



# Westlands Water District

*February 5, 2026*

Eric Oppenheimer  
Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Via email to [Eric.Oppenheimer@waterboards.ca.gov](mailto:Eric.Oppenheimer@waterboards.ca.gov)

**Re: Port Chicago Standard and the Waste of up to 600 TAF**

Dear Mr. Oppenheimer:

Faced with increased volatility and declining reliability in our lifeblood—our CVP water supply, Westlands Water District has led in adopting fundamental change in how our growers manage and utilize our limited supply. We were early supporters of the Healthy Rivers and Landscapes Program and steadfastly believe comprehensive and system-wide actions can lead to better outcomes. We have been a leader in groundwater sustainability, with a State-approved groundwater sustainability plan. We are proudly pursuing land transition strategies that will unlock tremendous opportunities for the generation of new clean energy with our Valley Clean Infrastructure Program. As we ask more of ourselves, we ask more from decision-makers where their actions can have a profound impact on our District and the State's water supplies.

We write now to request that the State Water Board take action to prevent the imminent loss of up to 600,000 acre-feet of critically needed water supply. On February 1, 2026, the Port Chicago Delta outflow requirement in Table 4 of Decision 1641 (D-1641) was triggered, mandating substantial reservoir releases and export curtailments over the next month. If the current dry forecast does not change, this could discharge enough water to serve 6 million people<sup>1</sup> for a year; water that cannot be replaced and will be desperately needed if current dry conditions persist over the next months, potentially years.

These D-1641 Delta outflow requirements, which were intended to protect an array of estuarine species under historical conditions, were designed in 1994 using decades-old hydrologic data and assumptions about natural flow patterns that no longer reflect current conditions or modern scientific understanding. This condition, referred to as the Spring X2

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<sup>1</sup> Per capita usage of 0.1 AFY per person.

standard, was premised on the assumption that high February outflows would be met at least primarily naturally through sustained wet conditions—not through costly reservoir releases triggered by brief moisture events followed by extended dry periods. Yet that is precisely the “weather whiplash” scenario we face in 2026: a wet late December and early January, followed immediately by persistent dry conditions and critically low snowpack (currently at only 56% of normal for this date and 36% of the April 1st average). This year exemplifies precisely why D-1641’s reliance on inflexible triggers produces unreasonable outcomes entirely divorced from the ecological conditions they were meant to address.

This increased outflow will result from reduced diversions at the Central Valley Project (CVP) and State Water Project (SWP) pumping plants in the south Delta and increased releases of stored water from CVP and SWP reservoirs upstream of the Delta. Based on historical operations it is likely these releases will be made from Shasta, Folsom and Oroville reservoirs. This lost water is enough to irrigate hundreds of thousands of acres for an entire year. The provision at issue governs the water rights permits for the CVP and SWP held by the Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR).

The last time the State Water Board considered implementing this trigger was in February of 2023, at which time Reclamation and DWR applied to the State Water Board for a Temporary Urgency Change Petition (TUCP). The State Water Board granted that TUCP February 21, 2023—approving a temporary suspension of the Port Chicago Delta outflow requirement—eight days after the application was filed. This decision prevented hundreds of thousands of acre-feet from being wasted when it was otherwise needed for municipal, industrial, agricultural and other beneficial uses.

The 2023 TUCP was filed and granted before a substantial loss of water could occur. Similar relief would be welcome here. This year, however, due to the manner in which the timeline unfolded and the lack of a similar Governor’s Emergency Drought Declaration, there is no path available to pursue a TUCP to prevent the impending and catastrophic waste of water. It is without question that a regulation should be subject to challenge and reconsideration where the facts that gave rise to that regulation cease to exist.<sup>2</sup> Nowhere is this more accurate than in the administration of water, the lifeblood of California.

For these reasons, and regardless of potential application of the TUCP process, we urge the State Water Board to perform its mandatory duty and independent obligation arising under Article X, section 2 of the California Constitution to evaluate whether under currently existing circumstances and hydrologic conditions the application of the Port Chicago standard is wasteful and an unreasonable use of water. The State Water Board, like other government actors, is “bound by the self-executing proscriptions of article X, section 2, and therefore can be held accountable in court or before the proper administrative agencies if they use water in a wasteful and unreasonable manner.” (*Los Angeles Waterkeeper v. State Water Resources*

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<sup>2</sup> See, e.g., *Shelby County v. Holder* (2013) 570 U.S. 529, 554 (noting concerns with actions that “reenacted a formula based on 40-year-old facts having no logical relation to the present day.”).

