weekly Water Quality System Status

Wednesday, January 4, 2023

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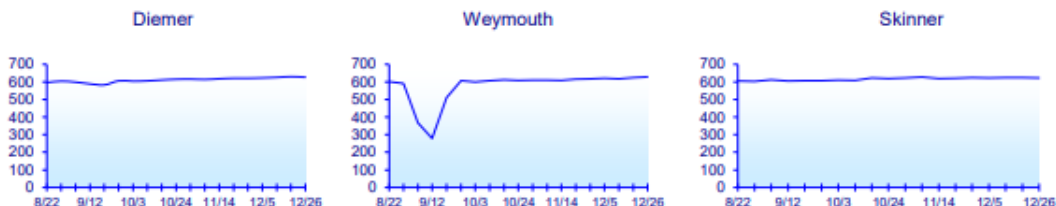
Water Quality Section Weekly TDS Report

For the week of 12/25/2022

Percent SPW Needed to Achieve TDS Goal of 500 mg/L				Estimated TDS for Reservoirs		
Source Water TDS		SPW Required		Reservoir (Effluent)	Date	mg/L
Plant	CRW	SPW	Percent			
Weymouth	615	276	34%	Lake Havasu (Table D)	10/5/22	614
Diemer	615	276	34%	Lake Mathews (DFPI-LWRFRD)	12/26/22	610
Skinner-Silverwood	606	276	32%	Lake Skinner (Outlet Structure)	12/26/22	313
Skinner-Perris	606	327	38%	Castaic Lake (JFPI)	12/25/22	276
CRW for Diemer and Weymouth is Lake Mathews and San Jacinto - West Portal for Skinner.				DVL (Mills Inf)	12/25/22	327
				Lake Perris (Table D)	10/3/22	327
				DVL Outlet (Table D)	10/10/22	283

SUNDAY COMPOSITE ESTIMATED TDS FOR 08/21/22 - 12/25/22

TDS For Week of 12/25	
Plant Eff.	mg/L
Diemer	627
Weymouth	629
Skinner	622
Jensen	330
Mills	291



Sunday composite estimated TDS measured from plant effluent composite samples collected on Sunday and analyzed for hardness and electrical conductivity.

WEEKLY COMPOSITE ESTIMATED TDS FOR 08/21/22 - 12/25/22

TDS For 12/19 - 12/25	
Plant Eff.	mg/L
Diemer	628
Weymouth	630
Skinner	623



Weekly composite estimated TDS measured from plant effluent composite samples collected Monday through Sunday and analyzed for hardness and electrical conductivity.

MONTHLY COMPOSITE CALCULATED TDS FOR November 2021 - October 2022

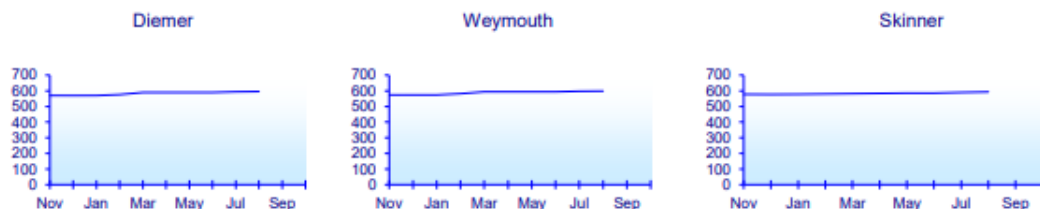
TDS For Oct 2022	
Plant Eff.	mg/L
Diemer	621
Weymouth	629
Skinner	626
Jensen	332
Mills	300



Monthly calculated TDS calculated from plant effluent monthly composite sample for total anions and cations. These results are also used for Table D.

FLOW WEIGHTED RAA TDS FOR November 2021 - October 2022

Flow-Weighted RAA TDS Nov 2021 - Oct 2022	
Plant	mg/L
Diemer	601
Weymouth	596
Skinner	599
Jensen	325
Mills	295



Seasonal flow weighted RAA TDS calculated from plant effluent monthly composite sample for total anions and cations. Results are based on average monthly flows.

