

## Appendix 12

# Local, State, Federal Policies, and other Legal Considerations

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# Local, State, Federal Policies, and other Legal Considerations

## Theme Subcommittee Members

The Flood-MAR Local, State, Federal Policies, and other Legal Considerations Theme Subcommittee consists of two co-chairs, seven subcommittee members, and two theme coordinators. In addition to subcommittee leadership, the State and non-State co-chairs are members of the Flood-MAR Research Advisory Committee (RAC). Subcommittee members are listed by name, title, and affiliation below.

<b>Position</b>	<b>Name</b>	<b>Affiliation</b>
State Co-Chair	Kelly Briggs, Environmental Program Manager	California Department of Water Resources (DWR), Division of Flood Management
Non-State Co-Chair	Stacy Sullivan, Policy Director	Sustainable Conservation
Subcommittee Member	Amanda Montgomery, Manager, Division of Water Rights	State Water Resources Control Board
Subcommittee Member	Pablo Garza, California Political Director, Ecosystems	Environmental Defense Fund
Subcommittee Member	Briana Seapy, Senior Environmental Scientist, Statewide SGMA Coordinator	Department of Fish & Wildlife, Water Branch
Subcommittee Member	Erik Ekdahl, Deputy Director, Division of Water Rights	State Water Resources Control Board
Subcommittee Member	Betty Andrews, Vice President / Principle Engineer	Environmental Science Associates
Subcommittee Member	Michael Kiparsky, Director	Wheeler Water Institute, Center for Law, Energy & the Environment
Interim Subcommittee Member	Lena Germinario, Office of the Chief Council	Department of Fish and Wildlife

## Flood-MAR Research and Data Development Plan

<b>Position</b>	<b>Name</b>	<b>Affiliation</b>
Theme Coordinator	Jim Wieking, Supervising Engineer	DWR
Theme Coordinator	Jennifer Marr, Supervising Engineer	DWR

## Engagement Process

Tasked by the RAC, the Local, State, Federal Policies, and other Legal Considerations Subcommittee's objective was to identify existing information and gaps in policy and legal considerations for Flood-MAR. An additional task was to prioritize the gaps identified by the subcommittee.

The State and non-State co-chairs were proposed by the California Department of Water Resources (DWR) Flood-MAR team. Both co-chairs were selected based on their leadership skills and expertise, interest, and experience associated with water resources project policy and legal considerations. The co-chairs, in collaboration with the Flood-MAR team, identified a list of potential subcommittee members. The final list of members who accepted to participate in the policy and legal theme as subcommittee members is shown in the above table.

The subcommittee had two in-person meetings and follow-up phone and email conversations. In addition, the co-chairs and the theme coordinators met several times to organize, process, and review the subcommittee's contributions to meeting the RAC's requests.

The subcommittee and co-chairs quickly agreed to focus on gaps; a list of existing policy and legal research, data, tools, and guidance is not provided. In addition, the compilation of a listing was completed in two steps. First, needs and gaps related to Flood-MAR policy and legal considerations were compiled. Subsequently, needs and gaps were converted to a listing of research, data, tools, and guidance actions. This allowed the subcommittee to ultimately report actions that can be completed to fill the gaps.

The subcommittee also discussed its expectation that the other Flood-MAR subcommittees likely would identify policy or legal considerations within their thematic areas. This proved to be the case. The subcommittee focused on priorities it had identified, viewing the top priorities as fundamental for project proponents being able to execute Flood-MAR projects.

The suite of policy and legal considerations associated with Flood-MAR projects is broad and complex, and the considerations identified in the other thematic areas are important. Further, more considerations may arise as the program is implemented.

# Policy and Legal Research, Data, Tools, and Guidance Actions

The following is a list of the Local, State, Federal Policies, and other Legal Considerations theme's identified actions, including research, data, tools, and guidance. This list includes a title for each action and a listing of related Flood-MAR implementation factors, with a designation of a primary implementation factor; additional implementation factors are all secondary.