*Control Bd.* (2023) 92 Cal.App.5th 230, 272.) “As the Supreme Court recognized soon after Article X, Section 2 was added, the rule limiting water use to that reasonably necessary ‘appl[ies] to the use of all water, under whatever right the use may be enjoyed.’ The rule of reasonableness is now ‘the overriding principle governing the use of water in California.’” (*Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1479 [quoting *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367–368 and *People ex rel. State Water Resources Control Bd. v. Forni* (1976) 54 Cal.App.3d 743, 750.]) The consideration is “of transcendent importance” and must evolve with changing conditions. (See *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 702.) “All uses of water, including public trust uses, must [] conform to the standard of reasonable use.” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443.) That a particular use of water provides some benefit does not establish that it is necessarily reasonable. (*Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132, 143 [Claiming that any benefit from a use is enough to satisfy Article X, section 2 “ignores rather than observes the constitutional mandate.”].) What constitutes reasonable use is case-specific. (*Light, supra*, 226 Cal.App.4th at 1479.)

If conditions in this Water Year are similar to those the State observed in Water Year 2015, when a wet period early in the year was followed by extended and extreme dry conditions, water that otherwise would be diverted to or be maintained in storage will be critically important to the State’s water supply for 2026. Against this backdrop, application of the outdated and inflexible Port Chicago standard is unreasonable because it carries the potential for severe, extraordinarily costly consequences in a year with a below average snowpack and a dry forecast. There is no evidence that imposition of the Port of Chicago standard is more protective than the otherwise applicable standard at Chipps Island, or that the release of the entire 600,000 acre-feet is required to serve any specific beneficial use requirement. Rather, with respect to species impacts, the triggered releases have the potential to cause more harm than the status quo due to the potential for future impairments on cold water in Shasta, Folsom, and Oroville, if the hydrology continues to be dry. Moreover, reduced storage will limit operational flexibility to meet multiple purposes for the duration of this water year.

Article X, section 2’s requirements to consider the reasonableness of a use of water before requiring that use through legal authority was confirmed in the recent decision *Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322, review granted July 16, 2025.<sup>3</sup> In that case a trial court mistakenly concluded that it need not consider the application of Article X, section 2 before ordering flows be left in-river on the Kern River for the intended benefit of fish below the dam pursuant to Fish and Game Code section 5937. The Court of Appeal held that under Article X, section 2, “[i]f the result mandated by a water use statute is reasonable and beneficial, then the statute is applied by its terms – even if the court is of the opinion that other use/allocations of water would be superior in some way. However, if the use/allocation of

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<sup>3</sup> *Bring Back the Kern* is on review to the California Supreme Court, which on July 16, 2025, declared that pending review, the opinion of the Court of may be cited for its persuasive value. (See *Bring Back the Kern v. City of Bakersfield* (2025) 571 P.3d 347, 348 [granting petition for review].)

water is unreasonable, section 2 prohibits the use even if the statute would otherwise require it." (*Bring Back the Kern*, 110 Cal.App.5th at 353.)

If applied today, the antiquated condition on a 30-year old State Water Board position would send 600,000 acre feet of water to the ocean, without a pause to consider whether current conditions actually require this for a beneficial use and what the corresponding consequences would be on the users that might put some or all of this water to beneficial use.

We respectfully request that the State Water Board exercise its inherent constitutional authority under Article X, Section 2 to:

1. Suspend application of the Port Chicago Delta outflow requirement for February 2026 pending a reasonableness determination under current hydrologic and scientific conditions;
2. Direct DWR and Reclamation that they are relieved of this obligation unless and until the Board completes this constitutionally mandated evaluation; and
3. Initiate an expedited process to assess whether the biological benefits of the Port Chicago releases, if any, justify the extraordinary water supply costs under 2026's specific circumstances.

The science underlying D-1641's Spring X2 requirements has been substantially updated since 1994. Recent studies have called into question the efficacy of rigid triggers like the Spring X2 requirements. Meanwhile, the very water supplies that would enable effective species management later in the year, including cold water pool preservation and temperature management, are being needlessly squandered.

We do not write here under threat of litigation. Instead, we hope to inspire fresh perspectives and timely action. Each day the delay continues results in the loss of thousands of acre-feet that cannot be recovered. The public interest requires that you move swiftly and decisively to avoid this continuing waste of precious water resources.

Sincerely,



Allison Febbo  
General Manager  
Westlands Water District