ISSUE BRIEF #E

SUBJECT: Colorado River Issues

RECENT ACTIVITY

Basin States Agree to Collaborate on Colorado River Alternative

On December 20, Metropolitan submitted scoping comments for the development of the supplemental environmental impact statement (SEIS) for the 2007 Interim Guidelines. Those comments included recognition for the need to provide sufficient water for public health and safety needs in the Colorado River Basin, including Metropolitan's service area. Metropolitan staff also collaborated with Southern Nevada Water Authority and Central Arizona Project to submit similar comments highlighting the need to protect some level of municipal water supplies. Metropolitan staff also provided input to the Colorado River Board of California comments, highlighting the need to consider the existing agreements and compacts when making water supply reduction. With those comments submitted, the Colorado River Basin states are now working on developing a seven-state consensus alternative that can be included in the SEIS. The Bureau of Reclamation would need an alternative developed by the end of January 2023 to have time to include it as an alternative in the SEIS. The alternative would include proposed changes to the coordinated operations of Lake Powell and Lake Mead and additional shortage reductions to the Colorado River Basin states beyond what is included in the 2007 Interim Guidelines and the 2019 Drought Contingency Plan. The alternative does not need to have all the details of what intrastate arrangements would be needed; however, it does need to have enough information about the effects to the Colorado River and its resources to show how it would be affected. If the states are successful in reaching an agreement for an alternative for the SEIS, the agencies would then need to develop details and ultimately agree on how this alternative could be implemented. For agencies within California, it is likely that the section 5 water right contractors, including Metropolitan, would need to have their respective boards consider and approve agreements for the alternative to be implemented. It is anticipated that if agreements are developed and approved, they would cover water supply operations from 2024 through 2026.

ISSUE BRIEF #F

SUBJECT: Delta Conveyance Activities and State Water Project Issues

RECENT ACTIVITY

Delta Conveyance

The public comment period for the Delta Conveyance Project (DCP) Draft Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) closed on Friday, December 16. The California Department of Water Resources (DWR) released the Draft EIR for public review and comment on July 27, 2022. On December 16, the U.S. Army Corps of Engineers (USACE) released the public Draft Environmental Impact Statement (Draft EIS) for the DCP ([SPK-2019-00899, Public Notice of Public Review of the Draft Environmental Impact Statement \(DEIS\) for the Delta Conveyance Project, Sacramento, San Joaquin, Contra Costa, and Alameda Counties, CA > Sacramento District > Sacramento District Regulatory Public Notices \(army.mil\)](#)). The public comment period runs from December 16, 2022, to February 14, 2023. The USACE will hold three virtual public meetings in January to receive comments from the public on the project and the draft document. Affected Federal, State, regional, and local agencies, Native American Tribes, other interested private organizations, and the public are invited to participate.

Joint Powers Authorities

During the regularly scheduled Board of Directors meeting on December 15, the Delta Conveyance Design and Construction Authority Board of Directors approved to extend a resolution authorizing virtual board and committee meetings pursuant to AB 361.

The December 15 regularly scheduled Delta Conveyance Finance Authority meeting was cancelled.

Sites Reservoir

In their December Joint meetings, the Sites Project Authority Board and the Sites Reservoir Committee approved the actions for the 2023–2024 Proposed Sites Reservoir Test Pits, Fault Studies, and Quarry Studies (Project), adopted the CEQA Initial Study/Mitigated Negative Declaration, adopted the associated Mitigation, Monitoring, and Reporting Program document, and approved the Project.

Science Activities

Metropolitan staff worked with researchers from UC Davis to continue the Delta Smelt Pilot Propagation study. The study uses the impoundments on Bouldin Island to conduct a proof-of-concept study by placing hatchery Delta smelt in the impoundments and monitoring their condition. The results are promising so far, and the Delta smelt are still doing well after three weeks, suggesting that culture in larger impoundments is feasible.

with limited management during the winter. Future work will include repeating the experiment in January to verify the results and inform further studies in the next few years.