- **Refine guidance and provide applicant assistance for beneficial use designations associated with recharge.**

*Implementation Factors:* Governance and coordination (primary), source water, and feasibility analysis and adaptive management.

- **Provide guidance and support for water availability analyses and associated determinations for processing of water rights applications.**

*Implementation Factors:* Governance and coordination (primary), source water, and feasibility analysis and adaptive management.

- **Develop recommendations for environmental permitting refinements and permitting guidance for Flood-MAR project proponents; establish an interagency group (part of the Flood-MAR network) to coordinate refined permit processes (working on actual projects seeking permits).**

*Implementation Factors:* Feasibility analysis and adaptive management (primary), and governance and coordination.

- **Encourage policy that would balance 1) facilitating stakeholder engagement in even relatively small Flood-MAR projects AND 2) avoiding associated increased transaction costs.**

*Implementation Factors:* Governance and coordination (primary), and feasibility analysis and adaptive management.

- **Encourage policy that incentivizes a system-scale multi-benefit approach to Flood-MAR implementation.**

*Implementation Factors:* Governance and coordination (primary), funding and incentives, and feasibility analysis and adaptive management.

- **Develop refined water accounting procedures that can support management, benefits and effects analyses, regulatory, economics, and financing of Flood-MAR projects.**

*Implementation Factors:* Feasibility analysis and adaptive management (primary), groundwater use, funding and incentives, recharge method and site management, source water, and governance and coordination.

- **DWR Flood-MAR program should provide a clear set of goals for Flood-MAR projects, including the scale and formulation of projects desired.**

*Implementation Factors:* Governance and coordination (primary), and all other implementation factors.

## Prioritization Process

After the subcommittee identified the above listing of research, data, tools, and guidance actions, the members worked on identifying priority actions for the Flood-MAR Policy and Legal Considerations theme. The subcommittee, with limited background, began to discuss which actions had the highest priority. Narrowing a priority listing to three action items proved challenging, but the discussion progressed quickly. The group began by identifying broad policy and legal categories, including potential barriers or impediments, unintended consequences, and needs for incentives to support implementation. Priorities should reflect an essential need, mitigation of barriers and challenges, alleviation of uncertainty, and supporting integration.

The group also discussed the intent of the Flood-MAR program related to scale. DWR Flood-MAR team members affirmed that they continue to believe that Flood-MAR can be implemented at several scales, from a single farm to a watershed. However, they also understand that multiple benefits and benefits of greater scope may be achieved more easily at larger scales.

A listing of broad category priorities associated with research, data, tools, and guidance gaps included water rights, beneficial uses, permitting, and incentives to support multi-benefit outcomes. Ultimately, the group settled on the first three items in its list. Over several months, the subcommittee made refinements to these actions, which are described in greater detail below.

## Top Three Research, Data, Tools, and Guidance Actions

The following three top priority actions for the Local, State, Federal Policies, and other Legal Considerations theme were determined by the theme's subcommittee. Each of the three action items include a title, description, related Flood-MAR implementation factors (the primary factor is noted with parentheses and the remaining factors are secondary), strategy for implementation, total estimated cost, estimated completion time, and potential lead entity or entities.

### **Action 1: Refine guidance and provide applicant assistance for beneficial use designations associated with recharge.**

**Description and Connection to Flood-MAR:** Develop additional guidance for water right applicants requesting inclusion of "other" beneficial uses for non-extractive purposes of use, in the context of the Sustainable Groundwater Management Act. Conduct outreach, education, and provide project-level assistance for applicants seeking to include non-extractive beneficial uses in their water right applications and change petitions. Refinement of guidance can be informed by tracking early case studies of applications and change petitions that propose to recharge surface water for a non-extractive purpose, drawing lessons learned from these and obtaining input from applicants.

**Implementation Factors:** Governance and coordination, source water and feasibility analysis and adaptive management.

**Strategy for Implementation:** In April 2019, the California State Water Resources Control Board (State Water Board) released *Purposes of Use for Underground Storage Projects Fact Sheet*, which provided improved general guidance related to recharge and beneficial uses of recharged water. Additional guidance and assistance would be helpful, including outreach and education such as detailed how-to guidance and examples for each type of extractive and non-extractive beneficial use.