Metropolitan staff also continued to work on Phase 2 of the Reorienting to Salmonid Recovery project. Metropolitan staff worked with the Project Planning team to organize and conduct three half day workshops to identify how social, cultural, economic, and ecological interests related to salmonid recovery will be quantified and measured. By developing these values, the project can evaluate how different actions to recover salmonids may affect these important values. Over 60 people from different interest groups participated, including tribal, environmental, commercial, and recreational fishing, agriculture, water agencies, and state and federal resource agencies. The values identified in the workshops will feed into Phase 3 of the project, which begins at the end of December and includes a structured decision-making process to identify, develop, model, and prioritize different actions to recover salmonids.

Regulatory Activities

On October 7, 2022, the US Fish and Wildlife Service (USFWS) issued a proposed rule to list the San Francisco Bay Delta distinct population segment of longfin smelt as an endangered species under the federal Endangered Species Act. Metropolitan staff is reviewing the proposed rule and developing comments. Comments on the proposed rule are due on December 6, 2022.

**Summary Report for
The Metropolitan Water District of Southern California
Special Board Meeting
January 9, 2023**

CONSENT CALENDAR OTHER ITEMS – ACTION

Approved Committee Assignments. (Agenda Item 5A)
[Click for link to Committee Assignments](#)

**THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES
OF THE MEETING.**

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**Summary Report for
The Metropolitan Water District of Southern California
Board Meeting
January 10, 2023**

CONSENT CALENDAR OTHER ITEMS – ACTION

Authorized preparation of Commendatory Resolution honoring Gloria D. Gray for her leadership during her term as Chairwoman of Metropolitan’s Board of Directors. **(Agenda Item 6B)**

Nomination and Election of three nonofficer members (Directors Luna, Pressman, and Cordero) of the Executive Committee for two-year term effective January 10, 2023. **(Agenda Item 6D)**

CONSENT CALENDAR ITEMS - ACTION

Awarded a \$14,820,500 contract to Steve P. Rados, Inc. to construct a bypass pipeline at the Wadsworth Pumping Plant as part of water supply reliability improvements in the Rialto Pipeline service area. **(Agenda Item 7-1)**

Reviewed and considered Addendum No. 5 to the certified 2017 Programmatic Environmental Impact Report for the Prestressed Concrete Cylinder Pipe Rehabilitation Program, and (a) Awarded a \$68,847,000 contract to J.F. Shea Construction, Inc. to rehabilitate Reach 3B of the Second Lower Feeder; and (b) Authorized an access and permitting agreement with the city of Lomita in an amount not to exceed \$310,000. **(Agenda Item 7-2)**

Reviewed and considered Addendum No. 3 to the certified 2005 Environmental Impact Report and: (a) Awarded a \$59,489,720 contract to James W. Fowler Company for construction of the Interstate 215 freeway tunnel crossing for the Perris Valley Pipeline; (b) Authorized an agreement with Parsons Environment & Infrastructure Group, Inc., for \$1 million to provide technical support during construction; (c) Authorized an agreement with Mott McDonald Group, for \$3.5 million to provide construction management support; and (d) Authorized an agreement with Rincon Consultants, Inc., for \$250,000 to provide specialized environmental support. **(Agenda Item 7-3)**

Authorized an agreement with Arcadis U.S., Inc. in an amount not to exceed \$2 million for preliminary design to rehabilitate the finished water reservoirs at Henry J. Mills and Joseph Jensen Water Treatment Plants. **(Agenda Item 7-4)**

(a) Authorized an agreement with the joint venture of AECOM Technical Services, Inc. and Brown and Caldwell in an amount not to exceed \$25 million for program management services to support the Pure Water Southern California program; and (b) Authorized an increase of \$950,000 to an existing agreement with CDM Smith, Inc. for a not-to-exceed total of \$3.7 million to support the Program's ongoing process demonstration effort. **(Agenda Item 7-5)**

Amended the Capital Investment Plan for fiscal years 2022/2023 and 2023/2024 to include the Foothill Feeder Valve Replacement project. **(Agenda Item 7-6)**

Authorized an agreement with SpearMC Management Consulting, Inc. in an amount not to exceed \$1,300,000 for the implementation of the following PeopleSoft Modules from the Oracle Cloud Human Capital Management Software Application Suite: Time & Labor and Absence Management for Payroll and Timekeeping System Improvements, including Maximo interface. **(Agenda Item 7-7)**

Authorized an agreement with Digital Scepter Corporation in an amount not to exceed \$1,469,000 million for procurement of equipment to replace network switches at Metropolitan's Headquarters at Union Station. **(Agenda Item 7-8)**

Authorized granting a permanent easement to Southern California Edison to house electrical equipment on Metropolitan property. **(Agenda Item 7-9)**

Authorized an agreement with Upper San Gabriel Valley Municipal Water District and the city of South Pasadena for a Stormwater for Direct Use Pilot Program. **(Agenda Item 7-10)**

(a) Authorized the General Manager to: (1) Secure one-year water transfers with various water districts for up to \$100 million (2) Secure storage and conveyance agreements with the Department of Water Resources and various water districts to facilitate these transfers consistent with Articles 55 and 56 of Metropolitan's State Water Project Supply Contract. (b) Grant the General Manager final decision-making authority to determine whether or not to move forward with these transfers following completion of any environmental reviews required under CEQA, subject to the terms and conditions set forth in the letter. **(Agenda Item 7-11)**

OTHER BOARD ITEMS - ACTION

Approved employment contract with Mr. Scott Suzuki as General Auditor, containing the terms and conditions set forth in the board letter. **(Agenda Item 8-1)**

OTHER MATTERS AND REPORTS

Induction of new Director Jeffrey D. Armstrong of Eastern Municipal Water District. **(Agenda Item 5G)**

Induction of new Director Jacquelyn McMillan of Calleguas Municipal Water District. **(Agenda Item 5H)**

Presented 20-year Service Pin to Director Randy A. Record. **(Agenda Item 5I)**

Presented 10-year Service Pin to Director Michael Camacho. **(Agenda Item 5J)**

FOLLOW-UP ITEMS

Approved increasing the Ethics Officer's salary to \$290,000 effective retroactively to July 1, 2022. **(Agenda Item 10-1)**

OTHER ITEMS

Administered Oath of Office for Board Chair Adán Ortega, Jr. for a two-year term beginning January 1, 2023. **(Agenda Item 11-1)**

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Upcoming Board Items

Item No. 7b

ANTICIPATED KEY ITEMS OF FOCUS – NOT AN EXHAUSTIVE LIST
SCHEDULE SUBJECT TO CHANGE

February	<ul style="list-style-type: none">• Board Retreat (Metropolitan Priorities Visioning)
March	<ul style="list-style-type: none">• Authorize Colorado River Protection Volume Agreements• Board Report on Portfolio of Recommended Actions for State Water Project Dependent Areas
April	<ul style="list-style-type: none">• Report on Alternatives being Considered by Reclamation in Supplemental EIS for Colorado River Basin Operations• Approve implementation of Water Supply Allocation Plan, adopt the supporting resolution, and conduct public hearing (if needed)• Quarterly Desert Housing Update
May	<ul style="list-style-type: none">• Update on Direct Potable Reuse Regulations
June	<ul style="list-style-type: none">• Long Range Finance Plan – Phase 1
July	<ul style="list-style-type: none">• Quarterly Desert Housing Update

The schedule of the following upcoming board items has not yet been determined:

August - January	<ul style="list-style-type: none">• Metropolitan Storage Portfolio Workshop• Sustainability, Resiliency, and Innovation Strategic Plan Workshop• Board Consideration Related to VA Package - (draft agreements and appendices, coupled with potentially required federal legislation)• Federal Grants for Large Recycled Water Projects• Pure Water Cost of Service Report
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