**Total Estimated Cost:** \$600,000

**Time Needed to Complete:** 3 years

**Potential Lead:** SWRCB and academia



**Action 2: Provide guidance and support for water availability analyses and associated determinations for processing of water rights applications.**

**Description:** Conduct education and outreach to water right applicants on the information needs to support a finding of unappropriated water available to supply a permit. Provide project-specific support to applicants and their engineering consultants during development of water availability analysis. Evaluate protective flood flow metrics for conditioning in permits.

**Implementation Factors:** Governance and coordination, source water, and feasibility analysis and adaptive management.

**Strategy for Implementation:** The State Water Board’s website has a webpage discussing water availability at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_availability/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_availability/). Generally, guidance on how to prepare water available analysis is handled on a case-by-case basis and potential applicants are directed to staff contacts for five watershed boundary permitting units. The State Water Board does have region-specific guidance of water available for North Coast streams (dated 2002). Additional how-to guidance for the remaining areas of the State would be very helpful. Outreach and education would be helpful as well, including examples as well as region- and season-specific-guidance.

**Total Estimated Cost:** \$1,600,000

**Time Needed to Complete:** 3 years

**Potential Lead:** California State Water Resources Control Board

**Action 3: Develop recommendations for environmental permitting refinements and permitting guidance for Flood-MAR project proponents; establish an interagency group (part of the Flood-MAR network) to coordinate refined permit processes (working on actual projects seeking permits).**

**Description and Connection to Flood-MAR:** To clarify how project proponents should approach environmental permitting in Flood-MAR projects and support projects in obtaining permits:

- Convene an interagency subgroup of the Flood-MAR network consisting of agencies with regulatory and decision-making authority over projects focused specifically on permitting.
- Work from existing information to prepare a comprehensive list of the primary laws, regulations, and associated permitting processes at all scales (local, county, State, federal) that may apply to Flood-MAR projects in California, prioritizing the permits and specific issues the group will work on initially.
- Examine the jurisdictional authorities and management capacities of the types of agencies that have formed groundwater sustainability agencies (GSAs) and how those authorities and capacities would or would not support holding a programmatic permit for Flood-MAR. For areas where GSAs are not appropriate programmatic permit holders, identify other agencies that are.
- Analyze how federal, State, and local environmental permitting could be coordinated to facilitate implementation of Flood-MAR.
- Develop recommendations geared to key decision-makers.
- Provide a forum that facilitates interagency legal and policy issue resolution as issues are identified or arise in the implementation of Flood-MAR projects.

**Implementation Factors:** Feasibility analysis and adaptive management, and governance and coordination

**Strategy for Implementation:**

- Hold interagency collaborative review of potential permitting requirements (including CEQA/NEPA, CESA/ESA, LSA, Section 404) for Flood-MAR projects to identify:
  - Jurisdictions/authorities/permit requirements.

## Flood-MAR Research and Data Development Plan

- Eligible applicants.
- Potential for programmatic/streamlining, including categorical updates to the permitting process and inter-agency coordination.
- Develop Flood-MAR environmental permitting “checklist” (universe of potential requirements – not project specific – with associated costs, triggers, and efficiency opportunities clarified for each potential permit).
- Test checklist on several case-studies to ground-truth/use case-studies to inform development.

**Total Estimated Cost:** \$900,000

**Time Needed to Complete:** 3 years

**Potential Lead:** California State Water Resources Control Board, California Department of Fish and Wildlife, academia, Flood-MAR Network Policy Subcommittee.

## **Next Steps**

Next steps were discussed by the policy and legal subcommittee for their priority actions and were identified as “strategy for implementation,” by action, for the top three priorities above.

As recommended to the RAC, the RAC coordinators suggested that the Flood-MAR Research and Data Development Plan present consistent levels of information for all the research themes to support a coherent message throughout. Based on this recommendation, the RAC requested some adjustments to the information provided by all Flood-MAR subcommittees and members.